

DATE OF DECISION: 8/26/2021

DATE OF MAILING: 8/26/2021

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

**RE: APPEAL AND APPLICATION OF JAMES UMLAUF AND
ERIN HUGHES FOR THE PROPERTY LOCATED AT 619 NORTH
LIMEKILN PIKE, NEW BRITAIN TOWNSHIP, BUCKS COUNTY,
PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-3-119**

FINDINGS OF FACT

1. On Thursday, June 17, 2021, 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 appeal and application of James Umlauf (“Umlauf”) and Erin Hughes (“Hughes”).

2. Umlauf and Hughes are collectively referred to in this Decision as the “Applicants.”

3. The Applicants are the record co-owners of the property located at 619 North Limekiln Pike, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-3-119 (the “Property”). The Property is the subject of the appeal and application.

4. Notice of the June 17, 2021, hearing was published in advance of the hearing in the Thursday, June 3, 2021, and Thursday, June 10, 2021, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-9.

5. Notice of the June 17, 2021, hearing was sent by first class mail on June 7, 2021, Kelsey Harris (“Harris”), the New Britain Township Zoning Officer, to (a) all record owners of properties within New Britain Township surrounding the Property; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See* Exhibit B-12.

6. Harris posted notice of the June 17, 2021, hearing on the Property on June 9, 2021, at 10:25 a.m. *See* Exhibit B-13.

7. As the record co-owners of the Property, the Applicants have the requisite standing to prosecute this zoning hearing board application.

8. No testimony was presented following the opening of the hearing on June 17, 2021. At the request of the Applicants’ representatives on the record, the hearing was immediately continued on the record, and was resumed and concluded on July 15, 2021. *See* Exhibit B-15.

9. Umlauf is the President of Distinctive Landscaping, Inc. (“DLI”). Hughes is an officer of DLI. DLI is a Pennsylvania corporation. DLI is the primary tenant and occupant of the Property.

10. The Property is located in the WS, Watershed, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

11. The Property is improved with a non-residential pole barn structure, a single-family detached dwelling, and other various structures and improvements. *See* Exhibit B-6, Site Plan.

12. DLI operates a non-conforming commercial construction and landscaping contracting use (use K5) in the non-residential structures and portions of the open areas on the Property. The dwelling is used for residential occupancy.

13. DLI proposes to expand the non-conforming contracting use into the ground floor of the single-family detached dwelling. The Applicants propose to convert this basement / storage area into office space.

14. To permit the expansion of DLI’s non-conforming use, the Applicants seek a special exception pursuant to New Britain Township Zoning Ordinance §27-2303.b and §27-3103 to extend the existing non-conforming K5 contracting use.

15. Alternatively, the Applicants appeal the Zoning Officer’s determination dated March 31, 2021 (the “Determination”) denying their zoning permit application to convert the basement of the residential dwelling to be used as office space in furtherance of the contracting use (use K5).

16. 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.

17. Relevant to this application, the Property, the Applicants and DLI are the subject of a prior decision of the Board dated October 15, 2020 (the “2020 Decision.”). *See* Exhibit B-2, 2020 Decision.

18. In the 2020 Decision, the Board granted a special exception to change the prior non-conforming truck terminal (use K3) and warehousing (use K6) uses to the current non-conforming contracting use (use K5). *See* Exhibit B-2, 2020 Decision.

19. The Board conditioned its grant of relief in the 2020 Decision upon the residential dwelling and use remaining on the Property. *See* Exhibit B-2, 2020 Decision.

20. Umlauf and Hughes testified in support of the application at the hearings.

21. The following individuals requested and were granted party status to the application:

- a. George Roma (“Roma”), 21 Creek Road, New Britain Township.
- b. John Miller (“Miller”), 19 Marian Circle, Chalfont Borough.
- c. Charles Siegfried (“Siegfried”), 16 Marian Circle, Chalfont Borough.

22. New Britain Township took no position on the application. However, the Township requests that its positions outlined in Exhibit B-16 be considered by the Board and attached as conditions to any relief granted by the Board. *See* Exhibit B-16, Letter.

23. Umlauf and Hughes stated, and the Board finds, that many of the Findings of Fact made by the Board in the 2020 Decision regarding the Property, the contracting use, the dwelling, and the existing buildings and structures, accurately describe the proposal as set forth in the instant application.

24. Based upon that credible finding, the Board incorporates by reference the applicable Findings of Fact from the 2020 Decision as if the same were fully set forth herein at length, except as modified and/or supplemented herein.

25. Umlauf stated, and the Board finds, that DLI is a commercial construction and landscaping contracting business. DLI specializes in recycling materials, along with stone and refuse storage and disposal. Many of DLI's customers are pharmaceutical companies.

26. The Property is a large flag lot. It has a narrow lane that is 629.48 feet long. The lane accesses North Limekiln Pike. The Property's lot area, exclusive of the lane, is 3.359 acres (net). *See* Exhibit B-6, Site Plan.

27. Where the Property widens at the end of the lane, the Property is shaped like a rectangle. The lane connects to the Property's wider section at the southwest corner. *See* Exhibit B-6, Site Plan.

28. Where the Property provides the minimum lot width, the Property's front lot line is 485.75 feet long. The rear lot line is 494.27 feet long. The northern side lot line is 328.76 feet long. *See* Exhibit B-6, Site Plan.

29. The Property's southern side lot line is a continuation of the access lane. Excluding the lane portion, this side lot line is roughly 241.22 feet long. *See* Exhibit B-6, Site Plan.

30. A long paved driveway occupies the entire width of the lane. Spurs off the driveway lane lead to the Property's asphalt paved area, as well as a small parking area next to the existing residential dwelling. *See* Exhibit B-6, Site Plan.

31. DLI's contracting and office operations are conducted in the large 5,000 square foot pole barn located in the center of the Property, as well as the surrounding paved areas. *See* Exhibits B-2, 2020 Decision; and B-6, Site Plan.

32. The Applicants stated, and the Board finds, that the office in the pole barn is currently used by DLI's employees who conduct most of their duties for DLI in off-site locations.

33. The Applicants stated, and the Board finds, that DLI needs to relocate its administrative staff from the office in the pole barn to the dwelling's basement in order to meet numerous health and safety protocols necessitated by the ongoing COVID-19 pandemic.

34. The Applicants stated, and the Board finds, that conversion of the basement into office space commenced without securing zoning approval in advance. The Applicants have halted work while pursuing the instant zoning application. *See* Exhibit B-3, Notice.

35. The Applicants stated, and the Board finds, that the single-family detached dwelling (use B1) was constructed in or around 1989. The dwelling is located roughly in the center of the Property's southern side lot line near the lane. *See Exhibits B-6, Site Plan; and A-10, Historical Photos.*

36. The Applicants stated, and the Board finds, that the dwelling's basement area is 30 feet by 30 feet, amounting to 900 square feet of floor area. This equates to 18% of the existing 5,000 square feet of interior space presently devoted to the non-conforming contracting use. *See Exhibit A-9, Elevations.*

37. Umlauf and Hughes stated, and the Board finds, that the basement footprint will not be expanded. No new structures or other exterior improvements are contemplated as part of the non-conforming use extension. *See Exhibit A-9, Elevations.*

38. The Applicants stated, and the Board finds, that no new employees or other staff will be added to DLI's workforce as part of the basement-to-office conversion.

39. The Applicants stated, and the Board finds, that the dwelling's second floor contains residential living space, a deck and a patio. In the past, the basement has been used as storage space for the dwelling unit. *See Exhibit A-9, Elevations.*

40. The Applicants stated, and the Board finds, that the basement area cannot be accessed directly from the interior though the second floor dwelling unit. The only access is from an exterior door along the basement's front wall. *See Exhibit A-9, Elevations.*

41. The Applicants stated, and the Board finds, that the living space on the dwelling's second floor will continue to be used for residential purposes that are separate and apart from DLI's use. The dwelling is presently occupied by a tenant.

42. Umlauf and Hughes stated, and the Board finds, that as part of the 2020 Decision, the Property and the uses thereon are subject to 5 previously imposed conditions. Those conditions are set forth at length in the 2020 Decision. *See Exhibit B-2, 2020 Decision.*

43. Umlauf and Hughes stated, and the Board finds, that DLI's contracting use, including the new office, the residential dwelling unit, and the Property will continue to comply with all these conditions. *See Exhibit B-2, 2020 Decision.*

44. Upon questioning from the Board, the Applicants stated, and the Board finds, that the additional conditions requested by New Britain Township, as set forth in Exhibit B-11, are acceptable to DLI and the Applicants.

45. Upon questioning from the Board and the intervening parties, the Applicants stated, and the Board finds, that DLI will continue to abide by the additional operational conditions specified in the 2020 Decision. *See Exhibit B-2, 2020 Decision.*

46. As the Board finds that the requested special exception is warranted, the Board concludes that the Applicants' appeal of the Determination is moot.

47. Subject to the conditions imposed herein, the proposed expanded contracting use, its size and location, is harmonious with the Property's size and consistent with uses of other properties in the surrounding neighborhood.

CONCLUSIONS OF LAW

1. Required advanced public notice of the date, time and location of the June 17, 2021, hearing was made by sufficient advanced publication, posting and mailing to affected property owners.

2. When a landowner applies for a special exception, the Board's function is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the Zoning Ordinance and merit the granting of the special exception. *See Broussard v. Zoning Board of Adjustment of City of Pittsburgh*, 907 A.2d 494 (Pa. 2006).

3. Zoning Ordinance §27-3103.a provides that "the Board shall grant a special exception only if it finds adequate evidence that any proposed development submitted will meet all of the following general requirements as well as any specific requirements and standards listed [in this Zoning Ordinance] for the proposed use."

4. Regarding the general criteria applicable to a special exception, Zoning Ordinance §27-3103.a provides that the Board shall, among other things, require the proposed use and location to be:

- a. in accordance with the New Britain Township Comprehensive Plan and consistent with the spirit, purposes and intent of [the Zoning Ordinance];
- b. in the best interests of [New Britain] Township, the convenience of the community, the public welfare and be a substantial improvement to the property in the immediate vicinity;
- c. suitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;
- d. in conformance with all applicable requirements of [the Zoning Ordinance];
- e. suitable in terms of effects on highway traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard; and
- f. in accordance with sound standards of subdivision practice where applicable.

5. Zoning Ordinance §27-2303 provides the following specific regulations regarding any proposal to extend an existing nonconforming use on a property:

- a. The proposed extension shall take place only upon the lot held in single ownership at the time the use became non-conforming. (§27-2303.b.1).

- b. The proposed extension shall conform with the setback, yard, area, dimensional, building, height, parking, sign, environmental and other requirements of the district in which the extension is located. (§27-2303.b.2).
- c. An increase in floor area shall not exceed an aggregate of more than 50% of the building volume or floor area, whichever is less, existent at the date the use became nonconforming. (§27-2303.b.3).

6. Under Pennsylvania law, the Board shall refuse an application for special exception where opponents to the application establish by a preponderance of evidence that the application is contrary to the health, safety and morals of general welfare of the community at large.

7. If an applicant demonstrates that the proposal meets the specific and general criteria of Zoning Ordinance, and no evidence is presented that requires a finding that the proposal is detrimental to the public interest, the Board must find that the proposed non-conforming use extension is warranted.

8. The Board concludes that the proposed office expansion of DLI's non-conforming contracting use will be wholly on the Property. The contracting use, and the prior non-conforming uses which the contracting use replaced, were limited to the Property

9. The Board concludes that the proposed office expansion of DLI's non-conforming contracting use shall conform with the setback, yard, area, dimensional, building, height, parking, sign, environmental and all other applicable criteria of the WS zoning district.

10. The Board concludes that the proposed office expansion of DLI's non-conforming contracting use into the existing 900 square feet basement of the dwelling will not exceed 50% of the floor area and/or volume presently devoted to the non-conforming contracting use on the Property.

11. The Board concludes that the proposed office expansion of DLI's non-conforming contracting use will comply with all the conditions attached to the prior non-conforming uses. DLI will maintain the residential living unit on the second floor of the dwelling on the Property.

12. Subject to the conditions attached hereto, the proposed office expansion of the non-conforming contracting use is in accordance with the New Britain Township Comprehensive Plan and is consistent with the spirit, purposes and intent of the Zoning Ordinance.

13. Subject to the conditions attached hereto, the proposed office expansion of the non-conforming contracting use is in the best interests of New Britain Township, the convenience of the community, the public welfare and is a substantial improvement to the properties in the immediate vicinity.

14. Subject to the conditions attached hereto, the proposed office expansion of the non-conforming contracting use is suitable for the Property; and will be designed, constructed, operated and maintained in harmony with and appropriate in appearance to the general vicinity's character.

15. Provided the non-conforming contracting use, as expanded, is conducted in accordance with the conditions attached herein, the use is suitable in terms of effects on highway traffic and safety and will be harmonious with the surrounding neighborhood.

DECISION

AND NOW, this 26th day of August, 2021, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicants' request for a special exception pursuant to Zoning Ordinance §27-2303.b and §27-3103 to extend the existing non-conforming contracting (use K5) on the Property, subject to the following conditions:

1. The extension of the non-conforming contracting use shall be limited to an office use in the current footprint of the basement on the first floor of the existing residential dwelling structure.

2. The proposed office in the first floor basement of the existing residential building, its dimensions, operations, location and appearance, shall be in accordance with the photos, drawings, evidence, representations and credible testimony made and submitted at the hearing.

3. The office space to be conducted in the first floor basement shall be used only in connection with the contracting use on the remainder of the Property. The office shall not be leased, sublet or occupied by any third parties, entities or other users.

4. The second story of the residential building on the Property shall remain a residential use, and shall not be converted to any other use except in conformance with the Zoning Ordinance and upon further approval from the Board.

5. The entire residential building on the Property shall be brought into compliance with the Pennsylvania Uniform Construction Code and all other applicable building codes and regulations to allow for an office use on the first floor and a residential dwelling use on the second floor.

6. The conditions set forth in 2020 Decision are re-affirmed, except as modified herein, and are incorporated herein by reference.

7. Should the Applicants or any future owner/occupant of the Property wish to expand or modify the existing uses on the Property, or conduct any other type of use on the Property, further relief from the Board shall be required.

8. The foregoing conditions shall be binding on any future owner and/or occupant of the Property, as well as the operator of any non-residential use at the Property.

9. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed use(s) and/or improvement(s) must meet all other applicable federal, state, county and New Britain Township regulations and codes.

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

DATE: 8/26/2021

/s/ Chuck Coxhead
Chuck Coxhead, Chair

DATE: 8/26/2021

/s/ Cathy Basilio
Cathy Basilio, Member

DATE: 8/26/2021

/s/ Jim Scanzillo
Jim Scanzillo, Member

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 or use activity.

/Users/tjwalsh3/Documents/New Britain Township/2021/Umlauf-Hughes/DECISION.Umlauf-Hughes.SIGNED.2021-08-26.docx

SCHEDULE A – TABLE OF EXHIBITS

| Exhibit | Description |
|----------------|--|
| B-1 | Zoning Hearing Board application dated 4/28/21 Attachments to Application: <ul style="list-style-type: none">• Deed dated 12/3/20• Addendum outlining relief requested |
| B-2 | ZHB Decision, dated 10/15/220 |
| B-3 | Courtesy Notice of Violation letter dated 3/8/21 |
| B-4 | Zoning Permit Application and supporting documents dated 3/18/21 |
| B-5 | Zoning Officer Determination dated 3/31/21 |
| B-6 | Site Plan, consisting of 1 sheet, prepared by Kramer & Marks, dated 2/12/21 |
| B-7 | Letter to The Intelligencer dated 5/27/21 |
| B-8 | Public Notice of the hearing on 6/17/21 |
| B-9 | Proof of publication of public notice in 6/3/21 and 6/10/21 editions of The Intelligencer |
| B-10 | Letter to Applicants and Attorney dated 5/27/21 providing notice of the hearing |
| B-11 | List of the record owners of all properties within 500 feet of the Property |
| B-12 | Affidavit of mailing to property owners – notice mailed on 6/7/21 |
| B-13 | Affidavit of posting of public notice at property – notice posted on 6/9/21 |
| B-14 | Bucks County Viewer Aerial and Map of Property |
| B-15 | Letter from Attorney for Applicants dated 6/16/21 requesting continuance |
| B-16 | Letter from Township Solicitor dated 7/14/21 outlining conditions |
| A-1 | Current deed for Property, dated 12/3/20 (Part of Exhibit B-1) |
| A-2 | Materials regarding possible subdivision of Property in 2007 |
| A-3 | ZHB Decision dated 10/15/2020 (Exhibit B-2) |

| Exhibit | Description |
|----------------|--|
| A-4 | NONE / EXHIBIT WITHDRAWN |
| A-5 | Zoning Permit Application |
| A-6 | Zoning Officer Determination dated 3/31/21 (Exhibit B-5) |
| A-7 | Google Aerial Photo of Property |
| A-8 | Site Plan (Exhibit B-6) |
| A-9 | Elevations of Residential Dwelling |
| A-10 | Historical Aerial Photographs of Property |