

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

February 4, 2009

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 Avenue, Delmar, New York. Chairman Hodom presided.

PRESENT: Michael Hodom, Board of Appeals Chairman
Michael Moore, Board of Appeals Counsel
Lennie Micelli, Board of Appeals Member
Ken Umina, Board of Appeals Member
Matt Watson, Board of Appeals Member
David DeCancio, Board of Appeals Member

Mark Platel, Assistant Building Inspector

Mark Jacobson Sam & Elise Whiting
Peter Lynch
Sean Egan

AGENDA: Charles Crisfulli
Crossroads Subdivision
Rick and Elizabeth Schrade

Chairman Hodom called the meeting to order at 7:00pm.

PUBLIC HEARINGS

Charles Crisafulli

The Board had received an application from Charles Crisafulli for property at 101 Cherry Avenue. The application was a Variance under Article VI, Supplementary Regulations, Section 128-54.

The Public Hearing started at 7:00PM.

Mr. Platel said the applicant was proposing to construct a twenty-four foot (24') by twenty-four foot (24'), five hundred seventy-six (576) square foot garage addition to the existing apartment building. The existing apartment building is located in a Core Residential Zoning District and is a pre-existing, nonconforming use. Under Section 128-54 pre-existing nonconforming uses are not allowed to expand. The existing and proposed structure will meet all setback and occupancy requirements of the Core Residential District.

A motion to indent the Public Hearing was offered by Mr. Umina, seconded by Mr. Watson and approved by all Board members present.

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday, February 4, 2009, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Charles Crisafulli for a Variance under Article VI, Supplemental Regulations, Section 128-54, Nonconforming Uses of the Code of the Town of Bethlehem for the construction of garages, for property at 101 Cherry Avenue, Delmar, NY 12054.

Mr. Sean Egan, representative for the applicant, presented. He said he was a contractor. He has been doing business with Mr. Crisafulli on and off for the past twenty (20) years. Mr. Crisafulli wants to sell his current home on Murray Avenue and move to Maple Manor Apartments into Building 1. He wants to build a two (2) car garage

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to accommodate his car, some storage and because his wife is disabled. She sustained two (2) compound fractures a few years ago and he wants to make sure she is comfortable getting in and out of the car. The apartment he will be living in is the furthest apartment on the right hand side of the complex.

Chairman Hodom asked what architectural features were planned for the garage. He wanted to know if it would match the features of the Maple Manor Apartments. Mr. Egan said the roof system would not match. He said the ridge would run east to west and the rafters gabled. The siding would match in color and be vinyl. Roof shingles would be architectural shingles and match in color. The garage would have one (1) large door and an entrance door and window on the western side. Chairman Hodom asked if there were any other garages provided on the site for the other tenants. Mr. Egan said no. Chairman Hodom asked Mr. Egan if he knew why there weren't any other garages. Mr. Egan said there were forty (40) units and building that many garages when the apartments were constructed in 1969 was not considered. He said there are dedicated parking spots. Mr. Crisafulli owns this complex.

Chairman Hodom confirmed that the dimensions of the garage would be twenty-four (24) feet by twenty-four (24) feet. He said there was access to the basement from that end of the building. He asked Mr. Egan who the access was for. Mr. Egan said it was a mechanical room that was no longer used. There isn't anything in that room. It's closed off from use. The area will be backfilled and slab will be placed over it for the garage.

Chairman Hodom asked if Mr. Crisafulli's home on Murray Avenue was on the market for sale. Mr. Egan said it wasn't currently on the market. He thought once Mr. Crisafulli returns in the spring, he will place it on the market at that time. Whether he sells the house or not, his plans are to move to the apartment. Chairman Hodom asked if there would be access from the interior of the garage to the apartment. Mr. Egan said yes. Chairman Hodom asked if there was a construction timeframe. Mr. Egan said no, he was not currently under contract with Mr. Crisafulli.

Mr. Umina asked if Mrs. Crisafulli's disability was permanent or temporary. Mr. Egan said she was seventy-five (75) years old and weakened by the fractures. He thought it would be permanent, she can walk but needs a walker.

Mr. DeCancio asked if the amenities, a table and grill, provided for the other residents in the area of the proposed garage would be relocated to another area. Mr. Egan didn't think the area was ever used. He said most of the residents had their own grills. Mr. Watson asked if they had any feedback from the other tenants. Mr. Egan said no. Mr. Umina asked if the tenants knew about the garage. Mr. Egan said he hadn't told them but there is a superintendent at the building and he thought he had informed them Mr. Crisafulli would be moving there. Mr. DeCancio asked if the residents were notified by the Town. Staff said a public hearing notice was sent to the adjoining land owners, the list is generated by the applicant. The Board is not obligated to notify anyone other than the newspaper with a public hearing notice. Mr. Egan said he hasn't had any conversations with the adjoining property owners. Mr. and Mrs. Whiting, adjoining property owners, were present. They didn't have any problem with the proposal.

There were no further comments from the Board or the audience.

The public hearing closed at 7:12PM.

Crossroads Subdivision

The Board had received an application from Frank Tate for property located on Wemple Road. The application was for a Variance under Article VI, Supplementary Regulations, Section 128-48.

The Public Hearing started at 7:15PM.

Mr. Platel said the applicant is proposing a flagpole lot that does not meet the minimum length requirement for the pole section of a flagpole lot. The proposed pole length of one hundred twenty feet (120') is eighty feet (80')

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shy of the two hundred feet (200') that is required. If approved by the Zoning Board the applicant will have to apply to the Planning Board for subdivision approval. The property is located in a Residence "A" Zoning District and is vacant land.

A motion to indent the Public Hearing was offered by Mr. Micelli, seconded by Mr. Umina and approved by all Board members present.

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will continue an adjourned public hearing on Wednesday, February 4, 2009, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Frank Tate for a Variance under Article VI, Supplementary Regulations, Section 128-48, Flag Lots and Shared Driveways of the Code of the Town of Bethlehem for one (1) lot in proposed three (3) lot subdivision named Crossroads Subdivision Section 3 located on Wemple Rd., Glenmont, NY 12077.

Mr. Peter Lynch, Esq., representative for the applicant, presented. Mr. Mark Jacobsen, the project engineer from Charles Sells, was also present. Mr. Lynch said a question raised at the first part of the Public Hearing was why the application submitted in 1990 for a two (2) lot subdivision was never processed and/or completed on this same parcel. Mr. Tate had hired Mr. Paul Hite to do a subdivision of the parcel. Mr. Tate was not aware at the time that a three (3) lot subdivision could have been achieved. The application was filed but never approved. Charles Sells had done an analysis of the 1990 regulations and at the time he could have applied for a four (4) lot subdivision. Mr. Lynch said that application was nineteen (19) years ago and we were presently in a different economy.

Mr. Lynch said the parcel was an irregular shaped parcel of land and they are proposing a three (3) lot subdivision. He said in the RA zoning district the minimum lot size is fourteen thousand five hundred (14,500) square feet. The design of the subdivision with the proposed location of the homes, meets all the dimensional requirements of the Zoning Law with the exception of the flag lot pole. They are eight (80) feet shy of the required length of that portion of the flag lot. The applicant wants the third lot for the two (2) reasons: Mr. Tate wants a nice development in a nice setting and he wants to maximize his economic return. He thinks with three (3) lots he can achieve a greater return on his investment. Mr. Lynch said the parcel can support three (3) lots, all over the minimum required lot size. He thought the question was if the flag lot with a one hundred twenty (120) foot driveway versus the two hundred (200) required would adversely affect the community or be a substantial impact. Mr. Lynch said the eighty (80) foot difference sounded large but in context, the lot in the back has a thirty-five and a half (35.5) foot setback from its front property line so the back of the house in the front of the flag lot house is approximately seventy-five (75) feet away from the front tip of the house to the rear. He thought landscaping and buffering along the property would mitigate any visual impact or privacy impact. He thought those were the reasons for the two hundred (200) foot requirement. He said though it appeared that the pole of the flag lot looked to fall very short of the requirement, the lots comply with all the other dimensional requirements for the district. Mr. Tate doesn't think this will have any adverse impact on any of the adjoining properties. He understands that it is a self created hardship and they are asking the Board to accept this deviation from the regulations. But a self created hardship is not a bar to an area variance. He said they are asking the Board to consider that the additional house will result in the acquisition of about hundred thousand (100,000) dollars of building materials, provide employment for approximately four (4) months for a building crew and provide an economic stimulus to the economy. When the Board considers whether this will be an adverse impact to the community, he thought it was fair game to consider the economic benefits that the community will derive.

Mr. Lynch said they have made the corrections on the EAF that Chairman Hodom requested and they updated the affidavit. Chairman Hodom said there was still a question as to the total acreage of the property. The EAF lists 1.393 acres and the Planning Board subdivision application states that there are sixty-two thousand five hundred fifty-five (62,555) square feet or 1.436 acres. He asked for clarification. Mr. Jacobsen said the difference between the two numbers is the subdivision will be deeding an additional ten (10) feet along the road to the Town. That is the difference in the parcel size. One reflects the square footage prior to the granting of the land to the Town and the other reflects what will be left.

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Chairman Hodom said there was a revision date on the revised plans currently submitted that was absent on the original plans even though the revisions would have been made prior to the original submission. Mr. Jacobsen said they had gone back in their computer records and found where that date had been mistakenly left off. They added the date before resubmission.

Chairman Hodom said the applicant had made the statement that the comments from Mr. Leslie's letter of March 17, 2008 had been incorporated into the plans. He said the safe setback line and the wetland delineation still was not on the plans. Chairman Hodom asked if Mr. Jacobsen had any conversations with someone in the Planning Department regarding their comments and the corrected drawings. Mr. Jacobsen said yes they had. He said with regard to the wetlands, they become a non-issue if the lot doesn't become viable. They are substantially away from any potential wetlands, which is the drainage course in the very rear of the lot. Mr. Jacobsen said the safe setback line would be a moot point without the third lot. He said the flag lot was regraded per the planning comments. He said the new configuration used a walk out basement so there isn't the same slope and grading issue as the safe setback line would require. If the flag lot doesn't become a viable lot, the safe setback line is not an issue.

Chairman Hodom asked Mr. Jacobsen who in the Planning Department he had discussed the plans with. Mr. Jacobsen said it was one of the junior engineers, Candy Stone, who had spoken with Mr. Ritz. Chairman Hodom said Mr. Ritz doesn't have any recollection of having any conversations with anyone from Charles Sells, since the initial submittal to the current date discussing any of the proposed changes. Mr. Jacobsen said it would have been either Ms. Stone or Mr. Percy Cotton. Mr. Cotton was doing another three (3) lot subdivision on Wemple Road. He said it was possible the two (2) subdivisions were getting mixed up. He said Mr. Cotton had several meetings with staff thru 2007 into the beginning of 2008.

Mr. Platel asked Mr. Jacobsen if when they figured the lot size for the keyhole lot was the square footage of the pole of the flag lot removed. Mr. Jacobsen said he had removed that square footage. Mr. Umina asked if the rear lot was a sloping lot. Mr. Jacobsen said it was. When asked the angle of the slope, Mr. Jacobsen said it was fairly flat. He said the house was designed to be a walkout basement. They were stepping the grade down along the foundation of the lot so there isn't a sharp drop off in the back.

The price of homes had not yet been determined.

There being no further comment, the hearing was declared closed at 7:35.

On a second look, Mr. Platel said it seemed that there was still an issue with the square footage reported for each lot. He would get the Board updated numbers.

DISCUSSIONS

Rick and Elizabeth Schrade

Mr. Schrade had applied for a variance under Article VI, Supplementary Regulations, Section 128-59, Signs, D (1).

Mr. Moore updated the Board on conversations between himself, Mr. Platel and Mr. Morelli about whether the Planning Board or the Planning Department wanted to weigh in on the variance application. They have agreed on a protocol going forward from here. For situation of routine maintenance or in kind replacement, they will not require the applicant to go back to the Planning Board, even though the original sign might have been on an approved site plan.

Chairman Hodom started the discussion. The current sign is five (5) foot high by six (6) foot wide, thirty (30) square feet which is ten (10) square feet over the current code maximum of twenty (20) square feet. The current

sign is also internally lit and the current code allows externally lit signs only. The applicant desires to increase the internally lit sign to thirty-six (36) square feet for sixteen (16) square feet or eighty percent (80%) over the allowable twenty (20) square feet. The current sign code allows for wall signage in addition to the one (1) free standing sign. The wall signage could be up to approximately sixty-six (66) square feet. The current sign is six (6) feet wide the current space between the windows on both halves of the building is seven (7) feet between the windows which would allow for signage similar in size to the existing sign in width. Chairman Hodom said either the existing sign could be modified to accommodate Mr. Schrade's new tenants and remain at thirty (30) square feet or that additional wall signage could be used with externally lighting to satisfy the applicant needs for his and his tenants businesses. He said the applicant should have been made to comply with the Code requirements back in 2005 but a sign permit was issued in error by the Building Department and not corrected at that time. He recommended denial of the increase in signage from thirty (30) square feet to thirty-six (36) square feet.

Mr. Umina asked how Chairman Hodom thought the existing sign could be modified. Chairman Hodom thought the Allstate sign portion, which is about three and one half (3 1/2) feet high, compared to the one (1) foot sections for the current tenants could be modified with smaller lettering for the Allstate portion. That would allow the space needed for the new tenant. Chairman Hodom thought wall signage could be very well done with external lighting that may enhance the tenants more than on the existing sign. Mr. Umina always wondered why the lights in signs weren't turned off after business hours were over. Chairman Hodom said the applicant did say he turned the lights off around nine (9) o'clock. Mr. Watson said he had removed the one lawyer's name that was no longer a tenant and had enough space for the new attorney. He agreed with Chairman Hodom. He didn't think he needed more square footage on the sign. He thought it was hard to identify those names as attorneys and not other agents of Allstate. He thought the lawyers would be better served with a different sign. Mr. Umina said he agreed with both Mr. Watson and Chairman Hodom's reasoning.

Mr. Micelli said the applicant had the option of putting the wall sign on the side of the building you would face going towards the High School or the front of the building. He agreed that the applicant had other options. Mr. Umina wondered if the modification could be made at a reasonable cost. Chairman Hodom said it would only be changing the lettering. Mr. DeCancio concurred with the other members of the Board.

A motion to deny the variance application of Elizabeth and Richard Schrade for signage increase at property located at 636 Delaware Avenue, Delmar was offered by Mr. Umina, seconded by Mr. Watson and approved by all Board members present.

The Board reviewed the minutes of January 21, 2009 prepared by staff.

A motion to approve the minutes as drafted was offered by Mr. Watson, seconded by Mr. Micelli and approved by all Board members present.

Mr. Moore said he had been in contact with Mr. Victor Camponera, attorney for McDonald's at 132 Delaware Avenue, Delmar. The Board had granted them an area variance for parking in 2007. The applicant has not taken any action on that variance. Mr. Camponera had wanted to apply to the Board of Appeals for a time extension to construct under that variance. The applicant had received site plan approval from the Planning Board. They have also received the two (2) ninety (90) day extensions allowed under the Code for site plans. They would not be applying to this Board for extensions.

A motion to adjourn was offered by Mr. Watson seconded by Mr. Umina and approved by all Board members present.

The meeting adjourned at 7:55pm.