

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

April 7, 2010

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 Ave, Delmar New York

PRESENT: Daniel Coffey, Board of Appeals Chairman
Lennie Micelli, Board of Appeals Member
David DeCancio, Board of Appeals Member
Matt Watson, Board of Appeals Member
Kenneth Umina, Board of Appeals Member
Mark Platel, Assistant Building Inspector
Peter Lynch
Mike Tucker
Luke Mullen
Michael Kornstein
Jason Baum
Bridget Chartrand

Noting that a quorum was present the Chairman open the public hearing and the reason for the hearing was given by Mr. Platel, Assistant Building Inspector for the town of Bethlehem. The reading of the public hearing notice was indented into the minutes on a motion By Ken Umina and seconded by matt Watson. Directions on the hearing procedure were given by Chairman Coffey.

Bridget Chartrand will give the presentation for Hoffman's Car Wash and Jiffy Lube. She stated that the new sign will be in the same location that the existing sign is located 14.5 feet from the curb. The sign will be the same size as the existing sign except that it will be one foot shorter. Mr. Platel explained to the board how the setback was determined from the sign to the property line. Mr. Watson asked what the existing size of the sign was and Ms. Chartrand stated it was 19 feet tall and 8 feet wide and 6.5 or 7 feet high. The actual sign will be the same size as the existing sign. Mr. Umina asked why it needed to be internally illuminated. Ms. Chartrand answered that it was a requirement of the identity package submitted by Jiffy Lube so all these sites need to conform to the Jiffy Lube requirements. We have changed the sign some by changing the one color from white to burgundy to reduce some of the light but the top is still white. Mr. Micelli asked if all of their signs in the area are being change over to this plan and Ms. Chartrand stated that they were. Mr. Micelli asked if the sign was down sized you feel that it would conflict with the car wash. Ms. Chartrand said yes it would and that it would create an issue with people driving down the road would not see the sign until they were right on top of it and would be slamming on their brakes and causing accidents. Mr. DeCancio noted that the sign is actually past the entrance. Ms. Chartrand said that it is but it sticks out that little bit farther past the building and tree line and you can see it as you approach it. Chairman Coffey asked if it was not practical to move it back further. Ms. Chartrand said that is correct. Chairman Coffey asked if the sign could be smaller and Ms. Chartrand said that the Hoffman's requested that this sign be the same size since it has worked and they also want to keep the style of a home town feel with landscaping around it and with the roof so that it is not just a sign sticking out in the middle of nowhere. Mr. Micelli brought up that the surrounding area has monument signs and in contrast, could a monuments sign be a possibility. Ms. Chartrand responded that the raised sign

is what Hoffman's like to have so that they can have the landscaping at the bottom and roof above the sign to keep the hometown feel. Mr. DeCancio asked if the board could be provided with Hoffman's policies in regards to the signage in writing and this was echoed by Chairman Coffey. Mr. Umina asked if all of the signs that are proposed in the area internally lighted and Ms. Chartrand stated that they are. Chairman Coffey stated that part of the new zoning was to have externally lighted signs going away from signs like for the Taste Freeze asked if the sign could be redesigned to be lit by external means. Ms. Chartrand stated that one of the reasons they want to switch is due to the winter time when it gets dark early around 4:00 due to some glare from headlights and other reason it is hard to read the sign. Also she said that she did drive down Delaware Ave and there are a lot of other internally lighted signs, Hannaford, CVS, Albany Medical Building, Tasty Freeze, Hess, McDonalds, which are internally illuminated but very different types of signs. Mr. DeCancio stated that he believed that the McDonalds is an externally lit sign and pointed out other new signs that are externally lit and other signs that the Board had turned down those asked for internally lit signs. Chairman Coffey asked when the code was changed to externally lighted signs and Mr. Platel informed him that it was changed in September of 2005. Ms. Chartrand said that if the sign is approved with all of the elements that the applicant is proposing the sign will fit in. Mr. Micelli asked how long it would take to install the sign. Ms. Chartrand said that it takes a couple of days because the sign is constructed in house, also with Hoffman's having their own landscaping crew we do not have to do that. We can also keep the sign toned down some by we can have the green roof and post changed to dark brown. Chairman Coffey asked if the sign was what Hoffman's was installing at all of their sites and Ms. Chartrand stated yes and indicated at this time they do not have any up in the area since they are all in production.

Chairman Coffey left the hearing open and asked the applicants representative to supply the board with the documentation it asked for and have Mr. Platel verify the size of the existing sign. Mr. Umina asked if Ms. Chartrand could let the board know if there are any locations that may have the same new signs that are externally lighted but she said that there is not. Chairman Coffey and Mr. Umina asked that if they could be provided with a location of a sign in the area that is similar to the one being proposed and Ms. Chartrand said yes and will provide a location to the board. Mr. DeCancio asked if Hoffman's was being mandated by Jiffy Lube to install the new signs and when told yes he then asked for that to be verified with documentation. Chairman Coffey asked Ms. Chartrand get the 3 points of information asked for buy the Board and the hearing was adjourned at 7:21.

Chairman Coffey called the next public hearing to order for Jason and Lisa Baum for an area variance to install a detached garage the does not meet the minimum side yard setback at 6 Center Lane, Delmar. Mr. Platel started that the structure will be located 3 feet from the Property line 2 feet shy of the 5 feet required in a Core Residential Zoning District. The reading of the notice of public hearing was indented on a motion by Mr. DeCancio and seconded by Mr. Umina with all in favor 5-0. Chairman Coffey gave the procedure for the hearing and Mr. Baum began his presentation. Mr. Baum stated that since we have 2 children and our house is not that large we intend to take the existing attached garage convert it into a family room and construct a new single bay detached garage next to the house. Chairman Coffey asked if there was a picture of the house because he thought he was there but the picture that the board had was a photo shop

picture that shows what it will look like when it is done. The garage will not be as close to the house as it appears in the picture we are proposing a 6 foot separation between the house and garage. Mr. DeCancio I was wondering why it looked so close and asked where the accessory door would be and Mr. Baum answered that it would be on the house side and that is where they would bring bikes and other things in and out. Mr. Umina asked if the 12 foot was wide enough and wanted to know if he planned on putting a car in the garage. Mr. Baum said that he did plan on using it for a car too especially in the winter and you are right that it will be tight. Chairman Coffey asked about the existing garage and Mr. Baum said that he believed it was 12 feet by 20 feet. Chairman Coffey asked if the proposed garage was because they needed more room in the house. Mr. Baum answered that the extra room was part of it as well the fact that his daughter's room was above the garage and if they finished it off they would be able to keep her room warm in the winter without a cold garage below. The Chairman asked about the list in the packet and if the applicant had a chance to talk to his neighbors and most had stopped in to see what they were doing. The one neighbor at the corner of Rowland and Center said they were ok with it and wanted to know if he wanted them to come to the hearing. Chairman Coffey said that they got 2 letters with one in favor and one against. The letter in objection is from Deborah Westphal of 4 Center Lane the house next door to you. My understanding is that you will be 2 feet from the property line. No that will be 3 feet from the property line. Mr. Watson asked how far the shed existing shed is from the property line and Mr. Baum answered that he did not really know. Mr. Coffey pointed out that in the letter Mrs. Westphal pointed out her property would be affected the garage would be 2 or 3 feet from the line and she may someday add a bed bath and laundry room and did not want it to be right up next to a garage. Did she talk to you about this? Mr. Baum said this was the first he heard about it. Chairman Coffey asked if Mr. Baum had a survey and the answer was no. Mr. DeCancio asked Mr. Platel what the setback would be if it was an attached garage and Mr. Platel responded it would be 8 feet. Mr. DeCancio asked if they considered attaching the garage. Mr. Baum said that they had considered it but ruled it out because the way that the garage would be attached to the house they would lose the window and that would create a building code issue with the bedroom upstairs dealing with light and ventilation requirements. Mr. Platel pointed out that a window is required in a bedroom for light, ventilation and also for emergency egress. Mr. Micelli asked how the family room would be heated and Mr. Baum said that they would just extend the forced hot air. Mr. DeCancio asked if the applicant would be willing to move it and also at inquired what the minimum was by code it had to be away from the house. Mr. Platel stated that it needs to be a minimum of 3 feet from the house and then Mr. DeCancio asked if they could make it 4 feet from the house and then they would be compliant with the setback. Mr. Baum said that it would be plan B but he would still rather have the space for snow removal and to be able to move things. Chairman Coffey said that since the neighbor next door is objecting and if there is a way to give her the 2 feet so that her daughter would not have to look out at the garage if you can move it 2 feet that would take care of it. Mr. Platel said that the number would work out. Mr. Platel stated that the separation between the overhangs of the structure needed to be 3 feet and Mr. DeCancio asked if the overhang could be eliminated and the applicant said that it would not be in character and also not good construction practice. The board had a general conversation and asked the applicant what he would like the board to consider and he stated that he would ask for the board to consider the 4' setback instead of the 3' setback that was originally asked for. After some further conversation the hearing was closed at 7:40.

Public Hearings were set for the new applications. The first application is for a fence for Mr. Robilotto located at 19 McCormack Rd. On a motion from Mr. Micelli and a second by Mr. Watson the hearing was set for 7:00 pm on April 21st on a 5-0 Vote. The second application is for Joe and Lim Konicek for a setback variance at 47 John St., on a motion by Mr. Micelli and a second by Mr. DeCancio the hearing was set for 7:15 on April 21st on a 5-0 vote. Also we have a presentation from Rob Leslie in regards to the cell tower on Van Dyke Road in regards to the timeliness of the application.

Next Item was a discussion on the application by Mr. Burke in regards to the proposed Wallgreens and Medical Arts building. Chairman Coffey started the discussion and stated that it is a worthwhile project and the corner has become an eyesore. The parking issue is driven by the building and the size of the building is driven by economics. I recall that the amount of parking was an issue at the McDonalds down the road and we have found out that the parking there has not been an issue with that lot. I am comfortable with the number of spaces proposed on the lot. I have never seen the CVS lot full and I believe that CVS and Wallgreens will split the population of people using drugs stores so I do not feel that either of those lots will be full to capacity. In saying that I would state a preference not a condition that the applicant would try to if possible decrease the building size and increase the parking to so we are not looking at the 40 or so spaces. But at the end of the day I am looking at voting in favor of the application. I would also like to give some consideration to see some traffic studies done and that could be something that the Planning Board may want address. Mr. DeCancio, do you have some comments?

The following statement was read and provided by Mr. DeCancio in writing as part of the official record.

Mr. DeCancio

Yes, First off let me say that the decision of this board today needs to be based on the current zoning codes of the town. Basing the decision today on a proposed study would not be fair to the applicant. In addition in my opinion any action today that is based on possible code changes that may or may not happen would most likely not be upheld should the applicant seek legal action against the town.

At the first look at this application one gets a sense that this is a massive project which at times causes people to become very concerned, after all the applicant is seeking relief from 7 variances in total. However, this proposed project is taking two underutilized and neglected parcels of land, that have turned a major intersection of the town into a blighted and visually unappealing area.

The project as presented to the Zoning board I feel is consistent with the stated goals of the town's comprehensive plan and is also consistent with the development of the neighboring properties, aka the CVS.

As for the proposed site plan and how it compares to the CURRENT guidelines for a "Commercial Hamlet district" I feel the applicant has offered a balanced plan that: greatly

expands the amount of green space on the location; orientates the building and drive thru window in similar locations to the neighboring CVS; Eliminates a curb cut on Delaware Ave., in fact eliminates 2 curb cuts on Delaware Ave.; Repositions curb cut on Elsmere Ave. away from Delaware and also repositions curb cut on booth

Area variance tests:

Change to the neighborhood Character, Retail services will continue to be available all the while helping create a “sense of Place” as prescribed in the towns Comprehensive plan. This project will turn this busy intersection from an eyesore to one that is visually and aesthetically pleasing

Alternatives to variances: the applicant I feel made a strong case as to why they need 7 variances to take these two underutilized, outdated and neglected parcels and redevelop it into good clean development. They showed that if they moved the building up to Delaware that would NOT help alleviate the parking variance they need, in fact it would make the rear parking lot deeper and most likely more dangerous to pedestrians.

Substantiality of request: seems huge--7 variances, that said one only needs to go to the location to see for themselves the blight and eyesore that has become of the Delaware/Elsmere corner.

Adverse effect on physical or environmental conditions in the neighborhood: the application increases the amount of green space from 4% of parcel to 21%. And the designed building and street scape will be tremendous improvement from the current blight and that of the corner even while CVS was open. I also feel the design will make the safer for drivers because of the elimination of the curb cuts on Delaware Ave and the repositioning of the curb cuts on Elsmere and Booth

Is the situation self created: Yes but I feel the applicant make a strong case as to why they need this and it should be pointed out that because it is self created, it DOES NOT preclude this board from approving the variances.

In fact unlike a use variance in which the applicant MUST prove each of the 4 standards in order to be granted a variance an area variance only says we must consider each of the 5 factors to approve them.

In Closing: In fact, this re-development will eliminate a blighted section of our community that has been neglected for far too long and will be enhancing current services and retail to local residents, which is why I am voting in favor of granting all 7 variances and urge my colleagues to do the same.

Chairman Coffey brought up the memo from Mr. Morelli and stated that the memo addressed concerns from a Hamlet Zone, but in my opinion we as a board have to base our decision on the current zoning, that of the Commercial Hamlet Zoning District.

Mr. Watson, I would like to thank Mr. DeCancio for all of his various important points and would not want to rehash them all and think he covered it all very well. During the conversations parking seemed to be the focus. I live rather close to CVS and have never had a problem parking near the door and if it has ever been half full I would be shocked and with 2 pharmacies rather close together. Actually I do not feel any changes need to be made to the parking and do not feel we need to make any stipulations to that. As Mr. DeCancio stated I this is going to have a great positive effect on the area and the neighborhood and takes us closer to our goal with the Comprehensive Plan where if the property stayed as is, people could move in now and the property could stay in the existing manner it is now and could remain an eyesore. So because of those reasons and those that Mr. DeCancio stated I would vote positive, vote for the variances.

Chairman Coffey, One other thing based on what Matt had indicated and I seeing that Mr. Burke is not here but the back of the site will someday be a bike trail and this is not a condition of approval but I know Mr. Burke is a good citizen and if there could be some consideration of putting a bench or a park at the back I know the Town would appreciate that, again if and when that happens. Lennie do you have any comments?

Mr. Micelli, You know I have been on the fence for several days going over the variances and the entrances which will be up to DOT and is not our call. I would have to say I agree with my fellow board members and Mr. Chairman that this is an existing eyesore and that the proposed building is beautiful. But at first I thought that we were trying to park a tractor trailer in a garage for a Volkswagen and it was a project that I needed to really think over. I was at the CVS the other day to get a prescription filled and people there were going in and out and the business runs like clockwork. I did not see any issues there as far as the parking and access with people coming in and out of the lot. Also in seeing the way that the Wallgreens works in Saugerties, and how it is kept up I did not see any problems there either. I would just wish you luck at this time and would be in favor of granting the variances. Mr. Coffey asked, didn't you have concerns about the grade at the entrance to the parking lot? Yes I do but that will be up to DOT and we really do not have any control over that. I do have concerns but that is under the jurisdiction of the State and if there are some problems they may require a caution light but that would be under their jurisdiction.

Mr. Umina, I would like to state that I do not feel it is in opposition to the Comprehensive Plan but Chairman I do agree that I have issues with ingress and egress but as Lennie mentioned that is a matter for DOT and not the Zoning Board to address. Chairman Coffey noted that the Albany County Planning Board did not render a decision which should not affect us. Mr. Umina continued that the ingress and egress are not germane to the issues before us. I do think that there is substantial relief requested but on balance I feel that the project is better than it is bad. I don't feel that a perfect project will present itself for this location. I feel that any project or proposal at this site will require variances and we will be right back here with another applicant and proposal. It is here now and it is a decent project and I will be in favor of the project but I do have reservations and would like to suggest that we see a traffic study that the planning board would look at.

Chairman Coffey, I was thinking at one time that maybe the applicant could meet us half way and maybe only need 20 spaces instead of the 40, but that would require making the building smaller and the applicant made a strong case that the structure needs to be this size to make it economically viable. Now if they can make it smaller to give back a few more spaces once they get into it, at the end of the day I think the corner has looked this way for 5 years and I believe it is time to get someone in there and get some development.

Mr. Umina, I was there the other day and to use the word blighted would be an understatement, it is not really a pretty place. I do not know who has done it, maybe the skate boarders, there is broken glass, uprooted cement, graffiti on the back and windows and it has been left to it's on devises and I think will get worse and worse.

Chairman Coffey, Are there any other Comments?

Mr. Micelli, Not I Mr. Chairman.

Mr. DeCancio, So moved

Chairman Coffey, Mr. DeCancio, we have a motion.

Mr. Lynch, Dan, if I may, would the Board consider making a Negative Declaration before you vote on the variance on the SEQRA.

Chairman Coffey, we had not thought about that.

Mr. Platel, I would not do that without Mike here.

Chairman Coffey, If Mike Moore was here we would be able to do that.

Mr. Lynch. The negative Declaration is simply a finding that based on the project that you don't think there is any significant adverse environmental impact that would necessitate the preparation environmental impact statement.

Mr. DeCancio, Is that something that falls under the jurisdiction of the Zoning Board or does that fall under the planning Board?

Chairman Coffey, Zoning, and Planning or could it be a coordinated review under SEQRA.

Mr. Lynch. No it does not have to be a coordinated review because it is a not listed action not a type I action but it is a variance that is an action under SEQRA and before you vote on the variance you have to make a SEQRA determination. The negative declaration is based on everything that you have here which is almost a modernization and consolidation of the existing uses into a single use. One could almost make a case that this is a type II action under SEQRA because it is the replacement of a like kind facility however treating it as an unlisted action we think based on the environmental assessment form we feel there is not a necessity to prepare a full blown environmental impact statement on this in the variance question. So consequentially

we are asking that you consider making a motion on issuing a negative declaration before you make a motion relative to the variance itself.

Chairman Coffey, if Mike Moore was here I would feel more comfortable with him not being here we can either table the whole thing until he is present on the 21st, and if you are telling me we need the Negative Declaration before we vote on the variance....

Mr. Lynch. I have to have it first because technically under SEQRA it is an action and if you vote on the

Some discussion among the board was made to if this was already done but it was determined it was not and that we would wait for Mike Moore to weigh in on it before we make this determination.

Mr. Lynch, if you want to defer the SEQRA review to the Planning Board that would be effectively doing a coordinated review and that would be fine.

Chairman Coffey, A deferral to the Planning Board.

Mr. Lynch, actually let me withdraw that. I really can't cut corners on SEQRA, I really can't do that.

Mr. Micelli, why don't you do the declaration and let us follow up with Mike Moore present.

Mr. Lynch, The reality is that it is an uncoordinated review and an action under SEQRA and if I got the variance first without SEQRA it could be invalidated like that. We need to go forward and get it done. It is unfortunate council is not here tonight and it puts you in a pickle.

Chairman Coffey, Obviously you will get the variance but you will have to come back on the 21st.

Mr. Lynch, We can come back on the 21st without any difficulty at all.

Mr. DeCancio, so now do we have to withdraw the vote?

Mr. Platel, you did not vote.

Chairman Coffey, we were just in the process. So we will table this to the 21st and have discussion with Council in regards to the Negative Declaration.

Mr. Chairman, ok now we can talk about Mr. Baum. Do you want to have the discussion on that?

Mr. Platel. Did we close the Hoffman's hearing or not?

Mr. DeCancio, no we left the hearing open so that we can be provided further information.

Ms. Chartrand had some questions on what the board needed from the applicant and inquired what the board would like. The board informed her on the criteria and other factors that the board would look at in making the determination.

Chairman Coffey, now in respect to Mr. Baum's application do we want to discuss it and vote on it. Mr. Umina said that he would be able to do so and other members agreed to do so also. Chairman Coffey said that due to the letter from the neighbor he would not be in favor of granting the variance. Mr. Umina said that he felt comfortable with splitting the difference and allowing the garage to be 4' from the property line and would vote to that way. Mr. DeCancio would like to receive more information in regards to the actual location of the property line and asked for additional information from the applicant prior to making a decision. Not having all of the facts I could not vote in favor. Chairman Coffey says it appears that some additional information is needed by the board but if the applicant is looking for a decision tonight it appears you would be voting no. Mr. Micelli stated that I agree with Dave and I did let you know that neighbors do play a role in our decision and I would not like a garage right next to my window. If we got a survey we would be in line to make a decision where we could see right where the building would go. I would like to see more information and discussion this with your neighbor and also have the survey to help make this determination. Mr. Umina asked if a plot plan was available and if not what it would cost to the applicant and that maybe the town may have one. Mr. Platel said that you can also just get a just the property line surveyed. Mr. Baum asked what structures they would like to be shown and if they want his neighbor's house too. Mr. Watson was looking at supporting this application with some stipulations in regards to providing a survey or having the property line located. Mr. Umina said that a survey is an expensive proposition for the applicant but the other Board Members felt that a survey would be needed. Further discussion went on in regards to additional information being needed and the Board asked the applicant for additional information. The applicant said he will get more information and give it to the board when he gets it. Mr. Baum was informed that the board has 62 days from this date to make the decision by law since the hearing was closed.

The board approved the minutes of the March 3, 2010 with amendments on a motion by Mr. DeCancio and a second by Mr. Watson on a 5-0 vote in favor

The Board approved the minutes of the March 17 with amendments on a motion by Mr. Micelli and a second by Mr. DeCancio and with a 5-0 vote in favor.

Chairman Coffey reminded the board of the presentation by the Senior Planner in regards to the ESCO Tower located on Van Dyke Rd at the next hearing.

The meeting was closed at 8:28 on a motion from Mr. Watson and a second by Mr. DeCancio with a 5-0 vote in favor

Respectfully submitted MJP