

DATE OF DECISION: OCT. 26, 2016

DATE OF MAILING: OCT. 26, 2016

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

**RE: APPLICATION OF JAMES NIEVES SOSA
FOR THE PROPERTY LOCATED AT 81 WOODSIDE AVENUE,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-7-12**

FINDINGS OF FACT

1. On Thursday, September 15, 2016 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 James Nieves Sosa (the "Applicant").

2. The Applicant and Nicole L. Nieves Sosa are the record owners of the property located at 81 Woodside Avenue, Chalfont, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-7-12 (the "Property"). *See* Exhibit A-1, Deed.

3. Notice of the September 15, 2016 hearing was published in advance of the hearing in the Thursday, September 1, 2016 and Thursday, September 8, 2016 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-4, Proof of Publication.

4. Notice of the hearing was sent by first class mail on September 1, 2016 by Devan Ambron ("Ambron"), 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-7, Affidavit of Mailing.

5. Ambron posted notice of the hearing on the Property on September 1, 2016 at 2:30 p.m. *See* Exhibit B-8, Affidavit of Posting.

6. As a co-record owner of the Property, the Applicant has the requisite standing to prosecute this zoning hearing board application.

7. The Property is located in the RR, Residential, zoning district under the current New Britain Township Zoning Ordinance (the "Zoning Ordinance").

8. The Property is unimproved. The Applicant proposes to construct a single-family detached dwelling (use B1), a detached garage, a retaining wall (use H3), stormwater management facilities, a driveway and related improvements on the Property. *See* Exhibit A-4, Zoning Plan.

9. A single-family detached dwelling (use B1) and accessory retaining wall (use H3) are uses permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

10. To permit the improvements, the Applicant seeks a variance from and/or interpretation of the following sections of the Zoning Ordinance:

- a. From §27-305.H3.b.2 to permit the retaining wall to exceed four (4) feet in height in the front yard;
- b. From §§27-505 and 27-2400.f.1 to permit only 73%¹ of the existing woodlands/forests on the Property to be protected, where the required minimum protection ratio is 80%;
- c. From §27-2400.i to allow disturbance of zone 1 and/or zone 2 of the required riparian buffer, where no disturbance of the riparian buffer is permitted; and
- d. From §27-2400.i.1 and 2 to allow a single-family detached dwelling, retaining wall, stormwater management facility and/or driveway uses within zone 1 and/or zone 2 of the riparian buffer, where such proposed uses are not allowed within the riparian buffer.

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 Applicant and Thomas B. Ludgate, P.E., P.L.S. (“Ludgate”), professional civil engineer testified, in support of the application at the hearing. Ludgate was qualified and testified as an expert in civil engineering.

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

- a. Mary Shlauer (“Shlauer”), 89 Woodside Avenue, Chalfont, PA.
- b. Richard Zavocki (“Zavocki”), 83 Woodside Avenue, Chalfont, PA.

14. The intervening parties objected to the relief requested. A few other persons appeared before the Board to make a statement or a comment on the application.

15. As a threshold matter, the Board notes that the application, as submitted by the Applicant, states that the street address of the Property is 83 Woodside Avenue. This is not the Property’s correct street address. 83 Woodside Avenue is Zavocki’s property. *See* Exhibit B-1, Application.

¹ At the opening of the hearing, the Applicant amended its request for relief from the woodlands/forests protection requirements to 73% (instead of the 75% stated in the application and the public notice). The Board granted this request.

16. Being based upon the application, the public notice, affidavit of mailing and affidavit of posting all incorrectly state that the Property's street address is 83 Woodside Avenue. *See* Exhibits B-3, Public Notice; B-7, Affidavit of Mailing; and B-8, Affidavit of Posting.

17. At the opening of the hearing, the Board, Ambron, the Applicant, all witnesses and all intervening parties confirmed and acknowledged that the correct street address of the Property that is the subject of the application is 81 Woodside Avenue.

18. The Board notes that as no confusion exists among all affected individuals and parties as to the identity of the Property that is the subject of the application, the publication and notification error is harmless.

19. The Property is a 4.081 acres vacant lot located along Woodside Avenue. The Property is oddly shaped, with two (2) separate areas: a narrow curved lane abutting Woodside Avenue; and a larger area behind the lane. *See* Exhibit A-4, Zoning Plan.

20. The Property is a lane (or "flag") lot. The Property lacks the required minimum lot width of 150 feet at the required minimum 50 feet front building setback line from the street. *See* Exhibit A-4, Zoning Plan; *see also* Zoning Ordinance §§27-201 and 27-902.b.

21. The lane has 50.41 feet of frontage along Woodside Avenue. It is approximately the same width throughout the entire depth of the lane. *See* Exhibit A-4, Zoning Plan.

22. According to the Property's legal description and the Zoning Plan (Exhibit A-4), one side of the lane is approximately 163 curvilinear feet in distance. The other longer side is roughly 186 curvilinear feet in length. *See* Exhibits A-1, Deed; and A-4, Zoning Plan.

23. Behind the lane is the Property's larger portion, where it widens out to provide the required minimum lot width of 150 feet. This section is generally shaped like a rectangle. The lane connects to the center of the Property's larger section. *See* Exhibit A-4, Zoning Plan.

24. The side lot lines of the Property's larger portion are 431.31 and 375.01 feet in length. The rear lot line is 456.38 feet long. The Property's "front" lot lines that connect to each side of the lane are 200.42 feet and 288.14 feet in length, for a total lot width (including the lane) of roughly 538 feet. *See* Exhibit A-4, Zoning Plan.

25. The Applicant and Ludgate stated, and the Board finds, that the Property's above-described area and dimensions have existed since its creation in or around September 1973. *See* Exhibit A-1, Deed.

26. At 4.081 acres, the Property meets the 1 acre minimum lot area in the RR zoning district. However, the Property lacks the required minimum lot area of 10 acres for a lane lot. As an existing parcel, the Board finds that the Property is a lawful non-conforming tract as to the required minimum lot area for a lane lot. *See* Zoning Ordinance §§27-201 and 27-2104.b.

27. The Applicant and Ludgate stated, and the Board finds, that the Property consists almost entirely of natural resources that require protection. These resources include two (2) watercourses, a related riparian buffer, woodlands/forests and steep slopes. *See* Exhibit A-4, Zoning Plan.

28. The main watercourse enters the Property at Woodside Avenue, travels through the lane, and then continues through the remainder of the Property. The secondary watercourse enters the Property from an adjoining residential tract, then connects to the primary watercourse in the center of the Property's larger portion. *See* Exhibit A-4, Zoning Plan.

29. The primary watercourse essentially bisects the Property into two (2) halves. The Property's area southwest of the main watercourse 1.92 acres. The Property's other "half," northeast of the main watercourse, is where the proposed dwelling, detached garage, driveway and stormwater management facilities will be located. *See* Exhibit A-4, Zoning Plan.

30. Ludgate stated, and the Board finds, that the main watercourse is normally always conducting water. Water generally only runs in the secondary watercourse during and shortly after storm events.

31. Along each side of the primary watercourse are two (2) protection zones of the required 75 feet riparian buffer. Zone 1 is 25 feet wide, extending outward from the watercourse's edge. Zone 2 is 50 feet in width, extending outward from the outer edge of zone 1. *See* Exhibit A-4, Zoning Plan; *see also* Zoning Ordinance §27-2400.i.1 and 2.

32. A twenty (20) feet wide sanitary sewer easement runs from Woodside Avenue, into the Property's lane portion. This easement then exits the Property, crosses an adjoining lot, and re-enters the Property in the area near the secondary watercourse. *See* Exhibit A-4, Zoning Plan.

33. Ludgate stated, and the Board finds, that Exhibit A-4 is a revised version of the Zoning Plan submitted with the application (marked as part of Exhibit B-1). Exhibit A-4 is the Applicant's definitive plan. Exhibit B-1 is to be disregarded. *See* Exhibits A-4 and B-1, Zoning Plan.

34. Ludgate stated, and the Board finds, that in Exhibit A-4, the location of the dwelling and detached garage were moved to clear the limit of the riparian buffer along the primary watercourse. *See* Exhibit A-4, Zoning Plan.

35. As a result of this plan revision, the Applicant stated, and the Board finds, that he no longer requests variance relief from Zoning Ordinance §27-2400.i.1 and 2 to allow a single-family detached dwelling use within the riparian buffer.

36. The Applicant and Ludgate stated, and the Board finds, that the footprint of the proposed dwelling is 1,966 square feet. The detached garage will be located to the east of the dwelling. The garage's footprint will be 1,610 square feet. *See* Exhibit A-4, Zoning Plan.

37. Ludgate stated, and the Board finds, that the dwelling and detached garage will be located within a building envelope that fully complies with all applicable dimensional requirements. *See* Exhibit A-4, Zoning Plan.

38. Ludgate stated, and the Board finds, that the dwelling and garage will be served by a driveway extending through the Property's lane portion, which will connect to Woodside Avenue. *See* Exhibit A-4, Zoning Plan.

39. The Applicant and Ludgate stated, and the Board finds, that the dwelling will be connected via a force main to the public sewer system. Potable water will be supplied by a private well, the location of which has not been determined. All required permits and authorizations for the force main and private well will be obtained prior to any construction.

40. Regarding stormwater management, Ledgate stated, and the Board finds, that the Property generally slopes downward from Woodside Avenue to the rear lot line. Topography lines on the Zoning Plan confirm that this decrease in elevation is approximately 25 feet. *See Exhibit A-4, Zoning Plan.*

41. To manage stormwater runoff, two (2) drainage basins are proposed, with an aggregate footprint of roughly 2,500 square feet. One basin will be located next to the driveway, within the riparian buffer. *See Exhibit A-4, Zoning Plan.*

42. The other drainage basin will be behind the dwelling and garage. Ludgate stated, and the Board finds, that the basins will ultimately drain to an unnamed tributary of the West Branch of the Neshaminy Creek. *See Exhibit A-4, Zoning Plan; see also Exhibit B-10, Engineer Review Letter.*

43. The Applicant and Ludgate stated, and the Board finds, that to construct the foregoing improvements, the main watercourse, the riparian buffer, the woodlands/forests and the steep slopes must be disturbed. The steep slope disturbance complies with the applicable natural resource protection standard. *See Exhibit A-4, Zoning Plan.*

44. To access the dwelling, the driveway must be constructed within the Property's lane. Ludgate stated, and the Board finds, that the driveway will encroach upon the primary watercourse, will cross through the riparian buffer, and will require disturbing the protected woodlands/forests. *See Exhibit A-4, Zoning Plan.*

45. Ludgate stated, and the Board finds, that the driveway will be approximately twelve (12) feet wide. Within the lane, the driveway will rest upon and above an 80 to 90 feet long culvert. The culvert will be roughly 36 inches in diameter, and will essentially enclose the primary watercourse. *See Exhibit A-4, Zoning Plan.*

46. The Board notes that relief from Zoning Ordinance §27-2400.a, to allow a watercourse to be altered, regraded, filled, piped, diverted and/or built upon, is not presently requested from the Board.

47. The Applicant and Ludgate stated, and the Board finds, that such relief is not presently required. The Pennsylvania Department of Environmental Protection (“DEP”) has issued some form of approval for the watercourse piping / culvert design. *See Zoning Ordinance §27-2400.a.*

48. Upon questioning from the Board, Ludgate acknowledged that while the Applicant has not finalized the culvert construction materials with DEP, the Applicant and Ludgate expect that the culvert will be made of concrete, which is the material preferred by the Board.

49. Ludgate stated, and the Board finds, that the retaining wall will be along and/or next to the driveway and culvert within the Property's lane. The retaining wall will be entirely within the front yard and the riparian buffer. *See Exhibit A-4, Zoning Plan.*

50. Ludgate stated, and the Board finds, that the retaining wall will be a 1 foot wide, mechanically stabilized earth (MSE) wall. It is needed since the driveway grade is higher than the Property's current grade. The wall will stabilize the driveway and culvert, and will limit the impact of the driveway upon the remainder of the Property. *See Exhibit A-4, Zoning Plan.*

51. Ludgate stated, and the Board finds, that the retaining wall will be between 80 to 90 feet in length. In most places, the wall's height will be four (4) feet. However, the wall may reach as high as 8 feet in certain sections due to the grade change. *See Exhibit A-4, Zoning Plan.*

52. Ludgate stated, and the Board finds, that the entire lane is within zone 1 of the riparian buffer. The driveway and retaining wall will be located within zone 1 of the riparian buffer. The driveway and one stormwater drainage basin will be located within zone 2. *See Exhibit A-4, Zoning Plan.*

53. Ludgate stated, and the Board finds, that the Zoning Ordinance generally prohibits any disturbance of the riparian buffer except as specifically authorized. *See Zoning Ordinance §27-2400.i.*

54. The Applicant and Ludgate acknowledged, and the Board finds, that driveways are prohibited within either zone of the riparian buffer, unless otherwise permitted by DEP or New Britain Township. *See Zoning Ordinance §27-2400.i.3.*

55. The Applicant and Ludgate acknowledged, and the Board finds, that retaining walls are not specified as a use or improvement authorized in either zone of the riparian buffer. Runoff control facilities are identified as a limited use in zone 1, but not in zone 2. *See Zoning Ordinance §27-2400.i.1 and 2.*

56. Although the proposed uses or improvements are not expressly authorized within the riparian buffer, Ludgate stated, and the Board finds, that no other location exists on the Property to locate these improvements, which are necessary to serve a permitted single-family detached dwelling. *See Exhibit A-4, Zoning Plan; see also Zoning Ordinance §27-2400.a.1 and 2.*

57. Regarding the woodlands/forests protection, Ludgate stated, and the Board finds, that mature trees are located throughout the entire Property. To construct the improvements, only 73% of the regulated woodlands/forests can be protected. This is short of the required minimum 80% protection ratio. *See Zoning Ordinance §27-2400.f.1.*

58. Ludgate stated, and the Board finds, that none of the trees in the Property's area southwest the primary watercourse will be disturbed during construction. The area of forest disturbance is limited to the lane and the zone northeast of the main watercourse. *See Exhibit A-4, Zoning Plan.*

59. Ludgate stated, and the Board finds, that the woodlands protection ratio is determined using the Property's "base site area." The area subject to the sanitary sewer

easement and southwest of the primary watercourse are excluded from the Property's gross area when determining the "base site area." *See* Zoning Ordinance §27-2402.b.

60. Applying these principles, Ludgate stated, and the Board finds, that the Property's gross site of area of 4.081 acres is reduced to a base site area of 2.831 acres. Within this base site area are 2.639 acres of protectable woodlands/forests. *See* Exhibit A-4, Zoning Plan.

61. Ludgate stated, and the Board finds, that the 80% protection ratio requires that 2.111 acres of woodland/forests be protected. The Applicant is protecting only 2.047 acres of woodlands/forests, which produces the 73% protection ratio. *See* Exhibit A-4, Zoning Plan.

62. The Applicant and Ludgate stated, and the Board finds, that the woodlands will be disturbed within the lane to construct the driveway, retaining wall and basin. Outside the lane, an area northeast of the watercourse will be cleared to allow for construction of the dwelling, detached garage and second stormwater management facility. *See* Exhibit A-4, Zoning Plan.

63. The Applicant and Ludgate stated, and the Board finds, that the forest areas behind and around the house, garage and basin will not be disturbed during construction of the dwelling and the related improvements. *See* Exhibit A-4, Zoning Plan.

64. Ludgate stated, and the Board finds, that modern stormwater management requirements necessitate a portion of the excessive woodlands/forest disturbance. *See* Exhibit A-4, Zoning Plan.

65. Shlauer and Zavocki each expressed concerns about the impact that the dwelling, driveway, the riparian buffer incursions and the woodlands disturbance will have on their respective properties. Specifically, the protesting parties conveyed concerns regarding environmental impacts and stormwater runoff.

66. The Applicant and Ludgate noted, and the Board finds, that neither Shlauer's nor Zavocki's parcels have modern stormwater management facilities. Also, the Property is at a lower grade than these neighboring properties, meaning it likely receives uncontrolled stormwater runoff from these adjoining properties.

67. The Property is surrounded by many tracts that are improved with single-family detached dwellings, similar to the proposed residence. The parcel directly west of the Property is improved with the Butler Elementary School. *See* Exhibit A-4, Zoning Plan.

68. The Applicant and Ludgate 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 dwelling, garage, retaining wall and stormwater management facilities in full compliance with the Zoning Ordinance's retaining wall height limitation and natural resource protection requirements.

69. Due to the Property being a pre-existing oddly-shaped non-conforming lane lot, and the fact that much of the Property is improved with protected watercourses, riparian buffers, and/or woodlands/forests, the Property lacks any location to build a single-family detached dwelling with related improvements in compliance with the Zoning Ordinance's wall front yard height restrictions and natural resource protection regulations.

70. The Property contains unique physical characteristics that support relief for the variances requested by the Applicant to permit the construction of a single-family detached dwelling and related improvements on the Property, with the limits of woodlands/forests and riparian buffer protections shown on the revised Zoning Plan. See Exhibit A-4, Zoning Plan.

71. The wall front yard height limitations and natural resource protection standards found at Zoning Ordinance §§27-305 and §27-2400, respectively, impose a hardship on the Property and the Applicant in that these provisions prevent the installation of a reasonably-sized single-family detached dwelling on a lawful pre-existing non-conforming lane lot.

72. Subject to the conditions imposed herein, the proposed single-family detached dwelling, detached garage, driveway, accessory retaining wall, stormwater management facilities 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 hearing was made by sufficient publication, posting and mailing to affected property owners.

2. The Board concludes that the request to disturb the riparian buffer to construct, install and/or operate a driveway, retaining wall and stormwater management facility is a request for a use variance. A use variance arises in a situation where the proposal is to use the property in a manner that is wholly outside a zoning ordinance regulation. See *Hertzberg v. Zoning Board of Adjustment of Pittsburgh*, 721 A.2d 43 (Pa. 1998).

3. Additionally, the Board concludes that the retaining wall height, and the woodlands/forests and riparian buffer natural resource protection, variances requested by the Applicant are dimensional variances. A dimensional variance arises in situations where the Zoning Ordinance permits or requires a certain dimension and that requirement or allowance is sought to be varied by degree. See *Constantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Commw. 1994).

4. 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.

5. The reasons for granting a use 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).

6. An applicant can demonstrate “unnecessary hardship” for a use or dimensional variance by showing that a property’s physical characteristics are such that the property cannot be used for any permitted purpose, or can only conform to a permitted purpose at prohibitive expense; or that the property has either no value or only distress value for any permitted purpose.

7. However, under Pennsylvania law, 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).

8. 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.

9. The Board concludes that the Property’s lawful non-conforming status, the odd shape, and the fact that the Property consists almost entirely of protected natural resources, establish a hardship under the *Hertzberg* standard.

10. Based upon the credible evidence presented, the Board concludes that the lane is the only means to provide access from a public street to the Property’s buildable area. *See Exhibit A-4, Zoning Plan*.

11. The watercourse, riparian buffer and woodland/forests natural resources occupy the entire lane. As the driveway must be located within the lane in order to afford the Applicant a reasonable use of the Property, the Board concludes that these natural resources must inevitably be disturbed. *See Exhibit A-4, Zoning Plan*.

12. The Board concludes that a variance is justified from Zoning Ordinance §27-305.H3.b.2 to permit the retaining wall in the front yard to be up to 8 feet high. The Property suffers from a significant change in grade within the lane area. Due to this natural feature, the Board concludes that this proposed height of the retaining wall is necessary to ensure a safe and stabilized area between the driveway and the surrounding areas. *See Exhibit A-4, Zoning Plan*.

13. After the lane, in the Property’s larger rear portion, while the dwelling and garage could be located at various points, the Board concludes that the proposed location will minimize the amount of watercourse, riparian buffer and woodlands/forest disturbance, thereby reducing any adverse impacts upon surrounding properties.

14. The Board concludes that a variance is justified from Zoning Ordinance §27-2400.f.1, to permit the disturbance of 27%, of the woodlands/forests on the Property. Any amount of reasonable disturbance that is required to construct the dwelling, detached garage, driveway and stormwater management facilities will necessarily exceed the permitted 20% disturbance ratio.

15. The Board concludes that a variance is justified from Zoning Ordinance §27-2400.i to allow disturbance of the riparian buffer, both zone 1 and zone 2, to permit the driveway, retaining wall and stormwater management facility.

16. The entire lane is within the riparian buffer. Moreover, the watercourse and riparian buffer essentially “split” the Property into two halves. Any amount of reasonable disturbance that is necessary to construct the driveway, dwelling, detached garage and stormwater management facilities will necessarily encroach upon the riparian buffer.

17. Critical to the Board’s conclusions is that the retaining wall, driveway and the underlying culvert be constructed and installed as safely as possible. The Board recognizes that the Property’s unique natural characteristics will require a level of construction not normally associated with the building of a driveway serving a dwelling.

18. The Board finds that requiring the Applicant to undertake a design to ensure the maximum amount of structural integrity of these improvements is a reasonable condition to the relief granted herein. Such design considerations shall include making all reasonable efforts to use concrete as the culvert’s material, and provide a maximum depth for the retaining wall.

19. While the Board recognizes the legitimate concerns of the neighboring protesting parties, the Board concludes that their objections are general and speculative in nature. The Board notes that the Property will be the sole parcel in this immediate vicinity with modern stormwater management controls.

20. To require the Applicant to install a retaining wall that does not exceed 4 feet in height in the front yard, to preserve at least 80% of the woodlands/forests, and to leave the riparian buffer undisturbed would essentially render the Property worthless and unusable. For that and the other reasons set forth in this Decision, the Board concludes that the relief requested is warranted.

21. 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 variances, including hardship, to install a retaining wall in the front yard that is up to 8 feet high, to protect only 73% of the regulated woodlands/forests, and to disturb the riparian buffer in connection with constructing a single-family detached dwelling, detached garage, driveway and stormwater management facilities on the Property as set forth in the Zoning Plan. *See Exhibit A-4, Zoning Plan.*

22. 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.

23. The approved variances will not be detrimental to the public welfare.

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

25. The approved variances represent the minimum variance that will afford relief and represent the least modification of the zoning regulations under the circumstances.

DECISION

AND NOW, this 26th day of OCTOBER, 2016, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicant's requests for variances from the Zoning Ordinance as follows: (a) from §27-305.H3.b.2 to permit the retaining wall to be up to 8 feet high in the front yard; (b) from §27-2400.f.1 to permit 73% of the woodlands/forests on the Property to be protected; and (c) from §27-2400.i.1 and 2 to allow disturbance of zone 1 and zone 2 of the riparian buffer through the installation of a driveway, retaining wall and stormwater management facility, all as shown on Exhibit A-4, Zoning Plan, presented at the hearing. The foregoing relief is subject to the following conditions:

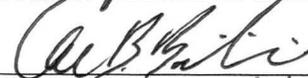
1. The proposed single-family detached dwelling, detached garage, driveway, retaining wall, stormwater management facilities and related improvements proposed for the Property, their respective dimensions, sizes, locations and appearances, shall be in accordance with Exhibit A-4, Zoning Plan, and the supportive evidence, exhibits, representations and credible testimony made at the hearing.

2. The Applicant shall design the driveway, culvert and retaining wall to ensure the maximum amount of structural integrity of these improvements. Such design considerations shall include making all reasonable efforts to use concrete as the culvert's material, and to ensure maximum depth of the retaining wall and its base.

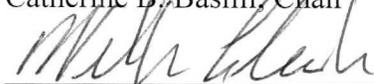
3. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed improvements must meet all other applicable federal, state, county and New Britain Township regulations and codes.

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

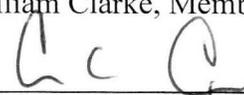
DATE: 10/26/16


Catherine B. Basilio, Chair

DATE: 10/26/16


William Clarke, Member

DATE: 10/26/16


Chuck Coxhead, Member

Thomas J. Walsh III, Esquire
Solicitor, New Britain Township Zoning Hearing Board
2500 York Road, Suite 120
Jamison, PA 18929

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

Exhibit	Description
B-1	Zoning Hearing Board application dated July 21, 2016. Attachments to the Application: <ul style="list-style-type: none">• Zoning Plan, dated 7/6/16, prepared by Ludgate Engineering
B-2	Letter to The Intelligencer dated 8/26/16 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on 9/15/2016
B-4	Proof of publication of public notice in 9/1/16 and 9/8/16 editions of The Intelligencer
B-5	Letter to Applicant dated 8/26/16 providing notice of the hearing
B-6	List of the record owners of all properties surrounding the Property
B-7	Affidavit of mailing to property owners – notice mailed on 9/1/16
B-8	Affidavit of posting of public notice at property – notice posted on 9/1/16 at 2:30 p.m.
B-9	Building Permit Plan, prepared by R.L. Showalter, dated 10/1/15
B-10	Engineering Review letter dated 10/27/15, issued by Gilmore & Associates
A-1	Deed dated May 16, 2015
A-2	Resume / CV of Thomas B. Ludgate, P.E., P.L.S.
A-3	Existing Conditions Plan, prepared by Ludgate Engineering, dated 9/15/16
A-4	Zoning Plan, prepared by Ludgate Engineering, dated 9/15/16 (revised version of Exhibit B-1 Zoning Plan)