

**IN RE:
APPLICATION OF
ELI KAHN (IVYLAND
INDUSTRIAL PARTNERS, LP)**

**BEFORE THE ZONING HEARING BOARD
OF TREDYFFRIN TOWNSHIP,
CHESTER COUNTY, PENNSYLVANIA**

APPEAL NO. 06-19

DECISION

The Zoning Hearing Board of Tredyffrin Township (the "Board"), after proper advertisement, met on Thursday, February 28, 2019 to hear evidence on the Application of Eli Kahn/Ivyland Industrial Partners, LP (the "Applicant") for two variances for the property located at 455 Devon Park Drive, Wayne PA, 19087, being Tax Parcel No. 43-6J-17 (the "Property"). The requested variances are from (1) §208-41 of the Zoning Chapter of the Tredyffrin Township Code of Ordinances (the "Code") to permit the proposed parking lot to exceed the impervious coverage limitation and (2) §§208-42.1.B and 208-103.A(7) for relief related to landscaping requirements. The Applicant was represented by Louis J. Colagreco, Jr., Esquire. David Gibbons testified on behalf of the Application.

Present at the hearing were Chairperson Daniel McLaughlin and Members Tara LaFiura, Neill Kling, and Mark Sheppard. Also present at the hearing were Michael Pilotti, Senior Building, Code & Fire Official, and Amanda J. Sundquist, Esquire, Solicitor for the Board. No one sought party status. Richard Kunin and Ray Clark offered comment to the Board. Solicitor Sundquist announced that a conflict waiver had been obtained.

The record was closed at the conclusion of the February 28, 2019 hearing and the hearing was continued to March 28, 2019 for the purpose of rendering a decision.

I. Findings of Fact

1. The following exhibits were admitted as evidence at the hearing:
Exhibit B-1 Application dated January 25, 2019 with attachments;

- Exhibit B-2 Proof of Publication of the notice in the Daily Local News on February 6, 2019 and February 13, 2019;
- Exhibit B-3 Affidavit of Posting of the notice on the Property;
- Exhibit B-4 Affidavit of Mailing of notice to the required properties;
- Exhibit B-5 January 7, 2019 Memorandum from the Township Engineer;
- Exhibit A-1 Zoning Hearing Board Application dated January 23, 2019 and Narrative and Cover Letter dated January 25, 2019;
- Exhibit A-2 Copy of the Tredyffrin Township Zoning Ordinance, as amended (incorporated by reference);
- Exhibit A-3 Deed between BBKP Realty Trust and Ivyland Industrial Partners dated August 3, 2017;
- Exhibit A-4 Lease documents between PECO and Ivyland Industrial Partners;
- Exhibit A-5 Authorization Letter from PECO;
- Exhibit A-6 Variance Application Plan prepared by D.L. Howell & Associates, Inc., dated January 17, 2019; and
- Exhibit A-7 January 7, 2019 Letter from the Township Engineer.

The Code and Zoning Map are incorporated herein by reference.

2. The hearing was duly convened, and the Applicant presented evidence in support of the Application.

3. The Property is located at 455 Devon Park Drive, Wayne PA 19087, being Tax Parcel No. 43-6J-17. Exh. A-1.

4. The Property is located in the LI Zoning District. N.T. at 12.

5. Eli Kahn, a principal of Ivyland Industrial Partners, LP, made the Application on behalf of Ivyland Industrial Partners, LP. N.T. at 6, 7.

6. The Philadelphia Electric Company (“PECO”) is the legal owner of the Property. N.T. at 8; Exh. A-5.

7. PECO authorized the Applicant to file and proceed with the Application. N.T. at 8; Exh. A-5.

8. The Applicant has an equitable interest in the Property; in particular a leasehold interest to park vehicles on the Property. N.T. at 8; Exh. A-4.

9. The Property is the parcel to the South on the site plan. N.T. at 11; Exh. A-6.

10. To the North of the Property is an approximately 10 acre tract containing an office building and parking facilities, currently occupied by Vanguard (“Office Parcel”). N.T. at 11-13; Exh. A-6.

11. The Property is 4.629 acres. N.T. at 12; Exh. A-6.

12. The Property is nonconforming as to net lot area. N.T. at 12, 20; Exh. A-6.

13. There is currently an existing parking lot on the Property. N.T. at 13; Exh. A-6.

14. PECO’s high power transmission lines are above the Property. N.T. at 13.

15. The Applicant proposes to construct additional parking on the Property, which will be utilized by the tenant on the Office Parcel. N.T. at 13.

16. The Applicant is proposing to add an additional 98 parking spaces and remove 8 parking spaces, resulting in a net addition of 90 parking spaces. N.T. at 14; Exh. A-6.

17. The Code limits impervious coverage on the Property to 50%; currently there exists 54.95% impervious coverage on the Property. The Applicant is proposing 69.38% impervious coverage on the Property. Exh. A-6.

18. The stormwater management controls on the Office Parcel consist of a 30 year old basin. N.T. at 15.

19. The Applicant proposes to improve the existing basin on the Office Parcel by (1) “naturalizing” it by planting a meadow or wetland type grass mix, (2) providing two new bays at either end of the existing basin to help filter out sediment runoff; and (3) look into further improving the existing structure during the engineering phase. N.T. at 15-16.

20. The Applicant also proposes to construct a new underground system on the Office Parcel, which will be a separate stormwater management basin to provide for additional stormwater storage. N.T. at 15; Exh. A-6.

21. After the addition of the proposed improvements to the Office Parcel, less stormwater will leave the Office Parcel than currently leaves the Office Parcel. N.T. at 16.

22. On the Property, the Applicant proposes to pave the proposed parking area with porous paving, so that there will be no stormwater runoff from the proposed parking area. N.T. at 16; Exh. A-6.

23. All stormwater storage for the proposed parking area will be located underneath the proposed parking area. N.T. at 16.

24. After the addition of the proposed parking area and proposed stormwater facilities, zero stormwater runoff will result from the proposed parking area. N.T. at 16.

25. There is a maintenance regime for porous paving. N.T. at 17.

26. The Applicant will be responsible for complying with maintenance regime for the porous paving. N.T. at 22.

27. The Applicant also proposes to provide a five (5) foot wide path or trail on the frontage along Devon Park Drive. N.T. at 18; Exh. A-6.

28. The proposed path or trail would be porous pavement if preferred by the Township. N.T. at 23.

29. The Applicant agreed that it would be responsible for maintaining the proposed path or trail. N.T. at 24-25.

30. The Applicant is also seeking a variance from the Township's landscape requirements which would require it to plant trees on the Property. N.T. at 19-20.

31. PECO does not permit trees to be planted underneath its high tension wires. N.T. at 19-20; Exh. A-4.

32. No trees currently exist on the Property. N.T. at 20.

33. Under the Code, the Applicant would be required to plant 9 to 10 trees on the Property. N.T. at 19.

34. The Applicant proposes to plant the required trees on the Office Parcel. N.T. at 19-20.

35. There are similar parking lots on the northern and southern side of Devon Park Drive. N.T. at 21.

36. Dave Gibbons of D.L. Howell Associates was accepted as an expert in civil engineering. N.T. at 10.

37. No one appeared to oppose the Application.

38. Richard Kunin and Ray Clark appeared to offer comment regarding stormwater concerns.

39. The proposed variance will not alter the character of the neighborhood.

40. Granting the proposed variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare of the community.

II. Discussion

In reviewing variance applications, the Board is governed by the provisions of §208-150 of the Code and the Municipalities Planning Code (“MPC”). The Code, MPC and existing case decisions provide that variances from a zoning ordinance may be granted where the following criteria can be complied with:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
2. That 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 that the authorization of a variance is therefore necessary to enable reasonable use of the property.
3. That such unnecessary hardship has not been created by the appellant.
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. §910.2. The burden upon a landowner who seeks a variance is a heavy one. Polonsky v. Zoning Hearing Board of Mount Lebanon, 590 A.2d 1388 (Pa. Cmwlth. 1991). However, applicants for a dimensional variance need not be held to the same strict standards imposed on applicants for a use variance. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (Pa. 1998).

The Property which is the subject of this Application is constrained by the high-tension transmission lines of a public utility. The high-tension transmission lines, by their nature, limit any use of the Property. In particular, they preclude tree plantings which are required under the

Code. The Applicant has not created this hardship, and has offered to relocate the required trees to another lot.

Similarly, the Property is significantly undersized which impacts the amount of permitted impervious coverage. However, given the significant amount of impervious coverage proposed, the Board has concerns regarding stormwater management. These concerns are echoed by the Township Engineer in his January 7, 2019 letter. The Board appreciates the Applicant's proactive steps to remedy the existing stormwater issues on the Office Parcel and the potential impact of additional impervious coverage on the Property. The Applicant's implementation and maintenance of stormwater management facilities is critical to the well-being of adjacent and nearby property owners. As a result, the relief granted by this Board is subject to the conditions to minimize future impact from stormwater.

III. Conclusions of Law

1. The hearing was duly advertised, all required notices were given, and the hearing was duly convened.
2. The Board has jurisdiction over this matter.
3. Dave Gibbons was accepted as an expert in civil engineering.
4. The Applicant has established entitlement to the requested variance from §208-41 of the Code to permit 69.38% impervious coverage on the Property.
5. The Applicant has established entitlement to the requested variance from §208-42.1B and 208-103.A(7) of the Code, such that it is not required to plant trees on the Property.
6. The Applicant's grant of relief is predicated on the compliance with the conditions set forth in the Order.

The Board, therefore, enters the following:

ORDER

AND NOW, this 28th day of March, 2019, upon consideration of the Application of Eli Kahn/Ivyland Industrial Partners, LP to permit a proposed parking area on the property located at 455 Devon Park Drive (Tax Parcel No. 43-6J-17) in the LI Zoning District of the Township, IT IS HEREBY ORDERED that the relief requested shall be GRANTED as follows:

1. A variance from §208-41 of Code to permit impervious coverage on the Property of 69.38%; and

2. A variance from §§208-42.1.B and 208-103.A(7) such that the Applicant is not required to plant trees along the perimeter or in the planting islands of the parking area.

All relief is subject to the following conditions:

1. The Applicant shall fully comply with all stormwater management requirements in the Code.

2. The Applicant shall comply with the list of proposed additional stormwater management measures set forth in the Township Engineer's January 7, 2019 Memorandum to the Zoning Hearing Board (Exh. B-5, Exh. A-7).

3. The Applicants shall prepare, have approved by the Township, and record a stormwater management operation and maintenance agreement in the Chester County Recorder of Deeds.

4. The Applicant shall comply with the terms of the recorded stormwater management operation and maintenance agreement.

5. The Applicant shall install a five (5) foot walking trail or path on the Property.

6. The Applicant shall be responsible for complying with the maintenance regime for the porous pavement on the Property and the trail.

7. The Applicant shall install the number of trees that would have been required to be installed on the Property on the Office Parcel.

8. The proposed improvements shall be constructed in substantial conformity with the evidence and testimony presented by the Applicant.

9. The Applicant shall comply with all other Township ordinances, rule and regulations and all federal, state, and local laws and regulations.

10. The approved land development plans shall state the conditions of this Order.

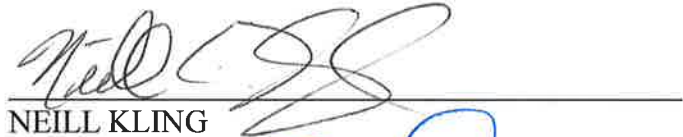
ZONING HEARING BOARD OF
TREDYFFRIN TOWNSHIP



DANIEL McLAUGHLIN, Chairperson



TARA LaFIURA



NEILL KLING



MARK SHEPPARD