

EXHIBIT F

I. Background:

As described in Exhibit E, as part of its mission to preserve America's industrial history by collecting, preserving and storing records for the education and research of future generations, Industrial Archives & Library ("IAL"), a 501 (c)(3) non-profit corporation qualifying as a private operating foundation acquired by donation the approximate 62-acre former Archibald Johnson estate at the north end of the City of Bethlehem (the "City"), specifically the southeast corner of Santee Mill Road and Altonah Road (the "Property").

It is IAL's intent after receiving zoning approval pursuant to this Application, to "subdivide" the Property to create two separate tax parcels: (i) one parcel for the "wooded area" of approximately 42 acres (the "Wooded Parcel"); and (ii) one parcel to be to be used for "Archives" purposes of approximately 19 acres (the "Archives Parcel").

II. Proposal:

With the City's grant of the variances described herein, IAL intends to reuse the seven existing buildings and presently construct one additional barn-like structure on the Archives Parcel, all of which shall be used for archival purposes as described in this Application. The existing buildings would remain unchanged in their outward appearance but would require interior renovations to support archival functions. The new barn-like structure, to be located near the existing clearing at the northwest corner of the Archives Parcel, would match the appearance of the existing onsite German-style bank barn but the interior would be specially designed for climate-controlled preservation and public/scholarly research of the archival materials.

This Variance request is substantially consistent with the City of Bethlehem Comprehensive Plan 2008, adopted March 2009, by:

1. Protecting residential neighborhoods by promoting compatible land uses at appropriate densities.
2. Protecting important wooded areas, steep slopes, and creek corridors (the Wooded Parcel).
3. Meeting the "Special Features Area" objectives of "very low intensity development" in the Archives Parcel by presently adding one context-structure.
4. Protecting the Wooded Parcel scenic vistas, improve air quality, and absorb stormwater runoff, and protect moderately steep slopes and very steep slopes.

III. Requested Zoning Ordinance Variances:

1. Use. IAL requests a use variance to permit "archives" use in the RR District. "Archives," as defined by the Society of American Archivists, refers to preservation

of valuable records of people, businesses and government. These records are kept because they have continuing value to potential users. As a documentary of past events, the facts are used to interpret and understand history.

- A. Schools are permitted in the RR District as a Special Exception while a Museum or Community Center is not permitted. Archives is not a Museum, library or Community Center and is far a less intensive use requiring less infrastructure, building cover, impervious cover, and generating de minimis traffic by nature of its limited staff and by-appointment-only access for public/scholarly researchers. By preserving the existing structures and adding one that will be matching in appearance, Archives use will be virtually indistinguishable from the current condition to neighbors and passersby.

- B. Given the ownership and/or current use, a “floodgates” argument would not seem to apply to granting IAL the site-specific use variance. Based on current parcel sizes in the City RR Zone, making “archives” a permitted use by variance in the RR zone for the Archives Parcel appears unlikely to attract interest from the 8 parcels similarly sized parcels listed below.

Address	Ac.	Owner	Notes
1. Biery’s Bridge Rd.	38	Karlene Gulick	Just north & west of IAL
2. 3405 Linden St.	33	Akal Assoc.	Woodlands south of IAL
3. 1310 Santee Mill Rd.	22	Carlos & Isabel Joao Tavares	Property East of IAL
4. 700 Central Blvd.	40	Pennsylvania Lines LLC	Rail use
5. 1600 Hanover Ave.	165	City Center Investment Corp	Spans Bethlehem & Allentown (Zoned I-G by Allentown)
6. 2505 Ringhoffer Rd.	23	Pichel Jay S ET AL	
7. 960 Applebutter Rd.	29	Pennsylvania Power and Light Co.	Split zoned RR & IN

8.	119 Research Dr.	462	Lehigh University	Small portion of 462-Ac. Parcel, split zoned RR & CM
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2. **Height** 1306.01 (a) from 35' per RR to 60'(5 x 12 above grade levels for building to be proposed) net effect 25' increase. See **Exhibit B**.
3. **Accessory Buildings** 1306.03 (d) from 1,000 sq ft max floor area per RR to approximately 5,645 increase (based upon existing buildings and building to be proposed).

The Archives Parcel has seven existing structures and the proposed archives barn-like structure would be the largest. IAL requests that the Zoning Officer confirm the new archives barn-like structure would be considered the new primary structure and existing structures would become accessory structures thereto. The 1927 Tudor Style Main house would then become an accessory building and its 5,645 SF would require the dimensional variance. The other buildings are existing-to-remain, dimensionally non-conforming accessory structures.

Proposed New Primary Building – Archival Operations Center Proposed - 30,000 sq ft

Gate House – Oral History Program - Existing 1,344sq ft

1927 Tudor Style Main house – Corporate and Administration Headquarters for IAL - Existing 5,645 sq ft

1775 Farmhouse – Property Caretaker - Existing 1,680 sq ft

Barn #1 – Equipment and Storage - Existing 5,472 sq ft

Barn #2 and Stables – Temporary Collections Storage - Existing 3,944 sq ft

Piggery House – Conservation Lab and Cold Storage - Existing 800 sq ft

Apartment – General Use Facility – Collections Receiving - Existing 1,152 sq ft

IV. Post Zoning Variance Approval

1. Following approval, IAL would then prepare and submit for City Planning Commission review and approval a land development plan for the proposed

additional barn-like structure together with a subdivision of the existing 62-acre Property into the Wooded Parcel and the Archives Parcel.

2. IAL would release its rights to develop a bed and breakfast as granted and set forth on Exhibit C.
3. The Wooded Parcel will essentially remain as greenspace in its natural state and undisturbed under IAL's ownership and management.

V. Legal Standards

Use Variance.

There are two (2) landmark Pennsylvania Supreme Court cases that form the base standard for reviewing use variances. The first, *E. Torresdale Civic Ass'n v. Zoning Bd. Of Adjustment*¹, establishes three (3) factors that applicants requesting a use variance must prove in order to obtain the use variance: (i) hardship; (ii) minimum necessary relief; and (iii) lack of adverse impact on the public². As noted in our responses to the questions posed below, it is clear that: (a) IAL's request is the minimum necessary relief; and (b) through IAL's careful and considered planning, not only will IAL's planned use have less of an adverse impact to the public than the Property's currently zoned use, IAL is ensuring that the character of the Property remains substantially the same as pre-variance.

The second, *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*³, expands upon the hardship requirement by noting that hardship can be established through a variety of factors that can be taken into account, taking the position that an applicants failure to establish valuelessness of the property without the variance or the failure to show the impossibility of compliance for the property does not automatically prohibit the finding of hardship.⁴

In 2022, the Commonwealth Court, citing to *E. Torresdale* and *Hertzberg*, further confirmed these standards in *In re Appeal of Garcia*⁵, that the Pennsylvania Supreme Court has "repeatedly made clear that in establishing hardship, an Applicant for a variance is *not required* to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose."⁶

Article 1325 of the City's Ordinance (the "Ordinance") establishes the Zoning Hearing Board (the "Board") and the procedures, powers and duties of the Board. Section 1325.06(b) notes that the power to issue a variance from the terms of the Ordinance can be exercised when all of the following findings, in short, are made, *where relevant*: (i) unique physical circumstances or conditions of the Property; (ii) there is no possibility that the Property can be developed in strict

¹ 639 A.2d 446 (Pa. 1994).

² *Id.* at 447.

³ 71 A.2d 43 (Pa. 1998).

⁴ *Id.* at pg. 48.

⁵ 276 A.3d 340 (Pa. Cmwlth. 2022).

⁶ *Id.* at pg. 351 (citing *Marshall v. City of Philadelphia*, 626 Pa. 385, 97 A.3d 323 (2014)) (emphasis in original).

conformity of the Ordinance because of the unique circumstances; (iii) the applicant did not create the unnecessary hardship; (iv) the variance will not alter the essential character of the neighborhood or district where the Property is located; and (v) the variance represents the minimum variance to afford relief.⁷ As discussed more in depth below, the use variance requested by IAL satisfies the findings required under (iii), (iv) and (v). Following the principals of *Hertzberg*, IAL is not required to establish the findings of (i) and (ii), as, IAL is not required to show that the Property is valueless without the variance or that it cannot be developed in strict conforming of the Ordinance (i.e., that it cannot be used for any permitted purpose).

Since *Hertzberg* establishes the precedent that affirmative findings for the factors set forth in subclauses (i) and (ii) are not required, under the terms of the Ordinance (“where relevant”), the Board can grant the variance without such findings. Additionally, in *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd. of City of Bethlehem*⁸, the Board, as affirmed by the Commonwealth Court, the Board granted a use variance to an applicant where the Board determined that the request, “would be harmonious with the general purpose and intent of the Zoning Ordinance, would not be injurious to the neighborhood or otherwise detrimental to the public welfare, and that the proposed use was reasonable to encourage the appropriate use of the land without any impact to the adjoining landowner.”⁹ IAL’s proposed is consistent with all three of the foregoing.

Dimensional Variance.

It is well established in Pennsylvania caselaw that the standard of proof required to establish unnecessary hardship in dimensional variance applications is lesser than applications for use variances.¹⁰ The Supreme Court of Pennsylvania established in *Hertzberg* the standard for courts to consider a multiple of additional factors for determining whether a dimensional variance can be granted, including, but not limited to, (i) economic determinant to an applicant if the variance was denied; (ii) the financial hardship created by any work necessary to bring the building into strict compliance; and (iii) impacts on the characteristics of the neighborhood, the result of which was the establishment of a far more relaxed standard than use variances.¹¹ Furthermore, in *Dunbar v. Zoning Hearing Bd. of City of Bethlehem*¹², Chief Justice Baer of the Supreme Court of Pennsylvania held, in reviewing a dimensional variance, that: (i) *Hertzberg* was aimed at providing flexibility to zoning hearing boards when ruling on a dimensional variance; and (ii) lower courts should interpret more broadly what constitutes an unnecessary hardship for dimensional variances.¹³

Notwithstanding not meeting two (2) of the three (3) named factors, the fact of the matter is that IAL’s plan does not require variances for the existing structures in size and appearance to remain as they are with the use proposed in Section III won’t be expanded and require additional relief.¹⁴, the height variance requested by IAL to the requirements of RR is *de minimis* and the

⁷ Ordinance, Art. 1325.06(b).

⁸ 2011 WL 10843482 (Pa. Commw. Ct. Mar. 17, 2011).

⁹ *Id.* at pg. 2.

¹⁰ *Supra* Note 3 at pg. 48.

¹¹ *Kneebone v. Zoning Hearing Board of Township of Plainfield*, 672 Pa. 721, 748 (2022) (citing *Hertzberg*).

¹² 144 A.3d 219 (Pa. Cmwlth. 2016).

¹³ *Id.* at pg. 750.

¹⁴ Note to Architect: Please provide the building plan specifications that do not require a

variances related to the accessory buildings is a technical request. As noted in *Dunbar* the Supreme Court had adopted a more relaxed standard for dimensional variances in *Hertzberg* because the applicant was asking for only a reasonable adjustment of zoning regulations. Since IAL's only dimensional variance requests are either *de minis* or technical, IAL falls within this reasonable adjustment zone.

Furthermore, as discussed herein, the dimensional variances requested by IAL are subject to IAL's construction plans that are carefully tailored to match the current architectural and cosmetic characteristics of the existing structures on the Property. In *Kneebone*, the Supreme Court of Pennsylvania affirmed a decision of zoning hearing board of the Township of Plainfield granting a dimensional variance based, in part, on the fact that the dimensional variance requested would not "negatively impact the surrounding properties or the character of the neighborhood."¹⁵ Not only does IAL's requested dimensional variance have no negative impact on the surrounding neighborhood, the alternative use for the Property, as permitted by the district and IAL's right to subdivide the Property, the creation of seven (7) residential parcels and units, would have a greater negative impact on the Property than IAL's intended plan.

Questions and Answers

1. Does compliance with the requirements of the zoning code cause an unnecessary hardship due to the size, shape, contours or physical dimensions of your property?

As discussed herein, the requirements of the zoning code generally do create an unnecessary hardship, as that term is defined by law, including, without limitation, court decisions, due to the size, shape, contours and physical dimensions of the Property. Furthermore, under the standards of *Hertzberg* set forth by the Supreme Court of Pennsylvania, the Board is not required to have an affirmative finding that the Property would be valueless or non-developable without the variance to be considered an unnecessary hardship.

Furthermore, Property is large enough to allow for the requested use of the Archives Parcel without affecting the integrity of the Property or the surrounding neighborhood. In fact, that the adverse impact on the surrounding neighborhood of the Property, a factor used in determining whether a use and dimensional variance should be granted, would be more severe should the requested variances not be granted and IAL be forced to develop the Property in a manner consistent with the zoning code.

2. Did any action on your part cause or create the special conditions or circumstances? Explain.

No current action on the IAL's part caused or created the special conditions or circumstances, satisfying the requirement under Ordinance Article 1325.06(b)(iii).

¹⁵ *Supra* Note 9 at pg. 749.

3. Will the variance you seek represent the least modification possible of the code provision to provide relief from the requirements of the zoning code?

Yes, the variance sought represents the least modification possible of the Code provisions to provide relief from the requirements of the Zoning Code. The variance will accommodate both a positive use of the Property with minimal relief requested.

4. Will the variance you seek increase congestion in public streets or in any way endanger the public?

No, the variance sought will not increase congestion in public streets or in any way endanger the public. The use contemplated by this application will not materially alter the layout or use of the Property nor will it generate any additional impact to surrounding properties. There is limited daily vehicular movement to and from the Property, and the instant application will not change the current or future traffic generated from the use as IAL's proposed use would cause de minimis traffic by nature of its limited staff and by-appointment-only access to public/scholarly researchers, which would be comparable to the approved bed and breakfast. In juxtaposition IAL's legal right to develop the Property in accordance with the RR Zoning Code as a matter of right, would create a greater burden.

Under both Pennsylvania caselaw, such as *Hertzberg*, *Dunbar* and *Kneebone*, and subsection (4) of Ordinance Article 1325.06(b), the essential character of the neighborhood and the appropriate use or development of adjacent property is a key standard when determining to grant a variance. In this case, IAL's requested variances actually have *less* of an adverse impact on the adjacent properties and character of the neighborhood than if IAL were to develop the Property pursuant to its legal rights and the Zoning Code.

5. Will the variance you seek harm your neighbors' use of their properties or impair an adequate supply of light and air to those properties?

No, the variance sought will not harm the neighbors' use or development of their properties or impair an adequate supply of light and air to those properties, or otherwise be detrimental to the public welfare. The Property is predominantly surrounded by other residential and some commercial uses. By IAL's intent to not change the exterior façade of any building and to develop the now proposed additional barn building consistent with the existing look (see **Exhibit B**) of the Property, the essential character of the neighborhood and the image of the Property will have no harm on neighbors' properties. As to the height of the proposed building, there is no neighbor's residence within 380 ft of its proposed location.

6. Will the variance you seek substantially increase traffic congestion in public streets or place undue burden on water, sewer, school, park or other public facilities?

No, the variance sought will not substantially increase traffic congestion in public streets or place undue burden on water, sewer, school, park or other public facilities.

There is limited daily vehicular movement to and from the Property, and the instant application will not change the current or future traffic generated from the proposed use. The application and use has no demand for school and park facilities. The use of the Property has extremely limited water and sewer use. And certainly comparable to a bed and breakfast the archives use will not increase traffic congestion. In juxtaposition IAL's right to develop the Property in accordance with the RR Zoning Code as a matter of right, would create a greater burden.

7. Will the variance you seek create environmental damage, pollution, erosion, or siltation, or increase the danger of flooding?

No, the variance sought will not create environmental damage, pollution, erosion or siltation or increase the danger of flooding. IAL understands the importance storm water from the Wooded Parcel and has sited the proposed barn building in a location to avoid any interference. In juxtaposition IAL's legal right to develop the Property in accordance with the RR Zoning Code as a matter of right, would create a greater burden.

8. Will the variance by creating more square footage for the new proposed additional barn building create any of the issues described in 3 through 6 above.

No, for the reasons stated above, the new proposed additional building will not create increased traffic congestion, endanger the public, harm the neighbors' use of their properties or cause an undue burden on water, sewer, school, park or other public facilities and will not create environmental damage, pollution, erosion or siltation or increase the danger of flooding.