

**ZONING HEARING BOARD OF WRIGHTSTOWN TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Applicant: Danils B Inc.
c/o Danil Berzin
100 Orchard Lane
Feasterville, PA 19053

Owner: Same

Subject Property: Tax Parcel No. 53-012-018-001, which is a vacant lot located on Second Street Pike in the vicinity of 2203 and 2135 Second Street Pike, Wrightstown Township.

Requested Relief: Applicant proposes the construction of a single-family dwelling, with an on-lot well and sewage system. Applicant seeks a special exception pursuant to §27-1208.C.2 of the Newtown Area Joint Municipal Zoning Ordinance ("Ordinance"), and the following variances: (1) from §27-401.B, to permit a density of 2.92 DU/AC, where a maximum of .33 DU/AC is permitted; (2) from §27-401.C, to permit a minimum lot width at the required building setback line of 129.5 feet, where the minimum lot width is 200 feet for a 1.0 acre lot; (3) from §27.401.C, to permit a buildable coverage of 13.29%, where a maximum of 10% is permitted for a 1.0 acre lot; (4) from §27.401.D.1, to permit a building envelope area of 3,773 square feet, where a minimum of 20,000 square feet is required for a 1.0 acre lot; and, (5) from §27-1000.C.2.a, to permit a lot size of 14,941 square feet, where 34,848 square feet is required.

Hearing History: The application was filed in Wrightstown Township on May 1, 2025. The hearing was held on June 18, 2025 at the Wrightstown Township Building, 2203 Second Street Pike, Wrightstown, PA 18940.

Appearances: Applicant by: Ryan Gallagher, Esq.
12 Terry Drive, Suite 201
Newtown, PA 18940

Mailing Date: August 4, 2025

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Wrightstown Township ("ZHB") met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. The Applicant is the Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the CM, Conservation Management Zoning District of Wrightstown Township. The lot area is 0.343 acres, which represents a preexisting legal nonconformity. The property is presently a vacant lot.

4. Applicant proposes the construction of a single-family dwelling, with an on-lot well and sewage system. Applicant seeks a special exception pursuant to §27-1208.C.2 of the Newtown Area Joint Municipal Zoning Ordinance ("Ordinance"), and the following variances: (1) from §27-401.B, to permit a density of 2.92 DU/AC, where a maximum of .33 DU/AC is permitted; (2) from §27-401.C, to permit a minimum lot width at the required building setback line of 129.5 feet, where the minimum lot width is 200 feet for a 1.0 acre lot; (3) from §27.401.C, to permit a buildable coverage of 13.29%, where a maximum of 10% is permitted for a 1.0 acre lot; (4) from §27.401.D.1, to permit a building envelope area of 3,773 square feet, where a minimum of 20,000 square feet is required for a 1.0 acre lot; and, (5) from §27-1000.C.2.a, to permit a lot size of 14,941 square feet, where 34,848 square feet is required.

5. In support of the request for relief, Applicant presented the testimony of Professional Engineer Scott Mease, PE, PLS, of Mease Engineering. Mr. Mease identified the following issues and justifications for relief:

- a. The existing lot area of 0.343 acres is an existing lawful nonconformity.
- b. With regard to the requested variance from §27-401.B to permit a density of 2.92 dwelling units per acre, Mr. Mease opined that the provision at issue should not be applied to an existing lot. Rather, the density limitation should be applied to a proposed subdivision. As such, Mr. Mease suggested that the request for variance represents a technical request to permit Applicant to construct a single-family dwelling on the Subject Property.
- c. The existing lot is 129.5 feet wide at the building setback line. The lot width represents a preexisting legal nonconformity. The lot existed prior to the current Ordinance being in place. In Mr. Mease's professional opinion, a lot width of 129.5 feet is sufficiently large enough to provide for the construction of a three bedroom single-family detached dwelling and

provides adequate room for the minimum side yard setbacks. Mr. Mease considers the request for relief, under the circumstances, a technical request.

- d. With regard to Applicant's request for building coverage of 13.29% as opposed to the 10% permitted for a one acre lot, Mr. Mease attributed the need for relief to the undersized lot. For context, Mr. Mease illustrated that the total permitted impervious surface coverage for the lot is 25%, and the proposed impervious surface coverage for the lot is only 19.8%. Applicant argued that the undersized lot represents a hardship as to application of building coverage.
- e. Applicant requests a variance for a building envelope area of 3,773 square feet, where the required building envelope is 20,000 square feet for a one acre lot. Mr. Mease considered the variance request a "technical" item, and emphasized that the building envelope on the Subject Property is large enough for a three bedroom single-family detached dwelling which complies with all dimensional setback requirements.
- f. Applicant requests a variance to permit construction of the single-family residential dwelling on a lot consisting of 14,941 square feet, where the required lot size is 34,848 square feet. Applicant indicated that the lot size represents a preexisting lawful nonconformity.
- g. Applicant requests a special exception pursuant to §27-1208.C.2, in order to permit the construction of a single-family detached dwelling on an existing nonconforming lot. Mr. Mease indicated that the Ordinance permits the construction of a building on any nonconforming lot which was lawfully in existence at the time of the adoption of the current Ordinance. Mr. Mease represented that the lot was in fact in existence prior to the adoption of the current Ordinance and therefore the special exception should be granted.

6. Mr. Mease did authenticate a plan prepared April 21, 2025, last revised April 30, 2025, entitled Zoning Hearing Plan, which illustrates the site plan for the single-family dwelling at issue. Some discussion ensued with regard to the title line carrying to the middle of Second Street Pike, but the ultimate right-of-way line reflecting approximately one-third of the lot being encumbered by ultimate right-of-way along Second Street Pike. Considerable discussion ensued also regarding the PennDOT drainage swale traversing the front of property beyond the cart way, and within the ultimate right-of-way.

7. Access to the property will be by way of an easement for use of a shared driveway

8. No one spoke in opposition to the application.

9. Wrightstown Township took no position, but did request a series of conditions in the event that the ZHB granted the relief requested.

CONCLUSIONS OF LAW:

1. The Subject Property represents a lawful preexisting nonconforming lot (nonconforming as to lot size and lot width).

2. Applicant proposes the construction of a single-family dwelling, with an on-lot well and sewage system. Applicant seeks a special exception pursuant to §27-1208.C.2 of the Newtown Area Joint Municipal Zoning Ordinance ("Ordinance"), and the following variances: (1) from §27-401.B, to permit a density of 2.92 DU/AC, where a maximum of .33 DU/AC is permitted; (2) from §27-401.C, to permit a minimum lot width at the required building setback line of 129.5 feet, where the minimum lot width is 200 feet for a 1.0 acre lot; (3) from §27-401.C, to permit a buildable coverage of 13.29%, where a maximum of 10% is permitted for a 1.0 acre lot; (4) from §27-401.D.1, to permit a building envelope area of 3,773 square feet, where a minimum of 20,000 square feet is required for a 1.0 acre lot; and, (5) from §27-1000.C.2.a, to permit a lot size of 14,941 square feet, where 34,848 square feet is required.

3. The standard for a variance includes the following:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That 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 that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. §10910.2.

See, also Newtown Area Joint Municipal Zoning Ordinance §1507.D

4. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variances requested under the relaxed variance standard applicable to dimensional variance cases, as articulated by the Pennsylvania Supreme Court, in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998).

5. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be no negative impacts upon surrounding properties or uses.

6. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary.

7. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.

8. The standard for granting special exceptions is found at Newtown Area Joint Municipal Zoning Ordinance §1507.E(3):

...

3. In granting special exceptions, the ZHB shall, in addition to such other factors as it may deem relevant:
 - a. Give full consideration to the size, scope, extent, and character of the exception desired and assure itself that such request is consistent with the plan for future land use in the municipality and with the spirit, purpose and intent of the Joint Municipal Zoning Ordinance.
 - b. Consider the suitability of the property for the use desired and the extent to which the new or expanded use is susceptible of regulation or restriction by appropriate conditions and safeguards.
 - c. Consider the public interest in or the need for the proposed use or change, and determine that the proposal will serve the best interests of the municipality, the convenience of the community, and the public health, safety, morals, and general welfare, but shall not constitute a change of use to one not specifically permitted by exception in that district.

- d. Consider, where pertinent, the effects of the proposed change with respect to congestion on the roads or highways, the most appropriate use of land, conserving the value of buildings, safety from fire, panic and other dangers, adequacy of light and air, the prevention of overcrowding the land, congestion of population, and the adequacy of public and community services.
 - e. Make certain that the proposed change is reasonable in terms of the logical, efficient, and economical extension of public services and facilities, such as public water, sewers, police and fire protection, transportation, and public schools.
 - f. Take into consideration the character and type of development in the area surrounding the location for which the request is made and determine that the proposed change or modification, as permitted, will constitute an appropriate use in the area and will not substantially injure or detract from the use of surrounding property or from the character of the neighborhood.
4. The burden will be upon the applicant to show:
- a. The ability and capacity of the existing public water system to provide the needs of the proposed use without system extensions beyond those which the applicant will provide;
 - b. The ability and capacity of public sanitary sewers to dispose of the wastes from the proposed use without system extensions beyond those which the applicant will provide;
 - c. The ability and capacity of drainage facilities to adequately dispose of surface runoff of the proposed use without system extensions beyond those which the applicant would provide;
 - d. The ability and capacity of existing street systems to provide for the needs of the proposed use without substantially altering existing traffic patterns or overloading the existing street system and the availability of other public facilities such as parks and playgrounds to meet the additional demands for public services without extensions beyond those to be provided by the applicant;
 - e. Proof that the proposed use accomplishes an orderly and contiguous extension of existing development (leapfrog

development is deemed to be wasteful of land and natural resources);

- f. The extent to which the proposed use, if residential, would meet existing goals of the municipality for low and moderate income dwelling units;
- g. A requirement that the application set forth environmentally significant qualities of the site or surrounding areas and the extent to which those qualities may be affected by the application;
- h. To the extent that the application will utilize existing buildings or structures, the extent to which existing structures will be modified and the extent to which they will be preserved if they are of historic or architectural significance.

9. The grant of the requested variances satisfies Applicant's burden to meet the objective criteria set forth in the Ordinance for a special exception. New Bethlehem Borough Council v. McVay, 78 Pa. Commw. 167, 467 A.2d 395 (Pa. Cmwlth. 1983). A use permitted by special exception is presumptively consistent with the public health, safety and welfare; the denial of a special exception can be based only on proof that the use would create an adverse effect on the public welfare in a way not normally associated with proposed use. Kern v. Zoning Hearing Board of Tredyffrin Township, 68 Pa. Commw. 396, 449 A.2d 781 (1982). Here, the objecting witnesses failed to present proof that the proposed use would present a substantial threat of harm to the health, safety and welfare of the community. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commw. 235, 559 A.2d 107 (PA. Cmwlth. 1989).

10. Accordingly, the Wrightstown Township Zoning Hearing Board determined, by a 2-0 vote, to grant the Applicant's request for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Wrightstown Township hereby GRANTS The following relief of the Newtown Area Joint Municipal Zoning Ordinance:

1. A special exception pursuant to §27-1208.C.2;
2. A variance from §27-401.B, to permit a density of 2.92 DU/AC, where a maximum of .33 DU/AC is permitted;
3. A variance from §27-401.C, to permit a minimum lot width at the required building setback line of 129.5 feet, where the minimum lot width is 200 feet for a 1.0 acre lot;
4. A variance from §27.401.C, to permit a buildable coverage of 13.29%, where a maximum of 10% is permitted for a 1.0 acre lot; and,
5. A variance from §27.401.D.1, to permit a building envelope area of 3,773 square feet, where a minimum of 20,000 square feet is required for a 1.0 acre lot; and, (5) from §27-1000.C.2.a, to permit a lot size of 14,941 square feet, where 34,848 square feet is required.

The relief granted is subject to the following conditions:

1. Applicant is required to obtain and record an Easement for use of the shared driveway;
2. The stormwater management facilities must be designed to address the maximum impervious coverage permitted on the lot;
3. Applicant shall record a Declaration of Covenants, Easements and Restrictions identifying the maximum impervious coverage permitted on the lot; and,
4. Applicant shall comply in all other respects of all governmental ordinances and regulations, including but not limited to stormwater management, grading, and the Bucks County Health Department.

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ZONING HEARING BOARD OF WRIGHTSTOWN TOWNSHIP

By: /s/ Allen Masenheimer
Allen Masenheimer

/s/ Steve Marcell
Steve Marcell