

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

June 18, 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. Chairman Hodom, 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
Anthony K. Umina, Board of Appeals Member
Matthew Watson, Board of Appeals Member

Mark Platel, Assistant Building Inspector

AGENDA: Karl Geist
Mark Almino
Catterina & Anthony Gallo

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

PUBLIC HEARINGS

Karl Geist

The Board received an application for a variance under Article V, Districts, Use and Area Requirements, Section 128-27, C, 1, accessory buildings not to be located in a front yard. The applicant wants to construct a garage in the front yard.

Mr. Platel stated the applicant is proposing to construct a one thousand seven hundred twenty-six (1,726) square foot garage on the existing concrete slab that is located in the front yard of the existing seventeen (17) acre parcel. In the Residence A building district and accessory structure may not be located in the front yard. Also the setback from the right of way to the structure, according to the maps submitted is non-existent at zero (0) feet. It is not meeting the twenty-five (25) foot minimum front yard setback requirement. The original structure that was located on the slab was demolished two and one half (2 ½) years ago after being damaged during a storm. Also for the Board's information, the NYSDEC wetlands map, shows the structure is located within one hundred (100) feet of the state wetland. If the variance were to be granted for the structure, the applicant would in all likelihood need approval from NYSDEC in order to construct the building. The existing use of the property is for a single-family dwelling located in Residential A Zoning District.

A motion to indent the public hearing notice 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, June 18, 2008, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Karl Geist for a Variance under Article V, Districts, Use and Area Requirements, Section 128-27, (C) (1) of the Code of the Town of Bethlehem for construction of a garage in the front yard, for property at 16 Beacon Rd., Glenmont, NY 12077.

Mr. Geist presented to the Board. He lives at 16 Beacon Rd., Glenmont. He wants to rebuild a garage that had been destroyed to store his antique cars. He had plans drawn up for it. He knows it is close to the road but a garage had been there before. The door for the garage used to be on the road side but it was hard to get in and

out of. His plans show the door on the side instead so it wouldn't have a blind access to the road. He didn't want to put the garage behind the house because most of the seventeen (17) acres is wetlands with ponds. There is a yard in the back but it's the only usable space and if puts a building there he'll lose that space.

Chairman Hodom asked Mr. Geist if he had a complete site plan of the entire parcel. He asked Mr. Geist to produce that for the Board. He wanted to see the entire layout of the property and where the wetlands were located. Chairman Hodom asked if the wetlands had been delineated by NYSDEC. Mr. Geist said they were not delineated. He said that Encon was coming to his home to discuss the wetlands among other issues with the ponds.

Chairman Hodom asked Mr. Platel if the front yard setback was a zero clearance. Mr. Platel said the road had been widened in that location. Mr. Geist said he had asked the engineering division and they had told him that the front corner of the slab was the edge of the right-of-way. The reason the road was that close was somewhere around 1990 the Town redid the road and it was then closer to the garage. Chairman Hodom asked if Mr. Geist's full sight plan showed the current right-of-way along Beacon Road. The submitted smaller one did not indicate a property line. Mr. Geist said it didn't show the right-of-way line. He said the submitted sheet was part of the survey that was done when they purchased the property. Mr. Geist said he and his neighbor to the side had different information as to the location of their common property line. It was ten (10) feet one way or another. Instead of holding up the closing on Mr. Geist's property, they agreed to a line.

Chairman Hodom asked if the new garage would be constructed the same as the old garage. Mr. Geist said the building that had been torn down was a long straight narrow piece. He said before that it had been an L shaped building. This would be the third garage. The proposed garage would be shorter than the previous one. Somewhere around fourteen (14) feet in height. The purpose of the garage is to store antique cars which he has four (4). He has a seventy-three (73) Mustang, two (2) 1966 Ford pickup trucks and 1998 Mustang convertible. All but the 1998 are considered classic cars. Mr. Geist said no utilities were proposed for right now, maybe in the future he would put in an electric service. He only wants it for storage.

Chairman Hodom said there was insulation shown on the plans. Mr. Geist said the insulation had been put in by the people who drew up the plans. He didn't want or need insulation. He has no intention to lease or rent the space for any purpose. It's for his personal use. The plumbing shown was also not part of his request. He thought the people who drew up put his plans put them with other generic plans. He is strictly looking for storage for his cars. The cars are currently stored outside behind his house. Mr. Micelli asked if he was affiliated with Geist brothers on Rt. 9W. Mr. Geist said he was.

Chairman Hodom asked if there was any other area on his parcel that the proposed garage could be placed. Mr. Geist said he could put it behind the house but he wanted to put it back where it had been because the concrete base was already there and it would save him some money. He was originally told he would be able to rebuild in the same place. When the garage was first damaged he didn't have the funds to rebuild.

Chairman Hodom asked how the structure was damaged. Mr. Geist said it was sixty (60) feet long and eighteen feet tall. During a wind storm it was blown over until it was leaning on some trees. The building department had told them the structure needed to come down. He had insurance on the garage but it had been used to put a roof on the house and some other repairs the home needed. Now he has the funds to replace the garage. He said he owns the property with his brother and they made the decision to do the other repairs together.

Mr. Umina asked if he had any intention of doing car body work in the garage. Mr. Geist said no. Mr. Micelli asked if he could store the cars at his place of business on Route 9W. Mr. Geist said the business belonged to both him and his brother and in the future when they sell, he would again be without a garage.

Mr. Geist said he purchased the property around 2002 or 2003. He has not discussed the proposal with his neighbors because he doesn't speak to his neighbors. The parcel was purchased as a foreclosure and needed a lot of work. He's been trying to fix up the property since that time. The insurance money for the garage had been put into the house. He now has the funds to rebuild the garage.

Chairman Hodom asked where the driveway would be located to get into the garage. He said the ten (10') foot by ten (10') foot door was the closest to Beacon Road. He wanted to know the traffic flow. He asked Mr. Geist

to put where the proposed driveway would be located. Mr. Geist said his intention was to be able to back out of the garage away from Beacon Rd. He would submit a plan with the location of the driveway.

Chairman Hodom asked when the construction of the garage, if it was approved, would begin. Mr. Geist said the construction should be done sometime in the fall. The masonry work would be done sooner. He wants to raise the bottom up a little to prevent rotting. The slab would also be raised up to grade and to level it.

Mr. Micelli asked what the exterior of the building would look like. Mr. Geist said it would be vinyl sided. He confirmed that he had used the destroyed garage to store the antique cars. The cars had been in the structure when it was blown over.

Mr. Umina asked if the garage would be used for commercial purposes. Mr. Geist said it would not.

Chairman Hodom asked Mr. Platel if the applicant would need an approval from NYDEC if the structure was within one hundred (100) feet of the wetlands. Mr. Platel said they would issue him a permit. Mr. Geist said both the ACOE and NYSDEC personal were coming to the site on the following Monday.

Chairman Hodom asked Mr. Geist to submit to the Board any written information that either of those agencies supplied to him. Mr. Geist said he would.

The public hearing was opened to the public.

Karl Ehrensbeck, 27 Beacon Rd. He said he doesn't know Mr. Geist but doesn't have a problem with him having a garage for storage. He doesn't want it located back in the same place. Mr. Geist said he had room behind the house to put the garage there and everyone else on Beacon Rd. has their garage either to the side or behind the house. He thought it could create a traffic hazard to have the garage there. He said the garage would be the size of a six (6) stall garage. If Mr. Geist moves, there was no guarantee that the next person wouldn't start a home business working on cars. He lives across the street from Mr. Geist. He was there when the other structure was up and he never saw anyone coming or going that would indicate it was used for anything commercial. He thought because Mr. Geist was pouring two(2) inches of cement over the existing slab, the monetary difference between that and a new slab was not significant. He said he didn't want to look at a six (6) stall garage in a residential neighborhood.

Mike Cirillo, 31 Beacon Rd. He lives across the street from Mr. Geist. He said some of the questions he had had already been raised. He was for individual property owners rights but in this particular case he couldn't see the benefit for the neighborhood. He showed the Board a map that was a portion of a subdivision.

Mike Cirillo said when the street was improved back in the nineties, the Town acquired additional right of way along Beacon Rd. The right of way line is now at the corner of where the slab is located. He showed the Board the deed and mapping that substantiated that claim. He left a copy for the Board. Mr. Cirillo's concern was only a portion of the property was shown on the submitted site plan. He said the property was split between two (2) zones. Residential A and Rural hamlet zone. Mr. Cirillo wanted to see the proposed garage located in a different area possibly along Rt. 9W. He also had a concern with the traffic backing out onto Beacon Rd.

Mr. Cirillo said the ponds were NYSDEC wetlands and one of the ponds were definitely within one hundred (100) feet of the proposed garage. He also understood that though there had been a building on the site, over one year had lapsed since the garage had been destroyed, thus losing the ability to build in the same spot without a variance. He said both him and his wife did not support the variance request because they did not believe it was in harmony with the neighborhood.

Karl Ehrenbeck also did not support the variance request. Especially because Mr. Geist wanted it plumbed and heated. Mr. DeCancio said for the record, Mr. Geist has told the Board that he will not be insulating the garage or putting in plumbing. He might put in electric at a later time.

Mr. Cirillo didn't think the price of a slab was significant considering the size of the proposed garage. He questioned whether the existing slab could be built on. Mr. Platel said he would need to submit architectural drawings. Chairman Hodom said they had submitted plans showing an Alaskan Slab. Mr. Cirillo didn't think Mr. Geist had proven hardship.

Chairman Hodom asked Mr. Geist to supply estimates of cost to construct a new slab and concrete floor in a new location.

There were no further comments from the Board. Mr. Geist had been asked by Chairman Hodom to supply additional information to the Board, when that was received the Public Hearing will be rescheduled for its' continuation.

A motion to adjourn the Public Hearing until a date uncertain was offered by Chairman Hodom, seconded by Mr. DeCancio and approved by all Board members present.

DISCUSSIONS

Mark Almino

The Board received an application for a variance under Article V, District Use & Area Requirements, Section 128-30 (C) (1), Core Residential, accessory buildings not to be located in a front yard.

The existing residence is located eighty (80) feet back from the front property line and only twenty-eight point six feet (28.6) from the easterly property line. The applicant had no control over this location. The proposed garage could be located on the westerly side of the property but it would require a completely new driveway, removal of the existing driveway and landscaping. This would be very costly. The overhead wires for the house would also need to be relocated. The applicant had stated that the size of the building as originally submitted would be adequate for his vehicles and storage requirements. Some Board members felt the side yard encroachment and the front yard encroachment requests were not excessive but they agreed that the Board should look to the minimum variance that would still allow the applicant to accomplish his goal.

A motion to approve the request for a front yard variance to construct a garage with the condition that the garage would not encroach into the front or side yard setback was offered by Chairman Hodom, seconded by Mr. DeCancio and approved by all Board members present.

Catterina and Anthony Gallo

The Board had received an application for a use variance under Article XIII, Section 128-99, Schedule of Uses.

Chairman Hodom started the discussion. He said the initial hearing was held on September 19, 2007. The applicant was directed to submit information to the Board before the continuation of the public hearing would be scheduled. Since that time the Zoning Board Counsel has corresponded with the applicant and their attorney on several occasions. The counsel for the applicant requested a ninety (90) day extension on March 19, 2008 which was granted until June 17, 2008. The ninety (90) days have been reached and the applicant has not attempted to contact the Board. Chairman Hodom recommended the Board deny the request for a use variance based on the applicant's failure to provide the requested information. The applicant has not made an adequate case for why the other allowed uses within the rural district could not be utilized for the site. The applicant has not shown that the land could not yield a reasonable return if used only for the purposes allowed within the rural district. The applicant has not shown that the plight of the owner is due to unique circumstances and not to the general conditions of the neighborhood which may reflect unreasonableness of the Zoning Ordinance and the applicant has not shown that the proposed use will not alter the essential character of the locality. Based on that information the request for a use variance should be denied. If the applicant decides they want to continue with the use variance, they can reapply for the use variance at a later date.

A motion to deny the use variance was offered by Chairman Hodom, seconded by Mr. Umina and approved by all Board members present.

The Board reviewed the draft minutes of May 21, 2008.

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

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

The meeting adjourned at 8:15 PM.