

DATE OF DECISION: 6/28/2024

DATE OF MAILING: 6/28/2024

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

**RE: APPLICATION OF THE SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY (SEPTA) FOR THE PROPERTY  
LOCATED ALONG RAILROAD AVENUE NEAR THE INTERSECTION  
OF WESTVIEW AVENUE AND WALTER ROAD, NEW BRITAIN  
TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-5-38**

**FINDINGS OF FACT**

1. On Thursday, May 16, 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 The Southeastern Pennsylvania Transportation Authority (“SEPTA”).

2. SEPTA is the record owner of the property located along Railroad Avenue near the intersection of Westview Avenue and Walter Road, New Britain Township, further known as Bucks County Tax Map Parcel No. 26-5-38 (the “Property”). The Property is the subject of the instant application.

3. Notice of the May 16, 2014, hearing was published in advance of the hearing in the Thursday, May 2, 2024, and Thursday, May 9, 2024, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-8.

4. Notice of the hearing was sent by first class mail on May 9, 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 of the Property; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See* Exhibit B-10.

5. Conroy posted notice of the May 16, 2024, hearing on the Property on May 9, 2024, at 11:35 a.m. *See* Exhibit B-11.

6. As the record owner of the Property, SEPTA has the requisite standing to prosecute this zoning hearing board application.

7. The Property is located in the SR-1, Suburban Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

8. The Property is primarily improved with the tracks for the Lansdale / Doylestown regional rail line. SEPTA proposes to repair and rehabilitate a stone arch bridge that carries an unnamed tributary of the Neshaminy Creek under the tracks.

9. To permit the bridge repairs, SEPTA seeks a variance from Zoning Ordinance §27-1904.o.1<sup>1</sup> which prohibits disturbance of a watercourse unless it is shown through hydrologic studies that the activity will reduce, change or impede the flood-carrying capacity of the watercourse in any way.

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 following individuals testified on behalf of SEPTA in support of the application at the hearing:

- a. Moussa Cisse (“Cisse”), senior project manager for SEPTA.
- b. Cassandra Khazem, PE, (“Khazem”), professional senior bridge engineer.
- c. Beth-Ann Grasso, PE and CFM (“Grasso”), professional civil engineer and certified floodplain manager.

12. No other individuals appeared at the hearing to request party status, register a position, or comment or ask questions about the application before the Board. New Britain Township took no position on the application and did not participate in the hearing.

13. The Property is approximately 8.3 acres. It is a very long and narrow tract that runs in an east-west direction. It mostly abuts Railroad Avenue from Schoolhouse Road to the municipal boundary line between Chalfont Borough and New Britain Township. *See* Exhibit B-12, Assessment Records and Viewer.

14. A small natural basin is on the Property near the intersection of Railroad Avenue, Westfield Avenue and Walter Lane. The basin sits between the single span railroad tracks and Railroad Avenue. *See* Exhibit B-2, Inundation Maps.

15. On the north side of Railroad Avenue, the unnamed tributary travels mostly along the northeast border of the tract located at 5 Walter Road, further identified as Bucks County Tax Map Parcel No. 26-5-31 (the “Vill Lot”). *See* Exhibits B-2, Inundation Maps; and B-12, Assessment Records and Viewer.

16. The tributary exits the Vill Lot at its southeast corner, crosses under Railroad Avenue through a separate culvert, and then enters the basin. Once in the basin, the water travels through the bridge under the tracks and into the Neshaminy Creek. *See* Exhibit B-2, Inundation Maps.

17. Cisse stated, and the Board finds, that SEPTA refers to the bridge as “stone arch UG4.87.” 4.87 is the mile marker. The arch bridge was constructed in 1903, and last repaired in 1998. *See* Exhibit A-5, Rehabilitation Summary.

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<sup>1</sup> Whether the Property is located in the Floodplain Overlay District was not discernible at the hearing. Out of an abundance of caution, SEPTA’s representatives asked that their application be amended to include a prayer for variance relief from Zoning Ordinance §27-1904.a.1, a.2, and b; and §27-2400.a. The Board granted the request.

18. Khazem and Gross stated, and the Board finds, that the bridge is in poor condition and well past its useful life. As part of SEPTA's ongoing infrastructure improvement project, the bridge must be repaired. *See Exhibits A-5, Inspection / Condition Assessment; and A-7, Hydrology Report.*

19. Khazem and Gross stated, and the Board finds, that the bridge is a masonry arch culvert. It varies in height from 6 feet 11 inches at the upstream face to 7 feet 1 inch at the downstream face. The culvert has an average span of 5 feet 1 inch through which the tributary travels. *See Exhibit A-7, Hydrology Report.*

20. Khazem and Gross stated, and the Board finds, that the out-to-out length of the arch is 23 feet 2 inches from the upstream face to the downstream face. The drop in elevation through the arch is approximately 0.15 feet. *See Exhibits A-5, Structural Profile; and A-7, Hydrology Report.*

21. Khazem and Gross stated, and the Board finds, that long cracks are visible through the top stones, mortar joints, and ring stones of the headwalls. In each wingwall, the capstones and mortar are weak, loose, or simply missing. *See Exhibit A-5, Inspection / Condition Assessment.*

22. Khazem stated, and the Board finds, that a 3-inch-thick structural steel plate liner with grout will be installed along all the interior sides for the length of the arch. The liner will provide structural capacity to extend the bridge's service life for 75 years. *See Exhibit B-1, Evaluation Summary.*

23. Khazem and Gross stated, and the Board finds, that the steel liner will reduce the arch opening from 5 feet 1 inch to 4 feet 4.5 inches. The culvert will be further depressed 6 inches below the streambed to provide a natural channel bottom. *See Exhibit A-7, Hydrology Report.*

24. Khazem and Gross stated, and the Board finds, that the unnamed tributary will still be able to safely continue through the reduced bridge opening while producing negligible rises in the elevations of the 2- and 10-year flood events. *See Exhibit B-2, Inundation Maps.*

25. Khazem and Gross stated, and the Board finds, that the repair produces a 0.48 foot rise in the elevations of the 100-year flood event. Like the existing flood boundary, the higher limit is contained on the Vill Lot. The new limit does not affect any dwellings or new structures. *See Exhibit B-2, Upstream 100 Year Inundation Map.*

26. Gross stated, and the Board finds, that SEPTA considered several other models and repair options. These options showed a higher increase in the flood event elevations than the interior steel liner.

27. Khazem and Gross stated, and the Board finds, that installing the liner and completing the related repairs will take approximately 6 months. While some rail service will be disrupted, neither the regional rail line nor any surrounding streets will be closed.

28. Khazem and Gross stated, and the Board finds, that replacing the arch culvert would take about 1 year. It would also require closing the tracks and discontinuing train service on the Lansdale / Doylestown line. SEPTA did not consider this a practical solution.

29. Khazem and Gross stated, and the Board finds, that to the proposed steel liner repairs have been approved by the Pennsylvania Department of Environmental Protection (“DEP”) and the Federal Emergence Management Agency. DEP has issued a general permit under its regulations for the project. *See* Exhibit A-7, Hydrology Report.

30. The Property contains unique physical circumstances that support relief for the watercourse disturbance variance in connection with the proposed stone arch rehabilitation project.

31. The Zoning Ordinance’s limitation found at §27-1904.o.1 imposes an exceptional hardship on the Property and on SEPTA in that it prevents the repair of a deteriorated stone arch culvert that is over 100 years old. If left unrepaired, the arch bridge poses a threat to human life.

32. Subject to the conditions imposed herein, the proposed improvements to the stone arch bridge and attendant small rise in the flood elevations 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 May 16, 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. In addition, pursuant to Zoning Ordinance §27-1905, an applicant must show the following to secure a variance from the applicable floodplain regulations:

- a. that there is good and sufficient cause;
- b. that the failure to grant the variance would result in exceptional hardship to the applicant; and
- c. that the granting of the variance will (i) neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or

extraordinary public expense; and (ii) nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

4. The Board finds that the requested variance 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).

5. 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).

6. 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).

7. 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.

8. 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).

9. The Zoning Ordinance defines a “watercourse” as “any natural or artificial stream, river, creek or canal, in which water flows in a definite direction or course, either continuously or intermittently and has a definite channel, bed and banks and includes any area adjacent thereto subject to inundation by reason of overflow or flood water.” *See Zoning Ordinance* §27-201.

10. The Board concludes that the stone arch bridge is an artificial canal through which the unnamed tributary flows over the Property in a definite direction. Thus, the bridge itself is part of the watercourse.

11. Based upon the credible evidence presented, the Board concludes that age and condition of the stone arch bridge, as well as location of the unnamed tributary to the Neshaminy

Creek near the intersection of 3 abutting streets, establish an exceptional hardship under the *Hertzberg* and Zoning Ordinance floodplain standards.

12. SEPTA has demonstrated sufficient and good cause for the bridge repair and related variance relief. Critical to the Board's conclusions is that (a) the attendant rise in the 100 year flood elevation level is less than one-half of a foot; and (b) DEP has issued a general permit for the proposed work.

13. Provided SEPTA complies with the reasonable conditions attached to the relief granted herein, the SEPTA has met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to repair the stone arch bridge on the Property as shown on the definitive plans.

14. The approved variance will not result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense; nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

15. 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.

16. The approved variance will not be detrimental to the public welfare.

17. The conditions and circumstances imposing a hardship upon the Property for the approved variance are not of SEPTA's own doing.

18. The approved variance represents the minimum variance that will afford relief and represents the least modification of the zoning regulations under the circumstances.

### **DECISION**

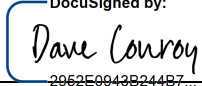
AND NOW, this 28th day of June, 2024, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** SEPTA's request for a variance from Zoning Ordinance §27-1904.o.1 to allow disturbance of the stone arch bridge portion of the watercourse, subject to the following conditions:

1. The proposed stone arch bridge disturbance shall be strictly in connection with the repairs, dimensions, size, location and appearance, as set forth in the definitive plans, evidence, representations, exhibits and credible testimony made and submitted at the hearings.

2. SEPTA shall continue to work with New Britain Township to further reduce the rise in elevations of the flood events, where possible, in connection with the proposed stone arch bridge repairs.

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.

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

Date: 6/28/2024

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.SEPTA.2024-05-16 hearing

## SCHEDULE A – TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application dated 4/15/24. Included with application: <ul style="list-style-type: none"><li>• Deed dated 4/30/1976</li><li>• List of property owners within 500 feet</li><li>• Engineer evaluation summary</li></ul>
B-2	Upstream Inundation Maps, 3 sheets, prepared by Pennoni, dated 4/12/204
B-3	Original Bridge Plan, Doylestown Branch
B-4	Bridge Improvement, Existing Conditions Plan, sheet 22 of 50, prepared by Pennoni Associates, Inc., dated 5/31/2023
B-5	Bridge Improvement, E&S Control Plan, sheet 24 of 50, prepared by Pennoni Associates, Inc., dated 9/19/2023
B-6	Letter to The Intelligencer dated 4/29/24 forwarding public notice of hearing for advertisement
B-7	Public Notice of the hearing on 5/16/24
B-8	Proof of publication of public notice in 5/2/24 and 5/9/24 editions of The Intelligencer
B-9	Township list of property owners within 500 feet of the Property; aerial map
B-10	Affidavit of mailing to property owners on Exhibit B-9 – notice mailed on 5/9/24
B-11	Affidavit of posting of public notice at property – notice posted on 5/9/24 at 11:36 a.m.
B-12	Bucks County Board of Assessment and Floodplain Viewer records
A-1	1 page of Board of Assessment records
A-2	Deed dated 4/30/1976
A-3	Original Bridge Plan, Doylestown Branch
A-4	Curriculum Vitae of Cassandra Khazem, PE
A-5	SEPTA Stone Arch UG4.87 Rehabilitation project summary, dated May 16, 2024



**Exhibit****Description**

- A-6 Gilmore & Associates, Inc. review letter dated 3/25/2024
- A-7 Pennoni Associates, Inc., response letter dated 3/29/2024, with (a) Hydrology and Hydraulic Report dated 1/11/2023; (b) Chapter 105 Water Obstructions General Permit; (c) Email correspondence with Chalfont-New Britain Township Joint Sewage Authority; and (d) Bridge Improvement, E&S Control Plan, sheet 24 of 50, prepared by Pennoni Associates, Inc., dated 9/19/2023
- A-8 Gilmore & Associates, Inc. review letter dated 4/3/2024
- A-9 Pennoni Associates, Inc., response letter dated 4/10/2024
- A-10 Curriculum Vitae of Beth Grasso, PE, CME, CFM

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

**Signature Page**

Re: SEPTA  
Railroad Avenue, near the intersection of  
Walter Road and Westview Avenue  
TMP No. 26-5-38


Chuck Coxhead, Chair

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Scott Fischer, Vice Chair

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**Scott Fischer**  
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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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