



SITE ADDRESS: 1338 E 4th St.

Office Use Only:

DATE SUBMITTED: _____

HEARING DATE: _____

PLACARD: _____

FEE: \$ 500

ZONING CLASSIFICATION: CL

LOT SIZE: 10,960 sq Ft.

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

1. Return one (1) original and seven (7) copies of this application and all supporting documentation to the Zoning Officer, along with the filing fee. Include site plans and/or floor plans as necessary.
2. The application is due by 4PM the 4th Wednesday of the month. The hearing will be held the 4th Wednesday of the next month.
3. If you are submitting MORE THAN 10 exhibits at the hearing, you MUST place them in an indexed binder and submit at one time.

Appeal/Application to the City of Bethlehem Zoning Hearing Board is hereby made by the undersigned for: (check applicable item(s):

- Appeal of the determination of the Zoning Officer
- Appeal from an Enforcement Notice dated _____
- Variance from the City of Bethlehem Zoning Ordinance
- Special Exception permitted under the City Zoning Ordinance
- Other: _____

X SECTION 1

APPLICANT:	
Name	<u>RAJWINDER NAGRA for EAST END PROPERTY LLC.</u>
Address	<u>4179 REXFORD DR</u> <u>Bethlehem PA 18020</u>
Phone:	
Email:	

OWNER (if different from Applicant): Note. If Applicant is NOT the owner, attach written authorization from the owner of the property when this application is filed.

Name Same

Address _____


Phone: _____


Email: _____

ATTORNEY (if applicable):

Name James Preston

Address 38 W Market St
Bethlehem PA 18018

Phone: 

Email: 

SECTION 2. INFORMATION REGARDING THE REAL ESTATE

1. Attach a site plan, drawn to scale, of the real estate. Include existing and proposed natural and man-made features.
2. Attach photographs.
3. If the real estate is presently under Agreement of Sale, attach a copy of the Agreement.
4. If the real estate is presently leased, attached a copy of the present lease.
5. If this real estate has been the object of a prior zoning hearing, attach a copy of the Decision.

SECTION 3.

THE RELIEF SOUGHT:

If the Applicant seeks a dimensional variance for any setback, lot coverage, distance between certain uses, etc., please state the following:

Section of Code	Dimension Required by Code	Dimension Proposed by Applicant	Variance Sought
<u>1306.01.b.2</u>	<u>2500 sqft per Du.</u>	<u>1096</u>	<u>1404 sqft</u>
_____	<u>4 permitted</u>	_____	_____
_____	<u>8 granted by variance</u>	_____	_____
_____	<u>10 requested</u>	<u>2</u>	_____

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

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

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

NARRATIVE

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

CERTIFICATION

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

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

S.K. → S.K.
Applicant's Signature

8-28-18
Date

Property owner's Signature

Date

Received by

Date

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



FITZPATRICK LENTZ & BUBBA

FITZPATRICK LENTZ & BUBBA, P.C. · 4001 SCHOOLHOUSE LANE · PO BOX 219 · CENTER VALLEY, PA 18034-0219
STABLER CORPORATE CENTER · PHONE: 610-797-9000 · FAX: 610-797-6663 · WWW.FLBLAW.COM

Edward J. Lentz
Joseph A. Fitzpatrick, Jr.
Joseph A. Bubba
Timothy D. Charlesworth
Douglas J. Smillie*
Emil W. Kantra II

eschock@flblaw.com
Direct Dial: 610-797-9000 ext 355

James G. Kellar
1927-2002
Douglas Panzer*
Of Counsel
Intellectual Property Law

Albertina D. Lombardi*
Kathleen M. Mills
Of Counsel

December 29, 2016

Rajwinder Nagra*
Michael R. Nesfeder
Catherine E. N. Durso
Jane P. Long
Erich J. Schock
James A. Bartholomew
Jacob M. Sitman*
Edward Hoffman, Jr. *
Steven T. Boell
Joshua A. Gildea
Marie K. McConnell*
Anthony S. Rachuba, IV*
Barbara Zicherman†
Maraleen D. Shields
Thomas J. Schlegel*
Colin J. Keefe†
Gretchen L. Geisser*
Kenneth R. Charette*
Mallory J. Sweeney*

Rajwinder Nagra
East End Property, LLC
4179 Rexford Drive
Bethlehem, PA 18020

James F. Preston, Esquire
Broughal & DeVito
38 W. Market Street
Bethlehem, PA 18018

**Re: City of Bethlehem Zoning Hearing Board
1338 E. 4th Street**

Gentlemen:

Enclosed please find a copy of the Notice and Decision of the Board in the above matter.

Very truly yours,

Erich J. Schock

† Also admitted in New York
* Also admitted in New Jersey

/sjw

Enclosure

cc: Zoning Officer, City of Bethlehem (w/encl., via e-mail)
City of Bethlehem Zoning Hearing Board (w/encl., via e-mail)

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

Northampton County Division

Appeal & Application of
EAST END PROPERTY, LLC,
Applicant

)
)
)

Dated: **December 29, 2016**
Re: **1338 E. 4th Street**

**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

December 29, 2016
(Date of Mailing this Decision)

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

Northampton County Division

Appeal & Application of)	Dated: December 29, 2016
EAST END PROPERTY, LLC,)	
Applicant)	Re: 1338 E. 4th Street

Certificate of Service

I, Erich J. Schock, Solicitor, do hereby certify that I sent a true and correct copy of the forgoing Decision to the Applicant and its counsel by regular U.S. Mail sent first class to the addresses and on the date set forth below:

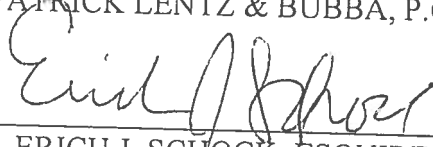
Rajwinder Nagra
East End Property, LLC
4179 Rexford Drive
Bethlehem, PA 18020
Applicant

James F. Preston, Esquire
Broughal & DeVito
38 W. Market Street
Bethlehem, PA 18018
Attorney for Applicant

FITZPATRICK LENTZ & BUBBA, P.C.

Date: December 29, 2016

BY: _____



ERICH J. SCHOCK, ESQUIRE
Atty. Id. No. 65475
4001 Schoolhouse Lane, P.O. Box 219
Center Valley, PA 18034-0219
Attorney for Zoning Hearing Board
Of the City of Bethlehem

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

Northampton County Division

Appeal & Application of
EAST END PROPERTY, LLC,
Applicant

)
)
)
)

Dated: **December 29, 2016**

Re: **1338 E. 4th Street**

DECISION

I. Preliminary Matters

A public hearing was held on November 16, 2016, at 6:00 PM before the Zoning Hearing Board of the City of Bethlehem regarding Applicant's request for a dimensional variance.

A. Parties.

1. Applicants: East End Property, LLC appeared through Rajwinder Nagra, and had standing as the owner of the subject property. James F. Preston, Esquire, represented Applicant.

2. Zoning Hearing Board: The Board comprised Gus Loupos (Chairman), William Fitzpatrick, Linda Shay Gardner, and James H. Schantz. The Zoning Officer was Suzanne Borzak. Erich J. Schock of Fitzpatrick Lentz & Bubba, P.C., represented the Zoning Hearing Board as its Solicitor.

3. Protestant(s) / Interested Parties: No protestants appeared at the public hearing.

B. Notice

Notice of the hearing was given by public advertisement, posting of the Property and regular mail to neighboring property owners pursuant to the applicable provisions of the

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

C. Property

The subject property is known as **1338 E. 4th Street**, Bethlehem, Pennsylvania (the "Property").

II. Applicable Law

The Board considered the case under the following statutory authority, as well as under applicable reported decisions of the appellate courts in Pennsylvania:

1. *The Codified Zoning Ordinance of the City of Bethlehem*, Ordinance No. 2210, effective September 25, 1970, as amended (hereinafter, the "Zoning Ordinance").

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").

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.

III. Nature of Relief Sought

Applicant sought a dimensional variance from §1306.01(b)(2) / §1306.01(a)(4) of the Zoning Ordinance to have 1370 SF of lot area per dwelling unit when 2500 SF is required.

IV. Evidence Received by the Board

In addition to testimonial evidence received by the Board from Applicant, neighbors and the Zoning Officer, the Board admitted the following Exhibits:

- Application and its attachments.
- Exhibit A-1: Correspondence re: Enterprise Zone Tax Credit
- Exhibit A-2: Correspondence regarding Eastern Gateway District
- Exhibit A-3: Letter of support from City Mayor
- Exhibit A-4: Letter of support from Hispanic Center
- Exhibit A-5: Letter of support from CACLV
- Exhibit A-6: Correspondence from Planning Commission re: blighted property
- Exhibit A-7: Rendering of proposed building
- Exhibit A-8: Site Plan

V. Findings of Fact

1. The Property is known as 1338 E. 4th Street and is located in the CL-Commercial Zoning District.
2. The Property consists of two tracts containing 10,960 SF.
3. The owner of the Property is East End Property, LLC.
4. Located on the Property are two vacant structures which have become uninhabitable.
5. Applicant proposes to demolish the existing structures and redevelop the Property with a three-story building containing eight apartments atop a first floor grocery store.
6. The footprint of the proposed building is 4,000 SF.
7. With 8 units the building will have only 1,370 SF of land area per dwelling unit.
8. The Zoning Ordinance requires 2,500 SF of land area per dwelling unit.

9. Compliance with the Zoning Ordinance would limit the structure to a maximum of 4 units.
10. The project will provide all required parking (21 spaces) on site.
11. The building will observe the maximum height allowed in the CL Zoning District.
12. The existing buildings have been vacant for ten (10) years.
13. Applicant contends that the buildings cannot be feasibly renovated and repurposed.
14. The project as proposed enables the developer to rehabilitate the Property.
15. The prior commercial use of the Property was a bar. Applicant is trying to bring a more needed commercial use to the neighborhood.
16. The cost of the project will exceed \$1.5M. The amount of site work required is cost-prohibitive, if less than eight units are constructed.
17. The project received the support from several neighbors who attended the hearing.
18. There is a viable market for residential apartments and a grocery store in this area.
19. The project meets all other zoning requirements.
20. The building as proposed fits with the character of the vicinity – there are two- and three-story buildings nearby.

VI. Analysis of Law

Applicant is the owner of the Property, known as 1338 E. 4th Street in the City of Bethlehem, Northampton County, Pennsylvania. The Property currently contains two vacant, uninhabitable buildings. Applicant proposes to use the Property for an 8-unit residential dwelling with a ground level retail grocery store. The Property is located in the CL-Commercial Zoning District.

Applicant requested a dimensional variance from §1306.01(b)(2) of the Zoning Ordinance.

The grant of a variance is pursuant to §1302.96 of the Zoning Ordinance.

1302.96 Variance

A modification of the regulations of this Ordinance, granted on grounds of exceptional difficulties or unnecessary hardship, not self-imposed, pursuant to the provisions of Article 1325 of this Zoning Ordinance, and the laws of the State of Pennsylvania.

The Zoning Ordinance provides specific criteria that the Zoning Hearing Board must address in relation to the approval or denial of a variance request:

1325.06 Powers and Duties – Variances

(a) Upon appeal from a decision by the Zoning Officer, the Zoning Hearing Board shall have the power to vary or adapt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions whereby such strict application would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building involved, but in no other case.

(b) In general, the power to authorize a variance from the terms of this Ordinance shall be sparingly exercised and only under peculiar and exceptional circumstances.

(c) No variance in the strict application of the provisions of this Ordinance shall be granted by the Board unless the Board finds that all the below requirements and standards are satisfied. The applicant must prove that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. In particular, the applicant shall establish and substantiate his appeal to prove that the appeal for the variance is in conformance with the requirements and standards listed below:

(1) That the granting of the variance shall be in harmony with the general purpose and intent of this Ordinance, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(2) That the granting of the variance will not permit the establishment within a District of any use which is not permitted in that District.

(3) There must be proof of unique circumstances: There are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building.

(4) There must be proof of unnecessary hardship: If the hardship is general, that is, shared by neighboring property, relief can be properly obtained only by legislative action or by court review of an attack on the validity of the Ordinance.

(5) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded.

Furthermore, hardship complained of cannot be self-created; it cannot be claimed by one who purchased with or without knowledge of restrictions, it must result from the application of the Ordinance; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

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).

The Property contains two outdated, uninhabitable buildings. Applicant is a residential developer, which is asking to demolish the current buildings and rebuild on the Property for a multi-family use. That use is permitted but only in conjunction with a first-floor commercial use. The Board believes that Applicant met its burden of proof for the variance to allow the foregoing to occur.

There are two significant factors supporting this grant of a variance – (a) it is for dimensional relief, and (b) it is to facilitate redevelopment of a blighted property. First, under the decision of *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 554 Pa. 249, 721 A.2d 43 (1998), it is clear that a dimensional variance is subject to a less strict standard than a use variance. In addition, the Board regularly deals with variances relating to dwelling units per lot area. When all of the parking can be accommodated on site, a major hurdle to increasing density is eliminated. Also, the Board often looks to the character of the neighborhood as to whether the density is appropriate. Here, based on the Board’s knowledge of this portion of the City of Bethlehem, the number of units proposed for the Property does not seem aberrant. With regard to the necessity for the variance, the same *Hertzberg* decision allows the Board to look at the goal of rehabilitating a dilapidated property as being the basis for reasonable modification of the Zoning Ordinance. The Board accepted the testimony from Applicant that it is infeasible to renovate and repurpose these buildings. Applicant’s project includes an investment of over \$1.5M into the City (and this neighborhood in particular). The Board is willing to accept that an appropriate return upon the investment necessitates a project with the number of units proposed. That the project requires no other zoning relief whatsoever and met with no objection but instead significant support from the neighbors and the City solidifies the appropriateness of this modification.

The Board concluded that the physical condition of the property created a hardship, that the relief would not harm the neighborhood but in fact help it and that the relief represents the minimum since it makes the project viable.

VII. Conclusions of Law

1. Applicant demonstrated that the Property is subject to unique physical circumstances.
2. Applicant demonstrated that the relief will cause no harm to the public welfare.
3. Applicant demonstrated the relief is the minimum requested.

VIII. Decision of the Board

Based upon the foregoing, by a 4-0 vote, the Zoning Hearing Board granted a variance to §1306.01(b)(2) of the Zoning Ordinance to maintain a per dwelling unit area of 1370 SF with a maximum of 8 dwelling units.

THE BOARD:

Voting to Grant the Use Variance:


ERICH J. SCHOCK
Solicitor

/s/ Gus Loupos
GUS LOUPOS
Chairman

/s/ Suzanne Borzak
SUZANNE BORZAK,
Zoning Officer

/s/ William Fitzpatrick
WILLIAM FITZPATRICK
Member

/s/ Linda Shay Gardner
LINDA SHAY GARDNER, Member

/s/ James Schantz
JAMES SCHANTZ
Member

DATE(S) OF HEARING: November 16, 2016
DATE OF WRITTEN DECISION: December 29, 2016