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**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**December 15, 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

Ed Kleinke, Applicant  
Frank Hessari, Applicant  
Fred Hessari, Applicant  
Rob Spiak, Applicant  
Anthony Goes, Applicant  
Marcia Roth, Applicant  
Patti Hoeg, Resident  
Thomas Hoeg, Resident  
Benoit Goeb, Resident  
John Osterhout, Resident  
Janet Morris, Resident  
Barbara Yovine, Resident  
Tom Yovine, Resident  
Christine Strelbel, Resident  
Scott Masters, Resident  
Chuck Radliff, Sr., Resident  
L. Rizzo, 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:**

**Delmar Holdings/Valero, 594 Delaware Avenue, Delmar** for a use variance under Article XIII, Uses and Area Variances, Section 128-99, Schedule of Uses.

Mr, Platel: The applicant is proposing to re-open a car wash in a Hamlet Zoning District which is not a permitted use. Prior to the zoning changes in 2005 this car wash was a permitted use as a special exception (special use permit) in which the previous owner had received the required approvals from the Zoning Board of Appeals to operate the car wash. At this time the car wash has not been in operation for more than 12 months and has lost its pre-existing nonconforming status requiring the applicant to receive a use variance in order to resume use of the car wash.

As mention earlier the property is located in a Hamlet Zoning District and if the variance was to be granted the applicant would then be required to go to the Planning Board for Site Plan Approval.

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.

58 Ed Kleinke, landscape architect, presented on behalf of the applicant, Frank Hessari, who was  
59 also in attendance. Mr. Kleinke provided an overview of the current site plan. The application  
60 before the board is for the ability to operate the existing car wash as previously approved. The  
61 car wash has not been in operation since the current owner and applicant purchased in 2009. In  
62 response to Chairman Coffey's question, Mr. Hessari advised the board the property was in  
63 foreclosure when he purchased it as is and the gas station and the car wash were both closed at  
64 the time. The applicant states he was not aware the car wash would require a use variance to  
65 operate at the time it was purchased. The owners obtained site plan approval from the Planning  
66 Board in September 2009 to change the use from a gas station to a convenience store that sold  
67 gas. They were then advised that re-establishment of the non-conforming car wash use required  
68 approval from the Zoning Board of Appeals. In the interim, the owners have maintained the car  
69 wash and driveway leading to and away from it. They consider it to be a partly functioning  
70 facility.

71 Chairman Coffey asked Mr. Kleinke to address why this specific use should be granted in the  
72 Hamlet District. Mr. Kleinke explained the Hamlet District encompasses offices, apartments,  
73 retail, food services, and mixed uses. At this time, the car wash exists but there is no reasonable  
74 return from the operation of the car wash. The location sells gasoline, but the convenience side  
75 of the operation has not been completed or opened. The owner is relying on the car wash  
76 income. Gasoline sales are very competitive in Delmar. Gasoline has a very tight margin and  
77 Mr. Hessari has to make his money on other profit centers: the convenience store, food sales, and  
78 the car wash. Chairman Coffey noted the reasonable return criteria necessary for a use variance  
79 must be supported by competent financial evidence. He recommends the applicant submit  
80 further evidence on how much he is making and how much more he might make with the car  
81 wash open. Mr. Watson asked for a break out of maintenance costs and the property taxes on the  
82 car wash alone. Chairman Coffey also requested the applicant include the estimated cost of re-  
83 use or destruction of the building, if necessary, as factored into the analysis of getting a  
84 reasonable return on the whole property.

85 Mr. Kleinke noted there are only two other car washes of this type in town. When the  
86 Comprehensive Plan was adopted in 2006, both of the other car washes were changed to a  
87 zoning that allowed car washes. The exception was the car wash now owned by the applicant.  
88 Mr. Kleinke brought the board's attention to the fact that the area occupied by the car wash is 6%  
89 of the site and impacts equal to or less than .0008% of the total area of the Hamlet District's  
90 approximately 25.15 acres. Additionally, there has been very little construction and change in  
91 the district so the conditions that existed when the 2000 conclusion of law granting the Special  
92 Exception to build the car wash have not changed. Mr. Kleinke explained the intent of the  
93 Hamlet District is to encourage multi use, where both residential and commercial uses are  
94 integrated with variety in mind, so he feels this property could better fit the intent by being  
95 convenient and providing a service to residents. The project will need to go before Planning  
96 Board for site plan amendment as well as the Albany County Planning Board.

97 Chairman Coffey noted a letter dated December 13, 2010 from Mike Morelli, Director of  
98 Economic Development and Planning, in favor of the use variance.

99  
100 Chairman Coffey asked if anyone would like to speak in favor or opposition to the application.  
101 No one responded. Kenneth Stewart, 13 Elm Avenue, did not attend, but left a phone message of  
102 support for the project. Chairman Coffey kept the public hearing open pending more information  
103 from the applicant.  
104

105 **APPLICATIONS:**

106 On a motion from Mr. Micelli, seconded by Mr. DeCancio, a public hearing was scheduled for  
107 January 5, 2011 at 7:00pm for **Paul Stelmaszyk, 55 Ivywood Drive, Selkirk** for an area  
108 variance under Article V, District Regulations, Section 128-40, Planned Development Districts.

109  
110 On a motion from Mr. Micelli, seconded by Mr. Watson, a public hearing was scheduled  
111 for January 5, 2011 for 7:15pm for **Hot Harry's Fresh Burritos, 365 Feura Bush Road,**  
112 **Glenmont** for an area variance under Article VI, Supplemental Regulations, Section 128-56,  
113 Off Street Parking and Loading.

114  
115 **PUBLIC HEARING:**

116 **Cumberland Farms, 68 Route 9W, Glenmont** for an area variance under Article VI,  
117 Supplemental Regulations, Section 128-59, G., Signs in a Commercial Zoning District.

118 Chairman Coffey reminded the board the applicant was asked to demonstrate the size of the  
119 proposed sign at the Cumberland Farms, to present photos of similar, existing signs and for  
120 copies of a traffic study report conducted during the Planning Board review in 2006. The sign  
121 demonstration took place on December 3, 2010. The traffic study was provided to the board.  
122 Photos of two signs were provided. One was taken at a store in Rotterdam and it showed the  
123 LED colors that are used on a sign that has regular and diesel prices. The other sign was taken at  
124 a store in Amherst and it was representative of the format of the proposed sign.

125 Chairman Coffey reviewed the photos of the sign mock up. It was noted the size is 95 square  
126 feet. The proposed sign would be built 4 feet higher than what was demonstrated.

127 Mr. DeCancio asked what road the larger sign is intended to attract more traffic from as drivers  
128 on the Thruway would have a very small window of time from seeing the sign to exiting onto  
129 Route 9W. He advised the trucker network would spread the word. There is currently no diesel  
130 pricing on the sign at all. Mr. DeCancio asked if there was any specific data being presented to  
131 support the size of the sign. Mr. Spiak said the size of the sign price panels were chosen based  
132 on studies by the American Association of State Highway and Transportation Officials that  
133 indicate that's the minimum number size needed to attract drivers' attention in a small window  
134 of time. Mr. Spiak advised they are trying to build a larger sign to gain volume in traffic to  
135 generate more gas sales while maintaining the character of the neighborhood. He acknowledged  
136 that an 85 square foot sign may be effective. He pointed to the proximity to the city of Albany  
137 and the corridor that is created by the junction of state highways as a unique characteristic of the  
138 application.

139 Chairman Coffey asked if anyone would like to speak in favor or opposition to the application.

140 Craig Jensen, 22 Old Route 9W, advises the increase in traffic will be dramatic. He has put a  
141 substantial amount of money and hard work into his house and would like to know his re-sale  
142 value is not being affected. There was a dark truck stop there when he purchased his home 15  
143 years ago. There is a diesel station at the bottom of Corning Hill Road.

144 Chairman Coffey closed the public hearing.

145  
146 **Marcia Roth, 18 Wellington Road, Delmar** for an area variance under Article VI, Section 128-  
147 47 B (1) Fences and Walls in a Core Residential District.

148 Ms. Roth submitted a breakdown addressing all the criteria need to meet an area variance.  
149 Chairman Coffey advised submissions are requested a week in advance of the meeting to allow  
150 the board time to review.

151 Chairman Coffey reminded the board that Ms. Roth was asked to provide documentation that the  
152 type of fence she wanted to install came in 6 foot heights only. In response, Ms. Roth had  
153 provided a pamphlet from Lowe's. Chairman Coffey asked if she could purchase the fence from  
154 another source that offers 5 foot options. Ms. Roth said she went to all the big box stores in the  
155 area and found only Lowe's would sell her and install the Miami-Dade fence she wants. Mr.  
156 DeCancio noted a source was found that offers Miami-Dade rated fences in 5 foot heights. A  
157 copy of the VEKA Blue fence literature was submitted to the record and provided to Ms. Roth  
158 on December 10 with a copy of a petition in opposition to the application signed by the abutters.

159  
160 Ms. Roth advised the fence will be useful to block noise and distractions, both of which are

161 stressful to autistic children, as well as to keep her autistic son Kevin in the yard, because  
162 autistic children run and are attracted to water. There is a stream located somewhere behind the  
163 houses across the street. She would like to make the neighborhood accessible to people with  
164 disabilities. The agencies don't want to deal with autistic children or people with medical  
165 disabilities. She cannot get appropriate in house care for her son. She is not going to start a  
166 group home at her residence. She wants to create a home for her son where he is safe and a  
167 fence is a key part of that. She advises no one has tried to talk to her about why she wants a 6  
168 foot fence in front.

169 Chairman Coffey asked if Ms. Roth had received a copy of the petition signed by her neighbors.  
170 She said she did and it was made up of non-factual information.

171  
172 Mr. DeCancio requested documentation that she cannot purchase the VEKA Blue fence in 5 foot  
173 height and have it installed. Ms. Roth indicated that she has already applied for the funding for a  
174 6 foot fence from OPWDD (New York State Office for People With Developmental Disabilities)  
175 and they will disallow bids for non-comparable fences.

176  
177 Barbara Yovine, 26 Sylvan Avenue. She has a disability. She is confused why a 6 foot fence is  
178 required and why a 4 foot fence will not suffice. She is also confused as to whether Ms. Roth's  
179 son is classified as a child as she believes he is 28 years old.

180 Ms. Roth advised the fence is made in 6 foot panels and her son is classified as a disabled adult  
181 child (DAC).

182  
183 Patti Hoeg, 17 Wellington Road. She is confused how the fence is going to control distractions,  
184 since Kevin sits in the front yard anyway and as Ms. Roth stated has acute hearing. Ms. Roth  
185 advised Kevin is more likely to be distracted if he is not feeling well or has pain. Ms. Hoeg  
186 noted the house is up on a hill.

187  
188 Tom Hoeg, 17 Wellington Road. He believes the appropriate way to address all the concerns  
189 mentioned was to enclose the back yard with a 6 foot fence and Kevin could spend time there.  
190 He loves Kevin. Ms. Roth advised Kevin is surprisingly fast and may run out the front. They  
191 are trying to encourage Kevin to enjoy using the back yard.

192  
193 Barbara Yovine, 26 Sylvan Avenue, wanted to know if the fence can be built to the property line  
194 and if the people who install the fence would be stepping on her property. Mr. Platel answered  
195 yes and that workers would probably temporarily step on her property in order to erect the back  
196 yard fence.

197  
198 Tom Yovine, 26 Sylvan Avenue, noted there is a 4 foot chain link fence in the front of a group  
199 home in town and to his knowledge, there has never been an issue. He suggested the board  
200 members visit the group home. He said any fence can be installed to last a very long time in 4  
201 foot, 5 foot and 6 foot heights.

202 Ms. Roth advised she is dealing with Lowe's, submitted a brochure of what Lowe's offers, and  
203 no one locally will install the type of fence being suggested. Mr. Watson noted again for the  
204 record that in the pamphlet Ms. Roth provided Lowe's offers a 5 foot Miami-Dade rated fence.  
205 Chairman Coffey asked if she could provide documentation that she has looked into it and no  
206 one else will install a 5 foot Miami-Dade fence locally.

207  
208 Janet Morris, 23 Wellington Avenue. She loves Kevin and doesn't understand why any fence at  
209 all is need. She is concerned about the desirability of her property.

210  
211 John Ousterhout, 23 Wellington Road, advised that Kevin has become considerably less mobile  
212 in recent years and needs assistance getting around. He doubts Kevin could jump over a 4 foot  
213 fence and asked if there have been variances given for any 5 foot or 6 foot fences in a front yard.  
214 Mr. Platel advised there have been no variances granted under the present zoning. When the  
215 zoning was changed, 6 foot fences were allowed in the back yard, but not in the front.

216 Mr. Ousterhout suggested that before considering a precedent setting variance the board consider  
217 meeting Kevin to see the extent of his mobility. Ms. Roth said this would be a good precedent  
218 for families with members with disabilities.

219  
220 Scott Masters, 19 Wellington Road, has invested in his house and is concerned about the  
221 appearance of a 6 foot fence across the street. He has discussed other fence options with Ms.  
222 Roth.

223  
224 Patti Hoeg, 17 Wellington Road, is concerned about visibility of drivers around a 6 foot fence.  
225

226 Tom Yovine, 26 Sylvan Avenue, hasn't seen any enclosed driveways in the area and is  
227 concerned about the effect of on the character of the neighborhood.  
228

229 John Ousterhout, 23 Wellington Road, hasn't seen Kevin walk farther than the car or the porch.  
230

231 Tom Hoeg, 17 Wellington Road. Kevin is a gift. He sits outside unsupervised and watches the  
232 birds. He feels Kevin would be safer in the back of the house.  
233

234 Mr. DeCancio wanted to state for the record that Ms. Roth should wait for the board to act before  
235 she purchases a fence. The possession of a 6 foot fence would not compel the board to act in her  
236 favor. Mr. DeCancio noted that there is evidence in the record that 5-foot fence options are  
237 available and reminded Ms. Roth that the Board's job is to provide the minimum variance  
238 necessary. Ms. Roth said she feels that if you approve a 5-foot option, you're creating a new  
239 class of fencing heights. In her opinion, there are two classes of fencing heights: 4-foot and 6-  
240 foot. Instead of creating a new class, she wants to continue something to extend the existing  
241 class of fencing height. Chairman Coffey advised Ms. Roth that's what the Board needs-proof of  
242 her assertion she can't install a 5-foot fence, even if it's something printed off the internet.  
243

244 Chairman Coffey noted he understands Ms. Roth's urgency to install a fence. He can leave the  
245 record open to offer her the opportunity to address some of the questions asked, including  
246 whether she would like the board to meet Kevin. She stated she is opposed to the board meeting  
247 Kevin and decided to keep the hearing open. Chairman Coffey advised her to submit additional  
248 material a week in advance of the meeting. Ms. Roth indicated she would not be ready by the  
249 January 5 meeting, but may submit more material in advance of the January 19 ZBA meeting.  
250

251 **MINUTES:**

252 The minutes of the December 1, 2010 regular meeting were approved as amended on a motion  
253 from Mr. Micelli, seconded by Mr. Watson, with all members present in favor. The minutes of  
254 the December 1, 2010 Executive Session were approved as amended on a motion from Mr.  
255 Micelli, seconded by Mr. DeCancio, with all members present in favor.  
256

257 **Project Updates:**

258 The Planning Board will hear a presentation by the Holbek Group on monopine designs for  
259 ESCO Tower, re-scheduled for December 21 at 6pm.  
260

261 The meeting was adjourned on a motion from Mr. Micelli and seconded by Mr. Umina with all  
262 in favor at 9:05pm.  
263

264 Respectfully submitted,  
265 Robin Nagengast