

DATE OF DECISION: 8/28/2023

DATE OF MAILING: 8/28/2023

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

**RE: APPLICATION OF KUNAL PATEL D/B/A K9 RESORTS  
LUXUY PET HOTEL FOR THE PROPERTY LOCATED AT  
1100 HORIZON CIRCLE, SUITE 100, NEW BRITAIN  
TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-5-47-8**

**FINDINGS OF FACT**

1. On Thursday, July 20, 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 Kunal Patel d/b/a K9 Resorts Luxury Pet Hotel (the “Applicant”).

2. The property that is the subject of this application is located at 1100 Horizon Circle, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-5-47-8 (the “Property”).

3. The Applicant is the prospective user of a certain portion of the non-residential building on the Property designated as Suite 100 (the “Premises”). The Premises are also the subject of this application. *See* Exhibit A-6, Floor Plan.

4. The record owner of the Property is Liborio, L.P., a Delaware limited partnership (“Liborio”). The Property’s current deed is recorded in the Bucks County Recorder of Deeds Office at Deed Book 5316, Page 0999. *See* Exhibit B-1, Deed.

5. Notice of the July 20, 2023, hearing was published in advance of the hearing in the Thursday, July 6, 2023, and Thursday, July 13, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

6. Notice of the July 20, 2023, hearing was sent by first class mail on July 17, 2023, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and Zoning Officer, to (a) all record owners of properties in 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-8.

7. Gehman posted notice of the July 20, 2023, hearing on the Property on July 17, 2023, at 12:21 p.m. *See* Exhibit B-9.

8. The Applicant is an adult individual, and the designee of a to-be formed business entity that will be the tenant of the Premises. Louis Ramunno (“Ramunno”) is an officer and representative of Liborio. *See* Exhibit B-1, Addendum.

9. The Applicant and Liborio have a separate agreement which allows for the Applicant to lease the Premises and certain exterior portions of the Property in the event all relevant use approvals are secured. *See* Exhibit B-1, Addendum.

10. As the prospective occupant of the Premises and portions of the Property, together with the record owner's participation as a co-applicant, the Applicant has the requisite standing to prosecute this zoning hearing board application. *See* Exhibits B-1, Addendum.

11. The Property is located in the C-3, Commercial, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

12. The Applicant proposes to conduct a pet resort use (use A13) in the Premises and certain exterior portions of the Property. An A13 use is not permitted in the C-3 zoning district. *See* Zoning Ordinance §27-1401.a.

13. To permit the pet resort use, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. from §27-1401 to allow the pet resort use (use A13), where such use is not permitted in the C-3 zoning district; and
- b. from §27-305.A.A13.b.3(a) to permit a capacity of more than 80 pets in the day-care portion of the pet resort use.

14. 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.

15. Kevin Tenant ("Tenant") is an officer and representative of the corporate franchisor of Appellant's to-be formed franchisee entity. Tenant testified on behalf of the Applicant and in support of the application at the hearings. Ramunno spoke during public comment.

16. 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.

17. The Property is Lot 6 in the High Point Office Campus. The Property is improved with a non-residential building (the "Building") containing 21,279 square feet of gross floor area. The Building was constructed in or around 1996. *See* Exhibits B-1, Addendum; and A-2, Site Plan.

18. The Property is also improved with a parking lot with approximately 158 parking spaces that surround the Building. An entrance driveway connects to the parking lot's southeast corner. *See* Exhibits A-1, Photo; and A-2 Site Plan.

19. The Property has 582.19 feet of frontage along County Line Road. The rear lot line is 522.19 feet long. The Property has 94.51 feet of curvilinear frontage along Horizon Circle. *See* Exhibit A-2, Site Plan.

20. When the Building was originally built and the Property developed, the driveway directly accessed the Horizon Circle cul-de-sac bulb at the Property's rear northeast corner. There was no access to the Property from County Line Road. *See* Exhibit A-2, Site Plan.

21. County Line Road was widened and improved during the mid 2010s. As part of those improvements, an entrance only spur from County Line Road to the Property was added in the Property's southeast corner. *See* Exhibit A-1, Photo.

22. This County Line Road entry access spur connects to the original driveway leading to Horizon Circle. To exit the Property, vehicles must still use Horizon Circle. *See* Exhibit A-1, Photo.

23. The Property is approximately 3.511 acres. It is shaped like a rectangle. The Building's front wall and primary pedestrian entrances are oriented toward County Line Road. *See* Exhibits B-1, Deed; and A-2, Site Plan.

24. The Building is a one-story structure. The Premises is located the eastern half of the Building. The Premises extends the entire depth of the Building. *See* Exhibit A-3, Photo.

25. Tenant stated, and the Board finds, that a financial services advisory firm (use J4) previously occupied the entire Building. A financial establishment use is permitted in the C-2 zoning district by right. *See* Zoning Ordinance §27-1301.a.

26. Tenant and Ramunno stated, and the Board finds, that the financial establishment use ceased due to the COVID-19 pandemic. Since at least 2020, the Building has been vacant. Only recently was Ramunno able to lease the Building's other suite to an occupant.<sup>1</sup> *See* Exhibit B-1, Addendum.

27. Tenant stated, and the Board finds, that the proposed use is a "premium" pet resort for dogs only. As a franchisee, the Applicant will provide luxury "doggy daycare" services and overnight boarding. Grooming services are also available.

28. Tenant stated, and the Board finds, that the proposed pet resort use will be conducted primarily inside the Premises. No expansion of the Building's footprint is proposed. Decorative improvements and compliant signage are proposed for the Building's front wall. *See* Exhibits A-5, Renderings; and A-6, Floor Plan.

29. Tenant Stated, and the Board finds, that a few parking spaces and an outdoor courtyard will be converted to outdoor play areas. The aggregate area of these outdoor play areas shall not exceed 2,500 square feet. *See* Exhibit A-6, Floor Plan.

30. Tenant stated, and the Board finds, that the Applicant will have between 14 to 24 total employees, but a maximum of only 7 to 10 employees at the Premises at any one time. Employees work in 2 shifts, from 6 a.m. to 2 a.m.; and from 2 a.m. to close.

31. Tenant stated, and the Board finds, that to the public, the pet resort is open Monday through Friday from 7 a.m. to 7 p.m.; and 9 a.m. to 5:30 p.m. on Saturday and Sunday. Pre-

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<sup>1</sup> This prospective user is an adult day care use. It is approved to occupy suite 102 in the Building next to the Premises. This adult day care use was the subject of a separate Board decision dated January 18, 2023.

opening begins an hour before the public open, and post-closing general extends an hour beyond the public closing time.

32. Tenant stated, and the Board finds, that dog owners using the daily day care services will deliver their pet to the Premises between 7 a.m. and 9:30 a.m. The pick-up time for day users is between 5 p.m. and 7 p.m. Dogs being boarded overnight are dropped off and picked up between 9 a.m. and 5 p.m.

33. All pick-up and drop-off times are by pre-set reservation. Owners must enter the Premises to drop off and retrieve their pet. Cars are not permitted to queue in front of the Building. The transaction time for each pick-up or drop-off is generally around 1 minute.

34. Dogs are primarily separated within the Premises and the outdoor play areas by weight. The dividing line is 30 pounds. The Premises will contain interior day care and fenced outdoor play yards for each category of dogs. *See Exhibit A-6, Floor Plan.*

35. The Premises will contain a reception and front office area, mechanical rooms, employee break room, and several “executive” dog boarding rooms. *See Exhibit A-6, Floor Plan.*

36. Based upon the proposed floor plan and size of the Premises, Tenant stated that the Premises could house up to 120 dogs. The Zoning Ordinance’s 80 pet maximum limitation to the day-care services would result in a significant portion of the Premises being unused. *See Exhibit A-6, Floor Plan.*

37. Tenant stated, and the Board finds, that dogs are always with a technician. Dogs are not walked outside the Premises. They are kept either inside or within one of the outdoor play areas. *See Exhibit A-6, Floor Plan.*

38. Tenant stated, and the Board finds, that no employees are at the Premises overnight. Dogs being boarded are contained in their crate space to rest. Internal cameras are installed to allow management and the corporate franchisor to view the space overnight.

39. Hospital grade cleaners are used to wash the Premises and to eliminate any pet odor and waste. A non-porous epoxy is applied to hard floors to prevent the surface from absorbing urine and other liquids. *See Exhibit A-6, Floor Plans.*

40. The outdoor play areas have an artificial turf surface known as “K9 grass.” The turf drains to the ground and is sanitized twice per day. Solid feces are removed immediately. Dog excrement is bagged and stored in a designated dumpster which is emptied daily by a commercial hauler. *See Exhibit A-6, Floor Plan.*

41. Tenant stated, and the Board finds, that the HVAC system will contain several zones to properly segregate the various rooms. There are roughly 12-15 fresh air exchanges per hour. UV light technology is used in the duct return to address odors and other contaminants. *See Exhibit A-6, Floor Plan.*

42. Tenant stated, and the Board finds, that noise is attenuated through interior acoustic block walls and ceiling tiles. A fence with sound absorption material will be installed around the outdoor play areas. *See Exhibit A-6, Floor Plan.*

43. Tenant stated, and the Board finds, that the Applicant will partner with a local veterinarian, as there is no vet on staff. If an animal needs to see the vet, an employee of the Applicant will contact the owner and secure permission to transport the dog to the vet.

44. Tenant stated, and the Board finds, that the surrounding properties are all non-residential in nature. The properties across County Line Road are improved with residences. *See* Exhibit B-10, Viewer.

45. The Board finds that the Property, being zoned commercial and located within the existing High Point Office Campus, can accommodate the proposed pet resort use and the related requested variance without overburdening the Property or the Premises, or negatively impacting the surrounding properties.

46. The Property contains unique physical characteristics that support relief for the proposed pet resort use to be located in the Premises and on the Property in the C-3 zoning district where such use is not permitted.

47. Due to the adjoining adult day care and other commercial uses in the High Point Office Campus, the Board finds that the proposed pet resort use is consistent and harmonious with the surrounding uses.

48. The Board finds that Zoning Ordinance's requirements, together with the unique physical characteristics, impose a hardship on the Property, the Premises, and the Applicant.

49. Subject to the conditions imposed herein, the proposed pet resort use, its location and manner of operation, is harmonious with the Premises' and Property's size and is consistent with uses of other properties in the surrounding neighborhood.

### **CONCLUSIONS OF LAW**

1. Required public notice of the date, time and location of the July 20, 2023, hearing was made by sufficient publication, posting and mailing to affected property owners.

2. The Board concludes that Gehman correctly determined that Applicant's proposed use constitutes a pet resort use (use A13). Such use is defined as a "facilit[y] routinely used for daily and overnight boarding of pets, doggy day care, grooming and spa services, training, rehabilitation therapy, swim therapy, massage, exercise and socialization of pets." *See* Zoning Ordinance §27-305.A.A13.a.

3. A pet resort use is not permitted in the C-3 zoning district. As such, the Board finds that the request to conduct a pet resort use with a capacity of more than 80 pets in the day-care portion of the use in the C-3 zoning district is a request for a use variance.

4. Under Pennsylvania law, a use variance arises in situations where the proposal is to use the property in a manner that is wholly outside a Zoning Ordinance regulation. *See Hertzberg v. Zoning Board of Adjustment of Pittsburgh*, 721 A.2d 43 (Pa. 1998).

5. In order to show entitlement to a use variance, an applicant must demonstrate all the following elements where relevant in any given case:

- 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.

6. 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).

7. An applicant can demonstrate “unnecessary hardship” for a use 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).

8. Although mere economic hardship alone will not justify the grant of a use variance, an applicant need not demonstrate that the property is rendered completely valueless without the variance or as zoned in order to show that a use variance is needed to make reasonable use of the property. *See Marshall v. City of Philadelphia*, 97 A.3d 323 (Pa. 2014).

9. When evaluating an unnecessary hardship in a use variance case, use of adjacent and surrounding land is relevant but not dispositive. *See Valley View Civic Association v. Zoning Hearing Board of Adjustment*, 462 A.2d 637 (Pa. 1983).

10. The Board concludes that the Applicant has established, by substantial and credible evidence, that an unnecessary hardship will result if the use variances are refused due to the unique physical circumstances and conditions of the Premises and the Property.

11. The Board concludes that the “professional services” nature of the proposed pet resort use is sufficient to justify the variances necessary from Zoning Ordinance §27-1401.a to permit a limited A13 use to be conducted in the C-3 zoning district.

12. The proposed pet resort use, while not a professional, office or similar use, is nonetheless a non-residential use. The Board concludes that the pet resort use is similar in nature to the existing uses in the High Point Office Campus.

13. Critical to the Board's conclusions herein is that the proposed pet resort use will be occupying existing space previously occupied by a non-residential use. No building expansion or other material exterior improvements are proposed.

14. Lastly, the Board concludes that ensuring that pet owners do not queue their vehicles in front of the Premises when dropping off or picking up their pet allows for sufficient and safe entry to and exit from the Premises for the clients. *See* Exhibits A-2, Site Plan, and A-6, Floor Plan.

15. Provided the Applicant complies with the reasonable conditions attached to the relief granted herein, the Applicant has met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to conduct the pet resort use in the Premises.

16. 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.

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

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

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

### DECISION

AND NOW, this 28th day of August, 2023, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicant's requests for variances from the Zoning Ordinance as follows:

a. A variance is granted from §27-1401 to conduct a pet resort use (use A13) in the Premises and the identified exterior portions of the Property, where such use is not permitted in the C-3 zoning district; and

b. A variance is granted from §27-305.A.A13.b.3(a) to permit a capacity of up to and not exceeding 120 dogs at any one time in the day care portion of the pet resort use.

The relief granted above is subject to the following conditions:

1. The pet resort use, Premises' and Property's dimensions, size, location, operations, occupancy, hours of operation, staffing levels and appearance shall be in accordance with the definitive plans, evidence, representations, exhibits, and credible testimony made and submitted at the hearing.

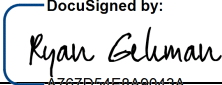
2. Vehicle queuing in front of the Premises for the drop-off and pick-up of all pets is prohibited. Owners shall park in the available spaces and hand-deliver their dog to the Premises.

3. There shall be no more than 3 outdoor play areas; and the aggregate area of the 3 outdoor play areas shall not exceed 2,500 square feet.

4. Should the Applicant or any future operator of a pet resort use at the Premises wish to modify and/or eliminate any of the conditions set forth above, further relief from the Board shall be required.

5. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed use(s) and/or improvement(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, confirms the Board's decision and order.

DocuSigned by:  
  
By: \_\_\_\_\_  
Ryan Gehman  
New Britain Township  
Assistant Planning and Zoning Officer

Date: 8/28/2023

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

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application (dated 6/14/23). Attachments to Application: <ul style="list-style-type: none"><li>• Addendum</li><li>• Google maps aerial photo</li><li>• Deed dated 2/21/2007</li><li>• Aerial photo</li><li>• Front elevation</li><li>• Floor plan</li></ul>
B-2	Site Plan, 1 sheet, prepared by Bock & Clark Surveyors, dated 12/29/2008
B-3	Letter to The Intelligencer dated 6/30/2023 forwarding public notice of 7/20/23 hearing for publication
B-4	Public Notice of the hearing on 7/20/2023
B-5	Proof of publication of public notice in 7/6/23 and 7/13/23 editions of The Intelligencer
B-6	Letter to Applicant and attorney dated 7/5/23 providing notice of the hearing
B-7	List of the record owners of all properties within 500 feet of the Property; aerial map of properties
B-8	Affidavit of mailing to property owners on Exhibit B-7 – notice mailed on 7/17/23
B-9	Affidavit of posting of public notice at property – notice posted on 7/17/23 at 12:21 p.m., together with photos of notice on property
B-10	Bucks County Viewer Map and Aerial
A-1	Google Maps aerial photo of Property
A-2	Site and Floor Plan, 1 sheet (Sheet A-1), prepared by Gouck Architects, dated 12/8/2022
A-3	Google Maps aerial photo of Property identifying the Premises
A-4	Google Maps aerial photo of Property identifying outdoor play area
A-5	Façade Improvements / Signage

**Exhibit****Description**

A-6 Floor plan / fit out sketch plan

**New Britain Township**  
**Zoning Hearing Board**

**Signature Page**

Re: Kunal Patel d/b/a K9 Resorts  
Luxury Pet Hotel  
1100 Horizon Circle, Suite 100  
New Britain Township  
TMP No. 26-5-47-8

Date: August 28, 2023

Chuck Coxhead, Chair

DocuSigned by:  
*Charles A Coxhead*  
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Cathy Basilio, Vice Chair

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*Cathy Basilio*  
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Scott Fischer, Member

/ABSENT/

Ryan Wantz, Alternate Member

/ABSENT/

DATE OF DECISION: 8/28/2023

DATE OF MAILING: 8/28/2023

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

**RE: APPLICATION OF JASON R. STOUT FOR  
THE PROPERTY LOCATED AT 171 OLD LIMEKILN ROAD,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-4-60**

**FINDINGS OF FACT**

1. On Thursday, July 20, 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 Jason R. Stout (the “Applicant”).

2. The Applicant and Laura A. Stout (“Laura”) are the record co-owners of the property located at 171 Old Limekiln Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-4-60 (the “Property”). The Property is the subject of the instant application.

3. Notice of the July 20, 2023, hearing was published in advance of the hearing in the Thursday, July 6, 2023, and Thursday, July 13, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the July 20, 2023, hearing was sent by first class mail on July 17, 2023, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and Zoning Officer, to (a) all record owners of properties in 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-8.

5. Gehman posted notice of the July 20, 2023, hearing on the Property on July 17, 2023, at 11:56 a.m. *See* Exhibit B-9.

6. As a record co-owner of the Property, the Applicant has the requisite standing to prosecute this zoning hearing board application.

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

8. The property is improved with a detached single-family residential dwelling (use B1), an accessory guest house, and an accessory pole barn. A B1 use is permitted in the WS zoning district. *See* Zoning Ordinance §27-801.

9. The Applicant proposes an accessory dwelling use (use H14) in the existing guest house building. To permit the accessory dwelling use, the Applicant seeks a variance from Zoning

Ordinance §27-305.H.H14.b.5 to permit the accessory dwelling on a lot that is 3.06 acres, where the required minimum lot area is 3.67 acres.

10. 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.

11. The Applicant testified in support of the application at the hearing. No other individuals appeared at the hearings 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.

12. The Property is an oddly shaped lot. Its front section along Old Limekiln Road is shaped like a square. A long and narrow section extends along the Property's northern side lot line. This rear section slightly widens toward the rear lot line. *See Exhibit B-10, Viewer.*

13. The Property's base site area is 3.06 acres. The Property has 246.84 feet of frontage along Old Limekiln Road. *See Exhibits B-2, Plan; and B-10, Viewer.*

14. The Property is one lot removed from the 90 degree bend in Old Limekiln Road before it intersects with New Galena Road. This adjoining lot is TMP No. 26-4-59 (the "Lot"). The Applicant and Laura are the record co-owners of the Lot. *See Exhibit B-10, Viewer.*

15. The Applicant stated, and the Board finds, that all the structures are in the front square portion of the Property. The historic farmhouse dwelling was built in or around 1865. It is roughly 30 feet from the edge of the Old Limekiln Road cartway. *See Exhibit B-2, Plan.*

16. The Applicant stated, and the Board finds, that the guest house (the "Guest House") is located directly behind the primary dwelling. The Guest House will contain the accessory dwelling unit. The pole barn is far rear yard. *See Exhibits B-2, Plan; and B-10, Viewer.*

17. A driveway accessing Old Limekiln Road runs next to the dwelling's and Guest House's side walls that face the Lot. The paved area also extends in between the rear of the dwelling and the front of the Guest House. *See Exhibits B-2, Plan; and B-10, Viewer.*

18. The Applicant stated, and the Board finds, that the Property's rear sections contain significant woodlands. This far rear section also contains the septic system and sand mounds that have the capacity to support the primary dwelling and the Guest House. *See Exhibit B-10, Viewer.*

19. The Applicant stated, and the Board finds, that the Guest House was in disrepair when he and Laura acquired the Property. New Britain Township approved his construction and plumbing plans to upgrade the Guest House in or around 2015.

20. The Applicant stated, and the Board finds, that following completion of the repairs, the Guest House was used as recreation space for his extended family. The Applicant's mother temporarily resided in the Guest House.

21. The Applicant stated, and the Board finds, that the Guest House will be used a permanent dwelling by his daughter and her family. The Applicant and Laura's son will reside in the primary dwelling, while they will reside in the dwelling on the Lot. *See Exhibit B-2, Plan.*

22. The Applicant stated, and the Board finds, that neither the Guest House nor the paved areas will be expanded in connection with using the Guest House as an accessory dwelling. *See Exhibit B-2, Plan.*

23. The Applicant stated, and the Board finds, that the Property's base site area has been 3.06 acres at all relevant times. While, this satisfies the 80,000 square feet minimum lot area for a tract improved with a B1 use in the WS zoning district, adding the H14 use requires a minimum lot area of 160,000 square feet (i.e., 3.67 acres.). *See Exhibit B-2, Plan; see also Zoning Ordinance §27-305.H.H14.b.5 and §27-502.b.1(a).*

24. The Applicant stated, and the Board finds, that the Property's existing lot area is more than sufficient to support the existing B1 and proposed H14 use. To be sure, the structure that will contain the H14 use is existing and will not be expanded.

25. Upon questioning from the Board, the Applicant stated, and the Board finds, that occupancy of the Guest House will be restricted to relatives of the occupants of the primary dwelling on the Property.

26. The surrounding properties consist of similar style residences and large lots. The Applicant stated, and the Board finds, that no other surrounding property owners have spoken to them to voice any objections to the proposed accessory dwelling unit in the Guest House on the Property.

27. Due to the Property being an oddly shaped undersized lot, along with the non-conforming structure containing the primary B1 use, the Property contains unique physical characteristics that support relief for the lot area variance in connection with the proposed accessory dwelling unit in the Guest House.

28. The Zoning Ordinance's dimensional limitations impose a hardship on the Property and the Applicant in that these provisions prevent a reasonable use of an existing accessory structure in support of a primary detached residential dwelling.

29. Subject to the conditions imposed herein, the proposed accessory dwelling, and the lot area of the Property containing the B1 and H14 uses and buildings, are consistent with uses of other properties in the surrounding neighborhood.

### **CONCLUSIONS OF LAW**

1. Required public notice of the date, time and location of the July 20, 2023, hearing was made by sufficient advanced publication, posting and mailing to affected property owners.

2. 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.

3. The Board finds that the lot area variance requested is dimensional in nature. 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).

4. 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).

5. 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).

6. 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.

7. 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).

8. The Board concludes that the Property’s odd shape, undersized nature, and the existence of the non-conforming structure containing the primary B1 use, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. The Board notes that “lot area” is defined, in relevant part, as the “area contained within the property lines of the individual parcels of land shown on a subdivision plan or required

by [the Zoning Ordinance], excluding any area within an existing or designated future street right-of-way.” See Zoning Ordinance §27-201.

10. The Board concludes that the Property is 83.4% of the required minimum lot area of 3.67 acres. It will continue to exceed the required minimum lot area of 80,000 square feet for a property improved with a B1 use in the WS. See Exhibit B-2, Plan.

11. Critical to the Board’s conclusions herein is that occupancy of the Guest House accessory dwelling will be limited to relatives and family of the occupants of the primary dwelling. The Guest House will not be rented to third parties.

12. Based on the credible testimony presented, the Board concludes that the requested lot area variance proposes a reasonable adjustment to the Zoning Ordinance in connection with the accessory dwelling unit in the Guest House.

13. Provided the Applicant complies with the reasonable conditions attached to the relief granted herein, the Applicants has met the Zoning Ordinance and Pennsylvania law requirements for the variance, including hardship, to conduct an accessory dwelling use (use H14) in the Guest House on the Property.

14. The approved variance 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.

15. The approved variance will not be detrimental to the public welfare.

16. The conditions and circumstances imposing a hardship upon the Property for the approved variance are not of the Applicant’s own doing.

17. The approved variance represents the minimum variance that will afford relief and represents the least modification of the zoning regulations under the circumstances.

### **DECISION**

AND NOW, this 28th day of August, 2023, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicants’ request for a variance from Zoning Ordinance §27-305.H.H14.b.5 to conduct an accessory dwelling (use H14) on the Property with a lot area of 3.06 acres, subject to the following conditions:

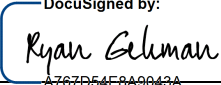
1. The proposed accessory dwelling (use H14) to be conducted in the Guest House shall be in accordance with definitive plans, and the other evidence, representations and credible testimony made at the hearing.

2. Occupancy of the Guest House accessory dwelling shall be limited to relatives and family members of the occupants of the existing main primary B1 dwelling. The Guest House accessory dwelling shall not be leased or rented to third parties.



3. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed use(s) and/or improvements(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, confirms the Board's decision and order.

DocuSigned by:  
  
By: \_\_\_\_\_  
Ryan Gehman  
New Britain Township  
Assistant Planning and Zoning Officer

Date: 8/28/2023

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

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application. Included with the Application: <ul style="list-style-type: none"><li>• Email from R. Gehman to applicant</li><li>• Deed dated 12/8/2009</li></ul>
B-2	Hand Drawn Site Plan
B-3	Letter to The Intelligencer dated 6/30/23 forwarding public notice of 7/20/23 hearing for publication
B-4	Public Notice of the hearing on 7/20/23
B-5	Proof of publication of public notice in 7/6/23 and 7/13/23 editions of The Intelligencer
B-6	Letter to Applicants dated 7/5/23 providing notice of the 7/20/23 hearing
B-7	Township list of the record owners of all properties within 500 feet of the Property; map of properties
B-8	Affidavit of mailing to property owners – notice of hearing mailed on 7/17/23 to property owners on exhibit B-7
B-9	Affidavit of posting of public notice at property – notice posted on 7/17/23 at 11:56 a.m.
B-10	Bucks County Floodplain Viewer and Map of Property

**New Britain Township**  
**Zoning Hearing Board**

**Signature Page**

Re: Jason R. Stout  
171 Old Limekiln Road  
New Britain Township  
TMP No. 26-4-60

Date: August 28, 2023

Chuck Coxhead, Chair

DocuSigned by:  
*Charles A Coxhead*  
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Cathy Basilio, Vice Chair

DocuSigned by:  
*Cathy Basilio*  
00AED344C17048D...

Scott Fischer, Member

/ABSENT/

Ryan Wantz, Alternate Member

/ABSENT/