

DATE OF DECISION: 3/6/2024

DATE OF MAILING: 3/6/2024

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

**RE: APPLICATION OF KEVIN MURPHY FOR THE
PROPERTY LOCATED AT 117 HAMPSHIRE DRIVE, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-8-110**

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 Kevin Murphy (the “Applicant”).

2. The Applicant and Jennifer Chance-Johnson (“Jennifer”) are the record co-owners of the property located at 117 Hampshire Drive, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-8-110 (the “Property”). The Property is the subject of the instant application.

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-5.

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-8.

5. Conroy posted notice of the February 15, 2024, hearing on the Property on February 8, 2024, at 12:30 p.m. *See* Exhibit B-9.

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) and an accessory storage shed. 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 a detached accessory garage (use H1). To permit the garage, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. From §27-902.b to permit an impervious surface ratio of 26.7% on the Property, where the maximum impervious surface ratio permitted by right is 25%; and
- b. From §27-902.c.2 to allow the detached garage to have a side yard setback of 13 feet, where the required minimum setback is 15 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 Brian Murphy, P.E. (“Brian”) a professional civil engineer, testified in support of the application at the hearing. Jennifer appeared at the hearing in support of the application. No one requested party status.

12. According to the Applicant and Bucks County records, the Applicant and Jennifer acquired the Property in or around November 2021. The Property is lot 16 in Section A of the Brittany Farms residential subdivision. The dwelling was constructed in or around 1959. *See Exhibit B-1, Application.*

13. The Property’s base site area is 15,000 square feet. The Property is a lawful undersized lot, as the present minimum lot size is 1 acre for a property improved with a B1 use in the RR zoning district. *See Exhibit B-2, Plan; see also Zoning Ordinance §27-902.b.*

14. The Property is shaped like a rectangle. The Property has 100 feet of frontage along the ultimate right-of-way line of Hampshire Drive. It is 100 feet wide along its rear lot line. The side lot lines are each 150 feet long. *See Exhibit B-2, Plan.*

15. A portion of the dwelling is within the required minimum side yard, making it a lawful nonconforming structure. A concrete patio is behind the dwelling. The storage shed is in the Property’s northeast rear corner. *See Exhibit B-2, Plan.*

16. A paved driveway connects Hampshire to the attached front-entry garage. The end of the driveway aligns with the plane of the dwelling’s rear wall. This driveway is close to the eastern side lot line. *See Exhibit B-2, Plan.*

17. The Applicant stated, and the Board finds, that the detached garage will be used to store a historic vehicle and personal household items. The existing shed will be removed once the garage is constructed, and the items presently in the shed will be relocated to the garage.

18. The Applicant and Brian stated, and the Board finds, that the garage will be 16 feet wide and 30 feet long, for a footprint of 480 square feet. The garage will be located at the end of the driveway just beyond the concrete patio. *See Exhibit B-2, Plan.*

19. The Applicant and Brian stated, and the Board finds, that at its closest point, the garage will be 13 feet from the nearest side lot line. *See Exhibit B-2, Plan.*

20. The Applicant and Brian stated, and the Board finds, that the driveway paving will be extended slightly to reach the garage. Were the garage moved to increase the side yard setback, the driveway would have to be further extended, thereby requiring more impervious surfaces. *See Exhibit B-2, Plan.*

21. The Applicant and Brian stated, and the Board finds, that a drainage swale is located next to the driveway in between the Property and the adjacent lot. Brian stated that placing the garage in the proposed location minimizes the amount of additional runoff that will enter this swale. *See Exhibit B-2, Plan.*

22. Brian stated, and the Board finds, following installation of the detached garage and expanded driveway, and removal of the existing shed, the Property will contain 4,031 square feet of impervious surfaces. This produces a ratio of 26.7%. *See Exhibit B-2, Plan.*

23. Regarding existing stormwater drainage patterns at the Property, Brian stated, and the Board finds, that water follows the Property's natural slope from the rear lot line toward the drainage swale and toward the western side lot line. *See Exhibit B-2, Plan.*

24. Brian opined that the existing drainage trench behind the concrete patio is sufficiently sized to handle the increased runoff. However, he did not perform any engineering calculations to verify that opinion. *See Exhibit B-2, Plan.*

25. The Applicant and Brian agreed that if the existing trench is determined to be undersized to handle the stormwater runoff caused by the existing and proposed excess impervious surfaces on the Property, that a compliant and approved stormwater management BMP facility and/or non-structural plantings will be installed on the Property. *See Exhibit B-2, Plan.*

26. The Applicant stated, and the Board finds, that any facility and/or plantings will comply with the New Britain Township Stormwater Management Ordinance and will be approved by the Township Engineer. *See Exhibit B-2, Plan.*

27. Brian stated, and the Board finds, that the finally designed, engineered and installed stormwater BMP facilities and/or 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 any existing excess and proposed net new impervious surfaces. *See Exhibit B-2, Plan.*

28. The Applicant stated, and the Board finds, that the adjoining residents and other surrounding neighbors do not object to the proposed detached garage and related improvements.

29. Due to the Property's undersized nature and non-conforming location of the dwelling, the Property contains unique physical characteristics that support relief for the side yard setback and impervious surface ratio variances requested in connection with the proposed detached garage.

30. The Zoning Ordinance's dimensional limitations impose a hardship on the Property and the Applicant in that these regulations prevent a reasonably sized detached garage on an undersized lot with an older non-conforming residential dwelling.

31. Subject to the conditions imposed herein, the detached garage, expanded driveway, 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 February 15, 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 side yard setback and impervious surface ratio variances 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. 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. The Board concludes that the Property's undersized nature, non-conforming dwelling location, and the fact that the driveway is next to a drainage swale establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

9. The Board concludes that while the Applicant has established a hardship to justify a side yard setback of 13 feet and an impervious surface ratio of 26.7%, the Applicant will alleviate the runoff hazards through the stormwater management BMP facilities and/or non-structural 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 variances, including hardship, to construct and install the proposed detached garage, lengthened driveway, and related improvements.

11. 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.

12. The approved variances will not be detrimental to the public welfare.

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

14. 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 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 variances from the Zoning Ordinance as follows:

- a. A variance is granted from §27-902.b to permit an impervious surface ratio of 26.7%; and
- b. A variance is granted from §27-902.c.2 to allow the detached garage to have a side yard setback of 13 feet.

The relief granted above is subject to the following conditions:

1. The detached garage, expanded driveway, and related improvements' dimensions, size, location and appearance shall be in accordance with the definitive plan (marked as Exhibit B-2), evidence, representations, exhibits and credible testimony made and submitted at the hearing.

2. The Applicant and his design professional shall revise the Plot Plan (Exhibit B-2) and submit a certification letter, if necessary, to the satisfaction of Conroy and the New Britain Township Engineer, to confirm that the finally engineered, designed and installed stormwater management improvements will produce an effective impervious surface ratio of not more than 25% on the Property.

3. The Applicant shall install, maintain and replace the stormwater management facility and improvements 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, confirms the Board's decision and order.

DocuSigned by:
By: David Conroy
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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.

DECISION.Murphy.2024-02-15 hearing

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application, dated 1/16/24. Attachments to Application: <ul style="list-style-type: none">• Deed dated 11/15/2021
B-2	Plot Plan, consisting of 1 sheet, prepared by MV Engineering, dated 11/2/23
B-3	Letter to The Intelligencer dated 1/26/24 forwarding public notice of 2/15/24 hearing for advertisement
B-4	Public Notice of the hearing on 2/15/24
B-5	Proof of publication of public notice in 2/1/24 and 2/8/24 editions of The Intelligencer
B-6	Letter to Applicant dated 2/1/24 providing notice of the 2/15/24 hearing
B-7	Township list of the record owners of all properties within 500 feet of the Property; map of properties
B-8	Affidavit of mailing to property owners – notice mailed on 2/8/24
B-9	Affidavit of posting of public notice at property – notice posted on 2/8/24 at 12:30 a.m., together with photos of notice on property
B-10	Bucks County Viewer Map and Aerial

New Britain Township
Zoning Hearing Board

Signature Page

Re: Kevin Murphy
117 Hampshire Drive
TMP No. 26-8-110

Chuck Coxhead, Chair

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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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Ryan Wantz
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