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NAZARETH, PA. 18064

December 3, 2009

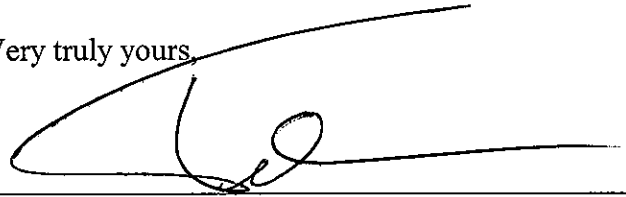
Hanover Township Engineering
ATTN: Yvonne D. Schoenly
Hanover Township Municipal Bldg.
3630 Jacksonville Road
Bethlehem, PA 18017

**Re: Hanover Township Zoning Hearing Board –
Gentis Associates, L.L.C. & Rachel Martinez**

Dear Yvonne:

Enclosed herewith find a copy of Findings of Fact and Conclusions of Law in the above matters, along with a copy of the cover letters enclosing the same.

Very truly yours,



Theodore R. Lewis, Esquire

TRL/bn
Enclosures

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Lawrence Center, Esquire
60 West Broad St., Suite 103
P. O. Box 1248
Bethlehem, PA 18016-1248

**Re: *Hanover Township Zoning Hearing Board –
Gentis Associates, L.L.C.***

Dear Larry:

Enclosed herewith please find a true and correct copy of the Findings of Fact and Conclusions of Law of the Hanover Township Zoning Hearing Board that I am sending to you as attorney for the petitioner in the above matter.

Very truly yours,



Theodore R. Lewis, Esquire

TRL/bn
Enclosure

cc: Yvonne D. Kutz, Zoning Administrator

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Re : Gentis Associates L.L.C.
Dated : August 14, 2009
Property : 325 Stoke Park Road

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, October 22, 2009, and rendering its oral decision granting some of the requested variances and modifying a condition of the prior decision of the Board, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is located at 325 Stoke Park Road, in a C1 – Commercial District.
2. The applicant is the owner of the property, Gentis Associates, L.L.C.
3. The applicant was represented at the hearing by Attorney Lawrence Center. He called on witnesses on behalf of the applicant, Mark A. Bradbury, Consulting Engineer; the President of JHM Signs; and Nicholas Gentis, of Gentis Associates, L.L.C.
4. Mr. Center also introduced the following exhibits into the record:
 - A-1 Being a site plan drawn by Thomas A. Edson with a date of January 15, 1979 and with the last revision date of March 14, 1979;
 - A-2 Being a plan entitled, "Restaurant Alteration", drawn by Louis A. Salamone and Burton S. Landau, Architects, which plan has a date of June 17, 2009 and no revision dates;
 - A-3 Being a Zoning Exhibit Plan for Gentis Associates, L.L.C., drawn by Martin, Bradbury, and Griffith, Inc., Consulting Engineers, with a date of August 3, 2009 and no revision dates;
 - A-4 Being a close-up picture of the existing sign with the dimensions of the same noted thereon;
 - A-5 Being a picture of the existing sign with a date of October 22, 2009;
 - A-6 Drawing or depiction of the proposed sign and its dimensions over the door with a date of October 2, 2009.

5. According to the testimony of Mark Bradbury, the original plans called for a 280 seat restaurant. The applicant now proposes 225 seats for indoor dining and 25 seats for outdoor dining, for a total of 250 seats. According to Mr. Bradbury, the applicant now will have 16 less parking spaces than required under the ordinance, Sect. 185.17(C) and therefore requests a variance for the same.

6. In addition, Sect. 185-29D(3) of the ordinance requires that all uses in a Commercial District be conducted within an enclosed building. The applicant is proposing outdoor dining and therefore requires a variance from this section.

7. The free-standing sign presently existing on the property would not be permitted based on its dimensions, except that a variance was granted for the same by the action of the Board in its decision dated May 24, 1979. The applicant desires to continue to use this existing free-standing sign and will not be changing its dimensions, but the letter sizes will actually be somewhat smaller.

8. In addition to this free-standing sign, the applicant proposes a wall sign over the front door which will be 97" wide.

9. After some discussion it was determined that this sign did not require any dimensional variances and would otherwise be a permitted sign, except that in the Board's prior decision granting the variance for the existing free-standing sign imposed a condition in Subsection (d) of the Order as follows: "There shall be no additional signs except those which were presented at the hearing and made a part of the record as exhibits."

10. An examination of the records submitted to the Zoning Board at the time of its prior decision, reveals that there was only one sign proposed and that was the free-standing sign that presently exists on the property. In particular, there was nothing in the records to suggest that there was a request for a wall sign above the door as is currently requested. Therefore, the applicant in order to put the wall sign above the door requires a modification of this prior condition placed by the Zoning Board.

11. The applicant made reference in his application to requested relief from the glare provisions of the ordinance. However, the Board found nothing with respect to the proposed application that indicates there will be a violation of the glare provisions of the ordinance, nor was there any testimony given that the applicant suffers a hardship by complying with the same. Therefore, the Board in granting approval for the variances and modifications as set forth below, is not granting any variance from the glare provisions of the ordinance.

12. The Board is entitled to grant a modification of the conditions of a prior decision where it believes that the condition is no longer necessary to assure that the grant of the variance is not injurious or detrimental to the public welfare.

13. The Board notes that the proposed sign would be a permitted sign in a commercial district and believes, at least as it relates to this particular sign proposal above the door, that the condition can be modified to permit this sign without any detrimental effect.

14. The Board also believes that the grant of the variance from the parking provisions of the ordinance as indicated, as well as permitting the grant of the variance to permit the outdoor dining on the premises, will not be detrimental to the public welfare.

WHEREFORE, the Hanover Township Zoning Hearing Board does not grant a variance from the glare provisions of the ordinance, grants a variance as set forth above from the parking provisions and from the provisions requiring all uses in a commercial district to be in an enclosed building, and further modifies the condition as set forth in the prior decision of the Zoning Board to permit the one additional wall sign of the dimensions and at the location and of the type as presented to the Board. Any modification to this sign or any other additional signs would require further action by the Board to consider whether to further modify the prior decision of the Board.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: 
Paul A. Balla, Chairman

Dated: December 3, 2009

THEODORE R. LEWIS
THOMAS L. WALTERS

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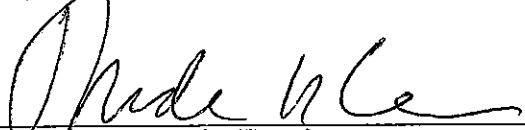
Ms. Rachel Martinez
9954 Ziegels Church Road
Breinigsville, PA 18031

**Re: Hanover Township Zoning Hearing Board -
Rachel Martinez**

Dear Ms. Martinez:

Enclosed herewith please find a true and correct copy of the Findings of Fact and Conclusions of Law of the Hanover Township Zoning Hearing Board concerning your application dated August 12, 2009.

Very truly yours,



Theodore R. Lewis, Esquire

TRL/bn
Enclosure

cc: Yvonne D. Schoenly, Zoning Administrator

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Re : Rachel Martinez
Dated : August 12, 2009
Property : 3740 Jacksonville Road

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, October 22, 2009, and rendering its oral decision denying the requested variances, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is located at 3740 Jacksonville Road, in an R1-S – Residential Suburban District.

2. The subject property is owned by the First Moravian Church of South Bethlehem, now known as Advent Moravian Church of Bethlehem. The primary use of the property is for church purposes.

3. The applicant is Rachel Martinez who desires to lease portions of the existing church building, and to fence in a portion of the outside area for purposes of operating a day care center on the property. The applicant also requests a variance to permit a free-standing sign on the premises to identify the proposed day care center.

4. Accompanying the application was a document entitled Child Care Center Proposal, where details, such as hours of operation and number of employees of the proposed child care center, were set forth.

5. Also a part of the application was a site plan entitled Advent Moravian Church with a date of July 23, 1991, and markings thereon showing the proposed fenced in area, and the proposed location of the day care sign, as well as the location of the existing church sign.

6. Also part of the application was a diagram of the interior of the church building, wherein the proposed areas to be utilized for day care center purposes were highlighted in yellow.

7. Finally attached to the application was a child care center sign proposal indicating what information was intended to be put on the sign.

8. Ms. Martinez testified at the hearing on behalf of her application. She reviewed through the information as set forth in the Child Care Center Proposal.

9. She indicated that she had the permission of the owner of the premises to lease the premises, and produced a document dated May 19, 2009, being a letter of intent signed by Rev. Katie R. Van Dee Linden of the Advent Moravian Church.

10. Ms. Martinez testified that based on the amount of square footage, a maximum number of 46 children under state law would be able to be on the premises at any one time.

11. Day care centers are not a permitted use in an R1-S District. They are allowed in other districts of the ordinance, such as the C1 and C2 District where they are permitted as a principal use; the OI, Office and Institutional District where they are permitted as an accessory use; and the PIBD, Planned Industrial/Business District where they are permitted as a conditional use.

12. In addition, Sect. 185.12 of the ordinance defining Day Care Center, specifically states: *"A day care center is not a school or a church, nor is it a permissible accessory use of a school or a church, nor is it a permitted accessory use of a residence."*

13. Free-standing signs are not permitted in an R1-S District. The applicant therefore is requesting a use variance with respect to the operation of a day care center and a variance as to the kind of sign permitted in this district.

14. Variances are governed under Sect. 185.52 of the ordinance, as well as the Municipalities Planning Code. Both require that in order to grant a variance there must be peculiar and exceptional circumstances creating a hardship. It is required that the unique circumstances be related to the subject property itself and not just to the circumstances of the applicant. The granting of the variance must be necessary for the reasonable use of the property.

15. While the Board appreciates that the applicant has presented many reasons why the church property may be very suitable for a day care center use, the applicant has failed to produce any testimony showing that the regulations impact this property differently than what was intended by the provisions of the ordinance.

16. It is obvious that the property is able to be utilized in a reasonable fashion in that the church is presently making use of the property for its church purposes. Because a property might also be well suited for another particular use is not a basis to change the overall provisions of the ordinance which do not permit such a use in that district.

17. In that regard, it is noted that the church itself would be prohibited from utilizing the property as a day care center as an accessory use to the church.

18. The expressed statement in the ordinance that day care centers are not permitted as accessory uses to the principal use of residences and churches, coupled with the fact that day care centers are not permitted in this district while they are permitted in other districts, demonstrates a clear unambiguous intent of the drafters of the ordinance to not allow this use in this district.

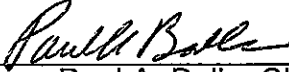
19. The applicant has failed to show where those prohibitions or restrictions impact this church or her in any way that is unique as it relates to this property. The effect of these provisions is that the applicant is simply not able to conduct a use on the premises which no one else would be able to conduct in this district.

20. It appears that the applicant in effect is seeking a broader change which would permit day care centers in this district under some circumstances, perhaps as a special exception use where if the Board found that certain characteristics are present, such as adequate parking, an adequate place for the dropping off and picking up of children, and sufficient isolation from the rest of the residential community, the use could be approved by the Board. However, in the absence of a change to the ordinance the Board, regardless of its own personal sentiments as to whether the day care center in this case would be well suited to the property, does not have the authority to simply re-write the ordinance when the criteria for a variance have not been met.

21. It obviously follows that the applicant has also failed to meet the various requirements for a free-standing sign for all of the same reasons.

WHEREFORE, the Hanover Township Zoning Hearing Board hereby denies the requested use variance and sign variance.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: 
Paul A. Balla, Chairman

Dated: December 3, 2009