

**BEFORE THE ZONING HEARING BOARD OF  
SOUTH WHITEHALL TOWNSHIP,  
LEHIGH COUNTY, PA**

**IN RE: APPEAL OF TRIPLE NET : NO. ZHB-2022-09**  
**INVESTMENTS CI, LLC C/O :**  
**JOSEPH PETRUCCI :**

**DECISION AND ORDER OF THE SOUTH WHITEHALL TOWNSHIP  
ZONING HEARING BOARD**

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**I. FINDINGS OF FACT.**

1. On or about August 24, 2022, Triple Net Investments CI, LLC c/o Joseph Petrucci (hereinafter "Triple Net"), filed with South Whitehall Township (hereinafter, "Township") a Zoning Hearing Board Notice of Appeal (hereinafter "Application") seeking zoning relief for property known as 1429 Eck Road, Allentown, PA (hereinafter, "Property"). (Application).

2. The Property is located in the Township's Industrial Commercial-1 (IC-1) Zoning District. (Ex. A-2).

3. The Applicant is the equitable owner of the Property pursuant to an agreement of sale, dated June 13, 2022. (Application).

4. The Property consists of a vacant lot comprising of approximately 5.10 acres and is bounded to the west by Eck Road and by a railroad to the east. The Property abuts a residence to the north, owned by Michael Prushkar, III (1479 Eck Rd.). There are commercial properties generally to the east, west, and south of the Property. (Ex. A-3, Prushkar, Smith).

5. Triple Net proposes to develop the Property as a fully-fenced and fully-paved parking lot facility which will be leased to a nearby warehouse business or businesses to use as parking space for trailers. (Smith, Petrucci).

6. The proposed use of the Property is "Outdoor Storage" which is a use permitted by special exception in the IC-1 Zoning District. (Smith, Application, Ex. A-1)

7. To carry out the project, Triple Net seeks the following zoning relief:

- i. Special exception use approval pursuant to Section 350-48(o)(9)(C); and

ii. A variance pursuant to Section 350-48(o)(2)(E)(ii)(e) to provide eight (8) parking spaces and reserve an additional sixteen (16) parking spaces where twenty-three (23) parking spaces are required by Section 350-48(o)(9)(D).

(Application).

8. A hearing was scheduled for September 28, 2022, and was advertised in the September 07, 2022, and September 14, 2022, Lehigh Valley Press editions of the "Parkland Press."

9. On September 23, 2022, Triple Net requested a continuance and executed a time waiver form pursuant to Section 908(1.2)<sup>1</sup> of the Pennsylvania Municipalities Planning Code (hereinafter, "MPC") to waive the requirement that a hearing be held within sixty (60) days from the date of the filing of the appeal with the Zoning Hearing Board (hereinafter, "Board").

10. The hearing was conducted on November 30, 2022, pursuant to Public Notice in the November 09, 2022, and November 16, 2022, Lehigh Valley Press editions of the "Parkland Press."

11. All members of the Board were present at, and participated in, the hearing.

12. Triple Net was represented by Counsel, Erich J. Shoch, Esq. who presented the testimony of three witnesses, including Mr. Martin Smith, P.E., Mr. John R. Wichner, P.E., PTOE, and Mr. Joseph Petrucci, a principal of Triple Net. All witnesses were sworn. Mr. Smith was certified as an expert in the fields of engineering and landscape and engineering design. Mr. Wichner was certified as an expert in the fields of traffic engineering.

13. The Township appeared as an interested party and was represented by its Solicitor Lisa Pereira, Esq, who did not present the testimony of any witnesses. The Township did not object to the appeal.

14. An opportunity was provided for additional individuals or groups to request party status, however, no requests were made.

15. An opportunity was provided for interested parties to make public comment and Mr. Michael Pushkar, III, an owner of the abutting residence at 1479 Eck Rd., was sworn but declined party and objector status. Mr. Pushkar expressed his concerns about light from the Property disturbing his residence and his desire for a berm to act as a buffer between the Property and his residence. (Pushkar).

16. Triple Net offered the following Exhibits:

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<sup>1</sup> 53 P.S. § 10908(1.2).

- a. Exhibit A-1 – Engineering Sketch Plans prepared by Pany & Lentz Engineering Co., dated August 15, 2022, and last revised October 3, 2022;
- b. Exhibit A-2 – A copy of a portion of the Township Official Map depicting the location of the Property;
- c. Exhibit A-3 – An aerial photograph depicting the location of the Property prepared by Pany & Lentz Engineering Co., dated November 30, 2022; and
- d. Exhibit A-4 – A copy of a Trip Generation Comparison Letter prepared by McMahon Associates, dated September 12, 2022, and addressed to Joseph Petrucci.

17. All of Triple Net's Exhibits were admitted into evidence.

18. The Board offered Exhibit B-1, a copy of a memorandum from the Township Director of Community Development David Manhardt, dated November 23, 2022, and addressed to Zoning Officer Laura Harrier, Township Manager Thomas Petrucci, Zoning Hearing Board Solicitor Thomas Dinkelacker, Esq., and Township Solicitor Lisa Pereira, Esq. Exhibit B-1 was made a part of the record without objection.

19. In issuing this opinion the Board takes judicial notice of all applicable sections of the South Whitehall Township Zoning Ordinance (hereinafter, "Ordinance"), including but not limited to Sections 350-16, 350-24, 350-42, and 350-48.

20. The proposed use of the Property is Outdoor Storage, a permitted use by special exception in the IC-1 Zoning District. (Smith, Petrucci; Ex. A-1).

21. Following development, the Property will consist of a fully fenced and fully-paved parking lot facility containing seventy nine (79) large parking spaces for trailers, a small guard booth for a security guard to monitor the facility and parked trailers, and eight (8) standard-sized parking spaces. The 79 trailer spaces include 16 spaces reserved for possible future use as standard size parking spaces, if needed. (Ex. A-1, Smith).

22. Relevant to Applicant's request for a special exception under the specific requirements of Section 350-48(o)(9)(E) for Outdoor Storage is the following evidence:

- a. The Property will be enclosed by a chain-link fence and visual screen in accordance with Section 350-42(b);

- b. The Property will conform to all required setbacks imposed on Outdoor Storage uses;

c. The Property will be paved and curbed so that the curb will prevent dirt and/or mud from spreading from the Property;

d. The paving and design standards of the trailer parking spaces will conform to the standards established by the Township and will be reviewed by the Township Engineer during the land development process;

e. Most trailers maintained on site are empty, however if full they will typically contain consumer or retail goods;

f. The Property will be used only for the storage of trailers;

g. The Applicant does not anticipate the storage of refrigerated trailers;

h. The Property will not be used for the storage of loose materials;

i. Trailers containing livestock will be prohibited;

j. The Property will be used only for the storage of trailers.

k. The Applicant will maintain a fuel spill containment facility on site, thus eliminating the possibility for materials or waste to be carried off the Property in a manner that could contaminate nearby watercourses;

l. The trailers parked on the Property will not contain hazardous materials; and

m. There will be no fumes, dust, fire hazards or conditions creating rodent problems (all waste will be in containers).

(Ex. A-1, Smith, Petrucci).

23. Relevant to the Applicant's request for a special exception under the general requirements of Section 350-16(i) is the following evidence:

i. The use of the Property as Outdoor Storage is consistent with the community development objectives articulated in the South Whitehall Township Zoning Ordinance;

ii. The use of the Property as Outdoor Storage is consistent with the statement of purpose articulated for the IC-1 Zoning District and promotes the harmonious and orderly development of the IC-1 Zoning District;

iii. The use of the Property as Outdoor Storage is consistent with the South Whitehall Township Comprehensive Plan;

iv. The Property will comply with all the requirements of the South Whitehall Township Subdivision and Land Development Ordinance (hereinafter, "SALDO"), except to the extent that Triple Net's request for a waiver from Section 312-38(c)(5)(A) relating to driveway width requirements is granted by the South Whitehall Township Planning Commission;

v. The design, characteristics, and operation of the Use is such that the public health, safety, and general welfare will be protected and reasonable consideration was given to the character of the neighborhood and the IC-1 Zoning District, conservation of property values, and traffic safety and road capacities;

vi. The design of the Property is compatible with the character and type of development existing in the vicinity of the Property and permitted in the IC-1 Zoning District;

vii. The use of the Property as Outdoor Storage is compatible with the uses permitted in the vicinity of the Property and in the IC-1 Zoning District, in terms of density and/or intensity of land use; and there is nothing abnormal or adverse about the use of the Property relative to other permitted uses in the IC-1 Zoning District;

viii. The design of the Property is reflective of sound engineering and land development design and construction principles, practices, and techniques, and is subject to review by the South Whitehall Township Planning Commission for the same;

ix. The design of the Property provides safe and efficient access to roads and will not create traffic congestion, hazardous traffic conditions or excessive traffic volumes;

x. The design of the Property provides continuity of existing circulation systems, including roads, sidewalks, and trails, and is subject to review by the South Whitehall Township Planning Commission for the same;

xi. The design of the Property provides for adequate environmental controls and performance standards to minimize unwanted deleterious effects of emissions on neighboring properties and the communities, and is subject to review by the South Whitehall Township Planning Commission for the same; and

xii. The proposed use of the Property as Outdoor Storage meets the specific requirements for Outdoor Storage as a special exception use contained in Section 350-48(o)(9)(E).

(Ex. A-1, Smith, Wichner, Petrucci).

24. The Application of 350-48(o)(2)(E)(ii)(e) requires 23 standard-size parking spaces, however the Applicant provides only 8. (Ex. A-1, Smith).

25. The Applicant believes that the 8 spaces provided will exceed the anticipated use of standard parking spaces and that providing 23 spaces is unnecessary as there will only be one security guard per shift and truckers will not be permitted to park personal vehicles on the Property. (Smith).

26. The plan includes a reservation of 16 parking spaces for future use as standard-size spaces. (Ex. A-1, Smith).

27. Applicant agrees to relinquish trailer parking on the 16 reserved spaces in favor of an appropriate number of standard size spaces in accordance with the requirements of the Township Zoning Ordinance and will add a note to that effect to the land development plan. (Smith).

28. The Board finds the testimony of Mr. Smith, Mr. Wichner, Mr. Petrucci, and Mr. Pushkar credible.

## **II. CONCLUSIONS OF LAW.**

1. Triple Net's Application and the hearing related thereto were advertised in accordance with the requirements of the MPC.

2. The hearing on Triple Net's Application was held pursuant to and in accordance with the requirements of the MPC in accordance with Triple Net's grant of an extension of time pursuant thereto.

3. Triple Net has met its burden of proof with respect to its request for special exception use approval pursuant to Section 350-48(o)(9)(C) to operate the Property as an Outdoor Storage use which is permitted by special exception in the IC-1 Zoning District in which the Property is located.

4. Triple Net has met its burden of proof with respect to its request for a variance pursuant to Section 350-48(o)(2)(E)(ii)(e) to provide eight (8) standard parking spaces and to reserve sixteen (16) standard parking spaces where twenty-three (23) standard parking spaces are required by Section 350-48(o)(9)(D).

5. The conditions of approval as set forth in this Order are reasonable, consistent with the testimony and other evidence offered by and on behalf of the Applicant, the intent of the Ordinance, and the public health, safety, and welfare.

### III. DISCUSSION.

This appeal comes before the Board on Triple Net's request for a special exception use approval to operate the Property as an Outdoor Storage use pursuant to Section 350-48(o)(9)(C) and Triple Net's request for a variance pursuant to Section 350-48(o)(2)(E)(ii)(e) to provide eight (8) standard parking spaces and to reserve an additional sixteen (16) standard parking spaces where twenty-three (23) standard parking spaces are required by Section 350-48(o)(9)(D).

#### 1. Special Exception Use Approval

Section 912.1<sup>2</sup> of the MPC requires that, where special exceptions are provided for in a zoning ordinance, such special exceptions must be granted or denied pursuant to the express standards and criteria contained in the zoning ordinance. Section 350-48(o)(9)(C) provides for Outdoor Storage as a special exception use permitted in the IC-1 Zoning District in which the Property is located. Section 350-48(o)(9)(D)-(E) lists the express criteria that must be satisfied for the Board to permit Outdoor Storage as a special exception use in the IC-1 Zoning District. Additionally, Section 350-16(i) lists requirements applicable to all permitted special exception use approvals.

The Board finds that Triple Net has offered substantial evidence on all requirements necessary for special exception use approval for the proposed use of Outdoor Storage in the IC-1 Zoning District. The Board finds as credible the testimony of Mr. Smith, Mr. Wichner, and Mr. Petrucci concerning the design, construction, and operation of the trailer parking facility, and is satisfied that the proposed facility meets the general criteria of Section 350-16(i) as well as the specific criteria of Section 350-48(o)(9)(D)-(E). The Board believes that the proposed use of Outdoor Storage is compatible with the character of the surrounding neighborhood and is no more intense than other similar uses permitted in the IC-1 Zoning District which is intended to contain industrial uses. Moreover, the Board believes that the conditions imposed serve to mitigate any deleterious effects produced by the Outdoor Storage use, and will serve to protect the health, safety, and welfare of neighboring properties, including the abutting residence of Mr. Pushkar located at 1479 Eck Road.<sup>3</sup>

#### 2. Variance

As noted above, the Applicant has requested a variance pursuant to Section 350-48(o)(2)(E)(ii)(e) which provides a mechanism whereby an applicant may receive relief from the off-street parking requirements for a particular use if the applicant demonstrates the required off-street parking spaces are unnecessary. While the Ordinance describes this relief as a "variance,"

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<sup>2</sup> 53 P.S. § 10912.1.

<sup>3</sup> The Board is authorized to place reasonable conditions on the grant of the special exception use approval as the Board deems necessary to implement the purposes of the MPC and the South Whitehall Township Zoning Ordinance. See 53 P.S. § 10912.1.

it is not a traditional variance as the term is often used and, as such, the traditional standard for granting a variance found in the MPC is inapplicable to Triple Net's requested relief in this respect. Instead, Section 350-48(o)(2)(E)(ii)(e) provides the following standard for relief:

The Zoning Hearing Board may grant a variance to the above [off-street] parking requirements when it is documented to the Board's satisfaction that the requirements would not result in unneeded parking. Sufficient area shall be reserved, however, to meet these requirements in full, and the Board of Commissioners may require partial or complete enlargement up to these standards as conditions indicate such enlargement is warranted.<sup>4</sup>

The Board finds that Triple Net has documented to the Board's satisfaction that requiring the provision of the twenty-three (23) parking spaces required by the off-street parking calculation for an Outdoor Storage use contained in Section 350-48(o)(9)(D) would result in unneeded parking. In this regard, the Board finds credible the testimony of Mr. Petrucci, Mr. Smith, and Mr. Wichner, concerning the necessity of standard parking spaces at the facility. More specifically, the Board notes Mr. Petrucci's testimony regarding the operation of the facility, the fact that tractor-trailer drivers will not be permitted to park their personal vehicles at the facility, and the fact that only one security guard will be employed during each shift.

The findings of fact, conclusions of law, and hearing transcript are incorporated herein by reference.

#### **IV. ORDER.**

**AND NOW**, this \_\_\_\_\_ day of **January 2023**, upon consideration of the Application of Triple Net Investments CI, LLC c/o Joseph Petrucci, the Board enters the following **ORDER**:

1. The Applicant's request for special exception use approval pursuant to Section 350-48(o)(9)(C) to authorize the operation of an Outdoor Storage use in the IC-1 Zoning District is **GRANTED**;

2. The Applicant's request for a variance pursuant to Section 350-48(o)(2)(E)(ii)(e) to provide eight (8) standard parking spaces and to reserve an additional sixteen (16) standard parking spaces where twenty-three (23) standard parking spaces are required by Section 350-48(o)(9)(D) is **GRANTED**.

3. The grant of Applicant's special exception use approval is **CONDITIONED** upon the following:

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<sup>4</sup> Section 350-48(o)(2)(E)(ii)(e).

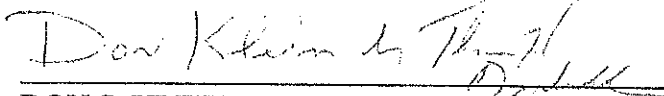


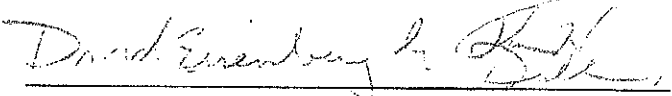
- (a) The continued application of Section 350-48(o)(2)(E)(ii)(e);
- (b) All recorded plans must identify the sixteen (16) parking spaces to be reserved by the Applicant;
- (c) If the Board of Commissioners determines that the reserved parking spaces are necessary for regular motor vehicle parking, then the reserved spaces shall be converted to regular motor vehicle parking spaces (standard size spaces) in an amount that is determined by the Board of Commissioners;
- (d) There shall be no idling of vehicles or equipment other than required for the attaching or detaching of trailers;
- (e) The chain link fence enclosing the property shall contain opaque strips, except that all fencing along the residential property to the north shall be solid;
- (f) The representations, testimony, and exhibits offered by or on behalf of the Applicant in the hearing regarding the proposed use and operation of the Property are binding upon the Applicant as conditions of approval for the special exception and variance;
- (g) A landscape buffer satisfactory to the Township shall be planted along the northern side of the property and shall be constructed to include a raised planting berm in accordance with the Applicant's evidence;
- (h) The minimum height at planting of any trees in the landscape buffer shall be at least ten feet (10');
- (i) The landscape buffer shall consist of plant materials satisfactory to the Township;
- (j) The operator of the facility shall maintain a proper hazardous spill containment unit appropriate for the facility;
- (k) There shall be no vertical stacking of trailers or containers parked on the property;
- (l) There shall be no refrigerated units along the north section of the property in the area designated with thirty (30) parking spaces;
- (m) No hazardous materials shall be permitted in the parking area;
- (n) No livestock trailers shall be permitted in the parking area

**BY THE BOARD:**

**Date of Written Decision:**

January 12<sup>th</sup>, 2023


  
**DON S. KLEIN, Esq., Chairman**

  
**DAVID EISENBERG, Esq., Vice Chairman**

**Date of Mailing Decision:**

January 12<sup>th</sup>, 2023

  
**KENNETH NAVITSKY, Secretary**

  
**LEE SOLT, Member**

  
**DENNIS TOOMEY, Member**