

**TOWN OF BETHLEHEM
BOARD OF APPEALS
November 1, 2006**

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
Gilbert Brookins Board of Appeals Member
Anthony K. Umina, Board of Appeals Member
Mark Hennessey, Board of Appeals Member
Leonard Micelli, Board of Appeals Member
Michael Moore, Attorney to the Board
Mark Platel, Building Inspector

AGENDA: McDonalds's – 132 Delaware Ave
Philip & Judy Smaldone

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

McDonald's

Chairman Hodom turned the Board's attention to the first item on the agenda, a discussion of the McDonald's request for a parking variance.

Chairman Hodom stated he did not have a problem with the parking variance. The business had operated for years with fewer parking spaces. He had done additional research on the Internet, and the majority of the business for that type of restaurant is between fifty (50) and sixty (60) percent drive thru. He was in favor of authorizing the parking variance.

Mr. Hennessey stated that he was not in favor of the variance. He looked at Section 128-08; paragraph D, of the Zoning Code, Purposes and Objectives of Chapter. When looking at the five criteria associated with the test for an area variance, he only saw that the variance would cause them to have more business. He did not think that was sufficient for the variance. He saw no benefit to the community. If they constructed a smaller building, it would require less parking and have fewer seats. The number of parking spaces they were short was significant. He thought the situation was self created because they didn't need to tear down the building.

Mr. Brookins said in the worse case scenario, the Board rejects the application; they decide that it's not worth it and a business on our main street leaves. Mr. Hennessey said the owners of the McDonalds never made that claim and so was never considered. Mr. Brookins said this was an opportunity for them to improve their site and improve their ability to serve the community. McDonalds was not going through this to serve the community less well but to serve them better.

Mr. Hennessey said that the business doesn't do it for the betterment of the community, but to increase their revenue. Mr. Brookins said to take that view, then a business would never remodel, take as much profit as they can and then when the place was in disrepair; they would leave.

Mr. Hennessey said the purpose of the remodel was to generate more sales, so if they didn't remodel then they would not increase sales. Mr. Brookins said that generating more sales was not a bad thing. Any business that is in the community, to serve the community, should be commended. That doesn't mean that anything they propose should be allowed but it's not an expansion of existing parking. This was an opportunity for the applicant to restructure the building because they have water and structural problems. The new building would allow them to bring their storage up to grade level. Not having a basement seems to be a necessity, so they would need more first floor space. When asked, Mr. Platel said the building would need to be about half the size to comply with the parking.

Chairman Hodom asked if the structure needed a variance when it was first constructed. Mr. Platel said that in 1969, it met the parking requirements.

Mr. Umina said that he was not in favor of granting the variance. He thought that the shortage of parking was excessive. He was concerned that new restaurants would be looking for the same type of variance in places such as Destiny Threads or the old CVS. He did not want to set a precedent. He also agreed with the reasons in Mr. Hennessey's presentation.

Mr. Brookins said that each project should be weighed on its own merit.

Mr. Micelli said he had lunch at McDonald's recently. He observed that their business was mostly drive thru. He said you could have had a football game in the parking lot and no one would have disturbed you. He didn't like the proposal to do away with the playground; he didn't think it was community friendly. His children had birthday parties there and the big dining room allowed kids to play. He thought the people worked in the kitchen with no problem. He said there were hardly any people in the parking lot; all the cars were going thru the drive thru. He was opposed on those issues, but primarily because they were proposing to do away with the playground.

Chairman Hodom said he was not sure how, if you go through the area variance requirements, that the benefit to the applicant didn't outweigh the detriment to the community. The reasons given did not show him where the detriment to the community lies. The applicant's proposal increased the parking by one space. The business has never had a problem with the parking that he was aware of. Mr. Brookins said that at the public hearing, one of the residents saw a benefit to the redesign because of the drive thru relocation.

Mr. Hennessey said the drive thru was not the issue; it was the parking. The Town Code has parking requirements for a building of this size and he thought it was one of the specifically enumerated items of the Town Code. Parking is something the Town cares about.

Chairman Hodom said parking requirements have always been a part of any development, but it's a matter of whether the parking is adequate for the proposed change. The question to ask; has it been adequate in the past?

Mr. Hennessey said that when he visited on Columbus Day every parking space was taken except one. He suspects that on some days they have full parking. The parking lot is there to generate business, so it's in their best interest to have more parking. He said he was concerned that if there wasn't enough parking, customers would leave, it would be McDonald's loss.

Mr. Brookins believed the applicant had taken those issues into consideration. If they were forced to have the seventy-five (75) required spaces, the building would be a size that couldn't function. He

didn't feel comfortable interjecting his opinion on how they should operate their facilities. He assumed they knew how to sell hamburgers.

Mr. Hennessey assumed that the government of the Town knew how to write a Town Code. Mr. Brookins agreed; that's why the Town had incorporated a Board to hear variances and appeals. Mr. Hennessey agreed but only in extraordinary circumstances, unique situations. He said that this could become a precedent in other cases.

Mr. Brookins said that within the last eight (8) or nine (9) years, he did not remember the Board operating that way. Chairman Hodom said they had always taken each case on its own merit.

A motion to deny the variance was offered by Mr. Hennessey, seconded by Micelli. The vote was Mr. Hennessey, Mr. Micelli and Mr. Umina against the variance; Mr. Brookins and Chairman Hodom were in favor of granting the variance.

The motion to deny the variance passed with a three (3) to two (2) vote.

Counsel was directed to prepare the Resolution.

Philip & Judy Smaldone

The next item on the agenda was the Resolution for Philip and Judy Smaldone.

The Board reviewed the draft Resolution prepared by Counsel Moore.

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

The Board reviewed the Draft minutes of October 18, 2006.

A motion to approve the minutes of October 18, 2006 as amended was offered by Mr. Hennessey, seconded by Mr. Umina and approved by all Board members present.

Chairman Hodom requested that the Board go into Executive Session to discuss a legal issue.

A motion to go into Executive Session was offered by Mr. Hennessy, seconded by Mr. Micelli and approved by all Board members present.

A motion to end Executive Session was offered by Mr. Umina, seconded by Mr. Micelli and approved by all Board members present.

Chairman Hodom stated that a letter had been received from a past applicant. The Board has directed the Counsel to respond to that letter. That correspondence will be available once it is composed.

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

The meeting adjourned at 7:40PM.