



SITE ADDRESS: 815 Pennsylvania Avenue

Office Use Only:

DATE SUBMITTED: MAY 28, 2019  
JULY 24, 2019

HEARING DATE: AUGUST 14, 2019

PLACARD: ISSUED JULY 31, 2019

FEE: \$500.00

ZONING CLASSIFICATION: RS

LOT SIZE: 3.016 ACRES

AMENDED


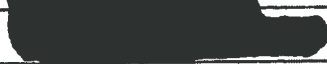
**APPLICATION FOR APPEAL TO THE CITY OF BETHLEHEM ZONING HEARING BOARD,**  
**10 E. CHURCH STREET, BETHLEHEM, PA 18018**

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 4<sup>th</sup> Wednesday of the month. The hearing will be held the 4<sup>th</sup> 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**

<b>APPLICANT:</b>	
Name	Pennsylvania Avenue Development LLC
Address	1177 Sixth Street Whitehall, PA 18052
Phone:	
Email:	
<b>OWNER</b> (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	Applicant is the owner of the property.
Address	
Phone:	
Email:	
<b>ATTORNEY (if applicable):</b>	
Name	John A. VanLuvanee, Esquire
Address	PO Box 1389
	Doylestown, PA 18901
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. Plan attached.
2. Attach photographs.
3. If the real estate is presently under Agreement of Sale, attach a copy of the Agreement. N/A
4. If the real estate is presently leased, attached a copy of the present lease. N/A
5. If this real estate has been the object of a prior zoning hearing, attach a copy of the Decision. Attached

**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	25' (side yard)	11.5'* or 24.64'**	13.5'* or 0.36' (4.32")*

If the Applicant seeks a use or other variance, please state the **specific section(s)** of the Zoning Ordinance applicable and describe the variance sought.

\*If Paul Avenue is a public street.

\*\*If Paul Avenue has been vacated and is not a public street.

1322.03(pp)(3) and 1322.03(pp)(8). A variance is requested to permit a 54-bed addition to the existing assisted living facility.

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

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

**NARRATIVE**

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

**CERTIFICATION**

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

I also certify that I understand that any and all federal, state or local rules and regulations, licenses and approvals shall be obtained if the appeal is granted.

Pennsylvania Avenue Development, LLC

By [Signature]  
Applicant's Signature

7-16-2019  
Date

Pennsylvania Avenue Development, LLC

By [Signature]  
Property owner's Signature

7-16-2019  
Date

\_\_\_\_\_  
Received by

\_\_\_\_\_  
Date

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

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

**Lehigh County**

<b>Appeal &amp; Application of Pennsylvania Venture Capital, Inc., Applicant</b>	) ) )	<b>Date: February 27, 2016  Re: 815 Pennsylvania Avenue</b>
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**DECISION**

**I. Preliminary Matters**

A public hearing was held on **September 23, 2015, October 21, 2015, December 2, 2015, December 16, 2015 and January 14, 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:** James F. Preston, Esquire and John Van Luvanee, Esquire, represented Pennsylvania Venture Capital, Inc. ("Applicant"). Applicant appeared and had standing by authorization of Pennsylvania Avenue Development, LLC (“Owner”), the fee simple owner of the property known as 815 Pennsylvania Avenue, Bethlehem, Lehigh County, Pennsylvania (the “Property”).

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. Attorney Preston acknowledged on the record his understanding of the impact of 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:** Wayne Achey and Roland Kushner, through

Lawrence B. Fox, Esquire, appeared as protestants and parties to the appeal. Other protestants and interested persons appeared at the public hearing and spoke in regard to the appeal.

**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,<sup>1</sup> the Zoning Ordinance of the City of Bethlehem<sup>2</sup> and the rules of the Board.<sup>3</sup>

**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").

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<sup>1</sup> 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."

<sup>2</sup> 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.

<sup>3</sup> 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.

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 use variance from §1304.01(b)(1) to use the property for a personal care home;
- (b) a dimensional variance from §1322.03(o) to have 75 beds in a personal care home located in a residential district; and
- (c) an interpretation of (or variance from) §1322.03(o) to have recreation areas as proposed.

**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: Resume of Bryan Ritter
- Exhibit A-2: Rosemont School aerial
- Exhibit A-3: Four-part aerial
- Exhibit A-4: Plan with 4 pictures of building elevations
- Exhibit A-5: Existing Features Plan
- Exhibit A-6: Development Plan of Proposed Use
- Exhibit A-7: Letter of Authorization
- Exhibit A-8: Resume of Eugene Berg Jr., AIA
- Exhibit A-9: Floor plan
- Exhibit A-10: 10/29 Letter from J. VanLuvancee

- Exhibit A-11: Deed for Property
- Exhibit A-12: Resume of Peter Terry
- Exhibit A-13: Traffic Report
- Exhibit A-14: Resume of Robert Allen Furst
- Exhibit A-15: BASD Capital Improvements Plan excerpt
- Exhibit A-16: BASD Memo to Dr. Roy
- Exhibit A-17: Zoning Map excerpt
- Exhibit Ruhf-1: J. Ruhf letter 12/2/15 to ZHB
- Exhibit O-1: Opening Statement of Objectors
- Exhibit O-2: City of Bethlehem letter to D. Harte 8/6/15
- Exhibit O-3: City of Bethlehem to ZHB 8/17/15
- Exhibit O-4: Prior Subdivision plan

**V. Findings of Fact**

1. The Property which is the subject of this appeal is located at 815 Pennsylvania Avenue in the Lehigh County portion of the City of Bethlehem (the "Property").
2. The property contains 3.0166 acres and is improved with an elementary school building, parking areas and a playground.
3. The fee simple owner of the Property is Pennsylvania Avenue Development LLC. Pennsylvania Venture Capital, Inc. is a related for-profit company proposed to be the tenant of the Property.
4. David J. Harte, who is the Vice President of both entities appeared at the hearing and authorized Applicant to pursue the application.
5. Suzanne Borzak, the City of Bethlehem Zoning Officer, testified that Applicant

submitted an application for a zoning permit.

6. The Zoning Officer rejected the application based on zoning deficiencies, which are accurately set forth in the Planning Commission report, which is Exhibit O-2.

7. The Property is located in the RS Zoning District.

8. A personal care home is not a permitted use in the RS Zoning District.

9. The existing building on the Property is a 34,000-SF former elementary school with parking areas and access off both Pennsylvania Avenue and Kenmore Avenue. In addition, a driveway off Paul Avenue provides access to the Property and an adjoining residential property.

10. Applicant proposes to restripe the existing parking lot. Canopies will be added to the north side of the building at the existing entrances. No additions to the building (other than the canopies) are proposed.

11. Entry will be off Pennsylvania Avenue to the front of the building for deliveries and drop offs. For the rear parking area, entry off of Kenmore Avenue into the parking lot (and then through to Cambridge Avenue) is proposed for visitors.

12. The design of the driveways meets Zoning Ordinance requirements. Also, the parking lots are designed to comply with the Zoning Ordinance requirements. The Zoning Ordinance requires one (1) space for every six (6) patient beds and one (1) space for every two (2) employees on a maximum shift. The available parking exceeds the number required by this formula.

13. There is no minimum lot area requirement for a non-residential use in the RS Zoning District. The minimum lot width is 75' and is met -- 420' in width exists.

14. The required setbacks in the RS District are 25' for the front, 35' for the rear and



25' for a side. The building is set back in excess of 35' on all sides.

15. The existing building coverage is 14.32%, while up to 25% is allowed.

16. There are no steep slopes on the Property.

17. The Zoning Ordinance sets forth specific standards in §1322.03(oo) to be met by a personal care home.

18. The building containing the personal care home is no further than 30' from any side or rear lot line of a residential district.

19. No buffer yard requirement in the Zoning Ordinance applies to the layout for the proposed facility, because no new parking areas are being proposed.

20. The maximum density of a personal care home cannot exceed 25 beds per acre. The personal care home will contain 75 beds, while the Property is in excess of 3 acres. Therefore, the density requirement is met. (However, the maximum number of beds for a personal care home in a residential district is 30, so a variance to that limit is requested.)

21. Twenty percent of the site must be suitable for outdoor passive recreation use. The areas of the Property that are not improved are available for such use.

22. The personal care home must be located on an arterial or collector road. Pennsylvania Avenue is a collector road.

23. Rosemont School has been located in the neighborhood since the 1920's. The exterior of the building will be unaltered.

24. A personal care home is permitted in three of the Zoning Ordinance's residential districts, including the RG District. Land zoned RG abuts the Property.

25. An assisted living facility is of a residential character.

26. Eugene Berg, Jr. is an architect for Gouck Architects, which provides

architectural services for schools and personal care homes.

27. Berg provided services for the conversion of the Whitehall Manor building from a manufacturing facility to a personal care home of 148 rooms with 222 beds. Berg also provided services for the conversion of a school building to a 127-room personal care home known as Saucon Valley Manor.

28. The building, which is of noncombustible construction, can be adapted to a personal care home.

29. The building will be renovated to comply with applicable building codes. Renovations include installing an elevator for handicap accessibility, upgrading toilets and dividing the classrooms to create the rooms for the residents. Sprinkler systems, automatic fire alarm systems, upgraded fire exit signs and fire extinguishers will be installed.

30. There will be a total of 38 bedrooms, all being double occupancy except for one.

31. Each bedroom will be 750 SF to 800 SF. Pennsylvania law requires a single room to contain 80 SF and multiple-resident rooms to have 60 SF per resident (or 100 SF for residents with mobility issues). All of the rooms far exceed the 100 SF per patient minimum.

32. Individual toilets will be added to each of the bedrooms.

33. On the ground floor the existing gym will be a common living space. The school kitchen will continue to serve as the food prep area.

34. A storage room will remain the same.

35. The main office space will be converted into a nurse's station and the kindergarten area will become administrative offices.

36. The laundry will be created in a boiler room and other storage room in the basement.

37. Classrooms on the first and second floor will be converted into bedrooms.
38. The sheer size of the building dictates that the minimum number of rooms exceeds 30 for the building to be fully utilized. A new building on the Property could contain permitted use.
39. Namita Kapoor-Atiyeh is the Co-Administrator and President of Whitehall Manor and the administrator and President of Saucon Valley Manor.
40. Kapoor-Atiyeh oversees the operation of both facilities with roughly 400 residents and 300 employees.
41. Kapoor-Atiyeh has worked at Whitehall Manor for 17 years and Saucon Valley Manor for 15 years.
42. Kapoor-Atiyeh has a Bachelor of Arts in hospital administration with a minor in business.
43. Kapoor-Atiyeh is licensed by the Pennsylvania Department of Human Services to be the administrator of a personal care home.
44. Whitehall Manor provides independent personal care, secure dementia and advanced physical care. The maximum number of residents is 215.
45. Saucon Valley Manor is licensed for 250 residents and provides the same services as Whitehall Manor. Both facilities also have in-house rehab.
46. The proposed facility will be operated similarly to those two existing facilities.
47. The facility's shifts will be 7 AM to 3 PM, 3 PM to 11 PM and 11 PM to 7 AM.
48. The largest number of employees at any one time is 45 on the day shift.
49. The staff on site from 11 PM to 7 AM is 5.
50. At Whitehall Manor only three (3) of the 200 residents have vehicles and are

permitted to drive.

51. Likewise, at Saucon Valley Manor only three (3) residents have vehicles and are permitted to drive.

52. The average age of the residents is 88.

53. Visiting hours are 8 AM to 8 PM, with the busiest time being from 9 AM to 4 PM.

54. There are no visitor hours from 11 PM to 7 AM.

55. The busiest times for the facility likely will coincide with the busiest times in neighborhood activity.

56. During her time at both facilities, only one resident has made an unauthorized departure from the secured dementia unit.

57. Trash collection likely will be twice per week (Monday and Wednesday), and picked up from dumpsters. Medical waste is stored in a secured and locked area until pickup.

58. There are approximately five (5) ambulance visits per week at each of the facilities. Ambulances do not use their sirens, since it may be upsetting to residents and neighbors.

59. The reason that all of the rooms are not proposed for singles is because the typical patient demographic includes residents with financial constraints that make a single unit unaffordable.

60. The staff on the peak shift consists of housekeeping, maintenance, dietary, activities department, transportation, medical aides, personal care aides, certified nursing assistants and RNs.

61. Doctors visit regularly but are not on staff.

62. On a non-holiday, there are only a few visitors per day.

63. Dumpsters are required by DPW to remain closed.

64. Soiled laundry is placed in bags, taken to the laundry and disinfected.

65. Nothing injurious is located outside the building, because a hazard to a child likely could be a hazard to an elderly resident.

66. Louis Caciolo is a resident of Whitehall Manor and testified that Whitehall Manor is his home and treated by the residents as such. He was not aware of any neighbors in the area that had complaints.

67. The length of stay varies. The longest resident at Whitehall Manor is 17 years, while the shortest respite stay at a facility is thirty (30) days.

68. Peter Terry is a traffic engineer for Benchmark Engineering who performed a traffic analysis.

69. Terry estimated the traffic generation from the site using the standard ITE Trip Generation Manual and studied two existing facilities (Whitehall Manor and Saucon Valley Manor) as a comparison.

70. Terry performed a traffic count at Pennsylvania Avenue and Kenmore Avenue to identify traffic volumes and performed an operational analysis of the intersection. Terry also looked at the general configuration of the roadways surrounding the site.

71. There are currently three driveways from the site onto Pennsylvania Avenue. The full access driveway at Kenmore Avenue will be modified to enter only.

72. A driveway will be constructed onto Cambridge Avenue near the center of the existing parking lot.

73. Terry performed a 12-hour traffic count from 6 AM to 6 PM at Pennsylvania

Avenue and Kenmore Avenue and identified three peak traffic periods - - AM, midday and PM.

74. Terry also performed an operational analysis using the 2010 Highway Capacity Manual.

75. The existing driveway operates at Levels of Service A or B, which means there is little delay. However, there currently is no traffic generated from the Property.

76. Terry also had staff using video equipment perform counts at Whitehall Manor and Saucon Manor.

77. Both sites have multiple driveways, so the data from all drives is combined for each site to generate a total volume of vehicles entering and exiting each facility.

78. Further, since Whitehall Manor has additional administrative staff and Saucon Manor has medical offices and residential units, volumes from those uses is isolated to eliminate its impact on the total volume for the sites.

79. ITE's estimated trip generation for an elementary school of 275 students is 520.

80. Terry estimated the trip generation for the proposed personal care home using both ITE and the data from the other sites.

81. ITE's number is lower than the estimate from the counts, so he accepted the higher number.

82. The estimated trip generation from the proposed facility is less than an elementary school. For instance, the PM peak trips for the elementary school are 41 and for the proposed personal care home are 22.

83. The majority of traffic will use the exit drives to reach Pennsylvania Avenue.

84. The traffic patterns for the personal care home will differ from that for an elementary school. For example, there will be more traffic between the peaks than at an

elementary school. However the traffic between peaks is less than traffic at the peaks.

85. The additional traffic will not significantly affect the operation of the adjoining streets.

86. The proposed facility is similar to Whitehall Manor, in that it is located in a residential neighborhood.

87. While staff performed the counts at the other facilities, Terry checked the validity by counting trips at randomly selecting time periods on the videos and comparing the counts to expert's national standards. Further, Terry isolated shift changes to ensure the counts seemed consistent with what should occur at a shift change.

88. Terry chose for his counts other facilities operated by Appellant's affiliates, because information on staff rosters and schedules, delivery and pick up times and scheduled activities is available. Also, it's presumed the facilities are most likely to be operated similarly.

89. Other permitted uses may also not have an adverse traffic impact.

90. The evening and overnight hours, when there typically would have been no school traffic, will have much less traffic at the proposed facility than peak hours.

91. Robert Furst, an architect, worked on projects at the Rosemont School and inspected the school on several occasions.

92. To reoccupy the building as an elementary school, the building would need to be expanded and renovated to meet current building codes and Department of Education guidelines.

93. D'Huy Engineering prepared a Capital Improvement Plan, which is available on the School District's website and was relied upon by Furst in preparing his testimony.

94. The outline of the necessary work noted by D'Huy is consistent with Furst's beliefs regarding the building's deficiencies.

95. D'Huy's recommendation was to sell the Rosemont School because of its being impractical for the School District to use it for School District purposes.

96. Rosemont School was unneeded, because there are 230 empty seats in other School District elementary schools.

97. Elementary schools are now targeted for 600 students, while Rosemont's capacity is 275.

98. To renovate the building for any school requires asbestos abatement, change for ADA compliance, upgrades to the bathrooms, a new elevator, additional insulation, updated exit stairs, replacement of the HVAC, upgrades to plumbing, replacement of lighting, installation of tech infrastructure, installation of fire protection and sprinkler system.

99. The cost of the work is roughly \$5M.

100. The building is not practical for use as a single family home due to its size and design.

101. The building is not practical for use as a church based on its size and the configuration of the building.

102. For the Property to be used for a public park or pool, the building would need to be torn down.

103. Similar renovations will be needed to make the building an assisted living facility. It is likely that the cost will be similar.

104. The building could be torn down at some cost, and schools have been torn down before.

105. Seventy-five (75) beds make the project financially viable and allows the building to be fully utilized, even with the greatly oversized resident rooms.



106. Applicant paid \$850,000 for the Property, does not have an estimate to tear the building down and will spend \$5 to \$6M to renovate it.

107. Wayne Achey testified that the surrounding neighborhood consists of homes dating back to the 1920's. It is a close-knit community with proximity to a park and the walking neighborhood.

108. Achey is concerned with any increased traffic, since nearby Avalon Street is the entrance for the park.

109. Achey does not find the school to be an objectionable use, but believes the proposed use is objectionable.

110. Achey would have no objection to other permitted uses such as a church or a governmental center.

111. Achey believes the difference with this use is that it operates twenty-four hours per day and would have ambulance traffic. Further, he is unsure about what differences it may create with respect to lighting, deliveries and visitor activity.

112. Achey believes it would alter the character of the area. He is familiar with the Pinebrook College property, where the school building was demolished and the housing constructed in its stead.

113. Even if the traffic is less than the school, he believes the traffic would be greater when children are not in school.

114. Achey has never visited Saucon Valley Manor or Whitehall Manor.

115. Mary Sheplock of the 26 Pennsylvania Avenue lives right across from the front of the school. Her concerns are with the lighting and signage and the fact that is operated 365 days a year and open 24 hours.

116. Sheplock has no objection to the school use but could not identify what aspects of the property use would create a detrimental effect on her property.

117. Sheplock was a nursing home administrator in Bethlehem for 12 years. She acknowledged that nursing homes require staffing requirements different than assisted living facilities.

118. Carrie Ruhf of 2017 Kenmore Avenue wanted to ensure that Kenmore Avenue would be an entrance only, that there would be buffering to reduce the view of the parking area and there be adequate on-site parking for all the employees.

**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. The Property contains an outdated school

building that will be renovated to a personal care home. The Property is located within a residential area, and while a personal care home is not permitted in the RS District, the Board did consider important that (a) the contiguous RG Zoning District, which is also a residential zone, allows a personal care home, and (b) the proposed use is residential and institutional in character and not commercial or industrial. The building itself is ill-suited to modern school use and, while expensive to convert to any permitted use, the proposed use is better suited for adaptation of the building than a permitted use. While the Board appreciated that conversion for either permitted uses or a personal care home, both entail significant expense, it did not believe this fact disqualified it from considering the buildings existence as a unique physical circumstance.

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 structure create a hardship to use of the Property for a permitted use. 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 while physically feasible, reuse of the building for a permitted use is impractical. By allowing the conversion to a personal care home, the Zoning Hearing Board would grant relief to allow a reasonable reuse of the building. The structure on the Property is 34,000 SF, which is more than sufficient to accommodate a 75-bed personal care home.

In addition, Applicant must demonstrate that the relief afforded is the minimum. While in the context of a use variance that prong may be irrelevant, i.e., which use that is not permitted in the RS Zoning District represents the least modification from the Ordinance, Applicant believes the evidence demonstrates that this use is a reasonable deviation. It is not uncommon to allow

residential reuse of former school properties. While the personal care home involves a component not present in all residential uses (living assistance), there are facts which support this use. The proposed use will generate less traffic than the school use, and Applicant testified that the traffic likely will be less than created by many potential uses for the property. Further, the use will not involve significant truck traffic that could adversely impact the area. Finally, the Board does not agree that razing the building to create a vacant tract for development is necessarily the least modification. As discussed below, the Board found Applicant's legal argument on this point to be persuasive.

In addition, the hardship was not created by Applicant. The hardship for the property is based upon the outdated building and its placement in the area, which created this "island" of institutional use in a residential neighborhood. The fact remains that this Property is vacant and has been underused or vacant for many years.

Finally, an Applicant must demonstrate that the use will not be injurious to the neighborhood or a detriment to the public welfare, which is a significant consideration when granting a use variance. In this regard, the Zoning Hearing Board analyzed the specific requirements set forth in §1322.03(oo) of the Zoning Ordinance for a personal care home.

This provision comprises eight (8) criteria (normally applicable to an applicant seeking special exception approval for a personal care home) that pertain only to a personal care home.

(oo) Personal Care Home, Nursing Homes and Assisted Living Facilities.

- (1) No building shall be erected nearer than 30 feet from any side or rear lot line within a residential district.
- (2) Buffer yards as required by Article 1318.23 shall be provided.
- (3) The maximum permitted density shall not exceed 25 beds per acre.
- (4) The facility shall have obtained any and all licenses and permits required by the Federal, State, or Local government which may be relevant to the facility.

- (5) A minimum of 20 percent of the site shall be suitable and developed for outdoor passive recreation uses. The passive recreation areas may include, but shall not be limited to sitting areas and pedestrian walks.
- (6) In a residential zone, Personal Care Homes or Assisted Living Facilities shall be permitted only on arterial or collector roads.
- (7) The location, design, and operating characteristics of the use shall be compatible with and not adversely affect adjacent properties and the surrounding area. The proposed development shall be harmonious with surrounding buildings with respect to scale, architectural design and building placement.
- (8) In a residential zoning district, Personal Care Homes and Assisted Living Facilities are limited to a maximum of 30 beds.

Applicant meets criteria one through seven. The Board granted a variance from criteria eight.

As mentioned above, the Board believes the body of case law cited by Applicant when applied to the facts here supports the relief. In Marshall v. City of Philadelphia, 97 A.3d 323 (Pa. 2014), the Supreme Court reaffirmed the law regarding the standard an applicant must meet to justify a use variance. An applicant proposed to redevelop a vacant school building into senior housing. (While the school use was nonconforming, the case was decided on a variance standard.) The zoning board granted the variance, citing that the building was vacant and in need of repair, and variances would not adversely impact the health, safety and welfare of the surrounding community. The proposed use of the property would be less burdensome on the community than its prior use as a school or other uses permitted as of right. The Commonwealth Court reversed by concluding that the applicant failed to demonstrate that the entire building was "functionally obsolete" for any use other than a use not permitted by the zoning ordinance. The Supreme Court reversed and rejected this "functionally obsolete" standard to be improper.

Unnecessary hardship in the context of a use variance, can be established by evidence that: (1) the property's physical features preclude its use for a permitted purpose; (2) it would be prohibitively expensive to make the property conform to a permitted use; or (3) the property has

no value for any permitted purpose. The Court emphasized that economic factors are relevant in assessing a variance application but are not determinative. An applicant is not required to show the property is valueless without a variance or that the property cannot be used for any permitted purpose. The Court further held that it was not necessary for the applicant to present direct evidence as to the value of the property as zoned, though economic hardship will not alone justify a grant of a variance, nor will evidence alone that the zoned use is less financially rewarding than the proposed use or that the property would increase in value if a variance were granted.

The Court reiterated that a zoning board does not have to require a variance applicant to reconstruct a building to a conforming use regardless of the financial burden. In Marshall the Court did add that this is particularly true where the desired change is from one nonconforming use to another more desirable nonconforming use, a fact not present here. Accordingly, there is a distinction between the facts in Marshall and the facts in this case in that the Supreme Court analyzed the request as a use variance and not as a case involving a change in nonconforming use. Nonetheless, the Board still believes the observations in Marshall apply. While in Marshall the school was conforming, it was still an institutional (not residential) use. Here, the proposed use is institutional but more residential in nature than the permitted school use.

In Zoning Hearing Board of Indiana Township v. Weitzel, 465 A.2d 105 (Pa. Commw. 1983) the applicant purchased a three-story school building in an area zoned for suburban residential use. He applied for a use variance to permit him to renovate the building and use it as a business and professional office complex. The zoning hearing board denied the application, finding that without a variance the applicant still could convert the building into a single-family dwelling or raze the structure and subdivide the lot.

The Commonwealth Court disagreed, finding that more than mere economic hardship existed where a property could not be converted into a permitted use without demolition and extensive reconstruction.

This case indicates that an applicant need not prove that all permissible alternatives are unfeasible before a use variance can be granted. The Court held that the existence of these permissible, yet extremely costly, uses did not prohibit the board from granting a use variance. A distinction here that the Board considered is that Applicant admitted that the proposed use itself is an expensive undertaking. Further, while the Board would conclude that the cost of demolition very likely could be less than the renovation of the building for a permitted use on the proposed use, that ignores that there also would then be expense to develop a use after the property is vacant. The Board believes a reasonable conclusion under these circumstances is that the limited permitted uses that a reasonable person might view as appropriate (or theoretically appropriate) for a 34,000-SF building (a school, a municipal building, a church) are such a limited pool of users that the uses do not prevent their still concluding that the variance is a reasonable deviation.

In the unreported case of Oakbrook Fire Co. No. 14 Relief Ass'n v. City of Reading Zoning Hearing Bd. (Pa. Cmwlth., Jan. 8, 2014), the applicant wanted to convert a former firehouse into a microbrewery and brew pub. The firehouse was located in an R-2 residential area that permitted "gardens, crop farming, and forestry; one family detached dwelling; one family semi-detached dwelling; one family attached dwelling; and public parks and non-motorized recreational trails." The Court affirmed the board's grant of a variance. It reasoned that the firehouse had never been used as a residence. Applicant's testimony that conversion to any



use, including the permitted use, or the proposed use, would require extensive renovation or demolition of the existing structure supported the grant of a use variance.

In Nowicki v. Zoning Hearing Bd. of Borough of Monaca, 91 A.3d 287 (Pa. Cmwlth. 2014) the applicants received a use variance for a single-family dwelling where the only permitted use of the property was for public and noncommercial recreation. The Commonwealth Court found that this permitted use did not constitute reasonable use of the property. It found that the applicant's only option if it did not receive a variance was to turn the land over to a public entity. The Board found this law applicable in some extent to the instant situation. Certain of the uses that may be physically achievable on this Property or for this building are only those conducted by a public entity.

In summary, the Board concluded that while the building could be razed or theoretically used for a permitted use, practicality dictated that the use variance was a reasonable deviation. Further, Pennsylvania law appears to allow the Board to reach the conclusion that the evidence met the variance standard without needing to reach the level of proving every permitted use to be absolutely impossible. Finally, based upon the size of the building, relief to have 75 units which far exceed state minimum areas is justified for a reasonable use of the entirety of the outdated building.

Based on all of the above and the particular facts of this proposal, the Board believed Applicant met its burden of proof.

## **VII. Conclusions of Law**

1. A personal care home is not permitted on the Property, and a use variance is required.
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 for a use permitted in the RS Residential Zoning District.

4. Applicant presented sufficient evidence to demonstrate that use of the Property for a personal care home 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 and that the use would otherwise comply with all specific requirements in the Zoning Ordinance pertaining to personal care home.

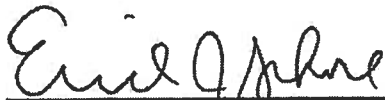
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**VIII. Decision of the Board**

Based upon the foregoing, by a 3-1 vote, the Zoning Hearing Board granted the following relief to use the Property for a personal care home, namely, (a) a use variance from §1304.01(b)(1) to use the property for a personal care home; (b) a dimensional variance from §1322.03(o) to have 75 beds in a personal care home located in a residential district; and (c) an interpretation of §1322.03(o) that passive recreation areas be maintained in the open areas of the Property.

**SUBJECT TO the following conditions:**

- A. that there shall at all times be adequate parking on site for all staff and visitors;
- B. that Applicant shall comply with all requested conditions in #2 of the memo from Tracy Samuelson to the Zoning Hearing Board dated August 17, 2015;
- C. that all staffing, including overnight staffing, be consistent in number and shift with the testimony of Applicant as set forth in the Findings of Fact;
- D. that Applicant comply with all other City codes;
- E. that Kenmore Avenue be restricted to only an entry to the Property;
- F. that buffer yards be maintained in accordance with all applicable ordinances around the parking areas; and
- G. that the dumpster be in a location so as to be shielded from adjacent residential areas.



ERICH J. SCHOCK, Solicitor

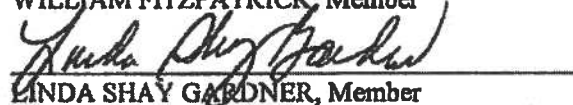
/s/ Suzanne Borzak

SUZANNE BORZAK, Zoning Officer

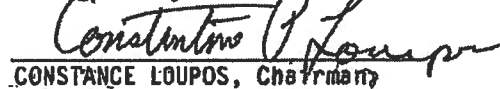
**Voting to Grant Relief:**

  
JAMES SCHANTZ, Member

  
WILLIAM FITZPATRICK, Member

  
LINDA SHAY GARDNER, Member

**Voting to Deny Relief:**

  
CONSTANCE LOUPOS, Chairman

**Recused:**

RECUSED  
MICHAEL SANTANASTO, Member

**DATE(S) OF HEARINGS: September 23, 2015, October 21, 2015, December 2, 2015,  
December 16, 2015 and January 14, 2016**

**DATE OF WRITTEN DECISION: February 27, 2016**

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

**Lehigh County**

Appeal & Application of )  
Pennsylvania Venture Capital, Inc., )  
Applicant )

Re: 815 Pennsylvania Avenue

**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.

Pennsylvania Venture Capital, Inc.  
1177 6<sup>th</sup> Street  
Whitehall, PA 18052  
**Applicant**

James F. Preston, Esquire  
38 W. Market Street  
Bethlehem, PA 18018  
and

John A. VanLuvanee, Esquire  
Eastburn and Gray PC  
60 E. Court Street, PO Box 1389  
Doylestown, PA 18901-0137  
**Attorneys for Applicant**

Lawrence B. Fox, Esquire  
915 W. Broad Street  
Bethlehem, PA 18018  
**Attorney for Protestants**

FITZPATRICK LENTZ & BUBBA, P.C.

BY: \_\_\_\_\_

ERICH J. SCHOCK, ESQUIRE

Atty. I.D. No.65475

4001 Schoolhouse Lane, P.O. Box 219

Center Valley, PA 18034-0219

Attorney for Zoning Hearing Board

Of the City of Bethlehem

Date: February 28, 2016

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

**Lehigh County**

<b>Appeal &amp; Application of</b>	)	<b>Date: February 27, 2016</b>
<b>Pennsylvania Venture Capital, Inc.,</b>	)	
<b>Applicant</b>	)	<b>Re: 815 Pennsylvania Avenue</b>

**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**

**February 28, 2016 (Date of Mailing)**



# CITY OF BETHLEHEM

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

BUREAU OF PLANNING AND ZONING

Phone: 610-865-7088

Fax: 610-865-7330

TDD: 610-865-7086

July 12, 2019

Zoning Hearing Board  
City of Bethlehem  
10 E. Church Street  
Bethlehem, PA 18018

Re: (19-001 Site Plan Review) – 19060001 – 815 Pennsylvania Avenue – Bethlehem Manor Expansion –  
SITE PLAN REVIEW – Ward 13, Zoned RS, plan dated May 23, 2019.

Dear Zoning Hearing Board Members:

At its July 11, 2019 meeting, the Planning Commission reviewed the above referenced site plan and made the following comments:

1. All comments in the attached July 5, 2019 review letter shall be reviewed by the Zoning Hearing Board at its August 2019 hearing.
2. The following additional comments approved by the Planning Commission shall be considered at the Zoning Hearing Board hearing when reviewing the subject plan:
  - a. Consideration shall be given to operational and circulation issues with the expansion.

Please consider these comments at your August 2019 hearing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darlene Heller".

Darlene L. Heller, AICP  
Director of Planning and Zoning

Cc: A. Atiyeh, PA Venture Capital, Inc.  
M. Dorner  
Z. Sayegh  
C. Peiffer  
T. Wells

Enclosure



# CITY OF BETHLEHEM

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

BUREAU OF PLANNING AND ZONING

Phone: 610-865-7088

Fax: 610-865-7330

TDD: 610-865-7086

July 5, 2019

Pennsylvania Venture Capital Inc.  
Attn: S. Marra  
1177 Sixth St.  
Whitehall, PA 18052

RE: (19-001 Site Plan Review) – 19060001 – 815 Pennsylvania Avenue – Bethlehem Manor Expansion – Ward 13, Zoned RS, plan dated May 23, 2019.

Dear Ms. Marra:

The above-referenced plan has been reviewed by the appropriate City offices. We offer the following comments:

## **ENGINEERING**

### **Stormwater**

1. A Stormwater Management Report shall be submitted to LVPC and a copy of their approval letter shall be submitted. Since the addition is greater than 10,000 SF, LVPC approval is required.

### **Sanitary**

1. Show sanitary connection to the proposed building.
2. Previously used as a school, it was determined it was determined that the flow for the manor was smaller than the use of the school. Please provide the sanitary flow calculations for the former school so we can calculate the proposed addition.

### **Miscellaneous Engineering**

1. Please show legend on the plan.
2. Please provide information regarding the hatched area along Paul Ave.

### **Public Works – Traffic**

1. All additional parking needed for the expansion shall be provided on the lot, and not in the neighborhoods.

### **Public Works – Urban Forestry**

1. Please submit a landscape plan.

### **Public Works – Water**

1. Need to see plumbing/utility plan for further review.

## **RECYCLING**

1. Plans submitted do not provide any details on how property owner will maintain trash and recycling services. Property owner will need to provide specific details on how they will handle the trash and recycling services with their plans.
2. Property owner should show the size of the trash enclosure noted on the plans.

## ZONING

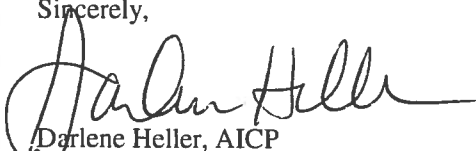
1. The use variance for the conversion of the existing school to an Assisted Living Facility was approved by the Zoning Hearing Board at its January 14, 2015 meeting. Expansion of the use requires appeal to the ZHB. The applicant is scheduled for the August 14, 2019 ZHB meeting.
2. Remove Paul Avenue tag from the vacated section adjacent to the proposed addition and label the section as vacated.
3. 1306.01.a.2 – Indicate existing and proposed maximum impervious coverage.
4. 1318.26.a – Provide a dumpster screen specification or describe the screen as a plan note.
5. 1318.28.a – Indicate trees to be removed and replaced. It is difficult to determine since no existing features plan is provided.
6. 1319.02.j.1 – Show existing street trees on a landscape plan and indicate existing street trees and proposed street trees.
7. 1319.02.o – Provide bicycle parking.
8. 1319.03.a.1 and 4 – Indicate parking stall dimensions (parallel and 90 degree), aisle widths, and directional arrows.
9. 1319.03.c.2 – Indicate 2 way ingress/egress width at curblin along Cambridge Avenue.
10. 1319.03.h – Provide fence, wall of planting between parking spaces and residential lots. Type of fence between proposed addition and the property to the north is illegible on the plan. Fence/landscaping along Cambridge is not shown on the plan.

## GENERAL

1. Provide an accurate square footage amount of all floors of the proposed two plus story addition including the ground floor. The site data only provides the first floor square footage for building coverage. Add overall existing and proposed square footage to the site data. A recreation fee will be determined based upon that new square footage.
2. Provide more detailed site data explanations and dimensions for the three variations of hashmarked items on the plan.
3. Indicate the significance of the crosshatched section of the vacated section of Paul Avenue and Putnam Street.
4. A purpose statement should be added to the plan.
5. All property lines shall be dimensioned, especially in the area of the vacated streets and alleys. It is difficult to determine the exact boundary of the property.

This item will be placed on the July 11, 2019 Planning Commission agenda for discussion. Please bring colored elevations and colored site plans to the meeting on boards.

Sincerely,



Darlene Heller, AICP

Director of Planning and Zoning

Cc: M. Dornier  
Z. Sayegh  
L. Smith  
T. Wells  
R. Taylor  
C. Peiffer  
Pennsylvania Avenue Dev. LLC.