

DATE OF DECISION: 8/7/23

DATE OF MAILING: 8/7/23

**BEFORE THE NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD**

**RE: APPLICATION OF BRAD AND KRISTA RUSCIO FOR THE
PROPERTY LOCATED AT 206 JULIE ROAD, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-28-22**

FINDINGS OF FACT

1. On Thursday, June 22, 2023, at 7:00 p.m. at the New Britain Township Building, 207 Park Avenue, Chalfont, New Britain Township, the New Britain Township Zoning Hearing Board (“Board”) held a duly noticed hearing on the application of Brad and Krista Ruscio (the “Applicants”).

2. The Applicants are the record co-owners of the property located at 206 Julie Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-28-22 (the “Property”). The Property is the subject of the instant application.

3. Notice of the June 22, 2023, hearing was published in advance of the hearing in the Thursday, June 8, 2023, and Thursday, June 15, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-6.

4. Notice of the June 22, 2023, hearing was sent by first class mail on June 13, 2023, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and Zoning Officer, to (a) all record owners of properties within New Britain Township within 500 feet of the Property; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See* Exhibit B-9.

5. Gehman posted notice of the June 22, 2023, hearing on the Property on June 15, 2023, at 10:00 a.m. *See* Exhibit B-10.

6. As the record co-owners of the Property, the Applicants have the requisite standing to prosecute this zoning hearing board application.

7. The Property is located in the RR, Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

8. The Property is primarily improved with an existing single-family detached dwelling that is part of a cluster subdivision (use B2). The Applicants propose an accessory non-commercial swimming pool (use H4). Such uses and structures are permitted in the RR zoning district. *See* Zoning Ordinance §27-901.

9. To permit the pool and related improvements, the Applicants seek variances from the following sections of the Zoning Ordinance:

- a. from §27-305.H.H4.b.2 to permit the pool and pool deck to be 5 feet from the rear lot line, where the required minimum distance from the rear lot line is 15 feet; and
- b. from §27-902.c.2 to permit the pool equipment pad accessory structure to be within the required minimum 15 feet separation distance from the principal building (dwelling) on the Property.

10. Alternatively, the Applicants request an interpretation of Zoning Ordinance §27-305.H.H4.b.2 and §27-902.c.3 to allow the pool and pool deck without the need for a variance from the minimum rear lot line distance regulation.

11. Introduced as exhibits at the zoning hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

12. Brad Ruscio (“Brad”), a co-Applicant, and Brian Stover (“Stover”), contractor, testified in support of the application at the hearing.

13. No other individuals appeared at the hearing to request party status, register a position, or comment or ask questions on the application before the Board. New Britain Township took no position on the application and did not participate in the hearing.

14. The Property is lot 26 of the Final Plan of Fairwoods subdivision, the plan for which was recorded on September 28, 1977, in Plan Book 160, page 35 at the Bucks County Recorder of Deeds. The Board takes judicial notice of the Fairwoods subdivision record plan. *See* 42 Pa.C.S §6102.

15. The Property is improved with a two-story single-family detached dwelling constructed in 1984. The Applicants acquired the Property in December 2019. *See* Exhibit B-1, Deed.

16. The Property is 9,618 square feet. The Property is served by public water and public sewer. As the minimum lot area is 12,500 square feet, the Property is a lawfully existing undersized lot. *See* Exhibit A-2, Plan; *see also* Zoning Ordinance §27-903.a.

17. The Property is shaped like a rectangle with one semi-curved side. The Property is located along the linear section and bulb of the Julie Road cul-de-sac street. *See* Exhibit A-2, Plan.

18. The Property has 87.46 linear and curvilinear feet of frontage along Julie Road. The side lot lines are 105 feet and 130 feet long. The Property is 80 feet wide along its rear lot line. *See* Exhibit A-2, Plan.

19. The dwelling’s front wall is oriented toward Julie Road. One front corner of the dwelling extends into the required minimum yard. The Board finds that this is a lawfully existing non-conformity. *See* Exhibit A-2, Plan.

20. A driveway leading from the dwelling’s attached front-entry garage connects to the curbed section of the Property’s Julie Road frontage. A sidewalk through the front yard connects the driveway to the front door. *See* Exhibit A-2, Plan.

21. The dwelling's rear wall is almost at the required minimum rear yard line of 40 feet. A raised deck and sunroom abut the rear wall and extend into the rear yard. A small circular patio area is next to and behind the sunroom. *See Exhibit A-2, Plan.*

22. A fence extends from the Property into a portion of the large open space area behind the Property. Like other tracts in this section of the Fairwoods subdivision, residents fenced in portions of the abutting open space to create a larger rear yard area. *See Exhibit B-2, Survey Plan.*

23. Brad stated, and the Board finds, that the Applicants intend to remove the fence where it extends into the open space. The fence beyond the Property's limits, and the Applicants' intent in connection with it, are immaterial to the Board findings herein.

24. Stover and Brad stated, and the Board finds, that the in-ground pool and deck will be in the rear yard behind the raised deck and sunroom. A walkway from the new pool deck will connect to the existing circular patio. *See Exhibit A-2, Plan.*

25. Stover and Brad stated, and the Board finds, that the pool surface will be 240 square feet. At its closest point, the pool deck will be 5 feet from the rear lot line. *See Exhibit A-2, Plan.*

26. The pool equipment pad will be in the southern side yard, along the same side of the dwelling as the existing air conditioner and propane tank. The equipment pad will be within 15 feet of the dwelling's side wall. *See Exhibit A-2, Plan.*

27. Brad and Stover stated, and the Board finds, that the pool and deck cannot be moved elsewhere on the Property to provide the requisite 15 feet distance from the rear lot line without removing the existing deck and sunroom. The Board does not consider that a practical solution. *See Exhibit A-2, Plan.*

28. Brad and Stover stated, and the Board finds that the proposed spot for the equipment pad is the most logical place to site the structure. As an accessory utility-type unit, it is similar in nature to the existing propane tank and air conditioner. *See Exhibit A-2, Plan.*

29. The Property abuts other properties in the Fairwoods subdivision that are improved with similar style single-family detached residential dwellings. *See Exhibit B-2, Plan.*

30. Brad stated, and the Board finds, that he has spoken with their neighbors, and they are agreeable to the proposed pool, pool deck, equipment pad, and their respective locations.

31. Due to the Property being an oddly shaped undersized lot with a non-conforming dwelling, the Property does not have a location to build a pool, pool deck and equipment pad in compliance with the Zoning Ordinance's dimensional regulations.

32. The Property contains unique physical characteristics that support relief for the proposed pool, pool deck, and equipment pad to be located within the within the required minimum separation distances.

33. The Zoning Ordinance's dimensional limitation imposes a hardship on the Property and the Applicants by preventing a reasonably sized pool and pool deck on a Property with an existing detached single-family residential dwelling.

34. Subject to the conditions imposed herein, the proposed pool, pool deck, and equipment pad, their respective size and location, are harmonious with the Property's size and consistent with uses of other properties in the surrounding neighborhood.

CONCLUSIONS OF LAW

1. Required advanced public notice of the date, time and location of the June 22, 2023, hearing was made by sufficient advanced publication, posting and mailing to affected property owners.

2. Addressing the Applicants' request for an interpretation, the Board concludes that the introductory language of Zoning Ordinance §27-902.c specifies that the general provisions of subsection (c) apply "unless otherwise stipulated in Part 3 of this [Zoning Ordinance]...."

3. This limitation requires the Board to apply the specific accessory structure rear lot line distance criteria found in §27-305.H.H4.b.2 instead of the 5 feet distance regulation set forth in §27-902.c.3.

4. Zoning Ordinance §27-305.H.H4.b.2 prohibits a pool and pool deck from being within 15 feet or "the required minimum rear yard," whichever is lesser. The "required minimum rear yard" for this B2 use in the RR zoning district is 40 feet. *See* Zoning Ordinance §27-903.a.

5. The Applicants in interpret the 5 feet rear lot line distance regulation of §27-902.c.3 as being the same as the "required minimum rear yard." It is not. The former is a special prescribed distance from the rear lot line for a specific structure. The latter is the yard area between the relevant lot line (rear) and the prescribed minimum distance.

6. Turning to the substantive relief sought, in order to show entitlement to a variance, use or dimensional, an applicant must demonstrate all the following elements:

- a. an unnecessary hardship stemming from unique physical characteristics or conditions will result if the variance is denied;
- b. because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property;
- c. the hardship has not been created by the applicant;
- d. granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and
- e. the variance sought is the minimum that will afford relief.

7. The Board finds that the rear lot line and building separation distance variances requested is a dimensional variances. A dimensional variance involves a request to adjust or vary a zoning ordinance provision by degree to be able to otherwise use a property consistent with the regulations. *See Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494 (Pa

Commw. 2015); *see also Constantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Commw. 1994).

8. An applicant can demonstrate “unnecessary hardship” for a use or dimensional variance by showing that: (a) a property’s physical characteristics are such that the property cannot be used for any permitted use or purpose; (b) the property can only conform to a permitted use or purpose at prohibitive expense; or (c) that the property has either no value or only distress value for any permitted purpose. *See Nowicki v. Zoning Hearing Board of Monaca Borough*, 91 A.3d 287 (Pa. 2014).

9. A dimensional variance is subject to a lesser standard of proof to establish unnecessary hardship than a use variance. *See Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 721 A.2d 43 (Pa. 1998) (when seeking a dimensional variance within a permitted use, the owner is asking only for a *reasonable adjustment* of the zoning regulations. The grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation).

10. When deciding whether a hardship has been established in dimensional variance cases, the *Hertzberg* rationale authorizes the Board to consider multiple factors, including (a) the economic detriment to the applicant if relief is denied; (b) the financial hardship created by any work necessary to bring the proposed improvements into strict compliance with the zoning requirements; and (c) the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47, 50.

11. Nevertheless, the reasons for granting a variance must be substantial, serious and compelling. The party seeking the variance bears the burden of proving that (a) unnecessary hardship will result if the variance is denied; and (b) the proposed use will not be contrary to the public interest. *See Wilson v. Plumstead Township Zoning Hearing Board*, 936 A.2d 1061 (Pa. 2007).

12. The Board concludes that the Property’s odd shape, undersized nature, and the non-conforming location of the existing dwelling establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

13. Based on the credible testimony presented, the Board concludes that the Property’s only open area to locate the pool, pool deck and equipment pad are in the rear yard behind the existing deck and sunroom, and along the dwelling’s side wall. *See Exhibit A-2, Plan*.

14. Provided the Applicants comply with the reasonable conditions attached to the relief granted herein, the Applicants have met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to construct and install the pool, pool deck and equipment pad as shown on the definitive plan (Exhibit A-2).

15. The approved variances will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent properties.

16. The approved variances will not be detrimental to the public welfare.

17. The conditions and circumstances imposing a hardship upon the Property for the approved variances are not of the Applicants' own doing.

18. The approved variances represent the minimum variances that will afford relief and represent the least modification of the zoning regulations under the circumstances.

DECISION

AND NOW, this 7th day of August, 2023, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby finds, concludes, and holds as follows:

a. A variance is granted from §27-305.H.H4.1802.b to permit the pool and pool deck to be 5 feet from the rear lot line;

b. A variance is granted from §27-902.c.2 to permit the pool equipment pad accessory structure to be within the required minimum 15 feet separation distance from the dwelling; and

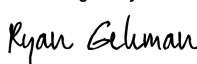
c. The Board denies the Applicants' request to interpret Zoning Ordinance §27-305.H.H4.b.2 and §27-902.c.3 as allowing the pool and pool deck without the need for a variance from the minimum rear lot line distance regulation.

The variance relief granted above is subject to the following conditions:

1. The proposed pool, pool deck, and equipment pad's dimensions, size, location and appearance shall be in accordance with the definitive plans, evidence, representations, exhibits and credible testimony made and submitted at the hearing.

2. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed improvement(s) and/or use(s) must meet all other applicable federal, state, county and New Britain Township regulations and codes.

The signatures of the New Britain Township Zoning Hearing Board members that appear on the following page attached hereto and incorporated herein confirm the Board's decision and order.

DocuSigned by:

By: _____
Ryan Gehman
New Britain Township
Assistant Planning and Zoning Officer

Date: 8/7/23

Thomas J. Walsh III, Esquire
Solicitor, New Britain Township Zoning Hearing Board
3655 Route 202, Suite 105
Doylestown, PA 18902

Note to Applicant: This Decision is NOT an authorization to build. Zoning and building permits must be obtained from New Britain Township prior to the commencement of any construction.

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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application (dated 4/20/23) Included with Application: <ul style="list-style-type: none">• Deed dated 12/20/2019• List of property owners within 500 feet• Addendum
B-2	Topographic Survey Plan, consisting of 1 sheet, prepared by Bux-Mont Surveying Services, LLC, dated 1/5/23, last revised 4/23/23
B-3	Letters dated 5/9/23 and 5/11/23 from Applicants’ attorney amending application, granting extension of time to hold hearing
B-4	Letter to The Intelligencer dated 5/31/23 forwarding notice of hearing for publication
B-5	Public Notice of the hearing on 6/22/23
B-6	Proof of publication of public notice in 6/8/23 and 6/15/23 editions of The Intelligencer
B-7	Letter to Applicants and attorney dated 5/31/23 providing notice of the hearing
B-8	List and map of the record owners of all properties within 500 feet of the Property
B-9	Affidavit of mailing to property owners on Exhibit B-8 – notice mailed on 6/13/23
B-10	Affidavit of posting of public notice at property – notice posted on 6/15/23, together with photo of posting
B-11	Bucks County Floodplain Viewer Aerial and Map of Property
A-1	Aerial Photo of Fairwoods Subdivision
A-2	Proposed Pool Exhibit Plan, consisting of 1 sheet, prepared by Bux-Mont Surveying Services, LLC, dated 6/21/2023
A-3	Selected sections of Zoning Ordinance

New Britain Township
Zoning Hearing Board

Signature Page

Re: Brad and Krista Ruscio
206 Julie Road
New Britain Township
TMP No. 26-28-22

August 7, 2023
Date: _____

Chuck Coxhead, Chair

DocuSigned by:
Charles A Coxhead
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Cathy Basilio, Vice Chair

DocuSigned by:
Cathy Basilio
00AED344C17048D...

Scott Fischer, Member

DocuSigned by:
Scott Fischer
D5F606AFF370430...

Ryan Wantz, Alternate Member

/ABSENT/