

**TOWN OF BETHLEHEM
BOARD OF APPEALS
June 6, 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

Kurt Kavoukian
Erika Adams
Andrea Angerame
Don Hunt
Victor Camponera
John Newkirk
Dan Mehlman
Jim McGlynn
Kenneth Mosher

AGENDA: Patricia Cross/ Kurt Kavoukian
John Newkirk
Daniel Mehlman
Brian and Julie Decker

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

Public Hearing

Patti Cross/ Kurt Kavoukian

The first item on the agenda was a Public Hearing for a Variance request under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, side yard setback requested by Patti Cross and Kurt Kavoukian for property located at 40 Royal Blvd., Delmar. The applicant wishes to expand the roof on an existing shed.

Mr. Platel stated that the applicant constructed an addition to an existing shed and the addition does not meet the minimum setback requirement of five (5) feet for an accessory structure. The structure, which was constructed without a permit is located two (2) feet from the side yard property line, this is three (3) feet shy of the five (5) feet required side yard setback. The existing shed was constructed prior to the change in the zoning and is pre-existing and non-conforming. The property is located in a Core-Residential Zoning District and the main structure is occupied as a Single-Family Dwelling.

A motion to indent the notice of the Public Hearing was offered by Mr. Micelli, 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, June 6, 2007, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Patti Cross & Kurt Kavoukian , at premises located at 40 Royal Blvd. Delmar, New York for a

variance under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, side yard setback for the construction of a shed.

Mr. Kavoukian, 40 Royal Blvd., Delmar presented for the project. He said that he had started in the early winter months to construct a temporary storage area. He said they exist around Town and a building permit is not required for them. Mr. Boucher had been to the residence because of a complaint about the structure. The building was up on stilts when Mr. Boucher was there the first time. Mr. Kavoukian said he explained to Mr. Boucher what he was building and how he was building it. He wanted to store items that were scattered around the yard. Mr. Kavoukian alleges that when he had this conversation, Mr. Boucher told him that temporary structures did not need a building permit. Mr. Kavoukian said they discussed the plans and Mr. Boucher said that for what Mr. Kavoukian was constructing, a building permit was required and he would bring a building permit application back to him. Mr. Kavoukian said he was never told to stop the construction. Mr. Boucher came back with the application and Mr. Kavoukian said he discussed the different types of ways that the pole supports might be connected to the ground. Mr. Kavoukian said that Mr. Boucher did not put a stop work order on the project. Mr. Kavoukian thought the project was OK and the building permit was a formality. He said that at no time during the conversation did Mr. Boucher indicate that the setback was five (5) feet from the property line. The shed on the property is pre-existing when the setback was two (2) feet from the property line. He said that after the shed was constructed, the neighbor put up the existing fence. A survey was done and pins were placed in the ground. He alleges that the fence is now on his side of the property line. And that day he had run a line along the property line, he said his supports were about two (2) feet six and half inches from the fence and a few more inches to the property line. He said there was not a way to run a laser line down the property line because the fence was in the way and not straight. He contends that during his discussions with the building inspector, he was never told to stop the construction because it was too close to the line. Mr. Kavoukian contends that the shed does not impede the neighbor, nor does the assembly of the roof extension constitute a shelter. He said he thought the structure is temporary but if he needs to he will cut the supports and move them the correct distance from the property line. The roof can be cantilevered over the supports. He mentioned what other Towns building inspectors have said about measurement and Chairman Hodom reminded him that he was in the Town of Bethlehem. Mr. Kavoukian disagrees with how the building inspector measures from the property line. He said that the structure was constructed according to the building code standards. Mr. Kavoukian said that he thought the building inspector was partially to blame because he never told him to stop construction, he also said if he has to move the structure, it will decrease the value of the property because it will now be visible from the street. It is now hidden by the existing shed. He said it would be a hardship to move the whole structure but he would move the supports.

Mr. Platel said that any roof area over eighteen (18) inches from the structure is considered building area. Chairman Hodom asked if the five (5) foot setback line was to the roof or to the supports. Mr. Platel said it was measured to the supports and there can be up to an eighteen (18) inch cantilever into that five (5) foot setback.

Chairman Hodom asked Mr. Kavoukian if recalled receiving a letter on November 17, 2006 from Mr. Boucher. The letter stated that the building permit had been denied because the structure was encroaching into the five (5) foot setback and the applicant could either remove the structure or apply for a variance. Mr. Kavoukian said that was after the structure had been finished. Chairman Hodom asked if he had built the structure prior to receiving a building permit. Mr. Kavoukian said yes, but he was never told to stop the construction. He did not have anything in writing to substantiate any of the conversations, it was all verbal between the applicant and Mr. Boucher. Mr. Kavoukian said he applied for a building permit during the construction.

Chairman Hodom said that Mr. Kavoukian should have responded to Mr. Boucher's November 17, 2006 letter by November 27, 2006. Another letter from Mr. Boucher dated February 2, 2007 referred to the first letter and subsequent conversations about the need to apply for a variance. By that time he had not yet applied for a variance. He applied for the variance on February 7, 2007. On March 13, 2007, Mr. Platel sent a letter telling Mr. Kavoukian that he needed to submit a certified plot plan as a requirement of the variance application. Mr. Kavoukian said he had submitted a copy of the tax map not a certified plot plan with the structures shown on it. Chairman Hodom asked if Mr. Kavoukian had seen the certified survey that had been submitted by the neighbor. He said he had not. It was shown to him and he was

asked if he agreed with the survey dimensions and the property line as shown. Mr. Kavoukian disagreed with location of the property line and that the neighbor's fence was on her property. Chairman Hodom told Mr. Kavoukian to supply the Board with a certified survey of his property if he did not agree with the neighbors and he needs to supply the survey within ten (10) days. Mr. Kavoukian said that the structure was too close to the property line and the amount of error in the survey would not make up that difference. Chairman Hodom said that the determination of the Board needed to be exact. Mr. Kavoukian said that the Board could use the neighbor's survey to make their determination.

Mr. Kavoukian said that existing shed has been on the property about eleven (11) years. He thought a building permit had been obtained but he was not sure because the property is his mother's. Mr. Kavoukian said the roof was attached to the existing shed after the first time that Mr. Boucher had come to the property. He alleged that Mr. Boucher OK'd what he had been building. Chairman Hodom said that after living in the Town all his life, Mr. Kavoukian should have known that there were Zoning Laws that needed to be followed. Mr. Kavoukian said he didn't know the Zoning Law had changed the setbacks. He thought that he was constructing it correctly. He thought it was the building inspector's fault because he never stopped the construction. He alleges that Mr. Boucher never mentioned that the setback line had changed. He had applied for a building permit when he was told to, but continued with the construction. Mr. Kavoukian asked why Mr. Boucher was not present. Mr. Hennessey said it was common practice to have a representative of the building department at the hearings.

Mr. Moore told Mr. Kavoukian that it was his opinion as legal counsel to the Board that all the alleged verbal representations that he claims Mr. Boucher made were of no consequence. Even if Mr. Boucher told Mr. Kavoukian that he could put the shed where it was and that he would be in compliance with the Town Code it would not give Mr. Kavoukian a right to do it. The Code requires a five (5) foot setback and that is the only issue before the Board.

Mr. Kavoukian said that the building department had the authority to issue a stop work order and Mr. Boucher never did that. Mr. Kavoukian did not think he should suffer now because he was never told to stop. He did not think that Mr. Moore thought he was credible.

Mr. Moore said that in his prior statement and what he was going to say now assumed that everything Mr. Kavoukian had said was true and still does not change his opinion.

Mr. Kavoukian said that other variances in the Town were given for whole houses that were built over the setback line. He didn't think that three (3) feet was a big deal. Chairman Hodom said that his problem started when he did not apply for a building permit. It is the responsibility of the property owner to know the laws of the Town. Mr. Kavoukian said the problem was the definition of temporary structure. Mr. Platel said that a wood frame structure is not temporary; aluminum poles with canvas were considered temporary.

Chairman Hodom asked if he had spoken to his neighbors about the structure. Mr. Kavoukian said he had not. Chairman Hodom said that when he was at the property, Mr. Kavoukian had various things hanging from the roof of the "open" structure. Mr. Kavoukian said that there was a net and a tarp hanging to protect what was inside. He said that wasn't a wall. Chairman Hodom asked what architectural features were planned for the structure. Mr. Kavoukian said three sides would remain open, the tarp had been a temporary thing.

Mr. Micelli asked what was stored in the pre-existing shed. Mr. Kavoukian said his sister had her things in it. His mother uses the garage for her car. The new roofed area keeps all other items under the roof in one (1) area. Mr. Kavoukian said that what he constructed could be legally done in his yard and moving it three (3) feet was not going to change the view of it for his neighbor. It was more of a hardship for him to move it. Chairman Hodom asked if there were other areas on the property that he could have constructed the structure. Mr. Kavoukian said yes but it would be more visible. Chairman Hodom said that if he had submitted a survey the Board could have better determined if the current location was the best one. He asked Mr. Kavoukian if he considered enclosing the structure. Mr. Kavoukian said if there was concern about seeing the contents of the structure he could put up lattice work on the end and the side of the structure that faced the Angerame's. He would prefer to do that. He would paint the structure and the pre-existing shed to match. Mr. Micelli said that would improve the view.

Mr. Victor Caponera, represented the Angerame's in this matter. He said he had submitted a letter on February 26, 2007 that goes through the basics of the case. He said that if Mr. Kavoukian had applied for a building permit when he should have, this would not have become a problem. He said the Board needed to weigh the benefit to the applicant of this variance versus the health, safety and detriment to the neighborhood. He said that they have submitted a survey that shows that the Cross property is flat and there was no reason for Mr. Kavoukian to have placed the shed as close to his client's property as it is. He said his client had contacted the building department when the construction had started. Mr. Caponera agreed with Mr. Moore's opinion. Mr. Caponera said that not only was the shed close to the Angerame property, but their house as well, which is only sixteen (16) feet from the side property line. He thought that the Zoning Law had changed the setback because of the possibility of fire, considering what most people store in their sheds. They have submitted in the letter that this structure would cause an undesirable change in the character of the neighborhood. The structure was visible from the neighbors behind Mr. Kavoukian's property. He stated that his client, Mrs. Angerame, was against the variance.

Mr. Jared King, 22 Paxwood Rd., Delmar, stated that he was against granting the variance. He said that the facts do not support a variance. He said Mr. Kavoukian should have applied for a building permit and to date still has not completed the variance application because he had not submitted a certified survey. He did not think the building had been built to Code. He thought the building department should have issued a stop work order. He asked the Board to deny the variance and require him to take the structure down.

Mr. Jim McGlin, 44 Royal Blvd., Delmar, he said that he understands that this structure could be built anywhere on his property. If that was true, he thought that putting sides and paint on the structure would make the shed less of an eyesore.

Mr. Kavoukian responded that the health and safety is no more of an issue by moving something three (3) feet. He could legally leave tractors, gas cans and wood against the fence with a tarp. Under the structure would make it further away. Dismantling the structure doesn't make any sense because it can be built under the Zoning Law. Enclosing it and painting it makes more sense. He would enclose all the sides if he could. He did get a building permit application when he was told he needed one. He did not build the structure maliciously. He said that Mr. King could not even see the structure from his property.

Mr. Ken Mosher, 43 Royal Blvd., Delmar, said if he needed to get a building permit then Mr. Kavoukian should need to get one also.

Chairman Hodom declared the hearing closed at 8:38.

John Newkirk

The second item on the agenda was a Public Hearing for a Variance under Article V, Section 128-28 C (3), percentage of lot occupancy requested by John Newkirk for property located at 5 Wiggand Dr., Glenmont.

Mr. Platel stated that the applicant is proposing to demolish the existing three hundred eight (308) square foot detached garage and construct a new 24' x 36', eight hundred sixty-four (864) square foot detached garage. When added together with the existing ninety-six (96) square foot storage shed the lot occupancy for accessory structures will be six point six five (6.65) %. The total square footage for accessory structures will be nine hundred sixty (960) square feet, which is two hundred thirty seven point seven (237.7) square feet over the seven hundred twenty-two point three (722.3) square feet allowed. The property is located in a Residence "B" Zoning District and the main structure is occupied as a Single-Family Dwelling.

A motion to indent the public hearing notice was offered by Mr. Micelli, 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, June 6, 2007, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of John Newkirk, at premises located at 5 Wiggand Dr., Glenmont, New York, for a variance under Article V, Section 128-28 C (3), percentage of Lot Occupancy for the construction of a garage.

Mr. Newkirk, the applicant, presented for the project. He said that wanted to demolish a single car garage and construct a three (3) car garage. It would have space for a work shop and to store classic cars. He also wanted to set it up for his quadriplegic son so he can pull in his car and get out of his car. In the future, he believes that his son will need a lift to get out of the car and the additional room width wise would be needed. He had spoken to his neighbors and they had signed a letter stating that they had no objection. He wanted to keep the existing shed. He has lived at the residence with his wife and son since 1989. He said his son has been handicapped for twenty (20) years. He likes cars and one of the classic cars had been fitted for a handicapped person to drive it. He only works on his own cars. His son has a hard time using the single car garage now and they are looking to his future limitations. Chairman Hodom asked if he had tried to reduce the size. Mr. Newkirk asked the architect to design the structure to look as small as possible. It will have the same style windows and vinyl siding as the house. It will have a hip roof because it makes the garage look smaller. He is not yet under contract but wants to construct it this summer.

Chairman Hodom declared the Hearing closed at 8:50.

Daniel Mehlmen

The Board discussed the application of Mr. Mehlman for a Variance under Article V. Section 128-28 C (3), percentage of lot occupancy and Article VI, Section 128-50, home occupations.

Chairman Hodom said the current accessory building already exceeds the allowable square footage, with the proposed addition the total lot occupancy would be 2.4 times the allowable square footage, about 240%. He said the variance request was substantial. Home occupations can occupy up to thirty (30)% of the square footage of the principal residence up to six hundred (600) square feet. Currently the area used for the home occupation is six hundred five (605) square feet which is already in excess of the allowed five hundred sixty-four (564) square feet. The additional square footage would bring the excess to 2.43 times the allowable square feet. He said that the business had outgrown the home occupation definition and is now a commercial business. There is also an area of the home that is being used for the home business that was not included in the calculations. He thought the applicant could lease other space for his business and the variance requests were substantial for a core residential district. He thought that the granting of the variance would create an undesirable change in the neighborhood. He said that the current Zoning Law states that a portion of the current residence can be used for a home occupation, not an accessory building. He recommends denial of both variance requests.

Mr. Brookins said that this home occupation has been in existence for eighteen (18) years. The area that this property is located is more rural in nature than core residential. He said the variance request was larger than normally seen and agreed with the substantial term. He said the home occupation was very specialized and unique and from a creative point it makes sense to have the business at his home. An artist's creative process is not a nine (9) to five (5) time frame. None of the neighbors spoke against the request and to the contrary all spoke very highly of him.

Mr. Umina said that he has been by Mr. Mehlman's studio many times and he thought the area was more rural in nature. He was also impressed with the support shown by the neighbors. He agreed that artists work at different times and to have the studio close is more beneficial to his process. He was in favor of granting the variance.

Mr. Hennessey said this was a unique circumstance and an opportunity to preserve a community resource. He said that the people who spoke in his behalf were very much in favor of his work and Mr. Mehlman as a neighbor. He was in favor of granting the variance.

Mr. Micelli said that he was impressed with Mr. Mehlman's studio but it was a tight space in which to work. He was also very impressed with the support of the neighbors. He was in favor of granting the variance.

A motion to grant the variance requests of Mr. Mehlman for property located at 152 Hudson Avenue was offered by Mr. Umina, seconded by Mr. Hennessey and with a vote of four (4) for and Chairman Hodom against, the motion was approved.

Brian and Julie Decker

The Board reviewed the Resolution for Brian and Julie Decker's Variance request as prepared by Mr. Moore, Counsel to the Board.

A motion to approve the Resolution as prepared was offered by Mr. Micelli, seconded by Mr. Hennessey and approved by all Board members present.

Rules of Procedure

The Board discussed the document known as the Rules of Procedure. They decided to defer the conversation until additional documents could be obtained.

The Board reviewed the draft minutes of May 16, 2007.

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

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

The meeting adjourned at 9:35 PM.