

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

March 17, 2010

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 Ave, Delmar New York

PRESENT: Daniel Coffey, Board of Appeals Chairman
Michael Moore, Board of Appeals Counsel
Lennie Micelli, Board of Appeals Member
David DeCancio, Board of Appeals Member
Matt Watson, Board of Appeals Member
Kenneth Umina, Board of Appeals Member
Mark Platel, Assistant Building Inspector
Justin Harbinger, Assistant building Inspector
Peter Lynch
Thomas Burke
Mike Tucker
Luke Mullen
Michael Kornstein

Chairman Coffey noting the presence of a quorum opened the meeting at 7:01 pm. The Chairman informed the Board Member that he would like to change up the agenda slightly to schedule the new applications for public hearings first and then go onto the hearings. The first application is for a public hearing for a Sign Variance for Hoffman Car Wash was scheduled on April 7, 2010 at 7:00 pm on a motion by Lennie Micelli and a second by Matt Watson. The second application is for a side yard setback variance for accessory structures for Jason and Lisa Baum was scheduled on April 7, 2010 at 7:15 pm, on a motion by Matt Watson and a second by Dave DeCancio.

Chairman Coffey started the continuation of the previously noticed public hearing for Thomas Burke for area variances located at 250-254 & 256 Delaware. Chairman Coffey noted that there was additional information submitted and asked the applicant if they had time to review the information and also if they would like to comment on the information in which Mr. Lynch said yes.

Chairman Coffey noted that the Albany County Planning Board was to meet on this application on the following day and that Mr. DeCancio had asked the applicant for additional information in regards to the parking for the Pharmacy. This information was then submitted to the board after a brief discussion with Mike Tucker, the applicants Engineer from Infinigy Engineering.

Chairman Coffey then asked if the applicant had any comments in regards to the memo from the Department of Economic Development and Planning and then gave a brief overview of the memo. Noting that the district has been looked at to changing this from a Commercial Hamlet to a Hamlet District

Mr. Lynch then addressed the memo item by item in regards to the 21 design guidelines. The first being the incorporation of landscaped areas in the front yard is encouraged. Mike's memo states that there was none proposed. We feel that there is significant landscaping proposed along the entire length of Delaware Ave. The next is the development of public parks, commons or small pedestrian plazas and amenities. This is a redevelopment and do not feel it is appropriate but we will have benches and bike rack that we do not show on the plan. Another issue was that the main entrances to be orientated to the lot frontage and the secondary entrance being oriented to the parking. However Mike stated that the main entrances are orientated to the main street but the pedestrians must walk through the parking lot travel lanes to gain access. The narrative

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points out that the main entrance is oriented to the main corner and that the secondary entrance is oriented to the street and main parking area at the rear and we feel that this meets the design guidelines. In this type of setting people will have to walk through the lot and that is true. Next Mike mentioned the drive through should be located at the side or rear and landscaped to reduce visibility and it also fronts on Booth Rd. In our talks with Mark we have determined that Booth Rd is not really a front yard but a side yard as it has been determined. Also there will be 14' wide green space along Booth Rd and when we do a landscaping plan we will have plenty of screening for the drive through. Chairman Coffey pointed out that it appears to be that the code wants the drive through to be less visible from the road. Mr. Lynch stated that there will be heavy landscaping proposed along Booth and Delaware. The next comment was that pedestrian safety and internal circulation must be considered in the design. The location of the drive through is located on the side of the building away from parking and the entrances so we feel we do meet this guideline. Chairman Coffey pointed out that it appears to him that most of the traffic that is going to the drive through will be generated from Elsmere so that the cars will be going through the back lot where people will be walking from the parking lot to the entrances of the building, speaking in terms of pedestrian safety. Mr. Lynch stated that he understood that but right now it is open, uncontrolled ingress and egress at Delaware and if you are looking at this as a virgin site the perspective of the variance request would differ but this site already has those use and we are consolidating into one building and minimizing the access to the site and improving it. You will always have conflict between cars and pedestrians in a parking lot but this is the best we can achieve with this lot.

Mr. Micelli asked if the drive-thru was required by Wallgreens and Mr. Lynch stated yes it was in order to be competitive.

Mr. Lynch then addressed comments from Mr. Morelli about site plan criteria in regards to the parking to be at the rear or side and also that the proposed building being orientated towards the middle of the site with parking in the front yard at Delaware and Elsmere Ave and the drive through being in the front yard facing booth Rd. According to Mike Tucker's calculations the building is located 77' from the street and to center it on the lot it would need to be back an additional 60' back. We feel that the building is not in the center but in the front third of the site with the major parking area in the rear. There are 43 parking spaces in the front areas where people will be able to get from cars to the sidewalk and into the building without walking to through the main lot in the back. The overall point being is that we do not agree that the building is in the middle of the site. Mr. Micelli asked about access and traffic flow through the site which Mr. Lynch addressed. Chairman Coffey stated that he did agree that the building was not in the middle of the lot but clarified that the concern was in mind of the Delaware Ave Study is looking at this site being a hamlet and promotes buildings being at street side. In the memo there are pictures showing this showing the building at the street with no parking at the main street. Mr. Lynch responded by referencing page 5, item 2 in his brief, the second design guideline in a Commercial Hamlet speaking of the overall design in keeping with the existing character of the streetscape and the plan is keeping with the existing conditions. Mr. Umina asked for the setback of the CVS in comparison to the new building and Mr. Tucker stated that the new building would be similar if not closer to the street. Mr. Lynch went on to say that Mike is using Hamlet design guidelines and we are using Commercial Hamlet guidelines which are the existing zoning requirements. We have met the design guidelines of the commercial hamlet district and some of the Hamlet district guidelines also. Mike addressed crosswalks on the plan which we have off of Elsmere and the corner but we can't have sidewalks in the parking lot.

Mike's memo made reference to the Delaware Ave Hamlet Study which is in the planning phase and there is no date as to when it will be completed and what recommendations will be made to the Town board and also if the Town Board would accept and approve any proposed changes. So at this time we would like to rely on the current zoning for which we have addressed in our application. We do not feel we should be limited to what may or may not happen in the future. Chairman Coffey brought up that we would base the decision on the current law but inquired about if the building met some of the Hamlet requirements that Mike brought up in his memo would there still be the need for the number of variances. Mr. Lynch stated that the parking spaces would remain the same by moving the building up to the street and there would be a

larger parking field in the back and people would have to walk further distances to the building. The one thing to point out is by having this lane of travel is to have better flow of traffic. This is a mixed use which meets the comprehensive plan for this district with 2 story building and mixed use for commercial redevelopment which this is. Also Wallgreens does require certain parking fields of which they have made concessions but this is different with CVS being across the street with the parking they have and Wallgreens not being able to get it that parking too in order to be competitive. Chairman Coffey clarified his question as to asking if the building did front Delaware would they be able to meet the code or would they still need the variance for the green space and other requirements. Mr. Tucker stated during conversation with a couple board members stated that moving the building up would not alleviate any of the variances and may even create a situation where there may be less parking on the site.

In regards to the information Mr. Platel submitted to the board in which even though the other communities allowed for smaller parking 9' x 18' rather than 9' x 20' spaces they did require more spaces. Mr. Lynch said that it is common in other towns also to bank parking spaces.

Mr. DeCancio inquired about the property line down the middle of the building as to why the property was not combined. Mr. Lynch and Mr. Burke informed the Board that there are mechanisms in place for Mr. Burke to purchase the properties in a predisposed time period that was agreed to by Mr. Mullen and the Estate of Stout. At this time Mr. Burke has a long term ground lease with the option to buy from both owners. He also has a 25 year lease with Wallgreens with a 75 year term. It is in Mr. Burke's best interest to close on these as soon as possible, at that time the property could be combined. Mr. DeCancio asked if there could be a situation where the lease and option could be voided and the answer was that it is all part of the terms of the lease and is under Mr. Burke's control and it could not happen. Mr. Watson asked if it was before the 25 year lease was over and the answer was yes, way before then. Mr. DeCancio also asked if there was an option of a lot line revision and it was answered by the applicant that was a not an option with 2 separate owners

Mr. Umina asked about the parking lot and the access to the drive thru in the parking lot and the safety. Mr. Burke stated that it is no different from the access to their drive thru at CVS and that it is a fact of life. We did put a lot of time and effort into this to make it as safe for pedestrians as we could and also allow for good traffic flow. Mr. Platel asked about the location of 2 of the entrances being directly across from each other with a straight shot from Booth to Elsmere and that at the last meeting Mrs. Blank said that there was an issue with cars avoiding the light at the corner and using this as a short cut. Mr. Lynch stated that this would be an issue that the Planning Board would most likely address and they would move the one entrance if asked.

Chairman Coffey brought up that the driving force of the variances is the size of the building. The lot can't be made larger so the applicant needs to address this as to why it needs to be this size. Mr. Lynch stated that in deference to Mr. Mullen we do not want to address the purchase and rental prices but that they have negotiated the best possible purchase prices and best rentals with Mr. Mullen and Stout to make it economical we have to have sufficient square footage to make the this work. Without the purchase price and rental price being lowered to make it economically viable you need the square footage for the cash flow to pay the bills. Mr. Burke stated that we are not trying to put three pounds into a 2 pound bag, we are not. This lot can accommodate the building and that the market place determines this not Tom Burke. CVS made a decision to move and you can find out what that cost, just the land and the property across the street where the shoe depot is are and asking 1.5 million so you can figure that there is a large amount of money just for the land before you put a shovel in the ground, it is a huge investment for anyone. The bank won't loan money for a project that won't work and you have to have solid leases and a project that will work. Mr. Lynch stated that Mr. Mullen found out that his building had become obsolete when CVS left him and the other building is becoming that way also as it was not built for medical space. It is clear that this corner is an eyesore and that was stated by others who were at the last meeting also at the previous meeting. The project has to have the economic strength to make the payments and a smaller building will not. We are not saying that we are drawing a line in the sand and that is it, we are saying this is what we need to make the project work. We do not have an economist to give you all of the numbers but at the end of the

day it has to work and all of Mr. Burkes projects work. We have to balance the project and the existing buildings of 26,000 square feet of space do not work and if we stayed with that size it would not even over Mr. Mullen's side of the project and it would not work. This is also a good project for the town, tax base, no burden to the schools and good services for the town's people. Mr. Burke stated that the project will be a vast improvement to the site with the additional green space and beautiful new building and that he lives in the town and has been driving by this site for years and this will be a dramatic improvement and that it will be better for the Town.

Mr. DeCancio asked what the minimum square footage that Wallgreens requires and Mr. Lynch responded that it is 14,550 square feet which was echoed by Mr. Burke. It will be about the same size as the CVS across the street.

Chairman Coffey asked about not meeting the parking requirements and that Mr. Lynch referenced the design guidelines in regards to having the minimum spaces required and this is based on what you are anticipating to be the minimum use based on the current use. My concern is that the minimum and we have nothing to compare this to and say on record that this is the minimum number of spaces and we are going to have a horror show with people trying to get in and out of the site. Mr. Lynch quoted the design guideline 16 in regards to the number of spaces being the minimum number to adequately serve the use. You have the code stating this is the number by square footage and a guideline stating to have the minimum necessary. Mr. Moore pointed out that the guideline does not overrule the requirement. Mr. Coffey asked how we know this is the minimum number needed. Mr. Lynch asked the board to use common sense and spoke about the uses not being at there peak use at the same time and therefore will not be fighting each other at peak hours and there is an offset there. The site was monitored by Mr. Burke and the lot only now uses like 35 spaces now and that may be doubled. The lot has 183 spaces and if you go to a CVS or Wallgreens, 99% of the time the parking lot only has 12 cars and they have the requirements for peak hours and around holidays when they are really busy and for the most part the parking lots are underutilized. We feel that based on Tom's 30 years of experience that it will work and the tenants will also not be here if they do not think that the parking is adequate. We do not only need to prove this to you but also the tenants need to know that there is the parking so they can have spaces for the employees as well as the clients so it is not just a number we threw out there.

Hearing no more questions or comments the hearing was closed by Mr. Coffey

Resolution for the South Albany airport was approved with changes in regards to noting that the proposed hangar is further from the property line than the existing hangar that will be removed. On a motion by Mr. Micelli and a second by Mr. Watson with a 5-0 vote in favor the application was approved

Mr. Umina asked the Chairman if the planning board would be looking into traffic issues since he does have reservations about ingress, egress and traffic flow to the site. The Chairman said that they would and also stated that the zoning board still needs to look at the criteria used in making a determination for an area variance and to make a decision based on the information supplied. Also was brought up was the pending ACPB decision and whether we should wait for it prior to making the decision. The board members agreed that it was a good idea to wait the 2 weeks before making a decision.

Meeting was adjourned at 7:56 on a motion by Mr. DeCancio and seconded by Mr. Watson.