

authorization from the owner of the property when this application is filed.	
Name	378 Development LP (Contact Person: Abraham Atiyeh)
Address	1177 6th St., Whitehall, PA, 18052-5212
Phone:	██████████
Email:	██████████
ATTORNEY (if applicable):	
Name	
Address	
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
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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.



SITE ADDRESS: 830 13th Avenue, Bethlehem, PA 18018

Office Use Only:

DATE SUBMITTED: 01.13.2021

HEARING DATE: 01.27.2021

PLACARD: 01.14.2021

FEE: \$ 500⁰⁰

ZONING CLASSIFICATION: LI

LOT SIZE: 1.27 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 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	Pennsylvania Venture Capital Inc.(Contact Person: Sue Kandil,PE)
Address	823 Third Street, Whitehall, PA 18052
Phone:	██████████
Email:	██████████@██████████.com
OWNER (if different from Applicant): Note. If Applicant is NOT the owner, attach written	

Section 1324.06- One-Year Limitation on Approvals

Due to the current COVID19 emergency, the attached Zoning Hearing Board decision dated February 22, 2020 that granted variances for the project couldn't commence and proceed with substantial construction of the improvement authorized within a period of one year from the date of such decision

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

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.

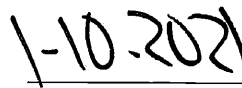
CERTIFICATION

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.

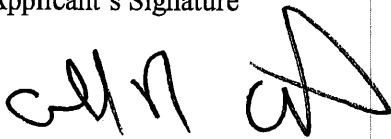
I also certify that I understand that any and all federal, state or local rules and regulations, licenses and approvals shall be obtained if the appeal is granted.



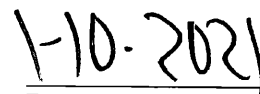
Applicant's Signature



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.



FITZPATRICK
LENTZ & BUBBA
ATTORNEYS AT LAW

eschock@flblaw.com
Direct Dial: 610-797-9000 ext 355

February 22, 2020

Pennsylvania Venture Capital, Inc.
1177 6th Street
Whitehall, PA 18052

James F. Preston, Esquire
38 West Market Street
Bethlehem, PA 18018

Marc S. Fisher, Esquire
Worth, Magee & Fisher, P.C.
2610 Walbert Avenue, Suite 2
Allentown, PA 18104

Pennsylvania Avenue Development, LLC
1177 Sixth Street
Whitehall, PA 18052

Michael Recchiuti, Esquire
60 W Broad St Suite 303
Bethlehem, PA 18018

John DiPasquale, III, Esquire
Faegre Drinker Biddle & Reath LLP
105 College Road East, P.O. Box 627
Princeton, NJ 08542-0627

**Re: City of Bethlehem Zoning Hearing Board
830 13th Avenue (a/k/a 825 12th Avenue)**

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**

Lehigh County

**Appeal & Application of
Pennsylvania Avenue Development, LLC,
Applicant**

)
)
)
)

Date: February 22, 2020

**Re: 830 13th Avenue (a/k/a
825 12th 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 situated. The City of Bethlehem is located partly in Northampton County and partly in Lehigh 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

February 22, 2020

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

Lehigh County

Appeal & Application of)	Date: February 22, 2020
Pennsylvania Avenue Development, LLC,)	
Applicant)	Re: 830 13th Avenue (a/k/a
)	825 12th Avenue)

DECISION

I. Preliminary Matters

A public hearing was held on **December 2, 2019** and **January 8, 2020**, at **6:00 PM** before the Zoning Hearing Board of the City of Bethlehem ("Board") regarding Applicant's Appeal to the Zoning Hearing Board.

A. Parties

1. Applicant: James F. Preston, Esquire, represented Pennsylvania Venture Capital, Inc. ("Applicant"). Applicant appeared and had standing with the authorization of Pennsylvania Avenue Development, LLC, the fee simple owner of the property known as 830 13th Avenue (a/k/a 825 12th Avenue) Bethlehem, Pennsylvania (the "Property").

2. Zoning Hearing Board: Erich J. Schock, of Fitzpatrick Lentz & Bubba, P.C., represented the Zoning Hearing Board as its Solicitor. The Board comprised William Fitzpatrick (Chairman), Linda Shay Gardner, James H. Schantz, Terry Novatnak and Peter Schneck. The Zoning Officer was Craig Peiffer.

3. Protestant(s) / Interested Parties: The following protestants or interested persons appeared at the public hearing:

- Jill and Keith Rust represented by Michael Recchiuti, Esquire
- Francesca Associates, LLC, represented by Marc Fisher, Esquire

- 860 14th Avenue Irrevocable Trust represented by John DiPasquale, III, Esquire

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

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*, effective June 15, 2012, as amended (hereinafter, the "Zoning Ordinance").

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) provides for notice to be given as follows: (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.

2. *The Pennsylvania Municipalities Planning Code*, 53 P.S. § 10101, *et seq.*, as reenacted 1988, Dec 21. P.L. 1329, No 170, § 2. and as amended (hereinafter, the "MPC").

III. Nature of Relief Sought

Applicant sought:

- (a) a use variance to convert the building to 67 apartment units;
- (b) a variance to maintain 67 parking spaces when 118 are required;
- (c) a variance to maintain less than the required 15' distance between parking spaces and a multi-family dwelling; and
- (d) a variance to have 48 parking spaces in one lot with 40 parking spaces in one lot being the maximum allowed.

At the hearing, Applicant withdrew the requested relief in item (d) after revising its layout to the design depicted in Exhibit A-11.

IV. Evidence Received by the Board

In addition to testimonial evidence received by the Board from Applicant, the Board admitted the following Exhibits:

Applicant's Exhibits:

- Exhibit A-1: 27 Photos
- Exhibit A-2: Curriculum Vitale of Eugene Berg, Jr.
- Exhibit A-3: Prior Decision of Zoning Hearing Board dated April 27, 2010
- Exhibit A-4: Photograph of storage units
- Exhibit A-5: Door of storage unit
- Exhibit A-6: Rendering of 1st corner of proposed building
- Exhibit A-7: Proposed Floor Plans
- Exhibit A-8: Aerial of site highlighted in yellow
- Exhibit A-9: Site Plan
- Exhibit A-10: Tractor trailer block access easement
- Exhibit A-11: Revised Site Plan
- Exhibit A-12: Aerial

Trustee's Exhibits:

- Exhibit T-1: Green space and stream (13th Street)
- Exhibit T-2: Gary Street
- Exhibit T-3: Photo of truck backing into loading dock
- Exhibit T-4: Photo of truck in street
- Exhibit T-5: Photo of truck partially in street
- Exhibit T-6: Photo of 13th Avenue turning radius

Exhibit T-7: Photo of 13th Avenue turning radius
Exhibit T-8: Tractor trailer exiting back entrance
Exhibit T-9: Rear building
Exhibit T-10: Neighbor's truck making turn
Exhibit T-11: Up alley looking at 13th Avenue
Exhibit T-12: Curriculum Vitale of Michael Sodl

Greenblatts' Exhibits:

Greenblatt 1: Deed

Greenblatt 2: Portion of Zoning Map

V. Findings of Fact

1. The Property which is the subject of this appeal is located at 830 13th Avenue in the Lehigh County portion of the City of Bethlehem. (The Property is also known as 825 12th Avenue.)

2. The Property contains 1.6 acres and is improved with a vacant building formerly used as the Synthetic Threads thread mill.

3. Applicant appeared with permission of the fee simple owner of the Property.

4. Four prior appeals have been heard by the Zoning Hearing Board related to the Property.

- a. In a decision dated April 27, 2010, Owner obtained a variance to use the Property for 67 efficiency apartments.
- b. The Zoning Hearing Board granted a variance (subject to conditions) in a decision issued April 5, 2012. The relief permitted a 189-SF on-premises sign.
- c. The Zoning Hearing Board denied variance relief to allow a 625 SF off-premises sign in a decision dated July 13, 2012.
- d. By its decision dated July 27, 2012, the Board granted a use variance (subject to conditions) permitting the Property's use for a residential treatment facility.

5. Applicant now files an Application for Appeal to the Zoning Hearing Board seeking to use the Property for a 67-unit multi-family dwelling.

6. The Property is located in the L-I Light Industrial Zoning District.

7. Applicant presented the testimony of four (4) witnesses:
 - a. Eugene Berry
 - b. Abraham Atiyeh
 - c. Douglas Frederick
 - d. Sue Kandil
8. The Property is subject to unique physical characteristics.
9. It is bounded on four sides by streets, including Route 378, 13th Avenue and vacated portions of 12th Avenue and Gary Street. However, both 13th Avenue and 12th Avenue dead-end at Route 378. The Property is accessible only by a bridge crossing 14th Avenue.
10. Also, the Property contains a large, outdated manufacturing building.
11. Applicant presented a Revised Site Plan (Exhibit A-11) depicting the layout of the proposed project.
12. Existing portions of the building labeled on the Site Plan as Building "A" and Building "B" will be reused, and a portion labeled as Building "C" will be razed for parking.
13. One-hundred and eight (108) parking spaces are required for a 67-unit multi-family dwelling. Sixty-seven (67) spaces are proposed.
14. The existing building was built in 1920.
15. The building previously had been used by Synthetic Threads for thread production.
16. There are columns in the interior, wood floors and the ceilings are too low for modern industrial use.
17. The wood floors would not support machinery used in a modern manufacturing facility.
18. The building had been vacant for many years except for a recent renovation into self-storage units.

19. The proposed use would consist of 66 studio apartments and 1 one-bedroom apartment.

20. A studio apartment does not contain a separate bedroom space.

21. The Board admitted Gene Berg, Jr. from Gouck Architects as an expert in the field of architecture.

22. Through Berg Applicant submitted a series of photographs that included depictions of the following:

- a. the outdated exterior of the building as seen from Route 378 (A-1);
- b. a view from the northwest corner of the Property showing the existing loading dock (A-2);
- c. a view showing that 14th Avenue from Union Boulevard is the only access to the Property (A-3);
- d. school-age children cross 14th Avenue at Union Boulevard (A-5);
- e. grades in the area of the loading dock, which do not match with the grade of the building and create difficulties for loading (A-9);
- f. various clearances inside the building with steel beams and girders being at a height of 8'11", sprinkler pipes being at 7'6.5" and a the basement at 6'6" (A-17).

23. The Property and building are of limited use for industrial purposes due to the Property's limited access and the building's structural limitations.

24. Regarding its use, Berg testified about the Property and building as follows:

- a. The building likely is too large for an animal shelter.
- b. The Property is not large enough to allow sufficient parking for a conference center or performing arts center. Also, the ceilings are too low, and the Property is too difficult to access for those types of uses.
- c. There is no pass-by traffic that is typically required for a sustainable commercial use.
- d. The loading dock is not proximate to the area that can be developed for self-storage.
- e. The ceiling height of a manufacturing facility is typically at least 35' and for warehousing it is 50'.
- f. There is no convenient access to a highway for trucks, since the intersection out of the area is through a residential neighborhood.
- g. No open area exists sufficient for an animal cemetery.

- h. The wood floors, grades, ceiling height and need for lifts makes an auto body shop or bus maintenance facility infeasible.
 - i. A transportation terminal, office, studio and exercise club are all unlikely due to access and location.
 - j. There is insufficient land area for a heliport or a nursery.
 - k. There is no area for outdoor storage to create a lumber yard.
 - l. There building is oversized for a typical catering business.
 - m. The top two floors of the building could not be used for a shooting range.
 - n. There are not enough loading docks for a construction materials facility.
 - o. The building is ill-suited to use as a kennel, laundry or recording studio.
25. The Property is not reasonably suited for many of the permitted uses.
26. Applicant provided proposed floor plans for the building (A-7).
27. The first floor will have a lobby with one apartment per structural bay and a double-loaded corridor.
28. The second floor would have a one-bedroom apartment in the southeast corner (due to the existing floor plan of the building) and otherwise be similar to the first floor in its layout.
29. The lower level will have only a single row of studio apartments.
30. Exhibit A-6 depicts a rendering of the proposed building with a glass entrance replacing the loading dock.
31. There are 28 parking spaces on the dead-end of 13th Avenue. Those spaces are not counted for the required parking, since the location is within a public road right-of-way.
32. The parking requirement is 1.75 spaces per unit and does not differentiate between number of bedrooms.
33. The proposed project will decrease the impervious coverage.
34. The other uses in the vicinity include Christmas City Photo, a storage facility, kitchen cabinetry millwork, steel fabrication, Lowe's, the railroad bed, and some vacant industrial land.

35. The use is an improvement to the Property.

36. The Property is subject to an access easement for Francesca Associates, LLC ("FA"), which will be widened from 20' to 25' to meet the City's regulations.

37. Abraham Atiyeh, the principal in Applicant, testified on behalf of Applicant.

38. Atiyeh testified that he abandoned the self-storage use due to lack of demand.

39. Atiyeh agreed that maximum occupancy of each unit would be limited to one (1) person.

40. Applicant paid for design of storage units throughout the building, made improvements to bring the entire building up to City code and built 145 of the self-storage units.

41. The approximate cost of all of those improvements is \$500,000.00.

42. The facility was open for two years and only three units rented.

43. A property manager will be in charge of enforcing parking regulations.

44. While there is no agreement in place with the City, Applicant will be pursuing obtaining the additional parking spaces in the unused portion of the public road nearby.

45. Applicant did not construct the multi-family dwelling approved in 2010 due to market conditions at that time.

46. The treatment center proposed in 2012 was determined by potential operators to be unsuitable for the facility.

47. This conversion will be similar to the Silk Mill Apartments conversion undertaken in the City by another Atiyeh entity.

48. Atiyeh characterized the surroundings as a "mini" business park, since he believes it is not significantly industrial.

49. For that reason, he believes the area is compatible with residential use.

50. Atiyeh believes residential use is better than increased truck traffic, since trucks need to pass through a residential area to reach the Route 378. In addition, the trucks have to pass Nitschman Middle School.

51. Applicant does not believe there is a conflict in traffic patterns, since trips by the residents likely would not conflict with tractor trailer trips. Further, the automobile trips are already made by employees of the nearby businesses.

52. Applicant presented the testimony of Doug Frederick, a real estate broker with Howard Hanna/The Frederick Group.

53. Frederick visited the site and concurred with the architect regarding its functional obsolescence.

54. Further, the lack of interconnection to other areas except by 14th Avenue is a hindrance to marketing the Property.

55. The housing existing in the area is primarily old or expensive.

56. Also, competitors such as Strata apartments are more expensive than what is proposed here.

57. Frederick's firm does significant work for relocation departments where space is needed for 1-2 years for employees. This type of apartment building would meet that need.

58. This building is the most outdated of any in the area.

59. Frederick does not believe the Property is a good site for distribution, due to the access issues. Also, there are not a prevalent number of manufacturing users in the market.

60. Frederick believes this site will be successfully leased due to the demand in the market and the neighborhood in which it is located.

61. Applicant presented the testimony of Sue Kandil, a professional engineer with twenty years experience in land development.

62. The Board admitted Ms. Kandil as an expert in land development.

63. None of the proposed parking spaces will impact the easement area.

64. The easement runs north of the building along 13th Avenue.

65. It is depicted as 25' to conform to City regulations however there will be no change to the access itself.

66. Eleven of the parking spaces have zero separation from the building and three of the parking spaces have 3' separation from the building.

67. The rest of the parking spaces meet the separation requirement.

68. Paul Greenblatt is a member of Francesca Associates, LLC ("FA").

69. That entity owns 850 and 870 13th Avenue.

70. Those properties are northeast of the subject property with access via an easement.

71. FA's property contains two buildings and the easement is both their only access.

72. FA owned the properties since the early 1970's.

73. FA previously owned 830 13th Avenue and reserved the easement through the sale.

74. The two buildings on the site are 40,000 SF and 10,000 SF.

75. The buildings house three tenants, East Coast Fleet Services ("ECFS") which does truck body work, Unit Self Storage ("USS") which rents pods and Great Eastern Seating ("GES") which is a warehouse for auditorium seating.

76. ECFS occupies 15,000 SF, has 15 employees and uses tractor trailers for its business, about 1 to 2 trucks per hour.

77. USS occupies 15,000 SF and has two employees on site.

78. GES has limited traffic, as it is only a warehouse.

79. Greenblatt characterizes the neighborhood as commercial/industrial, since there are no residents in the park.

80. His concerns are pedestrian traffic, residential traffic being inconsistent with truck traffic and overflow parking blocking the easement.

81. He is concerned about parking at the site and that he and other property owners will bear the burden.

82. He testified that at the time the Property was used by FA, there were 115 employees on three shifts in three buildings. That use ended in 2004.

83. There are no facilities remaining in the Lehigh Valley that manufacture sewing thread, the closest being located in Bensalem.

84. When FA owned the Property, the employees parked on site and also on an alley called Randall Street.

85. He does not recall that there were any traffic issues when the shifts let out.

86. The hours for ECFS are 7:30 AM – 4:00 PM, for USS 7:30 AM – 5:00 PM and GES is only as needed.

87. Paul Salomone testified on behalf of 860 14th Avenue Irrevocable Trust, which is the owner of 860 14th Avenue. Salomon is the property manager.

88. The property is west of 14th Avenue across from the Property.

89. The facility contains Century Kitchens, which is a distribution center for kitchen cabinetry and has been at the location since 1988.

90. Salomone is concerned with the interaction with residential use.

91. Salomone presented photographs depicting trucks and cars in the vicinity of the building and making loading movements.

92. Salomone admitted that the Property had operated at the same time as Synthetic Threads, and there were employees walking on the roadways.

93. Century Kitchens building is located on the property line.

94. At least half of the truck in Exhibit T-4 is located within the public road. Salomone does not have a permit to load on a public street

95. The photograph depicting the turning radius of 13th Avenue onto Gary Street is not a movement typically made by the tractor trailers for this company.

96. Also, Exhibit T-7 or T-10 do not depict his facility's operations.

97. The Trust also presented the testimony of Michael Sodl.

98. Mr. Sodl is a professional engineer qualified in Pennsylvania and the Board admitted him as an expert in civil engineering.

99. He visited the site and measured the turning radii.

100. Gary Street's cartway is 26' measuring from the curb underneath the gutter line of the Salomon property. The curb radius is 8' – 10' at the turns.

101. Typical width for tractor trailer turning is 30' – 35' with a 30' radius. Otherwise, a tractor trailer cannot remain in its lanes.

102. Sodl believes this use could present an issue for anyone walking on the street or for vehicle traffic.

103. If the Property is used for tractor trailers, Sodl is unsure if that use would create a greater conflict. His understanding is that currently the property owners work together to resolve traffic conflicts.

VI. Conclusions/Analysis of Law

A. Applicant requested a variance from §1316.02 of the Zoning Ordinance. Applicant's use is a "Multi-Family Dwelling" as defined in the Zoning Ordinance. The proposed use of the Property is 66 studios and 1 one-bedroom apartment. The Use Regulations for the L-I Light Industrial District are set forth in §1316.02. A Multi-Family Dwelling is not a use permitted in the L-I District. Applicant's project also requires relief from the minimum number of required parking spaces and the separation distance of parking from the building.

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 appeal from a decision by the Zoning Officer, the Zoning Hearing Board shall have the power to vary or adapt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions whereby such strict application would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building involved, but in no other case.

(b) In general, the power to authorize a variance from the terms of this Ordinance shall be sparingly exercised and only under peculiar and exceptional circumstances.

(c) No variance in the strict application of the provisions of this Ordinance shall be granted by the Board unless the Board finds that all the below requirements and standards are satisfied. The applicant must prove that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. In particular, the applicant shall establish and substantiate his appeal to prove that the appeal for the variance is in conformance with the requirements and standards listed below:

(1) That the granting of the variance shall be in harmony with the general purpose and intent of this Ordinance, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(2) That the granting of the variance will not permit the establishment within a District of any use which is not permitted in that District.

(3) There must be proof of unique circumstances: There are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building.

(4) There must be proof of unnecessary hardship: If the hardship is general, that is, shared by neighboring property, relief can be properly obtained only by legislative action or by court review of an attack on the validity of the Ordinance.

(5) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded.

Furthermore, hardship complained of cannot be self-created; it cannot be claimed by one who purchased with or without knowledge of restrictions, it must result from the application of the Ordinance; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

Applicant demonstrated to the Board that the land is subject to unique physical

circumstances that are peculiar to the Property. The Property contains an outdated mill building that will be renovated to an apartment building. The Property is located within an area of all industrial/light industrial uses and former industrial buildings have been removed to make way for new facilities. For example, nearby is the former Durkee plant property renovated for use by Lowe's and a major apartment complex. Further, the Property's physical location is unique. It lies tucked into a bend on Route 378 and is bounded on all four sides by streets. Access is limited by the area being an "island" connected to the City only by a bridge on 14th Avenue. The building itself is ill-suited to modern industrial use and is more readily convertible to residential use, such as the proposed apartments (or the previously approved Residential Treatment Facility).

Accepting that the Property is subject to unique circumstances, Applicant must also show that those unique circumstances create a hardship affecting its reasonable use of the Property. In previously granting relief to allow conversion of the building to apartments, the Board accepted that the physical characteristics of the Property and the limitations imposed by the outdated warehouse structure create a hardship to use of the Property for a permitted use. The analysis in this situation is consistent. The inability to reuse the Property for one of the permitted uses in the district is a hardship. The Board found Mr. Berg, Mr. Atiyeh and Mr. Frederick to be credible in the testimony they gave in this regard. By allowing the conversion to apartments (similar to permitting the conversion to a Residential Treatment Facility), the Zoning Hearing Board would grant relief to allow a reasonable reuse of the building. The structure on the Property is roughly 30,000 SF, which is of a sufficient and appropriate size to accommodate an apartment building.

In addition, Applicant must demonstrate that the relief afforded is the minimum. While in the context of a use variance that analysis is often difficult, i.e., which use that is not permitted in

the L-I Zoning District represents the least modification from the Ordinance, Applicant believes the evidence demonstrates that this use is a reasonable deviation. The Board previously approved apartments and a Residential Treatment Facility, and it is common to allow residential reuse of former industrial properties. The facts of record support this re-use.

The proposed use will not generate truck traffic. While the Property is in a business park that received truck traffic already, as discussed the access is challenging. Trucks proceed through residential neighborhoods, often past a school, and use 14th Avenue to enter the light industrial "island". The Board considered the concerns presented by the objectors of the alleged incompatibility of residential traffic in an area with truck traffic. However, it believes that argument is counterbalanced by the fact that this use adds no more trucks to what even the objectors testified is a sub-standard roadway network for trucks. The use will not involve significant truck traffic that is often associated with the permitted industrial uses but here hampered by the unusual access to the Property and the vicinity. Also, according to one objector, the Property previously accepted the traffic of its 115 employees, presumably many arriving by car. The nearby Durkee property, while re-used for commercial use, also contains an apartment complex in what was formerly an otherwise industrial area.

In addition, the hardship was not created by Applicant. The hardship for the Property is based upon the outdated building and development in the area which created this "island" of industrial use. While there are other ongoing industrial uses in the area, the fact remains that this Property is vacant and has been vacant for many years.

Finally, an Applicant must demonstrate that the use will not be injurious to the neighborhood or a detriment to the public welfare, which is a significant consideration when granting a use variance. Here, some of the same facts that make the property difficult for reuse

as an industrial facility also make the Property attractive for reuse as apartments. The Property is secluded. It is adjacent to and carved off from the majority of Bethlehem.

Notwithstanding the above, the Board did consider the objections of the other property owners concerning the potential for overflow parking. While Applicant testified that occupancy will be limited to one person per unit, the proposed parking ratio still appears problematic. However, the Board believes that issue is cured by attaching appropriate conditions that eliminate the overflow parking issue but recognize that the need for 1.75 spaces per unit (when restricted to one occupant) can be adjusted modestly. If Applicant can obtain additional, compliant parking, Applicant has the ability to return to the Board to seek additional relief.

VII. Conclusions of Law

1. A “Multi-Family Dwelling” is not permitted on the Property and a use variance is required.
2. Applicant presented sufficient evidence to demonstrate that the Property is subject to unique circumstances.
3. Applicant presented sufficient evidence to demonstrate that the unique circumstances create a hardship to reasonable use of the Property for a use permitted in the LI Light Industrial Zoning District.
4. Applicant presented sufficient evidence to demonstrate that use of the Property for a Multi-Family Dwelling is a reasonable accommodation under the Zoning Ordinance and the minimum relief necessary to allow reasonable use of the Property.
5. Applicant presented evidence that it did not create the hardship.
6. Applicant presented sufficient evidence to demonstrate that the use would not be injurious to the public.

7. The Board can attach conditions that eliminate the potential for an adverse impact caused by overflow parking.

VIII. Decision of the Board


A. Based upon the foregoing, by a 4-1 vote the Zoning Hearing Board granted a use variance to convert the existing building on the Property for a Multi-Family Dwelling subject to the condition that Applicant restrict the maximum occupancy of each unit to one (1) person.

B. Based upon the foregoing, by a 5-0 vote the Zoning Hearing Board granted a variance to maintain sixty-seven (67) parking spaces at the Property subject to the condition that the multi-family dwelling be limited to no more than forty (40) units, each of which can have no more than 1 occupant.

C. Based upon the foregoing, by a 5-0 vote the Zoning Hearing Board granted a variance to maintain the sixty-seven (67) parking spaces at the Property in the configuration shown on Exhibit A-11, which allows for eleven (11) of the parking spaces to maintain a separation of zero (0) feet from the building and for three (3) of the parking spaces to maintain a separation of eight (8) feet from the building.

THE BOARD:

Voting to Grant All of the Relief Above:


ERICH J. SCHOCK
Solicitor

/s/ Craig D. Peiffer*
CRAIG D. PEIFFER,
Zoning Officer

/s/ William Fitzpatrick*
WILLIAM FITZPATRICK
Chairman

/s/ James H. Schantz *
JAMES H. SCHANTZ
Member

/s/ Linda Shay Gardner *
LINDA SHAY GARDNER

Member

/s/ Terry Novatnak *

TERRY NOVATNAK

Member

**Voting to Deny the Relief in Paragraph A above
and Grant the Relief in Paragraphs B and C
above:**

/s/ Peter Schneck *

PETER SCHNECK

Member

DATE(S) OF HEARING: December 2, 2019 and January 8, 2020

DATE OF WRITTEN DECISION: February 22, 2020

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

Lehigh County

Appeal & Application of)	Date: February 22, 2020
Pennsylvania Avenue Development, LLC,)	
Applicant)	Re: 830 13th Avenue (a/k/a
)	825 12th Avenue)

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 and its counsel at the addresses set forth, by regular first class U.S. Mail on the date set forth below.

Pennsylvania Venture Capital, Inc.
1177 6th Street
Whitehall, PA 18052
Applicant

Pennsylvania Avenue Development, LLC
1177 Sixth Street
Whitehall, PA 18052
Owner

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Bethlehem, PA 18018
Attorney for Applicant

Michael Recchiuti, Esquire
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Attorney for Jill and Keith Rust

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Attorney for Francesca Associates, LLC

John DiPasquale, III, Esquire
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**Attorney for 860 14th Avenue
Irrevocable Trust**

FITZPATRICK LENTZ & BUBBA, P.C.

Date: February 22, 2020

BY: *Erich J Schock*
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Of the City of Bethlehem