



SITE ADDRESS: 3464 LINDEN ST

Office Use Only:

DATE SUBMITTED: 9.10.2020

HEARING DATE: 10.14.2020

PLACARD: 10.01.2020

FEE: 500⁰⁰

ZONING CLASSIFICATION: RG

LOT SIZE: 14,500 SF

**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 08/09/2020
- Variance from the City of Bethlehem Zoning Ordinance
- Special Exception permitted under the City Zoning Ordinance
- Other: _____

SECTION 1

APPLICANT:	<u>DANIEL WHITE</u>
Name	
Address	<u>3464 LINDEN ST</u>
	<u>BETHLEHEM, PA 18017</u>
Phone:	<u>[REDACTED]</u>
Email:	<u>[REDACTED]</u>
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 AND CATHY SNEEL
Address	1779 KLINE AVENUE
	BETHLEHEM, PA 18015
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.

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

1323.07

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

09/03/2020

Date

UNAVAILABLE FOR SIGNATURE

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.

RE: Special Use Exception for 3464 Linden St

I am seeking a special use exception to continue parking my company vans and providing delivery services from 3464 Linden St, Bethlehem, PA. This property was approved for similar use in September of 2009 for Helping Hands Medical Supply. My business is almost identical in nature to the aforementioned, yet I was told I needed to re-apply to have a special exception for this activity.

There was no filing fee schedule included in any of the correspondence sent to me, and as such, none is attached. I will be happy to mail in the applicable fees, should I be provided this information.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. White', with a long horizontal flourish extending to the right.

Daniel White, President

Miles and Smiles, LLC

THOMPSON LAW OFFICES

1177 North Sixth Street
Whitehall, PA 18052
Tel. 610.403.3400 ext. 221
Fax 610.403.1020

October 27, 2009

Steven Shields, Esquire
104 West 4th Street
Bethlehem, PA 18015

RE: MATTER: Appeal of James and Cathy Snell
ADDRESS: 3464 Linden Street
FILE: 2009-34

Dear Attorney Shields:

Under Section 908(9) of the Municipalities Planning Code, the Zoning Hearing Board may issue written findings of fact to accompany an approved application before the Board. This letter constitutes such findings of fact.

I. Findings

1. A Hearing was held on September 23, 2009 regarding the Applicants' request for a use variance to change a permitted landscaping and nursery business to a medical equipment and supply office and retail facility. Additionally, the Applicants requested a dimensional variance from the sign requirements to replace the existing sign with a duplicate sign that was previously granted by the Zoning Hearing Board.
2. In attendance at the hearing were Chairman Gus Loupos, members William Fitzpatrick, and Kenneth Kraft, and alternate members Ronald Lutes and Glenn Taggart.
3. The subject premises is located in the RS Residential Zoning District.
4. Appearing at the Hearing on behalf of the Applicants were James and Cathy Snell, the owners, and Marty Falk, the owner of Helping Hands Medical Supply.
5. The Applicants have not been able to compete in their landscaping business due to the emergence of big box stores in the immediate area.
6. The Applicants discontinued their landscaping business and has very little business in the retail gift portion of their business.

7. The Applicants have begun clearing the lot in preparation of the move of the business from the property.

8. The proposed medical business is primarily for in-home patients via the delivery of oxygen, medical equipment, prosthetic fittings, etc.

9. The delivery area encompasses the Northeast Region of Pennsylvania and into New Jersey.

10. Trucks are loaded in the morning, leave the building for their deliveries, and are generally back in the early afternoon.

11. The hours of operation when the business will be open to the public is from 9:00 a.m. to 5:00 p.m., but has 24 hour coverage in case of a medical emergency of one of its customers.

12. Deliveries are done via panel vans.

13. There is no storage of hazardous material on the site.

14. The dimensional variance from the sign requirements exceed what is permitted by the Zoning Ordinance, but the Applicants will not increase the size of the existing sign and only duplicate the size with the name of the new business.

15. The request for the variances were made under Section 1305.02(a), 1305.05, 1320.08 and 1325.06 of the Zoning Ordinance.

16. The size of the lot is 2.005 acres.

II. Exhibits

Board's Exhibit 1: Application.

A-1: Photographs of the subject premises.

III. Decision of the Board

Based upon the testimony and evidence presented at the hearing, the Board granted the use and dimensional variances by 3-0 vote subject to the following condition:

1. There shall be no sales of Class II and Class III Pharmaceuticals on the subject premises.

You have a right to appeal these findings of fact within thirty (30) days from the date of this letter to the Court of Common Pleas where the subject premises is situated. Other parties who either may have entered their appearance at the hearing or did not appear before the Zoning Hearing Board may also appeal these findings within the thirty (30) days. These findings will be on file with the City of Bethlehem Zoning Department.

Very truly yours,



Mickey K. Thompson
Solicitor
Bethlehem Zoning Hearing Board

MKT/owk
c: John Lezoche, Zoning Officer
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,

A handwritten signature in cursive script that reads 'Erich J. Schock'.

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)	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.

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

**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)**

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.

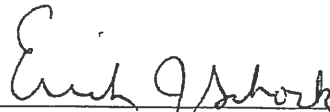
Robert Uliana
33 Cameron Street
Nazareth, PA 18064
Applicant

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

FITZPATRICK LENTZ & BUBBA, P.C.

Date: March 10, 2018

BY:

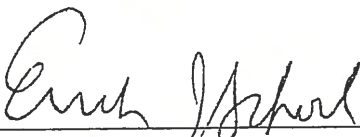


ERICH J. SCHOCK, ESQUIRE
Atty. I.D. No.65475
4001 Schoolhouse Lane
P.O. Box 219
Center Valley, PA 18034-0219

Attorney for Zoning Hearing Board
Of the City of Bethlehem

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

September 16, 2020

To Whom It May Concern:

We, the property owners of 3464 Linden Street, Bethlehem, PA 18017, hereby approve and recognize the submittal for variance by our tenant (aka) Miles + Smiles, LLC with Daniel White, President of the company.


James J. Snell

Cathy A. Snell
Cathy A. Snell

Our requested hours of operation are 7 days a week, 7AM until 6PM with occasional deliveries until 9PM.

Daniel White



LINDEN STREET RT. 19



EXISTING BARN & BEST MARKET TO BE REMOVED
#3474

RIGHT BLOCK # 3480

RYAN LINE
RACCOON DRIVE
(50 FEET WIDE)



Scale 1" = 30 ft



Drawn by: JLM DATE: MAY 25, 1998 Rev. No.:	Checked by: Date: Rev. No.:	REVISIONS: GENERAL 6/09/98 P. 306 ENTRANCE 6/10/98 RET. WALL, P. SPACES 6/12/98 RET. WALL NOTE, DESIGN CONTOUR REV. 7/06/98 RET. WALL DELETED 9/02/98	Prepared by: Checked by: Date:
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CITY OF BETHLEHEM

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

BUREAU OF ZONING

Phone: 610-865-7094

Fax: 610-865-7330

TDD: 610-865-7086

www.bethlehem-pa.gov

Certified Mail to James and Cathy Snell:
9214 7969 0099 9790 1016 3903 69

Certified Mail to Miles and Smiles, LLC:
9214 7969 0099 9790 1016 3903 90

James and Cathy Snell
1779 Kline Avenue
Bethlehem, PA 18015

Miles and Smiles, LLC
3464 Linden Street
Bethlehem, PA 18017

Re: Illegal Use
DATE OF THIS NOTICE: August 7, 2020
PROPERTY LOCATION: 3464 Linden Street, City of Bethlehem
NAME OF OWNER: James and Cathy Snell

ENFORCEMENT NOTICE UNDER 53 PS §10616.1 CEASE AND DESIST ORDER

Dear Property Owner:

Pursuant to 53 PS § 10616.1 of the Pennsylvania Municipalities Planning Code, you are hereby notified that you are violating the City of Bethlehem's Zoning Ordinance.

The previous use for this property, Leiser's Rentals, a retail/rental facility that involved the outdoor storage of rental equipment and products, was granted by Special Exception by the Zoning Hearing Board at their January 24, 2018 Hearing, with Written Decision dated March 10, 2018. You are currently using the above referenced property, all or in part, as a Courier Service. This conduct violates § 1323.07 of the Zoning Ordinance, whereas a non-conforming use may be changed to another non-conforming use only by Special Exception before the Zoning Hearing Board.

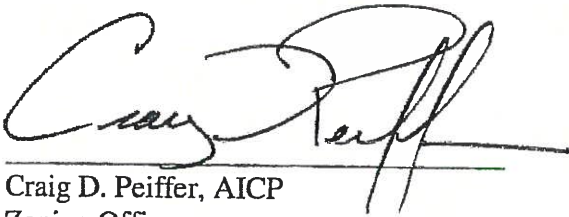
According to our records, you also do not have a current certificate of occupancy for the above mentioned property. The property was last inspected on March 19, 2018, as Leiser's Rentals. The new use shall require a new inspection and new certificate of occupancy.

Your property is located within the RG – Medium Density Residential District. A Courier Service is not a use permitted by right, special exception or otherwise in the RG Zoning District under section 1304 of the Zoning Ordinance, although it is authorized in other zoning districts under section 1305.

modified by the Zoning Hearing Board's Interpretational Decision dated March 10, 2018 (also attached), but mailed March 12, 2018. To date, those activities are the only uses allowed on-site. You have not provided, or sought, a Zoning Permit for the Tenant's current use, which is markedly different from those authorized uses. Under Section 1302.146 of the Zoning Ordinance, a Zoning Permit is proof that "use of a building and/or land is in conformity with all applicable City Zoning Regulations, to the best knowledge of the City Staff." Unless and until the Landlord and/or Tenant produces a Zoning Permit proving compliance, the activities warrant issuance of the Enforcement Notice dated August 7, 2020.

The time for appealing the Enforcement Notice expires September 6, 2020, and remains unchanged from the date stated in the Enforcement Notice. A copy of the Application for Appeal to the City of Bethlehem Zoning Hearing Board is attached hereto. The failure of any recipient of the Enforcement Notice to file an appeal to the Zoning Hearing may result in continuing enforcement of the Zoning Ordinance against the non-appealing party.

Be guided accordingly.

A handwritten signature in black ink, appearing to read "Craig D. Peiffer", written over a horizontal line.

Craig D. Peiffer, AICP
Zoning Officer

Enc. Decision of the City of Bethlehem Zoning Hearing Board, October 27, 2009
 Decision of the City of Bethlehem Zoning hearing Board, March 10, 2018
 Application for Appeal to the City of Bethlehem Zoning Hearing Board

C. Hon. Robert Donchez, Mayor
 Edmund J. Healy, Esq., First Assistant City Solicitor
 Alicia Karner, Dir., Community & Economic Development
 Darlene Heller, Dir. Planning & Zoning
 Mike Simonson, Chief Building Official

RECEIVED 8.27.2020
COP

To whom it may concern:

Recently my company, Miles and Smiles (located at 3464 Linden St, Bethlehem), received a cease and desist order from the City of Bethlehem codes enforcement office, issued by Craig Peiffer. This enforcement notice states that I am in violation of the City of Bethlehem's zoning ordinance, due to parking my Amazon delivery vans at this location. I am not a courier service as listed on the complaint, but a last mile transportation company, deemed LIFESUSTAINING by both the federal and state government, especially in light of the current, worldwide pandemic, COVID-19.

The demands for the permanent cessation of my business are not only ridiculous in nature, but the very enforcement document sent is conflicting on several levels. It states that a business such as mine is not permitted at this location, then also states that in order for this business to operate, it needs a new inspection and certificate of occupancy. This doesn't make sense and needs clarification. Is the City of Bethlehem attempting to make sure there is a current and updated certificate of occupancy, to go along with my already approved mercantile license? Or is the City of Bethlehem making an attempt to shut down a tax paying business employing 140+ employees during a worldwide pandemic, claiming the activity is not permitted here? Let me address the latter in the next paragraph.

The landlords of this property, James and Cathy Snell, called the codes office and spoke with Craig Peiffer back in February, asking if the use of the property for a company such as mine would be permitted. They were told it was "not a problem", and they proceeded to lease the property with this verbal approval. Below is an excerpt from my communications with James and Cathy Snell:

- "In late January, early February 2020, we had at least two phone conversations with zoning officer Craig Peiffer to confirm delivery vans [at least 60] as an acceptable usage of the property--that our tenant delivered for Amazon and the zoning officer replied that it was fine and approved it
- Vans were moved onto the property in early February and the business operation was in full swing by April 2020 and there were no issues with the City of Bethlehem
- A noise complaint was lodged with the City of Bethlehem in early June and property owner James Snell met with zoning officer Craig Peiffer on the property to discuss the back up van alarms
- Zoning officer also mentioned that the tenant had failed to apply for his business license and he subsequently emailed us the application paperwork to forward to our tenant
- AT NO TIME DURING THIS MEETING did the zoning officer mention any problems with delivery service operation, other than the noise [which was addressed] and the license to operate [which was also applied for and approved by the City of Bethlehem.
- OUT OF THE BLUE and after six [6] full months of operation on this property, approval and licensing, our tenant received a CEASE & DESIST ORDER on or about August 12, 2020 listing DELIVERY/COURIER service as a non-approved use of the property

- Every business which has been operated from this property has had DELIVERY/COURIER service in their daily business operation since 2001
- GREENSCAPES & GARGOYLES delivered gifts, garden supplies, trees & shrubs, mulch, stone, topsoil, garden ponds materials, etc.
- HELPING HANDS MEDICAL SUPPLY delivered medical equipment throughout the state of Pennsylvania
- LEISER'S RENTAL INC delivered all types of rental equipment including backhoes, forklifts, paver rollers, etc. as well as party supplies such as large tables and tents for misc party celebrations and weddings
- The three [3] business entities previous to MILES & SMILES all had delivery service in their business operations---MILES & SMILES is no different in delivery aspect"

In closing, I would ask that you please clarify what you would like from my company relative to this? I, and the landlords of the property, are more than prepared to fight this on any level necessary. I've contacted my attorney and will be more than happy to inform the media of this pending fight to keep my employees fed and working during the pandemic, as well as making sure our delivery customers have the products they need to maintain their health and safety during these difficult times. Please advise what the next step in this process should be. I've filled out and attached the commercial certificate of occupancy, that I was unaware existed, before this enforcement notice was sent to me. A check for the certificate is also enclosed. Please contact me with any questions or concerns.

Sincerely,



Daniel White, President

Miles and Smiles, LLC

[REDACTED]



CITY OF BETHLEHEM

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

BUREAU OF ZONING

Phone: 610-865-7094

Fax: 610-865-7330

TDD: 610-865-7086

www.bethlehem-pa.gov

August 28, 2020

Certified Mail to James and Cathy Snell:
9214 7969 0099 9790 1016 5081 39

Certified Mail to Miles and Smiles, LLC:
9214 7969 0099 9790 1016 5081 53

James and Cathy Snell
1779 Kline Avenue
Bethlehem, PA 18015

Daniel White
Miles and Smiles, LLC
3464 Linden Street
Bethlehem, PA 18017

Re: Miles and Smiles, LLC Response Letter, received by the Zoning Office on August 27, 2020.

Dear Property Owner and Tenant:

References in this letter to landlord refer to Mr. and Mrs. Snell, whereas references to tenant refer to Miles and Smiles LLC.

I am in receipt of a letter postmarked August 25, 2020, from the Tenant protesting a number of matters outlined in the City's August 7, 2020, Enforcement Notice and Cease and Desist Order (from here forward referred to as "Enforcement Notice").

The City requires compliance with three main ordinances: (1) possession of a Business Privilege License under Article 341 of the Codified Ordinances; (2) possession of a Certificate of Occupancy under Article 1731 of the Codified Ordinances; and (3) possession of the required Zoning authorization(s) under Articles 1301-1326 of the Codified Ordinances. This letter is intended to clarify your compliance with the main requirements.

The Tenant has complied with the requirement to obtain a Business Privilege License.

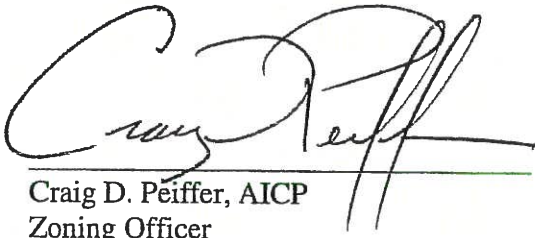
The Tenant's letter, last paragraph, states that he "filled out and attached the Commercial Certificate of Occupancy." Presumably, the Tenant intended to mean he completed an Application for Certificate of Occupancy; regrettably, no attachments of like kind or purpose were included. The City would welcome receipt of the (presumed) application as soon as possible.

The principal matter which drives the Enforcement Notice is rooted in the Tenant's noncompliance with the Zoning Ordinance. Upon information received and personally observed by the undersigned, the activities occurring on the property are substantially different from the use previously authorized by the Zoning Hearing Board under the Variance Decision dated October 27, 2009 (attached), as

You must commence correction of this violation within five days of this notice and correct all violations within 30 days, i.e. on or before September 6, 2020. Permanent cessation is required.

You have the right to appeal this Notice of Violation and Cease and Desist Order in writing to the City of Bethlehem Zoning Hearing Board within thirty (30) days from the date of this Notice in accordance with procedures set forth in the Zoning Ordinance. Grounds for appeal include, but are not limited to whether you believe that I have misinterpreted or misapplied the Ordinance.

Failure to comply with the notice within the time specified constitutes a violation, unless extended by appeal to the Zoning Hearing Board or if the Zoning Hearing Board sustains your appeal. Violations may result in the institution of proceedings before a District Justice where the District Justice may impose a daily fine of not more than Five Hundred (\$500.00) Dollars plus all court costs, including the attorneys' fees incurred as a result of such action. Each day that the violation continues shall constitute a separate violation and may subject you to a daily fine. The City may also institute other appropriate actions against you at law or in equity which may be necessary to enforce the provisions of the City of Bethlehem Zoning Ordinance.



Craig D. Peiffer, AICP
Zoning Officer

- C. Hon. Robert Donchez, Mayor
Edmund J. Healy, Esq., First Assistant City Solicitor
Alicia Karner, Dir., Community & Economic Development
Darlene Heller, Dir. Planning & Zoning
Mike Simonson, Chief Building Official