

DATE OF DECISION: 05/22/2024

DATE OF MAILING: 05/22/2024

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

**RE: APPLICATION OF TERRY APPEL FOR THE  
PROPERTY LOCATED AT 6 CLOVER LANE, NEW  
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-24-57**

**FINDINGS OF FACT**

1. On Thursday, April 18, 2024, 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 Terry Appel (the “Applicant”).

2. The Applicant and Stephanie Marks (“Marks”) are the record co-owners of the property located at 6 Clover Lane, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-24-57 (the “Property”). The Property is the subject of the instant application.

3. Notice of the April 18, 2024, hearing was published in advance of the hearing in the Thursday, April 4, 2024, and Thursday, April 11, 2024, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the April 18, 2024, hearing was sent by first class mail on April 11, 2024, by David Conroy (“Conroy”), the New Britain Township Director of Planning and Zoning, 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-7.

5. Conroy posted notice of the April 18, 2024, hearing on the Property on April 11, 2024, at 12:51 p.m. *See* Exhibit B-8.

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

7. The Property is located in the 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 (use H2), driveway, and patio. 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 Applicant proposes an accessory in-ground noncommercial swimming pool (use H4) and related improvements. Such accessory use and structures are permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

10. To permit the proposed pool, the Applicant seeks a variance from Zoning Ordinance §27-902.b to permit an impervious surface ratio of 27.9% on the Property, where the existing ratio is 26.6%, and the maximum impervious surface ratio permitted by right is 25%. *See Exhibit B-2, Plan.*

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 Applicant and Marks testified in support of the application at the hearing. No other individuals appeared at the April 18, 2024, hearing to request party status, register a position, or comment or ask questions on the application before the Board.

13. According to Bucks County records, the Applicant and Marks acquired the Property in or around July 2015. The Property is lot no. 4 in the Tower Hill Meadows residential subdivision. *See Exhibit B-1, Deed.*

14. The Property is shaped like a rectangle with curved frontage along the bulb of the Clover Lane cul-de-sac. The Property's base site area is 22,613 square feet (.519 acres). *See Exhibit B-2, Plan.*

15. The Property is a lawful undersized lot. The minimum lot size is 1 acre for a tract improved with a B1 use in the RR zoning district. *See Exhibit B-2, Plan; see also Zoning Ordinance §27-902.b.*

16. The dwelling was constructed in or around 1976. The footprints of the house, driveway, patio, walkway and shed produce the present non-conforming impervious surface ratio that existed when the Applicant and Marks acquired the Property. *See Exhibit B-2, Plan.*

17. The Property has 114.97 feet of curvilinear frontage and 10.94 feet of straight frontage along Clover Lane. It is 107 feet wide along its rear lot line. The side lot lines are 234.5 feet and 254 feet long. *See Exhibits B-2, Plan.*

18. The dwelling is in center of the Property. The dwelling is a split-level style house with a side entry garage. The storage shed is at the end of the driveway. The patio abuts the dwelling's rear wall. *See Exhibit B-2, Plan.*

19. The Applicant and Marks stated, and the Board finds, that the pool will be in the rear yard behind patio. The pool is 12 feet wide by 24 feet long. At present, they do not intend to install any pavers, coping or hardscapes around the pool. *See Exhibit B-2, Plan.*

20. The Applicant and Marks stated, and the Board finds, that the pool was installed prior to obtaining the necessary zoning and building permits. The Applicant stated he was unaware of the need to obtain permits prior to commencing construction. *See Exhibit B-2, Plan.*

21. The Applicant and Marks stated, and the Board finds, that at the time they acquired the Property, it contained 6,021 square feet of existing impervious surfaces. This produces a ratio of 26.6%, which exceeds the maximum 25% permitted ratio. *See Exhibit B-2, Plan.*

22. The pool and related improvements will add 288 square feet of new impervious surfaces to the Property. This produces a new net aggregate of 6,309 square feet, for a final ratio of 27.9%. *See Exhibit B-2, Plan.*

23. Regarding existing stormwater drainage patterns at the Property, the Applicant and Marks stated, and the finds, that the water flows towards a drainage channel that is just beyond the side lot line next to the driveway. This channel connects to a small basin. *See Exhibit B-9, Viewer.*

24. To account for the additional stormwater runoff caused by the existing and proposed excess impervious surfaces on the Property, the Applicant and Marks stated, and the Board finds, that additional trees and vegetation will be planted on the Property.

25. The Applicant and Marks stated, and the Board finds, that number and locations of the additional plantings have not been identified yet. The Applicant agreed that the vegetation will comply with the New Britain Township Stormwater Management Ordinance and will be approved by the Township Engineer. *See Exhibit B-2, Plan.*

26. The Applicant and Marks stated, and the Board finds, that the finally designed and implemented non-structural stormwater management plantings 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 both the *existing* excess and proposed net new impervious surfaces. *See Exhibit B-2, Plan.*

27. The Applicant and Marks stated, and the Board finds, that the surrounding lots are improved with similar style and size dwellings. None of the adjoining residents have raised any objection to the proposed pool and related improvements.

28. The Property contains unique physical characteristics that support relief for the pool and related improvements that produce an overall impervious surface ratio of 27.9%.

29. The Zoning Ordinance's dimensional limitation imposes a hardship on the Property and the Applicant in that this regulation prevents a reasonably sized in-ground noncommercial swimming pool on an undersized lot with an older non-conforming residential dwelling.

30. Subject to the conditions imposed herein, the noncommercial 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 April 18, 2024, 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. While the Board does not condone commencing construction or operations prior to securing all necessary permits, the Board nevertheless concludes that the Property’s lot area, existing non-conforming impervious surface ratio, and age of the dwelling establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. The Board concludes that while the Applicant has established a hardship to justify an impervious surface ratio of 29.7%, the Applicant and Marks will alleviate the runoff hazards through the stormwater management plantings 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 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, install and maintain the proposed swimming pool 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 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 May, 2024, 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 an impervious surface ratio of 27.9% on the Property, subject to the following conditions:

1. The 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. The Applicant and Marks and their design professional shall revise the site plan (Exhibit B-2) and submit a certification letter (pre-marked as Exhibit B-2(A)), if necessary, to the satisfaction of Conroy and the New Britain Township engineer, to confirm that the new stormwater management plantings will produce an effective impervious surface ratio of not more than 25% on the Property.

3. The Applicant and Marks shall install, maintain and replace the stormwater management plantings 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, confirm the Board's decision and order.

DocuSigned by:  
*David Conroy*  
By: \_\_\_\_\_  
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David Conroy  
New Britain Township  
Director of Planning and Zoning

5/22/2024  
Date: \_\_\_\_\_

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.

DECISION.Appel.2024-04-18 hearing

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

**Signature Page**

Re: Terry Appel  
6 Clover Lane  
TMP No. 26-24-57

Chuck Coxhead, Chair

*/ABSENT/*

Scott Fischer, Vice Chair

DocuSigned by:

*Scott Fischer*

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Dawn Farver, Member

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*Dawn Farver*

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Ryan Wantz, Alternate Member

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*Ryan Wantz*

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