

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
July 18, 2007**

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, Counsel to the Board  
Gil Brookins, Board of Appeals Member  
Lenny Micelli, Board of Appeals Member  
Mark Hennessey, Board of Appeals Member  
Kenneth Umina, Board of Appeals Member

Mark Platel, Assistant Building Inspector

Tim Madden  
Jeremiah Madden  
Aldo and Inez Mencaccini  
Bruce Whiting  
Lou Giampaglia  
Michael Uccellini

AGENDA: Matchless Stove & Chimney  
Aldo & Inez Mencaccini  
JKC Realty LLC  
Scott & Katherine Hodge  
Charles & Ada Court  
United Development Group  
Patti Cross / Kurt Kavoukian  
John Newkirk  
Selkirk Warehouses  
ZBA Rules of Procedure

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

**Matchless Stove & Chimney**

The Board had received an application from Matchless Stove & Chimney for an area Variance under Article VI, Section 128-59 (D), Signs. The applicant wanted to replace an existing sign.

Mr. Platel stated that the applicant was proposing to install a freestanding sign that does not meet the maximum allowed height requirement. The proposed sign would be fifteen feet (15') tall exceeding the ten-foot (10') allowed for a freestanding sign in a Rural Hamlet Zoning District.

A motion to indent the public hearing notice was offered by Mr. Umina, seconded by Mr. Micelli 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, July 18, 2007, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Matchless Stove and Chimney for a Variance under Article VI, Section 128-59 (D), Signs, of the Code of the Town of Bethlehem for construction of a new sign, at 693 Route 9W, Glenmont, New York.

Mr. Tim Madden presented for the applicant. He said that the sign they wanted to install would be five feet (5') taller than the zoning law allows. The reason they wanted the additional height was because weeds block the view of the sign from the motorist traveling in the south direction on Route 9W. He said that the sign they wanted to put in is shorter and smaller than the existing sign. Mr. Madden thought that the area of the weeds was a wetland. In any case, the property was not theirs and they couldn't cut the weeds. Chairman Hodom asked if they had asked the adjoining property owner to cut the weeds. Mr. Madden said he had not because he was not sure who owned the property at this time. Chairman Hodom said that in the pictures and when he visited the site, the sign was visible from the road. He thought that a ten-foot (10') high sign would be as visible as the existing seven foot by seven-foot (7x7) existing sign. Mr. Madden said that the reduced size of the sign and the speed of the passing traffic were also a consideration. Chairman Hodom asked if the proposed sign was an internally lit sign. Mr. Madden said the sign would be lit internally. Chairman Hodom asked if he had spoken with any of the neighbors about the new sign. Mr. Madden said that he did not think a smaller sign would be offensive, so he had not spoken to the neighbors. He said it was a nicer sign than the existing. Mr. Hennessey asked if the new sign was a part of a branding strategy and if it was part of the reason for changing the sign and seeking the variance. Mr. Madden said that they were opening a new store in Clifton Park that would have the same sign. It has the new logo that is being applied to all of their promotions. He said they wanted a sign that looked more upscale. Mr. Micelli said that the weeds he spoke of were already cut down. He asked if Mr. Madden knew who had done the cutting. Mr. Madden said that the state mowed back some.

Mr. Platel said that with an internally lit sign, the applicant would need a second variance because in a Hamlet zone, signs were to be lit from the outside only.

Mr. Madden said that the new sign would help with the promotion of the business and improve the look of the business. He did not think that the extra few feet would make the sign garish. He said that the business had been at that location for twenty-five (25) years, as has the sign.

There were no comments from the audience. Chairman Hodom declared the hearing closed at 7:14pm.

### **Aldo & Inez Mencaccine**

The Board had received an application from Aldo & Inez Mencaccine for an area Variance under Article XIII, Section 128-100, rear yard setback. The applicant wanted to construct a sunroom.

Mr. Platel stated that the applicant was proposing to construct a ten foot by fifteen foot (10' x 15') one hundred fifty (150) square foot addition to the existing single-family dwelling that will not meet the minimum rear yard setback. If the proposed addition were constructed, the rear yard setback would be twenty-three (23'), which is two feet (2') shy of the twenty-five feet (25') required in a Core Residential Zoning District.

A motion to indent the public hearing notice was offered by Mr. Hennessey, seconded by Mr. Micelli 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, July 18 2007, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Aldo and Inez Mencaccine for a Variance under Article XIII, Section 128-100 of the Code of the Town of Bethlehem for construction of a patio enclosure, for premises located at 142 Cherry Avenue, Delmar, New York.

Mr. Wing from Patio Enclosures presented for the applicant. He said that the applicants wanted to put a three (3) season room in the rear of their home. He said they were seeking a two (2) foot variance from the rear setback requirements. The reason the proposed sunroom was placed in that location was because there were existing sliding glass doors to the area, an existing patio that would be used as a base and shade. There was also a privacy fence that would block the view of the room from the neighbors. Several neighbors had submitted letters in support of the applicant's application. Mr. Mencaccine said that they

have lived in the residence for two and one half (2 ½) months. Mrs. Mencaccine said she did not like bugs and Mr. Mencaccine said a wasp recently bit him. Mr. Wing said that the room would have solid vinyl skirting. It would not be heated.

Mr. Hennessey asked if the size of the room could be reduced. Mr. Wing said that a room with an eight-foot depth would be small and hard to place furniture. Mrs. Mencaccine said that the whole house was small and she preferred the larger room.

Chairman Hodom wanted to know the proposed work schedule, if the variance was granted. Mr. Wing it would probably be about a month from the approval.

There were no comments from the audience. Chairman Hodom declared the hearing closed at 7:25pm.

### **Scott and Katherine Hodge**

The Board accepted the application for a Variance under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk requirements, lot occupancy.

A motion to set the Public Hearing for 7:00pm on August 15, 2007 was offered by Mr. Hennessey, seconded by Mr. Umina and approved by all Board members present.

### **Charles and Ada Court**

The Board accepted the application for a Variance under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, lot occupancy.

A motion to set the Public Hearing for 7:00PM on August 1, 2007 was offered by Mr. Micelli, seconded by Mr. Brookins and approved by all Board members present.

### **JKC Realty LLC**

The Board had received an application for an area Variance under Article XIII, Section 128-100, lot width and highway frontage. The applicant wished to subdivide a lot, retaining the portion with the existing business for himself.

Mr. Platel stated that the applicant was proposing to combine two (2) lots and then subdivide the combined lot into two (2) new lots. Lot 1 will have a width of ninety-nine point fourteen feet (99.14') at the building line, which is point eight six feet (.86') shy of the one hundred feet (100') minimum width at building line. Lot 2 will be ninety-seven point three feet (97.3'), which is two point seven feet (2.7') shy of the one hundred feet (100') required. Also Lot 2 will have a width of ninety-eight feet (98') at the highway property line, which is two feet (2') shy of the one hundred feet (100') minimum required for highway frontage. The applicant was recently in front of this board for a similar proposal but has made a significant change by adding the adjacent property to his proposal.

A motion to indent the public hearing notice was offered by Mr. Umina, seconded by Mr. Hennessey, 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, July 18, 2007, at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of JKC Realty for a Variance under Article XIII, Use and Area Schedules, Section 128-100, Schedule of Area, Yard & Bulk Requirements, minimum lot width and minimum highway frontage of the Code of the Town of Bethlehem for the ability to subdivide an existing lot at 448 Rt. 9W, Glenmont, New York.

Mr. Whiting presented for the application. He said that he wished to subdivide the parcel that his

insurance agency occupies. He would retain the lot with the existing business and sell the newly created lot to another small business. The existing driveway and parking would be shared. He said that he has been able to acquire an option to purchase a thirty (30') foot strip of land from Kings Chapel Church. This additional land would reduce the variance request to two (2) feet on the road frontage.

Chairman Hodom asked Mr. Whiting to make Lot #1 completely compliant with the Zoning Law and then Lot #2 would have two (2) variances. He said he would do that.

Mr. Whiting said that the option with the Church was signed and he had every reason to believe the option would proceed. Mr. Whiting's attorney did not think the religious corporation law that was mentioned in the option would be a problem. Mr. Hennessey wanted to know if this religious corporation law would effect the option. Pastor Lou Giampaglia said that a special request needed to be submitted to the judge to show that the church was using the bylaws that allowed the sale and purchase of property. They had a covenant meeting at the Church and they voted to go ahead with the MOU. That vote needs to be put into writing and sent to the judge. He said that the Church was ready to go forward with the necessary paperwork to proceed with the sale of the land. They have an attorney that will handle the matter for the Church. He said the membership of the Church is in favor of the sale. The Pastor said that the Church is an elder lead church with them setting the by-laws but they were taking additional measures of protection by getting the congregation's approval.

It was confirmed that there was no additional land that Mr. Whiting could purchase to make both lots fully compliant.

Mr. Jasinski, Bender Lane. He asked if the variance was approved and the lot sold, would there be stipulations on the lot or would it be buyer beware? Chairman Hodom said that the various requirements of the variance should be attached to the deed of the lot to be sold. Anyone purchasing the lot and building on the lot would need to comply with all the other zoning requirements for the district or they could submit an application for a variance request from the Zoning Board.

Mr. Moore said that any variance approved would be conditioned on Mr. Whiting proceeding with the purchase of the land from the Church. Mr. Whiting envisioned each approval being contingent on the one preceding it. He would continue with the purchase when he had an offer for the newly created land.

Chairman Hodom declared the hearing closed at 7:48pm.

### **United Development Group**

Chairman Hodom turned the Board's attention to the next item on the agenda, the additional materials submitted by United Development Group pertaining to their variance requests.

Chairman Hodom said that the financial narrative was a little less than he wanted. He wanted to be able to determine the minimum number of units required to make the project financially acceptable. Mr. Uccelini said there were fixed costs associated with the site regardless of the number of units. Those costs were approximately four (4) million dollars. He said the break even number was the one hundred fifty (150) unit number. Chairman Hodom wanted to be shown the site development costs of the site and the operating costs. Mr. Uccelini said that a reduction of units to seventy-five (75) would only reduce the operating costs by ten percent (10%). Chairman Hodom said that it would be easier to look at hard numbers instead of the percentages that had been submitted. Mr. Uccelini said that they wanted to be careful that the submitted information didn't give too much information to the competition. He understood that as soon as it was submitted, it was a public record. Chairman Hodom said that he could not sit with an applicant before they submit information because the Zoning Board was a quasi-judicial board. He said he could only ask for the information but if Mr. Uccelini was not comfortable submitting the information then he wouldn't. Mr. Uccelini said that he would submit as much as information as he could.

Mr. Hennessey asked about the projected increase in the real estate tax revenues. The current tax payment is approximately \$1250.00 and the projected payment was \$90,000 to \$138,000 after improvements. He wanted to know the basis that was used to arrive at those numbers. Mr. Uccelini said

that they used other apartment complexes within the Town of comparable size. They pay \$775 per unit in taxes. Glenwood Village would not have an impact on the school system and less impact on the road system. They said that they were looking for a PILOT for the project. The PILOT would increase each year with a finite life that would eventually go to full value assessment. Mr. Hennessey wanted to know if their projected payment was based on full occupancy. Tax payment with full occupancy and no PILOT would be between \$117,000 to \$138,000 per year.

Chairman Hodom said that the plans needed to be updated to adequately reflex the types of structures that were being proposed. The building types are 1 Design A, 1 Design B and 2 Designs C's.

Chairman Hodom said that Mr. Uccellini could request another hearing date. He asked that he submit the updated site plan and whatever additional financial information he felt comfortable submitting.

### **Patricia Cross / Kurt Kavoukian**

The Board reviewed the draft Resolution granting the variance prepared by Counsel.

A motion to approve the Resolution as amended was offered by Mr. Brookins, seconded by Mr. Micelli and with a vote of Mr. Brookins, Mr. Micelli and Chairman Hodom for and Mr. Umina and Mr. Hennessey against, the Resolution was approved and the Variance was granted.

### **John Newkirk**

The Board reviewed the draft Resolution granting the variance prepared by Counsel.

A motion to approve the Resolution as drafted was offered by Mr. Umina, seconded by Mr. Hennessey, and approved by all Board members present. The Resolution was approved and the Variance was granted.

### **Security Supply**

The Zoning Board Counsel, Mr. Moore, had sent a letter to the applicant. The Board is still awaiting a response from the applicant on the matter of paper streets within the boundaries of their lots.

### **ZBA Rules of Procedure**

The Zoning Board Counsel, Mr. Moore, after reviewing the "Rules of Procedure" that had last been updated April 19, 1995, told the Zoning Board that all rules were now either within the Zoning Law or covered in NYS Town Law. It was his opinion that the "Rules" were redundant and suggested the Board considers a Resolution to the Town Board proposing the "Rules of Procedure" be repealed. The Zoning Board decided against the recommendation and decided to keep the "Rules".

The Board reviewed the draft minutes of June 20, 2007.

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

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

The meeting adjourned at 8:22 PM.