

**TOWN OF BETHLEHEM
BOARD OF APPEALS
September 5, 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: Rose Reilly
United Development Group
Catterina and Anthony Gallo
Charles and Ada Court
Scott and Katherine Hodge

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

PUBLIC HEARINGS

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.

Mr. Platel stated that the applicant is proposing to leave the existing deck as it was constructed. The deck is four point one (4.1) feet and four point five (4.5) feet from the side yard property line, which is an encroachment of three point nine (3.9) and three point five (3.5) feet respectively into the eight (8) foot setback required. The applicant constructed the deck with a permit but misunderstood the direction that was given as to where the deck needed to be located. The property is located in a Residence "C" Zoning District and is occupied as a single-family dwelling.

A motion to indent the public hearing notice was offered by Mr. Umina, seconded by Mr. Hennessey 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 a public hearing on Wednesday, September 5, 2007, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Rose Reilly for a Variance under Article XIII, Use & Area Schedules, Section 128-100, Minimum side yards of the Code of the Town of Bethlehem for construction of a deck, at 514 Kenwood Avenue, Delmar, New York.

Ms. Reilly presented for the project. She said that they wanted the deck to enable her to watch the animals in her yard. She will be medically retired from her job as of December. She had acquired a permit to construct the deck but had misunderstood Mr. Platel when he explained where the entrance to the back door could extend to. She had thought that the deck could come straight out from the back door. She wanted to be able to continue with the construction of the deck as it stands.

Chairman Hodom asked if the building permit was issued for a twenty (20) foot by twenty (20) foot deck. Ms. Reilly confirmed. The deck that was constructed was twenty-three (23) feet by twenty (20) feet. The reason that the deck was twenty-three (23) feet wide was that the entrance from the house to the deck would not have been included if the deck did not have that additional three (3) feet. She had shown Mr. Platel a drawing that she believed showed the proposed deck in the dimensions that it had been constructed.

Chairman Hodom asked if the deck was constructed in the same position as the existing patio. Ms. Reilly confirmed. He asked Ms. Reilly what was her understanding of what could be built after speaking with Mr. Platel. Ms. Reilly said that she thought she could have a handicapped entrance to her home from the deck and she didn't understand that she should have cut off a corner of the deck. Mr. Platel said that Ms. Reilly had confused the ramp from the deck to the driveway area with the ramp from the door to the deck. He said that she was entitled to a ramp to the door from the deck even though it would be within the setback. Mr. Platel said that the house was a preexisting non-conforming side-yard setback.

Ms. Reilly said that she had spoken to her neighbors about the deck and some of her neighbors were present, they had not voiced any opposition. Chairman Hodom asked Ms. Reilly to explain her health problems. Ms. Reilly said that she had progressive multiple sclerosis. She had been confined to a wheel chair and will end up there again. The deck, with handicapped accessibility, was built with that fact in mind. Ms. Reilly said there weren't any plans to enclose the structure. Ms. Reilly said that she had spoken to Howard Johannessen, P.E. and the survey was done off of CISR points and she thought that there was more than four point one (4.1) feet from the deck area to the property line. She was questioning the distance. Chairman Hodom said that the Board needed to depend on the information that had been submitted to them.

Mr. Umina had spoken to Ms. Reilly and she told him that once she had found out that she needed a variance, she had stopped construction and immediately applied for a variance. Ms. Reilly confirmed. She had stopped and asked Mr. Platel to come to the site and asked permission to put up security bars and finish the steps. He let her go forward. She said she was doing her best to be in compliance.

Mr. Hennessey asked if they had plans to sell the house. Ms. Reilly said no. They would finish the construction of the deck this year and stain it next year.

Mr. Semen, 512 ½ Kenwood Avenue, said the lines between the houses to not run parallel with the lines of the houses. He understands that the deck is not encroaching over the property line, it's a setback issue. He thought the deck would look strange if it did not follow the same lines as the existing patio. He had no objection to granting the variance.

There being no further comments, Chairman Hodom declared the hearing closed.

United Development Group

The Board had received the additional information that had been requested of the applicant. The application was 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.

Mr. Platel stated that the applicant is proposing to construct a 150-unit apartment complex that will exceed the seventy-five (75) units allowed by seventy-five (75) units. The number of units allowed in this district is eight (8) units per acre of developable land that is serviced by municipal water and sewer.

The maximum height requirement for a main structures is thirty-five (35) feet. The applicant is proposing one (1) three (3) story building with a height of thirty-eight (38) feet, which will exceed the allowable height by three (3) feet; and three (3) four (4) story buildings with a proposed height of forty-eight (48) feet that will exceed the allowable height by thirteen (13) feet.

The allowable footprint of any building located in a Hamlet district may not exceed five thousand (5,000) square feet. Each of the four (4) proposed apartment buildings are estimated to be thirteen thousand eight hundred

(13,800) to fourteen thousand eight hundred (14,800) square feet and will exceed the five thousand (5,000) square feet allowed by eight thousand eight hundred (8,800) and nine thousand eight hundred (9,800) square feet. The clubhouse will be eight thousand three hundred fifteen (8,315) square feet also exceeding the maximum allowed by three thousand three hundred fifteen (3,315) square feet. Under Section 128-33 provisions are provided to allow an increase in the square footage if the structures are articulated in a manner to give the appearance of multiple buildings. It was Mr. Platel's decision that the structures are not designed in a manner to give that appearance. The property is vacant land and is located in a Hamlet Zoning District.

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 Bethlehem, Albany County, New York will hold a continuation of an adjourned public hearing on Wednesday, September 5, 2007, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Glenwood Village for Variances under Article V, Section 128-33D, Article VI, Section 128-56, Article XIII, Section 100, Density & Max Height, of the Zoning Law of the Town of Bethlehem for construction of an apartment complex for seniors, at 236 Glenmont Rd., Glenmont, New York.

Mr. Uccellini, President of United Group of Companies, presented for the applicant. He said they were looking for three (3) variances; height, façade and density. He said that they had thought the articulation of the building broke up the façade. This was the first time they had heard that the building inspector's determination did not agree. They were asking for a density of one hundred fifty (150) units on fourteen (14) acres and three (3) and four (4) story buildings of thirty-eight (38) feet and forty-eight (48) feet. The parcel is adjacent to a parcel zoned MED, which allows four (4) story structures. The four (4) story structures were put to the back of the site that had about a twenty-five (25) foot drop in elevation. The three (3) story structure would be closer to Glenmont Road with the side facing the road. They thought that this layout provided minimal visual impact to the surrounding landowners.

Mr. Uccellini said that because of conditions on the site such as substantial wetlands and archeological areas the site was developed as presented. The parcel is zoned Hamlet and using Section 128-65 Senior Citizen Housing, it's their opinion that this allows for the minimal impact and variance requests instead of a zone change to a Planned Development District. The applicant provided additional financial information to substantiate the need for one hundred fifty (150) units. The project is a development of land in accordance with the Town's Comprehensive Plan, addressing a need for senior housing in the Town. He said there were over five thousand eight hundred (5,800) seniors that were sixty (60) years of age and over with an income of thirty five thousand dollars (\$35,000) or greater that would qualify to live here. Currently there aren't any age restricted, market rate, non-income restricted apartments in the Town. Hamlet districts are called out in the Comp Plan as desirable for senior housing. There would not be any impact of the school system and it's located on a CDTA bus route. Water and sewer are adjacent to the site. Mr. Uccellini said that Karen Pellettier, Head of Senior Services in the Town, is supportive of the project. He said that his company has done many senior projects before. He said that on the Town's WEB site, housing for seniors was identified that was in the Town of Colonie. He said that wetlands would be preserved as well as an archeological site. He said that the tax base would increase and create job growth. He said that one alternative use of the site could be one hundred eighteen (118) single-family homes. He said that his project would provide seventy-one percent (71%) green space. He thought that the project would be a benefit to the Town.

Mr. Uccellini clarified the items on the financial report for the Board: Sources and uses includes mortgage debt; equity is what the company would put into the project; the finance costs included closing costs, capitalized interest and equity costs; the soft costs included architectural, engineering, marketing, legal and appraisals; construction costs included hard cost for the building, the site costs, site improvements, etc.; land is the acquisition costs for the land. The initial operating deficit and reserve consists of money that is necessary for the lease up, marketing and the operation. The income was the revenue generated by the project. Expenses were total operating expenses. The debt service were the annual costs to the applicant.

Chairman Hodom asked why the project was changed from a PDD. Mr. Uccellini said that after conversations with individuals in the planning department, it was determined that additional variances would have been needed because the PDD was very defined in the Zoning Code. The project as presented required less variances.

Chairman Hodom asked if the applicant had considered Section 128-51, incentive zoning, of the Zoning Code. Mr. Uccellini said it was explored but there were limits on size of units, rents, income and those did not work for this project. They have done mixed income projects before and it doesn't work well. Additional density would have been allowed with lower rents. The income from the apartments would have been less and not make it financially viable.

Chairman Hodom asked if they looked at having the first floor below grade to eliminate the need for height variances. Mr. Uccellini said that the site costs would be substantially higher to do that type of excavation and also sub-grade apartments would not be as attractive to the target audience.

Mr. Hennessey asked if the walls in the apartments could be lowered to bring down the heights. Mr. Uccellini said the ceilings could be lowered to eight feet but that would only make one of the buildings in compliance with the height restriction. That would be the one closest to Glenmont Road. The four (4) story buildings are tucked in the rear of the parcel. He said that the zoning on the parcel next to this one allowed for four (4) story buildings. It was estimated that the property was about fifteen (15) to twenty-five (25) feet lower in the rear of the parcel than the cemetery.

Mr. Micelli asked if there was more than one (1) entrance. Mr. Uccellini said that the two-way access circled around the site and had two (2) means of ingress/egress.

Mr. Mullinsac, 320 Glenmont Road, asked where the entrance and exit to the development would be, he thought that one of the roads on the side of the cemetery was a private road. Mr. Uccellini said that the private road was on their land and would remain a private road that they would develop and maintain.

Mr. Kustov, 306 Glenmont Road. He had purchased a house on the private road a year ago and was told that nothing could be built on the proposed site because the width of the road and the road could not be widened. Mr. Platel said that he was probably told that because the current road did not meet the standards for a road. It was to be improved to meet the standards.

Ms. Dodous, 291 Old Glenmont Road. She asked how close to the road was the building in the front.

Mr. Uccellini said it met the setback zoning requirements for the district. He said after putting a scale to it, he thought the building was about seventy-five (75) feet from the road.

Mr. Umina said that the Albany County Planning Board recommendation notification stated that if the project were to be approved, it would have an adverse impact effect on wetlands and the state road and it was too large of a project for the site.

Mr. Uccellini said that ACPB does not notify applicants when the project is to be before them. The applicant did not have an opportunity to present. They would have been able to show the ACPB that they were creating wetlands on the site. Mr. Uccellini did not concur with their recommendations.

Mr. Brookins said it would have been beneficial to have the applicant at the Albany County Planning Board meeting so the Zoning Board would know why they felt there would be an impact on the water quality. They state potential impacts but do not elaborate as to how they came to that conclusion.

Mr. Uccellini said that senior housing produces point one (.1) vehicle trips in the peak PM, in the peak AM it's point zero seven (.07). The project would produce about fifteen (15) vehicles between four (4) and six (6) in the peak PM and less in the morning hours. Single-family homes produce one (1) vehicle trip per home which could be as high as one hundred eighteen (118) additional cars. He said that the senior housing would have a minimal impact on Glenmont Road.

Mr. Uccellini said that NYSDEC regulations prohibited a project from increasing runoff greater than pre-construction. He said they would be in complete compliance with those regulations and would not have any impact on water quality.

Mr. Umina asked if they had any numbers for service vehicles. Mr. Uccellini said there would be mail and package delivery but there isn't any food service. There would be five (5) employees, the traffic impact would be minimal.

Mr. Brookins asked how their financial statement compared with industry standards. Mr. Uccellini said that Institute of Real Estate Management is a national organization. His company is a member and their financial statements are well within the range of expenses to revenues.

Mr. Micelli asked if the vehicle generation standards took into consideration visitors. Mr. Uccellini said it did.

Mr. Hennessey asked if the project would be financially feasible if the height variance was not granted. Mr. Uccellini said that one hundred twenty (120) units were not enough. He said that one hundred fifty (150) units was the minimum they needed to go forward with the project.

Mr. Platel said he scaled the front building for Ms. Docous and the building would be forty-five (45) feet from the edge of the highway.

Ms. Docous said that the building in the front looked larger than the one in the back. Mr. Uccellini said that the front building was three-stories high and sixty-six point eight (66.8) feet by two hundred sixty-three point four (263.4) feet. The footprint of the rear buildings was smaller but those were four (4) story buildings.

Mr. Brookins asked if the parking garage and the front building could be swapped. Mr. Uccellini said they had

tried that but they ran into problems with the road and the topography. A huge retaining wall would need to be built.

Mr. Defazio, Prudential Manor Homes. He represents the neighboring landowner to the east. He said the fire department had an interest of putting in a crash gate onto the Thruway, he asked if there would be a right-of-way granted from the project's property onto the neighboring property. Mr. Uccellini said they were OK with the fire department coming through the site.

Ms. Docous said she lived across the street from the building closest to Glenmont Road. She was against the proposal because of the front building. She has spoken to her neighbors and submitted a petition with their signatures opposing the project. She said that traffic was a concern of most of the people. She said there was already a significant amount of traffic. She submitted pictures to show the current view from her house and the view after the building. She said the majority of the homes in the area were single-family smaller homes with children. They felt that traffic would be impacted. She felt the project was not in character with the neighborhood, which she thought was rural.

Mr. Umina asked if she thought the people signing the petition thought the project would change the character of the neighborhood. She said that was the impression she got. They still felt that seniors drive, it's not an assisted living facility and traffic would increase. She said she was concerned with an increase in crime, low income housing and bus stops in front of Weiser Street.

Mr. Brookins stated that though most neighbors want everything to stay as they are, there are alternative uses that could go on the parcel. Ms. Docous said they knew something could be built, but she didn't want to look at a three-story building.

Mr. Hennessey said that seventy-five (75) apartments could be built on the parcel without a variance. She said she was not as opposed to the whole project, just the front building. Mr. Hennessey asked if the size of the rear buildings could be increased to mitigate the front building. Mr. Uccellini said he couldn't specifically answer that question off the top of his head. Wetland impact needed to be kept under one half acre.

Mr. Uccellini said that five thousand eight hundred (5,800) seniors in the Town would qualify to live in these apartments and hundreds were interested. They have met with senior services in Town and there is a demand for this type of housing. They offer more than housing; they have programming for the seniors that is a life style for them. He said that the neighborhood is not just residential, the Price Chopper Plaza is right next door and there are other commercial areas close by. He said they had taken a lot of care in the design of the buildings to give them the look of a townhouse. They will have stone and hardy plank siding.

Mr. Umina asked how the demand for this type of housing was determined. Mr. Uccellini said that some of their numbers comes from the senior services of the Town. He said that the average age of the residents of the project would be in their mid seventies. The primary market was the Town.

Ms. Mullinsac, 320 Glenmont Road. She said that Glenmont was ruined when the plaza went in. She said that she did not oppose the project.

Mr. Mullinsac said that the Town over the last twenty years has ruined the whole community by piling all the commercial in Glenmont. Trucks go too fast. He said that he would rather see this project than a Target.

There being no further comments, Chairman Hodom declared the hearing closed at 8:30 PM.

APPLICATIONS

Catterina and Anthony Gallo

The Board had received an application from Catterina and Anthony Gallo for a Variance under Article XIII, Section 128-99, Schedule of Uses.

A motion to set the public hearing for September 19, 2007 at 7:00pm was offered by Mr. Micelli, seconded by Mr. Hennessey and approved by all Board members present.

DISCUSSIONS

Rose Reilly

The Board decided to discuss the application of Ms. Reilly. The public hearing was earlier this evening.

Mr. Umina said that after visiting the site and the presentation, he had no objection to granting the variance. She had tried to comply and when she found out she was not in compliance, she immediately stopped the construction.

Mr. Brookins said that it was another narrow lot and with the placement of the house and the garage, it was almost impossible to do anything without a variance. The variance would not adversely impact the neighborhood. He was in favor of granting the variance.

Mr. Hennessey said that this was an exceptional circumstance and was not a substantial variance. He said that the applicant thought they were doing the right thing and didn't understand. He was in favor of granting the variance.

Mr. Micelli agreed with the other Board members. He was in favor of granting the variance.

A motion to grant the variance as submitted was offered by Mr. Micelli, seconded by Mr. Umina and approved by all Board members present.

RESOLUTIONS

Charles and Ada Court

The Board had received an application for Charles and Ada Court for an Area Variance under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, Lot Occupancy. The applicants wish to construct a two (2) car garage.
The Board reviewed the draft Resolution prepared by Counsel.

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

Scott and Katherine Hodge

The Board had received an application for Scott and Katherine Hodge for an Area Variance under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, Lot Occupancy. The applicants wish to add an addition to their single-family home.

The Board reviewed the draft Resolution prepared by Counsel.

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

The Board reviewed the draft minutes of August 1, 2007.

A motion to approve the minutes of August 1, 2007 as amended was offered by Mr. Brookins, seconded by Mr. Hennessey and approved by all Board members present

The Board reviewed the draft minutes of August 15, 2007.

A motion to approve the minutes of August 15, 2007 as drafted was offered by Mr. Umina, seconded by Mr. Hennessey and approved by all Board members present.

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

The meeting adjourned at 8:45 PM.