

**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**August 5, 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, Board of Appeals 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

Faith Foster, 11 Morningside Dr.  
Lydia Kosinski, 2 Leonard Pl.  
John Yolles, 2 Leonard Pl.  
Alice Carpenter, 4 Salisbury Rd.

AGENDA: Pines @ Normanside  
TD Bank  
Jim Sheldon  
Carol Cady

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.

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 into the record was offered by Mr. Umina, seconded by Mr. Watson 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, August 5, 2009, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New

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

York to take action on the 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).

Mr. Tucker from Infinigy Engineering presented for the applicant. Items presented:

- use variance requested is for proposed lot #11 fronting on Delaware Ave. for the Pines@Normanside project
- has obtained an area variance for width of lot for Lot #11, allowing seventy-five (75) foot lot width instead of one hundred (100) feet
- the building department rendered a decision that they needed a variance for the driveway access to be from Leonard Place
- they have approached abutting property owner for access easement and shared parking and keeping access in the commercially portion of the property; adjoining property owner not interested at all. Option was eliminated.
- correspondence from NYSDOT from a letter written by Planning staff; NYSDOT prefers access from Leonard Pl. due to safety reasons. They don't want additional curb cuts onto Delaware Ave.
- Planning staff has encouraged access from Leonard Pl. to address design criteria in Comprehensive Plan
- met with the Planning Board and they favor the access to be from Leonard Pl. Suggested extra buffering
- meets Zoning Code for the parking requirements for the proposed uses. Other allowable uses in the district would have to comply with the number of proposed parking spaces.
- Leonard Place will be widened up to twenty-two (22) the narrowest and up to twenty-four (24) in other areas. It will be repaved
- applicant will work with neighbor on buffering for their property at 2 Leonard Place and /or adjusting driveway to mitigate headlight glare
- client will maintain ownership of the mixed use parcel; is a large financial part of the project. Will supply the Board with a financial analysis.
- Will be marketed as office space.
- hardship is unique because the district line was set along the rear of the properties which front on Delaware Ave. The proposed lot #11 was left with no access onto Leonard Pl. without crossing districts. Planned access to satisfy DOT preference for access.
- will not change the character of the neighborhood, other commercial properties in the area that have access onto Leonard Pl.
- commercial vehicles will include moving vans, Fed Ex., etc. Meant to be office space, would not be getting large constant deliveries.
- hardship self created; setting of district line landlocked parcel because of DOT's request for no access onto Delaware Ave.
- without variance, applicant assumed NYSDOT would give them a curb cut onto Delaware Ave. but the building would be flipped with the parking in the front and the building to the rear, but applicant, Planning Department and Planning Board did not want that design
- asked for more time to compile the financial information requested

Zoning Board:

- more information, especially financial, to prove requirements needed for a use variance under the zoning law
- Chairman reminded applicant to review criteria in Zoning Law pertaining to use variance. Has a burden of proof that other uses, allowed in both zones, cannot see a reasonable return
- presentation as it stands is not adequate to substantiate a use variance
- member stated NYSDOT wants access from Leonard Pl. for safety reasons and traffic flow
- type of commercial vehicles that will going to mixed use building?
- member asked if multiple units, apartments, were a commercial or residential use
- member asked if this variance was a make or break for the project.
- Chairman asked if screening was discussed to mitigate the headlights onto 2 Leonard Pl.

Mark Platel:

- mixed use building is permitted but considered a commercial use

John Yoles, 2 Leonard Pl.

- concerned with headlights onto property from the access driveway
- with apartments they will be a lot of traffic and parties at night with people coming and going.
- if they didn't own the property behind them, NYSDOT would allow curb cut onto Delaware Ave.
- didn't think it would be a burden to applicant to have a curb cut on Delaware Ave.
- wants Board to deny variance

Lydia Kosinski, 2 Leonard Pl.

- concerned with headlights onto property, specifically into her bedroom
- safety concern with commercial vehicles coming through a residential neighborhood with children in the neighborhood
- a resident has had a problem with someone backing out of the pediatric dentist and children playing almost getting hit.
- opposed to access onto Leonard Pl.
- are sidewalks proposed for Leonard Place?
- will there still be street parking for residents of Leonard Place
- what is parking based on
- wants to make sure Leonard Pl. would not turn into a no parking area

Board directed applicant to gather information requested and report back to Zoning Board staff to get back onto the agenda.

A motion to adjourn the hearing to a date uncertain was offered by Mr. Umina, seconded by Mr. Watson and approved by all Board members present.

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## **APPLICATIONS**

### **TD Bank**

The Board had received an application for two variances under Article VI, Section 128-59 D (6). The applicant wished to have an internally lit pylon sign and wall sign.

A motion to schedule the public hearing for August 19, 2009 at 7:00PM was offered by Mr. Micelli, seconded by Mr. DeCancio and approved by all Board members present.

## **DISCUSSIONS**

### **Jim Sheldon**

The Board had received an application for a variance under Article VI, Section 128-55 (B) (2); for a lot line revision.

The applicant had come into the office and spoke with staff about his application. He is still in the process of negotiating with the adjoining neighbor and would like the Board to reserve their decision until a later date. The public hearing was closed on July 15, 2009 and the Board has sixty-two (62) days from close of hearing to make their decision.

## **RESOLUTIONS**

### **Carol Cady**

The Board had received an application for a variance under Article XIII 128-100. The applicant wishes to demolish an existing home and rebuild.

The Board reviewed draft Resolution AV-0905 prepared by the Zoning Board Counsel.

A motion to approve Resolution AV-0905 as drafted was offered by Mr. Umina, seconded by Mr. Watson and approved by all Board members present.

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

The meeting adjourned at 7:40.

Respectfully Submitted,

Nanci Moquin