

TOWN OF BETHLEHEM

David VanLuven
Town Supervisor

Zoning Board of Appeals Minutes



David Devaprasad
Chairman

Wednesday, December 20, 2017
6:00 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 6:00 PM.

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

II. Public Hearings

- A. Elsmere Fire District - for construction of a new fire station located at Wemple and Feura Bush Roads 97.00-1-16.2, (pursuant to Zoning Law Section 128-90 (B). The Zoning Board of Appeals is to apply the "Balance of Interest Test" when determining the applicability of the zoning law to quasi-public projects and, if said provision is applicable to this project, make a determination as to whether the project is to undergo site plan review. (17-01000027)

The Applicant is proposing to construct a fire department substation which under Article X, Section 128-90 B. of the Town Code, states the Zoning Board of Appeals will determine how to apply Chapter 128 to this public project.

The property is located in a Residential "A" Zoning District and is currently vacant land.

A motion to indent the Public Hearing Notice into the record was offered by Mr. Martelle, Seconded by Mr. Beams.

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, December 20, 2017 at

6:00 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application from Elsmere Fire District, for the construction of a satellite fire station proposed on Fire District property located on Wemple and Feura Bush Roads, Glenmont (97.00-1-16.2). Pursuant to Zoning Law Article X, Section 128-90 (B) the Zoning Board of Appeals is to apply the "Balance of Interests Test" when determining the applicability of the Zoning Law to quasi-public projects and, if said provision is applicable to this project, make a determination as to whether the project is to undergo site plan review.

Counsel provided a brief statement to the Board noting that this is not a typical Public Hearing for a "variance" application but a question whether a Quasi-public project, like the fire department, is subject to the Town Zoning Law as in the nature of interpretation of the code. The Board of Appeals function is to determine, once all factors considered, if the project be subject to site plan review with the Town Planning Board.

Terence Hannigan, Attorney for the Elsmere Fire District was present on behalf of the district along with the following Board of Commissioners: Richard Webster, Jack Brennan, William Webb, Richard Zigrosser and Joseph Catalano.

Mr. Hannigan, began with a description of the districts history and membership. He expressed the need of the project and how it will help meet the districts goals for the surrounding community. He believes they have addressed the nine elements of the "Balance of Interest Test" as provided in the application submitted.

Richard Campagnola, Principal Architect and Ed Vopelak, Jr. Chief Engineer both of C.T. Male Associates were present to provide a brief thumbnail sketch of the project details and answer questions from the Board.

The Board received a memorandum from Rob Leslie, Director of Planning for the Town of Bethlehem, recommending the project undergo site plan review by the Town Planning Board.

The Board received 35 emails in favor of the project and noted one email was received in opposition.

Several residents in attendance had questions and concerns that the representatives addressed. Several residents spoke out in favor of the project.

The project is not required to be reviewed by the Albany County Planning Board.

The Public Hearing was closed as follows:

RESULT:	CLOSED [UNANIMOUS]
MOVER:	Joshua Beams, Board Member
SECONDER:	Jeremy Martelle, Board Member
AYES:	Devaprasad, Barnes, Beams, Giliberto, Martelle

B. Public Hearing continuation-Innovative Solutions - 454 River Road, Glenmont - for an area variance under Article VI, Section 128-59(I) (K). Signage. (17-01000028)

The Applicant is proposing to replace a pre-existing non-conforming freestanding sign with a sign in the same location and of the same size. The existing use of the property is an industrial use and is located in a Heavy Industrial District.

A motion to indent the Public Hearing notice into the minutes was offered by Mr. Beams, Seconded by Ms. Barnes.

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, December 20, 2017 at 6:10 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by AJ Sign Company on behalf of Innovative Surface Solutions for an area variance located at 454 River Road, Glenmont. The applicant is proposing signage that does not meet the requirement of the Law Under Article VI, Section 128-59, I and 128-59, K.

Seeing that the Applicant/Representative was not in attendance the Board voted to Table the Public Hearing until January 3, 2018 at 6:10 PM or until the Applicant is able to reschedule a continuation of the Public Hearing which will be noticed in the Spotlight Newspaper.

There was no one present to speak in favor or against the application.

RESULT: **KEPT OPEN**

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

- **VICTOR KUSTOV- 619 WEMPLE ROAD, GLENMONT, FOR AREA VARIANCE(S) UNDER ARTICLE V, DISTRICT REGULATIONS, SECTION 128-25 RURAL DISTRICT D.(17-01000029)**

The Board voted to accept the Application and set the Public Hearing for January 3, 2018 at 6:00 PM.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Donna Giliberto, Board Member
SECONDER: Jeremy Martelle, Board Member
AYES: Devaprasad, Barnes, Beams, Giliberto, Martelle

IV. **Resolutions**

- **JOHN MCPHILLIPS-43 BENDER LANE, 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 Variances under Article VI, Supplementary Regulations, Section 128-47 B (3) (Fences in

residential districts, corner lot, height and setback) requested by John McPhillips (“Applicant”) for property at 43 Bender Lane, Delmar, 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 December 6, 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 Core Residential District is improved by a single family residence, and is located at the corner of Bender Lane and Devon Road. He proposes to erect a 6’ tall wooden fence in the front yard opposite the side yard (Devon Road side); where the Town Code limits fence height to 4’. In addition, the proposed fence at this location would be on the property line; where the Town Code requires a setback of 15’.

Applicant John McPhillips testified in support of the application.

There is an existing 4’ high fence on the property at the subject location, which would be replaced. The property slopes downgradient along Devon Road. The proposed 6’ high fence would provide enhanced privacy and screening in this portion of the property.

Moving the proposed fence back from the property line to eliminate the setback variance would significantly diminish the usable space in the applicant's rear yard.

There are other fences in the neighborhood similar in height and appearance to the one proposed by the Applicant.

Applicant provided the Board with a written statement of support for the project from several of his neighbors. Applicant testified that he had received an oral statement of support from the immediately adjoining neighbor.

At the public hearing, two of Applicant's neighbors asked questions regarding the proposed fence, but did not directly oppose 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 variances (Fences in residential districts, corner lot, height and setback) will be granted.

The Board has determined that the requested variances will be a benefit to the Applicant in his use and enjoyment of the property and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. There are similar fences in the neighborhood and the project received the support of the Applicant's neighbors. The Board also determines that the new fence will improve the appearance of the property and the neighborhood.

The benefit sought by the Applicant (rear yard privacy while preserving usable space) cannot be achieved by some method other than variances.

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

The requested variances are the minimum that is necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variances has been created in part by the Applicant, and in part by the physical configuration of the property (down slope on Devon Road side), but this factor is outweighed by the above Findings and Determinations.

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

The requested variances (Fences in residential districts, corner lot, height and setback) are 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 December 6, 2017 hearing except as the same may be modified by the Town Building Department; and
2. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

December 20, 2017

S. David Devaprasad
Chairman
Zoning Board of Appeals

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on December ____, 2017.

Zoning Board of Appeals

RESULT: APPROVED [4 TO 1]
MOVER: Jane Barnes, Board Member
SECONDER: Donna Giliberto, Board Member
AYES: Dave Devaprasad, Jane Barnes, Joshua Beams, Donna Giliberto
NAYS: Jeremy Martelle

V. Discussion/Possible Action

Motion To: Elsmere Fire District

RESULT: APPROVED [UNANIMOUS]
MOVER: Donna Giliberto, Board Member
SECONDER: Jeremy Martelle, Board Member
AYES: Devaprasad, Barnes, Beams, Giliberto, Martelle

The Board determined that the application will be required to undergo site plan review before the Town Planning Board.

Chairman Devaprasad-

Reviewed all material submitted by the applicant including the analysis of the balancing of interest factors. He believes it would be in the best interest of the public to have the application go before the Town Planning Board. He added that review of the site plan would provide a well needed forum for the public to be involved and the town to provide input which would add value to the process for the District.

Mr. Martelle-

Has support for the project and the District. Recommends the project undergo site plan review before the Town Planning Board.

Mr. Beams-

Expressed support for the project. Recommends the project undergo site plan review before the Town Planning Board.

Ms. Giliberto-

Expressed support for the project. Agrees that the public has a right to hear more information about the project and feels the District will benefit from the review. Recommends the project undergo site plan review before the Town Planning Board.

Ms. Barnes-

Expressed support for the project. Believes site plan review will help resolve some of the neighbors concerns. Agrees for all reasons previously stated and recommends the project undergo site plan review before the Town Planning Board.

VI. New Business

Chairman Devaprasad approved the Board of Appeals Meeting Schedule for 2018.

The Board meets the first and third Wednesday of each month at 6:00 PM.

The July 4, 2018 and November 21, 2018 meetings have been cancelled in observance of the corresponding holiday.

VII. Minutes Approval

A. Wednesday, December 06, 2017

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Joshua Beams, Board Member
SECONDER:	Jane Barnes, Board Member
AYES:	Devaprasad, Barnes, Beams, Giliberto, Martelle

VIII. Adjournment

Motion To:

RESULT:	ADJOURN [UNANIMOUS]
MOVER:	Joshua Beams, Board Member
SECONDER:	Donna Giliberto, Board Member
AYES:	Devaprasad, Barnes, Beams, Giliberto, Martelle

The Meeting was Adjourned at 7:05 PM

Next Regular Meeting January 3, 2018 at 6 PM