

LAW OFFICES  
**ELLIOTT & ELLIOTT**  
26 NORTH THIRD STREET  
EASTON, PENNSYLVANIA 18042

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(610) 252-6269

CHARLES W. ELLIOTT  
THOMAS R. ELLIOTT, JR.

September 8, 2020

**SENT VIA ELECTRONIC MAIL TO: [planninginfo@bethlehem-pa.gov](mailto:planninginfo@bethlehem-pa.gov)**

Mr. Craig D. Peiffer, AICP  
Zoning Officer  
Bureau of Planning & Zoning  
City of Bethlehem  
10 East Church Street  
Bethlehem, PA 18018

William Fitzpatrick, Chair  
Zoning Hearing Board  
City of Bethlehem  
10 East Church Street  
Bethlehem, PA 18018

Re: Application of Creek Investors, LLC and  
Exchange 9, LLC For a Use Variance from Section  
1304.01 of the City of Bethlehem Zoning Ordinance  
(Parcels Q7 9 6 0204 and Q7 9 7 0204)

Dear Messrs. Pfeiffer and Fitzpatrick:

On behalf of adjoining municipality Lower Saucon Township (“the Township”), and pursuant to Section 1324.07 of the City of Bethlehem Zoning Ordinance, we respectfully offer the following comments in opposition to the application of Creek Investors, LLC and Exchange 9, LLC for a use variance for their proposed ten (10) semi-detached dwellings/side-by-side twin project within the RR-Rural Residential District.

Both as an adjoining municipality and as an adjoining property owner, the Township objects to the requested use variance. Such a proposed use violates section 1304.01 of the City’s Zoning Ordinance and the Applicants cannot satisfy the elements for a use variance required by the Municipalities Planning Code (“MPC”). We respectfully request that this letter be made part of the record of the proceeding. A copy of this letter is also being provided to counsel for the Applicants.

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William Fitzpatrick, Chair, Zoning Hearing Board  
September 8, 2020  
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Interests of Lower Saucon Township

The Township owns property located at 1890-1892 Friedensville Road within Lower Saucon Township, tax parcel Q7 12 12A 0719E. See attached EXHIBIT A, property report from the Northampton County Tax Assessment Office website [www.ncpub.org](http://www.ncpub.org). This tax parcel is located at the intersection of Creek Road and Friedensville Road, directly across the street from the subject parcel. This Township property is identified in the Applicant's Site Plan S-1 as an adjoining parcel. See attached Site Plan, EXHIBIT B.

The Township property is the site of the Heller Homestead, a historic site and municipal park. The site is listed on the National Register of Historic Places. See attached EXHIBIT C, Excerpt, National Register of Historic Places Nomination Form. *See also*, National Park Service Record: File Unit: National Register of Historic Places and National Historic Landmarks Program Records: Pennsylvania: Item: Pennsylvania SP Heller, Michael and Margaret, House <https://catalog.archives.gov/id/71996341>.

In addition to its interests as an adjoining municipality, the Township would have standing in the proceeding as an adjoining property owner. *See, e.g., Laughman v. Zoning Hearing Bd. of Newberry Twp.*, 964 A.2d 19, 22 (Pa.Cmwlth. 2009) ("Obviously, property that is adjacent to or abuts the zoning area in question is in close proximity for standing purposes.... We have also held that the owner of property that is within 400 to 600 feet of the challenged zoning district is also within close proximity and has standing.") (internal citations omitted); *Walters v. Zoning Hearing Bd. of City of Easton*, 125 A.3d 479, 482 (Pa.Cmwlth. 2015) ("An owner of property within close proximity to the subject property is presumed to have been directly and adversely affected by the zoning decision.... Because Walters is an adjoining property owner it is presumed he was directly and adversely affected by the zoning decision and therefore meets the second prong of standing.") (internal citations omitted).

Standard for the Grant of a Variance

As the zoning hearing board and zoning officer well know, Section 910.2 of the MPC states:

The board may grant a variance, *provided that all of the following findings are made* where relevant in a given case:

(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

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William Fitzpatrick, Chair, Zoning Hearing Board  
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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.

53 P.S. § 10910.2 (emphasis added); *Pham v. Upper Merion Twp. Zoning Hearing Bd.*, 113 A.3d 879, 891 (Pa.Cmwlth. 2015). These requirements are repeated in the City's Zoning Ordinance, section 1325.06. This Ordinance section underscores the limits to the Board's power to grant a variance: "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 [sic] situations."

Indeed, the burden on an applicant seeking a zoning variance is heavy, and variances should be granted sparingly and only under exceptional circumstances. *Oxford Corp. v. ZHB of Borough of Oxford*, 34 A.3d 286 (Pa.Cmwlth.2011).

#### The Applicants Cannot Meet Their "Heavy Burden" to Show Entitlement to a Use Variance

The subject parcels (Parcels Q7 9 6 0204 and Q7 9 7 0204) neither possess nor are subject to "unique physical circumstances or conditions" that would justify a use variance. The parcels do not possess "irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property." To the contrary, particularly as combined for this proposal, these parcels are topographically unremarkable (mostly flat, except for the creek banks) and are neither so unduly narrow nor shallow as to otherwise preclude lawful development in accordance with the ordinance. See EXHIBIT B, Site Plan and EXHIBIT D, site photographs. There is no "unnecessary hardship" due to such conditions.

Indeed, there is an existing lawful use on parcel Q7 9 6 0204: a single-family residential use. See attached EXHIBIT E, Northampton County Tax Assessment Report for Q7 9 6 0204. No reason appears to exist why the property cannot be lawfully developed with single family residential uses,

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as the zoning ordinance permits. If setback standards or other dimensional limitations restrict development of the parcels for such purposes, the Applicants should seek dimensional variances rather than a use variance. Such dimensional variances, if needed, would represent the “least modification possible” of the ordinance as the MPC requires for a variance.

Moreover, other topographical and circumstances and development limitations such as proximity to the Saucon Creek and the potential for flooding in this area are conditions that are not parcel-specific but are conditions that also apply to other properties in the neighborhood. Indeed, the potential for flooding makes this site a poor site for a residential development project of this scale. See EXHIBIT F, compilation of photographs of the site and its environs under flooding conditions. The environmentally sensitive character of this area was one of the reasons for the low-density rural residential zoning classification.

The Applicants cannot meet their heavy burden to demonstrate there is “no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance.”

The two tracts total 11.62 acres in size. The minimum lot size for single family dwellings in the RR zoning district is 15,000 sf (0.3444 acres). Ordinance, section 1306.01(a). An existing single-family dwelling is currently located on the site. The maximum building coverage is 15%; thus, 1.743 acres of the site can be covered with buildings without exceeding the maximum building coverage limitation. Ordinance, section 1306.01(a). Under these circumstances, the Applicants cannot show that “there is *no possibility*” that the property can be developed with one or more single family dwellings. If other physical site constraints impede such development, the Applicants’ proper remedy is to seek dimensional or other variances that mitigate such impediments, not a *use* variance for the purpose of creating much higher density development.

The Applicants have no cognizable hardship justifying a variance and merely seeks to maximize profitable development on the parcels.

While this variance application is pending, the Applicants are also attempting to rezone these parcels from RR (Rural Residential District) to R-RC (Residential Retirement Complex District). A hearing on this rezoning application is scheduled before the City Council on September 15, 2020. See attached EXHIBIT G, August 7, 2020 letter from the City Council Office of the Solicitor to Lower Saucon Township providing notice of the hearing. At its March 12, 2020 meeting, the City’s Planning Commission issued a recommendation that the rezoning application be denied.

The Applicants have no cognizable hardship justifying a variance nor have they demonstrated the “exceptional circumstances” the MPC requires. They simply want to maximize the development of these parcels by whatever means they can, whether by variance or rezoning.

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The application before the Board is simply another, impermissible, attempt at “rezoning by variance.”  
The application should be denied.

Respectfully submitted,

*Charles W. Elliott*  
Charles W. Elliott

CWE/wp

Attachments: Exhibits as stated

cc: Eric Schock, Esquire, Solicitor, Zoning Hearing Board  
James Vivian, Esquire, Attorney for Objectors  
Ronald Corkery, Esquire, Attorney for Applicants  
[Corkery & Almonti, 352 Fifth St., Whitehall, PA 18052]

(all with attachments)

**PARID: Q7 12 12A 0719E****LOWER SAUCON TOWNSHIP, TOWN HALL****1890 -1892 FRIEDENSVILLE RD****Parcel**

Property Location	1890 -1892 FRIEDENSVILLE RD
Unit Desc	
Unit #	
City	
State	
Zip Code	
Neighborhood Valuation Code	1901
Trailer Description	
Municipality	LOWER SAUCON TOWNSHIP
Classification	Exempt
Land Use Code	110 - Single Family, Residential
School District	SAUCON VALLEY SCHOOL DIST
Topography	LEVEL
Utilities	WELL/SEPTIC APPROVED
Street/Road	PAVED
Total Cards	2
Living Units	1
CAMA Acres	2.24
Homestead /Farmstead	-
Approved?	-

**Parcel Mailing Address**

In Care of	
Name(s)	LOWER SAUCON TOWNSHIP TOWN HALL
Mailing Address	3700 OLD PHILADELPHIA PIKE
City, State, Zip Code	BETHLEHEM, PA, 18015-

**Alternate Address**

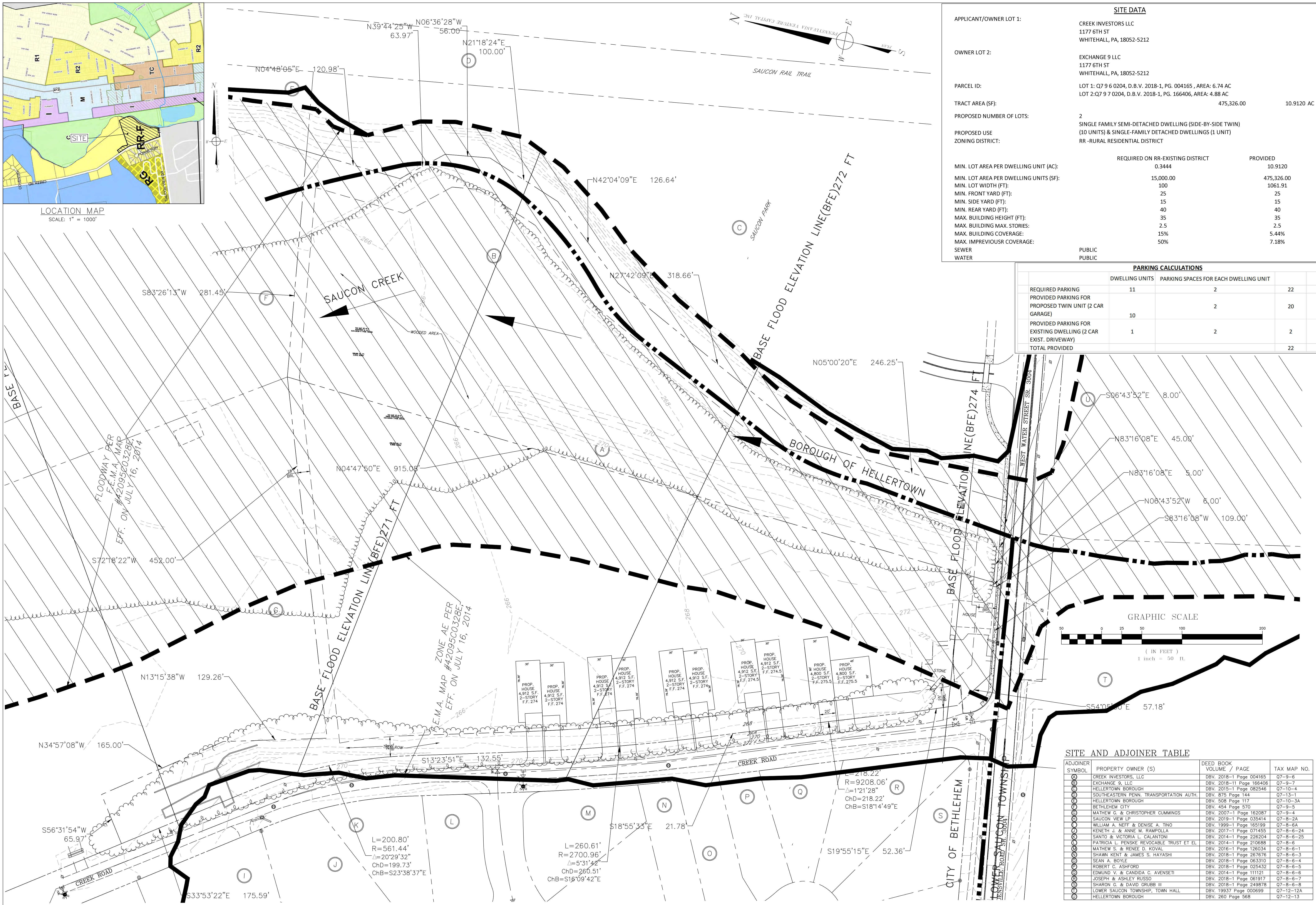
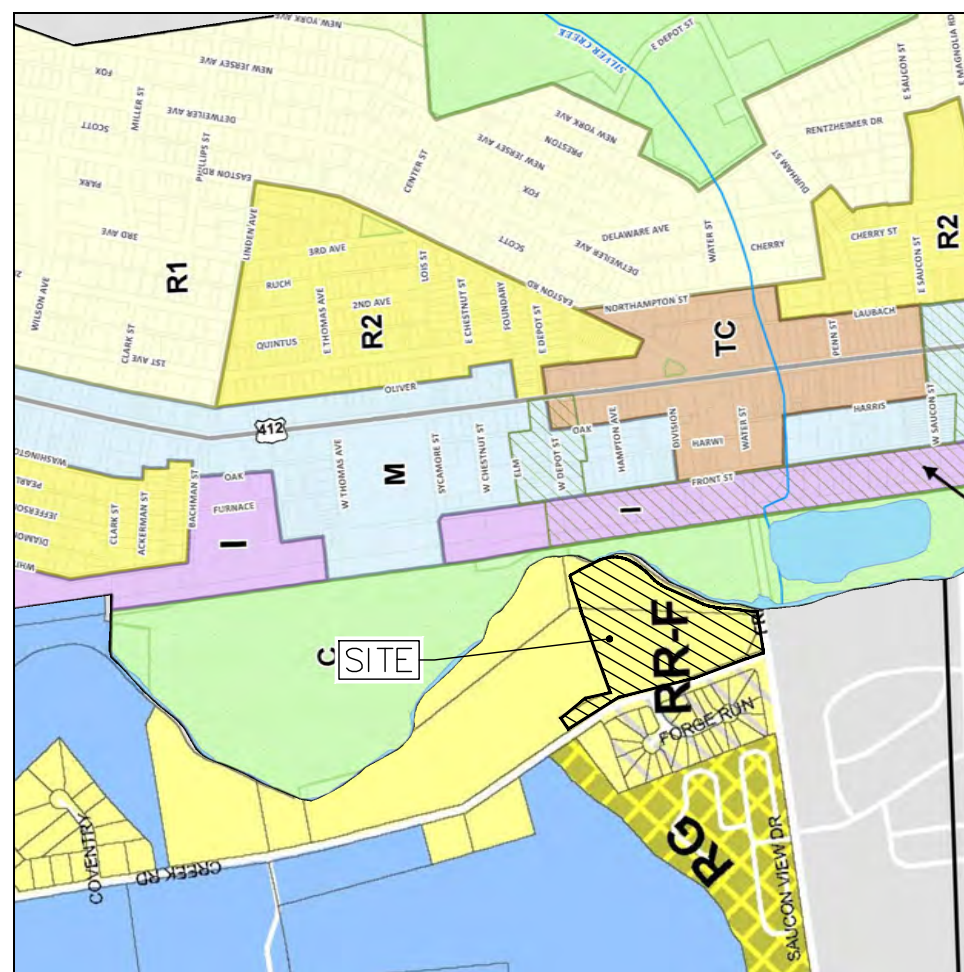
Alternate Address	
City	
State	
Zip	

**ACT Flags**

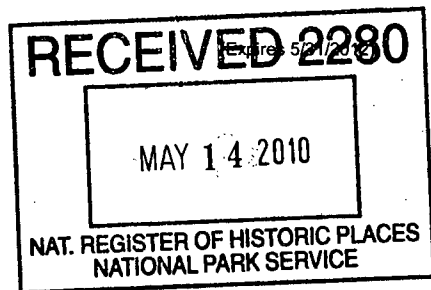
Act 319/515	
LERTA	
Act 43	
Act 66	
Act 4/149	
KOZ	
TIF Expiration Date	
BID	
Millage Freeze Date	

EXHIBIT A









United States Department of the Interior  
National Park Service

399

## National Register of Historic Places Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in National Register Bulletin, *How to Complete the National Register of Historic Places Registration Form*. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional certification comments, entries, and narrative items on continuation sheets if needed (NPS Form 10-900a).

### 1. Name of Property

historic name Heller, Michael and Margaret House

other names/site number Heller Homestead

### 2. Location

street & number 1890-1892 Friedensville Road

☐ not for publication

city or town Lower Saucon Township

☐ vicinity

state Pennsylvania code PA county Northampton code 095 zip code 18055

### 3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended,

I hereby certify that this ☒ nomination ☐ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60.

In my opinion, the property ☒ meets ☐ does not meet the National Register Criteria. I recommend that this property be considered significant at the following level(s) of significance:

☐ national ☐ statewide ☒ local

Andrew McDonald

April 26, 2010

Signature of certifying official/Title

Date

PA Historical & Museum Commission

State or Federal agency/bureau or Tribal Government

In my opinion, the property ☐ meets ☐ does not meet the National Register criteria.

Signature of commenting official

Date

Title

State or Federal agency/bureau or Tribal Government

### 4. National Park Service Certification

I hereby certify that this property is:

☒ entered in the National Register

☐ determined eligible for the National Register

☐ determined not eligible for the National Register

☐ removed from the National Register

☐ other (explain):

for Edson H. Beall

6-28-10

Signature of the Keeper

Date of Action



**United States Department of the Interior**  
**National Park Service**

**National Register of Historic Places**  
**Continuation Sheet**

Heller, Michael and Margaret House

Name of Property

Northampton, PA

County and State

Name of multiple listing (if applicable)

Section number 10 Page 1

**Verbal Boundary Description**

Beginning at the northeast point of the property, on the southern right-of-way of Friedensville Road, the boundary proceeds along the Saucon Creek South 2 degrees West 22.3 feet to a point; thence South 6 degrees East 308 feet to a point; thence along the southern boundary of the property South 86 degrees West 251 feet; thence North 48 degrees West 70.7 feet to a point; thence North 3 degrees West 298 feet to Friedensville Road; thence along the north boundary of the property North 86 degrees East 106 feet, South 3 degrees East 18 feet, and North 86 degrees East 181.9 feet to the place of beginning.

**Boundary Justification**

The boundary is coterminous with the tax parcel. It includes the Michael and Margaret Heller House, the associated Widow's House, and the other resources documented in this nomination.

United States Department of the Interior  
National Park Service

# National Register of Historic Places Continuation Sheet

Heller, Michael and Margaret House

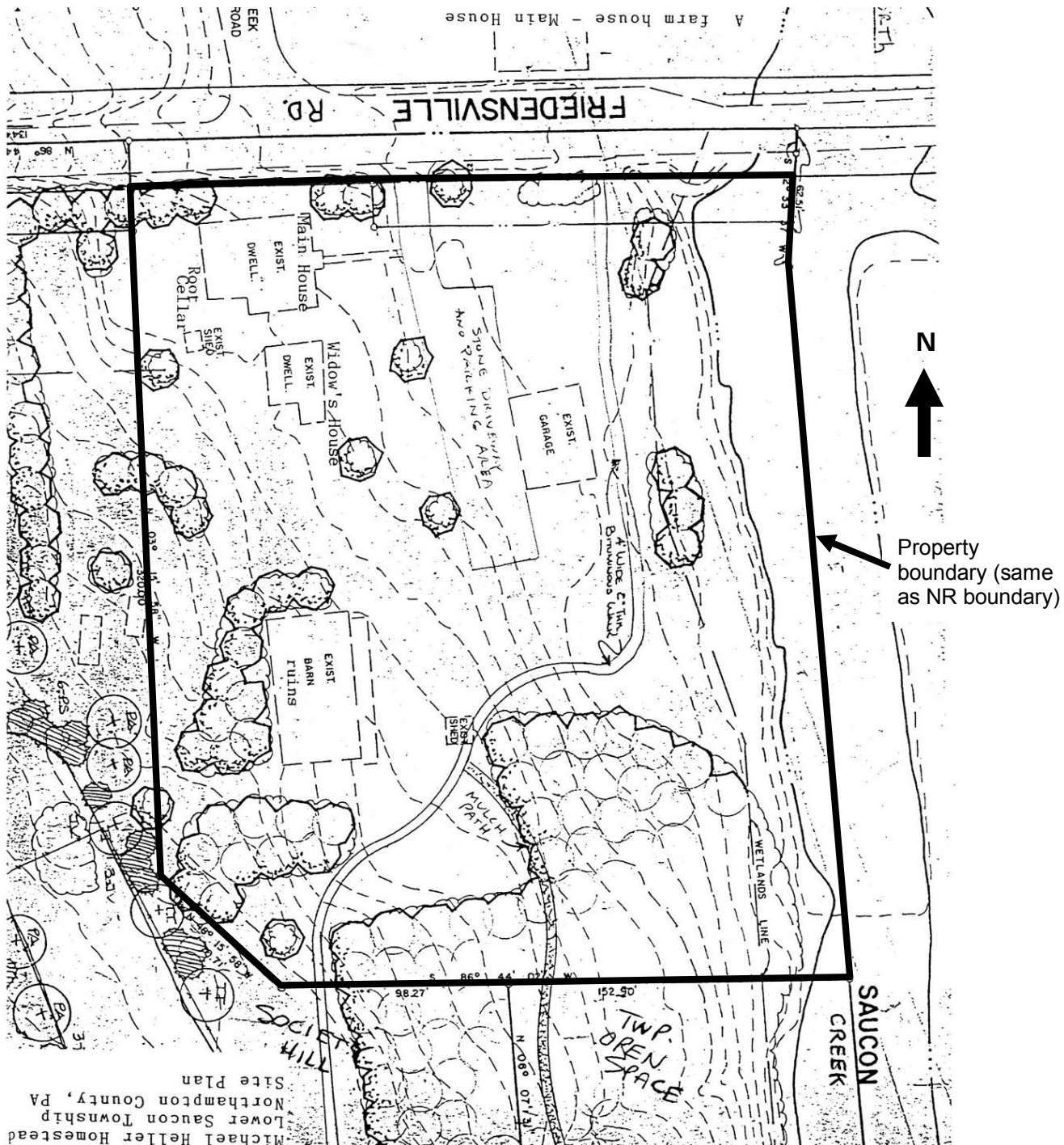
Name of Property

Northampton, PA

County and State

Name of multiple listing (if applicable)

Section number Maps Page 7



Map 8. Detail of "Site Plan" produced c. 1990 for the K. Hovnanian development of the surrounding property. The map shows the current property boundary. Refer to Map 1 to see all resources on the property.



EXHIBIT D





EXHIBIT D





EXHIBIT D





EXHIBIT D





EXHIBIT D





EXHIBIT D





EXHIBIT D



**Profile**

Parcel:	Q7 9 6 0204	Land Use Code:	110
Address:	2105 CREEK RD	LUC Description:	Single Family, Residential
Owner Details:	CREEK INVESTORS LLC	Municipality:	BETHLEHEM CITY
		NBHD:	1901
		School District:	BETHLEHEM SCHOOL DIST
Mailing Address:	1177 6TH ST	Zoning:	RR
	WHITEHALL PA 18052-5212	Land Acres:	6.74
		Street/Road:	PAVED
		Topography:	LEVEL
		Utilities	WELL

**Value Summary**

Appraised Land:	94,900	94900	Assessed Land	47,500
Appraised Building:	30,100	30100	Assessed Building	15,000
Appraised Total:	125,000		Assessed Total	62,500

**Primary Residential Card**

Card:	1	Basement:	CRAWL	Fireplace Prefab:	
Stories:	1	Square Feet:	1396	Fireplace Opening:	
Style:	BUNGALOW	HT/AC:	NORMAL	Fireplace Stacks:	
Year Built:	1945	Fuel:	UNKNOWN/NONE	Basement Garage:	
Year Remod.		System:	WARM AIR	Grade:	C-
Total Rooms:	5	Attic:	UNFINISHED	Cond (CDU):	FR
Bedrooms:	3	Rec Room Area:	0	Percent Complete:	
Full Bath:	1	Finished Basement Area:	0	Family Room:	0
Half Bath:	0			Ext. Material:	BRICK

**Commercial Card**

Year Built	Improvement Name:
Units	Gross Floor Area:
Grade:	

**Other Items**

Code	Description	Yr Blt	Sq Ft
AP1	4 SIDE CLOSED	1997	1224

**Sales History**

Date	Book-Page	Grantor	Sale	Desc	Parcels	Amount
1/8/2018	2018-1--004165	US BANK NATIONAL	2	NOT OPEN MARKET		215,000
8/24/2017	2017-1--183540	BOUC JANET D	5	LIQUIDATION/FORECLOSUR		238,000
5/29/2002	2002-1--136742	PIREDA JANETTE	9	OLD UNVALIDATED CODE		233,000
4/1/1996	19961--035859		0	VALID		110,000
10/1/1993	--		0	VALID		88,000
9/1/1993	--		2	NOT OPEN MARKET		32,000

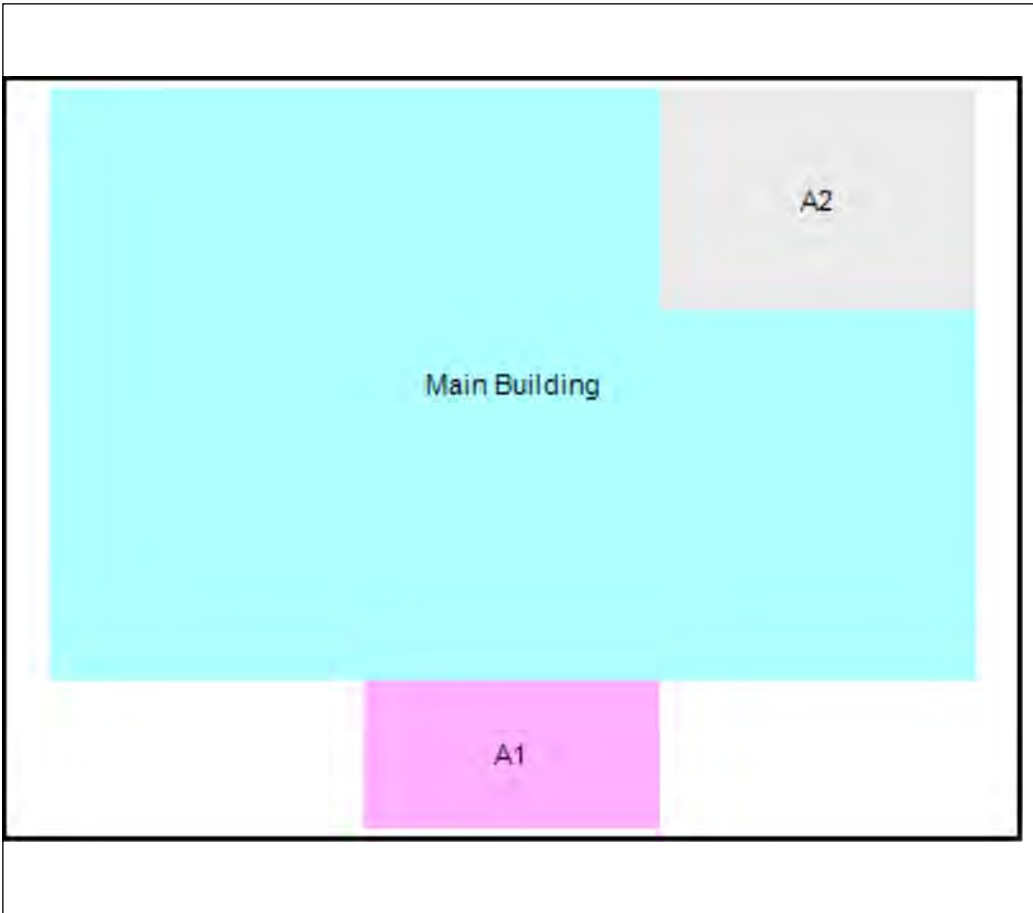
MAP



PHOTO



SKETCH



Sketch

0 Main Building 1396 Sq. Ft.  
1 A1 - 21:OMP OPEN MASONRY  
PORCH 128 Sq. Ft.  
2 A2 - 21:OMP OPEN MASONRY  
PORCH 204 Sq. Ft.  
1 POLE BLDG - AP1:4 SIDE CLOSED  
MTL POLE -18' 1224 Sq. Ft.

**Profile**

Parcel:	Q7 9 7 0204	Land Use Code:	92
Address:	FRIEDENSVILLE RD	LUC Description:	Vacant Land, Developers Lots
Owner Details:	EXCHANGE 9 LLC	Municipality:	BETHLEHEM CITY
		NBHD:	1901
		School District:	BETHLEHEM SCHOOL DIST
Mailing Address:	1177 6TH ST	Zoning:	RR
	WHITEHALL PA 18052-5212	Land Acres:	4.88
		Street/Road:	LANDLOCKED/NONE
		Topography:	BELOW STREET
		Utilities	ALL PUBLIC

**Value Summary**

Appraised Land:	2,000	2000	Assessed Land	1,000
Appraised Building:	0	0	Assessed Building	0
Appraised Total:	2,000		Assessed Total	1,000

**Primary Residential Card**

Card:	0	Basement:	Fireplace Prefab:
Stories:		Square Feet:	Fireplace Opening:
Style:		HT/AC:	Fireplace Stacks:
Year Built:		Fuel:	Basement Garage:
Year Remod.		System:	Grade:
Total Rooms:		Attic:	Cond (CDU):
Bedrooms:		Rec Room Area:	Percent Complete:
Full Bath:		Finished Basement Area:	Family Room:
Half Bath:			Ext. Material:

**Commercial Card**

Year Built	Improvement Name:
Units	Gross Floor Area:
Grade:	

**Other Items**

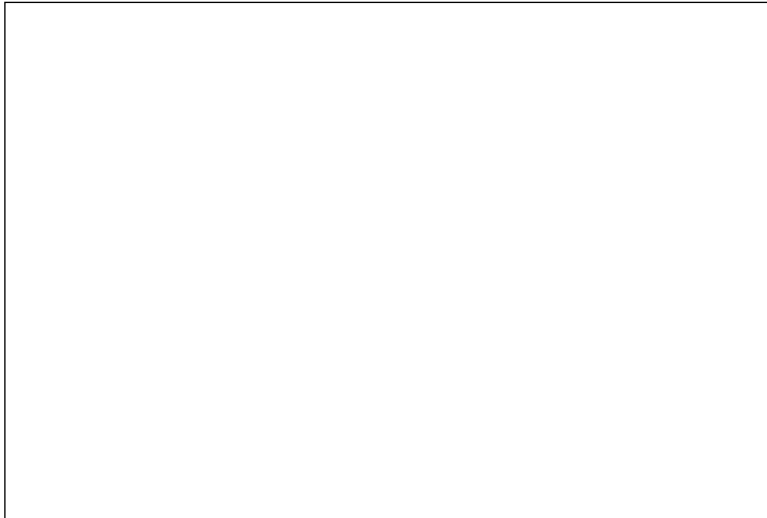
Code Description	Yr Blt	Sq Ft
Code Description		

**Sales History**

Date	Book-Page	Grantor	Sale	Desc	Parcels	Amount
8/6/2018	2018-1--166406	BEREZNY JULIA	5	LIQUIDATION/FORECLOSUR		3,000
5/1/1991	830 --000430		2	NOT OPEN MARKET		1



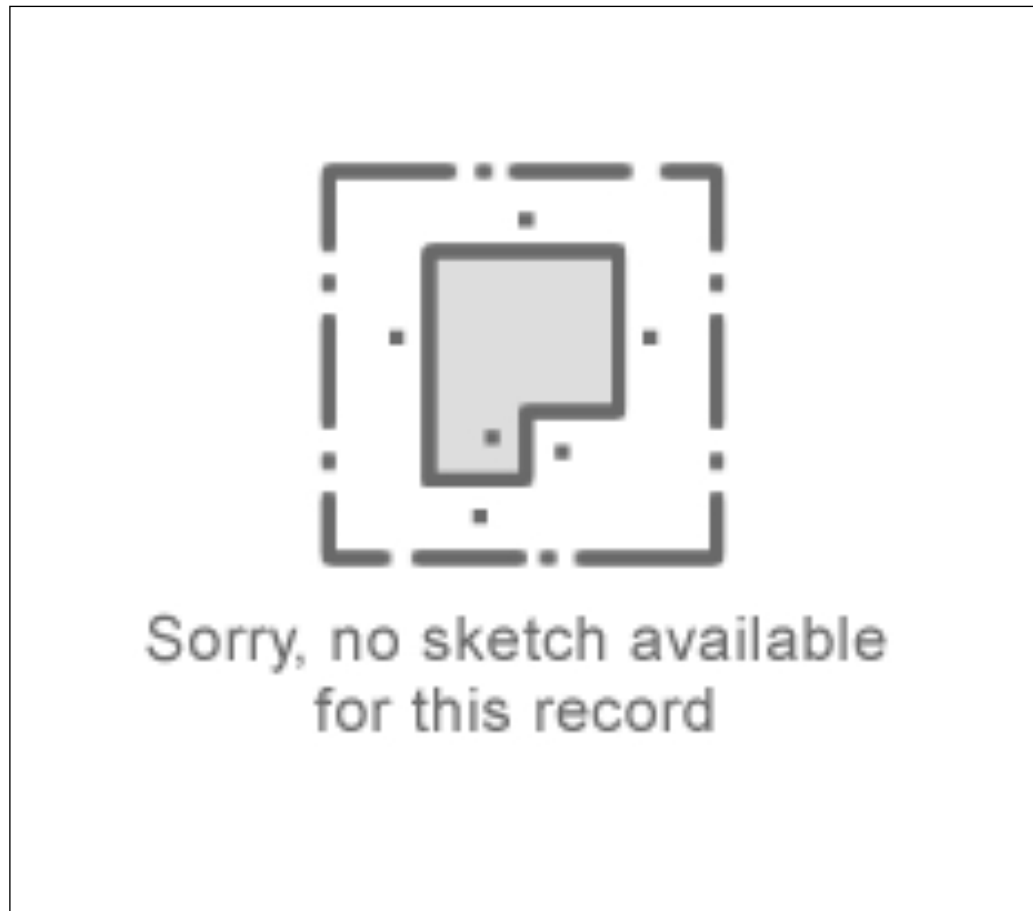
MAP



PHOTO



SKETCH



Sketch



EXHIBIT F





EXHIBIT F



EXHIBIT F





EXHIBIT F





EXHIBIT F





EXHIBIT F



EXHIBIT F





# CITY OF BETHLEHEM

## OFFICE OF THE SOLICITOR

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

Phone: 610-865-7011

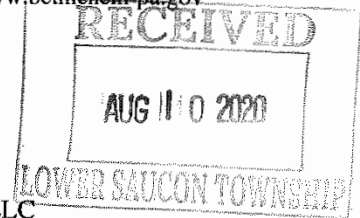
Fax: 610-865-7205

TDD: 610-865-7015

www.bethlehem-pa.gov

August 7, 2020

Lower Saucon Township  
3700 Old Philadelphia Pike  
Bethlehem, PA 18015



RE: Rezoning Requested by Creek Investors, LLC and Exchange 9, LLC  
Property Location: 2105 Creek Road (Q7-9-6 0204) and Friedensville Road (Q7-9-7 0204) (16<sup>th</sup> Ward)  
(\*see copy of plan provided by Petitioners)  
Proposed Rezoning: From RR (Rural Residential District) to R-RC (Residential Retirement Complex District)  
Date of Public Hearing: Tuesday, September 15, 2020  
Time of Public Hearing: 7:00 p.m.

Dear Sir/Madam:

On the above date and time the City Council of the City of Bethlehem will conduct a public hearing with respect to amending the zoning map of the City of Bethlehem. This hearing will take place in Town Hall of the City of Bethlehem, 10 East Church Street, Bethlehem, Pennsylvania.

Pursuant to state law, 53 P.S. § 10609(b) and City ordinance 1326.03(b), you are given notice as a property owner within the area being rezoned, or as an adjoining property owner, of the scheduling of this public hearing.

The proposed rezoning ordinance amendment provides that property located at the location identified above be rezoned.

You have the right to be present and be heard at the above scheduled meeting.

Due to the COVID-19 public health emergency, public access to Town Hall is currently closed. Public comments will be allowed only by telephone. If you would like to sign up to make public comments by phone, please email the City Clerk's office ([cityclerk@bethlehem-pa.gov](mailto:cityclerk@bethlehem-pa.gov)) no later than 12:00 PM on the meeting date or call (610) 997-7963 during the public hearing when the Council President announces he will take public comment calls. Members of the public may watch the meeting live-streamed on YouTube at "City of Bethlehem Council" YouTube channel at the following website address: <https://www.youtube.com/channel/UCRLFG5Y9U0jADKaRE1W3xw>. You can also view the meeting by doing a search on YouTube at the start time or during the meeting.

If you have any questions regarding this rezoning request, please contact the City of Bethlehem Planning Office at (610) 865-7088.

Very truly yours,

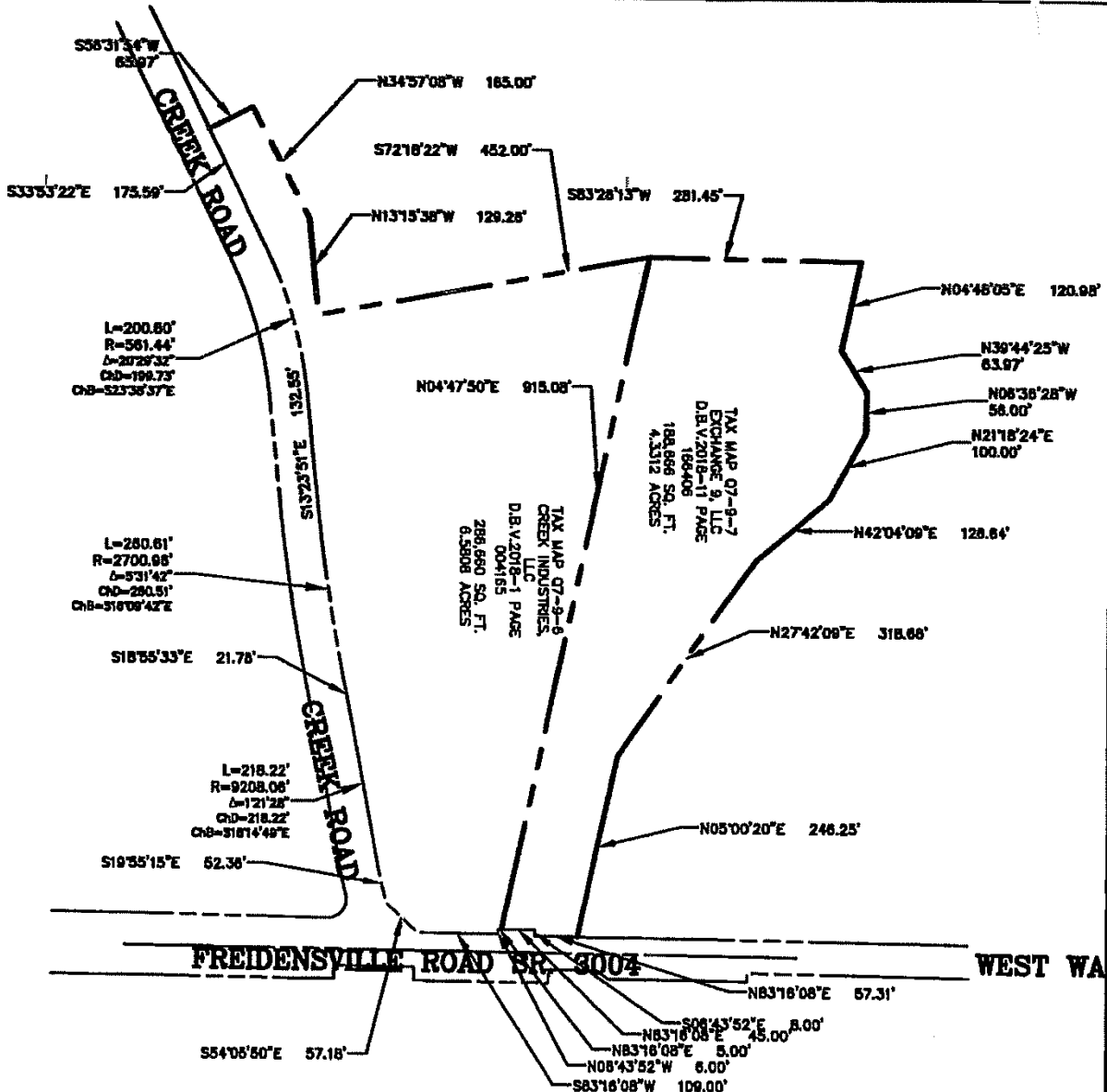
WILLIAM P. LEESON,  
City Solicitor

WPL:csb

EXHIBIT G

### ROUTING

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



## PARCELS EXHIBIT

PROJECT: 2105 CREEK ROAD

CITY OF BETHLEHEM  
NORTHAMPTON COUNTY  
PENNSYLVANIA

PENN TECHNOLOGY CONSULTING, LLC  
LAND DEVELOPMENT / SITE / CIVIL ENGINEERING  
P.O. BOX 88, FOGELSVILLE, PA 18051  
PHONE: 610-730-9808  
E-MAIL: SUEKANDL3@GMAIL.COM  
WEBSITE: HTTP://PENNTC.COM



**PENNSYLVANIA**  
VENTURE CAPITAL INC.

823 3rd Street, Whitehall, PA. 18052 (610) 403-6666

SHEET NUMBER:	DATE:	SCALE:	DRAFTER:
3 OF 3	10/23/19	1"=200'	SK