

**DATE OF DECISION:** July 31, 2024

**DATE OF MAILING:** July 31, 2024

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

**RE: APPLICATION OF BENJAMIN RUSH FOR THE  
PROPERTY LOCATED AT 128 HAMPSHIRE DRIVE, NEW  
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-8-80**

**FINDINGS OF FACT**

1. On Tuesday, July 2, 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”) opened a duly noticed hearing on the application of Benjamin Rush (the “Applicant”).

2. The Applicant is the record owner of the property located at 128 Hampshire Drive, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-8-80 (the “Property”). The Property is the subject of the instant application. *See* Exhibit B-10.

3. Notice of the July 2, 2024, hearing was published in advance of the hearing in the Wednesday, June 19, 2024, and Tuesday, June 25, 2024, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-6.

4. Notice of the July 2, 2024, hearing was sent by first class mail on June 25, 2024, by David Conroy (“Conroy”), the New Britain Township Director of Planning and Zoning, to (a) all record owners of properties in New Britain Township that are within 500 feet 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 July 2, 2024, hearing on the Property on June 25, 2024, at 1:04 p.m. *See* Exhibit B-9.

6. 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 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* Zoning Ordinance §27-901.a.

9. The Applicant proposes an addition and open deck to the rear of the existing dwelling. To permit the improvements, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. From §27-902.b to permit a rear yard setback of 42 feet for the addition, where the required minimum rear yard setback is 75 feet; and
- b. From §27-2105.b to permit a rear yard setback of 30 feet 2.75 inches for the open deck, where the required minimum rear yard setback is 60 feet.

10. Introduced as exhibits at the zoning hearing(s) 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 Jeffrey Harris, R.A. (“Harris”), project architect, testified in support of the application at the hearing.

12. 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.

13. The Applicant acquired the Property in August 2015. The Property is lot 26 in Section B of the Brittany Farms residential subdivision. *See* Exhibit B-10, Assessment Record.

14. The house is a ranch-style dwelling that was constructed in or around 1958. The dwelling has approximately 1,132 square feet of living space. It is served by public water and public sewer systems. *See* Exhibits B-3, Plot Plan; and B-10, Assessment Record.

15. The Property is shaped like a square. Its lot area is 13,192 square feet. The Property is a corner lot, having frontage along both Hampshire Drive and Devon Road. *See* Exhibit B-3, Plot Plan.

16. Per the Zoning Ordinance, with 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.

17. The Applicant stated, and the Board finds, that the lot line and yard behind the house’s rear wall are treated as a rear lot line and yard. *See* Exhibit B-3, Plot Plan.

18. The dwelling’s front wall and door are oriented toward Hampshire Drive. The driveway serving the dwelling accesses Devon Road. A covered patio on a concrete pad abuts the dwelling’s rear wall. *See* Exhibit B-3, Plot Plan.

19. The Property has 100.92 feet of frontage along the right-of-way line of Hampshire Drive and 120.92 feet of frontage along the right-of-way line of Devon Road. At the intersection of these 2 streets, the Property’s curvilinear frontage is 14.26 feet. *See* Exhibits B-2, Survey Plan; and B-3, Plot Plan.

20. The side lot line is 110 feet long. The Property’s rear lot line is 111.8 feet long. *See* Exhibits B-2, Survey Plan; and B-3, Plot Plan.

21. The dwelling is located in the center of the Property. The dwelling’s front wall is set back 40 feet 3 inches from the Hampshire Drive right-of-way line. The rear wall is 44 feet 1.5 inches from the rear lot line at its closest point. *See* Exhibits B-2, Survey Plan; and B-3, Plot Plan.

22. The Applicant and Harris stated, and the Board finds, that the Property is non-conforming as to lot area and 3 of the 4 the yard setbacks. The Zoning Ordinance's dimensional criteria produce a negative building envelope when applied to the Property. *See* Exhibit B-3, Plot Plan.

23. The Applicant stated, and the Board finds, that the dwelling has a small 2 car attached garage that is below the primary living space. The dwelling has limited storage areas due to its small size.

24. The Applicant and Harris stated, and the Board finds, that the addition will attach to the dwelling's rear wall. The addition will be 2 stories. It will have a footprint of 152 square feet. *See* Exhibit B-3, Plot Plan.

25. The Applicant and Harris stated, and the Board finds, that the open deck will be along the rear wall of the new dwelling addition. It will have a footprint of 250 square feet. The cover of the existing patio will be removed, but the concrete pad will remain. *See* Exhibit B-3, Plot Plan.

26. Harris stated, and the Board finds, that the dwelling addition will be 42 feet from the rear lot line at its closest point. Due to the non-conforming nature of the Property, Harris stated that any expansion of the dwelling along the rear wall requires variance relief. *See* Exhibit B-3, Plot Plan.

27. Harris stated, and the Board finds, that the open deck will be 30 feet 2.75 inches from the rear lot line at its closest point. Although open decks are allowed to protrude 15 feet into the required minimum 75 feet rear yard, the existing house is already beyond this line. *See* Exhibit B-3, Plot Plan.

28. The Applicant acknowledged that the Property with the proposed improvements must comply with the New Britain Township Stormwater Management Ordinance ("Stormwater Ordinance") and all other applicable regulations. *See* Exhibit B-3, Plot Plan.

29. The surrounding properties consist of similar style residences and lots. The Applicant stated that no nearby residents have raised any objection to the proposed addition, the open deck, or their respective location.

30. Due to the Property being a non-conforming undersized corner lot with a small non-conforming dwelling, the Property contains unique characteristics that support relief for the proposed dwelling addition and open deck. *See* Exhibit B-3, Plot Plan.

31. The Zoning Ordinance's dimensional limitations impose a hardship on the Property and the Applicant in that these regulations prevent a reasonably-sized addition and open deck in connection with an older residential dwelling on an undersized lot.

32. Subject to the conditions imposed herein, the proposed addition and open deck, 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 July 2, 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 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 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 the Property's characteristics such as an undersized non-conforming corner lot, negative building envelope, and small older non-conforming dwelling with limited living space establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

9. Based on the credible testimony presented, the Board concludes that the Property's only logical open area to locate the addition and open deck is along the dwelling's rear wall. *See Exhibit B-3, Plot Plan.*

10. Critical to the Board's conclusion is that the Applicant secure all necessary approvals, including compliance with the Stormwater Ordinance, for the new impervious surfaces proposed for the Property in connection with the addition and open deck.

11. 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 addition and open deck as shown on the definitive plan (Exhibit B-3).

12. 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.

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

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

15. 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 31st day of July, 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 rear yard setback of 42 feet for the addition; and
- b. A variance is granted from §27-2105.b to permit a rear yard setback of 30 feet 2.75 inches for the open deck.

The relief granted above is subject to the following conditions:

1. The proposed dwelling addition and open deck, their dimensions, sizes, locations and appearances, shall be in accordance with the definitive plan (identified as Exhibit B-3), evidence, representations, exhibits and credible testimony made and submitted at the hearings.

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.

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

Date: 7/31/2024

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.Rush.2024-07-02 hearing

## SCHEDULE A – TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application. Attachments to Application: <ul style="list-style-type: none"><li>• List of property owners within 500 feet</li></ul>
B-2	Survey Plan, 1 sheet, prepared by 1726 Land, dated 10/20/23, last revised 10/30/23
B-3	Plot Plan, 1 sheet, prepared by Jeffrey Harris Architect, dated 5/23/24
B-4	Letter to The Intelligencer dated 6/14/24 forwarding notice of 7/2/24 hearing for publication
B-5	Public Notice of the hearing on 7/2/24
B-6	Proof of publication of public notice in 6/19/24 and 6/25/24 editions of The Intelligencer
B-7	Township list of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners – notice mailed on 6/25/24
B-9	Affidavit of posting of public notice at property – notice posted on 6/25/24 at 1:04 p.m.
B-10	Bucks County Board of Assessment and Floodplain Viewer records

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

**Signature Page**

Re: Benjamin Rush  
128 Hampshire Drive  
TMP No. 26-8-80

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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Robert Byrne, Member

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Terry Young, Member

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Ryan Wantz, Alternate Member

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