

**DATE OF DECISION: 8/22/2022**

**DATE OF MAILING: 8/23/2022**

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

**RE: APPLICATION OF KELLIE RICHARDSON FOR  
THE PROPERTY LOCATED AT 502 NEW GALENA ROAD,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-1-94-2**

**FINDINGS OF FACT**

1. On Thursday, June 16, 2022, 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 Kellie Richardson (the “Applicant”).

2. At the Applicant’s request, the hearing was continued on the record to July 21, 2022. The hearing was resumed and concluded on July 21, 2022. *See* Exhibit A-1, Letter.

3. The Applicant is the record owner of the property located at 502 New Galena Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-1-94-2 (the “Property”). The Property is the subject of the instant application.

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

5. Notice of the June 16, 2022, hearing was sent by first class mail on June 6, 2022, 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.

6. Gehman posted notice of the June 16, 2022, hearing on the Property on June 9, 2022, at 10:01 a.m. *See* Exhibit B-9.

7. As the record 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). Such use is permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

10. The Applicant proposes an accessory in-ground non-commercial swimming pool (use H4) behind the existing single-family detached dwelling. *See Exhibit B-2, Zoning Plan.*

11. To permit the swimming pool, the Applicant seeks a variance from Zoning Ordinance §27-2400.f.1 to permit up to 40.17% of the woodlands on the Property to be disturbed, where the existing woodlands disturbance is 36.23%, and the maximum amount of permitted disturbance is 20%. *See Exhibit B-2, Plan.*

12. 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.

13. The Applicant and Kris Reiss, P.E. (“Reiss”), professional civil engineer, testified in support of the application at the June 16, 2022, hearing. The Applicant’s family appeared at the hearing in support of the application. No one requested party status.

14. The Property is lot 2 in the Lott Builders Ltd 3 lot residential subdivision plan (the “Lott Plan”). The Lott Plan was recorded in or around 2002. The Applicant acquired the Property in or around January 2022. *See Exhibit A-2, Plot Plan.*

15. The Applicant stated, and the Board finds, that the dwelling was constructed in or around 2003. The dwelling is served by public water and public sewer. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

16. The Property is shaped like a rectangle. It is a long and narrow lot. Its base site area is 1.46 acres. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

17. The Property has 150 feet of frontage along New Galena Road. The rear lot line is 150 feet in length. The side lot lines are 446 feet and 446 feet long. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

18. The dwelling is located in the center of the Property. A long driveway winds through trees in the front yard. It connects the dwelling’s garage to New Galena Avenue. A short walkway connects the driveway to the front porch. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

19. A brick paver patio abuts the dwelling’s rear wall. A storage shed is in the Property’s rear yard. An existing 4 feet high split rail fences surrounds the open portion of the rear yard where the new pool will be installed. *See Exhibit B-2, Zoning Plan.*

20. A 100 feet wide conservation easement (the “Easement”) extends from the rear lot line into the Property’s main rear yard. The Easement runs the entire width of the Property. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

21. The Applicant and Reiss stated, and the Board finds, that stormwater drainage facilities, including 4 inlets, as well as a sanitary manhole and sewer line are also located within the Easement. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

22. The sanitary sewer and stormwater drainage lines connect to larger collection facilities that are within the Richard Drive cul-de-sac behind the Property. Richard Drive is part of the Tower Hill Woods residential subdivision. *See Exhibit A-2, Plot Plan.*

23. Reiss stated, and the Board finds, that when the Lott Plan was recorded, the Property was fully wooded. Reiss estimated, and the Board finds, that roughly 36% of the existing woodlands were removed in 2002 to accommodate the driveway, stormwater facilities, and sanitary sewer lines. *See Exhibit A-2, Plot Plan.*

24. The Applicant and Reiss stated, and the Board finds, that the proposed pool, coping, deck, and equipment pad will be installed in the rear yard behind the existing paver patio. A short walkway will connect the pool deck to the patio. *See Exhibit B-2, Zoning Plan.*

25. Reiss stated, and the Board finds, that due to the Property's existing physical features and characteristics, no location exists on the Property to locate the pool in full compliance with the Zoning Ordinance's natural resource protection standards. *See Exhibit B-2, Zoning Plan.*

26. Reiss stated, and the Board finds, that to accommodate the pool and related improvements, 3 existing trees in excess of 5 inches caliper DBH (diameter at breast height (or 4.5 feet)) must be removed. This will increase the disturbance ratio to 40.17%. *See Exhibit B-2, Zoning Plan.*

27. Reiss stated, and the Board finds, that the 3 trees that must be removed are mostly in the functional rear yard. They are isolated from the groups of trees that form the continuous canopy through the Easement and along the side lot lines. *See Exhibits B-2, Zoning Plan; and A-3, Photographs.*

28. Upon questioning by the Board, Reiss and the Applicant confirmed that the existing woodland trees in the Easement and along the side lot lines will be preserved during construction of the pool and deck. *See Exhibit B-2, Zoning Plan.*

29. The Applicant and Reiss stated that if the 80% protection standard were to be met, they would need to plant trees. If the existing protection ratio of 74% were adhered to, no meaningful improvements could go in the functional rear yard. The Board recognizes that is clearly an absurd result. *See Exhibit B-2, Zoning Plan.*

30. The surrounding properties consist of similar style residences and lots. The Applicants stated that no nearby residents have raised any objection to the proposed swimming pool or tree disturbance. *See Exhibit A-3, Photos.*

31. Due to the Property's shape, the Easement along the rear lot line, and the existing level of tree disturbance, the Property contains unique characteristics that support relief for variance request to remove 3 trees. *See Exhibit A-3, Plan.*

32. The Zoning Ordinance's woodlands protection limitation imposes a hardship on the Property and the Applicant in that this regulation prevents a reasonably sized in-ground swimming pool and patio in connection with a residential dwelling.

33. Subject to the conditions imposed herein, the proposed in-ground swimming pool 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 June 16, 2022, 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 woodland/tree disturbance ratio 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 the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47.

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 fact that the Property is long and narrow lot, together with the Easement along the rear lot line, and the existing level of tree disturbance, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. Based upon the credible testimony provided, the Board concludes that the functional rear yard behind the house is the only area to reasonably site the pool. Any other location will require the removal of more woodlands. *See Exhibit B-2, Zoning 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 to remove 3 trees from the Property in connection with the proposed in-ground swimming pool, thereby producing an overall woodlands disturbance ratio of 40.17%.

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

### **DECISION**

AND NOW, this 22<sup>nd</sup> day of August, 2022, 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 §27-2400.f.1 to permit 3 woodland trees on the Property to be removed, producing a 40.17% disturbance ratio (59.83% protection ratio), where the required minimum woodlands protection ratio is 80%, and the existing protection ratio is 63.77%, subject to the following conditions:

1. The proposed in-ground noncommercial swimming pool and related improvements' dimensions, size, location and appearance shall be in accordance with the definitive plans, evidence, representations, exhibits and credible testimony made and submitted at the hearing.

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

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

DocuSigned by:  
*Thomas J. Walsh III*  
By: \_\_\_\_\_  
848BDD63FE5140E...  
Thomas J. Walsh III, Esquire  
Solicitor, New Britain Township Zoning Hearing Board  
3655 Route 202, Suite 105  
Doylestown, PA 18902

Date: 8/22/2022

**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/2022/Richardson.Kellie/DECISION.Richardson.2022-07-21 hearing.docx

## SCHEDULE A – TABLE OF EXHIBITS

| <b>Exhibit</b> | <b>Description</b>   |
|----------------|--|
| B-1            | Zoning Hearing Board application. Attachments to Application: <ul style="list-style-type: none"><li>• Cover letter dated 5/10/22</li><li>• List of property owners within 500 feet</li></ul> |
| B-2            | Zoning Plan, 1 sheet, prepared by LVL Engineering, dated 5/9/2022  |
| B-3            | Letter to The Intelligencer dated 5/31/22 forwarding public notice of 6/16/22 hearing for publication  |
| B-4            | Public Notice of the hearing on 6/16/22  |
| B-5            | Proof of publication of public notice in 6/2/22 and 6/9/22 editions of The Intelligencer   |
| B-6            | Letter to Applicant dated 5/31/22 providing notice of the 6/16/22 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 6/6/22 by Ryan Gehman   |
| B-9            | Affidavit of posting of public notice at property – notice posted on 6/2/22 at 10:01 a.m. by Ryan Gehman   |
| B-10           | Bucks County Viewer Map and Aerial   |
| A-1            | Letter dated 6/6/22 from Applicant’s engineering requesting hearing continuance  |
| A-2            | Building Permit Plot Plan, 1 sheet, prepared by Heritage Surveyors & Engineers, Inc., dated 9/5/2002   |
| A-3            | 3 Photographs  |

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

**Signature Page**

Re: Kellie Richardson  
502 New Galena Road  
New Britain Township  
TMP No. 26-1-94-2

Date: August 22, 2022

Chuck Coxhead, Chair

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

Cathy Basilio, Vice Chair

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

Scott Fischer, Member

DocuSigned by:  
*Scott W. Fischer*  
D5F686AFF378430...

Ryan Wantz, Alternate Member

DocuSigned by:  
*Ryan Wantz*  
0D30C4473FFA4B8...