

**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**October 1, 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  
Dave DeCancio, Board of Appeals Member  
Ken Umina, Board of Appeals Member  
Matt Watson, Board of Appeals Member  
Lennie Micelli, Board of Appeals Member

Mark Platel, Assistant Building Inspector

AGENDA: Brian Jordan  
Sonya and Alla Smelyansky  
Glenmont Mobil  
Hank Digeser (Gould Erectors)

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

**PUBLIC HEARING**

**Brian Jordan**

Chairman Hodom opened the Public Hearing. Mr. Platel said the applicant is proposing to construct a twenty-four (24) foot by twenty-four (24) foot, five hundred seventy-six (576) square foot detached garage in the fifty (50) foot buffer setback required in a Planned Development District. The proposed structure will be located at least nine (9) feet from the rear property line encroaching into the setback forty-one (41) feet.

The existing structure is occupied as a single-family dwelling and is located in a Planned Development 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, October 1, 2008, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Brian Jordan for a Variance under Article V, Districts, Use and Area Requirements, Section 128-40, (G) of the Code of the Town of Bethlehem for construction of a garage in the fifty (50) foot buffer area in the Planned Development District of Dowerskill for property at 39 Rotterdam Dr., Glenmont, NY 12077.

Mr. Jordan presented. He said he wanted to build a two (2) car detached garage in the rear corner of his lot. They have owned the home for about one (1) year; before they purchased the home he had come to the building department about options for a garage. One (1) option was to go twenty (20) feet off the back of the existing garage. He thought it wouldn't look right if they went with that option. He said to try and match the roofline and everything else would be difficult. It would be better if he were granted the variance to build a separate building.

Chairman Hodom asked if he had considered entering from the westerly side of the property. Mr. Jordan said he doesn't have access on the west side of the property to do anything. Chairman Hodom said there was roughly seventeen (17) feet from the property line to the existing home on that side. That was shown on the site plan the applicant submitted. Mr. Jordan said the reason he wanted the garage on the easterly side was there was more room. He owned a lot and a half. He said the nearest neighbor on the easterly side was about one hundred (100) feet away because of the National Grid easement. He said if you look at the property, the right hand side is wide

open. Chairman Hodom said national Grid had a one hundred (100) foot easement for the power line. Mr. Jordan said on the westerly side he would be right next to neighbor and the transformer box for both of the homes was also located in that area.

Chairman Hodom asked Mr. Jordan if he had spoken with national grid about utilizing some of their right of way. He said he had, he worked for national grid. They would allow encroachment into the easement about ten (10) feet with a driveway but not with any type of structure. Chairman Hodom asked if Mr. Jordan had an existing garage. Mr. Jordan said they had an existing two (2) car garage. He said between the lawn care equipment, tools and snow blower he couldn't get a car in the garage. He does some woodworking and he has a lot of tools. Chairman Hodom said he could put a twenty (20) foot by twenty (20) foot extension off the back of the existing garage giving him four hundred (400) square feet of additional storage area. That wouldn't impact the rear yard setback requirement. Mr. Jordan said he would rather have a separate structure. He said his issue was with rooflines. If that was constructed the garage would then be forty-four (44) feet long. The existing roofline runs east to west and now the new one would run north to south. He didn't think it could be made to look esthetically pleasing. He said the garage was right next to the kitchen. If it were built off the back of the existing garage, the only thing you would see out the kitchen window would be the wall of the garage. He said a few years down the road; they wanted to put a three (3) season room off the back. Chairman Hodom asked how many cars they owned. Mr. Jordan said they had two (2) cars, two (2) snowmobiles, a motorcycle, a jet ski and lawn tractor. He said his toolbox was six (6) foot high and five (5) foot long and that isn't all of them. He said he did a lot of woodworking for himself and other family members. He didn't advertise or do it as a business.

Chairman Hodom said in the application the structure was called a detached garage but in the explanation for the variance the structure was referred to as a storage and workshop area. He asked which was the primary use of the proposed garage. Mr. Jordan said it was all of the above. It would be used for all those purposes. It wouldn't be heated, it wouldn't have any sanitary facilities but would have electric. He has discussed the project with his neighbors.

Chris Garabidian, 43 Rotterdam Drive. He said Mr. Jordan was one of the best neighbors he's ever had. He keeps his property clean and beautified. He thought it was great that he wanted to do, what he wanted to do. He does a lot of mechanical work and helps a lot of friends and neighbors. He has helped him personally. He thought he was an asset to the neighborhood. He would like to see him do what he wants to do on his property. He thought it would look great in the back. They have a lot of lot and they have the room to do it. He said if he had his choice, as a neighbor, he would rather see him do a separate building than adding onto the garage. Esthetically as he sees the house, it seemed like the attached addition would be more of an eyesore than it would be nice addition. He said him and his wife and the neighbor across the street and next to him all were of favor of granting the variance.

Chairman Hodom asked Mr. Platel, if the variance were approved, what would be the minimum side and rear yard setbacks. Mr. Platel they would both be two (2) feet for accessory structures. Mr. Moore said it was within the powers of the Zoning Board to change to covenants of an existing Planned Development District.

Chairman Hodom asked Mr. Jordan why he selected the area he had for the proposed garage. Mr. Jordan said because that was where the room was to place it. Mrs. Jordan said if you look at the property, the proposed garage would be straight back and to the right of the existing garage. It would be well away from power lines and also there's a lot of space there. She thought it would look the most appealing, be the least invasive. There isn't a house behind them. It would be the furthest away from anything that it could be. The lot behind them in the next subdivision is not large enough to build on. Mr. Jordan said behind the area of the proposed garage is a thirty (30) foot ravine and between the gully and the road was only a ten (10) foot section that couldn't be built upon. The house closest is three or four hundred feet away. There are also woods between them. Mr. Umina asked if he would be putting in a driveway. Mr. Jordan said it would run along the existing driveway and then separate and continue to the proposed garage. He said he was going to try to get Verizon and Time Warner to move their junction boxes. He said there would be storage in the truss area of the proposed garage. They had chosen a garage that matched the design of their home the closest.

Chairman Hodom noted a correction needed to be done to the square footage of the proposed garage on the short EAF submitted.

There being no further comments, the hearing closed at 7:17pm.

## **Sonya and Alla Smelyansky - Appeal**

Chairman Hodom opened the public hearing at 7:18pm. Mr. Platel said the applicant is appealing the decision of the Building Inspector in regards to the whether a variance is required to add a third unit to the existing two (2) family dwelling in a Residence "C" Zoning District. The existing lot currently meets all minimum lot and bulk requirements and is at this time a conforming lot. In order to change the use to a three (3) family dwelling it has been determined the lot would be required to be eighteen thousand five hundred (18,500) square feet under Section 128-100.

The Planning Board approved this lot and subdivision in February 1986 when the minimum lot size required for a two (2) family dwelling was fourteen thousand five hundred (14,500) square feet. This was the requirement prior to the removal of two (2) family dwellings as an allowable use in 1984. The two (2) family use was reviewed and approved by the Planning Board because to the original application for subdivision being applied for prior to a two (2) family dwelling being removed as a use in that zone in 1984. In actuality when the Planning Board approved the two (2) family use and lot they were already nonconforming at that time.

With the passage of the new zoning law in 2005 the rezoning of this property to a Residence C District made the existing use and lots conforming to reflect the existing land uses in this district. The nonconformity will not be due to the passage of the zoning law that actually brought the nonconforming use and lots into compliance but due solely to the proposed change of use of the structure.

A motion to indent the Public Hearing notice was offered by Mr. Watson, seconded by Mr. Umina 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, October 1, 2008, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Sonya and Alla Smelyansky for an Appeal of Decision of the Building Inspector for property located at 7A Henderson Rd., Glenmont, NY 12077.

Ms. Sonya Smelyansky presented. She said she had appealed the decision of the building inspector as an alternative method of applying for a variance for the same reason. She had foiled the past zoning ordinances of the Town. It is their belief that because the property was constructed in 1986 and at the time the Zoning Law required fourteen thousand five hundred (14,500) square feet for a two (2) family. At the time there wasn't any mention of a three (3) family but a four (4) family was listed as requiring a ten thousand (10,000) square foot lot. It is their opinion that the property was made non-conforming in 2006. Chairman Hodom asked her how she came to that conclusion. Ms. Smolinsky said the lot in 1974 required a two (2) family lot to have a minimum lot of fourteen thousand five hundred (14,500) square feet. A four (4) family only required ten thousand (10,000) square feet and there wasn't a listing of a three (3) family dwelling. At that time the square footage requirement between a two (2) family and four (4) family decreased, so if that logic is followed than a three (3) family dwelling would not require an excess of fourteen thousand five hundred (14,500) square feet. The 2006 Zoning Law now requires eighteen thousand five hundred (18,500) square feet for a three (3) family dwelling. It is their belief that the enactment of the Zoning Law of 2006 made their lot non-conforming for a three (3) family dwelling.

Chairman Hodom said at the time the structure was built on the lot, the lot was conforming to that existing code. Ms. Smelyansky said Section 128-55 of the current Zoning Law is states that any lot in existence at the time of the adoption of the Zoning Law that doesn't comply with the requirements of the chapter shall be deemed a non-conforming lot. Chairman Hodom said the structure on the lot is a two (2) family structure and that structure conforms to the new code. She said the structure was constructed as a three (3) family even though it was constructed as such without the proper approvals. It remained a three (3) family until recently when the prior owners had opened one (1) of the walls and the structure reverted back to a two (2) family. If it were turned back into a three (3) family, which is a by-right use, it would then be a non-conforming lot, which she feels, is created by the chapter. Chairman Hodom said her contention is that the original construction was for a three (3) family structure. He said the Certificate of Occupancy that was issued for the structure was for a two (2) family residence, which was allowed on that size lot at that time. The three (3) family was an illegal

structure. Chairman Hodom asked if all three apartments have sleeping areas, kitchens and sanitary facilities. Ms. Smolinsky said there were three (3) meters for electric service, there are separate bathrooms and separate sleeping quarters. In the area they wanted to turn back into a third unit, the kitchenette would need to be replaced. Chairman Hodom said they had submitted a drawing with the variance request he wanted clarified. She said the front is Henderson Road and the picture was of the upstairs portion of the structure. That is where the third unit would be located. There is a separate entrance at the back of the property. She showed the area where the proposed third unit would be located.

Mr. Leif Smelyansky, father of the Sonya Smelyansky said it was a one (1) bedroom apartment. Ms. Smelyansky said there was a closet and that would be removed and turned into a small den area.

Chairman Hodom said in the 1974 Zoning Code a fourteen thousand five hundred (14,500) square foot lot was required for a two (2) family home. And that is what the residence in question was approved for at that time. In 1986 the property was a legal two (2) family and complied with the Zoning Law square footage. After the Zoning Law was changed in 2005, the lot was still a two (2) family and complied with the required lot square footage. The applicant wants to change a legal two (2) family into a three (3) family unit. In order to do that the lot size needs to be eighteen thousand five hundred (18,500) square feet. He asked if the applicant had any means of increasing the lot size by purchasing additional property from her neighbors. She said the neighbors needed their land to remain conforming lots. They are not able to purchase additional land. Mr. Umina asked if she had spoken to the neighbors about their plans. She said she had and submitted the list of the neighbors they had spoken with indicating if they had any opposition. None did only two (2) of them didn't want to become involved. It was a cross section of owners of the property and tenants. They live in the neighborhood at 31 Henderson Ave. Chairman Hodom asked if any of the family members of the applicants live at 7 Henderson Ave. Ms. Smelyansky said not at this time. The unit down stairs was rented but the unit upstairs that they want to renovate was vacant. The property was purchased the end of July 2008. Mr. DeCancio asked how the house had been marketed when they purchased it. Ms. Smelyansky said they purchased it as a two (2) family. They knew it had been used in the past as an illegal three (3) family. She had looked up the zoning and noticed that three (3) family units were a by-right use in the zone. Mr. Umina said it was by-right if the lot complies with the area requirements. Ms. Smelyansky said she knew the lot didn't comply with the area requirements for a three (3) family when she purchased the property. She said her interpretation was the lot was non-conforming so they would be able to put the wall in the second unit, making the property a three (3) family without the need for an area variance. Mr. Umina asked if they had spoken with anyone in the building department to see if their interpretation was correct. She said no.

Chairman Hodom said there wasn't a narrative attached to the list of names of the neighbors; he asked what had been told to the people who had signed. Sonya Smelyansky said they walked around the neighborhood and told people where they lived, some they knew personally, and told them the property was recently purchased. She explained that it had been a three (3) family, converted back to a two (2) family. She told them it was an illegal three (3) family and they wanted to again use it as three (3) family but legally. There is another property on the road that was an illegal three (3) family, which has since been converted to a two (2) family. She said she wanted to live in the property. Then asked if they wanted to support the variance. Mr. Watson asked the square footage of the proposed third unit. Mr. Smelyansky thought it was about three hundred seventy (370) square feet. Mr. Watson said it appeared that 16 Henderson was a three (3) family and possibly 10 Henderson. Ms. Smelyansky said 10 Henderson was a one (1) family house. When asked Mr. Smelyansky said the two (2) units each had their own gas and electric meter, the third unit only had electric because all the utilities and heat are electric. Mr. DeCancio asked if the property was originally built as a two (2) family. Ms. Smelyansky said it was built as a legal two (2) family; the third family was put in without the proper approvals. Mr. DeCancio asked how they knew it was converted to a three (3) family. Ms. Smelyansky said they knew the individual who had lived in the apartment. He had lived there for about ten (10) years. He moved out and when they purchased the property it had been converted back to a two (2) family.

There being no further questions or comments, the hearing was declared closed at 7:44pm.

Chairman Hodom recommended the Zoning Board uphold the Building Inspector's determination. When the structure was built, it was built as a two (2) family, the certificate of occupancy was for a duplex, the Zoning Code requirements established at that time were met for a duplex. When the Zoning Code changed in 2005 and 2006 the property was still a duplex and was in conformity with the Zoning Code. It was never met to be a legal three (3) family home.

A motion to uphold the determination of the building inspector was offered by Chairman Hodom, seconded Mr. Umina and approved by all Board members present.

The applicant's request has been denied.

### **Sonya and Alla Smelyansky**

Chairman Hodom opened the hearing at 7:44. Mr. Platel said the applicant is proposing to add an additional unit to the existing two (2) family dwelling creating a three (3) family dwelling, which would require a minimum lot of eighteen thousand five hundred (18,500) square feet. The existing lot consisting of fourteen thousand five hundred twenty (14,520) square feet is three thousand nine hundred eighty (3,980) square feet shy of the minimum required. The existing structure is located in a Residence "C" Zoning District and as stated earlier is occupied as a two (2) family dwelling.

A motion to indent the public hearing notice was offered by Mr. Micelli, 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, October 1, 2008, at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Sonya and Alla Smelyansky for a Variance under Article XIII, Section 128-100, for property located at 7A Henderson Rd., Glenmont, NY 12077.

Ms. Sonya Smelyansky presented. They are proposing to convert a two (2) family dwelling into a three (3) family dwelling. There are current separate meters for the units. The construction needed to accomplish this would be one wall. This would create a one (1) bedroom apartment with a living room. A small kitchenette would also be added; the unit already has a bathroom. They have spoken to the neighbors about the proposal and were generally supportive. There is a separate entrance in the back of the property going to the proposed third unit. Mr. DeCancio asked if there was a second egress to the proposed apartment. She said that was the only entrance into the proposed apartment. There are three (3) separate garages for each of the units. There are walls between them. Mr. DeCancio thought a second egress was required. Mr. Platel said the second egress could be an emergency egress through a bedroom window. He said if this variance were allowed, because the third unit was built without any permits, there would probably be deficiencies that will need to be corrected to bring the unit up to Code. Ms. Smelyansky said they were willing to do whatever is necessary to make the third unit legal.

Chairman Hodom asked Mr. Platel how he arrived at the required eighteen thousand five hundred (18,500) square feet lot size necessary for a three (3) family. Mr. Platel said the minimum lot size in a RC zone for a single-family dwelling is eight thousand five hundred (8,500) square feet. For each additional unit over the initial one an additional five thousand (5,000) square feet is required. In this instance an additional ten thousand (10,000) square feet would be required. Mr. Moore said this was listed in Chapter 128, Section 100, Bulk and Use Chart, footnote #11 under minimum lot size in Residence C District.

Chairman Hodom said the structure was built in 1986 as an illegal three (3) family and the Certificate of Occupancy was issued October 21, 1986 as a duplex. Chairman Hodom asked if the applicant knew when the structure had stopped being a three (3) family. Ms. Smelyansky said the person they knew who had lived there had moved out a few years ago. During the last few years she wasn't sure when it was turned back to a two (2) family. Mr. Umina asked if they wanted to convert to three (3) family for income purposes. Ms. Smelyansky said yes, she wanted to offset the costs with the additional unit. She was going to live there, not her parents. The property was purchased at the end of July 2008. She wasn't sure what unit she would live in.

Chairman Hodom asked Mr. Platel if the building department still had the plans for the home. Mr. Platel said he thought the area above the garage was intended to be storage. Chairman Hodom asked Mr. Platel to let the Board know when the plans would be available to look at.

Chairman Hodom asked if both of the units were occupied. Ms. Smelyansky said just Unit B. Unit A was vacant because of the variance application.

Chairman Hodom pointed out a correction that needed to be made to the short EAF. The list of names submitted with the application indicating the neighbors that had been notified of the proposed variance didn't have a narrative attached. Chairman Hodom asked if those people had been shown a copy of the plans. Ms. Smelyansky said no because most of the homes in the area were built very similar so it was easy to explain where the proposed wall would be located. Mr. Umina asked if the square footage of the lot was explained. Chairman Hodom asked if to her knowledge were all the homes in the neighborhood, except one (1), either single family or two (2) family. She said only one (1) was a single family, all the rest, except maybe one, were two (2) family. Some of the people they spoke with were owners and some were renters. On the plans, Ms. Smelyansky showed the Board where the wall would be constructed. It was verified that if the variance were granted the applicant still needed to apply to the building department for a permit.

There being no further questions or comments the hearing was declared closed at 8:03.

## **APPLICATIONS**

### **Glenmont Mobil**

The Board had received an application for a Variance under Article VI, Section 128-59, Signs, D (1) from Glenmont Mobil located at 415 Rt. 9W, Glenmont.

A motion to schedule the public hearing on October 15, 2008 at 7:00PM was offered by Mr. Watson, seconded by Mr. DeCancio and approved by all Board members present.

## **DISCUSSIONS**

### **Hank Digeser (Gould Erectors)**

Chairman Hodom started the discussion. The applicant had submitted documentation form NYSEDA. He said regarding noise level NYSEDA recommended operating at an ambient level of no more than 52 to 55 decibels at the property line. This application appears OK as to that noise level. Optimal height for small wind turbine operation is one hundred twenty (120) feet or a minimum height of sixty (60) feet. Other concerns were setback requirements; the applicant indicates a thirty (30) foot setback from the southerly property line. However NYSEDA recommends the minimum setback should no less than one and half times the height of the wind turbine, including the tower and blades. The setback requirements cited in the literature were primarily for public safety. If the turbine should fall and situated in accordance with the setbacks recommended by NYSEDA, there wouldn't be any impact to adjacent property owners. If the proposed wind turbine were constructed to meet the existing zoning at twenty-five (25) feet, the proposed thirty (30) foot setback would still not be appropriate. Another item Chairman Hodom mentioned was a shadow nuisance. There is a potential for nuisance from the operating windmill for creating moving shadows on adjacent property owners during daylight hours. It could be very annoying. Based on these items, he felt it was premature for the Board to approve this application as submitted. It could negatively impact the nearby property owners. Because the wind turbine is to be mainly used for demonstration purposes, he felt the objective of the applicant could be met by constructing the wind turbine at a height of twenty-five (25) feet, negating the need for a variance. Chairman Hodom said he had spoken with Mr. Morelli, in the Planning Department, and he indicated wind turbines are on the agenda for discussion after the first of the year to establish rules and regulations. Even NYSEDA indicates that it is best for a Town to establish the laws needed for wind turbines. He recommended denying the application as proposed.

Mr. DeCancio said he respectfully disagreed with Chairman Hodom based on 128-10, height exceptions. He said Mr. Digeser would be producing electricity, and his company uses electricity so he felt this application fell within that exception.

Chairman Hodom said per the minutes he wanted the wind turbine on the site for demonstration, not for production of electricity. Mr. DeCancio said he did want to show people it could produce electricity.

Mr. Watson asked Mr. Moore if there wasn't any precedent where the Board could grant a temporary variance and have him report back on a monthly basis. Chairman Hodom said after speaking with Mr. Digeser when he visited the site, he was under the impression he was willing to put up and take down the turbine as needed for demonstration. Mr. DeCancio noted that Mr. Digeser had said that specifically at the public hearing. He

seemed willing to be very accommodating and he wanted to use this for demonstration purposes to help business. Mr. Watson said he viewed this as demonstration for this Board and the Town Board so they can gather more information. He thought it was a great way to test the case. He thought turbines would be seen more and more.

Chairman Hodom didn't think they could grant a temporary variance without the applicant agreeing to it and he was not present. Mr. Moore said the Board could interpret the Zoning Code any way they deem advisable but as the Chairman pointed out, the Town does not have any regulations governing wind turbines. If the Town doesn't adopt specific regulations, this Board's interpretation that wind turbines are exempt from the height limitations, that will be the Town's interpretation of its Zoning Code until they pass an ordinance.

Mr. Umina's concern was if the variance is not approved, the Board is setting a businessman back. Mr. DeCancio said the Public Service Commission's recent approval of the Iberdrola deal, wind power is likely to get more attention meaning a new demand and possible green jobs. Mr. Umina questioned whether the Board would be discouraging innovative entrepreneurs. Mr. Micelli said the neighbors seemed to be OK with wind turbine.

Chairman Hodom suggested a number of conditions if the Board was inclined to grant the variance.

A motion to approve the variance with the agreed upon conditions was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

A motion to approve the minutes of September 17, 2008 as amended was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

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

The meeting adjourned at 8:33 PM.