

**TOWN OF BETHLEHEM
BOARD OF APPEALS
June 20, 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

AGENDA: Matchless Stove & Chimney
Aldo & Inez Mencaccine
JKC Realty LLC
Patti Cross / Kurt Kavoukian
John Newkirk
John Mehlmen

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

Matchless Stove & Chimney

The Board accepted the application for a Variance under Article VI, Section 128-59 (D), Signs.

A motion to set the public hearing on July 18, 2007 at 7:00pm was offered by Mr. Hennessey, seconded by Mr. Micelli and approved by all Board members present.

Aldo & Inez Mencaccine

The Board accepted the application for a Variance under Article XIII, Section 128-100, rear yard setback.

A motion to set the public hearing on July 18, 2007 at 7:15pm was offered by Mr. Brookins, seconded by Mr. Umina and approved by all Board members present.

JKC Realty LLC

The Board accepted the application for a Variance under Article XIII, Section 128-100, width of lot and highway frontage.

A motion to set the public hearing on July 18, 2007 at 7:30pm was offered by Mr. Brookins, seconded by Mr. Umina and approved by all Board members present.

Patti Cross / Kurt Kavoukian

Chairman Hodom began the discussion of the variance request under Article XIII, Section 128-100, side yard setback. He said that the applicant was in error in not obtaining a building permit. He would need to do so. He had visited the site and spoke with the applicant about enclosing the shed including the roof rafters. Mr. Kavoukian said that he would enclose the structure. Chairman Hodom wanted him to use the T-111 siding with matching trim that was on the existing shed. He also wanted the westerly wall enclosed with a double door so that all adjacent property owners would have a similar view of the shed. The backyard was small and could not accommodate the second shed in a different location. Chairman

Hodom said that if the variance was denied and the applicant moved the shed an additional three (3) feet away from the property line and left it open, it would be an undesirable change for the neighborhood. He said that the alleged difficulty was self-created by the applicant but perhaps the lack of action by the building department to place a stop work order, contributed to that difficulty. Chairman Hodom felt that the granting of the variance was the best solution, if the applicant agreed with the conditions he had mentioned, and under those circumstances, he would be in favor of the variance. He said that the applicant would need to comply with all applicable codes and regulations if the variance was granted.

Mr. Micelli said that he agreed with Chairman Hodom and the conditions that he suggested. He said that he didn't want the applicant to use the lattice he had previously suggested. He thought that enclosing the shed to match the existing shed was the best solution for the neighborhood.

Mr. Hennessey said that he was not in favor of granting the variance. He thought that the applicant acted in a reckless manner. He knew there was a Code in place and decided to go forward with construction without the necessary permits. He thought it was a self-created hardship. He said that there were other options that the applicant could utilize to keep the structure within the Code. Mr. Hennessey thought that by granting the variance a bad precedent would be set. The applicant said that he would move the structure and the neighbors were overwhelmingly opposed to the variance.

Mr. Umina said that he was not in favor of granting the variance. He thought the applicant had created the hardship himself. The opposition by the neighbors was significant.

Mr. Brookins said that technically, the applicant should have been aware of the requirements in Town but when the building inspector does not raise the issues that were now before the Board, a property owner has a reasonable assumption that he can proceed with the construction.

Mr. Umina said that those statements made by the applicant were his recollection of what transpired between himself and the building inspector. The building inspector might have a different interpretation.

Mr. Brookins said that the building inspector was at the site and a stop work was not issued. He also did not like the way the applicant had handled the matter. Mr. Brookins said that by giving him a variance, he would be rewarded for his bad acts. By not giving him the variance, he could restructure the building and it could have a less desirable affect on the neighborhood.

Chairman Hodom said that by blending the two (2) sheds together; it would have less of an impact on the neighborhood and the adjacent neighbors. The Chairman thought that by controlling the situation with conditions, the character of the neighborhood could be kept intact.

Mr. Hennessey said he understood that moving the structure over may not solve the problem but he thought that the building department would look at the new construction with greater scrutiny. He said that the current construction's roof dipped. He thought it should come down.

Mr. Umina did not like the fact that the applicant kept insisting that the structure was temporary. He thought he was misrepresenting the situation.

Mr. Micelli said that he was looking at the character of the neighborhood and what would be the best solution for the neighbors. He thought that by covering the structure would serve the neighbors better. He didn't want the structure to be an eyesore in the neighborhood.

Chairman Hodom said that the Board had the opportunity to control what the applicant does with the building. If he moves the structure and is in compliance with the setback requirement, the Board has no control over the other aspects of the structure. If he doesn't comply with the conditions that the Board agreed on, then he would have to remove the structure.

Mr. Platel said that the applicant could have an open structure up to eighteen (18) feet tall and about four hundred (400) square feet and painted any color he liked.

Mr. Brookins said that he had concerns but he was leaning towards allowing the variance with the

conditions that the Chairman had mentioned. He said that the neighbor would see a more finished structure.

The board discussed placing the following conditions within the Resolution: The structure to be enclosed with T-111 siding, the structure to be painted the same color as the existing shed, the applicant must acquire a building permit, the structure of the building must meet structural codes and the work must be completed within sixty (60) days.

A motion to grant the variance with conditions was offered by Mr. Brookins, seconded by Mr. Micelli. The vote was Chairman Hodom, Mr. Micelli and Mr. Brookins for and Mr. Hennessey and Mr. Umina, against. With a vote of three (3) for and two (2) against, the variance was granted.

John Newkirk

Chairman Hodom began the discussion for a variance request under Article V, Section 128-28 C (3), percentage of lot occupancy. He did not think that an undesirable change would occur in the neighborhood by granting the variance. He said that a substantial portion of the garage was for the benefit of the applicant's handicapped son. He recommended approval of the variance as requested.

The remaining members of the Board agreed with Chairman Hodom.

A motion to approve the variance as requested was offered by Mr. Umina, seconded by Mr. Brookins and approved by all Board members present.

Daniel Mehlman

The Board reviewed the draft Resolution as prepared by Counsel.

A motion to approve the Resolution as amended was offered by Mr. Hennessey, seconded by Mr. Brookins and with a vote of four (4) for and Chairman Hodom against, the Resolution was approved.

The applicant would now need to go to the Planning Board for Site Plan Approval.

Discussion of Board of Appeals, Rules of Procedure

The Zoning Board Counsel stated that he would further investigate whether all the rules from the document were now incorporated into the Zoning Law and report back to the Board.

Selkirk Warehouses

The Zoning Board Counsel said that deeds have been submitted and others were found by staff that have conflicting wording as to the rights of individuals to paper streets in the old Hackett Gardens subdivision. In another project, the Board had denied a variance to expand a building lot into a paper street in the absence of either a written agreement with whatever other parties had deeded rights to the streets or a judicial order extinguishing those rights. The same policy was appropriate in this instance. The Board does not have the jurisdiction to adjudicate title issues. There are avenues available to the applicant that they can pursue. In the absence of either a court order or an agreement, the Board should advise the applicant that they couldn't convey any rights to use land where other parties may have deeded rights. Mr. Moore said that he would send a letter to the applicant.

The Board reviewed the draft minutes of June 6, 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. Micelli, seconded by Mr. Hennessey and approved by all Board members present.

The meeting adjourned at 8:00 PM.

Respectfully Submitted,

Nanci Moquin