

**REQUEST FOR A HEARING ON A CHALLENGE TO THE ZONING ORDINANCE OF
THE CITY OF BETHLEHEM ALONG WITH A CURATIVE AMENDMENT**

Petitioner: BAHX, LLC

Petitioner's Property: Real property situated in both the City of Bethlehem and the City of Allentown with street addresses of 2300 Hanover Avenue, 2220 Florence Avenue, 2235 West Broad Street, and 2211 West Broad Street and further identified as Tax Map Parcels – 641758045413, 641758239955, 641758202273, 641758456810

Date: February 1, 2024

To the Bethlehem City Council

Please take notice that BAHX, LLC (“Petitioner”) hereby challenges the validity of the Zoning Ordinance of City of Bethlehem (“Ordinance”), pursuant to Pa. Mun. Pl. Code §§ 609.1 and 916.1, on the grounds the Ordinance arbitrarily and unreasonably restricts Petitioner’s property rights; the Ordinance as applied to the Petitioner’s Property is unduly restrictive and confiscatory; the Ordinance interferes with Petitioner’s property rights without a rational relation to public safety, health, morals, or general welfare; the Ordinance discriminates against Petitioner and Petitioner’s ability to establish a lawful permitted use at Petitioner’s Property with no rational basis for the discrimination; and, the Ordinance violates Petitioner’s right to due process and equal protection.

Petitioner holds equitable title to real property located partly in City of Bethlehem and partly in the City of Allentown identified as Tax Map Parcels 641758045413, 641758239955, 641758202273, 641758456810 (referred to herein collectively as the “Petitioner’s Property”). The Bethlehem portion of Petitioner’s Property is zoned CL (Limited Commercial). The Allentown portion is zoned B3 (Highway Business).¹

Petitioner intends to develop Petitioner’s Property with a residential apartment use.² A residential apartment use is permitted by-right in the City of Bethlehem CL Zoning District and therefore is permitted by-right at the Petitioner’s Property. The Ordinance prohibits residential apartments in buildings longer than 180 feet in the CL District; however, residential apartments in buildings of unlimited length are permitted elsewhere in the City. No building in CL District, other than those containing residential apartments, are subjected to building length limitations in

¹ This Petition for Curative Amendment applies to the City of Bethlehem portion of the Subject Property.

² The Ordinance identifies a residential apartment as a “multi-family dwelling”. Ordinance: § 1302.39(f)

the CL District. The 180-foot length limitation on residential apartment buildings in the CL District is arbitrary and unreasonable and has no valid relation to the public health, safety, morals and general welfare. The 180-foot length limitation on residential apartment buildings in the CL District restricts Petitioner's property rights for no valid public purpose and is therefore invalid. Petitioner is adversely affected by the arbitrary and unreasonable nature of the Ordinance.

Petitioner proposes that the Bethlehem City Council cure the invalidity in the Ordinance as envisioned by Pa. Mun. Pl. Code § 609.1 by amending the Ordinance as set forth in the Curative Amendment attached hereto as **Exhibit "A"**. Petitioner's Property is described in **Exhibit "B"** attached hereto. Petitioner proposes to develop Petitioner's Property with a residential apartment use as shown on the plan attached hereto as **Exhibit "C"** and further described in **Exhibit "D"**. An impact statement relative to Petitioners proposed use is attached hereto as **Exhibit "E"**.

Petitioner is not aware of any pending Ordinance amendment that would cure the invalidity. Petitioner requests a hearing before the City Council on this challenge and proposed amendment.

Filed

February 1, 2024
Copy to City Clerk

BAHX, LLC

By: 

EXHIBIT A

IN RE: BAHX, LLC: AMENDMENT PETITION

BILL NO. _____ - 2024

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF BETHLEHEM, COUNTIES OF LEHIGH AND
NORTHAMPTON, COMMONWEALTH OF PENNSYLVANIA, AMENDING ZONING
ORDINANCE SECTION 1322.03(II) TO AMEND PROVISIONS FOR MULTI-FAMILY
DWELLINGS IN THE CB AND CL ZONING DISTRICTS**

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1. That in Article 1322.03(II)(4) of the Zoning Ordinance, which currently reads that:

- Except within the IR-R and CB zoning districts, no building shall exceed 180 feet in length, measured at ground level or any floor level, whether on one frontage, or on the combined frontages of the main frontage and that of any wings of the same building.

Shall be amended to read as follows:

- Except within the IR-R, CB, and CL zoning districts, no building shall exceed 180 feet in length, measured at ground level or any floor level, whether on one frontage or on the combined frontages of the main frontage and that of any wings of the same building.

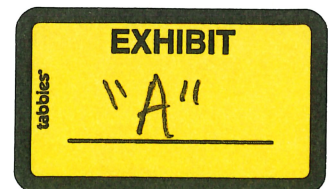


EXHIBIT B
IN RE: BAHX, LLC; CURATIVE AMENDMENT
Petitioner's Property

Location & Existing Conditions

The Petitioner's Property is an 8.74-acre tract comprising four (4) parcels located in both the City of Allentown and the City of Bethlehem. The property fronts along Hanover Avenue (Allentown) and W. Broad Street (Bethlehem) as well as along N. Wahneta Street and Florence Avenue. The rear of the property runs along Bascom Street. The parcels are located in the City of Allentown Ward 15, and City of Bethlehem Ward 13 Block 3.

The site is a former automobile dealership. Buildings and other structures from the prior use have been removed, but the foundations and existing pavement remain. The site is generally flat along the Hanover / West Broad Street frontage and slopes up to Florence Avenue.

Surrounding Uses

The site is located in the B3 Highway Business District in the City of Allentown and the CL Limited Commercial District in the City of Bethlehem.

- North: Zoned B3 Highway Business District (Allentown) and CL Limited Commercial (Bethlehem), existing uses are a truck leasing facility (Allentown) and office (Bethlehem).
- East: Zoned RT High Density Residential (Bethlehem). There are single family homes fronting on Grandview Boulevard with garages accessing Bascom Street (alley); there is an auto dealership at the intersection of West Broad Street and Grandview Boulevard.
- West: Zoned B3 Highway Business (Allentown), existing uses are a retail building and elder care facility.
- South: Zoned RMH Medium High Density Residential (Allentown) and Zoned RT High Density Residential (Bethlehem); with existing twin family homes fronting Central Park Avenue.

Public Safety

The two nearest fire stations are each located approximately the same distance with one in each City.

- Allentown: East Side Fire Station 718 N Irving St, Allentown, PA 18109, approximately 1.4 miles from the site.
- Bethlehem: Memorial Fire Station 521 West Broad Street, Bethlehem, PA 18018. Approximately 1.6 miles from the site.

The nearest hospitals are Lehigh Valley Hospital Muhlenburg (2-3 miles), St. Luke's Hospital Bethlehem (3-4 miles)

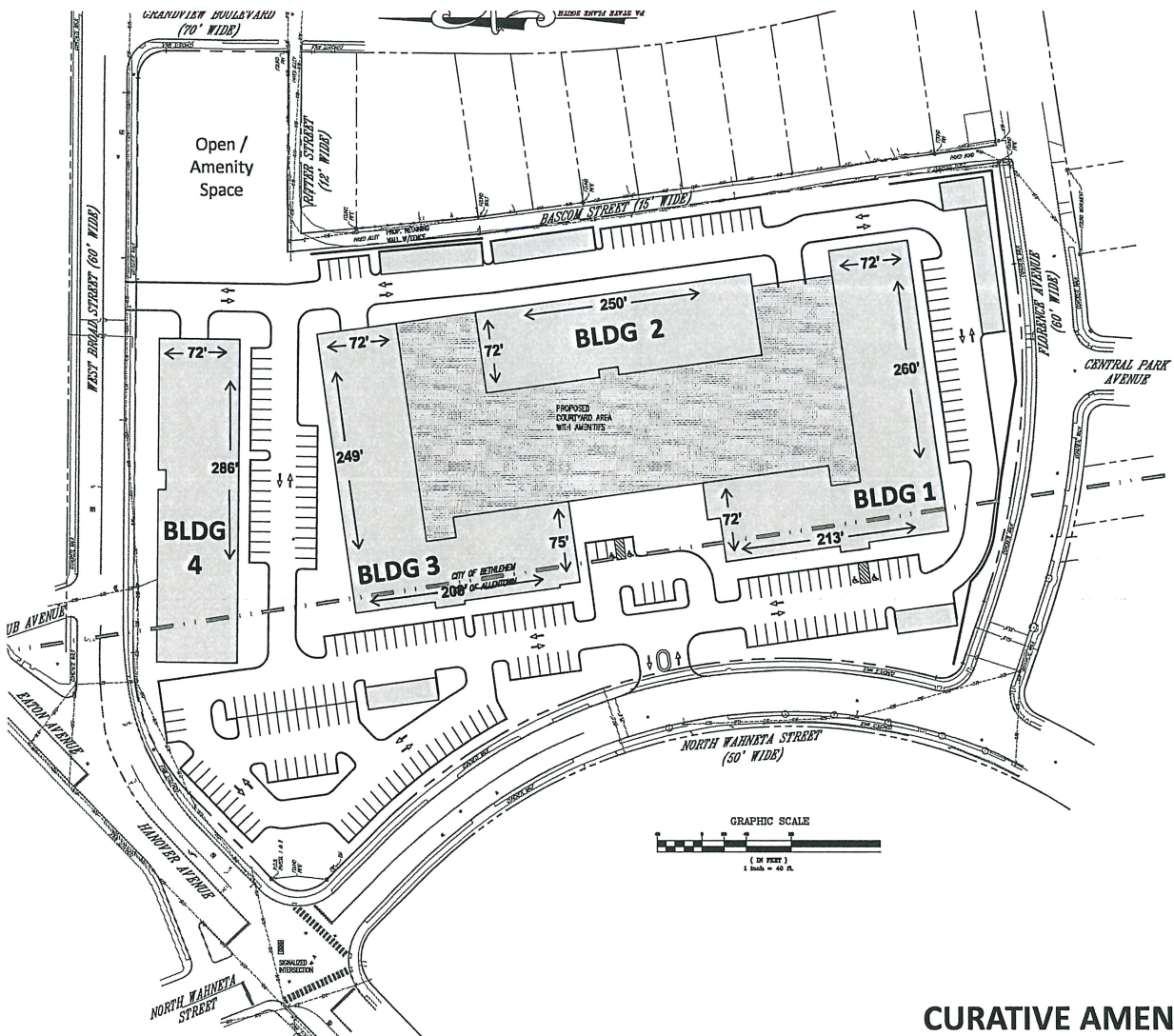
Landscaping

Street trees, extensive internal landscaping and parking lot buffer landscaping are proposed throughout the project. An architectural, decorative aluminum spaced picket fence is proposed surrounding the site to enhance the streetscape and boundaries of the development.



Public Transportation

The site is situated along LANTA bus routes providing access to public transportation opportunities throughout the Lehigh Valley. A LANTA bus stop is located at the southwest corner of the site (at the intersection of Hanover Avenue and N. Wahneta Street) with another stop on the site’s frontage along the south side of West Broad Street, just west of Grandview Boulevard.



SITE CHARACTERISTICS
 SITE AREA = 380,770 SF
 BUILDING AREA = 93,591 SF

LANDSCAPE/GREEN AREA
 COURTYARD PATIO = 51,842 SF
 OPEN AREAS = 115,885 SF
 TOTAL = 167,727 SF
 44% LANDSCAPE/GREEN
 NOTE: 30.43% W/O COURTYARD

PARKING
 UNITS: 317
 PARKING: 556
 PARKING RATIO 1.754

CURATIVE AMENDMENT PLAN

EXHIBIT
 "C"
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EXHIBIT D
IN RE: BAHX, LLC; CURATIVE AMENDMENT
Proposed Redevelopment

Redevelopment Summary*

- Buildings: 4 Buildings
- Building Height: 5 Stories
- Building Length: 208' to 286'
- Units Count: 317
- Unit Types: 1& 2 Bedroom.
- Greenspace Area: 44%
- Active Recreation Area: Over 1/2 acre.
- Passive Recreation Area: 1.2 Acres.
- Parking Spaces: 556
- Parking Ratio: 1.75 Spaces / Unit

Site Description

- The site is planned with four (4) apartment buildings, a clubhouse and other amenities.
- 2+ acres of recreation area provided.
 - Over 1/2 acre of active recreation.
 - Over 1.2 acres passive recreation.
- The majority of the property and the building area is in the City of Bethlehem.
- Parking is provided with a combination of surface and podium parking and freestanding garages.
- The buildings and the interior courtyard are proposed to be constructed on a podium allowing parking underneath to help minimize the traditional surface parking.
- Surface parking surrounds the buildings and several accessory garage buildings provide private parking.
- 259 podium parking spaces provided in total under five (5) interior buildings.
- All parking spaces (including podium parking) meet all code requirements relating to width, length, depth and number of spaces required.

Building Descriptions

- The four proposed multifamily buildings are 4 and 5 stories constructed on podiums to provide parking under the buildings.
- The green courtyard in the center of buildings 1, 2 and 3 will be constructed to provide additional parking as a podium, while providing passive recreation area in courtyard above the podium.
- The 317 planned apartments are a mix of studio, 1-bedroom and 2- bedroom units.
- Each building will include elevator service for residents.
- The freestanding garages are 1-story structures.

Stormwater and Utilities

- The green courtyard above the podium parking area results in additional greenspace benefiting the development and environment.
- The site drainage will connect to the existing stormwater infrastructure that runs through the property.
- The redevelopment of the site results in a decrease in impervious coverage from existing conditions, therefore stormwater runoff will be reduced.
- Public water and sanitary sewer are also located in and along the property.
- In addition to reducing the site stormwater runoff resulting from a reduction of impervious cover, the site will be designed to meet NPDES stormwater requirements for water quality and recharge requirements thereby further reducing runoff and increasing water quality into the municipal drainage system.

****All aspects of the proposed redevelopment plans outlined in this Redevelopment Summary comply with the City of Bethlehem Zoning Ordinance except for the building lengths which exceed 180' (Section 1322.03(II)(4)).***



EXHIBIT E

**IN RE: BAHX, LLC; CURATIVE AMENDMENT
IMPACT STATEMENT**

Petitioner submits this Impact Statement for City Council's consideration pursuant to Pennsylvania Municipalities Planning Code Section 609.1(c) (set forth below in italics).

(c) The governing body of a municipality which has determined that a validity challenge has merit may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects. The governing body shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:

(1) the impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

RESPONSE: The proposed multi-family redevelopment will have no adverse impact to the roads, sewer facilities, water supplies, school or other public service facilities. The proposed redevelopment will improve stormwater management by reducing the existing stormwater runoff from the subject property. Professional traffic engineering analysis has determined the existing public roads can support the proposed redevelopment with no adverse impact.

(2) if the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or map;

RESPONSE: The proposed redevelopment of 317 multi-family rental units will have a positive impact on regional housing needs by increasing the supply of desperately needed residential units available in the City of Bethlehem. Additionally, the City's Comprehensive Plan identifies the subject property for use as high density residential and the City has determined the proposed use and density of multi-family residential is suitable and appropriate as defined with the City's Zoning Ordinance Sections 1305.01(a) and 1306.01(a)(4).

The availability of residential units is at a critically low "crisis level" of a 2% vacancy - a healthy market is considered to have a vacancy rate of not less than 6-8%. The Lehigh Valley Planning Commission (LVPC), City of Bethlehem Director of Community and Economic Development, City of Bethlehem Director of Planning as well as consultants retained by the City all expressed the need and market demand for additional residential units of all types throughout the City of Bethlehem and greater Lehigh Valley to address the "crisis level" 2% vacancy rate for housing and the substantial population growth projected through 2050.



- In 2021 the LVPC determined the Lehigh Valley was deficient approximately 10,000 available housing units from having a balanced housing market.
- In 2022 the LVPC projected the Lehigh Valley's population could grow by 100,000 people by 2050, which amplifies the need for additional housing units of all types.
- In 2023 the City of Bethlehem Director of Planning and Zoning stated in a memo to the Bethlehem Planning Commission that "All areas of Bethlehem are seeing demand for additional residential units."
- In 2023 the City of Bethlehem Director of Economic Development stated "In the city of Bethlehem, we have a 2-percent vacancy rate; a healthy market has 6- to 8-percent," "We are in desperate need of residential units. That's city-wide, it's across all income levels."
- In 2023 housing studies commissioned by the City of Bethlehem found the rental vacancy rate reported at less than 2% - a "crisis" in supply.

(3) the suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, flood plains, aquifers, natural resources and other natural features;

RESPONSE: The City has determined the use and intensity of the planned multi-family residential redevelopment on the subject property is suitable as defined in Sections 1305.01(a) and 1306.01(a)(4) of the City of the Zoning Ordinance. The subject property is a vacant, former auto dealership and is a fully improved site almost entirely covered with asphalt and concrete. No woodlands, wetlands, floodplains, aquifers or natural resources exist on the subject property.

(4) the impact of the proposed use on the site's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and

RESPONSE: The proposed redevelopment has no adverse impact to the subject property's soils, slopes, woodlands, wetlands, flood plains, natural resources and natural features. The subject property is a vacant, former auto dealership and is a fully improved site almost entirely covered with asphalt and concrete. No woodlands, wetlands, floodplains or natural resources exist on the subject property. The proposed redevelopment will add significant landscaping to subject property and reduce existing impervious coverage. In addition, the proposed redevelopment will result in a reduction of stormwater runoff from the subject property.

(5) the impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.

RESPONSE: The proposed redevelopment has no adverse impact on the preservation of agriculture or other land uses which are essential to public health and welfare. The subject property is a vacant, former auto dealership and is a fully-improved almost entirely covered with asphalt and concrete. The proposed redevelopment will reduce the existing impervious coverage and reduce existing stormwater runoff. The City has determined the proposed use of multi-family residential is suitable as defined with the City of Bethlehem's Zoning Ordinance Section 1305.01(a). The City's Zoning Ordinance prohibits Crop Farming in the CL zoning district (Section 1305.01(f)).