



SITE ADDRESS: 262 Ninth Avenue

Office Use Only:

DATE SUBMITTED: 01.13.2021

HEARING DATE: 01.27.2021

PLACARD: 01.14.2021

FEE: \$ 500<sup>00</sup>

ZONING CLASSIFICATION: R-T

LOT SIZE: 0.271 ac. 90' x 131' or 11,790 SF

**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 4<sup>th</sup> Wednesday of the month. The hearing will be held the 4<sup>th</sup> 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: \_\_\_\_\_

**SECTION 1**

APPLICANT:	<u>Hamburg House, LLC</u>	<u>262 9TH AVE LLC</u>
Name	<u>262 Ninth Avenue</u>	
Address	<u>264 N. View Road</u>	
	<u>Fleetwood, PA 18522</u>	
Phone:		
Email:	<u>[REDACTED]</u>	
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
Address
Phone:
Email:
ATTORNEY (if applicable):
Name James J. Holzinger, Esquire
Address 1216 Linden Street
Bethlehem, PA 18018
Phone: [REDACTED]
Email: [REDACTED]

## 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. N/A
4. If the real estate is presently leased, attached a copy of the present lease. N/A
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
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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.

Applicant seeks relief from the strict application of Section 1324.06 as it applies to the attached Decision

of the Board dated January 31, 2020. Due to COVID-19, Applicant has been unable to proceed with the substantial construction of the requested approvals. Nothing has changed since the previous application.

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

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

N/A

### NARRATIVE

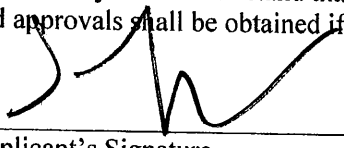
A brief statement reflecting why zoning relief is sought and should be granted must be submitted.

Please see attached

### 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.

  
\_\_\_\_\_  
Applicant's Signature Attorney for the Applicant/Owner  
Jams J. Holzinger, Esquire

1-13-21  
\_\_\_\_\_  
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.

**Before the Zoning Hearing Board  
Of the City of Bethlehem, Pennsylvania**

**Lehigh County**

**Appeal & Application of  
262 Ninth Avenue LLC,  
Applicant**

)  
)  
)

**Date: January 31, 2020**

**Re: 262 Ninth Avenue**

**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 Hearing 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**

**January 31, 2020**

**Before the Zoning Hearing Board  
Of the City of Bethlehem, Pennsylvania**

**Lehigh County**

<b>Appeal &amp; Application of</b>	)	<b>Date: January 31, 2020</b>
<b>262 Ninth Avenue LLC,</b>	)	
<b>Applicant</b>	)	<b>Re: 262 Ninth Avenue</b>

**DECISION**

**I. Preliminary Matters**

A public hearing was held on **December 18, 2019** at **6:00 PM** before the Zoning Hearing Board of the City of Bethlehem ("Board") regarding Applicant's appeal to the Board.

**A. Parties**

1. Applicant: 262 Ninth Avenue, LLC ("Applicant"), appeared at the hearing and had standing as the legal owner of the property. James J. Holzinger, Esquire, represented Applicant.

2. Zoning Hearing Board: The Board comprised William Fitzpatrick (Chairman), Linda Shay Gardner, James H. Schantz, Terry Novatnack and Peter Schneck. The Zoning Officer was Craig D. Peiffer. Erich J. Schock of Fitzpatrick Lentz & Bubba, P.C., represented the Zoning Hearing Board as its Solicitor.

3. Protestant(s) / Interested Parties: Several interested parties 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,<sup>1</sup> the Zoning Ordinance of the City of Bethlehem<sup>2</sup> and the rules of the Board.<sup>3</sup>

### **C. Property**

The subject property is known as **262 Ninth Avenue**, Bethlehem, Lehigh County, 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").

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<sup>1</sup> 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."

<sup>2</sup> Article 1325.04(a) provides for notice to be given as follows: (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.

<sup>3</sup> 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.

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 sought dimensional variance from §1306.01(a)(4) of the Zoning Ordinance to reduce the lot area per dwelling unit to 2,358 SF per unit (where 2,500 SF is required) and to exceed the maximum building coverage. The proposed building coverage is 34%, while 30% is allowed.

### **IV. Evidence Received by the Board**

In addition to the Applicant and testimonial evidence received by the Board from Applicant, the Board admitted the following exhibits:

Exhibit A-1: Aerial with lot lines

Exhibit A-2: Site plan

### **V. Findings of Fact**

1. The Property which is the subject of this appeal is located at 262 Ninth Avenue in the Lehigh County portion of the City of Bethlehem.

2. The owner of the property is 262 Ninth Avenue, LLC.

3. Owner acquired the property in September 2018

4. The Property is located in the RT – High Density Residential Zoning District.

5. The Property is located on the corner of Ninth Avenue and Martins Lane.

6. The Property contains 11,768 SF.

7. The Property is improved with a house and garage. However, the buildings are old and dilapidated and not in use.

8. The home consists of an original house with several later additions.

9. Bernie Telatovich, a professional engineer with Benchmark Civil Engineering Services, testified on behalf of Applicant regarding the character of the nearby uses.

10. Across Ninth Avenue the properties contain twins on lots of 2600 SF.

11. The building coverage of those residences is approximately 45%-47%.

12. There are duplexes nearby, which have their rear yards facing the Property.

13. Those duplexes are on lots of 2500 SF and have a building coverage of 28%-53%.

14. Also nearby on Spring Street are several residential lots that are smaller in area than the Property.

15. Proceeding south down the hill are single family homes.

16. Multi-family residential use is permitted in the RT Zoning District.

17. The proposed use of a multi-story dwelling 3 ½ stories or less allows for a maximum height of 35'. That requirement is met.

18. The proposal will contain five units.

19. Multi-family dwellings of more than 3 ½ stories are permitted in the RT District with a maximum height of 60'.

20. The multi-family dwelling will be constructed townhome style with the Property remaining a single lot.

21. Access to the Property off Martins Lane is allowed under the City's ordinances.

22. The site plan submitted as Exhibit A-2 depicts driveways leading from Martins Lane to the rear of the multi-family dwelling.

23. Each of the five units would have an individual driveway.

24. A multi-family dwelling of 3 ½ stories or less requires a lot area per dwelling unit of 2500 SF.



25. Applicant is proposing to have a 6% variation from the required amount.
26. The lot area per dwelling unit for a multi-family dwelling of more than 3 ½ stories would be only 1200 SF.
27. The maximum building coverage in the RT District is 30% and 34% is proposed.
28. Applicant is proposing to improve the façade along Ninth Avenue beyond what is required to create a front façade along Ninth Avenue.
29. The design as shown is intended to keep parking off of Ninth Avenue by allowing it to the rear of the multi-family dwelling off Martins Lane.
30. The Property is subject to slopes which dictated the building's location on the Property.
31. Land development approval from the City will be required during which landscaping and buffering will be finalized.
32. The deviation in coverage of 4% amounts to 470 SF.
33. The deficiency in lot area per dwelling unit of 6% amounts to 660 SF.
34. Each unit will have one driveway parking space and one garage parking space.
35. Each driveway is 19' at its intersection with Martins Lane.
36. In the location off Martins Lane the driveways can be relatively flat.
37. During the design Applicant and its engineer examined driveway placement to make it best situated for access off Martins Lane.
38. Arnold Allen is the principal of Applicant.
39. Allen testified that the home in its existing condition is not reasonably repairable.
40. Each unit will have a first floor level with garage and storage.

41. The second level will be the kitchen and living area, and the third level will be three bedrooms.

42. There will be 2 ½ bathrooms in each unit.

43. The building on the Property will be constructed generally in conformity with the rendering displayed at the hearing.

44. Trash pickup will be performed at the property owner's expense.

## **VI. Discussion**

Applicant requests a variance from §1306.01(a)(3) of the Zoning Ordinance. The grant of a variance is pursuant to § 1325.06 of the Zoning Ordinance. 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 findings 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 variance. 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 currently contains a residence that over time had been modified by various additions. The building is dilapidated and cannot be feasibly renovated for single family use. The size of the building and the area of the lot are atypical for the neighborhood. As demonstrated by Applicant, while there are other single family homes in the neighborhood, those are on smaller lots. In addition, a significant amount of residential development in the neighborhood are duplexes on smaller lots. Finally, multi-family dwellings including a multi-family dwelling up to 60' in height are permitted in the RT Zoning District.

The request for relief is intended to allow a fifth unit in a townhome style. More than five units could be permitted, since the multi-family dwelling over 3 ½ stories requires less building coverage and a lesser lot area per dwelling unit than multi-family dwellings done "townhome" style. The relief is dimensional in nature and modest based upon what is required. Further, the relief allows for the property to be developed with a multi-family dwelling that is more consistent in design with the other residences in the neighborhood. Finally, the design allows for

traffic to use Martins Lane and not utilize curb cuts on Ninth Avenue, which would reduce the amount of parking available on Ninth Avenue.

While neighboring residents primarily raised the issue of increased traffic and parking demand, as noted the lot area per dwelling unit requirement for multi-family dwellings of 3 ½ or more stories (also a permitted use) is only 1200 SF not 2500 SF. Based on these facts, the Board believed the relief should be granted. As is its prerogative, the Board attached the conditions set forth below as an additional precaution to minimize the impact on the area.

## **VII. Conclusions of Law**

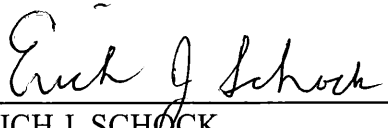
1. Applicant presented sufficient evidence to demonstrate that the Property is subject to unique circumstances.
2. The circumstances create a hardship.
3. Applicant did not create the hardship.
4. The relief will not be injurious to the public.

### **VIII. Decision of the Board**

Based upon the foregoing, by a 5-0 vote the Zoning Hearing Board granted a variance from §1306.01(a)(4) of the Zoning Ordinance to reduce the required lot area per dwelling unit and to maintain a building coverage of 34%, subject to the following conditions:

- (1) Applicant shall improve the Ninth Street façade of the building as shown on Exhibit A-2 presented at the hearing.
- (2) Applicant shall construct the multi-family dwelling substantially similar to the design shown on Exhibit A-1, subject to Planning Department and all other departmental reviews.
- (3) Trash collection shall be provided by the property owner with individual trash containers for each unit. No dumpster located on the exterior of the building.

#### ***THE BOARD:***

  
ERICH J. SCHOCK  
Solicitor

/s/ Craig D. Peiffer\*  
CRAIG D. PEIFFER,  
Zoning Officer

/s/ William Fitzpatrick\*  
WILLIAM FITZPATRICK  
Chairman

/s/ Linda Shay Gardner \*  
LINDA SHAY GARDNER  
Member

/s/ James H. Schantz\*  
JAMES H. SCHANTZ  
Member

/s/ Terry Novatnack\*  
TERRY NOVATNACK  
Member

/s/ Peter Schneck\*  
PETER SCHNECK  
Member

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

**DATE(S) OF HEARING: December 18, 2019**

**DATE OF WRITTEN DECISION: January 31, 2020**

**Before the Zoning Hearing Board  
Of the City of Bethlehem, Pennsylvania**

**Lehigh County**

**Appeal & Application of  
262 Ninth Avenue LLC,  
Applicant**

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)  
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**Date: January 31, 2020**

**Re: 262 Ninth Avenue**

**Certificate of Service**

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

262 Ninth Avenue, LLC  
264 N. View Road  
Fleetwood, PA 18522  
**Applicant**

James J. Holzinger, Esquire  
1216 Linden Street  
Bethlehem, PA 18018  
**Attorney for Applicant**

Date: January 31, 2020

FITZPATRICK LENTZ & BUBBA, P.C.

BY: \_\_\_\_\_



ERICH J. SCHOCK  
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Attorney for Zoning Hearing Board  
Of the City of Bethlehem