

**PLANNING BOARD
TOWN OF BETHLEHEM**

June 1, 2004

The Planning Board, Town of Bethlehem, Albany County, New York held a **Regular Meeting**, on Tuesday June 1, 2004, at the Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY. Chairman Parker D. Mathusa presided and called the meeting to order at 7:30 pm.

Agenda: Moratorium Waiver Applications: Van Dyke Spinney, Hamden Woods
Van Valkenburg Subdivision
State Farm Addition
Beacon Pointe Harbor

Present: Parker Mathusa, Planning Board Chairman
Keith Silliman, Planning Board Counsel
Brian Collier, Planning Board Member
Thomas Cotrofeld, Planning Board Member
Howard Engel, Planning Board Member
Katherine McCarthy, Planning Board Member
Christine Motta, Planning Board Member
Daniel Odell, Planning Board Member

Jeffrey Lipnicky, Town Planner
Janine Saatman, Deputy Town Planner
Randall Passmann, Senior Town Engineer

Howard Johannessen, Boutelle & Sons, Van Valkenburg Subdivision
Edward Feinberg, Van Dyke Spinney
Rex Ruthman, Van Dyke Spinney
John, Lois, Jeff and Joel Vadney, Van Dyke Spinney
Albert Hessberg, Esq., CB Development, Hamden Woods
Steve Clark, CB Development, Hamden Woods
Brian Moss, Gladstone Development, Hamden Woods
Neil VanDeCarr, State Farm Addition
Samuel Ciccio, McGuffey Ln., Delmar, Beacon Pointe Harbor
Simone Sebastian, Times Union

Moratorium Waiver Applications

Chairman Mathusa opened the meeting by reading some background information pertaining to the parameters the Planning Board had to operate under and the criteria that was used to determine the recommendation of the Planning Board. The parameters were outlined in Local Law No. 3 and the criteria had been set forth by the Planning Board Counsel, Planning Department and the Town Board Counsel. Chairman Mathusa asked the applicants if they had additional information that they wanted to add that had not been included in their application.

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955, extension 158.

Mr. Rex Ruthman spoke for the Van Dyke Spinney application. He thought that the proposed Van Dyke Spinney project should not fall within the projects affected by the moratorium. He felt that the project was still active at the Town Board level. The project was seeking a change of zoning from the Town Board.

Mr. Silliman requested that the Planning Board staff forward the e-mail that Mr. Ruthman had sent onto Mr. Potter, the Town Attorney. He stated that the Planning Board, because of their time constraints, should still go forward with their recommendation on the Van Dyke Spinney Waiver request.

Mr. Albert Hessberg, Esq. represented CB Development; Hamden Woods, concerning their waiver application. He thought that this project was a “poster child” for the waiver process under the moratorium. The project had been active since 1999. He mentioned an article that had recently been in the Spotlight Newspaper that implied that the review process in the Town was broken. He thought that the project had suffered from that breakdown. He stated that the application as submitted showed cause for a waiver.

Chairman Mathusa asked Mr. Lipnicky to explain the waiver criteria set forth and whether the applications had answered those criteria questions.

Mr. Lipnicky covered the waiver requests separately. First was the waiver request from Van Dyke Spinney. He stated that the first criterion looked at was unnecessary hardship affecting the property. Unnecessary hardship was defined in the Town Code under the use variance and that definition was applied as criteria in the determination of the waiver applications. Mr. Lipnicky stated that the Van Dyke Spinney waiver application did not try to address how their project was affected using that definition. He stated that the application neglected to include analysis of the parcel in question pertaining to any of the permitted uses under the Code not affected by the moratorium and whether it could gain a reasonable return from that use. The application neglected to supply a financial analysis other than a statement on engineering costs. Mr. Lipnicky stated that even though there may be a short-term financial burden that the applicant may suffer during the moratorium, the question remained, would the property produce a reasonable return in the long term. The second criterion of unnecessary hardship was that the hardship was unique to that property. The applicant had not shown unique hardship that was not being suffered by others affected by the moratorium. The next criterion looked at was whether the granting of the waiver would alter the essential character of the neighborhood. Though the application did not discuss this issue, the location of the proposed project was semi-rural to rural in character and still received an agricultural exception. The area of the proposed project was currently low-density single-family homes. The last criterion dealt with was whether the hardship had been self-created. Again the application does not address this issue. Mr. Lipnicky stated that additionally the Local Law identified questions that needed to be answered in order to arrive at a waiver decision. What was the existing land use in the vicinity of the property? Currently the immediate vicinity was low-density single-family homes, agricultural uses and undeveloped lands. The proposed project was high-density residential units. What would the impact of the waiver have on the water supply? The proposed project was out of the water district and the DEC was not allowing water extensions in the Town of Bethlehem at this time. What would be the impact of the waiver on agricultural lands? The soils on the site were identified as agricultural soils that were moderately suited to cultivated crops and well suited to pasture land. Granting the waiver would convert approximately 45 acres to suburban use. What would be the impact on open and recreational space? The parcel was currently undeveloped land. There wasn't any formal public or private recreational use of the property. The impact on rural character had

already been covered. The impact on natural resources and the infrastructure of the Town would have been identified in the SEQR process, which at this point had not been started. Mr. Lipnicky stated that possible intersection improvements would have been required at Meads Lane/ Van Dyke and an upgrade of Van Dyke Road in all likelihood would be needed.

Mr. Silliman stated that the Planning Board and the Town Board would be looking at the same three questions dealing with findings. Does the granting of the waiver adversely affect the purpose of the temporary moratorium? Does the granting of the waiver adversely affect the health, safety or welfare of the Town of Bethlehem? Does the granting of the waiver adversely affect any comprehensive planning being undertaken in the Town?

He stated that the Town Board had enacted a temporary moratorium on certain residential development. The purpose of the Zoning Code and the moratorium was to preserve the health safety and welfare of the Town while revisions to the Zoning Provisions of the Town Code are developed, considered, assessed and adopted. As part of that, the Town was undergoing a comprehensive planning effort, which should be completed within a year. Granting a waiver would be inconsistent and could undermine the results of the planning process, therefore the conclusion was that the applicant had not made an adequate showing to meet the requirements of any of the three findings.

Chairman Mathusa asked the Board members for questions or comments. Mr. Odell stated that the criteria used in their determination of the waiver were very specific and very constraining. He did not see any other alternative than the one outlined in the draft recommendation. Ms. Motta agreed with Mr. Odell. Mr. Collier wanted to let the applicant know that he liked the project. The owner of the property had written a letter outlining the financial dilemma of the family and he was empathetic. He didn't think that the applicant had made a sufficient argument for financial hardship, though he did understand that delays in construction would add costs. Mr. Collier was not completely convinced that the hardship standards that were used were applicable in this waiver process. Mr. Collier thought that the question brought up by the applicant as to whether this project was a zoning or a planning issue was interesting. He thought it should go back to the Town Board for further consideration and let the applicant make a case to the Town Board.

Mr. Silliman stated that whether the Planning Board votes yes or no, it was recommendation, not a final vote and either way it would go back to the Town Board. The Town Board has the ultimate say in the decision.

Ms. McCarthy stated that the standards to be used in their determination were very high and the work that Counsel and staff had done made it very clear that the waiver should be denied.

Mr. Cotrofeld felt that the project would be a benefit to the Town and the seniors. He stated that it was extremely difficult or impossible to satisfy all the criteria set forth. The waiver application as submitted did not satisfy that criteria.

Mr. Engel agreed with the other comments, but he wanted to focus on the comprehensive planning part of the findings. He stated that the Town was currently looking at the Zoning and the Planning process. He felt that the waiver would definitely have an adverse effect on the undertakings of the advisory committee. Even though he understood the concerns of the applicants and the owners, he would have to recommend the waiver be denied.

Chairman Mathusa stated that the Town Supervisor made it very clear at the Town Board meeting when the moratorium was adopted that she was very sensitive to the need for senior citizen housing in the Town. But based on the language of the moratorium, there weren't enough grounds to grant a waiver to the moratorium. He stated that the standards used to decide their recommendation were very high.

Mr. Collier asked if the applicant would have an opportunity to plead their case to the Town Board. Mr. Silliman stated that the Town Board would decide whether or not there would be a public hearing. Mr. Collier added that he didn't think that the granting of the waiver would directly impact the planning process the Town was undertaking.

A motion to accept the draft recommendation to the Town Board that the request for a waiver by the applicant of the Van Dyke Spinney Project be denied was offered by Mr. Odell, seconded by Ms. McCarthy; six approved, one opposed. The motion was carried.

Mr. Silliman stated that the draft recommendation was now a public document.

Chairman Mathusa turned the Board's attention to the waiver application of the Hamden Woods Subdivision. He stated that the same criteria and time constraints that applied to the previous application, also applied to this one.

Mr. Lipnicky prefaced by stating that some of the comments to the prior application were relevant to this one. The first question under unnecessary hardship remained. Can the applicant realize a reasonable return on the property utilizing the uses permitted in the Code? The applicant did not analyze whether the property could be put to the various uses permitted under the Code. There wasn't an analysis of the potential revenue the property could bring under those uses either in the short term or the long term, that would answer the "reasonable return" question. The documentation submitted substantiated only engineering costs incurred. The next question: Was the hardship unique to the property? No attempt had been made to show unique hardship. The hardship shown related to the amount of time it had been in the review process. Mr. Lipnicky agreed that the project had been around for a long period of time. The applicant had also pointed to the number of amendments that had been required by the Town and the cost of those amendments. The costs identified were not unique to this project and the types of economic hardships that were identified were being felt by all the projects affected by the moratorium. The next question was whether the waiver would alter the essential character of the neighborhood. The project location was in area of other subdivisions. It was surrounded on two sides with medium density single-family homes. The project proposed the same type of use that was near by. It was debatable as to whether this project would change the character of the neighborhood. The next question was whether the hardship was self-created. Mr. Lipnicky stated that again there wasn't any discussion in the application pertaining to this issue. This project was not located within a water district therefore an extension of the water district would be necessary and as mentioned before, DEC was not allowing any extensions at this time. The next question to take into consideration was the impact on agricultural lands. The parcel itself was not agricultural in nature, but wooded. It appeared that it had been quite sometime since it had been used for agricultural purposes. The soils on the parcel were classified as moderately well suited for cultivated crops and pastureland. At present there wasn't any formal recreational use of the property but because it was undeveloped land it could be considered open space. The impact of the project on the rural character would be subjective. Part of the area was subdivision but to the south of the project were mainly undeveloped lands. The impact on the natural resources was unknown. The impact on the transportation and infrastructure of the Town was the next question.

There had already been some work done in the area for this project. It was estimated that the project would create approximately three hundred (300) new vehicles trips per day. Staff did not consider this to be a significant impact on this area of the Town. In addition, the project itself would improve transportation because the applicant had agreed to construct a portion of the East/ West collector road that the Town had wanted to construct to relieve traffic congestion on Feura Bush Road. The Planning Department determined that the criteria under the fundamental question of unnecessary hardship had not been met.

Mr. Silliman stated that under findings the questions for the Planning Board and then the Town Board remained: Would the granting of the waiver adversely affect the purpose of the temporary moratorium? Would the granting of the waiver adversely affect the health, safety or welfare of the Town? Would the granting of the waiver adversely affect any comprehensive planning being undertaken in the Town? Mr. Silliman stated that the Town, when enacting the moratorium, identified exceptions to its application and imposed a one-year moratorium on certain residential development. The applicant had not made an adequate showing that a waiver was warranted in this instance. The moratorium was designed to protect the health, safety and welfare of the Town while it undertook a comprehensive planning process. The granting of a waiver could undermine that comprehensive planning process.

Ms. McCarthy didn't feel that that the Board could grant a waiver in this instance either. A large amount of financial documentation provided, it was not a huge development and the fact that they would be building onto an existing subdivision made it a hard decision. But the criteria still had not been met.

Mr. Collier wanted to know, if a developer purchases a piece of land with the intention of developing it into a certain number of parcels with the purchase price would reflecting that number and he could only develop four of those lots, could that be used as an argument for financial hardship.

Mr. Silliman stated that the four (4) lot restriction was temporary. The Town Board when instituting the moratorium had placed a specific cutoff for what would be allowed to proceed. This project did not come close.

Mr. Collier thought that the applicant's case rested on the fact that it's been a long process, four (4) or five (5) years, in which in their terms, they got "caught in the door" and they felt, in part, it was due to the Town process and criteria. Mr. Collier stated that whether he voted yes or no wouldn't make any difference. The Town Board would listen to the applicant and make the final decision.

Mr. Silliman stated that the applicant had made their case already in their application, whether the Town Board called for a public hearing or additional information was up to them, it wasn't mandatory.

Ms. Motta stated that under the standards that needed to be applied, even though the applicant had done a lot of work, she did not feel that the waiver could be granted. Mr. Odell and Mr. Cotrofeld agreed.

Mr. Engel agreed with the other members. In response to the statement by Mr. Collier that the project got "caught in the door", Mr. Engel thought the door was closed for a reason after much deliberation by legal counsel and the Town Board. He thought that opening the door for one

individual project would create more problems. Mr. Engel also wanted to respond to his other comment that his vote doesn't make a difference. He thought it made a great deal of difference. Everyone on the Board makes a difference, they spend a great deal of time reviewing plans and documentation, as does the staff and counsel. Their recommendation sends a very important message to the Town Board, who doesn't spend the same amount of time reviewing plans.

Mr. Collier responded that the Board's votes made a difference and he also stated that the public's concerns needed to be listened to at the appropriate level.

Mr. Engel thought that in order for the comprehensive planning process to effectively proceed, the door to development needed to remain closed.

Chairman Mathusa stated that he agreed with the other Board members in the denial of the waiver. He was sympathetic to the fact that the applicant had spent a lot of time and effort but the Town Board was clear in their resolve to temporarily suspend residential development.

Mr. Hessberg stated that the Town had done a poor job with the waiver application for the moratorium and the standard that they were being held to. There wasn't enough information or direction on the application pertaining to what standards would be applied. Mr. Hessberg stated that, as an attorney, he would have presented a much different application if he had the memo stating the standards prior to the submission of the application. He suggested that the Town articulate to future applicants, the standard they would be held to.

Chairman Mathusa understood his point and stated that these were new procedures for everyone.

A motion to accept the draft recommendation to the Town Board that the request for a waiver from the applicant for the Hamden Woods Subdivision be denied was offered by Mr. Cotrofeld, seconded by Mr. Engel; six approved, one opposed. The motion was carried.

Van Valkenburg Subdivision

Chairman Mathusa turned the Board's attention to the Van Valkenburg project, a 2-lot subdivision on Dawson Road. It was on the agenda for the possibility of setting a public hearing date. He asked Mr. Johannessen for an update on the project.

Mr. Johannessen stated that he had received a memo from Mr. Lipnicky outlining changes that needed to be made to the plat. Those had been done. They included: extra notations on the plat, some clarifications to the graphics, arrows to show flow direction in the storm sewers, detail around the pipe area, noting the types of districts that bordered the project and some adjustment was done to the grading in the area between the two lots so that the swale was centered on the common lot line between the two proposed lots.

Mr. Lipnicky stated that most of the items were detail in nature. The only items of any significance were the change in the swale and the other item concerned the drainage easement on the northeast property line.

Mr. Passmann stated that currently a twenty (20) foot wide drainage easement centered on the pipe was being shown. The Engineering Division would request an additional fifteen (15) feet up to the

property line. The easement would then have ten (10) feet on west side of the pipe and twenty-five (25) feet on the property line side to allow sufficient access for the Town.

Staff indicated that the plat was satisfactory for public hearing purposes.

A motion was offered by Ms. McCarthy, seconded by Mr. Collier and approved by all present to schedule a public hearing on Tuesday, July 6, 2004 at 7:30 pm, at the Town Offices, 445 Delaware Ave., Delmar, NY, on the application of William Van Valkenburg, 515 Dawson Road, Delmar, NY, for approval of a two (2) lot subdivision at 515 Dawson Road, Delmar, NY, as shown on a map entitled, "PRELIMINARY PLAT OF PROPOSED SUBDIVISION OF LANDS OF WILLIAM VAN VALKENBURG, ST. NO. 515 DAWSON ROAD, Town of Bethlehem, County of Albany, State of New York" dated February 18, 2004, revised May 19, 2004 and prepared by Edward W. Boutelle & Son, Civil Engineers and Surveyors, 423 Kenwood Ave., Delmar, New York.

A motion to table was offered by Mr. Engel, seconded by Mr. Odell and approved by all present.

State Farm Insurance Addition

Chairman Mathusa turned the Board's attention to the State Farm Insurance Addition that has been submitted by Neil Van De Carr. The project proposed adding approximately 280 square feet in the rear of the structure. This was an initial presentation to the Board.

Mr. Van De Carr stated that existing staff would utilize the addition. There wouldn't be any additional offices. One of the offices would relocate into the new space and their old space would become a lunchroom. The addition would be a 12' x 24' space.

Ms. Saatman stated that staff did not have many comments on the project. It was a small addition and fell within the Type II actions for SEQR and did not require a SEQR review. The Albany County Planning Review had been done and their recommendation was to defer to local consideration. Comments outlining a few minor changes that needed to be done to the map had gone out to the applicant, Mr. Van De Carr. Ms. Saatman stated that she would fax zoning boundary language to Mr. Hite that needed to be added to the plat.

Mr. Passmann stated that during a site visit it was noted that the overall grading on the property pitches to Kenwood Avenue. It appears that one-half to three-quarters of the site drains to the front of the parking lot with the remainder going to Kenwood Avenue. There was currently a berm on the front edge of the property. He stated that it seemed to have a damming effect on the storm water runoff. A four (4) inch diameter PVC pipe had been added that runs through that berm to convey the storm water to the sidewalk area and then to the nearby catch basin. Mr. Passmann stated that the proposed addition was not large enough to add significant runoff to the front edge of the property. Engineering would recommend that the existing condition be remedied to improve the drainage in the front of the property. The storm water should be conveyed to the catch basin and not across the sidewalk. He stated that the Engineering Division would be providing formal comments to the applicant. Mr. Passmann stated that the grading around the building should be shown on the plat. Mr. Van De Carr stated that he would wait for Mr. Passmann's comments before any changes would be made to the plat so they could all be done at the same time.

A motion to table was offered by Mr. Cotrofeld, seconded by Ms. McCarthy and approved by all present.

Beacon Pointe Harbor

Chairman Mathusa turned the Board's attention to the Beacon Pointe Harbor project. It was on the agenda to further discuss the SEQR issue and possibly make a recommendation to the Town Board.

Mr. Lipnicky stated that the Board had received the Environmental Assessment Form that had been submitted by the applicant and the Part II completed by staff. At the last meeting the applicant had indicated that the appropriate course of action would be to recommend a Positive Declaration and they could then begin the environmental review. Staff agreed with that course because of the number of issues that could potentially be significant impacts. Mr. Lipnicky stated that a draft resolution that outlined the potential impacts had also been distributed to the Board. Some of the potential impacts were as follows: traffic, wildlife habitat, drainage, compliance with Phase II Storm Water Regulations, flood plains, water supply, sanitary sewers, erosion and sediment control issues, federal wetlands, visual impact along the shore line and potential noise and air quality issues.

Mr. Lipnicky covered the procedure that was necessary to follow concerning this project. The Memorandum of Understanding between the Planning Board and the Town Board would be followed during the SEQR process. The Town Board would act as lead agency, making all the decisions and the Planning Board would act as an advisory agency during that process. In the immediate future the Planning Board would decide on a recommendation to the Town Board on whether a Positive Declaration would be issued, then the Town Board would vote to issue the Positive Declaration. Under the SEQR Regulation were provisions for scoping which identify the issues and how those issues would be addressed in the Draft Environmental Impact Statement. Under the MOU, the Planning Board would conduct the scoping. If the Town Board issued a Positive Declaration, they would circulate a notice to all the involved agencies and refer the project back to the Planning Board for the scoping document. The applicant must produce a Draft Scope for the Board and then the Board has sixty (60) days to produce a final scope. The applicant may then proceed with their Draft Environmental Impact Statement.

Chairman Mathusa asked if there was a need to hire a consultant for this project. Mr. Lipnicky stated that prior memos to the Board and the applicant stated that a consultant would be necessary to expedite the process. The applicant would incur the consultant costs. He stated that the RFQ would be prepared by the Planning Department. Support of the idea from the Planning Board would be helpful.

Mr. Collier asked if the consultant would be hired for the scoping work. Mr. Lipnicky stated that the consultant could be hired within the sixty (60) days given to produce a final scoping document. Mr. Collier noticed that the applicant had included Beacon Heights in their documentation. Mr. Lipnicky stated that even though the Beacon Heights project was affected by the moratorium, there were certain cumulative impacts that needed to be analyzed. The DEIS would cover both projects but the Beacon Heights would be an indirect analysis.

A motion to accept the amended Draft Resolution Recommending to the Town Board that a Positive Declaration be issued was offered by Mr. Collier, seconded by Mr. Cotrofeld and approved by all present.

A motion to accept the minutes as amended was offered by Ms. McCarthy, seconded by Mr. Odell and approved by all present.

A motion to adjourn was offered by Mr. Odell, seconded by Mr. Engel and approved by all present.

The meeting concluded at 9:20.