

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,
PENNSYLVANIA
CIVIL DIVISION

SOUTH BETHLEHEM HISTORICAL
SOCIETY, DANA GRUBB, STEPHEN
BARRON, JEFFREY ZETTLEMOYER,
and MARY PONGRACZ,

Appellants

vs.

CITY OF BETHLEHEM,

Appellee

NO. C0048CV- 2014-11463

LOCAL AGENCY APPEAL

COPY

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FILED
COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PENNSYLVANIA

**LOCAL AGENCY APPEAL PURSUANT TO
THE PENNSYLVANIA LOCAL AGENCY LAW**

AND NOW, Comes Appellants, South Bethlehem Historical Society, Dana Grubb, Stephen Barron, Jeffrey Zettlemyer, and Mary Pongracz, by and through their Counsel, and pursuant to the Pennsylvania Local Agency Law, 2 Pa. C.S. 551, et seq., appeals to the Court of Common Pleas of Northampton County from the adoption of City of Bethlehem Resolution No. 2014-221 and Resolution No. 2014-222, on November 5, 2014, and assert as follows:

1. Appellant, South Bethlehem Historical Society, is a Pennsylvania non-profit corporation with a registered office located at 617 East Fourth Street, Bethlehem, Northampton County, Pennsylvania 18015, and mailing address of P.O. Box 5106, Bethlehem, Pennsylvania 18015.
2. Appellant, Dana Grubb, is an adult individual, resident of the City of

Bethlehem, currently residing at 2420 Henderson Place, Bethlehem, Northampton County, Pennsylvania 18017.

3. Appellant, Stephen Barron, is an adult individual, resident of the City of Bethlehem, currently residing at 2239 Lincoln Street, Bethlehem, Northampton County, Pennsylvania 18017.

4. Appellant, Jeffrey Zettlemyer, is an adult individual, resident of the City of Bethlehem, currently residing at 1304 East Sixth Street, Bethlehem, Northampton County, Pennsylvania 18015.

5. Appellant, Mary Pongracz, is an adult individual, resident of the City of Bethlehem, currently residing at 321 West Fourth Street, Bethlehem, Northampton County, Pennsylvania 18015.

6. Appellee, City of Bethlehem, is a municipal corporation with principal offices located at 10 East Church Street, Bethlehem, Northampton County, Pennsylvania 18018.

7. The Commonwealth of Pennsylvania has established, by statute, the Municipal Historic Districts Law, 53 P.S. 8001, et seq., Act of June 13, 1961, P.L. 282, No. 167, et seq., as amended, the purpose of which is summarized as follows:

“... purpose of protecting those historical areas within our great Commonwealth, which have a distinctive character recalling the rich architectural and historical heritage of Pennsylvania, and of making them a source of inspiration to our people by awakening interest in our historic past, and to promote the general welfare, education and culture of the communities in which these distinctive historical areas are located.”

The aforesaid statute authorizes municipalities to adopt Ordinances implementing the provisions of the statute.

8. Pursuant to the authority granted it by the statute, the City of Bethlehem adopted the Historic Conservation District Ordinance, Ordinance No. 3952, as amended, providing the following purpose:

It is the purpose and intent of the City of Bethlehem to promote, protect, enhance, and preserve historic resources and traditional community character for the educational, cultural, economic and general welfare of the public through the preservation, protection and regulation of buildings and areas of historic interest or importance within the City; to safeguard the heritage of the City by preserving and regulating districts which reflect elements of its cultural, social, economic, political, and architectural history; to preserve and enhance the environmental quality of neighborhoods; to foster economic development; to strengthen the City's economy by the stimulation of tourism; to establish and improve property values; to foster civic pride in the beauty and accomplishments of the City's past; and to preserve and protect the cultural, historical and architectural assets of the City which have been determined to be of local, state or national significance.

A copy of the aforesaid City of Bethlehem Ordinance is attached hereto, made a part hereof, and marked Exhibit "A."

9. The Statute and Ordinance provide that for any demolition or construction of a new structure within a designated historic district, a Certificate of Appropriateness shall issue authorized by City Council which "certifies to the historical appropriateness of a particular request for the erection, alteration, reconstruction, repair, restoration, demolition or razing of all or part of any building or structure within a historic or conservation district."

10. On August 11, 2014, B Land Co., LLC, filed an Application for a Certificate of Appropriateness with the City of Bethlehem for certain property located at 24-30 West 4th Street, Bethlehem, Pennsylvania, said property lying within the South Bethlehem Historic Conservation District as delineated by City Ordinance. The Application called for demolition of existing buildings and construction of a 9-story mixed-use building.

11. On November 5, 2014, Bethlehem City Council approved Resolution No. 2014-221, Certificate of Appropriateness "to demolish the existing two, vacant buildings at 24-30 W, Fourth Street contingent upon the approval of a new building of appropriate scale." A copy of the aforesaid Resolution is attached hereto, made a part hereof, and marked Exhibit "B."

12. On November 5, 2014, Bethlehem City Council approved Resolution No. 2014-222, Certificate of Appropriateness "to construct a 9 story mixed-use building conditional on the approval of details and materials at 24-30 W. Fourth Street." A copy of the aforesaid Resolution is attached hereto, made a part hereof, and marked Exhibit "C."

13. Although City Council adopted the aforesaid Resolutions, it failed to comply with the Local Agency Law, 2 Pa. C.S.A. 555, which provides that:

All adjudications of a local agency shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail.

City Council, in connection with adoption of the aforesaid Resolutions, failed to make findings or provide reasons for the action taken.

14. Appellants assert that the failure of the City of Bethlehem to comply with the Local Agency Law, 2 Pa. C.S.A. 555, undermines the reviewability and validity of the Resolutions adopted and thus are not in compliance with statutory requirements that all adjudications of local agency be in writing and contain findings and reasons for adjudication.

15. Appellants aver and believe that no stenographic record was taken of the full extent of testimony and comments provided by the public objecting to the issuance of a Certificate of Appropriateness nor was a similar record stenographically recorded of Applicant's justification for same.

16. Appellants aver that City Council failed to consider the effect that construction of a 9-story mixed-used building in this historic district would have upon the general historic and architectural nature of the district.

17. Appellants aver that the City of Bethlehem failed to give consideration to the general design, size, scale, and proportion of the proposed 9-story structure inasmuch as said structure does not relate to the dominant proportions, size and scale of period buildings in the district thus violating Section 1714.10 of the Ordinance.

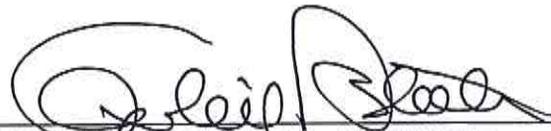
18. Similarly, the City of Bethlehem failed to consider design guidelines set forth in Section 1714.10 of the Ordinance relative to shape and massing of structures such that massing, building shapes, and roof shapes should be consistent with period buildings (i.e. 1895 through 1950) and streetscapes, such that construction ought to reflect prevailing setbacks, physical elements which define streetscapes in form, visual

continuity, and cohesiveness with period buildings (i.e. 1895 through 1950).

19. Appellants aver that construction of a 9-story mixed-use building in the South Bethlehem Historic District is as a matter of fact and law violative of the spirit and letter of the Municipal Historic Districts Law and City of Bethlehem Historic Conservation District Ordinance, and therefore Certificate of Appropriateness as reflected in Resolutions No. 2014-221 and No. 2014-222 ought to be revoked.

WHEREFORE, Appellants respectfully pray your Honorable Court, after review of the record pursuant to the Local Agency Law and Municipal Historic Districts Law, sustain the Appeal and revoke the Certificate of Appropriateness for the construction of a 9-story mixed-use building at 24-30 W. Fourth Street, Bethlehem, Northampton County, Pennsylvania.

Respectfully submitted,



GARY NEIL ASTEAK, ESQUIRE
ID: 19233
726 Walnut Street
Easton, PA 18042
(610) 258-2901
Attorney for Appellants

VERIFICATION

I, Jeffrey Zettlemoyer, being duly sworn according to law, depose and say that the facts set forth in the foregoing Local Agency Appeal are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: DECEMBER 2, 2014

Jeffrey R. Zettlemoyer
JEFFREY ZETTEMAYER

VERIFICATION

I, Stephen Barron, individually and as President of the South Bethlehem Historical Society, being duly sworn according to law, depose and say that the facts set forth in the foregoing Local Agency Appeal are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: 12/2/14


STEPHEN BARRON

VERIFICATION

I, Dana Grubb, being duly sworn according to law, depose and say that the facts set forth in the foregoing Local Agency Appeal are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: 12/01/2014

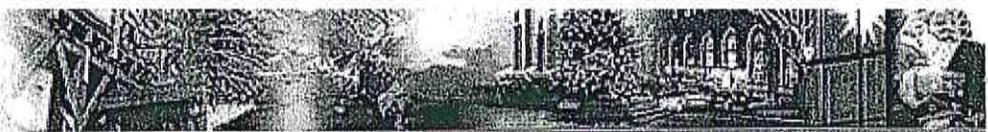

DANA GRUBB

VERIFICATION

I, Mary Pongracz, being duly sworn according to law, depose and say that the facts set forth in the foregoing Local Agency Appeal are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

DATED: 12/2/14

Mary T. Pongracz
MARY PONGRACZ



ORDINANCES

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ARTICLE 1714

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Historic Conservation District
South Bethlehem and Mount Airy

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1714.01 Legal Authorization

This District is created pursuant to the following Pennsylvania legislation:

a. Article I, Section 27, of the Pennsylvania Constitution, which states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

b. Act of June 13, 1961, Public Law 282, No. 167, as amended, which states:

(1) For the purpose of protecting those historic areas within our great Commonwealth, which have a distinctive character recalling the rich architectural and historical heritage Pennsylvania, and of making them a source of inspiration to our people by awakening interest in our historic past, and to promote the general welfare, education and culture of the communities in which these distinctive historical areas are located, all counties, cities except cities of the first class, boroughs, incorporated towns and townships, are hereby authorized to create and define, by ordinance, a historic district or districts within the geographic limits of such political subdivision; and

(2) Any governing body in determining whether or not to certify to the appropriateness of the erection, reconstruction, alteration, restoration, demolition or razing of any building, in whole or in part, shall consider the effect which the proposed change will have upon the general

Exhibit "A"

historic and architectural nature of the district.

The governing body shall pass upon the appropriateness of exterior architectural features which can be seen from a public street or way, only, and shall consider the general design, arrangement, texture, material and color of the building or structure and the relation of such factors to similar features of buildings and structures in the district.

1714.02 Short Title

The ordinance shall be known as the Historic Conservation District Ordinance.

1714.03 Purposes

It is the purpose and intent of the City of Bethlehem to promote, protect, enhance, and preserve historic resources and traditional community character for the educational, cultural, economic and general welfare of the public through the preservation, protection and regulation of buildings and areas of historic interest or importance within the City; to safeguard the heritage of the City by preserving and regulating districts which reflect elements of its cultural, social, economic, political, and architectural history; to preserve and enhance the environmental quality of neighborhoods; to foster economic development; to strengthen the City's economy by the stimulation of tourism; to establish and improve property values; to foster civic pride in the beauty and accomplishments of the City's past; and to preserve and protect the cultural, historical and architectural assets of the City which have been determined to be of local, state or national significance.

1714.04 Definitions

a. For the purpose of this Ordinance, all words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural construction of the word clearly indicates otherwise. The masculine gender includes the feminine and neuter genders, and the feminine gender includes the masculine and neuter genders. The word "shall" is mandatory. The word "used" includes "designated, intended, built or arranged to be used." Words not defined below shall have the meanings given in Webster's Unabridged Dictionary.

b. Accessory Structure - A structure located on the same lot which is customarily incidental and subordinate to the principal building or structure.

c. Alley, Common - A right-of-way intended to be used for vehicular and/or pedestrian access primarily to the rear yards of two or more lots and not owned or accepted for dedication by the City of Bethlehem.

d. Alteration - Any visual or physical change to a building, including the repair, replacement, or addition of any exterior structural, decorative or accessory element or feature, but excluding demolition, new construction, reconstruction or removal of any character-defining architectural elements of any building or part thereof.

e. Appurtenance - A subordinate component or structural feature, such as a porch, attached and affixed with the intent of permanence to a principal structure.

f. Building - A structure, enclosed and isolated by exterior walls and roof and permanently affixed to the land, that is used for residential, commercial, institutional, industrial, or public purposes, including principal and accessory buildings, regardless of whether designed for human use or occupancy.

g. Building Permit - An approval document signed by the Building Official or Inspector Codes Administrator authorizing the construction, alteration, reconstruction, repair, restoration, demolition or razing of all or part of any building.

h. Building Permit Application - The request filed by a property owner, equitable owner or developer with the Building Official/Inspector or Codes Administrator seeking authorization to erect, alter, reconstruct, repair, restore, demolish, or raze all or part of any building.

i. Building Official - A municipal employee of or individual retained by the City designated as the

individual who enforces compliance of the City of Bethlehem Building Code and issues permits for the erection, alteration, reconstruction, repair, restoration, demolition or razing of all or part of any building or structure within the municipality.

j. Certificate of Appropriateness - The approval statement signed by the City Council which certifies to the historical appropriateness of a particular request for the erection, alteration, reconstruction, repair, restoration, demolition or razing of all or part of any building or structure within a historic or conservation district.

k. Completed Application - An application for a certificate of appropriateness that conforms to submittal requirements for Historic Conservation Commission review.

l. Demolition - The dismantling, tearing down or razing of all or part of any building or structure, including the permanent removal of character-defining architectural elements, such as porches and porticos.

m. Erection - Construction, assembling, or installation of a building or structure on the ground or on a building or structure.

n. Historic Conservation District - That geographic area of the City of Bethlehem identified and delineated by the City Council, pursuant to Section 2, PA Act 167-1961, as amended, in order to protect and enhance Bethlehem's physical attractiveness and historic quality, in accordance with the City's Comprehensive Plan; to preserve the overall character of older built-up areas and neighborhoods, without the emphasis placed on preserving historical architectural detailing of buildings, as exists in the Central Bethlehem Historic District; and to preserve for future generations significant buildings and structures reflective of Bethlehem's historic development and past architectural styles.

o. Historic Conservation Commission - The official review board appointed by City Council pursuant to Section 3 of Act 167-1961, as amended, authorizing the appointment of a Board of Historic Architectural Review, which is charged with the responsibility to recommend to City Council, following deliberations at public meetings, the approval, with conditions or denial of Certificates of Appropriateness for regulated activities.

p. Historic Preservation Specialist - A municipal employee or individual retained by the City meeting the professional and educational qualifications of 36 CFR 61, as required by the Certified Local Government Program, and designated as the individual responsible for advising the Historic Commission and applicants/property owners regarding regulated activities within the Historic Conservation District.

q. Historic Conservation District - That geographic area of the City of Bethlehem created by Bethlehem Ordinance No. 3952, as amended by Ordinance No. 3972, and further amended by Ordinance No. 4432, wherein any and all changes to buildings, structures, or appurtenances visible from a public way are subject to review and approval by City Council. (Ord. 4432 – Passed 5/16/07)

r. Maintenance - work that does not alter the exterior fabric or features of a building or structure and has no material effect on the historic, archaeological, or architectural or cultural significance to a building or structure.

s. New Construction - Construction which is characterized by the introduction of new elements, buildings, structures or additions to existing buildings and structures.

t. Plot Plan - A drawing or map, drawn to scale, showing existing and proposed structures and other improvements.

u. Preservation - Actions taken to prevent or keep a structure from decay or degradation.

v. Principal Structure - Building(s) or structure(s) in which is conducted the principal, or primary use(s) of

a lot.

w. Public Way - A street that has been dedicated to and accepted by the City of Bethlehem and has been placed on the Official City (Street) Plan.

x. Reconstruction - The act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time but not necessarily of original material.

y. Regulated Activity - Any activity requiring review and recommendation by the Historic Conservation Commission and approval by City Council for the issuance of a Certificate of Appropriateness in the Historic Conservation District.

z. Repair - The process of rehabilitation which warrants additional work beyond maintenance. Repair includes, but is not limited to, patching, piecing in, splicing, consolidating or otherwise reinforcing materials.

aa. Replacement - To install new materials or components in place of existing materials or components, such as removing existing windows or doors and installing new windows or doors, regardless of whether the same material and design or a different material or design.

bb. Restoration - The process of accurately recovering the form and details of a property as it appeared at a specific period of time by means of removal of later work and the replacement of work missing from the period.

cc. Setback - The distance from a property line of a lot or parcel to the principal or secondary facade of a building or edge of a structure.

dd. Structure - Any man-made object, including buildings, having an ascertainable stationary location, whether or not affixed to the land or to an existing building or structure, excluding paved areas. For the purposes of this Ordinance, a sign greater than 200 square feet in area, whether it is free standing or affixed to a building or other structure, advertising services or products unrelated to the use of the property or building where it is located shall be considered a structure.

ee. Use - The specific purpose for which land, structure, building, or a unit within a structure or building is arranged, designed, intended, occupied or maintained.

1714.05 Delineation of Historic Conservation District

a. The City of Bethlehem Conservation District shall consist of the geographic area included in the CB, CG, and RG Zoning Districts in Wards 2, 3, 4, and 5 of the City of Bethlehem, and the Historic Conservation District, at the time of the adoption of this Ordinance, as shown on the map, dated March 25, 1999, revised August 26, 1999, in accordance with approval of the Pennsylvania Historical and Museum Commission (PHMC), and further revised November 16, 1999, attached hereto, marked as Exhibit "A" and on Description of Land, marked as Exhibit "B", made a part hereof. (Ord. 3972 - Passed 11/16/99; Ord. 3989 Passed 2/1/00.)

b. The City of Bethlehem Conservation District shall be enlarged to include the geographic area of the Mount Airy National Register Historic District, at the time of adoption of this ordinance, as shown on the map, in accordance with approval of the Pennsylvania Historical and Museum Commission (PHMC), and on Description of Land marked as Exhibit "C", attached hereto and made a part hereof.

c. The official Historic Conservation District Map shall be located in the Planning and Zoning Office and made available for public inspection.

(Ord. 4432 – Passed 5/16/07)

1714.06 Historic Conservation Membership

a. A Historic Commission is hereby established and is composed of nine (9) members appointed by the Mayor of the City of Bethlehem and confirmed by Bethlehem City Council. One member shall be a registered architect, one member a licensed real estate broker, one member a building inspector, and the remaining six (6) members shall be persons with knowledge of and interest in historic preservation and neighborhood conservation/revitalization, with a minimum of two (2) members as appointed residing within South Side Bethlehem; and additionally, with a

minimum of two (2) members as appointed maintaining business interests within South Side Bethlehem; and additionally, with a minimum of two (2) members as appointed residing within Mount Airy. (Ord. 3972 - Passed 11/16/99; Ord. 4432 – Passed 5/16/07.)

b. The term of each member shall be three years, or until his successor is appointed, except that the terms of the members first appointed pursuant to this Ordinance shall be so fixed that no more than three members shall be reappointed or replaced during any one calendar year. (Ord. 4007 - Passed 5/2/00)

c. The position of any member appointed in his capacity of architect, broker, inspector or resident who ceases to fulfill this requirement of membership shall be automatically considered vacant. An appointment to fill a vacancy shall be only for the unexpired portion of the term.

d. A majority of the appointed members shall constitute a quorum, and action taken at any meeting shall require the affirmative vote of a majority of the Commission members present at the meeting. Except that, if one or more positions are vacant at the time of official action, a quorum shall be no less than five (5) people; and, in the case of an even number of members present because of vacancy or absence, a tie vote shall indicate denial. (Ord. 4432 – Passed 5/16/07)

e. It shall be the duty of each Commission member to publicly announce any conflict of interest in connection with any application or other official action before the Commission. When a conflict of interest has been identified, the member shall not participate in the discussion, deliberation or voting on the matter, and shall, if requested by a majority of the Commission, temporarily absent himself from the meeting.

f. Any Commission member may be removed for misconduct or wrongdoing, unlawful execution of this Ordinance, or failure to perform his responsibilities pursuant to Ordinance, or for other just cause by a majority vote of the City Council, but not before he has been given the opportunity of a hearing to defend to any alleged infractions of this Ordinance.

1714.07 Powers and Duties of the Historic Conservation Commission

a. Advisory Role, Mandatory - The Historic Conservation Commission shall have the following responsibilities:

(i) review applications for regulated activities listed in Section 9 of this Ordinance;

(ii) consider the financial feasibility of its recommendations based on cost estimates and other financial documentation provided by the applicant when necessary;

(iii) submit written recommendations to City Council regarding the advisability of issuing any Certificate of Appropriateness prior to the issuance of a building permit by the Building Official.

(1) Recommendations Regarding Certificates of Appropriateness - The Commission shall base its recommendations of approval, conditional approval, or denial to City Council on the following:

(i) the appropriateness of exterior architectural features which can be seen from a public street or way, including the general design, arrangement, texture, and materials of the building or structure and the relation of such factors to similar features of buildings and structures of the period of significance in the Districts;

(ii) the effect which the proposed change will have upon the general historic and architectural nature of the District;

(iii) in the case of new construction, compatibility with the design guidelines listed in Section 10 of this Ordinance and other design guidelines specifically created for these conservation districts in conjunction with the Commission;

(iv) the written determination of appropriateness by the Historic Preservation Specialist; and

(v) the applicant's justification for the proposed activity, including financial feasibility and cost estimates when necessary, as set forth in Section 9. Recommendations to Council may include conditions of approval that modify an applicant's initial application if the applicant agrees to the recommended modifications.

(Ord. 4432 – Passed 5/16/07)

(2) Recommendations Against Issuance of Certificates

of Appropriateness - If the Commission decides to recommend against the granting of a Certificate of Appropriateness, it shall indicate to the applicant those changes, if any, which would result in a positive recommendation. The Commission shall withhold its report to Council if the applicant agrees to return to the Commission at a future regularly scheduled meeting with revised plans for its consideration.

b. Compensation - Commission members shall serve without compensation.

c. Meetings - The Historic Conservation Commission shall meet at scheduled public meetings, and if determined necessary, at special meetings, advertised in accordance with the Pennsylvania Sunshine Law.

1714.08 Powers and Duties of City Council

a. The City Council shall certify to the appropriateness of the proposed erection, reconstruction, or demolition of any building, in whole or in part, within the Historic Conservation District.

b. The City Council shall consider the recommendations of the Historic Conservation Commission for all applications for the erection, reconstruction, or demolition of any building, in whole or in part, within the Historic Conservation District.

c. The City Council shall vote to approve, to approve with conditions, to table for further consideration or to deny any application for the erection, reconstruction, or demolition of any building, in whole or in part, within the Historic Conservation District.

d. The City Council, in determining whether or not to certify to the appropriateness of the erection, reconstruction, or demolition of any building, in whole or in part, shall consider the effect which the proposed change will have upon the general historic and architectural nature of the District.

e. The City Council shall act upon the appropriateness of exterior architectural features which can be seen from a public street or way, and shall consider the general design, arrangement, texture, and material of the building or structure and the relation of such factors to similar features of buildings and structures in the District. (Ord. 4432 – Passed 5/16/07)

f. Upon approval of the proposed activity, the City Council shall issue a Certificate of Appropriateness authorizing the issuance of a building permit for the approved activity to the Building Official.

g. Disapproval of the City Council shall be in writing, stating reasons therefor, and copy of the disapproval shall be given to the applicant, the Building Official, the Historic Conservation Commission, and to the Pennsylvania Historical and Museum Commission.

1714.09 Activities Requiring Certificates of Appropriateness

a. Demolition

(1) Any activity visible from the public way within the Historic Conservation District requiring the issuance of a demolition permit by the Building Official in accordance with the City Building Code, shall require the issuance of a Certificate of Appropriateness by City Council; except that demolition of accessory structures with footprints less than 100 feet shall be exempt from the provisions of this Ordinance. (Ord. 4432 – Passed 5/16/07)

(2) Applications for demolition permits shall be accompanied by the following: (a) photographs of the building, structure, or part thereof proposed for demolition; (b) photographic evidence and written description of the deteriorated condition of the building or structure; (c) reason(s) for the demolition; (d) explanation why rehabilitation, reuse, plan alteration, or stabilization with the intent to market and sell the property is not feasible or desirable; (e) proposed future use of the lot or part thereof occupied by the building or structure proposed for demolition and timeline for implementation of proposed future use; and (f) statement on disposition of architectural features/ building materials.

b. Construction

(1) Any construction, reconstruction, or major alterations of principal structures or appurtenances visible from a public way within the Historic Conservation District shall require a Certificate of Appropriateness, provided that, (i) maintenance or repair of a building or structure or part thereof shall not require review, and (ii) the following construction, reconstruction, or major alterations of appurtenances or accessory structures or elements shall be exempt from the provisions of this Ordinance:

(a) Accessory structures in the rear or side yard, including but not limited to the following: storage sheds, gazebos, detached decks, hot tub enclosures, and animal shelters.

(b) Appurtenances and accessory elements of a decorative or ancillary nature, including but not limited to banners and flags, downspouts and gutters, flower boxes, heating or cooling units, light fixtures, and mailboxes.

(Ord. 4432 – Passed 5/16/07)

(2) Applications for Certificates of Appropriateness for construction, reconstruction or assembling of structures and appurtenances, except those listed as exempt above, shall be accompanied by the following: (i) architectural drawings with appropriate notes indicating conformity with the design guidelines listed below in Section 10; (ii) colored photographs of the lot or structure where the construction, reconstruction or assembling is to occur and streetscapes adjacent to and directly across the public street from the proposed construction activity; and (iii) reason(s) for any deviations from design guidelines listed in Section 10, including financial feasibility and documented cost estimates or alternatives, if appropriate.

1714.10 Design Guidelines

a. The general design, arrangement, texture, and material of a new building or structure and the relation of such factors to similar features of buildings or structures in the Historic Conservation District shall be detailed in the application. Consideration shall be given but not limited to the following:

(1) Size, Scale, Proportion - New construction should relate to the dominant proportions, size and scale of period buildings (1895 to 1950) in the district. For example, long, low buildings are inappropriate amid taller structures.

(2) Rhythm and Patterns - Design elements of principal facades should reflect and maintain neighborhood patterns of period buildings (1895 to 1950), including but not limited to the following: prevalent number of bays; door and window placement; floor-to-floor and cornice heights; spacing between windows and doors and between windows and cornices or rooflines; and dimensions of the facade's base and cornice. Where the use of the structure prevents maintaining the prevalent rhythms and patterns, the design shall incorporate detailing to suggest them.

(3) Window and Door Openings - The size and design of window and door openings should be similar to those of period buildings (1895 to 1950) in the immediate neighborhood.

(4) Materials and Textures - Building materials, textures and treatments should be compatible with those of period buildings (1895 to 1950) in the immediate neighborhood. Traditional materials common in the Historic Conservation District, such as brick, wood and stone, are preferred.

(5) Architectural Details - New construction should include details and appurtenances reflecting the character defining features of neighborhood buildings of period significance (1895 to 1950), such as porches, porticos, cornices, lintels, arches, quoins, and chimneys.

(6) Shape and Massing - New construction should incorporate massing, building shapes, and roof shapes that are present in period buildings (1895 to 1950).

(7) Streetscapes - New construction shall reflect prevailing setbacks, and physical elements which define streetscapes, such as brick walls, wrought iron fences, building facades or combinations of these which form visual continuity and cohesiveness with the period buildings (1895 to 1950).

(Ord. 4432 – Passed 5/16/07)

1714.11 Application Review Procedure

- a. The applicant shall submit a completed application for a permit for any regulated activity to the Building Official no later than the deadline posted in the office of the Building Official.
- b. Following the submission deadline, the Historic Preservation Specialist shall review each application, field inspect the property, consult with the applicant, if necessary, and prepare a written determination of appropriateness for the Historic Commission and applicant.
- c. At the time of application, the owner of record or his/her representative shall be advised of the time and place of the Commission meeting when his/her application will be considered and shall be advised that his/her or said representative's attendance at the meeting is required. (Ord. 4432 – Passed 5/16/07)
- d. The Historic Commission shall render a decision and recommendation on any application no later than 60 days after the filing of a complete application.
- e. Upon the Commission's rendering a decision, the Historic Preservation Specialist shall submit the Commission's recommendation, referencing the appropriate Secretary of the Interior's Standards with which the proposed activity complies, to the Council in time for action at its next regularly scheduled meeting.
- f. If the City Council approves the application, with any conditions recommended by the Commission, it shall issue a Certificate of Appropriateness authorizing the Building Official to issue a building permit for the work covered pursuant to those conditions.
- g. If the City Council disapproves, a written reason(s) shall be given to the Building Official, the applicant, and to the Pennsylvania Historic and Museum Commission. The disapproval shall indicate what changes in the plans and specifications would meet the conditions for protecting (i) the distinctive historic character of the District, and (ii) the architectural integrity of the building or structure.
- h. Upon receipt of a written disapproval of the City Council, the Building Official shall disapprove the application for a building permit and so advise the applicant. The applicant may appeal this disapproval to the County Court of Common Pleas within the time specified by law.
- i. In either case of approval or disapproval, the City Council shall notify the applicant of its decision within thirty (30) days of its meeting at which the application was considered.

1714.12 Unreasonable Economic Hardship

- a. When a claim of unreasonable economic hardship is made in reference to demolition due to the effect of this Ordinance, the owner of record must present evidence sufficient to prove that as a result of the Commission's action, he is unable to obtain a reasonable return or a reasonable beneficial use from the property. The owner of record shall submit by affidavit to the Commission some or all of the information below, at the discretion of the Commission, which shall include but not be limited to the following:
 - (1) Form of ownership or operation of the property, whether sole proprietorship, for-profit or nonprofit corporation, limited partnership, joint venture or other.
 - (2) Date property was acquired by current owner.
 - (3) Name and address of previous owner.
 - (4) Purchase price.
 - (5) Current equity in the property.
 - (6) All appraisals and/or market value analyses obtained within the previous two years by the owner or applicant in connection with purchase, offering for sale, financing or ownership of the property, or for other purposes. If none were previously prepared, a current appraisal or market value analysis shall be submitted.
- b. The Commission may require that an applicant furnish additional information relevant to its determination of unreasonable economic hardship.
- c. The Commission may request and consider studies and economic analyses relating to the property in question.

d. Should the Commission determine that the owner's present return is not reasonable, it must consider whether there are other uses currently allowed that would provide a reasonable return and whether such a return could be obtained through investment in the property for rehabilitation purposes. The Commission may choose to recommend to the City Council and City Administration that special economic incentives be developed to assist the owner in maintaining the property and obtaining a suitable economic return or achieving a reasonable beneficial use.

e. Should the applicant prove to the satisfaction of the Commission that he will suffer an unreasonable economic hardship if a Certificate of Appropriateness is not approved, and should the Commission be unable to develop with the City Council and Administration a solution which can relieve the owner's economic hardship, the Commission may recommend a Certificate of Appropriateness for demolition.

1714.13 Notice of Violation

The Building Official shall serve notice of violation on the property owner of record for any unauthorized regulated activity and for any demolition by neglect as well as for work done contrary to the work authorized by the Certificate of Appropriateness.

1714.14 Enforcement

The Building Official or his designated representative shall have the power to institute any proceedings at law or in equity necessary for the enforcement of this Ordinance. If an existing building or structure has been demolished in violation of the provisions of this Ordinance, no building permit for new construction on that lot shall be issued for two years from the date of notice of violation.

1714.15 Penalty

Any person, property owner, occupant, firm or contractor violating any of the provisions of this Ordinance shall, upon conviction therefor, be fined not less than one hundred dollars (\$100) and not more than three hundred dollars (\$300) for the first offense, and not less than three hundred dollars (\$300) and not more than six hundred dollars (\$600) for each and every offense thereafter, together with costs of prosecution, and in default of payment thereof, shall be imprisoned for not more than ninety days. Each day of violation as to any section of this article shall constitute a separate offense.

(Ord. 3952 - Passed 4/20/99.)

ARTICLE 1714 - EXHIBIT B

DESCRIPTION OF LAND DESIGNATED AS HISTORIC CONSERVATION DISTRICT

The City of Bethlehem Conservation District shall consist of the geographic area included in the CB, CG, and RG Zoning Districts in Wards 2, 3, 4 and 5 of the City of Bethlehem, County of Northampton, Commonwealth of Pennsylvania, at the time of adoption of this Ordinance, as shown on the map, dated March 25, 1999, revised August 26, 1999, in accordance with approval of the Pennsylvania Historic and Museum Commission (PHMC), and further revised November 16, 1999, bounded and described as follows:

Beginning at a point, said point being the intersection of the centerline of the Hill to Hill Bridge with the centerline of the West Third Street Ramp, said point also being the true point of beginning, thence in a northerly direction along the centerline of the Hill to Hill Bridge to a point, said point being the intersection of the centerline of the Hill to Hill Bridge with the extension of the north property line of #240 Union Station Plaza, thence in an easterly direction along the northern property line of #240 Union Station Plaza to a point, said point being the intersection of the northern property line of #240 Union Station Plaza with the eastern property line of #240 Union Station Plaza, thence in a southwest direction along the eastern property line of #240 Union Station Plaza to a point, said point being the extension of the eastern property line of #240 Union Station Plaza with the south street line of West Second Street, thence in a southeastern direction along the south street line of West Second Street to a point, said point being the intersection of the south street line of West Second Street with the extension of the west street line of Brodhead Avenue, thence in a southern direction along the extension of the west street line of Brodhead Avenue to a point, said point being the intersection of the extension of the west street line of Brodhead Avenue with the centerline of the existing railroad tracks, thence in a southeasterly direction along the centerline of the existing railroad tracks to a point, said point being the intersection of the centerline of the existing railroad tracks

with the centerline of West Third Street, thence in a easterly direction along the centerline of West Third Street to a point, said point being the intersection of the centerline of West Third Street and the extension of the west property line of Banana Factory parking lot, thence in a northerly direction along the west property line of the Banana Factory parking lot to a point, said point being the intersection of the extension of the west property line of the Banana Factory parking lot with the centerline of West Second Street, thence in a easterly direction along the centerline of West Second Street to a point, said point being the intersection of the centerline of East Second Street and the centerline of Columbia Street, thence in a easterly direction along the centerline of Columbia Street to a point, said point being the intersection of the centerline of Columbia Street with the centerline of Polk Street, thence in a southerly direction along the centerline of Polk Street to a point, said point being the intersection of the centerline of Polk Street with the centerline of the existing railroad tracks, thence in a easterly direction along the centerline of existing railroad tracks to a point, said point being the intersection of the centerline of the existing railroad tracks with the centerline of Fillmore Street, thence in a southerly direction along the centerline of Fillmore Street to a point, said point being the intersection of the centerline of Fillmore Street with the centerline of Evans Street, thence in a easterly direction along the centerline of Evans Street to a point, said point being the intersection of the centerline of Evans Street and the centerline of Pierce Street, thence in a southerly direction along the centerline of Pierce Street to a point, said point being the intersection of the centerline of Pierce Street with the centerline of Evans Street, thence in a easterly direction along the centerline of Evans Street to a point, said point being the intersection of the centerline of Evans Street with the centerline of Monroe Street, thence in a southerly direction along the centerline of Monroe Street to a point, said point being the intersection of the centerline of Monroe Street with the centerline of Mechanic Street, thence in a easterly direction along the centerline of Mechanic Street to a point, said point being the intersection of the centerline of Mechanic Street with the centerline of Hayes Street, thence in a southerly direction along the centerline of Hayes Street to a point, said point being the intersection of the centerline of Hayes Street with the centerline of East Morton Street, thence in a westerly direction along the centerline of East Morton Street to a point, said point being the intersection of the centerline of East Morton Street and the centerline of Webster Street, thence in a southerly direction along the centerline of Webster Street to a point, said point being the intersection of the centerline of Webster Street with the centerline of East Morton Street, thence in a westerly direction along the centerline of East Morton Street to a point, said point being the intersection of the centerline of West Morton Street with the centerline of Brodhead Avenue, thence in a northerly direction along the centerline of Brodhead Avenue to a point, said point being the intersection of the centerline of Brodhead Avenue with the extension of the once common property line between City of Bethlehem Ward 2 Block 10 Assessment Lot 5 and Ward 2 Block 10 Assessment Lot 6, thence in a westerly direction along said once common property line between City of Bethlehem Ward 2 Block 10 Assessment Lot 5 and Ward 2 Block 10 Assessment Lot 6 to a point, said point being the intersection of the once common property line between City of Bethlehem Ward 2 Block 10 Assessment Lot 5 and Ward 2 Block 10 Assessment Lot 6 with the centerline of Birkel Avenue, thence in a northerly direction along the centerline of Birkel Avenue to a point, said point being the intersection of the centerline of Birkel Avenue with the centerline of West Fourth Street, thence in a westerly direction along the centerline of West Fourth Street to a point, said point being the intersection of the centerline of West Fourth Street with the centerline of Broadway, thence in a southwesterly direction along the centerline of Broadway to a point, said point being the intersection of the centerline of Broadway with the centerline of Wyandotte Street, thence in a northeasterly direction along the centerline of Wyandotte Street to a point, said point being the intersection of the centerline of Wyandotte Street with the centerline of West Third Street, thence in a northerly direction along the centerline of Wyandotte Street to a point, said point being the intersection of the centerline of the West Third Street Ramp with the centerline of the Hill to Hill Bridge, said point being the place of beginning.

(Ord. 3952 - Passed 4/20/99; Ord. 3972 - Passed 11/16/99;
Ord. 3989 - Passed 2/1/00)

ARTICLE 1714 - EXHIBIT C MOUNT AIRY BOUNDARY DESCRIPTION

Beginning at a point on the southeast corner of Eighth and Prospect Avenue, thence east 210.5 feet along the south side of Prospect Avenue to the northeast corner of property at 821 Prospect Avenue, thence southwest 196.75 feet along the east property line to a point on the north side of Franklin Alley, thence west along the north side of Franklin Alley 166.75 feet to the southeast corner of Eighth Avenue approximately 65 feet, thence west across Eight Avenue 144.35 feet to the southwest corner of property at 903 Prospect Avenue, thence following rear property lines south 2 feet, west 39.65 feet, north 44.35 feet, west 74 feet, south 2 feet, and west 126.5 feet to a point on the west side of Ninth Avenue, thence south approximately 12 feet along the west side of Ninth Avenue, thence west 188.5 feet to a point on the west side of Tenth Avenue, thence south 67 feet along the west side of Tenth Avenue to the northwest corner of Tenth Avenue and Franklin Alley thence west 105.1 feet to the southeast corner of property at 359 Tenth Avenue.

Thence north 173 feet to the northwest corner of property at 359 Tenth Avenue, thence west 30 feet, thence north approximately 166 feet to a point on the south side of Prospect Avenue, thence west along the south side of Prospect Avenue approximately 286 feet to a point at the southwest corner of Eleventh and Prospect Avenues. Thence south 875.06 feet along the west side of Eleventh Avenue to the northeast corner of Eleventh Avenue and Spring Street, thence west along Spring Street 509.32 feet to the southwest corner of property at 1317 Prospect Avenue, thence north 390 feet, thence west 230 feet to a point on the east side of Thirteenth Avenue, thence north along the east side of Thirteenth Avenue 227.82 feet, thence west 281 feet to the southwest corner of property at 375 Thirteenth Avenue, thence following property lines south 37.67 feet, west 116.04 feet and south 220 feet to a point on the north side of Calypso Avenue, thence west 358 feet along the north side of Calypso Avenue to the northeast corner of Calypso and Fifteenth Avenue.

Thence north along the east side of Fifteenth Avenue 515 feet to the southeast corner of Fifteenth and Prospect Avenues, thence east 755 feet along the south side of Prospect Avenue to the southeast corner of Thirteenth and Prospect Avenues, thence north 185 feet along the east side of Thirteenth Avenue to the southeast corner of Thirteenth Avenue and West Market Street, thence east 1779.62 feet along the south side of West Market Street to the southwest corner of Eighth Avenue and West Market Street; thence south 299.5 feet along the west side of Eighth Avenue to the Point of Beginning.

(Ord. 4432 – Passed 5/16/07)

These ordinances are occasionally revised or changed by City Council at official and open public meetings. Every effort is made to keep this website up to date. However, there may be a short period of time between City Council changing an ordinance and the revised ordinance being posted on this site. If you have any questions about the status of a particular ordinance, please call the City Clerk's office at (610) 865-7130.

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RESOLUTION NO. 2014-221

RE: CERTIFICATE OF APPROPRIATENESS UNDER THE PROVISIONS OF THE ACT OF THE PENNSYLVANIA LEGISLATURE 1961, JUNE 13, P.L. 282 (53 SECTION 8004) AND BETHLEHEM ORDINANCE NO. 3952 AS AMENDED.

WHEREAS, it is proposed to demolish the existing two, vacant buildings at 24-30 W. Fourth St. contingent upon the approval of a new building of appropriate scale.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bethlehem that a Certificate of Appropriateness is hereby granted for the work.

Sponsored by: /s/ Bryan G. Callahan

/s/ Michael D. Recchiuti

ADOPTED BY COUNCIL THIS 5th DAY OF November, 2014.

/s/ J. William Reynolds
President of Council

ATTEST:

/s/ Cynthia H. Biedenkopf
City Clerk

Exhibit "B"

RESOLUTION NO. 2014-222

RE: CERTIFICATE OF APPROPRIATENESS UNDER THE PROVISIONS OF THE ACT OF THE PENNSYLVANIA LEGISLATURE 1961, JUNE 13, P.L. 282 (53 SECTION 8004) AND BETHLEHEM ORDINANCE NO. 3952 AS AMENDED.

WHEREAS, it is proposed to construct a 9 story mixed-used building conditional on the approval of details and materials at 24-30 W. Fourth St.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bethlehem that a Certificate of Appropriateness is hereby granted for the work.

Sponsored by: /s/ Bryan G. Callahan

/s/ Michael D. Recchiuti

ADOPTED BY COUNCIL THIS 5th DAY OF November, 2014.

/s/ J. William Reynolds
President of Council

ATTEST:

/s/ Cynthia H. Biedenkopf
City Clerk