

**BEFORE THE ZONING HEARING BOARD
OF THE CITY OF BETHLEHEM, PENNSYLVANIA**

Appeal & Application of
UGI ENERGY SERVICES)
) Dated: August 23, 2017
)
) Re: 2470 Ringhoffer Road

**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 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 this Decision or your right to such an appeal is lost.

YOUR APPEAL PERIOD BEGINS
August 23, 2017
(DATE OF MAILING THIS DECISION)

- S
- ROUTING
- Council
 - Manager
 - Asst. Mgr.
 - Zoning
 - Finance
 - Police
 - P. Works
 - P/C
 - P & R
 - EAC
 - Engineer
 - Solicitor
 - Planner
 - Landfill
 - EMC
 - Other

Emerg. Responder Website

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**Dated: August 23, 2017
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DECISION

I. Preliminary Matters

Public hearings were held before the Zoning Hearing Board of the City of Bethlehem on May 24, 2017, June 14, 2017, and July 12, 2017, regarding Applicant's request for a Special Exception and for two (2) dimensional Variances.

A. Parties.

1. Applicant: UGI Energy Services appeared, with counsel. Lehigh Valley Industrial Park, Inc. (LVIP), the record owner of the subject property, authorized the Application, thus granting Applicant standing to proceed.

2. Zoning Hearing Board: The Board was comprised of Gus Loupos, Chairman; William Fitzpatrick; James H. Schantz and Michael Santanasto. Linda Shay Gardner did not participate in the hearings or in the Decision by the Board. Kevin J. Kelleher of Butterfield-Joachim-Schaedler-Kelleher represented the Zoning Hearing Board as its Solicitor. The Zoning Officer was Suzanne Borzak.

3. Protestant(s)/Interested Parties:

(a) Lower Saucon Township, through counsel, was granted standing by the Board to participate in the hearings.

(b) Bethlehem Commerce Center, through counsel, appeared at the hearings.

(c) A number of individuals presented direct testimony and participated in cross-examination during the hearings.

B. Notice

Notice of the hearing was given by public advertisement, posting of the Property and First Class Mail to neighboring property owners pursuant to the applicable Pennsylvania

Municipalities Planning Code,¹ the Zoning Ordinance of the City of Bethlehem² and the rules of the Board.³

C. Property

The subject property is located at 2470 Ringhoffer Road, in the Northampton County area of the City of Bethlehem. The total area of the subject property is approximately 80 acres. The portion of the subject property which is relevant to this Application consists of 52.95 acres, in the IN Zoning District of the City of Bethlehem.

¹ MPC § 10908(1) provides that “[p]ublic notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provisions, by rules of the board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.”

² Article 1325.04(a) Notice of Hearings.

(a) Upon filing with the Board for an application for a special exception, variance or other appeal under this Ordinance, the Board shall determine a place and a reasonable time, and the City shall give notice as follows:

(1) The City shall publish a public notice describing the location of the building or lot and the general nature of the matter involved in a newspaper of general circulation in the City in conformance with the Municipalities Planning Code.

(2) The City shall give written notice to the applicant and persons who have made a timely request for notice of such hearing. In addition, notice shall be provided to those persons whose properties adjoin the property in question, and to the City Planning Commission. Such notice should be sent at least 7 days prior to the hearing.

(3) The City shall provide written notice to the last known address of the primary owner of lots within 300 feet of the subject lot, unless the application only involves a dimensional variance on an owner occupied single family dwelling unit or its accessory structure. Failure of a person(s) to receive such notice shall not be grounds for an appeal, provided that a good faith effort was made to provide such notice.

³ The custom and practice in the City of Bethlehem is for the Zoning Officer to place the notice in the newspaper and to send written notice to interested parties by regular mail. The Applicant is given a fluorescent sign by the Zoning Officer at the time the Application is filed and the fee paid, and the Applicant is instructed to conspicuously post the property with the sign giving notice of the particulars of the hearing at least seven (7) days prior to the hearing.

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 June 12, 2012, as amended (hereinafter, the “Zoning Ordinance”).
2. *The Pennsylvania Municipalities Planning Code*, 53 P.S. § 10101, *et seq.*, as reenacted 1988, Dec 21, P.L. 1329, No. 170, §2 (hereinafter, the “MPC”).

III. Nature of Relief Sought

Applicant proposed to construct a liquefied natural gas shaving facility on the subject property. The facility would include a storage tank approximately 98 feet tall. The facility would also include accessory buildings, a fire water tank, and parking and other paved areas.

The proposed use, in the IN Zoning District, is subject to the Special Exception requirements of the Zoning Ordinance of the City of Bethlehem. Section 1322 of the Zoning Ordinance does not set forth any specific requirements for a bulk liquid or gas fuel storage facility, or a facility for manufacturing or bulk processing of chemicals. Section 1325.07(B) of the Zoning Ordinance contains the general requirements for a Special Exception.

Section 1306.01(b)(8) of the Zoning Ordinance imposes a maximum height limit of eighty feet (80') for a facility such as the Applicant's proposed liquefied natural gas tank. The Application sought to construct the tank to a total height of ninety-eight feet (98').

Section 1306.01(c) of the Zoning Ordinance imposes a maximum impervious surface limit of five percent (5%) in this zoning district. The Application sought a total impervious coverage of six percent (6%) on the subject property.

IV. Evidence Received by the Board

The Board heard testimony from fact witnesses and from an expert witness on behalf of the Applicant. The Board also permitted cross-examination of the Applicant's witnesses by Lower Saucon Township, and by a number of individuals.

The Board received and admitted into the record a total of twenty-four (24) Applicant's Exhibits, consisting of Deeds, site plans, photographs, and other supporting documents.

The Board heard testimony from a number of individuals who reside near the subject property, in the City of Bethlehem and in Lower Saucon Township.

The Board received and admitted into the record a total of sixteen (16) Exhibits from Lower Saucon Township, consisting of plans, regulations, studies and photographs. Exhibit LST-10, covenants, was the subject of an objection when it was offered.

The Board received and admitted into the record Exhibit BBC-1, which was a Deed offered by Bethlehem Commerce Center.

V. **Findings of Fact**

1. The property which is the subject of this Appeal is located at 2470 Ringhoffer Road, in the Northampton County portion of the City of Bethlehem.
2. The property, in the City of Bethlehem, contains approximately 52.95 acres, and is located in the IN Zoning District.
3. The property is currently vacant and not developed.
4. The Application proposes to construct a liquefied natural gas shaving facility on the property.
5. The prominent element of the proposed use is a storage tank, approximately ninety-eight feet (98') in height and seventy-seven feet (77') in diameter.
6. The proposed tank is designed to hold two million (2,000,000) gallons of liquefied natural gas, at minus 260 degrees Fahrenheit.
7. The proposed tank will be located in a low topographical area on the subject property.
8. Only the top portion of the proposed tank would be visible from surrounding properties or roadways.
9. The proposed tank would be constructed using a triple wall design, consisting of two (2) steel tanks and a concrete enclosure.
10. The proposed use, in addition to the tank, would include accessory buildings, a gas impoundment area, a truck delivery area, a fire water tank, and parking area.

11. The total height of the proposed tank, including a domed top, would be ninety-eight feet (98’).

12. The total impervious covered area on the subject property would be six percent (6%) of the total area of the property.

VI. Discussion

A. Special Exception

Applicant seeks a Special Exception under Section 1325.07(B) of the Zoning Ordinance, to permit the proposed use, namely a liquefied natural gas storage and processing facility.

Special Exceptions may be granted by the Zoning Hearing Board, under Section 1325.07 of the Zoning Ordinance.

1325.07 Powers and Duties – Special Exceptions

- (a) The Zoning Hearing Board shall have the power to approve special exceptions for any uses for which this Ordinance requires the obtaining of such exceptions and for no other use or purpose.
- (b) General Requirements and Standards Applicable to all Special Exceptions. The Board shall grant a special exception only if it finds adequate evidence that any proposed use submitted for a special exception will meet all of the following general requirements, as well as any specific requirements and standards listed for the proposed use. The Board shall, among other things, require that any proposed use and location be:
 - (1) In accordance with the City of Bethlehem Comprehensive Plan and consistent with the spirit, purposes, and intent of this Ordinance.

- (2) In the best interest of Bethlehem, the convenience of the community, the public welfare, and be a substantial improvement to property in the immediate vicinity.
 - (3) Suitable for the property in question, and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.
 - (4) In conformance with all applicable requirements of this Ordinance.
 - (5) The proposed use shall not substantially change the character of any surrounding residential neighborhood, after considering any proposed conditions upon approval such as limits upon hours of operation.
 - (6) Suitable in terms of effects on street, traffic and safety with adequate sidewalks and vehicular access arrangements to protect streets from undue congestion and hazard.
 - (7) The proposed use shall not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.
 - (8) The proposed use shall be suitable for the site, considering the disturbance of steep slopes, mature woodland, wetlands, floodplains, springs and other important natural features.
- (c) The Zoning Hearing Board may impose such conditions, in addition to those required in the Ordinance, as are necessary to insure that the general purpose and intent of this Ordinance is complied with and that the use of the property adjacent to the area included in the proposed change or modification is adequately safeguarded, which conditions may relate to, but are not limited to, harmonious design of buildings, aesthetics, planting and its maintenance as a sight or sound screen, hours of operation, lighting, allied activities, ventilation, noise, sanitation, safety, smoke and fume control, and the minimizing of noxious, offensive or hazardous elements.

- (d) Persons With Disabilities. After the Zoning Officer receives a complete written application, the Zoning Hearing Board shall grant a special exception allowing modifications to specific requirements of this Ordinance that the applicant proves to the satisfaction of the Zoning Hearing Board are required under applicable Federal law to provide a “reasonable accommodation” to serve persons who the applicant proves have “disabilities”, as defined in and protected by such laws.
- (1) Such reasonable accommodations shall be requested in accordance with the U. S. Fair Housing Act Amendments and/or the Americans With Disabilities Act, as amended.
 - (2) If the applicant is requesting a reasonable accommodation under the United States Fair Housing Amendments Act of 1988 or the Americans With Disabilities Act, the applicant shall identify the disability which is protected by such statutes, the extent of the modification of the provisions of this Ordinance necessary for a reasonable accommodation, and the manner by which the reasonable accommodation requested may be removed when such person(s) with a protected disability no longer will be present on the property.
 - (3) Any modification approved under this Section may be limited to the time period during which the persons with disabilities occupy or utilize the premises.

In the present case, the Board found that the Applicant demonstrated satisfactory compliance with the General Requirements for a Special Exception under Section 1325.07(B)(1) through (8). There are no Specific Requirements in Section 1322 of the Zoning Ordinance for a bulk liquid or gas fuel storage facility, or a facility for the manufacturing or bulk processing of chemicals.

Specifically, the Board found that the proposed use will be in the best interests of the City of Bethlehem. It is suitable for the subject property, and conforms with the applicable provisions

of the Zoning Ordinance. The proposed use will not substantially change the character of the surrounding area, and it will provide adequate infrastructure support. The proposed use will not create a significant hazard, and it would be compatible with surrounding natural features.

B. Variances

Applicant also seeks two (2) dimensional Variances. The first is for the total height of the proposed tank (80 feet permitted; 98 feet proposed). The second is for greater impervious coverage (5% permitted; 6% proposed).

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 a written appeal from a determination by the Zoning Officer, the Zoning Hearing Board shall have the power to approve a Variance to one or more specific provisions of this Ordinance for a specific property.

(b) The power to authorize a variance from the terms of this Ordinance shall only be used where authorized under the Pennsylvania Municipalities Planning Code or in diminimus situations. As of the adoption date of this Ordinance, the Municipalities Planning Code provided that all of the following finds must be made, where relevant:

(1) 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 this Ordinance in the neighborhood or district in which the property is located;

(2) 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 a Variance is therefore necessary to enable the reasonable use of the property;

(3) Such unnecessary hardship has not been created by the appellant;

(4) 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; and

(5) 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.

There is a multitude of decisions of the various courts in the Commonwealth dealing with the grant of a variance. It is a general principle of Pennsylvania law that variances should be granted only sparingly and only under exceptional circumstances. *Botula v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 450 A.2d 637 (Pa. Commw. Ct. 1982); *Schaefer v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 435 A.2d 289 (Pa. Commw. Ct. 1981). A variance applicant must show that unnecessary hardship will result if the variance is denied and that the proposed use is not contrary to the public interest. *Allegheny West Civic Counsel, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997).

In this matter, the Board found that the requested Variances both meet the criteria set forth in the Zoning Ordinance. The total height of the proposed tank includes a domed apex, without which the total height would be lower. Because the proposed tank would be located in a low area of the subject property, the topography and natural growth would obscure all but the top portion of the tank from public view. The domed apex of the proposed tank is necessary for safety features associated with the storage and processing use. The unique physical circumstances of the property make it favorable for the location of the proposed tank, and it will not alter or impair the character of the surrounding area, nor adversely affect the development of adjacent property.

The impervious coverage Variance requested by the Applicant represents a one percent (1%) increase from the total area permitted in the Zoning Ordinance. While this change may be calculated to show an increase of twenty percent (20%), in the context of the total area of the subject property of more than 80 acres, the Board found this to be a de minimus change.

VII. Conclusions of Law

1. Applicant presented sufficient evidence to grant a Special Exception to permit the proposed use on the subject property.
2. Applicant presented sufficient evidence to grant a Variance to permit the total height of the proposed tank to be ninety-eight feet (98').
3. Applicant presented sufficient evidence to grant a Variance to permit total impervious coverage to be six percent (6%) of the total area of the subject property.

VIII. Decision of the Board

Based upon the foregoing, by a 4-0 vote, the Zoning Hearing Board granted the Applicant's appeal for a Special Exception, and further granted the Applicant's appeal for two (2) dimensional Variances. The relief granted by the Zoning Hearing Board was subject to the condition that Applicant must meet all applicable safety standards and other regulations, under federal, state and local law.

THE BOARD:

/s/ Kevin J. Kelleher
Solicitor

/s/ Suzanne Borzak
Zoning Officer

/s/ Gus Loupos, Chairman

/s/ William Fitzpatrick

/s/ James H. Schantz

/s/ Michael Santanasto

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

DATE(S) OF HEARING: May 24, 2017, June 14, 2017 and July 12, 2017

DATE OF WRITTEN DECISION: August 23, 2017

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CERTIFICATE OF SERVICE

I, Kevin J. Kelleher, Solicitor, do hereby certify that I sent a true and correct copy of the foregoing Decision to the Applicant and its counsel by First Class Mail to the addressed and on the date set forth below:

Applicant: UGI Energy Services, LLC
1 Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610

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Property Owner: Kerry A. Wrobel, President
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Counsel for
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38 West Market Street
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BUTTERFIELD-JOACHIM-
SCHAEDLER-KELLEHER

Date: August 23, 2017

by  _____
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