

ORIGINAL



SITE ADDRESS: 2897 Easton Avenue

Office Use Only:

DATE SUBMITTED: 01.07.2022

HEARING DATE: _____

PLACARD: _____

FEE: _____

ZONING CLASSIFICATION: _____

LOT SIZE: _____

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

1. Return one (1) original and eight (8) 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 on the 4th Wednesday of the month. The hearing will be held on 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: _____

SECTION 1

APPLICANT:	
Name	John Tallarico
Address	565 Ashwood Drive
	Nazareth, PA 18064
Phone:	[REDACTED]
Email:	[REDACTED]

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	Jake Vida Management Corp. of PA
Address	60 Davinci Drive, 1
	Bohemia, NY 11716-2366
Phone:	Redacted Agreement of Sale delivered to the Zoning Officer
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 architectural plans and elevations depicting proposed alterations or new construction.
3. Attach photographs.
4. If the real estate is presently under Agreement of Sale, attach a copy of the Agreement.
5. If the real estate is presently leased, attached a copy of the present lease.
6. 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>1322.03(II)(4)</u>	<u>Max Building Length 180'</u>	<u>Proposed 186'</u>	<u>6'</u>
<u>1306.01(a)2</u>	<u>Lot Area Per Dwelling Unit 8000 s.f.</u>	<u>2215 s.f.</u>	<u>5785 s.f.</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.

Use variance from Section 1306.01(a)2 to allow two buildings comprised of 54 units of multi-family dwellings each building to be three stories.

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.



Applicant's Signature John Tallarico

1/7/22

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.

Applicant desires to construct two (2) three (3) story multi-family dwellings with a total of 54 units. The RS Zoning District does not allow multi-family dwellings, but Applicant believes the location of the property is not well situated for single family dwellings or any of the other non residential or other allowed uses. Further, Applicant believes the property location across from a shopping center together with the odd shape of the lot supports the relief sought, namely, a use variance and other dimensional variances.

The subject property was approved for multi use retail/office back in 2008, but the economy and other factors resulted in the prior approval lapsing. See attached 2008 Zoning Opinion.

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

Northampton County Division

Appeal & Application of
CHRISTOPHER VALIANATOS,
Equitable Owner.

) September 2008
) Re: 2897 Easton Avenue
) File: #2008-32
) SPECIAL EXCEPTION TO
) CHANGE NONCONFORMING USE

DECISION

I. Synopsis of Decision

The Board granted the Applicant's request for a special exception to change a lawful non-conforming use, namely several principal uses including residential, landscaping warehouse and landscaping business, to one integrated multi-use retail/office use within the RS Residential Zoning District.

II. Preliminary Matters

A public hearing was held on September 24 at 7:00 p.m. before the Zoning Hearing Board of the City of Bethlehem, regarding the Applicant's request for a special exception to change a residential and landscaping office/warehouse use to one integrated multi-use retail/office use.

The Applicants first sought a zoning permit from the Zoning Officer. The Zoning Officer denied the permit. Thus, the Applicants filed this appeal with the Zoning Hearing Board.

A. Parties

1. **APPELLANT/APPLICANT(S)**¹: Christopher Valianatos appeared at the Hearing and was represented by James J. Holzinger, Esquire of Bethlehem, Pennsylvania.

2. **ZONING HEARING BOARD**: The Board, consisting of Chairman Gus Loupos and Members William Fitzpatrick and Ronald Lutes, was represented by its Solicitor, Mickey K. Thompson, Esq. of Thompson Law Offices in Bethlehem, Pennsylvania.

3. **PROTESTANT(S)/INTERESTED PARTIES**: The following individuals entered their appearance as interested parties to the matter: Thomas & Kimberly Blair, James & Susan McGee, Dino Curry, Georgiana Simitz, Ron & Jennifer Danyi, Ruse Rodriguez, Leo Pietrouche, Jr., Carl Moyer, Jose & Gloria Vasquez, and Bill Schreier.

B. Notice

Notice of the hearing was given by newspaper advertisement, by physical posting of the property, and by regular mail to neighboring property owners pursuant to the applicable provisions of the Pennsylvania Municipalities Planning Code,² the Zoning Ordinance of the City of Bethlehem³, citations *infra*, and the Rules of the Board.⁴

¹ Those persons or entities who have sought a permit from the Zoning Officer and were denied a permit have appealed from his denial and are thus "appellants" in a certain sense; they also are applying for relief from the Zoning Hearing Board and are thus "applicants."

² 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 or 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."

³ Article 1325.04(a) provides for notice to be given as follows: "(1) At least seven (7) days prior to the date fixed for public hearing, publish a public notice describing the location of the building or lot and the general nature of the question involved in a newspaper of general circulation in the City. (2) Give written notice to parties in interest at least seven (7) days in advance of such hearing. Such parties shall be at least those persons whose properties adjoin and face on the same street as the property in question, and the City Planning Commission."

⁴ 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. Applicable Law

This case was considered 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, amended to April 3, 2007 (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, effective in 60 days (hereinafter, the "MPC").

IV. Nature of Relief Sought

The Applicant, Christopher Valianatos, desired to change an existing non-conforming multi-residential and landscaping warehouse and landscaping business to an integrated multi-use retail/office use. Nonconforming uses are permitted to be changed, provided that the criteria for altering a nonconforming use under Section 1323.07 of the Zoning Ordinance are met, as well as the general criteria for special exception under Section 1325.07.

V. Evidence Received by the Board

Board Exhibit #1: Application.

Applicant's Exhibit #1: Site plan.

Applicant's Exhibit #2: Aerial photograph of Easton Avenue.

Applicant's Exhibit #3: Photograph of the neighborhood surrounding the premises.

Applicant's Exhibit #4: Aerial photograph of a development in Macungie, Pennsylvania.

Applicant's Exhibit #5: Application/Board Exhibit #1.

Applicant's Exhibit #6: Schematic rendering of the proposed site.

VI. Findings of Fact

1. The subject premises is located at 2897 Easton Avenue in the Northampton County portion of the City of Bethlehem.
2. The property is located in the RS Residential Zoning District.
3. The subject premises exists as a nonconforming multi-use property being residences, landscaping warehouse and landscaping business.
4. The Applicants desire to change the use to a multi-use retail/office center.
5. The property is buffered by Easton Avenue to the south, a large retail shopping mall to the south and a residential neighborhood to the north.
6. The property presently has three access points.
7. Many of the structures were built prior to 1960.
8. There are several structures on the property, including a barn, a two-story home, greenhouse and pole building.
9. The business was mainly operational during Spring, Summer and Fall.
10. The landscaping/nursery business produced noise, fumes, and landscaping and nursery dust and odors.
11. The subject nursery on the premises was the smallest of the four nurseries owned by the Kospiah family.

12. The property has a turning lane for access into the property.

13. There was an increase in traffic with the development of the shopping center across the street.

14. The Applicant desired initially to place a restaurant/banquet facility at the property, but due to another restaurant opportunity, the Applicant opened another facility in West Bethlehem.

15. The restaurant plan was presented to the City of Bethlehem and was well received.

16. The Applicant stated to the owners of the subject premises that he would purchase the property regardless of his changing intention of the development of the site.

17. The Applicant changed his proposal to incorporate a retail/office use for the property.

18. The site plan would go through review from the City of Bethlehem, but the Applicant stated that he would work with the neighbors to erect appropriate buffering around the subject premises.

19. The subject premises is unusually shaped (like an incongruent pentagon), but the development of the site would only include one integrated driveway to support ingress and egress.

20. The proposed building will be a 20,000 square foot L-shaped building.

21. Deliveries will not occur toward the rear of the building to interfere with the neighbor's enjoyment of the property.

22. Signage will conform to the Ordinance.

23. The roof-line of the building will resemble a residential structure.

24. The Applicants will not have a shopping center use or a restaurant or bar with a drive-thru facility.

25. The hours of operation will not be twenty-four hours per day.

26. The City of Bethlehem Planning Department will have oversight regarding the site development of the property.

27. There will be sidewalk improvements and upgrades.

VII. Conclusions of Law

The Applicant sought a special exception to change a non-conforming multi-use premises, being multi-residences, greenhouse/nursery facility, pole barn and warehouse that exist at present to a mixed multi-retail/commercial office space on the subject premises.

The Applicant initially desired to construct a restaurant and banquet facility on the premises, but because of another business opportunity, decided to change the subject premises to incorporate what was described as a local community retail and an office center. There are no commercial tenants proposed to the premises, but the Applicant planned upon creating no larger than 4,000 square feet units within the proposed 20,000 square feet building. Section 1323.07 of the Zoning Ordinance, regarding changes to existing nonconforming uses, states:

1323.07 Changes

Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use. A non-conforming use may be changed to another non-conforming use only under the following conditions:

(a) Such change shall be permitted only by special exception, under the provisions of Article 1325, Zoning Hearing Board.

(b) The applicant shall show that a non-conforming use cannot reasonably be changed to a permitted use.

(c) The applicant shall show that the proposed change will be less objectionable in external effects than the existing non-conforming use with respect to:

- (1) Traffic generation and congestion including truck, passenger car and pedestrian traffic.
- (2) Noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, and vibration.
- (3) Storage and waste disposal.
- (4) Appearance.

A non-conforming use is an activity or structure that predates relevant zoning restrictions.

Lantos v. Zoning Hearing Bd. of Haverford Tp., 153 Pa. Commonwealth Ct. 591, 621 A.2d 1208 (1993).

Property owners have a constitutional right to continue non-conforming uses. *Richland Tp. v. Prodex, Inc.*, 160 Pa. Commonwealth Ct. 184, 634 A.2d 756 (1993).

A lawful non-conforming use establishes in the property owner a vested property right that cannot be abrogated or destroyed unless it is a nuisance, it is abandoned, or it is extinguished by

eminent domain. *Pennridge Development Enterprises, Inc. v. Volovnik*, 154 Pa. Commonwealth Ct. 609, 624 A.2d 674 (1993).

The right to expand a non-conforming use is a constitutional right that may not be prohibited by local zoning ordinances. *R.K. Kibblehouse Quarries v. Marlborough Tp. Zoning Hearing Bd.*, 157 Pa. Commonwealth Ct. 630, 630 A.2d 937 (1993).

Additionally, the general requirements and standards applicable to all special exceptions are set forth in Article 1325.07:

1325.07 Power and Duties - Special Exceptions

(a) The Zoning Hearing Board shall have the power to approve special exceptions for any of the 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) Suitable in terms of permitting the logical, efficient and economical extension of public services and facilities such as public water, sewers, police and fire protection and public schools.

(6) Suitable in terms of effects on street, traffic and safety with adequate sidewalks and vehicular access arrangements to protect major streets from undue congestion and hazard.

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, smoke and fume control, and the minimizing of noxious, offensive, or hazardous elements.

A "special exception" is neither "special" nor an "exception"; rather, it is a use which is permitted by the Zoning Ordinance provided that certain criteria are met and the proposed use does not adversely affect the community. *Heck v. Zoning Hearing Board for Harvey's Lake Borough*, 39 Pa. Commonwealth Ct. 570, 575, 397 A.2d 15, 18 (1979).

A landowner/applicant's entitlement to a special exception is predicated upon his satisfying the special exception criteria as set forth in a zoning ordinance. *N. Pugliese, Inc. v. Palmer Township Zoning Hearing Board*, 140 Pa. Commonwealth Ct. 160, 592 A.2d 118 (1991).

There is no generalized right to seek a special exception and the right to a special exception exists only where it is specifically provided for under the terms of a zoning ordinance.

Borough of West Mifflin v. Zoning Hearing Board of the Borough of West Mifflin, 69 Pa. Commonwealth Ct. 604, 452 A.2d 98 (1982).

We find that the Applicant meets the general requirements for special exception under Section 1325.07(b)(1-6) for the change of the existing multiple uses to a multi-use retail and office use. First, the change is consistent with the spirit, purposes, and intent of this Ordinance. The purpose of the Zoning Ordinance is to promote the public health, safety, morals, and general welfare, by among other things, encouraging the most appropriate use of the land. The removal of the existing uses on this relatively large tract of land to consolidate the pedestrian and vehicular traffic for the proposed retail/office center encourages the most appropriate use of the land. The property exists on Easton Avenue and is located directly across from a busy commercial shopping center. The subject premises also enjoys the benefit of a traffic signal that will allow traffic to pass through the intersection and into the proposed retail/office center.

Second, the change of uses is suitable for the property in question, and is 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. The Applicant proposed a plan to take advantage of a highly visible location off of Easton Avenue in the midst of retail and commercial centers, while at the same time designing a multi-use community retail/office structure that blends with the neighborhood.

Third, the proposed change to the proposed use is also suitable in terms of effects on street, traffic and safety. There is a traffic signal that will permit easy ingress and egress to and from the site, and the subject premises will actually reduce the number of entrances to the site, in fact lessening the chance of an accident on Easton Avenue. There will also be roadway and sidewalk improvement to the area that will promote the safe access to the property.

Fourth, there is no further zoning accommodation necessary for the proposed multi-use commercial/retail/office center. The plan meets all zoning codes in reference to the construction of the structure.

We conclude that the remaining criteria had either been met by the Applicant or were not applicable to the request for special exception, by oral testimony or documentary evidence. The Applicant thus met his burden of proof in presenting evidence and persuading the Zoning Hearing Board that the proposed change of the use satisfied the objective requirements of the Zoning Ordinance for the grant of a special exception for the alteration or extension of a non-conforming use. *Appeal of Neill*, 160 Pa. Commonwealth Ct. 169, 634 A.2d 749 (1993). *Manor Healthcare Corporation v. Lower Moreland Township Zoning Hearing Board*, 139 Pa. Commonwealth Ct. 206, 590 A.2d 65 (1991).

Finally, the Board found that the Applicant met its burden under 1323.07 of the Ordinance regarding the change of the use and that the Applicant met the specific requirements for the change of use. The Applicant showed through testimony that the proposed use will be less objectionable than what presently exists on the site relating to traffic generation, noise and other forms of pollution, storage and waste disposal, and appearance.

As such, the Zoning Hearing Board approved the Applicant's proposed change of the use under Section 1323.07 and 1325.07 of the Zoning Ordinance.

VIII. Specific Conditions Imposed

A zoning hearing board has the power to impose reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Municipalities Planning Act and the Zoning Ordinance.⁵ Here, the Board concludes that certain safeguards should be imposed on the Applicant. The following conditions are imposed:

1. The Applicant shall adhere to the permitted uses allowed in the CL Zoning District, except for a bar and drive-thru restaurant use, communication tower use, and adult bookstore.
2. The Applicant shall not permit any tenant to rent or occupy space in excess of 4,000 square feet.
3. The hours of operation that the subject premises will be open to the public are 6:00 a.m. to 11:00 p.m.
4. There shall be no deliveries to the rear of the facilities.
5. There shall be no deliveries except during 8:00 a.m. to 8:00 p.m.
6. There shall be no refuse pick-up to the rear of the property.
7. There shall be no drive thru retail uses.

⁵ Section 910.2(b) of the Municipalities Planning Act, 53 P.S. §10910.2

IX. Decision of the Board

Based upon the foregoing, the Zoning Hearing Board granted the special exception to change an existing nonconforming use to another nonconforming use (by 3-0 vote).

THE BOARD:

MICKEY K. THOMPSON
Solicitor

/s/ Gus Loupos*
GUS LOUPOS
Chairman

/s/ Tracy Samuelson*
TRACY SAMEULESON
Acting Zoning Officer

/s/ William Fitzpatrick*
WILLIAM FITZPATRICK
Member

/s/ Ronald Lutes*
RONALD LUTES
Member

DATE OF HEARING: September 24, 2008

DATE OF ORAL DECISION: September 24, 2008

DATE OF FORMAL WRITTEN DECISION: November 7, 2008

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

Certification of Service

I, Mickey K. Thompson, Solicitor to the Zoning Hearing Board of the City of Bethlehem, do hereby certify that I sent a true and correct copy of the foregoing Decision to the persons and entities listed below at the addressed set forth below, by regular U.S. Mail sent First Class on or before the date set forth below.

Applicant

James J. Holzinger, Esquire
1216 Linden Street
Bethlehem, PA 18018

Attorney for Applicant

Objectors/Interested Parties

William Schreier
1890 Eaton Avenue
Bethlehem, PA 18018

Thomas & Kimberley Blair
2438 Greencrest Drive
Bethlehem, PA 18018

James & Susan McGee
2454 Greencrest Drive
Bethlehem, PA 18018

Dino Curry
2462 Greencrest Drive
Bethlehem, PA 18018

Georgiana Simitz
2446 Greencrest Drive
Bethlehem, PA 18018

Ron & Jennifer Danyi
2423 Nottingham Road
Bethlehem, PA 18018

Rose Rodriguez
2430 Greencrest Drive
Bethlehem, PA 18018

Leo Pietrouche , Jr.
2417 Nottingham Road
Bethlehem, PA 18018

Carl Moyer
2411 Nottingham Road
Bethlehem, PA 18018

Jose & Gloria Vasquez
2405 Nottingham Road
Bethlehem, PA 18018

DATE: November 7, 2008

Mickey K. Thompson

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