



SITE ADDRESS: 3464 Linden Street, Bethlehem, PA

Office Use Only:

DATE SUBMITTED: 03.23.2021

HEARING DATE: 05.12.2021

PLACARD: _____

FEE: 500⁰⁰

ZONING CLASSIFICATION: RS

LOT SIZE: _____

**APPLICATION FOR APPEAL TO THE CITY OF BETHLEHEM ZONING HEARING BOARD,
10 EAST CHURCH STREET, BETHLEHEM, PA 18018**

1. Return one (1) original and eight (8) copies of this application and all supporting documentation to the Zoning Officer, along with the filing fee. Include site plans and/or floor plans as necessary.
2. *The application is due by 4PM on the 4th Wednesday of the month. The hearing will be held on the 4th Wednesday of the next month.*
3. If you are submitting MORE THAN 10 exhibits at the hearing, you MUST place them in an indexed binder and submit at one time.

Appeal/Application to the City of Bethlehem Zoning Hearing Board is hereby made by the undersigned for: (check applicable item(s):

- Appeal of the determination of the Zoning Officer
- Appeal from an Enforcement Notice dated _____
- Variance from the City of Bethlehem Zoning Ordinance
- Special Exception permitted under the City Zoning Ordinance
- Other: _____

SECTION 1

APPLICANT:	
Name	Andrew Budick / Action Rental Center, Inc.
Address	4535 Broadway
	Allentown, PA 18104
Phone:	[REDACTED]
Email:	[REDACTED]

OWNER (if different from Applicant): Note. If Applicant is NOT the owner, attach written authorization from the owner of the property when this application is filed.	
Name	James J. Snell and Cathy A. Snell
Address	20 North Pintail Drive
	Ocean Pines, MD 21811
Phone:	
Email:	
ATTORNEY (if applicable):	
Name	Ronald E. Corkery, Esquire
Address	352 Fifth Street, Suite A
	Whitehall, PA 18052
Phone:	[REDACTED]
Email:	[REDACTED]

SECTION 2. INFORMATION REGARDING THE REAL ESTATE

1. Attach a site plan, drawn to scale, of the real estate. Include existing and proposed natural and man-made features.
2. Attach architectural plans and elevations depicting proposed alterations or new construction.
3. Attach photographs.
4. If the real estate is presently under Agreement of Sale, attach a copy of the Agreement.
5. If the real estate is presently leased, attached a copy of the present lease.
6. If this real estate has been the object of a prior zoning hearing, attach a copy of the Decision.

SECTION 3.

THE RELIEF SOUGHT:

If the Applicant seeks a dimensional variance for any setback, lot coverage, distance between certain uses, etc., please state the following:

Section of Code	Dimension Required by Code	Dimension Proposed by Applicant	Variance Sought
N / A	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If the Applicant seeks a use or other variance, please state the **specific section(s)** of the Zoning Ordinance applicable and describe the variance sought.

Not Applicable

If the Applicant seeks a Special Exception, please state the **specific section (s)** of Zoning Ordinance applicable:

Applicant seeks a Special Exception under Section 1323.07 to change

from one non-conforming use to another non-conforming use.

If the Applicant seeks an appeal from an interpretation of the Zoning Officer, state the remedy sought in accordance with Sec. 1325.11 (b):

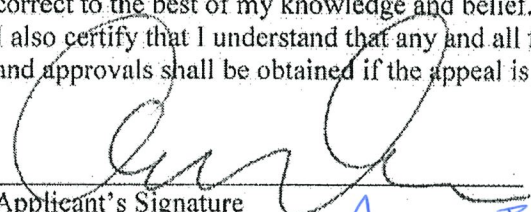
NARRATIVE

A brief statement reflecting why zoning relief is sought and should be granted must be submitted.

CERTIFICATION

I hereby certify that the information contained in and attached to this application is true and correct to the best of my knowledge and belief.

I also certify that I understand that any and all federal, state or local rules and regulations, licenses and approvals shall be obtained if the appeal is granted.


Applicant's Signature *ANDREW BUDICK*

March 15, 2021
Date

James and Cathy Snell
Property owner's Signature

⁰³⁻¹⁶⁻²⁰²¹
March , 2021
Date

Received by _____

_____ Date

NOTICE: If the Decision of the Zoning Hearing Board is appealed, the appellant is responsible for the cost of the transcript.

**NARRATIVE TO ZONING APPLICATION
OF ANDREW BUDICK / ACTION RENTAL CENTER, INC.**

APPLICANT: ANDREW BUDICK
 ACTION RENTAL CENTER, INC.

RE: 3464 LINDEN STREET
 BETHLEHEM, PA 18017
 PARCEL I.D. M7 2 7B 0204

Andrew Budick Owns and Operates Action Rental Center, Inc. and currently has three locations. One is located in Allentown, one is near the Philadelphia Airport and one is currently located at 1007 Marshall Street, Bethlehem, PA since 2004.

It is Mr. Budick's intention to move the Action Rental Center facility currently located at 1007 Marshall Street to the 3463 Linden Street site. Mr. Budick intends to purchase the Linden Street property rather than lease it from the current owners.

A previous Zoning Hearing Board Decision was rendered concerning this property on March 10, 2018. At that time, the Applicant sought Special Exception Approval to change from one non-conforming use to another non-conforming use, namely, to the current retail/rental facility that involves outdoor storage of rental equipment and products. The facility was known as Leiser's Rentals.

Action Rental Center will not have any significant changes to the existing structure, but will also utilize outdoor storage of rental equipment. The proposed hours of operation will be from 7:00 a.m. to 5:00 p.m. on Mondays through Fridays. There will be no Sunday operational hours and no Saturday hours are contemplated at the present time. In the future, if necessary, Saturday hours would be limited to 8:00 a.m. until noon at most.

There will be no significant retail sales at the site, but only equipment rental and auxiliary sales in connection with the equipment rentals. Any signage will be in accordance with the Zoning Ordinance. Any lighting will also conform to City Regulations.

There will be a few delivery trucks coming to the site, but normally only approximately ten to fifteen customers would come to the site on a given day.

The equipment will be serviced inside the building by Action Rental personnel. Action Rental does deliver some rental equipment to various sites and picks it up at the end of the rental period.

Currently the Action Rental store on Marshall Street has six employees. Those employees will be coming to the Linden Street operation. The number of employees might be increased to eight full and part time employees in the future if necessary.

Mr. Budick intends to install significant additional landscaping in connection with a Plan that will be submitted at the Zoning Hearing Board meeting in April. The prior Zoning requirement that an existing screening on the property be maintained will be complied with, and, in fact, significant additional screening will also be installed.

As indicated above, Mr. Budick will be the owner of the property and not a Lessee like the current operation with owners of the property not being involved. You will now have an owner/operator of an establishment who will be at the site almost every day and will act responsibly.

The nature of the rental equipment will be commercial and residential including some lift equipment, lawn equipment, digging equipment, etc. As indicated above, there are no anticipated weekend hours and the business will only operate during the week from 7:00 a.m. to 5:00 p.m.

There will be no rental of any commercial vehicles/trucks from the site. Applicant will not rent space for storage by any other entity of vehicles or other equipment. Only Applicant's employees will be operating from the site.

Applicant also intends to install significant additional landscaping in accordance with a Plan that will be submitted at the time of the hearing. The Plan has not been completed as of the present date which is the reason it is not attached hereto.

The Action Rental Center will look similar to the two centers currently operated by Applicant in Allentown and Bethlehem. Additional photographs of same will also be presented to the Zoning Hearing Board.

It is also respectfully submitted that the proposed operation will be similar to what was previously permitted by the Zoning Hearing Board in the March 10, 2018 Decision with relatively minor modifications. A significant improvement is that the property will now be owned by the operator, will not be a lessee and will have more appropriate hours of operation with much less noise, fewer employees, reduced hours of operation and more screening

Before the Zoning Hearing Board
Of the City of Bethlehem, Pennsylvania

Northampton County

Appeal & Application of) Date: March 10, 2018
Robert Uliana,)
Applicant) Re: 3464 Linden Street

DECISION

I. Preliminary Matters

A public hearing was held on **January 24, 2018 at 6:00 PM** before the Zoning Hearing Board of the City of Bethlehem ("Board") regarding Applicant's appeal to the Board.

A. Parties

1. Applicant: Robert Uliana appeared and had standing as the tenant of the subject property with permission of the owners, James and Cathy Snell (evidenced by owners' execution of the application).

2. Zoning Hearing Board: The Board comprised William Fitzpatrick, Michael Santanasto, Linda Shay Gardner and James H. Schantz. The Zoning Officer was Suzanne Borzak. Erich J. Schock of Fitzpatrick Lentz & Bubba, P.C., represented the Zoning Hearing Board as its Solicitor.

3. Protestant(s) / Interested Parties: No protestants or interested persons appeared at the public hearing.

B. Notice

Notice of the hearing was given by public advertisement, posting of the Property and regular mail to neighboring property owners pursuant to the applicable provisions of the

Pennsylvania Municipalities Planning Code,¹ the Zoning Ordinance of the City of Bethlehem² and the rules of the Board.³

C. Property

The subject property is known as **3464 Linden Street**, Bethlehem, Northampton County, Pennsylvania (the "Property").

II. Applicable Law

The Board considered the case under the following statutory authority, as well as under applicable reported decisions of the appellate courts in Pennsylvania:

1. *The Codified Zoning Ordinance of the City of Bethlehem*, Ordinance No. 2210, effective September 25, 1970, as amended (hereinafter, the "Zoning Ordinance").
2. *The Pennsylvania Municipalities Planning Code*, 53 P.S. § 10101, *et seq.*, as reenacted 1988, Dec 21. P.L. 1329, No 170, §2 (hereinafter, the "MPC").

¹ MPC § 10908(1) provides that "[p]ublic notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provisions, by rules of the board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing."

² Article 1325.04(a) Notice of Hearings.

(a) Upon filing with the Board for an application for a special exception, variance or other appeal under this Ordinance, the Board shall determine a place and a reasonable time, and the City shall give notice as follows: (1) The City shall publish a public notice describing the location of the building or lot and the general nature of the matter involved in a newspaper of general circulation in the City in conformance with the Municipalities Planning Code. (2) The City shall give written notice to the applicant and persons who have made a timely request for notice of such hearing. In addition, notice shall be provided to those persons whose properties adjoin the property in question, and to the City Planning Commission. Such notice should be sent at least 7 days prior to the hearing. (3) The City shall provide written notice to the last known address of the primary owner of lots within 300 feet of the subject lot, unless the application only involves a dimensional variance on an owner occupied single family dwelling unit or its accessory structure. Failure of a person(s) to receive such notice shall not be grounds for an appeal, provided that a good faith effort was made to provide such notice.

³ The custom and practice in the City of Bethlehem is for the Zoning Officer to place the notice in the newspaper and to send written notice to interested parties by regular mail. The Applicant is given a fluorescent sign by the Zoning Officer at the time the Application is filed and the fee paid, and the Applicant is instructed to conspicuously post the property with the sign giving notice of the particulars of the hearing at least seven (7) days prior to the hearing.

III. Nature of Relief Sought

Applicant sought special exception approval under §1323.07 to change one nonconforming use to another nonconforming use.

IV. Evidence Received by the Board

In addition to testimonial evidence received by the Board from Applicant, the Board admitted as Exhibit A-1 the Application and its attachments.

V. Findings of Fact

1. The Property which is the subject of this appeal is located at **3464 Linden Street** in the Northampton County portion of the City of Bethlehem.
2. The Property is located in the RS Residential Zoning District.
3. Prior to 2009 the owners used the Property for a landscaping business that included rental sales and outdoor storage of landscaping products and materials.
4. In 2009 the Board approved a variance for the use of the Property to be changed to medical equipment sales with an office and storage of products for delivery.
5. Applicant is the owner of an existing nearby business, Leiser's Rentals.
6. Leiser's Rentals is a retail/rental facility that involves the outdoor storage of rental equipment and products.
7. None of the landscaping business, medical supply sales or the rental facility are permitted principal uses in the RS Residential District.
8. The Zoning Officer testified that zoning relief is necessary to change the use to Leiser's Rentals.

9. Applicant testified as follows:
- a. There will be no outside changes to the building, although outside equipment storage, similar to the landscaping business, will be reinstated.
 - b. The landscaping business stored larger equipment outside for loading supplies. Leiser's only stores residential equipment outside.
 - c. The Property is heavily buffered by landscaping along the perimeter.
 - d. The hours of operation will be 7:30 AM to 5 PM Monday to Saturday, and 10:00 AM to 5PM on Sunday, which is similar to the retail hours of the landscaping business but an expansion from the medical supply business.
 - e. There are no nuisance characteristics generated by the business.
 - f. There will be no large equipment on site for loading or unloading the rental items.
 - g. The equipment will be stored on the partially paved stone area of the Property.
 - h. The proposed use will have similar traffic to the current use with about 10-15 customers per day.
 - i. Applicant estimates that 75% of its business is made via delivery.
 - j. There will be a propane filling station on the Property which can be used to fill tanks up to 100-lb capacity but is usually for 20-lb tanks.
 - k. The dispensing of propane is regulated by state law.
10. Applicant must move his business from its current location in Bethlehem Township due to the end of its lease at the Bethlehem Township facility.

VI. Discussion

The within request involves a unique fact pattern. The use prior to 2009 had been a landscaping business. It is unclear from the record whether that use had been established by variance or had been permitted when established or predated the Zoning Ordinance thereby being a nonconforming use at the time of the 2009 Zoning Application. The 2009 Zoning Application does not shed any light on that question either, although to convert from the landscaping business to the medical supply business the Board granted a variance (not a special exception to change a nonconforming use).

The second interesting aspect of this case is how to classify the uses and whether these uses are the same or different for zoning purposes. For example, if a property contained a retail use of the sale of shoes and the successive business represented the sale of household goods and included outdoor storage, the question becomes whether that use is the same to the extent that they both constitute a retail use under the Zoning Ordinance or due to the change of the product and the outdoor storage component if zoning relief is requested. Here, all three uses involved retail sales/rentals and the storage of product and arguably are similar.

Third, the Board considered the fact that if the appropriate request should be a special exception to change a nonconformity, that standard is lesser than the standard to justify a variance. Therefore, if the Applicant established facts similar to those that justified the variance relief in 2009, and therefore substantiated this relief, whether the relief that is necessary is a variance, modification of the 2009 variance or a special exception to grant a change of nonconformity, the relief should be granted.

The grant of a variance is pursuant to § 1325.06 of the Zoning Ordinance. The Zoning Ordinance provides specific criteria that the Zoning Hearing Board must address in relation to the approval or denial of a variance request:

1325.06 Powers and Duties – Variances

(a) Upon a written appeal from a determination by the Zoning Officer, the Zoning Hearing Board shall have the power to approve a Variance to one or more specific provisions of this Ordinance for a specific property.

(b) The power to authorize a variance from the terms of this Ordinance shall only be used where authorized under the Pennsylvania Municipalities Planning Code or in diminimus situations. As of the adoption date of this Ordinance, the Municipalities Planning Code provided that all of the following findings must be made, where relevant:

(1) 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 this Ordinance in the neighborhood or district in which the property is located;

(2) 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 therefore necessary to enable the reasonable use of the property;

(3) Such unnecessary hardship has not been created by the appellant;

(4) 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; and

(5) 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.

There is a multitude of decisions of the various courts in the Commonwealth dealing with the grant of variance. A variance applicant must show that unnecessary hardship will result if the

variance is denied and that the proposed use is not contrary to the public interest. *Allegheny West Civic Counsel, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997).

The use being proposed is a similar business use to the two (2) prior businesses. The use being proposed would utilize outdoor storage, and although that had been no longer utilized for the last eight (8) years, the Board believed that there is no reason not to allow that component of the use. That component of the use existed for many years with the landscaping business. That component of the use is appropriate for the property. That component of the use would not adversely affect the area, particularly because of the existing buffering. The Board could and did attach a condition that the existing buffering needed to remain to mitigate any potential adverse impact from the outdoor storage.

Regarding the rental component, the Board viewed that use as no different than the retail sale component of both the prior landscaping business and the medical supply business. In addition, since the landscaping business had heavy equipment for the loading of materials into the customers' vehicles, the proposed Leiser's Rentals is more similar in that respect to the medical supply business. The facts as recited in the 2009 Zoning Decision discuss delivery trucks loading medical supply at the facility in the morning, delivering offsite and returning to the Property in the evening. Leiser's Rentals has approximately 75% of its business by delivery and the proposed new facility, as per Applicant, should be similar. The Board found this testimony credible on the basis of the fact that Leiser's Rentals has existed for many years in the other location. The only reason for the move to this location is due to the termination of the lease at the Bethlehem Township site. Therefore, since the business would remain similar to how Leiser's Rentals operates today, the Board believes the use is similar to the medical supply business that predated it. The addition of the outdoor

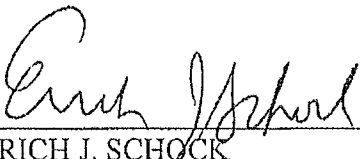
propane tank dispenser is not a significant change to create any issue with the Board that this is in fact substantially different from the prior application. Therefore, based upon the fact that the 2009 Decision found sufficient justification for a use variance for the medical supply business, the Board similarly finds that there is similar justification for this variance (or change to the prior variance or special exception) to allow Leiser's Rentals to use the Property as described.

VII. Conclusions of Law

1. Applicant met the standard for a variance.
2. The use as proposed should be allowed.

VIII. Decision of the Board

Based upon the foregoing, by a 4-to-0 vote, the Zoning Hearing Board granted the request to change the use to a rental equipment facility with outdoor storage subject to the condition that the existing screening on the Property be maintained.



ERICH J. SCHOCK
Solicitor

/s/ Suzanne Borzak *

SUZANNE BORZAK,
Zoning Officer

THE BOARD:

/s/ Linda Shay Gardner *

LINDA SHAY GARDNER
Member

/s/ William Fitzpatrick *

WILLIAM FITZPATRICK
Member

/s/ Michael Santanasto, Esquire *

MICHAEL SANTANASTO
Member

/s/ James H. Schantz *

JAMES H. SCHANTZ
Member

* The above individuals were unavailable at the date of mailing.

DATE(S) OF HEARING: January 24, 2018

DATE OF WRITTEN DECISION: March 10, 2018

Before the Zoning Hearing Board
Of the City of Bethlehem, Pennsylvania

Northampton County

Appeal & Application of
Robert Uliana,
Applicant

)
)
)

Date: March 10, 2018

Re: 3464 Linden Street

Certificate of Service

I, Erich J. Schock, Solicitor to the Board, do hereby certify that I sent a true and correct copy of the forgoing Decision to the Applicant listed below at the addresses set forth, by regular first class U.S. Mail on the date set forth below.

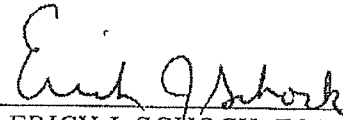
Robert Uliana
33 Cameron Street
Nazareth, PA 18064
Applicant

James and Cathy Snell
P.O. Box 20701
Lehigh Valley, PA 18002-0701
Owners

FITZPATRICK LENTZ & BUBBA, P.C.

Date: March 10, 2018

BY: _____



ERICH J. SCHOCK, ESQUIRE

Atty. I.D. No. 65475

4001 Schoolhouse Lane

P.O. Box 219

Center Valley, PA 18034-0219

Attorney for Zoning Hearing Board
Of the City of Bethlehem



FITZPATRICK
LENTZ & BUBBA
ATTORNEYS AT LAW

eshock@flblaw.com

Direct Dial: 610-797-9000 ext 355

March 12, 2018

Robert Uliana
33 Cameron Street
Nazareth, PA 18064

James and Cathy Snell
P.O. Box 20701
Lehigh Valley, PA 18002-0701

**Re: City of Bethlehem Zoning Hearing Board
3464 Linden Street**

All:

Enclosed please find a copy of the Notice and Decision of the Board in the above matter.

Very truly yours,

Erich J. Schock

/sjw

Enclosure

cc: Zoning Officer, City of Bethlehem (w/encl., via e-mail)
City of Bethlehem Zoning Hearing Board (w/encl., via e-mail)

Before the Zoning Hearing Board
Of the City of Bethlehem, Pennsylvania

Northampton County

Appeal & Application of
Robert Uliana,
Applicant

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)
)

Date: March 10, 2018

Re: 3464 Linden Street

NOTICE OF RIGHT OF APPEAL
OF AGGRIEVED PARTY

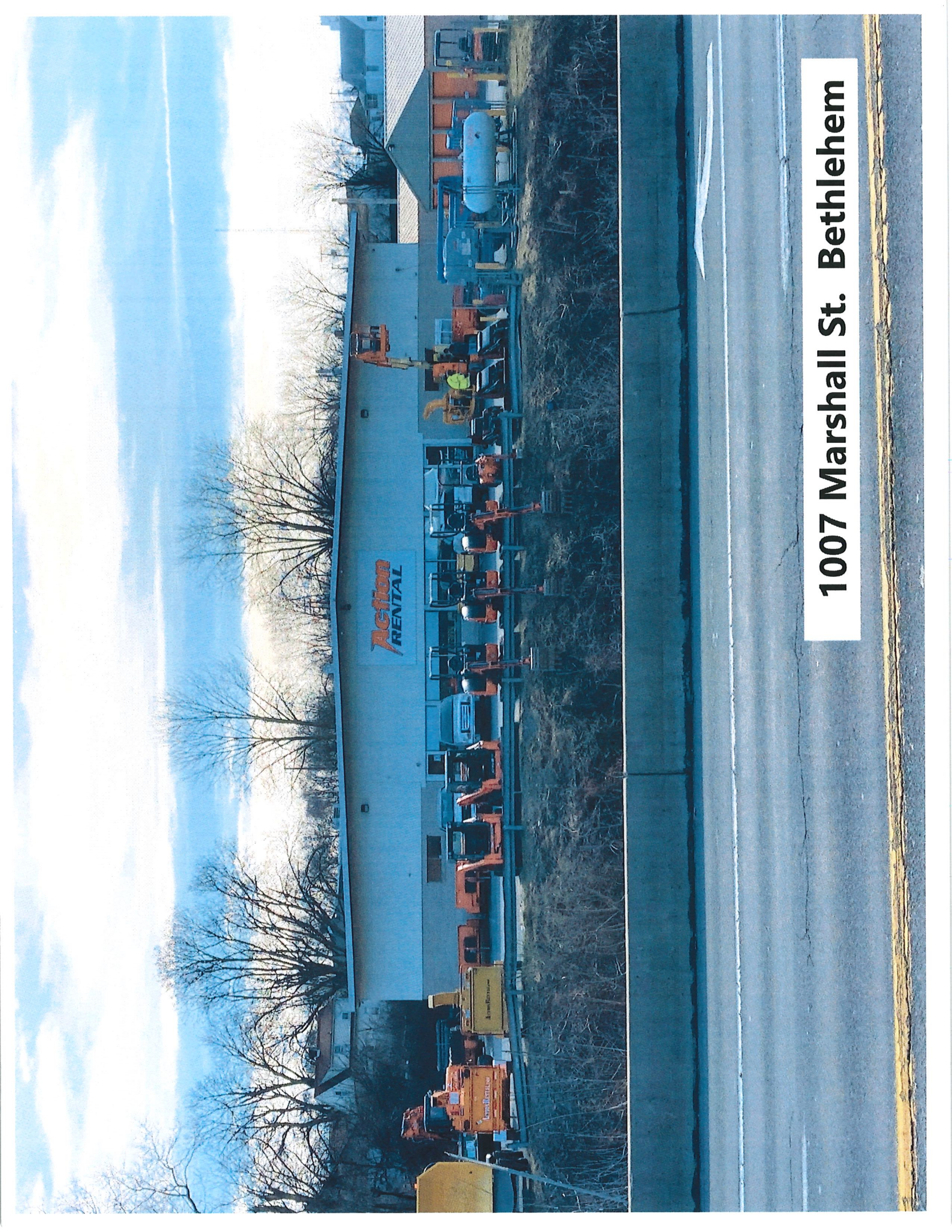
You have the right to appeal this Decision if you are an "aggrieved party" under the Pennsylvania Municipalities Planning Code. You must appeal to the Court of Common Pleas of the county in which the subject property is situated. The City of Bethlehem is located partly in Northampton County and partly in Northampton County.

In order to properly file an appeal, you should seek the advice of a lawyer. Please note that neither the Zoning Officer nor the Zoning Hearing Board Solicitor is permitted to give you legal advice. **PLEASE DO NOT CALL THIS OFFICE.**

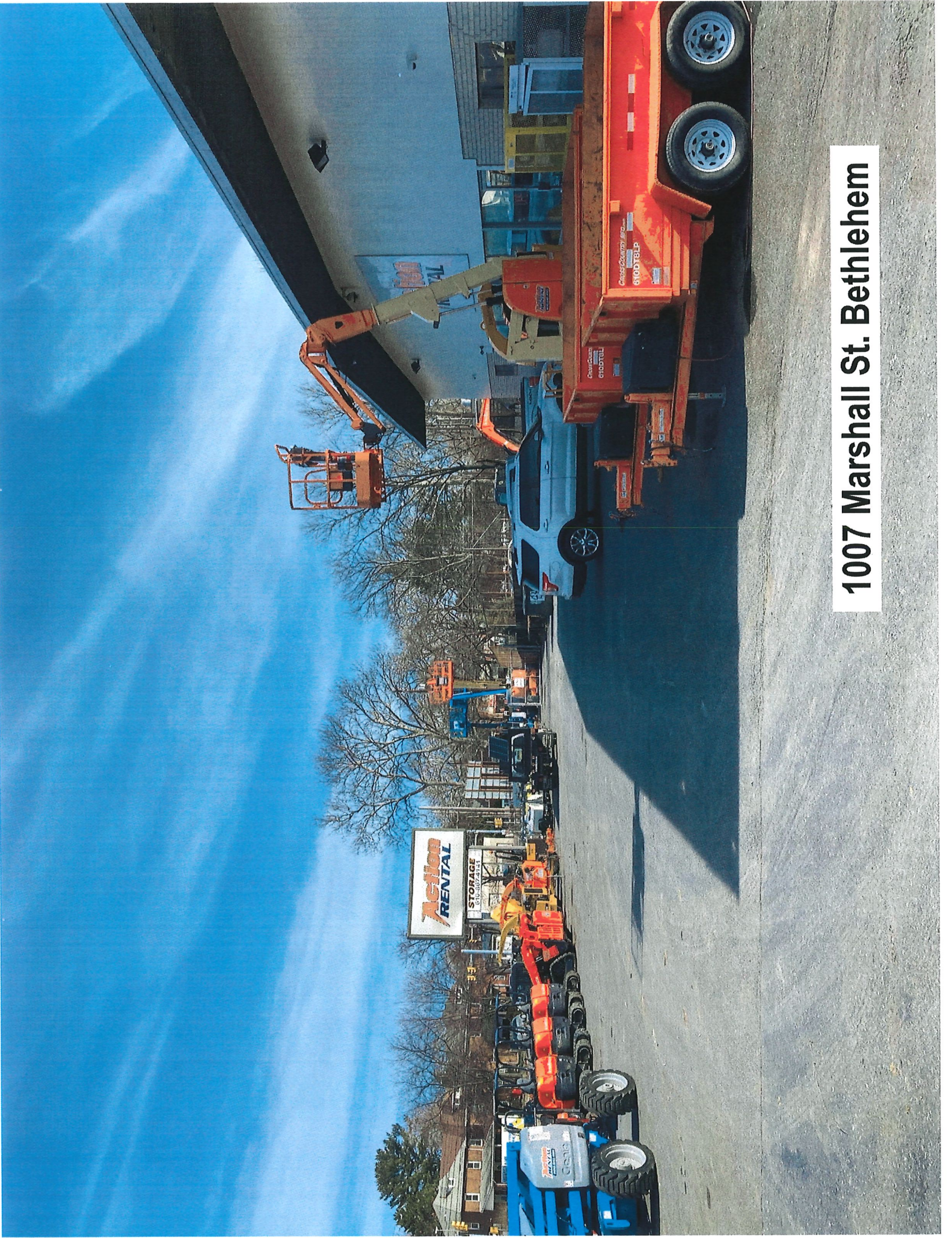
You must file your appeal in writing within thirty (30) calendar days of the date of this Decision or your right to such an appeal is lost.

YOUR APPEAL PERIOD BEGINS

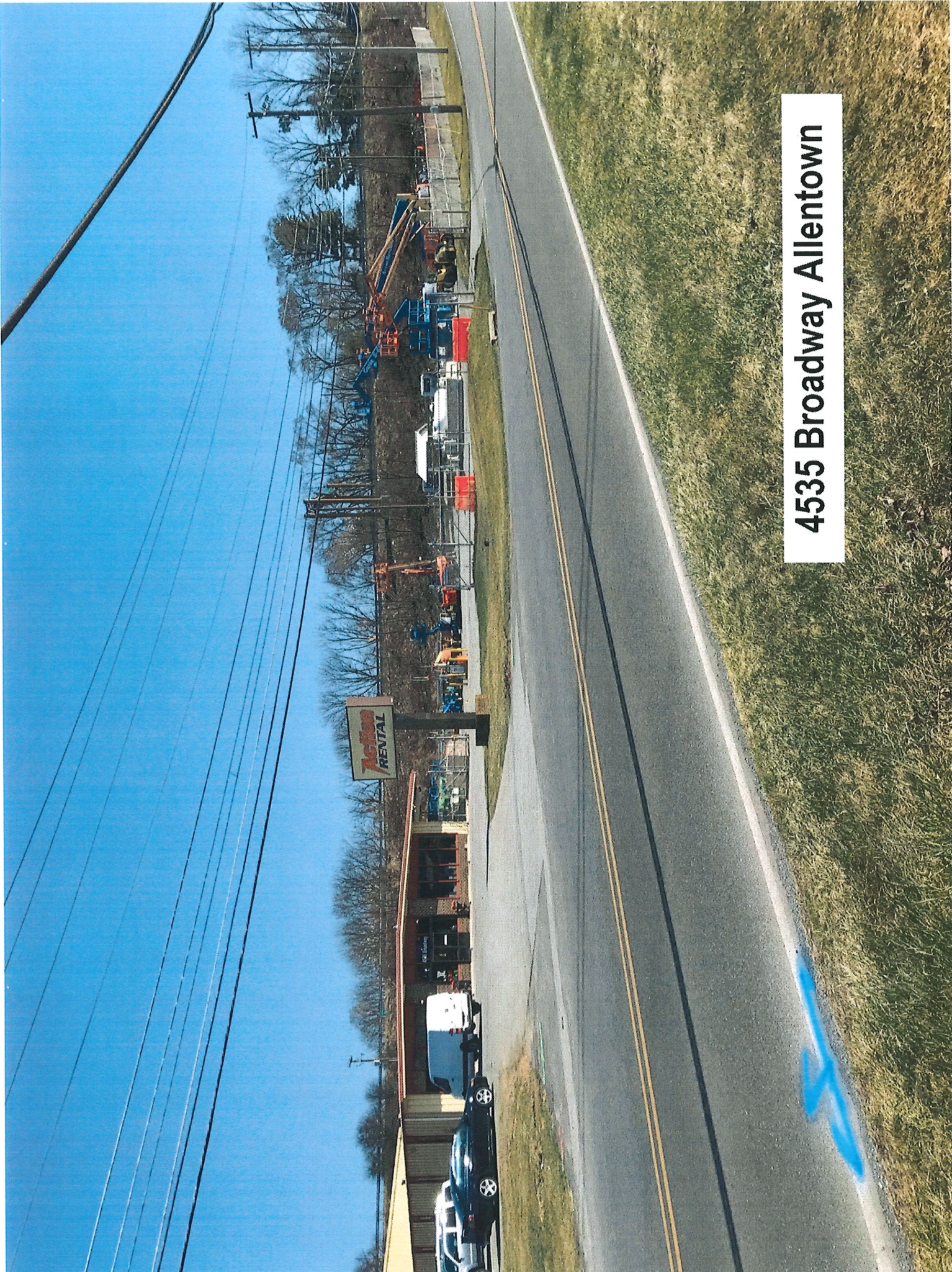
March 12, 2018
(Date of Mailing)



1007 Marshall St. Bethlehem



1007 Marshall St. Bethlehem



4535 Broadway Allentown