

DATE OF DECISION: 4/24/2023

DATE OF MAILING: 4/24/2023

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

**RE: APPLICATION OF BLAIR IMAGE ELEMENTS FOR THE  
PROPERTY LOCATED AT 4275 COUNTY LINE ROAD, SUITE 01,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-5-49-2**

**FINDINGS OF FACT**

1. On Thursday, March 16, 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 Blair Image Elements (the “Applicant”).

2. The real property that is the subject of this application is located at 4275 County Line Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-5-49-2 (the “Property”).

3. The Applicant is the agent for ERP New Britain Property Owner, L.P. (“ERP”), the Property’s record owner. The Property’s current deed is recorded in the Bucks County Recorder of Deeds Office at Deed Book 4878, Page 0088. *See* Exhibit A-1, Deed.

4. The Applicant is also the agent for Giant-Martins (“Giant”), the tenant and occupant of a certain 57,951 square feet portion of one of the non-residential buildings on the Property, further identified as suite 01 (the “Premises”). The Premises are also the subject of this application. *See* Exhibits A-4, Brochure; and A-5, Signage Plans.

5. Notice of the March 16, 2023, hearing was published in advance of the hearing in the Thursday, March 2, 2023, and Thursday, March 9, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

6. Notice of the March 16, 2023, hearing was sent by first class mail on March 8, 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 surrounding 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 March 16, 2023, hearing on the Property on March 9, 2023, at 11:20 a.m. *See* Exhibit B-9.

8. As the agent for ERP and Giant, with the express authorization of ERP, the Applicant has the requisite standing to prosecute this zoning hearing board application. *See* Exhibit A-2, Letter.

9. The Property is located in the C-2, Commercial, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

10. The Property is improved with four (4) non-residential buildings, collectively used for a shopping center use (J24). Giant conducts a retail supermarket use in the Premises. A J24 use is permitted by right in the C-2 Commercial, zoning district. *See* Exhibit A-3, Aerial; *see also* Zoning Ordinance §27-1301.a.

11. The Applicant proposes to replace 4 existing wall signs, install 2 new wall signs, and retain 1 existing wall sign in connection with the Giant retail supermarket use.

12. To permit the new signage, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. From §27-2610.d.1 to permit 7 wall signs on the building containing the Premises (Giant supermarket) where the maximum number of permitted wall signs on all the buildings in the shopping center is 2;
- b. From §27-2610.d.3(d) to permit the total sign area of all the Giant related wall signs to be 209.58<sup>1</sup> square feet, where the maximum total sign area of all wall signs on the Property is 100 square feet;
- c. From §27-2611.d.3(a) to permit 7 wall signs for a single tenant unit within the shopping center, where the maximum number of permitted signs per single tenant is 1; and
- d. From §27-2611.d.3(b) to permit 2 wall signs that contain wording other than the primary tenant’s name or logo.

13. 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.

14. Matthew Clift (“Clift”), contractor and installer for the Applicant, testified in support of the application at the hearing. 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.

15. The Property is a large lot with primary road frontage along West Butler Avenue and County Line Road. It consists of 21.125 acres. The Property is surrounded by many other non-residential properties. *See* Exhibit A-3, Aerial.

16. Vehicles access the Property from County Line Road, West Butler Avenue, and Andre Drive (an access road to the rear of the Property). Numerous buffer plantings and planted water detention facilities are along the Property’s perimeter. *See* Exhibit A-3, Aerial.

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<sup>1</sup> Using the data in the Applicant’s signage plan exhibit (Exhibit A-5), the aggregate square footage of all the wall signs proposed for the Premises is 201.97 square feet. The public notice, and the testimony at the hearing, states the aggregate square footage is 209.58 square feet. Prior to applying for zoning permits, the Applicant’s representatives shall clarify the precise square footage and/or the accuracy of the definitive plan, as the relief granted herein is limited to the figures set forth in the Applicant’s definitive plan (Exhibit A-5), as corrected.

17. The shopping center was constructed in the early 1990s. As currently designed, the shopping center can accommodate over 25 occupants and users in the various buildings. *See Exhibit A-3, Aerial.*

18. The Premises' front wall and entrances face a large parking lot. The front wall of the Premises is 353 feet long. The side wall of the Premises faces West Butler Avenue. The side wall is 140 feet long. *See Exhibit A-5, Signage Plans.*

19. Clift stated, and the Board finds, that shopping center is locally known as New Britain Village. Giant is the "anchor" tenant in the shopping center. For the past 2 years, Giant has been updating and replacing its exterior signage at all its stores to reflect its re-branding.

20. Clift stated, and the Board finds, that Giant presently has 5 wall signs. Four (4) signs are on the Premises' front façade. One (1) sign is along the side wall facing West Butler Avenue. *See Exhibit A-5, Signage Plans.*

21. Clift stated, and the Board finds, that the existing front wall signs and their individual areas are as follows: GIANT (50.35 square feet); PHARMACY (47.94 square feet); STARBUCKS COFFEE (20.17 square feet); and CITIZENS BANK (11.25 square feet). *See Exhibit A-5, Signage Plans.*

22. Clift stated, and the Board finds, that the remaining existing wall sign along the West Butler Avenue façade is a GIANT sign (86.84 square feet). Per the information in the definitive plans, the square footage of all the existing wall signs is 216.55 square feet. *See Exhibit A-5, Signage Plans.*

23. The Board finds that the existing signage on the Premises in support of the Giant is lawfully nonconforming as to the number of total and tenant-specific wall signs, the aggregate square footage, and the number of signs that do not contain Giant-specific wording or logo. *See Exhibit A-5, Signage Plans; see also Zoning Ordinance §27-2610 and §27-2611.*

24. Clift stated, and the Board finds, that 7 total signs are proposed for the Premises. Four (4) signs are replacement signs; two (2) are new signs; and one (1) existing sign will remain unchanged. *See Exhibit A-5, Signage Plans.*

25. Clift stated, and the Board finds, that 2 of the replacement wall signs are the large GIANT individual letter signs along the front and side walls. These signs are 44.88 and 70.08 square feet, respectively. The new signs will be in the same location as the corresponding existing sign. *See Exhibit A-5, Signage Plans.*

26. Clift stated, and the Board finds, that the other 2 replacement wall signs will be the PHARMACY and STARBUCKS signs along the Premises' front façade. The STARBUCKS sign is 20.42 square feet, and will be in the same place as the existing sign. The PHARMACY sign is 22.41 square feet, and will be in a spot along the front wall previously without signage. *See Exhibit A-5, Signage Plans.*

27. Clift stated, and the Board finds, that the 2 new wall signs are the BEER & WINE and GIANT DIRECT signs. The BEER & WINE sign is 23.6 square feet, and will be where the

former PHARMACY sign was located. The GIANT DIRECT sign is 9.33 square feet, and will be over the entrance doors. *See Exhibit A-5, Signage Plans.*

28. Clift stated, and the Board finds, that the CITIZENS BANK sign will remain at its existing size and location. *See Exhibit A-5, Signage Plans.*

29. Clift stated, and the Board finds, that the PHARMACY, BEER & WINE, STARBUCKS and CITIZENS BANK signs contain wording other than the Giant-specific name or logo. All these signs display activities and services that are available within the Giant at the Premises. *See Exhibit A-5, Signage Plans.*

30. The Board finds that the Property has been used as a shopping center with numerous wall signs supporting the supermarket and other center uses for over thirty (30) years without overburdening the Property or negatively impacting the surrounding properties.

31. Due to the Premises' outdated signage, its existing level of nonconforming signage, and the fact that Premises is effectively on a corner, the Property contains unique physical characteristics that support relief for the variances requested in connection with the proposed signage.

32. The Zoning Ordinance's applicable dimensional limitations impose a hardship on the Property, the Premises and the Applicant in that these provisions prevent the installation of reasonable commercial signage for an anchor tenant in a multi-tenant shopping center use.

33. Subject to the conditions imposed herein, the proposed new and existing walls signs, their size, appearance, content, location and number, are harmonious with the Property's and Premises' size and 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 March 16, 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 variances sought for the wall sign area square footage, number, and non-tenant content are 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).

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 and Premises lack of current brand signage for an anchor tenant in a long-standing shopping center use with multiple tenants, the Property being a corner lot, and the level of existing lawful nonconforming signage in connection with the Giant and Premises, establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

9. Critical to the Board’s conclusion is that the aggregate square footage of the wall signs on the Premises is decreasing. Although the overall number of wall signs is increasing by 2, this reduced size will not increase the impact the signs have upon the adjacent streets or the surrounding properties.

10. 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 construct and install the wall signs on the Premises as set forth on the definitive plan (Exhibit A-5).

11. 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.

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

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

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

**DECISION**

AND NOW, this 24<sup>th</sup> day of April, 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 request for variances from the Zoning Ordinance as follows:

a. A variance is granted from §27-2610.d.1 to permit 7 wall signs on the building containing the Premises (Giant supermarket);

b. A variance is granted from §27-2610.d.3(d) to permit the total sign area of all the Giant related wall signs to be 209.58 square feet;

c. A variance is granted from §27-2611.d.3(a) to permit 7 wall signs for a single tenant unit within the shopping center; and

d. A variance is granted from §27-2611.d.3(b) to permit 2 new wall signs that contain wording other than the primary tenant’s name or logo.

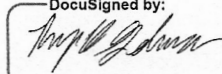
The relief granted above is subject to the following conditions:

1. The Property’s and the Premise’ proposed wall sign’s dimensions, size, location and appearance shall be in accordance with definitive plans (Exhibits A-5, as amended, representations, exhibits and credible testimony made and submitted at the hearing.

2. Prior to applying for zoning permits, the Applicant’s representatives shall clarify the precise square footage and/or the accuracy of the definitive plan, as the aggregate square footage relief granted herein is limited to the figures set forth in the Applicant’s definitive plan (Exhibit A-5), as corrected.

3. 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: \_\_\_\_\_  
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Ryan Gehman  
New Britain Township  
Assistant Planning and Zoning Officer

Date: 4/24/2023

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

Exhibit	Description
B-1	Zoning Hearing Board application (dated 2/16/23). Attachments: <ul style="list-style-type: none"><li>• Addendum to application</li><li>• Deed dated 2/14/2006</li><li>• Letter of authorization dated 2/15/23</li><li>• List of property owners within 500 feet</li></ul>
B-2	Signage Plans, consisting of 23 sheet, prepared by Blair Image Elements, dated 5/17/22, last revised 6/7/22
B-3	Letter to The Intelligencer dated 2/27/23 forwarding public notice of 3/16/23 hearing for publication
B-4	Public Notice of the hearing on 3/16/23
B-5	Proof of publication of public notice in 3/2/23 and 3/9/23 editions of The Intelligencer
B-6	Letter to Applicants and attorney 2/27/23 providing notice of the 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 on B-7 – notice mailed on 3/8/23
B-9	Affidavit of posting of public notice at property – notice posted on 3/9/23 at 11:20 a.m., together with photos of notice on property
B-10	Bucks County Viewer Map and Aerial
A-1	Deed
A-2	Property Owner Authorization Letter
A-3	Aerial Photograph of Property
A-4	New Britain Village Square Facts Sheets Brochure
A-5	Signs Drawings Package, prepared by Blair Image Elements, dated 4/15/22, last revised 6/7/22, consisting of 16 sheets



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

**Signature Page**

Re: Blair Image Elements, agent for  
ERP New Britain Property Owner, L.P.  
4275 County Line Road  
New Britain Township  
TMP No. 26-5-49-2

Date: 4/24/2023

Chuck Coxhead, Chair

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*Charles A Coxhead*  
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Cathy Basilio, Vice Chair

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*Cathy Basilio*  
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Scott Fischer, Member

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*Scott Fischer*  
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Ryan Wantz, Alternate Member

/ABSENT/

DATE OF DECISION: 4/24/2023

DATE OF MAILING: 4/24/2023

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

**RE: APPLICATION OF DARRYL AND RENEE PRESTI FOR  
THE PROPERTY LOCATED AT 19 SKYLINE DRIVE, NEW  
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-13-23**

**FINDINGS OF FACT**

1. On Thursday, March 16, 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 Darryl and Renee Presti (the “Applicants”).

2. The Applicants are the record co-owners of the property located at 19 Skyline Drive, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-13-23 (the “Property”). The Property is the subject of the instant application.

3. Notice of the March 16, 2023, hearing was published in advance of the hearing in the Thursday, March 2, 2023, and Thursday, March 9, 2022, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the March 16, 2023, hearing was sent by first class mail on March 8, 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 surrounding 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 March 16, 2023, hearing on the Property on March 9, 2023, at 11:06 a.m. *See* Exhibit B-9.

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 improved with a single-family detached residential dwelling (use B1), storage shed, in-ground pool, paver deck and driveway. These uses and structures are permitted by right in the RR zoning district. *See* Exhibit B-2, Plan; *see also* Zoning Ordinance §27-901.a.

9. The Applicants propose an expanded patio, driveway and walkway. To permit the proposed improvements, the Applicants seek a variance from Zoning Ordinance §27-902.b to

permit an impervious surface ratio of 29.87% on the Property, where the maximum impervious surface ratio permitted by right is 25%. *See Exhibit B-2, Plan.*

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. Darryl Presti (“Darryl”), a co-Applicant, testified in support of the application at the hearing. A few other neighboring individuals appeared at the March 16, 2023, to comment in support of the application before the Board. No one requested party status.

12. According to Darryl and Bucks County records, the Applicants acquired the Property in or around August 1995. The Property is lot 22 in Section 2 of the Oxbow Meadows residential subdivision. The dwelling was constructed in or around 1971. *See Exhibit B-1, Deed.*

13. The Property’s ratio base site area is 0.49 acres. The Property is a lawful undersized lot, as the minimum lot size is 1 acre for a property improved with a B1 use in the RR zoning district. *See Exhibit B-2, Plan; see also Zoning Ordinance §27-902.b.*

14. The Property is shaped like a rectangle. The Property has 100 feet of frontage along the ultimate right-of-way line of Skyline Drive. It is 100 feet wide along its rear lot line. The side lot lines are 215.06 feet and 214.51 feet long. *See Exhibit B-2, Plan.*

15. A portion of the dwelling is within the required minimum side yard, making it a lawful nonconforming structure. The paver patio and pool are behind the dwelling. The storage shed is in the Property’s northeast rear corner. *See Exhibit B-2, Plan.*

16. A paved driveway connects Skyline Drive to the attached side-entry garage. This driveway is very close to the eastern side lot line. Hickory Lane intersects with Skyline Drive at the Property’s front yard. *See Exhibit B-2, Plan.*

17. Darryl stated, and the Board finds, that the Applicants are expanding the patio, driveway and walkway. The driveway improvements are intended to allow perpendicular parking to assist Renee when exiting her vehicle. *See Exhibits B-2, Plan; and A-6, Letter.*

18. Darryl stated, and the Board finds, that the Applicants’ contractor commenced the work prior to obtaining the necessary permits from New Britain Township. The work has been suspended pending receipt of all applicable and required approvals. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

19. Darryl stated, and the Board finds, that a steep slope is located next to the driveway on the adjacent property. This feature creates hazardous conditions when a passenger is exiting a vehicle parked parallel to the side lot line. *See Exhibit B-2, Plan.*

20. Darryl stated, and the Board finds, that the driveway’s rear corner will be squared off to accommodate the new parking design. The expanded patio includes the fire pit and tiki bar areas as shown on the definitive plan. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

21. Darryl stated, and the Board finds, following installation of the expanded deck, driveway, and walkway, the Property will contain 6,377 square feet of impervious surfaces. This produces a ratio of 29.87%. *See* Exhibit B-2, Plan.

22. Regarding existing stormwater drainage patterns at the Property, Darryl stated, and the finds, that the water follows the Property’s natural slope toward the drainage easement along the rear lot line. The Property does not exhibit any existing drainage or runoff problems. *See* Exhibit B-2, Plan.

23. To account for the stormwater runoff caused by the existing and proposed excess impervious surfaces on the Property, Darryl stated, and the Board finds, that a compliant and approved stormwater management BMP facility will be installed on the Property. *See* Exhibit B-2, Plan.

24. Darryl stated, and the Board finds, that the stormwater management facility has not been designed yet. Darryl agreed that the facility will comply with the New Britain Township Stormwater Management Ordinance and will be approved by the Township Engineer. *See* Exhibit B-2, Plan.

25. Darryl stated, and the Board finds, that the finally designed, engineered and installed stormwater BMP facility will infiltrate and control the amount of water runoff from the Property to produce an effective impervious surface ratio of not to exceed 25%. This accounts for any existing excess and proposed net new impervious surfaces. *See* Exhibit B-2, Plan.

26. Darryl stated, and the Board finds, that the adjoining residents and other surrounding neighbors do not object to the proposed widened driveway, patio, and related improvements. The neighbors attending the hearing voiced their support for the project.

27. Due to the Property’s undersized nature and non-conforming location of the dwelling, the Property contains unique physical characteristics that support relief for the existing expanded driveway, patio, and related improvements that produce an overall impervious surface ratio of 29.87%.

28. The Zoning Ordinance’s dimensional limitation imposes a hardship on the Property and the Applicants in that this regulation prevents a reasonably sized driveway, patio, and sidewalk upgrade on an undersized lot with an older non-conforming residential dwelling.

29. Subject to the conditions imposed herein, the expanded driveway, paver patio, sidewalk and related improvements, their 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 public notice of the date, time and location of the March 16, 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 requested impervious surface ratio is a dimensional variance. 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 undersized nature, non-conforming dwelling location, and the fact that the driveway is next to a slope on the adjacent lot establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. The Board concludes that while the Applicants have established a hardship to justify an impervious surface ratio of 29.87%, the Applicants will alleviate the runoff hazards through the stormwater management BMP facility approved by New Britain Township to produce an effective and *de facto* impervious surface ratio of not to exceed 25%. See Exhibit B-2, Plan.

10. 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 variance, including hardship, to construct and install the proposed widened driveway, paver patio, walkway, and related improvements.

11. 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.

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

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

14. 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 24<sup>th</sup> day of April, 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 §27-902.b to permit an impervious surface ratio of 29.87% on the Property, subject to the following conditions:

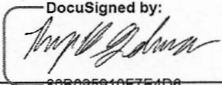
1. The expanded driveway, renovated patio, walkway, and related improvements' dimensions, size, location and appearance shall be in accordance with the definitive plan (marked as Exhibit B-2), evidence, representations, exhibits and credible testimony made and submitted at the hearing.

2. The Applicants and their design professional shall revise the Zoning Exhibit Plan (Exhibit B-2) and submit a certification letter, if necessary, to the satisfaction of Gehman and the New Britain Township Engineer, to confirm that the finally engineered, designed and installed stormwater management improvements will produce an effective impervious surface ratio of not more than 25% on the Property.

3. The Applicants shall install, maintain and replace the stormwater management facility and improvements approved by New Britain Township on the Property in accordance with this Decision and all applicable New Britain Township ordinances.

4. 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, confirms the Board's decision and order.

DocuSigned by:  
  
By: \_\_\_\_\_  
80B095910F7E4D6...  
Ryan Gehman  
New Britain Township  
Assistant Planning and Zoning Officer

Date: 4/24/2023

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.

/Users/tjwalsh3/Documents/New Britain Township/2023/Presti/DECISION.Presti.2023-03-16 hearing.docx

## SCHEDULE A – TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application, dated 2/16/23. Attachments to Application: <ul style="list-style-type: none"><li>• Deed dated 7/31/1995</li><li>• List and map of property owners within 500 feet</li></ul>
B-2	Zoning Exhibit Plan, consisting of 1 sheet, prepared by Cowan Associates, Inc., dated 2/14/23
B-3	Letter to The Intelligencer dated 2/27/23 forwarding public notice of 3/16/23 hearing for advertisement
B-4	Public Notice of the hearing on 3/16/23
B-5	Proof of publication of public notice in 3/2/23 and 3/9/23 editions of The Intelligencer
B-6	Letter to Applicants and attorney dated 2/27/23 providing notice of the 3/16/23 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 mailed on 3/6/23
B-9	Affidavit of posting of public notice at property – notice posted on 3/9/23 at 11:06 a.m., together with photos of notice on property
B-10	Bucks County Viewer Map and Aerial
A-1	Deed
A-2	Plan of Subdivision
A-3	Board of Assessment Property Summary
A-4	Google Earth Image of Property
A-5	Moss Rehab Letter



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

**Signature Page**

Re: Darryl and Renee Presti  
119 Skyline Drive  
New Britain Township  
TMP No. 26-13-23

Date: 4/24/2023

Chuck Coxhead, Chair

DocuSigned by:  
*Charles A Coxhead*  
D2A2738415474F1...

Cathy Basilio, Vice Chair

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

Scott Fischer, Member

DocuSigned by:  
*Scott Fischer*  
D5F688AFF378430...

Ryan Wantz, Alternate Member

/ABSENT/