

# TOWN OF BETHLEHEM

*David VanLuven*  
Town Supervisor

## Zoning Board of Appeals Minutes



*David Devaprasad*  
Chairman

Wednesday, April 4, 2018  
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	Absent	
Joshua Beams	Board Member	Present	
Donna Giliberto	Board Member	Absent	
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. Monolith Solar/Bentley Self Storage - PUBLIC HEARING CANCELLED.

The Public Hearing was cancelled at the request of the Assistant Building Inspector. After additional review it was determined that a large scale roof mounted PV system located at 721 River Road is permitted as a second principal use on the property as a Special Use Permit allowed under definitions (Use Principal) in the Town Zoning Law therefore not requiring a Use Variance.

Once submitted the application will go before the Planning Board for Site Plan Review/Special Use Permit - date to be determined.

**RESULT:** CLOSED [UNANIMOUS]  
**MOVER:** Dave Devaprasad, Chairman  
**SECONDER:** Joshua Beams, Board Member  
**AYES:** Dave Devaprasad, Joshua Beams, Jeremy Martelle  
**ABSENT:** Jane Barnes, Donna Giliberto

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

No new applications at this time.

IV. Resolutions

- WENDY'S RESTAURANT-261 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 Variances under Article VI, Supplementary Regulations, Section 128-59 (C) (9) and J (2) and (3) (Signs, General Standards, no wall signs above building height; shopping centers, wall signs, number of signs, number on one building façade, “box” signs prohibited) requested by Cornerstone Consulting Engineers (“Applicant”), Hudwen, LLC (“Owner”) for property at 261 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 March 21, 2018; 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

Owner proposes to upgrade the signage at its existing “Wendy’s” drive through restaurant in the Town’s General Commercial District (shopping center) to meet current corporate branding standards and franchise requirements. Signage is proposed on three sides of the building; the Town Code limits signage to two sides. Two signs are proposed at the front of the building; the Town Code limits signage to one per side. One of the two proposed signs at the front is a “box” type sign; the Town Code allows only “channel” signs with individual letters. Two of the proposed wall signs would protrude above the building’s roof line; the Town Code prohibits this.

John Anderson of Cornerstone and Chad Adams from Wendy’s corporate offices testified in support of the application.

There is a total of five signs on the existing restaurant totaling 190 square feet in area. The proposed new signage would also consist of five signs, but the square footage would be reduced to approximately 108 square feet.

The Wendy’s restaurant is located well within the Town Center I shopping center, about 200 feet from the highway (Route 9W) and is partially screened by a berm. Applicant and Owner’s representatives testified that the proposed signage is necessary to ensure the visibility of the restaurant to customers, both within the shopping center and from the highway.

As noted, the proposed changes to the building’s signage are mandated by the corporate parent and by the Owner’s franchise agreement.

Similar signage variances have been granted by the Board for other restaurants in this shopping center (Taco Bell, Applebee’s).

By Resolution dated February 15, 2018 (Case No. 04-180202934) the Albany County Planning Board deferred to local consideration on the application, with an Advisory note regarding potential “precedent setting” nature of variances to the Town sign Code.

The Board received no other written or oral testimony related 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 and Owner, the Board determines that the requested variances (Signs, General Standards, no wall signs above building height; shopping centers, wall signs, number of signs, number on one building façade, “box” signs prohibited) will be granted.

The Board has determined that the requested variances will be a benefit to the Owner in its effort to attract and retain customers and market share in a competitive environment for its restaurant business and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood, which consists primarily of other retail facilities in shopping centers at a busy commercial intersection in the Town.

The benefit sought by the Owner could be achieved by some method other than variances, but only with significant deviation from the corporate rebranding program; which could place it in violation of its franchise agreement.

The requested variances will have no adverse effect on the physical or environmental conditions in the neighborhood. There is existing signage on the Owner’s building.

The variances granted are the minimum that is necessary and adequate to the Owner’s needs, while still preserving the character of the neighborhood. As noted, the proposed signage is a reduction in square footage from that existing on the building at present. The Board has determined that signage on three sides of the Owner’s building is warranted due to its location as a stand-alone facility within a shopping center, with traffic thoroughfares at multiple nearby points and a view of multiple sides of the building simultaneously from these thoroughfares (not parking areas).

The alleged difficulty necessitating the requested variances has been created in part by the Applicant and Owner, and in part by the requirements of Owner’s franchise agreement. This finding is outweighed by the other factors discussed above.

The proposed signage is a “Type II” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 [c] [2]), and no environmental impact review is required.

The requested variances (Signs, General Standards, no wall signs above

building height; shopping centers, wall signs, number of signs, number on one building façade, “box” signs prohibited) are GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans and testimony presented to the Board by the Applicant and Owner at the March 21, 2018 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.

April 4, 2018

S. David Devaprasad

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 April \_\_\_\_, 2018.

Kathleen Reid, Secretary

Zoning Board of Appeals

The Resolution was approved as follows:

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

- **ANTONIO CATALANO -194 RIVER ROAD, 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 XIII, Use and Area Schedules, Section 128-100 (Schedule of Area, yard and bulk requirements, Rural Light Industrial District, minimum front yard, minimum rear yard) requested by Antonio Catalano, Sr. (“Applicant”) for property at 194 River Road, 194 River Road, 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 September 20, 2017, October 18, 2017 and March 21, 2018; 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 proposes to construct a convenience store with gasoline station on its vacant property in the Rural Light Industrial District. The proposed project would require three area/setback variances from the Town Code: a rear yard setback of 16 feet is proposed (variance of 34 feet); a front yard setback of 33 feet is proposed for the gasoline station canopy (variance of 17 feet); and another identical front yard setback of 33 feet is proposed for a kiosk to be located beneath the gasoline station canopy (variance of 17 feet). An earlier proposal to construct residential apartment units above the convenience store would have required a use variance and was

removed from the application. If the variances are approved, the project would require site plan review and approval by the Town Planning Board.

Attorneys from the firm of Couch White, LLP testified in support of the application, along with the Applicant and Antonio Catalano, Jr.

The property is long and narrow, bordered by River Road (NY Route 144) on the west, and railroad tracks, a Niagara Mohawk right of way and the Hudson River on the east. The maximum width of the property is about 95 feet. Other nearby land uses include commercial/light industrial uses and some residences.

The Albany County Department of Health has approved the Applicant's proposed septic system design. The Town Building Department has determined that the property is not located in a regulated "special flood hazard area" (floodplain).

The Board received oral testimony from one nearby property owner in favor of the project. The Board received oral testimony from other neighbors opposed to the project, based primarily on traffic concerns along the subject section of River Road and the proposal for gasoline pumps and underground petroleum/gasoline storage tanks.

By Recommendation dated February 15, 2018 (Case No. 04-180202944) the Albany County Planning Board (ACPB) recommended a modification of any local approval to include: 1) review by the NY Department of Environmental Conservation for possible permits related to petroleum bulk storage; 2) review by the NY Department of Transportation for design of highway access, drainage and assessment of road capacity (NY Route 144-River Road); and 3) review by Town stormwater management office of project drainage plans and practices (new impervious surfaces). These reviews would all occur during site plan review, if the variances are approved.

ACPB's Recommendation also included an "Advisory" note regarding the precedent setting nature of "significant" setback variances; and ensuring that the Applicant is aware of regulations regarding construction activities that will disturb more than one acre of land (.98 acres proposed to be disturbed by the Applicant). The latter issue would also be addressed by the Town Planning Board during site plan review.

## CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearings, and other documents submitted by the Applicant, the Board determines that the proposed variances (Rural Light Industrial District, minimum front yard, minimum rear yard) will be granted.

The Board has determined that the requested variances will be a benefit to the Applicant and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. The proposed convenience store and gasoline station would not be out of character with other nearby land uses and will put an underutilized property back into productive use.

Given the configuration of the property, described above, the benefit sought by the Applicant cannot be achieved by some method other than setback variances. It would appear that almost any permitted use of the property would require front and rear yard variances.

The requested variances will have no adverse effect on the physical or environmental conditions in the neighborhood. The Applicant's proposed sanitary waste disposal system has been approved by the Albany County Health Department. The property is not in a regulated flood zone. The project will receive substantive review for traffic and other environmental concerns (gasoline and underground petroleum tanks) from the responsible State and Town agencies during the course of site plan review.

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 not been created by the Applicant, but by the configuration of the property. The Board has considered the potential "precedent setting" nature of this Resolution and, given the unique configuration of this underutilized property, this is not a factor in its

determination.

The proposed variances are a “Type II” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 [c] [12]), and no environmental impact review is required.

The requested variances (Rural Light Industrial District, minimum front yard, minimum rear yard) 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 above noted public hearings, except as the same may be modified by the Town Planning Board, or by the involved State agencies with jurisdiction over the project;
2. The Applicant shall comply with the three “modifications” of ACPB in its February 15, 2018 Recommendation (Case No. 04-180202944); and
3. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

April 4, 2018

S. David Devaprasad  
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 April \_\_\_\_, 2018.

Kathleen Reid, Secretary

Zoning Board of Appeals

The Resolution was approved with conditions as follows:

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

**V. Minutes Approval**

**A. Wednesday, March 21, 2018**

The March 21, 2018 minutes were approved as follows:

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

- B. Kenneth E. Gonyea, Adirondack FPI, Inc-1074 River Rd, Selkirk for a Use Variance under Article XIII, Section 128-99 Schedule of Uses, A. In the Riverfront Zoning District a contractors' s yard is not listed as a permitted use. (18-01000004)**

The Applicant is proposing to operate a contractor’s yard out of the existing structure which would require a Use Variance as the proposed use is not permitted use in the Rural Riverfront Zoning District. The existing use of a single family is a permitted use in this district.

A motion by Mr. Beams Seconded by Mr. Martelle to indent the Public Hearing Notice into the minutes.

## **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, April 4, 2018 at 6:10 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Alita Giuda of Couch White, LLP on behalf of Ken Gonyea, Adirondack FPI, Inc., The Applicant is proposing to alter the existing building into an office, shop and contractor’s yard for his business located at 1074 River Road, Selkirk. Under Article XIII, Section 128-99, Schedule of Uses, A. in the Rural Riverfront Zoning District a contractor’s yard is not a permitted use.

Alita Giuda of Coach White LLP was present on behalf of the Applicant, Kenneth Gonyea who was also present to answer questions from the Board.

The following items were discussed:

- Historical use of property
- Description of the parcels topography and surrounding area

- Surrounding businesses, character of neighborhood
- Operation of proposed business/parking/hours/vehicles
- Owners hardship

The Board requested the following from the Applicant:

1. An appraiser's report of the valuation of the property,
2. Documentation of work/labor proposed on site,
3. Photos of existing sewer conditions,
4. Show act of concealment.

Nearby residents spoke of sewer and water run off concerns

There was no one present to speak in favor or opposed to the project.

The project is required to be reviewed by the Albany County Planning Board and will be on its April 19, 2018 agenda.

If approved the project will go before the Planning Board for site plan review.

**RESULT:**                      **KEPT OPEN**

**C.      *Discussion/Possible Action***

None

**D.      *New Business***

No New Business

**VI.     *Adjournment***

**Motion To:** Adjourn

**RESULT:**                      **ADJOURN [UNANIMOUS]**  
**MOVER:**                      Dave Devaprasad, Chairman  
**SECONDER:**                 Joshua Beams, Board Member  
**AYES:**                         Dave Devaprasad, Joshua Beams  
**ABSENT:**                      Jane Barnes, Donna Giliberto, Jeremy Martelle

The Meeting was adjourned at 7:04 PM

Next Regular Meeting April 18, 2018 at 6 PM