

DATE OF DECISION: 12/20/2023

DATE OF MAILING: 12/20/2023

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

**RE: APPLICATION OF CASADONTI HOMES, INC. FOR  
THE PROPERTY LOCATED AT 140-146 UPPER CHURCH ROAD,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-3-104**

**FINDINGS OF FACT**

1. On Thursday, November 16, 2023, at 7:00 p.m. at the New Britain Township Building, 207 Park Avenue, Chalfont, New Britain Township, the New Britain Township Zoning Hearing Board (“Board”) held a duly noticed hearing on the application of Casadonti Homes, Inc. (the “Applicant”).

2. The Applicant is the record owner of the property located at 140-146 Upper Church Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-3-104 (the “Property”). The Property is the subject of the instant application.

3. Notice of the November 16, 2023, hearing was published in advance of the hearing in the Thursday, November 2, 2023, and Thursday, November 9, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the November 16, 2023, hearing was sent by first class mail on November 9, 2023, by David Conroy (“Conroy”), the New Britain Township Director of Planning and Zoning, to (a) all record owners of properties in New Britain Township within 500 feet of the Property; and (b) to the adjoining municipality for any similarly situated properties that are located in that municipality. *See* Exhibit B-8.

5. Conroy posted notice of the November 16, 2023, hearing on the Property on November 9, 2023, at 12:23 p.m. *See* Exhibit B-9.

6. The Applicant is a Pennsylvania for-profit corporation. As the record owner of the Property, the Applicant has the requisite standing to prosecute this zoning hearing board application.

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

8. The Property is improved with a single-family detached dwelling (use B1) and 2 accessory barn structures. Such uses and structures are permitted in the WS zoning district. *See* Zoning Ordinance §27-501.

9. The Applicant proposes a minor subdivision of the Property to create 2 lots. Lot 1 will contain the existing B1 use dwelling and barn structures, and will also contain a new single-family detached dwelling (use B1). Lot 2 will be a new building lot to be improved with a single-family detached dwelling (use B1). *See* Exhibit B-2, Plan.

10. To permit the minor subdivision of the Property and the creation Lot 1 and Lot 2, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. From §27-305.H.H14 and §27-501 to permit the existing dwelling on Lot 1 to be used as an accessory dwelling (use H14) that is not a stand-alone or second dwelling unit; and
- b. From §27-2904.d.5 to permit 2 driveways to be 68.5 feet apart on Lot 1, where the required minimum separation distance is 75 feet.

11. Introduced as exhibits at the zoning hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

12. The following individuals testified in support of the application at the hearing:

- a. Joseph Casadonti (“Casadonti”), principal and officer of the Applicant. Casadonti is a builder of residential homes.
- b. Robert Cunningham, P.E. (“Cunningham”), registered professional civil engineer. The Board received Cunningham as a civil engineering expert witness.

13. A few individuals appeared at the hearing to comment on the application and ask questions before the Board. No one requested party status. New Britain Township took no position on the application and did not participate in the hearing.

14. The Property is a very large lot. It is oddly shaped. It resembles a rectangle with the northwest corner removed and replaced with a inward-curved boundary line. *See* Exhibit B-2, Plan.

15. The Property’s gross lot area is 13.49 acres. Excluding the areas of the Property within the ultimate right-of-way of Upper Church Road and other easements, the Property’s base site area is 12.42 acres. *See* Exhibit A-3, Existing Conditions Plan.

16. The Property’s front lot line is 677.59 feet long at the center line of Upper Church Road. At the Upper Church Road ultimate right-of-way line, the Property is 639 feet wide. *See* Exhibit B-2, Plan.

17. The Property’s eastern side lot line is 719.99 feet long. The rear lot line is 988.39 feet long. Each of these lot lines is relatively straight. *See* Exhibit B-2, Plan.

18. The western side lot line is very jagged. It consists of 6 separate sections. The straightest 2 sections connect to the rear lot line and are 279.4 feet long. The remaining 4 sections generally form a concave curve that is 287.01 feet long. *See* Exhibit B-2, Plan.

19. Casadonti and Cunningham stated, and the Board finds, that the Property contains many natural resources. An unnamed tributary to the North Branch of the Neshaminy Creek essentially diagonally bisects the Property. *See* Exhibit A-3, Existing Conditions Plan.

20. Casadonti and Cunningham stated, and the Board finds, that the Property also contains woodlands and steep slopes. Collectively, all the natural resources occupy 11.65 acres of the Property. *See* Exhibit A-3, Existing Conditions Plan.

21. Casadonti stated, and the Board finds, that the existing B1 dwelling and barn structures are located along the jagged side lot line in the middle to rear portion of the Property. They are served by a long driveway that is partially on both the Property and the adjoining tract. *See* Exhibits A-2, Aerial Plan; and A-3, Existing Conditions Plan.

22. Casadonti stated, and the Board finds, that the existing long driveway is within a recorded easement. It accesses Upper Church Road near where the northern side lot line connects to the front lot line. *See* Exhibits A-2, Aerial Plan; and A-3, Existing Conditions Plan.

23. Casadonti and Cunningham stated, and the Board finds, that the new minor subdivision line will partition the Property roughly in half. Lot 2 will be 7.889 acres, and Lot 1 will 5.460 acres. The existing structures will be on Lot 1. *See* Exhibit B-2, Plan.

24. Cunningham stated, and the Board finds, that the proposed subdivision configuration was chosen to allow Lot 1 and Lot 2 to be comparable in size, shape and layout to the surrounding properties. *See* Exhibit B-2, Plan.

25. Casadonti and Cunningham stated, and the Board finds, that the vast natural resources significantly reduce the available building envelope on Lot 1 and Lot 2. The 2 new single-family detached B1 dwellings are close to Upper Church Road. *See* Exhibit B-2, Plan.

26. Each new dwelling will be served by its own on-lot septic system, well, and stormwater management system. Each new dwelling will also be served by its own driveway that connects to Upper Church Road. *See* Exhibit B-2, Plan.

27. Cunningham stated, and the Board finds, that the size and location of the building envelope on Lot 1 as well as the slope in Upper State Road limit where the driveway can access the street. *See* Exhibit B-2, Plan.

28. Cunningham stated, and the Board finds, these physical features prevent the new Lot 1 driveway's access point from being more than 75 feet away from the existing driveway. The 68.5 feet separation distance is the maximum gap that can be provided. *See* Exhibit B-2, Plan.

29. Regarding the existing 2 barn structures, Casadonti stated that the smaller barn will be removed. The lower wing sections of the larger barn will be removed, but the larger barn's original middle section will be preserved. *See* Exhibit A-5, Photos.

30. Casadonti stated, and the Board finds, that the larger barn's center section is in good condition. It will be secured during construction to ensure it does not become damaged or a hazard. *See* Exhibit A-5, Photos.

31. Casadonti stated, and the Board finds, that the existing dwelling was originally built in or around 1850. The dwelling will be renovated to be used as accessory living space solely in connection with the new house on Lot 1. *See Exhibit B-2, Plan.*

32. Casadonti stated, and the Board finds, that although the existing dwelling will be considered an accessory dwelling (use H14) under the Zoning Ordinance, it will not be a separate, stand-alone or second dwelling unit. *See Exhibit B-2, Plan.*

33. Casadonti stated, and the Board finds, that the renovated former house will not have an in-law suite, nor a kitchen. The sewage disposal system for the renovated structure will be an auxiliary system intended to serve only a single bathroom. It will not be a bedroom-based septic system. *See Exhibit B-2, Plan.*

34. Cunningham stated, and the Board finds, that a large conservation easement will run through the rear and eastern side yard of Lot 2. The protected riparian buffer on Lot 1 serves as a *de facto* conservation easement. *See Exhibit B-2, Plan.*

35. The surrounding properties consist of similar style residences and large lots. The surrounding property owners voiced concerns about the safety of the large barn and the on-lot septic systems for the 2 new dwellings.

36. Due to the Property being an oddly shaped large lot, along with the existence of a large amount of protected natural resources, the Property contains unique physical characteristics that support relief for the variances in connection with the proposed minor subdivision.

37. The Zoning Ordinance's limitations impose a hardship on the Property and the Applicant in that these provisions prevent a reasonable minor subdivision of the Property with 2 residentially used lots that are harmonious with the tracts in the surrounding area.

38. Subject to the conditions imposed herein, the proposed minor subdivision plan, the driveway separation, and the re-purposed use of the existing dwelling structure, are consistent with uses of other properties in the surrounding neighborhood.

### **CONCLUSIONS OF LAW**

1. Required public notice of the date, time and location of the November 16, 2023, hearing was made by sufficient advanced publication, posting and mailing to affected property owners.

2. In order to show entitlement to a variance, use or dimensional, an applicant must demonstrate all the following elements:

- a. an unnecessary hardship stemming from unique physical characteristics or conditions will result if the variance is denied;
- b. because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property;

- c. the hardship has not been created by the applicant;
- d. granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and
- e. the variance sought is the minimum that will afford relief.

3. The Board finds that the request to use accessory dwelling (use H4) as a modified living space structure is a request for a use variance. The Board finds that the driveway separation variance is a dimensional variance.

4. 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).

5. 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).

6. The reasons for granting any 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).

7. An applicant can demonstrate “unnecessary hardship” for a use or dimensional variance by showing that: (a) a property’s physical characteristics are such that the property cannot be used for any permitted use or purpose; (b) the property can only conform to a permitted use or purpose at prohibitive expense; or (c) that the property has either no value or only distress value for any permitted purpose. *See Nowicki v. Zoning Hearing Board of Monaca Borough*, 91 A.3d 287 (Pa. 2014).

8. Although mere economic hardship alone will not justify the grant of a use variance, an applicant need not demonstrate that the property is rendered completely valueless without the variance or as zoned in order to show that a use variance is needed to make reasonable use of the property. *See Marshall v. City of Philadelphia*, 97 A.3d 323 (Pa. 2014).

9. When evaluating an unnecessary hardship in a use variance case, use of adjacent and surrounding land is relevant but not dispositive. *See Valley View Civic Association v. Zoning Hearing Board of Adjustment*, 462 A.2d 637 (Pa. 1983).

10. A dimensional variance is subject to a lesser standard of proof to establish unnecessary hardship than a use variance. *See Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 721 A.2d 43 (Pa. 1998) (when seeking a dimensional variance within a permitted use, the owner is asking only for a *reasonable adjustment* of the zoning regulations. The grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation).

11. When deciding whether a hardship has been established in dimensional variance cases, the *Hertzberg* rationale authorizes the Board to consider multiple factors, including (a) the economic detriment to the applicant if relief is denied; (b) the financial hardship created by any work necessary to bring the proposed improvements into strict compliance with the zoning requirements; and (c) the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47, 50.

12. 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).

13. The Board concludes that the Applicant has established, by substantial and credible evidence, that an unnecessary hardship will result if the variances are refused due to the unique physical circumstances and conditions of the Property.

14. The Board concludes that the Property's odd shape, location and age of the existing structures, and the Property's extensive natural resources establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

15. The Board concludes that the nature of the renovated accessory dwelling is sufficient to justify the variance necessary from Zoning Ordinance §27-305.H.H14 and §27-501 to permit the structure to be used for living space purposes without rising to the level of being a full dwelling unit.

16. Critical to the Board's conclusion is that the accessory dwelling will be used only by the occupants of the new house on Lot 1. It will not be a rental unit, and will lack the overall physical features (i.e., kitchen) typical of a stand-alone dwelling unit.

17. Regarding the new driveway on Lot 1, the Board concludes that the 68.5 feet separation distance is necessary due to the Property's physical characteristics. Relocating the driveway to increase this distance is not possible and would create hazardous conditions.

18. The location of the building envelope, the slope of Upper Church Road, and the existing driveway within an easement benefiting the adjoining tract limit the places where the Lot 1 driveway can access the street. *See Exhibit B-2, Plan*.

19. Based on the credible testimony presented, the Board concludes that the requested variances propose reasonable adjustments to the Zoning Ordinance in connection with the minor subdivision.

20. The Board concludes that while the Applicant has established hardships to justify the variances, the Applicant can mitigate any adverse effects that use of the accessory dwelling structure on Lot 1 may have on surrounding tracts by preventing it from becoming a stand-alone dwelling unit.

21. Provided the Applicant complies with the reasonable conditions attached to the relief granted herein, the Applicant has met the Zoning Ordinance and Pennsylvania law

requirements for the variances, including hardship, to effect a minor subdivision of the Property, with the resulting dimensions and sizes of Lot 1 and Lot 2, as shown in with the definitive plan identified as Exhibit B-2.

22. The approved variances will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent properties.

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

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

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

### DECISION

AND NOW, this 20th day of December, 2023, 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 variances from the Zoning Ordinance as follows:

- a. A variance is granted from §27-305.H.H14 and §27-501 to permit the existing dwelling on Lot 1 to be used as an accessory dwelling (use H14) that is not a stand-alone, separate or second dwelling unit on Lot 1; and
- b. A variance is granted from §27-2904.d.5 to permit the 2 driveways on Lot 1 to be 68.5 feet apart.

The relief granted above is subject to the following conditions:

1. The proposed 2 lot minor subdivision of the Property, and the resulting layout of Lot 1 and Lot 2, shall be in accordance with definitive plan marked as Exhibit B-2, the other evidence, representations and credible testimony made at the hearing.

2. The living space proposed for the renovated existing residential dwelling shall not be a stand-alone, separate or second dwelling unit on Lot 1. Occupancy of the living space shall be limited to family members of the occupants of the new main dwelling on Lot 1. The accessory dwelling shall not be leased or rented to third parties. The septic system for the modified accessory dwelling shall be an auxiliary type system for a single bathroom, not a bedroom-based system.

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

The signatures of the New Britain Township Zoning Hearing Board members that appear on the following page attached hereto and incorporated herein, confirms the Board's decision and order.

DocuSigned by:  
By: David Conroy  
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David Conroy  
New Britain Township  
Director of Planning and Zoning

Date: 12/20/2023

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.

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## SCHEDULE A – TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application dated 9/26/22 Included with the Application: <ul style="list-style-type: none"><li>• Addendum outlining relief requested</li><li>• Deed dated 9/30/2022</li><li>• Map and list of property owners within 500 feet</li></ul>
B-2	Subdivision Plan, 1 sheet, prepared by Holmes Cunningham, LLC, dated 6/16/23
B-3	Letter to The Intelligencer dated 10/27/23 forwarding public notice of 11/16/23 hearing for publication
B-4	Public Notice of the hearing on 11/16/23
B-5	Proof of publication of public notice in 11/2/23 and 11/9/23 editions of The Intelligencer
B-6	Letter to Applicant’s attorney dated 10/30/23 providing notice of the 11/16/23 hearing
B-7	Township list of the record owners of all properties within 500 feet of the Property; map of properties
B-8	Affidavit of mailing to property owners – notice of hearing mailed on 11/9/23 to property owners on exhibit B-7
B-9	Affidavit of posting of public notice at property – notice posted on 11/9/23 at 12:23 p.m., together with photo of posting
B-10	Bucks County Floodplain Viewer and Map of Property
A-1	ZHB Application (same as Exhibit B-1)
A-2	Aerial Map, 1 sheet, prepared by Holmes Cunningham, LLC, dated 6/16/2023
A-3	Existing Conditions and Site Analysis Plan, 1 sheet, prepared by Holmes Cunningham, LLC, dated 6/16/2023
A-4	Subdivision Plan, 1 sheet, prepared by Holmes Cunningham, LLC, dated 6/16/23 (same as Exhibit B-2)
A-5	5 photos

**New Britain Township**  
**Zoning Hearing Board**

**Signature Page**

Re: Casadonti Homes, Inc.  
140-146 Upper Church Road  
New Britain Township  
TMP No. 26-3-104

Date: December 20, 2023

Chuck Coxhead, Chair

DocuSigned by:  
*Charles A Coxhead*  
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Cathy Basilio, Vice Chair

/ABSENT/

Scott Fischer, Member

DocuSigned by:  
*Scott Fischer*  
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Ryan Wantz, Alternate Member

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*Ryan Wantz*  
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