

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
December 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: Lyngard, Paul – 33 Henry Ave.

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

Chairman Hodom stated that the first order of business was a public hearing for a Variance under Article V, Section 128-100, Minimum side-yard setbacks, requested by Paul Lyngard for property located at 33 Henry Avenue, Albany, NY. The applicant wants to construct a 24 x 14 foot carport, which will encroach into the minimum side yard setback by 3.7 feet.

Mr. Platel stated the proposed carport would be three hundred thirty-six (336) square foot addition to the side of the existing main structure creating a side yard setback of six point three (6.3) feet. This is three point seven (3.7) feet shy of the minimum ten (10) foot side yard setback required. The existing structure is a single family home in the Residence A zoning district.

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, December 6, 2006, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Paul Lyngard, for a Variance under Article V Section 128-100, maximum side yard setback, of the Code of the Town of Bethlehem for construction of a carport at premises 33 Henry Avenue, New York.

Mr. Lyngard stated that he lived at 33 Henry Avenue and he wanted to construct a 24x14 foot carport on the side of his home. He has lived at this location since 1972. An attached garage had been changed into additional living space about 8 to 10 years ago. He has a temporary structure on the site for his car but it must be removed eventually. It would probably remain until the end of the winter.

Chairman Hodom said that many previous requests for carports were eight (8) or ten (10) foot wide

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structures. If Mr. Lyngard used that width in his construction, he would not need a variance. Mr. Lyngard said that he wanted the fourteen (14) feet because when both doors of the car were open it measured twelve (12) feet and he wanted a little extra room for a snow blower. He had the adjoining neighbors sign a statement that they had no objection to the carport.

Mr. Micelli asked Mr. Lyngard if he had any intention of enclosing the structure in the future. Mr. Lyngard said no. He said that the construction, which would be done by himself, should be done within one (1) year. The outside of the structure and the roof would match the existing home. Mr. Brookins asked the width of the temporary structure. Mr. Lyngard replied that it was twelve (12) feet wide.

There being no further comments from the audience or the Board, Chairman Hodom declared the hearing closed at 7:13pm.

## **Discussion**

Chairman Hodom stated that at the last meeting the Board had discussed McDonald's and Counsel had sent the Board a memo with some additional information. He wanted to know if the Board wanted to go into executive session to discuss the material from Counsel.

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

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

Chairman Hodom stated that in his opinion, within the 1986 Resolution to approve the Use Variance for the drive thru, it was the intent of the Zoning Board of Appeals to reduce the number of parking spaces required because they had mentioned such within the resolution.

A motion to take a new vote on the McDonald's application was offered by Chairman Hodom, seconded by Mr. Micelli and approved by all Board members present.

Chairman Hodom stated that the use variance granted in 1986 carried over to future owners, it runs with the land. The area variance is a balancing between the benefit to the applicant compared to the detriment to the health, welfare and safety of the community. The facility had been in operation since 1969, and he was not aware of any problems with parking, or a detriment to the community or the neighbors. He said when he reviewed the five criteria the Zoning Board looks at when deciding an area variance; in his estimation, they fit within those criteria. He said the only person who had spoken at the public hearing was a neighbor who was in favor of the new placement of the building and new circulation. He thought that the Board should look at the benefit that McDonald's has given to the community over the years. He was in favor of approval.

Mr. Brookins stated that the existence of the 1986 Resolution provides some clarity as to why McDonald's is in this situation. He agreed that the granting of that 1986 Resolution granted them the parking variance in addition to the use variance. He was in favor of the approval.

Mr. Hennessey did not agree that the 1986 Resolution granted them the parking variance as well as the use variance. He felt there were alternatives they could have pursued and the parking variance request was substantial. He thought the need for the variance was self-created; they did not have to tear down

the building. He was not in favor of the variance.

Mr. Micelli said that after reading the information that the Counsel had supplied pertaining to the 1986 Resolution and his explanation of that information, he was now in favor of the variance.

Mr. Umina agreed with the reasons given by Mr. Hennessey and he was not in favor of granting the variance.

A motion to approve the parking variance application was offered by Mr. Brookins, seconded by Mr. Micelli with a vote of Chairman Hodom, Mr. Brookins and Mr. Micelli in favor and Mr. Hennessey and Mr. Umina against. The application is approved.

Chairman Hodom directed Counsel Moore to prepare the Resolution.

It was decided that Mr. Lyngard's application would be discussed at the next Board meeting.

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

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

The meeting adjourned at 7:45PM.