

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

IN RE: AIDEN HENNINGER

CID 207-004060
PID P6NE1C171 0204

DECISION OF THE ZONING HEARING BOARD OF THE CITY OF BETHLEHEM

I. HISTORY OF APPEAL; BACKGROUND

1. The property subject of this appeal is located at 222 East Broad Street, Bethlehem, Northampton County, Pennsylvania 18018 and is in the CL-Limited Commercial Zoning District of the City of Bethlehem.

2. The Applicant requests a variance from 1305.01 (a), footnote one requiring multifamily uses in the CL Zoning District to include a principal retail, restaurant or personal service use on the front street level, the Applicant proposing to retain an apartment on street level associated with his proposed change of use.

3. The Applicant further requests a variance from 1306.01 (a) (4) and 1306.01 (b) (2) (a)¹ stating requirements for a multifamily dwelling on a lot deficient in minimum tract size (9,000 sq. ft required, 3,241 sq. ft. existing) lot area per dwelling unit (1,200 sq. ft. required, 1,080 sq. ft proposed and lot width (90 feet required, 30 ft. existing).

4. The Applicant also request parking relief from 1319.01 (a) (1) (ii) regarding off street parking requirements, the Ordinance requiring 1¾ parking spaces for each dwelling unit for a multifamily dwelling, the Applicant proposing three (3) apartments which require six (6) spaces, one space existing and one additional space being proposed; alternatively, the Applicant requests parking relief pursuant to 1319.02 (b) (6) which permits the Board to reduce parking requirements

¹ Incorporating the RT dimensional requirements for multifamily uses in the CL Limited Commercial District.

by Special Exception.

5. A public hearing was held on the appeal on Wednesday, August 25, 2021 at 6:00 P.M. at the City Hall Rotunda, 10 East Church Street, Bethlehem, Pennsylvania; the hearing was conducted live and by remote participation as described in the public notice.

6. The property was posted by the Applicant on August 18, 2021. The hearing was advertised and neighboring property owners were notified of the hearing in accordance with the requirements of the Zoning Ordinance. Evidence of public notice is on file in the Township Zoning Office.

7. Applicant was represented by Stephanie A. Kobal, Esq. of Fitzpatrick Lentz and Bubba, P.C., 645 West Hamilton Street, Suite 800, Allentown, Pennsylvania 18101.

II. FINDINGS OF FACT

1. The Applicant is Aiden Henninger the owner of the property located at 222 East Broad Street, Bethlehem, Pennsylvania.

2. The property is located in the CL-Limited Commercial Zoning District of the City of Bethlehem.

3. Mr. Henninger offered testimony in behalf of his appeal.

4. The Board received Exhibit A1 which is a deed to the property.

5. The structure on the property is improved with a building having a first-floor apartment; on the upper two (2) floors are six (6) boarding rooms, with three (3) rooms on each floor.

6. The structure was built in approximately 1925.

7. The property has in recent history been used as a boarding house.

8. The property is at the southeast corner of Broad Steet and Penn Street.

9. There is no history of recent commercial use in the building.
10. The surrounding neighborhood is a mix of commercial and residential uses.
11. The Applicant's zoning appeal was marked as Exhibit A-2.
12. The Applicant offered Exhibit A-3 which is a Site Plan (page 1) and Floor Plan (page 2) for the property.
13. The property is 3,241 sq. ft. with lot width of 30 ft.
14. The Applicant is proposing three (3) one-bedroom apartments, one on each floor, which will average lot area of 1,080 sq. ft. per unit.
15. The first-floor apartment is proposed to 690 sq. ft. and will have one bedroom, a living room and a kitchen/dining area.
16. The second-floor unit will be 812 sq. ft. and will have one bedroom, a living room and a kitchen/dining area.
17. Apartment 3 on the third floor is proposed to be 539 sq. ft. and will have a combination living room/bedroom with a kitchen and bathroom.
18. A-3 also contains architected renderings of the three boarding units on the second and third floors.
19. A fire escape exists for the third-floor.
20. At the present time the only exit from the second floor is by the stairwell.
21. The Applicant believes the conversion will result in fewer tenants and hence less occupants of the building; the Applicant believes that the second-floor unit will be reasonably available for occupancy use by two (2) individuals and the third-floor unit will be reasonably available for regular occupancy by one (1) individual.

22. The Applicant is proposing a second parking pad along the Penn Street side of the property between the sidewalk.

23. The Applicant believes that the converted use will blend into the neighborhood as it pertains to parking inasmuch as the demand for on street parking is normally daytime demand with residential demand occurring after commercial hours.

24. There were no objectors to the request.

III. DISCUSSION

The Applicant requests variances secondary to a proposed change of use of the building. The proposed use is not a permitted use to the extent that the ground level use is not proposed to be a commercial use. The proposal is also deficient with respect to the various lot requirements pertaining to multi-family dwellings associated with tract size, lot width and lot area per dwelling unit. Applicant also requires a variance as it pertains to off-street parking or alternatively a Special Exception to permit a reduction in parking.

The Board is guided by Section 1325.05 providing the standards with the respect of a grant of a variance. This section codifies the variance standards of the Municipalities Planning Code. With respect to the dimensional variances requested, the Board is guided by the Pennsylvania Supreme Court decision in Hertzberg v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998) A dimensional variance involves a request asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with applicable regulations; a zoning board can evaluate cases for dimensional variances under a relaxed standard of proof.

The Hertzberg Court like the case before the Board involves a property owner seeking to make do with a structure and lot predating zoning. The building is larger than the zoning

subsequently enacted would have allowed on a lot this size.

The principles of Hertzberg may be properly applied to the facts in this appeal. Although the Applicant is requesting a variance as to use to the extent that the ground level of the use is not proposed to be dedicated to a commercial use, the existing building design already has a ground level apartment use which is merely proposed to continue.

The Applicant is proposing a change of use with respect to the second and third floors. Although not presented for consideration, the Board notes that nonconforming uses can be changed by Special Exception where the change is less objectionable in its impact than the existing use. See 1323.07. The Board finds that the establishment of two (2) apartments in substitution of a boarding house will constitute an improvement to the building and property, and to the neighborhood. Thus, the relief is consistent with the policy intent of the Ordinance.

A boarding house with six (6) rooms at operating capacity generates demands on the property by six (6) different individuals. The one (1) bedroom limited sized apartment uses proposed for the second and third floor will logically result in an occupancy reduction.

The Board finds parking relief is also appropriate by reason of the same preexisting property conditions. Occupancy reduction will result from changed use of the building. Applicant has also committed to create an additional onsite space. The use remains residential.

The change in use results in an improvement to parking requirements. The Ordinance requires one (1) space for each of the six (6) boarding rooms, plus one (1) space for the first-floor dwelling as the property exists, i.e., there are seven (7) spaces required for the use as it exists. On the other hand, the proposal results in reduction of required parking. Each of the three (3) dwelling units requiring $1\frac{3}{4}$ spaces resulting in a need for only six (6) off street spaces.

The objective with respect to existing nonconformities is always to reduce the degree of nonconformity and this proposal furthers that policy. The proposal results in improvement, the property being in an area with many commercial uses. The neighborhood's need for parking is the least when the parking needs of the property and its occupants are the greatest, i.e., residential demands are generated outside of the hours of business operation.

It appears that parking has not been an issue in this neighborhood. The Board notes that there were no objectors to this request. Rehabilitation of the property through renovations will improve the appearance and structure of an aging building. Further, updated building codes will follow the redesign of the interior. The Board further finds that the granting of relief is appropriate to further the interest of the local community and the City. The Board is thus satisfied that the Applicant has proved sufficient hardship created by existing conditions and finds that the relief requested does not result in an overuse of the property or the building. The variance is in the best interest of the neighborhood. For all the above reasons the Board will grant the Applicant his requested variances.

IV. DECISION

1. The Applicant's request for a variance from 1305.01 (A) footnote 1 to permit use of the building for three (3) apartments without a commercial use on the first floor of the premises as required in the CL-Limited Commercial Zoning District is granted.

2. The Applicant is granted dimensional variances from 1306.01 (b) (2) (a) applying the dimensional standards of 1306.01 (a) (4) to residential uses in the CL-Limited Commercial Zoning District to permit the Applicant to establish three (3) apartment uses of the property, minimum required tract size (9,000 sq. ft. required, 3,241 sq. ft. proposed), lot area per dwelling unit (1,200 sq. ft. required per unit, 1,080 sq. ft. proposed) and lot width (90 feet required, 30 ft.

existing and proposed).

3. The Applicant is granted a variance from 1319.01 (a) (1) (ii) in order to reduce parking, six (6) spaces required, two (2) spaces proposed.²

4. The Applicant's relief is contingent upon the Applicant obtaining all required permits from the City with respect to creating the additional parking space as proposed, and providing proper fire escape access for the second floor as may be required by the Building Code.

5. This approval is further contingent upon the Applicant changing use of the building in compliance with the Applicant's testimony and evidence, including Exhibit A3 constituting the plans of such change and renovation.

6. The Applicant shall obtain any other permits, reviews or approvals as required.

7. This decision shall be final unless an appeal is taken therefrom within thirty (30) days as provided in the Pennsylvania Municipalities Planning Code, Act 247, as amended in 2008 (No. 39, Section 4).

ZONING HEARING BOARD OF
CITY OF BETHLEHEM, BY

William Fitzpatrick, Chairman

Jim Schantz

Terry Navachik

Jessica Lee

Peter Schneck³

² Because the Board has determined to grant parking variance relief, the Board need not consider the Applicant's request for parking relief under 1319.02 (B) (6) which permits the Board to reduce parking requirements by Special Exception.

³ Mr. Schneck dissents.

MAILING NOTICE DATE:

YOUR APPEAL PERIOD BEGINS TO RUN ON THE MAILING NOTICE DATE, WHICH IS THE DATE THAT THIS DECISION WAS MAILED TO YOU. IF YOU WISH TO APPEAL THIS DECISION YOU MUST APPEAL TO THE LEHIGH COUNTY COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE MAILING OF THIS NOTICE.