

BEFORE THE ZONING HEARING BOARD OF THE CITY OF ALLENTOWN
ALLENTOWN, PENNSYLVANIA

IN RE: APPEAL OF RCI VILLAGE PROPERTIES

Appeal #A-2023-00496

DECISION OF THE ZONING HEARING BOARD

FINDINGS OF FACT

1. This is the Appeal of RCI Village Properties for a variance to convert a place of worship to twelve (12) dwelling units, community center, office and temporary shelter and to maintain ten (10) parking spaces. The applicant was represented by legal counsel as were some of the objectors.

2. The first public hearing was held on Monday, February 5, 2024. Applicant was present with counsel. A number of objectors were present for this hearing.

3. A second hearing was held on March 11, 2024 and third hearing held on April 8, 2024.

4. The subject property is located in the Medium High Density Residential (R-MH) District and Traditional Neighborhood Development Overlay (TNDO) District.

5. The subject property is located at 1539-1551 Chew Street. RCI Village Properties currently owns the property. The property was donated to RCI Village Properties.

6. RCI Village Properties has their main office located at 1335 West Linden Street, which contains their administrative offices, a community center space and thirteen (13) apartments on site.

7. Applicant is proposing twelve (12) apartments within the church structure. Applicant submitted, as Applicant's Exhibit A-1, which is incorporated herein, a three-page exhibit

with various photographs of the site. It contains several aerial photographs of the area of 16th and Chew Street, which shows the church and an adjoining parking lot, the exhibit shows Chew Street looking at the property from the alleyway next to the property. The photographs are rather large and have attempted to indicate the surrounding neighborhoods as well as the property in question.

8. This property was gifted to this organization by the prior church owner.

9. The church had previously “informally” serviced the community by providing space for many social and neighborhood activities and assistance to individuals within the area.

10. Applicant’s Exhibit is a diagram that demonstrates the immediate area where the facility is going to be located and several other general areas within the City of Allentown.

11. Applicant submitted a number of drawings, from its architect, Spillman Farmer Architects, showing the configuration of the interior of the “church” building after RCI Village Properties has made various renovations inside the structure to create a number of floors, and having a community hall and three respite beds on the first floor plus some other facilities as demonstrated on the plan, a second floor that would have five (5) living quarters or apartments along with a laundry/storage area so that each apartment would have an area to store items, and a layout of the third floor which would have seven (7) additional apartments to provide affordable housing to individuals or families that may have formerly been homeless.

12. The interior renovations would also add the installation of a fourth floor, which would house a number of offices some open space and restroom facilities. A copy of these diagrams are retained in the City’s file and incorporated herein by reference.

13. Applicant also submitted several photographs of the interior of the church as it is today, with those photographs being two (2) in number, attached hereto, and incorporated herein by reference. The applicant also submitted a rendering showing the various levels that would be

installed within the current church structure, including those in the lower level or basement, and then the three (3) levels that would be installed in the area where the church proper exists today. A copy of said diagram is attached hereto and incorporated herein by reference.

14. The offices would just be for members of the RCI Village Properties organization. They have eight (8) people on staff. Those offices are to provide service for its operations.

15. RCI Village Properties representative also testified that the community center would be used so that residents of the various apartments and other members of the public that would attend activities or functions at the facility, would be able to interact and build social relationships, because RCI believes that social relationships are missing from a lot of people that are “homeless” and/or underserved in the housing areas.

16. Applicant indicates that they have another facility in close proximity to this particular property. That facility does not generate much vehicular traffic as most of the people using the apartments and community center do not have vehicles.

17. Applicant indicated that its current facility has twenty (20) parking spaces and they are not all used at any time. People that are residing at the center usually take public transportation or walk to work or other appointments.

18. The aerial photographs show the proposed additional location and the existing facility on Linden Street.

19. The property itself has twenty-one (21) off-street parking spaces. The Zoning Ordinance requires forty-five (45) spaces for this use. The prior church use, pursuant to the Zoning Ordinance, would have required 76 spaces.

20. Applicant also testified that “half of the staff” lives within walking distance of this location.

21. The director testified that only about sixty (60%) percent of their residents would have vehicles.

22. The director indicated that the twelve (12) apartment units are important because they need as much housing as possible for people with what she described as “housing instability”.

23. The twelve (12) units will address housing needs for low income residents of the City of Allentown. The majority of the units are one-bedroom units.

24. Applicant submitted, as Applicant’s Exhibit A-6, which is retained in the City’s file, a prior Zoning Decision for a facility in the Allentown City limits for a similar type of use.

25. Applicant submitted a copy of the site plan that showed the location of the building and the locations of the parking lots along with trees and shrubbery that was being either supplemented or added to the property.

26. Applicant’s director testified that its purpose of the conversion is to provide a number of services including health, psychological, and various counseling to the people occupying their facilities.

27. All of the residents would pay rent.

28. Only adults are allowed to rent the units.

29. There are three (3) single occupancy rooms for respite care.

30. Christian Didra, the architect from Spillman Farmer testified with regard to the plans submitted. Mr. Didra has been licensed as an architect in the Commonwealth since 2017, and prepared both Exhibits 2 and 3 which are the site plan and floor plan. He also took the photographs of the interior of the church structure.

31. The lot itself contains 15,600 square feet which is approximately 0.36 acres.

32. The property is located at the southeast corner of 16th Street and Chew Street.

33. Applicant will provide a lighting plan that meets all code requirements. The lighting plan will result in the installation of two (2) new lights at the entrance to the building. The applicant may also add additional lighting in the parking lot area for security and to make it easier for people to traverse this area.

34. Applicant will modify the entrance where the bell tower is located to make it ADA compliant. Applicant will also be adding a dumpster location on the site.

35. Most of the work for the construction of the apartments, offices, community center and the like will occur inside the building, so the building external structure will not change.

36. There will be two (2) new levels in the nave which is the principal area of the church building.

37. The basement level of the church will be areas where the community center and storage areas are proposed to be located.

38. The first floor of the church will contain some apartments and the respite areas.

39. The second and third floors will be constructed within the existing church structure.

40. Ultimately, once all the construction is completed there will be four stories within the existing church structure.

41. All of the apartments meet the square footage requirements in the Zoning Ordinance for the various types of residential use.

42. Concerning the parking calculations, it would appear that, based upon the various uses that the Applicant wishes to make of this structure, its use would require forty-five (45) spaces and twenty-one (21) spaces are provided on the lot.

43. Applicant indicated that under the Zoning Ordinance, the prior use, the church, would have required seventy-six (76) parking spaces so they are actually reducing the parking

space nonconformity of this property. However, the interior expansion of the property would require additional parking not covered by the nonconformity.

44. Applicant also indicated that the parking spaces on the east side of the lot would be 9 feet wide x 15.33 feet long and the spaces on the west side of the lot would be 8.1 feet wide x 18 feet long. Based upon those space sizes, Applicant indicated it is not possible to install any additional parking spaces on the lot.

45. Since these are existing spaces, Applicant wants to use the spaces “as is” and believes the spaces are nonconforming as to their size.

46. The ordinance also requires that the spaces be setback 10 feet from the building. It appears that these spaces are roughly 8 feet 9.5 inches to the buttresses of the building. Applicant indicates they are actually 10 feet from the actual building but these buttresses protrude somewhat from the exterior walls and that causes the difference in the setback.

47. Applicant is installing various landscaping, as depicted on the attached plan, but it is not changing the size of the existing parking lot.

48. Certain portions of the lot would constitute “steep slopes” under the Zoning Ordinance definitions. Applicant is disturbing some of these areas, with approximately 89 square feet of disturbance more than the allowed disturbance provided for in the ordinance. Applicant indicates that it is installing a pad in the rear for the trash receptacle. Applicant is also putting screening around the pad which would be approximately be 7 feet tall. After various calculations, it appears that the Applicant is exceeding the maximum height of the screenings by 2.6 feet. That is, the requirements would be 10.6 feet for the retaining/screening wall for the pad that is for the dumpster location.

49. Concerning the “respite rooms”, there would be controlled access to the same. These rooms address a need for people that are recovering from various medical procedures and are either homeless or do not have access to suitable recovery facilities.

50. Seth Campbell appeared and testified. He is employed by Valley Health Street Medicine as a Physician Assistant. He has been the director of Street Medicine since 2022. He has had a relationship with RCI Village Properties and they have partnered for the past eight (8) years with regard to providing medical care for individuals that would be using RCI’s facilities. He comes to the facility approximately two (2) times per month. The purpose of Street Medicine is to go to see people where they are, because these people, being “housing challenged”, do not have a home where a doctor or physician assistant could make an appointment to come and see them.

51. The testimony reflected that the treatment and the respite rooms are not a shelter, and not a treatment facility, but simply rooms where people that need certain services can obtain them and also be off the street while they are healing or recovering from an out-patient treatment conducted at an off-site medical facility.

52. Mr. Campbell also testified that there is some respite care presently offered in hotel rooms in Allentown.

53. Under the definition of respite care, the definition encompasses somebody that has a medical illness from which they can recover. The respite rooms in this facility must be occupied by someone that has medical issues requiring respite care.

54. These respite care rooms are proposed by the applicant as accessory to the facility.

55. Applicant submitted, as Applicant’s Exhibit “A-1” for the hearing on March 11, 2024, a series of photographs that show various individuals using the “community room”. It also

demonstrates security cameras that took pictures of Michael Schelp and Alan Younkin when they made their second visit to the facility. The first visit had lasted two minutes and the second visit lasted approximately 20 minutes. This exhibit is retained in the City's file.

56. Applicants submitted, as Applicant's Exhibit "A-2" the security plan for the facility provided by the architect. A copy of said Exhibit is retained in the City's file and incorporated herein by reference.

57. The "Community Center" use as proposed by the Applicant, would require special exception approval in accordance with the terms of the Allentown Zoning Ordinance.

58. The objectors provided testimony from Alan Jennings who has been involved with the Community Action Committee and the 6th Street Shelter, a homeless shelter. Mr. Jennings indicated that he had been involved with many housing incentives over the course of his career. He stated that the application for this particular use did not identify the use as a "homeless shelter", was concerned about its impact on the neighborhood and could cause a decline in property values.

59. Mr. Jennings did admit that he had done no research regarding home ownership around this facility and had done no specific research to determine the impact of the existing facility on property values in the area. He based his testimony on the first location that this entity had at Linden Street and his familiarity with that location at its use.

60. Dale Lingston appeared. Ms. Lingston resides at 1532 West Chew Street and had resided there since 2008. She testified that her property was located "4 doors down" from the subject property. Ms. Lingston testified that she had heard the RCI representative's testimony from the first hearing and/or had listened to it on the City's website. She stated that she had worked in human services for over 40 years and knew what would occur in these types of facilities. Her concern is that this facility would cause an impact on the community with an increase in crime.

She also had concerns about the impact this would have on parking and related that the church had rented out some of their spaces which had alleviated some of the parking problems in the neighborhood and she was now concerned that this use would be using the spaces for itself and would not be continuing to rent the parking spaces to the neighbors.

61. Ms. Lingston also testified that the traffic on Chew Street would be at an unsafe speed.

62. Vincent Decebo of 1527 Chew Street indicated that he lived at his property for the past 7 years. He was 7 doors down from the church. He had concerns about the parking issues, indicating that this use would require 45 spaces and they only had 10 off-street spaces. He also testified that approximately 20 cars have been turned out onto the street that had previously been able to park in the parking lot for the church.

63. Mr. Decebo also testified that he took a number of photographs which were marked as Objectors Exhibits 2-22. These showed the Southside of Chew Street and the parking issues in the area. Exhibit 16, for instance, showed a car that had been booted. He testified that these photographs were a fair and accurate depiction of the area surrounding the subject property

64. He testified that some of the photographs showed parking issues with regard to a snowy day, and how that would also impact parking in the area.

65. Alan Younkin appeared and testified. He lived approximately a half block from the back door and a block from the front door of this facility. He was concerned about the parking issues, crime increasing, and decrease in property values and littering. He testified that West Park was a "well preserved area" and his concern was this type of use would have detrimental impacts on the area.

66. He also testified about a number of records that he had obtained which were marked as Exhibits 31, 32 and 33 which were right-to-know requests and the responses from the City EMS and Police. He then produced Exhibits 45 and 46 which showed records of emergency visits and ambulance visits to the other location operated by RCI.

67. He expressed concerns that if this was a larger facility it would have even more calls than what were depicted in the records he submitted. He felt that because this was a larger structure and had more people occupying the same, there would be more calls. He and a number of the neighbors express concerns about the "community center". They knew that the community center did serve meals and they were concerned about people being attracted to this location.

68. Exhibit 40 was presented which was the City of Bethlehem's strategic plan.

69. Objectors also submitted Exhibit 47 which was a Wall Street Journal article about a city's closing shelters for homeless people and the problems that were associated therewith.

70. He also testified that this shelter was within 1,000 feet of William Allen High School and about one half mile from his home.

71. Margarita Housler appeared. She owns the 1615 W. Turner Street property, which was a rental. She had owned 1615 W. Turner Street before her present residential property. She was objecting to the use, not the apartments but the temporary shelter and the community center. She also expressed various concerns about the parking. She took exception to Franklin Park being described as the same as West Park. The objectors presented Exhibit 38 which was demographic information that they obtained from various census reports. She testified that BG4 tract 20 is West Park and BG3 tract 20 is Franklin Park.

72. Mrs. Housler lived at 1522 ½ Chew Street and had resided there for 40 years with her husband. She indicated that her husband often picks up litter in the neighborhood.

73. With regard to the community center she had concerns about people being outside smoking, and how the operator was going to supervise the people within the facility.

74. With regard to the medical respite rooms she also had concerns about who would supervise these individuals and who would monitor their activities.

75. Michael Schelp of 1547 W. Turner Street appeared and testified. He described a visit he had made to the Linden Street property and he noted that there were a lot of people at the site. Many people were there for free food and that they were homeless people. His concern was that the homeless population would grow and have a negative impact on his neighborhood and cause damage to the surrounding properties.

76. He also expressed concerns about the medical respite rooms and who would supervise those individuals and what would happen if they “broke the rules”.

77. It was noted that there were also 39 people present that were in support of the proposed use of this property.

78. Luis Martinez of 1308 W. Turner Street appeared and expressed his support.

79. Sue Carpenter of 1513 W. Turner Street indicated that she was a volunteer at this facility and she supported the community room and the other activities at this facility. She said it was a good facility and it provided a great deal of assistance to a number of people.

80. Elish Moyer of 1413 Turner Avenue also stated that she worked for RCI. She had positive views of RCI and thought that the community center would be good for people in the neighborhood.

81. There were 8 other supporters of RCI present and provided testimony of support.

82. RCI also called the Director as a rebuttal witness. She presented Exhibit “A-2” from March 11, 2024 which was a 3 page document. This document addressed various security

issues, the extensive coverage of cameras around the facility. She also expressed that the facility had policies and procedures in place and would monitor this area and make sure that the facility remained safe and people obeyed the rules.

83. She indicated that with regard to the community center it would be open to the public. She believes that about 50% of the people that came to the community center would be homeless people looking for help and the other 50% might be people that still resided in their homes.

84. The community center's purpose was so that people could interact with other people. She felt that it was important that individuals within society had interactions with other individuals within society and this community center area would provide that for all types of people.

85. She indicated that this facility would not be a "shelter" as that is defined under the Zoning Ordinance of the City of Allentown.

86. The community center activity would occur at just this location and not their other facility nearby.

DISCUSSION

A. VARIANCE

Number of Variances Requested – Dimensional:

A Zoning Ordinance is a legislative act. It speaks in general terms, reflecting an exercise of legislative power rather than an attempt to formulate ad hoc regulations for each property and municipality. Indeed, if the legislative body acts in too specific a fashion, its action may be invalid as "spot zoning".

In Zoning, the problem of applying general legislation to a specific situation is particularly acute. Lot lines seldom are square or coincide exactly with the Zoning boundaries. Topographic conditions render Zoning restrictions too difficult or unworkable. The Zoning requirement may prevent any use of a property if strictly applied. Variances are designed to meet the problem of adjusting the general terms of the ordinance to fit the land which is regulated. In effect, the variance applicant says "what I seek is not permitted under the ordinance, but the general regulations should not be applied to my property because to do so would work an 'unnecessary hardship' on me without any compensating benefit to the public interest".

The modification of the Zoning Ordinance by the issuance of a variance is itself an exercise of a form of legislative power. H.A. Steen Ind., Inc. vs. Cavanaugh, 430 Pa. 10, 17, 241 A.2d 771, 775 (1968). While the ordinance reflects legislation in its most common form - the creation of rules of general application - a variance is a special form of legislation, directed at the specific property involved. The Courts have long recognized that unlimited use of the variance power would swallow the entire legislative power, and therefore, generally have refused to permit its use as a substitute for rezoning. See: O'Neill vs. Zoning Board of Adjustment, 434 Pa. 331, 254 A.2d 1219 (1969).

Variances cannot be used to achieve general legislative solutions to zoning problems. The general rule is that the issuance of a variance only authorizes the acts specifically requested. For example, a variance to store medical supplies does not have the effect of rezoning the property so that the owner may institute any use of the same zoning classification. It permits storage of medical supplies and nothing more.

Cases set forth many standards, which govern an application for a variance. It appears that an applicant for a variance must meet with the following criteria:

1. The Zoning Ordinance causes hardship, which is compelling in light of the variance, which he seeks.
2. The hardship, which he suffers, is not of the type, which necessarily flows from the zoning regulation, involved.
3. The variance, which he seeks, is within the providence of the Zoning Board rather than a matter, which should be submitted to the municipal legislative body.
4. The grant of the variance would not be injurious to the public interests.

The Municipalities Planning Code, at 53 P.S. §10910.2(a) sets forth the requirements for the granting of a variance. They are as follows:

- “(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.”

B. DE MINIMUS STANDARDS FOR VARIANCE

The first step in defining when an application can be treated as “de minimis” is to define the term. First, the applicant must show that the relief sought is very minor. Usually this involves measuring the relief against the Zoning requirements that would be varied. See Leonard vs. Zoning Hearing Board of the City of Bethlehem, 136 Pa. Commonwealth 182, 583 A.2d 11 (1990). The Board must determine whether the deviation is minor and that rigid compliance is not necessary for the protection of the public policy concerns of the Ordinance. Therefore, the rule is that even where the deviation proposes is minor, a de minimis variance should not be granted unless compliance is not necessary for the protection of the policy concerns inherent in the particular Zoning restriction involved.

Other factors that the Board should examine are:

1. Is the potential loss to the owner quite large?
2. Whether the owner, while not meeting all traditional variance requirements, proves that the zoning limitation has a unique and particularly injurious impact on his lot.
3. Whether application of the zoning limitations simply does not fulfill any of its purpose.

C. SPECIAL EXCEPTION

Section 1307.03 sets forth the criteria for special exceptions. Subsection B of that section reads as follows:

“The Board shall hear and decide requests for special exceptions in accordance with standards and criteria as found in Section 1307.10 of this Ordinance. In granting a special exception, the Board may attach such reasonable conditions and safeguards in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this Zoning Ordinance.”

Section 1307.10 sets forth “special exception procedures”. That section reads as follows:

“A. Purposes. The following standards are intended to provide the Zoning Hearing Board with a guide for the purpose of reviewing certain uses not otherwise permitted in specified districts except under restrictions of this Ordinance.

B. Procedures.

1. Application. Applications for special exception approval shall be made on forms available at the Zoning Office. If required by the Zoning Officer or elsewhere in this ordinance, four copies of a proposed site plan must accompany the application. The submission shall include the data required for site plan review under Article 1325, and other such information as may be required to enable the Zoning Officer and the Zoning Hearing Board to properly evaluate the submission.

2. Reviews. The Zoning Officer shall refer such site plan to the Planning Commission, or its designee, for its review and recommendation in accordance with the provisions of Article 1325, and shall prepare a written report on the application and its compliance with the standards of this Ordinance, and shall forward any comments of applicable City departments and agencies.

a. The Planning Commission, or its designee, should, within 45 days of receipt of the site plan and application for which the special exception is pending, submit to the Zoning Officer any comments regarding the adequacy of the site plan under the provisions of Article 1325 and its recommendations concerning the effect of the proposed use on the surrounding properties and the City's Comprehensive Plan.

3. Consideration of Commission Comments. The Zoning Hearing Board should not take action on the application until receipt of written comments from the Planning Commission or its designee, or after the 45 day period, whichever is first. In taking action on an application the Board shall consider the written comments of the Commission or its designee or any City department or agency, and the written report of the Zoning Officer, and may suggest site plan modifications and changes in the application. Changes and modifications required by the Board, as well as the original provisions of the application which have not been modified, shall serve as conditions upon the use.

A "Community Center" is defined, by the Allentown Zoning Ordinance, as follows: "A building used for recreational, social, educational and cultural activities owned and/or operated by a public or non-profit group or agency. The use may also include the non-profit preparation and

provision of meals for senior citizens. Any residential use or a treatment center shall only be permitted if they also comply with the requirements for such use.” The definition of a Community Center is found at Section 660-6 under the Definitions of the Ordinance.

The testimony presented demonstrated that people would “gather” on the porch of this use and that there were other activities the objectors observed that seemed to rise above that permitted by the definition of a Community Center.

The Board, in reviewing the testimony presented regarding the “Community Center” use and the various exhibits presented during the hearing, lead the Board to determine that the evidence showed that the “Community Center” as proposed, would be detrimental to the neighborhood. The Board determined that the use, as exhibited by the exhibits and testimony presented, went over and above what would qualify as a Community Center under the definition set forth in the Zoning Ordinance. A “Community Center” is defined in the Zoning Ordinance, as follows: “Community Center – means a building used for recreational, social, educational and cultural activities owned and/or operated by a public or nonprofit group or agency. The use may also include the nonprofit preparation and provisions of means for senior citizens. Any residential uses or a treatment center” shall only be permitted if they also comply with the requirements for such use.”

The Board determined that the proposed “Community Center” use as described in the testimony was too intense a use to comply with the requirements set forth in the ordinance. The activities on the porch, the number of visitors in and out and the testified intensity of this use did not meet the definitions requirements. The Board determined that the gathering on the porch or inside the building did not meet the specific uses delineated in the definition and beyond the scope of simple recreational or social gathering.

The Board determined that based on the existing make-up of the neighborhood, the testimony of Alan Jennings, and the proposed intensity of the Community Center use, that this particular "Community Center", as proposed, does not meet the Ordinance definition for the same and would therefore be denied. The Board also determined that the concerns of the objectors regarding the negative impacts of gatherings outside of the proposed project were valid. The Board found that the signage placed by the applicant at their existing facility (Objectors Exhibit xxx) threatening suspension of porch privileges provided direct evidence that compliance with rules was an actual issue and not mere supposition by the objectors. The Board determined that such challenges with compliance was an issue not typically associated with Community Centers and concluded that it would likely have a negative impact on the surrounding residential neighborhood.

The applicant failed to present any evidence, especially in light of the other uses they were making of the church property, that there was any legal hardship pursuant to zoning law that would warrant the granting of a variance for the Community Center use consistent with the activities testified to by the Applicant, to be appropriate for this property. The use seemed more intensive than the uses set forth in the definition people "just dropping in" was more intensive than the specific uses set forth in the definition.

With regard to the other variances being requested the Board determined that many of them were dimensional in nature. A number of them were "de minimus" in nature.

With regard to the request concerning the parking lot and the number of spaces, the distance from the structure, the stall size, the number of spaces, the lot area per dwelling unit, the parking lot aisle width, the number of street trees, exceeding the allowed disturbance of steep slopes and the maximum allowable height of the wall, the Board granted these variances.

With regard to the number of parking spaces being provided, this particular use actually would require less spaces than what the church had previously required. The church use was a pre-existing non-conforming use. The new use, because it was reducing the number of mandated parking spaces by the Zoning Ordinance, was actually reducing the non-conformity concerning the number of parking spaces being provided.

With regard to this particular parking lot, it was a pre-existing use on this property. As such this setback exists on this property. Furthermore, it appears that the location of setback encroachment actually was only in the areas where the ramparts of the building protruded from the building towards the parking lot. In the other areas, the parking lot did meet the required setbacks.

Concerning the aisle widths and parking stall sizes, again these were pre-existing conditions of the property. They had previously existed with the parking lot and, as such, would remain as pre-existing nonconformities with regard to the aisle widths and parking space stalls. To allow these spaces to remain would have no impact since they are pre-existing.

The aisle and parking space size had existed with the prior use and were not worsened by this change. The parking stall dimensions were 8 ½ feet by 18 feet required and the proposed spaces are 8.15 feet by 18 feet and 9 feet by 15.33 feet. The Board determined that these minor deficiencies were de minimus in nature. Likewise, the aisle width is 18.16 feet and 24 feet is required. Based upon the testimony concerning the intensity of the use and the prior use of the parking lot, the Zoning Hearing Board determined that these variations from the Zoning Ordinance requirement were again de minimus and would be approved.

The Applicant was not changing the property to the extent that the footprint of the building or parking lot were being changed. The configuration of the property and the parking lot, the areas

of the lot that it covered, and the configuration of the surrounding properties also indicate that the street tree shortage is also a de minimus variance. The requirement will only be for one additional street tree, and as such, the Board determined that the failure to install this tree would again be de minimus under the circumstances of this case.

Concerning the distance of the parking from the building, the requirement is 10 feet and the proposal is 9 feet. Again this condition that has existed for a long period of time.

Concerning the steep slope areas, the maximum disturbance of an area of 25% to 35 % slope is 25% and the proposal would disturb 29.8% of this area. In examining the testimony, it also appeared that the steep slope areas may not have been natural slopes but may have been manmade. This slope area being disturbed, again, appears to be de minimus in nature looking at the configuration of the property, the existence of the parking lot and structure and the fact that there are some trees in the area. As such, the Board determined that there was a hardship with regard to the pre-existing construction and paving on the property that would preclude the installation of any additional street trees and as such, the Board determined that the condition pre-existed and the hardship was not created by the Applicant.

With regard to the issue of exceeding the allowable height in stories. This was a rather unique question, because the structure itself is not being changed. The only changes are on the interior of the church structure where the "floors" are being constructed internally to provide for a more efficient use of the property. From the exterior of the property the look of the structure will remain the same, the height of the structure will remain the same, the configuration of the building will remain the same. The fact that there would be four stories within the structure does not have any external impact on the neighborhood. The Ordinance allows for the reuse of existing

structures, and actually encourages the same. This is a rather historic structure, and it is being maintained, even if the stories, internal to the structure, are being altered. As such, the Board found that this modification of the interior of the structure, having no impact on the exterior, would be appropriate under the circumstances. This was a rather unique circumstance which would warrant the granting of the variance so that the internal area in the church could be efficiently used and the four stories created. It would allow the continued use of a historic structure, with an appropriate reuse of the building.

Concerning the retaining wall, that would be 10 ½ feet in height and 8 feet is the maximum permissible height. The Board, in examining the slope of the property, and the need for this retaining wall to hold certain portions of the property in place, and also to make allowance for the location of the trash receptacles, determined that a hardship had been proven for the additional height of the retaining wall. The necessity was created by the slope of the property, the configuration of the property and the neighborhood in which it exists. The Board determined that this intrusion into the slope area, and having a slightly higher wall than allowed by the Ordinance was warranted under the circumstances of this case, the slope of the property.

In any event, in an effort to protect the public health, safety and welfare, and to ensure that the use is consist with the testimony presented at the hearing, the Zoning Hearing Board also proposed certain conditions. Those conditions are:

1. With regard to the respite rooms, they will be attached to the program and under the guidance and/or direction of the medical staff as indicated by the Applicant during the testimony presented to the Board. If this oversight cease then the respite room use must cease.

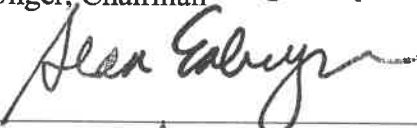
2. The apartment uses will be consistent with the testimony presented as far as their use and occupancy and the plans submitted.
3. With regard to the additional floors, they will be constructed within the existing building volume.
4. The operator of this facility shall have their principal office within the building.
5. This facility shall not become a "homeless shelter" but the use of these particular rooms shall be consistent with the testimony indicating that individuals that occupy them meet certain requirements of the organization and also do pay of rent for their occupancy.

With regard to the Community Center, the Applicant failed to meet the burden of proof for the requested use variance and did not successfully rebut the evidence presented by the objectors that the use would not create a negative impact on the desirable character of an existing residential neighborhood and the proposed Community Center use is denied. The other variances requested are granted consistent with the testimony presented and as set forth in this decision.

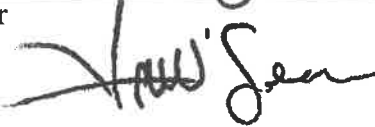
BY THE BOARD:



R. Scott Unger, Chairman



Alan Salinger



Trent Sear

Date: May 15, 2024
364115

BEFORE THE ZONING HEARING BOARD OF THE CITY OF ALLENTOWN

ALLENTOWN, PENNSYLVANIA

IN RE: APPEAL OF RCI VILLAGE PROPERTIES

Appeal #A-2023-00496

RIGHT OF APPEAL TO COURT

Any person or persons jointly or severally aggrieved by any decision of the Zoning Hearing Board, or any taxpayer, or any officer, department, board or bureau of the City may present to the Court of Common Pleas of Lehigh County a petition duly verified, setting forth that such decision is illegal in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the Court within thirty (30) days of the date shown below.

Date of Mailing: 5/15/2024



Tabatha Tingle
Secretary
Zoning Hearing Board