

# TOWN OF BETHLEHEM



*John Clarkson*  
*Town Supervisor*

## Zoning Board of Appeals Minutes

*David Devaprasad*  
*Chairman*

Wednesday, November 1, 2017  
6:00 PM

### I. Call to Order

A Regular Meeting of the Zoning Board of Appeals of the Town of Bethlehem was held on the above date at the Town Hall Auditorium, 445 Delaware Avenue, Delmar, NY. The Meeting was called to order at 6:00 PM.

| Attendee Name   | Title                                    | Status  | Arrived |
|-----------------|--|---------|---------|
| Dave Devaprasad | Chairman                                 | Present |         |
| Jane Barnes     | Board Member                             | Present |         |
| Joshua Beams    | Board Member                             | Present |         |
| Donna Giliberto | Board Member                             | Present |         |
| Jeremy Martelle | Board Member                             | Present |         |
| Michael Moore   | Planning/Zoning Board Counsel            | Present |         |
| Mark Platel     | Assistant Building Inspector             | Present |         |
| Craig Yaiser    | Assistant Building Inspector             | Present |         |
| Kathleen Reid   | Assistant to the Zoning Board of Appeals | Present |         |

### II. Public Hearings

- A. Public Hearing - Matthew Gokey-63 Salisbury Road, Delmar - for an area variance Under Article XIII, Section 128-47, Fences and Freestanding Walls and Article VI, Section 128-600, Swimming Pools, Spas and Hot Tubs, E.(17-01000023)

The Applicant is proposing to install a swimming pool and a 4.5 foot fence on a through lot. As determined previously by the building inspector a through lot has 2 front yards, a swimming pool and a fence exceeding 4 feet may not be installed in a front yard.

A motion to indent the Public Hearing notice into the record was offered by Mr. Martelle, Seconded by Ms. Giliberto.

## NOTICE OF PUBLIC HEARING

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, November 1, 2017 at 6:00 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Matthew Gokey for area variance(s) located at 63 Salisbury Road, Delmar. The Applicant is proposing installation of a fence and pool that does not meet the requirements of the Town Code under Article VI, Section

128-47, Fences and Freestanding Walls, and Article VI, Section 128-60, Swimming Pools, Spas and Hot Tubs, E. location of a swimming pool may not be located in the front yard of the property.

Mr. Gokey presented to the Board on his own behalf, Mrs. Gokey was also present to answer questions. Mr. Gokey displayed several views of his property and views from an adjacent home to his property where the pool would be located. He addressed comments and concerns from neighbors that submitted letters to the Board. Counsel Moore noted variances previously granted for installation of a pool on a corner lot are different than the installation of a pool on a through lot.

The following items were discussed:

Alternative locations

Buffering provided by trees on property

Safety provided by proposed fence

Noise created by pool activity

Description of surrounding neighborhood

The following residents submitted letters of concern:

Caryl Siber - 57 Burhans Place

Linda E. Brown - 65 Burhans Place

Michael Traynor - 70 Salisbury Road

The following residents submitted letters in favor of the variance:

Bradley and Paulina Glass - 67 Salisbury Rd

Richard Hamm and Anette [*sic*] Lippold - neighbor

David and Linda Burtis - 61 Salisbury Road

There was no one present to speak in opposition or in favor of the variance.

The Board voted to close the Public Hearing as follows:

|                  |   |
|------------------|---|
| <b>RESULT:</b>   | <b>CLOSED [UNANIMOUS]</b>                     |
| <b>MOVER:</b>    | Joshua Beams, Board Member                    |
| <b>SECONDER:</b> | Jane Barnes, Board Member                     |
| <b>AYES:</b>     | Devaprasad, Barnes, Beams, Gilberto, Martelle |

- B. Public Hearing - Maureen Young-67 Orchard Street, Delmar for an area variance under Article XIII, Use and Area Schedules, Section 128-100, Schedule of Area, Yard and Bulk Requirements, A.(17-01000025)**

The Applicant is proposing to construct a 152 square foot carport on the existing main

structure which will create a side yard setback of 3.3' which is 4.7' shy of the 8' required.

The property is located in a Core Residential Zoning District and is used as a single family dwelling.

A motion to indent the Public Hearing notice into the record was offered by Ms. Giliberto, Seconded by Ms. Barnes.

## **NOTICE OF PUBLIC HEARING**

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, November 1, 2017 at 6:10 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Maureen Young for area variance(s) located at 67 Orchard Street, Delmar. The Applicant is proposing a construction of a carport addition to the existing single family dwelling that will not meet the requirements of the Town Code under Article XII, Section 128-100, Schedule of Area, Yard and Bulk Requirements, A.

Ms. Young was present to speak on her own behalf. She gave a brief history of the parcel and description of her property and the surrounding neighborhood.

The following items were discussed:

Aesthetics and construction details of the proposed carport and driveway

Alternative locations

The Board received a letter in support of the variance from Marc and Chris Kleinhenz - 65 Orchard Street

There was no one present to speak in favor or in opposition to the variance.

The Public Hearing was closed as follows:

|                  |  |
|------------------|--|
| <b>RESULT:</b>   | <b>CLOSED [UNANIMOUS]</b>                      |
| <b>MOVER:</b>    | Jane Barnes, Board Member                      |
| <b>SECONDER:</b> | Joshua Beams, Board Member                     |
| <b>AYES:</b>     | Devaprasad, Barnes, Beams, Giliberto, Martelle |

### **III. Applications - Review and Possible Public Hearing Scheduling**

### **IV. Resolutions**

- **PAUL KLEIN-312 BENDER LANE GLENMONT**

## **RESOLUTION**

**AV-1725**

**Paul and Theresa Klein**  
**312 Bender Lane, Glenmont**

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a Variance under Article XIII, Use and Area Schedules, Section 128-100A (Schedule of Area, Yard and Bulk Requirements, Residential “A” District, minimum front yard) requested by Paul and Theresa Klein (“Applicants”) for property at 312 Bender Lane, Glenmont, New York; and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on October 18, 2017; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

**FINDINGS OF FACT**

Applicants propose to demolish an existing front porch on their home and replace it with a slightly larger four-season room. The proposed new structure would encroach 11.8 feet into the required 35-foot front yard setback (setback of 23.2 feet proposed). The existing structure is set back 26.3 feet from the right of way of

Bender Lane in the front yard, a pre-existing non-conforming condition. The property is located in the Residential “A” District and is occupied by a single-family dwelling.

Applicants Paul and Theresa Klein testified in support of the proposal.

The Applicants’ home was built around 1949. The proposed new structure would be built utilizing the existing porch foundation, and an existing set of stairs for access. It would include a three-foot overhang on the roof to improve drainage.

Possible alternative locations for the proposed structure not needing a variance are not feasible and/or cost prohibitive. Placing the new porch on the west side of the house would leave it without access from the outside (2 existing bedrooms in the home at this location). On the south side of the home is an existing septic tank, which would have to be moved. Placing a new porch on the north side of the home would detract from its appearance.

The property owner closest to the proposed new structure is a Nature Preserve on the opposite side of Bender Lane. Applicants have spoken with Preserve managers, who expressed no opposition. The nearest residential structure to the property is some distance away to the west, on the opposite side of the home.

There was no testimony submitted in opposition to the Applicants’ proposal.

#### CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicants, the Board determines that the proposed variance (Residential “A” District, minimum front yard) will be granted.

The Board has determined that the requested variance will be a benefit to the Applicants in their use and enjoyment of the home and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. The new porch will improve the appearance of the home and be a benefit to the neighborhood.

Given the existing configuration of this older home, the benefit sought by the

Applicants (improved living space utilizing existing foundation) cannot be achieved on another part of the home by some method other than a variance.

The requested variance will have no adverse effect on the physical or environmental conditions in the neighborhood.

The requested variance is minimal, approximately 3 feet larger than the existing non-conforming condition, and is the minimum variance that is necessary and adequate to the Applicants' needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variance has been created by the Applicants but this factor is outweighed by the above Findings and Conclusions.

The proposed porch addition is a "Type II" action under the NY State Environmental Quality Review Act ("SEQRA") (6 NYCRR 617.5 [c] [9], [10]), and no environmental impact review is required.

The requested variance (Residential "A" District, minimum front yard) is GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the October 18, 2017 hearing except as the same may be modified by the Town Building Department;
2. In the construction of the addition, the Applicants shall match, as nearly as possible, the existing roofing and siding on the home; and
3. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

November 1, 2017

S. David Devaprasad  
Chairman  
Zoning Board of Appeals

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The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on November 2, 2017.

Kathleen Reid, Secretary

### Zoning Board of Appeals

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Joshua Beams, Board Member  
**SECONDER:** Donna Giliberto, Board Member  
**AYES:** Devaprasad, Barnes, Beams, Giliberto, Martelle

#### V. Discussion/Possible Action

- **MATTHEW GOKEY-63 SALISBURY ROAD, DELMAR**

The Board Voted to APPROVE the variance(s) as follows:

Chairman Devaprasad-

Not an undesirable change to the neighborhood

No other feasible location

Not a substantial request

Not self-created

Mr. Beams-

Negligible change to neighborhood

No other feasible location

No impact on environment

Mr. Martelle-

Minimal impact on neighborhood

Other pools in neighborhood/a pool is a permitted use

Noise factor is not an issue

Trees provide a buffer

For all reasons previously stated

Ms. Giliberto-

For all reasons previously stated

Fence proposed makes sense for noise and as a visual barrier

Ms. Barnes

For all reasons previously stated

Buffering of trees for a through lot is a "positive" for this application

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Joshua Beams, Board Member  
**SECONDER:** Jane Barnes, Board Member  
**AYES:** Devaprasad, Barnes, Beams, Giliberto, Martelle

- **MAUREEN YOUNG-67 ORCHARD STREET, DELMAR**

The Board Voted to APPROVE the variance(s) as follows:

Mr. Beams-

No other feasible location

No environmental impact

Noted for record that the Board is granting the variance for an "open" carport

Mr. Martelle-

Not an undesirable change

Chairman Devaprasad-

For all reasons previously stated

Ms. Giliberto-

Applicant has covered the five factors required for a variance

Not a substantial variance

No other feasible location

Ms. Barnes-

For all reasons previously stated

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Jane Barnes, Board Member  
**SECONDER:** Jeremy Martelle, Board Member  
**AYES:** Devaprasad, Barnes, Beams, Giliberto, Martelle

**VI. New Business**

**VII. Minutes Approval**

**A. Wednesday, October 18, 2017**

**RESULT:** ACCEPTED [UNANIMOUS]  
**MOVER:** Jeremy Martelle, Board Member  
**SECONDER:** Joshua Beams, Board Member  
**AYES:** Devaprasad, Barnes, Beams, Giliberto, Martelle

**VIII.**

**Motion To:** Adjourn

**RESULT:** **APPROVED [UNANIMOUS]**  
**MOVER:** Donna Giliberto, Board Member  
**SECONDER:** Jeremy Martelle, Board Member  
**AYES:** Devaprasad, Barnes, Beams, Giliberto, Martelle

The Meeting was adjourned at 7:01 PM

Next Regular Meeting November 15, 2017 at 6 PM