

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

November 05, 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 presided.

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: Karl Geist
St Thomas School
William Curtiss
Glenmont Mobil
Sonya and Alla Smelyanski

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

PUBLIC HEARING

Karl Geist

Chairman Hodom opened the Public Hearing. This was a continuation of an Adjourned Hearing. Mr. Platel said the applicant was proposing to construct a one thousand seven hundred twenty-six (1,726) square foot garage on the existing concrete slab that is located in the front yard of the seventeen (17) acre parcel. In a residence A zoning District an accessory structure may not be located in the front yard. The setback from the right-of-way to the structure according to the map is non-existent at zero (0) feet, not meeting the twenty-five (25) foot front yard setback requirement. The original structure that was located on the slab was demolished two and one half (2 ½) years ago after being damaged during a storm. Also for the Board's information the NYSDEC wetland map shows that this structure is located within one hundred (100) feet of a state wetland and if the variance were to be granted for the structure the applicant will need approval from NYSDEC in order to construct the building. The existing use of the property is for a single family dwelling and is located in Residence A zoning district.

A motion to indent the public hearing notice was offered by Mr. DeCancio, 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, June 18, 2008, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Karl Geist for a Variance under Article V, Districts, Use and Area Requirements, Section 128-27, (C) (1) of the Code of the Town of Bethlehem for construction of a garage in the front yard, for property at 16 Beacon Rd., Glenmont, NY 12077.

Mr. Geist presented. He said he wanted to put the garage up where it had been located before. He said the last time he was here the Board had requested that he submit some additional information which he has done. He submitted estimates, a letter from NYSDEC, a map and pictures of the old garage. He submitted the pictures because one of the neighbors said the new garage would be an eyesore and he wanted to show what had been there. He said all he has done since he's moved into the property was make it neater, cleaner and better. He

would like to continue with the new garage.

Chairman Hodom thanked Mr. Geist for contacting NYSDEC and submitting the letter and submitting a detailed estimate. He said during the first hearing there was discussion about possibly constructing the garage along the property along RT. 9W. He asked if Mr. Geist had considered doing that. Mr. Geist said the reason that NYSDEC was on the property in the first place was because that area along Rt. 9W is also within one hundred (100) feet of wetlands. He had permission from Albany County to put a driveway in on Rt. 9W and he started to do so, but one of his neighbors decided he didn't like that kept calling NYSDEC and the ACOE until someone came out and looked at it. He said the bottom line is that NYSDEC doesn't want anything to be there that would be one hundred (100) feet of the wetlands including the driveway which they made him move back.

Chairman Hodom asked Mr. Geist to point out on the map the area where they were constructing the driveway. He showed the Board that the driveway was just about across the street from the storage buildings on Rt. 9W. Chairman Hodom asked the dimensions of the building that had been destroyed. Mr. Geist said it was eighteen (18) feet in height, the width was eighteen (18) feet three (3) inches and the length was sixty-two (62) feet. Chairman Hodom asked if that structure was adequate to store the vehicles he had. Mr. Geist said yes.

Chairman Hodom said in reviewing the NYSDEC letter submitted, it appears that their preferred location and the only location they would issue a permit for would be back on the existing concrete pad. Mr. Geist said they told him it would be the least offensive to the wetlands.

Chairman Hodom said the last couple sentences of the letter from NYSDEC says, "if you had requested a permit to construct a garage on another undisturbed or vegetative portion of your property when you have an option to construct it on an already disturbed site, the Department would have likely have determined that your application did not meet standards for issuance of a permit because you had a reasonable and practicable alternative available to you." He asked Mr. Geist if that goes along with the verbal conversations he had with NYSDEC. Mr. Geist said yes. He said they told him that on the portion of the property on Rt. 9W he was allowed to cut trees down but he can't dig up stumps. It would be difficult to put a building in an area that he couldn't remove stumps.

Chairman Hodom said the estimate submitted to increase the slab on the existing slab with a foundation would be \$19, 175.00 and if he was able to use an alternative location and doing the same type of slab and foundation would be \$23, 650.00. Mr. Geist said that amount would not include the price of moving the storm sewer drain.

Mr. DeCancio asked what was the size of the foundation that the estimate was for. Mr. Geist said the front would be thirty-five (35) feet wide and the back would be eighteen (18) feet wide.

Mr. Cirillo, Beacon Rd. He thought the ponds were more that one hundred (100) feet from Rt. 9W. He said typically the buffer area is one hundred (100) feet. He didn't know if NYSDEC had made a determination that the frontage on Rt. 9W was wetlands or was just a buffer area from the pond. Mr. Geist said there are low spots that are filled with water about six (6) inches deep and NYSDEC considered that area wetlands. Chairman Hodom asked if both NYSDEC and ACOE told him the wetlands are considerably closer to his property line than the ponds are. Mr. Geist said there is a trail that goes around the outside of the ponds and then on the Rt. 9W side of that is more area with water in it and vegetation of wetlands. There is also one drainage pipe that drains into that area.

Mr. DeCancio said the letter from NYSDEC states that he can't build anywhere but where they are giving permission for which is on the existing slab. Mr. Micelli agreed. Chairman Hodom said it is their preferred location.

Mr. Moore said the ACOE jurisdiction over wetlands and waters of the United States is considerably greater than NYSDEC. Areas that would not be regulated by NYSDEC can be regulated by them. Mr. DeCancio said he read the letter from NYSDEC to mean that the applicant can't use any other part of the property for the garage other than where they are allowing it. Chairman Hodom agreed.

Karen Glastetter showed a copy of the wetland map she had and the area extended all the way to Rt. 9W.

Mr. Cirillo questioned the fact that NYSDEC told Mr. Geist he couldn't build anywhere on his frontage along

Rt. 9W. Mr. Platel said he had NYSDEC wetland maps in the building department. Mr. Moore said regardless of what is on the maps, this Board cannot make a determination of where the buffer areas are located.

Mr. Cirillo said the plans show a floating Alaskan slab. He said typically an engineer or architect will show existing with modifications to it. He said it was questionable whether the architect has documented the suitability for using the existing slab. Chairman Hodom said if the Board approved the variance, Mr. Geist has to go to the building department for a permit and the building department will review those items. Mr. Cirillo thought the Board should determine that ahead of time. He asked the difference in cost between refurbishing the existing slab and creating a new slab. Chairman Hodom said it was about \$4,485.00. Mr. Cirillo said Mr. Geist said he would have a hardship if he didn't use the existing slab. Chairman Hodom said building in another area was an option until NYSDEC said he couldn't. He said the Board had the plans for the garage that were stamped by an architect. Mr. DeCancio said this Board was looking at the area variance. The building itself would be reviewed by the building department. Mr. Cirillo thought he could still build on Rt. 9W. He said an accessory building such as a garage is usually twenty-four (24) feet by twenty-four (24) feet. This garage will be three (3) times as large. He said it will be eight (8) feet from the driving lane of Beacon Road.

Mr. DeCancio asked Mr. Cirillo if the garage was there when he purchased his house. He said yes. Mr. Geist had said that the size of the building would be the same as the one that had been destroyed. Mr. Decancio asked Counsel, if Mr. Geist had replaced the garage within one (1) year of the destruction of the old one, would he have needed to come for a variance. Mr. Moore said he would have been grandfathered in without a variance. Mr. Cirillo thought it would change the character of the neighborhood.

Carl Eirenspeck, Beacon Rd. He said he understands the problems Mr. Geist has had with his building. But as a neighbor directly across the street. He would like to see options exhausted before granting the variance. If the garage were built on Rt. 9W, which is zoned commercial, it would be worth more money in the future. He thought a building that size should be on Rt. 9W. There are a lot of commercial buildings on Rt. 9W.

Mr. Geist said his garage for his personal use should not be that far away from his home. If it's there he wouldn't be able to see it from his house. On the existing slab he can see and make sure no vandalism is going on. He reminded them that NYSDEC has already said no. If he could turn that area into useful commercial property, it would be. Tree clearing was the only thing he could do. He said in 1990 when Beacon Road was redone, the Town moved the right-of way to the edge of the building. If it was good enough then for Town, it doesn't know why Mr. Cirillo is making such a big deal about it because he was the one, as the Town Engineer, who wanted to move it there.

Mr. Cirillo said the building at the time was about seventy (70) years old and when those decisions are made, existing buildings need to be worked around. Beacon Road has changed with more new homes. He didn't think a building that close to the road was acceptable.

Karen Glastetter, Beacon Road. She said somebody made the comment that the garage would change the neighborhood. She said the old garage was not as nice as the new structure will be. The garage might seem tall but its' right next to five or six apartment buildings that are much taller than the proposed garage. She thought it would fit in with the surrounding buildings.

Mr. Geist said it would be constructed to look like a building. Chairman Hodom asked Mr. Geist to send in any letters of information his brother might have on the part of the property along Rt. 9W.

There being no further comments, the hearing was declared closed at 7:35PM.

APPLICATIONS

St. Thomas the Apostle School

The Board had received an application from St. Thomas the Apostle School at 365 Kenwood Ave., Delmar for a request for a variance under Article VI, Supplemental Regulations, Section 128-59, Signs, E. They want to place a sign on the school's property.

A motion to schedule the public hearing for St. Thomas the Apostle School on November 19, 2008 at 7:00PM

was offered by Mr. Watson, seconded by Mr. Micelli and approved by all Board members present.

William Curtiss

The Board had received an application from William Curtiss at 58 Cherry Avenue, Delmar for a request for a variance under Article V, Districts Use and Area Requirements, Section 128-30 (C) (3) maximum lot coverage. He wants to construct a two (2) car garage.

A motion to schedule the public hearing for William Curtiss on November 19, 2008 at 7:15PM was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

DISCUSSIONS

Glenmont Mobil

This applicant had requested a variance under Article VI, Section 128-59, Signs, D (1). Chairman Hodom started the discussion. He said the request for a second monument sign at the Feura Bush Road entrance was warranted because of the corner lot configuration. The corner monument sign that is currently there is located at the intersection of Rt. 9W and Feura Bush Road. It is not readable for traffic traveling east on Feura Bush Road. He didn't think that additional wall signage would be visible or adequate for traffic on Feura Bush Road and could possibly be a safety hazard. The second monument sign would be safest to notify the public of the site's services. He did not believe an undesirable change would occur in the neighborhood nor any detriment to nearby properties by the granting of the variance. The applicant cannot achieve the results by any other method, the request for the variance is not substantial, the proposed variance won't have any adverse effect on physical or environmental conditions in the neighborhood or the district. He recommended the approval of the variance.

Mr. DeCancio agreed with the Chairman. He believes it's a safety issue; he passes the site twice a day. Mr. Micelli supports the variance because you have to up to the intersection before you see the sign at the corner. Mr. Umina agreed. Mr. Watson supported the variance; he didn't think it was an unreasonable request.

A motion to approve the variance request for 415 Route 9W, Glenmont for an additional monument sign was offered by Mr. Watson, seconded by Mr. Umina and approved by all Board members present.

RESOLUTIONS

Brian Jordan

The Board reviewed the draft Resolution AV-0812 for Brain Jordan at 39 Rotterdam Drive, Glenmont for an area variance as prepared by Counsel.

A motion to adopt Resolution AV-0812 for 39 Rotterdam Drive, Glenmont as amended was offered by Mr. Umina, seconded by Mr. Micelli and approved by all Board members present.

Prior to review of the next two (2) resolutions, Chairman Hodom asked to go into executive session to discuss legal questions on the request for a rehearing.

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

A motion to come out of Executive Session was offered by Mr. Watson, seconded by Mr. DeCancio and approved by all Board members present.

Sonya and Alla Smelyansky – Appeal of Decision of Building Inspector

The Board reviewed the draft Resolution IV-0801 for Sonya and Alla Smelyansky at 7 Henderson Road, Glenmont for Appeal of Decision of Building Inspector as prepared by Counsel.

A motion to adopt Resolution IV-0801 for 7 Henderson Road, Glenmont as amended was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

Sonya and Alla Smelyansky – Area Variance

Chairman Hodom said subsequent to the public hearing on October 15, 2008 the Board received a request from the Law Offices of Rapport, Meyers, Whitbeck, Shaw & Rodenhausen, LLP to reopen the hearing and/or reconsider the denial. He said the Board has an option of reopening the hearing. In doing so it would require a unanimous vote. Mr. Moore said there were two (2) submissions from the law firm one on October 27, 2008 and another on November 3, 2008.

Chairman Hodom said a lot of the information covered in the November 3, 2008 letter was considered by the Board. The information could have been and should have been provided during the hearing time frame rather than after the fact. He recommended denial of the request to reopen the hearing.

Ms. Smelyansky asked to make a comment and it was denied by Chairman Hodom who reminded the applicant that the hearing was closed.

Mr. DeCancio said the Board had reviewed all the information and the new letter did not justify reopening of the hearing. Ms. Smelyansky tried to make another comment and Chairman Hodom suggested she seek counsel. Mr. Micelli, Mr. Umina and Mr. Watson all agreed with Chairman Hodom.

A motion to deny the request to reopen the public hearing was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

Ms. Smelyansky said she had neighbors with her to make comments.

The Board reviewed draft Resolution AV-0813 for Sonya and Alla Smelyansky at 7 Henderson Road, Glenmont for an area variance as prepared by Counsel.

A motion to adopt Resolution AV-0813 for 7 Henderson Road, Glenmont as amended was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

The Board reviewed the draft minutes of October 15, 2008 prepared by staff.

A motion to adopt the minutes of October 15, 2008 as amended was offered by Mr. Micelli, seconded by Mr. DeCancio and approved by all Board members present.

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

The meeting adjourned at 8:05 PM.