

**TOWN OF BETHLEHEM
BOARD OF APPEALS
February 21, 2007**

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. Michael Hodom, Chairman, presiding.

PRESENT: Michael Hodom, Board of Appeals Chairman
Gilbert Brookins Board of Appeals Member
Anthony K. Umina, Board of Appeals Member
Mark Hennessey, Board of Appeals Member
Michael Moore, Attorney to the Board

Mark Platel, Assistant Building Inspector

AGENDA: JKC Realty, LLC
Benderson Development
Eric Farbent
Capital Communications
Nathaniel Adams Blanchard Post

Chairman Hodom called the meeting to order and opened public hearing at 7:00pm.

JKC Realty LLC

The first item on the agenda was a public hearing for a Variance under Article XIII, Section 128-100, Schedule of Area, Yard and Bulk Requirements, minimum lot width and minimum highway frontage requested by JKC Realty, LLC for property at 448 Rt. 9W, Glenmont. The applicant wants to subdivide an existing lot.

Mr. Platel stated that the applicant should have submitted two (2) separate applications because the variance requested for minimum lot width and minimum highway frontage, would be needed for both of the lots that would be created. The Board decided to continue the Public Hearing for Lot #2 and then the applicant would submit the variance application for Lot #1.

Mr. Platel stated that the applicant is proposing to separate an existing lot into two (2) separate parcels. Lot #1 would have a lot width of ninety-one point zero nine (91.09) feet, this is eight point nine one (8.91) feet shy of the required one hundred (100) feet. Lot #1 would have ninety-four (94) feet of highway frontage which is six (6) feet short of the required one hundred (100) feet. The lot is located in the Commercial Hamlet District and the existing use of the building is for a business office.

A motion to indent the public hearing notice was offered by Mr. Hennessey, seconded by Mr. Umina and approved by all Board members present.

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

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday, February 21, 2007, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of JKC Realty for a Variance under Article XIII, Use and Area Schedules, Section 128-100, Schedule of Area, Yard & Bulk Requirements, minimum lot width and minimum highway frontage of the Code of the Town of Bethlehem, for the ability to create an additional buildable lot, at 448 Rt. 9W, Glenmont, , New York.

Mr. Bruce Whiting presented for the project. He is the owner of Whiting Insurance Company and JKC Realty LLC that owns the property that was purchased in the summer of 2006. The parcel is approximately three quarters (3/4) of an acre with one (1) building that is occupied by Whiting Insurance. He wants to subdivide the parcel into two (2) separate parcels and sell the newly created parcel to another small business owner, retaining the other parcel for his own use. He would like to sell to a business owner that could share parking and the existing access onto Rt. 9W. The existing parking lot could be expanded and used by both businesses.

Chairman Hodom asked if there were any regulations in the Zoning Law that would prevent shared parking and access. Mr. Platel stated that it was encouraged.

Chairman Hodom asked if Mr. Whiting had tried to purchase the approximately thirty (30) foot strip of adjoining land from the Kings Chapel Church. Mr. Whiting said he discussed it with the church. The non-buildable piece of land was about thirty (30) feet wide and two hundred (200) feet deep. The Church had been open to the idea of selling the property.

Mr. Whiting said that even with the purchase of the thirty (30) feet the proposed lots would be short the required lot width for the two (2) lots and he would still need a variance. Chairman Hodom said the amount of variance needed would be significantly mitigated with the purchase of the land. He wanted to know how soon Mr. Whiting might have an answer from the church.

Mr. Whiting said that he had wanted to see the outcome of tonight's meeting before furthering the conversation with the Church. It was more economical for him not to have to purchase the land. The other alternative he had considered was to leave the parcel as one (1) piece and do a land lease with a build to suit for an additional business. Chairman Hodom wanted to know if that alternative would work better for Mr. Whiting. Mr. Whiting said that most buyers preferred the simple sale of land instead of a land lease. A land lease could not be combined into a mortgage. He preferred the separation of the parcel and the ability to sell it.

Chairman Hodom asked if the thirty (30) foot strip of land was purchased, would one (1) of the lots be in full compliance with the Zoning Law. Mr. Whiting said that an even split of the parcels put a diagonal property line across the driveway. To eliminate that

problem, the lot he would retain would be larger. Mr. Whiting said that he had spoken with the Planning Department about his plan and they were pleased with the renovation that he had completed on the existing building on the site. The reuse of existing structures was favorable to the Town and a goal of the Comprehensive Plan.

Chairman Hodom asked if he had spoken to any of his neighbors with his intentions. Mr. Whiting said he had spoken with the veterinarian on the north side of his parcel. The owners of that parcel were looking to expand at some future time and Mr. Whiting said he would be open to also sharing parking with that business which could further reduce the number of curb cuts on Rt. 9W. Mr. Whiting said that he had not spoken with Monroe Muffler.

Chairman Hodom asked the types of businesses that he would like to attract to the parcel. Mr. Whiting said that he would be looking for a professional office. Mr. Brookins asked if the applicant had any interested buyers for the parcel. Mr. Whiting said that there were inquires only. Mr. Hennessey asked how much the parcels were worth together versus separated. Mr. Whiting said he thought they would be more valuable as separate parcels but did not have specific numbers.

Mr. Platel said that if the variances were granted, the newly created parcel would need site plan approval from the Planning Board prior to building.

Chairman Hodom suggested adjourning the Public Hearing to a date uncertain until the applicant submitted his second application and had the opportunity to continue his conversation with the Church about the purchase of the land.

A motion to adjourn the Public Hearing to a date uncertain was offered by Mr. Brookins, seconded by Mr. Umina and approved by all Board members present.

The Public Hearing adjourned at 7:26.

Benderson Development

The second item on the agenda was a Varinace under Article VI, Section 128-59 (J) (1), Quantity of Free Standing Signs requested by Benderson Development for property at Feura Bush Road, Glenmont. The applicant wishes to construct two (2) additional free standing signs, one (1) sign on Feura Bush Rd. and one (1) sign on Route 9W.

Mr. Platel stated that the applicant wanted to construct two (2) free stand signs. The additional signage would give the applicant a total of four (4) free standing signs. The zoning law permits two (2) free standing signs, exceeding the allowable signage by two (2) signs, for a shopping center with two (2) street frontages. The parcel is located in a Commercial Hamlet District.

A motion to indent the Public Hearing notice was offered by Mr. Umina, seconded by Mr. Hennessey and approved by all Board members present.

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday, February 21, 2007, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Benderson Development for a Variance under Article VI, Supplementary Regulations, Section 128-59 J (1), Signs in shopping centers & shopping malls, of the Code of the Town of Bethlehem for construction of two (2) free standing signs, at Glenmont Plaza, Glenmont, New York.

Michael Mundy, Benderson Development, presented for the project. He stated that they were re-developing the shopping center, bringing in new tenants for the site. They had waited for the new amendments to the Zoning Law that now allows a shopping center with two (2) street frontages to have two (2) free standing signs. He stated that when the parcel was purchased, the McDonald's Restaurant already had free standing signs on Route 9W and Feura Bush Road. He stated that visibility was critical for the retailers within the plaza. They thought that safety also was a concern. People needed to easily see the stores offered within the center. Mr. Mundy had worked with Mr. Morelli, Assistant Director of Economic Development and Planning, on a sign package that would be something the Town would like to see as well serving the needs of the developer. Mr. Mundy said that the Zoning Law allowed two hundred (200) square feet with two (2) signs. Their proposal was for an eighteen (18) feet high, eighty (80) square foot pylon sign on Route 9W identifying the Plaza and the retailers within and an eight (8) foot high monument sign on Feura Bush identifying the plaza. The signs would be internally illuminated. All four (4) signs would have a total of one hundred forty (140) square feet, which is sixty (60) square feet below the allowable. The monument signs for McDonald's were a pre-existing condition prior to Benderson Development purchasing the Plaza. They had explored subdividing the parcel, but setback requirements and the existing lease prohibits them from pursuing that course of action.

Mr. Platel said that when the plaza was first built, the owners would have had to go back to the Planning Board for a pylon sign on Route 9W. They never did. The only signage for the retailers was on the facade of the individual stores.

Chairman Hodom asked if the applicant had tried to have McDonald's join their signage with the plaza's. Mr. Mundy said they had tried and thought that the franchisee might be open to that but the corporate office of McDonald's was not receptive. They would not give up any signage. Mr. Mundy did not have anything in writing to that effect. Mr. Umina asked how long the term of the lease with McDonald's was. Mr. Mundy said they had options for about another thirty (30) years.

Each tenant would have signage on the façade of their space.

Mr. Morelli stated that the Comprehensive Plan listed a number of priorities. The Glenmont Plaza was specifically mentioned as a Tier One priority for redevelopment. The Town wanted to see adaptive reuse of vacant buildings. Mr. Morelli said Mr. Mundy

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

and Benderson Development have been very responsive in their dealings with the Planning Department. The Planning Department had requested they look very carefully at the signage package being submitted. The sign package is sixty (60) square feet less than what is allowed. They have taken the suggestion to treat the Feura Bush Road sign differently than the proposed signage for Route 9W. Mr. Morelli said that if the Board were to consider the signage, that the sign on Feura Bush Road should be moved to area on the inside of the sidewalk to provide better visibility.

Mr. Morelli said that the Town receives many phone calls concerning when stores within the plaza will be opening. He said it could be a deal breaker for the Marshall's store if they are not allowed free standing signage. The Town felt it was a critical project for the Town and they were in favor of granting the variance.

Mr. Mundy said that Marshall's believes in the Glenmont site but the plaza cannot be seen from the intersection. Mr. Crocker, Real Estate Director for the Marshall's, said they were looking forward to opening up in Glenmont but as part of the business model they look at co-tenancy. They are taking a chance because there isn't another tenant specified as yet. They do like to have good signage to attract people but also for safety reasons. With new people and additional homes being built not everyone knows where the center is located.

Linda Jasinski said she drove Route 9W everyday. She is on the Route 9W committee and has watched the progress of the redevelopment of the plaza. She felt they had done a wonderful job. She said that businesses need signs and you need to see far enough in advance to know where businesses are located and where to turn and she thought the signs were tastefully done. She was in favor of granting the variance.

Robert Jasinski, Bender Lane, said he had watched the project develop and he said that the businesses need support to remain. He said it might be detrimental to the stores not to have appropriate visibility. He was in favor of granting the variance.

Bruce Whiting, Whiting Insurance, said that he was in favor of granting the signage. He had seen three (3) accidents within the last six (6) months in that area and he assumed it was because people were driving by the plaza and looking to see what stores were there because there is no signage.

Mr. Brookins said that for clear line of site coming out of the plaza, the sign on Feura Bush Road, should be set to the interior side of the sidewalk. Mr. Mundy said that they would comply with that request.

Mr. Mundy said that other potential tenants were looking to see how the Marshall's does once they are open. That opening was critical.

Chairman Hodom declared the hearing closed at 7:50.

Eric Farbent

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

Mr. Farbent had requested an extension of a variance for a setback that was granted on June 1, 2005. Mr. Moore stated that after reviewing the request, his conclusion was that the Board did not have the authority to grant the extension because the Town Board had changed the setback requirements in that zoning district. He said that the applicant had a three choices; either complete the project in the time allotted in the variance resolution; acquire vested rights in the project through “substantial improvements and substantial expense” and then be able to complete it after June 1, 2007 or wait until the variance expired and reapply for a variance under the new setback requirements.

The Board asked Mr. Moore to send a letter to Mr. Farbent, informing him of his options. If the Farbent’s still wanted to come in front of the Board with their request, that would allowed.

Capital Communications

Chairman Hodom turned the Board’s attention to the next item on the agenda, Capital Communications.

Chairman Hodom said that he had visited the property again and had spoken with Mr. Morelli concerning the Town’s recommendation to change the zoning of the parcel and other small lots in the area to a commercial hamlet. The application as submitted would comply with all the requirements of the commercial hamlet zone. He thought the credit union was a good development for that parcel. It was a low traffic generator with no night hours of operation. There was a problem with the rear of the site and placing the building further back would be very difficult to impossible. The Board had received a letter from Mr. Bercharlie’s attorney clarifying that the parcel next door was not for sale in pieces. Chairman Hodom was in favor of granting the variances.

Mr. Brookins said that the conditions for consideration of area variances were laid out for the Board. He felt this would change the character of the southwest corner significantly. By granting the variances, the Board could be allowing or it would be viewed as spot zoning. He thought there were other parcels that could meet the applicant’s needs. One of the applicant’s options was to wait for the Town to rezone the parcel. He thought the list of variances was substantial and the impact on the adjoining properties was unclear. He said that every day he hears people voicing their concern over the traffic and development happening along Route 9W. He was surprised that more people did not come to the public hearing. Mr. Brookins was not in favor of granting the variances for those reasons.

Mr. Umina said that he has reservations but the benefit to the applicant outweighed the detriment to the Town. He thought it would be a financial burden to the applicant to make them wait for the Town Board to rezone the parcel. Mr. Umina was in favor of granting the variances.

Mr. Hennessey said the Board was being asked to look at something that may be changed in the future. Granting a variance that could eventually become non-existent is difficult. He thought they needed to base the decision on the merits of the project before them. His initial concern was the impact that a similar business would have on pre-existing businesses in the area but he viewed new businesses in Town as a good thing. After weighing all the information, Mr. Hennessey was in favor of granting the variances.

Mr. Moore said the Board could include a recommendation in the Resolution to the Economic Development and Planning Department and the Town Board that they take the comprehensive look at the zoning in the area, sooner rather than later.

A motion to approve the variances as submitted was offered by Mr. Umina, seconded by Mr. Hennessey. The vote was Mr. Umina, Mr. Hennessey and Chairman Hodom for, Mr. Brookins against and Mr. Micelli absent. The motion passed.

Nathaniel Adams Blanchard Post

The Board reviewed the Resolution prepared by Counsel. Minor changes were made and it was determined that because two (2) of the Board members had recused themselves from the project and one (1) of the Board members was absent this evening, the vote on the Resolution would need to take place at the March 7, 2007 meeting.

The Board reviewed the minutes of February 7, 2007.

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

A motion to adjourn was offered by Mr. Umina, seconded by Mr. Hennessey and approved by all Board members present.

The meeting adjourned at 8:25pm.