

**PLANNING BOARD
TOWN OF BETHLEHEM**

October 5, 2004

The Planning Board, Town of Bethlehem, Albany County, New York held a **Regular Meeting** on Tuesday October 5, 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 pm.

Agenda: Delmar Health & Fitness – Amendment to Site Plan
William Van Valkenburg – Amendment to Barber Subdivision
CVS Pharmacy – Updated proposal for new CVS in Elsmere

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

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

Paul Hite, LLS, Delmar Health & Fitness
Michael Mashuta, Delmar Health & Fitness
Regina Wagner, Delmar Health & Fitness
William & Ellen Van Valkenburg, Barber Subdivision Amendment
Devin Dal Pos, Laker Development, CVS Pharmacy
Simone Sebastian, Times Union

Delmar Health & Fitness

Chairman Mathusa called the meeting to order and noted the presence of a quorum. He turned the Board's attention to the first item on the agenda, a request by Delmar Health & Fitness, LLC, for an amendment to their Site Plan Approval. They were proposing an increase to the amount of parking on the site. The Board of Appeals had approved twenty parking spaces to be placed in the AB Residential Zone to the rear of Commercial Zone with the stipulation that the Planning Board would approve the site plan amendment. Chairman Mathusa stated that the main issue with the proposal was the slope stability along the eastern side of the building.

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955.

Mr. Paul Hite, LLS presented for the applicant. Mr. Hite stated that the proposal included a driveway that would run along the east side of the building, into the rear of the site, with additional parking along that side, a few in the front and more in the rear of the site for a total of thirty-two (32) spaces. In 1998 the soils engineer, Mr. Vern Hoffman, had established a slope set back line on the easterly side of the site, so he had been contacted to do a reevaluation. Mr. Hoffman had submitted an updated soils report to the Board of Appeals when they went through the use variance process. At that time the question was raised if a retaining wall could be placed at the top of the slope. Mr. Hoffman did not think the additional weight of the wall at the top of the slope was a good idea. That updated soils report had been submitted to the Planning Department and the Engineering Division for their review. Mr. Hite stated that Mr. Hoffman didn't have any objections to the proposal and that should be reflected in his report. The grading for the driveway and parking lot would be on a 1 to 1.3 % grade so that all drainage would be directed to an existing catch basin. Mr. Hite had received the comment memo from the Planning Department, the main issue being the slopes. He felt the other issues could be addressed with no problems.

Chairman Mathusa asked if a guardrail could be place at the top of the slope for safety reasons. He noted it was quite steep and with two way traffic and snow, he was concerned. Mr. Hite stated it could be done, but pointed out there were woods that came up to that edge.

Mr. Silliman stated that the Board of Appeals had given a Use Variance to allow up to twenty parking spaces in the AB Residential portion of the zone, leaving the details of the Site Plan up to the Planning Board.

Mr. Lipnicky stated the slopes were thirty (30) to forty (40) feet deep. He had received the updated report from Mr. Hoffman but had not had the opportunity to review it in detail. During a site visit he noticed there was an erosion channel that was starting to form where the storm sewer line was located. That would need to be addressed. He mentioned to the Board that a zoning item that would need to be dealt with during the process. The Zoning Code required a five foot buffer area between a residential zone and a commercial zone. That boundary fell within the proposed parking lot. The code allowed the Planning Board the flexibility to adjust the location of that buffer into the residential area. Mr. Lipnicky asked the applicant about the area that would be used for snow storage on site. To the north of the parking lot an embankment is located that would prohibit snow storage. His concern was that the snow storage not be placed at the top of the slope.

Mr. Hite pointed to an area to the west of the rear parking lot that would be used for snow storage. They had no intention of putting the snow near the slope. He stated that the memo mentioned that the slope did not meet the 3(h) on 1(v) requirement set by Town standards. He had done calculations and come up with 2.8(h) on 1(v), they could correct that during the construction of the additional spaces.

Mr. Collier wanted to know if the Code specified the type of buffer that needed to be between the residential and the commercial zones. Mr. Lipnicky stated that a "visual

barrier” was required. Mr. Collier mentioned the slope to the rear was a visual barrier. Mr. Lipnicky didn’t believe that the buffer needed to be landscaped plantings. Mr. Hite stated that a large portion of the rear of the property was a mixture of brush and wood. Between the embankment and the vegetation, the parking lot would only be visible to one neighbor when driving back to their house.

Mr. Collier asked if the applicant was concerned with the weight and vibration of the proposed parking and driveway compromising the stability of the building. Mr. Hite stated that they were not concerned. When the building had been constructed, storm drainage had been put in that significantly dried out the site. Mr. Hite had done cross sections for Mr. Hoffman to show that the slope had not moved.

Mr. Mashuta stated that by having the piping installed the site had changed. It had dried out over the five years. That had been one of Mr. Hoffman’s concerns. The erosion ravine that Mr. Lipnicky had mentioned was a five year old ravine. The grading had not correctly directed the runoff to the catch basin. They proposed to re-grade so the runoff would hit the catch basin. The original contractor had never removed fabric from the basin and there was a sumac tree growing there that was inhibiting the basin from being utilized properly.

Mr. Lipnicky asked if the piping used was perforated because it had been said that the pipe was surrounded by gravel. Mr. Hite stated that it was not. Mr. Passmann asked Mr. Hite if it was the same design that was on the original approval. Mr. Hite acknowledged that it was. Mr. Hite stated that they had put in additional gravel because when they cut into the side of the bank there was a great amount of water that ran out of it. They put a 4 inch perforated pipe throughout the parking lot area to get it to the 12 inch main pipe.

Being no further comment, Chairman Mathusa stated that they would be placed back on the agenda as soon as possible.

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

Barber Subdivision Amendment

Chairman Mathusa introduced the next item on the agenda, a request from Mr. Van Valkenburg to amend the Barber Subdivision Approval. He wanted to amend the setback restriction from the Albany Water line to allowing a porch and a deck to be built onto his home. The setback restriction was put in place to minimize potential damage that might be caused in the event that the forty-eight (48) inch water line failed.

Mr. Van Valkenburg stated they were aware when they purchased the lot that there was a twenty-nine (29) foot building restriction line that was due to the close proximity of the Albany Water line. A friend suggested to him that if he contacted the Albany Water Board, they might allow him to build closer. He figured it couldn’t hurt to try. He stated that he walks his dog along the water line and he noticed that there were a lot of houses

that were closer to that line than what was sited in the Subdivision Approval document. He called the Albany Water Board and spoke with a Mr. Simcoe and explained that he wanted to build a porch and deck but couldn't because of the setback restriction. Mr. Simcoe told him that as long as the construction didn't come within fifty (50) feet of the water line itself there wouldn't be a problem. He had plans drawn up because the construction he wanted would be sixty-five (65) feet from the line. When he submitted those plans to the Building Department, they told him they needed a letter from the Albany Water Board confirming his conversation. The letter he received did not state the what he had been told on the phone. The letter from the City of Albany stated that they didn't have a problem with the deck but "they couldn't recommend any permanent type of structure". Mr. Van Valkenburg had asked for clarification but he had not heard back. At the second Zoning Board of Appeals meeting they closed the issue and had sent him a letter stating that his next course of action would be to contact the Planning Board.

Mr. Odell wanted to know why Mr. Van Valkenburg needed to go before the Zoning Board. Mr. Van Valkenburg stated that he needed three (3) variances. The three issues were the lot occupancy, setback and the proximity to the water line.

Mr. Lipnicky stated that this issue had been discussed with the counsel to the Zoning Board and it had been agreed that it was in the jurisdiction of the Planning Board. Because the setback restriction was within the approval document of the subdivision where the lot was located.

Ms. Motta wanted to know if the City of Albany had changed their policy. She noted that the last two letters received from them had different limitations for structures. One stated that the deck would be OK and the other stated no structures should be built.

Ms. Saatman stated that the Planning Board had consistently used fifty (50) foot setback from the waterline right-of-way, rather than the waterline itself. When this subdivision was in the process of being approved, the Planning Department had taken into consideration the letters from the Albany Water Department stating that a seventy-five (75) foot setback from the main itself would be sufficient. This deviation resulted in the Planning Board allowing the twenty-nine (29) foot setback in the subdivision. The Engineering and Planning staff didn't recommend any further encroachment into that setback area. The potential for property damage and safety issues were the reasons. The other structures that Mr. Van Valkenburg had mentioned that were closer to the waterline were either lots that hadn't come before the Board or they were located within subdivisions that were approved prior to the current practice of the Planning Board.

Mr. Van Valkenburg stated that his lot was higher than most of the lots around him. He didn't feel it was a safety issue for him.

Chairman Mathusa stated that the setback regulations for his lot were in effect. Mr. VanValkenburg was asking for an exception from those regulations. The Board's dilemma was setting a precedent of changing what the Planning Board had done over

approximately the last thirty years. If another forty-eight (48) inch line was installed, it would be even closer to his house which only increased the Board's concern.

Some of the Board members and staff tried to suggest to Mr. VanValkenburg some alternatives to the placement of his porch and deck. He was reminded by staff that regardless of how close the City of Albany was willing to let him build, the Planning Board had set specific setbacks for all structures within that subdivision. A condition in the approval stated that if the Albany Water Department had a greater setback, that would take precedent over the minimum standard set by the Planning Board.

Mr. VanValkenburg was informed that not only was the ability to build the porch in question but also the deck. He had assumed that the deck was OK because of the letter from the Albany Water Board. Ms. Saatman said that the Planning Board could take that into consideration but the condition was in the subdivision approval document.

Chairman Mathusa stated that he was reluctant to waive any conditions of a prior approval document. Mr. VanValkenburg thought that special consideration should be given to the fact that his lot size was small compared to the new houses of today. He didn't have any other direction to go in.

Mr. Odell stated that since he had been on the Board, the Board had been consistent with their setback requirements. He did not see any justification to rescind the condition. Mr. Collier agreed. He stated that when this subdivision was approved, the Planning Board investigated the Albany Water Board requirements and decided to use the centerline of the waterline to measure from for the seventy-five foot setback line and not the usual fifty (50) foot setback from the right-of-way line. The Board had gone out of their way to make the lots buildable.

Mr. Odell stated that as time goes by and new standards and requirements are placed on subdivisions, the older subdivisions look different. Mr. VanValkenburg's lot happens to be within a subdivision with newer standards. Mr. VanValkenburg did not feel that he was getting equal treatment. He reiterated the standards from the Albany Water Board which was fifty (50) to seventy-five (75) feet of the waterline. Ms. Saatman could not speak for the Albany Water Board and why they change their regulations. She stated that the Planning Board's determination took precedence over their requirements in this instance.

Mr. Collier asked if the deck was included in the structures that couldn't be built, did that also include patios and wood decks at grade. The Planning Department said that would be a question for the Building Department.

Chairman Mathusa stated that he didn't want precedent set by changing prior approval conditions especially when they involved safety issues.

The Board agreed and directed the Planning Department to prepare a Resolution denying the request to amend the Barber Subdivision.

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

CVS Pharmacy

The next item on the agenda was the proposed CVS Pharmacy to be located on the opposite corner of the existing CVS in Elsmere. This plan was revised since the first time this item was on the agenda.

Mr. Dal Pos, with Laker Development Group, presented for CVS. Mr. Dal Pos showed an overview of the existing conditions and the first proposal that came before the Board. The primary comment that they had heard from the Board was the desire for the building to be closer to the street. Other issues were pedestrian safety and visual impact from the street. They had reworked the design to satisfy the Board and also incorporate the needs of CVS. Before the design was presented to the next level in CVS, they felt that the support of the Board would make it easier to sell to the corporation. The revised design eliminated parking by the front door to the site and they had moved the building up closer to the street by eighteen (18) feet. They had increased the feature at the corner to look more like a pocket park, added benches and more landscaping. They took into consideration the comment about the amount of school children that frequented the store. To enhance the safety of pedestrian traffic they had added walkways and crosswalks to assist getting pedestrians into the store. Some parking that had been located along Elsmere Avenue had been removed and they had enhanced the flow of traffic. The amount of parking had been reduced from one hundred (100) parking stalls to eighty (80) in the new design. The area for the rear buffer had been increased which added to the area that could be used for above ground, onsite drainage. Mr. Dal Pos stated that they had measured the proximity of existing buildings to Delaware Avenue along the corridor. They ranged from twenty (20) feet to two hundred ninety (290) feet with the proposed CVS being sixty-five (65) feet from the street.

Mr. Dal Pos thought that this design could be sold to the higher echelon at CVS. Economically and functionally the design would work for them. As far as the esthetics of the building, an elevation was shown to the Board last time that they seemed to agree on. This would be the design proposed for this site. Mr. Dal Pos showed the Board the proposed landscape design for the site. He understood that the building was not all the way to the street, but he felt it was a compromise. They had lost some of their most valuable parking to try and meet the Board half way. They also enhanced the corner area and also suggested the possibility of placing a flag pole in that space if the Town wanted.

Ms. McCarthy wanted to know what would happen to the current CVS. Mr. Dal Pos stated that the lease on the property would expire during the coming year. He stated that the current CVS property was not large enough to do what they wanted.

Mr. Collier wanted to know why that corner was so important to them. Mr. Dal Pos stated that the primary turn movement at that intersection turns at Elsmere in the evening when

the majority of their business occurs. They prefer to be on the going home side of the street.

Mr. Dal Pos stated that the reason that they wanted to expand was because with the amount of customers they had, the building was not sufficient and the parking was inadequate.

Chairman Mathusa asked him to explain the function of the two drive-thru windows that they were proposing. Mr. Dal Pos stated that the lane closest to the building would be a pickup window and the outside bay would be for drop off only. Studies had been done and people want to pick up their prescription from a person. Chairman Mathusa asked if monitors could be set up like at a bank for prescription pick up instead of the face to face. Mr. Dal Pos stated that remote drive thrus had been tried and in this industry, they don't work. People didn't use them.

Ms. Saatman wanted to know where the closest CVS's were located that had drive-thru windows. Mr. Dal Pos mentioned Clifton Park. He stated that all the new proto types had them.

Ms. Motta thought it was a design that the Board could work with. The design incorporated some of the comments that the Board had made. If they incorporated some community elements into the elevation design that was previously shown along with good landscaping, she felt it would minimize the impact of the parking. She believed that the drive-thru had social value for the community. She liked the sidewalk and crosswalk that went to the front door and thought it would be beneficial to those who walked but believed that the majority of the patrons would be driving.

Mr. Cotrofeld wanted to know if there was a barrier or shield at the loading dock. Mr. Dal Pos stated that there wasn't a barrier around the trash compactor but there was an enclosure for the dumpster. Mr. Cotrofeld had reservations about the location of the drive-thru. It seemed too many lanes were converging at the same place and the site distance around the building was limited. Mr. Dal Pos asked if curbing might be helpful. Mr. Cotrofeld suggested moving the window back away from the end of the building. Mr. Dal Pos stated that the reason for the placement of the drive-thru was because of the location of the pharmacy within the store. The layout of the store was critical to its operation. There were only two places that it could be located, one being its proposed placement or on the rear of the building.

Ms. Motta wanted to know if having two windows was necessary. Mr. Dal Pos said that because of the volume of the business it was necessary.

Mr. Cotrofeld said it was a nice attempt, he liked the layout of the corner and the softening of the view from Elsmere. He would like to see the view along Delaware Avenue softened even more. He suggested less parking and more green space. Chairman Mathusa stated that there was only one row of parking, so it was one or none. Mr. Dal

Pos stated that there was about twenty (20) feet of landscaping proposed along Delaware Avenue.

Mr. Odell felt that the developer had heard the Planning Board by the changes that had been made. Though it wasn't everything that they wanted, he doubted that getting everything was possible. He liked the corner treatment and preferred maximizing the green space and the landscaping. He thought that getting the pedestrians from the corner and into the store in a safe manner was important which was why he liked the walkway and crosswalks.

Mr. Engel liked the concept and he would support it. He thought that a drive-thru in the community was important. Having the drive-thru on the side and the loading dock in the back allowed for more landscaping in the front. He had been concerned that if the building was pushed up to the street, it would put the pedestrians in the path of the truck traffic. He had spent some time driving up and down Delaware Avenue and noticed that after the underpass the road widens and the speed limit increases. As you go closer to Albany, the majority of the buildings are set back further from the street. He thought that the proposed setback distance blended in with the existing structures. He felt that the existing CVS has problems with pedestrians walking through their parking area. Mr. Engel stated that with proper landscaping and the right design for the building, it would be an asset to the community.

Mr. Collier stated that he had liked the first plan and thought that the revised design was a good compromise for those that were interested in the urban streetscape for the building versus the suburban streetscape. One of his concerns was the long drive along the front side next to the sidewalk. He wanted to make sure that the sidewalk was wide enough. This plan faced Delaware Avenue at about the same depth as one of the buildings that would be removed. He stated that he had been in contact with scout master of a troop that met at the Elsmere School and they were interested in taking on the pocket park as a community project. He agreed with Mr. Cotrofeld for the need for screening along Elsmere Avenue to soften that approach. Mr. Dal Pos stated that the grade was quite steep in that area.

Ms. McCarthy had heard from many people that Delaware Avenue was not attractive and felt it was due to all the setbacks. She stated that with all the cars and asphalt you lose the sense of being in a small town. She did feel that the developer had made a good improvement over the original proposal but felt that this was the opportunity to begin the transformation of Delaware Avenue to an urban landscape. She still wanted to see the building moved closer to the street. She did like that elevation that was quite different from a block structure. She stated that to her it looked as though her neighborhood would still have a great deal of cars and pavement.

Mr. Dal Pos stated that many of the businesses that were set back along Delaware Avenue were lacking any landscaping in the front and it truly was a "sea of asphalt". They weren't proposing that at all. They have a significant amount of landscaping proposed to soften that corner. He felt that the old Boston Chicken market was a hard

surface at the corner and not at all inviting. They were trying to accommodate the walkers.

Chairman Mathusa wanted to know if a walkway could be added to the design for the people walking up Elsmere Avenue that would lead up to the store. Mr. Dal Pos said that could be incorporated. Mr. Odell wanted to know how a delivery truck would come onto the site and maneuver around. Mr. Dal Pos didn't have an answer for Mr. Odell but he would look into it.

Mr. Dal Pos wanted to know if he could get a sense from the Board as to whether there was an acceptance so they could make their proposal to CVS. They were hoping for an expeditious approval from the Board.

Mr. Lipnicky stated that he saw the dividing line between the highway commercial strip and the residential as Elsmere Avenue. He stated that this proposal would add to the view of parking lots when driving on Delaware Avenue that includes the medical building, the existing CVS and now this proposal. He felt that the Boston Chicken building anchored the corner. By positioning the building back it extends the highway commercial strip into Delmar. He felt that the building needed to be at the corner, the long side of the building needed to be oriented to Delaware Avenue and the entrance should be to Delaware Avenue if they want pursue the idea of a more urban, more village sense for Delmar.

Mr. Lipnicky said that the proposal was oriented to the automobile with landscaping and berms like there is at Walmarts. Mr. Dal Pos disagreed. He felt that unless there was an atmosphere for businesses to flourish and succeed then the revitalization would not take place. Mr. Lipnicky agreed that Delaware Avenue did not have the same streetscapes as some older towns in the southern part of the state but it could be better than extensive parking lots.

Mr. Dal Pos thought that they had compromised the best they could and still have the necessary components to be a viable business. They had tried to listen to the Board and add features that softened the look at that corner as well as agreeing to the elevation the Board preferred.

If given the go ahead, they would produce a perspective for the Board that looked from the opposite corner through the landscaping towards the building. Mr. Lipnicky stated that coming up Elsmere Avenue, the view would be parking lot. Mr. Silliman said that he drove it everyday and in his opinion, one of the biggest problems coming down Delaware from Delmar and turning onto Elsmere, was that the Boston Chicken building was blocking the view at the intersection. He thought this was an improvement to that condition. Mr. Dal Pos said that traffic safety at corners was one of their concerns. They felt landscaping was easier to see through than trying to look around a building.

Mr. Dal Pos thought that they had tried to listen to the Board's concerns and stated that few enterprises would have the finances to redevelop this site and make it a viable part of

the community again. They had listened to the pedestrian concerns with walkways and crosswalks for safety.

Ms. McCarthy stated that the moratorium was put in place to step back and take a look at the amount, type and look of development in the Town. She felt that the Board had an opportunity to craft something that was attractive.

Mr. Silliman stated that this proposal complies with all the standards of the Town Code and he doubted that the permitted uses in this area would be changed. The Board was at a point where the developer had stated that this compromise was the best they could do and it was up to the Board to decide if they could accept this proposal.

Chairman Mathusa felt that the driving force behind the design was the drive-thru window. He thought that this design kept the pedestrians separate from the drive-thru traffic. He understood the desire of wanting a streetscape but he did believe that the developer had listened to the concerns of the Board from the last meeting. He wanted some time to give it more thought.

Mr. Dal Pos thought that along with the esthetics of a community, economic viability needed to be taken into consideration. He understood it was a challenge. Ms. Saatman said that good design attracted other business to the area. Mr. Dal Pos stated that investors, whether in real estate or business have to be convinced that the Town's vision would afford them the possibility of economic success.

Mr. Collier felt that the challenge of this developer was to propose a design that would fit on the site and incorporate what they needed. He stated that the building would be closer than Dunkin Donuts and almost as close as My Place. He doesn't see this building as being set way off from the street. He thought it would be closer to the road than was being perceived. He felt there was more green space on the proposal than what currently existed.

Ms. McCarthy felt that no matter what the CVS looked like and where it was situated it would be successful. Mr. Dal Pos stated that the executives that have to invest, don't believe that statement. He believed that people would frequent an establishment that was convenient.

Mr. Collier thought that how the building presented itself to the road was more important than how close it was to the corner. He thought that this design presented itself very well. Chairman Mathusa wanted to know if the whole building could be brick. Mr. Dal Pos said he would present that idea to CVS.

Mr. Passmann noted that the position of the loading dock could present a problem with traffic flow. The solution to that might necessitate moving the building. He suggested that issue be resolved before any agreement was reached on the final location.

Mr. Silliman asked Mr. Dal Pos what he was looking for from the Board. Mr. Dal Pos was hoping for a preliminary approval of the design of the site. Mr. Silliman didn't believe that was possible until the loading dock issue was resolved. Chairman Mathusa also wanted the Engineering Division to give some approximations on the storm water system. Mr. Passmann stated that when the Planning Board agreed on the general location of the building, the Engineering Division would recommend that the applicant consult with DEC on their storm water management approach. The approach that they had proposed followed the DEC's interim guidelines for redevelopment projects. Some of the criteria in there didn't appear to be met by what is being shown on the site.

Mr. Collier wondered if an unofficial poll could be taken for the developer in order to give him a sense of where the Board stands on the proposed site. Chairman Mathusa preferred to get some feed back on the dock first. He stated that through an unofficial count it appeared that 5-2 or 6-1 of the Board were in favor of moving forward. The applicant had stated that they would give the Board some sketches from the Delaware Avenue and Elsmere Avenue viewpoint. Chairman Mathusa stated that he was willing to put the project back on the agenda in two (2) weeks to give them a more firm yes or no.

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

A motion to approve the minutes from September 21, 2004 as amended was offered by Ms. McCarthy, seconded by Ms. Motta and approved by all present.

A motion to adjourn was offered by Mr. Engel, seconded by Mr. Odell and approved by all present.

The meeting adjourned at 9:40 PM.