


EXHIBIT A



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December 11, 2020

Monocacy General Contracting, LLC


James F. Holzinger, Esquire


Christopher T. Spadoni, Esquire


**Re: City of Bethlehem Zoning Hearing Board – Decision
810 Monocacy Street and 813 Monocacy Street**

All:

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

Very truly yours,



Erich J. Schock

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
MONOCACY GENERAL
CONTRACTING, LLC,
Applicant

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Date: December 11, 2020

Re: 810 Monacacy Street and
813 Monacacy 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 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

December 11, 2020

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

Lehigh County

**Appeal & Application of
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Date: December 11, 2020

**Re: 810 Monacacy Street and
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DECISION

I. Preliminary Matters

A public hearing was held on **October 28, 2020** 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: Monocacy General Contracting, LLC (“Applicant”) appeared at the hearing through Plamen Ayvazov, the principal in Applicant. James J. Holzinger, Esquire, represented Applicant.

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

3. Protestant(s) / Interested Parties: Christopher T. Spadoni, Esquire, appeared as counsel for the adjoining property owner and participated in the 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 The hearing was held in part remotely. Telecommunication devices were utilized during the hearing in accordance with the requirements of Pa. Act 15 of 2020 (35 Pa. C.S. Section 5741, *et seq.*, and 42 Pa. C.S.) enacted by State Legislature and signed into law by Governor Wolf on April 20, 2020. All public notices, posting of the property, and mailings regarding the public hearing were, however, performed in compliance with the Public Notice requirements of the Pa. Municipalities Planning Code, 53 P.S. Section 10107, *et seq.*, and the City Zoning Ordinance, and not under the relaxed standards set forth in Pa. Act 15 of 2020.

C. Property

The property consists of two parcels of land located at **810 Monacacy Street** and **813 Monacacy Street**, Bethlehem, Lehigh County, Pennsylvania (collectively, the “Property”).

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.

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").

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

III. Nature of Relief Sought

Applicant sought the following relief:

(a) a variance from the minimum lot area per dwelling, 1,200 SF required, 644 SF proposed, to have 24 units instead of the permitted 12 units; and

(b) a special exception to permit a reduction in off-street parking (42 required, 40 proposed).

IV. Evidence Received by the Board

In addition to testimonial evidence received by the Board from Applicant, the Board admitted the following as an exhibits:

Applicant's Exhibits

Application and its attachments
Exhibit A-1: Ground Floor plan
Exhibit A-2: Second Floor plan
Exhibit A-3: Other Floor plans
Exhibit A-4: Site Plan
Exhibit A-5: Photos

Neighbor's Exhibit:

Exhibit OBT-1: Prior Zoning Decision

V. Findings of Fact

1. The Property which is the subject of this appeal is located at 810 Monacacy Street and 813 Monacacy Street in the Lehigh County portion of the City of Bethlehem.

2. The owner of the Property is Monocacy General Contracting, LLC.
3. The Property is located in the CL-Limited Commercial Zoning District.
4. These two tracts combined are 17,956 s.f. (0.41228 ac.).
5. Plamen Ayvazov is the principal in Applicant and appeared on its behalf.
6. Applicant previously appeared before the Board requesting relief to convert the building on the Property to multi-family dwelling use.
7. Christine Ussler is a professional architect retained by Applicant to assist in the project and presented testimony concerning the project.
8. Originally, Applicant proposed 28 units within the existing building on the Property.
9. Applicant's new proposal reduces the number of units to 24.
10. The first floor is on-grade to the South and its design remains identical to the prior proposal.
11. The second floor is on-grade to the North.
12. This aspect of the project changes. A portion of the building will be demolished to create a parking area in the front of the building.
13. Ussler explained photos (Exhibit A-5) that depict between the north and south section of the building a 4' elevation difference.
14. The photos also depicted the interior of the building as significantly deteriorated.
15. Ussler provided detail on each level as shown in Exhibits A-1 to A-4.
16. The ground level consists of seven (7) one-bedroom apartments.
17. There are two (2) units with separate entrances.
18. The main entrance will be the existing main entrance to the building.

19. Some units are lofted. Those units enter on the second level from Spruce Street and the bedrooms are downstairs.

20. Lofting these units is necessary, since otherwise the ceiling height would be 16'-17'.

21. Using an open 16'-17' roof is not energy efficient.

22. On the second level there are seven (7) one-bedroom and one (1) 2-bedroom apartments, including four (4) units in a mezzanine along Spruce Street.

23. The third level has two (2) 1-bedroom and one (1) 2-bedroom apartments.

24. The fourth level has four (4) 1-bedroom and one (1) 2-bedroom apartments.

25. The fifth level has one 2-bedroom apartment.

26. In total, the current proposal provides twenty (20) 1-bedroom and four (4) 2-bedroom apartments.

27. The building is clad in grey brick coating. The building is originally red brick.

28. Applicant proposes to remove the brick coating, cut in windows where needed, add red brick as necessary and restore the original brick.

29. Some of the bedrooms face the adjacent Old Brewery Tavern.

30. Windows in those units will be upgraded to a thicker, insulated glass to temper noise.

31. The air space between the panes of glass is increased and thicker or laminated glass is utilized.

32. The project cost is approximately \$4M - \$5M.

33. There is a similar apartment building in the area that also involved reuse of an outdated industrial building.

34. That building is two stories and 22,000 s.f. in area. The building contains 22 units at approximately 500-600 s.f. per unit.

35. This building is five stories and 30,000 s.f. in area. This building will contain 24 units that range from 600 to 1,000 s.f. per unit with most of the units being 700-800 s.f.

36. The number of units being proposed creates financial feasibility for the developer and utilizes the entirety of the building (less the portion being razed) for appropriately-sized apartments.

37. Ussler opined that it is infeasible to create a fewer number of apartments, since these apartments are already larger than typical.

38. ADA improvements will be installed in some units.

39. If the building would be converted to 12 units, the units would be oversized or a portion of the building would not be utilized.

40. The previous project included five (5) units in an addition to the building.

41. Ussler believes the Property's prior use had been for a brewery.

42. Craig Peiffer, the Zoning Officer to the City of Bethlehem, confirmed that the 40 parking spaces being proposed meet the design criteria under the Zoning Ordinance.

43. There are six (6) spaces off Spruce Street, four (4) spaces on the south side of the building, eight (8) spaces at 813 Monacacy Street, eighteen (18) spaces from the Bethlehem Parking Authority, and four (4) spaces at 813 Main Street accessed from Orchard Street.

44. The spaces at 813 Monacacy Street meet the distance requirement under the Zoning Ordinance to be counted towards the offstreet parking requirement for this Property.

45. Applicant is developing this project along with two other apartment renovations in the City.

46. Ayvazov's experience includes a renovation into apartments of an old mill at 374 W. Main Street in the Borough of Bath.

47. Applicant believes this application addresses the two issues noted by the Board in its prior denial, namely, a more significant variance for the lot area per dwelling unit and the deficit in offstreet parking.

48. This project provides more of the required offstreet parking and reduces the number of units.

49. Other uses that would be permitted at the Property are not possible due to the changes in the floor elevation and the ceiling heights. Further, other uses would require a similar amount of parking.

50. This plan removes any spaces from near the Old Brewery Tavern's patio so that there are no headlights shining on that outdoor dining.

51. Applicant's intention is to renovate and restore the façade as much as possible.

52. In addition, the windows will be upgraded.

53. Applicant will include in its tenant leases that the tenant acknowledges that the OBT existed prior to the apartment and that any noise from the Old Brewery Tavern's outdoor use is acceptable.

54. Using one-bedroom apartments decreases the demand for parking, even though the City's Ordinance requires the same amount of parking for a one- or two-bedroom unit.

55. Previously, Applicant had an 11-space deficit. That deficit is decreased to only a 2-space deficit in this project

56. The building only contains one loading dock which cannot be accessed by a tractor trailer and there is no working elevator.

57. These conditions create issues for a non-residential tenant.
58. The cost to demolish the building and begin from a vacant tract is about \$1M, and Applicant believes it is preferable to renovate the building than raze it.
59. Alicia Karner is the Director of Community and Economic Development for the City of Bethlehem. She has served in that role for the past 7 years.
60. Karner is familiar with the building and is aware that it previously received an official designation of being blighted.
61. The City from the outset expected that there would be no other use of this building in the future other than a multi-family dwelling, agreeing that any other use is impractical.
62. Karner appeared on behalf of the City including the Director of Planning and Zoning and the Mayor.
63. The City's North Side 2027 planning process targets blighted properties for redevelopment.
64. This building is prime for redevelopment to multi-family use, since it is proximate to the business district.
65. Further, renovating this building helps the neighborhood.
66. There is public transportation in the vicinity, which is appropriate for multi-family dwellings.
67. The Bungalow is the nearby existing apartment building that involved a redevelopment of a former industrial property.
68. Relief was granted to have 28 spaces when 41 were required.

69. There have been no complaints to the City about parking, which is consistent with what the City expects for multi-family housing based on the trends in parking needed to support them.

70. The City has no concern with there being 40 spaces, i.e., 2 spaces too few.

71. The City supports the proposed use.

72. The City believes it has the demand for an additional 1200 multi-family dwelling units.

73. This neighborhood is rated G on a scale from A down to G, and clearly will benefit from this project.

74. The Mayor reviewed the application and the prior decision before deciding to support the project. (The Mayor sent a letter to the Zoning Hearing Board dated October 16, 2020.)

75. Karner is not aware of any other interest in this building.

VI. Discussion

A special exception is not an exception to a zoning ordinance, but rather a use, which is expressly permitted, absent a showing of a detrimental effect on the community. *Greaton Props. v. Lower Merion Twp.*, 796 A.2d 1038 (Pa. Cmwlth. 2002). *See also Heck vs. Zoning Hearing Bd. for Harveys Lake Borough*, 397 A.2d 15, 18 (1979); *Appeal of Lynch Community Homes, Inc.*, 554 A.2d 155 (1989). Where a particular use is permitted in an area by special exception, the law recognizes that the local legislative body already considered the use for the area in terms of general matters such as health, safety, and the general welfare, as well as the general intent of the zoning ordinance. *Shamah v. Hellam Township Zoning Hearing Bd.*, 648 A.2d 1299 (Pa. Cmwlth. 1994).

The initial burden on Applicant is to establish that the proposal satisfies the objective requirements of the zoning ordinance for the grant of a special exception. *In re Appeal of Brickstone Realty Corp.*, 789 A.2d 333 (Pa. Cmwlth. 2001). Sections 1319.02(b)(5) and (6) contain clear objective standards.

The project is an adaptive reuse of an existing principal non-residential building for a new approved use. Further, the new use is a permitted use in the applicable zoning district. The Board also notes that Applicant proved to the satisfaction of the Board that the number of spaces is sufficient when including the off-site but nearby parking. Based upon the use and the Board's appropriate attachment of conditions, Applicant meets the standard for relief.

To defeat a special exception use based upon the proposal's effect on public health, safety and welfare, the impact to the public interest must be greater than that which might be expected under normal circumstances. *Lower Providence Township and Wood v. Ford*, 283 A.2d 731 (Pa. Cmwlth. 1971). The Board believes Applicant demonstrated that the proposed parking arrangement is not contrary to the public welfare.

Applicant also requires a variance from the Zoning Ordinance for lot area per dwelling unit to construct the project as proposed. The grant of a variance is pursuant to § 1325.06 of the Zoning Ordinance.

1302.96 Variance

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

The Zoning Ordinance provides specific criteria that the Zoning Hearing Board must address in relation to the approval or denial of a variance request:

1325.06 Powers and Duties – Variances

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

(b) The power to authorize a variance from the terms of this Ordinance shall only be used where authorized under the Pennsylvania Municipalities Planning Code or in *de minimus* 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 Board first notes that the zoning relief requested is dimensional relief. Dimensional variance relief is subject to a lesser standard than use relief. Further, Applicant's case for relief is compelling. With respect to lot area per dwelling unit, Applicant is renovating and readapting an existing nonresidential use into a permitted use. The Board recognizes that this design criteria may be intended to impose a particular layout for a multi-family dwelling being developed on raw land, the Board acknowledges (and in prior decisions has acknowledged) that meeting this requirement may not be feasible in the instance of a readapted use.

It is the existing physical circumstance of the Property, namely its prior development for a now unused brewery building, that dictates the relief. The Board can think of no adverse impact on the community. As Ms. Karner credibly testified, the project is an improvement to the neighborhood. Further, Ms. Ussler testified that to comply with the lot area per dwelling unit, the choice is to make unreasonably large units or to not use the entire building. The third alternative, as stated by the developer, is to raze the building. All of these options are not reasonable. The relief is the minimum, since it creates the minimum number of units that reasonably occupy the building. The necessity for the relief is not created by the Applicant but rather by the prior development.

Applicant meets the standard for a variance. Further, as is the Board's prerogative, conditions can be attached to protect the public interest.

VII. Conclusions of Law

1. Applicant meets the specific criteria for a special exception relating to parking.
2. Applicant presented sufficient evidence to demonstrate that the Property is subject to unique circumstances.
3. The circumstances create a hardship.

4. Applicant did not create the hardship.
5. The relief that is granted will not be injurious to the public.

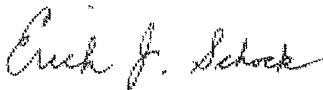
VIII. Decision of the Board

Based upon the foregoing, by a 5 – 0 vote the Board granted the necessary relief subject to the following conditions:

1. Applicant shall install upgraded windows as described in the testimony for each bedroom window that faces the Old Brewery Tavern.
2. Applicant shall include in each tenant lease a notice in a form acceptable to the Zoning Officer that the tenant acknowledges the Old Brewery Tavern existed prior to the creation of this apartment building and that the tenant understands the Old Brewery Tavern may generate noise, including from its outdoor seating area.
3. Applicant shall prepare a document, in recordable form subject to the satisfaction of the Zoning Officer, that so long as the building is used as a multi-family dwelling, 813 Monacacy Street cannot be conveyed or used separately and must be parking for the multi-family building.
4. The mix of units shall be as testified to and shown on the plan, namely, twenty (20) 1-bedroom and four (4) 2-bedroom apartments.

5. Applicant shall construct and have available a minimum of 40 parking spaces as testified to at the hearing, including providing proof of any leased spaces with the Bethlehem Parking Authority.

BOARD:



ERICH J. SCHOCK
Solicitor

/s/ Craig D. Peiffer*

CRAIG D. PEIFFER,
Zoning Officer

/s/ William Fitzpatrick *

WILLIAM FITZPATRICK
Chairman

/s/ Linda Shay Gardner *

LINDA SHAY GARDNER
Member

/s/ James H. Schantz*

JAMES H. SCHANTZ
Member

/s/ Terry Novatnack*

TERRY NOVATNACK
Member

/s/ Peter Schneck*

PETER SCHNECK
Member

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

DATE(S) OF HEARING: October 28 2020

DATE OF WRITTEN DECISION: December 11, 2020

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

Lehigh County

**Appeal & Application of
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Date: December 11, 2020

**Re: 810 Monacacy Street and
813 Monacacy 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.

Monocacy General Contracting, LLC
3128 Beaufort Street
Bethlehem, PA 18017
Applicant

James F. Holzinger, Esquire
1216 Linden Street
Bethlehem, PA 18018
Attorney for Applicant

Christopher T. Spadoni, Esquire
1413 Easton Avenue
Bethlehem, PA 18018
Attorney for Neighbor

FITZPATRICK LENTZ & BUBBA, P.C.

Date: December 11, 2020

BY: _____

Erich J. Schock

ERICH J. SCHOCK
Atty. I.D. No.65475
Two City Center
645 West Hamilton Street, Suite 800
Allentown, PA 18101
Attorney for Zoning Hearing Board
Of the City of Bethlehem