

DATE OF DECISION: NOV 19, 2020

DATE OF MAILING: NOV 20, 2020

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

**RE: APPLICATION OF 84 SCHOOLHOUSE ROAD, L.P.,
FOR THE PROPERTY LOCATED AT 84 SCHOOLHOUSE ROAD,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-5-3**

FINDINGS OF FACT

A. Procedural History.

1. On Thursday, September 19, 2019 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") opened a duly noticed hearing on the application of 84 Schoolhouse Road, L.P. (the "Applicant").

2. The Property that is the subject of this application is located at 84 Schoolhouse Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-5-3 (the "Property").

3. Notice of the September 19, 2019 hearing was published in advance of the hearing in the Thursday, September 5, 2019 and Thursday, September 12, 2019 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the September 19, 2019 hearing was sent by first class mail on August 30, 2019 by Kelsey Harris ("Harris"), 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-8.

5. Harris posted notice of the September 19, 2019 hearing on the Property on September 3, 2019 at 1:22 p.m. *See* Exhibit B-9.

6. No witness testimony was presented following the opening of the hearing on September 19, 2019. At the request of counsel for the Applicant, the hearing was immediately continued on the record to November 21, 2019. *See* Exhibits B-10 and B-11.

7. On Thursday, November 21, 2019, the Board resumed the continued hearing at the New Britain Township building. Counsel for the Applicant and New Britain Township (the "Township") appeared at this continued hearing. The Board notes that by law, the Township is automatically a party to the hearing. *See* 53 P.S. §10908(3).

8. At the November 21, 2019 hearing, the Applicant's counsel and the Township's solicitor jointly requested that the hearing be continued again.

9. The Applicant's counsel stated that the Applicant intended to submit an amended application to address additional areas of relief raised by the Township. The Board advised that it would need to provide new public notice of the amended relief sought.

10. Following a discussion with the Board, the Board voted to conditionally grant the requested continuance. The next hearing date was scheduled on the record for February 20, 2020.

11. The Board expressly conditioned its vote to grant the second requested continuance on the Applicant submitting the amended application on or before January 31, 2020, to allow the Board sufficient time to provide the required public notice.

12. The Applicant's representatives submitted the amended application and revised plan on January 21, 2020. *See Exhibit B-12.*

13. Notice of the February 20, 2020 hearing was published in advance of the hearing in the Thursday, February 6, 2020 and Thursday, February 13, 2020 editions of *The Intelligencer*. *See Exhibit B-19.*

14. Notice of the February 20, 2020 hearing was sent by first class mail on February 4, 2020 by Harris 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-21.*

15. Harris posted notice of the February 20, 2020 hearing on the Property on February 5, 2020 at 9:17 a.m. *See Exhibit B-22.*

16. On February 20, 2020, the Board resumed the hearing. Many people attended this hearing. The Board received and granted requests for party status to the hearing. The Applicant began presentation of its witness testimony and evidence.

17. The Applicant did not conclude presentation of its case in chief by the end of the February 20, 2020 hearing. The Board continued the hearing on the record to March 26, 2020.

18. On March 6, 2020, the Governor declared a disaster state of emergency (the "COVID-19 Disaster Emergency") in the Commonwealth of Pennsylvania due to the coronavirus disease (COVID-19) pandemic.¹

19. The COVID-19 Disaster Emergency, and the regulatory mitigation measures implemented thereunder, limit the number of persons that can be present in an indoor setting. These measures prevented the Board from resuming the in-person hearing on March 26, 2020 at the New Britain Township Building.

20. On April 20, 2020, the Governor signed Act 15 of 2020 ("Act 15") into law. Effective immediately, Act 15 provides a limited suspension of all statutory deadlines for the

¹ The Governor renewed the declaration on June 3, 2020, and again on August 31, 2020.

Board to hold hearings and act upon applications during the pendency of the COVID-19 Disaster Emergency.

21. At all times relevant hereto, the COVID-19 Disaster Emergency has been in effect. As required by Act 15, the Board provided written notice dated May 6, 2020 to the Applicant's counsel of the Applicant's right to request a hearing. *See Exhibit B-24.*

22. On Wednesday, September 10, 2020 at 7:30 p.m. at the National Shrine of Our Lady of Czestochowa (the "Shrine"), 654 Ferry Road, Doylestown, New Britain Township, the Board held a duly noticed hearing on the Applicant's application. *See Exhibit B-26.*

23. Notice of the September 10, 2020 hearing was published in advance of the hearing in the Thursday, August 27, 2020 and Thursday, September 3, 2020 editions of The Intelligencer. *See Exhibit B-27.*

24. Notice of the September 10, 2020 hearing was sent by first class mail on August 25, 2020 by Harris 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-28.*

25. Harris posted notice of the resumed September 10, 2020 hearing on the Property on September 1, 2020 at 10:56 a.m. *See Exhibit B-29.*

26. On September 10, 2020, the Board resumed the hearing. The hearing was thereafter continued on the record, resumed and concluded on October 15, 2020 at the Shrine.

27. On the record at the various hearings, all parties waived the statutory requirements that (a) the Board hold subsequent hearings within forty-five (45) days after the prior hearing; (b) the Applicant complete presentation of its case-in-chief within 100 days of the first hearing on the application; and (c) the Applicant receive at least 7 hours of hearings within 100 days of the first hearing, including the first hearing.

28. Following the presentation of the evidence, public comment, and oral argument of the parties at the October 15, 2020 hearing, the Board unanimously voted to deny the application. This written Decision is issued in furtherance of the Board's vote.

B. Parties and Application.

29. The Applicant is the record owner of the Property. The Applicant is a Pennsylvania limited partnership. *See Exhibit A-1, Deed.*

30. As the Property's record owner, the Applicant has the requisite standing to prosecute this zoning hearing board application.

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

32. The Applicant proposes a B3 use, Single-Family Semidetached Dwelling, residential subdivision and land development of the Property, consisting of 12 twin dwelling units² (the “Project”). See Exhibit B-14, Plan.

33. The Applicant seeks a special exception pursuant to Zoning Ordinance §27-901.b and §27-3103 to permit the Project (i.e. the proposed B3 use) on the Property in the RR zoning district.

34. To allow the Project, the Applicant also seeks variances from the following sections of the Zoning Ordinance:

- a. From §27-903.a and §27-2101.a to permit 11 of the 12 lots containing the dwelling units to have less than the required minimum lot area of 15,000 square feet;
- b. From §27-903.a and §27-2103 to permit 9 of the 12 lots containing the dwelling units to have less than the required minimum lot width of 75 feet;
- c. From §27-903.a and §27-2105 to permit all the lots containing the dwelling units to have a 20 feet front yard setback, where the required minimum front yard setback is 50 feet;
- d. From §27-2105 and §27-2108.f.3 to permit all the lots containing the dwelling units to have a 50 feet rear yard setback, where the required minimum rear yard setback is 60 feet;
- e. From §27-2108.f.3 to permit 10 of the 12 lots containing the dwelling units to have a building coverage ratio greater than the maximum 12% ratio permitted by right;
- f. From §27-2108.f.3 to permit 5 of the 12 lots containing the dwelling units to have an impervious surface ratio greater than the maximum 26% ratio permitted by right;
- g. From §27-2400.f.1 to permit 27.2% of the existing woodlands / forest on the Property to be disturbed, where the maximum amount of permitted disturbance is 20% (80% protection ratio); and
- h. From §27-2113 and §27-2401.b to permit all of the lots containing the dwelling units to have a building envelope that is less than the required minimum building envelope of 10,000 square feet; and to permit buildings to be erected on such lots and in such building envelopes.

² The Applicant submitted, introduced, and provided testimony on numerous plans for the Project throughout the several hearings. The Board considers the Conceptual Site Plan submitted on January 21, 2020 (and identified as Exhibit B-14) to be the Applicant’s definitive plan for the Project, and is the plan upon which this Decision is based.

35. Introduced as exhibits at the hearings 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.

36. The following individuals testified on behalf of the Applicant in support of the application and the Project at the hearing:

- a. Robert Cunningham, P.E. (“Cunningham”), professional civil engineer;
- b. Vincent Panches (“Panches”), certified arborist; and
- c. David C. Babbitt, AICP (“Babbitt”), professional land planner.

37. The Township appeared as an active party at the hearings opposing the Project, the application and the relief sought therein. Harris testified on behalf of the Township’s position at the hearings.

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

- a. Paula Robertson (“Robertson”), 549 Meadow Road, New Britain Township; and
- b. Michael and Carol Herceg (collectively “Herceg”), 78 Schoolhouse Road, New Britain Township.

39. Where relevant in this written Decision, Robertson and Herceg are collectively referred to as the “Protestants.” All the Protestants testified on their own behalf at the hearings, and each objected to the relief requested, as amended.

40. A few individuals appeared at the hearings to comment and ask questions about the Project and the application during the public comment portion of the hearings.

C. The Property and Surrounding Tracts.

41. The Property is 84 Schoolhouse Road. It is located along the west side of Schoolhouse Road, across from its intersection with Boulder Drive. *See* Exhibit B-14, Plan.

42. According to the Applicant’s witnesses and Bucks County records, the Applicant acquired the Property in or around July 2017. *See* Exhibit A-1, Deed.

43. The Property is normally shaped, like a rectangle. The Property’s gross site area is 9.136 acres (397,947 square feet). Deducting the 0.334 acres (14,547 square feet) of the Property that is within the ultimate right-of-way of Schoolhouse Road, the Property’s base site area is 8.802 acres (383,400 square feet). *See* Exhibit B-14, Plan.

44. The Property has 423.28 feet of frontage along Schoolhouse Road, and is 423.43 feet wide along its rear lot line. The side lot lines are 946.03 feet and 934.12 feet long. *See* Exhibits B-14, Plan; and A-2, Existing Conditions Plan.

45. The Property is improved with a one-story, ranch-style single-family detached residential dwelling, a detached garage, and 2 storage sheds. According to Bucks County records, the dwelling was constructed in 1961. *See Exhibit A-2, Existing Conditions Plan.*

46. Cunningham stated, and the Board finds, that all of these structures, as well as the existing driveway, will be removed as part of the Project. *See Exhibit B-14, Plan.*

47. The existing dwelling is in the Property's northeast corner, close to the front lot line and eastern side lot line. Its front wall is oriented toward Schoolhouse Road. The storage sheds are behind the garage and dwelling. *See Exhibit A-2, Existing Conditions Plan.*

48. An asphalt driveway with a loop spur connects Schoolhouse Road to the existing dwelling and detached garage. The driveway intersects Schoolhouse Road at the Property's front northeast corner. *See Exhibit A-2, Existing Conditions Plan.*

49. The majority of the Property's rear section is woodlands. These natural resources comprise 7.32 acres of the Property. *See Exhibit B-14, Plan.*

50. Cunningham stated, and the Board finds, that alluvial soils are in the rear-most portion of the Property. Although no wetlands are present, regulated waters exist on the Property. These conditions were confirmed by site inspections by a soil scientist and biologist. *See Exhibit A-6, Report.*

51. The regulated waters are an unnamed watercourse traversing the Property's southeast corner. The channel begins at a checker-block and concrete wall level spreader stormwater management facility located at the end of Meadow Drive adjacent the Property's eastern side lot line. *See Exhibits B-14, Plan; and A-2, Existing Conditions Plan.*

52. After the stormwater facility, the channel runs in a southerly direction along the Property's eastern side lot line. This is also the rear lot line of the parcels in the adjoining County Line Park residential subdivision. *See Exhibit A-2, Existing Conditions Plan.*

53. At the far end of the eastern side lot line, the drainage channel turns west and enters the Property. The watercourse then travels at an angle across the Property's corner. It exits the Property across the rear lot line on to lands owned by the Township. *See Exhibit A-2, Existing Conditions Plan.*

54. The right-of-way of Meadow Drive extends to the Property's eastern side lot line. The paved and travelable section of Meadow Drive ends in front of the checker-block stormwater facility. Meadow Drive itself does not reach the Property. *See Exhibit A-2, Existing Conditions Plan.*

55. Boulder Drive intersects with Schoolhouse Road across from the Property, roughly in the center of the Property's frontage. Schoolhouse Road curves away from the Property at the front northwest corner. *See Exhibit A-2, Existing Conditions Plan.*

56. Robertson owns the lot to the north of Meadow Drive, and adjacent to the Property's eastern side lot line. The Herceg tract is directly north of Robertson's parcel, and abuts the Property along Schoolhouse Road. *See Exhibit A-2, Existing Conditions Plan.*

57. Cunningham stated, and the Board finds, that the County Line Park residential subdivision, located to the east of the Property, are primarily single-family detached dwellings on half-acre lots. *See* Exhibit A-2, Existing Conditions Plan.

58. Cunningham stated, and the Board finds, that north of the Property is the Colebrook residential subdivision (“Colebrook”). Colebrook is a planned residential development approved in or around 2015 containing twin and townhome dwellings. *See* Exhibit A-2, Existing Conditions Plan.

59. Cunningham stated, and the Board finds, that across Schoolhouse Road from the Property is another residential development. This development is along Boulder Drive, and contains single-family detached and townhome-style dwellings.

D. The Project.

60. Cunningham stated, and the Board finds, that the Project is designed to purposely create lots that lack the minimum lot area, lot width, setback and other dimensions required by the Zoning Ordinance. *See* Exhibit B-14, Plan.

61. Cunningham stated, and the Board finds, that the Applicant’s reasons for this choice are to “minimize impacts” to the lots in the adjoining County Line Park subdivision; site the new dwellings near Schoolhouse Road; leave the rear of the Property in its natural state; and not connect to Meadow Road.

62. Cunningham stated that the definitive plan (Exhibit B-14) is designed to produce the same dwelling unit yield as the alternative plans that the Applicant’s representatives believe require fewer variances from the Zoning Ordinance. *See* Exhibits B-14, Plan; and A-4, Concept Plan.

63. Cunningham stated, and the Board finds, that the Project will cluster the 12 dwelling units in the Property’s front section on separate small lots.³ *See* Exhibit B-14, Plan.

64. Cunningham stated, and the Board finds, that the Property’s rear section will be untouched. It will be a single large common open space lot, the exact size of which is not depicted on any plans. *See* Exhibit B-14, Plan.

65. Cunningham stated, and the Board finds, that each home will be a twin dwelling, with a 2 car garage and 2 car driveway on each lot. One (1) overflow parking space will be provided for each unit. *See* Exhibit B-14, Plan.

66. Cunningham stated, and the Board finds, that the Project will only utilize Schoolhouse Road for access. Under this front-cluster design, a connection to Meadow Road will not be pursued. *See* Exhibit B-14, Plan.

³ The Applicant also introduced a Planned Community layout for the Project, without individual lots for the dwellings. *See* Exhibit A-9, Planned Community Plan. The Applicant’s representatives presented this as an alternative sketch, without withdrawing any of the zoning relief sought. As such, the Board cannot consider Exhibit A-9 the definitive plan upon which the Applicant’s prayer for relief is premised.

67. Cunningham stated, and the Board finds, that the roadway serving the dwellings will be a cul-de-sac street with the 12 overflow parking spaces between 2 landscaped islands in the center. *See Exhibit B-14, Plan.*

68. Cunningham stated, and the Board finds, that the new road accessing Schoolhouse Road will align with Boulder Drive. *See Exhibit B-14, Plan.*

69. Cunningham stated, and the Board finds, that lots 1 and 12 will abut Schoolhouse Road and the new road. The remaining lots will front on only the internal road. *See Exhibit B-14, Plan.*

70. Cunningham stated, and the Board finds, that each dwelling unit will be roughly 30 feet wide by 50 feet in depth. The building footprint for each twin dwelling will be 1,550 square feet. *See Exhibit B-12, Plan.*

71. Cunningham stated, and the Board finds, that the Project proposes tract sizes as small as 6,582 square feet (lot 8) for the dwelling lots. Only lot 1 with 16,497 square feet provides at least the required minimum lot area of 15,000 square feet. *See Exhibit B-14, Plan.*

72. Cunningham stated, and the Board finds, that only 3 of the lots provide the required minimum lot width of 75 feet. The undersized lots range from 71.1 feet in width (lot 10) to 40.2 feet wide (lot 7). *See Exhibit B-14, Plan.*

73. Cunningham stated, and the Board finds, that all of the lots provide a reduced front yard setback of 20 feet. Only the corner lots along Schoolhouse Road (lots 1 and 12), which each have 2 front yards, provide at least 1 front yard with the required minimum front yard setback of 50 feet. *See Exhibit B-14, Plan.*

74. Cunningham stated, and the Board finds, that all of the lots have only a 50 feet rear yard setback, instead of the required 60 feet. The building footprints on lots 5 through 9, inclusive, show these dwellings' rear building wall precisely at this smaller setback line. *See Exhibit B-14, Plan.*

75. Cunningham acknowledged, and the Board finds, that the decks on lots 4 through 10, inclusive, project into the rear yard. Although no dimensions were provided, Cunningham stated that these porch projections will comply with the Zoning Ordinance's limitations only if the rear yard setback variance is granted. *See Exhibit B-14, Plan; see also Zoning Ordinance §27-2105.b.*

76. Cunningham stated, and the Board finds, that none of the dwelling lots provide a building envelope of at least the required minimum 10,000 square feet. No evidence was presented showing the actual size of the various building envelopes. *See Exhibit B-14, Plan.*

77. Absent a variance, Cunningham acknowledged that a dwelling unit cannot be constructed on a lot lacking the required minimum lot area, lot width, and building envelope. *See Exhibit B-14, Plan; see also Zoning Ordinance §27-2101.a, §27-2103, and §27-2113.b.*

78. Cunningham stated, and the Board finds, that only lots 1 and 12 (the corner lots along Schoolhouse Road) maintain a building coverage ratio less than the maximum 12%

permitted ratio. The excess ratios are a product of the Applicant purposely providing undersized lots. *See Exhibit B-14, Plan.*

79. Similarly, Cunningham stated, and the Board finds, that 5 of the 12 dwelling lots will have an impervious surface ratio that will exceed the maximum 26% permitted ratio. The intended small lot size is the primary driver of these transgressive ratios. *See Exhibit B-14, Plan.*

E. Stormwater Management; Natural Woodland Resources.

80. Regarding stormwater management, Cunningham stated, and the Board finds, that runoff presently sheet flows toward the Property's southwest corner. Surface water from the Property does not generally drain toward Meadow Road. *See Exhibit A-2, Existing Features Plan.*

81. Cunningham stated, and the Board finds, that very little of the Property's stormwater actually reaches the checker-block level spreader facility in Meadow Road or the watercourse in the rear corner. *See Exhibit A-2, Existing Features Plan.*

82. Topography lines on the definitive plan (Exhibit B-14) confirm that the Property's low point is the southwest corner. The Property has roughly a 20 feet drop in elevation from the northeast corner high point to the rear southwest corner. *See Exhibit A-2, Existing Features Plan.*

83. Cunningham stated, and the Board finds, that the Project proposes two (2) stormwater management basins⁴. One basin will be along lot 1 next to Schoolhouse Road. The other larger basin is behind Lots 5 and 6. A stormwater easement will be between lots 6 and 7. *See Exhibit B-14, Plan.*

84. Cunningham stated, and the Board finds, that neither basin is presently engineered. Cunningham stated that each basin will eventually be sufficiently sized to handle all runoff and infiltration requirements applicable to the Project. *See Exhibit B-14, Plan.*

85. Regarding the existing woodlands, Cunningham stated, and the Board finds, that 7.32 acres of the Property consist of qualifying woodlands. This means roughly 80% of the Property's gross area is comprised of natural forest resources. *See Exhibit B-14, Plan.*

86. Cunningham stated, and the Board finds, that the Project protects only 72% of the existing woodlands. This 8% protection deficit equates to roughly one-half excess acre of the protected woodlands being disturbed. *See Exhibit B-14, Plan.*

87. PUNCHES stated, and the Board finds, that the most prevalent woodland tree on the Property is the white ash. PUNCHES stated that at least 25% of these white ash trees are dead. *See Exhibit B-14, Plan.*

⁴ The Applicant presented alternative plans showing a third basin that would alleviate runoff problems along the rear of the abutting lots in the County Line Park subdivision. *See Exhibit A-8.* This third basin increases the needed woodlands disturbance variance on the Property. As the Applicant's representatives did not formally amend their request for this augmented variance, the Board considers this plan to be merely illustrative.

88. Punches stated, and the Board finds, that the other tree found in measurable quantities on the Property is the maple. Punches stated, that roughly 10% of the maples have structural defects and should be removed. *See* Exhibit B-14, Plan.

89. Punches stated, and the Board finds, that most of the healthier trees are located to the rear of the Property. These trees will be undisturbed. The weaker and dead trees to be removed are in the front of the Property, where the Project will site the dwellings. *See* Exhibit B-14, Plan.

90. Upon questioning from the Board, Punches acknowledged that he did not analyze how many trees need to be removed to allow the Project. His opinion was limited to the condition of the existing tree inventory. *See* Exhibit B-14, Plan.

F. Economic Analysis; Alternative Concept Plans.

91. Babbitt stated, and the Board finds, that the Project will create more assessable dwellings and land in New Britain Township for real estate tax purposes. *See* Exhibit A-11, Report.

92. The Board finds that this is not unique to the Property. In any new residential development, new homes create additional assessable properties. *See* Exhibit A-11, Report.

93. Babbitt stated his opinion that the revenues from the Project will more than offset the added costs for services to the Township. On this basis, Babbitt stated his opinion that the Project will produce an annual fiscal surplus for the Township. *See* Exhibit A-11, Report.

94. Babbitt stated, and the Board finds, that his fiscal analysis was limited to the proposed B3 use. Babbitt did not analyze development options of the Property using different types of housing (i.e. a single-family detached dwelling project, use B1). *See* Exhibit A-11, Report.

95. Upon questioning from the Board, Babbitt acknowledged that he did not perform a minimum yield or density analysis of the Property while accounting for development costs, to ascertain the number of dwelling units needed to allow the Applicant a reasonable use of the Property and a reasonable return. *See* Exhibit A-11, Report.

96. Cunningham stated, and the Board finds, that the Applicant's initial and alternative Project designs show the Property being developed for 12 dwelling units.⁵ Access to the dwelling units is from Schoolhouse Road and through an extension of Meadow Road (the "Meadow Road Plans") *See* Exhibits A-4 and A-12, Meadow Road Plans.

97. Cunningham stated that according to his calculations, other than the need for a special exception approving the proposed B3 use, extensive zoning relief is not necessary to improve the Property with the Project pursuant to either of the Meadow Road Plans. *See* Exhibits A-4 and A-12, Meadow Road Plans.

⁵ At the October 15, 2020 hearing, the Applicant introduced *another* alternative concept plan showing only 10 dwelling units. *See* Exhibit A-12, Concept Plan. Again, the Board finds this plan mere illustrates another development option for the Property.

98. Cunningham opined that the only zoning relief necessary to improve the Property with either of the Meadow Road Plans is a variance to allow woodlands in the building envelope. The Applicant's counsel and Cunningham referred to the Meadow Road Plans as close to "by right" plans. *See Exhibits A-4 and A-12, Meadow Road Plans.*

99. The Applicant did not present into evidence any formal review of either Meadow Road Plan by the New Britain Township engineer or Harris to verify their claim that the Property could be developed pursuant to the Meadow Road Plans with limited zoning relief.

100. The Applicant's counsel stated that the Applicant does not wish to develop the Property pursuant to the Meadow Road Plans. Instead, the Applicant's counsel stated that his client prefers the Project subdivision plan submitted with the amended application and presented to the Board (Exhibit B-14).

101. Upon questioning from the Board, Cunningham confirmed that no plans for any alternative permitted residential uses were designed. Specifically, uses B1 (single-family detached), B2 (cluster), and B4 (two-family detached) are also permitted in the RR zoning district. *See Zoning Ordinance §27-901.*

102. The Township, the Protestants, as well as the residents in attendance at the hearing who live near the Property, objected to the requested relief on the grounds that developing the Property for 12 dwelling units with the numerous variances sought is not necessary to permit a reasonable use of the Property.

103. The Applicant maintains that the Property's size and amount of woodlands are unique physical characteristics that impose an unnecessary hardship on the Property sufficient to support the several variances and special exception for the Project.

104. The Board rejects this position. These characteristics are not unique. They do not relate to whether the Property is presently being denied a reasonable use if the variances to allow the Project are proscribed.

105. The Applicant also maintains that the Project's cluster-layout with the dwellings closer to Schoolhouse Road represents better planning while producing the same number of dwelling units as the Meadow Road Plans.

106. The Board rejects this position. Absent a showing of hardship, no tract is guaranteed a minimum yield simply because a separate layout is preferrable. To be sure, the Zoning Ordinance expressly codifies that intuitive limitation. *See Zoning Ordinance §27-2403.*

107. The application requests more than the minimum deviation from the terms of the Zoning Ordinance to permit a reasonable use of the Property. Hence, the application does not satisfy all the relevant criteria that must be shown to permit the Board to grant the requested variances nor the special exception.

108. As the Property is presently being reasonably used as zoned for a single-family detached residential dwelling, the Property is free of any hardship that supports the sweeping relief needed to allow the Project.

CONCLUSIONS OF LAW

1. Required advanced public notice of the date, time and location of the several hearings was made by sufficient advanced publication, posting and mailing to affected property owners.

2. When a landowner applies for a special exception, the Board's function is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the Zoning Ordinance and merit the granting of the special exception. *See Broussard v. Zoning Board of Adjustment of City of Pittsburgh*, 907 A.2d 494 (Pa. 2006).

3. A "single-family semidetached dwelling" is defined as "one dwelling unit accommodating one family that is attached to another unit and completely separated from that unit by a vertical unpierced fire wall. Only one additional unit and one side yard shall be adjacent to each dwelling unit. Each unit shall be on a separate lot." *See Zoning Ordinance §27-305.B3.*

4. Based upon the description of the dwelling units in the Project by the Applicant's witnesses, the Board concludes that the Applicants' Project proposes 12 single-family semidetached dwelling units. *See Exhibit B-14, Plan.*

5. As previously found, a single-family semidetached dwelling use (use B3) is permitted in the RR, Residential, zoning district by special exception. *See Zoning Ordinance §27-901.b.*

6. Zoning Ordinance §27-3103.a provides that "the Board shall grant a special exception only if it finds adequate evidence that any proposed development submitted will meet all of the following general requirements as well as any specific requirements and standards listed [in this Zoning Ordinance] for the proposed use."

7. Regarding the general criteria applicable to a special exception, Zoning Ordinance §27-3103.a provides that the Board shall, among other things, require the proposed use and location to be:

- a. in accordance with the New Britain Township Comprehensive Plan and consistent with the spirit, purposes and intent of [the Zoning Ordinance];
- b. in the best interests of [New Britain] Township, the convenience of the community, the public welfare and be a substantial improvement to the property in the immediate vicinity;
- c. suitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;
- d. in conformance with all applicable requirements of [the Zoning Ordinance];

- e. suitable in terms of effects on highway traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard; and
- f. in accordance with sound standards of subdivision practice where applicable.

8. The Board must refuse an application for a special exception where the application fails to comply with the general and specific Zoning Ordinance criteria applicable to the proposed single-family semi-detached dwelling use (use B3). *See Lafayette College v. Zoning Hearing Board of City of Easton*, 588 A.2d 1323 (Pa. Commw. 1991).

9. Also, even where an applicant demonstrates compliance with the general and specific criteria of the Zoning Ordinance, the Board shall refuse an application for special exception where opponents to the application establish by a preponderance of evidence that the application is contrary to the health, safety and morals of general welfare of the community at large.

10. Regarding the requested variances, in order to show entitlement to a variance, use or dimensional, an applicant must demonstrate all the following elements where relevant in any given case:

- 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 variance that will afford relief and will represent the least modification possible of the regulation at issue.

11. The Board finds that the lot area, lot width, front yard setback, rear yard setback, building coverage ratio, impervious surface ratio, building envelope size and natural resource protection variances requested are dimensional variances. A dimensional variance involves a request to adjust or vary a zoning ordinance provision by degree to be able to otherwise use a property consistent with the regulations. *See Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494 (Pa Commw. 2015); *see also Constantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Commw. 1994).

12. 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.

13. 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).

14. Under the standard announced in *Hertzberg*, 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.

15. 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.

16. Nevertheless, 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).

17. In the instant matter, the Board concludes that the Applicant is not entitled to the numerous variances under the *Hertzberg* standard to develop the Property for the Project. The Applicant desires to construct single-family semidetached dwelling units, but without any lot that meets the Zoning Ordinance's dimensional requirements for the B3 use.

18. Conducting a 12 semidetached dwelling unit subdivision on such undersized lots was clearly not contemplated by the Zoning Ordinance. Whether this criteria was meant to apply to a different layout of 12 residential units is not for the Board to discern. The degree of relief sought by the Applicant is simply too large.

19. Based upon the vast relief requested, the Board concludes that the Project essentially asks the Board to make a legislative determination and conjure a new use. Such a trick falls within the sole discretion of the Township's Board of Supervisors.

20. The Board concludes that not only does the Property presently exhibit a reasonable use, a separate reasonable use of the Property exists that requires less deviation from the Zoning Ordinance.

21. Assuming, but not conceding, that the Applicant's analysis of the Property's development potential under the Meadow Road Plans is accurate, the Board concludes that a reasonable use of the Property is available with the need for only limited variance relief from or under the Zoning Ordinance.

22. That finding and conclusion alone defeats any application to develop the Property for the Project as set forth in the Applicant's definitive plan (Exhibit B-14).

23. However, the Board concludes that the Property's current single-family detached dwelling residential use (use B1) is a permitted and reasonable use under the circumstances.

24. The Board concludes that comparative analyses of alleged "by right" plans to a proposed plan that requires immense zoning relief distracts from the actual issue, which is whether the Applicant has proven the relevant elements, by substantial evidence, to demonstrate his entitlement to a variances for the Project.

25. The Board notes that Section 910.2 of the Pennsylvania Municipalities Planning Code (the "MPC"), 53 P.S. 10910.2, authorizes the Board to grant variances provided that it makes findings regarding all of the factors "*where relevant in a given case*" (emphasis added). See MPC §10910.2(a); see also *Somers v. Stroud Township Zoning Hearing Board*, 913 A.2d 306 (Pa. Commw. 2006).

26. While all the criteria are *required* to be demonstrated in any variance case, the implication of the "where relevant in a given case" language is simply that if a particular factor is not relevant in a particular case, the Board need not make a specific factual finding. See *Somers, supra*, at 312; see also *Vaughn v. Zoning Hearing Board of Township of Shaler*, 947 A.2d 218, 223 fn 11 (Pa. Commw. 2008).

27. The Board concludes that this prefatory language does not abrogate the Applicant's obligation to demonstrate compliance with each variance factor.

28. Based on the Property's physical characteristics, the Board concludes that the Applicant has not satisfied the factors set forth in MPC §10901.2(a).⁶

29. The Board concludes that the Property lacks any unique physical characteristics. Other than the Property's woodlands and drainage channel, the Property exhibits common natural features. The Property's depth and slope do not rise to the level of being unique features.

30. The Board concludes that none of the Property's physical characteristics have prevented the Property from being reasonably used since its creation in conformance with the Zoning Ordinance. To be sure, the Property has been used, free of Zoning Ordinance infraction, for a permitted residential dwelling since 1961.

31. The Board concludes that the Applicant's definitive plan (Exhibit B-14) for the Project runs afoul of the rule that a Board may grant a variance where it is the *minimum* necessary to afford relief. See *Somers, supra*, at 313.

32. The proposed definitive plan for the Project requires variances from at least eight (8) separate sections of the Zoning Ordinance, for all of the lots. By the Applicant's own admission, either proposed Meadow Road Plan would require far fewer variances.

33. Moreover, the Applicant's only justification for not pursuing either of the Meadow Road Plans is desire. The Applicant's representatives stated that they prefer the cluster-plan. See Findings of Fact 60, 61 and 62.

⁶ The Board notes that the variance criteria established in MPS §10910.2(a) are essentially identical to the criteria set forth in Zoning Ordinance §27-3104.

34. The Board finds that the Property lacks the requisite unique physical characteristics imposing a hardship that prohibit its use for any permitted purpose except at prohibitive expense, nor does the Property lack any value when used as zoned.

35. The Board concludes that the Applicant is not entitled to the requested special exception because the Project is not entitled to the several variances sought for the B3 use.

36. Under Pennsylvania law, a plan's failure to meet an applicable zoning regulation, or the failure to secure a variance therefrom, is a sufficient basis upon which to deny a requested special exception. *See Lafayette College, supra.*

37. The proposed B3 use at the Property is not in accordance with the spirit, purposes, intent and all applicable requirements of the Zoning Ordinance, all other Township ordinances, and the Township comprehensive plan, including the purposes of the RR zoning district.

38. The proposed B3 use at the Property is not suitable for the particular location in question, and will be detrimental to the public welfare.

DECISION

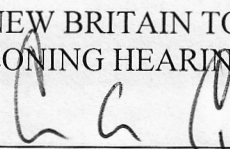
AND NOW, this 19th day of NOVEMBER, 2020, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **DENIES** the Applicant's requests for (a) a special exception pursuant to Zoning Ordinance §27-901.b and §27-3103 to improve the Property with a B3 use (single-family semidetached dwelling); and (b) variances from Zoning Ordinance §27-903.a; §27-2101.a; §27-2013; §27-2105; §27-2108.f.3; §27-2113; §27-2400.f.1 and §27-2401.b, to allow the proposed B3 use on the Property with the specifically proposed dimensional criteria as set forth in Finding of Fact No. 34.

DATE: 11/19/20

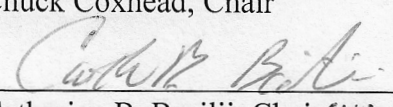
DATE: 11/19/20

DATE: 11/19/20


NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD



Chuck Coxhead, Chair



Catherine B. Basilio, Chair (Vice)



Jim Scanzillo, Member

Thomas J. Walsh III, Esquire
Solicitor, New Britain Township Zoning Hearing Board
3655 Route 202, Suite 105
Doylestown, PA 18902

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application (dated 7/29/19) Attachments to Application: <ul style="list-style-type: none">• Exhibit A – Variance List summary• Deed for Property 7/18/2017• List of surrounding property owners
B-2	Site Plan, prepared by Holmes Cunningham, LLC, 1 sheet, dated 7/29/19
B-3	Letter to The Intelligencer dated 8/29/19 forwarding public notice of 9/19/19 hearing for advertisement
B-4	Public Notice of the hearing on 9/19/19
B-5	Proof of publication of public notice in 9/5/19 and 9/12/19 editions of The Intelligencer
B-6	Letter to Applicant and Attorney dated 8/29/19 providing notice of the 9/19/19 hearing
B-7	List of the record owners of all properties surrounding the Property
B-8	Affidavit of mailing to property owners – notice mailed on 8/30/19
B-9	Affidavit of posting of public notice at property – notice posted on 9/3/19 at 1:22 p.m.
B-10	Letter dated 9/16/19 from attorney for Applicant requesting continuance of 9/19/19 hearing
B-11	Letter dated 9/17/19 from attorney for Applicant granting waiver of 45 day hearing requirement
B-12	Letter dated 1/20/20 from attorney for Applicant submitting revised plans and amended application
B-13	Zoning Officer’s Narrative, outlining relief being requested in revised plans
B-14	Conceptual Site Plan, prepared by Holmes Cunningham, LLC, 1 sheet, identified as Drawing No. CP-8, dated 12/20/19
B-15	Conceptual Site Plan with Storm Improvements, prepared by Holmes Cunningham, LLC, 1 sheet, identified as Drawing No. CP-8B, dated 12/20/19

Exhibit	Description
B-16	Conceptual Site Plan – Planned Community, prepared by Holmes Cunningham, LLC, 1 sheet, identified as Drawing No. CP-8A, dated 12/20/19
B-17	Letter to The Intelligencer dated 1/28/20 forwarding public notice of amended relief to be heard at 2/20/20 hearing for advertisement
B-18	Public Notice of hearing on 2/20/20
B-19	Proof of publication of public notice in 2/6/20 and 2/13/20 editions of The Intelligencer
B-20	Letter to Applicant and Attorney dated 1/28/20 providing notice of the 2/20/20 hearing
B-21	Affidavit of mailing to property owners – notice mailed on 2/4/20
B-22	Affidavit of posting of public notice at property – notice posted on 2/5/20 at 9:17 a.m.
B-23	Email message from E. Bradley dated 1/28/20 advising that Board of Supervisors oppose amended application
B-24	Act 15 of 2020 Notice to Attorney for Applicant, dated 5/6/20
B-25	Letter to The Intelligencer dated 8/19/20 forwarding public notice of amended relief to be heard at 9/10/20 hearing for advertisement
B-26	Public Notice of hearing on 9/10/20
B-27	Proof of publication of public notice in 8/27/20 and 9/3/20 editions of The Intelligencer
B-28	Affidavit of mailing to property owners – notice mailed on 8/25/20
B-29	Affidavit of posting of public notice at property – notice posted on 9/1/20 at 10:56 a.m.
A-1	Deed dated 7/18/2017
A-2	Existing Conditions Plan, prepared by Holmes Cunningham, LLC, 1 sheet, dated 6/4/19, Drawing No. CO.1

Exhibit	Description
A-3	Existing Resource and Site Analysis Plan, prepared by Holmes Cunningham, LLC, 1 sheet, dated 11/21/18, Drawing No. CO.2
A-4	Conceptual Site Plan (Meadow Road Access), prepare by Holmes Cunningham, LLC, 1 sheet, dated 7/10/17, Drawing No. CP-1
A-5	Sight Distance Exhibit Plan, prepared by Holmes Cunningham, LLC, 1 sheet, dated 2/20/20, Drawing No. EXHIBIT 1
A-6	Opinion Letter on Wetlands Delineation, prepared by VW Consultants, dated 5/26/19
A-7	Conceptual Site Plan (14 Units; Schoolhouse Road Access), prepared by Holmes Cunningham, LLC, 1 sheet, dated 7/29/19, Drawing No. CP-7
A-8	Conceptual Site Plan As Planned Community (12 Units; Schoolhouse Road Access), prepared by Holmes Cunningham, LLC, 1 sheet, dated 12/20/19, Drawing No. No. CP-8B
A-9	Conceptual Site Plan As Planned Community (12 Units; Schoolhouse Road Access), prepared by Holmes Cunningham, LLC, 1 sheet, dated 12/20/19, Drawing No. CP-8-PC
A-9(A)	Conceptual Site Plan – Planned Community (12 Units; Schoolhouse Road Access), prepared by Holmes Cunningham, LLC, 1 sheet, dated 12/20/10, Drawing No. CP-8A
A-10	Conceptual Site Plan as Planned Community with Storm Improvements (12 Units; Schoolhouse Road Access), prepared by Holmes Cunningham, LLC, 1 sheet, dated 12/20/19, Drawing No. CP-8A-PC
A-11	Fiscal Impact Analysis, prepared by David C. Babbitt, AICP, dated 9/8/20
A-12	Conceptual Site Plan (10 Units; Schoolhouse Road and Meadow Road Access), prepared by Holmes Cunningham, LLC, 1 sheet, dated 7/20/17, last revised 9/22/20, Drawing No. CP-1
T-1	New Britain Township Fire Marshal Review letter dated 1/24/19
T-2	Lot Calculations table from plans; Zoning Ordinance table for RR zoning district
T-3	Realtor.com printout listing of house on Property

DATE OF DECISION: OCT 15, 2020

DATE OF MAILING: OCT 16, 2020

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

**RE: APPLICATION OF DISTINCTIVE LANDSCAPING, INC. AND
STEVEN F. WHITE FOR THE PROPERTY LOCATED AT 619 NORTH
LIMEKILN PIKE, NEW BRITAIN TOWNSHIP, BUCKS COUNTY,
PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-3-119**

FINDINGS OF FACT

1. On Thursday, September 17, 2020 at 7:30 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 Distinctive Landscaping, Inc. ("DLI") and Steven F. White ("White").

2. DLI and White are collectively referred to in this Decision as the "Applicants."

3. White is a record co-owner of the property located at 619 North Limekiln Pike, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-3-119 (the "Property"). The Property is the subject of this application.

4. Notice of the September 17, 2020 hearing was published in advance of the hearing in the Thursday, September 3, 2020 and Thursday, September 10, 2020 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-6.

5. Notice of the September 17, 2020 hearing was sent by first class mail on September 2, 2020 by Kelsey Harris ("Harris"), 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-10.

6. Harris posted notice of the September 17, 2020 hearing on the Property on September 10, 2020 at 11:50 a.m. *See* Exhibit B-11.

7. The Applicant is a Pennsylvania corporation. James B. Umlauf ("Umlauf"), President of DLI, and White testified in support of the application at the September 17, 2020 hearing.

8. White and Umlauf stated, and the Board finds, that the Property is subject to an Agreement of Sale between White and DLI (or its controlled assignee). White also gave DLI his express written authorization to pursue the instant application. *See* Exhibit A-2, Authorization.

9. As White is the Property's record co-owner, DLI is the Property's equitable owner, and White has provided his express authorization to DLI, the Applicants have the requisite standing to prosecute this zoning hearing board application.

10. The Property is located in the WS, Watershed, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

11. Umlauf stated, and the Board finds, that DLI is a commercial construction and landscaping contracting business. DLI specializes in recycling materials, along with stone and refuse storage and disposal. DLI presently operates its business at 216 Titus Avenue, Warrington.

12. DLI proposes to relocate its existing contracting use to the Property. This non-conforming contracting use (use K5) is intended to replace two (2) existing non-conforming uses conducted on the Property, specifically warehousing (use K3) and truck terminal (use K6) uses.

13. To conduct DLI's contracting use as a non-conforming use on the Property, the Applicants seek a special exception pursuant to Zoning Ordinance §27-2304 and §27-3103 to permit the change from the existing non-conforming K3 and K6 uses to the proposed non-conforming K5 use.

14. Introduced as exhibits at the 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.

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

- a. Vincent Tulio ("Tulio"), 53 Peace Valley Road, New Britain Township.
- b. Francesca Miller ("Miller"), 19 Marian Circle, Chalfont Borough.
- c. Stephen and Susan Bell (collectively "Bell"), 17 Marian Circle, Chalfont Borough.
- d. Linda Siegfried ("Siegfried"), 16 Marian Circle, Chalfont Borough.
- e. George Roma ("Roma"), 21 Creek Road, New Britain Township.
- f. Franklin White, III ("Franklin"), 617 North Limekiln Pike, New Britain Township. Franklin is the other record co-owner of the Property.

16. New Britain Township took no position on the application. The Board acknowledges that the Board of Supervisors previously granted a conditional use to allow DLI to conduct an accessory outdoor storage and/or display use (use L2) on the Property in connection with the proposed K5 use. *See* Exhibit A-3, Conditional Use Decision.

17. The Property is a large flag lot. It has a long and narrow lane¹ that is 629.48 feet in length. The lane accesses North Limekiln Pike. The Property's lot area, exclusive of the lane, is 3.359 acres (net). *See Exhibit A-5, Existing Features Plan.*

18. Where the Property widens at the end of the lane, the Property is shaped like a rectangle. The lane connects to the Property's wider section at the southwest corner. *See Exhibit A-5, Existing Features Plan.*

19. Where the Property provides the minimum lot width, the Property's front lot line is 485.75 feet long. The rear lot line is 494.27 feet long. The northern side lot line is 328.76 feet long. *See Exhibit A-5, Existing Features Plan.*

20. The Property's southern side lot line is a continuation of the lane. Exclusive of the lane portion, this side lot line is roughly 241.22 feet long. *See Exhibit A-5, Existing Features Plan.*

21. A long paved driveway occupies the entire width of the lane. Spurs off the driveway lane lead to the Property's asphalt paved area, as well as a small parking area next to the dwelling. *See Exhibit A-5, Existing Features Plan.*

22. The Property is improved with a single-family detached dwelling (use B1) constructed in or around 1989. The dwelling is located along the Property's southern side lot line near the lane. *See Exhibits A-5, Existing Features Plan; and A-4, Aerial Photo.*

23. Umlauf and White stated, and the Board finds, that the dwelling is leased to a family unrelated to the existing non-conforming uses or DLI's proposed use. Umlauf stated that he intends to continue that practice. He and his family will not occupy the dwelling.

24. The Property is also improved with several non-residential structures. The primary structure is a 1 story metal pole-barn style garage located in the center of the Property's wider section. *See Exhibits A-5, Existing Features Plan.*

25. Umlauf stated, and the Board finds, that the pole barn's footprint is roughly 5,000 square feet. A 1,400 square feet section of the pole barn is a lean-to addition, located on the building's eastern façade. *See Exhibits A-5, Existing Features Plan; and A-4, Aerial Photo.*

26. Umlauf stated, and the Board finds, that the other structures are mainly concrete pads. Three (3) of these pads are adjacent to the pole barn and serve as loading docks. The pad in the center of the macadam is a wash bay. *See Exhibit A-5, Existing Features Plan.*

27. The macadam area is presently in front of and to the southern side of the pole barn garage. This paving extends just past the concrete pad wash bay. *See Exhibit A-5, Existing Features Plan.*

28. The Property's remaining hard surface areas consist of compacted millings and stone. This stone area extends from the western edge of the paving to the concrete retaining wall along the front lot line. *See Exhibit A-5, Existing Features Plan.*

¹ Umlauf acknowledged, and the Board finds, that this lane is erroneously labeled as Peace Valley Road on the Aerial Photograph identified as Exhibit A-4.

29. Umlauf and White stated, and the Board finds, that the prior non-conforming use at the Property was a trucking, hauling and warehousing company. This business had roughly 13 employees. It operated Monday through Friday, 5 a.m. to 5 p.m.; and on Saturday for a half day.

30. Umlauf and White stated, and the Board finds, that the trucking company had several tri-axel haulers, back-hoes and pick-up trucks at the Property. White stated that these uses were conducted at the Property for many years, and ceased operations in June 2020.

31. Umlauf and White stated, and the Board finds, that the existing non-conforming trucking and warehousing uses operated subject to five (5) previously imposed conditions:

- a. The residential dwelling use shall remain on the Property;
- b. The non-conforming commercial use(s) shall have no more than 15 commercial vehicles (i.e. trucks) on the Property at any one time;
- c. The non-conforming commercial use(s) shall have no more than 5 employees on the Property at any one time;
- d. The paved and/or stone surface vehicle and parking areas on the Property shall not be expanded; and
- e. The foregoing conditions shall be binding on any future owner of the Property and/or operator of any non-residential use at the Property.

32. Umlauf stated, and the Board finds, that DLI's contracting use will comply with all the foregoing conditions imposed against the prior non-conforming truck terminal and warehousing uses.

33. Umlauf stated, and the Board finds, that the pole barn garage will serve as the base of DLI's operations. DLI's hours will be Monday through Friday, 6 a.m. to 4 p.m. Saturday work is limited to emergencies.

34. Umlauf stated, and the Board finds, that outdoor activities in connection with the contracting use on the Property will occur primarily between 6 a.m. and 6:15 a.m., and between 3 p.m. to 4 p.m.

35. Umlauf stated, and the Board finds, that DLI will limit its use of the lane to employees arriving at the Property and a small number of commercial vehicles. DLI will have 4 vehicles leaving the Property in the morning, and the same 4 returning in the afternoon.

36. Umlauf and White state, and the Board finds, that the other two (2) tracts that access and use the lane are the New Britain Township Public Works Department and White. Umlauf and White stated that the Public Works Department frequently uses the lane, and will use it more than DLI. *See Exhibit A-7, Zoning Plan.*

37. Umlauf stated, and the Board finds, that all stones and other materials necessary for a job are loaded the prior day so as to minimize noise in the early morning to only vehicles leaving the Property.

38. Umlauf stated, and the Board finds, that although DLI employs up to 8 people, only the office manager will be at the Property on a daily basis. No more than 4 employees will be at the Property at any one time. DLI's customers will not visit the Property.

39. Umlauf stated, and the Board finds, that DLI will operate several dump trucks, trailers and utility trucks on the Property. The utility trucks will be stored in the pole barn along with DLI's equipment. The dump trucks and trailers will be in the to-be created angled parking spaces. *See Exhibit A-7, Zoning Plan.*

40. Umlauf stated, and the Board finds, that the parking lot will not be expanded. DLI will pave certain areas of the existing stone already used for parking. DLI will install striping to delineate 15 angled truck vehicle parking spaces along the Property's front lot line next to the retaining wall. *See Exhibit A-7, Zoning Plan.*

41. Umlauf stated, and the Board finds, that DLI will also install striping along the eastern edge of the existing macadam area between the dwelling and the pole barn. Five (5) of these spaces will be devoted to the contracting use. One (1) space will be a new overflow space for the dwelling. *See Exhibit A-7, Zoning Plan.*

42. Umlauf stated, and the Board finds, that DLI's outside storage areas approved by the conditional use will be in the Property's northwest corner. These will be three (3) concrete storage bins measuring 20 feet by 20 feet. *See Exhibits A-3, Conditional Use; and A-7, Zoning Plan.*

43. Upon questioning from the Board and the intervening parties, Umlauf stated, and the Board finds, that no chemicals, fuel, waste or mulch will be stored at the Property. Topsoil will only briefly remain on the Property after being returned from a job site. *See Exhibit A-7, Zoning Plan.*

44. Umlauf stated, and the Board finds, that DLI's proposed contracting use will be less intense in terms of traffic, environmental effects, storage and waste disposal, and appearance than the previously operated truck terminal and warehousing uses.

45. Umlauf stated, and the Board finds, that the only way the Property could be changed to an exclusively permitted use, such as the B1 dwelling use, is to demolish the pole barn.

46. Umlauf and White stated, and the Board finds, that many of the intervening residents live in on Marian Circle in nearby Chalfont Borough. These dwellings are on lots that are at higher elevations than the Property. The existing mature vegetation between the rear of these lots and the Property will shield views of DLI's use. *See Exhibit A-7, Zoning Plan.*

47. Subject to the conditions imposed herein, the proposed contracting use (use K5), 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 advanced public notice of the date, time and location of the August 20, 2020 hearing was made by sufficient advanced publication, posting and mailing to affected property owners.

2. When a landowner applies for a special exception, the Board’s function is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the Zoning Ordinance and merit the granting of the special exception. *See Broussard v. Zoning Board of Adjustment of City of Pittsburgh*, 907 A.2d 494 (Pa. 2006).

3. Zoning Ordinance §27-3103.a provides that “the Board shall grant a special exception only if it finds adequate evidence that any proposed development submitted will meet all of the following general requirements as well as any specific requirements and standards listed [in this Zoning Ordinance] for the proposed use.”

4. Regarding the general criteria applicable to a special exception, Zoning Ordinance §27-3103.a provides that the Board shall, among other things, require the proposed use and location to be:

- a. in accordance with the New Britain Township Comprehensive Plan and consistent with the spirit, purposes and intent of [the Zoning Ordinance];
- b. in the best interests of [New Britain] Township, the convenience of the community, the public welfare and be a substantial improvement to the property in the immediate vicinity;
- c. suitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;
- d. in conformance with all applicable requirements of [the Zoning Ordinance];
- e. suitable in terms of effects on highway traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard; and
- f. in accordance with sound standards of subdivision practice where applicable.

5. Regarding specific criteria applicable to the substitute non-conforming contracting use, Zoning Ordinance §27-305.K5 defines a “Contracting” use as “contractor offices and shops, such as building, electrical, plumbing, heating, masonry, painting and roofing contractors.”

6. Umlauf and White describe DLI’s proposed activity as a full-service commercial construction and landscaping operation, specializing in recycling materials, along with stone and refuse storage and disposal.

7. Based upon the Umlauf’s and White’s credible testimony, the Board concludes that DLI’s proposed activity qualifies as a “contracting” use as that phrase is used and defined under the Zoning Ordinance.

8. The Board concludes that neither a contracting, truck terminal nor warehouse use is permitted in the WS zoning district. As such, the Applicants' proposal to substitute the non-conforming contracting use for the existing non-conforming truck terminal and warehousing use qualifies as a proposed change of non-conforming uses.

9. Zoning Ordinance §27-2394 provides the following specific regulations regarding any proposal to change a nonconforming use to another nonconforming use on a property:

- a. The existing nonconforming use cannot be reasonably changed to a permitted use. (§27-2304.b).
- b. The proposed nonconforming use is less objectionable in external effects than the existing nonconforming use with respect to:
 - (1) Traffic generation and congestion including truck, passenger car and pedestrian traffic. (§27-2304.c.1).
 - (2) Noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration. (§27-2304.c.2).
 - (3) Storage and waste disposal (§27-2304.c.3).
 - (4) Appearance (§27-2304.c.4)

10. Under Pennsylvania law, the Board shall refuse an application for special exception where opponents to the application establish by a preponderance of evidence that the application is contrary to the health, safety and morals of general welfare of the community at large.

11. If an applicant demonstrates that the proposal meets the specific and general criteria of Zoning Ordinance, and no evidence is presented that requires a finding that the proposal is detrimental to the public interest, the Board must find that the proposed accessory home occupation use is permitted.

12. The Board concludes that DLI's contracting use will be contained and operated in the pole barn garage and non-grassy areas of the Property. This follows the practice employed by the prior non-conforming truck terminal and warehousing uses.

13. The Board concludes that DLI's contracting use will comply with all the conditions attached to the prior non-conforming uses. DLI will maintain the residential dwelling on the Property.

14. DLI's operations will have no more than 5 employees, nor more than 15 commercial vehicles on the Property at any one time. In fact, DLI will have only 1 employee on the Property for most of the average business day.

15. DLI does not propose to expand the macadam or stone areas on the Property. By paving portions of the stone areas, DLI will be reducing dust, smoke and other hazards generated by vehicles driving over stone.

16. Regarding the specific criteria, the Board concludes that the Property already contains a single-family detached dwelling (use B1). A B1 use is permitted by right in the WS zoning district. *See Zoning Ordinance §27-501.a.*

17. The Board concludes that the Property is not readily adaptable to the other uses permitted in the WS zoning district, even if the pole barn and other structures devoted to the existing non-conforming uses were removed.

18. Moreover, the Board concludes that removal of a primary building on the Property is an unreasonable solution to conducting a conforming use on the Property.

19. The Board concludes that the proposed contracting use will generate less traffic than the prior truck terminal and warehousing use. The contracting use's environmental effects, storage and waste disposal and appearance will not be more intense than the prior non-conforming uses.

20. In this matter, no relevant evidence was presented by any intervening, objecting or protesting parties to show that the proposed non-conforming contracting use is detrimental to the public interest. Most of the objections raised by the neighboring property owners involve general neighborhood concerns.

21. However, the Board concludes that certain aspects of the proposed non-conforming contracting use may adversely impact the adjoining properties unless proper limits are imposed.

22. The Board has the power to attach reasonable conditions regarding the performance of the contracting use to any relief it grants that it deems necessary to secure the Zoning Ordinance's objectives. *See Zoning Ordinance §27-3103.b.*

23. The Board believes that re-attaching the conditions imposed on the previous non-conforming uses, as well as limiting the contracting use to the activity as described in the credible testimony, are reasonable safeguards that should be placed upon the relief granted herein to preserve the residential nature of the area.

24. The Applicants are agreeable to the requested conditions.

25. Subject to the conditions attached hereto, the proposed non-conforming contracting use is in accordance with the New Britain Township Comprehensive Plan and is consistent with the spirit, purposes and intent of the Zoning Ordinance.

26. Subject to the conditions attached hereto, the proposed non-conforming contracting use is in the best interests of New Britain Township, the convenience of the community, the public welfare and is a substantial improvement to the properties in the immediate vicinity.

27. Subject to the conditions attached hereto, the proposed non-conforming contracting use is suitable for the Property; and will be designed, constructed, operated and maintained in harmony with and appropriate in appearance to the general vicinity's character.

28. Provided the non-conforming contracting use is conducted in accordance with the conditions attached herein, the proposed use is suitable in terms of effects on highway traffic and safety and will be harmonious with the surrounding neighborhood.

DECISION

AND NOW, this 15th day of OCTOBER, 2020, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicants' request for a special exception pursuant to Zoning Ordinance §27-2304 and §27-3103 to change the existing non-conforming truck terminal (use K3) and warehousing (use K6) uses on the Property to a non-conforming contracting (use K5), subject to the following conditions:

1. The contracting use's dimensions, operations, location and appearance shall be in accordance with the photos, drawings, evidence, representations and credible testimony made and submitted at the hearing.
2. The contracting use shall be limited to a commercial construction and landscaping business as described in the testimony and evidence. Should the Applicants or any future owner/occupant of the Property wish to conduct any other type of contracting use, further relief from the Board shall be required.
3. The hours of operation of the contracting use shall be limited to Monday through Friday, 6 a.m. to 4 p.m. Saturday operations will be limited to emergencies.
4. The residential dwelling and use shall remain on the Property.
5. The contracting use shall have no more than 15 commercial vehicles (i.e. trucks or non-passenger vehicles) on the Property at any one time.
6. The contracting use shall have no more than 5 employees on the Property at any one time.
7. The paved and/or stoned surface vehicle and parking areas on the Property shall not be expanded. The existing stone areas to be paved shall be as set forth on the definitive plan (Exhibit A-7).
8. The foregoing conditions shall be binding on any future owner and/or occupant of the Property, as well as the operator of any non-residential use at the Property.
9. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed use(s) and/or improvement(s) must meet all other applicable federal, state, county and New Britain Township regulations and codes.

***** SIGNATURES APPEAR ON FOLLOWING PAGE *****

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

DATE: 10/15/20



Chuck Coxhead, Chair

DATE: 10/15/20



Cathy Basilli, Member

DATE: 10/15/20



Jim Scanzillo, Member

Thomas J. Walsh III, Esquire
Solicitor, New Britain Township Zoning Hearing Board
3655 Route 202, Suite 105
Doylestown, PA 18902

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 or use activity.

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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated 7/21/20 (Received 7/29/20) Attachments to Application: <ul style="list-style-type: none">• Cover letter dated 7/27/20• Addendum outlining relief requested• Current Deed dated 4/12/2011• List of surrounding property owners
B-2	Existing Features Plan, sheet 1 of 2, prepared by Tri-State Engineers, dated 6/16/20
B-3	Zoning Exhibit Plan, sheet 2 of 2, prepared by Tri-State Engineers, dated 6/16/20
B-4	Letter to The Intelligencer dated 8/27/20
B-5	Public Notice of the hearing on 9/17/2020
B-6	Proof of publication of public notice in 9/3/20 and 9/10/20 editions of The Intelligencer
B-7	Letter to Applicants and Attorneys dated 8/27/20 providing notice of the 9/17/20 hearing
B-8	List of the record owners of all properties surrounding the Property
B-9	Affidavit of mailing to property owners – notice mailed on 9/2/2019
B-10	Affidavit of posting of public notice at property – notice posted on 9/10/2020
A-1	Current deed for Property, dated 4/12/2012 (Exhibit B-1)
A-2	Property owner authorization
A-3	Conditional Use Decision dated 7/20/20
A-4	Aerial Photograph
A-5	Existing Features Plan (Exhibit B-2)
A-6	Enlarged section of Existing Features Plan
A-7	Zoning Exhibit Plan (Exhibit B-3)

Exhibit

Description

A-8 Enlarged section of Zoning Exhibit Plan