TOWN OF BETHLEHEM
BOARD OF APPEALS

January 5, 2011

A regular meeting of the Board of Appeals, of the Town of Bethlehem, Albany County, New York, was held on the above date at the Town Offices, 445 Delaware Ave, Delmar New York.

PRESENT: Daniel Coffey, Acting Chairman
Michael Moore, Board of Appeals Counsel
Lennie Micelli, Board of Appeals Member
David DeCancio, Board of Appeals Member
Matthew Watson, Board of Appeals Member
Mark Platel, Assistant Building Inspector
Justin Harbinger, Assistant Building Inspector
Paul Stelmaszyk, Applicant
Clay Slaughter, Applicant
Peter Gillies, Applicant
Eric Robinson, Applicant
Chuck Radcliff
Jim Giacone
Kenny Umina
Gary Barkman
Carol Zalewski
Sarah Zalewski
Doris Jensen
Adam Boghosian
Sejal P. Shah

Mr. Coffey noted a point of order that his Chairmanship expired on 12/31/10 and the Town Board has not yet appointed a Chairman for the ZBA for 2011. The Town Board is expected to name a Chairman at their 1/12/11 organizational meeting. Per Town Law 267(2), an Acting Chair may be appointed by a majority of the Board. Mr. Micelli made a motion to appoint Mr. Coffey as Acting Chair for the purpose of conducting this meeting, seconded by Mr. Watson and approved with three votes, Mr. Micelli, Mr. Watson, and Mr. DeCancio. Mr. Coffey abstained.

Acting Chairman Coffey also noted that the term of Kenny Umina expired 12/31/10. His seat remains vacant at this time. Mr. Umina was present, but was unable to either participate in any discussions or vote on any matters.

Acting Chairman Coffey called the meeting to order at 7:02pm noting that there is a quorum with four (4) members being present as well as Attorney Michael Moore.

PUBLIC HEARING:
Paul Stelmaszyk, 55 Ivywood Drive, Selkirk for an area variance under Article V, District Regulations, Section 128-40, Planned Development Districts.

Mr. Platel: The applicant is proposing to construct a shed that will be located 25’ from the back property line which will encroach into the 50’ buffer for a planned residence district by 25’. The 50 setback is an additional buffer to adjoining properties of the planned district as required in Schedule “A” of the previous zoning law. For lots in this district that do not have the additional buffer the setback requirement for accessory structure would be 2’ from the property line.

The existing use of the property is as a single family dwelling and is located in a Planned Development District.

Mr. Micelli made a motion to indent the Public Hearing notice into the record, seconded by Mr. DeCancio, with all members present in favor. Acting Chairman Coffey advised the procedure to be used is to hear the Applicant’s presentation, entertain any questions or comments from the audience,
Mr. Stelmaszyk presented on his own behalf. He added a letter of support dated January 5, 2011 from Joyce A. Whiting, 59 Ivywood Drive, Selkirk to the record. It was also noted a letter of support dated December 30, 2010 was received from Gary Barkman, 229 Elm Avenue East, Selkirk. Mr. Stelmaszyk considered several factors when choosing an appropriate site on his property for a backyard shed. It was important to find a flat, level spot that was discreet and did not require removing any of the mature trees. He also added some larger versions of some previously submitted photos to the record to better show detail. Part of the shed will be in a Town drainage easement and will require permission from the Engineering Department. The siding on the shed will match the siding on his house as closely as possible. The shed will be positioned 16-feet across with the doors facing his house.

Acting Chairman Coffey asked if anyone would like to speak in favor or opposition to the application.

Gary Barkman, 229 Elm Avenue East (neighbor in back) spoke in favor of the project. He feels his property would be most impacted by the location of the shed. Mr. Stelmaszyk is an excellent neighbor and takes great care of his property. The location chosen for the shed is most appropriate in terms of the placement in the trees and considering the slope of his property. It would not look right closer to the house. There is a stream that runs between his property and Mr. Stelmaszyk’s property several months a year. It has never risen to reach the proposed area for the shed.

No one spoke in opposition. Acting Chairman Coffey closed the public hearing.

DISCUSSION:

Attorney Moore advised the application is a Type II, and therefore, excluded from SEQRA.

Acting Chairman Coffey is in favor of granting a variance. The shed will be located in the back of property in a flat area, obscured by trees and foliage. There are no other feasible spots for the shed and the homeowner would not have to remove mature trees on the property. Two neighbors support the application; none have spoken in opposition.

The variance passed on a motion by Mr. DeCancio, seconded by Mr. Micelli, and approved with all present in favor. Mr. Platel noted the resolution should stipulate that approval is required from the Engineering Department to place the shed on the Town drainage easement.

PUBLIC HEARING:

Hot Harry’s Fresh Burritos, 365 Feura Bush Road, Glenmont for an area variance under Article VI, Supplemental Regulations, Section 128-56, Off Street Parking and Loading.

Mr. Platel: The applicant is proposing to open a restaurant in a shopping center that was approved for retail use only. The parking spaces located at this shopping center are, at this time the minimum required to serve the site. The restaurant use would require an additional 24 parking spaces to meet the minimum spaces required. At this time there are 77 spaces on site and 101 would be required if the restaurant was to occupy the 2,500 square foot space.

The current use of the property is as a retail shopping center and is located in a Commercial Hamlet Zoning District.

Mr. Micelli made a motion to indent the Public Hearing notice into the record, seconded by Mr. Mr. Watson, with all members present in favor. Acting Chairman Coffey advised the procedure to be used is to hear the Applicant’s presentation, entertain any questions or comments from the audience, hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition. All comments and questions should be directed to the Board.
Clay Slaughter presented on behalf of Pritesh Shah, landowner at the plaza. Hot Harry’s is a fresh burrito franchise, similar to Moe’s or Baja Fresh. There are a couple of stores in the capital region. Bethlehem is a target market. The proposed location is currently occupied by Mainly Leather. There will be a take-out counter and seating for 44 people. There will not be a liquor license or table service. Hot Harry’s would open at 8am and close at 10pm. Mr. Slaughter presented a parking study he conducted based on sales trends at other Hot Harry’s stores in the area. His study concluded there are 120 cars in and out of the lot on an average day and 163 cars on peak days and that there are 6.8 cars in the parking lot at any given time. He estimated 3 employee cars in the parking lot at any time. There are employee parking spots in the back of the building that would be enforced.

This plaza has been at 77% to 80% occupancy for the past couple of years. Hot Harry’s franchises try to be community minded and reuse existing space. They do not use pad sites. Mr. Slaughter presented a couple of photos showing their Union Street, Schenectady store and their downtown Pittsfield store before Hot Harry’s moved in. When considering use of the parking lot, their intent is to share the parking lot with customers of other businesses in the plaza.

One space for every 250 square foot of floor area for restaurants one space is required for every 10 required for retail use, 34 required as a restaurant so the applicant would require a variance for 24 spaces. This particular build out allows for a large office and separate bathroom for the operators that does not figure into the parking equation.

By code, a take-out only restaurant would be a retail use. Hot Harry’s decided to pursue the variance for operating the location as a restaurant; the business model is not viable for take-out only. The business operation is “fast casual”, meaning the food is prepared to order and the line takes longer than typical fast food, requiring a comfortable seating area while people wait. Hot Harry’s is looking around in town for other locations to lease instead, but there isn’t anything available at this time. Mr. Shah is finding it difficult to rent the plaza because of the restrictions regarding parking for restaurant use.

At lunch, 60% of customers take-out and 40% eat in. At dinner, the percentages roughly switch. The business will be slower during the weekend. Several tenants including the liquor store and the Laundromat are busy nights and weekends.

Mr. Slaughter presented photos he took of the parking lot on Wednesday, December 1 at 12:45pm when there were 16 cars in the parking lot and on Tuesday, December 14 at 12:15pm there were 23 cars in the parking lot. Reducing the number of seats would not change the number of parking spaces required in this case.

Originally, Hot Harry’s was considering leasing another space in the plaza next to a Subway store, but decided the space they are now leasing at the other end of the plaza would be better in terms of location and parking. Mr. Platel noted the Subway store is operating as an eat-in restaurant without the appropriate parking variance and is not compliant with town code, which is being addressed by the Building Department.

In 1991, the Board of Appeals denied a request for a parking variance. Mr. Slaughter doesn’t believe restaurant operations will require as many parking spaces as the code states. Also, there is currently a hardship on the part of the plaza. In the case of the previous applicant, the business operated as take-out only, then decided to add seats, necessitating the request for a variance. Mr. DeCancio pointed out the area was very different 20 years ago.

Acting Chairman Coffey requested additional information as to:
1. where Mr. Slaughter obtained the data regarding occupancy at the Centre and
2. proof of financial hardship on the part of the plaza owner, in particular how it differs from the situation in 1991 when the previous request was denied.

Jim Giacone, 12 Sunset Drive, Delmar, feels there has been an increase in food service operations in the area, disproportionate to new retail and population increase, making it difficult for other restaurant owners, like himself, to compete.
Albany County Planning Board will consider the application at the January 20, 2011 meeting.

Acting Chairman Coffey kept the public hearing open pending more information from the applicant.

CONTINUANCE OF PUBLIC HEARING:
YMCA, 900 Delaware Avenue, Delmar for consideration under Article III, Zoning Maps and Districts, Section 128-16, Parcels in Multiple Districts.

Acting Chairman Coffey reminded the board that at the public hearing on December 1, 2010, Mr. Gillies was asked to provide more information as to how the application is consistent with Section 128-16 (B). In providing the additional information, Mr. Gillies compared the allowed uses within the Rural Hamlet and Residential A zoning districts. Mr. Gillies noted that the design guidelines listed in the Residential A district zoning code section 128-27(E)(4) encourages the development of athletic fields, educational amenities and other low density uses that require large acreage.

The proposed pavilion meets all the area, yard and bulk requirements for both the Rural Hamlet and Residential A zoning districts. Mr. Gillies noted that the design guidelines listed in the Residential A district zoning code section 128-27(E)(4) encourages the development of athletic fields, educational amenities and other low density uses that require large acreage.

The area could be used for residential building. The subject property is one parcel.

The proposed project requires Planning Board review. Albany County Planning Board has deferred to local consideration. The board found that the proposed action will have no significant countywide or inter-municipal impact.

Attorney Moore clarified for the board as a reminder that it is not a variance situation. If there were two separate tax parcels, it would be a use variance, but it is a single parcel with multiple districts requiring a compromise to allow the proposed action.

DISCUSSION:
After some discussion, it was determined to do a coordinated review in regards to SEQR with the Planning Board assuming lead agency status. This was approved on a motion by Mr. Micelli, seconded by Mr. DeCancio, and approved by all members present in favor. On further discussion and on advice from counsel, it was determined that doing a coordinated review was not necessary and a re-vote was taken to do an uncoordinated review of SEQR on a motion by Mr. DeCancio, seconded by Mr. Watson, and approved by all members present.

Attorney Moore advised this is an unlisted action under SEQRA. Acting Chairman Coffey reviewed Part II, Impact Assessment, of the SEQRA for Unlisted Actions. All items were answered that there would be no impact. In answering item D, Attorney Moore noted there are no areas in town designated as a Critical Environmental Area (CEA). Under Part III, Determination of Significance, Acting Chairman Coffey indicated that the proposed action will not result in any significant adverse environmental impacts. Mr. Micelli moved to authorize Acting Chairman Coffey to complete Part III of the SEQRA form as reviewed, seconded by Mr. Watson, and the motion passed with all members present in favor.

Acting Chairman Coffey started the discussion of the variance. Most of the development will be on the Rural Hamlet zoned district, a small portion will be on the district zoned Residential A. The denial was based on the pavilion being an accessory to the existing commercial use. The pavilion is arguably a quasi-public use, consistent with many of the other existing uses that could be allowed for adaptive reuse in a Residential A area, including athletic fields, educational amenities, and other low density uses. The YMCA is close enough by definition to be considered a wellness center. The proposed pavilion would be in a wooded area with no residences close by. As the applicant pointed out, this area can only be accessed via the Rural Hamlet portion of the property. For these reasons, Acting Chairman Coffey favors granting the compromise sought. Mr. DeCancio agrees. He feels it would be a positive enhancement of the property and the services the YMCA provides to the community. Mr. Watson and Mr. Micelli agreed. On a motion by Mr. Micelli, seconded by Mr. DeCancio, the variance was approved with all members present in favor.
DISCUSSION:

Cumberland Farms, 68 Route 9W, Glenmont for an area variance under Article VI, Supplemental Regulations, Section 128-59, G., Signs in a Commercial Zoning District.

Acting Chairman Coffey noted the public hearing was closed at the December 15, 2010 meeting and the application is being taken up as a discussion at this time. He reiterated the applicant is asking for an approximately 55 square foot variance. The applicant has not proven the need for relief as large as what the applicant has requested. If the board decides to grant a variance, he would favor substantially less than 55 square feet. The applicant indicated they want to attract traffic from the Thruway. Acting Chairman Coffey is very concerned about precedence. There has never been a variance of this magnitude given for a sign of this size in town.

The Jensens’ concerns about garbage coming onto their property from the property are of enforcement and not directly related to the size of the sign. He notes their concern about the changing to the character of the neighborhood due to increasing truck traffic.

Mr. Watson felt the size demonstrated by the mock up was not as large as he expected. The additional 4-foot height wasn’t demonstrated. There are specific unique characteristics at the location as it is placed up on a hill and set back from the road.

Applicant does not need a variance for the proposed height.

Mr. Micelli would like to deny the application. He feels the size of the current sign is adequate. He would not want to encourage more large signs along Route 9W.

Mr. DeCancio agrees with Acting Chairman Coffey. The size requested has not necessarily been justified. Any variance should be conditional on removing the second sign on the property.

The height of the sign can be increased to 15-feet and comply with Town Code. No variance is required for the increased height of 4-feet of the proposed sign. A site plan amendment is not needed so a Planning Board review is not required.

Attorney Moore advised this is an unlisted action under SEQRA. Acting Chairman Coffey reviewed Part II, Impact Assessment, of the SEQRA for Unlisted Actions. He noted there is an anticipated affect on traffic and traffic patterns that has been previously discussed. After some discussion, it was agreed the proposed sign would not directly affect air quality.

All items were answered that there would be no impact. In answering item D, Attorney Moore noted there are no areas in town designated as a Critical Environmental Area (CEA). Under Part III, Determination of Significance, Acting Chairman Coffey indicated that the proposed action will not result in any significant adverse environmental impacts. Mr. Watson moved to authorize Acting Chairman Coffey to complete Part III of the SEQRA form as reviewed, seconded by Mr. DeCancio, and the motion passed with all members present in favor.

After some discussion, it was determined to reject the variance for 55.35 square feet and vote on a variance of up to an additional 20 square feet, which would increase the total size of the sign to 60 square feet, conditional on removing the second sign on the property at Corning Hill Road. On a motion by Mr. DeCancio, seconded by Mr. Watson, and approved by a vote of 3 in favor and 1 (Mr. Micelli) opposed.

MINUTES:

The minutes of the December 15, 2010 regular meeting were approved as amended on a motion from Mr. Micelli, seconded by Mr. Watson, with all members present in favor.

The meeting was adjourned on a motion from Mr. Micelli and seconded by Mr. Watson with all in favor at 8:36pm.

Respectfully submitted,
Robin Nagengast