DATE OF DECISION: SEPT 15, 2016

DATE OF MAILING: SEPT 16, 2016

BEFORE THE NEW BRITAIN TOWNSHIP ZONING HEARING BOARD

RE: APPLICATION OF NAPLIN ONE, L.P. FOR THE PROPERTY LOCATED ALONG COUNTY LINE ROAD, WHICH IS PART OF A LARGER TRACT WITH A MAILING ADDRESS OF 4371 COUNTY LINE ROAD, NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-5-2

FINDINGS OF FACT

1. On Thursday, August 18, 2016 at 7:00 p.m. at the New Britain Township Building, 207 Park Avenue, Chalfont, New Britain Township, the New Britain Township Zoning Hearing Board ("Board") held a duly noticed hearing on the application of Naplin One, L.P. (the "Applicant").

2. The property that is the subject of the application is a certain to-be-created parcel located along County Line Road identified as "Lot 2" on a plan of subdivision submitted with the application (the "Property"). *See* Exhibits A-1(B), Agreement of Sale, and A-4, Site Plan.

3. The Property is part of a larger tract that has an address of 4371 County Line Road, New Britain Township, Bucks County, Pennsylvania, further known as Bucks County Tax Map Parcel No. 26-5-2 (the "Parent Tract"). *See* Exhibit A-4, Site Plan.

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

5. Notice of the hearing was sent by first class mail on August 2, 2016 by Devan Ambron ("Ambron"), the New Britain Township Zoning Officer to (a) all record owners of properties within New Britain Township surrounding the Property; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See* Exhibit B-7.

6. Ambron posted notice of the hearing on the Property on August 3, 2016 at 2:10 p.m. *See* Exhibit B-8.

7. The Property is located in the I, Industrial, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

8. The Property is unimproved. The Applicant proposes a non-residential building containing a wholesale business, wholesale storage and/or warehousing use (use K3) under the

Zoning Ordinance. Use K3 is a use permitted by right in the I, Industrial, zoning district. *See* Zoning Ordinance §27-1701.a.

9. The Applicant seeks a variance from Zoning Ordinance §27-1702.a to permit the proposed building to be 40 feet high, where the maximum building height permitted by right is 35 feet.

10. 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.

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

a. Ronald E. Klos, Jr., P.E. ("Klos"), professional civil engineer.

b. Allan Nappen ("Nappen"), officer and principal of Applicant.

12. No other persons requested party status to the application. A few individuals appeared at the hearing to comment and ask questions about the application.

13. The Property is subject to an Agreement of Sale dated September 1, 2015, (the "Agreement") between Quad/Graphics Marketing, LLC ("Quad") and the Applicant. *See* Exhibit A-1(B), Agreement.

14. Quad, a Wisconsin limited liability company, is the record owner of the Parent Tract. The Parent Tract's current deed is dated January 16, 2013. It is recorded in the Bucks County Recorder of Deeds Office at Instrument Number 2013011360. *See* Exhibit A-1(A), Deed.

15. Quad operates a non-residential industrial-style use in a large building on the Parent Tract. *See* Exhibit A-3, Aerial Plan.

16. The Applicant is a Pennsylvania limited partnership. As the equitable owner of the Property pursuant to the Agreement, the Applicant has the requisite standing to prosecute this zoning hearing board application.

17. As noted previously, the Property is currently part of the Parent Tract. The Applicant proposes to subdivide the Property from the Parent Tract if the proposed non-residential building receives all necessary and required approvals. *See* Exhibit A-1(C), Prospective Deed.

18. Klos stated, and the Board finds, that after the subdivision from the Parent Tract, the Property will contain 15.844 acres (net). The minimum site area for a property to be improved with a use permitted by right in the I, Industrial, zoning district is 3 acres. *See* Zoning Ordinance §27-1702.b.

19. Klos stated, and the Board finds, that the Parent Tract surrounds the George Allen Wastewater Management property located at 4375 County Line Road (the "George Allen Parcel"). After the subdivision, the Property will surround the George Allen Parcel. *See* Exhibits A-3, Aerial Plan, and A-4, Site Plan.

20. Klos stated, and the Board finds, that after subdivision, the Property will be irregularly shaped. The Property will be shaped like an upside-down letter "U," with two (2) separate frontages along County Line Road. *See* Exhibit A-4, Site Plan.

21. The primary street frontage, which is in front of the proposed non-residential building, will be 648.58 linear feet. The other street frontage, located on the opposite side of the George Allen Parcel, will have approximately 50 feet of frontage along County Line Road. *See* Exhibit A-4, Site Plan.

22. Klos stated, and the Board finds, that the West Branch of the Neshaminy Creek (the "West Branch") runs at an angle through the Property, effectively separating the George Allen Parcel from the Property. *See* Exhibit A-3, Aerial Plan.

23. Klos stated, and the Board finds, that the location of the West Branch and the George Allen Parcel are the physical features that will produce the Property's irregular shape after the subdivision. *See* Exhibit A-3, Aerial Plan.

24. Klos stated, and the Board finds, that per the Zoning Ordinance, a 75 feet wide riparian buffer, to be subject to a conservation easement, exists along the West Branch. This buffer is measured from the top of the bank outward. *See* Zoning Ordinance §27-2400.i.

25. Klos stated, and the Board finds, that large mature and dense trees are located within the entire length of the riparian buffer. The proposed building is located outside this buffer zone, behind this tree line. *See* Exhibits A-3, Aerial Plan, and A-4, Site Plan.

26. Klos stated, and the Board finds, that the proposed building will be a 120,000 square foot, 40 feet hight, warehouse structure. The proposed building will be located in the Property's larger usable portion, east of the West Branch and the riparian buffer. *See* Exhibits A-3, Aerial Plan and A-6, Rendering.

27. To support the required off-street vehicle parking, 243 parking spaces will be provided in a lot in front of the building. Twenty-nine (29) loading bays will be located behind the building. *See* Exhibit A-4, Site Plan.

28. Klos stated, and the Board finds, that no direct access to the Property will be from County Line Road. Instead, 3 access points will connect the Property's parking lot and loading bays to the existing driveway located on the Parent Tract along the Property's southeastern side lot line. *See* Exhibit A-4, Site Plan.

29. Klos stated, and the Board finds, that the proposed building will be set back 370 feet from the Property's lot line along County Line Road. This distance is more than 7 times greater than the required minimum 50 feet front yard setback. *See* Exhibit A-4, Site Plan.

30. Klos stated, and the Board finds, that the additional 5 feet in building height will be nearly indiscernible from County Line Road due to this large front yard setback. *See* Exhibit A-4, Site Plan.

31. Klos stated, and the Board finds, that the existing vegetation located within the riparian buffer will shield views of the proposed building from the George Allen Parcel. *See* Exhibit A-4, Site Plan.

32. Nappen stated, and the Board finds, that a prospective tenant for the proposed building has not yet been identified. Nappen stated that warehouse operators look for the available interior space when determining a building's feasibility.

33. Nappen stated, and the Board finds, that if the building height were limited to the 35 feet allowed under the Zoning Ordinance, this would produce a maximum internal "clear height" of 32 feet. The "clear" height is the highest level of the internal joists.

34. Nappen stated, and the Board finds, that at an internal clear height of 32 feet, the building would not meet the minimum market demands of commercial warehouse operators. At that height, Nappen believed the building would be "functionally obsolete."

35. Nappen stated, and the Board finds, that the additional 5 feet in building height, resulting in a 40 feet high building, would produce an available internal clear height of 34 feet.

36. Nappen stated that this additional 5 feet in available building height is the minimum necessary to meet market demands and is comparable to other industrial warehouse facilities in the region. *See* Exhibit A-6, Comparables.

37. Due to the distance the building will be setback from County Line Road, as well as the shielding provided by the dense riparian buffer, the Board finds that the additional 5 feet in building height will have a negligible impact upon the surrounding properties.

38. The Board finds that the Applicant could likely construct its proposed building at the 35 feet height allowable by right without needing relief from the Zoning Ordinance. However, a building at such a height would run counter to the Zoning Ordinance's purpose "to provide for a wide range of industrial uses…in the community" in the I, Industrial, zoning district. *See* Zoning Ordinance §27-1700.a.

39. Subject to the conditions imposed herein, the proposed 40 feet building height is harmonious with the Property's size and are consistent with uses of other properties in the surrounding neighborhood.

CONCLUSIONS OF LAW

1. Required public notice of the hearing was made by sufficient publication, posting and mailing to affected property owners.

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

   a. an unnecessary hardship stemming from unique physical characteristics or conditions will result if the variance is denied;

b. because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property;

c. the hardship has not been created by the applicant;

d. granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and

e. the variance sought is the minimum that will afford relief.

3. The Board finds that the variance requested to exceed the maximum permitted building height is a dimensional variance. A dimensional variance arises in situations where the Zoning Ordinance permits or requires a certain dimension and that requirement or allowance is sought to be varied by degree. *See Constantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Commw. 1994).

4. An applicant can demonstrate "unnecessary hardship" for a use or dimensional variance by showing that a property's physical characteristics are such that the property cannot be used for any permitted purpose, or can only conform to a permitted purpose at prohibitive expense; or that the property has either no value or only distress value for any permitted purpose.

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

6. When deciding whether a hardship has been established in dimensional variance cases, the *Hertzberg* rationale authorizes the Board to consider multiple factors, including the characteristics of the surrounding neighborhood. *See Hertzberg, supra,* at 47.

7. Based upon the credible evidence presented, the Board concludes that Property's odd shape, multiple frontage along County Line Road, several surrounding properties used for non-residential purposes, and the existence of the West Branch and riparian buffer bisecting a part of the Property, establish a hardship under the *Hertzberg* standards.

8. The Board recognizes that as a prospective structure, the building on the Property could be constructed to comply with the maximum permitted 35 feet height limitation.

9. However, the Board concludes that by increasing the building height by 5 feet, the Applicant will generate greater availability for its business and its prospective warehouse tenant operators, without creating any adverse visibility hazards along County Line Road.

10. The Board concludes by constructing the building at a height of 40 feet, the Applicant is responding to prevalent market forces and mitigating the possibility that the warehouse facility will suffer from early obsolescence and/or vacancies.

11. Provided the Applicant complies with the reasonable conditions attached to the relief granted herein, the Applicant has met the Zoning Ordinance and Pennsylvania law requirements for the variance, including hardship, to construct a non-residential building at a building height of 40 feet.

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

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

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

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

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DECISION

AND NOW, this 15th day of September, 2016, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicant's request for a variance from Zoning Ordinance §27-1702.a to permit the proposed non-residential building on the Property to be 40 feet high, where the maximum building height permitted by right is 35 feet, subject to the following conditions:

1. The Property's and the proposed building's dimensions, size, location and appearance shall be in accordance with plans, representations, exhibits and credible testimony made and submitted at the hearing.

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

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

DATE: 9/15/16

Catherine B. Basilii, Chair

DATE: 9/15/16

William Clarke, Member

DATE: 9/15/16

Chuck Coxhead, Member

Thomas J. Walsh III, Esquire
Solicitor, New Britain Township Zoning Hearing Board
2500 York Road, Suite 120
Jamison, PA 18929

Note to Applicant: This Decision is NOT an authorization to build. Zoning and building permits must be obtained from New Britain Township prior to the commencement of any construction.

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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated June 22, 2016. Attachments: • Addendum outlining relief requested • Proof of payment of the requisite fees • Site Plan (Concept "A" Plan), prepared by Bohler Engineering, dated 11/2/15, last revised 6/16/16, sheet 1 of 2 • Authorization of property owner dated 11/20/14 with sign exhibit • Deed dated 1/16/2013 • Agreement of Sale (redacted) dated 9/1/15
B-2	Letter to The Intelligencer dated 7/19/16 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on 8/18/16
B-4	Proof of publication of public notice in 8/4/16 and 8/11/16 editions of The Intelligencer
B-5	Letter to Applicant and Attorney dated 7/19/16 providing notice of the hearing
B-6	List of the record owners of all properties surrounding the Property
B-7	Affidavit of mailing to property owners – notice mailed on 8/2/2016
B-8	Affidavit of posting of public notice at property – notice posted on 8/3/16 a 2:10 p.m.
A-1(A)	Deed dated 1/16/2013
A-1(B)	Agreement of Sale dated 9/1/15
A-1(C)	Prospective Deed dated 7/13/2016
A-2	Curriculum Vitae of Robert E. Klos, Jr.
A-3	Aerial Plan, prepared by Bohler Engineering, dated 7/28/2016
A-4	Site Plan (Concept "A" Plan), prepared by Bohler Engineering, dated 11/2/15, last revised 6/16/16, sheet 1 of 2
A-5	Rendering of proposed warehouse building

Exhibit	Description
A-6	Table of competitor warehouse buildings