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**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**November 17, 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  
Matthew Watson, Board of Appeals Member  
Mark Platel, Assistant Building Inspector  
Justin Harbinger, Assistant Building Inspector

Rob Spiak, Applicant  
Anthony Goes, Applicant

Marcia Roth, Delmar  
Chuck Radliff, Sr., Delmar  
Craig & Doris Jensen, Glenmont  
Kate Spiller, Delmar

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 Michael Moore.

**APPLICATIONS:**

On a motion from Mr. Umina, seconded by Mr. Watson, a public hearing was scheduled for December 1 at 7:00pm, on an application by **YMCA, 900 Delaware Avenue, Delmar** for consideration under Article III, Zoning Maps and Districts, Section 128-16, Parcels in Multiple Districts, to build a commercial pavilion in a Residential District.

On a motion from Mr. Watson, seconded by Mr. Umina, a public hearing was scheduled for December 1 at 7:15pm, on an application by **Marcia Roth, 18 Wellington Road, Delmar** for an area variance under Article VI, Section 128-47 B (1) Fences and Walls in a Core Residential District. Chairman Coffey noted the applicant might request an executive session to discuss details pertinent to the variance request, in which case the hearing may be the last order of business of the night.

**DISCUSSION:**

The next order of business was a continuation of the public hearing for Cumberland Farms, 68 Route 9W, Glenmont for an area variance under Article VI, Supplemental Regulations, Section 128-59, G., Signs in a Commercial Zoning District. The applicant is proposing to remove 2 existing 48 square foot freestanding signs and install one 95.35 square foot freestanding sign. This is 55.35 square feet over the 40 square feet allowed. The existing structure is located in a Commercial Zoning District and the use of the property is a retail store with fuel sales. Chairman Coffey noted that the Albany County Planning Board decision was to defer to local consideration with an advisory that the Town should consider possible precedent setting consequences when granting the requested variances particularly for height and square footage. If approved the reasons should be clearly stated.

Mr. Spiak presented on behalf of the applicant. Mr. Goes, the Cumberland Farms District Manager for the Route 9W, Glenmont location was also present.

The applicant last appeared before the Board at the October 20, 2010 meeting.

55 To follow up on questions raised at that meeting, Chairman Coffey asked if there are any  
56 compliance issues with the parcel. Mr. Harbinger and Mr. Platel advised there are not.  
57 Chairman Coffey reviewed Mr. Harbinger's research on signs in town of similar size as the one  
58 the applicant proposes.

59 After some in depth research but by no means exhaustive, Mr. Harbinger found a few signs in  
60 Town that could be compared to the size of the sign Cumberland Farms is proposing at 95.35  
61 square feet. All were pre-existing non-conforming and did not require variances.

62 1. The top of the Comfort Inn sign at 37 Route 9W is 98 square feet per side.  
63 2. The group of signs at the Price Chopper plaza in Slingerlands (1355 New Scotland Road) is  
64 100 square feet for the signage area per side (structure area is not included).  
65 3. The entrance to the Glenmont Plaza at 388 Feura Bush Road. That group of signs totals 81  
66 square feet per side (structure area not included).

67 Chairman Coffey concluded that, according to Mr. Harbinger's research, no sign variance of this  
68 size has been previously granted and if the variance was granted for 55.35 square feet, it would  
69 be a precedent.

70 Mr. Spiak presented the additional information Cumberland Farms provided comparing diesel  
71 sales in gallons in October 2008 to September 2010, showing a roughly 40% drop off in sales.  
72 As stated at the October 20 Public Hearing, Cumberland Farms is hoping to increase diesel sales  
73 by attracting more trucks off the Thruway with a larger, more visible sign.

74 Chairman Coffey asked if there was another way to attract the Thruway traffic other than a sign  
75 this size. Mr. Spiak said probably not. He explained that the Thruway Authority only advertises  
76 Thruway services and does not allow signs from private entities. Off premise signs are not  
77 allowed by Town Code. Mr. Spiak feels the proposed sign is a good balance of improvements to  
78 the size for attracting business and a re-design with LED prices that emit less light because only  
79 the numbers are lit. He also noted that in response to the concerns expressed at the October 20,  
80 2010 ZBA meeting, Cumberland Farms rebuilt a large portion of the fence on the Jensen's  
81 property. In response to Mr. Jensen's complaint of excessive garbage on their property, Mr.  
82 Goes advised the store manager checks the area for garbage on a daily basis.

83 Mr. Spiak encouraged the Board to not overstate the significance of precedence and asked the  
84 Board to consider the merits of the individual application.

85 Chairman Coffey proposed the applicant create a mock up of the sign demonstrating the actual  
86 size for the ZBA members. This sign should also have markings on it showing what the sign  
87 would look like if it were smaller (i.e., at 85 square feet; 75 square feet, etc.). The applicant  
88 indicated it would be possible to do this. It was agreed to proceed with a test on a Friday  
89 morning, if possible, at a date to be determined and communicated to Board members and the  
90 Jensens. In response to Mr. Micelli's question, Mr. Goes advised that several area Cumberland  
91 Farms have switched or are in the process of switching to newer signs similar to the proposed  
92 sign, including the Duanesburg Road location in Rotterdam, the State Street location in  
93 Schenectady, and a store in North Greenbush. The North Greenbush store is in the process of  
94 changing over to a 64 square foot sign that required a variance.

95 The sign at the Duanesburg Road store is the most similar to the sign proposed at Glenmont  
96 Road because it includes diesel pricing. Mrs. Jensen asked if there are any homes in the area of  
97 the Rotterdam store. Mr. Spiak advised there are homes across the street.

98 Chairman Coffey requested photos of the newer signs that are already erected.

99 Mr. Spiak concluded his presentation. Chairman Coffey asked if there was anyone else who  
100 would like to speak.

101 Mr. & Mrs. Jensen, 22 Old Route 9W. Mr. Jensen would like to go on the record to correct the

102 minutes of the October 20 ZBA meeting. At the initial public hearing, what he said, or his intent  
103 was to say (October 20, 2010 minutes – lines 63-64), was that the Cumberland Farms is an  
104 improvement from the former Big M truck stop that was there before, not that the new sign  
105 would be an aesthetic improvement over the current sign, as reflected in the approved minutes.  
106 There was much discussion about garbage in the area and how it possibly gets there. No one  
107 knew for certain whether it blows off the Cumberland Farms lot or is dropped from moving  
108 vehicles. Mr. Jensen said no one has ever cleaned up his property abutting his fence besides  
109 himself at his own expense.

110 There was some discussion about a fence that is falling down on the piece of property across Old  
111 Route 9W from the Jensen's house. No one knew for sure who owns this property. Mr. Spiak  
112 indicated that in the past, he was under the impression it is town property. Mrs. Jensen advised  
113 she has called the town about the fence.

114 Mr. Jensen continued with his concern about the additional noise in the area that will be caused  
115 by an increase in truck traffic and that the sign will be even more visible above the fence than it  
116 currently is. The Jensens are already unhappy about the effects of the Cumberland Farms on  
117 their residence and feel any increase to the size of the sign and to the traffic levels will be  
118 detrimental to their quality of life, in terms of noise generation, traffic back up, and increased  
119 garbage in the neighborhood. Chairman Coffey asked if Mr. Jensen has noticed a decrease in  
120 truck traffic between October 2008 and September 2010 that would correlate with Cumberland  
121 Farm's decrease in diesel sales. Mr. Jensen said he did not. Mrs. Jensen asked what the diesel  
122 sales loss has been in other Cumberland Farms. Mr. Goes advised most other stores do not have  
123 diesel pumps, and Mr. Spiak advised only one other store, in Boston, has a diesel pumping  
124 system similar to the one at this store.

125 Chairman Coffey advised he isn't sure if there is anything the Zoning Board can do about the  
126 Jensen's concerns about their property.

127 Mr. Spiak wanted to state for the record that the Cumberland Farms is a legally zoned, 24-hour  
128 operation, and consideration was given to the residentially zoned neighbors during site plan  
129 review. Mr. Goes noted the lighting is very residential friendly.

130 Mr. Radcliff spoke. He sympathizes with the Jensens. He drove truck for forty plus years and  
131 advises that if he bought coffee at Cumberland Farms, he would not throw out the cup in the  
132 area. He would take the cup with him until he finished his coffee and dispose of the cup in a  
133 garbage elsewhere. He believes a lot of the debris is coming from sources other than the  
134 Cumberland Farms. He has observed people littering from cars on Corning Hill Road.

135 Ms. Roth commented that the area is very historic and thinks we should have more green spaces  
136 in town.

137 Chairman Coffey asked if there was anyone else who would like to speak. No one responded.  
138 Chairman Coffey reiterated that when the mock up sign demonstration at the proposed size was  
139 scheduled, the Board and the Jensens would be advised. The applicant has agreed to provide the  
140 following additional information:

- 141 • Photos of existing stores with new signs similar to proposed sign design for representation  
142 of LED lights and colors.
- 143 • Traffic study results presented at the site plan review/approval before the Town of  
144 Bethlehem Planning Board

145 Chairman Coffey left the public hearing open and indicated the SEQR determination and the  
146 discussion would be taken up after the applicant responded to the board's requests.

147  
148 **RESOLUTION:**

149 Glenwood Village, Glenmont Rd, Glenmont for area variances under Article 128-100, rear yard  
150 setback, maximum height, maximum density, Section 128-33 D) Specific regulations for the  
151 District, building footprint, and Section 128-56, Off Street Parking and Loading for the  
152 construction of a 148 unit senior housing complex.

153 After a brief discussion, there were a couple of edits made to the variance resolution. The first  
154 was in regards to the specific wording for garage spaces, resulting in a word being added. The  
155 second was in regards to one of the conditions set in the variance that was granted in 2008. It  
156 was determined the Planning Board would be considering the articulation of the building design,  
157 whether the condition was set or not, so the condition was omitted.

158 Mr. Umina moved to approve the SEQR Negative Declaration, Mr. Watson seconded, and the  
159 motion passed with all members present in favor. On a motion from Mr. Umina, seconded by

160 Mr. Micelli, the variance resolution was approved as amended with all members in favor.

161

162 **MINUTES:**

163 The minutes of the October 20, 2010 meeting were approved as amended on a motion from Mr.  
164 Watson, seconded by Mr. Micelli, with all members present in favor.

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166 **Project Updates:**

167 The Planning Board will hear a presentation by the Holbek Group on monopine designs for  
168 ESCO Tower, re-scheduled for December 7 at 6pm. At the November 16 Planning Board  
169 meeting, two of the options presented were thrown out. If either of the two remaining options is  
170 chosen, the completed height is likely to be approximately 130 feet.

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172 The meeting was adjourned on a motion from Mr. Watson and seconded by Mr. Micelli with all  
173 in favor at 8pm.

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Respectfully submitted,  
Robin Nagengast