

CITY OF BETHLEHEM

Department of Community and Economic Development Interoffice Memo

TO: Planning Commission members

FROM: Darlene L. Heller, Director of Planning and Zoning

RE: Proposed Curative Amendment Petition for a text amendment to Section 1322.03(II) of the Zoning Ordinance

Background

The City has received a petition for a curative text amendment to the Zoning Ordinance to revise section 1322.03(II) of the Ordinance, relating to additional provisions concerning multifamily dwellings, and which currently reads as follows:

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.

The petition seeks to amend Section 1322.03(II) so that it reads as follows:

Except within the IR-R and 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.

The Petitioner, BAHX, LLC, is the equitable owner of the parcel of land at 2300 Hanover Avenue. The parcel was recently the site of a zoning appeal where variance relief from the above referenced section was requested and then denied by the Zoning Hearing Board. The request for zoning relief was related to the Hanover Apartments development proposal at the site.

A petition for a curative amendment under Section 609.1 of the Municipalities Planning Code (MPC) is a challenge to the substantive validity of a zoning ordinance or map and is ultimately heard and decided upon by City Council. Under the MPC, the Planning Commission reviews the proposed amendment and may offer a recommendation prior to Council holding its public hearing on the proposal. A substantive validity challenge attacks a zoning ordinance on due process grounds, *i.e.*, on whether the ordinance is substantially related to a legitimate state interest. A proposed curative amendment is distinct from a simple request for rezoning under Section 909.1(b)(5) of the MPC in that the latter is an appeal to Council to act solely in its legislative capacity to determine whether rezoning is in the best interest of the community, whereas a curative amendment is an appeal to Council in a quasi-judicial capacity and challenges the legal validity of the ordinance.

Findings

The Petitioner’s request for the text amendment to section 1322.03(II) assumes that the purposes of the CB, CL, and IR-R zoning districts are virtually indistinguishable from one another and, therefore, differences between the districts cannot have a rational basis. However, each zoning district has distinct characteristics and is intended to be developed in a manner consistent with the nature of purpose of each particular district.

Article 1303.07 of the Zoning Ordinance explains the purposes of each zoning district. The purpose of the CL Limited Commercial District is:

To provide for less intensive types of commercial uses in areas that include many existing homes or small lots that are immediately adjacent to residential neighborhoods. The intent is to control uses that are most likely to generate nuisances or hazards for nearby residents, such as 24-hour operations.

Given that the CL district is designed for less intensive commercial uses in areas that including many existing homes or small lots, it is logical that City Council did not find it desirable to allow the most intensive type of residential dwelling, i.e., very long multifamily dwellings, which might necessarily require a larger lot to build upon.

By comparison, the purpose of the CB Central Business District is:

To provide for an orderly coordinated development of varied commercial business and office uses in combination with limited intensive residential development in the central business areas of North Bethlehem and South Bethlehem, and to encourage excellence of design in the development of properties. To promote pedestrian-friendly uses, as opposed to uses that are auto dependent.

In the CB district, it makes sense to permit multifamily dwellings longer than 180 feet because the district expressly endorses “intensive residential development”.

As to the IR-R Industrial Redevelopment – Residential District, the purpose of this district is:

To promote the economic revitalization on underutilized properties that historically were used for older industrial uses. To allow a variety of non-residential land uses, with flexible design standards to be applied during the site plan approval process. To also allow rental and condominium apartment dwellings in combination with complementary commercial uses in the same building.

The IR-R district is flexibly designed to allow for a variety of uses, and specifically includes apartment dwellings – which are synonymous with multifamily dwellings in the Zoning Ordinance – in the description of the district. As such, long multifamily dwellings would be consistent with the purpose of this district.

Based on the above, the location of multifamily dwellings in excess of 180 feet is consistent with the Zoning Ordinance's stated purposes of the CB and IR-R districts but not with the stated purpose of the CL district. Accordingly, it was rational for City Council not to exempt the CL district from the 180-foot limit for multifamily building length.

Further, the Petitioner's property, at 8.74 acres, is one of the largest, if not the largest, CL-zoned tracts in the City. Adopting the proposed curative text amendment would allow for the construction of multifamily dwellings in excess of 180 feet not just on Petitioner's property, but on all CL lots in the City, many of which are smaller in size and unsuitable for such large-scale development. Notably, the 180-foot limit for multifamily dwellings applies to all the residential zoning districts in the city, even the high density RT residential district. Given that City Council intended to impose that limit on multifamily dwelling building length in even the most intense residential district, it makes sense that it would utilize that limit for such buildings in a non-residential district, *i.e.*, the CL district, which predominantly features smaller-scale commercial uses.

In reviewing the proposed curative text amendment, City Council will, pursuant to the Municipalities Planning Code, 53 P.S. § 10609.1(c), consider the proposed amendment, the plans and explanatory material submitted by the Petitioner, and will also consider five additional factors, which are set forth below, along with the City's comments to each:

- (1) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
 - Permitting longer residential buildings, *i.e.*, those in excess of 180 feet, will allow for the inclusion of a greater number of dwelling units on lots in the CL district, thereby increasing the number of residents on such lots and imposing a greater burden on roads, sewer facilities, water supplies, schools and other public service facilities.
- (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.
 - The impact of the proposed curative text amendment on regional housing needs is uncertain. In theory, the proposal may expand the housing supply, though the affordability of such housing units is speculative, and building length has no relation to affordability. However, it is important to remember that the CL district is a commercial district primarily designed for small-scale commercial uses. Ensuring an adequate housing supply is an important and critical objective, but one best achieved through review and potential modifications to residential zoning districts and to relevant housing ordinances, not through disruption to the purpose and regulations of the CL district. The existing limitation of the CL district on multifamily building length does not unlawfully exclude any class of persons. It should be emphasized that the CL district presently allows the construction of multifamily dwellings of significant length – up to 180 feet – so any argument that the CL district unduly restricts the construction of multifamily dwellings is without merit.

- (3) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, flood plains, aquifers, natural resources and other natural features.
 - As the Petitioner seeks a curative text amendment, this factor does not appear to be applicable, as this factor contemplates a map change affecting a specific site.
- (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.
 - As the Petitioner seeks a curative text amendment, this factor does not appear to be applicable, as this factor contemplates a map change affecting a specific site.
- (5) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
 - The Petitioner's proposed curative text amendment would have no impact on the preservation of agriculture in the City.

In addition, the following sections of the Zoning Ordinance note various distinctions between the CL district and CB and IR-R districts. The examples below are not intended to be an exhaustive list of the differences between the CL district and the CB and IR-R districts. There are a multitude of use and dimensional differences between the districts.

- Section 1305 allows more intense uses in CB and IR-R districts that are not allowed in the CL district. Examples include conference centers, hotels, motels, hospitals and surgery centers, personal care homes and nursing homes, industrial equipment sales, rentals and service, wood products and furniture, packaging, printing and bookbinding, crop farming and wholesale greenhouses, certain parking structures, recycling collection centers, amusement arcades, sales of automobiles, boats and manufactured homes, beverage distributors, plant nurseries, commercial indoor recreation, commercial outdoor recreation, fast food restaurants with a drive-thru, and indoor target ranges, which are permitted by right in CB and IR-R but not in CL. There are other uses not permitted in the CL district which may be permitted by special exception in either the CB or IR-R district, an example of which is a nightclub, which is permitted by special exception in the CB district and by right in the IR-R district but which is not permitted in the CL district.
- Section 1305(b), Commercial Uses, retail store and restaurants uses in the CL district include a note 4 stating that each business establishment in an existing building shall have a maximum floor area of 10,000 square feet on any one floor of a building. This Note was specifically added to the CL district provisions when the 2012 Zoning Ordinance was enacted, but was not added to any other commercial district. The Note is intended to require smaller shops and footprints that would typically occur in a neighborhood commercial district as opposed to larger uses and footprints that might occur downtown or at the BethWorks site. Specifically, this Note is intended

to ensure that infill development in the CL district is similar in nature to the existing uses that surround it.

- Section 1306.01(b) imposes density limitations for residential uses in the CL district but not for the CB district.
- Section 1319, Parking. Off-street parking is not required in the CB district but is required in the CL district.
- Section 1320.09, signs in commercial and industrial redevelopment districts, (a)(2)(ii) allows 20% coverage for wall signs except in the CL district where coverage is maxed at 200 square feet.
- Section 1318.23, Buffer Yards, in the CB district a buffer yard shall not be required where districts are separated by an ordained street or alley.

Each of these sections, in various ways, differentiates the CL district from the CB and IR-R districts. The differences between districts clearly include intensity of uses, parking, signage and dimensional requirements. Each district has its own characteristics and the Zoning Ordinance is designed to reflect those characteristics with specific, enforceable provisions.

It is important to also remember that the validity challenge proposes a change to all CL zoning districts in the City, not just the CL designation at the Petitioner's property. Therefore, the proposed text amendment would affect properties in unknown ways along E 4th Street, East and West Broad Street, and portions of Center Street, Linden Street and Easton Avenue. It is impossible to calculate or predict the future negative impacts that this text amendment could have in these various CL districts scattered throughout the city.

Conclusion

The Zoning Ordinance's 180-foot limitation for multifamily dwellings in the CL district is substantially related to the City's legitimate purpose in preserving that district for smaller-scale uses that are primarily commercial in nature. The purpose of the CL district is distinct from those of the CB and IR-R districts, both of which allow for more intense development, and City Council could rationally conclude that permitting multifamily dwellings in excess of 180 feet in the CB and IR-R districts was substantially related to the purposes and characteristics of those districts but was inconsistent with the purpose and characteristics of the CL district. Thus, the existing Section 1322.03(11) does not violate the Petitioner's due process rights and, therefore, Section 1322.03(11) is not substantively invalid. In addition, the proposed curative text amendment would be applicable in all CL districts if approved, which creates opportunity for new development that would be inappropriate in a Limited Commercial zoning district.


This item is placed on your March 14 Planning Commission agenda for consideration. The Planning Commission's role will be to make a recommendation to City Council regarding approval or disapproval of the proposed curative amendment. The Planning Bureau does not

support the proposed curative amendment and requests that the Planning Commission recommend that the amendment not be adopted.

We can discuss the proposal in more detail at the March 14 meeting.

CC: Mayor Reynolds
Craig Peiffer
Laura Collins
Atty. Preston
Atty. Deschler

DATE: 3-7-24



Darlene L. Heller
Director Planning and Zoning