DATE OF DECISION: DEC. 18, 2015

DATE OF MAILING: DEC. 18, 2015

BEFORE THE NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

RE: APPLICATION OF MICHAEL BRIGIDI FOR THE PROPERTY LOCATED ALONG NEW GALENA ROAD, SOUTH OF ROUTE 313, IDENTIFIED AS LOT 1 ON THE MINOR SUBDIVISION PLAN OF NATASHA WORTHINGTON, NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-4-70-7

FINDINGS OF FACT

1. On Thursday, November 19, 2015 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 Michael Brigidi (the "Applicant").

2. The Applicant and Krista Brigidi are the record owners of the property located along New Galena Road, South of Route 313, identified as Lot 1 on the Minor Subdivision Plan of Natasha Worthington, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-4-70-7 (the "Property").

3. Notice of the November 19, 2015 hearing was published in advance of the hearing in the Thursday, November 5, 2015 and Thursday, November 12, 2015 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township.

4. Notice of the hearing was sent by first class mail on November 2, 2015 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.

5. Ambron posted notice of the hearing on the Property on November 4, 2015 at 1:22 p.m.

6. As a 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 WS, Watershed, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

8. The Property is vacant. The Applicant proposes a 4 bedroom single-family detached dwelling (use B1) on the Property. A single-family detached dwelling (use B1) is permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501(a).

9. The Applicant seeks a variance from Zoning Ordinance §27-2115 to permit components of the on-lot sand mound septic system to be located 2.37 feet from the ultimate right-of-way line of New Galena Road, where the required minimum setback is 10 feet.

10. 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.

11. The Applicant and Max Russick ("Russick"), Certified Professional Soil Scientist, testified in support of the application at the hearing.

12. No other persons requested party status to the application. New Britain Township took no position on the application.

13. Jeffrey Bruni and Sharon Vogt, two individuals who reside at 1093 New Galena Road, a property across New Galena Road from the Property, appeared at the hearing to comment and ask questions on the application.

14. The Property is Lot 1 of the Record Plan of Subdivision for Natasha Worthington, original plan date November 14, 2014, last revised March 25, 2015 (the "Plan"). *See* Exhibit A-1, Record Plan; *see also* Exhibit B-1, Deed.

15. The Property is 2.582 gross acres (2.192 net acres). The Property's shape most closely resembles a trapezoid. The Property has 336.61 feet of frontage along New Galena Road. *See* Exhibit A-1, Record Plan.

16. Along the Property's frontage, New Galena Road has an ultimate right-of-way of 40 feet from the centerline of the cartway. *See* Exhibit A-1, Plan.

17. A watercourse runs through the center of the Property. The watercourse runs generally perpendicular to New Galena Road, extending from New Galena Road to the rear lot line. The watercourse essentially bisects the Property into two (2) halves. A *See* Exhibit A-1, Record Plan.

18. The Plan shows a proposed building envelope and building footprint for a potential 2,400 square feet, 2 story dwelling in the portion of the Property on the western side of the watercourse. *See* Exhibit A-1, Record Plan.

19. The Applicant stated, and the Board finds, that the dwelling's footprint has not been finalized. The final design will be consistent with the footprint shown on the Plan. *See* Exhibit A-1, Record Plan.

20. The Plan shows that the proposed dwelling will be a private on-lot septic system. The proposed septic system is a sand mound, located in the eastern portion of the Property on the opposite side of the watercourse. *See* Exhibit A-1, Record Plan.

21. An area for a back-up reserve / alternate absorption area is shown adjacent to the primary sand mound. *See* Exhibit A-1, Record Plan; *see also* Exhibit A-4, Sewage Plan.

22. The Applicant stated, and the Board finds, that he and his wife have 3 young children. Due to the size of his family, the Applicant stated that they searched for a property on which they could build a 4 bedroom, 2.5 bathroom house.

23. When researching the Property for suitability, the Applicant stated, and the Board finds, that he investigated both the Plan as well as the Component 1 Sewages Facilities Planning Module (the "Planning Module") prepared by DelVal Soil & Environmental Consultants ("DelVal") for the Property's prior owner in support of and in connection with the Plan. *See* Exhibit A-2, Planning Module.

24. The Planning Module states that the project "proposes the improvement of a new lot with a five-bedroom single-family dwelling." *See* Exhibit A-2, Planning Module.

25. Based upon that representation, the Applicant stated, and the Board finds, that he and his spouse purchased the Property, and thereafter made application for permits to construct a 4 bedroom dwelling and the sand mound septic system shown on the Plan. *See* Exhibit A-1, Plan.

26. During the permitting process, the Applicant stated, and the Board finds, that he was advised by representatives of DelVal that the septic system design shown on the Plan would only support a 3-bedroom dwelling. *See* Exhibit A-1, Plan.

27. To correct this design deficiency, Russick stated, and the Board finds, that DelVal re-confirmed the Property's soil conditions, and re-engineered the sand mound to accommodate a 4-bedroom dwelling. *See* Exhibit A-4, Sewage Plan.

28. Russick stated, and the Board finds, that the re-designed sand mound is bigger than the septic system shown on the Plan. It is 4 to 6 inches higher, and has a 3:1 berm slope (instead of 2:1). *See* Exhibit A-4, Sewage Plan.

29. Russick stated, and the Board finds, that much of the Property's soils exhibit a limiting zone of only 11 to 15 inches. A minimum limiting zone of 20 inches is required. The limiting zone is the upper zone of a soil layer where its ability to treat wastewater is limited.

30. Russick stated, and the Board finds, that the Property's only area with a sufficient limiting zone is the space where the sand mound is shown on the Plan. *See* Exhibit A-1.

31. Russick stated, and the Board finds, that due to the need to keep the sand mound in its current location, and to enlarge it, portions of the mound will encroach within the required minimum 10 feet setback from the ultimate right-of-way line of New Galena Road. *See* Exhibit A-4, Sewage Plan.

32. Russick stated, and the Board finds, that the only portions of the sand mound that will be within this 10 feet setback area will be the top soil located within the toe of the berm's slope. *See* Exhibit A-4, Sewage Plan.

33. All the distribution and collection lines, which are located within the "rectangle" portion of the sand mound, will be located outside the ultimate right-of-way setback. *See* Exhibit A-4, Sewage Plan.

34. The sound mound will be located 33.5 feet from the edge of the New Galena Road cartway. The Applicant and Russick stated, and the Board finds, that a drainage ditch and some mature trees are located between the cartway edge and the ultimate right-of-way line. *See* Exhibit A-1, Plan.

35. Russick stated, and the Board finds, that the sand mound will not impact this drainage ditch nor the general stormwater flows in this area.

36. Russick stated, and the Board finds, that only one (1) large tree will be impacted, and possibly need to be removed, as a result of the re-designed sand mound. Russick stated this was the only adverse environmental impact.

37. The Applicant stated, and the Board finds, that the proposed 4-bedroom dwelling will be similar in size and design to the residences on the surrounding properties.

38. Due to the Property's poor soil conditions, and a watercourse that essentially bisects the Property, the Property lacks a location to build an on-lot sand mound septic system in compliance with the Zoning Ordinance's ultimate right-of-way setback regulations.

39. The Property contains unique physical characteristics that support relief for the proposed on-lot sand mound septic system to be located 2.37 feet from the ultimate right-of-way line of New Galena Road.

40. The setback limitation found at Zoning Ordinance §27-2115 imposes a hardship on the Property and the Applicant in that this provision prevents the installation of an on-lot sand mound septic system in support of a proposed detached single-family residential dwelling in the only area of the Property with suitable soils.

41. Subject to the conditions imposed herein, the proposed on-lot sand mound septic system, its size and location, is harmonious with the Property's size and consistent with uses of other properties in the surrounding neighborhood.

CONCLUSIONS OF LAW

1. Required public notice of the hearing was made by sufficient 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 on-lot septic system setback variance requested is a dimensional variance. 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. Ordinarily, 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.

5. 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).

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. The Board concludes that the Property's generally poor soil conditions, as well as the existing watercourse, establish a hardship under the *Hertzberg* standard.

8. The Property's only suitable area to construct the sand mound, while respecting buffer setbacks from the watercourse, is close to the ultimate right-of-way line of New Galena Road.

9. The Board concludes that most of the sand mound's operative parts (i.e. distribution lines) will be setback at least 10 feet from the New Galena Road ultimate right-of-way line.

10. Due to this design, the Board concludes that tny adverse impacts upon the sand mound's "hardware" from the setback encroachment are mitigated as only the berm's slope will be located within the ultimate right-of-way.

11. While the Board notes that the Applicant could construct a smaller (i.e. 3 bedroom) dwelling and install the compliant sand mound shown on the Plan, this would produce a residence not as in keeping with the houses in the surrounding neighborhood.

12. The Board acknowledges that the Applicant and his spouse exercised due diligence prior acquiring the Property, to potentially ensure they could construct a 4-bedroom dwelling. The Applicant should not unreasonably suffer from the design error between the Plan and the Planning Module restricting the dwelling to only 3-bedrooms.

13. Critical to the Board's conclusions herein is that the sand mound will be 33.52 feet from the edge of the New Galena Road cartway. Due to the generally rural character of the area, it is very unlikely New Galena Road will be widened to such an extent so as to adversely impact the sand mound.

14. 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, including hardship, to construct and install an on-lot sand mound septic system that is setback 2.37 feet from the ultimate right-of-way line of New Galena Road.

15. 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.

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

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

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

***** REMAINDER OF PAGE INTENTIONALLY LEFT BLANK *****

DECISION

AND NOW, this 18th day of DECEMBER, 2015, 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 §27-2115 to allow the on-lot sand mound septic system, proposed in connection with a 4 bedroom single-family detached dwelling, to be setback 2.37 feet at its closest point from the ultimate right-of-way line of New Galena Road, subject to the following conditions:

1. The proposed on-lot sand mound septic system, its dimensions, size, location and appearance, shall be in accordance with Exhibit A-4, and the representations and credible testimony made at the hearing.

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

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

DATE: 12/18/15 _____
Catherine B. Basilii, Chair

DATE: 12/18/15 _____
William Clarke, Member

DATE: 12/18/15 _____
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.

/Users/tjwalsh3/Documents/New Britain Township/Brigidi/DECISION.Brigidi.2015-11-19 hearing.docx

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated October 28, 2015. Attachments to Application: • Record Plan of Subdivision for Natasha Worthington, dated 11/14/14, last revised 3/25/14 • Portion of Record Plan with Text Box outlining requested relief • Deed dated October 27, 2015
B-2	Letter to The Intelligencer dated November 2, 2015 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on November 19, 2015
B-4	Proof of publication of public notice in 11/5/15 and 11/12/15 editions of The Intelligencer
B-5	Letter to Applicant and Attorney dated November 2, 2015 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 November 2, 2015
B-8	Affidavit of posting of public notice at property – notice posted on November 4, 2015 at 1:22 p.m.
B-9	Email message from E. Bradley, Township Manager, dated November 3, 2015, regarding Board of Supervisors taking no position on application
A-1	Record Plan (submitted as part of Application, Exhibit B-1)
A-2	Sewage Facilities Planning Module, Component 1, dated 12/2014, last revised 9/21/15
A-3	Curriculum Vitae of Max H. Russick, CPPS
A-4	Sewage System Design Plan, prepared by DelVal Soil & Environmental Consultants, Inc., dated 11/19/15