

**PLANNING BOARD  
TOWN OF BETHLEHEM**

**August 19, 2008**

The Planning Board, Town of Bethlehem, Albany County, New York held a Regular Meeting, on August 19, 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  
Keith Silliman, Planning Board Counsel  
Christine Motta, Planning Board Member  
Howard Engel, Planning Board Member  
Nick Behuniak, Planning Board Member  
Kathy McCarthy, Planning Board Member  
John Smolinsky, Planning Board Member  
Kate Powers, Planning Board Member

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

Agenda: Glenmont Mobil  
Mystic Woods

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

**Glenmont Mobil**

Chairman Mathusa said this project was requesting a special use permit for a drive-thru coffee at an existing business. The proposal was last before the Board on August 5, 2008. At that time the Board had raised issues with the proposal and wanted the applicant to return for further discussion. He wanted the applicant to discuss certain items starting with the NYSDOT letter of August 15, 2008 and their concern with queuing of cars on Feura Bush Rd.

Mr. Boyea from Bohler Engineering presented for the applicant, Mr. Hessari, who was also present. Mr. Boyea said the two (2) concerns mentioned in the letter; the first was that conclusions on queue numbers could not be made by the counts at McDonalds. Staff had agreed and asked the applicant to count other Dunkin Donuts facilities. They have done that and submitted the numbers to staff. The average stacking numbers at peak hours were between eight (8) to ten (10). They feel they have a plan that addresses that issue. They feel that the numbers on this site would be self-regulating and they wanted to stay with their Option A for better circulation on the site. The applicant felt with the volume of traffic on the roads, people would not use the facility if they were on the opposite side of the road. It would not be convenient for them. Chairman Mathusa asked the applicant to move the ordering box closer to the corner of the building in answer to the observation by NYSDOT that queuing starts at the order box. That would enable one (1) more car to be in the queue. Mr. Boyea said it was possible to move it up one (1) car. He said the Dunkin Donuts sites that were counted experienced a very high volume of vehicles on the adjacent street compared to this site. It only got as high as ten (10) cars for three (3) seconds. They noted it to be fair. He mentioned the alternate plan that could be put in place if the queuing became an issue.

Mr. Smolinsky asked where the cars were counted from and how they compare with the queue that could occur on this site. Mr. Boyea said the counts were apples to apples. They counted from the window back. Mr. Smolinsky

thought additional stacking over the six (6) would cause circulation problems on the site. He thought it might block exiting traffic onto Feura Bush. Mr. Boyea said if the stack were to experience extended length, the driveway is wide enough for three (3) lanes. He didn't think there would be a circulation problem.

Mr. Engel said he would be 100% against option B. He thought it would create more problems than it would solve. He also wanted them to move the order box up to the corner but he thought the site would be self-regulating. If there was stacking, people would not stop. Ms. Motta agreed with Mr. Engel. But she also thought there should be continuing oversight, so stacking did not become a problem. Mr. Behuniak said it looked like people would back up into the bypass lane. Mr. Boyea said it was standard width of a lane. Mr. Behuniak wanted to know how many more customers they would have with the drive-thru. Mr. Boyea said additional business is nearly impossible to predict. The inside existing coffee and pastries would be removed and replaced with the drive-thru window. Customers would want the convenience of the drive-thru. Mr. Boyea said the peak time for this business is morning. Mr. Behuniak asked if there were changes that could be implemented at a later time if a problem arose with circulation on the site. Mr. Boyea said the applicant had option B if they were very successful and had long stacking. Mr. Behuniak was not in favor of granting approval for the project. He indicated that the applicant was losing a parking space, there is limited space at the location, the business was located right at the intersection of two (2) busy roads and the business in its current form was new. Ms. McCarthy did not like option B. She thought moving the menu board was a good idea. She thought Dunkin Donuts was a done deal but now it did not look that way. She did not want any food sold other than a coffee and donut place because other types would cause longer stacking due to the length of their prep time. Mr. Boyea didn't have a problem limiting the window to a coffee and donut type business. Other than that Ms. McCarthy liked the plans. Ms. Powers agreed with Mr. Behuniak. Ms. Powers asked what the queue would be at the peak hours. Mr. Boyea said after counting similar businesses, the most at peak hours was ten (10) cars. He didn't think this location would be that heavy maybe eight (8) cars for a short peak time. Regularly it would probably be four (4) or five (5). Ms. Powers said she would support option A on a trial basis. Mr. Silliman said the condition in Mr. Leslie's memo would satisfy Ms. Powers's concern. Based upon what was presented by the applicant, Ms. Powers and Mr. Behuniak didn't think there were additional improvements that could be made to the site even if such were subsequently needed because of car stacking problems. Ms. McCarthy thought the site would work. She said people already know there is a Cumberland Farms with a Dunkin Donuts down the road and if this site were not easy to get in and out of, they would not go there. She thought a roundabout at that intersection would improve traffic flow and people would become familiar with it.

Mr. Leslie asked Mr. Boyea if the sites they counted at allowed spaces for ten (10) cars in the stacking queue. Mr. Boyea said the cars at Cumberland Farms were a little out of the stacking lane but not impeding any traffic flow. There were a few cars at the Rt. 9 Dunkin Donuts into the road. Mr. Leslie asked if people were getting out of their cars to go inside for the product. Mr. Boyea said he didn't witness that. He said the NYSDOT letter suggested getting more counts and they did them and gave them to staff.

Chairman Mathusa said a concern he had with the condition drafted because if the Board thinks there are problems, they should be addressed now. He said either the Board approves option A or they deny it. He wanted to put that on the table for the Board to consider. Mr. Silliman suggested if the applicant is confident in their proposal, if the Board puts in the condition drafted by staff with additional language saying if the site has problems, the special permit would be withdrawn within twelve (12) months. Ms. McCarthy asked who would make that determination. Mr. Leslie said it would be the Planning and Engineering Departments review and analysis of the site. Mr. Silliman thought it should come back to the Planning Board if they couldn't come up with site improvements to solve the problem. Ms. McCarthy was concerned that the Board would give approval for a business and then if they were successful the Board would close them down. Mr. Silliman suggested that the applicant come up with a second option that was acceptable to the Board because their option B was not. Chairman Mathusa said there were physical limitations on the site. He said directing the traffic counter clockwise could cause difficulties on the site. He didn't think the queuing of the cars would be more than three (3) or four (4) cars at any given time because of the location.

Mr. Behuniak asked if this was a new business. It was articulated that the site had been a gas station for years but had been recently closed and significantly renovated and recently reopened. Mr. Behuniak suggested waiting to see how the current business did before adding another aspect. Mr. Hessari said that he had worked on the project for two (2) years. Mr. Leslie and Mr. Ritz were aware of the applicant's intention for a drive thru. He said NYSDOT was at a meeting with Mr. Leslie and the original plan had five (5) pumps, they had eliminated one (1) of the pumps because of the drive thru. He thought that Option A was the best and safest. He did not think comparing this location with the Cumberland Farms on Route 9W was a fair equation. That site has sixteen (16) pumps. The volume of gas sales the applicant does in month, that site would do in three (3) days. This site has a limited capacity. NYSDOT had been involved with the plan. He was surprised with the letter they sent and the comments about stacking. He said this business is self-regulating. If his prices are high or service is horrible or the site is dangerous, people will not come back. He said he is a petroleum distributor with numerous locations in other counties and he believes a Dunkin Donuts will work on the site. If the special permit is left open ended and an accident happens within the next twelve (12) months he doesn't want to be closed down. He said you might as well shut down the entrance to the Wal-Mart because there was an accident there. He thought the design of the site was a home run; the site has excellent traffic flow. It's easy to get in and get out. Even with very competitive pricing, his gas sales are around six thousand (6,000) gallons. This is not a high volume site. As business owner, he would improve the site if a problem arose; it was in his best interest. He has been in this business for twenty-two (22) years.

Mr. Engel said he has been on the site and the circulation worked fine. As far as he was concerned, option B was completely out of the question. He thought it would create more problems than it solves. He said the main issue is the queuing and whether people would stack onto Feura Bush Rd. He didn't think that some one would sit at that intersection without someone behind them blowing their horn and telling them to move along. He agreed the site would be self-regulating. He thought the Board was at the point of making a decision of yes or no. He thought the drive-thru would enhance the business of the corner.

Chairman Mathusa said its either option A with moving the menu board or nothing. He didn't want to the condition of looking at the site for the next twelve (12) months part of the approval. He would rather the Board make a final decision. He mentioned Mr. Behuniak's wish to wait for the business to be going for a while before making a decision but he wasn't convinced the traffic would change much in a short time frame. Chairman Mathusa said the gas station was there for many years. Mr. Smolinsky said they were told the entrance on Feura Bush was twenty-four (24) feet wide. He wondered if the entry way could be widened and the three (3) lanes could be made distinct. Two (2) entries, for gas or donuts and one (1) exit lane. Mr. Ritz said the current entry was about forty-five (45) feet wide. Mr. Smolinsky thought the lanes could be defined. That would have all traffic for gas going around the building. Mr. Leslie said option B showed that circulation. Mr. Boyea said the lanes could be wider than standard. Maybe they could stripe them for about the first ten (10) feet to designate two (2) entry lanes and one (1) exit lane. Mr. Smolinsky wanted more distinction between the gas lane and the donut lane. Mr. Boyea agreed with Mr. Leslie that was option B. Ms. McCarthy said that sounded like option B to her. Chairman Mathusa said that was discussed with staff and they thought it would put too much traffic around the building. Mr. Leslie said if the stacking were to go to the Feura Bush entrance, it would prevent any traffic from getting to the pumps. Mr. Ritz said another consideration was someone heading east on Feura Bush Rd. wanting to get gas, would pull in, see the gas pumps and drive across lanes to get to the pumps. Mr. Smolinsky thought there should be barriers put up. He said it wasn't his job to design the project. He said it was the Board's job to approve a safe project. He said the applicant made some convincing points but as far as the condition, he liked the idea of watching the site to see if problems arose. If there are problems, he wanted the window closed until the problems are corrected. The applicant would have to decide if that was a risk he wanted to take.

Mr. Silliman said the condition drafted by staff was good but it assumes an answer to possible problems could be found. He thought the acceptance of those answers should be a Planning Board decision. He wanted to add more language to the condition to reflect that. Ms. Motta thought the site would work as presented but also wanted the condition in the approval. Mr. Silliman asked the applicant if he would agree to the condition. Ms. McCarthy was

opposed to the condition. Mr. Engel said the only problem would be if the queuing went onto Feura Bush Rd. and causing traffic problems. Mr. Engel was against the condition. He said the site was working now and he thought the Board was over analyzing the site. He said the only problem he saw was if the applicant was very successful and caused traffic problems. Mr. Behuniak said this site was a new business. Mr. Engel said there was a Mobil station there for many years. It had wide-open access to the site. The site had closed for about a year and been redone. Mr. Behuniak said NYSDOT's letter expressly indicated the site was confined and could be a problem because of traffic. Ms. Powers was concerned with approving the project considering NYSDOT's concerns. Mr. Boyea thought they had added the information they wanted. He suggested NYSDOT take another look at the plans and the additional traffic counts. He said the only part of the site that has changed over the thirty (30) years was the fuel presentation and the access points. The building has always been there. He said Mr. Hessari wouldn't have agreed to lose a pump if hadn't wanted to go forward with the drive thru. He said to address the concerns of the Board about the stacking onto Feura Bush Road on a regular basis; they would be willing to look at options to remedy but not the option of closing the window. He said it was a large investment up front for the applicant. He said there were other options. He doubted any prospective company would sign on with that condition; it's too risky. He listed a number of other options that could be done if a problem arose.

Mr. Silliman informally asked the Board if they would approve the special use permit as submitted. Four (4) of the Board members said they would be opposed and two (2) were in favor. Mr. Morelli said these types of businesses are self-regulating; if it's not convenient people will not go there. If traffic backs up and blocks crosswalk and travel lanes, they will be subject to police enforcement. Mr. Behuniak noted that the Planning Board should not approve plans it believes are insufficient under the assumption that errors or deficiencies will always be cured by a business as a course of practice. Ms. McCarthy said she just wanted him to take a look at the business and the nature of the business. Mr. Morelli said what is before the Board is a request for a special use permit for a drive thru window. The Zoning Law states the applicant must show they can provide places for four (4) cars to stack. They meet the Code in that respect. Special use permits can include conditions.

Chairman Mathusa preferred the project go to the public hearing without conditions. A condition could be drafted at a later time. Mr. Boyea said they could come to the meeting with concrete solutions the applicant was willing to do to remedy possible problems on the site. Mr. Leslie reminded the Board that NYSDOT was only concerned with stacking into their highway. If the cars reach the road but don't go into the road, they are OK with that. The applicant was asked to collect data at two (2) other Dunkin Donut sites and that data had this site falling within the range of stacking space.

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

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

A motion to set the Public Hearing for September 2, 2008 at 7:00pm was offered by Mr. Smolinsky, seconded by Ms. Powers and approved by all Board members present.

Mr. Boyea said a wall sign is proposed for the Dunkin Donuts and the proposed monument sign, that needs Zoning Board Approval, would match the existing.

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

### **Mystic Woods**

This nine (9) lot subdivision was last before the Board on May 6, 2008. Mr. Shafer from Spectra Engineering

presented for the applicant. There haven't been any major changes to the project since it was last before the Board. There is a single cul-de-sac road proposed. None of the lots are less than two (2) acres. They have worked with staff finalizing engineering details for the project. They have made some of the backyards a little more level, anticipating requests for decks and pools. There are four (4) pieces of land that will be deeded to the Town. The deed restrictions because of the valleys have been drafted and with the assistance of Mr. Ritz, the intersection was re-worked. The sidewalk will not be put in at this time; the Town just wanted the easement. Mr. Andrejuk said the size of the homes that will be built would be between fifty eight hundred (5,800) to six thousand (6,000) square feet.

The Board reviewed the draft Conditional Final Plat approval 236-CF prepared by staff.

A motion to approve Conditional Final Plat approval 236-CF as amended was offered by Ms. McCarthy, seconded by Mr. Engel and approved by all Board members present.

The Board reviewed the draft minutes of August 5, 2008.

A motion to approve the minutes of August 5, 2008 as amended was offered by Ms. McCarthy, seconded by Mr. Engel and approved by all Board members present except Ms. Motta, who abstained.

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

The meeting adjourned at 8:50 PM.

Respectfully submitted,

Nanci Moquin