

DATE OF DECISION: 6/28/2023

DATE OF MAILING: 6/28/2023

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

**RE: APPLICATION OF McDONALD'S USA, LLC FOR THE
PROPERTY LOCATED AT 4275 COUNTY LINE ROAD, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-5-49-5**

FINDINGS OF FACT

1. On Thursday, May 18, 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 McDonald's USA, LLC (the "Applicant").

2. The Applicant is the long-term tenant and occupant of the property located at 4275 County Line Road, New Britain Township, further known as Bucks County Tax Map Parcel No. 26-5-49-5 (the "Property").

3. Notice of the May 18, 2023, hearing was published in advance of the hearing in the Thursday, May 4, 2023, and Thursday, May 11, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the May 18, 2023, hearing was sent by first class mail on May 8, 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 that are 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 May 18, 2023, hearing on the Property on May 10, 2023, at 11:40 a.m. *See* Exhibit B-9.

6. The Applicant is a Delaware limited liability company. Adam Citrullo, P.E. ("Citrullo"), professional civil engineer for the Applicant; and Mike Abbonizio ("Abbonizio"), proprietor of the restaurant at the Property, testified in support of the application at the May 18, 2023, hearing.

7. The record owner of the Property is ERP New Britain Property, L.P. ("ERP"). The Property's current deed is recorded in the Bucks County Recorder of Deeds Office at Land Record Book 4878, Page 88. *See* Exhibit A-2, Deed.

8. Abbonizio and Citrullo stated, and the Board finds, that representatives of ERP have authorized the Applicant to proceed with the instant application.

9. As the current tenant of the Property with the express authorization of the Property’s record owner, the Applicant has the requisite standing to prosecute this zoning hearing board application.

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

11. The Property is improved with a non-residential building containing a McDonald’s restaurant use, with parking areas, drive aisles, and a single-lane / order point drive-through facility (use J7). A J7 use is permitted by right in the C-2 Commercial, zoning district. See Zoning Ordinance §27-1301.a.

12. The Applicant proposes a second order point and lane for the existing drive-through, drive-through related structures and signage, a fourth electronic messaging menu board, and a new service sidewalk. See Exhibit A-7, Plan.

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

- a. From §27-1302.b to permit an impervious surface ratio of 82.3% on the Property, where the existing ratio is 81.49%, and the maximum ratio permitted by right is 65%;
- b. From §27-306.J7.b.2 to permit a fourth menu board that is 10.1 square feet on the Property, where only 2 menu boards are permitted, and the maximum permitted area of a menu board is 20 square feet;
- c. From §27-2606.b.2 and §27-2610.f.1 to permit an additional electronic message center sign (fourth menu board), where only one electronic message center sign is permitted; and
- d. From §27-2606.b.1 and §27-2610.f.1 to permit the additional electronic message center sign in addition to, instead of in lieu of, the new freestanding signs for the expanded drive-through.

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. No individuals appeared at the hearing to request party status or register a position on the application before the Board. Abbonizio’s spouse, also a proprietor of the restaurant, offered comments to help explain the application before the Board. New Britain Township took no position on the application and did not participate in the hearing.

16. Relevant to this application, the Applicant and the Property are the subject of a prior decision of the Board dated October 15, 2020 (the “2020 Decision”). The Board granted an impervious surface ratio and menu board signage variances to permit prior similar improvements to the existing drive-through. See Exhibit B-11, 2020 Decision.

17. Abbonizio and Citrullo stated, and the Board finds, that all the relevant Findings of Fact made by the Board in the 2020 Decision regarding the Property, the use, and the improvements accurately describe the current conditions.

18. Based upon that credible finding, the Board incorporates by reference the applicable Findings of Fact from the 2020 Decision as if the same were fully set forth herein at length, except as modified and/or supplemented herein.

19. The Property is shaped like the capital letter “L.” It is within the New Britain Village Shopping Center and is surrounded by many other non-residential properties and uses. *See Exhibits A-4, Aerial; and A-5, Existing Conditions.*

20. The Property is located near the intersection of West Butler Avenue and County Line Road. The Property’s lot area is 1.04 acres. *See Exhibit A-7, Plan.*

21. The restaurant building is oriented in an east to west direction. To the north side and rear (west) of the building are parking areas serving the restaurant. The Property is accessed by drive aisles that each enter on the internal road through the shopping center. *See Exhibit A-4, Aerial.*

22. The restaurant building has 4,892 square feet of floor area. It is located in the Property’s longer and narrower section. *See Exhibit A-7, Plan.*

23. The existing order point of the single lane drive-through facility is behind the building’s rear wall. The drive-through lane starts on the north side of the building. *See Exhibit A-5, Existing Conditions.*

24. The drive-through lane wraps around the rear of the building where it intersects with the existing order point, menu and pre-menu boards. The lane continues around to the south side of the building where it passes the payment and delivery windows. *See Exhibit A-5, Existing Conditions.*

25. Abbonizio stated, and the Board finds, that in part due to the COVID-19 pandemic, 80% of the restaurant’s sales now come from customers purchasing their food through the drive-through. Very few customers actually come into the restaurant to eat.

26. Abbonizio stated, and the Board finds, that the proposed changes are intended to reflect these eating trends and continue McDonald’s efforts to modernize the drive-through facility. *See Exhibit A-7, Plan.*

27. A second lane and order point will be added next to the existing single lane behind the building. A small concrete island will separate the 2 ordering lanes. After the order points, the 2 aisles converge back into one lane in advance of the payment and delivery windows. *See Exhibit A-7, Plan.*

28. Vehicles will be directed to enter the new lane primarily from the existing access to the adjoining tract. Access to the existing lane will continue from along the south side of the building. *See Exhibit A-7, Plan.*

29. A double-gateway clearance structure will be installed on the island at the beginning of the 2 lanes. The structure will have directional signage to assist and inform drivers. *See Exhibits A-4, Signage Plan; and A-7, Plan.*

30. Abbonizio and Citrullo stated, and the Board finds, that 5 parking spaces behind the building and along the northern side lot line will be removed to accommodate the second aisle. The Property's remaining 43 spaces satisfies the Zoning Ordinance's requirements. *See Exhibit A-7, Plan.*

31. Abbonizio and Citrullo stated, and the Board finds, that the second aisle spur and order point will provide additional vehicle capacity. During peak ordering times, traffic stacks into the existing drive-through lane. The second order point will alleviate this traffic hazard.

32. Abbonizio and Citrullo stated, and the Board finds, that 3 menu boards presently exist at the Property. Two (2) are primary menu boards, and the other is a pre-menu board. *See Exhibits A-5, Existing Conditions; and B-11, 2020 Decision.*

33. The 2 larger menu boards are 20 square feet in area. The single smaller sign is a 10 square feet "pre-menu" board. The new pre-menu board will be the same size as the existing comparable sign. *See Exhibit A-6, Signage Plan.*

34. These are all electronic messaging signs. Abbonizio stated, and the Board finds, that the changing displayed data informs the patron of available food, beverage and specialty items. *See Exhibits A-5, Existing Conditions; A-6, Signage Plan; and B-11, 2020 Decision.*

35. Abbonizio and Citrullo stated, and the Board finds, that the primary menu boards will be located near the "ORDER HERE" canopy points behind building. The existing and new pre-menu board signs will be placed where the single lane splits. *See Exhibits A-6, Signage Plan; and A-7, Plan.*

36. Regarding the impervious surface ratio, the Applicant is adding 590 square feet of new paving. A new sidewalk will be installed in front of the building. Also, a landscaped island near the entrance to the new order lane is being removed. *See Exhibits A-5, Existing Conditions; and A-7, Plan.*

37. Citrullo stated, and the Board finds, that the new sidewalk in front of the building will provide a safer means of travel for pedestrians around the restaurant. *See Exhibit A-7, Plan.*

38. Upon questioning by the Board, Citrullo acknowledged that the removal of the landscaped island may adversely impact the pedestrian travel path from parking spaces along the rear lot line. The Applicant agreed to work with the Township to make this route safer.

39. The Property's current impervious surface ratio is 81.49%. This exceeds the 65% ratio permitted by right in the C-2 zoning district. This ratio was permitted by the Board in the 2020 Decision. *See Exhibits A-5, Existing Conditions; and Exhibit A-7, Plan.*

40. The new impervious surfaces produce a coverage ratio of 82.3%. This exceeds the existing 81.49% impervious surface ratio by a *de minimis* amount. *See Exhibit A-7, Plan.*

41. As a result of this *de minimis* impact, Citrullo stated, and the Board finds, that no new stormwater management facilities or features are needed on the Property to support the new hard surfaces. See Exhibit A-7, Plan.

42. Due to the Property having an odd shape, the existing level of impervious surfaces, and the single-lane and order drive-through, the Property contains unique physical characteristics that support relief for the proposed fourth electronic messaging menu board sign and impervious surface ratio variances requested in connection with the proposed improvements.

43. The Zoning Ordinance’s limitations impose a hardship on the Property and the Applicant in that these provisions prevent modernizing a non-residential building in a shopping center that is being used as a permitted restaurant use with an older drive-through facility.

44. Subject to the conditions imposed herein, the proposed new second drive-through lane and order point, fourth menu board sign, sidewalk and related improvements are harmonious with the Property’s size and are 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 May 18, 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 impervious surface ratio and fourth menu board sign variances requested 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 odd shape, the existing level of impervious surfaces, and the inadequate service level provided by the existing single lane and order point drive-through facility establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

9. The Board concludes that the fourth pre-menu board sign will result in a safer and more efficient drive-through facility. The electronic messaging nature of the new sign is consistent with the existing 3 menu boards.

10. The Applicant’s representatives describes the additional 590 square feet of sidewalk as having a “*de minimis*” upon the Property. The Board notes that under Pennsylvania zoning law, it is empowered to grant a *de minimis* variance as a narrow exception to an applicant’s traditional heavy burden of proof in seeking a variance.

11. The *de minimis* doctrine applies where (a) a minor deviation from the dimensional requirements of a zoning ordinance is sought; and (b) rigid compliance with the zoning ordinance is not necessary to protect the public policy concerns inherent in the ordinance. *See Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494 (Pa. Commw. 2016).

12. The Board concludes that the *de minimis* doctrine applies in this instance. The increase in the impervious surface ratio from 81.49% to 82.3% is a minor deviation from the applicable dimensional requirement, with no adverse impact whatsoever.

13. Critical to the Board’s conclusion is that the Applicant ensure pedestrians can walk safely from the western-most parking spaces to the restaurant. The Applicant shall review the definitive plan with New Britain Township and incorporate any reasonable safety improvements.

14. 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 install a fourth menu board sign and 590 square feet of new hard surfaces on the Property in connection with the expanded drive-through.

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 Applicant’s 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 28th day of June, 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 §27-1302.b to permit an impervious surface ratio of 82.3%;
- b. A variance is granted from §27-306.J7.b.2 to permit a fourth menu board (identified in the definitive plans as a pre-menu board) that is 10.1 square feet in area;
- c. A variance is granted from §27-2606.b.2 and §27-2610.f.1 to permit an additional electronic message center sign (fourth pre-menu board); and
- d. A variance is granted from §27-2606.b.1 and §27-2610.f.1 to permit the additional electronic message center pre-menu board sign in addition to, instead of in lieu of, the new freestanding signs.

The relief granted above is subject to the following conditions:

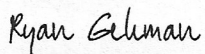
1. The proposed new drive-through lane, clearance and order canopy structures, pre-menu board, sidewalk and other improvements’ dimensions, size, location and appearance shall be in accordance with the definitive plans, evidence, representations and credible testimony made at the hearing.

2. The Applicant shall review the definitive plans with New Britain Township for the purpose of evaluating pedestrian safety through the Property, specifically from the rear parking

spaces to the restaurant. The Applicant shall include any reasonable options into its definitive plan.

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 confirm the Board's decision and order.

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

Date: 6/28/2023

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

Exhibit	Description
B-1	Zoning Hearing Board application. Attachments: <ul style="list-style-type: none">• Addendum• Deed dated 2/14/2006• List of property owners within 500 feet
B-2	3 sheets of a larger plan set: <ul style="list-style-type: none">• Sheet 1 – Boundary Plan, dated 6/30/22, prepared by Control Point Associates• Sheets 2 and 3 – Site Plan and Signage Plan, dated July 15, 2022, last revised August 5, 2022, prepared by Bohler Engineering
B-3	Letter to The Intelligencer dated 4/28/23 forwarding notice of 5/18/23 hearing for publication
B-4	Public Notice of the hearing on 5/18/23
B-5	Proof of publication of notice in 5/4/23 and 5/11/23 editions of The Intelligencer
B-6	Letter to Applicant and Engineer dated 5/1/23 providing notice of the hearing
B-7	List and map of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners – notice mailed on 5/8/23
B-9	Affidavit of posting of public notice at property – notice posted on 5/10/23
B-10	Bucks County Floodplain Viewer Aerial and Map
B-11	ZHB Decision dated 10/15/202
A-1	Addendum to ZHB Application
A-2	Deed dated 2/14/2006
A-3	Curriculum Vitae of Adam Citrullo, P.E.
A-4	Aerial Photo
A-5	Boundary & Topographic Survey (same as part of Exhibit B-2)

Exhibit

Description

- A-6 Site and Signage Plans (same as part of Exhibit B-2)
- A-7 Site Improvement Plan (described as Zoning Exhibit), 1 sheet, prepared by Bohler Engineering, dated 5/17/2023

B – Zoning Hearing Board

A – Applicant

New Britain Township
Zoning Hearing Board

Signature Page

Re: McDonald's USA, LLC
4275 County Line Road
New Britain Township
TMP No. 26-5-49-5

Date: JUNE 28, 2023

Chuck Coxhead, Chair

DocuSigned by:
Charles A Coxhead
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Cathy Basillii, Vice Chair

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Cathy B. Basillii
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Scott Fischer, Member

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Scott Fischer
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Ryan Wantz, Alternate Member

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Ryan Wantz
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DATE OF DECISION: 6/28/23

DATE OF MAILING: 6/28/23

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

**RE: APPLICATION OF MARK SNAVELY FOR THE
PROPERTY LOCATED AT 205 POPLAR ROAD, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-28-28**

FINDINGS OF FACT

1. On Thursday, May 18, 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 Mark Snavely (the “Applicant”).

2. The Applicant is the record owner of the property located at 205 Poplar Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-28-28 (the “Property”). The Property is the subject of the instant application.

3. Notice of the May 18, 2023, hearing was published in advance of the hearing in the Thursday, May 4, 2023, and Thursday, May 11, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the May 18, 2023, hearing was sent by first class mail on May 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 May 18, 2023, hearing on the Property on May 10, 2023, at 11:18 a.m. *See* Exhibit B-9.

6. As the record of the Property, the Applicant has 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 Applicant proposes to construct a roof over an existing attached open deck on a property which is primarily improved with an existing single-family detached dwelling that is part of a cluster subdivision (use B2). Such uses and structures are permitted in the RR zoning district. *See* Zoning Ordinance §27-901.

9. To permit the covered deck, Applicant seeks a variance from Zoning Ordinance from §27-903.a to permit a rear yard setback of 22 feet 6 inches, where the required minimum rear yard setback is 40 feet.

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 and Thomas Mazza (“Mazza”), contractor, testified in support of the application at the hearing.

12. 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.

13. The Property is lot 32 of the Fairwoods (South Lot D) subdivision plan, which was recorded on July 13, 1979 in Plan Book 185, page 17 at the Bucks County Recorder of Deeds. The Board takes judicial notice of the Fairwoods (South Lot D) subdivision record plan. *See* 42 Pa.C.S §6102.

14. The Property is improved with a two-story single-family detached dwelling constructed in 1984, and an accessory storage shed. The Applicant and his spouse, Constance Snavely (“Constance”), acquired the Property in February 1992. Constance passed away in 2020.

15. According to the Applicant and Bucks County records, the Property is approximately .235 acres. The dwelling contains 2,021 square feet of living area. The dwelling is served by public water and public sewer systems. *See* Exhibit B-1, Application.

16. The Property is shaped like a rectangle with one semi-curved side. The Property is located along the linear section and bulb of the Poplar Road cul-de-sac street. *See* Exhibits B-2, Aerial, and B-10, Viewer.

17. The Property has 87.46 linear and curvilinear feet of frontage along Poplar Road. The side lot lines are 105 feet and 130 feet long. The Property is 85 feet wide along its rear lot line. *See* Exhibits B-1, Deed; and B-10, Viewer.

18. The dwelling’s front wall is oriented toward Poplar Road. A driveway leading from the dwelling’s attached front-entry garage connects to the straight section of the Property’s Poplar Road frontage. *See* Exhibits B-2, Aerial; and B-10, Viewer.

19. The dwelling and the driveway are located very close to the longer side lot line. The dwelling’s rear wall is 38.51 feet from the rear lot line. The uncovered deck abuts the dwelling’s rear wall. *See* Exhibits B-2, Aerial and Plan.

20. The uncovered deck is 16 feet in depth and 28 feet long, for a footprint of 448 feet. The edge of the existing deck is 22.51 feet from the rear lot line. *See* Exhibits B-2, Plans and Specifications.

21. The Applicant and Mazza stated, and the Board finds, that the deck covering will be a pitched roof resting on 3 poles. The roof will provide shade to the area. The roof overhang will protrude a *de minimis* amount beyond the rear edge of the existing deck. *See* Exhibits B-2, Plan and Specifications.

22. The Applicant stated, and the Board finds, that the poles and roof will complement the existing dwelling's architecture. The new shingles will match those on the existing dwelling's roof.

23. The Applicant stated, and the Board finds, that the deck cannot be moved elsewhere on the Property to provide the requisite 40 feet rear yard setback distance. The dwelling is in a lawful non-conforming location as to required minimum rear yard. *See Exhibit B-2, Plan.*

24. 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.*

25. The Applicant stated, and the Board finds, that he has spoken with their neighbors, and they are agreeable to the proposed covered deck and its location.

26. Due to the Property being an oddly shaped lot with a non-conforming dwelling, the Property does not have a location to build a covered deck in compliance with the Zoning Ordinance's rear yard setback regulations.

27. The Property contains unique physical characteristics that support relief for the proposed covered deck to be located within the required minimum rear yard.

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

29. Subject to the conditions imposed herein, the proposed covered deck, its size and location, is 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 May 18, 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 rear yard setback variance requested 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 odd shape and the non-conforming location of the existing dwelling establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

9. Based on the credible testimony presented, the Board concludes that the Property’s only open area to locate the covered deck is in the existing location in the rear yard abutting the existing dwelling. *See Exhibit B-2, Plan*.

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 variance, including hardship, to construct and install a roof over the existing open rear deck on the Property.

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 Applicant's own doing.

14. The approved variance represents 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 JUNE, 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 a variance from Zoning Ordinance permit a rear yard setback of 22 feet 6 inches for the covered deck, subject to the following conditions:

1. The proposed covered deck's dimensions, size, location and appearance shall be in accordance with the 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:
Ryan Gehman
By: A767D54E8A9043A...
Ryan Gehman
New Britain Township
Assistant Planning and Zoning Officer

Date: 6/28/2023

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.

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application (dated 10/22/20). Attachments to Application: <ul style="list-style-type: none">• Deed dated 1/29/1992• List of property owners within 500 feet
B-2	Collective exhibit: Hand-drawn sketch plan; Aerial Photo; Roof Specifications
B-3	Letter to The Intelligencer dated 4/28/23 forwarding public notice of hearing for advertisement
B-4	Public Notice of the hearing on 5/18/23
B-5	Proof of publication of public notice in 5/4/23 and 5/11/23 editions of The Intelligencer
B-6	Letter to Applicant dated 5/1/23 providing notice of the hearing
B-7	List and map of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners on Exhibit B-7 – notice mailed on 5/8/23
B-9	Affidavit of posting of public notice at property – notice posted on 5/10/23, together with photo of posting
B-10	Bucks County Floodplain Viewer Aerial and Map of Property

New Britain Township
Zoning Hearing Board

Signature Page

Re: Mark Snively
205 Poplar Road
New Britain Township
TMP No. 26-28-28

Date: JUNE 28, 2023

Chuck Coxhead, Chair

DocuSigned by:
Charles A Coxhead
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Cathy Basillii, Vice Chair

DocuSigned by:
Cathy B. Basillii
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Scott Fischer, Member

DocuSigned by:
Scott Fischer
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Ryan Wantz, Alternate Member

DocuSigned by:
Ryan Wantz
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DATE OF DECISION: 8/28/2023

DATE OF MAILING: 8/28/2023

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

**RE: APPLICATION OF TYLER SPINGLER FOR THE
PROPERTY LOCATED AT 544 AIRY AVENUE, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-6-75**

FINDINGS OF FACT

1. On Thursday, May 18, 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”) opened a duly noticed hearing on the application of Tyler Spingler (the “Applicant”).
2. The Applicant and Samantha Christine Spingler (“Samantha”) are the record co-owners of the property located at 544 Airy Avenue, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-6-75 (the “Property”). The Property is the subject of the instant application.
3. Notice of the May 18, 2023, hearing was published in advance of the hearing in the Thursday, May 4, 2023, and Thursday, May 11, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See Exhibit B-5.*
4. Notice of the May 18, 2023, hearing was sent by first class mail on May 8, 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 that are within 500 feet 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 May 18, 2023, hearing on the Property on May 10, 2023, at 11:44 a.m. *See Exhibit B-9.*
6. Following the close of the hearing on May 18, 2023, the Applicant submitted a request to amend the application and re-open the record. The Board granted the request, and rescheduled the matter for its July 20, 2023, hearing. *See Exhibits B-2.1 through B-8.1.*
7. As a record co-owner of the Property, the Applicant has the requisite standing to prosecute this zoning hearing board application.
8. The Property is located in the RR, Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

9. The Property is improved with a single-family detached residential dwelling (use B1) with an accessory storage shed (use H2). Such uses and structures are permitted by right in the RR zoning district. *See Zoning Ordinance §27-901.a.*

10. The Applicant proposes an attached garage addition to the existing dwelling. To permit the addition, the Applicant seeks a variance from Zoning Ordinance §27-902.b to permit a front yard setback along Lexington Avenue of 16 feet 6 inches, where the required minimum front yard setback permitted by right is 50 feet.

11. Introduced as exhibits at the zoning hearings 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. The Applicant testified in support of the application at the hearings. 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.

13. The Applicant and Christine acquired the Property in April 2017 from the Applicant's father. The Property is lot 96 in the County Line Park residential subdivision. *See Exhibit B-1, Deed.*

14. The split-level dwelling was constructed in or around 1960. The dwelling is served by public water and public sewer systems.

15. The Property is shaped like a rectangle. Its base site area is .5051 acres. The Property is a corner lot, having frontage along both Airy Avenue and Lexington Avenue. *See Exhibits B-1.1, Plan; and B-10, Viewer.*

16. Per the Zoning Ordinance, with a corner lot, the yards adjoining the streets are both considered front yards. The owner of a corner lot has the option of choosing which of the 2 side lot lines that are not street lines is to be considered a rear lot line. *See Zoning Ordinance §27-201.*

17. As constructed, the dwelling's front wall is oriented to Airy Avenue. The Applicant stated, and the Board finds, that the yard behind the house's rear wall is treated as a rear yard. *See Exhibit B-1.1, Plan.*

18. The Property has 192.12 feet of frontage along the right-of-way line of Lexington Avenue and 99.54 feet of frontage along the right-of-way line of Airy Avenue. At the intersection of these 2 streets, the Property's curvilinear frontage is 12.46 feet. *See Exhibits B-1.1, Plan; and B-10, Viewer.*

19. The side lot line is 200 feet long. The Property is 110 feet wide along the lot line that functions as the rear lot line. *See Exhibits B-1.1, Plan; and B-10, Viewer.*

20. The dwelling is located in the center of the Property. The dwelling's front wall is set back 69 feet from the Airy Avenue cartway. The dwelling's side wall is roughly 61 feet from the Lexington Avenue cartway. *See Exhibits B-1 and B-1.1, Plans.*

21. The Applicant stated, and the Board finds, that the existing dwelling does not have a garage. A former attached 1 car garage was converted to living space prior the Applicant and Christine acquiring the Property. Vehicles are presently parked outside. *See Exhibit B-1.1, Plan.*

22. The Applicant stated, and the Board finds, that the garage addition will attach to the dwelling's side wall facing Lexington Avenue. The addition will be 1 story and have 2 bays. *See Exhibit B-1.1, Plan.*

23. The Applicant stated, and the Board finds, that the garage addition will be 32 feet wide and 26 feet in depth, for a footprint of 832 square feet. At its closest point, the addition will be set back 16 feet 6 inches from the Lexington Avenue right-of-way line. *See Exhibit B-1.1, Plan.*

24. The Applicant stated, and the Board finds, that no existing improvements or vegetation in the Lexington Avenue yard will be affected by the addition. The new garage will be roughly 12-15 feet from the drainage swale within the right-of-way along Lexington Avenue. *See Exhibit B-1.1, Plan.*

25. The existing driveway connecting the front of the dwelling to Airy Avenue has been expanded and lengthened to reach the garage addition. The Applicant stated that this area was previously a stone surface, but he recently paved it. *See Exhibit B-1.1, Plan.*

26. The Applicant stated that New Britain Township is reviewing presently his submissions for compliance with the applicable impervious surface regulations for both the driveway expansion and the addition. *See Exhibit B-1.1, Plan.*

27. Upon questioning from the Board, the Applicant confirmed that no commercial vehicles or operations will be stored or conducted in the new garage.

28. The surrounding properties consist of similar style residences and lots. The Applicant stated that no nearby residents have raised any objection to the proposed garage addition and its location.

29. Due to the Property being a corner lot with dwelling that lacks a garage, the Property contains unique characteristics that support relief for the proposed garage addition to have a setback of 16 feet 6 inches from the Lexington Avenue right-of-way line. *See Exhibit B-1.1, Plan.*

30. The Zoning Ordinance's dimensional limitation imposes a hardship on the Property and the Applicant in that this regulation prevents a reasonably sized 2 car garage addition in connection with an older residential dwelling.

31. Subject to the conditions imposed herein, the proposed garage addition, its 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 May 18, 2023, and July 20, 2023, hearings 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 front yard setback variance 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 as a corner lot, the Property's yard along Lexington Avenue, while legislatively classified as a front yard, functions as a side yard and a partial rear yard. The Zoning Ordinance imposes stricter setback requirements on a front yard than on a side yard. *See Zoning Ordinance §27-902.b.*

9. The Board concludes that the fact that the Property is a corner lot, as well as the lack of a garage serving the existing dwelling, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

10. Based on the credible testimony presented, the Board concludes that the Property's only logical open area to locate the garage addition is along the dwelling's side wall in the front yard facing Lexington Avenue. *See Exhibit B-1.1, Plan.*

11. Critical to the Board's conclusion is that the Applicant secure all necessary approvals, including variance relief if required, for the new impervious surfaces proposed for the Property in connection with the driveway and garage addition. *See Zoning Ordinance §27-2303.a.*

12. 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 variance, including hardship, to construct and install the proposed garage addition with a front yard setback of 16 feet 6 inches in the front yard along Lexington Avenue.

13. 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.

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

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

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

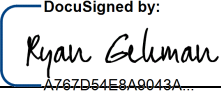
DECISION

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 Applicant's request for a variance from Zoning Ordinance §27-902.b to permit a front yard setback of 16 feet 6 inches in the yard along Lexington Avenue, subject to the following conditions:

1. The proposed attached garage addition, its dimensions, size, location and appearance, shall be in accordance with the definitive plan (identified as Exhibit B-1.1), evidence, representations, exhibits and credible testimony made and submitted at the hearings.

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: 8/28/2023

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.

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application (dated 4/21/23). Attachments to Application: <ul style="list-style-type: none">• List of property owners within 500 feet• Deed dated 4/28/2017
B-2	Hand Drawn Site Plan
B-3	Letter to The Intelligencer dated 4/28/23 forwarding notice of 5/18/23 hearing for publication
B-4	Public Notice of the hearing on 12/17/20
B-5	Proof of publication of public notice in 5/4/23 and 5/11/23 editions of The Intelligencer
B-6	Letter to Applicant dated 5/1/23 providing notice of the 5/18/23 hearing
B-7	List of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners – notice mailed on 5/8/23
B-9	Affidavit of posting of public notice at property – notice posted on 5/10/23 at 11:44 a.m.
B-10	Bucks County Floodplain Viewer Map and Aerial
B-1.1	Zoning Permit Plan (differs from Site Plan from 5/18/23 hearing)
B-2.1	Letter to The Intelligencer dated 6/30/23 forwarding notice of 7/20/23 hearing for publication
B-3.1	Public Notice of Hearing on 7/20/23
B-4.1	Proof of publication of public notice in 7/6/23 and 7/13/23 editions of The Intelligencer
B-5.1	Letter to Applicant dated 7/5/23 providing notice of the 7/20/23 hearing
B-6.1	List and map of the record owners of all properties within 500 feet of the Property
B-7.1	Affidavit of mailing to property owners – notice mailed on 7/17/23
B-8.1	Affidavit of posting of public notice at property – notice posted on 7/17/23

New Britain Township
Zoning Hearing Board

Signature Page

Re: Tyler Spingler
544 Airy Avenue
New Britain Township
TMP No. 26-6-75

Date: August 28, 2023

Chuck Coxhead, Chair

DocuSigned by:
Charles A Coxhead
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Cathy Basili, Vice Chair

DocuSigned by:
Cathy Basili
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Scott Fischer, Member

/ABSENT/

Ryan Wantz, Alternate Member

/ABSENT/