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**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**September 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  
Justin Harbinger, Assistant Building Inspector  
Rob Leslie, Senior Planner

Nancy Berns, Applicant  
Charles Berns, Applicant  
Thomas Butler, Applicant  
James Loder, Applicant  
Michael Fabe, Applicant

Chuck Radliff, Sr.  
Viktor Kustov

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**

**Charles & Nancy Berns, 1402 River Road, Selkirk** for an Area Variance under Article V, District Regulations, Section 128-32, Rural Riverfront District, C. Accessory Uses, (1) Location. The applicant is proposing to construct a 660 square foot detached garage that will be located in the front yard of the property. An accessory structure is not allowed under the code to be located in the front yard. The garage will be located 100 feet from the front property line but under the zoning code the front yard is defined as the space between the main structure and the street line. The existing structure is located in a Rural Riverfront Zoning District and is occupied as a single family dwelling.

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

Nancy Berns presented on her and her husband's behalf. She badly needs a two-car garage to protect their vehicles from limbs from the many trees on the property. They are currently keeping their cars out in the open and occasionally incur damage from fallen branches.

Additionally, she and her husband both have health issues, including knee problems that have required surgery in the past. Also, they would like more secure storage for their cars and equipment as sometimes motorists exiting from the Thruway a half-mile away turn up at their property asking for gas.

52 The main reason for the placement in the front of the house is proximity to the front entrance of  
53 the house. Using the back entrance involves using a large staircase to get to the main level of the  
54 house. Mr. Berns' health issues prohibit him from the frequent use of stairs. Also, there is a  
55 septic field in the back of the house. They considered building the garage on the side of the  
56 house. It would require a different variance and construction of a drainage system.  
57 There is a smaller one-car garage on the other side of the property that is not suiting their needs.  
58 Their long term plan is to store a hobby car there. They have consulted with their neighbors,  
59 who have expressed no objections.

60 Attorney Moore confirmed this application is Type II under SEQR.

61 Mr. DeCancio asked if, given the proximity to River Road, whether any other agency would be  
62 required to review the application. It was confirmed that because their driveway exits onto a  
63 county road, the Albany County Planning Board has asked to review the application. The  
64 application was submitted for the September 16 meeting.

65

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

68

### 69 APPLICATIONS

70 On a motion from Mr. Micelli, seconded by Mr. Umina, a public hearing was scheduled for  
71 October 6 at 7:00pm, on an application by **Michael & Tina Fabe 28 McMillen Place**, for area  
72 variances under article XIII, Use and area Schedules, Section 128-100, Schedule of Yard and  
73 Bulk requirements, Lot Occupancy and Front Yard Setback.

74

75 On a motion from Mr. Umina, seconded by Mr. Watson, a public hearing was scheduled for  
76 October 6 at 7:15pm on an application by **Glenwood Village, Glenmont Rd, Glenmont** for  
77 area variances under Article 128-100, rear yard setback, maximum height, maximum density,  
78 Section 128-33 D) Specific regulations for the District, building footprint, and Section 128-56,  
79 Off Street Parking and Loading for the construction of a 148 unit senior housing complex.

80

### 81 RESOLUTIONS

82 **Ed Henson, 5 Derry Lane, Glenmont** for an Area Variance under Article XIII, Use and Area  
83 Schedules, Section 128-100 Schedule of Area, Yard and Bulk Requirements (Minimum  
84 Setback).

85 Mr. Umina moved to approve the resolution, Mr. Micelli seconded, and the motion passed with  
86 all members present in favor.

87

88 Attorney Moore excused himself from the proceedings and Attorney Keith Silliman was  
89 conferenced in via speaker phone.

90

### 91 PUBLIC HEARING

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

94 **telecommunications tower.** This is a continuation of a public hearing for the construction of a  
95 telecommunications tower that will exceed the allowable height and encroach into the setback  
96 requirement to the property line. The height of the proposed tower of 125' from ground level is  
97 35' over the 90 feet that is allowed and the setback to the property line is 185.1', which is 2.4'  
98 shy of the 187.5' required.

99 The existing use of the property is as a farm and single family residence and is located in a  
100 Residential "A" District.

101 Chairman Coffey summarized the status of the project since the applicants' last appearance  
102 before the ZBA on July 7, 2010. The Board has received the three-year build out plans from the  
103 carriers as requested and they have been reviewed by Rob Leslie and Ron Graiff. The Planning  
104 Board issued a negative declaration in regards to SEQR at their meeting [on September 7] on  
105 condition of stealth design (monopine) is used. The project is on the September 21 Planning  
106 Board agenda for the public hearing for the site plan/special use permit review. As a side note,  
107 Independent Towers has withdrawn their application for a site plan/special use permit and area  
108 variance for a proposed cell tower to be located at 65 Elm Avenue. Additionally, the Town of  
109 Bethlehem has been given permission to locate a SCADA whip antenna on the ESCO Tower, if  
110 it is approved. The two issues to be considered at this meeting are the request for the setback  
111 variance and the height variance.

112 Chairman Coffey addressed the setback variance first. Mr. Platel and Chairman Coffey clarified  
113 the relief from the setback requirements does not involve the National Grid power lines or any  
114 existing structures and pertains to the property line only. Applicant Tom Butler made a  
115 distinction between the height of a monopole (124 feet to the top of the antennas) and a  
116 monopine (132 feet to the top of the branches). He and co-applicant Jim Loder noted the reason  
117 they must seek a setback variance is due to the additional height of the monopine design. Rob  
118 Leslie explained the actual relief required will be determined after the monopine crown is  
119 designed. The crown can be expected to be between 8 feet and 15 feet. For example, Mr. Platel  
120 noted, a monopine with a height of 139 feet would require a setback variance of 21 feet.  
121 Attorney Silliman advised that if the variance was granted the resolution can be written to  
122 specify the variance height (center line) and the appropriate height limitations of the mitigation.  
123 Mr. DeCancio asked if the proposed location of the tower can be moved so that a setback  
124 variance is not required. Mr. Butler indicated that the tower is proposed in a location on the site  
125 as to not impact the landowner's farming operations.

126 Chairman Coffey then addressed the height variance. He recapped that the Planning Board  
127 issued a Negative Declaration in regards to SEQR for a height of 120 feet. The town consultant,  
128 Ron Graiff, indicated the carriers on the application would require only a 110 foot location on  
129 the tower to meet their coverage needs. The applicant is requesting approval from the Zoning  
130 Board for a top carrier height of 120 feet. Mr. Butler reiterated a letter from his attorney that the  
131 ZBA has discretion in determining the minimum height necessary and should consider the  
132 potential for future co-location as written in the town telecommunications code. For reference,  
133 Mr. Butler presented a photo of a view over the railroad yard to the southwest, showing three cell  
134 towers and a radio tower on Old Quarry Road. He provided the photo to demonstrate that  
135 coverage in the town could have been accomplished by only one tower with several carriers  
136 collocating instead of four towers with only a couple of carriers each.

137 Mr. Micelli asked Mr. Butler to elaborate on why ESCO is requesting a variance for a proposed  
138 tower height up to 120 feet when the town consultant has reported in his comments and before  
139 the board that a tower at 110 feet is sufficient to provide coverage according to the data  
140 submitted by the applicant's carriers. Mr. Butler indicated it is in the interest of accommodating  
141 future co-locaters that ESCO is pushing for approval at 120 feet. Mr. Butler advised his business  
142 model is dependent on other carriers being added to the tower and if the ZBA grants approval for  
143 a tower that is 110 feet, he anticipates appearing before the board at a future date requesting a  
144 variance. If the tower is approved at 120 feet, it will only require a building permit to add a  
145 carrier at that height. Chairman Coffey referenced the building elevation of the monopine  
146 provided by the applicant and asked if the tower would have less visual impact at 110 feet. Mr.

147 Loder responded the balloon test was not visible two blocks away. Mr. Butler noted the tower  
148 would be designed to be expandable to 140 feet, if appropriate. Sprint has not submitted data to  
149 ESCO so it is uncertain whether Sprint could co-locate at 90 feet on this proposed tower. Mr.  
150 Loder mentioned the tree line at this location may interfere with an antenna at 90 feet.  
151 The question was raised whether the Zoning Board could specify the height on the tower at  
152 which each carrier is approved. Attorney Silliman and Chairman Coffey opined that it was not  
153 likely in the board's scope of responsibility and that there was no real advantage of the board  
154 making that determination anyway.  
155 Chairman Coffey closed the public hearing at 8:03pm.

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157 **Added:**

158 **DISCUSSION:**

159 Mr. Umina spoke first and indicated he is in favor of granting the height variance at 120 feet and  
160 the setback variance as requested. Chairman Coffey also is in favor of granting the height  
161 variance at 120 feet, noting that while it might be said a 110 foot tower would be the appropriate  
162 minimum relief, the town telecommunications code is written to encourage co-location and he  
163 feels future co-location is better served, especially in light of the Planning Board's SEQR  
164 approval at 120 feet. According to town code section 128-61 (I), the Planning Board can require  
165 the applicant to re-certify every year that they are in compliance with emissions requirements  
166 and the conditions of a special use permit, if granted. He is also in favor of the setback variance.  
167 Mr. Micelli would like to deny the application at 120 feet. Since the town hired a consultant, he  
168 feels it is more appropriate to defer to the consultant's finding that 110 feet is adequate. Mr.  
169 Micelli would approve a variance at 110 feet. He is in favor of the setback variance.  
170 Mr. Watson is in favor of granting the variance at 120 feet and granting the setback variance.  
171 His biggest concern is the monopine design. He would have preferred a lattice tower structure.  
172 Mr. DeCancio referenced the SEQR resolution approved by the Planning Board September 7,  
173 2010. He objected to item 13 on page 5 that stated the project would not adversely impact  
174 public health. Mr. DeCancio is concerned there is insufficient data on the long term health  
175 effects of cell towers and feels strongly that the location, 1000 feet from the elementary school  
176 his children attend, is inappropriate. Mr. DeCancio doesn't understand why this fact of the  
177 application is not a bigger consideration and thinks the town telecommunications tower code  
178 should be strengthened. He objected to the monopine design.  
179 Mr. Umina moved to approve the variance at 120 feet centerline with a cap of 139 feet needed  
180 for the visual impact mitigation. No one seconded.  
181 Mr. Watson asked if the ZBA can request the Planning Board re-consider the lattice tower  
182 option. Mr. Leslie noted the Negative Declaration was approved by the Planning Board, as Lead  
183 Agency, for a monopine design to mitigate the visual impacts of a tower on the community.  
184 Attorney Silliman noted the majority of Planning Board members rejected the lattice tower  
185 design. Mr. Leslie further clarified the lattice tower design was rejected first in favor of either  
186 the monopole or the monopine design. Attorney Silliman advised he would need to do some  
187 research as to whether the Zoning Board is bound by the monopine determination by the  
188 Planning Board. It was agreed Attorney Silliman would come back to the board with an answer  
189 to the question, "What flexibility does the ZBA have if they do not want to accept the  
190 determination of the Planning Board re: design in particular as it affects the variance being  
191 considered?"  
192 The discussion was tabled until the next ZBA meeting on October 6, 2010.

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194 **MINUTES**

195 The minutes of the September 1, 2010 meeting were approved as changed on a motion from Mr.  
196 Micelli, seconded by Mr. DeCancio, with all members present in favor.  
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198 The meeting was closed on a motion from Mr. Watson and seconded by Mr. Micelli with all in  
199 favor at 8:30pm.

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Respectfully submitted,  
Robin Nagengast