

DATE OF DECISION: JULY 15, 2022

DATE OF MAILING: JULY 15, 2022

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

**RE: APPLICATION OF ERIC GULI AND HEATHER ROLLINS FOR  
THE PROPERTY LOCATED AT 41 CLEARVIEW AVENUE,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-9-33**

**FINDINGS OF FACT**

1. On Thursday, June 16, 2022, 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 Eric Guli and Heather Rollins (the "Applicants").
2. The Applicants are the record co-owners of the property located at 41 Clearview Avenue, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-9-33 (the "Property"). The Property is the subject of the instant application.
3. Notice of the June 16, 2022, hearing was published in advance of the hearing in the Thursday, June 2, 2022, and Thursday, June 9, 2022, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.
4. Notice of the June 16, 2022, hearing was sent by first class mail on June 6, 2022, by Ryan Gehman ("Gehman"), the New Britain Township Assistant Planning and 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-8.
5. Gehman posted notice of the June 16, 2022, hearing on the Property on June 9, 2022, at 9:46 a.m. *See* Exhibit B-9.
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 is permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.
9. The Applicants propose an addition and covered-front porch extension to the existing single-family detached dwelling. *See* Exhibit A-1, Architectural Plan.

10. To permit the front porch extension, the Applicants seek a variance from Zoning Ordinance §27-902.b and §27-2107 to permit a front yard setback of 41.1 feet<sup>1</sup>, where the required minimum front yard setback is 50 feet. *See* Exhibit A-3, Plot Plan.

11. 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.

12. The Applicants testified in support of the application at the June 16, 2022, hearing. One neighbor appeared at the hearing in support of the application. No one requested party status.

13. The Property is lot 12 in the Stoler Heights residential subdivision (“Stoler Heights”). Stoler Heights was created in or around 1951. The Applicants acquired the Property in or around March 2012. *See* Exhibit B-1, Deed.

14. The Applicants stated, and the Board finds, that the dwelling was originally constructed in or around 1954. A second floor above the garage was added in or around 1960. The dwelling is served by private water and public sewer. *See* Exhibit B-1, Deed.

15. The Property is shaped like a rectangle. Its base site area is 30,206 square feet. *See* Exhibit A-3, Plot Plan.

16. The Property’s undersized lot area is a lawful non-conformity. The minimum lot area is 1 acre for a lot improved with a single-family detached dwelling (use B1) in the RR zoning district. *See* Zoning Ordinance §27-902.b.

17. The Property has 200 feet of frontage along Clearview Avenue. The rear lot line is 200.3 feet in length. The side lot lines are 174.37 feet and 177.69 feet long. *See* Exhibit A-3, Plan.

18. The dwelling is located in the center of the Property. The dwelling’s front wall is set back 45.2 feet from Clearview Avenue. The Board finds that this front setback dimension is a lawful non-conformity. *See* Exhibit A-3, Plan.

19. The dwelling’s rear wall is set back 77.5 feet from the rear lot line at its furthest point. The dwelling’s eastern side wall is located exactly at the required minimum 25 feet side yard setback line. *See* Exhibit A-3, Plan.

20. A driveway connects the dwelling’s side-entry garage to Clearview Avenue. A short walkway connects the driveway to the rear patio and elevated deck. *See* Exhibits A-2, Photos; and A-3, Plan.

21. The Applicants stated, and the Board finds, that when the second floor was added in 1960, the garage ceiling was lowered. As a result, the existing garage cannot accommodate vehicles. *See* Exhibit A-1, Floor Plans.

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<sup>1</sup> The public notice cites only Zoning Ordinance §27-902.b. The application references Zoning Ordinance §27-2107. The Applicants requested, and the Board granted, that their application be amended to reflect both Zoning Ordinance provisions.

22. The Applicants stated, and the Board finds, that the addition will connect to the western side wall of the existing dwelling. The addition will be located mostly over the existing driveway. *See Exhibit A-3, Plan.*

23. The Applicants stated, and the Board finds, that the addition will contain first and second floor living space, as well as a new 3 car front-entry garage. The addition's front wall will follow the plane of the existing non-conforming dwelling. *See Exhibits A-1, Floor Plans; and A-3, Plan.*

24. The Applicants stated, and the Board finds, that the area in front of the existing garage will be repurposed as the covered-front porch extension. The new front porch will be 21 feet long and be over a new concrete slab. *See Exhibit A-1, Renderings.*

25. The Applicants stated, and the Board finds, that the porch will project 4 feet into the front yard. This will produce a front yard setback of 41.1 feet for the porch. *See Exhibit A-3, Plan.*

26. The Applicants stated, and the Board finds, that the dwelling addition could not be relocated or reduced in depth to provide a greater front yard setback for the porch. The dwelling addition and porch are at the minimum size necessary to provide reasonable living space and modernize the dwelling. *See Exhibits A-1, Floor Plans; and A-3, Plan.*

27. The Applicants stated, and the Board finds, that the proposed addition and covered-front porch will be designed to complement the existing dwelling's architecture and materials. *See Exhibit A-1, Renderings.*

28. The surrounding properties consist of similar style residences and lots. The Applicants stated that no nearby residents have raised any objection to the proposed dwelling addition, front porch extension, or their location. *See Exhibit A-2, Photos.*

29. Due to the Property being a non-conforming lot with a non-conforming dwelling location, together with a garage that cannot accommodate vehicles, the Property contains unique characteristics that support relief for the proposed front-porch extension to the existing dwelling to have a front yard setback of 41.1 feet. *See Exhibit A-3, Plan.*

30. The Zoning Ordinance's dimensional limitation imposes a hardship on the Property and the Applicants in that this regulation prevents a reasonably sized front porch extension to a modest size older residential dwelling.

31. Subject to the conditions imposed herein, the proposed covered-front porch, 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 June 16, 2022, 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 front yard setback 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).

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 the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47.

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 fact that the Property is a non-conforming lot, together with the existing non-conforming location of the dwelling, as well as the age and condition of the existing dwelling and attached garage, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. Based upon the credible testimony provided, the Board concludes that the proposed covered-front porch addition will essentially be in the same non-conforming location as the existing dwelling. The porch will protrude only slightly further into the front yard than the dwelling. *See Exhibit A-3, Plan.*

10. 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 variance to construct and install the covered-front porch addition with a front yard setback of 41.1 feet.

11. 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.

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

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

14. 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 15<sup>th</sup> day of JULY, 2022, 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 variance from Zoning Ordinance §27-902.b and §27-2107 to permit the covered-front porch addition to have a front yard setback of 41.1 feet, subject to the following conditions:

1. The proposed covered-front porch addition and related improvements' dimensions, size, location and appearance shall be in accordance with the definitive plans, 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, confirms the Board's decision and order.

By: /s/ Thomas J. Walsh III, Esq.  
Thomas J. Walsh III, Esquire  
Solicitor, New Britain Township Zoning Hearing Board  
3655 Route 202, Suite 105  
Doylestown, PA 18902

Date: 7/15/2022

**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.

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## **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>• Cover letter dated 4/14/22</li><li>• Attachment outlining relief requested</li><li>• List of property owners within 500 feet</li><li>• Deed dated 3/29/2012</li></ul>
B-2	Portion of Plot Plan (sheet 1 of Exhibit A-3)
B-3	Letter to The Intelligencer dated 5/31/22 forwarding public notice of 6/16/22 hearing for publication
B-4	Public Notice of the hearing on 6/16/22
B-5	Proof of publication of public notice in 6/2/22 and 6/9/22 editions of The Intelligencer
B-6	Letter to Applicants and attorney dated 5/21/22 providing notice of the 6/16/22 hearing
B-7	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 6/6/22 by Ryan Gehman
B-9	Affidavit of posting of public notice at property – notice posted on 6/2/22 at 9:46 a.m. by Ryan Gehman
B-10	Bucks County Viewer Map and Aerial
A-1	Architectural Plans, prepared by Michael J. Panachayda Architect, LLC, consisting of 4 sheets, dated 1/28/2022
A-2	Aerial and Street Photographs
A-3	Plot Plan, prepared by Lenape Valley Engineering, consisting of 2 sheets, dated 3/24/22

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

**Signature Page**

Re: Eric Guli and Heather Rollins  
41 Clearview Avenue  
New Britain Township  
TMP No. 26-9-33

Date: JULY 15, 2022

Chuck Coxhead, Chair

/ABSENT/

Cathy Basilio, Vice Chair

Cathy Basilio

Scott Fischer, Member

/s/ SCOTT FISCHER

Ryan Wantz, Alternate Member

/s/ RYAN WANTZ



**DATE OF DECISION: 8/22/2022**

**DATE OF MAILING: 8/23/2022**

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

**RE: APPLICATION OF KELLIE RICHARDSON FOR  
THE PROPERTY LOCATED AT 502 NEW GALENA ROAD,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-1-94-2**

**FINDINGS OF FACT**

1. On Thursday, June 16, 2022, 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 Kellie Richardson (the “Applicant”).

2. At the Applicant’s request, the hearing was continued on the record to July 21, 2022. The hearing was resumed and concluded on July 21, 2022. *See* Exhibit A-1, Letter.

3. The Applicant is the record owner of the property located at 502 New Galena Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-1-94-2 (the “Property”). The Property is the subject of the instant application.

4. Notice of the June 16, 2022, hearing was published in advance of the hearing in the Thursday, June 2, 2022, and Thursday, June 9, 2022, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

5. Notice of the June 16, 2022, hearing was sent by first class mail on June 6, 2022, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and 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-8.

6. Gehman posted notice of the June 16, 2022, hearing on the Property on June 9, 2022, at 10:01 a.m. *See* Exhibit B-9.

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

8. The Property is located in the RR, Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

9. The Property is improved with a single-family detached residential dwelling (use B1). Such use is permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

10. The Applicant proposes an accessory in-ground non-commercial swimming pool (use H4) behind the existing single-family detached dwelling. *See Exhibit B-2, Zoning Plan.*

11. To permit the swimming pool, the Applicant seeks a variance from Zoning Ordinance §27-2400.f.1 to permit up to 40.17% of the woodlands on the Property to be disturbed, where the existing woodlands disturbance is 36.23%, and the maximum amount of permitted disturbance is 20%. *See Exhibit B-2, Plan.*

12. 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.

13. The Applicant and Kris Reiss, P.E. (“Reiss”), professional civil engineer, testified in support of the application at the June 16, 2022, hearing. The Applicant’s family appeared at the hearing in support of the application. No one requested party status.

14. The Property is lot 2 in the Lott Builders Ltd 3 lot residential subdivision plan (the “Lott Plan”). The Lott Plan was recorded in or around 2002. The Applicant acquired the Property in or around January 2022. *See Exhibit A-2, Plot Plan.*

15. The Applicant stated, and the Board finds, that the dwelling was constructed in or around 2003. The dwelling is served by public water and public sewer. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

16. The Property is shaped like a rectangle. It is a long and narrow lot. Its base site area is 1.46 acres. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

17. The Property has 150 feet of frontage along New Galena Road. The rear lot line is 150 feet in length. The side lot lines are 446 feet and 446 feet long. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

18. The dwelling is located in the center of the Property. A long driveway winds through trees in the front yard. It connects the dwelling’s garage to New Galena Avenue. A short walkway connects the driveway to the front porch. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

19. A brick paver patio abuts the dwelling’s rear wall. A storage shed is in the Property’s rear yard. An existing 4 feet high split rail fences surrounds the open portion of the rear yard where the new pool will be installed. *See Exhibit B-2, Zoning Plan.*

20. A 100 feet wide conservation easement (the “Easement”) extends from the rear lot line into the Property’s main rear yard. The Easement runs the entire width of the Property. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

21. The Applicant and Reiss stated, and the Board finds, that stormwater drainage facilities, including 4 inlets, as well as a sanitary manhole and sewer line are also located within the Easement. *See Exhibits B-2, Zoning Plan; and A-2, Plot Plan.*

22. The sanitary sewer and stormwater drainage lines connect to larger collection facilities that are within the Richard Drive cul-de-sac behind the Property. Richard Drive is part of the Tower Hill Woods residential subdivision. *See Exhibit A-2, Plot Plan.*

23. Reiss stated, and the Board finds, that when the Lott Plan was recorded, the Property was fully wooded. Reiss estimated, and the Board finds, that roughly 36% of the existing woodlands were removed in 2002 to accommodate the driveway, stormwater facilities, and sanitary sewer lines. *See Exhibit A-2, Plot Plan.*

24. The Applicant and Reiss stated, and the Board finds, that the proposed pool, coping, deck, and equipment pad will be installed in the rear yard behind the existing paver patio. A short walkway will connect the pool deck to the patio. *See Exhibit B-2, Zoning Plan.*

25. Reiss stated, and the Board finds, that due to the Property's existing physical features and characteristics, no location exists on the Property to locate the pool in full compliance with the Zoning Ordinance's natural resource protection standards. *See Exhibit B-2, Zoning Plan.*

26. Reiss stated, and the Board finds, that to accommodate the pool and related improvements, 3 existing trees in excess of 5 inches caliper DBH (diameter at breast height (or 4.5 feet)) must be removed. This will increase the disturbance ratio to 40.17%. *See Exhibit B-2, Zoning Plan.*

27. Reiss stated, and the Board finds, that the 3 trees that must be removed are mostly in the functional rear yard. They are isolated from the groups of trees that form the continuous canopy through the Easement and along the side lot lines. *See Exhibits B-2, Zoning Plan; and A-3, Photographs.*

28. Upon questioning by the Board, Reiss and the Applicant confirmed that the existing woodland trees in the Easement and along the side lot lines will be preserved during construction of the pool and deck. *See Exhibit B-2, Zoning Plan.*

29. The Applicant and Reiss stated that if the 80% protection standard were to be met, they would need to plant trees. If the existing protection ratio of 74% were adhered to, no meaningful improvements could go in the functional rear yard. The Board recognizes that is clearly an absurd result. *See Exhibit B-2, Zoning Plan.*

30. The surrounding properties consist of similar style residences and lots. The Applicants stated that no nearby residents have raised any objection to the proposed swimming pool or tree disturbance. *See Exhibit A-3, Photos.*

31. Due to the Property's shape, the Easement along the rear lot line, and the existing level of tree disturbance, the Property contains unique characteristics that support relief for variance request to remove 3 trees. *See Exhibit A-3, Plan.*

32. The Zoning Ordinance's woodlands protection limitation imposes a hardship on the Property and the Applicant in that this regulation prevents a reasonably sized in-ground swimming pool and patio in connection with a residential dwelling.

33. Subject to the conditions imposed herein, the proposed in-ground swimming pool 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 June 16, 2022, 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 woodland/tree disturbance ratio 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).

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 the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47.

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 fact that the Property is long and narrow lot, together with the Easement along the rear lot line, and the existing level of tree disturbance, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. Based upon the credible testimony provided, the Board concludes that the functional rear yard behind the house is the only area to reasonably site the pool. Any other location will require the removal of more woodlands. *See Exhibit B-2, Zoning 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 variance to remove 3 trees from the Property in connection with the proposed in-ground swimming pool, thereby producing an overall woodlands disturbance ratio of 40.17%.

11. 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.

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

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

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

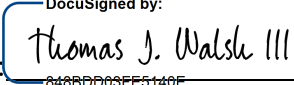
### **DECISION**

AND NOW, this 22<sup>nd</sup> day of August, 2022, 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 a variance from Zoning Ordinance §27-2400.f.1 to permit 3 woodland trees on the Property to be removed, producing a 40.17% disturbance ratio (59.83% protection ratio), where the required minimum woodlands protection ratio is 80%, and the existing protection ratio is 63.77%, subject to the following conditions:

1. The proposed in-ground noncommercial swimming pool and related improvements' dimensions, size, location and appearance shall be in accordance with the definitive plans, 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, confirms the Board's decision and order.

DocuSigned by:  
  
By: 848BDB03FE5140E...  
Thomas J. Walsh III, Esquire  
Solicitor, New Britain Township Zoning Hearing Board  
3655 Route 202, Suite 105  
Doylestown, PA 18902

Date: 8/22/2022

**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.

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## 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>• Cover letter dated 5/10/22</li> <li>• List of property owners within 500 feet</li> </ul>
B-2	Zoning Plan, 1 sheet, prepared by LVL Engineering, dated 5/9/2022
B-3	Letter to The Intelligencer dated 5/31/22 forwarding public notice of 6/16/22 hearing for publication
B-4	Public Notice of the hearing on 6/16/22
B-5	Proof of publication of public notice in 6/2/22 and 6/9/22 editions of The Intelligencer
B-6	Letter to Applicant dated 5/31/22 providing notice of the 6/16/22 hearing
B-7	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 6/6/22 by Ryan Gehman
B-9	Affidavit of posting of public notice at property – notice posted on 6/2/22 at 10:01 a.m. by Ryan Gehman
B-10	Bucks County Viewer Map and Aerial
A-1	Letter dated 6/6/22 from Applicant's engineering requesting hearing continuance
A-2	Building Permit Plot Plan, 1 sheet, prepared by Heritage Surveyors & Engineers, Inc., dated 9/5/2002
A-3	3 Photographs

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

**Signature Page**

Re: Kellie Richardson  
502 New Galena Road  
New Britain Township  
TMP No. 26-1-94-2

Date: August 22, 2022

Chuck Coxhead, Chair

DocuSigned by:  
*Charles A Coxhead*  
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Cathy Basilio, Vice Chair

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*Cathy Basilio*  
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Scott Fischer, Member

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*Scott W. Fischer*  
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Ryan Wantz, Alternate Member

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*Ryan Wantz*  
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DATE OF DECISION: JULY 15, 2022

DATE OF MAILING: JULY 15, 2022

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

**RE: APPLICATION OF STEPHEN AND GINA WHERRY FOR  
THE PROPERTY LOCATED AT 141 CHEESE FACTORY ROAD, NEW  
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-11-57-1**

**FINDINGS OF FACT**

1. On Thursday, June 16, 2022, 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 Stephen and Gina Wherry (the "Applicants").
2. The Applicants are the record co-owners of the property located at 141 Cheese Factory Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-11-57-1 (the "Property"). The Property is the subject of the instant application.
3. Notice of the June 16, 2022, hearing was published in advance of the hearing in the Thursday, June 2, 2022, and Thursday, June 9, 2022, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.
4. Notice of the June 16, 2022, hearing was sent by first class mail on June 6, 2022, by Ryan Gehman ("Gehman"), the New Britain Township Assistant Planning and 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-8.
5. Gehman posted notice of the June 16, 2022, hearing on the Property on June 9, 2022, at 10:16 a.m. *See* Exhibit B-9.
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 WS, Watershed, 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), storage shed (use H2), driveway, stone walls, and a brick patio. These uses and structures are permitted by right in the WS zoning district. *See* Exhibit B-2, Plan; *see also* Zoning Ordinance §27-501.a.

9. The Applicants propose an accessory outdoor pavilion, concrete hot tub pad, renovated patio, and driveway widening. Such accessory improvements are permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501.a.

10. To permit the proposed improvements, the Applicants seek a variance from Zoning Ordinance §27-502.b.1(h)1) to permit an impervious surface ratio of 17.42% on the Property, where the existing ratio is 13.49%, and the maximum impervious surface ratio permitted by right is 12%. *See* Exhibit B-2, Plan.

11. 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.

12. The Applicants testified in support of the application at the hearing. No other individuals appeared at the June 16, 2022, hearing to request party status, register a position, or comment or ask questions on the application before the Board.

13. According to the Applicants and Bucks County records, the Applicants acquired the Property in or around April 2021. The Applicants purchased the Property at a lien sale conducted by the Bucks County Sheriff. *See* Exhibit B-1, Deed.

14. The Applicants stated, and the Board finds, that the dwelling was constructed in or around 1963. When they acquired the Property, the house, along with many aspects of the Property's exterior, was in deplorable and unlivable condition. The dwelling has been vacant for at least 2 years. *See* Exhibit B-2, Photos.

15. The Property is shaped like a rectangle. Its gross site area is 43,712 square feet. Excluding the areas within the ultimate right-of-way of Cheese Factory Road, the Property's base site area is 39,078 square feet. *See* Exhibit B-2, Plan.

16. The Property is a lawful undersized lot, as the minimum lot size is 80,000 square feet for a property improved with a B1 use in the WS zoning district. *See* Exhibit B-2, Plan; *see also* Zoning Ordinance §27-502.b.1(a).

17. The Property has 152.62 feet of frontage along the ultimate right-of-way line of Cheese Factory Road. It is 157.96 feet wide along its rear lot line. The side lot lines are 285.71 feet and 280.51 feet long (including the portions of the Property within the ultimate right-of-way of Cheese Factory Road). *See* Exhibits B-2, Plan.

18. The dwelling is entirely within the front yard setback area. The dwelling is a 1 story ranch style house, with a basement grade side entry garage. The storage shed is along the southern side lot line. *See* Exhibit B-2, Plan.

19. An unlevel brick patio abuts the dwelling's rear wall. The stone walls are near the location of a former above-ground pool. The deck and stone walls are in decrepit condition and will be removed. *See* Exhibits B-2, Plan; and A-1, Sheet A-2.

20. The Property has a steep slope. The Property's grade drops steadily approximately 16 feet from the southern to the northern side lot line. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

21. The Property's rear yard is filled with natural vegetation. The northern adjacent lot is improved with a similar style residential dwelling. The National Shrine of Our Lady of Czestochowa (the "Shrine") owns the tract behind and to the south of the Property. *See Exhibits B-10, Viewer; and A-2, Photos.*

22. The Applicants stated, and the Board finds, that they are renovating the dwelling and intend to occupy it. They intend to preserve as many plantings as possible when installing the exterior improvements. At least 1 dead tree will be removed. *See Exhibits B-2, Plan; A-1, Sheet A-5.*

23. The Applicants stated, and the Board finds, that the existing driveway access on to Cheese Factory Road is very narrow. This feature creates hazardous conditions for vehicles entering and exiting the Property. *See Exhibit B-2, Plan.*

24. The Applicants stated, and the Board finds, that the existing driveway is 10 feet wide, and 79 feet long. The driveway will be widened along its southern side by an additional 10 feet for its entire length. The final driveway width will be 20 feet. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

25. The Applicants stated, and the Board finds, that the driveway's rear corner closest to the house will be squared off to accommodate better vehicle maneuvering. *See Exhibit B-2, Plan.*

26. The Applicants stated, and the Board finds, that the existing rear patio will be replaced. The hot tub pad will be installed in the area of the former pool. The renovated patio and pad will be 1,115 square feet. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

27. The Applicants stated, and the Board finds, that the wall remnants will be removed. The pavilion will be installed in this area. The pavilion will have a footprint of 400 square feet. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

28. The Applicants stated, and the Board finds, that at the time they acquired the Property, it contained 5,270 square feet of existing impervious surfaces. This produces a ratio of 13.49%, which exceeds the maximum 12% permitted ratio. *See Exhibit B-2, Plan.*

29. The expanded driveway, renovated patio, hot tub, and pavilion will add 2,503 square feet of gross new impervious surfaces to the Property. Accounting for the 964 square feet of impervious areas to be removed, this produces a new net aggregate of 6,809 square feet, for a final ratio of 17.42%. *See Exhibit B-2, Plan.*

30. Regarding existing stormwater drainage patterns at the Property, the Applicants stated, and the Board finds, that the water follows the Property's natural slope. It generally flows from the southern side lot line to the northern side lot line. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

31. To account for the additional stormwater runoff caused by the existing and proposed excess impervious surfaces on the Property, the Applicants stated, and the Board finds, that a compliant and approved stormwater management BMP facility will be installed on the Property. Pervious pavers and new plantings will also be installed where possible. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

32. The Applicants stated, and the Board finds, that stormwater management facility has not been designed yet. The Applicants agreed that the facility will comply with the New Britain Township Stormwater Management Ordinance and will be approved by the Township Engineer. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

33. The Applicants stated, and the Board finds, that the finally designed and engineered stormwater BMP facility will infiltrate and control the amount of water runoff from the Property to produce an effective impervious surface ratio of not to exceed 12%. This accounts for both the *existing* excess and proposed net new impervious surfaces. *See Exhibits B-2, Plan; and A-1, Sheet A-5.*

34. The Applicants stated, and the Board finds, that neither the adjoining resident nor any representative of the Shrine have raised any objection to the proposed widened driveway, patio, hot tub pad, pavilion and related improvements.

35. The Property contains unique physical characteristics that support relief for the existing expanded driveway, patio, pad, pavilion, and related improvements that produce an overall impervious surface ratio of 17.42%.

36. The Zoning Ordinance's dimensional limitation imposes a hardship on the Property and the Applicants in that this regulation prevents a reasonably sized driveway, patio, and pavilion on an undersized lot with an older non-conforming residential dwelling.

37. Subject to the conditions imposed herein, the expanded driveway, hot tub pad, patio, pavilion 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 June 16, 2022, 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 impervious surface ratio 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).

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 the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47.

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 dimensions, slope, existing non-conforming impervious surface ratio and dwelling, and overall condition of the Property, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. The Board concludes that while the Applicants have established a hardship to justify an impervious surface ratio of 17.42%, the Applicants will alleviate the runoff hazards through the stormwater management BMP facility approved by New Britain Township to produce an effective and *de facto* impervious surface ratio of not to exceed 12%. *See Exhibit B-2, Plan.*

10. 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 variance, including hardship, to construct and install the proposed widened driveway, patio, hot tub pad, pavilion and related improvements.

11. 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.

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

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

14. 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 15<sup>th</sup> day of JULY, 2022, 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 variance from Zoning Ordinance §27-502.b.1(h)1) to permit an impervious surface ratio of 17.42% on the Property, subject to the following conditions:

1. The expanded driveway, renovated patio, concrete hot tub pad, pavilion, and related improvements' dimensions, size, location and appearance shall be in accordance with the definitive plans, evidence, representations, exhibits and credible testimony made and submitted at the hearing.

2. The Applicants and their design professional shall revise the Zoning Exhibit Plan (Exhibit B-2) and submit a certification letter (pre-marked as Exhibit B-5(A)), if necessary, to the satisfaction of Gehman and the New Britain Township engineer, to confirm that the finally engineered and designed stormwater management improvements will produce an effective impervious surface ratio of not more than 12% on the Property.

3. Where approved by the New Britain Township engineer, the stormwater management improvements shall include additional plantings and pervious pavers.

4. The Applicants shall install, maintain and replace the stormwater management facility and improvements approved by New Britain Township on the Property in accordance with this Decision and all applicable New Britain Township ordinances.

5. 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, confirms the Board's decision and order.

By: /s/ Thomas J. Walsh III, Esq.

Date: 7/15/2022

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.

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## **SCHEDULE A – TABLE OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application, dated 5/19/22. Attachments to Application: <ul style="list-style-type: none"><li>• Deed dated 4/21/21</li><li>• List of property owners within 500 feet</li></ul>
B-2	Zoning Variance Exhibit Plan, consisting of 1 sheet, prepared by Urwiler & Walter, Inc., dated 5/18/22
B-3	Letter to The Intelligencer dated 5/31/22 forwarding public notice of 6/16/22 hearing for advertisement
B-4	Public Notice of the hearing on 6/16/22
B-5	Proof of publication of public notice in 6/2/22 and 6/9/22 editions of The Intelligencer
B-6	Letter to Applicants and attorney dated 5/31/22 providing notice of the 6/16/22 hearing
B-7	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 6/6/22
B-9	Affidavit of posting of public notice at property – notice posted on 6/9/22 at 10:16 a.m., together with photos of notice on property
B-10	Bucks County Viewer Map and Aerial
A-1	Wherry Home Renovation Building Permit Plans, consisting of 9 sheets, prepared by Gavin Construction Company, dated 2/3/22
A-2	14 photographs



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

**Signature Page**

Re: Stephen and Gina Wherry  
141 Cheese Factory Road  
New Britain Township  
TMP No. 26-11-57-1

Date: July 15, 2022

Chuck Coxhead, Chair

/ABSENT/

Cathy Basillii, Vice Chair

Cathy Basillii

Scott Fischer, Member

/S/ SCOTT FISCHER

Ryan Wantz, Alternate Member

/S/ RYAN WANTZ