

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

September 2, 2009

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. Chairman Hodom presided.

PRESENT: Michael Hodom, Board of Appeals Chairman
Michael Moore, Zoning Board Counsel
David DeCancio, Board of Appeals Member
Lennie Micelli, Board of Appeals Member
Ken Umina, Board of Appeals Member
Matt Watson, Board of Appeals Member

Mark Platel, Assistant Building Inspector
Justin Harbinger, Assistant Building Inspector

Dan Cleary, Bohler Engineering
Mike Tucker, Infinigy Engineering

AGENDA: Pines @ Normanside
TD Bank
Jim Sheldon

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

PUBLIC HEARINGS

Pines@Normanside

The Board had received an application for a use variance to access a mixed use site in a commercial hamlet zone over a portion of the property in a core residential zone. This is a continuation of a hearing that had begun on August 5, 2009.

Mr. Platel said the applicant is proposing to access a commercially zoned property for a commercial use through a residentially zoned portion of the property. The proposed development for the commercially zoned lot are office space and apartments and will be accessed by a driveway from Leonard Place, a Town road, through residentially zoned land. The parcel is a split zoned lot located in both a commercial hamlet and core residential zoning district. The applicant is currently in the process of site plan and subdivision review with the Planning Board and will continue that process once a decision for this request is reached by the Board.

A motion to indent the public hearing notice was offered by Mr. Watson, seconded by Mr. Umina 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 the continuation of a public hearing on Wednesday, September 2, 2009, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 518-439-4955.

application of Richard Bohl, The Pines @ Normanside, for a Use Variance to allow access to a commercial use in a mixed use zone through a residential zone for the portion of property fronting Delaware Avenue, Delmar (86.05-3-10.1).

Michael Tucker, Infinigy Engineering presented for the applicant.

- In a letter dated August 17, 2009 outlined criteria for a use variance
- 1st applicant cannot realize a reasonable return – only access onto Delaware without a variance, DOT not in favor of a curb cut. Without curb cut only viable use allowed in both zones is a single family home. Letter showed the monetary difference between the proposed use and a single family home. Over ten year period, applicant would lose about \$230,000 in present value dollars. The other allowable uses are not viable because of location, size, setbacks or financial return; collocation of cell tower, new cell tower, house of worship, conservancy, agricultural use and cemetery. If DOT did allow curb cut, value of property would be reduced by about 10% per local real estate agents.
- 2nd alleged hardship is unique to lot – district lines were drawn to the rear of most lots along Delaware Avenue, cutting this one large lot so access onto Leonard could not occur without crossing district lines. This creates a unique situation, couldn't comply with the goals of the comprehensive plan or the design guidelines for the commercial hamlet zone. Design guidelines prefer parking to be located in the rear of the lot.
- 3rd will variance change the essential character of the neighborhood – several other businesses have access onto Leonard Place. Applicant has offered landscaping to resident directly across from the driveway.
- 4th hardship self-created – applicant's parcel is one piece and the difficulty was created by the zoning district line

Board comments

- will driveway be realigned to accommodate neighbors. Mr. Tucker replied, neighbors were given his number to work out landscaping but they have never contacted him.
- only house where the headlights were an issue – suggestion was made to angle the end of driveway to help mitigate the headlight glare.
- buffer is planned for adjoining parcel

The hearing was declared closed at 7:11pm.

DISCUSSIONS

TD Bank

The Board had received an application for an area variance under Article VI, Section 128-59 D (6). The applicant wishes to have two (2) internally lit signs, a flag sign and a wall sign.

Board's comments:

- stated goals incorporated into comprehensive plan and subsequent regulations provides adequate and reasonable regulations for signs in the Hamlet district.
- provisions for externally lit signs will enhance the Delaware Avenue main street character
- concern if internally lit sign at this location were granted, it would set a precedence
- one of the criteria that the Board must consider "benefit sought by applicant can be achieved by some other method" can be achieved by external lighting
- visited other TD Bank locations in the Capital Region; one of the sites has a similar character to the location on Delaware Ave, they have no lighting
- in the area of TD Bank on Delaware Ave. many other businesses have externally lit signs, some do have internally lit signs. To continue the work of the comprehensive plan, character of Delaware Ave. must be maintained by only allowing external lighting
- continuity of the Comprehensive Plan was important
- applicant did not want to put in a monument sign

A motion to deny the area variance application from TD Bank as submitted was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

Jim Sheldon

Chairman Hodom stated that the breezeway causing the encroachment has been removed. Mr. Sheldon has not contacted staff to either withdraw the application or any other information. The Board directed the Zoning Board Counsel to write a letter to Mr. Sheldon stating that the variance is moot because an encroachment no longer exists. Mr. Platel was to verify that the breezeway has been removed.

The Pines@Normanside

Board comments

- applicant has shown zoning regulations and restrictions have caused unnecessary hardship for this site
- applicant has shown unnecessary hardship for each of the permitted uses under the zoning law in a core residential district in which the access point is located
- applicant cannot realize a reasonable return as per their submitted evidence
- alleged hardship is unique to this property
- zone line across the rear of the proposed lot does not allow access within the district other than onto Delaware Avenue.
- requested variance will not alter the essential character of the neighborhood
- alleged hardship was not self-created
- applicant suggested shared access and parking with adjoining property owner and was denied
- NYSDOT prefers access from Leonard Pl. for safety reasons
- Board also had safety and traffic concerns if access was from Delaware Ave.

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- voiced a concern with large truck deliveries onto Leonard Pl.
- Town Planning Department suggests access from Leonard Pl.
- Board recommends the Planning Board reviews and resolve the concerns of the residents at 2 Leonard Pl. and all other residents along Leonard Pl. and adjoining neighbors.

A motion to approve the use variance application as submitted with conditions was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

MINUTES

The Board reviewed the draft minutes of August 19, 2009 prepared by staff.

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

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

The meeting adjourned at 7:35.

Respectfully Submitted,

Nanci Moquin