

**TOWN OF BETHLEHEM
BOARD OF APPEALS
April 4, 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
Anthony K. Umina, Board of Appeals Member
Lenny Micelli, Board of Appeals Member
Mark Hennessey, Board of Appeals Member

Mark Platel, Assistant Building Inspector

AGENDA: JKC Realty LLC
United Development Corp.
Daniel Mehlman
Brian and Julie Decker
Ronald McLagan

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

Public Hearing

JKC Realty LLC

The first order of business was a public hearing for Variances under Article XIII, Section 128-100, Schedule of Area, Yard and Bulk Requirements, minimum lot width and minimum highway frontage for Lot #2 and the continuation of a Public Hearing for Lot #1 requested by JKC Realty, LLC represented by Mr. Bruce Whiting for property located at 448 Route 9W, Glenmont. The applicant wishes to subdivide an existing lot into two (2) separate parcels. The lot with the existing business to be retained by the applicant and the newly created lot to be sold.

Mr. Platel said that the applicant proposes to subdivide the existing lot into two (2) separate parcels. Lot 2, which would be vacant land, will have a lot width at the building setback line of seventy-two point three eight (72.38) feet which is twenty-seven point six two (27.62) feet shy of the required one hundred (100) feet required and the lot will have seventy-two (72) feet of highway frontage which is twenty-eight (28) feet shy of the one hundred (100) feet required. The property is located in a Commercial Hamlet District and the existing use of the property is a business.

A motion to indent the public hearing notice was offered by Mr. Micelli, 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, April 4, 2007, at 7:00 p.m.,

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955.

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. Bruce Whiting presented his request to the Board. He said he wanted to take his three quarter (3/4) acre parcel and subdivide it into two (2) parcels creating a vacant parcel that he could potentially sell to a small business. Currently he has one hundred sixty-six (166) feet of road frontage, two hundred (200) feet is needed, making him short thirty-four (34) feet. The Board had suggested that he speak to the Kings Chapel Church about purchasing their thirty (30) foot adjacent parcel to mitigate the amount of variance that would be needed. Mr. Whiting said he had approached them but didn't think it was a viable option for him to purchase the land. The thirty (30) feet is not a flat parcel, it is steeply banked leading up to the Monore Muffler property. It's not buildable. He had been negotiating with them but a few days ago he had staked out his parcel and he walked the church's parcel. He found a lot of debris such as oil cans, oil pails, oil containers, tires and trash on the church's property. Even if that is the only means of obtaining the variance, he did not want to buy it. He could not be sure how long this type of trash had been there or how many years this type of dumping had been going on. He said that he was concerned with pollution of the parcel. He had already made a sizable investment in the property and it was not economically feasible for him to purchase land with possible pollution issues.

The other issue he was concerned with was if the lot was extended, a buyer could build a building that was eighty (80) feet in width. He thought a building up to ten (10) thousand square feet could be built. He did not want that size of a structure next to him, nor did he think it would fit with the surroundings of smaller structures.

He said he had purchased the property a year ago and did significant renovations to the existing house. Financially he felt he had exhausted and exceeded reasonable financial investment. When he had originally spoken with Pastor Lou, considering it is only a thirty foot strip of land, he had offered fifteen (15) thousand dollars for the land. He was willing to negotiate; their final offer had been twenty-five (25) thousand for the parcel, payable on ZBA approval, or thirty (30) thousand with a two (2) year option, payable on the sale of the lot. Mr. Whiting thought that price was excessive and he didn't want to be tied into a two (2) year option. But the final issue was the potential cost attached to the clean up of the debris on the property. He said he had four hundred and fifty thousand (450,000) dollars already invested in the property.

Chairman Hodom mentioned that Mr. Whiting had originally planned on dividing the property into equal parcels. That was not the current plan and he asked why. Mr. Whiting said that if he subdivided the lot in half it would cut across the existing parking lot. If he sold the other parcel he would do so with a right of way to use the driveway and the parking lot but legally felt it was better to have it all in one ownership.

Chairman Hodom asked if he had considered having one of the parcels in compliance with the Zoning Law and only asking for a variance for the second parcel. Mr. Whiting said he was open to that suggestion, if the Board preferred.

Mr. Brookins asked if Mr. Whiting had notified the Church of his findings about the land. Mr. Brookins thought it might help to show the Church the additional costs involved with the parcel. Mr. Whiting had

not contacted them. He had spoken with counsel about the matter and he was not comfortable using that information in negotiating with the Church. It had only been a few days since he had made that discovery.

Chairman Hodom asked if he had explored retaining ownership of the parcel and doing a ground lease with another business. Mr. Whiting said he had not. It was not a preferred option. He had spoken with real estate professionals and Benderson Development when they had been before the Board and they had said that larger businesses would not have a problem with ground lease but a small business might.

Chairman Hodom asked Mr. Platel if there were limitations on the parcel if Mr. Whiting were to pursue a ground lease. Mr. Platel said he was not familiar with land leases but said that he would be able to build another structure on the parcel and be within the Zoning Law criteria. Mr. Whiting said he could not afford to build another building. The only way it could happen was if he found someone willing to build their own building and lease the land.

Chairman Hodom said he would reopen the hearing for Lot #1 with ninety-four (94) feet road frontage with the existing building. The current parcel had one hundred sixty-six (166) feet of road frontage if the property is not divided.

Mr. Ron Schoof, one the governing Board members of the Kings Chapel Church, said the Church was not aware of any problems with the property they owned. He agreed with what Mr. Whiting had said about the negotiation between the himself and the Church. Mr. Schoof thought the Church's price was fair, but he was not a real estate professional. He said that their price was much less than what Mr. Whiting was asking for the proposed vacant lot. Mr. Schoof had not walked through the whole parcel they owned and was not sure where this debris items were located.

Chairman Hodom asked Mr. Whiting if he desired additional time to negotiate with the Church. Mr. Whiting said that if the Church were willing to obtain a clean environmental bill of health, he might consider the purchase. This could not be at his cost. The cost of clean up could cost as much as the sale would gain. Chairman Hodom said that the thirty (30) feet owned by the Church would help him mitigate the variance he was requesting. The property currently was in compliance with the Zoning Law. Chairman Hodom asked Mr. Whiting to make a final effort to negotiate with the Church on a mutually agreed upon price and terms. Mr. Whiting said he would try. Chairman Hodom said they could adjourn the public hearings to April 18, 2007 to give him that opportunity. Mr. Whiting agreed.

Mr. Micelli asked Mr. Whiting if the debris he mentioned was a recent discovery. Mr. Whiting said due to the significant overgrowth, he had not seen it before a few days ago. It looked like it had been there for awhile. There was also erosion along the hillside of the Church's property. It is about a twelve (12) foot high embankment to the rear of the parcel. Mr. Micelli wanted to know if the debris could be seen from the back of the Monroe property. Mr. Whiting said if a person walked the property or went to the top of the hill in the back of Monore, the debris could be seen.

Mr. Brookins asked the square footage of the Church's parcel. Mr. Whiting said it was about six thousand (6,000) square feet.

A motion to adjourn the public hearings for Lot #1 and Lot #2 until April 18, 2007 at 7:00pm was offered by Mr. Hennessey, seconded by Mr. Brookins and approved by all Board members present.

United Development Corp. – 236 Glenmont Road, Glenmont

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The applicant requests the following: Variance under Article V, Section 128-33 D (1), footprint and Section 128-100, Schedule of Area, Yard & bulk Requirements, density and maximum height, to construct an apartment complex for seniors.

A motion to schedule the Public Hearing for United Development Corp. on April 18, 2007 at 7:15pm was offered by Mr. Micelli, seconded by Mr. Brookins and approved by all Board members present.

Daniel Mehlman – 152 Hudson Avenue, Delmar

The applicant requests the following: Variance under Article VI, Section 128-50 C (1-d) Home Occupations, percentage of floor area, and Article V, Section 128-30 C (3), maximum lot coverage to increase garage space for an existing home business.

A motion to schedule the Public Hearing for Daniel Mehlman on May 2, 2007 at 7:00pm was offered by Mr. Brookins, seconded by Mr. Micelli and approved by all Board members present.

Brian and Julie Decker – 49 Magee Drive, Glenmont

The applicants request the following: Variance under Article XIII, Section 128-100, maximum lot coverage and minimum side yard setback to construct a single family home.

A motion to schedule the Public Hearing for Brian and Julie Decker on May 2, 2007 at 7:15pm was offered by Mr. Micelli, seconded by Mr. Brookins and approved by all Board members present.

Ronald McLagan

The next item on the agenda was the draft Resolution for Ronald McLagan's request six (6) variances on four (4) proposed lots on Yale Ave. and Milton St., prepared by Counsel.

A motion to approve Area Variance Resolution AV-0705 as amended was offered by Mr. Micelli, seconded by Mr. Umina and with a vote of four (4) for and one (1) abstention, the Resolution was approved.

The Board reviewed the draft minutes of March 21, 2007.

A motion to approve the minutes as amended was offered by Mr. Umina, seconded by Mr. Micelli 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 7:50PM.