DATE OF DECISION: MAY 20, 2016

DATE OF MAILING: MAY 20, 2016

BEFORE THE NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

RE: APPLICATION OF WILLIAM A. MUZIKA, SR., FOR THE PROPERTY LOCATED AT 66 SELLERSVILLE ROAD, NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-1-123

FINDINGS OF FACT

1. On Thursday, April 28, 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 William A. Muzika, Sr. (the "Applicant").

2. The Applicant is the record owner of the property located at 66 Sellersville Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-1-123 (the "Property").

3. Notice of the April 28, 2016 hearing was published in advance of the hearing in the Thursday, April 14, 2016 and Thursday, April 21, 2016 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 April 12, 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.

5. Ambron posted notice of the hearing on the Property on April 13, 2016 at 10:00 a.m.

6. The Property is located in the SR-2, Suburban Residential, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

7. The Applicant seek variances from Zoning Ordinance §27-801 to install and operate an agricultural retail use (use A3) in the SR-2 zoning district where such use is not permitted; and from Zoning Ordinance §27-300(a) to conduct more than one principal use on a lot.

8. 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.

9. The Applicant testified in support of the application at the hearing.

10. New Britain Township (the "Township") took no position on the Application. However, through a communication from Township manager Eileen Bradley, the Township submitted information to the Board noting that the Property is subject to a conservation easement (the "Easement") in favor of the Township. *See* Exhibits B-9 and B-10.

11. No other persons requested party status to the application. One individual appeared at the hearing to comment in support of the application.

12. According to the Applicant and Bucks County records, the Property is approximately 30.95 acres. The Applicant acquired the Property in 2013 from the Estate of Jessie M. Nowakowski. *See* Exhibit B-1, Deed.

13. The Applicant stated, and the Board finds, that the Property has been an operating agricultural and dairy farm use since the late eighteenth century. The Applicant claims that his is only the fifth family to own the Property and operate the farm since 1791.

14. The Property has frontage along Sellersville Road. The existing dwelling and buildings on the Property are reached by a recently relocated driveway. Access to the former driveway, which intersected Sellersville Road at a dangerous angle, has been blocked off. *See* Exhibit A-1, Aerial Photo.

15. The Property is improved with a single-family detached residential dwelling (use B1) and several farm buildings that support the general farming use (use A1). Uses A1 and B1 are permitted by right in the SR-2 zoning district. *See* Zoning Ordinance §27-801(a).

16. The Applicant and his family reside in the dwelling. The remaining buildings and structures consist of a large barn, a chicken coop and an existing farm storage building (the "Building") that will contain the proposed agricultural retail use. *See* Exhibit A-1, Aerial Photo.

17. The Building is an existing 3,200 square feet non-residential structure. It will not be expanded as part of the proposed agricultural retail use. No new utilities are proposed as the Building has existing sufficient connections.

18. The Applicant stated, and the Board finds, that he intends to operate the agricultural retail use (use A-3) from a 1,100 square feet renovated portion the Building. The remaining 2,100 square feet will continue to be used in connection with the general farming use. *See* Exhibit B-1, Graph Plot Plan.

19. The Applicant stated, and the Board finds, that the Building will be renovated to provide for a public market and vegetable sales area. The Building will also include an area for a future commercial kitchen, to be developed in accordance with all regulations issued by the Bucks County Department of Health. *See* Exhibit B-1, Graph Plot Plan.

20. The Applicant stated, and the Board finds, that the agricultural retail use will offer for sale to the public various products grown and/or produced on the Property. No off-site catering or other sales will occur.

21. The Applicant stated, and the Board finds, that the market use will sell seasonal fruits and vegetables grown on the Property. In addition, baked goods, jellies, honey from bees on the farm, eggs and other ingredients produced on the farm, will be made available for sale.

22. The Applicant stated, and the Board finds, that the farm's livestock will be raised naturally. All dairy and beef cattle will be grass fed and pastured. The chickens will be free range.

23. The Applicant stated, the Board finds, that meats from certain cattle and chickens raised on the Property will available for sale. These animals will be processed at off-site locations.

24. Lastly, the Applicant stated, and the Board finds, that he plans to build a micro dairy as a future project as part of the market. The micro dairy will be a pasteurizer for up to ten (10) cows, to enable the bottling of up to 15 gallons of milk every five (5) minutes.

25. The Applicant stated, and the Board finds, that the agricultural retail market will be operated by himself, his spouse and their 5 children. While not ruling out the possibility, the Applicant stated that he did not foresee the need to hire any new employees.

26. The Applicant stated, and the Board finds, that no new exterior lighting is proposed in connection with the market. The existing lighting between the barn structure and the Building sufficiently illuminates the area.

27. The Applicant stated, and the Board finds, that the market will be open from 6 a.m. to 6 p.m., Monday through Saturday. It will be closed on Sundays.

28. The Applicant stated, and the Board finds, that the agricultural retail use will be called "The Milk House Market," to reflect the Property's former history as an operating dairy farm.

29. An existing gravel area at the end of the driveway in front of the Building will provide parking spaces for up to fifteen (15) vehicles, depending on how the parked vehicles are arranged. *See* Exhibit B-1, Graph Plot Plan.

30. The Applicant stated, and the Board finds that second area, also able to accommodate 6 to 8 cars, will be located next to the Building. This stone area was the former location of a house trailer that has been removed. *See* Exhibit B-1 Graph Plot Plan.

31. The Applicant stated, and the Board finds, that conforming signage promoting and advertising the agricultural retail market will be installed along Sellersville Road.

32. The Applicant stated, and the Board finds, that the Property is bordered by lots improved with residential dwellings and agricultural activities. The parcels across Sellersville Road are also improved with residences.

33. As pointed out by the Township, while the Easement preserves the Property's conservation values in perpetuity by restricting the uses permitted on the Property, the Easement specifically allows the "direct retail sale to the public of crops and products harvested and produced principally on the Property." *See* Exhibit B-10, Easement, §4(b).

34. Upon questioning from the Board, the Applicant stated that he was agreeable to a condition requiring the operator of the agricultural retail use to own and/or occupy the residential dwelling on the Property.

35. The Property contains unique physical characteristics that support relief for the proposed agricultural retail use to be located on a Property in the SR-2 zoning district where such use is not permitted.

36. Due to the existing agricultural activity on the Property and the nature of the proposed A3 use, the Board finds that the proposed agricultural retail use is essentially another component of the existing general farming use.

37. As such, the permitted agricultural retail use and multiple principal use restrictions found at Zoning Ordinance §§27-801 and 27-300(a), respectively, impose a hardship on the Property and the Applicant in that these provisions prevent use of the Property for a retail use selling goods, produce and other products grown and produced from the general farm use.

38. Subject to the conditions imposed herein, the proposed agricultural retail use and the related structures, 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. As noted previously, the Board concludes that the Applicant's proposal constitutes an agricultural retail use (use A3).

3. An agricultural retail use is defined as "[t]he retail sales of agricultural products to the general public at roadside stands or other structures." *See* Zoning Ordinance §27-305.A3(a).

4. The Board concludes that the proposed "Milk House Market" store, where the products made available for sale to the public will be grown and/or principally produced on the Property, and sold from the existing Building, constitutes an agricultural retail use under the Zoning Ordinance. *See* Zoning Ordinance §27-305.A3(b)(2).

5. An agricultural retail use is not permitted in the SR-2 zoning district. As such, the Board finds that the request to conduct an agricultural retail use in the SR-2 zoning district is a request for a use variance.

6. In addition, the Board concludes that to conduct multiple principal uses on the Property by adding the Agricultural Retail use to the Property which contains two (2) principal uses is a request for a use variance.

7. Under Pennsylvania law, a use variance arises in situations 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).

8. In order to show entitlement to a use variance, 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.

9. 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).

10. An applicant can demonstrate "unnecessary hardship" for a use 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.

11. Addressing the multiple principal use variance request first, Zoning Ordinance §27-300(a) prohibits a property from being occupied by more than one (1) principal use except where specifically authorized. A "principal use" is defined as the "primary or predominant use of any lot or parcel." *See* Zoning Ordinance §27-201.

12. Based upon the credible evidence of the existing activities, the Board concludes that two (2) primary and predominant uses exist on the Property, specifically the single-family detached residential dwelling (use B1) and the general farming agricultural activities (use A1).

13. Uses B1 and A1 are both permitted by right in the SR-2 zoning district. *See* Zoning Ordinance §27-801(a).

14. The Board concludes that the agricultural retail use as described by the Applicant will add a third principal use to the Property. The Board further concludes that the Zoning Ordinance contemplates allowing a retail sales use in connection with a general farming use (use A1). *See* Zoning Ordinance §27-305.A1(b)(7).

15. However, under Zoning Ordinance §§27-305.A1(b)(1) and 27-305.A3(b)(1), an agricultural retail use conducted in connection with a general farming use must, *inter alia*, be *an accessory use* clearly subordinate to [the] primary agricultural uses.

16. An "accessory use" is defined as "a use of land...or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on same lot with the principal use." *See* Zoning Ordinance §27-201.

17. Based upon the credible testimony and evidence presented, the Board concludes that the proposed agricultural retail use, although it will be a principal use of the Property, will nonetheless by "incidental" to the general farming principal use of the Property.

18. The proposed agricultural retail market use will be operated within a 1,100 square feet area of the existing renovated Building, which is already devoted to the existing general farming use.

19. As the Board concludes that the proposed agricultural retail use is a principal use, with accessory features, under the Zoning Ordinance, the Property and the Applicant suffer from an unnecessary hardship sufficient to justify a variance from the multiple principal use restriction found at Zoning Ordinance §27-300(a).

20. Along these lines, the Board further concludes that the nature of the proposed agricultural retail use is sufficient to justify any variance necessary from Zoning Ordinance §27-801(a) to permit an A3 use to be conducted in the SR-2 zoning district.

21. The Board notes that the agricultural retail use must meet the yard and setback requirements of the related general farming use, and meet the buffer requirements of Part 28 of the Zoning Ordinance. *See* Zoning Ordinance §27-305.A3(b)(4) and (5), respectively.

22. The Board concludes that as the proposed agricultural use will be operated within Buildings, and within the setbacks and areas of the existing general farming use, subsection 305.A3(b)(4) is met.

23. Regarding the buffer, the Board notes that a minimum 25 feet wide buffer is required in the SR-2 Zoning district. *See* Zoning Ordinance §27-2801.

24. Zoning Ordinance §27-2800(c) permits the Board to waive or reduce the buffer requirements where sufficient planting and vegetation exists on an adjoining property. Although this waiver is generally made upon a request for a special exception, the Board finds that the variance relief requested sufficiently includes a request to waive the required buffer.

25. The Board concludes that by operating the agricultural retail use essentially in the center of the Property in the existing Building, any new buffer plantings are extraneous.

26. The Board concludes that attaching a reasonable condition to ensure that the proposed agricultural retail use is operated by an owner and/or occupant of the primary residential dwelling on the Property is appropriate and advances the purposes of the Zoning Ordinance for the SR-2 zoning district. *See* Zoning Ordinance §27-800.

27. As nearby residential properties exhibit similar agricultural and low-density residential activities, the proposed agricultural retail use, subject to the conditions attached herein, will be harmonious with the surrounding neighborhood.

28. 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 construct and install an agricultural retail use on a Property in the SR-2 zoning district with existing principal uses.

29. 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.

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

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

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

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DECISION

AND NOW, this 20th day of MAY, 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 Zoning Ordinance §27-801 to conduct an Agricultural Retail use in the SR-2 zoning district, when such use is not permitted as a principal use in that zoning district; and from Zoning Ordinance §27-300(a) to conduct more than one principal use on a lot, subject to the following conditions:

1. The proposed agricultural retail use's dimensions, size, location, improvements, operations and appearance shall be consistent with the plans, representations and credible testimony made at the hearing.

2. The agricultural retail use shall be operated by the occupant of the residential dwelling on the Property, whether such occupant is an owner or lessee of the Property.

3. The buffer requirements of Part 28 of the Zoning Ordinance are waived, and/or a variance is granted therefrom.

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: 5/20/16 _____
Catherine B. Basilii, Chair

DATE: 5/20/16 _____
William Clarke, Member

DATE: 5/20/16 _____
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.

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated March 23, 2016. Attachments to Application: • Aerial photos of Property • Site plan graph showing proposed improvements and us • Narrative of proposed use • Deed for Property dated April 30, 2013 • Determination of Zoning Officer dated March 22, 2016
B-2	Letter to The Intelligencer dated April 5, 2016 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on April 28, 2016
B-4	Proof of publication of public notice in 4/14/16 and 4/21/16 editions of The Intelligencer
B-5	Letter to Applicant dated April 5, 2016 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 April 12, 2016
B-8	Affidavit of posting of public notice at property – notice posted on April 13, 2016 at 10:30 a.m.
B-9	Email message from E. Bradley, Township Manager, dated April 25, 2016
B-10	Conservation Easement, dated May 3, 2000
A-1	Aerial photograph, showing relocated driveway