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**TOWN OF BETHLEHEM
BOARD OF APPEALS**

July 7, 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
David DeCancio, Board of Appeals Member
Kenneth Umina, Board of Appeals Member
Matt Watson, Board of Appeals Member
Keith Silliman, Planning Board Counsel
Mark Platel, Assistant Building Inspector
Justin Harbinger, Assistant Building Inspector

Jim Tobin, applicant
John Stevens, applicant
Tom Butler, applicant
Jim Loder, applicant
Jennifer Dougherty, Phillips Lytle
Ron Graiff, P.E.
Francis Bossolini, applicant
Chuck Radliff, Sr.

Chairman Coffey called the meeting to order at 7:00pm noting that there is a quorum with four (4) members being present as well as Attorney Keith Silliman.

PUBLIC HEARINGS

Yasemin Fuels, 414 Route 9W, Glenmont for an Area Variance under Article VI, Supplemental Regulations, Section 128-59, Signs.

Mark Platel advised the applicant is proposing to remove the existing pylon sign and install a new monument style sign in the exact location. The setback to the front property line will be 1.5 feet, which is 8.5 feet shy of the 10 feet that is required in a Commercial Hamlet Zoning District. When the existing sign was erected there was not a minimum setback requirement making the existing sign pre-existing and nonconforming. Once the existing sign is removed, it will lose the nonconforming status and the new sign will have to meet the required setback.

To forego the reading of the Public Hearing, Chairman Coffey requested a motion to indent the Public Hearing notice into the record. Mr. Umina moved, seconded by Mr. Watson, 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.

Jim Tobin, architect, presented the application. He advised a gas station has operated in the location since 1930 and in the current configuration since 1968. The Planning Board issued a site plan approval for the conversion to a convenience store. As part of the amendment, the owner voluntarily agreed to change the sign and close the entrance closest to the intersection of Route 9W and Glenmont Road. With one less entrance, the fuel delivery truck can enter from Glenmont Road, but needs all the paved area that is there today. Chairman Coffey asked if it would be possible to build the new sign where it would meet the 10' setback requirement. Mr. Tobin advised that the location of the sign could be moved to meet the 10' setback requirement, but then it would not be feasible to close the entrance closest to 9W as recommended by the Planning Board and the Highway Department. If the applicant cannot get a variance, the

59 existing, non-conforming sign will remain in place. Chairman Coffey noted the Town Planner's
60 memo Jeff Lipnicky from June 17, 2010 conveying the Planning Board's support for replacing
61 the existing freestanding sign with the proposed low lying monument style sign and that the
62 proposed sign is of a similar design of others in the area. Chairman Coffey also noted the
63 Albany County Planning Board's recommendation of June 17, 2010 to modify local approval to
64 include review and approval by NYS Department of Transportation for the location of the sign
65 and site distance. On request from Mr. Watson, Mr. Tobin verified the new sign, if approved,
66 would be placed in the same location as the old sign. Mr. Platel noted the new sign will meet all
67 zoning requirements except for the setback requirement.
68 Chairman Coffey asked if there was anyone present to speak for or against the application.
69 No one responded. Chairman Coffey closed the public hearing at 7:08pm.

70
71 **Continuance of public hearing for applicant ESCO Tower, Van Dyke Road, Delmar** for
72 area variances under Article VI, Section 128-61 F 7(b) and Section 128 - 61 (F) (9) Height and
73 setbacks, to construct a 120 foot telecommunications tower.

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

78 Jennifer Dougherty on behalf of ESCO Tower, Inc. which made the application on behalf of
79 AT&T Wireless, PCS LLC, and Verizon Wireless, spoke on behalf of the applicants and
80 responded to previous comments the town's RF consultant, Ronald Graiff, P.E. dated July 6,
81 2010. To the first of those comments, Ms. Dougherty advised the applicant has now provided
82 accurate drive test data.

83 Following up on the issue of tower height, she affirmed the applicant is still seeking a variance
84 for a 120-foot tower and requested the board consider the visual difference between 110' and
85 120-feet is insignificant and that her applicant believes there is need shown, but they would be
86 willing to accept the town consultant's finding that 110-feet is sufficient. Ms. Dougherty
87 indicated the carriers would prefer the 120-foot height.

88 Thirdly, the Zoning Board and the Planning Board had requested additional information about
89 the three year build out plan. Ms. Dougherty indicated her applicants are willing to present any
90 new or additional information to the ZBA prior to their next appearance. She requested that the
91 ZBA close the applicants' public hearing pending completion of the SEQR review by the
92 Planning Board.

93 Chairman Coffey reviewed the items Mr. Graiff had requested from the applicant at the May 19
94 ZBA meeting. Mr. Graiff had requested "drive test" data to support the applicants' claim that
95 there is insufficient coverage by AT&T in specific areas. Mr. Coffey asked why some of those
96 streets were not included in the applicants' drive test data for AT&T. Ms. Dougherty explained
97 the applicant did not believe there was a specific request to drive specific roads and indicated the
98 area driven was designed to be wide enough to include enough data points to create a
99 correlation.

100 In response, Mr. Graiff agreed it would have been nice if the applicant had driven the roads
101 where, in the original presentation, they claimed there were gaps (Van Dyke Road, Orchard
102 Street, Carstead Drive, N. Helderberg Parkway, Mayfair Drive, Gay Street, Vadney Road, Elkin
103 Court, Juniper Drive, Summit Road, Wakefield Court, Longmeadow Drive, and Brockley
104 Drive). He further commented, notwithstanding the fact there were some specific roads not
105 included, the drive test and calculated maps are sufficient enough to demonstrate the relative
106 accuracy of the propagation model. He feels the model sometimes understates the real world
107 coverage, but for this kind of analysis, the precision is good enough to make the assumption the
108 applicant is presenting a reasonable representation of the coverage on all the roads.

109 Chairman Coffey followed up on the issue of height by asking Ms. Dougherty why the applicant
110 is requesting a variance for up to a height of 120-feet when they are demonstrating the minimum
111 height needed by AT&T is 110-feet. He specifically asked if the request for 120-feet was to
112 accommodate co-locaters in the future. Ms. Dougherty advised the decision to request a
113 variance up to 120-feet is based on RF, that the applicants would argue there is sufficient need,
114 and that at 120-feet, there will be the additional benefit of allowing additional co-locaters at the
115 proposed facility, which prevents the proliferation of towers in town. She expressed the opinion
116 that there would not be a discernable visual difference between a 110-foot tower and a 120-foot

117 tower. Chairman Coffey reiterated the data supports Verizon Wireless needs would be
118 sufficiently served at 100-feet and AT&T needs would be sufficiently served at 110-feet and
119 there isn't a third co-locator on the application. Ms. Dougherty agreed that is Mr. Graiff's
120 finding, but would still insist the applicants' needs would be better met at 110-feet and 120-feet
121 respectively. She thinks at 120-feet, the tower would cover more gaps and provide a larger
122 coverage area. Ms. Dougherty noted while Mr. Graiff is the expert on the matter and she
123 respects his opinion, she and her applicant would continue to make the argument for 120-feet.
124 Referencing Rob Leslie's memo of July 6 to the Zoning Board, Chairman Coffey asked Ms.
125 Dougherty if she is taking the Kenwood Avenue Water Tower, listed as an "In-process Site" by
126 Verizon, into account when making the specific claim that the residential area completely south
127 of the Bethlehem Cemetery receives reduced coverage if Verizon were to locate at 100-feet on
128 ESCO site. Town of Bethlehem Planner, Rob Leslie, reiterated his comments from that memo.
129 Ms. Dougherty asserted that site for Verizon is, at this point, a planned, not existing, site and
130 that more coverage is always a good thing. Tom Butler, VP ESCO Tower, advised when they
131 have the build out plans, they will present to the Board at their next opportunity.
132 Mr. DeCancio asked for clarification on "in-process Site". Ms. Dougherty explained an "in-
133 process site" is in the planning stages or has been considered or thought about. Mr. Leslie
134 advised he would get clarification on whether the Water Tower site has been discussed with the
135 town and what the status is. Mr. Graiff commented the propagation data for the Kenwood
136 Avenue Water Tower is included in the applicants' RF plots and should be deemed accurate.

137
138 Chairman Coffey referenced the code law with respect to telecommunications towers, section
139 128-61, "the height of any new tower shall be the minimum required to establish and maintain
140 adequate service" and asked Mr. Graiff to comment. Attorney Silliman asked Mr. Graiff to
141 comment on whether at 110-feet, the ESCO tower would be able to co-locate Sprint. Mr.
142 Graiff then used the overhead projector to present several maps to demonstrate the data he
143 reviewed when making a determination for height recommendations. The overlays
144 demonstrated that according to the computer model, there is no discernable difference in
145 coverage between a 110-foot tower and a 120-foot tower, so his professional determination is
146 that the coverage will be the same at either height. Mr. Graiff agreed that at 120-feet, the tower
147 will also provide good coverage, but he doesn't feel the applicant has shown a need over 110-
148 feet.

149 Mr. Graiff advised that in his opinion, all the carriers involved could operate adequately at either
150 site at 110-feet, including the proposed Bethlehem High School location. He advised Sprint
151 hasn't propagated the ESCO location yet. However, it is his opinion that there are enough
152 similarities in the two proposed tower locations (0.60 +/- miles apart) to assume Sprint can co-
153 locate on either tower.

154 Mr. Umina asked if there is any significant difference in emissions between 100-feet and 110-
155 feet. Mr. Graiff said there is not.

156 Mr. Graiff advised the applicant has submitted an OET65 analysis, which is the FCC bulletin
157 that specifies the emission requirements for the general public. He has reviewed and deemed it
158 to be correct in terms of the formulas, the analysis, and the frequencies. The results were
159 significantly below the maximum allowable levels. Mr. Graiff went on to say that the exposure
160 requirements are so tight to protect the public, but at 110-feet, the signal degrades so rapidly,
161 there is no issue with the location being near a school.

162 Chairman Coffey gave the applicant the opportunity to convey to the board why their site was a
163 good choice. Ms. Dougherty cited the reasons as 1) a source of income to a farmer, 2) the
164 proposed site is located 200-feet from the National Grid property, 3) the proposed site is located
165 at least 800-feet from the nearest developable property and at least 1800-feet from houses, 4) is
166 not going to be visible to nearly anyone from the road and 5) it will fit into the landscape.

167 Mr. Butler indicated he spoke with Sprint two and a half years ago and Sprint had no interest in
168 leasing in the area of the two proposed towers. He feels Sprint's participation in his
169 competitor's tower at Bethlehem High School is speculative.

170 Mr. DeCancio asked how many co-locaters can go on the tower if the height is increased from
171 110-feet to 120-feet. Ms. Dougherty advised one additional carrier. Mr. Butler advised that
172 because of the tree line, a carrier cannot go on the tower at a height lower than 80-feet, limiting
173 the leasable space of the tower. The tower can structurally be built to be extended up to 150-
174 feet. If the variance is approved for 120-feet, Mr. Butler feels it will save the town time that

175 might be spent reviewing a future application for a variance to add height. Ms. Dougherty
176 explained it is relatively easy to add height to a lattice tower and Mr. Butler indicated they chose
177 the lattice design for several reasons, including less visual impact in that location. In response to
178 Attorney Silliman's question, Mr. Butler and Ms. Dougherty advised there are no plans to add
179 microwave dishes to the tower. However, Mr. Butler said it was feasible in the future, but there
180 isn't much call for microwave signal as more carriers start to use fiber.
181 Attorney Silliman advised the Planning Board has requested a balloon test for the purpose of
182 conducting a visual impact analysis of heights at 150-feet and 120-feet. The balloon test shows
183 the actual proposed heights at each location. It will take place early morning on a date to be
184 determined and both boards and the public will be properly noticed.
185 Ms. Dougherty reiterated her applicant will provide the build out plans at their next appearance
186 before the board. She again requested to close the public hearing.
187 To address any concerns about whether Sprint can co-locate on the ESCO tower, Mr. Graiff
188 recommended the applicant request Giant Technologies, on Sprint's behalf, demonstrate that 90-
189 feet would be an appropriate height for Sprint on their tower. Chairman Coffey advised he
190 would request this board be copied on any additional analysis provided to the Planning Board
191 and on Attorney Silliman's counsel, did not close the public hearing in anticipation of additional
192 information.

193 APPLICATIONS

194 **Roger Monthie, 38 Roweland Avenue, Delmar** for an area variance under Article V, District
195 Regulations, Section 128-30, Core residential District, C. (3) Maximum coverage.
196 Mr. Monthie would like to build a 12' x 18' storage shed to increase the storage capacity on his
197 property. There is currently an 18' x 18' detached garage.
198 Mr. Watson motioned to set the public hearing for July 21 at 7pm, was seconded by Mr.
199 DeCancio, and the motion passed with all members present in favor.

201 RESOLUTIONS

202 **None.**

203 DISCUSSIONS

204 **Thomas Paonessa, Proposed Grove Subdivision, North Bethlehem** for area variances under
205 Article XIII, Area Schedules, Section 128-100, Schedule of Bulk and Area Requirements.
206 Chairman Coffey reminded the board members the project is a proposed 10- lot subdivision, of
207 which 8 lots will be new building lots, however, 3 of the proposed lots will not meet all the lot
208 and bulk requirements. The three lots affected are 12 Grove Street, 11 Bower Avenue, and 25
209 Pine Street. The Albany County Planning Board referred to local consideration and did not
210 make any recommendations. At the public hearing before the Zoning Board (June 2, 2010),
211 three neighbors spoke in favor of granting the variances for reasons relating to increased
212 accessibility to fire and emergency vehicles and spoke to the good reputation of the builder. No
213 one spoke against the project. A prior application was partly approved, but expired before it was
214 acted on.
215 Chairman Coffey noted part of the subdivision is in the town of Guilderland. Guilderland
216 requires a quarter of an acre while Bethlehem requires one third of an acre. He indicated his
217 intent to vote positive for the variance based on the need shown. He further noted it would not
218 cause an undesirable change to the character of the neighborhood and it would be good for the
219 public services as school buses, fire department, mail delivery would gain better access to lots
220 with the variance granted.
221 Mr. Watson agreed that it was granted in 2006 and he is comfortable granting at this time. Mr.
222 Umina concurred. Chairman Coffey also commented that according to his notes, complying
223 with current zoning laws is not possible due to the paper street, wetland issues so the applicant is
224 somewhat constrained.
225 Mr. Umina moved to approve the variance, Mr. Watson seconded. The motion passed with all
226 members present in favor.

227 **Independent Towers, Elm Avenue, Delmar. Planning Board's acceptance of Lead Agency 228 status in regards to SEQRA.**

229 Chairman Coffey acknowledged the memo from George Leveille, Chairman of the Town

233 Planning Board, accepting lead agency status in regards to SEQRA. The next step will be to
234 schedule a public hearing.
235 Mr. Watson motioned to schedule the public hearing for July 21 at 7:15am, seconded by Mr.
236 DeCancio, all members present in favor.
237 John Stevens from Infinigy Engineering and Independent Towers advised that at its meeting July
238 6, 2010, the Planning Board requested that both applicants (Independent Towers and ESCO)
239 consider all three tenants on their tower. Mr. Stevens indicated he reached out to Verizon and
240 AT&T and was awaiting their responses. If they both agree to be added to the Independent
241 Towers' application, Independent Towers will be revising their application to include a height
242 variance. With that in mind, several members questioned if the public hearing should be set at a
243 date when the applicant would have more time to complete their modified application, if
244 appropriate. Mr. Stevens concurred.
245 Mr. DeCancio moved to move the public hearing to August 4, Mr. Watson seconded the motion,
246 and the motion was approved by all members present.
247 Due to scheduling conflicts, subsequently, on July 9, 2010, by majority vote via email of the
248 Board, this public hearing was moved back to July 21
249

250 **Added:**

251 **Yasemin Fuels, 414 Route 9W, Glenmont** for an Area Variance under Article VI,
252 Supplemental Regulations, Section 128-59, Signs.
253 Chairman Coffey advised he has no problem with granting the variance. Attorney Silliman
254 advised it is classified as a Type II action under SEQRA. The project has appeared before the
255 Planning Board and the Planning Board recommended the Zoning Board approve the variance.
256 Chairman Coffey noted there isn't another location on the property for the sign and the proposed
257 sign will be consistent with other improved signs in the area. Mr. DeCancio indicated he is also
258 in favor and believes the new sign will be an enhancement to the corner and considers the
259 closing of the curb cut to be a positive safety improvement. The board agreed it would be
260 appropriate to add the stipulation to the resolution, that in accordance with The Albany County
261 Planning Board, the sign project be referred to the New York State Department of
262 Transportation for review for location of the sign and site distance.
263 Mr. Umina moved to approve the variance, Mr. DeCancio seconded, and the motion was passed
264 with all members present in favor.
265

266 The minutes of the June 16, 2010 meeting were approved on a motion from Mr. DeCancio,
267 seconded by Mr. Watson, with all in favor.
268

269 The minutes of the June 23, 2010 special meeting were approved on a motion from Mr.
270 DeCancio, seconded by Mr. Watson, with all in favor.
271

272 The meeting was closed on a motion from Mr. Watson and seconded by Mr. DeCancio with all
273 in favor at 8:09 pm.

274 Respectfully submitted.
275 Robin Nagengast