

# TOWN OF BETHLEHEM



*John Clarkson*  
Town Supervisor

## Zoning Board of Appeals Minutes

*Daniel W. Coffey*  
Chairman

Wednesday, August 2, 2017  
7:00 PM

### I. Call to Order

A Regular Meeting of the Zoning Board of Appeals of the Town of Bethlehem was held on the above date at the Town Hall Auditorium, 445 Delaware Avenue, Delmar, NY. The Meeting was called to order at 7:02 PM.

Attendee Name	Title	Status	Arrived
Daniel Coffey	Chairman	Present	
Jane Barnes	Board Member	Absent	
Dave Devaprasad	Board Member	Absent	
Donna Giliberto	Board Member	Present	
Jeremy Martelle	Board Member	Present	
Michael Moore	Planning/Zoning Board Counsel	Present	
Mark Platel	Assistant Building Inspector	Present	
Craig Yaiser	Assistant Building Inspector	Present	
Kathleen Reid	Assistant to the Zoning Board of Appeals	Present	

### II. Public Hearings

- A.** Public Hearing for an application submitted by Timothy Aherns, ForeFront Power, LLC on behalf of the Estate of Marvin LaGrange for the proposal of a ground mounted solar facility for the sole use of the Bethlehem Central School District. The project site is located on Delaware Avenue, Parcel No. 95.00-4-30. The proposed project does not meet the Town's Zoning Code requirements under Article XIII, Section 128-99, A Schedule of Uses - a large scale PV System is not a permitted use in the Rural Hamlet Zoning District and Article VIII, Section 128-67.2, E. (3) (b) [2] [a], for setback requirements when abutting a residential district. (17-01000017)

The Applicant is proposing to install a large scale photovoltaic (PV) system that will be located 44 feet from the rear yard property line, 160 feet is required and 15 and 65 feet from the side yard property line where 135' is required. The setbacks include an additional 120' buffer for PV Systems that are located adjacent to residentially zoned property. The access to the PV system travels through a Rural Hamlet Zoning District where it is not listed as a permitted principal use therefore the access road will require a use variance.

The 47.5 acre parcel is currently vacant land used for agriculture it is a split zone with Rural Hamlet Zoning in the front portion of the lot and Rural Zoning in the back portion of the lot.

A Motion to indent the Public Hearing notice into the minutes was offered by Mr. Martelle, Seconded by Ms. Giliberto.

## NOTICE OF PUBLIC HEARING

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a Public Hearing on Wednesday, August 2, 2017 at 7:00 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Forefront Power, LLC on behalf of the Estate of Marvin C. LaGrange for Variances located on Delaware Avenue, Delmar, Parcel No. 95.00-4-30. The Applicant is proposing construction of a large scale ground-mounted solar Photovoltaic system for the use of the Bethlehem Central School District. The proposed facility does not meet the Town's Zoning Code requirement for uses under Article XIII, Section 128-99 A. An Area Variance is required for setback requirements not met under Article VI, Section 128-67.2, E. (3) (b) [2] [a].

Jacqueline Phillips Murray, Attorney for the Applicant, spoke on behalf of Forefront Power LLC., Timothy Aherns, Representative for Forefront Power and Tracy Darougar, Engineer with TRC Solutions were also present to answer questions. Ms. Phillips demonstrated the uniqueness of the project describing the site as a single parcel within two zoning districts that require a Use Variance only for the access driveway going thru a district that Solar PV Systems are not permitted. Additionally, the Applicant started the application process in 2015, in February 2016 the Town adopted Supplementary Regulations for Solar PV Systems.

The following items were discussed:

- The Applicant addressed the need for two variances for this site
- Alternative sites for the project
- Alternative access to the site
- Size of solar system and its location on the parcel
- Submission process for Solar PV Systems/NYSERDA process
- Current use and future plans for parcel
- Surroundings and topography of the project site
- Visual impact from Delaware Turnpike - in regards to the rear setback
- Hardship to the Applicant if the variances are not approved

Adjacent neighbors inquired about the future impact to neighboring parcels

There was no one to speak in opposition to the project

Judith Kehoe, Chief Business and Financial Officer for Bethlehem Central School District spoke in favor of the project.

The Board requested the Applicant submit the following:

1. State Environmental Quality Review Act ("SEQRA") Classification
2. Zoning intent of the Rural and Rural Hamlet zoning districts in accordance with the Town's Code and Comprehensive Plan
3. Aerial photograph of the entire parcel

Albany County Planning Board differed to local action.

If variances are approved the project will go to the Planning Board for site plan review

**RESULT: KEPT OPEN**

- B.** Public Hearing for an application submitted by Garo Derian, Owner, Glenmont Self Storage- 560-576 Route 9W, Glenmont for a use variance under Article(s) XIII, 128-99, 128-12, Article IV, Section 128-22 and an area under Article V, Section 128-37 C(9) for a 50' Master Plan Buffer. (17-01000019)

The Applicant is proposing a self-storage facility which is not listed as a permitted use in the MED Zoning District and will also be the second principal use of the property, both of these issues require a use variance. Additionally the parking area will be located 5 feet from the side property line as well as two of the proposed buildings where a 50 foot MED boundary setback is required. The existing use of the properties which will be combined as part of this proposal are 2 vacant parcels and 1 parcel as a single family use.

A Motion to indent the Public Hearing notice into the minutes was offered by Mr. Martelle, Seconded by Ms. Giliberto.

## **NOTICE OF PUBLIC HEARING**

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a Public Hearing on Wednesday, August 2, 2017 at 7:10 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Garo and Maria Derian for Variances located at 564, 572 and 576 US Route 9W. The Applicant is proposing expansion of the existing self-storage facility located immediately adjacent to subject lands. The proposed facility does not meet the Town's Zoning Code requirement for uses under Article XIII, Section 128-99. Schedule of Uses, A., Article III, Section 128-12 & Article IV, Section 128-22. An area variance was submitted for a 50' Master Plan Buffer as required under Article V, Section 128-37 C. (9) by the Town's Zoning Law.

John Hayko, Attorney, representing Garo and Maria Derian, the Applicant. Paul Hite, Land Surveyor; Stephen Jones, Architect; James O'Neill, Appraiser; Haffner Valuation Group, Inc. and Peter Mckee, Keller Williams Realty were also present to

answer questions.

Mr. Hayko gave a brief summary of the proposed project, the Applicant would like to expand the existing self storage facility by combining two of the parcels and purchasing an adjacent parcel.

The following items were discussed:

History of the parcel

Site limitations on the parcel

Drainage

Traffic and visual Impact

Design of building proposed

Definition of a Use Variance in accordance with this project

Economic impact on business if relief is not granted

Character of the neighborhood

At the next meeting Mr. Hite will provide the name of the engineer they hope to retain that to assist in designing a retention pond.

Chairman Coffey read into the record as many as twenty names of residents/customers that submitted emails/letters to the Board in support of the project.

The Board received a letter submitted by Ms. Doris Beckman, 594 Route 9W, concerned with drainage to her home and areas surrounding the parcels. John Willi, another neighbor voiced the same concerns.

If the variance is approved drainage concerns will be addressed during the Planning Boards Site Plan Review; prior to Site Plan Review the project would require Town Board approval of a Development Master Plan.

Several residents and customers came forward to speak in favor of the Business Owner's, Garo and Maria Derian and the project.

There was no one present in opposition to the variance.

**RESULT:                      KEPT OPEN**

### **III. Applications - Review and Possible Public Hearing Scheduling**

- **ACCEPT APPLICATION AND SET PUBLIC HEARING FOR AN APPLICATION SUBMITTED BY JOHN VADNEY FOR AN AREA VARIANCE LOCATED ON VAN DYKE ROAD, DELMAR, TAX MAP #96.00-1-32. THE APPLICANT IS PROPOSING CONSTRUCTION OF A SINGLE FAMILY**

**HOME THAT DOES NOT MEET THE LOT HIGHWAY FRONTAGE ONTO DUYSER COURT  
UNDER ARTICLE XIII, SECTION 128-100.(17-01000020)**

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Donna Giliberto, Board Member  
**SECONDER:** Jeremy Martelle, Board Member  
**AYES:** Daniel Coffey, Donna Giliberto, Jeremy Martelle  
**ABSENT:** Jane Barnes, Dave Devaprasad

**IV. Resolutions**

- **WILLIAM SPINOSA - 629 ROUTE 9W, GLENMONT**

**RESOLUTION**

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a Variance under Article V, District Regulations, Section 128-40 C (3) (Rural Hamlet District, Accessory uses, Maximum coverage) requested by William Spinosa (“Applicant”) for property at 629 Route 9W, Glenmont, New York; and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on July 19, 2017; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

## FINDINGS OF FACT

Applicant's property in the Rural Hamlet (RH) District is occupied by a single-family dwelling and a cluster of outbuildings ("accessory uses," per the Town Code) of varying sizes and types. Applicant proposes to demolish most of the outbuildings and replace them with a detached accessory garage of approximately 1280 square feet. If the new accessory structure were built the total lot occupancy of all accessory structures on the property would be 1720 square feet, or 8.92% of the total lot size. The Town Code specifies that accessory structures in the RH District may not exceed 5% of the total lot area.

Applicant William Spinosa testified in support of the application.

The Rural Hamlet District is defined in the Town Code as one of four "mixed use districts" (Section 128-12 B). The Town Code defines "MIXED-USE DEVELOPMENT" as the "Use of land and/or a building or structure for a variety of complementary and integrated uses, such as residential, office, retail, entertainment, and recreation." The Town Code "Schedule of Area, Yard and Bulk Requirements" (Section 128-100A), allows for a maximum lot coverage (all uses) in the RH District of 70%. The maximum lot coverage (all uses) for the other three "mixed use" Districts is: Hamlet (75%), Rural Riverfront (20%) and Commercial Hamlet (65%). For the Town's "residential" Districts (Section 128-12 A), the maximum allowable lot coverage (all uses) ranges from 20%-30%.

Applicant has inherited considerable real and personal property from the estate of his late mother. He seeks the additional storage space that the proposed accessory structure would provide to accommodate his classic automobiles, tractors and trailers and other personal property.

Directly adjoining the Applicant's property on the north is an automobile dealership. Adjoining the Applicant's property on the south is the residential property of Johnson. Mr. Johnson, and one other party in the neighborhood, provided the Board with written statements supporting the application.

Applicant has in the past purchased additional land from the automobile dealership. An additional land purchase from this owner, to potentially minimize or avoid the requested variance, is not possible.

The existing cluster of outbuildings is dissimilar, disorganized and unsightly. The proposed new structure will consolidate the accessory structures on the property, and greatly improve its overall appearance.

As part of the project, Applicant also proposes to include a “drive through” door on the new garage, which will enable vehicles leaving the new accessory structure to pull out directly onto Route 9W, rather than “back out” onto the highway.

Demolition of additional existing outbuildings to reduce the size of the requested variance would defeat the Applicants’ objective of adding storage space. The outbuildings proposed to remain are more functional and attractive.

There was no testimony in opposition to the Applicant’s project.

Albany County Planning Board review of the application is not required, pursuant to a memorandum of understanding between the Town and the County Board (variance application only, no site plan review required for residential use of the property).

The Board received no testimony in opposition to the application.

#### CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed variance (Rural Hamlet District, Accessory uses, Maximum coverage) will be granted.

The Board has determined that the requested variance will be a benefit to the Applicant, will improve the appearance of the property and the neighborhood (existing unsightly accessory structures replaced), and will enhance public safety (new “turnaround” area). The immediate “neighborhood “is dominated by a commercial use (automobile dealership). Applicant’s adjoining residential neighbor has expressed his support for the project.

The benefit sought by the Applicant, additional storage space for personal property, cannot feasibly be achieved by some method other than a variance. Additional demolition or additional land purchases are not practical.

The requested variance will have no adverse effect on the physical or environmental conditions in the neighborhood.

As noted, in the “mixed use” District where the property is located, the Town Code allows for a substantially larger percentage of “lot coverage” than in other primarily “residential” Districts. Even with the granting of the requested variance, the total lot occupancy of all structures on the property will still be well below the allowed 70%. The Board determines that the proposed accessory structure is a “complementary” and “integrated” “mixed use development” on the property; and is consistent with the intent and purpose of the Town Code.

The requested variance is larger than other “lot coverage” variances previously considered by the Board and the alleged difficulty necessitating the requested variance has been in part created by the Applicant. These factors are outweighed by the above Findings and Conclusions.

The proposed accessory structure is a “Type II” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 [c] [7], [10]), and no environmental impact review is required.

The requested variance (Rural Hamlet District, Accessory uses, Maximum coverage) is GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the July 19, 2017 hearing except as the same may be modified by the Town Building Department;



2. In the construction of the garage, the Applicant shall match, as nearly as possible, the existing roofing and siding on the single-family dwelling at the property;
  
3. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

August 2, 2017

Daniel Coffey

Chairman

Zoning Board of Appeals

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The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on August \_\_\_\_, 2017.

Kathleen Reid, Secretary

Zoning Board of Appeals

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Donna Giliberto, Board Member
<b>SECONDER:</b>	Jeremy Martelle, Board Member
<b>AYES:</b>	Daniel Coffey, Donna Giliberto, Jeremy Martelle
<b>ABSENT:</b>	Jane Barnes, Dave Devaprasad

**V. Discussion/Possible Action**

- **LAGRANGE/FOREFRONT POWER, LLC-DELAWARE AVENUE, DELMAR**

No Action at this time

- **GLENMONT SELF STORAGE**

No Action at this time

**VI. New Business**

- **ANTHONY CATALANO-194 RIVER ROAD, GLENMONT - SET PUBLIC HEARING CONTINUATION**

An application for an Area Variance located at 194 River Road, Glenmont will be placed on the August 16, 2017 Board of Appeals agenda for continuation of a Public Hearing. Mr. Anthony Catalano, the Applicant, requested additional time to gather information the Board requested at the March 18, 2015 Public Hearing.

A motion to schedule the Public Hearing continuation for August 16, 2017 at 7:10 PM was offered by Ms. Giliberto, Seconded by Mr. Martelle.

**B. Recognize Daniel Coffey for his Service as Zoning Board Chairman from 1/13/2010 - 8/2/2017**

Chairman Daniel Coffey announced his resignation from the Board of Appeals effective 8/3/2017.

Counsel, Michael Moore thanked Mr. Coffey for his service from 1/13/2010-8/3/2017 and read/presented the following Resolution:

RESOLUTION

***Daniel Coffey***

*WHEREAS, Daniel Coffey has faithfully served as a committed and capable member of the Zoning Board of Appeals of the Town of Bethlehem and*

*WHEREAS, his work as a representative of the residents of the Town of Bethlehem has always been performed in a most professional and ethical manner, and*

*WHEREAS, he has brought to the Zoning Board of Appeals of the Town of Bethlehem a strong commitment to thoroughness, a perceptive outlook toward development, a judicious respect for the rights of homeowners and landowners, and a sincere desire to provide and preserve a desirable quality of life in the Town of Bethlehem, and*

*NOW, THEREFORE, in recognition of his very dedicated service, as an appointed Member of The Zoning Board of Appeals from January 13, 2010 through August, 2, 2017*

*BE IT HEREBY RESOLVED, the undersigned members of the Zoning Board of Appeals and Town staff, with whom Daniel Coffey has served, hereby express our gratitude to our colleague and wish him much success in the years ahead, and*

*BE IT FURTHER RESOLVED, that these sentiments of the Board Members and staff shall be entered and preserved with the official records of Zoning Board of Appeals and*

*BE IT FURTHER RESOLVED, that a copy of this Resolution shall be presented to our colleague*

*Daniel Coffey as a lasting personal memento of our sincere appreciation for his*

*dedicated service to the citizens of the Town of Bethlehem.*

**VII. Minutes Approval**

**A. Wednesday, July 05, 2017**

**RESULT:** ACCEPTED [UNANIMOUS]  
**MOVER:** Donna Giliberto, Board Member  
**SECONDER:** Jeremy Martelle, Board Member  
**AYES:** Daniel Coffey, Donna Giliberto, Jeremy Martelle  
**ABSENT:** Jane Barnes, Dave Devaprasad

**B. Wednesday, July 19, 2017**

**RESULT:** ACCEPTED [UNANIMOUS]  
**MOVER:** Donna Giliberto, Board Member  
**SECONDER:** Jeremy Martelle, Board Member  
**AYES:** Daniel Coffey, Donna Giliberto, Jeremy Martelle  
**ABSENT:** Jane Barnes, Dave Devaprasad

**VIII. Adjournment**

A Motion to Adjourn at 8:56 PM was offered by Mr. Martelle, Seconded by Ms. Giliberto with all present in favor

Next Regular Meeting August 16, 2017