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February 8, 2024

Via email - [sboell@flblaw.com](mailto:sboell@flblaw.com)

Steven T. Boell, Esquire  
Fitzpatrick, Lentz & Bubba, P.C.  
Two City Center

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██  
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Re: Macada Partners, 1800 Calypso LLC v. City of Bethlehem  
Zoning Hearing Board  
Docket No. 2023-C-3675  
Our File No. 82,877J

Dear Steve:

As you know, I filed an appeal on behalf of my client at the Lehigh County Court of Common Pleas.

In an effort to resolve this litigation and in the hope of a settlement, I have been authorized to offer the following:

A revised plan for a 27 x 50 house and a mock up of how the house would look.

As you can see from the revised plan, the house is now five feet narrower from the previous plan, and the house is set back from the side yard setback by an additional three and a half feet.

The revisions address the concern raised in the Zoning Hearing Board Decision and preserve the character of the neighborhood.

Please let me know if you would be able to present the attached to the Board in an attempt to resolve this case.

February 8, 2024  
Page 2

I look forward to hearing from you.

Very truly yours,

  
Victor E. Scmillio

VES/jlb

Enclosure

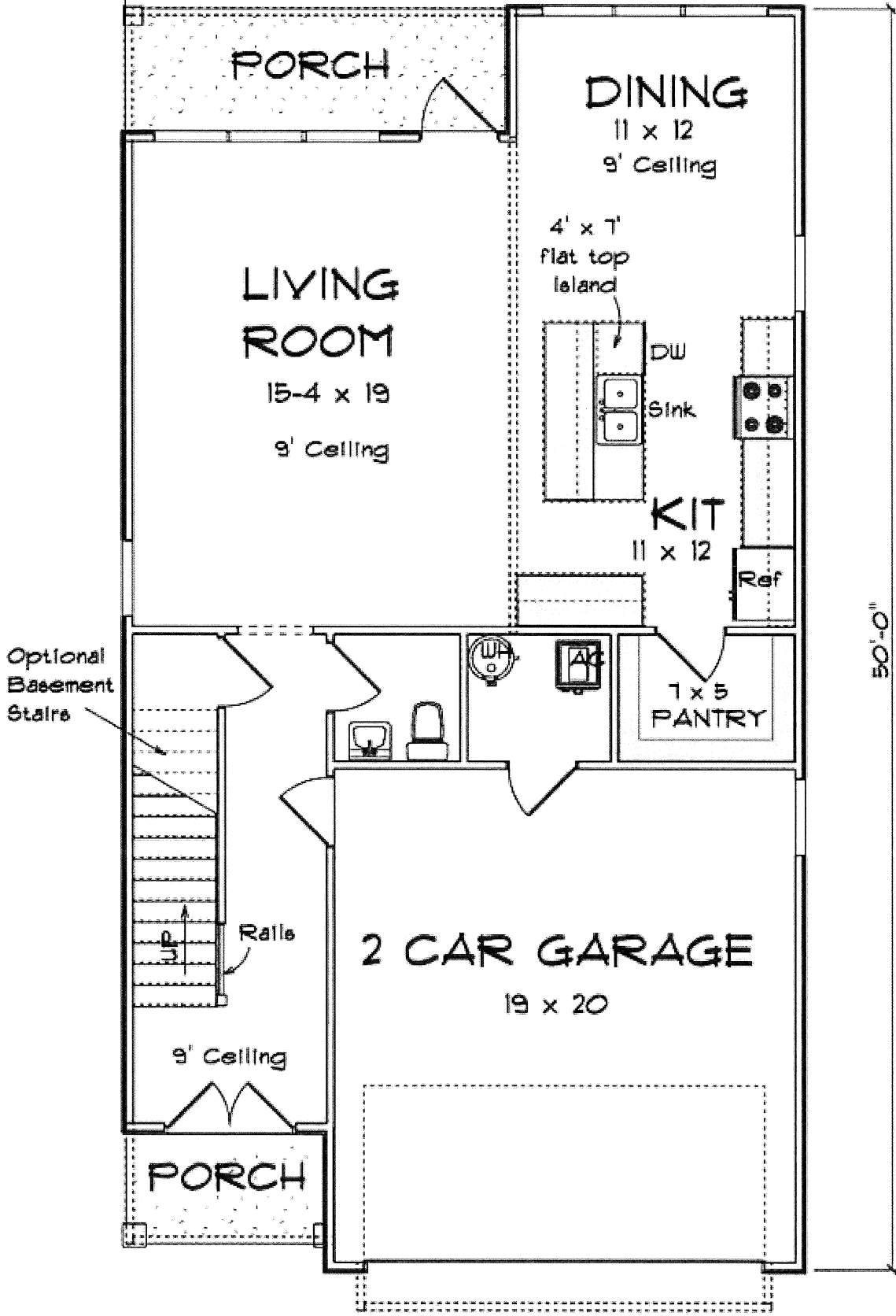
cc: Macada Partners, 1800 Calypso, LLC (via email)





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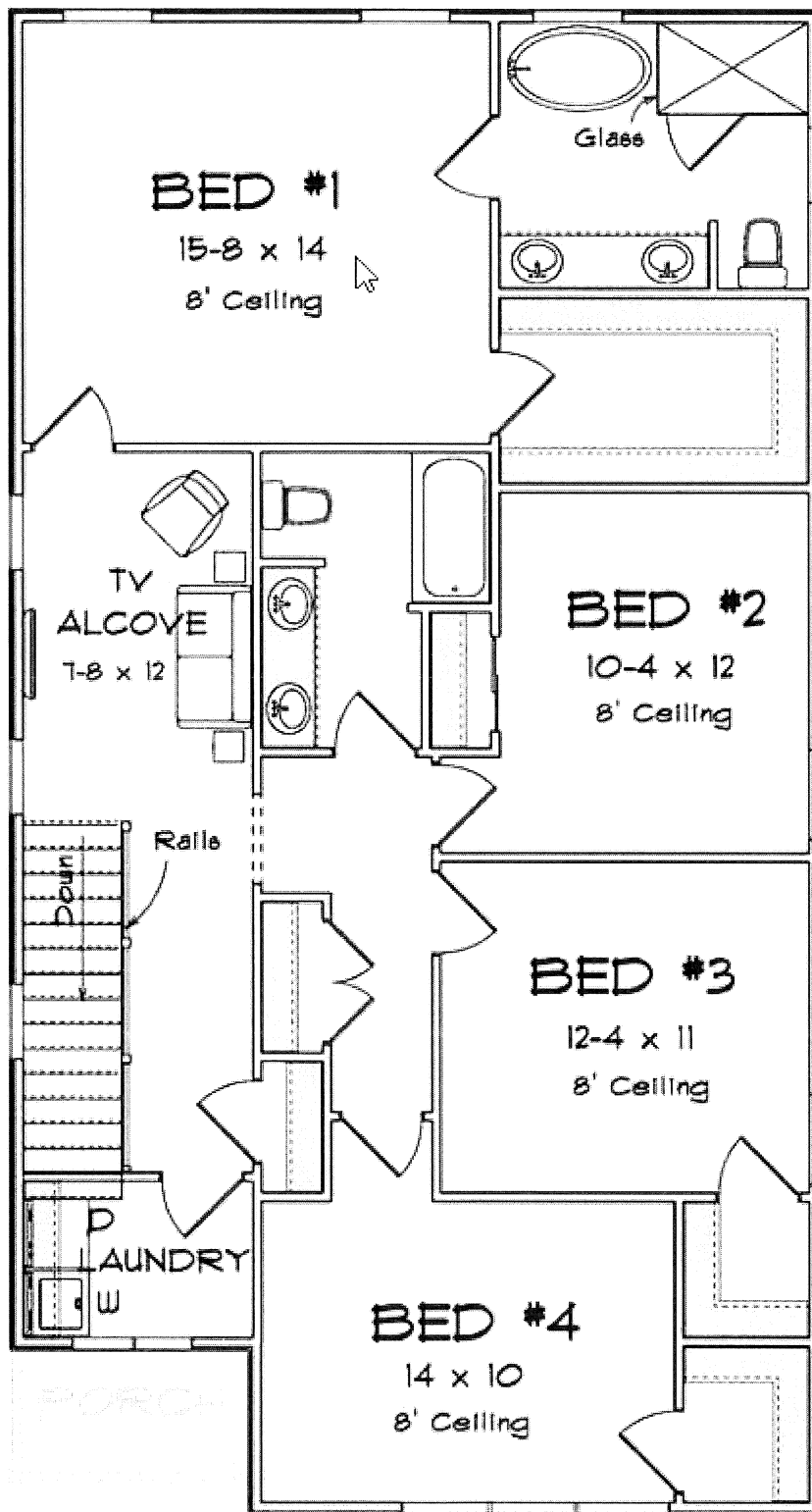
COPYRIGHTED W L MARTIN HOME DESIGNS



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**FL&B**

FITZPATRICK  
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ATTORNEYS AT LAW

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December 8, 2023

Macada Partners  
[REDACTED]

**Applicant**

Victor Scomillio, Esquire  
Holzinger, Harak & Scomillio  
[REDACTED]

**Attorney for Applicant**

**Re: City of Bethlehem Zoning Hearing Board  
1708 Calypso Avenue**

All:

Enclosed please find a copy of the Notice and Decision of the Zoning Hearing Board of the City of Bethlehem in the above matter.

Very truly yours,



Steven T. Boell

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**

<b>Appeal &amp; Application of</b>	)	<b>Date: December 8, 2023</b>
<b>Macada Partners</b>	)	
<b>Applicant</b>	)	<b>Re: 1708 Calypso Avenue</b>

**DECISION**

**I. Preliminary Matters**

A public hearing was held on **October 25, 2023**, at **6:00 PM** before the Zoning Hearing Board of the City of Bethlehem (“Board”) regarding Applicant's Appeal to the Zoning Hearing Board.

**A. Parties**

1. Applicant: David Ronca appeared on behalf of Macada Partners, LLC (“Applicant”). Applicant was represented by Victor Scamillio, Esquire.

2. Zoning Hearing Board: The Board was comprised of Terry Novatnack (Chairman), Jessica L. Lee, and Lea Grigsby. Steven T. Boell, Esquire, of Fitzpatrick Lentz & Bubba, P.C. represented the Zoning Hearing Board as its Solicitor.

3. Protestant(s) / Interested Parties: Mike and Beth Schlener of 1715 Calypso Ave.

**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>

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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



and the rules of the Board.<sup>3</sup>

**C. Property**

The subject property is known as **1708 Calypso Avenue**, Bethlehem, Northampton 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").

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 seeks approval for a variance to develop a nonconforming lot and dimensional variances from Zoning Ordinance §1306.01(a).2 for the minimum lot width (75' required; 50'

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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.

proposed) and for Lot Area (8,000 s/f required, 7,000 proposed).

**IV. Evidence Received by the Board**

In addition to testimonial evidence, the Board admitted the following:

**Exhibit A-1**

**Exhibit A-2** Deed

**Exhibit A-3** Line Drawing of Lot and Building Setbacks

**Exhibit A-4** Comparable Parcels

**Exhibit A-5** Historic Deeds

**Exhibit A-6** Aerial with Lot Lines and

**V. Findings of Fact**

1. The Property is owned by MACADA PARTNERS 1800 CALYPSO LLC and is situated on the north side of Calypso Ave., on Bethlehem's west side.
2. The Property is vacant, 50' x 140' and has an area of 7,000 square feet.
3. The Property is in the RS zone, proximate to the RT zone.
4. The surrounding properties consist primarily of 1 & 2-Story single family homes, and 2-Story multi-family garden apartments and town homes.
5. The Applicant intends to construct a 2-Story, single family home on the existing parcel, which is a permitted use.
6. Though the existing lot width and area are less than the required minimums, applicant believes the lot width and area deficiency pose no issue to comfortably construct a single-family home.
7. David Ronca, manager, testified on behalf of the Applicant.
8. Applicant purchased the Property from Susan Bennett who also owned the neighboring lot.

8. Applicant alleges that there are numerous existing single-family homes on lots of similar or less width and area within close proximity and throughout this area of Bethlehem's west side.

9. The proposed single-family home will meet all other requirements as to front, side and rear yard set-back distances, etc.

10. The proposed structure would comply with all required setback requirements.

11. The home would have approximately 1,800 s/f.

12. Applicant testified that in its purchase of the house it did nothing to create the original lot and purchased the property "as-is."

13. To the rear of the property are multifamily apartments and has existing homes on each side.

13. Beth Schlener of 1715 Calypso appeared in opposition to the property. She testified that the 25' variance was significant and alleged that the hardship was self created because the Applicant was aware of the lot dimensions at the time of purchase. Describing the proposed home akin to a "double wide" she also alleged that the development would have a negative impact on property values and would "overcrowds" the lot. She also testified about stormwater issues within the road causing issues on her property. She testified that the development would not fit with the area.

14. Mike Schlener of 1715 Calypso also appeared in opposition and testified that the variances were overly significant and that the request was "ridiculous".

15. Applicant testified that the property would be developed in conformance with all other legal requirements including impervious coverage and that the home is consistent with neighboring development.

16. Applicant testified that the Board has granted variances of similar magnitude in the past.

17. If granted, the variances will alter the essential character of the neighborhood or district in which the property is located and be detrimental to the public welfare. The testimony otherwise presented by Applicant in that regard is found not credible.

## **VI. Discussion**

Applicant requests a variance from §1306.01(b)(7) of the Zoning Ordinance. The grant of a variance is pursuant to the following provision of the Zoning Ordinance.

### **1302.143 Variance**

The granting of specific permission by the Zoning Hearing Board to use, construct, expand, or alter land or structures in such a way that compliance is not required with a specific requirement of the Zoning Ordinance. Any variance shall only be granted within the limitations of the PA Municipalities Planning Code. See Article 1325 of this Ordinance.

The Zoning Ordinance provides specific criteria that the 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 *de minimis* 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.

(c) The applicant shall establish and substantiate his appeal to prove that the appeal for the variance is in conformance with the requirements of the Pennsylvania Municipalities Planning Code.

(d) In granting any Variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.

A zoning variance should be granted sparingly and only under exceptional circumstances.

--- Evans vs. Zoning Hearing Bd. of Borough of Spring City, 732 A.2d 686 (Pa. Cmwlth. 1999).

Variance applicant's burden is a heavy one, and a variance should be granted sparingly and only under exceptional circumstances. --- Patullo vs. Zoning Hearing Bd. of Tp. Of Middleton, 701 A.2d 295 (Pa. Cmwlth. 1997).

To show unnecessary hardship an applicant must prove that either: (1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) the property can be conformed for a permitted use only at a prohibitive expense; or (3) the property is valueless for any purpose permitted by the zoning ordinance. SPC Co., Inc. v. Zoning Bd. of Adjustment of the City of Phila., 773 A.2d 209 (Pa. Cmwlth. 2001). The applicant must show the

hardship is unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on the entire district. Laurento v. Zoning Hearing Bd. of the Borough of West Chester, 162 Pa.Cmwth. 226, 638 A.2d 437 (1994). Mere evidence that the zoned use is less financially rewarding than the proposed use is insufficient to justify a variance. *Id.* Where a condition renders a property almost valueless without the grant of a variance, unnecessary hardship is established. Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment of the City of Phila., 787 A.2d 1123 (Pa. Cmwth. 2001); Laurento; Serban v. Zoning Hearing Bd. of Bethlehem, 480 A.2d 362 (Pa. Cmwth. 1984).

The Board finds credible that the preexisting dimensions of the lot create a general hardship; however, the Board's mandated inquiry does not stop there. The Board must also determine (i) whether the variances will alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property or be detrimental to the public welfare.

The Board finds that, given the density and size of the proposed single-family home, Applicant failed to meet its burden to establish that the variance will not be determinantal to the public welfare. Applicant seeks to shoehorn an overly dense single-family home onto the Property. We conclude that that, in the density proposed, the single-family home would alter the essential character of the neighborhood or district in which the property is located and be detrimental to the public welfare. While the Board emphasizes with the hardship pertaining to the undersized lot, the Board finds that a dwelling with a lower density would have less of an adverse impact on the neighbors and community.

## **VII. Conclusions of Law**

1. While the Property may be subject to a hardship, the variances as proposed will

alter the essential character of the neighborhood or district in which the property is located and will be detrimental to the public welfare.

*[Rest of Page Intentionally Blank]*

**VIII. Decision of the Board**

By a vote of 2-1, the Board DENIES the variances from Zoning Ordinance §1306.01(a).2 for the minimum lot width and for Lot Area.



\_\_\_\_\_  
Steven T. Boell,  
Solicitor

***THE BOARD:***

VOTING TO DENY THE RELIEF

/s/ Jessica L. Lee \*  
Jessica L. Lee  
Member

/s/ Lea Grigsby \*  
Lea Grigsby  
Member

VOTING TO GRANT THE RELIEF

/s/ Terry Novatnack \*  
Terry Novatnack,  
Chairman

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

**DATE(S) OF HEARING: October 25, 2023**

**DATE OF WRITTEN DECISION: December 8, 2023**



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

**Northampton County**

**Appeal & Application of  
Macada Partners  
Applicant**

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**Date: December 8, 2023**

**Re: 1708 Calypso Avenue**

**Certificate of Service**


I, Steven T. Boell, Solicitor to the Board, do hereby certify that I sent a true and correct copy of the forgoing Decision to the Applicant listed below and its counsel at the addresses set forth, by regular first-class U.S. Mail on the date set forth below:

Macada Partners  
276 E. Macada Road  
Bethlehem, PA 18015  
**Applicant**

Victor Scomillio, Esquire  
1216 Linden Street  
Bethlehem, PA 18018

FITZPATRICK LENTZ & BUBBA, P.C.

Date: December 8, 2023

BY:   
\_\_\_\_\_  
Steven T. Boell  
Attorney I.D. No. 89700  
Two City Center  
645 West Hamilton Street, Suite 800  
Allentown, PA 18101  
Attorney for Zoning Hearing Board  
Of the City of Bethlehem

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

**Northampton County**

<b>Appeal &amp; Application of</b>	)	<b>Date: December 8, 2023</b>
<b>Macada Partners</b>	)	
<b>Applicant</b>	)	<b>Re: 1708 Calypso Avenue</b>

**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 in Northampton 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 mailing of this Decision or your right to such an appeal is lost.**

**YOUR APPEAL PERIOD BEGINS**

**December 8, 2023  
(Date of Mailing)**