

# BJSK

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October 28, 2024

James F. Preston, Esq. ✓  
Craig D. Peiffer, Zoning Officer

Re: 934-946 and 1004 Evans Street

I have enclosed with this cover letter the Decision of the Zoning Hearing Board of the City of Bethlehem regarding this matter.

Thank you



Kevin J. Kelleher, Esq.  
w/ attachment

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

**Appeal and Application of  
HH Evans Street, LLC**

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**Dated: October 28, 2024**

**Re: 934-946 and 1004 Evans 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 located. The City of Bethlehem is located partly in Northampton County and partly in Lehigh County.

In order to file an appeal properly, 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  
OCTOBER 28, 2024  
(DATE OF MAILING THIS DECISION)**

**BEFORE THE ZONING HEARING BOARD .  
OF THE CITY OF BETHLEHEM, PENNSYLVANIA  
NORTHAMPTON COUNTY**

**Appeal & Application of  
HH Evans Street, LLC**

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**Dated: October 28, 2024**

**Re: 934-946 and 1004 Evans Street**

**DECISION**

**1. Preliminary Matters**

A public hearing was held on September 18, 2024, at 6:00 p.m. before the Zoning Hearing Board of the City of Bethlehem regarding Applicant's requests a Special Exception and for Variances.

**A. Parties.**

1. Applicant: HH Evans Street, LLC, through duly authorized representatives, appeared in support of the Application. James Preston, Esquire, represented the Applicant.

2.     Zoning Hearing Board:     The Zoning Hearing Board was comprised of Jessica Lee, Chair; Peter Schneck; and Paige Van Wirt, M.D. David Taylor, City of Bethlehem Zoning Office, appeared on behalf of the Zoning Hearing Board. Kevin J. Kelleher of BJSK Law Offices represented the Zoning Hearing Board as its Solicitor.

3.     Protestant(s)/Interested Parties:     No other persons or parties appeared.

**B.     Notice**

Notice of the hearing was given by public advertisement, posting of the subject property and First-Class 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.

**C.     Property**

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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) 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.

The property is located at 934-946 and 1004 Evans Street, in the Northampton County portion of the City of Bethlehem. The property consists of three (3) vacant lots located in the RT Residential Zoning District, 934-940 Evans Street; 942-944 Evans Street; and 946 Evans Street. The Applicant intends to consolidate those parcels into one (1) lot, of 0.4461 acres or 19,434 square feet. The parcel at 1004 Evans Street consists of 0.2834 acres or 12,347 square feet. The Applicant proposes to construct a multi-family dwelling building on the consolidated lots, and to maintain the other parcel separately as off-street parking exclusively for the dwellings at 934-946 Evans Street, as long as that property contains multi-family dwellings.

## **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 June 12, 2012, 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**

The Applicants first sought Zoning Hearing Board relief from strict application of Sections 1322.03 (nn) of the Zoning Ordinance, to permit ten (10) parking spaces on the 934-946 Evans Street portion of the subject property, and to utilize all of the 1004 Evans Street portion of

the subject property for parking. The Zoning Ordinance provides that land may be utilized for off-street parking facilities as a principal use of the lot providing the requirements in Article 1319 and 1321 and the following are met: (i) The Applicant must be the owner of both the property which is to be served by the parking lot and the property in the residential district to be used as the parking lot; (ii) No repair, service, display, or storage of vehicles shall be permitted on said parking lot; and (iii) The parking lot shall be used exclusively for customer and employee parking. In this case, the Applicant is the Owner of both lots in question; parking will be permitted only for the building at 934-946 Evans Street; and the only use of the parking lot will be resident parking.

The Applicant also sought numerous dimensional Variances, which are enumerated on Exhibit A, attached hereto. The Exhibit lists each variance sought, the dimensions required by each applicable Section of the Code, and the dimensions proposed by the Applicant.

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

In addition to the application package, the Applicant submitted Exhibit A-1, a set of four (4) photographs of the subject property in its current state. The Applicant also submitted Exhibit A-2, a set of renderings of the proposed residential structure. The Applicant presented testimony from David Hitzel, a principal of the Applicant entity. The witness testified that the property was acquired in August, 2023, and was the subject of several previous Zoning proceedings. He also related the history of the property, including the collapse of the building at 934-946 Evans Street in 2022. The Applicant's intent is to maximize the residential use of the property, by constructing a total of thirty-seven (37) units; thirty (30) one-bedroom units and seven (7) two-bedroom units. The site plan submitted with the Zoning application was made part of the record.

It shows irregularly-shaped lots, which make it difficult to construct two (2) separate buildings. In addition, the steep grade (15% to 16%) of State Street and Ridge Street, which border the property, make construction challenging.

With regard to the Special Exception requested, the witness affirmed that the owner of both lots would be the same entity, that there would be no vehicle repairs permitted on the property, and that the parking would be available only for tenants or lessees.

With regard to the Variances requested, the witness testified that the irregular shape of the parcels, and the steep grades in the area, make construction within the Code's requirements impossible. He asserted that the buildings proposed would be scaled to fit in with the surrounding buildings in the neighborhood, and he confirmed that there are twenty-seven (27) multi-family buildings in the area, including nine (9) buildings with more than ten (10) units. To construct a residential building on the subject parcels strictly within the Code's requirements would be financially impossible, given the fixed costs and the variable costs associated with such construction. As a result, the dimensional Variances are needed in order to make the project feasible.

Scott Volkert, architect, also testified on behalf of the Applicant. He indicated to the board that the proposed construction is an efficient design, and he recommended approval of the Special Exception and Variances requested.

**V. Findings of Fact**

1. Applicant HH Evans Street, LLC, is the record owner of the subject properties.
2. The subject properties are located at 934-946 Evans Street, and 1004 Evans Street, in the Northampton County portion of the City of Bethlehem. The combined total area of the properties is 0.7299 acres or 31,795 square feet.

3. The property is located in the RT Residential Zoning District.
4. The Applicant proposes to construct multi-family residential structure on the 934-946 Evans Street portion of the subject property, and utilize the 1004 Evans Street portion of the property for tenant and lessee parking.
5. The proposed construction would not meet applicable setback requirements, nor would it meet buffer strip, landscaping, shrub plantings, lot area per dwelling unit, and parking space requirements.
6. The subject properties are in an area of steep slopes.
8. It would be impossible to construct a building on the subject property in strict compliance with the dimensional requirements of the Zoning Ordinance.
9. Parking will be provided by the Applicant, on the 1004 Evans Street portion of the properties.

## **VI. Discussion**

Applicant first requested a Special Exception under Section 1322.03 (nn) of the Zoning Ordinance, relating to Parking Lots in residential areas. Where such a use is allowed under district regulations, land may be used for off-street parking facilities as a principal use provided the requirements of Article 1319 and 1321 are met, along with the other specific standards outlined above. In the present case, the Applicant presented competent testimony that the parcel at 1004 Evans Street will be under the same owner as the parcel at 934-946 Evans Street; that no repair, service, display or storage of vehicles will be permitted; and that the parcel will be exclusively used for tenant or lessee parking.



Applicant also requested a number of dimensional Variances under 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 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 di minimus situations. As of the adoption date of this Ordinance, the Municipalities Planning Code provided that all of the following finds 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 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). In the present case, the Zoning Hearing Board found that the size, shape and “steep slope” nature of the subject property prohibits construction that would strictly comply with the Zoning Ordinance.

The Board also found that the proposed construction would be compatible with the neighborhood.

On the issue of financial hardship, the Supreme Court of Pennsylvania, in *Hertzberg v Zoning Board of Pittsburgh*, 554 Pa, 249, 721 A.2d 43 (1998), held that “When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations.” The State Supreme Court observed that the grant of a dimensional variance is of lesser moment the grant of a use variance, since the latter involves a proposal to

use the property in a manner that is wholly outside the zoning regulation. Further, in *Allegheny West Civic Council, Inc. v Zoning Board of Adjustment of the City of Pittsburgh*, 547 Pa. 163, 689 A.2d 225 (1997), the Supreme Court also found that multiple factors are to be taken into account in order to determine whether unnecessary hardship has been established. Financial hardship may be included among those multiple factors.

## **VII. Conclusions of Law**

1. The properties are located in the RT Zoning District in the Northampton County portion of the City of Bethlehem
2. The Applicant proposes to construct multi-family residential structure on the 934-946 Evans Street parcel, and to provide tenant and lessee parking on the 1004 Evens Street parcel.
3. The proposed construction would be in harmony with the surrounding neighborhood.
4. The size, shape and “steep slope” nature of the subject property constitute hardships, which entitle the Applicant to the relief sought.
5. The financial hardships associated with construction of a building within strict compliance of the Zoning Ordinance also constitutes a recognizable hardship which entitles the Applicant to the relief sought.
6. The Applicant demonstrated that the parking that will be provided in connection with this proposal meets the standards for the grant of a Special Exception.

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

By a vote of 3-0, the Zoning Hearing Board granted Applicants' request for a Special Exception, and also granted the Applicant's request for dimensional Variances.

***THE BOARD:***

/s/ Kevin J. Kelleher, Esquire\*  
Solicitor

/s/ Jessica Lee, Chair\*

/s/ Peter Schneck\*

/s/ David Taylor\*  
Zoning Officer

/s/ Paige Van Wirt, M.D.\*

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

**DATE OF HEARING**  
**September 18, 2024**

**DATE OF WRITTEN DECISION**  
**October 28, 2024**

# EXHIBIT A

| Section of Code  | Dimension Required by Code   | Dimension Proposed by Applicant  | Variance Sought  |
|------------------|--|--|--|
| §1318.23(f)      | 8' Buffer Strip at public streets and parking lots   | Variable   | Requesting partial Buffer Strips; 1004 Evans buffer along Evans Street only, partial along State Street; 934-946 Evans partial buffer along Evans Street only                    |
| §1319.01(a)(iii) | Parking space requirements: 1.5 parking spaces per unit  | 1.35 parking spaces per unit   | Proposed 50 parking spaces combined for 37 living units  |
| §1319.02(j)(1)   | 1004 Evans St. Lot Frontage: ±114' require 3.8 Trees   | Requesting 2 trees along Evans St. on 1004 Evans Street parking lot  | Total reduction of 1 street tree for 1004 Evans parking lot combined frontage (State & Evans Streets)  |
| §1319.02(j)(1)   | 934-946 Evans St. Lot Frontage: ±150' require 5 Trees  | 5 Trees from smaller group (per Forestry and Fire Department recommendations)  | Per Forestry Department: suggestion to meet the street tree requirement but also accommodate the fire access would be to plant smaller trees from the group 1 approved tree list |
| §1306.01(a)4     | Lot Area per Dwelling Unit require 1,200 Sq. Ft. / Dwelling Unit   | 859 Sq. Ft. / Dwelling Unit Proposed   | Requesting relief for lot area per dwelling unit   |
| §1306.01(a)4     | Front Yard Setback require 10 feet   | Requesting setback of 1"   | Requesting relief for setback  |
| §1306.01(a)4     | Side Yard Setbacks require 15 feet   | Requesting Setback of 9" & 9"  | Requesting relief for setback  |
| §1318.23(l)      | 8 feet minimum width buffer strip along a public street shall be required where new parking spaces for 10 or more vehicles are proposed to be adjacent to and visible from a public street | Variable   | Requesting partial Buffer Strips; 1004 Evans buffer along Evans Street only, partial along State Street; 934-946 Evans partial buffer along Evans Street only                    |
| §1319.02(g)(6)   | 15-foot buffer between curb line and parking lot   | Requesting reduction to 11.8' & 8.5' for Eastern Lot   | Requesting relief for buffer   |
| §1319.03(h)      | Fencing around parking areas   |  | Requesting relief for fencing along Eastern end of lot adjacent to Parcel P6SE2A 15 2 0204 (due to retaining wall on property line)  |
| §1349.08(c)      | Buffer Yard planting requirements  | Variable   | Requested reduction of buffer yards does not allow for meeting of planting requirements (see §1318.23(l) variance)   |
| §1349.08(f)(1)   | Landscaped off-street parking and loading areas shall have a minimum of ten (10%) percent of the area represented by approved plantings  | 1004 Evans Lot requires 1,234.7 Sq. Ft. landscaped, propose 1,004 sq. ft.<br>934-946 Evans Lot will use front yard for landscaping requirement to meet 10% > 1,945 sq. ft. | Reduction of 1004 Evans lot landscaping requirement  |
| §1349.08(f)(2)   | Side foundation shrub plantings  |  | Building layout does not allow for foundation shrub plantings  |