



SITE ADDRESS: 124 EAST MORTON

Office Use Only:

DATE SUBMITTED: 7.22.2020

HEARING DATE: 9.9.2020

PLACARD: \_\_\_\_\_

FEE: 500.00

ZONING CLASSIFICATION: I-O

LOT SIZE: 3.34 ACRES



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



1. Return one (1) original and seven (7) 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 the 4<sup>th</sup> Wednesday of the month. The hearing will be held the 4<sup>th</sup> 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**

<b>APPLICANT:</b>	
Name	Lehigh University
Address	461 Webster Street
	Bethlehem, PA 18015-1796
Phone:	
Email:	
<b>OWNER</b> (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	
Address	
Phone:	
Email:	
<b>ATTORNEY (if applicable):</b>	
Catherine E.N. Durso, Esquire	
Name	Fitzpatrick Lentz & Bubba, P.C.
Address	645 West Hamilton Street, Suite 800
	Allentown, PA 18101
Phone:	
Email:	

**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 photographs.
3. If the real estate is presently under Agreement of Sale, attach a copy of the Agreement.
4. If the real estate is presently leased, attached a copy of the present lease.
5. 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
<u>1320.07(g)</u>	<u>N/A</u>	<u>N/A</u>	<u>To permit sign on penthouse</u>
<u>1320.08(a)(11)(i)</u>	<u>Not to exceed 25' above grade and not greater than 22.5 SF</u>	<u>88-96 Feet above grade and 101 SF in size</u>	<u>63'-71'/78.5 SF</u>
<u>1320.08(a)(11)(ii)</u>	<u>Not more than 50 SF</u>	<u>101 SF</u>	<u>51 SF</u>
<u>1320.08(a)(14)</u>	<u>40 SF per side facing street (80 SF total)</u>	<u>101 SF</u>	
<u>1320.08(a)(16)</u>	<u>N/A</u>	<u>N/A</u>	<u>To permit nighttime illumination</u>

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.

See attached Supplemental Statement.

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

N/A

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

N/A


**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

Catherine E.N. Durso, Esquire, Attorney and  
Authorized Agent for Applicant/owner

July 22, 2020

Date

Property owner's Signature

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.**

**BEFORE THE ZONING HEARING BOARD OF THE  
CITY OF BETHLEHEM, NORTHAMPTON COUNTY, PENNSYLVANIA**

**IN RE: APPEAL OF LEHIGH UNIVERSITY**

**SUPPLEMENTAL STATEMENT**

**I. BACKGROUND**

Lehigh University ("Applicant") is the owner of property located at the intersection of Webster Street and E. Morton Street in the I-O (Institutional Overlay) District (the "Property"). The Property is 150,239 square feet in size. Applicant will be using the Property for a six-story state-of-the-art Health Science Technology Building to house faculty and student laboratories, offices and related accessory uses. The Health Science Technology Building is permitted by right in the IO-District. Applicant is proposing the installation of a sign stating "LEHIGH" along the north façade roof section of the building. Applicant requests the following variances to permit the proposed sign: 1) From Section 1320.07(g)'s requirement that no signage be placed, inscribed or supported upon the roof that the sign abuts or upon any structure which extends above the roof on any building, except that a sign may be attached to a parapet wall that extends up to five feet above the roof; 2) From Section 1320.08(a)(11)(i)'s requirement that no portion of a wall sign be less than 7.5' above grade and no more than 25' above grade and not exceed 22.5 square feet in size; 3) From Section 1320.08(a)(11)(ii)'s requirement that total wall signage not exceed ten (10%) percent of the area of the building face with total of wall signage not exceeding 50 square feet in size; 4) From Section 1320.08(a)(14)'s requirement that signs for institutional uses in an Institutional Zone not exceed a maximum of 40 square feet of wall signage per principal building side facing a street; and 5) From Section 1320.08(a)(16)'s requirement that any illuminated or indirectly illuminated sign used for advertising or identification of a permitted non-residential use only be illuminated during the hours of operation.

**II. RELIEF REQUESTED**

The Health Science Technology Building is situated in an area on Campus which is proximate to complimentary facilities and uses including other science facilities such as the Whitaker and Sinclair Labs. Following a review of Lehigh University's Campus to identify a sufficiently sized lot which could accommodate a building of this size and specification, the Subject Property was identified as being uniquely situated for the project. The proposed Health Science Technology Building is sized to facilitate crucial and necessary laboratory and support facilities with a square footage sufficient to meet demonstrated need. A sign stating "LEHIGH" is proposed to be embedded within the corrugated metal panel envelope of the building's penthouse wall on the north side. Because this building is the gateway between the City of Bethlehem and Lehigh University's campus, it is important to identify the building and Lehigh's presence in the community. The Health Science building represents Lehigh's partnership with the community and having a tasteful sign to act as a wayfinding tool is important for the area. The proposed signage will enable the Health Science building to be a beacon in this section of the City much like how the landmark tower and dining room in Iacocca Hall on the Mountaintop Campus operates. The

sign will assist with the building's purpose of connecting Lehigh to the City and surrounding community.

The proposed sign will be located between the 88 foot to 96 foot elevations on the building. The proposal is to have light fixtures behind the corrugated, perforated panels that illuminate through the perforations for the sign. The sign will be lit all day with different output depending on time of day/night. The sign will not project from the building. The proposed sign will be 101 square feet in size and located on the north façade of the building. The north façade of the building is 26,840 square feet. The proposed signage represents .4% of the north façade of the building. The signage will be placed on the penthouse portion of the building which measures 4,590 square feet in size resulting in the sign only being 2.2% of the north penthouse frontage.

A variance from Section 1320.07(g) is requested as the wall sign is proposed to be placed on the penthouse which extends above the roof of the building more than five feet. A variance from Section 1320.08(a)(11)(i) is requested as the wall sign will be more than 25' above grade and larger than 22.5 square feet in size. A variance from Section 1320.08(a)(11)(ii) is requested because although total wall signage will not exceed ten (10%) percent of the area of the penthouse face, the total sign exceeds 50 square feet in size. A variance from Section 1320.08(a)(14) is needed because the sign for the building in the Institutional Zone exceeds 40 square feet of wall signage per principal building side facing a street (80 SF permitted and 101 SF proposed). A variance from Section 1320.08(a)(16) is requested as it is intended that the sign lighting will continue from dawn to dusk with the building primarily opened and operational from 7:00 a.m. to 5:00 p.m. The grant of the requested variances is necessitated by unique hardships pertaining to the topography and existing development of the Lehigh University Campus as well as the location of the building.

A significant portion of the building height includes the "penthouse" designed to screen and shield the pertinent mechanical systems and facilities. The sign is intended to be seen from City Hall and other prominent areas around the City. It will have limited visibility in the surrounding area due to street widths and surrounding buildings. Based on the size of the building façade, the size of the sign is reasonable. The proposed signage is consistent with the spirit, purposes and intent of the Zoning Ordinance given its nature and benefit to the public. It is in the best interests of Bethlehem, the convenience of the community, the public welfare and will be a substantial improvement to the Property. Granting the requested variances will not be a detriment to public health, safety or welfare. The proposed sign is suitable for the Property and will be designed, constructed, operated and maintained so as to be in harmony with the existing and intended character of the general vicinity, particularly the adjacent University campus.


The proposed signage will not substantially change the character of the surrounding neighborhood. The proposed signage will not create a significant hazard to public health, safety and welfare such as fire, toxic or explosive hazards. The proposed signage is suitable for the site and will not result in disturbance of any important natural features. Applicant is requesting the minimum relief necessary.

III. CONCLUSION

For the aforementioned reasons, the requested variances and any other necessary relief for the proposed signage should be granted.

Respectfully submitted,

FITZPATRICK LENTZ & BUBBA, P.C.

By: 

Catherine E.N. Durso, Esquire  
Attorneys for Applicant  
645 West Hamilton Street, Suite 800  
Allentown, PA 18101  
Ph.: (610) 797-9000

Date: July 22, 2020

**BEFORE THE ZONING HEARING BOARD  
OF THE CITY OF BETHLEHEM, PENNSYLVANIA  
NORTHAMPTON COUNTY**

**Appeal & Application of  
Lehigh University**

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**Dated: October 4, 2018  
Re: 5 East Packer Avenue**

**DECISION**

**1. Preliminary Matters**

A public hearing was held on August 22, 2018 at 6:00 p.m. before the Zoning Hearing Board of the City of Bethlehem regarding Applicant's requests for Variances.

**A. Parties.**

1. Applicant: Adrienne McNeill, Assistant Vice President for Community and Regional Affairs for Lehigh University, appeared on behalf of the Applicant. The Applicant was represented by Steven T. Boell, Esq.

2. Zoning Hearing Board: The Board was comprised of William Fitzpatrick, Chairman; James H. Schantz; Linda Shay Gardner; Michael Santanasto and Lynn Rothman. The Zoning Officer was Suzanne Borzak. Kevin J. Kelleher of B-J-S-K Law Offices represented the Zoning Hearing Board as its Solicitor.

3. Protestant(s)/Interested Parties: A number of interested persons appeared at the time of the hearing.

## **B. Notice**

Notice of the hearing was given by public advertisement, posting of the Property and First Class Mail to neighboring property owners pursuant to the applicable provisions of the Pennsylvania Municipalities Planning Code,<sup>1</sup> the Zoning Ordinance of the City of Bethlehem<sup>2</sup> and the rules of the Board.

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<sup>1</sup> 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.”

<sup>2</sup> 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.

**C. Property**

The property is located at 5 East Packer Avenue, in the Northampton County portion of the City of Bethlehem. The property consists of 150,239 square feet, and it is located in the I-O Zoning District.

**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 June 12, 2012, 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”).

**III. Nature of Relief Sought**

The Applicant sought Zoning Hearing Board relief from strict application of Section 1304.01(b) of the Zoning Ordinance, to permit the construction of a Health Science Technology Building. The proposed construction will be 105 feet in height, with setbacks of 20 feet. In this Zoning district, a building of that height requires setbacks of 35 feet, particularly along East Morton Street and Webster Street.

#### **IV. Evidence Received by the Board**

In addition to the application package, the Applicant also introduced an Exhibit package at the time of the hearing. This Exhibit package consisted of a list of documents, including but not limited to site plans, elevations, photographs, maps and renderings. Significantly, item number 5 on that list is a letter from the City Planning Commission, dated July 6, 2018. That letter outlines a number of City departments whose requirements will need to be met as this project moves forward.

Adrienne McNeill told the board that the proposed building will be a state-of-the-art science and research facility, with interdisciplinary availability. The site is currently a parking lot. The expected loss of that parking will not cause any concern, because there is surplus parking now, and the university is in compliance with all parking requirements.

Jason Englehart, principal of Logan Engineering, testified as the site civil engineer for this project. He confirmed for the board that the proposed construction is a use that is permitted by right in the I-O Zoning district. He testified that although the total height of the structure will be 105 feet, the highest occupied floor will only be a 79 feet. The additional 26 feet consists of a “penthouse” structure, which will screen and shield the mechanical systems associated with the scientific and research use. These mechanical systems must be vented through the roof of the structure, in order to minimize vibrations that could interfere with those functions. Mr. Englehart also informed the Board that other campus buildings in the immediate area prove little or no setbacks.

Brent Stringfellow, the Associate Vice President for Facilities and the University Architect, testified that there is no other available space on campus to accommodate this

proposed structure. He provided a campus map (Exhibit A-6) and a building height rendering (Exhibit A-7), in order to illustrate the appearance of the building when completed, relative to other campus structures and the neighboring community. Mr. Stringfellow indicated that he is familiar with the City Planning Commission letter of July 6, 2018, and that the University is willing to comply with all relevant City departmental requirements.

**V. Findings of Fact**

1. Applicant Lehigh University is the record owner of the subject property.
2. The property contains 150,239 square feet, and is located at 5 East Packer Avenue, in the Northampton County portion of the City of Bethlehem.
3. The property is located in the I-O Residential Zoning District.
4. The existing use of the property is a surface parking lot.
5. The Applicant proposed to construct a Science and Research facility on the subject property, with a total height of 105 feet.
6. The proposed structure will provide for 20 feet in setbacks.
7. The proposed structure will not be occupied at a height greater than 79 feet, and the additional 26 feet in height is necessary for a mechanical structure which will provide ventilation and other environmental functions.

**VI. Discussion**

Applicant requests Variances from §1318.29 of the Zoning Ordinance. The grant of a Variance is pursuant to §1302.96 of the Zoning Ordinance.

**1302.96 Variance**

A modification of the regulations of this Ordinance, granted on grounds of exceptional difficulties or unnecessary hardship, not self-imposed, pursuant to the provisions of Article 1325 of this Zoning Ordinance, and the laws of the State of Pennsylvania.

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 di minimus situations. As of the adoption date of this Ordinance, the Municipalities Planning Code provided that all of the following finds 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 a variance. It is a general principle of Pennsylvania law that variances should be granted only sparingly and only under exceptional circumstances. *Botula v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 450 A.2d 637 (Pa. Commw. Ct. 1982); *Schaefer v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 435 A.2d 289 (Pa. Commw. Ct. 1981). 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).

In the present case, the Application meets these criteria for the grant of a Variance from the total height limitation and from the resultant setback requirement.

## **VII. Conclusions of Law**

1. The property is located in the I-O Zoning District in the Northampton County portion of the City of Bethlehem

2. The Applicant proposes to construct and science and research facility on the subject property, with a total height of 105 feet.

3. The Applicants met the requirements for the grant of the Variances needed, to obtain relief from the maximum height limitation and also from the consequential setback requirement.

**VIII. Decision of the Board**

By a vote of 5-0, the Zoning Hearing Board granted Applicant's request for the Variances requested, with the condition that the applicant comply with the requirements set forth in the City Planning Commission letter dated July 6, 2018.

***THE BOARD:***

/s/ Kevin J. Kelleher, Esquire\*  
Solicitor

/s/ William Fitzpatrick, Chairman\*

/s/ James H. Schantz\*

/s/ Suzanne Borzak\*  
Zoning Officer

/s/ Linda Shay Gardner\*

/s/ Michael Santanasto\*

/s/ Lynn Rothman\*

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

**DATE OF HEARING:**  
**August 22, 2018**

**DATE OF WRITTEN DECISION:**  
**October 4, 2018**



**BEFORE THE ZONING HEARING BOARD  
OF THE CITY OF BETHLEHEM, PENNSYLVANIA  
NORTHAMPTON COUNTY**

	)	
Appeal and Application of	)	Dated: October 4, 2018
Lehigh University	)	Re: 5 East Packer Avenue
	)	

**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 located. The City of Bethlehem is located partly in Northampton County and partly in Lehigh County.

In order to file an appeal properly, 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**

**October 4, 2018**

**(DATE OF MAILING THIS DECISION)**