

**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**September 17, 2008**

A regular meeting of the Board of Appeals, of the Town of Bethlehem, Albany County, New York was held on the above date at the Town Offices, 445 Delaware Avenue, Delmar, New York. Chairman Hodom, presiding.

PRESENT: Michael Hodom, Board of Appeals Chairman  
Michael Moore, Board of Appeals Counsel  
Dave DeCancio, Board of Appeals Member  
Ken Umina, Board of Appeals Member  
Matt Watson, Board of Appeals Member  
Lennie Micelli, Board of Appeals Member

Mark Platel, Assistant Building Inspector

AGENDA: Crossroads Subdivision  
Stewart's Shop  
Sonya Smelyansky  
Hank Digeser (Gould Erectors) – Public Hearing  
Karl Geist  
Robert Mahar

Chairman Hodom called the meeting to order at 7:00pm.

**PUBLIC HEARING**

**Crossroads Subdivision (Frank Tate) – Wemple Rd.**

Chairman Hodom opened the public hearing. Mr. Platel said the applicant is proposing a flag lot that does not meet the minimum length requirement for a pole section of a flag lot. The proposed pole length is one hundred twenty (120) feet, eighty (80) feet shy of the two hundred (200) feet that is required. If approved by the Zoning Board, the applicant will have to apply to the Planning Board for subdivision approval. The property is located in a Residence A zoning district and is vacant land.

A motion to indent the Public Hearing notice into the record was offered by Mr. Watson, seconded by Mr. Umina and approved by all Board members present.

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, September 17, 2008, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Frank Tate for a Variance under Article VI, Supplementary Regulations, Section 128-48, Flag Lots and Shared Driveways of the Code of the Town of Bethlehem for one (1) lot in proposed three (3) lot subdivision named Crossroads Subdivision Section 3 located on Wemple Rd., Glenmont, NY 12077.

Mr. Peter Lynch, Esq. presented for the applicant. Mark Jacobson the project engineer from Chas Sells was also present. The applicant has filed for a three (3) lot subdivision and they meet all the criteria except for length of the pole on the flag lot. The length of the pole, which is measured from the road property line to the front yard line of the rear portion of the lot, is required to be two hundred (200) feet. They are seeking a variance to allow the pole to be one hundred twenty (120) feet. Mr. Lynch said that Mr. Ritz's letter says a flag lot cannot be configured without a variance. The lot is one point three nine three (1.393) acres. The density in this zone is three (3) dwelling units per acre. The lot sizes are about seventeen thousand (17,000), sixteen thousand (16,000) and twenty-seven thousand (27,000) square feet. The lots comply with the density requirement. The house cannot be moved further towards the rear for a few reasons. There is thirty (30) foot wide sanitary sewer easement at the rear of the site and at the far rear of the site is an intermittent stream that is a federal wetland. The three houses have been placed in what the applicant feels is the most appropriate locations. Mr. Lynch thought the intent of the two hundred (200) foot pole length regulation was to make sure that the house on a flag lot was not close to the house in front of it. Mr. Lynch said their flag lot house has a thirty-five (35) foot

setback. The distance between the rear of the front house and the front of the flag lot house was seventy (70) feet. He thought that distance was sufficient for privacy of the property owners. He didn't think the character of the neighborhood would be altered by this approval. The applicant doesn't have any other way of creating the third lot without a variance. The variance is a forty percent (40 %) deviation from the regulation. He thought the Board should look at whether it is a substantial variance in relation to all the other dimensional requirements of the ordinance. He said the lots do meet all the other dimensional requirements. The applicant doesn't think the single variance is substantial. The applicant will be the builder of the project and would inform the prospective purchasers of the variance. Mr. Lynch said they agree that it is a self-created hardship. He said that someone in 1990, he didn't know who, had submitted a plan for a two (2) lot subdivision and then never built it. But a self-created hardship shouldn't be a bar from granting the variance. He said the applicant was trying to achieve the maximum use of his property and Mr. Lynch asked the Board to consider the application.

Chairman Hodom asked how long Mr. Tate has owned the property. Mr. Lynch didn't know. Chairman Hodom said the original two (2) lot submittal was made by Mr. Tate. He asked what happened since 1990 that has increased the two (2) lot subdivision to a three (3) lot subdivision. Mr. Lynch said it was a sign of the times. The envelopes of the houses would be about twenty-two hundred (2,200) square feet with a price range of about three hundred and fifty thousand (350,000) dollars. Larger size lots would command a larger price. The applicant thinks the most economical way to develop the lots was to hit that price range. Chairman Hodom asked if there was a reason the lots weren't developed in 1990. Mr. Lynch was not sure but he would contact the applicant. Chairman Hodom wanted a narrative from the applicant why the lots weren't developed.

Chairman Hodom said Mr. Leslie from the Planning Department had sent a comment letter mentioning, among other things, the safe setback line and the site specific soils report. He asked Mr. Lynch if those had been developed. Mr. Lynch said all of the design criteria within the letter have been incorporated into the design other than the required length of pole for the flag lot. Chairman Hodom asked about the Engineering Department's slope concerns on the easterly side of the property. Mr. Jacobson, P.E. said fill has been added to the design to flatten the slope to the required 1 on 5. He said they have had quite a few conversations with Mr. Ritz about the project. Chairman Hodom asked if there were wetlands on the parcel. Mr. Lynch said the only wetland on the parcel was the intermittent stream. He said ACOE had jurisdiction over the wetlands not NYSDEC. But it has not been delineated.

Chairman Hodom asked if the sheet 1 of 5 that was given to the Board the same sheet 1 of 3 that was referenced in Mr. Leslie's letter. Mr. Jacobson stated the project had evolved since the original submission and subsequent conversations with the Town. He said they have gotten feedback from the Town and changed the plans to reflect that feedback. Chairman Hodom asked for complete sets of the plans to be submitted to the Zoning Board.

Chairman Hodom pointed out several areas of the Short EAF that needed to be updated. Mr. Lynch said he would have the document amended and resubmitted.

Chairman Hodom asked Mr. Platel if he was satisfied with the information submitted regarding the safe setback concerns. Mr. Platel said that was an engineering question. Chairman Hodom asked Mr. Platel to check with the Engineering Division to ensure their concerns have been addressed. Mr. Jacobson said he would provide a full set of plans to Mr. Platel for the Engineering Department's review.

Mr. Micelli asked if the original proposal had the two (2) lots the same as the ones shown along the road. Mr. Lynch said he had never seen that proposal and was not aware that it had been Mr. Tate's submittal.

Mr. DeCancio asked if there was any other configuration of the lots that would have the pole of the flag lot in a different location and able to be the required length. Mr. Lynch said it wouldn't help in keeping the houses away from each other. He thought the only reason for the required two hundred (200) foot length was for privacy.

Mr. Watson asked if Mr. Tate had received any letters of support or in opposition from neighbors. He hadn't contacted any neighbors.

Chairman Hodom opened the hearing to the audience for questions and comments. Andrew Schoonmaker, 23 Wemple Rd. He said he lives across the street from the proposed project. He asked if the driveway would be wide enough for fire trucks. Mr. Jacobson said the driveway would be built to Town

standards and twenty-eight (28) feet wide. Mr. Platel said the road frontage of the flag lot needs to be twenty-eight (28) feet wide and the driveway itself needs to be eleven (11) feet wide. Any driveway over one hundred (100) feet has to accommodate the weight of a fire truck. Mr. Schoonmaker said the ditch in the back of proposed lot is the drainage for all the lots on that side of the road and it runs down into the creek. He said the lot in the rear will be a swamp. Chairman Hodom said it looked like the lot dropped off and wondered how high the drainage course rises.

Candice Schoonmaker-Cuddle, 215 Wemple Rd. She said behind her house, they have pictures and you could take a canoe out when it rains. It covers the manhole that's how bad it is. It was never that bad. With all the new housing around them, it all goes down. She said she's never heard of moving wetlands. It's a natural thing and she didn't think it was permitted. She said to her knowledge, you weren't supposed to build where there's wetlands. Chairman Hodom said if there are wetlands on the site it would be determined by either New York State or the Federal Government through the Army Corp of Engineers. They would be delineated once a permit was requested. He said a person can build within one hundred (100) feet of NYS wetlands and fifty (50) feet of federal wetlands. Mr. Platel asked if she meant relocating wetlands. Ms. Schoonmaker-Cuddle thought they would have to relocate the wetlands if they were going to build there. She said that everyone who lives in the area has to comply with the ordinances of the Town. She wanted to know how the applicant can ask to not follow the Town's regulations. Chairman Hodom said the purpose of the Zoning Board was to listen to requests from applicants for variances from the ordinances. They have the right to ask by law. They are following the bureaucracy the Town has to ask for those variances. She said the development would affect them because they live right across the street. Nothing has ever been built there and now there will be three (3) homes with a large driveway. Chairman Hodom said the entrance of the driveway will be right across from her fathers garage/workshop.

Tim Cuddle, 215 Wemple Road. He said his concern was the intermittent stream. He is familiar with that stream. He said it comes around and flows under Wemple Rd. and up behind his property. After a light rain he has seen it swell to thirty (30) feet wide. There is a Town easement in the area with a manhole cover and he has seen the stream overflow into the manhole covers. He wanted to know how the development would affect the backflow. Chairman Hodom said the Zoning Board was concerned with the zoning variance request which is shortening of the pole of the flag lot. If this Board approved the application, the applicant would then need to go to the Planning Board for subdivision approval. That Board would deal with the types of questions he was raising. Mr. Cuddle said he has a similarly shaped lot across the street and it's about two (2) acres. He said there are high voltage power lines next to the lot. It's a quality of life issue. He said why not build an eighteen (18) story apartment complex here. It's too dense for the property. He said when he built his house, he put it in the middle, as far way from the power lines as possible. He said to think what is best for the Town. Does the Town need three (3) more houses putting more of a tax on the water and sewer lines and school district. One (1) house should be fine. He said he's seeing how things are flooding out around him. He has one hundred (100) new houses behind him. He doesn't think it's the best thing for the Town. If you want to do that, why not throw a Wal-mart in there.

Candice Schoonmaker-Cuddle, 215 Wemple Rd. She asked why the applicant didn't contact any of the neighbors with his plan. Chairman Hodom said he didn't know. The Board sends out notices to the neighbors but most developers contact the neighbors when they have proposed plans, to be neighborly. She said if they build the houses, would it affect her father. She said some neighbors don't like the rural look and she was concerned they would complain about her dad. Chairman Hodom assumed that her father wasn't having any problems with the existing zoning in Town.

Chairman Hodom asked Mr. Lynch when he could have the documentation requested to the Board. He said he could have the information by the next meeting.

A motion to adjourn the hearing to a date uncertain was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

### **Stewarts – 1344 Rt. 9W, Selkirk**

Chairman Hodom opened the public hearing. The applicant wants to replace the existing gas canopy with a larger gas canopy. Mr. Platel said the applicant is proposing to demolish the existing five hundred seventy-six (576) square foot canopy and construct the proposed one thousand one hundred eighty-four (1,184) square foot canopy. The proposed canopy will have a front yard setback of seventeen (17) feet which is thirteen (13) feet

shy of the thirty (30) feet required for the front yard setback. The existing use of the property is a convenience market and is located in a rural hamlet zoning district.

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

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, September 17, 2008, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Stewarts Corp. for a Variance under Article XIII, Use and Area Schedules, Section 128-100, Schedule of Area, Lot and Bulk Requirements of the Code of the Town of Bethlehem for demolition and reconstruction of a gas canopy on property located at 1344 Route 9W, Selkirk, NY 12158.

Mr. Chris Cannucciari presented for the applicant. He works for Stewarts in the real estate group. Mr. Tom Lewis, a member of Stewarts real estate group was also present. Mr. Cannucciari said the Stewarts shop in question has been in existence for about twenty (20) years and they would like to improve it. The store has gotten busier over the years. He showed the Board an illustration showing the issues of congestion on the lot for people using the gas pumps. They would like to improve the flow and the safety of the lot. They wanted to space the pumps further apart and put them at a slight angle. He said that the corporation has gone through a series of drawings to come to the proposed layout. They believed that this layout was the best for lot circulation while not blocking the parking spaces and keeping the cars away from the entrance to the store. They would not be changing the building or the ingress or egress. With this proposal, they still meet the centerline setback, it would be the right of way setback they would be off by thirteen (13) feet. That is the reason the applicant does not consider the variance request to be substantial. The physical improvements to the site would be better circulation on the site and the environmental effects are the removal of tanks that were put in 1989. The newest technology tanks would put in their place. An added benefit would be better drainage on the site by raising the pump area slightly. Mr. Cannucciari said the lot was rather constrained and they are limited as to the configuration of the pumps and canopy.

Chairman Hodom asked if the number of pumps would be increased. Mr. Cannucciari said no, four (4) fueling points would remain. Chairman Hodom asked why they needed such a large canopy. The canopy size would increase by one hundred fifty (150) percent. Mr. Cannucciari said it was spacing and a circulation issue. Chairman Hodom thought if the canopy was constructed in the same place as the existing canopy they might be able to eliminate the need for a variance. He asked why the pumps needed to be offset as shown. Mr. Cannucciari said if the pumps were spread in the existing location one of the entrances would be impacted as well as the parking. Chairman Hodom asked how long they had been in business and whether they have had a problem with ingress and egress. Mr. Cannucciari said about twenty (20) years and over that period of time their business has increased and circulation on site had become an issue. Chairman Hodom asked if the parking spaces would be impacted if the new canopy was built straight on. Mr. Cannucciari said some of the spaces would be impacted. Mr. Lewis said there has not been an issue accessing the site over the years. If the canopy was placed as the Chairman was suggesting, then the canopy would impact either the parking spaces or the access points. He said the older Stewarts Shops were configured the same as this site is presently. The company now agrees that it was not a good design. It was the minimum amount of canopy to get the four (4) fueling points. All the new fueling businesses built within the last eight (8) to ten (10) years, all have the same distance as their proposal was showing. They are investing millions of dollars to improve this site. The company did go through many configurations so they would not need a variance. Chairman Hodom still thought they could move the canopy in such a way to avoid the need for a variance. Mr. Lewis said their engineers have tried and all the configurations they attempted impacted some other function of the site. Chairman Hodom asked them to supply an engineers report as to why there would be impacts.

Chairman Hodom asked if the existing canopy was illuminated. Mr. Cannucciari said there was recessed down lighting and the new canopy would remain the same style. There wouldn't be any overflow of lights onto the adjoining properties. Signage on the new canopy is not proposed. Mr. Lewis said the distance between cars at the pumps were driving the proposed change. Other than the canopy, tanks and pole lights, no other changes are proposed for the site. Chairman Hodom asked the applicant to find out if his suggested placement of the canopy would eliminate any parking spaces. Mr. Platel said per the Zoning Law they needed at least ten (10) parking spaces for the site.

There being no further comments, Chairman Hodom closed the public hearing at 8:02pm.

## **APPLICATIONS**

### **Sonya and Alla Smelyansky**

The Board received an application from Sonya and Alla Smelyansky for an appeal to the Building Inspectors decision denying a building permit.

A motion to set the public hearing for October 1, 2008 at 7:15 was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

### **Sonya and Alla Smelyansky**

The Board received an application from Sonya & Alla Smelyansky for a variance under Article XIII, Use and Area Schedules, Section 128-100, Schedule of Area, Lot and Bulk Requirements. The applicant wants to change a two (2) family home into a three (3) family home.

A motion to set the public hearing for October 1, 2008 at 7:30 was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

## **DISCUSSIONS**

### **Hank Digeser (Gould Erectors)**

Chairman Hodom asked the Board to reschedule this discussion until the next Board meeting. All Board members agreed.

### **Karl Geist**

Chairman Hodom said the public hearing had not been closed. They had asked the applicant to supply the Board with additional information. He had some questions on the submitted material. NYSDEC had submitted a work permit but it only addressed the construction of the L shaped wood framed garage. There wasn't anything submitted to NYSDEC concerning the site work that goes along with that construction, such as the ingress and egress to the garage. He said the permit is very specific, no other work can be done on the site other than the construction of the garage without further approvals. Chairman Hodom said he had asked the applicant for a site ingress and egress plan. Mr. Geist said he was under the impression that they wanted to know the size and where it would be located. He had said at the last meeting that he no intention of putting one in at this time. He said it is on the drawings. He said there never was a driveway. Chairman Hodom said that the prior minutes reflected a comment that said Mr. Geist would submit a plan with the location of the driveway. Chairman Hodom said he had not done that. Mr. Geist said he had. It was located in the documentation submitted by Mr. Geist. Chairman Hodom asked if the plan was submitted to NYSDEC. Mr. Geist said they had come out to the site, the only plan submitted to NYSDEC were the plans of the building prepared by DeRaven. They did not include a map. Chairman Hodom said other than the garage; no other site work was approved. He thought a driveway was necessary to access the garage. Mr. Geist said they had always driven over the lawn to the previous garage and planned on doing the same thing. The garage doors would not be facing Beacon Road. Chairman Hodom said that NYSEEC had not seen the plans for the ingress/egress to the garage. Mr. Geist said he was not going to put in a driveway, the only reason he put a driveway on the plans was because the Board had asked him to show where it would be if he was to put one in. That supposed driveway was never part of the proposal. He just wanted to get his cars out of the weather. His cars don't come out in the rain, only in good weather and then you can drive over the lawn. Mr. Platel said there wasn't a requirement for an ingress/egress to a storage building. Mr. Geist said the Board was concerned with him backing out onto Beacon Rd. He said he doesn't back out onto a road, it's illegal. Ms. Glastetter said most of the residents on Beacon Road back out onto the road. Mr. Geist said if you look at the area of where the garage is located, it's all lawn. Ms. Glastetter said after reading the minutes from the last meeting, Mr. Cirillo had a concern with them backing out onto the road. There won't be a need to back out because there is plenty of room to turn around a drive straight out onto Beacon Road. The garage door will not be facing Beacon Road.

Chairman Hodom said the submitted site plan doesn't show a change to the property line. Apparently the new property line is at the corner of the existing garage pad. Mr. Geist said he had no way of knowing where that

was, he had been trying to find the information. He said when it was changed, the line was supposedly moved to nine (9) feet from the corner of the garage. Chairman Hodom thought the new right of way was right at the corner of the northwest corner of the garage. Mr. Geist said in the early nineties, the Town fixed and changed Beacon Road and changed the line then, when the garage was existing. The road was widened and straightened. Mr. Geist said if the information was available, he wasn't sure why it wasn't included on the survey.

Chairman Hodom asked if NYSDEC had given them any delineation of the wetlands on the property or a letter stating the property is wetlands. Mr. Geist doesn't know when it became a wetland. He wasn't sure where to go for maps of those wetlands. He didn't build the ponds, they were there when he purchased the property. Chairman Hodom asked if he had any information from ACOE. Mr. Geist said the permit issued was a joint permit from both ACOE and NYSDEC.

Chairman Hodom asked Mr. Geist to submit a written estimate for the cost of a new concrete pad with specifics as what would be included. Mr. Geist said he was specifically told by NYSDEC that the area behind the house, suggested as an alternate site, was out of the question because of a Town drainage course and increased trauma to the wetlands. Chairman Hodom wanted it in writing. Mr. Geist asked the Board for any other additional information the Board would want him to submit so he could supply the information all at one time. Chairman Hodom said the letter from NYSDEC stating he could not build behind the house would help his case. Mr. Moore said NYSDEC could give them a portion of the wetland map showing his parcel and how much of the parcel was wetlands. The official wetland maps will show that. Mr. Platel said the building department had those maps in their office. Chairman Hodom thought NYSDEC would have delineation maps of his property specifically. Mr. Geist said he would try to submit the information requested in a timely manner.

## **RESOLUTIONS**

### **Robert Maher**

The Board reviewed draft Resolution AV-0810 prepared by the Zoning Board attorney.

A motion to approve Resolution AV-0810 as drafted was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

The Board reviewed the draft minutes of September 3, 2008.

A motion to approve the minutes as amended was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

A motion to adjourn was offered by Mr. Micelli seconded by Mr. Watson and approved by all Board members present.

The meeting adjourned at 8:40 PM.