

DATE OF DECISION: 05/22/2024
DATE OF MAILING: 05/22/2024

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

**RE: APPLICATION OF PAUL PARSONS FOR THE
PROPERTY LOCATED AT 121 BRITTANY DRIVE, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-7-5**

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 Paul Parsons (the “Applicant”).
2. The Applicant and Taylor Parsons (“Taylor”) are the record co-owners of the property located at 121 Brittany Drive, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-7-5 (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 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-7.*
5. Conroy posted notice of the April 18, 2024, hearing on the Property on April 11, 2024, at 12:40 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). Such use and structure 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 addition to the existing dwelling. To permit the addition, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. From §27-902.b to allow a side yard setback of 15 feet 7 inches, where the required minimum side yard setback is 25 feet; and
- b. From §27-902.b to allow a rear yard setback of 55 feet, where the required minimum rear yard setback is 75 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 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.

12. According to Bucks County records, the Applicant and Taylor acquired the Property in or around October 2019. The Property is lot 84 in Sections B and C of the Brittany Farms residential subdivision. The dwelling was constructed in or around 1960. *See Exhibit B-1, Deed.*

13. The Property's base site area is 15,000 square feet. The Property is a lawful undersized lot, as the 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 Brittany Drive. It is 100 feet wide along its rear lot line. The side lot lines are each 150 feet long. *See Exhibits B-2, Plan; and B-9, Viewer.*

15. The dwelling is a small ranch-style house, possessing only 1,326 square feet of living area. A drainage pipe runs through the northern side yard. *See Exhibits B-2, Plan; and B-9, Viewer.*

16. The Applicant stated, and the Board finds, that the dwelling's northern side wall is only 20 feet 6 inches from the nearest side lot line. The existing rear wall is only 68 feet from the rear lot line. The physical characteristics make the house a lawful nonconforming structure. *See Exhibit B-2, Plan.*

17. A paved driveway connects Brittany Drive to the below street level parking area that is under the main dwelling living space. The end of the driveway protrudes slightly beyond the extended plane of the dwelling's rear wall. The driveway edge is on the southern side lot line. *See Exhibit B-2, Plan.*

18. The Applicant stated, and the Board finds, that the addition will be 2 stories. A 2 car garage will be on the first floor. The second floor will be a new master bedroom suite. *See Exhibit B-2, Plan.*

19. The Applicant stated, and the Board finds, that the garage will be 22 feet wide and 22 feet long, for a footprint of 484 square feet. The garage will be located at the end of the driveway and will connect to the dwelling's rear corner. *See Exhibit B-2, Plan.*

20. The Applicant stated, and the Board finds, that at its closest point, the addition will be 15 feet 7 inches from the nearest side lot line, and 55 feet from the rear lot line. *See Exhibit B-2, Plan.*

21. The Applicant stated, and the Board finds, that the driveway will not be extended to reach the new garage. The addition will be placed partially over the existing paving thereby minimizing the increase in impervious surfaces. *See Exhibit B-2, Plan.*

22. The Applicant stated, and the Board finds, that the addition cannot be relocated to increase or comply with the required side or rear yard setbacks. As found previously, the dwelling already sits in the required minimum rear and side yards. *See Exhibit B-2, Plan.*

23. Upon discussion with the Board, the Applicant stated that he did not calculate the Property's existing or proposed impervious surfaces or ratios. The Applicant acknowledged that further zoning relief may be necessary once those figures are determined. *See Exhibit B-2, Plan.*

24. The Applicant stated, and the Board finds, that the adjoining properties are improved with similar single-family detached dwellings. The Applicant stated that the adjoining residents and other surrounding neighbors do not object to the proposed dwelling addition.

25. Due to the Property's undersized nature, non-conforming location of the dwelling, and size and age of the dwelling, the Property contains unique physical characteristics that support relief for the side and rear yard setback variances requested in connection with the proposed addition.

26. The Zoning Ordinance's dimensional limitations impose a hardship on the Property and the Applicant in that these regulations prevent a reasonably sized addition to an older non-conforming dwelling on an undersized lot.

27. Subject to the conditions imposed herein, the dwelling addition 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 side and rear yard setback 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, the presence of the drainage swale, and the driveway along the side lot line 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 15 feet 7 inches, and a rear yard setback of 55 feet, the Applicant will alleviate any potential hazards associated with addition by placing a portion of it over the existing driveway. *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 dwelling addition 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 22nd 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 variances from the Zoning Ordinance as follows:

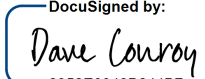
- a. A variance is granted from §27-902.b to permit a side yard setback of 15 feet 7 inches; and
- b. A variance is granted from §27-902.b to allow a rear yard setback of 55 feet.

The relief granted above is subject to the following conditions:

1. The addition 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. 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:

 By: _____
 David Conroy
 New Britain Township
 Director of Planning and Zoning

Date: 05/22/2024

New Britain Township
Zoning Hearing Board

Signature Page

Re: Paul Parsons
121 Brittany Drive
TMP No. 26-7-5

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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