

**TOWN OF BETHLEHEM
BOARD OF APPEALS
May 2, 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

Karen Guastella, Assistant Building Inspector

Diane Decker
Edward Dillon
Bob Wiggand, Jr.
Eric and Linda Braun
Jerry Devendorf

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

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

Public Hearing

Daniel Mehlman

The first item on the agenda was a public hearing for a 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, requested by Daniel Mehlman for property at 152 Hudson Avenue, Delmar. The applicant wishes to expand an existing home occupation.

Ms. Guastella stated that the applicant is proposing to construct a 768 square foot addition to the existing 605.1 square foot accessory building creating a total accessory structure of 1,373.1 square feet. This is 770.2 square feet over the 602.9 square feet allowed for accessory structures. The lot occupancy for accessory structure would be 11.39%, which is 6.39 over the 5% allowed.

The applicant is proposing to use this structure for a home occupation. Home occupations are allowed an area of up to 30% of the floor area of the main structure. The main structure would allow for a home occupation that would not exceed 282 square feet in floor area. The total area proposed for the

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home occupation is 1,373.1 square feet and exceeds the allowable by 1091.1 square feet. The square footage of the structure will also exceed the 600 square feet that is allowed maximum for a home occupation by 773.1 square feet.

The existing dwelling is occupied as a single-family dwelling and the existing accessory structure is currently being used by the owner for his home occupation. The property is located in a Core Residential District.

A motion to indent the Public Hearing notice was offered by Mr. Umina, seconded by Mr. Micelli 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, May 2, 2007, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Daniel Mehlman for Variances under Article VI, Section 128-50 and Article V Section 128-30 of the Zoning Law of the Town of Bethlehem for an expansion of a garage for additional space for an existing home business at 152 Hudson Avenue, Delmar, New York.

Mr. Mehlman said that he is a freelance artist that works out of his home on Hudson Avenue. He has degrees in fine art with a specialty in ceramics. He has worked for twenty-five (25) years in the tableware ceramics and glass industry. The work includes design products and model making that includes machine work and sculpting. He also does some mold making. His craft is business-to-business work in the development stage. He is also active as a fine artist and has had shows in Town. The studio resembles a well-stocked home woodworking shop with the addition of some sculpting and pottery equipment. He purchased his home in 1989 with the intention of using the garage for his business. When he was considering the purchase, there was determination made by Mr. Flanigan, the building inspector at the time, and Mr. Kaplowitz, the Town Attorney, that as long as there weren't any signs or traffic generated or customers, it was an acceptable use. The new Zoning Law does allow a home occupation. His occupation does not present a commercial presence on the site. He has a good relationship with his neighbors and was not aware of any complaints ever being made because of his business.

He wants to expand the area of his business because it is crowded and he doesn't have the room to lay out projects that he is working on. He works with materials that can contaminate each other and he can't keep them separated. He's doing more design work and he needs a clean area for drawing. He has to shift equipment around and if he had more space he could work more efficiently and safely. He's proposing to extend the rear of the garage and it should not be noticeable from the street. He wants to keep the roofline low. The presence in the neighborhood will not change outwardly. He is bounded by three immediate neighbors, one being himself because he owns the house next door and rents it. Mr. Flansberg, the neighbor on the other side, had written a letter stating that he doesn't have any objection to the proposal. The other neighbor, Mr. Devendorf, had been encouraging him to expand.

Chairman Hodom asked if it is his belief that he currently complies with all the home occupation requirements in the Zoning Law. Mr. Mehlman said that he had spoken with Mr. Platel and he believed that his was an acceptable home occupation. He has never had employees, he doesn't have any retail trade, and he doesn't create traffic.

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Chairman Hodom asked if Mr. Mehlman had deliveries to his business. Mr. Mehlman said that materials were delivered about five (5) times per year and it takes about ten (10) minutes to unload. His out going work he takes to a local shipping company himself.

Chairman Hodom said there was a regulation that said the home occupation shall have a current certificate of occupancy. He asked Ms. Guastella if that was a special certificate for a home occupation. She said that with an addition to a home a person would either receive a Certificate of Compliance or a Certificate of Occupancy.

Chairman Hodom asked if Mr. Mehlman had the business inspected by the building department in 1989 or since that date. Mr. Mehlman said he had received an informal OK and had never been given any indication that an inspection was necessary. Mr. Platel had visited the site.

Mr. Devedorf stated that he had built the garage and Mr. Flanigan had given him certificate of occupancy at that time. Chairman Hodom asked Ms. Guastella to find out if a home occupation needed its own certificate of occupancy or certificate of compliance.

Mr. Hennessey asked who were Mr. Mehlman's clients. Mr. Mehlman said his biggest client was Steuben Glass in Corning. He also does dinnerware for Dansk, Lenox china, some European clients such as Bacara. He said it is a long established business and to his knowledge the only independent freelance studio that does this type of work in the country.

Mr. Mehlman said his business has no outside storage of materials and doesn't produce any odors, noise, vibration, or smoke. He would like to install a better dust collection system that would make his studio cleaner. He doesn't work with any toxic materials. He works in plaster and clay.

Mr. Brookins asked if he had considered moving to a space that was larger, properly zoned and would not require a variance. Mr. Brookins acknowledged that it sounded like a substantial investment. Mr. Mehlman said that he had looked for commercial property but his preference was to work at home. It's more convenient and when his children were young he was always home. A separate place would be considerably more expensive. He sometimes works odd hours and being able to be at home is more productive.

Chairman Hodom asked if Mr. Mehlman had spoken with his neighbors and shown them his proposal. Mr. Mehlman said that they knew what and where he intended to build but not the specific details. Chairman Hodom wanted to know if he would consider a smaller addition. Mr. Mehlman said he was not eager to build or heat more than he needed. When he envisioned the work area, this was the space he would need. The building would not go straight back because then it would not meet the side yard setback. That was why it was offset. He wants to move the equipment he has to the new space so that there is space around the equipment to move around it safely. The proposed structure would abut the existing structure with a door between. There wouldn't be a bathroom in the structure.

Mr. Umina said that he had ridden his bike past the shop many times and a person would not know that a business was inside the garage. There isn't any commercial presence

The second level of the current work area is used for storage of ceramic materials and saved artwork. It's a constricted space with a sloped ceiling. It has a small staircase and it wouldn't address the

problem of a cramped working area. He had considered an addition with a smaller footprint and two (2) stories but he thought the structure would be more imposing and the workspace on two (2) levels would not work for him.

Mr. Alfred Burke, Hunter Road, said that the original building that was there was a barn that was twice the size of what was there. He did not have a problem with the applicant's proposal.

Mr. Eric Braun, 5 Hunter Road, confirmed there was very little traffic and a person would not know there was a business there. He was in favor of granting the variance.

Mr. Brookins said that the new building is about four (4) times what is allowed which is a substantial variance. If the Board did not approve the address, he asked Mr. Mehlman what potential impact it would have on his business. Mr. Mehlman said it is a very tough time for his business and he doesn't want to give up business that is offered to him. Because of his current space, he has had to turn down business and delay deadlines because he does not have the room to have many projects going at the same time. He needs to have a working ceramics studio that is currently in storage. The personal impact is that it is not a safe environment because of the lack of space for the power tools.

Mr. Brookins asked how CAD has impacted his business? Mr. Mehlman said that he was handwork designer and because there was a whole generation that was comfortable with CAD technology, it would take him quite awhile to reach a level of competence. He said there was still a demand for his type of design work. Mr. Brookins asked if improvements to his current facility would allow him to remain competitive in the industry. Mr. Mehlman agreed completely; he said that some overseas companies offer to do the type of work he currently does for free. He competes on the basis of the quality of his work and his reputation. He said it was a struggle to stay competitive.

Mr. Devendorf said that Mr. Mehlman was a treasure of the community and efforts should be made to allow him to stay.

Mr. Mehlman said that two (2) people live in the residence and one (1) of the bedrooms were used as an office. There weren't any other functions of the studio that could be preformed in the home. It would not be efficient to have some functions in other areas.

Ms. Linda Braun, 5 Hunter Road, said that she has been in Mr. Mehlman's studio and the community is lucky to have this caliber of artist. She said that by having the studio next to his home, it allows him work when he is inspired. He is quietly famous all over the world. She was in favor of helping him in any way possible to stay in the community.

Mrs. Mehlman said that the reason they decided to do this now was that college for their children was over and they were now preparing for the rest of their lives. She said the structure would create a courtyard that would enhance the property. An architect friend was helping them with the design.

Chairman Hodom declared the hearing closed at 7:40.

Brian and Julie Decker

The second item on the agenda was a public hearing for a Variance under Article XIII, Section 128-100, maximum lot coverage and minimum side yard setback, requested by Brian and Julie Decker for property at 49 Magee Drive, Glenmont. The applicant wishes to build a single-family residence.

Ms. Guastella stated that the applicant is proposing to construct a dwelling that will have a side yard setback of seven (7) feet. This is three (3) feet shy of the ten (10) feet required. The total lot occupancy will be 21.84%, which is 1.84 over the 20% allowed. The proposed use is for a single-family dwelling and the property is located in a Residence A Zoning District.

A motion to indent the Public Hearing notice was offered by Mr. Hennessey, 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, May 2, 2007, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Brian and Julie Decker for Variances under Article XIII, Section 128-100, minimum side yard and maximum lot coverage of the Zoning Law of the Town of Bethlehem for construction of a residence, at 49 Magee Drive, Glenmont, New York.

Mr. Decker said they were proposing to build a single-family house for their home. He has lived his life in Bethlehem and now he wants to build his home here. He works in Bethlehem as a pharmacist. His wife is a pharmacist also but in a different town.

Mr. Wiggand, their contractor, said that the lots were smaller lots and part of an old subdivision when lots were smaller. The lots were fifty-five (55) feet by one hundred fifty (150) feet. He said it would be very difficult to design a house with a two-car garage that would fit on the lot with the necessary setbacks. The proposed house is narrow with the garage offset by two (2) feet; that is two (2) of the three (3) feet of the variance they are requesting. He felt that the lot would need a variance for any design. They had purchased the lot and demolished the existing home because it was not structurally sound. Mr. Decker's mother lives next door. Letters from the neighbors had been submitted in support of the proposed house.

Mr. Decker said that the area behind the lot was a wetland preserve that the Glenmont School had developed. In the front is a large undeveloped field. Mr. Wiggand thought that the front field had been delineated as a wetland years ago. Mr. Wiggand said it would be very difficult to reduce the size of the garage without making it a one (1) car garage, which is not as desirable with today's prices.

Chairman Hodom asked if there was an area of the proposed house that could be reduced to eliminate square feet so the lot coverage percentage would not exceed the allowable. Mr. Wiggand said it would be very difficult with a narrow lot. The proposed house is thirty-six (36) feet wide. The lot area is preexisting non-conforming.

Chairman Hodom asked Mrs. Decker, 47 Magee Drive, the width of her lot. She said it was eighty-five (85) feet. Her and her neighbor on the other side had each purchased one and a half lots. She had wanted to give her son some land but her lot under the current Zoning Law was preexisting non-conforming. Mr. Decker said the contract for the construction of the house was contingent on obtaining

the variance. If they were successful, the home could be started during the summer and should be finished within six (6) months.

Mr. Dillon said he lived next door and he was in favor of the variance. Mrs. Diane Decker, 47 Magee Drive, said she was in favor of the variance.

Chairman Hodom declared the hearing closed at 7:57.

United Development Corp.

An application has been submitted for a Variances under Article V, Section 128-33 D (1), footprint and Section 128-100, Schedule of Area, Yard & bulk Requirements, density and maximum height, Article VI Section 128-56, off street parking, requested by United Development Corp., for property located on Glenmont Road behind St. Mathew's Cemetery.

A motion to schedule the Public Hearing for May 16, 2007 at 7:00pm was offered by Mr. Micelli, seconded by Mr. Hennessey and approved by all Board members present.

JKC Realty

The next item on the agenda was a discussion on the Variance request by JKC Realty for proposed Lot #1 and proposed Lot #2 for property located at 448 Rt. 9W, Glenmont.

Chairman Hodom stated that the lot currently complies with the 2006 Zoning Law and by dividing the lot it would make both of the lots non-compliant. The applicant himself stated that the benefit could be achieved through another means, namely a land lease. The variance requested was substantial and the alleged difficulty was created by the applicant. He recommends denial of the area variance request for proposed Lot #1 and proposed Lot #2.

Mr. Brookins agreed that the issues were self-created and some other potential solutions existed. The lot was purchased when the current Zoning Law was in effect. He was against granting the variances.

Mr. Umina thought that the parcel owned by the church should have been explored further to mitigate the variance request. He was against granting the variances.

Mr. Micelli said that Mr. Whiting did not want to negotiate with the Church and he was against granting the variance.

Mr. Hennessey said that he didn't like taking a compliant property and making it non-compliant. He was against granting the variance.

A motion to deny both application for area variance on Lot #1 and Lot #2 was offered by Mr. Umina, seconded by Mr. Micelli and approved by all Board members present.

The Board reviewed the draft minutes of April 18, 2007.

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

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

The meeting adjourned at 8:15 PM.