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**TOWN OF BETHLEHEM
BOARD OF APPEALS**

October 6, 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
Keith Silliman, Planning Board 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
Mike Morelli, Director, Economic Development and Planning

Michael Fabe, Applicant
Tim Haskins, Applicant
Nancy Berns, Applicant
Thomas Butler, Applicant
James Loder, Applicant
Eric Robinson, Applicant

Chuck Radliff, Sr., Delmar
Shalyn Docous, Glenmont
Viktor Kustov, Glenmont
Lynne & Richard Hummel, Glenmont
Janet Shultes, Glenmont
Sam Messina, Delmar
Mark Jordan, Slingerlands

Chairman Coffey called the meeting to order at 7:01pm noting that there is a quorum with all members being present as well as Attorney Michael Moore.

PUBLIC HEARING

Michael & Tina Fabe 28 McMillen Place, for area variances under article XIII, Use and area Schedules, Section 128-100, Schedule of Yard and Bulk requirements, Lot Occupancy and Front Yard Setback.

The applicant is proposing to demolish the existing 8' x 22' 176 square foot front porch and construct a 10' x 24' 240 square foot addition and a 5' x 6' open porch to the existing main structure. The total lot occupancy will be 25.41% which is 5.41 over the 20% allowed. The front yard setback will be 22' which is 3' shy of the 25 feet required. The existing total lot occupancy is 23.61% and the front yard setback is 24'. These are both pre-existing nonconforming conditions.

The proposed open porch at the front of the addition is allowed to encroach into the front yard setback under section 128-10, exceptions, but is still included in calculating building area. The existing structure is currently occupied as a single family dwelling and is located in a Core Residential Zoning District.

Mr. Micelli 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

56 the Applicant and anyone desiring to speak in opposition. All comments and questions should be
57 directed to the Board.

58 Mr. Fabe presented on his own behalf. The existing porch is open and unused. He advised the
59 house was large enough for him and his wife when they purchased it in 2000. Now they have
60 children, they are outgrowing the house and need more living space. They would like to stay in
61 the neighborhood that they enjoy and where their kids have friends. The porch is deteriorating
62 so their proposed solution is to expand the living room to include the space where the porch is
63 currently. The back yard is small so there isn't enough space to expand off the back of the
64 house, where there is another porch. An addition to the back would require an area variance as
65 well. The entire lot is 50 feet by 108 feet. The proposed addition would not change the
66 character of the neighborhood.

67 Chairman Coffey asked if there was anyone present who would like speak for or against the
68 application. No one responded. Chairman Coffey closed the Public Hearing.

69

70 MINUTES

71 The minutes of the September 15, 2010 meeting were approved as changed on a motion from
72 Mr. Umina, seconded by Mr. Watson, with all members present in favor.

73

74 APPLICATIONS

75 On a motion from Mr. Umina, seconded by Mr. Micelli, a public hearing was scheduled for
76 October 20 at 7:00pm for applicant **Cumberland Farms, 68 Route 9W, Glenmont** for an area
77 variance under Article VI, Supplemental Regulations, Section 128-59, G., Signs in a
78 Commercial Zoning District.

79

80 DISCUSSION:

81 **Charles & Nancy Berns, 1402 River Road, Selkirk** for an Area Variance under Article V,
82 District Regulations, Section 128-32, Rural Riverfront District, C. Accessory Uses, (1) Location.
83 The Albany County Planning Board is deferring to local consideration as it found the proposed
84 project has no significant county-wide or inter-municipal impact.

85 Attorney Moore advised the application is a Type II, and therefore, excluded from SEQRA.

86 Chairman Coffey favors the variance. The garage would be obscured by trees in the front. The
87 applicants have health concerns and would benefit from the additional garage space and its
88 proximity to their house. The rest of the members noted they support granting the variance.

89 Mr. Watson moved to approve the area variance, Mr. Umina seconded, and the motion passed
90 with all members present in favor. Chairman Coffey directed counsel to draft the resolution.

91

92 PUBLIC HEARING

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

97

98 The applicant is proposing to construct a 148 unit senior housing complex in a Hamlet Zoning
99 District. The developable land allows for 75 dwelling units, 73 less than the 148 proposed. One
100 of apartment buildings will be set back 20 feet from the rear property line, 20 feet shy of the 40
101 feet required. Both of the apartment buildings will be 42.5 feet in height, exceeding the 35 feet
102 that is allowed by 7.5 feet. The 162 proposed parking spaces will not meet the minimum 222
103 spaces required under section 128-56, off street parking.

104 The 2 apartment buildings are each 21,541 square feet and the clubhouse is 7,433 square feet all
105 over the 5,000 square feet allowed for a structure in a Hamlet District. Structures may exceed
106 5,000 square feet if they are articulated in a manner that gives the appearance of separate
107 buildings 5,000 square feet or less in size. It is has been determined that the design of the
108 apartment buildings does not give the appearance of separate structures.

109
110 This project was before the board in 2008 and was granted variances for all of the previously
111 mentioned issues except for parking. Mr. Platel presented a comparison of the 2 proposals.
112 Chairman Coffey requested clarification on the formula in the Town Code that is used to
113 determine the minimum number of parking spaces, which is 1.5 spaces per unit.
114 Mr. Umina made a motion to indent the Public Hearing notice into the record, seconded by Mr.
115 DeCancio, with all in favor.
116 Chairman Coffey advised that as with the first public hearing, the procedure to be used is to hear
117 the Applicant's presentation, entertain any questions or comments from the audience, hear
118 anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition.
119 All comments and questions should be directed to the Board.
120 Tim Haskins presented on behalf of United Development Group and Glenwood Village. He
121 discussed the long history of the project's review by the community and the Town's Zoning
122 Board and Planning Board. He advised the design that was previously approved by the ZBA,
123 with underground parking, proved to be too expensive to build and rent to the intended market.
124 Mr. Haskins presented some of the design changes from the previous plans.
125 One apartment building will be visible from Glenmont Road; the other apartment building will
126 be obscured by the tree line behind St. Matthew's Cemetery. The buildings are setting twelve
127 feet lower on the site than in the previous approved plan.
128 The parking is now all surface parking in the front of the buildings and 36 garages for tenants to
129 rent. The plan will call for 163 parking spaces in accordance with the formula United Group
130 typically uses for their senior apartment complexes, including those built in Colonie and Utica,
131 which is .75 - 1 space per unit. The garage spaces are not counted in the total number of parking
132 spaces. Mr. DeCancio requested a copy of the study that United Group uses to determine that
133 formula and Mr. Haskins said he will provide. Mr. Haskins advised the plan calls for a sidewalk
134 to Glenmont Road and includes working with CDTA to discuss the possibility of building a bus
135 shelter near the entrance of the complex and the complex will have a van that will provide
136 scheduled trips to local stores.
137 The new design has reduced ceiling heights of 8 feet (the previous design called for 9 foot
138 ceilings). The rear setback is the same as previously granted. Mr. Haskins explained placing the
139 structure at the highest piece of ground allows them to use a little extra fill and reduces their
140 wetlands impact. The defining factor for determining the size of the building was the necessity
141 to site between two wetlands. There is no other location where the building can fit between the
142 wetlands. The cumulative footprint of the entire project is smaller in square feet, lower in height,
143 and lower in impact.
144 Chairman Coffey then discussed the subject of articulation as it relates to the section of the code
145 that provides that buildings may exceed 5,000 square feet if the façade of the structure is
146 articulated to appear as "multiple" buildings each under this size. It was agreed that could be a
147 subjective assessment. Mr. Haskins advised efforts were made in the design to conform to the
148 intent of that particular section of the code as possible. The Town Building Inspector has
149 determined that the structures do not appear to be "multiple" smaller structures and therefore
150 require a "footprint" variance.
151 Chairman Coffey noted that the current application is requesting the basically same variances
152 previously granted in 2008, which expired in March 2010, plus the addition of a request for a
153 parking variance. The overall relief requested is less than what was granted by the previous
154 resolution.

155 Some of the other changes from the previous site plan include there are no longer plans to use
156 Glenmont Place as a access road and the dumpster pad will be placed slightly farther from
157 existing houses in the area. If the variances are approved by the Zoning Board, the project will
158 go to the Planning Board for Site Plan Review. The application has been referred to the Albany
159 County Planning Board on behalf of both Town Boards and is on the agenda for the October 21,
160 2010. In 2008, the ACPB found the proposed action would have no significant countywide or
161 intermunicipal impact and deferred to local consideration.

162 Chairman Coffey asked if there was anyone present who would like speak for or against the
163 application. Mike Morelli, Director of Economic Development and Planning for the Town
164 advised he is speaking in favor of the application as he did in 2007. He feels this project is a step
165 forward in advancing the goals of the Town's Comprehensive Plan. The property is zoned in a
166 Hamlet Zoning District. The Comprehensive Plan encourages high density, mixed use and senior
167 housing in the Hamlet Zones as they tend to be more walk able with services in close proximity.
168 He supports the addition of needed senior housing. Local seniors would like to stay in town after
169 raising their families here. The location itself is challenging. Mr. Morelli believes this is the right
170 project for the location.

171 Janet Shultes, resident, asked whether seniors would need to cross the street to get the bus
172 service. Mr. Haskins advised that as part of Site Plan review, he plans on asking CDTA to adjust
173 the service to pick up on the same side as the complex. Ms. Shultes asked if all units are
174 handicap accessible. Mr. Haskins advised all units would be convertible for a negotiated cost.
175 Ms. Shultes also expressed concern about traffic in the area. Mr. Haskins advised a traffic study
176 was done at another United Group property during the last review. The traffic study showed
177 seniors drive less during peak travel times. Chairman Coffey requested a copy of the traffic
178 study for the record.

179 Shalyn Docous, resident, expressed concern about the height of the building and the lighting
180 design in regards to how it would affect visibility of the building. She also inquired about how
181 emergency calls would be handled. Mr. Haskins advised the lighting and the alarm systems are
182 specifically designed with seniors in mind.

183 Viktor Kustov, resident, asked for clarification on wetland mitigation. Mr. Haskins advised he
184 will need to reinitiate the issue with the Army Corps of Engineers during the planning process.
185 Mr. Kustov also asked about plans for the pedestrian walkway and emergency access. Mr.
186 Haskins advised they would be putting in sidewalks; the emergency access issue is one for the
187 Planning Board.

188 Chairman Coffey kept the Public Hearing open. A decision on whether to conduct a coordinated
189 or uncoordinated review will be determined at the November 3 meeting.

190
191 **DISCUSSION:**
192 **ESCO Tower, Van Dyke Road, Delmar for area variances under Article VI, Section 128-61**
193 **F 7(b) and Section 128 - 61 (F) (9) Height and setbacks, to construct a 120 foot**

194 **telecommunications tower.** This is a continuation of the discussion for ESCO Tower.
195 Chairman Coffey reminded the Board that at the last meeting, Attorney Silliman participated by
196 phone. There was a motion by Mr. Umina to approve the variance at 120 feet. Then Mr. Watson
197 asked a question of Attorney Silliman as to whether the ZBA could deny the variance based on
198 the tower design. That was the conclusion of the September 15th meeting.

199 Attorney Silliman commenced with his answer. He advised the Planning Board, in its purview
200 as the lead agency under SEQR, combined with its Special Use Permit authority, has the ability

201 to ascertain the type of structure to be built. The Zoning Board has the jurisdiction to determine
202 the appropriate height and the minimum variance necessary.

203 When the Planning Board reviewed the Special Use application, they did several things. One,
204 they conducted a balloon test. Two, they requested an increase to the lease area to make sure
205 existing trees are maintained as a screen to obscure the view of the tower. Three, they evaluated
206 three different types of structures: lattice, monopole, and monopine. The Planning Board did not
207 ascertain the appropriate height of the structure. The Planning Board was guided by the advice
208 of the Town appointed consultant, Ron Graiff, but they realized the actual height of the tower
209 was to be determined by the Zoning Board.

210 In assessing the environmental impact, the Planning Board determined that the project could
211 have a negative declaration under SEQR, meaning there wasn't an environmental impact, if the
212 applicant adopted a monopine design. The monopine design is slightly different than a
213 monopole or lattice structure in that in order for the design to work, the height has to be
214 increased a bit above the height necessary to meet the needs of the carriers because the design
215 has to provide for a crown. Chairman Coffey indicated the additional height required could be
216 up to 19 feet or possibly much less. The tower has not been designed yet.

217 Attorney Silliman continued. The Planning Board fully assessed the impacts and issued a
218 negative declaration on the monopine and is slated to take up the issue of the Special Use Permit
219 after the Zoning Board has acted on the variance request. Attorney Silliman further addressed
220 the concern of some of the Board members, who asked at the last meeting (September 15, 2010)
221 if the Planning Board should have issued a positive declaration, given the potential visual impact
222 of the tower, and therefore, required the preparation of an Environmental Impact Statement.

223 Attorney Silliman advised that in this case, the answer is no because the information that would
224 be sought in doing an Environmental Impact Statement has already been collected by doing the
225 balloon test, visual simulation, and therefore, requesting mitigation with the monopine crown.

226 Attorney Silliman acknowledged visual impact is subjective. The Planning Board made its
227 determination of a monopine design for mitigation purposes with a five-to-one vote, and if they
228 had not recommended the monopine design as lead agency under SEQR, they would have under
229 the Special Use Permit.

230 Mr. DeCancio didn't understand the concept of issuing a negative declaration. He doesn't
231 dispute what Attorney Silliman said when he clarified the role of the Planning Board as lead
232 agency in regards to SEQR, but he feels issuing a negative declaration and requiring a monopine
233 is not following the spirit of the law. Attorney Silliman advised that there can be an impact, but
234 if the applicant has adequately studied the impact at this stage and agreed to the appropriate
235 mitigation, there is no need for further study.

236 Mr. DeCancio continued by saying that since visual impact can be so subjective, one might say
237 the visual impact of what appears to be a large pine tree where there are no other pine trees
238 causes an environmental impact in itself. Attorney Silliman advised that exact issue was
239 discussed at the Planning Board meeting September 7, 2010, prior to issuing the negative
240 declaration. There were two resolutions drafted prior to the September 7 meeting, one for a
241 monopole and one for a monopine. After a spirited discussion, the Planning Board
242 recommended a monopine design by a vote of five to one.

243 Mr. DeCancio referenced a copy he had of the SEQR Full EAF and addressed question number
244 10 on page 15 that reads, "Will Proposed Action affect agricultural land resources?" The answer
245 selected on the form was, "NO". In Mr. DeCancio's opinion, the answer should read, "YES",
246 since there was land added to the lease agreement to include more trees. Attorney Silliman

247 reminded Mr. DeCancio the Environmental Assessment Form is completed by the applicant and
248 submitted early on in the process. The EAF serves as the basis for the analysis, as well as the
249 field tests, and after consideration of all the available information, the Planning Board increased
250 the lease area. Mr. DeCancio then referenced question 18 on page 19 of the EAF regarding
251 whether there may be a chronic low level discharge or emission. Attorney Silliman advised Mr.
252 DeCancio that box is left unchecked because, as stated at previous ZBA meetings, the issue of
253 emissions is pre-empted for local jurisdictional review by the FCC (Federal Communications
254 Commission). Because the applicant met a certain threshold of analysis provided to the Town
255 designated consultant who accepted the findings, the Planning Board is pre-empted from
256 considering the impact of emissions.

257 Mr. DeCancio also referenced question number 20 on page 20, "Is there, or is there likely to be,
258 public controversy related to potential adverse environmental impacts?" and the answer "NO" is
259 selected. Attorney Silliman reminded Mr. DeCancio that the applicant completes this portion of
260 the EAF and advised that during the course of the Zoning Board's review and the Planning
261 Board's review, the issue has been fully vetted before the public and the public has had more
262 than adequate opportunity to raise their concerns. The public was notified the issue was on the
263 Planning Board agenda and the minutes of the meeting have been posted on the Town website.
264 The cell tower issue was also covered in the Spotlight.

265 Chairman Coffey discussed next steps. If the variance is granted, the applicant goes back to the
266 Planning Board to work with staff and the manufacturer on the design of a custom built
267 monopine. Mr. DeCancio questioned whether the custom design impacted the ability to expand
268 and co-locate on the tower. Attorney Silliman advised at 120 feet, the tower could potentially
269 accommodate four carriers. Mr. DeCancio maintains the Town Code is not worded strongly
270 enough and does not give the Board what he feels is the appropriate amount of control.

271 Mr. Watson asked for confirmation of the heights of the balloon test. Attorney Silliman advised
272 the balloons were at 120 feet and 150 feet.

273 Chairman Coffey advised his reasons for wanting to approve the variance at 120 feet are stated in
274 the minutes of the September 15 meeting. Chairman Coffey has since discussed the issue with
275 Director of Economic Development and Planning, Mr. Morelli, and Senior Planner, Rob Leslie,
276 and he is on record as being opposed to the monopine design. Chairman Coffey recognizes,
277 however, the design and the mitigation of the visual impact under SEQR are Planning Board
278 decisions, not Zoning Board decisions. He is certain the issue was given due consideration, as
279 Attorney Silliman indicated, and the Zoning Board is constrained, per counsel, to accept the
280 Planning Board's decision that the monopine design is the best way to mitigate the visual impact
281 of the tower. The Town will be placing a six foot whip antenna on the tower free of charge that
282 will require additional mitigation to be included in the design and that should not reflect
283 negatively on the applicant. Chairman Coffey went on to say that careful consideration is being
284 given to the design of the monopine to ensure the visual impact is minimized. Chairman Coffey
285 also recommends that if the variance is approved, that in accordance with Section 128-61(I), the
286 Planning Board require certification every January 1st.

287 Chairman Coffey asked if anyone else would like to speak. Mr. DeCancio wanted to remind all
288 the Board Members that they have a task to provide the minimum relief permissible and that the
289 Board is quasi-judicial and a safety valve for the residents for zoning issues. He feels his job is
290 to protect people, the community, and the property owners. Mr. DeCancio also feels that as there
291 are no other pine trees in the area, a monopine will change the character of the neighborhood.

292 He believes we would be abdicating our responsibility as the Zoning Board by granting the
293 variance at 120 feet because he feels the final design will be built at 140 feet.

294 Mr. Micelli expressed his preference for granting the variance at 110 feet as he feels it is most
295 consistent with the findings of the Town designated consultant. Chairman Coffey advised for
296 clarification that the stated height range so far has been between 134 feet and 139 feet and that he
297 would like the language of any resolution passed by the ZBA to indicate the monopine will be
298 built at the minimum height necessary to meet the needs of the monopine design. Chairman
299 Coffey favors providing the variance at 120 feet so that the additional height needed for co-
300 locating is considered in the design of the monopine now instead of later when another carrier
301 comes in.

302 Mr. Umina agreed building the tower at 120 feet with the potential of including at least two
303 additional carriers is important to reduce the proliferation of cell towers in the Town. Mr. Umina
304 stated that at the September 15 meeting, he made a motion to approve the variance at 120 feet
305 which was not seconded. Mr. Umina again made the motion to approve the variance at 120 feet
306 and with the setback as requested by the applicant with the appropriate language provided by
307 Attorney Silliman.

308 Mr. Watson stated he feels a lattice tower is the appropriate design for the location and would
309 like to ask the Planning Board to reconsider. Attorney Silliman advised the appropriate time to
310 provide feedback on the monopine design was during the Planning Board's SEQR review.
311 Chairman Coffey asked Attorney Silliman if language can be written into the variance resolution
312 requesting the design issue be re-opened.

313 Mr. DeCancio asked for clarification on whether the ZBA is bound by another Board's decision.
314 Attorney Silliman advised that yes and the Zoning Board's recourse could be to deny the
315 variance.

316 Attorney Silliman recommended approving the variance and a letter from the ZBA Chairman to
317 the Planning Board requesting reconsideration. He further explained that, as the counsel
318 advising both boards and having sat in on the Planning Board's discussions of the monopine
319 design, he thinks it is improbable that the Planning Board would change the negative declaration.
320 Attorney Silliman advised the Planning Board's mission is different than Zoning Board's
321 mission. Attorney Silliman would not suggest delaying the vote while waiting for the letter to be
322 drafted due to concerns about exactly how much time the ZBA has to act. Chairman Coffey
323 thinks it would be imprudent to deflect the issue back to the Planning Board because the design
324 issue being discussed has already been carefully considered by that Board. He advised he would
325 favor a letter to the Chairman of the Planning Board requesting reconsideration of the design.

326 Mr. Umina indicated he feels the letter is unwarranted and asked that he not be considered one of
327 the members requesting the letter. He reiterated his motion to approve the height variance to
328 120 feet plus the minimum required to extend the monopine crown to mitigate the visual impact.
329 Chairman Coffey seconded.

330 Mr. Umina and Chairman Coffey voted in favor. Mr. Micelli and Mr. DeCancio voted against
331 the variance. Mr. Watson did not immediately state his vote. Mr. DeCancio indicated he most
332 likely would have approved a monopole tower up of 120 feet and reiterated his "nay" vote for a
333 monopine is due to the reasons he mentioned previously, as well as his concerns for the welfare
334 of the children who attend Eagle Elementary within 1000 feet of the tower. Mr. DeCancio also
335 objects to being in a position of being asked to grant a variance for potentially up to 50 feet more
336 than what the code allows, despite Mr. Graiff's finding that a height of 110 feet would provide
337 adequate service. Chairman Coffey reminded the Board that Mr. Graiff's findings concluded

338 that a tower built to 110 feet would suffice for coverage and a tower built to 120 feet would
339 encourage co-location and stop the proliferation of cell towers.
340 Attorney Silliman advised the Board that the letter could express the concerns about the
341 monopine and that because of the decision to do a coordinated review, the monopine requires the
342 Zoning Board to grant a height greater than required to satisfy the carriers' coverage needs. Mr.
343 DeCancio indicated he feels the letter should state the coordinated review in this case is
344 hindering our ability to do our job. Attorney Silliman advised that in fact it isn't hindering doing
345 his job; it is just making it more difficult.
346 Chairman Coffey reminded everyone the motion on the table is two votes for and two votes
347 against. Mr. Watson indicated he would vote for the variance at 120 feet. The variance passed
348 with three votes to approve the variance at 120 feet, two votes against.
349 Chairman Coffey then asked for a motion to authorize Attorney Silliman to draft a letter under
350 the ZBA Chairman's signature indicating that four out of five members of the Zoning Board
351 strongly recommend the Planning Board reconsider the monopine design.
352 Mr. Watson moved to draft the letter and circulate for review by the ZBA, seconded by Mr.
353 DeCancio, and passed by all members present.
354 Chairman Coffey directed counsel to draft the letter, which will be circulated to the Board for
355 comments before it goes out under the Chairman's signature. Chairman Coffey also directed
356 counsel to draft the appropriate resolution with respect to the variances.
357
358 The meeting was closed on a motion from Mr. Micelli and seconded by Mr. Umina with all in
359 favor at 9:16pm.

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Respectfully submitted,
Robin Nagengast