

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
August 1, 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  
Lenny Micelli, Board of Appeals Member  
Mark Hennessey, Board of Appeals Member  
Kenneth Umina, Board of Appeals Member  
  
Mark Platel, Assistant Building Inspector

AGENDA: Charles & Ada Court  
Matchless Stove & Chimney  
Aldo & Inez Mencaccine  
JKC Realty LLC

Chairman Hodom called the meeting to order at 7:00pm and opened the public hearing.

**Charles & Ada Court**

The Board had received an application from Charles & Ada Court for area Variances under Article XIII, Section 128-100, total lot occupancy and Article V, Section 128-27, lot occupancy for accessory structures. The applicant wishes to construct a two (2) car garage.

Mr. Platel stated that the applicant is proposing to construct a six hundred seventy-six (676) square foot detached garage. The total square footage for accessory structures with the addition of the new garage will be one thousand sixty-five point two (1,065.2) square feet, which is four hundred sixty-five point two (465.2) square over the six hundred (600) square feet allowed. The lot occupancy for accessory structures will be eight point eighty-eight percent (8.88%), which is three point eighty-eight percent (3.88%) over the five percent (5%) allowed.

The total structures allowed for the site will be two thousand eight hundred point seven (2,800.7) square feet, which is four hundred point seven (400.7) square feet over the two thousand four hundred (2,400) square feet allowed. The lot occupancy for total structures will be 23.34%, which is 3.34 over the 20% allowed.

The existing main use of the property is as a single family dwelling and is located in a Residence "A" Zoning District

A motion to indent the public hearing notice was offered by Mr. Micelli, seconded by Mr. Brookins 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, August 1, 2007, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on the application of Charles and Ada Court for an area Variance under Article XIII, Section 128-100, Schedule of Area, Yard & Bulk Requirements, Lot Occupancy, of the Code of the Town of Bethlehem for construction of a garage, at 71/73 Babcock Terrace, Selkirk, New York.

Mr. and Mrs. Court presented. Mrs. Court said they would like to build a two (2) car garage because they both have health issues. She has arthritis and her husband has Parkinson's disease, which is progressive. They have two (2) vehicles that currently are kept outside. She said they place the cars under a tree to keep them out of the sun but they become soiled by birds. In the winter, the snow covers the cars and trying to clean off the cars and shovel to the cars is very difficult. They currently have a tractor for plowing that is kept in their Amish building that was a distance from the driveway and that area is lower than the driveway. It is difficult to get the tractor to driveway without additional shoveling. She was also concerned that with both cars in the driveway, emergency vehicles would have a hard time getting to the house. At their age, this was a concern. She said that she was 76 years old and her husband is 79 years old.

Chairman Hodom asked if they had spoken to the neighbors. Mrs. Court said they had. Mrs. Sipperly, one of their neighbors, had called staff to let them know that they did not have a problem with the construction of the garage. She said that the two houses across the street were the only ones that would be able to see the proposed garage. The applicant had submitted pictures of the garage that they wanted to build. The contractor would be Mr. Bill Banahan. The Court's wanted to get on his list for construction prior to the upcoming winter season. The garage would have electric but no heat. Mrs. Court said there was an area over the garage that would be used for storage. There were access stairs to that area. They have a small attic in the house with pull down stairs She can barely make it up those stairs now. The storage area in the proposed garage could be used in place of the attic in the house. Mrs. Court said they wanted to be able to house the tractor in the garage during the winter to be able to plow the driveway easier and reduce the amount of shoveling that they would need to do.

Chairman Hodom asked if the architectural features of the proposed garage would match the existing house. Mr. Court said it would. The proposed garage would be set back twenty-three (23) feet from the property line. Mr. Platel said that the Code required the garage, an accessory building, to not be located in the front yard setback. A front yard is defined as a space on the same lot with the main building extending the full width of the lot situated between the street line and the front line of the building. The accessory structure must be placed behind that line. Mr. Court did not think that the garage would take up that much lot space. Chairman Hodom asked if the Amish building that they had mentioned before was the existing shed that was being shown on the site plan. Mrs. Court confirmed. Mr. Court said there was another lower garage attached to the house that the tractor was kept in during the winter. The tractor needed chains and still sometimes it didn't make it up the hill. Mrs. Court said that that garage was more like a cellar; it was never used as a garage.

Chairman Hodom asked if they would be able to reduce the size of the garage. Mr. Court said they wanted to park two (2) cars and a snow-blowing tractor. He said they needed the size they proposed. Mr. Hennessey asked if they would be putting in another driveway to access the new garage. Mrs. Court said they would. Mr. Umina noted the proposed garage size appeared to be what the Court's needed for their proposed uses. Chairman Hodom said if they could rotate the garage so the overhead doors would face the house and not the street. He noted that on their street, there aren't any large garages. He was suggesting this change to try to maintain some of the character of the street by making the side of the garage look more like a residence. Mr. Court said that there were quite a few larger garages on the street. Chairman Hodom said that those garages were set way back from the street. He thought if they could rotate the garage and move it closer to the side property line it would blend in better with the neighborhood. Mr. Court said it would make it further away from the house. He didn't think the garage would be an eyesore and the street was a dead end. Chairman Hodom said the land at the end of the street could be developed someday. He was offering the change to the proposed plans but if the Court's didn't think it was a viable alternative, they could say so. Mrs. Court said that the pictures that were submitted did not show the doors that would be on the garage, which she thought were very attractive. Mr. Hennessey thought that the separation between the house and garage, if rotated, would not be sufficient to negotiate the space with the cars the Courts owned. Chairman Hodom said there would be enough room if the garage were pushed further away from the house. The Court's did not want to rotate the garage; they would prefer to have the garage as proposed. Mr. Court said it would be much easier for them to get in and out of the garage with a straight driveway to the garage.

There were no comments from the audience. Chairman Hodom declared the hearing closed at 7:30pm.

## **Matchless Stove & Chimney**

The Board had received an application from Matchless Stove & Chimney for an area Variance under Article VI, Section 128-59 (D), Signs. The applicant wanted to replace an existing sign. The public hearing had been held on July 18, 2007.

Chairman Hodom started the discussion. He said that the existing sign is fourteen (14) feet in height and forty-nine (49) square feet in size. The proposed sign is fifteen (15) feet in height and thirty (30) square feet. He thought the existing reeds could present a problem. NYSDOT does mow about ten (10) feet into the right of way. He did not think the proposal would cause an undesirable change for in the neighborhood or nearby properties, the benefit could not be achieved by other means, the problem was not self created and the variance was not substantial. The applicant is reducing the size of the sign. He didn't see any problem allowing a local business the ability to upgrade their signage. Chairman Hodom recommended the approval of both variances.

Mr. Micelli said that while traveling south on Rt. 9W, the brush did not keep him from seeing the existing sign. Traveling north, the neighbor's car canopy made it difficult to see the sign. He would have liked to have seen the ten (10) foot sign versus the fifteen (15) foot sign. He didn't want to start a trend in the Town to allow higher signage. He understands that this is a well-established business but he didn't see the need for the variances. He was not in favor of granting the variances.

Mr. Hennessey said that the design of the proposed sign would be a benefit to the neighborhood and its nice to see an existing business expanding to new locations. But he wanted to know if the variance could be approved with a lower height. He said that the reeds were seasonal in nature.

Mr. Brookins said that the proposed sign was an attractive improvement to the neighborhood, it's rural in nature with mixed uses in the area and it would be an improvement to the existing sign. It would be a benefit to the applicant for branding his business. He said that up and down Rt. 9W has signs that are a variety of heights through preexisting conditions. The speed limit in the area of the sign is forty-five (45) miles per hour, so a higher sign would make it easier to see. He did not think that the sign would be a detriment to the neighborhood. Even though the reed would be gone in the winter, snow banks would replace them.

Mr. Umina didn't think the applicant demonstrated the need for relief from the current sign ordinances. He didn't think that the fact there were preexisting signs that were larger should that be used as a deciding factor in granting the variances. He said there was an effort to control signage and he was against granting the variances.

Mr. Brookins said that sign issues keep coming before the Board and if the Town really wants consistency in signage, then they should put all businesses on notice that they have a certain amount of time to conform to the new sign ordinances.

A motion was made by Chairman Hodom to allow a four (4) foot variance over the allowed ten (10) foot for the height of the sign and to allow the internal lighting of the sign, seconded by Mr. Brookins, and with a vote of Chairman Hodom and Mr. Brookins for and Mr. Umina, Mr. Micelli and Mr. Hennessey against. The motion was defeated and the variances were denied.

## **Aldo & Inez Menacaccine**

The Board had received an application from Aldo & Inez Mencaccine for an area Variance under Article XIII, Section 128-100, rear yard setback. The applicant wanted to construct a sunroom. The public hearing had been held on July 18, 2007.

Chairman Hodom said it was a small room addition on a small lot, several neighbors were in favor and after considering the criteria of an area variance, he recommended the approval of the requested variance.

Mr. Micelli said he visited the site and the neighbors were not in opposition. He was in favor of the

variance.

Mr. Hennessey said it was not a significant variance and it would allow two (2) members of the community to age in place. He felt it would be a desirable change to the house. He was in favor of granting the variance.

Mr. Brookins said that it was a minor request and the room would serve their purposes well.

A motion to approve the variance request as submitted was offered by Mr. Umina, seconded by Mr. Hennessey and approved by all Board members present.

### **JKC Realty LLC**

The Board had received an application for an area Variance under Article XIII, Section 128-100, lot width and highway frontage. The applicant wished to subdivide a lot, retaining the portion with the existing business for himself. The public hearing was held on July 18, 2007.

Chairman Hodom said that the applicant has made a great effort to comply with the current zoning by purchasing the adjoining property for thirty thousand dollars (\$30,000). There isn't any other property that is available for purchase. He said that Lot #1 would not require any variances because the applicant has stated that he would make that Lot, Code compliant. The variances for Lot #2 are not substantial. He recommended granting the two (2) variance requests for Lot #2.

Mr. Brookins said that the applicant has done everything that he could possibly do to bring his lots into compliance. He was in favor of granting the variance.

Mr. Umina said that he has spent a significant amount of money to bring one of the lots into compliance. He was in favor of granting the variances.

Mr. Micelli said that he was in favor of granting the variances for the reasons mentioned.

Mr. Hennessey said that he reviewed the Religious Corporations Law and the Not-for profit Law. Because the applicant doesn't own the property and only has an option, there was a potential undesirable affect on the neighborhood by the addition of a retail shop and the benefit sought by the applicant could be achieved by a land lease, he was not in favor of granting the variances. He does agree that the applicant has tried to come into compliance.

Mr. Brookins said it was normal for someone wanting to purchase land that would need a variance to have an option on the property and not buy prior to the granting of the variance. Mr. Moore said that even large companies such as Lowes and Walmarts, come before Boards for approvals prior to the purchase of land.

Mr. Umina asked Mr. Hennessey if the sale of land was difficult under the Religious Corporations Law. Mr. Hennessey said the sale had to be voted on by the Church's board and then they apply to either the County or the Supreme Court.

Mr. Moore said that clear title to the property would be a condition of the variance.

A motion to approve the variances on Lot #2 with conditions was offered by Mr. Brookins, seconded by Mr. Umina and with a vote of Chairman Hodom, Mr. Micelli, Mr. Umina and Mr. Brookins for and Mr. Hennessey against, the motion was carried and the variances were approved.

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

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

The meeting adjourned at 8:05 PM.