

**TOWN OF BETHLEHEM
BOARD OF APPEALS
September 6, 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: Patricia VanValkenburgh – 174 Maple Ave. – Public Hearing
McDonalds Corporation – 132 Delaware Ave. – Public Hearing
Lance Crossett – 100 Bridge St. – New Application
Angela & Phil Halwick – 940 River Rd. - Discussion

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

VanValkenburgh – Public Hearing

The first item on the agenda was a PUBLIC HEARING for a request from Patricia VanValkenburgh and Gary Krueger for a Variance under Article XIII, Use & Area Schedules Sections 128-100, minimum rear yard setback, for the construction of a two (2) story addition, which will encroach into the minimum setback. The addition will be nineteen point four (19.4) feet short of the forty (40) foot minimum setback. The existing structure is a single family dwelling in the Hamlet district.

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, September 6, 2006, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Patricia VanValkenburg & Gary Krueger for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Front Yards for corner lots & minimum rear yards of the Code of the Town of Bethlehem for construction of an addition, which will encroach into the minimum setback requirement at premises 174 Maple Avenue, Selkirk, New York.

Mr. Krueger, 174 Maple Avenue, Selkirk, presented for the applicants. They are proposing a two (2) story addition with a family room, master bath and closet on the first floor and an expanded bedroom and bathroom on the second floor. They wanted to demolish an existing garage, that is nine (9) feet

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

from the property line and move the location of the new garage closer to the road and fifteen feet from their neighbor's fence.

Mr. Platel confirmed that the existing residence is non-compliant under the Code. Chairman Hodom asked the applicants if they had discussed the addition with their neighbors. Mr. Krueger stated they had spoken to them and two (2) had submitted letters in favor of the addition. Mr. Krueger said they wanted to start in the spring of '07 and the project should be finished within one (1) year.

Chairman Hodom asked for a description of the homes layout and the condition of the garage. Mr. Krueger stated that the first floor held a living room, a study, existing bedroom, a dining room and kitchen. On the second floor were two (2) bedrooms and bath. He said that both garage doors have collapsed because of the sagging of the structure. The supports were rotted at the ground level; they currently use it with precautions. They will have an engineer determine if the structure is safe enough to continue its use through the winter. There are two (2) cars in the family.

Chairman Hodom asked if the architecture of the addition would match the home. Mr. Krueger stated it would and along with the addition, the existing roof needed to be replaced. They want to try to match the roof and gain additional space at the same time. It was mentioned that the roof was unique to the area. Mr. Krueger said that the outside of the house was sculptured stone and the goal was to remove the existing brick on the rear of the house and use it on the front of the addition.

There being no further questions or comments Chairman Hodom declared the hearing closed.

McDonald's Corporation – Public Hearing

The next order of business was the PUBLIC HEARING for McDonald's Corporation, 132 Delaware Avenue request for a variance under Article VI, Supplementary Regulations, Section 128-56, Off Street parking & Loading, Article VI, Supplementary Regulations, Sections 128-59, Signs. They are proposing to redevelop an existing site that will not meet the off street parking requirements and will exceed that allowable square footage and height for signage.

Mr. Platel stated that the applicant was proposing to demolish the existing drive thru restaurant in the Commercial Hamlet District and build a new four thousand three hundred forty (4,340) square foot drive thru restaurant with forty-four (44) off street parking spaces which are twenty-nine (29) spaces less than required by the Code. The applicant is also proposing signage that would exceed the allowable for the structure. The freestanding sign would be sixteen (16) feet tall and eighty-eight point two (88.2) square feet per side. The allowable height in this district is ten (10) feet and the allowable square feet per side is thirty-two (32). There are two (2) proposed wall signs totaling fifty-four point fifty-seven (54.57) square feet; allowable for the structure is forty-five (45) square feet.

A motion to indent the Public Hearing notice was offered by Mr. Micelli, seconded by Mr. Hennessey 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, September 6, 2006, at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of McDonalds Corporation for Variance's under Article VI, Supplementary Regulations, Section 128-52, off Street Parking & Loading, Article VI, Supplementary

Regulations, Section 128-54 E, Signs of the Code of the Town of Bethlehem for the re-development of an existing site, which will not meet the off street parking requirements and for new signage, which will exceed the allowable square footage and height requirements at premises 132 Delaware Avenue, Delmar, New York.

Victor Caponera, Esq., presented for the applicant. His offices are located at 3 Atrium Drive, Albany, NY. Also present for the applicant was Mr. Boyea, Bohler Engineering, Francis Essien from McDonald's Corporation and James Fox the owner of the franchise at 132 Delaware Avenue.

Mr. Caponera stated that the existing restaurant was constructed in 1969. The Commercial Hamlet District, that the restaurant was located in, allowed drive-thru restaurants subject to special use permits. The current restaurant is approximately four thousand, two hundred twelve (4,212) square feet with forty-three (43) parking spaces. They wanted to demolish the old and construct a new four thousand three hundred forty (4,340) square foot restaurant in approximately the same footprint. The new structure would not have the basement that currently exists for storage. The proposal would increase the parking by one (1) space. The zoning required one (1) space for every sixty (60) square feet of gross floor area. The required number of spaces would be seventy-three (73) spaces. They are requesting an area variance and in Mr. Campenara's opinion, the benefit to the applicant out weighed the detriment to the health, safety and welfare of the community. He was basing this on the history of the site and the many years of its existence. He did not feel it would create any significant change from its current use. In order to conform to the parking requirements, they would need to construct a much smaller building.

Mr. Caponera stated that his information from McDonald's indicated that the with a drive thru, approximately 65% of the customers would use that drive thru and not the parking. Because of that factor, they felt the proposed parking spaces would be sufficient for the restaurant. The owner, Mr. Fox, said he never experienced a full parking lot or a problem with the current number of parking spaces. They respectfully requested a favorable ruling on the parking variance.

Mr. Caponera said that they had a problem with water in the basement and the storage would now be on the main floor area. Mr. Fox said there had been many leaks and bringing the stock downstairs was not efficient. Storage on the main floor would help with the unloading of stock.

Mr. Brookins wanted to know if the seating capacity would change. Mr. Essien stated that it would be less, the sizing of the building was based on market data and the knowledge that the majority of the customers were drive-thru. Mr. Brookins wanted the existing seating numbers versus the proposed. Chairman Hodom asked the applicant to supply industry standard documentation that would support the statement that 65% of customers were drive-thru. Mr. Micelli wanted to know if the basement items would be stored in the structure or in an outside building. Mr. Essien said the items would be stored in the structure and deliveries would be scheduled to reduce the need for as much space as currently allocated to storage. Mr. Unima inquired as to the number of employees and if they needed the parking. Mr. Fox stated that thirty-five (35) to forty (40) people worked there, but the majority used public transportation or received rides from others. The most employees at one time that used the parking area was two (2) or three (3).

Chairman Hodom asked how many stacking spaces they were proposing. Mr. Boyea said the rebuild would be a more efficient design for the drive thru, supplying more stacking spaces. They were

proposing in excess of ten (10) spaces, only four (4) were required. The proposed structure was rectangular and oriented to Delaware Avenue with a more efficient circulation on the site. Mr. Boyea stated that per ADA standards, they had sufficient handicapped spaces, located adjacent to the main entrance. When asked, Mr. Boyea did not know if neighbors had been contacted for possible sale of property for additional parking, but they did not feel that additional parking was necessary. Mr. Caponera said a variance request for reduction of required parking spaces was more appropriate. Lands behind them would require a use variance because it was in a different zoning district.

Mr. Hennessey wanted to know why the building couldn't be smaller if the majority of the business was drive thru. This would help with parking requirements. Mr. Essien stated that the building was sized for the customers' needs and to satisfy all the Code requirements including ADA requirements and storage needs. The kitchen space would be increased to better service the drive thru cliental. The actual dining area would be smaller. Mr. Hennessey wanted to see the interior layout of the proposed floor plan versus the existing.

Mr. Micelli asked the type of buffer between the neighbor and the business and whether there had been many complaints from them. Mr. Fox stated there was a fence and plantings and within the last year the speaker in the rear was fixed and proved to be too loud for the neighbors and the volume was lowered.

Mr. Brookins asked what determined the core size of the building. Mr. Fox stated that the type of kitchen needed for today's customers and the type of food prepared influenced the size of the kitchen and the structure. Mr. Fox said that the old building was past the point of just a remodel, it needed more than that. Mr. Unima wanted to know if the parking demand increased sufficiently with the weather. Mr. Fox said that he had never seen the parking maxed out.

Bob Zembra, 3 Crannell Avenue, asked the height of the structure. Mr. Boyea said it would be about six (6) feet higher than the existing building. It appeared higher because the design of the roofline had changed to straight lines. The parapet roof was to conceal the mechanical workings on the roof. Chairman Hodom stated that the applicant would need to go to the Planning Board for site design; this Board dealt with the number of parking spaces and the square footage and height of the signage.

Pete Verhagen, 5 Mason Rd., said the proposed footprint appeared much longer and the drive thru would pass behind his garage, not next to it. Chairman Hodom said that the location of the building on the site was a Planning Board issue. Mr. Verhagen said that he preferred the proposed location.

Chairman Hodom moved the discussion to the next variance request, the signage. Mr. Caponera said there was an existing free standing non-conforming sign on the site that was two hundred (275) seventy-five square feet and twenty-five (25) high. The Zoning Law allowed a maximum of ten (10) feet height for free standing signs. Their proposed sign would be one hundred (100) square feet and sixteen (16) feet high and set back ten (10) feet from the property line. Mr. Boyea stated that it was fifty four point five (54.5) square feet wall sign. Mr. Platel said the building department boxed letters when it calculated the square footage. There were two (2) signs proposed for the building wall. Total proposed signage is one hundred fifty-four point five (154.5) square feet.

It was confirmed that menu boards are exempt. The applicant was allowed one (1) square foot of signage per lineal foot of the façade, total allowable wall signage was forty-five (45) square feet under Chapter 128 Section 59-D of the Town Zoning Law.

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

Mr. Boyea stated that they usually keep the free standing sign on a rebuild but they were told by Mr. Platel that they could keep the sign because it was preexisting but they would not be allowed any building signage at all. They wanted wall signage and McDonald's decided to make this application for a variance. Chairman Hodom wanted to know if the size of the signs were set at a corporate level. Mr. Boyea said this sign design went the best with this building design. Mr. Essien stated that a reduction in the freestanding sign might affect the monetary return of that location. Chairman Hodom and Mr. Unima wanted to see the studies to support that statement. Mr. Fox said that the new design of the building did not look like a typical McDonald's and he felt it needed a freestanding sign. He liked the existing sign because it could be seen from CVS and as soon as you come across the bridge.

Chairman Hodom said even with the proposed reduction, the applicant was still fifty percent (50 %) over the allowable square footage for signage. He said that the biggest problem before the Board was that the Town wanted to put uniformity on Delaware Avenue as far as sign height was concerned. The Board needed to weigh the benefit to the applicant versus the injury to the Town. He asked the applicant to look at a further reduction in the signage. Mr. Boyea said that they had looked at other options and this was what McDonald's Corporation decided to submit. They did not feel that a monument sign would be effective at this location, though they did have one at the other store that Mr. Fox owned on Holland Avenue in Albany. Mr. Hennessey wanted to know the square footage of that sign. Mr. Essien said the monument sign was about five (5) by five (5) feet. Mr. Fox said that the visibility was better there. That type of sign worked there because there were no other businesses around them.

Mr. Caponera thought a monument sign would be a hazard at the Delaware Avenue location. People would be stopping quickly to turn into the driveway because they would see the sign late. The Board thought the word "hazard" was a little strong.

Chairman Hodom asked if there was a McDonald's that was similar to their proposal. When asked why, he stated that he was concerned with the percentage their sign proposal was over the allowable under Code. There was not one close by.

Matthew Scheuler, Empire News, wanted to know how far from the road was the existing sign. The applicant stated it was less than five (5) feet from the property line. The new sign would be ten (10) feet from the line.

Mike Carey, owner of the Solo Auto Sales, next door wanted to know if the side sign and the eyebrow over the front sign was included in the square footage of signs. The applicant said it was a computer-generated photo and the side sign was not a part of the variance request and Mr. Platel said the eyebrow would not be considered a part of the sign. Mr. Carey said that he had not been approached by the applicant concerning the purchase of additional land for parking spaces.

Kevin Ray, 13 Mason Rd., said they have a current exit sign that partially obstructs the view from their property when turning onto Delaware Avenue.

Mr. Essien stated that once they obtained their approvals, the timetable from demolition to rebuild was about ninety (90) to one hundred (100) days.

Chairman Hodom reminded the applicant of the following items the Board wanted them to provide: the

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

existing floor plan and the proposed floor plan; industry standard studies on size of sign to profitability of the establishment; and the industry standards of drive thru percentages. It was suggested that the applicant show how the size of the sign would affect their business.

A motion to adjourn the hearing until October 18, 2006 at 7:00 PM was offered by Mr. Micelli, seconded by Mr. Hennessey and approved by all Board members present.

Lance Crossett – acceptance of an application

The next item on the agenda was the acceptance of the application of Lance Crossett concerning property at 100 Bridge Street, Selkirk, for a variance under Article XIII subsection 128-100, Schedule of Area, Yard & Bulk requirements. The applicant has a pending land Division with the Town. Two (2) residential structures presently exist on one (1) lot and in order to divide the two (2) residential structures, the minimum lot widths cannot be maintained.

A motion to schedule the Public Hearing on September 20, 2006 at 7:00 PM was offered by Mr. Brookins, seconded by Mr. Hennessey and approved by all Board members present.

Angela & Phil Halwick – Discussion

The next item on the agenda was the request from Angela & Phil Halwick, 940 River Road, Selkirk, for a variance under Article XIII, Use & Area Schedules, Section 128-100, Minimum Side Yards, for the construction of an attached garage addition, which will encroach into the Side yard setback requirement.

The application had been heard on two (2) meetings, the landowner adjacent to the Halwick had had some reservations but seemed to be satisfied at the last meeting. He supported the application. The drainage issue had been discussed and the Board was satisfied with the layout of the project. Chairman Hodom recommended a condition be added to the approval resolution stating the final site work of this application be in compliance with the Apple Landing Final Plat and Subdivision Approval Document and any other local codes that might apply.

A motion to approve the application with conditions as set forth by the Chairman was offered by Mr. Hennessy, seconded by Mr. Micelli and approved by all Board members present.

Patricia VanValkenburgh & Gary Krueger – Discussion

The neighbors were not in opposition to the application. The garage was falling down and the project would be an improvement to the site in appearance and safety.

A motion to approve the application as submitted was offered by Mr. Micelli, seconded by Mr. Brookins and approved by all Board members present.

A motion to approve the minutes as amended was offered by Mr. Brookins, seconded by Mr. Umina 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.

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

The meeting adjourned at 9:20PM.