

DATE OF DECISION: 11/21/2024

DATE OF MAILING: 11/21/2024

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

**RE: APPLICATION OF ASHLEY ROSE ZACIRKA AND MICHAEL  
EDWIN HAYES FOR THE PROPERTY LOCATED AT 106 DEVON ROAD,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-8-27**

**FINDINGS OF FACT**

1. On Thursday, October 17, 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 Ashely Rose Zacirka and Michael Edwin Hayes (the “Applicants”).

2. The Applicants are the record co-owners of the property located at 106 Devon Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-8-27 (the “Property”). The Property is the subject of the instant application. *See* Exhibits B-1, Deed; and B-9, Assessment Record.

3. Notice of the October 17, 2024, hearing was published in advance of the hearing in the Thursday, October 3, 2024, and Thursday, October 10, 2024, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5, Proof.

4. Notice of the October 17, 2024, hearing was sent by first class mail on October 10, 2024, by Janene Marchand (“Marchand”), the New Britain Township Assistant Zoning Officer, 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-7, Affidavit.

5. Marchand posted notice of the October 17, 2024, hearing on the Property on October 9, 2024, at 1:30 p.m. *See* Exhibit B-8, Affidavit.

6. As the record co-owners of the Property, the Applicants have 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 Applicants propose an addition to the rear of the existing dwelling. To permit the addition and related improvements, the Applicants seek variances from the following sections of the Zoning Ordinance:

- a. From §27-902.b to permit a rear yard setback of 41 feet 4 inches for the addition, where the required minimum rear yard setback is 75 feet; and
- b. From §27-902.b to permit a building coverage ratio of 16.7%, where the maximum ratio permitted by right is 15%.<sup>1</sup>

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 Applicants and Colin Craig (“Craig”) from Munz Construction, project contractor, testified in support of the application at the hearing.

12. A few individuals appeared at the hearing to observe the proceedings and ask questions on the application. No one requested party status. New Britain Township took no position on the application and did not participate in the hearing.

13. The Applicants acquired the Property in August 2022. The Property is lot 68 in Section A of the Brittany Farms residential subdivision. *See* Exhibits B-1, Deed; and B-10, Assessment Record.

14. The house is a modest split-level style dwelling that was constructed in or around 1958. The dwelling’s footprint is 1,720 square feet. The covered front porch’s building footprint is 83 square feet. *See* Exhibits B-2, Plan; and B-9, Assessment Record.

15. The Property’s lot area is 14,984 square feet. It is a lawfully existing non-conforming tract as to lot area. The minimum lot size for a lot in the RR district improved with a B1 use is 1 acre. *See* Exhibit B-2, Plan; *see also* Zoning Ordinance §27-902.b.

16. The Property is shaped like a rectangle. It has 100 feet of frontage along the right-of-way line of Devon Road. The Property’s rear lot line is 129.11 feet long. Each side lot line is 150 feet long. *See* Exhibits B-2, Plan; and B-9, Viewer Record.

17. The dwelling’s front wall, front door, and attached garage are oriented toward Devon Road. The driveway serving the dwelling accesses Devon Road. An open deck abuts the dwelling’s rear wall. *See* Exhibit B-2, Plan.

18. The dwelling is located in the center of the Property. The dwelling’s front wall is set back 40 feet from the Devon Road right-of-way line. The rear wall of the attached garage portion of the house projects past the 75 feet setback line into the rear yard. *See* Exhibit B-2, Plan.

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<sup>1</sup> The application contained this variance request, but it was inadvertently not included in the public notice. The Applicants requested, and the Board granted, that the application be considered amended to the extent necessary to rectify this omission.

19. Each side wall of the dwelling protrudes into the minimum required 25 feet side yard setback. The Applicants and Craig stated, and the Board finds, that the dwelling is non-conforming as to all 4 of the yard setbacks. *See Exhibit B-2, Plan.*

20. The Applicants and Craig stated, and the Board finds, that the addition will be connected to the dwelling's rear wall behind the existing garage. The addition will project into an open area in the Property's side and rear yard. *See Exhibit B-2, Plan.*

21. The Applicants and Craig stated, and the Board finds, that the addition will contain an in-law suite that will be occupied by Michael Hayes's aging mother. The suite will contain a small kitchenette, living room, bedroom, and bathroom.

22. The Applicants and Craig stated, and the Board finds, that the in-law suite addition will be 1 story. It will have a footprint of 697 square feet. A second floor addition over the existing garage shown on the plan is not currently planned for construction. *See Exhibit B-2, Plan.*

23. The Applicants and Craig stated, and the Board finds, that the addition will have a door on the rear and western side wall. A walkway is proposed from the driveway to the side door. The in-law suite will also be accessible from the dwelling's interior. *See Exhibit B-2, Plan.*

24. The Applicants and Craig stated, and the Board finds, that the addition will follow the plane of the dwelling's existing non-conforming side wall. The addition will be 15 feet from the side lot line and 41 feet 4 inches from the rear lot line. *See Exhibit B-2, Plan.*

25. Due to the non-conforming nature of the Property and the dwelling, the Applicants and Craig stated that any expansion of the dwelling along the rear wall requires variance relief. *See Exhibit B-2, Plan.*

26. The Applicants and Craig stated, and the Board finds, that the addition cannot be moved to the dwelling's rear wall or other side wall to increase the rear yard setback. Such a relocation would require removing the open patio. *See Exhibit B-2, Plan.*

27. The Applicants and Craig stated, and the Board finds, that the existing dwelling and proposed addition will both be finished to have a common scheme. *See Exhibit B-2, Plan.*

28. The Applicants and Craig stated, and the Board finds, that the Property contains 1,803 square feet of existing building coverages, producing a ratio of 12%. This figure complies with the 15% ratio permitted by right. *See Exhibit B-2, Plan.*

29. The in-law suite addition will add 697 square feet of new building coverage to the Property, for a new building surface aggregate of 2,500 square feet. This total produces a building coverage ratio of 16.7%. *See Exhibit B-2, Plan.*

30. Upon questioning from the Board, the Applicants stated that the addition's footprint was designed to minimize the increase in building coverage. The Property does not exhibit any drainage or standing water issues. A French drain through the side yard conveys runoff into the street. *See Exhibit B-2, Plan.*

31. The Applicants 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-2, Plan.

32. The surrounding properties consist of similar style residences and lots. The Applicants stated that no nearby residents have raised any objection to the proposed addition or its location.

33. Due to the Property being a non-conforming undersized lot with a non-conforming dwelling, the Property contains unique characteristics that support relief for the proposed dwelling addition. *See* Exhibit B-2, Plan.

34. The Zoning Ordinance’s dimensional limitations impose a hardship on the Property and the Applicants in that these regulations prevent a reasonably-sized in-law suite addition in connection with an older residential dwelling on an undersized lot.

35. Subject to the conditions imposed herein, the proposed addition and its 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 October 17, 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 and building coverage ratios 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 physical characteristics of an undersized non-conforming lot, very small 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 is along the rear wall of the dwelling’s attached garage. *See Exhibit B-2, Plan*.

10. While the addition could be located at various points on the Property, the Board concludes that the proposed location will minimize the amount of disturbances, thereby lessening adverse impacts upon surrounding properties.

11. Provided the Applicants comply with the reasonable conditions attached to the relief granted herein, the Applicants have met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to construct and install the proposed in-law suite addition as shown on the definitive plan (Exhibit B-2).

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 Applicants' 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**

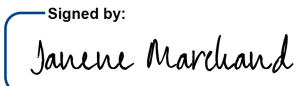
AND NOW, this 21<sup>st</sup> day of November, 2024, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicant's request for variances from the Zoning Ordinance as follows:

- a. A variance is granted from §27-902.b to permit a rear yard setback of 41 feet 4 inches for the addition; and
- b. A variance is granted from §27-902.b to permit a building coverage ratio of 16.7%.

The relief granted above is subject to the following conditions:

- 1. The proposed dwelling addition, its dimensions, sizes, locations and appearances, shall be in accordance with the definitive plan (identified as Exhibit B-2), evidence, representations, exhibits and credible testimony made and submitted at the hearing.
- 2. The in-law suite shall not be converted into a stand-alone dwelling unit. Occupancy of the in-law suite living space shall be limited to family members of the occupants of the existing main dwelling. The in-law suite shall not be leased or rented to third parties.
- 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, including without limitation the Stormwater Ordinance.

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.

Signed by:  
  
 By: \_\_\_\_\_  
 Janene Marchand  
 New Britain Township  
 Assistant Zoning Officer

Date: 11/21/2024

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.Zacirka.2024-10-17 hearing.FINAL

## SCHEDULE A – TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application dated 9/3/24. Attachments to Application: <ul style="list-style-type: none"><li>• List of property owners within 500 feet</li><li>• Deed dated 8/31/2022</li></ul>
B-2	Addition and Renovation Plan, 1 sheet, prepared by Inglesby Architects, dated 4/17/24, last revised 9/4/24
B-3	Letter to The Intelligencer dated 9/30/24 forwarding notice of 10/17/24 hearing for publication
B-4	Public Notice of the hearing on 10/17/24
B-5	Proof of publication of public notice in 10/3/24 and 10/17/24 editions of The Intelligencer
B-6	Township list of the record owners of all properties within 500 feet of the Property
B-7	Affidavit of mailing to property owners on Exhibit B-6 – notice mailed on 10/10/24 by J. Marchand
B-8	Affidavit of posting of public notice at property – notice posted on 10/9/24 at 1:30 p.m.
B-9	Bucks County Board of Assessment and Floodplain Viewer records




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

**Signature Page**

Re: Ashley Rose Zacirka  
and Michael Edwin Hayes  
106 Devon Road  
TMP No. 26-8-27


Chuck Coxhead, Chair

Signed by:  
  
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Scott Fischer, Vice Chair

Signed by:  
  
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Dawn Farver, Member

Signed by:  
  
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Robert Byrne, Member

Signed by:  
  
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Terry Young, Member

Signed by:  
  
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Ryan Wantz, Alternate Member

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