

**PLANNING BOARD  
TOWN OF BETHLEHEM**

**September 16, 2008**

The Planning Board, Town of Bethlehem, Albany County, New York held a Regular Meeting, on September 16, 2008, 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 D. Mathusa, Planning Board Chairman  
Michael Moore, Zoning Board Counsel  
Howard Engel, Planning Board Member  
Nick Behuniak, Planning Board Member  
Kathy McCarthy, Planning Board Member  
Chris Motta, Planning Board Member

Michael Morelli, Assistant Director of DEDP  
Jeff Lipnicky, Town Planner  
Rob Leslie, Senior Planner  
Terry Ritz, Assistant Town Engineer

Chris Boyea  
Kevin Klersy  
Frank Hessari  
Terresa Bakner  
Jarrett Carroll  
Dan Hershberg  
Tony Califano  
Doris Kirk  
John Bossalini  
Susan Boyer  
Howard Johannessen

Agenda: Glenmont Mobil  
Millwood Estates  
Carol Richards Subdivision  
450 Route 9W Medical Office  
Brookside Meadows  
Elm Avenue East Subdivision  
Vista Phase 1A  
Zoning Law and Subdivision Regulation Amendments

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

**Glenmont Mobil**

The last time they were before the Board was the public hearing. The stacking of cars and the site design were discussed. The last specific action proposed was for an open/full sign to be installed at the entrance at Feura Bush Road.

Chris Boyea, Bohler Engineering, presented for the applicant. He said copies of the sign design have been supplied to staff and the Board. Staff has indicated to the applicant that the sign would be part of the approval. The applicant is in agreement with installing the sign as part of the approval.

The Board reviewed the draft Special Use Permit – SUP 07 prepared by staff.

A motion to approve Special use Permit – SUP 07 as drafted was offered by Mr. Engel, seconded by Ms. McCarthy and with a vote of four (4) for, Mr. Behuniak against and two (2) absent, the motion was approved.

The Board reviewed the draft Site Plan Approval Amendment S.P.A. 136 A-1 prepared by staff.

A motion to approve Site Plan Approval S.P.A. 136 A-1 was offered by Ms. McCarthy, seconded by Mr. Engel and approved by all Board members present.

### **Millwood Estates**

This project was last before the Board on August 7, 2007 for a Preliminary Plat Approval.

Mr. Califano presented for RDA Associates. He said most of the engineering had been completed. There was still legal work to be completed such as transferring property to the Town for easements, sidewalks, streets and stormwater pond facilities. He said the project includes forty-eight (48) acres of which two (2) acres were in the Town of Guilderland. They avoided dealing with the Town of Guilderland by making one (1) of the building lots totally encompass those two (2) acres. It's a twenty-five (25) lot subdivision, one (1) lot for the retention pond, leaving twenty-four (24) building lots. Four (4) of the lots are located on Russell Road and the remainder are located on internal roads of the subdivision. Some of the property has wetlands and the applicant has filed deed restrictions on those. As recommended by the Board, a noise study was done and the noise levels came in below the acceptable noise levels. They can now use that information when speaking with builders.

Mr. Lipnicky said staff has asked the applicant to verify what the Army Corp of Engineers and NYSDEC required in the wetlands permit. He said the permit granted was based on the wetland area being deeded to the Town and that is no longer part of the plan.

Mr. Califano asked what would be sufficient to show ACOE and NYSDEC agree. He said there aren't any state wetlands on the parcel. Mr. Lipnicky said they were most interested in information from Army Corp of Engineers because one of the assumptions in the ACOE's permit was that land being transferred to the Town. Mr. Califano said one of the drawings submitted showed the extent of the wetlands on the property that has been deed restricted.

The Board reviewed the Draft Conditional Final Approval, 234-CF, prepared by staff.

A motion to approve Conditional Final Approval, 234-CF, as drafted, was offered by Ms. McCarthy, seconded by Mr. Behuniak and approved by all Board members present.

### **Carol Richards Subdivision**

Chairman Mathusa said this subdivision, located on the corner of Fisher Blvd. and New Scotland Ave. was last before the Board on April 15, 2008.

Terresa Bakner, esq. presented for the applicant. The property had been inherited from Ms. Richards aunt. The configuration of the lots hasn't change since they were last before the Board. They propose to transfer twenty-four point six three (24.63) acres to the Open Space Institute. They think that Institute will eventually make that acreage part of the Five Rivers Environmental Center. That parcel is being transferred with a deed restriction prohibiting it from ever being able to be built upon. The proposed six (6) lots are all along either Fisher Blvd. or New Scotland Road. Ms. Bakner said there are wetlands on the back of the lots and they're shown on the map. Those wetland boundaries were confirmed by the ACOE and NYSDEC has sent an email confirming there aren't any NYSDEC wetlands on the site. They will be transferring the six (6) building lots subject to deed restrictions that prevent any impacts to the wetlands. The building envelopes have been placed in such a way as to not impact the wetlands. One

(1) utility pipe will be placed under the wetlands. They have advanced the engineering details on the plans after comments from staff.

Chairman Mathusa said at one time twenty-nine (29) or thirty (30) acres were going to be transferred to the Open Space Institute, including lot 25. Ms. Bakner said Lot 25 was never going to be transferred to them. Chairman Mathusa said the Board was looking for an access point from Fisher Blvd. to the rear parcel. Originally they thought Lot 25 would be that access. The piece on New Scotland between the two (2) houses is not a good entrance because of the impact to the two (2) adjoining neighbors. He asked for a twenty (20) foot easement along Lot 45 for access.

Ms. Bakner said it was the applicant's understanding that the property owned by Mr. Cade, next to this one, had a proposal for a development and one of their pieces was going to be held for open space, giving access to the back parcel. Chairman Mathusa said he wanted the twenty (20) foot easement from both parties. Ms. Bakner said the proposed house on Lot 45 was very close to that side property line. Chairman Mathusa said he erroneously thought there was access at a different point and that was why they hadn't pushed the point. He said if the Mr. Cade's Phillipin Kill project never developed, there would still be access to the rear parcel.

Ms. Bakner said twenty (20) feet back on their side would bring the access through wetlands. It wouldn't be a very practical access point and it's an oddly shaped parcel along that side. She wasn't sure it would help gaining access. Chairman Mathusa understood the wetland issue but he wanted a right of way. Ms. Bakner said Lot 25 has never changed. It was always proposed as a building lot.

Mr. Leslie said they had received a letter from Open Space Institute is interested in purchasing the twenty-nine (29) acres. He had spoken with the Open Space Institute and they were under the same impression that lot 25 was included bringing the acreage to twenty-nine (29). Ms. Bakner said that was an error of Open Space's that had been clarified. The map had not changed since the last time they were before the Board. Mr. Leslie said the next issue was the access to the lot and the concern was the New Scotland Road access was not ideal because it goes through a driveway of two (2) adjacent properties. Ms. Bakner replied they were not suggesting that Open Space Use that for access and they do not think that is the intention. They think the plan is to connect the parcel through the lands of the State of New York. Mr. Leslie said Katie Stone, from the Open Space Institute, had spoken with Craig Thompson of DEC who provided the Board with a letter stating they are looking for an access point on Fisher Blvd. That was the twenty (20) feet Chairman Mathusa was mentioning. Ms. Bakner said she had not heard that. She said she would go back to Ms. Richards and ask if she would consider reducing the size of the lot further. She said Ms. Richards was frustrated with the process of trying to transfer this land to OSI. She's being paid sixty thousand (\$60,000) for twenty-four point six three (24.63) acres. She could sell that tomorrow for three hundred thousand (\$300,000). It's costly and frustrating for Ms. Richards. Chairman Mathusa said they were looking for access. If the Phillipin Kill Manor project doesn't go forward, the Board still wants access from this project. The Board was going to suggest to OSI that the land between the two (2) homes on New Scotland be sold to those homeowners. Ms. Bakner said she would ask Ms. Richards but they would not build the access.

Mr. Behuniak asked if the Phillipin Kill went forward, could the piece of land next to the Richards Subdivision be an access point. Mr. Leslie said the current plan submitted to the Board for review showed that parcel as being kept open either by deeding it to the Town or to Five Rivers. That project has a lot of environmental impacts they are working through and the approval for that project could be several years down the road. From a planning approach, that parcel should not be depended upon for access onto Fisher. Mr. Leslie said OSI had indicated they would be willing to purchase access. Ms. Bakner said they would need to redo the appraisal and pay Ms. Richards more money. That would contribute to delay of that transfer. Ms. Bakner said she was shocked that OSI didn't come to the applicant to discuss this issue. Mr. Leslie said staff had just received the letter late in the afternoon.

Mr. Moore asked if the Board's request would require any reconfiguration of the lots. Ms. Bakner said no. She said the property could have about thirty (30) buildings on it based on the current zoning while avoiding the wetlands. Mr. Moore assumed the Board had enough information to make the SEQR Determination regardless of the determination of the access. Mr. Engel asked if anything would be done with the twelve (12) foot wide right of

way all the way out to the back of the property. Ms. Bakner said the right-of-way was owned by Dr. Noonan and his wife. At the request of Mr. Leslie they were contacted and they said they didn't have any plans for the right of way. They said they were glad the property would be forever wild. Ms. Bakner suggested they contact OSI to see if there was any benefit to them by transferring the right of way to OSI or to the state. Mr. Engel said the right of way ran along the property line in the area of the twenty (20) foot easement they were discussing. He asked if the Noonan's would need to give up their rights to the right of way in order for the easement to go forward. Ms. Bakner said no, the right of way can be built upon by either the fee owner or the Noonans as long as their ability to use it is not compromised. There isn't anything exclusive about the right of way.

Chairman Mathusa said Lot 11 showed a twenty-five (25) foot rear yard and Lot 39 showed a forty (40) foot yard. Though the Board usually prefers a fifty (50) foot yard, that requirement could be waived if markers were placed to indicate the beginning of the wetlands. Ms. Bakner said they have changed the configuration of the building to increase the rear yard to forty (40) feet.

Ms. McCarthy wanted to thank Ms. Richards for donating the land. She realizes it is a financial gift but also a lasting legacy and very nice.

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

A motion to approve the SEQR Resolution, Classification of Action and Negative Declaration as drafted was offered by Mr. Engel, seconded by Ms. Motta and approved by all Board members present.

A motion to set the public hearing on October 7, 2008 at 7:00pm was offered by Mr. Behuniak, seconded by Ms. McCarthy and approved by all Board members present.

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

#### **450 Rt. 9W Medical Office**

Chairman Mathusa said the project was last before the Board on September 2, 2008. He asked about the status of the purchase of the additional land needed from the King's Chapel church.

Luigi Palleschi, ABD Engineers, presented for the applicant. The project at 450 Route 9W is located next to the Monroe Muffler and Whiting Insurance. Since the last time they were before the Board, the size of the building has been increased by about one hundred thirty (130) sq. ft. The previous site plan had a basement, which had been eliminated. The parking requirement per the Town Code is ten (10) spaces. They will provide twenty-five (25) spaces. The existing driveway will be shared with Whiting Insurance. The landscaping has not changed since the Board last reviewed. The site is about .6 acres. They have about fifty percent (50%) green space combined with the two (2) parcels. They are also subdividing the parcel and adding a piece they are purchasing from Kings Chapel to satisfy a condition of a granted variance. Chairman Mathusa said it takes a while to purchase land from a church and asked if they had a timetable. Mr. Palleschi wasn't sure of the time but said the necessary papers had been filed with the courts.

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

A motion to approve the SEQR Resolution, Classification of Action and Negative Declaration as drafted was offered by Ms. McCarthy, seconded by Mr. Engel and approved by all Board members present.

A motion to set a public hearing on October 7, 2008 at 7:15pm was offered by Ms. McCarthy, seconded by Mr. Behuniak and approved by all Board members present.

Mr. Palleschi asked the Board for permission to start clearing the trees on the site, prior to final approval. They also want to grade the site. That would include erosion control measures such as silt fencing and temporary sediment basins. Mr. Morelli said the Board could allow the cutting and removal of trees but the moving of soil around is not usually allowed during site plan review. Chairman Mathusa asked it would involve the Church property. Mr. Palleschi said it wouldn't. He said the whole site drains into the property. Mr. Morelli said they would check with the building department, but grading would not be allowed until and unless they have site plan approval from the Board. Mr. Palleschi said there are several large silver maples on the north side of the lot that need to be removed which could be done without any site work. Chairman Mathusa made a proposal that the Board would allow clearing of brush and removal of trees prior to site plan approval. Because the applicant is not the owner of the property, Mr. Moore recommended the applicant submit a letter from the owner giving permission prior to the commencement of any work.

Chairman Mathusa offered a motion to allow the applicant limited site preparation as set forth by Mr. Morelli pursuant to the letter from the owner, seconded by Mr. Motta and approved by all Board members present.

### **Brookside Meadows**

Chairman Mathusa turned the Board's attention to a draft letter to Charlew Construction Company noting that because of economic opportunities for the Town and an overall design change to the Clapper Road Extension there will be a need to change some of the proposed Brookside Meadows project designs on Clapper Road.

A motion to direct the Chairman to sign the draft letter was offered by Mr. Behuniak, seconded by Ms. Motta and with four (4) for and one (1) against, the motion passed.

### **Elm Avenue East Subdivision**

This project was last before the Board on October 16, 2007. The applicant was before the Board to discuss the landscaping and buffer area plan.

Chris Round, Chazen Company, presented for the applicant. Susan Boyer, Landscape Architect from Chazen Company was also present. Since October of last year, they have worked through a number of engineering issues with staff. The changes didn't change any lot layouts or density. Most of the issues related to utilities, grading and drainage. They've submitted waste water reports to the satisfaction of the engineering department, addressed geotechnical issues and some lot specific issues. He said Ms. Boyer would present the landscaping plan.

Ms. Boyer said the goal of the applicant was to preserve as much of the natural buffer as possible and enhance that with berming and native trees and shrubs. The final location of the plantings will be determined after clearing and grading between the landscape architect and the Town's representative. The minutes from the last meeting indicated that this approach was generally acceptable to the Board. One of the issues raised was clearing in the right-of-way. The request was thirteen (13) feet from the edge of pavement be cleared in the right-of-way. The area is indicated on the plan as well as a notation. The applicant supplied two (2) twelve (12) foot wide openings in the buffer for stormwater utility access. The outstanding issue was trees in the national grid easement. They show about one third (1/3) of the trees in that easement. The applicant needed to clear and grade within the easement and wanted to put trees back there to increase the buffer. The applicant and National Grid were to work that out. Staff has asked for a letter from National Grid agreeing with the proposed plantings. Mr. Lipnicky said this was not an existing easement but a proposed easement. He said the easement might not be necessary because alot of the utilities along this roadway were located within the Town right-of-way. The power lines are on the other side of the road. He said the Town wanted a letter from National Grid stating they didn't need the easement, and then the landscaping plan, as submitted, could proceed. Mr. Round said they were looking for approval from the Board on the plan as submitted with a condition that they would secure the necessary approvals from National Grid. They have many levels of approval and it could take some time. Mr. Lipnicky said a condition could be written to protect the Board stating if the landscaping plan is not acceptable to the Board; the applicant will need to come back before

the Board. He said the last time the applicant was before the Board, they had a conceptual plan. He asked if the plan being proposed was acceptable to the Board. Mr. Round said if National Grid doesn't agree, then they will pull the trees out of their easement. Hearing no opposition, Chairman Mathusa said the applicant should move ahead with the landscaping plan as submitted. The next issue was the headlight glare from vehicles exiting the subdivision at two locations. There were two homes most affected. Ms. Boyer designed two (2) landscape buffers to mitigate the glare. They were put out to bid and then the applicant met with the two homeowners. Ultimately it was their property and they could accept the monetary offer and do whatever landscaping they chose. The applicant had come to an agreement with both families contractually. Chairman Mathusa assumed the applicant would do the work as opposed to the families receiving money. Mr. Round said the families preferred the check. They have their own ideas how they want to mitigate the issue. The applicant was asked to resolve the headlight glare to the satisfaction of the homeowners, which they have done. It is private property and the applicant did not think they should dictate what the homeowners should do on their property. Chairman Mathusa thought the check would be going to the company doing the work, not the homeowner, to insure the mitigation would be done. Mr. Round said the homeowners wanted to do the work themselves. Ms. McCarthy thought the Board should leave that decision up to the homeowners. The applicant had done what the Board requested. Mr. Morelli said this was a unique circumstance because usually the property being enhanced by landscaping is owned by the applicant. This is the exception not the rule. Mr. Morelli felt it was a reasonable solution to give the homeowners the funds and allow them to decide how to mitigate the headlights. Chairman Mathusa asked for a copy of the contract between the applicant and the homeowners in question for the file.

A motion to table was offered by Mr. Engel, seconded by Ms. Motta and approved by all Board members present.

### **Vista Technology Campus - Phase 1A**

Chairman Mathusa stated the next project is located in Slingerlands, off Route 85 the project was last before the Board on June 19, 2007 to review the master plan.

Mr. Herbert, BBL Development Group, said they have been working on the Vista Technology Campus for a few years. They have an approved master plan and were here to present Phase 1A of the project. He said they have a simple set of drawings to show the overall master plan with the Phase 1A development shown. He had an illustration of the appearance of the first building that will be a part of Phase 1A. This will be the style of architecture they hoped to establish. Ms. Terresa Bakner, Esq. was present as their environmental counsel.

Daniel Hershberg, Hershberg and Hershberg, presented the details for this phase. He said the plan shown was a super imposition of the Phase 1 work to be done. That work includes the entire length of Vista Blvd. to the turnaround which surrounds the cemetery. It maintains the LaGrange House and shows the first building to be built that is labeled as the P building on the master plan. They have significant grade at the entrance to the project. They are proposing to move a large portion from one side to the other of Vista Blvd. where the retail portion of the project will be located. Even though the first building is only forty thousand (40,000) sq foot building, they will be installing all of Vista Blvd., a storm water management area and a pump station to serve the entire area. Originally there were to be three (3) pump stations but they have determined they could handle all with a single pump station and accept all the sewage. The one variable is if the condominiums are developed, they would need to use a grinder pump to force main their sewage. Phase 1A would allow them to get the bulk of their infrastructure in place to allow them to get very close to shovel ready sites for other developers. He showed how the project would look in Phase 1A. He said they have advanced the plans to a level that allows staff and the consultant to start their review and send out comments. He said the current plan has no wetland disturbance. The storm water management facility fits into the terrain allowing it to discharge through the federal wetlands. He said under NYSDEC regulations, disturbance of more than five (5) acres at a time needs justification. With the amount of grading necessary, it will be hard for them to keep the disturbance under five (5) acres. They will stage the work and stabilize to allow them to do the amount of grading necessary. The entire water facility is scheduled to be installed during Phase 1A. Mr. Hershberg said the first building is a primary use as an office space.

Chairman Mathusa asked about the two (2) houses on the property. He knew one (1) was going to be saved but

when the other is dismantled, he asked if the Bethlehem Historical Association could take another walk through of that building to see if there was something that could be saved for the museum. Mr. Hershberg said the entrance roadway to the Jones home would be reworked to provide some protection from headlights and Vista Blvd. would have berming to give additional protection. They would like to add a black wrought iron fence around the cemetery in the roundabout. Chairman Mathusa asked if the LaGrange house would be used as an information center. Mr. Herbert said it was currently occupied by a member of the Jones family. They plan to stay there for awhile. The use would change in the future. Chairman Mathusa said they had spoken before about putting a dotted line for a road in the future through the rear of the property to New Scotland. He wanted to make sure that potential was not blocked. Mr. Hershberg said there was a private drive and proposed to remain so but it could be extended to the back in the future. He said it would take a major engineering effort to accomplish that road because of all the deep ravines. Chairman Mathusa said if there were enough people working there, the road could be built. Mr. Behuniak wanted to know if the applicant had any elevations of the proposed buildings. Mr. Hershberg said there were some schematic layouts as part of Environmental Impact Statement. That is all of record. Ms. Bakner said the DEIS, FEIS and Findings Statement are all on the Town's WEB site. Mr. Behuniak asked if there were any plans for pedestrians. Mr. Hershberg said there was a sidewalk shown along the roadway, a shared bike path and a footpath for either hiking or walking around the site. They were working on the liability issue for the footpath for companies that would lease the land. Ms. Bakner said was a sensitive issue because this was to be a technology park and some of those types of companies are very sensitive about security, trade secrets and securing their perimeters. The applicant wants to make sure the companies feel secure being there. Mr. Hershberg said it was difficult at this point to place paths on the map because the building locations and sizes were tentative. If a company came in and wanted to shift the building location or have a larger or smaller building, those things would change the location of the walking path.

Chairman Mathusa asked what their schedule was for putting in the road and constructing the first building. Mr. Herbert said they would like to begin construction of the boulevard this year. Some of the work could go right through the winter. In the spring they would be ready to start the building.

Mr. Morelli said the project has been in front of both the Town Board and the Planning Board. This isn't a project that the Board hasn't seen a few times. It's an aggressive schedule but staff will work with the applicant to move the project forward. This is a Tier 1 project.

Ms. McCarthy asked if there were any prospective tenants for the building. Mr. Herbert said the building would be put up for a specific single tenant. She assumed it would be office space and not a technology company. Mr. Herbert said they have not been able secure a technology company and feels it will be a year or two before that happens.

Ms. McCarthy said buildings I & J in earlier renderings were village style and now she sees a big box and parking. She said what she remembers seeing she loved and what she is seeing now, she hates. Mr. Herbert said he would have better renderings to show as they get to those specific buildings.

Mr. Herbert said the proposed building is a simple two (2) story office building, one (1) front door and (1) rear door. They are emphasizing the architecture by flanking the front canopy with large store front glazing. Field brick and running brick will be mixed to give it some style. It is similar to a building they constructed in Glens Falls. Nothing special but a nice start; it's a general office use space.

Mr. Behuniak said one of the buildings had the appearance of a big box. He wanted to know if there were provisions in place to insure the prevention of a big box. Ms. Bakner said the retail portion of the project is strictly limited by the zoning law. The limitations are smaller than an average grocery store. Mr. Herbert said building I was meant to be a village retail character. He said it is still the same layout with offices over shops. The largest retail building was about fifty thousand (50,000) total square feet of space in a two (2) story structure. He said this will be modest sized support retail.

Ms. McCarthy wanted to clarify one of her objections; the parking at the road. She prefers buildings to be street

front with parking behind. Mr. Herbert said originally the parking was facing Rt. 85, which was more objectionable. He said retail has to have the parking in the front with services in the back. They will screen the parking and enhance the landscaping. She said that will need more work when that comes before the Board.

### **Zoning Law and Subdivision Regulation Amendments**

Mr. Lipnicky had prepared a detailed package outlining the proposed amendments to the Zoning Law and Subdivision Regulation Amendments. The amendments had been discussed the last meeting. No comments had been submitted to him from the Planning Board. The last time the Zoning Law, map and Subdivision Regulations were updated was in 2006. It is expected that as the Code is used, changes will be identified and amendments will be suggested as needed. The Town Board has scheduled a Public Hearing for these amendments on the 24<sup>th</sup>.

The Board reviewed the draft recommendation Resolution prepared by staff.

A motion to approve the Resolution as drafted by staff was offered by Mr. Engel, seconded by Mr. Behuniak and approved by all Board members present.

The Resolution would be forwarded to the Town Board.

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

The meeting adjourned at 9:00 PM.