

**TOWN OF BETHLEHEM
BOARD OF APPEALS
January 19, 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
Robert Wiggand
Marjory O'Brien
Gilbert Brookins
Leonard Micelli

Michael Moore Attorney to the Board

Mark Platel Building Inspector

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. Our first public hearing this evening that was scheduled has been withdrawn. Our second public hearing which was set for 7:45, there has been a question raised by Mr. LaFave regarding availability of having horses in an "A" residential district by virtue of the polo field being listed as an allowable entity in that zone. We've had our counsel take a look at Mr. LaFaves letter and he has responded to Mr. LaFave on January 18th indicating his recommendations, that the proper procedure in Mr. LaFave's request would be for the Building Department and the Building Inspector to rule on the interpretation of Section 128-12 A (6) as allowing horses as a permitted use in the residence "A" zone by virtue of a Polo Field being listed as an allowed use and Mr. Platel who is the Building Inspector for the Town has been requested to make a determination in this matter. I don't know if Mark has made a determination as yet in writing.

MR. PLATEL: Not formally, no.

CHAIRMAN HODOM: Okay but a determination will be issued in response to your request and depending upon the determination and your view of the determination, you will then have an opportunity to agree with it or appeal the determination. That being said if the determination of Mr. Platel is appealed we will approach that determination first and deal with that prior to a continuation of the Use Variance that was requested previously. If you so wish to proceed with a Use Variance depending upon what happens on the review and determination of the Building Inspectors determination. I hope

everybody understands what I just said. Mr. Mosall I know your here because of the hearing. Do you have any questions on that?

MR. MOSALL: Is this allowed because of the Polo Field, that doesn't mean it's automatically – that he can have the horses there, it goes to a further determination is that right?

CHAIRMAN HODOM: That's correct. The philosophy that Mr. LaFave and his counsel is that because a Polo Field is listed as an allowed use in an "A" residential zone, the continuation of that would say that horses should be allowed as a use in an "A" residential zone.

MR. MOSALL: But these horses were called pets by Mr. LaFave, not a Polo horse. But anyway okay that's something that is not

CHAIRMAN HODOM: That will be part of the issue once we have the determination by the Building Inspector and if in fact Mr. LaFave agrees with that determination or appeals that determination we'll go from there. So it will all be resolved eventually, this is just another step in the procedure and again depending upon the determination made by the Building Inspector, if an appeal is made that appeal will be advertised legally as we had in the past and for the Use Variance as well.

MR. MOSALL: Will the fact that there's never been or even considered a Polo Field in that area, would that be part of the consideration?

CHAIRMAN HODOM: We will consider the entire record, all the information that's provided, all the documentation that's provided and anyone who speaks. The Board always looks at the entire record before making a final determination.

MR. MOSALL: I see, I understand.

CHAIRMAN HODOM: So in that regard the hearing that was scheduled this evening will be adjourned to a date uncertain pending the resolution of the determination of the Building Inspector based on the latest request regarding a Polo Field.

On a motion made by Mrs. O'Brien, seconded by Mr. Micelli and unanimously carried by the Board, the hearing was adjourned to a date uncertain.

Hearing adjourned 7:35 p.m.

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The next order of business was to consider the application of Mr. & Mrs. William Cohen, 94 Longmeadow Drive, Delmar, New York. 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 Mr. & Mrs. William Cohen for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for the construction of an addition, which will exceed the allowable percentage of lot occupancy at premises 94 Longmeadow Drive, Delmar, New York, it is hereby ordered that a public hearing on this matter be held February 16, 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 proposed resolution of Feura Bethlehem Heights Alliance.

The following proposed resolution was presented by Attorney Silliman for the Board's consideration.

RESOLUTION

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WHEREAS, a Notice of Appeal, dated August 19, 2004, on behalf of the Feura-Bethlehem Heights Alliance, Inc (FBHA) was filed with the Town of Bethlehem Zoning Board of Appeals (ZBA) as well as with the Town of Bethlehem's Building Inspector pursuant to Town of Bethlehem Zoning Law Section 128-99;

WHEREAS, the FBHA appeal from a determination of the Building Inspector that mining occurred prior to August 7, 2003 on land owned by Peter K. Frueh, Inc., in the Town of Bethlehem (Frueh);

WHEREAS, the ZBA held a public hearing on October 20, 2004 and November 1, 2004 to take testimony and comments regarding the FBHA Appeal;

WHEREAS the ZBA reviewed the measures taken by the Building Inspector and the information relied upon by him in making his determination;

WHEREAS the ZBA reviewed all testimony and documents presented at the public hearing;

WHEREAS the ZBA has reviewed the additional and supplemental submittals made on behalf of both FBHA and Frueh;

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the ZBA makes the following Findings of Fact and Conclusions of Law in this matter

FINDINGS OF FACT

Frueh has been engaged in an excavation business, which included mining activity, on several contiguous parcels comprising approximately 180 acres in the Town of Bethlehem, and the Town of New Scotland.

Frueh extracted materials from its land and sold such materials commercially.

Frueh has not been found to be in violation of the Environmental Conservation Law provisions regulating mining activities.

Business records provided by Frueh to both the Building Inspector and the ZBA show the sale of materials mined from the Frueh Property prior to August 7, 2003.

Based upon a site visit and his inspection of business records, the Building Inspector determined that mining had occurred on the land owned by Frueh prior to August 7, 2003.

CONCLUSIONS OF LAW

Mining is defined in the Environmental Conservation Law (ECL). In the section relevant to this inquiry, the ECL states:

“Mining” means the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial or construction use;... ECL 23-2705(8).

Local Law No. 5-2003 amended Bethlehem Town Code Section 128-23(a)(12)(d) to include as a permitted use in the Rural District not zoned “any other commercial, industrial or retail use” in existence on August 7, 2003. Such permitted uses would extend to all contiguous tax parcels in common ownership, thus permitting expansion of an existing business on one parcel to adjacent contiguous parcels.

Mining is a commercial use and thus was a lawfully permitted use in the “Rural District not zoned” if such use existed prior to August 7, 2003.

Based upon the above findings and conclusions, the ZBA determines that mining occurred prior to August 7, 2003 on land owned by Frueh in the Town of Bethlehem.

Based upon the above findings and conclusions, the ZBA determines that Building Inspector’s had adequate basis for his determination that mining had occurred on the land owned by Frueh prior to August 7, 2003.

Based upon the above findings and conclusions, the ZBA determines that the FBHA’s appeal of the Building Inspector’s determination should be denied and concludes that mining occurred on the land owned by Frueh prior to August 7, 2003 and that such activity constitutes a permitted use on all contiguous parcels owned by Frueh.

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Michael C. Hodom
Chairman
Board of Appeals

Mr. Brookins made a motion that the Resolution be adopted, Mr. Wiggand seconded the motion and it passed by the following vote:

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None	None	None
Robert J. Wiggand			
Gilbert Brookins			
Marjory O'Brien			
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on January 20, 2005.)

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The next order of business was to consider the proposed resolution of Scott & Barbara Rogler.

The following proposed resolution was presented by Attorney Moore for the Board's consideration.

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York seeking a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings, requested by Scott and Barbara Rogler ("Applicants") for property at 139 Marlboro Road, Delmar, New York; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on November 17, 2004, continued on December 15, 2004; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicants are proposing to construct a 646.88-square foot addition to the existing 2,117.04-square foot main structure. This will create a main structure of 2,763.92-square feet, which is 550.08-square feet over the 2,213.84-square foot that is allowed. The lot occupancy will be 18.73-percent, which is 3.73-percent over the 15-percent that is allowable. There are existing accessory structures on the lot, which when combined with the proposed new main structure it would create a total lot occupancy of 20.19-percent exceeding the allowable by .19-percent.

The existing structure is located in an "AA" Residential District and is occupied as a single-family dwelling.

Mr. Rogler has an arthritic condition, and the Applicants are proposing extensions to the existing ranch home to provide more living space, and to allow for the family's laundry facilities to be relocated to the first floor of the home.

At the public hearings, the Applicants agreed to modify their plans to reduce the size of the requested variance. Applicants agreed to eliminate a proposed 19' x 6' extension of the proposed new family room on the south end of the home. This modification will also create a "clean" and uniform line at the rear of the home.

No one spoke in opposition to the application at the public hearings.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that the Applicants should be granted the requested variance.

The Board concludes that the requested variance will be a benefit to the Applicants, that this benefit cannot be achieved by some method other than a variance, and the requested variance will not affect the health, safety and welfare of the community.

As modified, the requested variance is minimal, and is the minimum variance that is necessary and adequate to the Applicants' needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variance has not been created by the Applicants.

Accordingly, the Board grants the Applicants' request for a Variance to construct the proposed addition on the following conditions:

1. The project will be constructed in conformity with the testimony before the Board and the plans and documents submitted to it;
2. The Applicants shall match the new addition as nearly as possible with the existing siding and roofing on the house;
3. The Applicants' plans shall be modified to reflect to above-noted elimination of the family room extension, and engineered plans reflecting this modification shall be presented to and approved by the Town Building Department before any construction is commenced.
4. The proposed project will be constructed within two years of the date of this resolution.

January 19, 2005

Michael C. Hodom
Chairman
Board of Appeals

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Mrs. O'Brien made a motion that the Resolution be adopted as amended, Mr. Brookins seconded the motion and it passed by the following vote:

YES	NO	ABSENT	ABSTAINING
	Michael Hodom	None	None
Robert Wiggand			
Marjory O'Brien			
Gilbert Brookins			
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on January 20, 2005.)

The next order of business was to consider the proposed resolution of Michael Rowe.

The following proposed resolution was presented by Attorney Moore for the Board's consideration.

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York seeking a Variance under Article X, Highway Frontage and Access, Section 128-41, Driveway Placement on Residential Lots requested by Michael Rowe for property at 350 Elsmere Avenue, Delmar, New York; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on January 5, 2004; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicant is seeking an area Variance in order to remove an existing driveway onto Elsmere Avenue and construct a new driveway that will connect to a new town street (Sedgwyck Drive, under construction). The zoning code requires that the driveway be located within the abutment of the lot that the dwelling is located upon with the town road or highway. The proposed driveway will pass through the lands of the Walden Fields Homeowners Association and then access the proposed new Town road. This does not meet the abutment requirement, as the new driveway would have to pass through the Association's "landscaping and planting maintenance" easement.

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

The Applicant seeks to construct the new driveway for safety reasons (there is increased traffic on Elsmere Avenue with recent development in the area) and to provide a shorter driveway.

In addition to the requested variance, the Applicant will also require site plan approval from the Town Planning Board, a modification of the Walden Fields Planned Residential District (PRD) from the Town Board, and must consent to a license agreement with the Walden Fields Homeowner's Association, which will own the green space easement abutting Sedgwyck Drive.

The Applicant also plans to eventually reconstruct the garage to accommodate the new driveway location, and to convert the existing driveway into a lawn area or green space.

The Board has received a letter from the developer of the PRD stating that it has no objection to the proposed driveway relocation.

No one spoke in opposition to the application at the public hearing.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that the Applicant should be granted the requested variance.

The Board concludes that the requested variance will be a benefit to the Applicant, that this benefit cannot be achieved by some method other than a variance, and the requested variance will not affect the health, safety and welfare of the community.

The requested variance is minimal, and is the minimum variance that is necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variance has not been created by the Applicant.

Accordingly, the Board grants the Applicant's request for a Variance to relocate the existing driveway on the following conditions:

1. The grant of this Variance shall not relieve the Applicant of the obligation to obtain approvals from other Town bodies and the PRD Homeowner's Association for this proposed project.
2. The Board recommends that the new driveway and garage be constructed in a manner, which will allow vehicles to enter and exit front first, without backing into or out of Sedgwyck Drive. This could be accomplished by creating a turn around area near the reconstructed garage.
3. The Board further recommends, as much as possible, that the new driveway be so located that it is not directly opposite the driveways of any homes located on Sedgwyck Drive.
4. The existing driveway will be eliminated and turned into green space.

January 19, 2005

Michael C. Hodom
Chairman

Board of Appeals

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Chairman Hodom made a motion that the Resolution be adopted amended, Mr. Micelli seconded the motion and it passed by the following vote:

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None	None	None
Robert Wiggand			
Marjory O'Brien			
Gilbert Brookins			
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on January 20, 2005.)

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On a motion made by Mrs. O'Brien, seconded by Mr. Brookins, and unanimously carried by the Board, the minutes of the January 5, 2005, meeting were approved as amended.

The meeting was adjourned on a motion made by Mr. Wiggand, seconded by Mr. Micelli and unanimously carried by the Board.

Meeting Adjourned: 8:00 p.m.

Respectfully submitted,

Secretary