

**TOWN OF BETHLEHEM
BOARD OF APPEALS
February 20, 2008**

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. Michael Hodom, Chairman, presiding.

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

Karen Guastella, Assistant Building Inspector

AGENDA: Jessica Brand
George Ten Eyck
Selkirk Warehouses
United Development Group
Mary Wilmott

PRESENT: Terri Herubin Jessica and Alex Brand
Melissa Zera George Ten Eyck
Carol Steven
John Smolinsky
Keith Bennett

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

PUBLIC HEARINGS

Jessica Brand

The Board received an application for a variance under Article XIII, Use and Area Schedules, Section 128-100, Schedule of Area, Yard and Bulk Requirements.

Ms. Guastella said the applicant is proposing to construct a five hundred seventy-four point eighty-five (574.85) square feet addition to the existing main structure that will create a rear yard setback of thirteen point three nine (13.39) feet, which is eleven point six one (11.61) feet shy of the twenty-five (25) feet required. The applicant revised the previous plans reducing the rear yard encroachment by three (3) feet and negating the need for a side yard variance. The main structure is occupied as a single-family dwelling and is located in a Residence "A" Zoning District.

This is a continuation of a hearing opened on January 16, 2008.

Mr. and Mrs. Brand presented. Mrs. Brand said when they were last before the Board they had suggested the Brands reduce the amount of square feet of the addition so the expansion would end where the pre-existing non-conforming shed is located. Another request was for more professional drawings and confirmation that they would not be requesting a side yard setback variance. They are not requesting a side yard variance.

The Brands had submitted a plot plan prepared by their architect. The plan includes the proposed kitchen design, mud room and laundry room as well as dimensions of the addition. She said they had worked with the architect and he was aware of the Board's concerns. The architect and the Brands have agreed that it would be

very difficult to accomplish their goals of increasing the kitchen and including the laundry room and mud room by only going back as far as the pre-existing non-conforming shed. There would be insufficient width to accommodate the washer and dryer in the laundry room and the kitchen would appear cramped and not allow them to place the table where they wanted. They believe that it would be possible to construct the addition by only going three (3) feet past where the end of the current shed is located. They have reduced their original request from six (6) feet. They would appreciate the flexibility of their original request for six (6) feet but they do believe that they could attain their goal limiting the variance to (3) feet past the existing shed. Without the additional feet, the expense of the addition would be too much without being able to attain the goals of the addition. Ms. Brand said another point they had not raised before was that the house is seventy (70) years old and they live in Slingerlands. They are surrounded by much larger homes where a two (2) car garage was not necessarily standard but many of the homes have three (3) car garages and other amenities such as pools and tennis courts. She said most of the homes on the street have been renovated and many have newer kitchens and two (2) car garages. The prior two (2) owners of their home have moved close by but into much larger homes. The current home is very small for a growing family. They are also looking to the future when they want to sell their home, they don't want to be at a disadvantage because the home has a very small kitchen and a one (1) car garage. People expect certain amenities in today's market.

Chairman Hodom thanked the Brands for their effort to consult with a professional. He said the Board also appreciated their efforts in trying to minimize the proposed addition to bring it as close as possible to what they actually need. He said it was good that they reduced the width of the garage and Chairman Hodom considered the proposal satisfactory. He asked if they were still proposing to place living space above the garage. The Brands said yes, the garage addition would be two (2) stories.

Chairman Hodom asked Ms. Guastella if the bay window on the back side of the kitchen impacted the rear yard setback. Ms. Guastella said the setback line was determined from the foundation.

Mr. Umina asked the Brands if they preferred to have the option of extending the additional six (6) feet but were willing to keep it to three (3) feet. Mrs. Brand said the six (6) feet would give them some flexibility during construction if a problem was encountered and they needed to move the wall out.

Chairman Hodom asked when the construction would begin. Mrs. Brand said that the contractor thought he had time in the fall.

The hearing closed at 7:11PM.

George Ten Eyck

The Board received an application for a variance under Article V, District Use and Area Requirements, Section 128-40 Planned Development District, Lot & Bulk Requirements.

Ms. Guastella said the applicant is proposing to construct a one hundred fifty-four (154) square foot Sunroom addition to the one thousand six hundred forty two point eight (1,642.8) square foot existing main structure creating a total building area of one thousand seven hundred ninety-six point eight (1,796.8) square feet. This is two hundred seventy-two (272) square feet over the one thousand five hundred twenty-four point eight (1,524.8) square feet of building area allowed. The lot occupancy will be seventeen point sixty-eight percent (17.68%), which is two point six eight percent (2.68 %) over the fifteen percent (15%) allowed. The rear yard setback will be eighteen (18) feet, which is seven (7) feet shy of the twenty-five (25) foot rear yard setback requirement.

The existing structure is located in a Planned Development District and is occupied as a single-family dwelling.

A motion to indent the public hearing notice 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 hold a public hearing on Wednesday, February 20, 2008, at 7:15 p.m., at the Town Offices, 445

Delaware Avenue, Delmar, New York to take action on application of George & Jody Ten Eyck for a Variance under Article V, District Use & Area Requirements, Section 128-40 Planned Development District, Lot & Bulk Requirements of the Code of the Town of Bethlehem for construction of an addition to the rear of the existing home located at 15 Patroon Place, Glenmont, New York.

Mr. Ten Eyck presented. He said he wanted to replace an existing deck with a three (3) season sunroom having the same footprint as the deck. The main reason for the sunroom is because there are a lot of wetlands behind the property and in the spring and summer it's difficult to sit outside in the evenings. The existing deck has been there for twenty-two (22) years and its at the point where it needs to be replaced. They wanted to replace with a more useful structure.

Chairman Hodom asked if there were any medical reasons why they wanted the enclosed room. He asked about allergies, such as bees. Mr. TenEyck said he was allergic to bees and he had two (2) children with asthma. Chairman Hodom asked if the existing deck would be kept. Mr. Ten Eyck said it would be replaced and the new structure would be attached to the house as per code. He said the adjoining deck would remain. They have lived at that address for twenty-three (23) years. Chairman Hodom asked if Mr. TenEyck had discussed the sunroom with his adjoining neighbors and shown them the plans. He said he had discussed what he wanted to do but did not have plans at the time but they came to his house. Some of his neighbors had submitted letters in support. The proposal also went before the Village Square Home Owners Association. They had approved it at their October meeting.

Chairman Hodom asked Ms. Guastella if the use of Techno Posts were allowed in Town. She said that the building department would need to see a soils report. They are not listed in the Code. A representative from Patio Enclosures, Mr. Tim Legace, said that the Town had approved the use of Techno Posts sometime in the middle of last year. They are a manufactured pier foundation. He said the posts were put in by a machine that gives out a pressure readout. Patio Enclosures like to use the Techno Posts. He said they go a minimum of sixty (60) inches below grade. They need to go into virgin soil. Chairman Hodom asked if Mr. Legace had a copy of the report that is mentioned on Patio Enclosures drawings. He said he did not. Chairman Hodom asked who would be responsible for the soil borings analysis. Mr. Legace said Techno Posts accepted that responsibility. He said Patio Enclosures signs the plans for the room and Techno Posts signs the plans for the piers. Chairman Hodom asked how the home owner was protected. Mr. Legace said the contract with Techno Posts states that if a pier fails, they will replace it at no cost to the home owner. Chairman Hodom asked if Techno Post would submit stamped signed drawings to the Town once the foundation is completed. He asked Mr. Legace to put together a narrative as to the procedure. Mr. Micelli asked if the Techno Posts were used in any other Town's. He asked Mr. Legace to submit information about other sites. Mr. Legace said that the corner of one of the Town of Bethlehem's buildings is on Techno Posts. Ms. Guastella said that the Town has allowed the posts but realize that it is a fairly new application approved by the State Building Code. The Town inspects the posts. Mr. Legace said that the posts are augured into the ground and tested. There is a plastic sleeve around posts. Mr. Micelli asked what happened if the posts failed. Mr. Legace said if the posts weren't deep enough they would raise up but settle back down in the spring.

The public hearing closed 7:28.

DISCUSSIONS

Selkirk Warehouses

The Board had received an application for a variance under Article V, Section 128-39, D (4), Specific Regulations for the district. Public hearings were held on January 17, 2007 and February 6, 2008.

Chairman Hodom started the discussion. He said that Security Supply has been in business for over seventy (70) years. During the previous hearings no neighbor opposed the warehouse, the new Zoning Law requires an additional one hundred (100) foot buffer otherwise the location of the proposed warehouse would meet the setback requirements. He does not believe that an undesirable change will occur in the character of the neighborhood or be a detriment to the nearby properties. He does not think the benefit sought by the applicant can be achieved by any other feasible method. The requested variance is substantial but is due to the existing

limitations of the site and the adoption of the new Zoning Law. He does not think that the granting of the variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district. He does not believe that the difficulty was self created by the applicant. He recommends granting the variance requested by the applicant with the following suggestions. He wants the recommendation of the Albany County Planning Board be added, and ask the Planning Board to review the concerns of the neighbors about selling of company vehicles on the premises and the operation of Security Supply vendor deliveries and truck deliveries hours of operation.

Mr. Micelli said that he agreed with the suggestions of the Albany County Planning Board. He was glad that the applicant had resolved the issue of the paper streets and they seemed willing to work with the adjoining land owners on buffering and lighting. He was in favor of granting the area variance.

Mr. Umina thought the business was an asset to the community. He was in favor of granting the variance.

Mr. Watson said he was in favor of granting the variance but was concerned with limiting the hours of operation. He said they have been in business for along time and have determined the hours needed to run their business.

Mr. DeCancio was in favor of granting the variance. He thinks the construction of the building will not only help Selkirk Warehouses to become more efficient; it will also have a positive impact on the neighbors because the forklifts will be moving materials inside. He hopes the Planning Board addresses the issue of creating a buffer to limit noise and light as much as possible. He was not sure that limitations should be placed on the hours of operation. He said Security Supply has been in business for seventy-four (74) years and has been a good business for the community. He did not see how the construction of a new warehouse warranted the limiting of the hours of operation. He thinks it will limit the noise coming out of the facility.

Chairman Hodom said he was not suggesting that the Board try to limit the hours of operation. It was suggested that the Planning Board take a look at the issue as well as the selling of company cars. He said that Mr. Bennett had fully explained the reasons behind the current hours of operation. If the Board did not want that added as a suggestion or condition, he was open to that suggestion.

The majority of the Board decided that the hours of operation should be left out of the resolution.

A motion to approve the variance requested with the conditions of the Albany County Planning Board included and also the condition for the Planning Board to review the concerns of the neighbors in regards to the selling of company vehicles on the site was offered by Mr. Watson, seconded by Mr. Umina and approved by all Board members present.

United Development Group

The Board had received an application for a variance under Article V, Section 128-33 D (footprint size), Article XIII, Section 100 (density, maximum height, minimum rear yard). Public hearings were held on April 18, 2007, September 5, 2007 and February 6, 2008.

Chairman Hodom stated that the Town's Comprehensive Plan suggests this type of development provides a housing alternative, develops an un-utilized parcel of land, addresses the need for senior housing and will not have any effect of the school system. It also suggests that senior housing be located near services such as shopping centers and mass transportation. The Comprehensive Plans states that the aging population and increased need for affordable housing means that Bethlehem must provide for the development of a range of housing types and sizes so that existing and future residents can continue to live in the community. The applicant has addressed the concerns of the neighbors by moving the buildings to the rear of the property. The topography of the site restricts the view of the buildings in the rear of the property. The traffic information supplied suggests that senior housing would create considerable less traffic impact during the AM and PM peak traffic than single-family homes. This project has proposed to comply with the section of the Zoning Law pertaining to senior housing. Bethlehem Senior Services has expressed a serious need for senior housing within the Town at a reasonable cost. The adjoining property is zoned MED, allowing four (4) story buildings to maximum height of sixty (60) feet. The Albany County Planning Board now supports this project. Chairman

Hodom said the benefit to the applicant and the many seniors that live in Town, far out weighs any potential detriment to the neighborhood or the community. He doesn't believe that an undesirable change will occur in the neighborhood or nearby properties. Based on the record, he does not feel that the benefits sought by the applicant can be achieved in any way besides area variances. The area variances though substantial are necessary to make the project economically feasible. He doesn't think the area variances will have a detrimental effect on the environmental or physical conditions of the neighborhood or the district. He said the alleged difficulty was not self-created, if the applicant cannot obtain the variances requested, the project will not proceed. He recommends the four (4) area variances be approved with the following suggestions: he recommends that the Planning Board, in consort with the Building Department, review the section of the Zoning Law pertaining to building articulation.

Mr. Umina said when the project first came before the Zoning Board, the Albany County Planning Board was against the approval and he notes that the revised plans are now viewed as favorable and the Albany County Planning Board deferred to local consideration. The project originally had considerable opposition voiced by those that lived nearby. At the most recent Public Hearing, that opposition had dissipated. He said the applicant had made significant modifications which allows the project to fit into the character of the neighborhood. He was in favor of granting the variances.

Mr. Micelli said he had been against the project because of the design with the building close to the road. He appreciated the effort put forth by the applicant to revise the plans. He said it was also a benefit to the fire department for access to the Thruway. He wanted to know if the garbage containers would be fenced in or bushes planted around them. Chairman Hodom said that was a Planning Board issue. Mr. Micelli was in favor of granting the variances.

Mr. DeCancio said the plan was well put together and the aesthetics would enhance the character of the neighborhood. He said the topography of the land was challenging and the design fit nicely into it. He said there was a tremendous need for senior housing in the Town. He was in favor of granting the variances. He hoped that the Planning Board acted expeditiously on the project.

Mr. Watson said he supported the project and thought it was an asset to the Town. He was in favor of granting the variance.

A motion to approve the variances with the Chairman's recommendation was offered by Mr. Umina, seconded by Mr. DeCancio and approved by all Board members present.

Jessica Brand

The Board received an application for a variance under Article XIII, Use and Area Schedules, Section 128-100, Schedule of Area, Yard and Bulk Requirements. The Public Hearing was held earlier this evening.

Mr. Umina said they had come back to the Board with a better design. Mrs. Brand had said she wanted to have more than three (3) feet and he was inclined to give them the six (6) foot variance they first requested.

Chairman Hodom said it was the obligation of the Zoning Board to approve the minimum required request of any applicant. The applicant's had been uncertain as to the amount of variance they really needed. They have come back with professional designs that show they need a three (3) foot less rear yard setback variance as was previously requested.

Mr. Moore said the Board needed to come to a consensus as to the minimum necessary for the variance.

Mr. DeCancio said that the plans are adequate and appropriate for what they need. He was in favor of granting the eleven point six one (11.61) foot rear yard setback variance.

Mr. Micelli said though the applicant had mentioned that they would like the fourteen point six one (14.61) foot variance, they could do what they wanted with the three (3) foot variance as shown on the submitted plan. He was in favor of granting the eleven point six one (11.61) foot rear yard setback.

Mr. Watson said he would have liked to give them the fourteen point six one (14.61) foot variance but the revised plans clearly show professional plans that only need a eleven point six (11.61) foot variance. He was in favor of granting the eleven point six one (11.61) foot rear yard setback variance.

A motion was offered by Chairman Hodom to approve the revised variance request of the eleven point six one (11.61) foot rear yard setback that eliminates the request for a side yard setback, seconded by Mr. DeCancio and approved by all Board members present.

RESOLUTIONS

Mary Willmott

The Board had received an application for a variance under Article V, Districts, Use & Area Requirements, Section 128-32 (C-1) Accessory uses. The Public Hearing had been held on February 6, 2008.

The Board reviewed draft Resolution AV-0801 for the variance requested for 111 Simmons Road, Glenmont prepared by Mr. Moore, Zoning Board Counsel.

A motion to approve Resolution AV-0801 as prepared was offered by Mr. Umina, seconded by Mr. DeCancio and with a vote of four (4) for and Chairman Hodom against, the motion passed.

MINUTES

The Board reviewed the draft minutes of January 16, 2008.

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

The Board reviewed the draft minutes of February 6, 2008.

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

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

The meeting adjourned at 8:05 PM.