

DATE OF DECISION: MAY 16, 2022

DATE OF MAILING: MAY 16, 2022

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

**RE: APPLICATION OF 101 INDEPENDENCE LANE ASSOCIATES, LLC,  
FOR THE PROPERTY LOCATED AT 101 (aka 141) INDEPENDENCE LANE,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-1-100-11**

**FINDINGS OF FACT**

1. On Thursday, April 21, 2022, 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 101 Independence Lane Associates, LLC (the “Applicant”).

2. The property that is the subject of this application is located at 101 (aka 141) Independence Lane, New Britain Township, further known as Bucks County Tax Map Parcel No. 26-1-100-11 (the “Property”).

3. Notice of the April 21, 2022, hearing was published in advance of the hearing in the Thursday, April 7, 2022, and Thursday, April 14, 2022, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the April 21, 2022, hearing was sent by first class mail on April 4, 2022, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and 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. Gehman posted notice of the April 21, 2022, hearing on the Property on April 8, 2022, at 11:22 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 141 Realty, LP (“141 Realty”). The Property is subject to a valid Agreement of Sale (the “Agreement”) between 141 Realty 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 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 permitted by right in the IO zoning district. *See* Zoning Ordinance §27-1801.a.

10. To permit the new non-residential building with the K3 use, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. From §27-1802.a to permit the proposed building to be 42 feet high, where the maximum building height permitted by right is 35 feet;
- b. From §27-2400.g.1 to permit 100% of the slopes that range from 8% to 15% grade to be disturbed, where the maximum amount of permitted disturbance is 40%;
- c. From §27-2400.g.2 to permit 100% of the slopes that range from 15% to 25% grade to be disturbed, where the maximum amount of permitted disturbance is 30%;
- d. From §27-2400.g.3 to permit 100% of the slopes that exceed 25% grade to be disturbed, where the maximum amount of permitted disturbance is 15%;
- e. From §27-2901.K to allow less than the minimum required number of off-street parking spaces for the proposed K3 use (177<sup>1</sup> spaces are required; 53 spaces are proposed); and
- f. From §27-2904.g.5 to permit paved areas to be 9.3 feet from exterior structural walls of the proposed building, where the required minimum setback for such paved areas from the exterior structural building wall is 20 feet.

11. Gehman stated, and the Board finds, that he and the New Britain Township Engineer reviewed the history of the Property and the surrounding tracts after the application was submitted. They determined that the Property’s steep slopes are not naturally occurring. *See* Exhibits B-13, Letter; and A-2, Email.

12. Gehman stated, and the Board finds, that the slopes are dirt stockpiles from prior construction activities that occurred on the surrounding tracts. As such, the Property’s steep slopes do not qualify under the Zoning Ordinance’s natural resource protection provisions. *See* Exhibits B-13, Letter; and A-2, Email.

13. As a result of this determination, the Applicant’s representatives amended the originally requested relief. The Applicant withdrew its requests for variances from Zoning Ordinance §27-2400.g.1, 2 and 3. *See* Exhibit A-3, Amendment.

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<sup>1</sup> As submitted, 186 spaces were needed to support the building. At the hearing, the Applicant introduced a revised definitive plan that reduced the building’s size, and similarly the required number of parking spaces. The Applicant sought leave, granted by the Board, to amend the application to reflect the modified variance.

14. 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.

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

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

16. No other individuals appeared at the April 21, 2022, hearing to request party status, register a position, comment on, or ask questions regarding the application before the Board.

17. New Britain Township took no position on the application. However, the Township requests that its position outlined in Exhibit B-12 be considered by the Board and attached as a condition to any relief granted by the Board. *See* Exhibit B-16, Letter.

18. The Property is located in the New Britain Business Park. Its gross site area is 7.071 acres. Excluding the areas within the ultimate right-of-way of the abutting street, and within any utility or other similar easements, the Property’s base site area is 5.76 acres. *See* Exhibit A-5, Plan.

19. The Property is shaped like a trapezoid. It has 118.87 feet of curvilinear frontage along the Independence Lane cul-de-sac bulb. The other sections of the Property’s front lot lines extend off each side of the cul-de-sac frontage. *See* Exhibits A-5, Plan.

20. The Property’s shorter linear front lot line section travels 63.35 feet from the cul-de-sac, when it slightly jogs to run perpendicular to Independence Lane. This latter section is 75 feet long. *See* Exhibit A-5, Plan.

21. The Property’s longer linear front lot line section is 66.22 feet long from the cul-de-sac. At this point, the lot line angles to travel perpendicular to Independence Lane. This longest portion of the Property’s front lot line is 276.16 feet. *See* Exhibit A-5, Plan.

22. The Property’s side lot lines are 626.18 feet and 497 feet long. The rear lot line is 535.84 feet long. It is at an angle to the front lot lines. *See* Exhibit A-5, Plan.

23. Fasnacht stated, and the Board finds, that natural wetlands are located along the Property’s rear lot line, in the southeast rear corner. These wetlands are 0.04 acres (1,724 square feet). *See* Exhibit A-6, Plan.

24. Fasnacht stated, and the Board finds, that much of the Property’s front yard is occupied by existing stormwater management easements and facilities, a driveway easement, and a right-of-way to potentially extend Independence Lane beyond the cul-de-sac. *See* Exhibit A-6, Plan.

25. Miller stated, and the Board finds, that the proposed building will be an 88,250 square feet, 42 feet high, warehouse structure. The building will be between the front yard

easements and the rear yard wetlands. Its front wall will be oriented toward the longer side lot line. *See Exhibits A-5, Plan; and A-6, Plan.*

26. Fasnacht stated, and the Board finds, that direct access to the Property will be via a single driveway from Independence Lane. After a short distance, the driveway splits. Separate driveway spurs lead to a parking lot in front of the building and loading bays along the rear wall. *See Exhibit A-5, Plan.*

27. Fasnacht and Miller stated, and the Board finds, that a 20 feet wide emergency vehicle access lane will travel around the building's eastern (rear) side. The ends of this emergency lane intersect with the edges of the parking lot and loading dock. *See Exhibit A-5, Plan.*

28. Fasnacht and Miller stated, and the Board finds, that the emergency lane will be a "grasscrete" road. It will consist of pavers filled with dirt and grass, sufficient to support large emergency vehicles. A retaining wall will protect the wetlands from the paver access lane. *See Exhibit A-5, Plan.*

29. Fasnacht and Miller stated, and the Board finds, that the emergency access lane was added to the definitive plan per the request of the Township's Fire Marshal. The Applicant's representatives agreed to comply with any further reasonable plan design conditions requested by the Fire Marshal. *See Exhibit B-12, Letter.*

30. Fasnacht and Miller stated, and the Board finds, that an employee and patron parking lot will be provided in a lot adjacent to the building's front wall. Sixteen (16) loading bays will be located behind the building. *See Exhibit A-5, Plan.*

31. Fasnacht stated, and the Board finds, that the edge of the parking lot paving will be setback 9.3 feet from the building's front exterior structural wall along the majority of its length. A five (5) feet wide sidewalk will be between the edge of the paving and the building wall. *See Exhibit A-5, Plan.*

32. Fasnacht stated, and the Board finds, that the paved areas must be close to the building's front wall in order to provide access to the parking area and facilitate the design of the drive aisles and fire access lane. *See Exhibit A-5, Plan.*

33. Regarding the building's height, Fasnacht stated, and the Board finds, that the additional 7 feet in building height will be nearly indiscernible from surrounding properties since each tract is improved with a similar warehouse or industrial building and use. *See Exhibit A-5, Plan.*

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

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

36. Miller stated, and the Board finds, that without a sufficient internal clear height, the building would not meet the minimum market demands of commercial warehouse operators and would eventually become functionally obsolete.

37. Miller stated, and the Board finds, that the additional 7 feet in building height is the minimum necessary to meet market demands and is comparable to other industrial warehouse facilities in New Britain Township and the region.

38. Regarding the off-street parking, Fasnacht stated, and the Board finds, that the Zoning Ordinance requires the Property to have 177 off-street parking spaces to support the K3 use (1 space for every 500 square feet of total floor space). *See* Zoning Ordinance §27-2901.K.

39. Miller stated, and the Board finds, that 53 new spaces are proposed for the parking lot next to the building's functional front wall. The parking lot cannot be made larger due to its proximity to the existing front yard easements and stormwater detention area. *See* Exhibits B-10, Viewer; and A-5, Plan.

40. Miller and Fasnacht stated, and the Board finds, that they studied the K-3 use's parking needs based upon demand rate calculations and the guidelines contained in the Parking Generation Manual (the "Manual") promulgated by the Institute of Transportation Engineers. *See* Exhibit A-7, Parking Analysis.

41. Although Fasnacht conceded that the Zoning Ordinance applies a higher demand rate than the Manual, her parking analysis of the Property revealed that the largest demand rate is 35 parking spaces. In her opinion, the 53 spaces will adequately serve the parking needs of the warehouse use. *See* Exhibits A-5, Zoning Plan; and A-7, Parking Analysis.

42. Fasnacht stated, and the Board finds, that stone beds with an underground detention system will be installed under the loading dock area to handle the increased stormwater runoff. *See* Exhibit A-5, Plan.

43. The Board finds that the Property, being zoned Industrial/Office and located within the existing New Britain Business Park, can accommodate the proposed 42 feet high warehouse building with 53 available off-street parking spaces without overburdening the Property or negatively impacting the surrounding properties.

44. Due to the Property's odd shape and wetlands, its limited frontage along a cul-de-sac street, and the various easements in the front yard, the Property contains unique physical characteristics that support relief from the required minimum number of off-street parking spaces, building height, and paving setback for the proposed building and warehouse use.

45. The Board finds that Zoning Ordinance's requirements, together with these unique physical characteristics, impose a hardship on the Property and the Applicant.

46. Subject to the conditions imposed herein, the proposed building's size, height, 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 April 21, 2022, 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 variances requested for the building height, paving setback and off-street parking spaces are dimensional variances. 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) 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).

5. 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, naturally occurring wetlands, limited curved street frontage, and extensive front yard easements establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

9. 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.

10. However, the Board concludes that by increasing the building height by 7 feet, the Applicant will generate greater availability for its business and prospective warehouse tenant operators, without creating any adverse visibility hazards along nearby streets.

11. The Board concludes by constructing the building at a height of 42 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.

12. 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 front areas are virtually unusable for any purpose due to the natural resources and the right-of-way easements.

13. The Board concludes that despite these limitations affecting the Property, the 53 off-street parking spaces proposed for the warehouse use (use K3) will be sufficient. Critical to the Board's conclusions herein is Fasnacht's credible testimony that the proposed parking spaces more than sufficiently serve the warehouse's parking needs. *See Exhibit A-7, Parking Analysis*.

14. The Board concludes that a variance is justified to permit the proposed paved areas to be within 9.3 feet of the front exterior structural wall of the building. This dimension is necessary to provide safe and sufficient parking areas and drive aisles for the non-residential structure.

15. Provided the Applicant complies with the reasonable conditions attached to the relief granted herein, the Applicant has met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to construct a 42 feet high non-residential warehouse building on the Property while providing 53 off-street parking spaces.

16. 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.

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

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

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

**DECISION**

AND NOW, this 16<sup>th</sup> day of May, 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 variances from the Zoning Ordinance as follows:

- a. A variance is granted from §27-1802.a to permit the proposed building to be 42 feet high;
- b. A variance is granted from §27-2901.K to permit no less than 53 off-street parking spaces on the Property in connection with a warehouse use (use K3) on the Property; and
- c. A variance is granted from §27-2904.g.5 to permit the paved areas of the front parking lot to be 9.3 feet from exterior front structural wall of the proposed building.

The relief granted above is subject to the following conditions:

- 1. The Property's and the proposed building's dimensions, size, location and appearance shall be in accordance with amended definitive plans (Exhibits A-5 and A-6), representations, exhibits and credible testimony made and submitted at the hearing.
- 2. The Applicant shall provide a minimum of 53 off-street parking spaces on the Property.
- 3. The plan for the proposed non-residential building shall be designed so as to comply with all the reasonable requirements of the New Britain Township Fire Marshal.
- 4. 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: 5/16/2022

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



## SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application (dated 2/16/22). Attachments: <ul style="list-style-type: none"><li>• Cover letter dated 2/17/22</li><li>• Attachment outlining relief requested</li><li>• List of owners of property withing 500 feet</li><li>• Board of Assessment printout</li><li>• Deed dated 11/25/2014</li><li>• Purchase and Sale Agreement (partial)</li></ul>
B-2	Layout Sketch Plan, consisting of 1 sheet, prepared by Rettew Associates, dated 1/25/22, last revised 2/16/22
B-3	Letter to The Intelligencer dated 3/31/22 forwarding public notice of hearing for publication
B-4	Public Notice of the hearing on 4/21/22
B-5	Proof of publication of public notice in 4/7/22 and 4/14/22 editions of The Intelligencer
B-6	Letter to Applicant and Attorney dated 3/31/22 providing notice of 4/21/22 hearing
B-7	List of the record owners of all properties within 500 feet of the Property; aerial map of properties
B-8	Affidavit of mailing to property owners – notice mailed on 4/4/22
B-9	Affidavit of posting of public notice at property – notice posted on 4/8/22 at 11:22 a.m., together with photograph of posting
B-10	Bucks County Floodplain Viewer Map and Aerial of Property
B-11	Email dated 3/14/22 from Applicant’s counsel granting waiver of time to hold hearing on application
B-12	Letter dated 4/21/22 from J. Garton, Esq., regarding condition
B-13	Letter dated 4/21/22 from R. Gehman regarding steep slope interpretation
A-1	Original Attachment to ZHB application

<b>Exhibit</b>	<b>Description</b>
A-2	Email message from Township Engineer dated 4/18/22
A-3	Redlined Original Attachment to ZHB application
A-4	Layout Sketch Plan, consisting of 1 sheet, prepared by Rettew Associates, dated 1/25/22, last revised 2/16/22 ( <i>same as Exhibit B-2</i> )
A-5	Layout Sketch Plan, consisting of 1 sheet, prepared by Rettew Associates, dated 1/25/22, last revised 4/14/22
A-6	Exhibit A-5 Plan highlighting wetlands, stormwater detention basin, driveway easement and road right-of-way
A-7	Selected sheet for Warehousing use from ITE Parking Generation Manual

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

**Signature Page**

Re: 101 Independence Lane Associates, LLC  
101 (aka 141) Independence Lane  
New Britain Township  
TMP No. 26-1-100-11

Date: 5 16  
5/16/2022

Chuck Coxhead, Chair



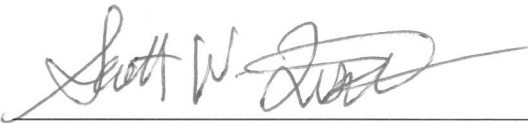
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Cathy Basilio, Vice Chair



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Scott Fischer, Member



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Ryan Wantz, Alternate Member



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