DATE OF DECISION: SEPT 15, 2016

DATE OF MAILING: SEPT 16, 2016

BEFORE THE NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

RE: APPLICATION OF CASADONTI HOMES, INC., FOR THE PROPERTY LOCATED ALONG CREEK ROAD, NEAR ITS INTERSECTION WITH CALLOWHILL ROAD, NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-11-110

FINDINGS OF FACT

1. On Thursday, August 18, 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 Casadonti Homes, Inc. (the "Applicant").

2. The Applicant is the record owner[1] of the property located along Creek Road, near its intersection with Callowhill Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-11-110 (the "Property").

3. Notice of the August 18, 2016 hearing was published in advance of the hearing in the Thursday, August 4, 2016 and Thursday, August 11, 2016 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-4.

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

5. Ambron posted notice of the hearing on the Property on August 3, 2016 at 9:57 p.m. *See* Exhibit B-8.

6. As the 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 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) with related improvements on the Property. A single-family

[1] The Applicant's name is spelled differently in the application (Cas*a*donti) than in the records of the Bucks County Board of Assessment and title report submitted with the application (Cas*o*donti). According to the witness at the hearing, as well as the Applicant's corporate records, the former spelling is correct. As such, that spelling will be used herein.

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 §§27-505 and 27-2400.f.1 to permit only 47% of the existing woodlands/forests on the Property to be protected, where the required minimum woodlands protection ratio is 80%.

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. Joseph A. Casadonti ("Casadonti"), principal and owner of the Applicant, testified in support of the application at the hearing.

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

a. Michelle Tataren-Peak ("Tataren-Peak"), 63 Callowhill Road, Chalfont, PA.

b. Mildred H. and Deborah White (the "Whites"), 71 Callowhill Road, Chalfont, PA.

c. Megan McGregor ("McGregor"), 213 Creek Road, Doylestown, PA 18901.

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

14. To the Property's north and east is a parcel identified as 213 Creek Road, further designated as Bucks County Tax Map Parcel No. 26-11-111 ("McGregor's Parcel"). McGregor's Parcel is owned by McGregor and Arthur Wawiernia. *See* Exhibit B-1, Permit Plan.

15. To the Property's south and west is a parcel identified as 71 Callowhill Road, further designated as Bucks County Tax Map Parcel No. 26-11-109 ("White's Parcel"). White's Parcel is owned by Mildred White. *See* Exhibit B-1, Permit Plan.

16. To the Property's south is a parcel identified as 53 Callowhill Road, further designated as Bucks County Tax Map Parcel No. 26-11-108 ("Tataren-Peak's Parcel"). Tataren-Peak's Parcel is owned by Tataren-Peak. *See* Exhibit B-1, Permit Plan.

17. The Property, McGregor's Parcel, White's Parcel and Tataren-Peak's Parcel were all created as part of the Willow Brook subdivision. The Willow Brook final plan is dated April 29, 1967. It is recorded in the Bucks County Recorder of Deeds office in plan book 45, page 18. *See* Exhibit B-1, Title Policy.

18. The Property is a 59,300 square feet (net) vacant lot located along Creek Road, near its intersection with Callowhill Road. The Property is shaped like a rectangle. *See* Exhibit B-1, Permit Plan.

19. The Property has 160 feet of frontage along Creek Road. Along the Property's frontage, Creek Road has an ultimate right-of-way of 25 feet from the centerline of the cartway. *See* Exhibit B-1, Permit Plan.

20. The Property's front and rear lot lines are 160 feet in length. Each side lot line is 400 feet long. The Property's lot width, measured at the front yard setback line, is 160 feet. *See* Exhibit B-1, Permit Plan.

21. Casadonti stated, and the Board finds, that the Property is a completely wooded lot. Steep slopes make up much of its front half. Based upon these characteristics, a sizeable portion of the Property consists of multiple protected natural resources. *See* Exhibits B-1, Permit Plan and A-1 through A-6, Photographs; *see also* Zoning Ordinance §§27-505 and 27-2400.

22. Casadonti stated, and the Board finds, that the Applicant proposes a modest single-family detached dwelling on the Property. The estimated footprint of the proposed dwelling is 2,800 square feet. *See* Exhibit B-1, Permit Plan.

23. Casadonti 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 in full compliance with the Zoning Ordinance's natural resource protection standards.

24. Casadonti stated, and the Board finds, that the dwelling will be located in the Property's center section, within a building envelope that fully complies with all applicable dimensional requirements. *See* Exhibit B-1, Permit Plan.

25. Casadonti stated, and the Board finds, that the dwelling will have actual front and rear yard setbacks of 109.8 feet and 205.8 feet, respectively. The dwelling will be setback 35 feet and 55 feet from the respective side lot lines. *See* Exhibit B-1, Permit Plan.

26. Casadonti stated, and the Board finds, that the proposed 11.27% impervious surface and 4.97% building coverage ratios will comply with the Zoning Ordinance. In the WS zoning district, the maximum permitted impervious surface and building coverage ratios are 12% and 5%, respectively. *See* Zoning Ordinance §27-502.b.1(g) and (h).

27. A new spur off an existing driveway from Creek Road will be used to access the Property. Casadonti stated, and the Board finds, that this existing driveway also serves the dwelling located on McGregor's Parcel. *See* Exhibits B-1, Permit Plan, and A-1, A-2 and A-3, Photographs.

28. Regarding stormwater management, Casadonti stated, and the Board finds, that the Property generally slopes upward from Creek Road to the rear lot line. Topography lines on the Permit Plan confirm that this increase in elevation is approximately 25 feet. *See* Exhibit B-1, Permit Plan.

29. To manage water runoff, two (2) rain garden infiltration areas are proposed. One garden will be directly in front of the dwelling. The other will be to the side/rear of the proposed house. *See* Exhibit B-1, Permit Plan.

30. Regarding sanitary sewage disposal, Casadonti stated, and the Board finds, that sufficient soils are located in front of the dwelling's proposed location, in front of one of the rain gardens, to support an on-lot septic system with related dose tank. *See* Exhibit B-1, Permit Plan.

31. Casadonti stated, and the Board finds, that all required permits and authorizations from the Bucks County Board of Health for the proposed septic system would be obtained prior to any construction.

32. Casadonti stated, and the Board finds, that potable water will be supplied to the dwelling by means of an on-lot well. The well, located behind the dwelling, meets all applicable separation and isolation distance requirements from the on-lot septic system. *See* Exhibit B-1, Permit Plan.

33. At 1.33 net acres (59,300 net square feet), the Property lacks the required minimum lot area for a Property in the WS zoning district. Generally, the minimum lot size for a property in the WS zoning district to be improved with a B1 use is 80,000 square feet. *See* Zoning Ordinance §27-502.b.1(a).

34. However, subject to certain other regulations, the minimum lot area is 1 acre for a property in the WS zoning district lawfully existing by recorded plan or deed prior to the effective date of the relevant Zoning Ordinance provision(s), and proposed to be improved with a single-family detached dwelling. *See* Zoning Ordinance §27-2102.a.1.

35. Casadonti and Ambron confirmed, and the Board finds, that the Property is a lawful pre-existing lot, as it has been in separate existence, at its current lot size of 59,000 net square feet, since the recording of the Willow Brook final record plan in or around 1967.

36. Regarding the woodlands/forests protection, Casadonti stated, and the Board finds, that mature trees are located throughout the Property. To construct all the foregoing improvements, on 47% of the regulated woodlands can be protected. This is short of the required minimum 80% protection ratio. *See* Zoning Ordinance §27-2400.f.1.

37. Casadonti stated, and the Board finds, that many of the trees in the Property's rear yard, behind the house, will not be disturbed during construction of the dwelling and the related improvements. *See* Exhibits B-1, Permit Plan; and A-1 and A-6, Photographs.

38. Casadonti stated, and the Board finds, that roughly 35% of the disturbance is for the rain gardens and the septic system. The remaining disturbance amount is attributable to the dwelling. *See* Exhibit B-5, Permit Plan.

39. Casadonti stated, and the Board finds, that modern stormwater management and sewage disposal system requirements necessitate much, if not all, of the excessive woodlands/forest disturbance.

40. Upon questioning by the Board, Casadonti stated that he intends to preserve as many trees as possible that are located in the various construction areas. Casadonti was agreeable to a condition that he submit a tree protection and removal plan, to be approved by the New Britain Township engineer, identifying and marking those trees that could be preserved in the various construction areas.

41. Casadonti stated that if the 80% protection standard were to be met, the dwelling could be constructed, but it would lack the required septic system and stormwater management facilities. The Board recognizes that is clearly an absurd result. *See* Exhibit B-1, Permit Plan.

42. Tataren-Peak, McGregor, and the Whites all expressed concerns about the impact the dwelling and the woodlands disturbance will have on their respective properties. Specifically, the protesting parties conveyed concerns regarding stormwater runoff and off-site tree protection.

43. Casadonti noted, and the Board finds, that none of Tataren-Peak's Parcel, McGregor's Parcel or White's Parcel have stormwater management facilities. Also, Casadonti stated, and the Board finds, that the limits of the woodlands/forests disturbance will be roughly 15 to 20 feet from the nearest side lot lines.

44. Due to the Property being a pre-existing non-conforming lot as to area, and the fact that much of the Property is improved with protected woodlands and/or steep slopes, the Property lacks any location to build a single-family detached dwelling in compliance with the Zoning Ordinance's natural resource protection regulations.

45. The Property contains unique physical characteristics that support relief for the variance requested by the Applicant to permit the construction of a single-family detached dwelling on the Property, with the related limits of woodlands/forests protections proposed on the submitted Permit Plan. See Exhibit B-1, Permit Plan.

46. The 80% woodlands/forest protection ratio found at Zoning Ordinance §27-2400.f.1 imposes a hardship on the Property and the Applicant in that this provision prevents the installation of a reasonably-sized single-family detached dwelling on a lawful pre-existing non-conforming lot.

47. Subject to the conditions imposed herein, the proposed single-family detached dwelling, 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 woodlands/forests natural resource protection variance requested by the Applicant 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 lawful non-conforming status, and the fact that the Property consists almost entirely of protected woodlands and/or steep slopes, establish a hardship under the *Hertzberg* standard.

8. While the dwelling could be located at various points throughout the Property, the Board concludes that the proposed location will minimize the amount of woodlands/forest disturbance, thereby reducing any perceived adverse impacts upon surrounding properties.

9. The Board concludes that a variance is justified from Zoning Ordinance §27-2400.f.1, to permit the disturbance of .705 acres, or 53%, of the woodlands/forests on the Property. Any amount of reasonable disturbance that is required to construct the dwelling, septic system and stormwater management facilities will necessarily exceed the permitted 20% disturbance ratio.

10. Critical to the Board's conclusions is the fact that many of the mature trees in the Property's rear yard and along the Property's common borders with White's Parcel and McGregor's Parcel will be protected during construction, and remain after completion of the dwelling.

11. To ensure that the to-be disturbed woodlands/forests are not simply "clear cut" but are removed effectively, as a condition of the relief granted herein, the Applicant shall prepare a tree removal plan for review and approval by the New Britain Township engineering, showing, at a minimum, an inventory of the affected trees and resource protection measures, where feasible.

12. 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 moden stormwater management controls.

13. To require the Applicant to preserve at least 80% of the woodlands/forests on the Property 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.

14. Provided the Applicant complies 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 protect on 47% of the regulated woodlands/forests in connection with constructing a single-family detached dwelling on the Property as set forth in the Permit Plan. *See* Exhibit B-1, Permit Plan.

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.

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DECISION

AND NOW, this 15th day of September, 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 a variance from Zoning Ordinance §27-2400.f.1 to permit .705 acres of woodlands on the Property to be disturbed, producing a 47% protection ratio, where the required minimum woodlands protection ratio is 80%, subject to the following conditions:

1. The proposed single-family detached dwelling, septic system and stormwater management facilities proposed for the Property, their respective dimensions, sizes, locations and appearances, shall be in accordance with evidence, exhibits, representations and credible testimony made at the hearing.

2. The Applicant shall prepare and submit a tree removal plan to New Britain Township, for review and approval by the Township's engineer. While not limiting the relief granted herein, this plan shall be designed to maximize the potential to preserve woodlands/forests in the areas of disturbance. All trees noted for protection shall be appropriately marked and protected at all times during construction, and be available for inspection by the Townhip's engineer.

3. Any future woodlands/forests disturbance on the Property, or any woodlands/forests disturbance that varies from the relief granted herein, shall require further approval from the Board.

4. 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: 9/15/16 _____
Catherine B. Basilii, Chair

DATE: 9/15/16 _____
William Clarke, Member

DATE: 9/15/16 _____
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 12, 2016. Attachments to the Application: • Permit Plan, dated 5/23/16, prepared by Holmes Cunningham • Title Insurance Report commitment (marked-up)
B-2	Letter to The Intelligencer dated 7/25/16 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on 8/18/2016
B-4	Proof of publication of public notice in 8/4/16 and 8/11/16 editions of The Intelligencer
B-5	Letter to Applicant dated 7/25/16 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 8/2/16
B-8	Affidavit of posting of public notice at property – notice posted on 8/3/16 at 9:57 a.m.
B-9	Engineering Review letter dated 6/27/16, issued by Gilmore & Associates
A-1	Photograph looking up from driveway
A-2	Photograph of front yard
A-3	Photograph of approximate location of house
A-4	Photograph of location of house from adjoining property
A-5	Photograph of Property from adjoining property
A-6	Aerial Photograph