

**PLANNING BOARD
TOWN OF BETHLEHEM**

February 6, 2007

The Planning Board, Town of Bethlehem, Albany County, New York held a **Public Hearing** and **Regular Meeting**, on February 6, 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
Katherine McCarthy, Planning Board Member
Daniel Odell, Planning Board Member
Chris Motta, Planning Board Member
Tom Cotrofeld, Planning Board Member
Howard Engel, Planning Board Member
John Smolinsky, Planning Board Member

Michael Morelli, Deputy Director of Economic Development & Planning
Jeffrey Lipnicky, Town Planner
Janine Saatman, Deputy Town Planner
Terry Ritz, Assistant Town Engineer
Monika King, Town Engineer

Michael Cox – Public Hearing
Robin Jacobs – Public Hearing
Pam Radzyminski – Public Hearing
Pat & Gregg MacMillan – Public Hearing
Jay Gallagher – Public Hearing
Amy Mahar – Public Hearing
Myella Bein – Public Hearing
Robert Wise – Public Hearing
Woody Hayes – Public Hearing
Kerry Gunner – Lightning Legal
Karyn McKenna-Barry – Lot line revision
Steve Buldoc – 7 Elm Avenue
Tony Califano – Millwood Estates
Dave Becker – Millwood Estates
T. R. Laz

Public Hearing

Andrew & Mary Ann Fischler – 50 & 50A Elwood Avenue

The Chairman called the meeting to order and noted the presence of a quorum. The first item on the agenda was a public hearing on the application of Andrew and MaryAnn Fischler, 50 & 50A Elwood

Rd., Delmar, for a Special Use Permit/ Site Plan for an accessory apartment attached to a single-family home. The project is a Type II SEQR requiring no further action.

A motion to indent the public hearing was offered by Mr. Cotrofeld, seconded by Ms. McCarthy 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, February 6, 2007 at 7:00 p.m., at the Town Offices, 445 Delaware Ave., Delmar, New York, on the application of Andrew & Maryann Fischler for a Special Use Permit for an accessory apartment on a single family home to be located at 50 & 50A Elwood Rd, Delmar, NY, Albany County, N.Y., as shown on map entitled: MAP OF PROPOSED SITE PLAN, STREET NO. 50 & 50A ELWOOD ROAD, LANDS CONVEYED TO ANDREW B. & MARYANN FISCHLER, Town of Bethlehem, Albany County, State of New York, dated August 25, 2006, map prepared by Paul E. Hite, Licensed Land Surveyor, 230 Delaware Avenue, Delmar, NY 12054.

Mr. Hite, LLS presented for the applicant. The applicant proposes to construct a single family home with an attached accessory apartment and an accessory garage/workshop on a two and a quarter (2 ¼) acre parcel located at the end of Elwood Rd., which is a Town road. Federal and state wetlands in the path of the extension of Elwood Rd. to Delaware Avenue have made that extension unlikely. The proposed driveway would extend from the end of Elwood Rd., cross over an area of wetland and continue to the main house and to the accessory garage/workshop. Two (2) parking spaces are provided for the apartment. On the plan Mr. Hite had displayed, was a dark green colored area that would not be disturbed and a light green for lawn area. The sewer would be connected to an existing pipe and the water would be brought in from the end of Elwood Rd. The applicant would install a hydrant at the end of the line that had been previously proposed but never installed. At the end of the driveway, the applicant proposes to install two (2) posts with low-level lighting for safety and to distinguish where the driveway was located. The garage would have residential outside lights and a post light would be installed at the entrance of the home and apartment. The closest structure to the proposed home was approximately two hundred (200) feet away.

Gregg McMillan, 43 Elwood Rd., asked what type of workshop would be in the garage. Mr. Fischler said it would be for his own use to work on his classic cars.

Michael Cox, 1 Lincoln Dr., Glenmont, wanted to know the size of the accessory garage. Mr. Fischler said it was twenty-four (24) by thirty-six (36) and the height of a one-story building. Mr. Cox wanted to know how they could cross over wetlands with the driveway. Mr. Hite said that per regulations, if less than one tenth (1/10th) of an acre of wetlands is disturbed, a permit is not required.

Robin Jacob thought that it looked like a two-family house in a neighborhood of small homes with children. She wanted to know the square footage of the home. Mr. Fischler said the main house was thirty-two hundred (3,200) square feet and the apartment was about nine hundred eighty (980) square feet. Ms. Jacob thought the home was too large, she didn't like cars coming and going and she wanted to know if the apartment could be rented to other than family members. Mr. Fischler said their intention

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was to keep the apartment for family members only. Chairman Mathusa stated the Zoning Law required that the property owner occupy one (1) of the units.

Pam Radzyski, 44 Elwood Rd., wanted to know if the property is zoned for a single family home. Chairman Mathusa said it was zoned for a single-family home with an accessory apartment, which needs a special use permit. She thought the apartment would significantly affect the privacy in her backyard. She was opposed to the special use permit. Mr. Fischler said that there would be a buffer of trees between her house and his. She thought the size of his home was too large. Mr. Hite said that under the Zoning Law the house could be as close as fifteen (15) feet from her property line.

Amy Mahar, 16 Wallace Dr., an adjacent property owner had a concern with drainage in her yard. She said it was a swamp, the whole back yard sloped down, and she couldn't mow until July because of the amount of water. She wanted to make sure that this was not increased by the proposed home. Her shed bottom was rotted because of the water. If she had seen the home in the spring with all the water, she would have never purchased it. She currently had the biggest house in the area and their proposed home would be much larger. She didn't like the apartment.

Mr. Hite said that a drainage system had been installed along the rear of her parcel during the original construction of the subdivision. He suggested that she contact the Town engineering division to see if the catch basin was blocked. The Town had an easement to that catch basin and they could check it for her. Other unidentified members of the audience spoke out that they had water in their yards also. Mr. Hite said that the proposed grading of the lot would not increase the water in their lots.

Ms. Jacobs wanted to know if there were house size limitations in the Zoning Law. Chairman Mathusa stated that the limitations were for the percentage of lot coverage allowed. The proposed Fischler property was approximately at 10% or less lot coverage and the adjoining properties were at 15% lot coverage.

An audience member asked if detached garages were permitted. Mr. Silliman said that within that zoning district, at least one (1) accessory building was allowed. Mr. Morelli said that the garage did not exceed the height allowed in the district. He said during the Comprehensive Plan meetings it was agreed that more diversity in housing was needed in the Town. The accessory apartment was considered another housing option and adopted into the Zoning Law with a Special Use Permit. There are restrictions attached to these apartments listed in the Zoning Law, such as the requirement to be owner occupied.

Mr. Hayes, 28 Wallace Dr., did not mind in-laws living in the apartment but didn't want it rented to others. Mr. Silliman said that the Fischler's could legally rent the apartment to whomever they wanted but stated that was not their intent. Mr. Hayes thought the house was large. He wanted to know if the law allowing apartments in that zoning district could be changed. Mr. Silliman said the law could be changed. It had just been changed recently to allow accessory apartments.

Ms. Jacobs didn't like the idea of trucks going down her street delivering supplies for the construction of the Fischler's home.

Pam Radzysinski thought there were more wetlands on the property than they were saying. She also thought they would have a lot of cars coming and going because of visitors to the family and the in-laws. She didn't want lights at the end of the driveway. Everyone else on Elwood had lampposts in the front of the house not at the driveway. It was dark by her driveway and she liked it dark. She wanted to know where the water from under the proposed driveway pipe would go. Mr. Hite said the water that came from her lot, would travel through the pipe and continue to drift through the easement and down to Delaware Avenue. It was large enough to insure that the water would not backup into anyone's yard.

Peter Potter, Crimson Leaf Lane, thought that the home was too large.

Amy Mahar wanted the house to face a different direction. Another audience member asked the same thing. Mr. Hite said that the least used part of the home; the front yard would face her backyard. He said it was a unique lot without a road going past. Mr. Fischler said that they planned on leaving at least an acre of trees around the lot for everyone's privacy.

Robert Wise wanted to know if the house would have a deck and if it was a requirement for the apartment to have a separate address. Mr. Fischler said they would have a patio, not a deck and Chairman Mathusa said that 911 emergency required the separate address. He asked if the swale would impact his parcel. Mr. Hite said that the grading for the proposed home would not increase the drainage on his property.

Mr. Fischler said their intention was to move to Bethlehem with their two (2) small children and parents and be a part of the community. They intended to keep the apartment for family members.

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

The hearing closed at 8:00pm.

Lightning Legal Services

Chairman Mathusa turned the Board's attention to the next item on the agenda, a site plan at 273 Delaware Avenue. It was last on the agenda on December 19, 2006 at which time a SEQR Resolution, Negative Declaration was approved. The project was reviewed by the Albany County Planning Board and was deferred to local consideration.

Mr. Hite presented for the applicant. He said that the parking lot had been reconfigured to eliminate the need to back out into Rural Place. There are four (4) regular spaces and one (1) handicapped space. The parking spaces in the garage, per the building department, could be used in the count as long as other proposed parking did not block the spaces in the garage.

Mr. Smolinsky wanted to know if staff reviewed the buffer around the site. Mr. Morelli said that a fence existed between this parcel and the adjoining parcel on Rural Place. Staff felt this was sufficient. Ms. Gunner said her staff did not work at night so headlights should not be an issue.

The Board reviewed the draft Site Plan Approval document prepared by staff.

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A motion to approve the Site Plan S.P.A. 126 as drafted was offered by Mr. Engel, seconded by Ms. Motta and approved by all Board members present.

Elm Avenue Professional Building

Steve Buldoc, owner of Keystone Builders, presented for the project. He wanted to develop the one (1) acre parcel into a commercial building in the front of the site and two (2) four (4) unit apartment buildings to the rear of the site. He would be relocating his office from 388 Kenwood Avenue to occupy a portion of the commercial space, leaving about two thirds (2/3rds) for tenant space. Their engineering firm, ABD Engineers, have been working with the Town's Engineering Division on issues of drainage and with the Planning staff on the lighting issues. A sidewalk would come along the side of the building and continue across the front of the parcel and to the Stewart's parcel.

Mr. Buldoc said that the storm water would be handled with a detention pond in the rear of the parcel into which the runoff from the site would be directed. In addition there are plans to direct the runoff from the roof to dry wells in the parking lot. The overflow from the detention pond would filter to the adjacent school property. Chairman Mathusa wanted to know the impact of that runoff. Mr. Ritz said the applicant would not increase the runoff currently going to the school either in volume or velocity. Mr. Ritz stated that they were disturbing less than one (1) acre and therefore the NYSDEC storm water regulations did not apply. Albany County had said they would take some surface drainage from the entrance into their system but did not want the overflow from the storm water management pond. Ms. King said that if they had been over the acre disturbance, they would need to control volume and velocity. Being under an acre, they were not required to do anything but because they were close to that threshold, ABD Engineers decided to put in detention basin and CDS unit. ABD Engineers have signed off on the design. Mr. Morelli said that the applicant had done significant work on the storm water even though they were not required to under the current regulations.

Mr. Smolinsky wanted to know if the Fire Department had looked at the plans. Mr. Ritz said that the project had been before the Development Planning Committee and the fire department is represented within that committee. They had not submitted any comments. Mr. Morelli said that before projects come before the Planning Board the staff meets with the applicants and any significant issues are identified and addressed.

Mr. Cotrofeld asked if there would be standing water within the detention pond and at what depth. Ms. King said that the maximum water depth would be one (1) or two (2) feet during an extreme storm. It did not meet any of the requirements for a fence.

The staff reviewed the draft SEQR Resolution, Classification of Action and Negative Declaration prepared by staff.

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

Clearview Subdivision/ Corbett-Burke Subdivision

Chairman Mathusa turned the Board's attention to the next item on the agenda, a lot line revision request from homeowners at 18 Eileen Lane.

Ms. McKenna-Barry, owner of 18 Eileen Lane, presented. She stated that they had planted a row of trees on what they had thought was their property. As a solution to the problem, instead of removing the trees, they had agreed to purchase the strip of land from their neighbor. They have already purchased the land and now wished to combine the property with their lot at 18 Eileen Lane. This would change the lot lines within the Clearview Subdivision and the Corbett-Burke Subdivision. Mr. Morelli stated that the revision would not affect any setback requirements and therefore staff recommended approval of the revision.

The Board reviewed the draft Subdivision Amendment, Lot line Revision, Clearview Subdivision 192F-M2 & Corbett Subdivision 51F – M1, as prepared by staff.

A motion to approve the Subdivision Amendment as drafted was offered by Mr. Smolinsky, seconded by Mr. Odell and approved by all Board members present.

Millwood Subdivision

Chairman Mathusa turned the Board's attention to the next item on the agenda the Millwood Subdivision located on Russell Road. At the previous meeting there had been a request by the applicant for the Board to consider taking a ten (10) acre parcel for a park in lieu of paying the parkland fee. The parcel is located adjacent to the North Bethlehem Park, which had been donated by family members of the applicant. The Board had specific criteria within the Subdivision regulations to consider before making their decision on the offer of parkland.

Mr. Califano said that the of the ten (10) acre parcel, eight (8) acres were in the Town of Bethlehem and two (2) acres were in the Town of Guilderland. This was the area that was being offered to the Town. If the Town decides that they do not want the parcel, the applicant would extend lot lines in the proposed subdivision to encompass that land. Chairman Mathusa asked if any of the land within the boundaries of the Town of Guilderland was offered to the adjacent landowner. Mr. Califano said they had not approached anyone, they preferred to keep it as one piece. The land in the Town of Guilderland could not be subdivided because the Town of Guilderland would then become involved in the process. NYSDEC had asserted jurisdiction of the wetlands on the property and the applicant had given up the lot closest to the Thruway. By giving up that lot and deed restricting the back portion of the land as habitat, NYSDEC had agreed to sign off on the layout of the remainder of the subdivision. In the future the Town could purchase the parcel now being offered, if the owner of the property wanted to sell.

Chairman Mathusa said that the Board had received a letter from the Town of Bethlehem's Park Administrator and she was not in favor of accepting the land, she preferred that a fee be assessed per lot and collected.

Dave Becker asked if the Town just wanted the land but not use it as parkland. Mr. Silliman stated that the Board had two (2) options before them, either they would take the offer of land or they would assess a fee per lot and not take the land.

A motion by Mr. Odell was offered stating that based on the criteria for land reservation as set forth in the Zoning Law, the criteria is not met and the Planning Board should require the fee and not accept the land. Mr. Cotrofeld seconded the motion.

Mr. Odell said the Parks Administrator's response was very helpful for him in determining if this offer of land fit within the criteria set forth in the Zoning Law. She questioned the suitability of the land due to wetlands, problems with access to the site and cost for parking and development. The characteristic of the land was not unique. The site needs to be able to be developed for active recreation and the wetlands limit the amount of area that could be developed. Some of the other criteria could go in the favor of accepting the land but Mr. Odell felt that the majority of the criteria were not met and voted to require the fee.

Ms. McCarthy said that whenever there is an offer of land to the Town that it should be seriously considered. If we give it up now the Town would never take it and she saw the wetlands in a positive light for open space. She voted to accept the offer of land.

Mr. Engel said that he agreed with the Park Administrator, the adjoining park was not fully developed and the wetlands would be a good educational tool but when all the criteria are taken into consideration he voted to require the fee.

Ms. Motta said that one of the factors to consider was safety. She had been at the Park in the summer and there were four wheelers there and the ability of enforcement to keep them out of the park was a concern. Mr. Califano said the four wheelers used the transmission lines to ride, not his land. She voted to require the fee.

Mr. Cotrofeld stated that the negatives of accepting the land out weighed its usefulness and he voted to require the fee.

Mr. Smolinsky said he was aware of fiscal concerns, but the land had potential for active recreation such as trails and he thought it was a mistake not to accept property adjacent to a Town park. He voted to accept the land.

Mr. Lipnicky reminded the Board that both the Army Corps of Engineers and NYS DEC were requiring deed restrictions on the property; development could not occur on the land.

The final vote on the motion to require a fee in lieu of parkland was five (5) for and two (2) against. The motion passed.

Mr. Califano said as requested by the Board they had done a noise study by CME. It had been submitted to the Board and staff to show the decibel levels throughout the proposed subdivision. Mr. Lipnicky said that the report had been forwarded to the TDE for review.

Mr. Lipnicky said that prior to a SEQR Determination, the applicant still needed to submit a preliminary SWPPP and engineers report.

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

Vista Technology Park Presentation

This one point four (1.4) million square foot proposed complex is located in a Mixed Economic Development District in the area behind Price Chopper Plaza in Slingerlands. The Route 85 bypass extension would be the access point into the complex. The project is a combination of commercial and retail in the area closest to the by-pass, with office, research and development to the rear. The parcel has a total of four hundred fifty-one (451) acres; eighty-two (82) acres to be retained by Dr. Jones and one hundred fifty-eight (158) acres would be developed in the project, the remaining acres would be left as open space.

Ms. Terresa Bakner, Esq., attorney for the applicant, said that the Town Board was the lead agency of this project under SEQR. The Town Board had issued a Positive Declaration and the applicant had prepared a Draft Environmental Impact Statement and a public hearing had been held. The public comment period was now closed and the applicant was responding to the comments that had been received. Once the Final Environmental Impact Statement was submitted to the Town, there would be a SEQR Finding Statement and then the project would be back before the Planning Board for the recommendation of the MEDD conceptual plan.

Mr. Gregg Ursprung, Saratoga Associates, presented for the applicant. He said the project was a technology based economic development, which will provide economic benefits to the Town of Bethlehem and New Scotland. Average annual tax revenues to the Town of about \$124,000 per year and the school district about 2.5 million. The jobs during the growth period and the peripheral jobs created after build out could total 8,000 jobs. The project is located in the Empire Zone so companies that located there would be able to take advantage of that fact.

The build out for the project is estimated to be twelve (12) years. Phase I would be commercial and retail space and the infrastructure for the remainder of the park. Because this project spans both the Town of Bethlehem and the Town of New Scotland, applications will be submitted to both. There is an area in New Scotland that needed to be rezoned to a district similar to the one in the Town of Bethlehem. They were currently working with New Scotland on this. The project would increase the non-residential tax base and have significant open space that could be a part of regional and local trail systems. The property not included in the developed area of the parcel would be deed restricted to ensure it remains open space. The developer noted that no residential development was proposed for the site with the possible exception of one or two single-family homes on Dr. Jones' property.

Mr. Ursprung said a few of the major topics that were covered in the Environmental Impact Statement were topography and geology, water resources, water & sewer, cultural resources and visual impact. The Town was currently investigating the current water and sewer systems to make sure there is adequate capacity for the park. The project would maintain a historic park on the site that would include the Christian LaGrange House and cemetery. The visual impact discovered that the project, though it will be able to be seen from some areas at Thatcher Park lookout, is not out of character with other developed areas that can be seen.

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Mr. Jeff Pangburn, Creighton Manning, said that the project would be accessed from a roundabout on the by-pass extension. That roundabout would have pedestrian crossings. Creighton Manning had looked at the service levels at the current intersections versus service levels after roundabouts and the development of the project. Most areas would improve with the roundabouts but two (2) intersections would experience lower levels of service, Kenwood at New Scotland and Kenwood at Cherry Avenue.

Mr. William Herbert said that they were interested in having the commercial space designed to fit in Delmar. They had spoken with a local restaurant that was interested in relocating at the park. There would not be any residential component to this development park. The open space would be deed restricted.

Mr. Morelli said that on December 27, 2006 the DEIS was accepted complete by the Town Board. On January 24, 2007 a public hearing was held and the Town Board referred the project for an advisory recommendation on the MEDD concept plan to the Planning Board. The Planning Board has sixty (60) days to make their recommendation. That would be by the March 20, 2007 meeting of the Planning Board. The Town Board could then adopt the Master Plan and specific projects would come in to the Planning Board for site plan approval.

Chairman Mathusa thanked the applicant for their presentation.

The Board reviewed the draft minutes of January 16, 2007.

A motion to accept the minutes as drafted was offered by Ms. McCarthy, seconded by Mr. Odell and approved by all Board members present.

A motion to adjourn was offered by Mr. Odell, seconded by Mr. Cotrofeld and approved by all Board members present.

The meeting adjourned at 10:05PM.