

**TOWN OF BETHLEHEM
BOARD OF APPEALS
October 3, 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
Gil Brookins, Board of Appeals Member
Lenny Micelli, Board of Appeals Member
Mark Hennessey, Board of Appeals Member
Kenneth Umina, Board of Appeals Member

Mark Platel, Assistant Building Inspector

AGENDA: United Development Group
Rose Reilly

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

DISCUSSIONS

United Development Group

This application is for a Variance under Article V, Section 128-33 D (1), footprint and Section 128-100, Schedule of Area, Yard & Bulk Requirements, density and maximum height.

Chairman Hodom started the discussion. He said that the Town's Comprehensive Plan encourages this type of development because it develops an unutilized parcel of land, addresses the need for senior housing, provides a housing alternative, will not have an effect on the school system and is in a location that is desirable for senior housing. The Town Comprehensive Plan suggests that senior housing should be located near services such as shopping and mass transportation. Section 4 of the Town's Comprehensive Plan Recommendations states that the trend towards smaller household sizes, aging population and the increasing need for affordable housing means that Bethlehem must provide for the development of a range of housing types and sizes so the existing and future residents can continue to live in the community. Bethlehem hamlet centers provide an opportunity to accomplish greater housing diversity. The topography of the site restricts the view of the three (3) four (4) story buildings in the rear of the property. Chairman Hodom said most of the concern was the three (3) story building located along Glenmont Rd. Based on the traffic information presented at the hearing, it appears that the senior housing project will create considerably less traffic impact in the AM and PM peak times than the individual homes or other types of development that could be placed on the site. The proposed project will comply with Section 128-65, senior citizen housing of the Town's Zoning Law. The Bethlehem Senior Services has acknowledged a need for senior housing at a reasonable cost. The adjoining property to the west is zoned Mixed Economic Development which allows four (4) story building to a maximum height of sixty (60) feet. In the petition against the variance approval of Glenwood Village, 68% of the people were against the development because of traffic issues, 27% did not want three (3) or four (4) story buildings in the neighborhood although they are currently allowed and 5% were against the proposal because of the increase in crime. Chairman Hodom did not see crime as a serious consideration at this location. Twelve (12) residents signed letters supporting the need for senior housing in the Town. Chairman Hodom thought the Albany County Planning Board recommendation was flawed because "practical difficulty" has not been used in Town Law since July of 1992 and unnecessary hardship is not a requirement of an area variance. They weighed their decision heavily on those two (2) causes. It was his determination that the benefit to be realized by the applicant and the many seniors that

live in the Town of Bethlehem far outweighs any potential detriment to the health, safety or general welfare of the neighbors or the community. He does not believe that an undesirable change will be produced in the character of the neighborhood nor will the granting of the variances create a detriment to the nearby properties. Based on the record before the Board, Chairman Hodom does not believe the benefit sought by the applicant can be achieved by any other method. The requested area variances are substantial but they are needed to make the project economically feasible. He does not believe that the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district. The proposed type of development is allowed in the Hamlet District. The alleged difficulty was not self-created. If the applicant cannot obtain the variances requested, the project will not proceed.

Chairman Hodom recommended approval of the three (3) area variances requested with conditions and/or suggestions. He recommended the ceiling heights in the three (3) story building be reduced to eight (8) feet so the building height would comply with the maximum building height allowed in the district. He also recommended that the ceiling heights in the four (4) story buildings be reduced to eight (8) feet, reducing the overall height by approximately four (4) feet or lower. He recommends that the Planning Board with the Building Department review Section 128-33 D (1), exception that the five thousand (5,000) square foot building footprint can be exceeded only if the building façade are articulated to appear as multiple buildings. That was a concern of the building inspector, if the application for the variances is approved, that issue could be worked out between the Planning Board and the Building Department. He also suggested that the Planning Board look at the use of partial sub-grade first floor units to further reduce the building heights, especially the four (4) story buildings. Chairman Hodom was in favor of approving the three (3) area variances requested.

Mr. Umina said that he was against approving the application. He had visited the site three (3) times and he agreed with the Albany County Planning Board's recommendation. Part of the recommendation said that if the variances were granted, the project would have an adverse impact to the State road and wetlands and the proposal was too large for the site. Mr. Umina agreed with those statements. He said that the variances requested were substantial and east and west of the site were primarily single-family homes. He thought that by granting the application an undesirable change would occur in the neighborhood and would be a detriment to the nearby properties. He did note that if the project were scaled down, it would no longer be financially lucrative for the applicant. The request for the density variance is twice the allowable in the zoning district. Mr. Umina said there was considerable community opposition to the project. The neighbors felt the project would create an adverse physical effect in their neighborhood and he agreed. He had reviewed the letters in support of the project and he noted that some of the individuals lived miles from the project site. He agreed with the neighbors.

Mr. Brookins said that he had visited the project site and also made two (2) visits to the applicant's Hearthstone site in Latham. They were similar in size. He said there is a need in the community for senior housing, a need that will not go away but difficult to manage given the clients. He said that some people feel we should move the seniors to some "pasture land" that would have no potential impacts or bother the other residents. The reality is that the seniors have been contributing to community and would like to stay in the community. He thought the benefit to the broader community outweigh the perceived detriments to the neighborhood. He said that the neighborhood had changed drastically with the Price Chopper Plaza, the renovated Glenmont Plaza and Bethlehem Town Center I & II. He did not think that the addition of the senior housing would change the character of the neighborhood. He suggested flipping the building closest to Glenmont Road with the garage behind it. He understood that this would require a retaining wall. The applicants, at their Hearthstone site, had accommodated terrain changes with an attractive retaining wall. He said those buildings are attractive but suggested using color changes to minimize the big box look. He said that he would support the variance requests.

Mr. Micelli wanted to know if the Board had decided to ask the applicant to move the front building back. Chairman Hodom said that at the public hearing the applicant had said that there hadn't been time to determine if

they could move the structure to a different location. They have several areas of wetlands on the site they were trying to not impact. Chairman Hodom said that if the Board were to approve the application, they could send recommendations to the Planning Board about relocation of the front building, if possible, to satisfy the neighbors concerns. Mr. Micelli said that his biggest concern was the building fronting on Glenmont Road. He did not think that the area needed any more changes. He thinks that the project will generate more traffic than stated and the area will be more congested. He would like to see the building in the front removed. He said he would deny the application.

Mr. Hennessey said this was an attractive project that makes a lot of sense for the Town's direction. He thought there was a tremendous amount of neighborhood opposition and it would be difficult to work out a balance. He thought the benefit to the applicant would be great. In the opinion of the people in the neighborhood the change in the neighborhood would be undesirable. Moving the building back and alleviating the traffic concerns raised by the neighbors would be a positive. He agrees that the crime issue is a non-issue. He thinks this is a unique property both in shape and character and in order to site a project, it must be done in a particular way. Mr. Hennessey said that project had great benefit but it needs to be reconfigured. He would vote against the project as presented.

Chairman Hodom asked Mr. Uccellini if he wanted an opportunity to look at the site plan to see if something could be done with the front building. The Board could then reopen the hearing for further discussion from the Board and the neighborhood. The main concern seemed to be the front building.

Mr. Uccellini said that they had begun to look at the site plan to see if something could be done with that building. He said they have a retaining wall in the current design of the site. The way the road comes in and the wetlands make re-configuration difficult. If they remove the garage building, they lose the garage spaces. The garage spaces on the site are already limited and they are a benefit to senior housing but they would remove the garage if necessary. They can't put the building in the back; there isn't any room. Mr. Uccellini said that they would like the opportunity to try to rework the site. Mr. Uccellini said he had additional support letters from the community to submit.

Mr. Uccellini, the applicant, requested the Board not vote on the project and also waived the obligation of the Board to make a decision on the project within the sixty-two (62) day time frame. The applicant would submit a revised site plan as part of the variance application.

A motion to not vote on the variance application and move the application to a date uncertain was offered by Mr. Hennessey, seconded by Mr. Micelli and approved by all Board members present.

Once the revised materials were submitted to the Board, the project would be re-noticed and a hearing would be held.

RESOLUTIONS

Rose Reilly

The Board had received an application from Rose Reilly for a Variance under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, Side yard setback.

The Board reviewed the draft Resolution prepared by Counsel.

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

OTHER

Selkirk Warehouses

Mr. Moore said that Selkirk Warehouses had submitted a variance application last year to enable them to construct a new warehouse on their property. An issue of paper streets had serviced in an old subdivision and whether some of the neighbors retained legal rights to those paper streets. The applicant had been asked to resolve that issue. The applicant's attorney had submitted a letter, a report from a title company and report of a survey. It was the title company's opinion that Selkirk Warehouses did have clear title to the area that they were seeking the variance. They said they would insure the title. Mr. Moore had a conversation with the applicant's attorney asking for a copy of the survey and a drawing indicating that the area covered by the requested variances was within that area of the survey.

Catrina Gallo

The Chairman requested a report on the cases cited by the attorney for the Gallo's. He suggested moving to Executive Session.

A motion to go into Executive Session was offered by Mr. Hennessey, seconded by Mr. Micelli and approved by all Board members present.

A motion to come out of Executive Session was offered by Mr. Brookins, seconded by Mr. Hennessey and approved by all Board members present.

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

The meeting adjourned at 7:40 PM.