



SITE ADDRESS: 327 E. Market St., Bethlehem, PA
(7th ward of Northampton County portion of City of Bethlehem)

Office Use Only:

DATE SUBMITTED: AUGUST 19, 2020

HEARING DATE: SEPTEMBER 23, 2020

PLACARD: _____

FEE: \$ 500.00

ZONING CLASSIFICATION: R-T

LOT SIZE: _____

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 4th Wednesday of the month. The hearing will be held 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	Glemser Technologies Corporation
Address	520 N New St.
	Bethlehem, PA 18018
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	David J. Kmetz, Diane L. Kmetz, his Wife
Address	Chief Operating Officer Glemser Technologies Corp.
Phone:	[REDACTED]
Email:	dave.kmetz@glemser.com
ATTORNEY (if applicable):	
Name	Christopher T. Spadoni, Esq.
Address	1413 Easton Ave
	Bethlehem, PA 18018
Phone:	[REDACTED]
Email:	spadoniesq@live.com

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.
- Attached July 1999 Decision of City of Bethlehem Zoning Hearing Board re: Blough Nursing Home Inc.

SECTION 3.

THE RELIEF SOUGHT: N/A

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
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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.

Variance for Glemser Technologies Corporation to establish
administrative offices in first floor at 327 E. Market St,
Bethlehem, PA in R-T residential district of Bethlehem.
Zoning relief from Section 1304.

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 Attached.

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.

Glemser Technologies Corporation


Applicant's Signature

By: Ray Glemser

August 19th, 2020
Date


Property owner's Signature

Dave Kmetz / Diane Kmetz

August 19th, 2020
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

Glemser Technologies Corporation currently of 520 N. New Street, Bethlehem, Northampton County, PA 18018, as a result of the COVID-19 Pandemic, has operated as a virtual business organization without the use of an office. It is anticipated moving forward Glemser Technologies Corporation will operate almost exclusively as a virtual business organization but desires to maintain a physical presence in the City of Bethlehem.

327 E. Market Street, maintains four units, currently 3 of the units are rented on a long term basis (4+ years) as one bedroom apartments and the first floor is to be utilized for an office not exceeding 3 people. It is anticipated that consistently less than 2 people will be present at this office, noting that there is parking at the rear of the premises.

It should be noted that previously this site was previously granted relief in 1999 to the Blough Nursing Facility and the current applicant would agree to the restrictions set forth therein that the hours of operation would be 9-5, the operation of Glemser Technologies would in no way impact the surrounding neighborhood, and would not produce any deleterious effects.

Glemser Technologies Corporation is desirous of maintaining a physical presence within the City of Bethlehem and is asking the Bethlehem Zoning Hearing Board to permit this limited office use on the first floor only of 327 E. Market Street, Bethlehem, PA with the restrictions set forth hereinabove.

Respectfully submitted,



Glemser Technologies Corporation

By: Ray Glemser

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

NORTHAMPTON COUNTY DIVISION

Appeal & Application of)	JULY 1999
BLOUGH NURSING HOME, INC.,)	
Lessee.)	EXPANSION OF A LAWFUL
)	NON-CONFORMING USE

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 Lehigh 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 Board Solicitor are 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 TO RUN ON
AUGUST 19, 1999.**

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

NORTHAMPTON COUNTY DIVISION

Appeal & Application of)	JULY 1999
BLOUGH NURSING HOME, INC.,)	
Lessee.)	EXPANSION OF A LAWFUL
)	NON-CONFORMING USE

DECISION

I. Synopsis of Decision

The Board granted a special exception to expand a lawful non-conforming use to Blough Nursing Home to establish auxiliary offices in a R-T Residential District.

II. Preliminary Matters

A public hearing was held on July 28, 1999 at 7:30 p.m. before the Zoning Hearing Board of the City of Bethlehem at Town Hall, Bethlehem, regarding the Applicant's request for a special exception to expand a lawful non-conforming use in a R-T Residential District.

The Applicant sought a zoning permit from the Zoning Officer. The Zoning Officer denied the permit and Blough Nursing Home filed this appeal with the Zoning Hearing Board.

A. Parties

1. APPELLANT/APPLICANT(S)¹: The Applicant, Blough Nursing Home, was represented by Thomas J. Maloney, Esq., of Bethlehem, Pennsylvania. The Applicant had standing to appear before the Board as the lessee of the subject premises.

2. ZONING HEARING BOARD: The Board, consisting of Chairman Dr. Gordon L. Sommers and Members Laurie Gostley-Hackett and Thomas J. Jones, was represented by its solicitor, Kevin Frank Danyi, Esq., of Bethlehem.

3. PROTESTANT(S): There were no protestants present at the hearing.

B. Notice

Notice of the hearing was given by newspaper advertisement, by physical posting of the property, and by regular mail to neighboring property owners pursuant to the applicable provisions of the Pennsylvania Municipalities Planning Code², the Zoning Ordinance of the City of Bethlehem³, citations *infra*, and the Rules of the Board.⁴

¹ Those persons or entities who have sought a permit from the Zoning Officer and were denied a permit have appealed from his denial and are thus "appellants" in a certain sense; they also are applying for relief from the Zoning Hearing Board and are thus "applicants".

² 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 or 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."

³ Article 1325.04(a) provides for notice to be given as follows: "(1) At least seven (7) days prior to the date fixed for public hearing, publish a public notice describing the location of the building or lot and the general nature of the question involved in a newspaper of general circulation in the City. (2) Give written notice to parties in interest at least seven (7) days in advance of such hearing. Such parties shall be at least those persons whose properties adjoin and face on the same street as the property in question, and the City Planning Commission."

III. Applicable Law

This case was considered 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, amended to May 26, 1998 (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, effective in 60 days (hereinafter, the "MPC").

IV. Nature of Relief Sought

The Applicant sought a special exception to alter or extend a non-conforming use under Section 1323.04(c), which requires that an applicant meet the general standards of a special exception under Section 1325.07 of the Zoning Ordinance to alter or extend a non-conforming use. The Applicant proposes to establish temporary auxiliary offices in an adjacent residential building to support the primary building and use of the nursing home.

⁴ 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.

V. Evidence Received by the Board

- **Board Exhibit #1:** Application.⁵
- **Applicant Exhibit #A:** Letter from apartment residents [not admitted based upon hearsay evidence principles].
- **Applicant Exhibit #B:** Copy of deed of subject property.

⁵ The Application filed by the Applicants is normally received as part of the record by the Board for informational purposes only as evidence of the intention of the Applicant and not as substantive evidence unless substantiated by uncontradicted sworn testimony of the Applicants(s) and/or witnesses called by the Applicant(s).

VI. Findings of Fact

1. The subject premises are located at 327 East Market Street in the 7th Ward of the Northampton County portion of the City of Bethlehem (North Side).
2. The subject premises are located in a R-T Residential District.
3. Blough Nursing Home is the lessee of the property. The lessor and fee simple owner of the subject premises is David J. and Diane L. Metz.
4. The Applicant proposes to utilize the first floor of the subject premises as an auxiliary office supporting Blough Nursing Home.
5. Blough Nursing Home is a lawful non-conforming use. The property, due to its location and size, cannot be expanded to meet the needs of the Applicant.
6. The proposed offices will be used between the hours of 7:30 a.m. ad 5:00 p.m, Monday through Friday.
7. There will be no signage at the subject premises indicating the existence of an office.
8. There will only be two employees occupying the structure at any one time.
9. There will be no exterior renovations made to the property and it will retain its residential characteristics.

VII. Conclusions of Law

The Applicant sought a special exception to alter or extend (expand) a non-conforming use under Section 1323.04(c), which mandates that any alteration or extension of a non-conforming use meet the requirements for special exception under Section 1325.07 of the Zoning Ordinance. The Applicant proposes to occupy the first floor of an adjacent building with auxiliary offices supporting the Blough Nursing Home. Business offices are not an acceptable use in a R-T Residential District. Thus, the Applicant sought the special exception to expand the lawful non-conforming use.

A non-conforming use is an activity or structure which predates relevant zoning restrictions. *Lantos v. Zoning Hearing Bd. of Haverford Tp.*, 153 Pa. Commonwealth Ct. 591, 621 A.2d 1208 (1993). Nursing homes are not permitted uses within the R-T Residential District. However, Blough Nursing Home has been in existence for decades and predates the existence of the present Ordinance. Thus, Blough Nursing Home is a non-conforming use.

Property owners have a constitutional right to continue non-conforming uses. *Richland Tp. v. Prodex, Inc.*, 160 Pa. Commonwealth Ct. 184, 634 A.2d 756 (1993). A lawful non-conforming use establishes in the property owner a vested property right which cannot be abrogated or destroyed unless it is a nuisance, it is abandoned, or it is extinguished by eminent domain. *Pennridge Development Enterprises, Inc. v. Volovnik*, 154 Pa. Commonwealth Ct. 609, 624 A.2d 674 (1993).

The establishment of auxiliary offices in support of Blough Nursing Home may be classified as an expansion or alteration of a non-conforming use. The right to expand a non-conforming use is a constitutional right which may not be prohibited by local zoning ordinances.

R.K. Kibblehouse Quarries v. Marlborough Tp. Zoning Hearing Bd., 157 Pa. Commonwealth Ct. 630, 630 A.2d 937 (1993).

However, the “natural expansion doctrine” provides that, to a certain extent, a non-conforming use can expand as a matter of right if the matter is not detrimental to public health, safety, or welfare, but still must comply with dimensional, space, lot size design, structural, or aesthetic restriction or obtain a variance. *Piecknick v. South Strabane Tp. Zoning Hearing Bd.*, 147 Pa. Commonwealth Ct. 308, 607 A.2d 829 (1992).

Section 1323.04(c)(1), which governs alteration or extension of non-conforming uses, states:

1323.04(c) Non-Conforming Uses

Non-conforming uses shall not be altered, reconstructed, extended or enlarged, except in accordance with the following provisions:

- (1) Such alteration, reconstruction, extension⁶ or enlargement shall be permitted only by special exception under the provisions of Article 1325, Zoning Hearing Board.

Thus, in order to extend or alter a non-conforming use, we must find that the request is acceptable under the general requirements of Section 1325.07 of the Zoning Ordinance.

The general requirements and standards applicable to all special exceptions are set forth in Article 1325.07:

1325.07 Power and Duties - Special Exceptions

- (a) The Zoning Hearing Board shall have the power to approve special exceptions for any of the uses for which this Ordinance requires the obtaining of such exceptions and for no other use or purpose.

⁶The Board has interpreted that “extension” is synonymous with “expansion.”

(b) General Requirements and Standards Applicable to all Special Exceptions: The Board shall grant a special exception only if it finds adequate evidence that any proposed use submitted for a special exception will meet all of the following general requirements, as well as any specific requirements and standards listed for the proposed use. The Board shall, among other things, require that any proposed use and location be:

(1) In accordance with the City of Bethlehem Comprehensive Plan and consistent with the spirit, purposes, and intent of this Ordinance.

(2) In the best interest of Bethlehem, the convenience of the community, the public welfare, and be a substantial improvement to property in the immediate vicinity.

(3) Suitable for the property in question, and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.

(4) In conformance with all applicable requirements of this Ordinance.

(5) Suitable in terms of permitting the logical, efficient and economical extension of public services and facilities such as public water, sewers, police and fire protection and public schools.

(6) Suitable in terms of effects on street, traffic and safety with adequate sidewalks and vehicular access arrangements to protect major streets from undue congestion and hazard.

The Zoning Hearing Board may impose such conditions, in addition to those required in the Ordinance, as are necessary to insure that the general purpose and intent of this Ordinance is complied with and that the use of the property adjacent to the area included in the proposed change or modification is adequately safeguarded, which conditions may relate to, but are not limited to, harmonious design of buildings, aesthetics, planting and its maintenance as a sight or sound screen, hours of operation, lighting, allied activities, smoke and fume control, and the minimizing of noxious, offensive, or hazardous elements.

A “special exception” is neither “special” nor an “exception”; rather, it is a use which is permitted by the Zoning Ordinance provided that certain criteria are met and the proposed use does not adversely affect the community. *Heck v. Zoning Hearing Board for Harvey's Lake Borough*, 39 Pa. Commonwealth Ct. 570, 575, 397 A.2d 15, 18 (1979). A landowner/applicant's entitlement to a special exception is predicated upon his satisfying the special exception criteria as set forth in a zoning ordinance. *N. Pugliese, Inc. v. Palmer Township Zoning Hearing Board*, 140 Pa. Commonwealth Ct. 160, 592 A.2d 118 (1991).

There is no generalized right to seek a special exception and the right to a special exception exists only where it is specifically provided for under the terms of a zoning ordinance. *Borough of West Mifflin v. Zoning Hearing Board of the Borough of West Mifflin*, 69 Pa. Commonwealth Ct. 604, 452 A.2d 98 (1982).

We find that adequate evidence exists that the Applicant meets the general requirements as listed in Section 1325.07(b)(1-6). First, the establishment of auxiliary offices in support of a nursing home is consistent with the spirit, purposes, and intent of this Ordinance. The purpose of the Zoning Ordinance is to promote the public health, safety, morals, and general welfare, by, among other things, encouraging the most appropriate use of the land.⁷ The establishment of the auxiliary offices promotes the public health and general welfare by being able to better serve and care for elderly inhabitants of the nursing home and the City of Bethlehem. The establishment of the auxiliary offices in an adjacent building allows for more room in the nursing home to be devoted for the care of its residents. Thus, the auxiliary offices not only benefit Blough Nursing Home for administrative purposes, but those individuals in need of elder care as well.

⁷*Zoning Ordinance*, §1301.03(a).

Second, the establishment of auxiliary offices is suitable for the property in question, and is designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity. The subject premises has been and continues to be used for residential purposes. The proposed offices will in no way harm the character of this building. The building will not be altered in any way. There will be no signs located on the building or any surrounding buildings. There will be staff in this building for traditional business hours, and will never be open on the weekends. Thus, the establishment of the auxiliary offices will not affect the character or residential quality of the neighborhood in any way.

Third, the establishment of the auxiliary offices is in conformance with all applicable requirements of this Ordinance. The Applicant does not need to request a variance in order to create the offices in this building. Thus, the proposed structure itself is in conformance with the Ordinance, although the special exception is needed to alter or extend the non-conforming use.

Fourth, the proposed plan to enclose establish the auxiliary offices is suitable in terms of effects on street, traffic and safety. The first floor of the subject premises will be used only for the auxiliary offices. Two employees will operate within the offices. The Applicant is actually reducing the problems associated with parking in this part of Bethlehem since the employees will work during the traditional business hours when the residents of the neighborhood are at work, and vacating the offices when the tenants and residents of the neighborhood are returning from work. Thus, by establishing the office in this building, the Applicant is reducing the strain on parking that a tenant occupying the same space would place on the neighborhood.

We conclude that the remaining criteria had either been met by the Applicant or were not applicable to the request for special exception, by oral testimony or documentary evidence. The Applicant thus met the burden of proof in presenting evidence and persuading the Zoning Hearing Board that the proposed establishment of auxiliary offices for support of Blough Nursing Home satisfied the objective requirements of the Zoning Ordinance for the grant of a special exception for the alteration or extension of a non-conforming use. *Appeal of Neill*, 160 Pa. Commonwealth Ct. 169, 634 A.2d 749 (1993). *Manor Healthcare Corporation v. Lower Moreland Township Zoning Hearing Board*, 139 Pa. Commonwealth Ct. 206, 590 A.2d 65 (1991).

Finally, the Applicant intends to occupy the offices on a temporary basis. Therefore, we grant the request for a special exception to expand the non-conforming use.

VIII. Specific Conditions Imposed

Although the right to expand a non-conforming use is a constitutional right, a municipality has the right to impose reasonable restrictions on the expansion of the non-conforming use. *Warner Co. v. Zoning Hearing Bd. of Tredyffrin Tp.*, 148 Pa. Commonwealth Ct. 609, 612 A.2d 578 (1992), *appeal denied*, 533 Pa. 654, 624 A.2d 112.

Additionally, the Ordinance specifically confers upon the Board the power to "impose such conditions, in addition to those required in the Ordinance, as are necessary to insure that the general purpose and intent of this Ordinance is complied with..."⁸

⁸*Zoning Ordinance*, §1325.07.

The following limitations have been imposed by the Board as a condition to the approved special exception:

1. The expansion of the non-conforming use applies only to Blough Nursing Home and does not run with the land - the relief granted is for temporary alleviation of Blough's administrative problem and is subject to review at the discretion of the Board.

2. The maximum number of employees to occupy the auxiliary offices is limited to three (3) employees.


3. The Applicant may not place any signs signifying the existence of the office.

4. The hours of operation of the offices shall be traditional business hours, Monday through Friday only.

IX. Decision of the Board

Based upon the foregoing, the special exception to change or alter a lawful, non-conforming use sought by the Applicant is granted by 2-1 vote (Mr. Jones dissenting).

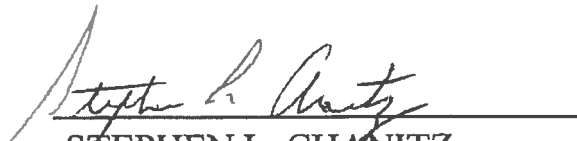
THE BOARD:



KEVIN FRANK DANYI, Esq.
Solicitor

/s/ Dr. Gordon L. Sommers *


Dr. GORDON L. SOMMERS
Chairman



STEPHEN L. CHANITZ
Zoning Officer

/s/ Laurie Gostley-Hackett *

LAURIE GOSTLEY-HACKETT
Member



THOMAS J. JONES
Member

- * Dr. Gordon L. Sommers was unavailable to execute this document.
- * Laurie Gostley-Hackett was unavailable to execute this document.

DATE OF HEARING: July 28, 1999

DATE OF ORAL DECISION: July 28, 1999

DATE OF INFORMAL WRITTEN DECISION: August 4, 1999

DATE OF FORMAL WRITTEN DECISION: August 19, 1999

Certification of Service

I, Kevin Frank Danyi, Esq., Solicitor to the Zoning Hearing Board of the City of Bethlehem, do hereby certify that I sent a true and correct copy of the foregoing Decision to the persons and entities listed below at the addressed set forth below, by regular U.S. Mail sent First Class on or before the date set forth below.

Applicant

THOMAS J. MALONEY, ESQ.
901 West Lehigh Street
Bethlehem, PA 18017

Attorney for Applicant

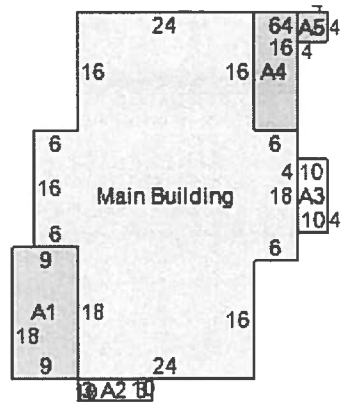
DATE: August 19, 1999



KEVIN FRANK DANYI, Esq.

PARID: P6NE2D 9 13A 0204
 KMETZ DAVID J & DIANE L,

327 MARKET ST E



Item	Area
Main Building	1404
A1 - 11/11:OFP OPEN FRAME PORCH/OFP OPEN FRAME PORCH	162
A2 - 22:EMP ENCL MASONRY PORCH	30
A3 - 20:1SMAS MASONRY	40
A4 - 11:OFP OPEN FRAME PORCH	96
A5 - 62/62:FIRE ESCAPE/FIRE ESCAPE	16

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