

**DATE OF DECISION:** 3/6/2024

**DATE OF MAILING:** 3/6/2024

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

**RE: APPLICATION OF CHALFONT HOLDINGS, LLC,  
FOR THE PROPERTY LOCATED AT 545 WEST BUTLER AVENUE,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-6-101-1**

**FINDINGS OF FACT**

1. On Thursday, February 15, 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 Chalfont Holdings, LLC (the “Applicant”).

2. The property that is the subject of the application is located at 545 West Butler Avenue, situate at the northwest corner of its intersection with County Line Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-6-101-1 (the “Property”).

3. Notice of the February 15, 2024, hearing was published in advance of the hearing in the Thursday, February 1, 2024, and Thursday, February 8, 2024, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-7.

4. Notice of the February 15, 2024, hearing was sent by first class mail on February 8, 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 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-9.

5. Conroy posted notice of the February 15, 2024, hearing on the Property on February 8, 2024, at 12:36 a.m. *See* Exhibit B-10.

6. The Applicant is a Pennsylvania limited liability company. As the record owner of the Property, the Applicant has the requisite standing to prosecute this zoning hearing board application.

7. The Property is located in the C-1, Commercial, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”). The Property is also located in the COD, Butler Avenue Corridor Overlay District.

8. The Property is improved with a non-residential building, parking spaces and drive aisles. The Applicant proposes to demolish the existing building. *See* Exhibit A-2, Plan.

9. The Applicant proposes a new non-residential building containing a drive-in and other eating place use (use J7), with redesigned parking areas and drive aisles. A J7 use is permitted by right in the C-1 zoning district. *See* Zoning Ordinance §27-1201.a.

10. To permit the new non-residential building and the related improvements, the Applicant seeks a variance from Zoning Ordinance §27-2904.g.5 to permit a paved area to be within 0.5 feet of the exterior structural wall of the proposed building, where the required minimum setback for such paved areas from the exterior structural building wall is 20 feet.

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. Scott Mill (“Mill”), registered landscape architect, testified on behalf of the Applicant in support of the application at the hearing.

13. 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.

14. At the commencement of the hearing, Mill stated that proposed building will contain only a single J7 use (Dunkin’ Donuts). A second J7 use (Papa John’s) previously considered for the building was eliminated. *See* Exhibit A-2, Plan.

15. The Property is shaped like a rectangle. Its base site area is 0.65 acres. The required minimum lot size for a tract conducting a drive-thru and other eating place use in the C-1 district is 1 acre. The Board finds that the Property’s undersized area is an existing lawful non-conforming condition. *See* Exhibit A-2, Plan; *see also* Zoning Ordinance §27-1202.b.

16. The Property is a corner lot. It abuts the intersection of 2 heavily traveled streets. The Property has 166.62 feet of frontage along West Butler Avenue; and 134.58 feet of frontage along County Line Road. The Property is 27.76 feet long at the actual intersection. *See* Exhibit A-2, Plan.

17. Per the Zoning Ordinance, for a corner lot, the yards adjoining the streets are each considered a front yard. The owner of a corner lot has the option of choosing which of the two lot lines that are not street lines is to be considered a rear lot line. *See* Zoning Ordinance §27-201.

18. Mill stated, and the Board finds, that the Property’s yard behind the existing building is designated as a side yard. The remaining yard perpendicular to West Butler Avenue also functions as a side yard. *See* Exhibit A-2, Plan.

19. The existing building on the Property is a one-story masonry structure. The front wall of the existing building is oriented toward West Butler Avenue. *See* Exhibits A-1, Aerial; and A-2, Plan

20. The existing building is vacant. It formerly contained a Wawa convenience store. The Wawa use relocated to a site 1 tract removed from the Property east along West Butler Avenue. *See* Exhibits A-1, Aerial; and A-2, Plan.

21. The Property has 2 vehicle access points. One is on County Line Road; the other is on West Butler Avenue. Presently, vehicles can freely enter and exit, and turn in both directions, from either access point. *See Exhibit A-1, Aerial.*

22. Mill stated, and the Board finds, that the existing building is an outdated structure built in or around 1988. Due to its non-conforming location within 15 feet of the lot line behind the building, a safe and functional drive-thru facility and service lanes cannot be added. *See Exhibits A-1, Aerial; and A-2, Plan.*

23. Mill stated, and the Board finds, that the proposed building will be one story with a footprint of 2,530 square feet. The new building's footprint is 450 square feet smaller than the footprint of the existing structure. *See Exhibit A-2, Plan.*

24. Mill stated, and the Board finds, that the new building will be set back 25.5 feet from the lot line behind the building. A retaining wall will run along the entire northern lot line. *See Exhibit A-2, Plan.*

25. Mill stated, and the Board finds, that two (2) 10 feet wide travel lanes will be behind the new building's rear wall. One lane will be for the drive-thru pick up window. The other lane will be for traffic exiting the Property without using the drive-thru facility. *See Exhibit A-2, Plan.*

26. Mill stated, and the Board finds, that the paving and curbing of the drive-thru lane will be 0.5 feet from the building's rear wall at its closest point. The paving cannot be moved further away from the building without compromising the safety and functionality of the drive-thru and the pick-up window. *See Exhibit A-2, Plan.*

27. Mill stated, and the Board finds, that both street accesses will be redesigned. The West Butler Avenue access will be limited to westbound egress only. The County Line Road access will allow ingress from either direction, but a northbound right-turn only exit pattern. *See Exhibit A-2, Plan.*

28. Mill stated, and the Board finds, that these access modifications will facilitate safer one-way traffic through the parking lot in the yard along West Butler Avenue, past the double-menu board, around the building, and to the County Line Road exit. *See Exhibit A-2, Plan.*

29. Regarding stormwater runoff, Mill stated, and the Board finds, that Property's level of impervious surfaces will be reduced slightly. During the project's land development phase, Mill stated that the Applicant intends to design stormwater management facilities, plantings and lighting on the Property. *See Exhibit A-2, Plan.*

30. Mill stated, and the Board finds, that the lands directly north and east of the Property are used for non-residential purposes. No surrounding lot owners or occupants have voiced any objections to the proposed new building and related improvements.

31. Due to the Property being a pre-existing non-conforming undersized corner lot with a building in a non-conforming location, the Property lacks any location to build a non-residential building for a modern eating place with a drive-thru facility in compliance with the Zoning Ordinance's paving separation regulations.

32. The Property contains unique physical characteristics that support relief for the variance requested by the Applicant to permit the construction of a non-residential building on the Property with paved areas within 0.5 feet of the rear exterior structural wall. *See* Exhibit A-2, Plan.

33. This dimensional restriction imposes a hardship on the Property and the Applicant in that it prevents the installation of safe and modern drive-thru facility on a lawful pre-existing non-conforming corner lot.

34. Subject to the conditions imposed herein, the proposed non-residential building with the J7 use, drive-thru, travel aisles, and other 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 public notice of date, time and location of the February 15, 2024, hearing was made by sufficient 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 paving separation distance variance requested by the Applicant 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. Cmwlth. 2015); *see also Constantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Cmwlth. 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. Based upon the credible evidence and testimony presented, the Board concludes that the Property's existing lawful non-conforming size, the fact that the Property is a corner lot, and the older building in a non-conforming location, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. The Board concludes that the Applicant's design reflects safe drive-thru facilities. Relocating the paving or the service window away from the exterior structural wall would create adverse conditions and reflect outdated industry trends.

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, in connection with the proposed new non-residential building 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 variance that will afford relief and represents the least modification of the zoning regulations under the circumstances.

#### **DECISION**

AND NOW, this 6th day of March, 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 §27-2904.g.5 to permit the drive-thru paving and lane to be within 0.5 feet of the exterior structural wall of the proposed building, subject to the following conditions:

1. The proposed J7 use, non-residential building, parking and drive aisles, and related improvements, their respective dimensions, sizes, locations and appearances shall be in general accordance with plans, evidence, representations, exhibits and credible testimony made and submitted at the hearing.

2. The Applicant shall use all reasonable efforts during the land development design and review phase of the project to add stormwater management facilities and plantings to the Property.

3. 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: \_\_\_\_\_  
David Conroy  
New Britain Township  
Director of Planning and Zoning

Date: 3/6/2024

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

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application (dated 11/6/23). Attachments: <ul style="list-style-type: none"><li>• List of property owners within 500 feet</li><li>• Deed dated 8/24/22</li></ul>
B-2	Zoning Hearing Exhibit Plan, 1 sheet, prepared by Van Cleef Engineering, dated 10/5/23, last revised 12/18/23
B-3	Letter from D. Shafkowitz, Esq., dated 12/5/23, requesting continuance and granting waiver
B-4	Letter from D. Shafkowitz, Esq., dated 1/9/24, amending application
B-5	Letter to The Intelligencer dated 1/26/24 to publish Public Notice of hearing
B-6	Public Notice of the hearing on 2/15/24
B-7	Proof of publication of public notice in 2/1/24 and 2/8/24 editions of The Intelligencer
B-8	Township list of the record owners of all properties within 500 feet; aerial map of properties
B-9	Affidavit of mailing to property owners on Exhibit B-8 – notice mailed on 2/8/24 by David Conroy
B-10	Affidavit of posting of public notice at property – notice posted on 2/8/24 at 12:36 p.m. by David Conroy, together with photo of posting
B-11	Bucks County Floodplain Viewer and Aerial of Property
A-1	Aerial Overlay Plan, 1 sheet, prepared by Van Cleef Engineering, dated 2/5/24
A-2	Zoning Hearing Exhibit Plan, 1 sheet, prepared by Van Cleef Engineering, dated 10/10/23, last revised 1/31/24

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

**Signature Page**

Re: Chalfont Holdings, LLC  
545 West Butler Avenue  
TMP No. 26-6-101-1

Chuck Coxhead, Chair

DocuSigned by:  
*Charles A Coxhead*  
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Scott Fischer, Vice Chair

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Dawn Farver, Member

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Ryan Wantz, Alternate Member

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