

DATE OF DECISION: JAN 21, 2022

DATE OF MAILING: JAN 21, 2022

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

**RE: APPLICATION OF 180 NEW BRITAIN BLVD ASSOCIATES, LLC,  
FOR THE PROPERTY LOCATED AT 180 NEW BRITAIN BOULEVARD,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-1-100**

**FINDINGS OF FACT**

1. On Thursday, December 16, 2021, 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 180 New Britain Blvd Associates, LLC (the “Applicant”).

2. The property that is the subject of this application is located at 180 New Britain Boulevard, New Britain Township, further known as Bucks County Tax Map Parcel No. 26-1-100 (the “Property”).

3. Notice of the December 16, 2021, hearing was published in advance of the hearing in the Thursday, December 2, 2021, and Thursday, December 9, 2021, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the December 16, 2021, hearing was sent by first class mail on November 30, 2021, by Michael Walsh (“Walsh”), the acting New Britain Township Zoning Officer 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 surrounding properties that are located in that municipality. *See* Exhibit B-8.

5. Walsh posted notice of the December 16, 2021, hearing on the Property on December 1, 2021 at 11:00 a.m. *See* Exhibit B-9.

6. The Property is located in the IO, Industrial/Office, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

7. The record owner of the Property is BREP III (“BREP”). The Property is subject to a valid Agreement of Sale (the “Agreement”) between BREP as seller, and the Applicant, as buyer. *See* Exhibit B-1, Agreement.

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

9. The Property is improved with a large non-residential building. The Applicant proposes to convert the building from its existing warehousing use (use K3) to a flex space use (use K18). A K18 use is permitted by right in the IO zoning district. *See* Zoning Ordinance §27-1801.a.

10. The Applicant seeks a variance from Zoning Ordinance §27-2901.K to allow less than the minimum required number of off-street parking spaces for the proposed flex space use (use K18) (370 spaces are required; 137 spaces are proposed).

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 on behalf of the Applicant in support of the application at the hearing:

- a. Craig Melograno (“Melograno”), principal and officer of Applicant; and
- b. Kim Fasnacht, P.E. (“Fasnacht”), registered professional civil engineer.

13. No other individuals appeared at the December 16, 2021, to request party status, register a position, comment on, or ask questions regarding the application before the Board.

14. The Property is located in the New Britain Business Park. Its lot size is 8.4 acres. The existing large non-residential building on the Property was constructed in or around 1994. *See* Exhibit A-4, Rendered Plan.

15. The Property is an irregularly shaped lot with frontage on 3 streets. Per the Zoning Ordinance, any yard adjoining a street is considered a front yard. *See* Exhibits B-4, Rendered Plan; and B-10, Viewer; *see also* Zoning Ordinance §27-201.

16. The Property has 345.37 feet of frontage along Trewigtown Road and 516.98 feet of curvilinear frontage along New Britain Boulevard. The Property also has 362.83 feet of frontage along Schoolhouse Road. *See* Exhibits B-2, Plan; and B-10, Viewer.

17. As constructed, the non-residential building’s front wall is oriented at an angle to New Britain Boulevard. The yard facing Schoolhouse Road behind the building’s rear wall is treated as a rear yard. *See* Exhibit B-2, Plan.

18. The non-street lot lines have multiple bends in each boundary. The functional side lot line next to the building’s southern wall has separate sections that are 119.88 feet, 140.33 feet and 722.85 feet long. *See* Exhibits B-2, Plan; and B-10, Viewer.

19. The lot line behind the building runs partially along Schoolhouse Road. The lot line’s initial section abutting Schoolhouse Road and closest to the Trewigtown Road intersection is roughly 110 feet long. *See* Exhibits B-2, Plan; B-4, Rendered Plan; and B-10, Viewer.

20. The lot line’s first 90 degree course change occurs roughly at the rear corner of the building. After short perpendicular distance, the lot line then turns parallel again to Schoolhouse

Road for a distance of 150.31 feet, where the next 90 degree turn occurs. *See Exhibits B-2, Plan; B-4, Rendered Plan; and B-10, Viewer.*

21. This other perpendicular section is 94.97 feet long. The lot line then makes its final 90 degree turn and travels parallel to Schoolhouse Road. The line runs behind an intervening residentially used parcel that separates the Property from Schoolhouse Road. This final portion of the rear lot line is 485.58 feet long. *See Exhibits B-2, Plan; B-4, Rendered Plan; and B-10, Viewer.*

22. Vehicles enter and exit the Property through 2 access points on to New Britain Boulevard. There is no vehicular or pedestrian access to the Property from either Trewigtown Road or Schoolhouse Road. *See Exhibit B-4, Rendered Plan.*

23. Melograno and Fasnacht stated, and the Board finds, that the Property presently has 84 off-street parking spaces. These spaces are located in 2 primary parking lots. *See Exhibits B-2, Plan; and B-4, Rendered Plan.*

24. One lot is in along the half building's front wall facing New Britain Boulevard. The other lot is in the yards fronting on Trewigtown Road and Schoolhouse Road. *See Exhibits B-2, Plan; B-4, Rendered Plan; and B-10, Viewer.*

25. Access to the parking lots is through the northern-most driveway entrance on to New Britain Boulevard. The parking lots are connected by a short drive aisle that wraps around the building's front northwest corner. *See Exhibits B-2, Plan; B-4, Rendered Plan; and B-10, Viewer.*

26. The other street access connects to a drive aisle that travels through the Property's southern side yard. Separate spurs off this drive aisle lead to loading areas along the building's side and rear walls. The drive aisle terminates in a truck turning area behind the building. *See Exhibits B-2, Plan; B-4, Rendered Plan; and B-10, Viewer.*

27. An 80 feet wide gas line easement runs through the Property's functional side yard, from New Britain Boulevard to the rear lot line. A stormwater basin is in the front section of this side yard. *See Exhibits B-2, Plan; and B-4 Rendered Plan.*

28. Melograno stated, and the Board finds, that building's sole tenant and occupant will be PDM Constructors, Inc. ("PDM"), a Pennsylvania corporation. Melograno stated, and the Board finds, that PDM and the Applicant are under common control by the same owners.

29. Melograno stated, and the Board finds, that PDM is a light manufacturing business. It makes and assembles pre-fabricated building elements, namely bathrooms, for inclusion in large construction projects such as hospitals and college housing. *See Exhibit A-5, Brochure.*

30. Melograno stated, and the Board finds, that PDM presently operates in a non-residential building at 425 Stump Road, Lansdale. In this facility, PDM manufactures and assembles metal studs, and maintains employee office and meeting spaces. *See Exhibit A-3, Photos.*

31. Melograno stated, and the Board finds, that recent demand for PDM's pre-fabricated bathrooms has increased significantly. PDM's rapid growth has stretched the limits of its Stump Road facility, necessitating its need for the Property.

32. Melograno stated, and the Board finds, that the existing non-residential building has 101,700 gross square feet of floor area devoted to the warehousing use. 81,623 square feet is manufacturing space, and 20,077 square feet is occupied by office space. *See Exhibit B-2, Plan.*

33. Melograno and Fasnatch stated, and the Board finds, that PDM will assemble the pre-fabricated bathrooms in the building on the Property. No raw materials will be stored nor fashioned at the Property.

34. Melograno and Fasnatch stated, and the Board finds, that the metal studs and other building elements will be delivered to the building from other locations, including the Stump Road facility. No studs or other materials will be stored outside.

35. Melograno and Fasnatch stated, and the Board finds, that completed bathroom units ready for delivery will be picked up by tractor trailer trucks from the widened loading bay along the side wall. Melograno expects to deliver 30 bathrooms weekly, necessitating 10 truck trips. *See Exhibit B-4, Rendered Plan.*

36. Melograno and Fasnatch stated, and the Board finds, that for purposes of the Zoning Ordinance, all 101,700 existing square feet will be devoted to the flex space use (K18). Roughly 81,623 square feet of the space will be the assembly activity. The remaining 20,077 square feet will be supportive office space. *See Exhibit B-4, Rendered Plan.*

37. Based upon this square footage, the Property must have 370 off-street parking spaces to support the K-18 flex use (1 space for every 275 square feet of total floor space). *See Zoning Ordinance §27-2901.K.*

38. Melograno and Fasnatch stated, and the Board finds, that 53 new spaces are proposed for the Property. This will bring the total off-street parking spaces on the Property to 137. *See Exhibit B-4, Rendered Plan.*

39. The new spaces will be in the Property's front and side yards. The existing lot will be expanded in front of and along the side of the building. A second access to the expanded parking lot will be from the existing drive aisle in the side yard. *See Exhibit B-4, Rendered Plan.*

40. Fasnatch stated, and the Board finds, that stone beds with an underground detention system will be installed under the parking area to handle the increased runoff. The existing stormwater basin cannot be expanded due to its proximity to the gas line easement. *See Exhibit B-4, Rendered Plan.*

41. Melograno and Fasnatch stated, and the Board finds, that the Property's physical characteristics preclude providing the remaining 233 spaces. The rear yard lacks utility due to the indented lot line. Spaces cannot be built in the side yard due to the gas line easement and stormwater facility. *See Exhibits B-2, Plan; and B-4, Rendered Plan.*

42. Melograno stated, and the Board finds, that PDM's employee count will be limited to the number of spaces available in the expanded lot. In his opinion, the 137 spaces will be sufficient for PDM's flex space use. *See* Exhibit B-4, Rendered Plan.

43. Melograno stated, and the Board finds, that to enable PDM to immediately use the building as converted flex space, he will further limit PDM's employee count at the Property to 65 until the expanded parking lot is approved and constructed. *See* Exhibit A-2, Letter.

44. The Board finds that the Property, being zoned Industrial/Office and located within the existing New Britain Business Park, can accommodate the proposed flex space use with 137 available off-street parking spaces without overburdening the Property or negatively impacting the surrounding properties.

45. Due to the Property's odd shape, its frontage along 3 streets, and the gas line easement, the Property contains unique physical characteristics that support relief from the required minimum number of off-street parking spaces for the proposed flex space use.

46. The Board finds that Zoning Ordinance's off-street parking space requirements, together with these unique physical characteristics, impose a hardship on the Property and the Applicant.

47. Subject to the conditions imposed herein, the flex space use's size, location and manner of operation, with the parking provided, is harmonious with the Property's size and is 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 December 16, 2021, 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 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 that will afford relief.

3. The Board finds that the variance requested to reduce the minimum number of required off-street parking spaces 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); *see also Township of Northampton v. Zoning Hearing Board*, 969 A.2d 24 (Pa. Commw. 2009).

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. 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).

8. The Board concludes that the Property’s odd shape, frontage on 3 streets, and large gas line easement establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. The Board concludes that regardless of the use of the building on the Property, a variance from the required minimum number of off-street parking spaces is likely needed. The Property’s rear and side areas are virtually unusable for any purpose due to the natural resources, boundary contours and the gas line easement.

10. The Board concludes that despite these limitations affecting the Property, the 137 off-street parking spaces proposed for the flex space use (use K18) will be sufficient.

11. The Board concludes that by limiting the number of staff on the Property to 65 until the parking lot is expanded, the Applicant has taken steps to minimize the impact of the parking shortage.

12. 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 operate a flex space use (use K18) on the Property while providing 137 off-street parking spaces.

13. 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.

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

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

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

### DECISION

AND NOW, this 21<sup>st</sup> day of January, 2022, 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 §27-2901.K to provide less than the required minimum number of off-street parking spaces in connection with a flex space use (use K18) on the Property, subject to the following conditions:

1. The Applicant shall provide a minimum of 137 off-street parking spaces on the Premises, in accordance with the layout of the proposed improvements shown on the definitive plan and exhibits, and consistent with the representations and credible testimony made at the hearing.

2. The Applicant and/or the building's occupant shall limit the number of employees, staff, etc. at the Property to 65 while conducting the flex space use until such time as the expanded parking lot is constructed.

3. 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.

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.

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

Date: 1/21/22

**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 11/15/21). Attachments: <ul style="list-style-type: none"><li>• Narrative of Relief requested</li><li>• List of owners of property withing 500 feet</li><li>• Proof of payment of fees</li><li>• Deed dated 5/20/1993</li><li>• Purchase and Sale Agreement (date redacted)</li></ul>
B-2	Zoning Hearing Board Site Plan, 1 sheet, prepared by Rettew, dated 11/10/21
B-3	Letter to The Intelligencer dated 11/29/21 forwarding public notice of hearing for publication
B-4	Public Notice of the hearing on 12/16/21
B-5	Proof of publication of public notice in 12/2/21 and 12/9/21 editions of The Intelligencer
B-6	Letter to Applicant and Attorney dated 11/29/21 providing notice of 12/16/21 hearing
B-7	List of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners – notice mailed on 11/30/21
B-9	Affidavit of posting of public notice at property – notice posted on 12/1/21 at 11:00 a.m., together with photograph of posting
B-10	Bucks County Floodplain Viewer Map and Aerial of Property
B-11	Letter dated 12/13/21 from Applicant’s counsel amending application
A-1	Attachment Narrative to ZHB application
A-2	Letter dated 12/13/21 from Applicant’s counsel amending application (same as <i>Exhibit B-11</i> )
A-3	6 photos of 425 Stump Road building
A-4	Rendered Site Plan, 1 sheet, prepared by Rettew, dated 12/15/21
A-5	Pamphlet for Pre-Manufactured Building Elements

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

**Signature Page**

Re: 180 New Britain Blvd Associates, LLC  
180 New Britain Boulevard  
New Britain Township  
TMP No. 26-1-100

Date: JANUARY 21, 2022

Chuck Coxhead, Chair

CC

Cathy Basilio, Vice Chair

C. Basilio

Jim Scanzillo, Member

ABSENT

Scott Fischer, Alternate Member

Scott W. Fischer