

**TOWN OF BETHLEHEM
BOARD OF APPEALS
January 5, 2005**

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
Marjory O'Brien
Gilbert Brookins
Leonard Micelli

Michael Moore Attorney to the Board

Mark Platel Building Inspector

ABSENT: Robert Wiggand

Chairman Hodom called the meeting to order at 7:30 p.m.

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. Welcome and happy New Year. Our first hearing this evening has been postponed for James Dertinger. Any Idea when he's going to have the documentation we requested?

MR. PLATEL: I told him I would talk to him again. He was going to contact his own lawyer.

CHAIRMAN HODOM: So we will reschedule the James Dertinger, Dunbrook Mobil hearing to a date uncertain and hopefully it's within 30-days. Our second hearing is scheduled for 7:45; we do have some other business we can take care of in interim.

The next order of business was to consider the application of Cingular Wireless. The application was found to be in order and Mr. Brookins made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Cingular Wireless for Special Exception under Article VI, Permitted Uses, Section 128-20 C (1), Public Utility & Chapter 113-4 A (1), Alternative Tower Sites to collocate 6-panel antennas and related call processing equipment to an existing tower at premises 44 Hannay Lane, Glenmont, New York, it is hereby ordered that a public hearing on this matter be held February 2, 2005 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mrs. O'Brien seconded the motion and it was unanimously carried by the Board.

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The next order of business was to consider the application of Bob Hughes, 2 Knights Way, Albany, New York. The application was found to be in order and Mr. Micelli made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Bob Hughes for Variance under Article XII, Percent of Lot Occupancy, Section 128-50 & Article XVII, Side Yards, Section 128-73, required Widths for the construction of a sunroom addition, which will exceed the allowable percentage of lot occupancy and an existing foundation, which currently encroaches into the side yard setback requirement at premises 2 Knights Way, Albany, New York, it is hereby ordered that a public hearing on this matter be held February 2, 2005 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mrs. O'Brien seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of Scott & Barbara Rogler for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for construction of an addition, which will exceed the allowable percentage of lot occupancy at premises 139 Marlboro Road, Delmar, New York 12054. The following points were brought up by the Board members in favor of the proposal: The proposed addition wouldn't have a negative effect of the surrounding community. There were no neighbors that spoke in opposition to the proposal. There would be conditions set forth in the resolution to reduce the overall

percentage of lot occupancy. The following points were brought up by the Board member in opposition of the proposal: The proposed addition is substantial and with the existing sheds on the property would be over the 20-percent that's allowed. The Applicant can make adjustments on the proposal to reduce the overage. On a motion made by Mr. Brookins, seconded by Mrs. O'Brien, on a vote 3 to 1, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on January 19, 2005.

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The next order of business this evening is a public hearing for a Variance under Article X, Highway Frontage & Access, Section 128-41, Driveway Placement on Residential lots requested by Michael Rowe for property at 350 Elsmere Avenue, Delmar, New York. The Applicant wishes to remove an existing Driveway and replace it in a different location, which would cross a 50-foot PRD setback at the premises of 350 Elsmere Avenue.

CHAIRMAN HODOM: Mr. Platel, would you give us the reason for the hearing, please?

MR. PLATEL: Yes, Mr. Chairman. The Applicant is seeking an area Variance in order to remove an existing driveway and construct a new driveway that will connect to a new town street. The code requires that the driveway be located within the abutment of the lot that the dwelling was located upon and the town road or highway. The proposed driveway will pass through the lands of the Walden Fields Homeowners Association and then access the Town road. This does not meet the abutment requirement.

The existing structure is occupied as a single-family dwelling with an accessory garage and is located in an "A" Residence District.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, would you please read the official call of the meeting?

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday January 5, 2005 at 7:45 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Michael Rowe for Variance under Article X, Highway Frontage & Access, Section 128-41, driveway Placement on Residential Lots, of the Code of the Town of Bethlehem for the removal of an existing driveway and replacement in a different location, which will cross over a 50-foot PRD setback at premises 350 Elsmere Avenue, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the December 29, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons

listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition of the Applicant. Anyone desiring to speak will be allowed to do so, we just ask that you come up, stand or sit close to the black microphone, it's for recording purposes only. Any questions or comments should be directed to the Board. Mr. Rowe if you would – let me ask Mark a question. I know you made a reference to the abutment requirement, are we looking at a minimum 28-foot wide access to the property?

MR. PLATEL: No, this isn't for access. They do have access already to Elsmere Ave. This is just strictly for the location placement of the driveway, okay the driveway is supposed to be within the abutment of the road and the property. They're actually going to use it from - - they won't have the abutment anymore because there will be a piece of land in between. The abutment that they are using is....

CHAIRMAN HODOM: Okay so it's part of the green-space of the development?

MR. PLATEL: Correct.

CHAIRMAN HODOM: The homeowners...

MR. PLATEL: The Homeowners Association.

CHAIRMAN HODOM: Association owns that, okay. Mr. Rowe if you would just introduce your self to us and give your address and tell us what you want to do and why you want to do it.

MR. ROWE: My name's Michael Rowe and I live at 350 Elsmere Avenue. What we're requesting is to relocate the driveway from its current position where we access the driveway from Elsmere Avenue to the new Town Road, which I believe is Sedgwick Drive. We would remove the existing driveway and install a new driveway to Sedgwick with the intention of improving the safety of entering and exiting the property and also shortening the driveway and just making it more user friendly for us as homeowners.

CHAIRMAN HODOM: Just some clarification to the Board that our duty this evening is to either approve or not approve the Variance. If we do approve the applicant's request it still must go to the Planning Board for their review and change to the PRD documents.

MR. PLATEL: To the Town Board.

CHAIRMAN HODOM: And then to the Town Board. The developer also would have to have Mr. And Mrs. Rowe sign a license of some kind, which would be that they would

agree to the requirements of the Homeowners Association to maintain and continue that area through the green-space. The plan that we had submitted to us Mr. Rowe shows the new driveway coming into the side of the existing garage. Are you building a new garage as well?

MR. ROWE: Yeah the plan would be probably in the summer of 2007 to reconstruct the garage to face the driveway and expand the garage in size somewhat.

CHAIRMAN HODOM: Let me just show you the plan that I have. Is that the approximate location of where you intend to install that driveway?

MR. ROWE: Yes.

CHAIRMAN HODOM: Okay. Just let the record show that the new driveway comes off of Sedgwick to the side of the existing – it is a one-car garage?

MR. ROWE: Yes.

CHAIRMAN HODOM: Currently in existence. But you intend to remove the existing driveway, which comes off of Elsmere?

MR. ROWE: Correct.

CHAIRMAN HODOM: And what are your plans on replacing that area?

MR. ROWE: Tentatively to use a landscaper to turn it into lawn area.

CHAIRMAN HODOM: So it would be reverted back to a green area?

MR. ROWE: Yes.

CHAIRMAN HODOM: Do you currently own this parcel that the house is constructed on?

MR. ROWE: Yes.

CHAIRMAN HODOM: The reason I ask that is because on the plan that I have it says lands N/F of Charles J. Waldenmaier. Did you purchase the property from Waldenmaier?

MR. ROWE: No, we purchased it actually from the McGuire family. It was originally Waldenmaier and I believe it was purchased - - the McGuires purchased it from the Waldenmaier's and then we purchased it from the McGuires.

CHAIRMAN HODOM: Okay. But you do own it?

MR. ROWE: Yes.

CHAIRMAN HODOM: And you're fully aware of the obligation you will have if the Board were to approve the Variance of meeting the homeowners association conditions through the developer, some kind of license that he would issue to you?

MR. ROWE: Yeah we're aware that they're going to present us with a license and then we would have to agree or not agree to that license.

CHAIRMAN HODOM: Any other questions from the Board?

MRS. O'BRIEN: How long have you owned the house Mr. Rowe?

MRS. ROWE: 2-years today.

MR. ROWE: 2-years today.

MRS. O'BRIEN: Had you intended on expanding the garage before this development?

MR. ROWE: No, when we purchased the house we weren't aware of the Walden Fields project so the boundaries of our property have changed immensely since we've purchased the house so prior to the construction of the Walden Fields it was a tree lined property, now there are no trees what so ever and we weren't aware of that. So the answer is no, we didn't plan this until the Walden Fields construction.

MRS. O'BRIEN: You ultimately still have to exit onto Elsmere Avenue, I don't know that there's a traffic light or anything planned for the intersection. Why would that be any different than what you're doing now?

MR. ROWE: Well I'd say there's a big difference moving from your driveway to Sedgwick versus the driveway into Elsmere Avenue. We have some concerns that the traffic may continue to increase on Elsmere and at some point there may be a traffic light there. As people visiting our house, if they are to enter or exit the driveway often times they have to back in or back out because it is a narrow driveway and it would be much easier to back out onto Sedgwick versus Elsmere. Also the grade of the current driveway as it enters Elsmere is on a pretty substantial slope so in winter conditions when there's ice and things like that, there is concern that we may slide down into Elsmere whereas the new placement of the new driveway, the slope would be much less than the current one and we feel that would be much safer as well.

MR. BROOKINS: Your neighbor up the street, Terrace and – I'm not exactly sure of the number but it's north towards the bi-pass, put basically a front yard turn around, did you consider that at any time as an option.

MR. ROWE: No.

MR. BROOKINS: Why?

MR. ROWE: Why should we?

MR. BROOKINS: I don't know I just wondered if you had a particular reason.

MRS. O'BRIEN: You do have space in front of your garage to turn your car around?

MR. ROWE: Correct.

MRS. O'BRIEN: And that would not be so with the new driveway, you'd have to back out onto Sedgwick?

MR. ROWE: Probably so, yes we'd probably have to back out or back into the driveway.

MRS. O'BRIEN: But you have to option of doing that?

MR. ROWE: Yes, and with Sedgwick it would presumably be a very quiet street based on the number of homes that are going to be constructed on it so it'd be much easier to back into the driveway or exit it from it.

CHAIRMAN HODOM: Any questions Len?

MR. MICELLI: Yes, Mr. Rowe is that going to be a 2-car garage?

MR. ROWE: We haven't finalized the plans on that.

MR. MICELLI: Okay so from where you're existing garage is now all the way down you're going to have that all landscaped obviously?

MR. ROWE: Yes.

MR. MICELLI: By the way those were my tire marks there in your driveway. Thank you.

CHAIRMAN HODOM: For the record we have a letter from Rosen Development who has currently constructed this Planned Residence District by a Mr. Lee Rosen. The Developer has no objections to the applicant having access onto Sedgwick Drive for his driveway. Any other questions from the Board? Are there any questions or comments from the audience? Is there anyone wishing to speak in favor of the Applicant? Is there anyone wishing to speak in opposition to the applicant? Hearing no further questions or comments, we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

Hearing closed 8:00 p.m.

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The next order of business was a discussion of the previous public hearing held in the matter of Feura-Betlehem Height's Alliance, Inc. for an Appeal under Article XXIII, Board of Appeals, Section 128-99, Appeals. For an appeal of the determination of the Building Inspectors decision to allow mining in a Rural District Not Zoned for property at Old Quarry Road, Feura Bush, New York. The following points were brought up by the Board members: All testimony was heard from both the Petitioner and the Respondent. Everyone that desired to speak was allowed to do so. The Board reviewed all testimony and documentation that was presented at the public hearings. The Board determined that an excavation business, which included mining on several contiguous parcels, approximately 180-acres did occur prior to August 7, 2003. No documentation was provided to show that Peter K. Frueh had been found to be in violation of the Environmental Conservation Law provisions regulating mining activities from DEC. On a motion made by Chairman Hodom, seconded by Mr. Brookins, and unanimously carried by the Board, the Board directed Attorney Silliman to prepare a proposed resolution denying the Appeal by Feura-Bethlehem Heights Alliance, for presentation at the next Board meeting on January 19, 2004.

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On a motion made by Mr. Brookins, seconded by Mrs. O'Brien, and unanimously carried by the Board, the minutes of the December 15, 2004, meeting were approved.

The meeting was adjourned on a motion made by Mrs. O'Brien, seconded by Mr. Brookins and unanimously carried by the Board.

Meeting Adjourned: 8:25 p.m.

Respectfully submitted,

Secretary