

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

July 1, 2009

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 presided.

PRESENT: Michael Hodom, Board of Appeals Chairman
Lennie Micelli, Board of Appeals Member
Ken Umina, Board of Appeals Member
Matt Watson, Board of Appeals Member

Mark Platel, Assistant Building Inspector
Justin Harbinger, Assistant Building Inspector

AGENDA: Jim Sheldon
Carol Cady
Gregg Sagendorph, Jr.

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

PUBLIC HEARINGS

Jim Sheldon

The Board had received an application for a variance under Article VI, Section 128-55 (B) (2), nonconforming lots and structures for a parcel of land (86.06-2-19) on Grant St. The applicant wishes to move a lot line that will make a non-conforming lot more non-conforming.

Mr. Platel said the applicant is proposing to deed over an eight (8) point eight four (.84) foot by forty-nine (49) foot, four hundred thirty-three point one six (433.16) square feet parcel of land to the neighboring lot to rectify an existing building encroachment. The existing twelve thousand (12,000) square foot vacant lot is a pre-existing non-conforming building lot. The Zoning Law states that a pre-existing non-conforming lot will lose its non-conforming status if the lot's non-conformity is increased. In the residence A zoning district the minimum lot size for a buildable lot is fourteen thousand five hundred twenty (14,520) square feet. After the applicant deeds over the four hundred thirty-three point one six (433.16) square feet, increasing the non-conformity, the lot will be eleven thousand five hundred sixty-six point one four (11, 566.14) square feet, which is two thousand nine hundred fifty-three point one six (2,953.16) square feet shy of minimum lot size required.

A motion to indent the public hearing notice into the record 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 Beth-

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lehem, Albany County, New York will hold a public hearing on Wednesday, July 1, 2009 at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Jim Sheldon for a Variance under Article VI, Districts, Use and Area Requirements, Section 128-55, (B) (2), non-conforming lots and structures of the Code of the Town of Bethlehem to revise the lot line making a non-conforming lot less conforming.

Mr. Sheldon presented. He said he wanted to adjust the property line on the easterly side of the property, so it would go around the building that is encroaching onto the lot that he purchased. He wanted to apply for a building permit to build a single family home.

Chairman Hodom asked Mr. Sheldon when he purchased the property. Mr. Sheldon thought it was in 2002. The most recent deed he had was from 2008. He said he would let the Board know. Chairman Hodom asked if he currently owned a residence in the Town of Bethlehem. Mr. Sheldon said he had sold his home two (2) years ago and now rents. Chairman Hodom asked if he had discussed the proposal with the neighbors. Mr. Sheldon said he wanted to get the property line resolved before he made any further decisions. He said this issue came up when Mr. Hite was hired to do the survey. He said the breezeway on the back house was encroaching onto the property and Mr. Hite suggested addressing the problem. He then spoke with the building department and they suggested getting a map drawn up (5/2009) and it was thought this would be the best way to remedy the problem. Chairman Hodom asked why he wanted to build a home on the property. Mr. Sheldon said he wanted to build a single family owner occupied home. Chairman Hodom asked if Mr. Sheldon had considered leaving the line as it is. He said he would leave the line as it is, if the Town would allow him to build a home on the lot. Chairman Hodom asked Mr. Platel if he was able to leave the line where it was. Mr. Platel said he could leave it but they decided to remedy the encroachment so there would be a clear title. Mr. Sheldon thought this is what he had to do; he didn't think there was another option. Chairman Hodom said if he left the lines where they were and built the home to the front of the lot, then the encroachment wouldn't impact the residence. Mr. Sheldon thought the encroachment was about the side setbacks and he assumed the adjusted line would be a new starting point. He doesn't have a house design set for the space. The building footprint on the plans was put there by Mr. Hite to show that the proposed home would comply with the Town's Zoning Law. Chairman Hodom asked if he had considered building it closer to the front of the lot. Mr. Sheldon said the activity from Tastee Freeze and the laundry mat are next to the back yard area and if he was sitting on the back patio he would have more privacy with the building setback.

Chairman Hodom asked who owned the property next door and had he considered asking the adjoining neighbor to correct the encroachment problem. Mr. Sheldon said he had spoken with the person he assumed was the owner of the back house but he now knows there is a gray area to that ownership. She had no intention of doing anything with the breezeway and instead of bringing a law suit, he decided to go this route. He now knows that someone else owns the property.

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Mr. Cohen, son-in-law to Charles Hansen, owner of the property, introduced the both of them. He said the house in question has been in his family since 1935. Mr. Hansen holds the deed to all of the property. He had found out about the proposal from the public hearing notice sent to him. They didn't have a problem with Mr. Sheldon's proposal. Mr. Cohen said Mr. Hansen's father built the house in 1935 and 1937 he constructed a garage. A few years later his brother put an apartment over the garage. In 1971 there was an agreement written between the sisters and brothers saying he had the right to live there. That building is the brother's to use as well as his heirs. The woman who has the rights to back building now is Rosemary. To take the breezeway down would cause legal complications for the family. Rosemary owned the vacant lot that Mr. Sheldon purchased and she still maintains some rights to the back house. Her daughter now lives there. Mr. Cohen said he would send in the legal document that shows tenancy for life.

Mr. Sheldon said it was his intention to avoid that confusion by just deeding over the piece of land. Chairman Hodom said that approach creates a problem for the pre-existing non-conforming lot. If there wasn't an encroachment issue being addressed, there wouldn't be a necessity for a variance. Mr. Platel said when he had spoken with Mr. Sheldon, this was the route that he decided to pursue, knowing there was an issue with the land next door.

Mr. Umina said because Mr. Sheldon's lot would be more non-conforming if the piece of the parcel was deeded over, he didn't think it was in Mr. Sheldon's best interest. Mr. Platel said if the variance were granted he would have a little less building area to use for a home but the encroachment issue would be gone. The variance was to allow the non-conforming status to remain so he could build on it. The variance would be for the allowable square footage in a Residence A district. Right now, he can build without a variance if the lot line remains where it is.

Mr. Cohen said there is another easement question concerning the driveway that's been there since 1937. About 3/4ths of it is on Mr. Sheldon's property. Chairman Hodom wants Mr. Moore, the Zoning Board Counsel, to review the agreement document that Mr. Cohen said he had. Chairman Hodom said wanted to verify that if there were no changes made, the encroachment could be handled by an easement.

Mr. Robert Boughton asked if this variance had anything to do with Tastee Freeze and the exits from that establishment. Chairman Hodom said it did not.

A motion to adjourn the hearing until July 15, 2009 at 7:00pm was offered by Mr. Watson, seconded by Mr. Umina and approved by all Board members present.

Carol Cady

The Board had received an application for a variance under Article XIII, Section 128-100, percentage of lot coverage. The applicant wishes to demolish an existing home and reconstruct a new one on the property at 19 Mill Rd.

Mr. Platel said the applicant is proposing to demolish an existing single family dwelling and construct a new dwelling. The new dwelling will have a building area of one thousand four hundred forty one point zero five (1441.05) square feet and in addition, with the existing three hundred thirty (330) square foot accessory building will have a total building area of one thousand seven hundred seventy-one point zero five (1,771.05) square feet. The total building area that is allowed for a six thousand nine hundred one (6,901) square foot lot is one thousand three hundred eighty point two (1,380.2) square feet. The proposed building area will exceed the allowable by three hundred ninety point five (390.5) square feet. In terms of percentage of lot coverage, the building will cover twenty-five point sixty-six (25.66) % or five point sixty-six (5.66) % over the twenty (20) % allowed. In addition to the overage in building area, the proposed front yard setback to the property line will be twenty-four (24) feet, which is eleven (11) feet shy of the thirty-five (35) feet required. The existing structure is occupied as a single family dwelling and is located in a residence A zoning district.

A motion to indent the public hearing notice into the record 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, July 1, 2009 at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Carol Cady for a variance under Article XIII, Section 128-100, percentage of lot coverage and front yard setback, of the Code of the Town of Bethlehem for the reconstruction of a home at 19 Mill Road, Delmar, NY.

Mr. Cady presented. He said they have gone through multiple styles of housing and are currently proposing a small three (3) bedroom. In order to meet the code of percentage of lot coverage, they would need to eliminate two (2) bedrooms. They are at the smallest model that they can get as a pre-fabbed home. They want to demolish the house because it was his grandmother's house and it was built on wooden piers. Just about every room in the house was going in a different direction. He said it was about time that his mother had a new house. They are trying to stay as close to code as possible but this design is as close as they can get. He said there were neighbors present that will attest to the fact that the current dwelling is an eyesore.

Chairman Hodom asked the room configuration of the current dwelling. Mr. Cady said the house has a front porch, laundry room and bath, kitchen, living room and back room on the first floor and three bedrooms upstairs. There isn't a basement. There are three (3)

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people that currently live in the house. Mrs. Cady said she has lived there since 1968. Chairman Hodom asked if they had spoken to their neighbors. Mr. Cady said they had; none of them were opposed to what they wanted to do.

Chairman Hodom asked if they could move the proposed structure back to comply with the front yard setback requirement. Mr. Cady said he would if he had to but the building would be only six (6) feet from the double doors of the shed in the rear. Chairman Hodom asked what the shed was used for. Mr. Cady said storage and a workshop. There are tools, lawn mowers and auto mechanic tools in the shed. Chairman Hodom said the site plan shows a full basement including the garage under the residence. With a depth of twenty-two (22) feet, it would leave thirty feet of basement area that could be used for storage. Mr. Cady said the shed on the property is only three (3) years old. He did not consider taking it down an option. He was willing to move the proposed structure back. Chairman Hodom said the building couldn't be moved back eleven (11) feet because it would be into the rear yard setback. He said the proposed house is about eight (8) feet to the rear yard setback line. He said if the house was moved back to minimize the variance for the front yard setback, it could only be moved back eight (8) feet.

Mr. Cady said they had planned on a front porch but took it off the design to come closer to compliance. Chairman Hodom asked if they would consider the following; if the new house were fifty (50) feet deep and twenty-seven (27) feet wide, giving a square footage of one thousand three hundred fifty (1,350) square feet and if the shed were removed and the basement were used for storage, it would satisfy the percentage of lot occupancy. If the house was also moved back on the lot, it would reduce the front yard setback requirement to one (1) foot. Mr. Cady said his brother spent between four and five thousand dollars three years ago to build the shed. It was not a option to knock it down, it held all of his tools. Mrs. Cady said the furnace and hot water tank would be in the back of the garage/ basement area. She said there wouldn't be that much room. Mr. Boughton, the adjoining neighbor, was approached to purchase some of his property and he did not want to sell any land.

Mr. Cady said the orange colored steel rods set on the property were the boundaries of the proposed house. Chairman Hodom asked and Mr. Platel stated that because the lot was a pre-existing non-conforming lot, the square footage of the lot was not in question.

Mr. Micelli asked how long it would take to build the home. Mr. Cady said they were using Superior Homes in Cobleskill. They say it's sixty days from start to finish. Mr. Umina asked if the one exit from the kitchen was enough. Mr. Platel said one exit was needed from the main structure and each bedroom needed emergency exit windows. Mr. Cady said all porches were removed from the proposal. They have tried to make the structure as small as possible to be able to get the variance.

Chairman Hodom asked if they thought they could reduce the house size from fifty-two (52) feet to fifty (50) feet. Mr. Cady said if they tried, Superior Homes would consider it a custom home and charge more money. He thought it was as small as they could go but

they were willing to move the house back a little. Mrs. Cady said they have been through many different designs and she felt this was a small as they could go and still have it a livable space for the three of them. They have been working on this for about three (3) years. They didn't know that putting up the shed would affect the amount of living space they could have for the house.

Mr. Umina asked if any of the neighbors objected. Mr. Cady said two (2) of the neighbors were present; his uncle lived on one side. He thought everyone agreed that it was a good idea to knock the home down and replace it.

Robert Boughton, 2 Mill Road, asked if where the red stakes were in the ground, would that be the front of the house. Mr. Cady said that was how it was proposed now, they would like leave it as proposed. Mr. Boughton said it was fine with him but he didn't want it to go out any further and block the scenery. He said his kids wanted him to put up a little log home on his lot. If he sold part of that lot to the Cadys, it would stop him from putting up his own home.

Charmaine Tompkins, 14 Rockefeller Road, said as far as the setback was concerned, all of the house in the village are close to the road. It's an old village. To put the house in the existing spot would not bother anyone.

The hearing was declared closed at 7:47pm.

DISCUSSIONS

Gregg Sagendorph, Jr.

The Board had received an application for a variance under Article V, Section 128-30 C (1) for 62 Harrison Avenue, Delmar. The applicant proposes to move a garage.

Chairman Hodom started the discussion. He said that Bower Ct. is a paper street that can't be continued through to Alden Ct. because it's only twenty-five feet wide and would not comply with the Town's standards for a street. The Zoning Law considers this property a corner lot with two (2) front yards, he considers the Bower Ct. side is more a side yard than a front yard because it can't be developed. The Sagendorph's children are getting older and playing in the yard more frequently. There is a safety concern with the current location of the garage because there is a blind spot and they cannot be seen from the house. It is Chairman Hodom's opinion that an undesirable change will not be produced in the neighborhood nor will there be a detriment to the nearby properties with the granting of the variances. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant. The requested variance is not substantial, the proposed variance will not have any adverse effect on the physical or environmental conditions in the neighborhood or the district. The alleged difficulty was not self created by the applicant. He recommends the granting of the one (1) area variance requested.

Mr. Umina, Mr. Watson and Mr. Micelli all agreed with Chairman Hodom's recommendation.

A motion to approve the one (1) area variance as submitted was offered by Mr. Umina, seconded by Mr. Watson and with a vote of four (4) for and Mr. DeCancio absent, the one (1) variance is hereby granted.

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

The meeting adjourned at 7:55.

Respectfully Submitted,

Nanci Moquin