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**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**October 20, 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  
Justin Harbinger, Assistant Building Inspector

Rob Spiak, Applicant  
Thomas Butler, Applicant  
James Loder, Applicant

Chuck Radliff, Sr., Delmar  
Craig & Doris Jensen, Glenmont

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

**PUBLIC HEARING**

**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 new sign will be located 2.1 feet from the front property line, 7.9 feet shy of the 10' required.

The existing structure is located in a Commercial Zoning District and the use of the property is a retail store with fuel sales.

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

Rob Spiak, Core States Group, presented on behalf of Cumberland Farms. Mr. Spiak noted the previous variances granted for the property in 2006. The applicant's intent is to keep within the bounds of those resolutions. The sign they want to remove is on Route 32, closest to the residences. The new sign will replace the current one in the middle of the site that faces the Thruway. The reason is that the diesel fuel sales at the location have not been as expected. The truck traffic has not been as expected. The sign will have LED lighting that has the benefit of being energy efficient and can be changed from a computer indoors. The LED prices emit less light because only the numbers are lit. The existing setback variance of 9.1 feet will not change. The variance for the additional sign that would be removed if the project was approved will no longer be needed. The appearance of the base and roof of the proposed 15 foot high sign will be very similar to the existing 10 foot high sign. The orientation will not change.

53 The total freestanding sign at 95 square-feet will be slightly fewer square feet than the 96 square-  
54 feet allowed by the current variances. Mr. Spiak indicated the reason for one larger sign is to get  
55 the attention of the truck drivers on the Thruway and then hopefully increase diesel sales. Mr.  
56 Micelli requested the company data regarding revenue loss due to the diesel price sign not being  
57 large and/or visible enough so the board can be more informed as to the justification for a larger  
58 sign. Chairman Coffey asked if the location might get by with a sign that is larger than the  
59 current sign, but not 50 square feet over the allowable. He questioned whether there are any  
60 signs in town that are close to 95 square feet and Mr. Harbinger advised he would check. Mr.  
61 DeCancio asked if Cumberland Farms could place a sign off premises, close to the Thruway and  
62 was advised that section 128.59 (L) (1) prohibits.  
63 Craig and Doris Jensen, 22 Old Route 9W, spoke. Mr. Jensen agreed the proposed sign would  
64 likely be an improvement aesthetically. He is concerned that if a larger sign attracts more traffic,  
65 it will be more truck traffic passing in front of his house. Mrs. Jensen advised that she has nearly  
66 been rear-ended making the turn into her street. They are not happy with the volume of litter  
67 generated by the Cumberland Farms. They are unhappy with the noise from large trucks and  
68 cannot open their windows in the summer. When the project was initially approved in 2006,  
69 there was an agreement to plant a certain amount of trees and erect a fence on their property as a  
70 buffer. They have not been totally satisfied with the outcome. Chairman Coffey advised the  
71 Jensens that staff would review the approval documents to verify if the Town had an obligation  
72 to maintain the buffer and/or remove garbage on their property. It was clarified for the record  
73 that the Cumberland Farms property is zoned General Commercial.  
74 Chairman Coffey asked if there was anyone present who would like speak for or against the  
75 application. No one responded. Chairman Coffey tabled the Public Hearing.

76  
77 **DISCUSSION:**  
78 **Michael & Tina Fabe 28 McMillen Place, Delmar for area variances under article XIII,**  
79 **Use and area Schedules, Section 128-100, Schedule of Yard and Bulk requirements, Lot**  
80 **Occupancy and Front Yard Setback.**

81 Chairman Coffey was in favor of granting the variance. The relief requested to the setback  
82 requirement adds only 2 feet over the current non-conforming structure, which is only 1 foot shy  
83 of the 25 feet required. The backyard is not adequately sized to expand the house in that  
84 direction to accommodate the applicants' growing family. The lot occupancy of the main  
85 structure would increase by only 1.8%. The addition would not change the character of the  
86 neighborhood. None of the neighbors spoke against the proposed addition. There appears to be  
87 no other way to achieve the same benefit. All members agreed.

88 Attorney Moore confirmed the application is a Type II, and therefore, excluded from SEQRA.  
89 Mr. Umina moved to approve the area variance, Mr. Micelli seconded, and the motion passed  
90 with all members present in favor. Chairman Coffey directed counsel to draft the resolution.

91  
92 **RESOLUTION:**  
93 **Charles & Nancy Berns, 1402 River Road, Selkirk for an Area Variance under Article V,**  
94 **District Regulations, Section 128-32, Rural Riverfront District, C. Accessory Uses, (1) Location.**  
95 Mr. DeCancio moved to approve the resolution as drafted for an area variance, Mr. Umina  
96 seconded, and the motion passed with all members present in favor.

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98 **DISCUSSION:**  
99 **Glenwood Village, Glenmont Rd, Glenmont for area variances under Article 128-100, rear**  
100 **yard setback, maximum height, maximum density, Section 128-33 D) Specific regulations for**  
101 **the District, building footprint, and Section 128-56, Off Street Parking and Loading for the**

102 construction of a 148 unit senior housing complex.  
103 Chairman Coffey introduced the discussion of whether a coordinated or uncoordinated review  
104 should be done in regards to SEQR. He advised the nature of the project typically would  
105 indicate that a coordinated review with the Planning Board as lead agency would be favored.  
106 Attorney Moore explained that lead agency status is usually reserved for the Board that can best  
107 address all the issues before SEQR, not just those that are relevant to the variances. Generally,  
108 the Planning Board has greater access to engineering staff to do the appropriate reviews and the  
109 Planning Board's jurisdiction encompasses issues related to storm water, wetlands, etc. that are  
110 not typically carefully considered by the Zoning Board. The regulations are written that one  
111 board must assume lead agency status. SEQR must be determined at the earliest opportunity  
112 possible in the process.

113 In light of recent disagreement during the course of the ESCO coordinated review, Chairman  
114 Coffey has discussed the possibility of an agreement or memorandum of understanding with the  
115 Planning Board Chairman to improve the coordinated review process so that all board members  
116 feel they can do their jobs appropriately. Due to the scope of the project, Chairman Coffey  
117 favors a single rather than two separate reviews from an efficiency standpoint and also agrees  
118 with Attorney Moore that some of the environmental issues can be better addressed by the  
119 Planning Board. Mr. Umina would support a coordinated review as would Mr. Micelli. Mr.  
120 Watson and Mr. DeCancio do not support a coordinated review. Mr. Watson feels by agreeing  
121 to do a coordinated review, he is rescinding his control as a board member. Mr. DeCancio feels  
122 doing a coordinated review compromises the board's ability to make appropriate determinations  
123 on the variances.

124 Mr. Umina provided some background on the ESCO tower situation for Attorney Moore's  
125 clarification. Chairman Coffey pointed out that under the Telecommunications Code, the  
126 Planning Board can require stealth techniques for visual mitigation as long as it doesn't interfere  
127 with the applicant's purposes. Mr. Watson advised he feels it would have been more appropriate  
128 if the Planning Board had made that determination during the site plan review rather than SEQR.  
129 Mr. Micelli introduced the idea of having a joint meeting with the Planning Board. Several  
130 options were discussed as to how a SEQR review can be coordinated while retaining the ZBA's  
131 right to input and it was determined the most effective way would be to do an uncoordinated  
132 review.

133 Mr. Watson moved to conduct an uncoordinated review, seconded by Mr. DeCancio and the  
134 motion passed with all members present in favor. Attorney Moore advised the project is an  
135 Unlisted Action under SEQR. Completion of Part II of the Environmental Assessment Form  
136 was tabled until the November 3 meeting so the applicant can be present to respond to questions  
137 or requests for additional information.

### 138 139 MINUTES:

140 The minutes of the October 6, 2010 meeting were approved as changed on a motion from Mr.  
141 Micelli, seconded by Mr. Watson, with all members present in favor.

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143 Chairman Coffey noted he had distributed the Board Rules of Procedure to all members.  
144 Attorney Moore has previously advised that as of 2007, the Rules of Procedure were superseded  
145 by Town Code. The Board has the option to rescind or revise, to be decided at a future meeting.  
146 Also, the Board currently does not have alternate members to serve in the event a member needs  
147 to be recused. The Town Board appoints alternates and Chairman Coffey will request the Town  
148 Board follow up and appoint alternates as appropriate.

149  
150 Chairman Coffey excused Attorney Moore for a discussion of the ESCO Tower application.

### 151 152 DISCUSSION:

153 **ESCO Tower, Van Dyke Road, Delmar for area variances under Article VI, Section 128-61**  
154 **F 7(b) and Section 128 - 61 (F) (9) Height and setbacks, to construct a 120 foot**  
155 **telecommunications tower.** This is a continuation of the discussion for ESCO Tower.

156 Chairman Coffey reminded the Board that at the last meeting, there was a three-to-two vote  
157 approving a variance of 120 feet plus whatever additional height would be needed for the  
158 monopine design, contingent on a letter from Chairman Coffey to the Planning Board, which was

159 sent October 15, requesting re-consideration of the monopine design. The letter was discussed at  
160 the October 19 Planning Board meeting and Chairman Coffey has also discussed the issue with  
161 the Planning Board Chairman, George Leveille. Chairman Coffey noted the Planning Board  
162 intends to retain an engineer to develop 8 – 10 designs for a monopine to address the concerns of  
163 the Zoning Board as to the maximum height required, and therefore, the maximum variance  
164 required, as well as the visual impact. Chairman Coffey also noted that the applicant met with  
165 the Town Engineer and indicated that the Town may not be allowed to put a SCADA antenna on  
166 the tower free of charge. Reference was made to the Town’s SCADA antenna in previous  
167 meeting minutes and in the draft Board of Appeals resolution. Chairman Coffey preferred not to  
168 vote on the resolution on the variance until the Board has an opportunity to see design options  
169 and height options, and whether a monopine design is adopted. He also feels it would be  
170 premature to finalize the language of the resolution until a decision has been made regarding  
171 whether the Town’s SCADA antenna is going on the tower. Chairman Coffey asked the Board if  
172 there were any questions or concerns.

173 Mr. Watson indicated he would like a revision to the resolution. On page two, references are  
174 made to the heights at which each carrier’s antenna is going to be placed on the tower. Mr.  
175 Watson thought it would be imprudent to specify. Mr. Watson also noted he was concerned as to  
176 whether the design review process would consider the flexibility of the monopine to be expanded  
177 higher. Chairman Coffey advised the adaptability of a monopine design was to be considered in  
178 the design review process. Mr. Umina noted that is important in avoiding the proliferation of  
179 cell towers in town. It was concluded there was sufficient cause to postpone the vote on the  
180 resolution.

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182 The meeting was closed on a motion from Mr. Watson and seconded by Mr. DeCancio with all  
183 in favor at 9:16pm.

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Respectfully submitted,  
Robin Nagengast