

**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**July 15, 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  
David DeCancio, Board of Appeals Member  
Lennie Micelli, Board of Appeals Member  
Ken Umina, Board of Appeals Member  
Matt Watson, Board of Appeals Member

Mark Platel, Assistant Building Inspector  
Justin Harbinger, Assistant Building Inspector

AGENDA: Jim Sheldon Carol Cady  
Pines @ Normanside Gregg Sagendorph, Jr.

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

**PUBLIC HEARINGS**

**Jim Sheldon**

The Board had received an application for a variance under Article VI, Section 128-55 (B) (2), nonconforming lots and structures for a parcel of land (86.06-2-19) on Grant St. The applicant wishes to move a lot line that will make a non-conforming lot more non-conforming. This is a continuation of the public hearing.

Mr. Platel said the applicant is proposing to deed over an eight point eight four (8.84) foot by forty-nine (49) foot, four hundred thirty-three point one six (433.16) square feet parcel of land to the neighboring lot to rectify an existing building encroachment. The existing twelve thousand (12,000) square foot vacant lot is a pre-existing non-conforming building lot. The Zoning Law states that a pre-existing non-conforming lot will lose its non-conforming status if the lot's non-conformity is increased. In the residence A zoning district the minimum lot size for a buildable lot is fourteen thousand five hundred twenty (14,520) square feet. After the applicant deeds over the four hundred thirty-three point one six (433.16) square feet, increasing the non-conformity, the lot will be eleven thousand five hundred sixty-six point one four (11, 566.14) square feet, which is two thousand nine hundred fifty-three point one six (2,953.16) square feet shy of minimum lot size required. The applicant and his surveyor had met with the building department and discussed the proposal in front of the Board. They had concluded that it would be best for the applicant to give the adjoining neighbor the portion of land eliminating the encroachment rather than granting an easement where the encroachment would still exist and it may be problematic in the future. As stated at the last meeting a building permit could be issued if an easement was granted but was felt that this would be the best solution for all parties involved.

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For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955.

A motion to indent the public hearing notice into the record 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 continuation of a public hearing on Wednesday, July 15, 2009 at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Jim Sheldon for a Variance under Article VI, Districts, Use and Area Requirements, Section 128-55, (B) (2), non-conforming lots and structures of the Code of the Town of Bethlehem to revise the lot line making a non-conforming lot less conforming.

Chairman Hodom asked Mr. Sheldon if he had anything else to add from the last meeting. Mr. Sheldon said he did not. He just wants to move forward with the application so he can apply for his building permit and construct a home.

Chairman Hodom asked Mr. Moore if the use of easements was a better way of dealing with the encroachment issue instead of further reducing the size of the pre-existing non-conforming lot. Mr. Moore said it was a matter entirely between Mr. Sheldon and his neighbor. He had spoke with Mr. Platel and one of the reasons that the building department thought it would be a better solution to convey title was because the access to the apartment is only from the side door. Mr. Moore thought it was a compelling reason why a conveyance of the property might be preferable. He said the reality is that it's a matter between the two property owners and how they want to proceed. Chairman Hodom said there is already a driveway encroachment on Mr. Sheldon's lot to the rear building. Mr. Platel said the access he spoke of was into the building itself. He was also concerned with access for maintenance of the building. He didn't know if it would raise insurance issues for Mr. Sheldon.

Chairman Hodom asked if there had been a survey done at the time of the purchase. Mr. Sheldon said he had not but he felt it would still have brought them to this point. When he first purchased the lot, he didn't have any intention of building a home, but circumstances have changed. He's sold the home he was living in and he now wants to build a home. When he made that decision, he got a survey done and Mr. Hite brought to his attention that there was an encroachment issue with the breezeway on the back house. Mr. Moore asked Mr. Platel if there was anything in the state code dealing with access to a building through an easement. He didn't think there was. Mr. Sheldon said the building was not an apartment house but a single family home over a garage. Chairman Hodom asked if he had spoken with counsel. Mr. Sheldon said he had spoken with his real estate attorney and there were a few remedies discussed. The attorney told him the easiest would be getting Mr. Hansen to remove the breezeway. He said he had spoken to Rosemary, who says she is the owner of the back house. She refused to remove the breezeway. She says she has a letter in the file that says the breezeway was fine. Mr. Platel said the letter states the apartment is fine. Mr. Sheldon said he was a path of least resistance type of guy so he decided to apply for the variance.

Mr. Hansen said Rosemary Hansen does not own the house, he did. There is a family agreement giving her some rights but it's not ownership. Chairman Hodom said the family agreement had no bearing on the variance application. Mr. Hansen said he had the right to remove the breezeway. Rosemary had to do the maintenance but he owned the building. Mr. Sheldon said he would remove the breezeway at his expense. Mr. Hansen said it's removal would not alter the living space of the apartment. Mr. Umina asked what would happen if there was a accident. Who would have the liability? Mr. Sheldon said he would get a short term policy. Chairman Hodom asked if there was an agreement in place between Mr. Hansen and Mr. Sheldon concerning the driveway. Mr. Sheldon said he didn't have an issue with the driveway. He said it was in disrepair. If the driveway were to be replaced, he wanted them to put it on the other side of their house. There is room for it there. Mr. Sheldon preferred not to have an easement on his property. Mr. Hansen said it would like to finalize the issue now. If he wants to sell the house in the future, he doesn't want it coming up. If the breezeway is an issue, he would remove it. Mr. Sheldon said that sounded fine to him, then he would not have to do a lot line adjustment. Chairman Hodom asked if Mr. Hansen if he was willing to take down the breezeway. He said he was and Mr. Sheldon said he would help. Chairman Hodom asked if the metal building could be moved that is on the property line. Mr. Hansen said yes.

Mr. Sheldon and Mr. Hansen decided to try and work out the situation between themselves. They would notify the board of the outcome.

The hearing was declared closed at 7:21.

## **APPLICATIONS**

### **Pines @ Normanside**

The Board had received an application for a Use Variance for access to the commercial portion of the site from a residentially zoned property for property located on Leonard Place and Delaware Avenue, tax map # 86.05-3-10.1.

A motion to schedule the public hearing for August 5, 2009 at 7:00PM was offered by Mr. Micelli, seconded by Mr. DeCancio and approved by all Board members present.

## **DISCUSSIONS**

### **Carol Cady**

The Board had received an application for a variance under Article XIII, Section 128-100, percentage of lot coverage. The applicant wishes to demolish an existing home and reconstruct a new one on the property at 19 Mill Rd.

Chairman Hodom started the discussion. The existing two (2) story structure is in need of considerable repair. There isn't a solid foundation under the structure. Over time it will continue to deteriorate. The proposed structure is the smallest model by Superior

Homes without it becoming a specialty order. The storage building on the property is only three (3) years old and should be allowed to remain. Though the front yard setback could be reduced, he thought the character of the neighborhood would be changed if the structure were moved back. The houses along Mill Road are in alignment and the applicant's proposal continues that alignment. He didn't believe that an undesirable change would occur in the neighborhood nor be a detriment to nearby residents by granting the variances. The benefit sought by the applicant cannot be achieved without variances. The variances are not substantial and they will not have an effect on environmental issues in the neighborhood. Though the variances are somewhat self-created; those self created issues should not preclude the granting of the variances. He recommended granting both variances as requested. Mr. Micelli agreed and voted yes. Mr. DeCancio said after visiting the residence and speaking with Mrs. Cady, he thought it would be excessive to ask them to spend more money for a smaller home. He voted in favor of granting the variances. Mr. Watson thought what they were proposing would improve the neighborhood and felt the variances should be granted. Mr. Umina voted in favor of granting the variances as requested. He thought the new home would improve the neighborhood and make their lives better.

A motion to approve the variance application for the two (2) variances as submitted was offered Mr. Umina, seconded by Mr. DeCancio and approved by all Board members present.

## **RESOLUTIONS**

### **Gregg Sagendorph, Jr.**

The Board had received an application for a variance under Article V, Section 128-30 C (1) for 62 Harrison Avenue, Delmar. The applicant proposes to move a garage.

The Board reviewed draft Resolution AV-0904 prepared by the Zoning Board Counsel.

A motion to approve Resolution AV-0904 as drafted was offered by Mr. Umina, seconded by Mr. DeCancio and approved by all Board members present.

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

The meeting adjourned at 7:40.

Respectfully Submitted,

Nanci Moquin