

**TOWN OF BETHLEHEM
BOARD OF APPEALS
March 7, 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: Ronald McLagan
Benderson Development
Nathaniel Adams Blanchard Post
Capital Communications

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

Ronald McLagan

The first item on the agenda was a Variance under Article XIII, Section 128-100 Schedule of Area, Yard & Bulk Requirements, minimum lot size requested by Ronald McLagan, for Proposed Lot #1, Lot #2, Lot #3 and Lot #4 located at Yale & Milton Ave.

Mr. Platel stated that the applicant is proposing a four (4) lot subdivision in a Residence A Zoning District in which all four (4) lots do not meet the minimum density requirement. The proposed lots contain twelve thousand thirty-one (12,031) square feet, twelve thousand one hundred thirty-two (12,132) square feet, twelve thousand one hundred thirty-four (12,134) square feet and twelve thousand two hundred eighty-five (12,285) square feet, where fourteen thousand five hundred twenty (14,520) square feet is the minimum lot size allowed for this district. Two (2) of the proposed lots, 24 Yale Avenue and 6 Milton Street do not meet the minimum lot width requirement. At the building setback line, 24 Yale Ave. is eighty-six (86) feet, which is fourteen (14) feet less than required and 6 Milton Street measures ninety-two (92) feet at the building setback line, which is eight (8) feet less than required. The current property, except for one (1) existing storage shed, is vacant land.

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

Notice is hereby given that the Board of Appeals of the Town of Beth-

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

lehem, Albany County, New York will hold public hearings on Wednesday, March 7, 2007, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on four (4) applications of Ronald McLagan for Variances under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, minimum lot size, of the Code of the Town of Bethlehem for a proposed four (4) lot subdivision at Yale Ave., Milton St., Lee Ave., North Bethlehem, New York.

Mr. McLagan presented. He said he was a builder by trade and he had been trying to find the owners of the property since the late 1990's. Three (3) years ago he had been before the Planning Board with a preliminary concept of his proposed four (4) lot subdivision. He had received comments from staff at that time. Staff had requested filed deeds, in his name, to proceed with the project. His attorney had not been ready to file the deeds then because there were title issues that needed to be cleared. The property was obtained through an estate. The process of sign offs from the heirs took some time. He didn't realize that the zoning law would change after the moratorium. He didn't submit revised plans until September 2006 at which time he was told that the proposed lot layout would not meet the current requirements.

Chairman Hodom wanted to know the specific date that he closed on the property. He asked Mr. McLagan to supply the Board with copies of the filed deeds. Chairman Hodom asked if the parcels were serviced by public water and public sewer. Mr. McLagan said that he would need to extend the sewer line and there was water available.

Chairman Hodom asked Mr. McLagan why he didn't include the additional adjoining parcel he owned with the proposed four (4) lot subdivision. If that was done, two (2) of the lots would not require variances. Mr. McLagan wanted to combine that lot with the neighbor's lot, Bergmann, to make it a lot that could comply with setbacks. He believed that a church now owned the property. He would either purchase their lot or he would sell his lot to them. Mr. McLagan said that he had a letter from the building department telling him that the Bergmann lot was a buildable lot but would need setback variances. Chairman Hodom requested a copy of the letter. Mr. McLagan said that he did not have an agreement with the owners of the Bergmann property to buy or sell. He said there were title issues with the Bergmann property.

Chairman Hodom asked if Mr. McLagan had approached the owners of 8 Yale Avenue, to see if they wanted to sell any of their property. Mr. McLagan said that awhile ago the owner had asked if he wanted to purchase the parcel but he wasn't interested. They had signed a petition saying that they were not in opposition to his variance request. Other people in the neighborhood had signed the same petition. Mr. McLagan said there were a variety of non-conforming lots in that neighborhood. Chairman Hodom said that the majority of the properties on Lee, Milton and Yale fit the requirements of the current code. Those property owners had purchased two (2) lots and combined them into one (1) building lot.

Chairman Hodom asked Mr. McLagan if he would combine the additional lot he owned to make two (2) of the proposed lots compliant under the existing Zoning Law. Mr. McLagan said that he did not want to combine that lot. He wanted to save it to combine it with the Bergmann lot. He said that he started to obtain the parcels prior to the Zoning regulation change and had documentation to prove that statement. He said it was his fault that he did not keep informed of the changes in the zoning regulations. He was not aware of deadlines that could potentially cause him problems. Chairman Hodom said that when purchasing property a person should be aware of the changes in zoning laws. Mr. McLagan did not think that in fill property should have to comply with new zoning regulations. He thought this was a first time home buyer area and would not support high end homes. Chairman Hodom said that Mr. McLagan had the opportunity to mitigate the zoning variances for two (2) of the parcels and make those two (2) parcels compliant. The other two (2) parcels do not have adjacent land that would help their compliance. Mr. McLagan said Chairman Hodom was being short sighted with regard to the Bergmann parcel, owned by a church. Mr. Hennessey said that the Bergmann parcel was not before the Board for consideration. The Board needed to examine the application before them. Mr. Hennessey said that if there was a current proposal for the combining of Mr. McLagan's additional parcel and the Bergmann parcel it could be looked at as another possibility, but there wasn't. It was all hypothetical. Chairman Hodom stated that the Zoning Board was a quasi-judicial panel. Decisions are made on the applicant's presentation, the facts and information before them. They can not deal in hypotheticals.

Mr. Brookins understood that Mr. McLagan wanted to maximize his investment and the project would be modest homes. Mr. Brookins wanted to know the impact on pricing if he had to reduce the lot number to three (3) or use the other lot for mitigation. Mr. McLagan said he needed to price below new homes in subdivisions. The price he mentioned was two hundred thirty thousand (\$230,000). He thought he had to give a better project at a less price. He said that the appraised price of the existing homes in the neighborhood would not support a high end home. He said that to develop the four (4) lots, he needed to meet the engineering requirements of the Town for drainage, which would help the drainage in the neighborhood. Mr. Sipperly, an engineer, had been advising Mr. McLagan and he had told him to get his easements taken care of. Mr. McLagan said the Town did not have the drainage easements they should have had from one side of the Yale to the other. He said that the Town attorney had given Mr. Sipperly easement language, who then gave it to him, to go to his neighbors with to acquire easements on their property. He said the drainage easement issues were cleared away. Mr. McLagan said that if he did not get the four (4) lots from the land, he would make two (2) building lots out of the six (6) that would not require any variances and sell them. He said he was not tied to building there. He would prefer receiving the variances.

Mr. Umina asked McLagan if he refused to combine his additional lot to mitigate the variance on two (2) of the lots. Mr. McLagan confirmed.

Mr. Maziekowski, 25 Yale Avenue, said that he had purchased his property in August of 2006 that was across the street from the proposed lots of Mr. McLagan. It has one hundred fifty (150) foot frontage. Mr. Maziekowski said that he owned the lowest lot and

he was concerned with runoff. The lot was already wet. Mr. McLagan said he might put a berm in the front of Mr. Maziekowski's property. He did not want that. Mr. McLagan said the Town engineers might require a berm. Chairman Hodom said Mr. McLagan could not build a berm on anyone's property but his own. Other drainage questions would be addressed at the Planning Board level. Mr. McLagan said he was just trying to give Mr. Maziekowski a variety of options that could be done to help the drainage. Mr. Maziekowski said that he preferred the country atmosphere without additional houses.

Chairman Hodom declared the Public Hearing closed at 8:00PM.

Benderson Development

The next item on the agenda was a discussion on the application of Benderson Development for two (2) additional free standing signs on the property at Feura Bush Rd. and Rt. 9W, Glenmont.

Mr. Hennessey was in favor of the variance application. It was a reuse of an existing structure and would revitalize the Glenmont Shopping Plaza. The request was less than the allowed square footage for signage and it might help bring in more retail stores to the plaza.

Mr. Brookins was in favor of the variance application. He thought the signage was well designed and placed. The applicant had agreed to place the Feura Bush Rd. sign to the inside of the sidewalk. He thought it was general improvement in the neighborhood.

Mr. Umina was in favor of the variance application.

Mr. Micelli said that though he was not present for the Public Hearing, he had read the minutes and other materials submitted. He was in favor of the variance application.

Chairman Hodom was in favor of the variance application. He thought the application met all the requirements of a variance application. He thought that the additional signage would create a safer environment at the location. The applicant had tried to work with McDonalds but had not been successful. The application was the minimum variance necessary for the site.

A motion to approve the variance application by Benderson Development for property located at Feura Bush Rd. and Rt. 9W was offered by Mr. Brookins, seconded by Mr. Hennessey and approved by all Board members present.

Nathaniel Adams Blanchard Post

The Board reviewed the draft Resolution for Nathaniel Adams Blanchard Post, 16 West Poplar Drive, Delmar, prepared by Counsel.

A motion to approve the Resolution as drafted was offered by Mr. Hennessey, seconded by Mr. Micelli and with a vote of three (3) for; Mr. Hennessey, Mr. Micelli and Chairman Hodom and two (2) recused; Mr. Umina and Mr. Brookins, the motion passed.

Capital Communication Federal Credit Union

The Board reviewed the draft Resolution for Capital Communications Federal Credit Union, 384 Bender Lane, Glenmont, prepared by Counsel.

A motion to approve the Resolution as drafted was offered by Mr. Umina, seconded by Mr. Micelli and with a vote of four (4) for; Chairman Hodom, Mr. Umina, Mr. Micelli and Mr. Hennessey and one (1) opposed; Mr. Brookins, the motion passed.

The Board reviewed the draft minutes of February 21, 2007.

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

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

The meeting adjourned at 8:20PM.