

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

April 15, 2009

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

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

Mark Platel, Assistant Building Inspector

AGENDA: Pines @ Normanside

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

DISCUSSIONS

Pines @ Normanside

The applicant has submitted an application for an area variance under Article XIII, Section 128-100, Schedule of Area, Yard and Bulk Requirements. The Public hearing was held on April 1, 2009.

Chairman Hodom said the Board had been included in the correspondence between Mr. Moore and Mr. Platel regarding this application. Chairman Hodom asked Mr. Platel why he was referencing Section 128-16 as a possible solution to this application. Mr. Platel said Section 128-16 says when a lot is divided by a zoning district boundary either Section A or Section B shall apply. He said if the Board doesn't feel that there is a compromise that can be found; the applicant would need a use variance. Chairman Hodom said initially the Board thought one (1) of the proposed uses for the mixed use building in the Commercial Hamlet Zone was also allowed within the Core Residential Zone. Mr. Platel said neither of the proposed uses would be allowed in the Core Residential. Only single family dwellings are allowed in Core Residential. Chairman Hodom said in applying Section 128-16, he would look to whether either of the uses being proposed for the mixed use building in the Commercial District were allowed in the Core Residential. He thought then the Board could consider the driveway running through the residential district to the commercial use under Section 128-16.

Mr. Micelli said his interpretation of that section of the Zoning Law was the same as the Chairman's. Mr. Moore asked and it was confirmed that the project was one single lot. Mr. Platel said it was one parcel at this point but the proposal was to subdivide it. Mr. DeCancio said Lot 11 was one (1) parcel.

Mr. Tucker from Infinigy Engineering said the applicant was currently in front of the Planning Board for a subdivision. Chairman Hodom asked if he had had any conversations with the adjoining land owner for a cross easement agreement. Mr. Tucker said his client has sent them a letter to start those discussions. He said they weren't sure it would work because the neighbor might lose some parking spaces to give them that easement. A cross easement is when the adjoining property allows a means of access across their property to the other property. Alternatively, a shared parking situation could also be setup by both of the property owners.

Chairman Hodom said it appears that there is an undeveloped area behind the parking lot of the adjoining property owner. It was asked and confirmed that the undeveloped parcel was owned by the adjoining property owner. Chairman Hodom asked if that was the area the applicant would use for the cross easement. Mr. Tucker

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was not sure, they've just reached out to that neighbor and have not received any answers back as of yet. If the cross easement was to be for access only, they would probably try to use that green area. If the easement were to be for shared parking and access they would keep the driveway where it was currently located. Chairman Hodom asked if the applicant has had any conversations with NYSDOT about a curb cut on Delaware Avenue. Mr. Tucker said Planning Department staff had written a letter to them and received a response back stating that NYSDOT is trying to limit the curb cuts on Delaware Avenue. They didn't say they wouldn't allow it but not having a curb cut would be in keeping with NYSDOT's safety issues and the Town's Comprehensive plan. Access from Delaware Avenue would mitigate any variance request the applicant would need for a use or area variance. Mr. Tucker was skeptical that NYSDOT would give their approval for a curb cut and additionally they would need to put the parking lot in the front yard, which is not in keeping with the design guidelines for the district.

Chairman Hodom asked Mr. Tucker if he had the authority to grant the Zoning Board an extension of the sixty-two (62) days from the close of the public hearing in which they must make a decision, until the applicant has been able to come to a resolution with the adjoining property owner about the cross easement. Mr. Tucker thought he did but the applicant had filed for an area variance for the width of the lot, he thought it was a different issue than the access issue. He would prefer to have the Board act on that variance first. If at a later date they cannot resolve the access issue without a variance, the applicant would come back to the Zoning Board. They preferred that course of action because if the Board did not grant the width of lot area variance, the applicant would not have to pursue the access issue because they couldn't develop the lot. Mr. Moore agreed because the Board's jurisdiction is only appellate and the Building Inspector has not determined that there is a need for a variance for the access. The Zoning Board needs a formal determination.

Chairman Hodom started the discussion of the area variance request before the Board. He said because the majority of the parcels along Delaware Avenue were less than the one hundred (100) foot requirement in the Zoning Law, he didn't think it was necessary to have that requirement for this application. The benefit to the applicant outweighs any detriment to the community at this location. There are existing facilities on both sides of the parcel which precludes the applicant from purchasing additional property to obtain the one hundred (100) foot requirement. He didn't think the development of the parcel would be detrimental to the district, environmentally or otherwise. The applicant has proposed architectural features to blend in with the existing properties along Delaware Avenue. He thought the area variance should be approved for the seventy-five (75) foot lot width.

Mr. Micelli agreed that the width variance should be approved. Mr. DeCancio said the parcel was consistent with all the other parcels along Delaware Avenue and the applicant doesn't have any other alternatives. He thought the lot width variance should be approved. Mr. Umina agreed. Mr. Watson said it maintains the character of the neighborhood and the project would be a nice addition to the area. He approved of granting the width variance. Mr. Moore said there should be a notation regarding the access issue.

Chairman Hodom suggested the approval be conditioned subject to a use variance or a cross easement with the property owner at 229 Delaware Avenue or the purchase of additional property or access from Delaware Avenue.

A motion to approve the application as conditioned was offered by Mr. Watson, seconded by Mr. Umina and approved by all Board members present.

Chairman Hodom directed Zoning Board Counsel to prepare the necessary Resolution and advised Mr. Tucker to pursue the access issue as soon as possible. Mr. Tucker asked if the applicant would definitely need a use variance for the access driveway as presented. Mr. Moore said his advice to the Board and to Mr. Platel is the proposal reflected on the site plan for a driveway access from Leonard Place through a residentially zoned property to a commercially zoned property would require a use variance. After the applicant exhausts his options for an access and if there isn't another solution, the building inspector will send him a formal determination as to how to proceed with the application.

The Board reviewed the minutes of April 1, 2009 prepared by staff.

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

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

The meeting adjourned at 7:30pm.

Respectfully Submitted,

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