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**TOWN OF BETHLEHEM
BOARD OF APPEALS**

December 1, 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, Chairman
Michael Moore, Board of Appeals Counsel
Lennie Micelli, Board of Appeals Member
Kenneth Umina, Board of Appeals Member
David DeCancio, Board of Appeals Member
Matthew Watson, Board of Appeals Member
Mark Platel, Assistant Building Inspector
Justin Harbinger, Assistant Building Inspector

Peter Gillies, Applicant
Marcia Roth, Applicant
Chuck Radliff, Sr., Resident
Janet Morris, Resident
Tom Yovine, Resident
Scott Masters, Resident

Chairman Coffey called the meeting to order at 7:00pm noting that there is a quorum with five (5) members being present as well as Attorney Michael Moore.

PUBLIC HEARING:

YMCA, 900 Delaware Avenue, Delmar for consideration under Article III, Zoning Maps and Districts, Section 128-16, Parcels in Multiple Districts.

Mr. Platel: The applicant is proposing to construct a 3,200 square foot pavilion and recreational field in a Residential "A" District. The overall parcel has 2 separate Zoning Districts regulating the use of the property. The front portion of the property is in a Rural Hamlet District that permits Commercial uses such as the YMCA and the rear portion of the lot is zoned Residence "A" that permits residential uses. Under Section 128-16(B) the Zoning Board can determine if the proposed use is a compromise of the zoning of the 2 separate districts. The overall size of the parcel is 29 acres with the commercial portion being about 15 acres and the residential area being approximately 14 acres. The existing use of the property is as a fitness center and as stated earlier is located in a Rural Hamlet and residence "A" Zoning Districts.

Mr. Watson made a motion to indent the Public Hearing notice into the record, seconded by Mr. Umina, with all in favor.

Chairman Coffey advised the procedure to be used is to hear the Applicant's presentation, entertain any questions or comments from the audience, hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition. All comments and questions should be directed to the Board.

Pete Gillies, Woodward Connor Gillies Selemen Architects, presented. The site is about 29.4 acres, intercepted by land owned by National Grid. On one side of the National Grid land, the zoning of the YMCA parcel is Rural Hamlet. On the other side, the zoning of the YMCA parcel is Residential A. The YMCA has an easement to cross the National Grid land for day campers to gain access to nature trails in the woods. The YMCA would like to build a pavilion in the area in the Residential A district to support more activities for campers, about 100 feet from the Rural Hamlet district. During the past summer, there was a tent erected on the site for these purposes.

55 Eventually, the YMCA plans to build cabins in the Residential A area to support more activities.
56 The camp is intended for use during the day only.
57 Mr. DeCancio asked what the zoning was before the Comprehensive Plan. Mr. Platel wasn't
58 certain, but he will research and advise the Board. Chairman Coffey noted the project will need
59 to go before the next Albany County Planning Board on December 16, 2010 for determination
60 and will need to go to the Town Planning Board for approval if the variance is granted.
61 Chairman Coffey asked if it was possible to place the pavilion in the Rural Hamlet district
62 portion of the YMCA parcel. Mr. Gillies advised he was constrained by the existing parking lot
63 and the topography on either side of the existing parking. There is no space left on the Rural
64 Hamlet side of the parcel. In response to Mr. Micelli's question, Mr. Gillies presented a
65 rendering of the proposed pavilion. It will be wooden with a metal roof, with power, water and
66 sanitary facilities. Mr. Micelli asked if there was any danger in constructing a pavilion near the
67 National Grid power lines. Mr. Gillies advised the power lines run through developments in the
68 area and Mr. Umina advised the same power lines run through Colonial Acres. The path to the
69 pavilion will not be paved. It was noted there are several abutters, but no residences within site
70 of the proposed pavilion.
71 Chairman Coffey reviewed Section 128-16(B) of the Zoning Code. Because the YMCA land is
72 one parcel according to the Town, the application can be considered under this section that
73 applies to parcels in Multiple Zoning Districts. Since no action can be taken by the Board prior
74 to the decision by the Albany County Planning Board meeting on December 16, Chairman
75 Coffey asked the applicant to take a closer look at Section 128-16(B) and submit more
76 information and evidence, consistent with the language in that section, as to why the Board
77 should grant the variance based on 128-16(B). The alternative is for the Board to consider a use
78 variance, which is more difficult for an applicant to meet all criteria necessary.
79 Attorney Moore noted the proposed action is an unlisted action under SEQR and the decision
80 will be made at the earliest possible time as to whether to do a coordinated or uncoordinated
81 review.
82 Chairman Coffey asked if anyone would like to speak in favor or opposition to the application.
83 No one responded and Chairman Coffey kept the public hearing open.

84
85 **APPLICATIONS:**

86 On a motion from Mr. Micelli, seconded by Mr. DeCancio, a public hearing was scheduled for
87 December 15 at 7:00pm, on an application by **Delmar Holdings/Valero, 594 Delaware**
88 **Avenue, Delmar** for a use variance under Article XIII, Uses and Area Variances, Section 128-
89 99, Schedule of Uses.

90
91 **MINUTES:**

92 The minutes of the November 17, 2010 meeting were approved as amended on a motion from
93 Mr. Umina, seconded by Mr. Micelli, with all members present in favor.

94
95 **PUBLIC HEARING:**

96 **Marcia Roth, 18 Wellington Road, Delmar** for an area variance under Article VI, Section 128-
97 47 B (1) Fences and Walls in a Core Residential District.

98
99 Mr. Platel: The applicant is proposing to construct a 6 foot fence in the front yard of the
100 property. In a Core Residential Zoning District a 6 foot fence may be located in the side and
101 rear yard of the property but only a four foot fence is allowed in the front yard. The applicant
102 will need a variance of 2 feet to allow the construct of the 6 foot fence in her front yard.

103
104 The existing use of the property is as a single family dwelling and is as stated earlier is located
105 in a Core Residential District.

106
107 Mr. Umina made a motion to indent the Public Hearing notice into the record, seconded by Mr.
108 Watson, with all in favor.
109 Chairman Coffey advised the procedure to be used is to hear the Applicant's presentation,
110 entertain any questions or comments from the audience, hear anyone wishing to speak in favor of
111 the Applicant and anyone desiring to speak in opposition. All comments and questions should be
112 directed to the Board. Additionally, there was a request in writing to discuss certain specifics of
113 the reason for the application in executive session. Attorney Moore advised that would require a
114 motion and vote in open session using wording he can provide at the appropriate time.
115 Ms. Roth presented on her own behalf. She used a hand drawn site plan to illustrate some detail
116 in the front and the placement of the proposed fence. The fence will be vinyl and designed to
117 withstand hurricane force winds. Mr. Platel did some calculations and advised that based on the
118 width of the front yard, if the panels are 8-feet wide, about 9 panels would be required.
119 The fence will be on Ms. Roth's property and will not infringe on the town right of way. There
120 are currently 8-foot white lattice panels erected in the front of the house for privacy. Ms. Roth
121 intends to keep the panels up after installing a fence and gate around the property. Chairman
122 Coffey asked if it would be possible to install a 5-foot fence instead. Ms. Roth advised the fence
123 is not manufactured at 5-foot heights. Chairman Coffey asked if there is another way to secure
124 the property and gain privacy. Ms. Roth advised she has planted bushes and trees but plants and
125 trees don't grow as thick as she would like and some of them are dying off. Chairman Coffey
126 asked if any of the neighbors expressed concern about the proposed project. Ms. Roth advised a
127 couple left messages, but no contact info, so she couldn't return the calls. Two times, Ms. Roth
128 mentioned she would like to go into executive session. Chairman Coffey noted the importance
129 of getting as many of the details relating to the relief requested on the record, excluding any
130 information she would prefer to share in executive session.
131 Chairman Coffey asked if anyone would like to speak in favor or against the application.
132 Tom Yovine, 26 Sylvan (neighbor in back), asked if Ms. Roth plans to build a 6-foot fence in the
133 front as well as the back of her property. Mr. Platel clarified a 6-foot fence is allowed in the
134 back and sides of the property but code allows a maximum height of 4-feet in the front. Ms.
135 Roth needs a variance for the portion of the fence in the front yard only.
136 Scott Masters, 19 Wellington (neighbor across the street), indicated this was the first he was
137 aware the fence in front would be 6-feet tall and he feels the property is adequately screened for
138 privacy by the 8-foot panels. Chairman Coffey noted a 4-foot fence is allowable and asked if
139 Mr. Masters objects to a 6-foot fence or any fence at all. Mr. Masters indicated he would prefer
140 a decorative fence over a chain link fence or a solid fence. Mr. DeCancio noted Ms. Roth's
141 application is for a white vinyl fence and asked if she can provide a photo of the fence she plans
142 on buying to the Board. Mr. DeCancio asked if any condition can be set if the variance is
143 granted that the applicant must remove the fence in the front if she sells the house. Attorney
144 Moore advised a variance follows the land, not the homeowner, and therefore, a condition of that
145 type cannot be attached to a resolution.
146 Mr. Masters also indicated his concern with how the fence would appear given the fact that most
147 of the houses in the neighborhood are within close proximity to each other. In response to Mr.
148 Micelli's question, Ms. Roth advised she will provide the dimensions of the panels of the fence.
149 Janet Morris, 23 Wellington (neighbor diagonally across the street), is concerned about the
150 appearance of the fence if it is a stockade design and the effect on the neighborhood.
151 Ms. Roth advised the distance between the houses will not change if she installs a 6-foot fence in
152 her front yard. The styles of fences that are 4-foot are very traditional in appearance but would
153 not provide privacy.
154 Mr. DeCancio requested documentation that manufacturers do not make a hurricane fence at 5-

155 foot heights. Ms. Roth preferred to discuss why her situation requires a fence that is a minimum
156 of 6-feet and whether she needed the fence more for privacy or for security in closed session.
157 Ms. Roth advised she has not taken the decisions about the specifications of the fence lightly.
158 The OPWDD (New York State Office for People With Developmental Disabilities) will be
159 paying for the fence and initially only wanted to cover the cost of paying for a chain link fence.
160 but Ms. Roth objected. She also has hurricane windows in her house.

161 Chairman Coffey reiterated the 3 pieces of information the board has requested from the
162 applicant:

- 163 1. Photo of the proposed fence
- 164 2. The dimensions of the proposed fence
- 165 3. Documentation that a 5-foot high fence is not available

166 Chairman Coffey noted the applicant requested in writing on November 18, 2010 that the
167 confidential medical information relevant to her request for a variance be discussed in executive
168 session. Mr. Umina moved to go into executive session to consider evidence related to the
169 medical condition of a family member of the applicant, seconded by Mr. Watson, with all in
170 favor. The room was cleared of everyone except for the Board members, town staff and the
171 applicant at 7:55pm.

172 [Executive Session]
173

174
175 Chairman Coffey closed the executive session upon a motion by Mr. Umina, seconded by Mr.
176 Micelli, with all in favor at 8:22pm. Members of the public were allowed to come back into the
177 room and advised the public hearing was kept open pending additional information requested
178 from the applicant, due by December 8 for the December 15 agenda. The agenda will be on the
179 town website by Friday, December 10. The application will not be referred to the Albany
180 County Planning Board and is Type II under SEQR.

181
182 **Project Updates:**

183 At the Board's request, Cumberland Farms has scheduled a mock up of the sign demonstrating
184 the actual size for Friday, December 3 between 8am – 10am.

185
186 The Planning Board will hear a presentation by the Holbek Group on monopine designs for
187 ESCO Tower, re-scheduled for December 7 at 6pm.

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189 The discussion of the Rules of Procedure was deferred to 2011. Chairman Coffey advised while
190 most of the Rules of Procedure enacted in 1972, and amended several times, have been
191 superseded by state and town law, he would like to review and consider enacting rules governing
192 six different areas, as allowed by Town zoning code.

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194 The meeting was adjourned on a motion from Mr. Micelli and seconded by Mr. DeCancio with
195 all in favor at 8:35pm.

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Respectfully submitted,
Robin Nagengast