

DATE OF DECISION: 1/18/2023

DATE OF MAILING: 1/18/2023

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

**RE: APPLICATION OF BRETT AND NICOLE WHITE FOR
THE PROPERTY LOCATED AT 101 MICHAELS COURT,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-35-9**

FINDINGS OF FACT

1. On Thursday, December 15, 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”) held a duly noticed hearing on the application of Brett and Nicole White (the “Applicants”).

2. The Applicants are the record co-owners of the property located at 101 Michaels Court, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-35-9 (the “Property”). The Property is the subject of the instant application.

3. Notice of the December 15, 2022, hearing was published in advance of the hearing in the Thursday, December 1, 2022, and Thursday, December 8, 2022, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the December 15, 2022, hearing was sent by first class mail on February 6, 2018 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 December 15, 2022, hearing on the Property on December 2, 2022, at 10:08 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 developed as part of a cluster subdivision (use B2), together with a storage shed (use H2) and in-ground non-commercial swimming pool (use H4). Such uses and structures are permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

9. The Applicants propose an addition to the existing single-family detached dwelling. To permit the addition, the Applicants seek a variance from Zoning Ordinance §27-903.a to permit a front yard setback along Green Valley Way of 26.9 feet, where the required minimum setback is 40 feet.

10. As submitted, the Applicants specified a front yard setback of 30 feet. At the hearing, the Applicants clarified that the application reflected an earlier version of the plan. The Applicants sought leave, granted by the Board, to amend the application to reflect the modified variance.

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

12. The Applicants testified in support of the application at the hearing. No other individuals appeared at the hearings to request party status, register a position, or comment or ask questions on the application before the Board. New Britain Township took no position on the application.

13. The Property is lot 14 in the Green Valley residential subdivision. The Applicants acquired the Property in or around July 2005. The dwelling was built in or around 1991. It contains approximately 1,406 square feet of living space, and is served by public water and public sewer. *See Exhibits B-1, Deed; and B-2, Plans.*

14. The Property is shaped like a rectangle. Its base site area is 9,200 square feet. The Property is a corner lot, having frontage along both Michaels Court and Green Valley Way. *See Exhibit B-2, Plans.*

15. On 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.*

16. The dwelling's front wall is oriented to Michaels Court. The Applicants stated, and the Board finds, that the yard behind the house's rear wall is treated as a rear yard. *See Exhibit B-2, Plans.*

17. The Property has 80 feet and 115 feet of frontage along Michaels Court and Green Valley Way, respectively. The side lot line is 115 feet long. The rear lot line is 80 feet long. *See Exhibit B-2, Plans.*

18. The dwelling is located in the center of the Property. The dwelling's side wall is set back 36.9 feet from Green Valley Way. The Board finds that this front setback dimension along Green Valley Way is a lawful non-conformity. *See Exhibit B-2, Plans.*

19. A short asphalt driveway accessing Michaels Court serves the dwelling. An open deck abuts the dwelling's rear wall. The pool is behind the deck. The storage shed is in the front yard along Green Valley Way. *See Exhibit B-2, Plans.*

20. The Applicants stated, and the Board finds, that the proposed addition will attach to the dwelling's side wall facing Green Valley Way. The addition will expand the existing living and dining rooms. *See Exhibit B-2, Plans.*

21. The Applicants stated, and the Board finds, that the proposed addition will be 10 feet wide and 27 feet 4 inches long. Its area will 273.33 feet. It will be one-story. *See Exhibit B-2, Plans.*

22. The Applicants stated, and the Board finds, that the dwelling's existing living space is very small. The addition will expand the available living space. *See Exhibit B-2, Plans.*

23. The Applicants stated, and the Board finds, that the addition will produce a front yard setback of 26.9 feet along Green Valley Way. This is the minimum setback that will allow the addition to be usable living space. *See Exhibit B-2, Plans.*

24. The Applicants stated, and the Board finds that the addition cannot be relocated to another position on the Property to alleviate the setback incursion. If placed behind the house, the existing deck and/or pool would need to be removed. The Board does not consider that a practical solution. *See Exhibit B-2, Plans.*

25. The Applicants stated, and the Board finds, that the shed will remain in the same location. The existing privacy fence will be modified to terminate at the end of the new addition. *See Exhibit B-2, Plans.*

26. The surrounding properties consist of similar style residences and lots. The Applicants stated that no nearby residents have raised any objection to the proposed dwelling addition or its location.

27. Due to the Property being a corner lot with a non-conforming dwelling location, the Property contains unique characteristics that support relief for the proposed dwelling addition to have a front yard setback of 26.9 feet from Green Valley Way. *See Exhibit B-2, Plans.*

28. The Zoning Ordinance's dimensional limitation imposes a hardship on the Property and the Applicants in that this regulation prevents a reasonably sized addition to a smaller residential dwelling.

29. Subject to the conditions imposed herein, the proposed 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 December 15, 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 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 Green Valley Way, while legislatively classified as a front yard, functions as side yard and partial rear yard. The Zoning Ordinance imposes a stricter setback requirements on a front yard than on a side yard. *See* Zoning Ordinance §27-903.a.

9. The Board concludes that the fact that the Property is a corner lot, as well as the existing non-conforming location of the 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 does not have any reasonably accessible open area to locate the addition that complies with the 40 feet front yard setback without adversely impacting the Property's other improvements.

11. 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 dwelling addition with a front yard setback of 26.9 feet in the yard along Green Valley Way.

12. 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.

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

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

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

DECISION

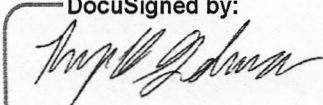
AND NOW, this 18th day of January, 2023, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicants' request for a variance from Zoning Ordinance §27-903.a to permit a front yard setback of 26.9 feet in the yard along Green Valley Way, subject to the following conditions:

1. The proposed dwelling addition, fence, shed, and the related improvements' dimensions, size, location and appearance shall be in accordance with plans, evidence, representations and credible testimony made at the hearing.

2. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed addition 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: 1/18/2023

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 (filed 11/17/22). Attachments: <ul style="list-style-type: none">• Deed dated 7/19/2005• List of surrounding property owners
B-2	Site and Floor Plans with Elevations, 2 sheets, prepared by Form Architecture, dated 8/17/22, last revised 8/31/22
B-3	Letter to The Intelligencer dated 11/22/22 forwarding public notice of hearing for advertisement
B-4	Public Notice of the hearing on 12/15/22
B-5	Proof of publication of public notice in 12/1/22 and 12/8/22 editions of The Intelligencer
B-6	Letter to Applicants dated 11/22/22 providing notice of the hearing
B-7	List of the record owners of all properties surrounding the Property; map of properties
B-8	Affidavit of mailing to property owners on B-7 – notice mailed on 11/28/22
B-9	Affidavit of posting of public notice at property – notice posted on 12/2/22 at 10:08 a.m., with photo of posting
B-10	Bucks County Viewer Map and Aerial of Property

New Britain Township
Zoning Hearing Board

Signature Page

Re: Brett and Nicole White
101 Michaels Court
New Britain Township
TMP No. 26-35-9

Date: 1/18/2023

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 W. Fischer

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Ryan Wantz, Alternate Member

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Ryan Wantz

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