

**PLANNING BOARD  
TOWN OF BETHLEHEM**

**August 7, 2007**

The Planning Board, Town of Bethlehem, Albany County, New York held a **Public Hearing**, on August 7, 2007, at the Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Mathusa presided and called the meeting to order at 7:00 pm.

Present: Parker Mathusa, Planning Board Chairman  
Keith Silliman, Planning Board Counsel  
Dan Odell, Planning Board Member  
Kathy McCarthy, Planning Board Member  
Chris Motta, Planning Board Member  
John Smolinsky, Planning Board Member  
Kate Powers, Planning Board Member

Mike Morelli, Assistant Director of Economic Development and Planning  
Jeff Lipnicky, Town Planner  
Robert Leslie, Senior Planner  
Terry Ritz, Assistant Town Engineer

Jim Gillespie  
Stefanie Bitter, Esq.  
Alana Moran  
Brian and Valerie McDermott  
James Sutton  
Jim & Ida Neenan  
Bob Gunderson  
Connie & John Dickinson  
Henry Klersy  
Paul Hite  
Bill Smart

Bill Smart  
Al Foster  
Mark Dempf  
John & Lois Vadney  
Jeff Vadney  
John Ferraro  
Dave Carpenter  
Melody Burns  
Dave Becker  
Tony Califano

Agenda: **Public Hearings:**  
Cumberland Farms

**Regular Agenda:**  
Guidetti Subdivision  
Millwood Estates  
Meadowbrook III  
Bryant Asset

Cyprus Shriners  
Van Dyke Spinney

Chairman Mathusa called the meeting to order at 7:00pm, noted the presence of a quorum.

**Cumberland Farms**

Chairman Mathusa opened the public hearing at 7:00PM.

A motion to indent the public hearing notice was offered by Ms. McCarthy, seconded by Mr. Smolinsky and approved by all Board members present.

Notice is hereby given that the Planning Board of the Town of Bethlehem, Albany County, New York, will hold a public hearing on Tuesday, August 7, 2007 at 7:00 p.m., at the Town Offices, 445 Delaware Ave., Delmar, New York, on the application for a Special Use Permit for Cumberland Farms, Inc. located at the corner of Rt. 9W and Maple Avenue, Selkirk, Town of Bethlehem, Albany County, N.Y., as shown on map entitled: CUMBERLAND FARMS, Inc., Prop. Convenience Store & Gas Station, Lots 7, 8 & 12, Block 1, Section 121.04, New York State Highway Route 9W, Town of Bethlehem, Albany County, State of New York, dated 9/12/06, last revised June 20, 2007, map prepared by Bohler Engineering. P.C., 5 Computer Drive West. Albany, NY 12205.

Ms. Bitter, Esq., local counsel for the applicant, presented. She stated that the total parcel is 1.15 acres. The proposal is to construct a Cumberland Farms convenience store, fueling pumps, no diesel, and a drive-thru Dunkin Donuts. No baking will be done on the site; the Dunkin Donut products will be delivered to the site. The residence in the rear of the lot will be demolished. The size of the store has been reduced based on concerns raised by the Planning Board and staff. Pedestrian access has been added to address prior comments from the Board. The drive-thru is to be located on the north side of the store and booths are proposed for the interior of the store. The store will be the same architectural design as the Cumberland Farms under construction at the corner of Rt. 9W and Corning Hill Rd. Three access points are proposed, two (2) full accesses and one (1) entrance only from Maple Avenue based on NYSDOT recommendations. Pay phones and air pumps will be located on the north side of the site. All signage will be externally illuminated.

Mr. Gillespie, Bohler Engineering, continued the presentation. He said that all the components of the proposed site have been pushed closer to Rt. 9W to give more of the buffer between the project and the residential zone. Fencing and landscaping has been increased and the lighting has been reduced to insure that no illumination goes off the site. The store, fueling pumps and drive-thru are proposed as a twenty-four (24) hour operation. He said that access points had been discussed at length with NYSDOT and the Town's engineers. The proposed truck circulation was satisfactory to NYSDOT. Mr. Gillespie said that they had sent a letter to a resident that might be affected by headlights coming out of the site but had not heard back from them. Ms. Bitter said that a similar issue had arisen at the Big M site and they had proposed additional landscaping on the resident's property to reduce headlights.

Chairman Mathusa opened the hearing to the public.

Jim Sutton, 18 Neil Blvd. He said he was in favor of the project. He had written a letter to the Town about the grade of the Miller Avenue at the intersection of Miller and Rt. 9W. He said that in winter it's very slippery. He had asked if the project could be made to level the street to make it get out the street easier. Mr. Sutton said that the Town had sent out engineers to look at the grade of the road and it was determined that it was in an acceptable range. He still wanted something done.

Al Foster, 6 Miller Avenue. He didn't mind the project but he was not in favor of a twenty-four (24) hour operation. He also doesn't want any access onto Miller Avenue because there are no other businesses on the street.

Jim Neenan, 27 Miller Avenue. He said that coming here tonight from Miller Avenue there were nine (9) children playing in that street in the area where the driveway onto Miller is proposed to be located. He said that between seven (7) and eight (8) in the morning it takes ten (10) to fifteen (15) minutes to get onto Rt. 9W from Miller Road, in the evening it can twenty-five (25) minutes. He doesn't think that any development should be allowed on that corner and he is against a twenty-four (24) hour operation.

Brian McDermott, 14 Miller Avenue. He said his home is directly across from the driveway onto Miller Avenue. He has a problem with a twenty-four (24) hour operation, the lights, the noise, the tractor-trailers, the fueling, the smell of gas, the headlights and the people. He didn't think that any traffic should be coming onto Miller Avenue at all. He said he wouldn't have rebuilt his house if he knew that this project was coming. He thought the project would affect property values. He said that Rt. 9W between Glenmont to Ravena would have four (4) Cumberland Farms.

An unidentified man from the audience did not want access onto Miller Avenue.

Valerie McDermott, 14 Miller Avenue. She said that the previous Hess station had one entrance and one exit. She said that the area did not need another gas station.

Bob Gunderson, next-door neighbor. He wanted to know if all of the facilities of the project would be opened for twenty-four hours such as the store. Chairman Mathusa said that the Board would further discuss the hours.

John Dickinson, 3 Neil Blvd. He agreed with Mr. Sutton about the grade of Miller Rd. He said it was hard to up in the winter.

Jim Neenan said that there have been a number of accidents at the corner of Rt. 396 and Rt. 9W with three (3) deaths in the last four (4) years. He said there would be three (3) times as many accidents if the development had access onto Miller Road. He said it would be the Planning Board's fault if someone were hurt in an accident. He said he rides the ambulance and knows how many accidents have occurred.

There were no further comments from the audience.

A motion to close the public hearing was offered by Mr. Odell, seconded by Ms. Powers and approved by all Board members present.

The hearing closed at 7:19pm.

### **Guidetti Subdivision**

The public hearing for the project was held on July 17, 2007. Mr. Hite, LLS presented for the applicant. The project proposes to develop a parcel on Blessing Road into three (3) building lots. The sanitary sewer will be provided through a manhole on the opposite side of the street. Water and gas are also on the opposite side of the road. Federal wetlands are located on all three (3) of the lots and the proposed houses will be a minimum of a fifty (50) foot buffer from the wetlands. There isn't any road construction necessary for this project. An easement will be conveyed along Blessing Road for the primary reason of the Town gaining access to the sanitary sewer line. An additional all purpose easement will be conveyed to the Town for future sidewalks or bike paths.

Chairman Mathusa asked if the wetlands would be deed restricted. Mr. Hite said that could be done. Mr. Smolinsky asked how the buffer would be enforced. Mr. Hite felt that most people respected deed restrictions but some would not. The fifty (50) foot buffer is an ACOE guideline if the property allows it. On these specific lots, beyond the fifty (50) foot line, the parcels were quite wet.

The Board reviewed the draft Parkland Resolution prepared by staff.

A motion to approve the Parkland Resolution as drafted was offered by Mr. Smolinsky, seconded by Ms. McCarthy and approved by all Board members present.

The Board reviewed the draft Conditional Approval of Final Plat 233-CF prepared by staff.

A motion to approve the Conditional Approval of Final Plat 233-CF as drafted was offered by Mr. Smolinsky, seconded by Ms. Powers and approved by all Board members present.

### **Millwood Estates**

Chairman Mathusa turned the Board's attention to the next item on the agenda, Millwood Estates Subdivision. The public hearing had been held on July 17, 2007.

Mr. Califano presented for the project. He said they had been working with an engineering firm to put in a lateral sewer pipe to be done before the resurfacing of Russell Road. He had been told that the road would not be resurfaced before next year. They had received the water quality permit from NYSDEC that was needed to proceed with construction. Mr. Califano said that though they had worked closely with NYSDEC, they were not asserting jurisdiction in respect to the wetlands; they were under ACOE jurisdiction. He said that all the wetlands, per the ACOE permit, would be deed restricted. A copy of the covenants had been submitted to staff for review prior to filing them with Albany County. Mr. Lipnicky said that when he spoke with NYSDEC they told him that they would be asserting jurisdiction but they had signed off on the proposal. The ACOE was the agency that wanted the deed restrictions. Mr. Silliman said that the language within the Preliminary Plat Approval referring to wetlands was fine as drafted by staff. Mr. Smolinsky said that when there are wetlands on projects, he would want to see deed restrictions also required by the Planning Board. Mr. Califano said in addition to the project in general, each lot would have individual deed restrictions.

The Board discussed the difference between the type of language that would be found in a preliminary plat approval document and the more specific conditions that are found within the Final Plat Approval. The Board decided to keep the language in the Preliminary Plat that had been consistently used.

The Board reviewed the draft Parkland Resolution prepared by staff.

A motion to approve the Parkland Resolution as drafted was offered by Ms. McCarthy, seconded by Ms. Motta and approved by all Board members present.

The Board reviewed the draft Preliminary Plat Approval 234-P prepared by staff.

A motion to approve the Preliminary Plat Approval 234-P as drafted was offered by Ms. Motta, seconded by Ms. Powers and approved by all Board members present.

Chairman Mathusa reminded the Board that the Final Plat needed to be submitted to the Board within six (6) months.

### **Bryant Asset**

The item the Board considered was Bryant Asset's request for a site plan waiver to enclose an existing porch area on their existing building on New Scotland Avenue.

Mr. Palmer, Bethlehem Home Repairs, presented for the applicant. He stated that the plans for this enclosure had been submitted to and approved by the Building Department as part of the building permit for the addition to the structure. This enclosed porch was never built; they would like to construct it now. Just beyond the door is the sitting area and when the door is opened the leaves, rain or snow blows in. There is a handicapped ramp inside that is accessed through a ground level door. The enclosure would match the rest of the building.

The Board reviewed the Site Plan Waiver request and related determination letter to be sent to the Town Building Inspector.

A motion to approve the site plan waiver request and authorize Chairman Mathusa to sign the letter was offered by Mr. Odell, seconded by Mr. Smolinsky and approved by all Board members present.

### **Meadowbrook III**

The next item on the agenda was Meadowbrook III forty-eight (48) lot project located within an established PDD on Blessing Road. The Public Hearing has been held on June 19, 2007.

Mr. Carpenter, Esq., Counsel for the applicant, presented. He stated that they were before the Board asking for an

approval of the Recommendation to the Town Board. They understood that they still needed to go before the Town Board for the Building Project Approval with conditions that would be required by staff. Metes and bounds descriptions of the easements should be submitted to the Town shortly for their review that includes the drainage district, the storm water district, the lands that will be held by the home owners association and roads. Mr. Carpenter said he was still working on the legal aspects of the project including the deed restrictions. He said that some of the deed restrictions were for properties located near steep slopes; others would be for the properties to held as open space and held by the homeowners association. Mr. Lipnicky said that the ACOE were requiring deed restrictions on about forty (40) acres of wetlands and upland areas.

Mr. Lipnicky said there was a slope setback line that was shown on the plans and its location varies by lot depending on where the slope is located. Any lot that has a building foundation proposed on the slope side of the steep slope setback line would be required to do an individual soils study and geotechnical report on the lot. There are slope drains proposed for about every other lot to keep the moisture out of the soil because that is one of the issues that could cause slope failure.

Chairman Mathusa mentioned that the idea of sidewalks had been recently been raised for the front of the project's property. Mr. Odell felt that given the steepness of the slopes immediately off of the highway right-of way, it would seem be too expensive to install a sidewalk. Mr. Lipnicky said that the planning staff and highway department had looked at this issue over the years. The decision was made that with the steep terrain, the expense of the maintenance and the sidewalk feasibility study that Clough Harbour had done for this section of North Bethlehem, the best location for the sidewalk was the other side of Blessing Road.

Mr. Smolinsky said if the project, being a Phase III, could be made responsible for part of the sidewalk. He said that at some time it was all one parcel and he thought it must have had one approval. Chairman Mathusa said there were never sidewalks suggested for any part of the project. He said there was a greater interest in sidewalks now. Mr. Silliman said that if there was an impact from this project that the Board needed to mitigate, the applicant could be asked to participate in development of pedestrian access by setting up a fund and holding it in escrow for a certain number of years. Other projects in the area could be asked to contribute to the same fund. Chairman Mathusa said that because the apartments on Blessing Road were already built and most of the land on that side of Blessing was already built out, there wasn't any way to collect additional funds. He thought that if and when the sidewalks were to be put in, it would need to be done by some other mechanism than developers. Mr. Silliman agreed.

The Board reviewed the draft Building Project Approval Recommendation prepared by staff.

A motion to Building Project Approval Recommendation as drafted was offered by Ms. Powers, seconded by Ms. Motta and approved by all Board members present.

### **Cyprus Shriners**

The Chairman turned the Board's attention to the next item on the agenda, an initial presentation for a site plan proposed by the Cyprus Shriners, to be located at 27 Hannay Lane.

Mr. Smart, PLS, presented for the applicant. Mr. Johnson from the Shriners and Mr. Ferraro the architect were present. Mr. Smart stated that the parcel is seventeen point three six (17.36) acres in a rural light industrial zone. The parcel has gentle to steep slopes near the Normans Kill. The proposal includes a seven thousand (7,000) square foot fraternal hall with one hundred forty-four (144) parking spaces and fifteen (15) acres of green space. There would municipal water and sewer and two (2) hydrants were proposed for fire protection. The storm water would be detained and treated on site. The facility would be used for meetings of the members, ceremonies during the year and member functions such as weddings. The traffic generation per the ITE would be about fifteen (15) trips per day. The maximum occupancy of the facility would be two hundred sixty-four (264).

Chairman Mathusa said that it was a fact that the site was filled during the construction of the South Mall in Albany; he asked where the building was located in relation to that fill area. Mr. Smart said that after soil borings

were done, the building had been located to an area that had a stable ground.

Mr. Smart said that the intent was to blacktop the road and the parking lot. The larger parking lot would be left as a gravel parking lot. The storm water system would be designed as if the larger parking lot were blacktopped.

Chairman Mathusa said that Hannay Lane was difficult to get to and wondered if the intersection of Hannay Lane and Frontage Street had been looked at for traffic flow improvement. Mr. Smart said some signage might be helpful but the larger events that would happen would be at off peak hours.

Mr. Odell asked how often the facility would be rented to the public. Mr. Smart said that would be market driven. Mr. Johnson said that it would be member use in the beginning and they hoped that the new facility would help boost membership. It could be rented to other outside organizations to help generate some revenues. Chairman Mathusa asked if the area along the Normans Kill could have a dock. Mr. Johnson said that the Mohawk Hudson Conservancy had approached them to use part of that area and they had considered picnicking areas.

Mr. Smolinsky said that they should have a conversation with the Town and NYSDOT about traffic impacts during the times when the facility was being used for banquets or training. Mr. Johnson said that most of the meetings were in the evening.

Mr. Smolinsky said he had a concern with the fill on the site and whether it was the type that could produce methane gas. He wanted to know if there were permits when the area was filled and if there were any restrictions. Mr. Smart said that he had reviewed the soil borings done and in order to generate any methane gas, organic materials would need to be present. The soil borings showed brick, stone and concrete. It had been there since the 1960's and the fill area is compact. He did not think there were permits at that time. The proposed building would be set back from the safe setback line.

A motion to table the project was offered by Ms. McCarthy, seconded by Ms. Powers and approved by all Board members present.

### **Van Dyke Spinney**

Mr. Dempf, Stantec Engineering, presented the update report for the applicant. He said they had submitted plans for a realignment of the intersection of Meads Lane and Van Dyke. It was under review by the Town. The fifty (50) foot buffer along the property line had been kept all around the project. He said that there was a concern of the impact of the sanitary sewer. They had provided the Town with an analysis of the flows and were provided with a report that had been done for the Town by Barton and Loguidice. There are still some things that need to be resolved and the applicant has agreed to participate. The project will have a Planned Development District and an eight (8) or nine (9) lot single-family subdivision. The project has a trail system through the PDD area and one of the neighbors had a concern that the trail dead-ended at the property line. They have changed the trail so it ends in a loop that leads people back away from the neighbor's lot. The senior living residences will be located on one (1) side of Van Dyke Road with the single family homes on the opposite side of the road. A geotechnical report has been submitted to the Town and there were areas that the geotechnical report suggested should be avoided. They had made some minor changes to the project. They had prepared the Section 2 of the Environmental Assessment Form and submitted that to the Town. The TDE had done a site visit and noted a pipe near the old house to be saved that had a smell of sewer. They would investigate that issue. The TDE had raised the issue of a water and sewer line along the proposed extension to the Town's facilities. There might be wetlands impacted but that impact could be temporary in nature along the right-of-way and they would be addressed as part of the over all wetland mitigation. They had prepared a concept storm water management plan and submitted that to the Town. A conceptual grading plan has also been submitted to the Town.

Mr. Morelli said that if the Town Board approves the Planned Development District, the project would be back to the Planning Board for subdivision approval and site plan approval.

Chairman Mathusa said that the adjoining neighbors had a concern that people would trespass onto their land.

Changing the trails was a good start but possibly other steps could be taken to protect the neighbor's interests such as signage on the applicant's property.

Mr. Smolinsky said that the letters from the Vadneys had very neighborly suggestions that should be looked at by the applicants.

Mr. Waldenmaier asked if the intersection design for Meads Lane and Van Dyke Road had been finalized. Mr. Dempf responded no.

A motion to table the project was offered by Mr. Odell, seconded by Ms. Powers and approved by all Board members present.

The Board reviewed the draft minutes of July 10, 2007.

A motion to approve the minutes of July 10, 2007 as amended was offered by Mr. Smolinsky, seconded by Ms. McCarthy and approved by all Board members present.

The Board reviewed the draft minutes of July 17, 2007.

A motion to approve the minutes of July 17, 2007 as drafted was offered by Ms. McCarthy, seconded by Mr. Smolinsky and approved by all Board members present.

A motion to adjourn was offered by Ms. Powers, seconded by Mr. Smolinsky and approved by all Board members present.

The meeting adjourned at 9:02 PM.