

DATE OF DECISION: 11/20/2023

DATE OF MAILING: 11/20/2023

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

**RE: APPLICATION OF TRIPLE NET INVESTMENTS LXXXV, LLC,
ET AL, FOR THE PROPERTIES LOCATED AT OR NEAR THE
INTERSECTION OF MANOR DRIVE AND ANDRE DRIVE, NEW BRITAIN
TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER
IDENTIFIED AS TAX MAP PARCEL NOS. 26-5-49-13, 26-5-49-14, AND 26-5-49-18**

FINDINGS OF FACT

1. On Thursday, October 19, 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 Triple Net Investments LXXXV, LLC (“TNI”).

2. The additional applicants are RCM Properties IX, LLC (“RCM”); and the New Britain Corporate Center Business Community Owners Association, Inc. (the “Association”). TNI, RCM and the Association are collectively referred to herein as the “Applicants.”

3. The following properties are the subject of this application:

- a. Bucks County Tax Map Parcel No. 26-5-49-13, located at 300 Manor Drive and 500 Manor Drive (the “Manor Drive Lot”).
- b. Bucks County Tax Map Parcel No. 26-5-49-14 (the “Common Lot”), located along Manor Drive directly east of the Manor Drive Lot.
- c. Bucks County Tax Map Parcel No. 26-5-49-18 (the “Ring Lot”), located along Manor Drive, Andre Drive and Schoolhouse Road.

4. TNI and RCM are the record co-owners of the Manor Drive Lot. The Association is the record owner of the Common Lot and the Ring Lot. The Manor Drive Lot, Common Lot, and Ring Lot are collectively referred to herein as the “Property.” See Exhibit B-1, Deeds.¹

5. Notice of the October 19, 2023, hearing was published in advance of the hearing in the Thursday, October 5, 2023, and Thursday, October 12, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. See Exhibit B-6.

6. Notice of the October 19, 2023, hearing was sent by first class mail on October 10, 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;

¹ The current deeds for the Manor Drive Lot and the Ring Lot were submitted with the application and are part of the record. The current deed for the Common Lot was not included, but it is recorded with the Bucks County Recorder of Deeds at Instrument No. 20080108910001.

and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See Exhibit B-9.*

7. Conroy posted notice of the October 19, 2023, hearing on the Property on October 12, 2023, at 11:47 a.m. *See Exhibit B-10.*

8. TNI is a Pennsylvania limited liability company. The Association is a Pennsylvania non-profit corporation. As a record owner of the Property, together with RCM's and the Association's participation as co-applicants, TNI has the requisite standing to prosecute this zoning hearing board application.

9. The Property is located in the C-3, Commercial, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

10. The Manor Drive Lot consists of 2 separate and non-contiguous sections: Premises A and Premises B. TNI proposes to construct a new building on Premises B that will contain medical office uses (use I1). *See Exhibit B-3, Plans.*

11. TNI proposes to construct a separate new building on Premises A and a portion of the Common Lot that will operate a nursing home use (use C2). A C2 use is not permitted in the C-3 zoning district. *See Exhibit B-3, Plans; see also See Zoning Ordinance §27-1401.*

12. To permit the 2 new buildings, the nursing home use, and the related improvements (collectively the "Project"), TNI seeks variances from the following sections of the Zoning Ordinance:

- a. from §27-1401 to allow the nursing home (use C2), where such use is not permitted in the C-3 zoning district;
- b. from §27-2901.C to allow less than the minimum required off-street parking spaces for the proposed nursing home use (333 spaces are required; 245 spaces are proposed); and
- c. from §27-2901.I to allow less than the minimum required off-street parking spaces for the proposed new medical office uses (175 spaces are required; 110 spaces are proposed).

13. 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.

14. The following individuals testified on behalf of TNI in support of the application at the hearing:

- a. Cheri Doyle ("Doyle"), principal and officer of TNI. Doyle is a former nursing home administrator.
- b. George Hartman, P.E. ("Hartman"), registered professional civil engineer. The Board received Hartman as a civil engineering expert witness.

- c. Mark Roth, P.E. ("Roth"), P.E. The Board received Roth as a traffic and transportation expert witness.

15. No other individuals appeared at the hearing to request party status, register a position, or comment or ask questions on the application before the Board. New Britain Township took no position on the application and did not participate in the hearing.

16. The Property is part of a larger tract identified as Lot 4 in the New Britain Corporate Center Business Community, a Planned Community (the "Community"). The Community is a mixed use planned development created in or around 2007. *See Exhibits B-1, Deeds; and B-2, Plat.*

17. Premises A and Premises B of the Manor Drive Lot are unimproved. The Ring Lot surrounds Premises B and abuts Premises A. The Ring Lot is improved with parking spaces. *See Exhibits B-2, Plant; and B-3, Zoning Plan.*

18. Premises A has approximately 173.45 feet of frontage along Manor Drive near the intersection with Andre Drive. The eastern boundary of Premises A has 515.15 feet of frontage along the Common Lot. *See Exhibits B-1, Deeds; and B-3, Zoning Plan;*

19. The Common Lot has frontage along Manor Drive. The Common Lot is improved with parking spaces that support other existing non-residential buildings on Lot 4 in the Community. *See Exhibits B-1, Deeds; and B-3, Zoning Plan.*

20. Lot 4 presently contains 1 medical office building that is 8,687 square feet; and 1 general office building that is 70,249 square feet. The existing medical office building is next to Premises B. The general office building is adjacent to the opposite end of the Common Lot. *See Exhibits B-2, Plat; and A-5, Report.*

21. Doyle stated, and the Board finds, that TNI, through various affiliated real estate development companies, has been involved with commercial, medical, and senior living projects for several years.

22. Doyle and Hartman stated, and the Board finds, that the Project blends compatible medical office and senior living uses and buildings in a pedestrian and environmentally friendly manner in order to promote a design that is consistent with the Community. *See Exhibit B-3, Zoning Plan.*

23. Doyle and Hartman stated, and the Board finds, that the single non-residential building on Premises B will be a 2 story medical office building. It will be 150 feet wide and 100 feet deep. It will contain 30,000 square feet of gross floor space. *See Exhibit B-3, Zoning Plan (MOB).*

24. Doyle and Hartman stated, and the Board finds, that the Project's other non-residential building will be a senior living facility. The structure will be located on Premises A and a portion of the Common Lot. Parking spaces will be removed from the Common Lot to accommodate the facility. *See Exhibit B-3, Zoning Plan (Senior Living).*

25. Doyle and Hartman stated, and the Board finds, that the senior living building will be 3 stories. The structure will be shaped like the capital letter "H." It will be 171,970 square feet,

and contain 169 rooms with 190 beds. *See* Exhibits B-3, Zoning Plan (Senior Living); A-4, Elevation; and A-5, Report.

26. Doyle stated, and the Board finds, that the senior living facility will consist of a mix of independent, assisted and memory care living units. The building will not have skilled nursing beds or rooms. *See* Exhibit B-3, Zoning Plan (Senior Living).

27. Doyle and Hartman stated, and the Board finds, that outdoor gardens, dining, and walking areas will be along the senior living facility's southern, western and northern walls. The main entrance and drop-off location will be along the eastern wall facing the Common Lot. *See* Exhibit B-3, Zoning Plan (Senior Living).

28. Doyle and Hartman stated, and the Board finds, that beginning in 2021, TNI investigated numerous options to develop the Property consistent with the C-2 zoning district designation as well as the Community.

29. Doyle and Hartman stated, and the Board finds, that in meetings with the Township's boards, commissions and consultants, TNI presented a concept plan showing a compliant 60,000 square foot warehouse building. *See* Exhibit A-1, Concept Plan.

30. Doyle and Hartman stated, and the Board finds, that a warehouse is incompatible with the Community and the surrounding tracts. The proposed nursing facility use reflects the large demand for such living arrangements due to Bucks County's aging population. *See* Exhibit B-3, Zoning Plan (Senior Living).

31. Regarding the off-street parking, Roth stated, and the Board finds, that 907 parking spaces are required for all the uses that will be on Lot 4. The Project proposes 701 spaces across Lot 4. *See* Exhibits B-3, Zoning Plan; and A-5, Report.

32. Roth and Hartman stated, and the Board finds, that the Zoning Ordinance requires 333 spaces and 172 spaces for the new nursing facility use and new medical office building, respectively. The Project proposes 245 spaces and 110 spaces, respectively. *See* Exhibits B-3, Zoning Plan; A-6, Report; and A-6, Rendered Plan.

33. Roth and Hartman stated, and the Board finds, that the 245 nursing facility spaces will be located on the Common Lot and a portion of the Ring Lot. The balance of the Common Lot will have 296 spaces to support the existing office building. *See* Exhibit A-3, Rendered Plan.

34. Roth stated, and the Board finds, that he studied the Property's and the uses' parking needs based upon the expected staffing levels, demand rate calculations, as well as the guidelines contained in the Parking Generation Manual (the "Manual"), promulgated by the Institute of Transportation Engineers. *See* Exhibit A-5, Report.

35. Although Roth conceded that the Zoning Ordinance applies a higher demand rate than the Manual, his parking analysis of the Property and Lot 4 revealed, and the Board finds, that the total projected demand for all uses on Lot 4 is 427 parking spaces. *See* Exhibit A-5, Report.

36. Roth stated, and the Board finds, that the 701 proposed spaces will likely exceed the actual parking needs of all the uses on Lot 4. The Board suggested that TNI work with the

Township to place parking spaces in “reserve” to maintain green space and reduce excess paving. *See Exhibit A-5, Report.*

37. Upon questioning from the Board, Hartman confirmed that the Project has not been fully engineered. Hartman believed that the existing drainage basin on Lot 4 next to the Ring Lot is sufficiently sized to accommodate the Property’s impervious surfaces following completion of the Project. *See Exhibit B-3, Zoning Plan.*

38. The surrounding non-residential tracts consist of a shopping center, an existing skilled nursing home, and other general office buildings. Apartment and multi-family residential dwellings are also located near the Community. *See Exhibit B-2, Plat.*

39. The Board finds that the Property, being zoned commercial and located within the Community, can accommodate the Project, the proposed nursing facility and medical uses with a reduced number of off-street parking spaces without overburdening the Property or Lot 4, and without negatively impacting the surrounding properties.

40. The Property contains unique physical characteristics that support relief for the proposed nursing facility use and medical office building, with the reduced number of off-street parking spaces, to be located on the Property.

41. Due to the adjoining medical office building, general office building, other commercial uses in the Community, and separate nursing facility across Manor Drive, the Board finds that the Project is consistent and harmonious with the surrounding uses.

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

43. Subject to the conditions imposed herein, the Project, its location and manner of operation, 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 October 19, 2023, hearing was made by sufficient publication, posting and mailing to affected property owners.

2. The Board concludes that Conroy correctly determined that TNI’s proposed use constitutes a nursing home (use C2). Such use is defined as a “facility licensed by the state for the housing and intermediate or fully-skilled nursing care of four or more persons.” *See Zoning Ordinance §27-305.C.C2.a.*

3. A nursing home use is not permitted in the C-2 zoning district. As such, the Board finds that the request to conduct a nursing home use in the C-2 zoning district is a request for a use variance. The Board finds that the variances sought to reduce the number of off-street parking spaces are dimensional variances.

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 Township of Northampton v. Zoning Hearing Board*, 969 A.2d 24 (Pa. Commw. 2009).

6. 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.

7. 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).

8. An applicant can demonstrate “unnecessary hardship” for a 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).

9. 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).

10. 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).

11. 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).

12. 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.

13. The Board concludes that TNI 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 limited nature of the proposed nursing home facility use is sufficient to justify the variances necessary from Zoning Ordinance §27-1401 to permit a nursing home use (use C2) to be conducted in the C-2 zoning district.

15. The proposed nursing home use, while not a retail, professional, office or similar use, is nonetheless a non-residential use. The Board concludes that the nursing home use is similar in nature to the existing uses in the Community.

16. Regarding the off-street parking, the Board concludes that the number of beds and floor area size of the 2 proposed new buildings dictates how many new off-street parking spaces are required. Actual need for the spaces is not a criteria. *See Zoning Ordinance §27-2901*.

17. By requiring the entire 508 off-street parking spaces where the credible testimony confirms that such spaces are not needed to support the nursing facility and new medical office uses unnecessarily prevents the Property's development and would convert valuable green space into impervious surfaces.

18. Critical to the Board's conclusions herein is Roth's credible testimony that the proposed 701 off-street parking spaces will sufficiently serve *all* the uses on Lot 4. The excess parking spaces could return valuable green space.

19. The Board concludes that attaching a condition to the relief granted herein requiring TNI (and the co-Applicants) to work with the Township to place a certain number of off-street parking spaces "in reserve" will prevent over-development and preserve landscaped areas. *See Exhibit B-3, Zoning Plan*.

20. Provided TNI complies with the reasonable conditions attached to the relief granted herein, the Applicants have met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to conduct the nursing home use, medical office building, and reduced off-street parking spaces on the Property.

21. 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.

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

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

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

DECISION

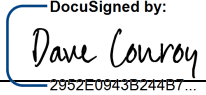
AND NOW, this 20th day of November, 2023, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicants’ requests for variances from the Zoning Ordinance as follows:

- a. A variance is granted from §27-1401 to conduct a nursing home use (use C2) on the Property, where such use is not permitted in the C-2 zoning district;
- b. A variance is granted from §27-2901.C to allow 245 off-street parking spaces to serve the new nursing home use (use C2); and
- c. A variance is granted from §27-2901.I to allow 110 off-street parking spaces to serve the new medical office use and building (use I1).

The relief granted above is subject to the following conditions:

- 1. The Project, its dimensions, size, location, operations, occupancy, hours of operation, staffing levels and appearance shall be in accordance with the definitive plans, evidence, representations, exhibits, and credible testimony made and submitted at the hearing.
- 2. Working with the Township during latter stages of the Project’s review, the Applicant shall endeavor to place off-street parking spaces in excess of demand in “reserve” status and preserve the related green space.
- 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.

DocuSigned by:

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

Date: 11/20/2023

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

Exhibit	Description
B-1	Zoning Hearing Board application (dated 9/12/23). Attachments to Application: <ul style="list-style-type: none">• Addendum outlining relief requested• Deed for Lot 4 dated 12/21/2021• Deed for 100 Manor Drive dated 12/21/2021• Map and list of surrounding property owners
B-2	Amended Planned Community Plat Plan, 1 sheet, prepared by Bohler Engineer for Lot 4
B-3	Zoning Plans, consisting of 3 sheets, prepared by Bohler Engineering, dated 9/5/2023
B-4	Letter to The Intelligencer dated 9/29/2023 forwarding public notice of 10/19/23 hearing for publication
B-5	Public Notice of the hearing on 10/19/23
B-6	Proof of publication of public notice in 10/5/23 and 10/12/23 editions of The Intelligencer
B-7	Letter to Applicant’s attorney dated 10/2/23 providing notice of hearing
B-8	Township list of the record owners of all properties within 500 feet of the Property; aerial map of properties
B-9	Affidavit of mailing to property owners on Exhibit B-8 – notice mailed on 10/10/23
B-10	Affidavit of posting of public notice at property – notice posted on 10/12/23 at 11:47 a.m., together with photos of notice on property
B-11	Bucks County Viewer Map and Aerial
A-1	Warehouse Concept Plan (Revision 4), consisting of 1 sheet, prepared by Bohler Engineering, dated 2/23/2023
A-2	Sheet 1 (Zoning Plan) of Exhibit B-3
A-3	Rendered Sheet 2 (Zoning Plan, Senior Living) of Exhibit B-3

Exhibit**Description**

- | | |
|-----|---|
| A-4 | Elevation of Senior Assisted Living Facility |
| A-5 | Parking Evaluation Report, prepared by McMahon Associates, dated 10/18/23 |
| A-6 | Rendered Sheet 3 (Zoning Plan, Medical Office Building) of Exhibit B-3 |

New Britain Township
Zoning Hearing Board

Signature Page

Re: Triple Net Investments LXXXV, LLC, et al
Manor Drive and Andre Drive
New Britain Township
TMP Nos. 26-5-49-13, 26-5-49-14, and 26-5-49-18

Date: November 20, 2023

Chuck Coxhead, Chair

/ABSENT/

Cathy Basilio, Vice Chair

DocuSigned by:

Cathy Basilio

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Scott Fischer, Member

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Scott Fischer

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Ryan Wantz, Alternate Member

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Ryan Wantz

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