



SITE ADDRESS: 202 WYANDOTTE STREET

Office Use Only:

DATE SUBMITTED: 5/29/18

HEARING DATE: 4/27/18

PLACARD: Spinn 5/29/18

FEE: 500

ZONING CLASSIFICATION: RG

LOT SIZE: 2.93 ac



**APPLICATION FOR APPEAL TO THE CITY OF BETHLEHEM ZONING HEARING BOARD,
10 E. CHURCH STREET, BETHLEHEM, PA 18018**

1. Return one (1) original and seven (7) copies of this application and all supporting documentation to the Zoning Officer, along with the filing fee. Include site plans and/or floor plans as necessary.
2. The application is due by 4PM the 4th Wednesday of the month. The hearing will be held the 4th Wednesday of the next month.
3. If you are submitting MORE THAN 10 exhibits at the hearing, you MUST place them in an indexed binder and submit at one time.

Appeal/Application to the City of Bethlehem Zoning Hearing Board is hereby made by the undersigned for: (check applicable item(s):

- Appeal of the determination of the Zoning Officer
- Appeal from an Enforcement Notice dated _____
- Variance from the City of Bethlehem Zoning Ordinance
- Special Exception permitted under the City Zoning Ordinance
- Other: _____

SECTION 1

APPLICANT:	
Name	<u>NIP WILBUR LLC - JOHN NOBLE</u>
Address	<u>1800 OLD MILL RD</u>
	<u>BETHLEHEM, PA 18015</u>
Phone:	
Email:	

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

Address

Phone:

Email:

ATTORNEY (if applicable):

Name DAVID M. BACKENSTOE, ESQUIRE

Address 148 MAIN STREET
HELLERTOWN, PA 18055

Phone: [REDACTED]

Email: [REDACTED]

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
1306.01(a)	HEIGHT - 2.5 STORIES	4 STORIES	1.5 STORIES
1319.01(a)(7)	PARKING - 69 SPACES	55 SPACES	14 SPACES
1316.01(d)	DRIVEWAY SLOPE - 10%	12.73%	2.73%
_____	_____	_____	_____

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.

ARTICLE 1304 - USE VARIANCE TO ESTABLISH A HOTEL,
CONFERENCE CENTER, AND RESTAURANT/BAR

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

If the Applicant seeks an appeal from an interpretation of the Zoning Officer, state the remedy sought in accordance with Sec. 1325.11 (b): _____

NARRATIVE

A brief statement reflecting why zoning relief is sought and should be granted must be submitted.

CERTIFICATION

I hereby certify that the information contained in and attached to this application is true and correct to the best of my knowledge and belief.

Applicant's Signature

Date

5/29/18

Property owner's Signature

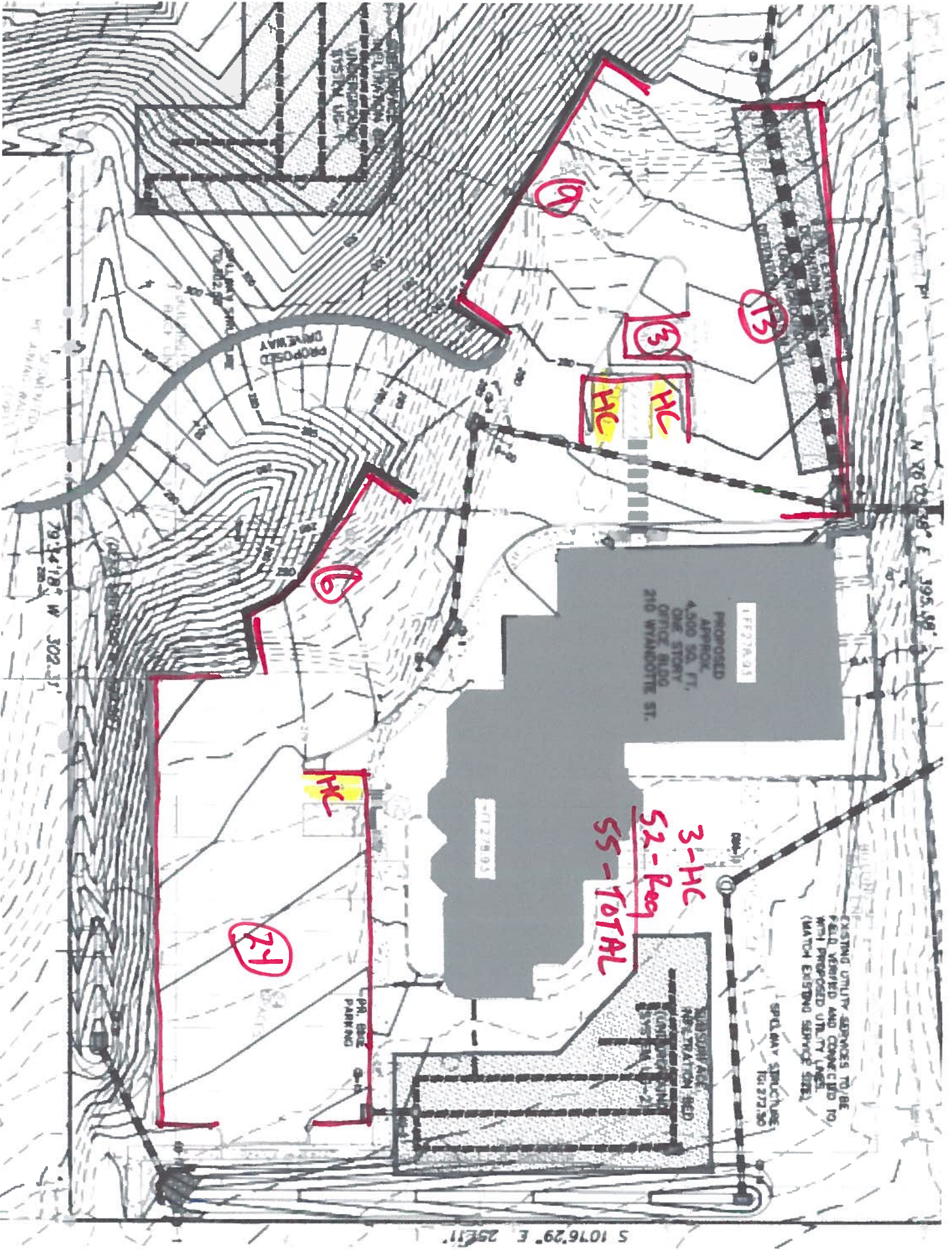
Date

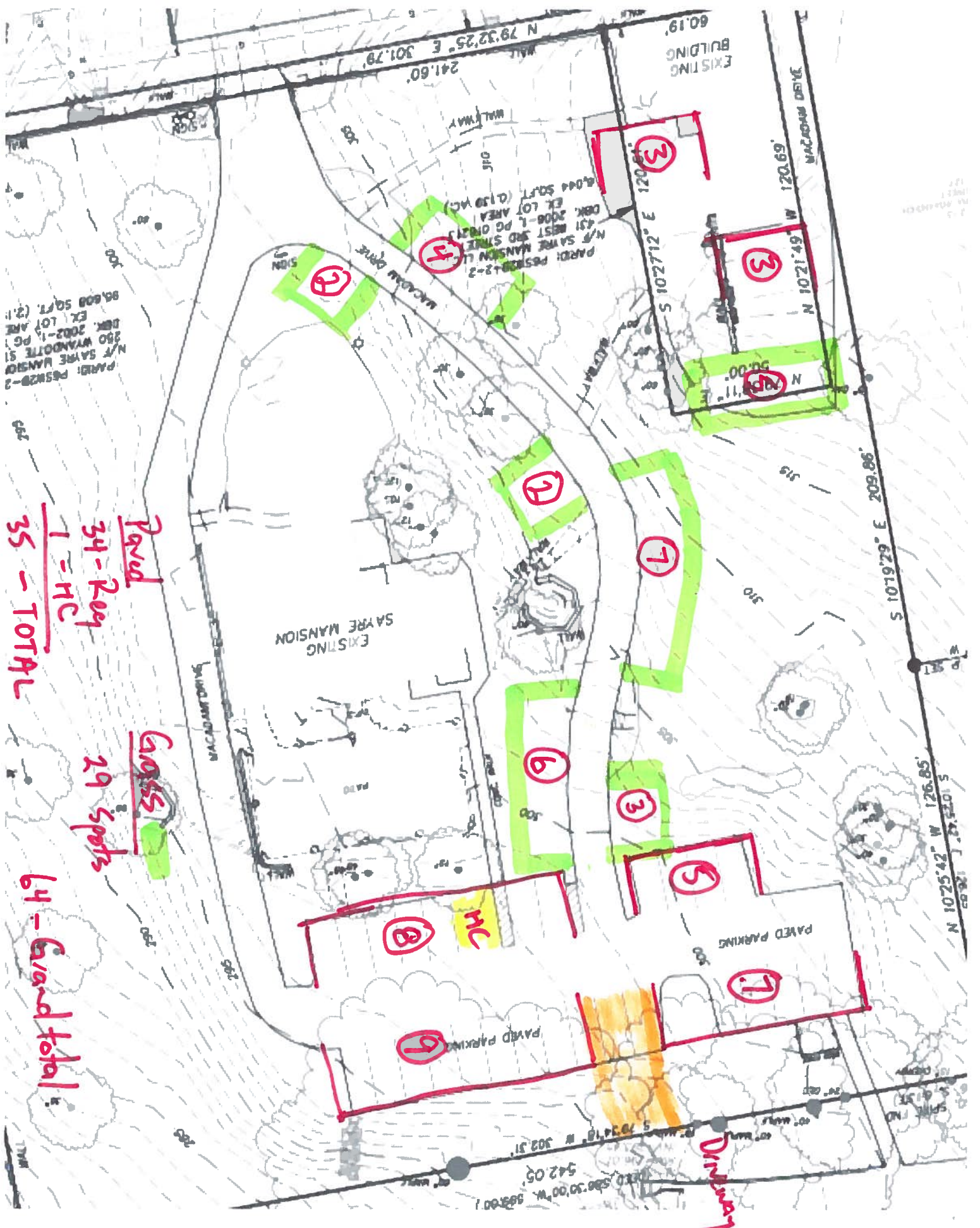
5/29/18

Received by

Date

NOTICE: If the Decision of the Zoning Hearing Board is appealed, the appellant is responsible for the cost of the transcript.





Paved
 34 - Roq
 1 - HC
 35 - TOTAL

Grass
 29 spots

64 - Grand total

Dinner

Narrative

After exploring an office use for the Wilbur Mansion, an opportunity to form a joint venture with the neighboring Sayre Mansion has presented itself. The new partnership will result in a combined hotel, conference center, and restaurant with bar on a landscaped campus. The Sayre Mansion, Carriage House, and Wilbur Mansion will all be under single ownership enabling us to consolidate the operations. This joint venture will enable us to have a cohesive Gateway into South Bethlehem and allow significantly more public access to the Historic Sayre and Wilbur Mansions.

The combined properties will have the following uses:

- 1) 24 rooms in the Sayre Mansion
- 2) 31 rooms in the Wilbur Mansion
- 3) Conference space for up to 200 people
- 4) 80 person / seat restaurant and bar on the 1st floor of the Wilbur

To use the Fountain Hill Historic District and Bethlehem's Planning and Zoning Ordinance as a guide, we will need some zoning relief. The variances requested are minimum necessary to use the property in a manor that is compatible to the surrounding area.

The specific relief requested is as follows:

1) Article 1306.01(a): Building height in the RG district allows 2.5 stories. We are seeking relief to build a 4-story addition adjacent to the Wilbur Mansion. The neighboring buildings along Brighton St. are similar in height to the building we are proposing. The four-story addition would enable us to save the existing Wilbur Mansion and keep with height consistency of the surrounding properties.

2) Article 1319.01(a)(17): The Wilbur site can be designed for 55 off-street parking spaces requiring us to request a minimum relief of 14 off-street parking spaces. The off-street parking requirements for the Wilbur site are below:

1)	31 Hotel rooms x 0.8/ room	25 spaces
2)	6 Hotel employees x 1/ 2 employees	3 spaces
3)	200 person event space x 1/ 4 people	50 spaces
4)	80 person / seat restaurant and bar x 1/ 4 seats	20 spaces
5)	24 event and restaurant employees x 1/ 2 emp.	12 spaces
6)	Credit for supplemental uses 82 x 0.5	<u>(41 spaces)</u>
	Total required	69 spaces required
	Minimum relief required	<u>14 spaces relief</u>

* The Sayre Mansion and Carriage House will add 24 rooms and 2 employees for the additional parking requirement below.

1)	24 Hotel rooms x .8 / room	20 spaces
2)	2 employees x 1 / 2 employees	2 spaces
	Total required	<u>22 spaces</u>

* Total required and provided for the complete Sayre - Wilbur campus

Total required off street parking	69 + 22	<u>91 spaces</u>
Wilbur Mansion provided		55 spaces
Sayre Mansion provided		29 spaces
Carriage House provided		6 spaces
Grass parking provided		29 spaces
Total off street parking provided		<u>119 spaces</u>
Excess off street parking provided		<u>28 spaces</u>

3) Article 1316.01 (d): The maximum dimension of the driveway slope per zoning is 10%. In order to connect the two properties, which share challenging topography, the minimum slope of the driveway can be engineered at 12.73%. The variance requested is the minimum amount required to connect the adjacent properties.

4) Article 1304: We are requesting a use variance to establish a hotel, conference center and restaurant with bar. The current property was functioning as a legal non-conforming lodge and conference center. The new conference center will reduce the non-conforming use by approximately 11,000 sq. ft.. With this unique property the use will be compatible to the existing surrounding commercial uses.

Supporting Documentation

- Narrative
- Existing conditions survey
- Wilbur Mansion Site Plan
- Wilbur and Sayre colorized parking layout
- Proposed Hotel Rendering
- Traffic Study
- Prior Zoning Hearing Board Decision



TRAFFIC PLANNING AND DESIGN, INC.

WWW.TRAFFICPD.COM

March 23, 2018

Ms. Darlene L. Heller, AICP
Planning Director
City of Bethlehem
10 East Church Street
Bethlehem, PA 18018

RE: Wilbur Mansion Redevelopment

Traffic Analysis

City of Bethlehem, Northampton County, PA
TPD No. VACE 00025

Dear Ms. Heller:

Traffic Planning and Design, Inc. (TPD) has performed the following analysis to update the 2016 Traffic Impact Study (TIS) for the Wilbur Mansion Redevelopment. The redevelopment project includes the construction of two apartment buildings with a total of 64 units, along with an adaptive reuse of the Wilbur Mansion building.

The Traffic Impact Study assumed that the Wilbur Mansion building would be utilized as professional office space. However, it is now anticipated that the building will be reused as an expansion of the Sayre Mansion Inn.

PREVIOUS TRIP GENERATION CALCULATIONS – OFFICE BUILDING

The trip generation calculations for the office reuse were based upon data published in the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, 9th Edition. The original calculations from the TIS are summarized in **Table 1** below.

TABLE 1
TRIP GENERATION CALCULATIONS – OFFICE BUILDING

Land Use	Independent Variable	Time Period	Trip Generation Rate	Number of New Trips
General Office (#710)	10.900 ksf	Weekday	$T = 11.03*(X)$	122 trips
		AM Peak Hour	$T = 1.56*(X)$	17 trips
		PM Peak Hour	$T = 1.49*(X)$	16 trips

T = number of site-generated vehicular trips X = independent variable (ksf, thousand square feet of gross floor area)

As shown in **Table 1**, the office reuse was expected to generate 17 trips during the weekday AM peak hour and 16 trips during the weekday PM peak hour.

REVISED TRIP GENERATION CALCULATIONS – SAYRE MANSION EXPANSION

The proposed expansion of Sayre Mansion will increase the size of the existing hotel from 24 rooms to 55 rooms. The expansion will also include a larger event space and a new on-site restaurant/bar. TPD analyzed the impact of the proposed expansion by calculating the number of trips generated by the existing 24-room hotel and the number of trips generated by the proposed 55-room hotel based on the ITE *Trip Generation Manual*, 10th Edition. Land Use Code 310 (Hotel) includes the following description:

A hotel is a place of lodging that provides sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops. All suites hotel (Land Use 311), business hotel (Land Use 312), motel (Land Use 320), and resort hotel (Land Use 330) are related uses.

Based on this description TPD determined that an on-site restaurant/bar and event space are typical features for a hotel and separate trip generation calculations are not needed for those features. The trip generation calculations for the hotel expansion are summarized in **Table 2** below.

TABLE 2
TRIP GENERATION CALCULATIONS – SAYRE MANSION EXPANSION

Land Use	Time Period	Trip Generation Rate	Number of Trips (24 Room Hotel)	Number of Trips (55 Room Hotel)	Number of New Trips
Hotel (#310)	Weekday	$T = 8.36*(X)$	200 trips	460 trips	260 trips
	AM Peak Hour	$T = 0.47*(X)$	11 trips	26 trips	15 trips
	PM Peak Hour	$T = 0.60*(X)$	14 trips	33 trips	19 trips

T = number of site-generated vehicular trips

X = independent variable (rooms)

As shown in **Table 2**, the hotel expansion is expected to generate 15 additional trips during the weekday AM peak hour and 19 additional trips during the weekday PM peak hour.

CONCLUSIONS

Based on the calculations summarized above, the proposed hotel expansion will generate a similar number of peak hour trips to the previously planned office use. Therefore, it is our opinion that the conclusions of the previously prepared Traffic Impact Study are still valid. Please feel free to contact me if you have any questions.

Sincerely,

TRAFFIC PLANNING AND DESIGN, INC.



Benjamin T. Guthrie, P.E.

Project Manager

bguthrie@TrafficPD.com

cc: John Noble, Wilbur Mansion
Rob Ashford, Wilbur Mansion



FITZPATRICK LENTZ & BUBBA

ATTORNEYS AT LAW

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May 6, 2016

✓ **John Noble**
NIP Wilbur, LLC
1800 Old Mill Road
Bethlehem, PA 18015
Applicant

David M. Backenstoe, Esquire
148 Main Street
Hellertown, PA 18055
Applicant's Counsel

Re: City of Bethlehem Zoning Hearing Board
202 Wyandotte Street and 267 Cherokee Street

Gentlemen:

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

Very truly yours,
Erich J. Schock
Erich J. Schock

/vlm
Enclosure

cc: Zoning Officer, City of Bethlehem (w/encl.. via e-mail)
City of Bethlehem Zoning Hearing Board (w/encl.. via e-mail)

Also admitted in New York
and admitted in New Jersey
Registered Patent Attorney

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

Northampton County

**Appeal & Application of
John Noble/NIP Wilbur, LLC
Applicant**

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)
)
)

Date: May 6, 2016

**Re: 202 Wyandotte Street and
267 Cherokee 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 mailing of this Decision or your right to such an appeal is lost.

YOUR APPEAL PERIOD BEGINS

May 6, 2016 (Date of Mailing)

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

Northampton County

**Appeal & Application of
John Noble/NIP Wilbur, LLC
Applicant**

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)

**Date: May 6, 2016
Re: 202 Wyandotte Street and
267 Cherokee Street**

DECISION

I. Preliminary Matters

A public hearing was held on **March 23, 2016, at 7:00 PM** before the Zoning Hearing Board of the City of Bethlehem ("Board") regarding Applicant's Appeal to the Zoning Hearing Board.

A. Parties

1. Applicant: John Noble, a principal in NIP Wilbur, LLC ("Applicant") appeared at the hearing and had standing by virtue of NIP Wilbur, LLC's fee simple ownership of the Property. David M. Backenstoe, Esquire, represented Applicant.

2. Zoning Hearing Board: The Board comprised Gus Loupos (Chairman), William Fitzpatrick, Linda Shay Gardner and James H. Schantz. (Board member Michael Santanasto recused himself. Mr. Noble, through counsel, acknowledged on the record an understanding of the impact of having a 4-member Board and waived any potential objection.) 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: Numerous members of the public appeared at the hearing. Some spoke in favor and others against the project, although none requested party status.

B. Notice

Notice of the hearing was given by public advertisement, posting of the Property and regular mail to neighboring property owners pursuant to the applicable provisions of the Pennsylvania Municipalities Planning Code,¹ the Zoning Ordinance of the City of Bethlehem² and the rules of the Board.³

II. Applicable Law

The Board considered the case under the following statutory authority, as well as under applicable reported decisions of the appellate courts in Pennsylvania:

1. *The Codified Zoning Ordinance of the City of Bethlehem*, 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) 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.

III. Nature of Relief Sought

Applicant sought the following relief:

- (a) a dimensional variance from §1322.03(kk)(7)(i) to maintain a 45-foot front yard setback where 60 feet is required;
- (b) a dimensional variance from §1322.03(kk)(7)(ii) to maintain a 30-foot rear yard setback where 70 feet is required;
- (c) a dimensional variance from §1322.03(kk)(4) to have a 330-foot building length where a maximum of 180 feet is allowed;
- (d) a dimensional variance from §1306.01(a)(3) to have 2,736 SF of lot area per unit dwelling where 4,000 SF/dwelling unit is required;
- (e) a special exception under §1323.07 to change a nonconforming use or (alternatively) a use variance from §1304.01(b)(2) to maintain an office use on the Property when such use is not permitted in a residential district; and
- (f) a dimensional variance from §1319.02(m) to place more than 50% of the required parking in a front yard.

IV. Evidence Received by the Board

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

Applicant's Exhibits:

- Exhibit A-1: Application for Appeal
- Exhibit A-2: Deed for 202 Wyandotte Street
- Exhibit A-3: Deed for 267 Cherokee Street
- Exhibit A-4: Agreement of Sale for 267 Cherokee Street

- Exhibit A-5: Owner's Authorization
- Exhibit A-6: Letter from Sayre Mansion dated March 16, 2016
- Exhibit A-7: City of Bethlehem Review Letter dated March 3, 2016
- Exhibit A-8: Site Plan
- Exhibit A-9: Project Details Booklet
- Exhibit A-10: Renderings

V. Findings of Fact

1. The land which is the subject of this appeal consists of contiguous two (2) parcels located at 202 Wyandotte Street, in the Northampton County portion of the City of Bethlehem and 267 Cherokee Street, also located in the Northampton County portion of the City (collectively, the "Property").
2. The Property contains approximately 4 acres and is located in the RG Medium Density Residential Zoning District.
3. Applicant, John Noble, is a principal of NIP Wilbur, LLC ("NIP"), and the proposed developer of the project.
4. NIP intends to contribute to the redevelopment of South Bethlehem.
5. The Property contains the Wilbur Mansion, which is nearly intact, and the Masonic Lodge, which has suffered significant water damage.
6. NIP views the Property as a "gateway" to South Bethlehem.
7. Noble's goal is to save the Wilbur Mansion, which is already being used for an office, and to add office space with ADA accessibility.
8. When combined with the apartment project and joining of the Masonic Lodge, the project is designed to promote walkability in South Bethlehem and add to the green space.

9. The additional office space contains 4,200/SF.
10. The impervious coverage on the Property will be reduced by approximately 5,000/SF.
11. The space is a one-story addition, except for a stairwell to the second floor of the Wilbur Mansion.
12. The offices will be for professionals and are not intended to include medical offices.
13. There will be two identical apartment buildings with a 60' separation, but there will also be a lobby connection between the buildings.
14. Apartments are a permitted use in the RG Zoning District.
15. Underground parking is provided for the apartments, in an attempt to not affect street parking in the area.
16. The Wilbur Mansion has existed since 1865.
17. NIP's goal is to retain 100% of the existing Wilbur Mansion appearance, while also providing banquet hall services.
18. D'Huy Engineering prepared a report identifying that the Masonic Lodge has excessive black mold and structural damage.
19. The repairs would involve over \$2M. As such, it would be more feasible to raze the Masonic Lodge.
20. The Masonic Lodge is the primary nonconforming component of the current use.
21. Its removal reduces the overall nonconformity by approximately 15,000 SF.
22. The apartment's construction is podium style, which is unique to this area.
23. The units will have 1 or 2 bedrooms with a 50/50 split between the two designs.

24. The aesthetics are not set in stone, but will generally be of a design shown in the renderings submitted by Applicant (Exhibit A-10).
25. Two parking spaces per unit are being provided.
26. The Property will have a continuous lawn down to the Sayre Mansion.
27. Applicant's engineer testified regarding several applicable dimensional items from which Applicant is requesting relief.
28. The required front yard set back on Brighton Street is 60'.
29. The Property is unique, as it contains three front yards and two will comply with the required setback.
30. A setback of 45' is proposed along Brighton Street.
31. The 45' setback is greater than the setbacks of other buildings in the area.
32. A rear yard set back of 70' is required while 30' is proposed.
33. The Property contains an irregular rear boundary line that causes the need for this relief.
34. The maximum length for a building is 180'. Here, each building is 135'.
35. However, for architectural and convenience reasons, a connection of the two buildings is proposed by creating a common lobby, which will enhance the Property.
36. A 4,000-SF dwelling unit is required, while a 2,736-SF dwelling unit is proposed.
37. This area per dwelling unit is similar to, or greater than, the comparable measurement for 70 of 78 apartment units in the vicinity.
38. For example, 425 Brighton Street contains 32 units with 656-SF unit.
39. The front yard is proposed to be used for parking.

40. There will be an alternative streetscape provided with shrubbery that buffers the parking.

41. The layout of the Property, based on topography, access and the existing buildings, make the front yard the better location for the parking.

42. This building is also atypical in that underground parking is also to be provided. The underground parking will be 100' from the road.

43. Applicant proposes seven (7) parking spaces more than required.

44. The office addition still reduces the non-conformity by 15,000 SF.

45. The use will now be the same as the other non-conforming use that already exists.

46. The proposal helps preserve the Wilbur Mansion and is suitable for the area.

47. Applicant proposes to comply with all recommendations in the Planning Commission letter, including providing a traffic study.

48. The proposal does not change the character of the area.

49. The projected trips for a banquet hall are 1098 with 111 trips at the PM peak. The proposed use generates 546 trips and 68 trips at its PM peak.

50. Applicant projects completing the Land Development process by the end of 2016, with construction beginning in 2017 and lasting about 1 year.

VI. Conclusions/Analysis of Law

The grant of a variance is pursuant to §1302.96 of the Zoning Ordinance.

1302.96 Variance

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

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

1325.06 Powers and Duties – Variances

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

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

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

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

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

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

(4) There must be proof of unnecessary hardship: If the hardship is general, that is, shared by neighboring property, relief can be properly

obtained only by legislative action or by court review of an attack on the validity of the Ordinance.

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

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

Applicant demonstrated to the Board that the land is subject to unique physical circumstances that are peculiar to the Property. Located on the Property is a former mansion that has been renovated for office use, and a banquet facility that is reuseable only at prohibitive expense. The Property is located within a residential area, and both the office and banquet uses are not permitted in the RG District. The Board did consider important that (a) the continued operation for the existing use is infeasible, and (b) the location of the Property along Route 378 is both adjacent to Sayre Mansion and at the gateway to South Bethlehem, making a purely residential use of this Property unlikely. The Masonic Lodge building is outdated, in disrepair, and would be expensive to convert to solely a permitted use. The proposed combination of uses is better suited for the Property than the existing combination of nonconforming uses or an attempt to convert the Property to all permitted uses. While the Board appreciated that reconstruction for permitted use in compliance with the dimensional criteria might be physically possible, it did not believe this fact disqualified it from considering the existing condition of the Property as a unique physical circumstance. Further, the Property is uniquely-shaped and constrained by its location along three public streets.

Accepting that the Property is subject to unique circumstances, Applicant must also show that those unique circumstances create a hardship affecting its reasonable use of the Property. The Board accepted that the physical characteristics of the Property and the limitations imposed by the existing structures create a hardship to use of the Property in strict compliance with the Zoning Ordinance. The inability to reasonably reuse the Property for one of the permitted uses in the district is a hardship. The Board found credible Applicant's evidence that reuse of the Masonic Lodge building for a permitted use is impractical. By allowing the razing of the Masonic Lodge building and the addition to the office use, the Zoning Hearing Board would grant relief to allow a reasonable reuse of the Property. The uses on the Property as proposed reduce the nonconforming uses by 15,000 SF, which is an important consideration.

In addition, Applicant must demonstrate that the relief afforded is the minimum. The Board believes that the evidence demonstrates that the relief is a reasonable deviation. It is not uncommon to allow dimensional relief for the reuse of properties. While the addition to the office use and the dimensional relief for the apartments (a permitted use) appear substantial, facts exist which support this relief. If rejuvenated, the project should generate less traffic than the existing uses. Further, the use will be primarily residential. Finally, the Board believes that razing the Masonic Lodge building to eliminate a vacant building that was a nonconforming use and reduce the overall nonconformity, is the least modification needed for relief.

The hardship was not created by Applicant. The hardship for the property is based upon the outdated Masonic Lodge building, the existing Wilbur Mansion and their placement in the area and the physical circumstances of the land. The fact remains that this Property is underutilized and has been for many years.

Finally, Applicant must demonstrate that the use will not be injurious to the neighborhood or a detriment to the public welfare. In this regard, the Zoning Hearing Board analyzed the proposed use in the context of the existing neighborhood.

The neighborhood contains numerous buildings used for multi-family purposes. The apartments are consistent with this use and permitted by right. The dimensional relief for the per dwelling unit square footage of the apartments allows for the density to be consistent with the multi-family use in the area. Further, the other dimensional relief allows the developer to achieve an attractive design despite the physical constraints. The office use is expanded but the addition is to a use already operated on the Property. Further, because the Masonic Lodge building is removed and its nonconforming use is no longer present, the nonconformity decreases. Finally, the use as proposed would be considered a change of a nonconforming use, which is allowed by special exception, essentially meaning it is permitted.

In summary, the Board concluded that the variances are reasonable deviations. Further, the law appears to allow the Board to reach the conclusion that the evidence met the variance standard.⁴ Based on all of the above and the particular facts of this proposal, the Board believes Applicant met its burden of proof.

⁴ Other than the fact that this change involves the razing of the Masonic Lodge (and thus may not strictly qualify as a permitted change of one nonconforming use to another), the requirements to do so are otherwise met. Applicant demonstrated that the change from the existing use to the proposed use falls within the category of a change of a nonconforming use. Also, Applicant's testimony did not note any failure to meet the dimensional requirements other than those for which relief is requested. Otherwise, special exception approval for a change of one nonconforming use to another is subject to the following:

"... (b) The applicant shall show that a non-conforming use cannot reasonably be changed to a permitted use.

(c) The applicant shall show that the proposed change will be less objectionable in external effects than the existing non-conforming use with respect to:

- (1) Traffic generation and congestion including truck, passenger car and pedestrian traffic.
- (2) Noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, and vibration.
- (3) Storage and waste disposal.
- (4) Appearance...."

The project described by Applicant and in the Application met the burden to demonstrate compliance with the applicable specific standards.

VII. Conclusions of Law

1. The project as proposed requires a variance relief.
2. Applicant presented sufficient evidence to demonstrate that the Property is subject to unique circumstances.
3. Applicant presented sufficient evidence to demonstrate that the unique circumstances create a hardship to use of the Property in conformance with the Zoning Ordinance.
4. Applicant presented sufficient evidence to demonstrate that use of the Property as proposed is a reasonable accommodation under the Zoning Ordinance and the minimum relief necessary to allow reasonable use of the Property.
5. Applicant presented evidence that it did not create the hardship.
6. Applicant presented sufficient evidence to demonstrate that the use would not be injurious to the public.
7. Applicant presented sufficient evidence to show that the change to the uses decreases the nonconformity of the uses.


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VIII. Decision of the Board

Based upon the foregoing, by a 4-0 vote, the Zoning Hearing Board granted the following relief to use the Property for an office and apartments, namely, (a) a dimensional variance from §1322.03(kk)(7)(i) to have a 45-foot front yard setback along Brighton Street where 80' is required; (b) a dimensional variance from §1322.03(kk)(7)(ii) to have a rear yard setback of 30' where 70' is required; (c) a dimensional variance from §1322.03(kk)(4) to permit a 330' building length where a maximum of 180' is allowed; (d) a dimensional variance from §1306.07(a)(3) to have 2,736 SF of lot area per unit dwelling where 4,000 SF/ dwelling unit is required; (e) a special exception under §1323.07 to change a nonconforming use to add to the office use on the Property; and (f) a dimensional variance from §1319.02(m) to place more than 50% of the required parking in a front yard,

SUBJECT TO the following conditions:

1. Applicant shall comply with all applicable requirements in the letter dated March 3, 2016.
2. All parking will be located off street.
3. Parking of a minimum of 1 space per apartment unit will be inadequate.
4. The apartment building will have an architectural design similar to the design presented in Applicant's renderings (Exhibit A-10).
5. The Wilbur Mansion will be kept and historically preserved as discussed.


ERICH J. SCHOCK
Solicitor

/s/ Suzanne Borzak*
SUZANNE BORZAK,
Zoning Officer

THE BOARD:

/s/ Constantine Loupos*
CONSTANTINE LOUPOS
Chairman

/s/ William Fitzpatrick*
WILLIAM FITZPATRICK
Member

/s/ Linda Gardner*
LINDA SHAY GARDNER
Member

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

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

DATE(S) OF HEARINGS: March 23, 2016
DATE OF WRITTEN DECISION: May 6, 2016

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

Northampton County

Appeal & Application of John Noble/NIP Wilbur, LLC Applicant))))	Date: May 6, 2016 Re: 202 Wyandotte Street and 267 Cherokee Street
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Certificate of Service

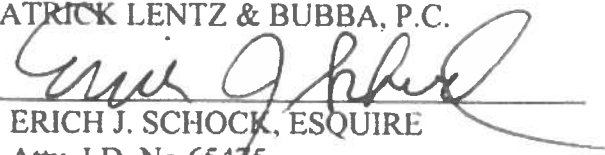
I, Erich J. Schock, Solicitor to the Board, do hereby certify that I sent a true and correct copy of the forgoing Decision to the Applicant listed below and its counsel at the addresses set forth, by regular first class U.S. Mail on the date set forth below.

John Noble
NIP Wilbur, LLC
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Bethlehem, PA 18015
Applicant

David M. Backenstoe, Esquire
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Hellertown, PA 18055
Attorneys for Applicant

FITZPATRICK LENTZ & BUBBA, P.C.

BY: _____



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Of the City of Bethlehem

Date: May 6, 2016