

**PLANNING BOARD  
TOWN OF BETHLEHEM  
February 17, 2004**

The Planning Board, Town of Bethlehem, Albany County, New York held a meeting, on Tuesday, February 17, 2004, at the Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Parker D. Mathusa presided and called the meeting to order at 7:30 p.m.

Agenda Items:        McLagan Subdivision  
                             Nigro Retail

Present:                Parker D. Mathusa, Planning Board Chairman  
                             Keith Silliman, Counsel to the Planning Board  
                             Howard Engel, Planning Board Member  
                             Christine Motta, Planning Board Member  
                             Thomas Cotrofeld, Planning Board Member  
                             Katherine McCarthy, Planning Board Member  
                             Daniel Odell, Planning Board Member  
                             Brian Collier, Planning Board Member

                             Jeffrey Lipnicky, Town Planner  
                             Janine Saatman, Deputy Town Planner  
                             Randall Passmann, Senior Town Engineer

                             Steven Powers, Nigro Companies, Nigro Retail  
                             Todd Curley, Nigro Retail  
                             Peter Giovenco, Bergmann Associates, Nigro Retail  
                             Bob Sweeney, Esq., Shanley, Sweeney, Reilly & Allen, Nigro Retail  
                             Mr. & Mrs. Van Derpoel, Rt. 9W, Nigro Retail  
                             Kristen Olby, Spotlight Newspaper  
                             Ronald McLagan, McLagan Subdivision

Mr. McLagan was not present at the start of the meeting; Chairman Mathusa decided to proceed with the Nigro Retail project.

**Nigro Retail**

Chairman Mathusa opened the discussion of the Nigro Retail by making the following statement. He felt that the Town was in agreement that it was in favor of expanding the commercial base in the Town. He stated that the efforts of the Town and the developer had made sure that Bethlehem Town Center was a positive addition to the Town. He didn't want any project to detract from that positive impact and would be looking to companies that wanted to do business in the Town to hold to the same standards. He felt that because this project was in a sense at the entrance to the Rt. 9W corridor of Bethlehem, it was critically important that any project approved continues

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with the same careful considerations as the Bethlehem Town Center. He felt that the impression made here would set the tone for the entire area. He wanted to let the applicant know as soon as possible that this first impression was very important to the Town and to make clear what the Board would be looking at for the common good of the applicant and the Town.

Steve Powers echoed the sentiments of Chairman Mathusa as to the quality and aesthetics of the project. They were driven before by the desires of the retailers in Town center as to the design of the buildings. With this project, they would have more control of that aspect. He then introduced his team. Bob Sweeney, Todd Curley and Pete Giovenco were all present. Mr. Giovenco of Bergmann Associates presented the proposed site plan for the Nigro Companies.

Mr. Giovenco showed an overall view of the project. The proposed site, north of Lowes, was approximately 17 acres with a significant slope to the rear. They were limited as to the area that they would be able to use. An easement for a gas line ran along the north boundary of the property. They were proposing two (2) separate structures on the site, one larger one to the rear and a second one near to Rt. 9W. They didn't have tenants for the rear structure but it might be a series of small shops. The other structure had potentially two (2) tenants that wished to face the Bethlehem Town Center. One of the retailers marked on the proposed project was a Staples. They were looking to have a façade on the side facing the road that mirrored a front façade. The rear of the front building would contain the delivery aspect, which would be partially protected and blocked visually. The parking lot would be shared between the two (2) structures. There were many landscaped islands within the parking lot to stay within the 10% green space in the Code. They would add perimeter landscaping to enhance that green space.

The utilities were already planned for when they were laid out for the Bethlehem Town Center project. Sanitary sewer, water, gas and electric were easily accessible. The Storm Water Management would be handled by putting in a storm water basin to the rear of the property. There were some delineated federal wetlands on the site, they were going to attempt to stay out of those if possible, but would work with the Army Corp if mitigation was necessary. They were aware of the Phase II requirements and were prepared to meet those requirements. They proposed to collect the water in a basin to the rear and treat for water quality and quantity and discharge into the creek at the rear of the site. They were considering working with the Corp and implementing other mechanisms such as storm sceptor system or a vortex unit that would also treat the water before discharge off the site.

Mr. Giovenco stated that access to the project would be solely from the internal road that now follows the southern boundary of the proposed project. They proposed two (2) curb cuts onto that road. There would not be any additional curb cuts onto Rt. 9W.

Mr. Giovenco showed the Board a proposed elevation for the building in the rear. It had a brick façade with a roofline that combined peaks and flat lines. They also proposed awnings to give a more pedestrian scale. They understood that this was in the concept stage and this elevation was open for change. He understood that there was a big concern that this would be the first project that people would see on entry into the Town. He understood that the location of the loading dock on the front building was a concern. The Dominion Gas Company that owned the right-of-way had very strict guidelines as to what would be allowed on their easement. They had met with them and the gas company would allow some pavement, but not large landscaping such as trees.

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They would have to utilize something else to come up with shielding. They suggested a wall next to the building. The grade on the north boundary line drops significantly to Old Kenwood and placing a berm there would not be feasible. That was why they suggested doing a treatment to the building itself for buffering. He stated that the side façade would look like the front of a store. He thought that with the building close to the road, it gave the center a more pedestrian feel than a strip center. The small scale of the front building helped with this.

Ms. McCarthy stated that the side of the Staples and the loading dock would be a large concern. She was glad to hear that the side would be treated as a front façade. She preferred the facade that was proposed for the rear structure and wondered if the buildings could be flipped. She remembered that during the review of a previous residential project, there was a concern of turning their backs to the main streets of the Town. The first impression of people coming into that area would be the loading dock of Staples and then a large blank wall. She felt that anything they could do to mitigate that would be better. Mr. Giovenco stated that was why they were proposing to treat the side as a front façade. Ms. McCarthy wanted to know if there would be a berm along the Rt. 9W side of the project. They had looked into turning the structure to face Rt. 9W but that would make access to the front door harder for their customers. Mr. Lipnicky suggested turning the building and moving it back on the site to accommodate parking in the front of the store. Mr. Giovenco thought that would limit parking for the retailers in the rear building that would make it less desirable retail space.

Chairman Mathusa wanted to know if they had retailers for the other side of the front building. Mr. Giovenco stated that they had had conversations with some retailers but there wasn't anything firm. The Chairman wanted to know if the two front retailers could be moved to the rear structure and defer the construction of the front structure. Mr. Powers stated that Staples wanted to be out on the street and that request had a lot to do with the current site plan design.

Mr. Odell agreed that the loading dock was not aesthetic. He also thought that there was a possibility of trucks waiting to unload that would also detract visually. Mr. Giovenco stated that there would only be about two (2) trucks per week unloading at the dock, he didn't feel that waiting trucks would be an issue. When asked, he stated that there would be a dumpster but it would be in an enclosure with materials similar to the building.

Mr. Collier felt that the proposed rear building had a much more desirable façade than the front Staples box. He also thought that the buildings should be reversed. Mr. Giovenco stated that the next time they were in front of the Board, they would have proposed elevations for the front parcel. Mr. Collier felt that the big retailers had certain designs that were acceptable and other than changing the color or maybe the type of block, they weren't open to much change. It would still look like a big box. If Staples was willing to move from that thinking, it would be an improvement. He felt that retailers were more creative in urban settings than in suburban settings. Mr. Collier felt that one of the reasons the Bethlehem Town Center had been so well received because of the aesthetics of the berms. Without that berm, he felt that something else needed to be done.

Chairman Mathusa echoed the sentiments of the other Board members. He also did not like those big box stores with their loading docks facing the street, being the first impression people get of that area. He did not feel that it was a plan that would be well received by the Town or the Town

Board. He liked the rear structure on the parcel and believed it would be an easy sell with the elevations as proposed.

Mr. Giovenco wanted to know if it was the design or the location of the front structure that was the issue. Chairman Mathusa would prefer trees and landscaping in the front with the rear structure visible. He thought that by blocking it would detract from the site. He was bringing up these issues now because he wanted to see the site succeed. Mr. Giovenco welcomed the input because during their next time in front of the Board, he wanted to be able to address the Board's concerns.

The Board's main concerns remained the design of the front structure and location of the loading dock. Mr. Odell and a few other members felt that either removing the front structure or exchanging the locations of the buildings would enhance the site. They preferred the elevation of the rear structure. A few other suggestions were an L-shaped building or running one structure along the north boundary. A large berm along the front was also suggested. Mr. Powers stated that the close proximity of the gas line made certain layouts impossible.

Chairman Mathusa and other members of the Board felt that the elevation for the rear structure was attractive and was what they had in mind for that parcel. He stated that the view they were concerned with started on Rt. 9W where the VanDerpoel's driveway was located. Mr. Silliman stated that with the drawings before them, it was not evident what the view would be to travelers as they approach the site from the north. Mr. Engel suggested staggering the Retail A and Retail B in the front so the loading area would not be visible from the road.

Mr. Giovenco didn't think that a berm would be necessary if the façade of the building was attractive. Mr. Lipnicky stated that the Bethlehem Town Center was much larger than the proposed project. The location of the berms there softened the impact of the large retailers. He wondered if the Board wanted to treat this project as a part of that larger project or as a separate entity. He was not convinced that a large berm was the way to go. He preferred a building that oriented itself to the street and maybe set back a little with the loading area definitely away from the road. He would also like to see the same type of landscaping used along the front of Bethlehem Town Center continued along the front of this project for continuity with possibly a smaller berm.

Mrs. VanDerpoel stated that they lived next to the proposed project and they already had a difficult time getting out of their driveway. If a berm were placed there, it would cut off their vision of traffic coming from the south.

Mr. Collier felt that this project should be treated as an integrated part of the existing project. He thought that the berms also protected a person's view of a parking lot full of cars as well as shielding the view of structures. Chairman Mathusa felt that a light would be needed at the access road and Rt. 9W. He was not sure that DOT would support one but he felt it was definitely needed. Mr. Lipnicky stated that DOT previously didn't think it was necessary because of the trip generation; the new retailers would change those numbers. Staff felt it was very important to have the driveway signalized.

Mr. Lipnicky stated that the proposed project fit within the Rt. 9W study and design guidelines. In future drawings he wanted to see location of wetlands and topography, especially to the rear where the ravines were located. They may also need a minor amendment to the previous BPA approval for the Bethlehem Town Center to accommodate the access driveway to the rear of the proposed building. He also wanted to integrate the landscaping and site lighting to fit with the Bethlehem Town Center. The location of the detention basin was determined to be at the bottom of the slope. He stated that to install the basin a portion of the lower slope may need to be cut into, that could create potential slope stability issues. Mr. Lipnicky felt that a geotechnical review would be necessary. He also stated that the parking module dimensions needed to be changed to conform to the zoning code. Staff would need a statement in writing from the gas company as to what was allowed along their easement. He felt that preliminary traffic generation estimates would be needed. Mr. Lipnicky stated again that the biggest issue he saw was the orientation of that front building.

Mr. Passmann brought up the issue of a sign in the area. Mr. Giovenco stated that they would be looking to put one up, but considering the stage of the concept it was too early to address the sign.

Chairman Mathusa commented that everyone was anxious to see this go forward but they were looking to the applicant to come back to the Board with a revised plan that encompassed the concerns of both staff and the Board members.

Mr. Giovenco stated that they appreciated the Board's input and would be back before them with a revised plan.

A motion to table was offered by Mr. Odell, seconded by Ms. McCarthy and approved by all present.

### **McLagan Subdivision**

Chairman Mathusa turned the Board's attention to the next item on the agenda, a 4-lot subdivision within the established Hills & Dales Subdivision in north Bethlehem. Both the Planning Department and the Engineering Division had forwarded comments to Mr. McLagan on his project.

Mr. McLagan stated that the proposed project involved taking six (6) non-conforming parcels within the Hills & Dales subdivision and converting them into four (4) conforming lots. This would be an in fill project. The original project map for Hills & Dales was filed in the 1930's. He displayed a map that showed the existing six (6) parcels and reconfiguration into the proposed four (4) parcels. He stated that there was a pressure line that they were certain came to a house just shy of the proposed lots. If it were necessary the line would be continued to service the proposed lots. He said that one of the comments he had received concerned bringing the right-of-way along the front of the lots up to standard, he felt that there was enough footage on the lots to accommodate that right-of-way. He stated that he had spoken with neighbors in the area and they didn't voice any opposition to the proposed project. According to existing contour maps that had been supplied to him, it appeared that some soil had been taken out of the area without the owner's knowledge.

Ms. Saatman outlined some the comments that had been sent to the applicant. A copy of the purchase contract should be supplied for the file and she suggested changing the name of the project; using his own name was one possibility. She wanted to know if the Board would require an archeological study, because the property was located in an archeological sensitive area. Ms. Saatman requested that the applicant indicate for the Board the location of wetlands on the property map. He pointed to an area that was across the front of two (2) of the combined lots. He stated that they had been delineated and flagged a few years back by Northeast; the swale that was along the road was part of it. The area indicated was approximate to within two (2) feet of the actual delineation. Ms. Saatman stated that the total acreage of the wetlands and the extent of the impact should be stated on the map along with who had done the delineation. She felt that the main issue would be the roads. She mentioned that the existing pavement on one section of Yale Avenue was no more than twelve (12) feet wide. The standard for roads in the Town was twenty-four (24) feet.

Mr. Passmann stated that three (3) of the initial things that the Engineering Division felt needed to be addressed was as follows: the low pressure sanitary sewer system, the roadway and the proposed grading and storm drainage. In 1993 the Town designed a low-pressure sewer system to service the general area. The design had been approved by the Albany County Health Department and had been broken into two (2) Phases. The first Phase had been constructed but not Phase II that would bring the sanitary sewer system to the proposed lots. The Engineering Division wanted the applicant to acquire the documents that had been prepared for the Phase I & II and have a design professional review them and bring them up to current standards. Concerning the roadway, the Engineering Division wanted the applicant to revise the lot lines at the intersection of Yale Ave. and Milton St. and again at the intersection of Lee Ave. and Milton St. to provide thirty (30) foot corner radiuses for the right-of-way. During a site visit the pavement on Milton St. was measured and found to be 11.5 feet wide and further over it was 16 feet wide. He wanted the width of pavement around the block to be shown on the map so the access for emergency vehicles could be reviewed. Mr. Passmann suggested that improvements to the road might be necessary.

Mr. Collier wanted to know if the applicant would be required to improve the width of pavement of the road. Mr. Passmann stated that more information was needed before that determination could be made. Mr. Collier felt that with only twelve (12) feet of pavement it would be difficult to have two (2) way traffic. Mr. McLagan stated that presently there were about 20 houses in the subdivision and he didn't see that a four (4) lot subdivision should be responsible for the upgrade of a road that serviced twenty (20) other houses. He stated that the neighborhood was entry level that would probably attract first time homebuyers on the low side of the housing range. The project was an infill of an existing subdivision and they hoped to utilize the existing infrastructure.

Mr. Lipnicky stated that in the past, approval had been given to the projects along substandard roadways but not as narrow as Yale Ave. They were still deciding how to handle the situation. The amount of houses that could be serviced by a twelve (12) foot wide street was in question. Mr. Odell felt that the point Mr. Collier was making was that in fairness to the applicant, if roadway improvement was expected from him he should be told now. Mr. Lipnicky stated that the Planning Department was waiting for input from the Highway Superintendent on the subject.

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Staff was looking through the Town Code for any regulations that would require the improvements to the road. Chairman Mathusa stated that he would also like input from the Planning Board Counsel as to the amount of latitude the Board had in this area.

The applicant felt that the four new structures with smoke detectors would not be likely to have a fire and need the assistance of the fire department. He thought that the existing structures would be more at risk for a fire. Chairman Mathusa and Mr. Collier did not agree that newer homes wouldn't need the Fire Department because smoke detectors do not prevent fires.

Another item that Mr. Passmann looked at was the proposed grading and storm drainage. A few of the proposed lots seem to drain down towards to Milton St. and that street didn't appear to have a crown on it. Service water could drain over and impact the front yards of the homes across the street. A mechanism to collect the surface water coming off the lots was needed in the design. The low spot on Yale Ave. was located near the ten (10) inch culvert that crossed underneath. The upstream of the culvert was located on a site visit but because of the snow cover, the downstream could not be located. There were two properties that didn't appear to have a clear swale along the common property line where the water could go. Mr. Passmann stated that if the proposed houses were to have basements in them, they needed catch basins to collect the footing drain and also a system to collect the storm water that would go along the front of the lots 157 thru 159. He felt that a series of catch basins and closed piping would be needed to handle the storm water onsite. The topography suggested that there was a ravine system in the area and Mr. Passmann stated that the close pipe system would need to extend to the bottom of those ravines. The applicant would need to acquire the proper easements for that system.

Mr. McLagan stated that on examination of a prior building permit for a house across the street from the proposed project, a drainage swale showed up that does not have a legal easement in the area that Mr. Passmann had referred to. The Town does maintain the swale. He felt that it would benefit everyone to have that a closed pipe system instead of the swale. He had spoken to the person who owned the land in the area and they did not object to the piping along their property.

Mr. Collier thought that in the past when a positive storm flow drainage was not available, a French drain had been acceptable for a basement footing drain. Mr. Passmann stated that dry wells had been allowed. He felt that a closed system would also be needed to handle the surface water runoff. Mr. Collier was under the impression that the applicant would be using open swales along the road down to the culvert under Yale Ave. He wanted to make sure that the applicant and Mr. Passmann were on the same page. Mr. Passmann stated that open culverts were an option in the absence of foundation drains to contend with and with the proper easements in place. Chairman Mathusa wanted to know if all the drainage lines had to be connected and then channeled to one point. Mr. Passmann stated that a closed pipe system would pick up the foundation drains and surface water then convey it to the low spot and ultimately down to the lower elevation of the ravine. Mr. Collier stated that there were many instances in which lots drained to a swale along the road. He wondered why a closed drainage system was needed in this instance. He wanted to know if that was a necessity. Mr. Lipnicky stated that in new subdivisions it was piping that was used but this was an infill project in an old subdivision. There might be some latitude in their approach.

Chairman Mathusa brought up the archeological issue and the previous disturbance to the site. Ms. Saatman stated that because of the snow cover during the site visit, she unable to see the disturbance. She felt it would be a judgment call for the Board, there wasn't a lot of land but the site was near streams. Chairman Mathusa felt that it would be hard to make that judgment without knowing how much disturbance had taken place. Mr. McLagan thought that approximately 2 to 3 feet had been removed; basically it was just his feeling that the area had been flattened. Mr. Collier didn't feel that a study was necessary because of the prior disturbance. Ms. Saatman asked the applicant if the disturbance appeared to be recent. Mr. McLagan thought that it would have happened about five (5) years ago.

Chairman Mathusa asked the applicant if he presently owned all the property that was to be developed. Mr. McLagan stated that he had the option to purchase the lots. Chairman Mathusa wanted the applicant to make sure that when he subtracted out the right-of-ways he would have the square footage necessary for the lots. Mr. McLagan said he could change around the property line a little and he would have the necessary square footage.

The Board agreed to wait until after the property had been surveyed to determine whether an archeological study would be necessary. At that time the amount of prior disturbance would be known.

Mr. McLagan was concerned about the possible infrastructure work that he might be required to do. He had not anticipated improving Town roads for this project other than minor paving on radiuses. Chairman Mathusa was sensitive to his concern but the Board wanted to wait until they had obtained a determination from the superintendent of highways and Planning Board Counsel that the roadways would be adequate. They wanted to make sure that the traffic flow would not become an issue and emergency vehicles would be able to negotiate the roadways safely. Mr. McLagan stated that there were two parcels in the current layout of the subdivision that only had a 25-foot right of way between them. It reduced the road to about a lane and a half in one area. That was exactly why Chairman Mathusa wanted the additional input. As soon as that information was available to the Board, it would be passed along to the applicant.

Mr. Collier brought up the fact that a number of lots in that area remained undeveloped. He was concerned that other houses would be built and the roads would not be able to handle the additional traffic. The applicant stated that the remaining lots were not developable. A few had been combined with other lots that were already built out. Mr. Odell agreed with the applicant, he had driven around the area and stated that on review it appeared that there weren't any available lots to build. The houses were close together. That satisfied Mr. Collier's concern.

Chairman Mathusa stated that there were some concerns that needed to be addressed with this project.

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

A motion to approve the minutes of February 3 as amended was made by Mr. Odell, seconded by Mr. Engel and approved by all present.

A motion to adjourn the meeting was offered by Mr. Collier, seconded by Ms. McCarthy and approved by all present.

The meeting adjourned at 9:30.

Respectfully submitted,

Nanci Moquin  
Planning Board Secretary