

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
February 18, 2004**

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  
                      Robert Wiggand  
                      Gilbert Brookins  
                      Marjory O'Brien  
                      Leonard Micelli

                          Michael Moore                           Attorney to the Board

                          Mark Platel                                Building Inspector

Chairman Hodom called the meeting to order at 7:30 p.m.

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for a Variance under Article VI, Permitted Uses, Section 128-17 (D), Accessory Business Signs requested by CVS Pharmacy (Applicant), Mullen Capitol LLC (Owner) for property at 256 Delaware Avenue, Delmar, New York. The Applicant wishes to construct an electronic message board, which will exceed the allowable square footage at the premises of 256 Delaware Avenue.

CHAIRMAN HODOM: Mr. Platel, would you give us the reason for the hearing, please?

MR. PLATEL: Yes, Mr. Chairman. The applicant is seeking a Variance to replace an existing pylon sign which when combined with the remaining signage on the structure will exceed the allowable signage for the structure. The building frontage on the principal street is 60.44-feet, which allows 120.88-square feet of total signage for the site. After the existing pylon sign is replaced with a new 204.27-square foot pylon sign, the total signage on the site will be 262.17-square feet, which is 141.39-square feet over the 120-88-square feet allowed.

The structure is occupied by CVS Pharmacy and is located in a "CC" Retail Commercial District.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, would you please read the official call of the meeting?

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday February 18, 2004 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of CVS Pharmacy, 256 Delaware Avenue, Delmar, New York for Variance under Article VI, Permitted Uses, Section 128-17 (D), Accessory Business Signs of the Code of the Town of Bethlehem for construction of an electronic message board which would exceed the allowable square footage at premises 256 Delaware Avenue, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the February 11, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone wishing to speak in opposition of the Applicant. Anyone desiring to speak will be allowed to do so, we just request that you come up, stand or sit close to the black microphone, it's for recording purposes only. Any questions or comments should be directed to the Board. We also request that you speak individually when acknowledged so that we don't have too many people speaking at the same time. Mr. Jacks you're representing CVS this evening?

MR. JACKS: Yes sir.

CHAIRMAN HODOM: Just introduce yourself to us if you would and your association with CVS and tell us what you want to do and why you want to do it and how you want to do it.

MR. JACKS: Sure. Good evening, my name is Steve Jacks, a representative of Site Enhancement Services, a sign consultant for CVS Pharmacy Corporation. CVS pharmacy respectively request relief under the Town of Bethlehem's municipal ordinance, Article VI, Section 128-17 (D). We are here tonight to discuss a national re-imaging campaign that CVS Pharmacy Corporation has put together. Included in this campaign is a proposed free standing sign in the attached, an electronical changeable copy board. In the recent meetings with Mark about the proposed sign, we have determined that this sign as proposed is not appropriate in size. If I may at this time give you a revision of the proposed sign that we put together. The sign that I originally submitted to Mark and Karen is an excellent sign and Doug and I both agree it fits to the needs of the unaware motorist or the traveling motorist is unaware; is unfamiliar with this area, but we feel that the sign is to big. So in a sense - I have a revised copy here that I had came up with CVS Pharmacy and myself that we feel meets the needs of the motorist. It's basically about the

same design as the proposed sign; the difference is the square footage that we proposed is dramatically different than what we originally proposed. The same difference is the electronic changeable copy. We feel the relief sought tonight, CVS Pharmacy is requesting your approval for 220-square feet of aggregate sign area. At this time in the conclusion, this sign will have no adverse affects on the surrounding properties or public safety at this time. If you have any questions; I would like to field those at this time.

CHAIRMAN HODOM: Mr. Jacks, we had talked earlier before the hearing commenced that the Board will need authorization from CVS authorizing you, your firm to be their agent in presenting this application.

MR. JACKS: Sure. Yeah, I'd be more than happy to....

CHAIRMAN HODOM: We're going to proceed with the hearing but we still need that for the record.

MR. JACKS: Thank you, I appreciate that. I think Doug stated earlier I'd be more than happy to get that over to you tomorrow.

CHAIRMAN HODOM: Okay. The information that our Building Inspector had stated earlier will have to be amended but it certainly stills appears that the sign is over the required or the allowable square footage stated in the code.

MR. JACKS: Okay.

CHAIRMAN HODOM: You would agree with that?

MR. JACKS: Yes, we sure do.

CHAIRMAN HODOM: Can you – do you have the plan with you of the site?

MR. JACKS: Yeah, I sure do.

CHAIRMAN HODOM: Can you tell the Board where you're actually locating the sign? I know you're located in the same vicinity as the existing single pole sign.

MR. JACKS: Yeah, it's the same spot.

CHAIRMAN HODOM: Maybe if you have a copy and put it up there.

MR. JACKS: Yeah we sure can, we'll show the Board. This is my associate Douglas Merrit.

MR. MERRIT: If I can adjust the Board.

CHAIRMAN HODOM: Sure.

MR. MERRIT: The signs current location and we discussed this Mark previously in a meeting that we had here that we would be more than happy to comply with the necessary setback away from the - - to provide a clearer unobstructed line of site for the motorist as they enter the intersection at that signal light. We don't want to have any confusion there and we'll be more than happy to work with Mark and make sure that the setback whether it be 5-feet, 10-feet from the right of way, it's appropriately addressed.

CHAIRMAN HODOM: Just before you continue, I think what the Board is going to require from you folks is a drawing maybe to a larger scale showing exactly where you're going to - where you propose this sign on the site so we can take a look at as well.

MR. MERRIT: I'd be more than happy to.

CHAIRMAN HODOM: Thanks.

MR. MERRIT: Do you want me to just go ahead and mark it on now?

CHAIRMAN HODOM: I'd like you to explain to us where it's going to be and how it impacts any line of site or right of ways, or property lines.

MR. MERRIT: Okay. The current sign is located at the hard corner of Delaware and Elsmere. I think that what we want to do is make sure that - because the sign is a single pole sign at the site as it exists right now and really the setback is not sufficient at this time to meet our needs with the new proposed sign. So what we would actually have to do is locate the sign approximately 10-feet inside the property line towards the store so it actually breaks - is no longer in the line of site of the utility pole there. As you go by the site right you actually have a break in the sign because there's a utility pole that obstructs it, so we'll actually set the sign back to make it unobstructed view of the sign, and I'll go ahead and just mark that in now. What I'll do is I will provide Mark a new-dimensional scaled site plan at time of permitting that references the new proposed location.

CHAIRMAN HODOM: Well I think what we're going to need before this Board can act is a updated site plan with a blown up location of the sign showing it's dimensional features from the DOT right of way also from the property line - from both property lines. The plan that you submitted although it does show the sign - has never had a revision date. I mean the date on the drawing currently is 11/11/92. It should have been updated to the current date.

MR. JACKS: I apologize. That was the recent update that I knew of - that I received, but definitely I'll be more than happy to...

CHAIRMAN HODOM: Are you clear on what the Board is going to need as far as an updated site plan locating the sign, but also a blow-up of that area showing dimensional features in proximity to both property lines?

MR. JACKS: Yes.

CHAIRMAN HODOM: Okay. Is it then – are you going to lose any parking areas with the location of this sign – the relocation of this sign?

MR. MERRIT: I do have a photo that I can submit into record. This shows the current sign location and the 2-bollards that prevent motorists from backing into the sign or driving into the sign, but we actually will not lose any parking area. There is sufficient space that's asphalt space.

CHAIRMAN HODOM: Okay. That's the kind of information the Board would like to see to. If you're going to have bollards in front of it as a protective device, we'd like to see that and that should be shown again on your plan.

MR. WIGGAND: I have one question for Mr. Jacks. The plan here that shows the location of the sign presently, is that where it is now?

MR. JACKS: Yes, it sure is. The only stipulation would be to meet the setbacks. If I discuss with Mark – I don't know if it's 5-feet, 10-feet...

MR. WIGGAND: The way I read that now is that the sign is out on State property now isn't it?

MR. JACKS: Yes sir.

MR. MERRIT: Right it actually is.

MR. WIGGAND: I'm not criticizing that point.

MR. MERRIT: No, it is. It has been improperly located and that's the second issue that we've had to contend with obviously when working with CVS Pharmacy. We brought that up and we said that we would be meeting and complying with the necessary setbacks.

MR. WIGGAND: So it goes back that 10-feet, we're all set with it then right?

MR. MERRIT: Right.

MR. WIGGAND: Is there any other obstructions when you move it back?

MR. MERRIT: No, we've actually studied the site so both frontages to make sure that there is clear and unobstructed site line for any vehicles that pull up to that intersection.

MR. WIGGAND: And this sign is of course 2-sided?

MR. MERRIT: Yes sir.

MRS. O'BRIEN: What is the square footage on the current sign – just the sign itself?

MR. JACKS: You know I don't think that....

CHAIRMAN HODOM: 50-square feet.

MR. MERRIT: It's just under 50.

MR. WIGGAND: I partially measured it today and it was about 3-foot square, maybe 40-inches square.

MR. JACKS: Yeah, Mark and I were doing some measuring a little while ago on the wall signage.

MR. WIGGAND: I tried to do the best I could by standing underneath it.

CHAIRMAN HODOM: Are there any other changes you're proposing to the building or to the site with this application?

MR. JACKS: No, just the free standing sign and the electronic changeable copy board, no changes on the building itself, no because there's a banner on it.

CHAIRMAN HODOM: Also if you would with your resubmittal on the sign, please provide some dimensional characteristics where height from grade to the underside of your electronic message board is. If you can dimension all these areas so that we can make a accumulative dimensional verification of what you're arriving at to come up with your 20-square feet – or 20-lineal feet now.

MR. JACKS: Okay, sure we usually measure the calculations for the square footage, we usually do just the face of the CVS Pharmacy and not the actual – the top or on the front, which is like a trim cap, we usually don't include that in the square footage but I'll be more than happy to for you.

CHAIRMAN HODOM: I'm not quite sure – I think the Town has been very liberal by not including that because if I was looking at the signage I would have included that into the square footage of the sign. Even with the original drawing, Mark gave you some smaller values because the whole sign wasn't taken into effect. What I really want is more dimensional data showing the heights from the ground to the underside of the electronic message center, okay?

MR. JACKS: Okay, we can do that – sure.

MR. MERRIT: What we'll do is we'll just turn over the manufacturing drawings that were furnished by the engineer.

CHAIRMAN HODOM: That's fine.

MRS. O'BRIEN: Would it be possible to include along side it representation of the current sign, how tall that is, what the size is – actually see them side-by-side?

MR. JACKS: Absolutely, we sure can.

CHAIRMAN HODOM: This is a P-50, okay the P-70 was – that's your reference to the type of sign?

MR. JACKS: Yeah, they're basically both the same sign. One is just taller and has more square footage and the one I revised is less of square footage and it is shorter.

CHAIRMAN HODOM: So you're going from the P-70 that was originally submitted to this P-50?

MR. JACKS: Yes, we felt for the surrounding areas in the study that we have done for this corridor that fits in with.

CHAIRMAN HODOM: It's a, and I think Bob asked the question; it's a 2-sided sign?

MR. JACKS: Correct.

CHAIRMAN HODOM: And it will be illuminated?

MR. JACKS: Yes.

CHAIRMAN HODOM: Is the existing sign illuminated?

MR. JACKS: Yes.

CHAIRMAN HODOM: Okay. Is the proposed electronic message center a fixed or a moving narrative?

MR. MERRIT: It's fixed, they have an instantaneous change and we talked to Mark about this, it will not flash, blink, strobe, stream; have any type of animation design what so ever. We don't feel that that is appropriate for this local and it's something that CVS Pharmacy feels strongly about. So it'll be essentially the same as a manual changeable copy board, but in a sense it's an electronic board.

CHAIRMAN HODOM: But there's no moving narrative at all?

MR. MERRIT: None at all, and it would certainly be a condition of the approval.

CHAIRMAN HODOM: I haven't worked out the square footage on this P-50, but my original comments were why would you have to have a sign this size at that location,

which is 4-times the size of the sign that's there now? Maybe you could explain that to us.

MR. JACKS: I sure can. Actually I would like for my – Douglas Merrit here if he could explain that and elaborate on that, he can fill you in.

MR. MERRIT: Certainly we have – Steve gets to have like port-a-typical sign package and working with the community and specifically Mark because he represents the community. We did not feel that it was appropriate at that size originally, initially proposed. So what we did, we actually went out and studied the corridor, really analyzed all the signs in the corridor. It kind to get an idea of roughly of, you know what size Getty has or what size Mobile has. What size, you know the new shopping center, multi tenant shared pylon sign – really kind of came up with a consensus on an average really for the individual use whether it was a multi-tenant use. CVS Pharmacy has, and it is well known like 4,500 hundred stores nation wide now. We offer multiple services, that's why we did not propose anything other than just the CVS Pharmacy logo and the name itself. We felt that that logo, being that it was 49-square feet was appropriate for the posted road speed as well as for the height that we were proposing it was going to be.

CHAIRMAN HODOM: Is there documentation that substantiates you're determination as to the size based on location and traffic flow. Is there that type of information out there?

MR. MERRIT: Yes actually there is a buro-reaction time that we do. We have a prepared study we can submit if you...

CHAIRMAN HODOM: Would you please?

MR. MERRIT: Yes.

CHAIRMAN HODOM: Thank you. Are there currently other locations within a reasonable driving distance from the Town of Bethlehem where a similar sign has been constructed at a CVS?

MR. MERRIT: We can provide that information in a letter.

CHAIRMAN HODOM: Are there still smaller signs that you might consider or propose that are smaller than the P-50?

MR. MERRIT: That's why we came down from the P-70 automatically and that's actually a special sign that we came up with.

CHAIRMAN HODOM: Is the P-50 the smallest that CVS uses?

MR. MERRIT: No, actually there is a smaller cabinet that they do use. The sign that's currently at the site is an outdated sign and it's no longer in manufacturing. We don't

have that size anymore. If you have something in mind we certainly would work something out. If you have a dimension you're thinking...

CHAIRMAN HODOM: Well I think that the Code addresses that.

MR. MERRIT: We can certainly - - that's why we provided - we can provide the study and show you how we based our opinion on the size.

CHAIRMAN HODOM: Okay, but again there are smaller applications then certainly other than the P-70, but there are smaller applications than P-50.

MR. MERRIT: There is a smaller sign that we have and it is a monument style sign.

CHAIRMAN HODOM: Could you explain that for us?

MR. MERRIT: A monument style sign is a sign that has no poles; it's just a little ground sign.

CHAIRMAN HODOM: Okay. Have you or CVS discussed the sign location and size with New York State Department of Transportation by any means?

MR. MERRIT: No sir.

CHAIRMAN HODOM: Okay. Again until we get that drawing, initially I believed that the proposed sign was going to be in the D.O.T. right of way if it was going to be located where the existing sign is so they may very well have to be consulted to...

MR. MERRIT: We certainly will comply with the...

CHAIRMAN HODOM: Okay. Just so that we can make you aware of this that we may very well ask our Planning Board to look at this change in site document and ask for their recommendations as to final location, size and so forth. You don't have any objection to that?

MR. MERRIT: Oh no sir.

CHAIRMAN HODOM: Let's look at your narrative that was submitted with the drawing - your attachment "A" I believe it is. Does CVS or do you folks as their agent believe that the CVS facility as it currently exists is not sufficiently viewable by the public or the passing motorist?

MR. MERRIT: We feel that we have been commissioned to handle their re-imaging across the United States and as a part of that we have been working with the International Sign Association in determining letter heights and appropriate sizes for each individual location due to their posted road speed and then site conditions, whether it be topographical grade issues or something of that nature. We certainly feel that the sign as

proposed will provide the line of sight that vision – the ledge ability for motorist as they're traveling Delaware Avenue.

CHAIRMAN HODOM: So they proposed sign change is basically a requirement the CVS is making a – or trying to re-image their facilities throughout the United States?

MR. MERRIT: Well we want to be sure that – I don't want to misspeak here, the site is allowed – has an aggregate amount of sign area that is provided within the ordinance.

CHAIRMAN HODOM: That's correct.

MR. MERRIT: And that we want to make sure that we have adequate signage at the roadway for oncoming motorists perpendicular to the roadway as well have wall mounted signage of the appropriate letter height for the span of the building both on Elsmere and Delaware Avenue. If we take that into consideration, we want to make sure that with the new set back that we're proposing and which we will provide that the sign is of adequate size and then it's not setback in a manner in which, you know the sign would be blocked, you know as the motorist is traveling up to the intersection we don't want to have any – where the sign currently is it's almost a zero-setback. It's literally almost on top of the roadway and that actually has an advantage and if we set it back, as the motorist come in – approaching the intersection that it may be blocked so it just depends on the distance on which the motorist is traveling. Now obviously for those individuals that live just around the store, they know that CVS is there, but it is a 24-hour location and we want to make sure that the individuals that are coming to this store that are unfamiliar with this location as a 24-hour location, we want to make sure that they do have clear adequate line of sight to that sign to locate the facility.

MRS. O'BRIEN: Has CVS had any awareness that the public is not able to find the store and not aware that it's there?

MR. MERRIT: Actually I have not talked to operations to determine if this site is losing money, no. We have not had an outcry by the public that the site is under-signed; no we have not.

CHAIRMAN HODOM: I think that that is something the Board would like to entertain as documentation that if in fact CVS is losing income because of their signage problem.

MR. MERRIT: I would be more than happy to accommodate that request but at this time and speaking for and on behalf of CVS Pharmacy I am not at liberty to disclose the financial statements of CVS Pharmacy.

CHAIRMAN HODOM: Well perhaps CVS would like to do that.

MR. MERRIT: We can certainly pass that along.

CHAIRMAN HODOM: Can you explain to the Board and the audience the EMB

operation and how it does actually change it's displays and how frequently they are changed and when they are changed?

MR. MERRIT: The intervals actually can be changed or set by the user so the boards or the weekly specials that would be advertised would be controlled out of Rhode Island and the manager would have obviously a direct line to that individual who handles the PC – the actual control board for that sign. Now, if the Board feels that under the ordinance that a 15-second interval is appropriate or a 45-second interval is appropriate or a 1-hour interval is appropriate than that is the wishes of the Board and that can be deemed as stipulation or condition of approval.

CHAIRMAN HODOM: What are the...

MR. MERRIT: Currently most sites that we have are 15.

CHAIRMAN HODOM: But what are the other variables, I mean the Board doesn't have anything in front of it currently that shows what the variables of the sign is.

MR. MERRIT: Well there are, the full function of the sign and actually if allowed the sign can have full animation, but that's not the intent as stated at the beginning of the meeting. We have no intention of making it a fully animated board; we simply do not value the manual changeable copy boards with new technology. New technology eliminates the problem of someone going out and misspelling a word. These boards actually have spell check, they're ran through a computer. There will not be and you indicated before, a streaming message or a scrolling message or a message that could be interpreted in a way that it could be confused with a traffic signal or something of that nature. That's not the case, these boards are very efficient most state highway use these boards to notify motorists of upcoming changes or impending weather conditions on high speed, high traveled roadways so they're a useful tool not only to serve the community with an amber-alert message or a CVS Pharmacy or any other retailer to say that they have a weekly advertised special, a certain height and for a certain price, a time and temperature message or a community message. If the Town of Bethlehem has Bethlehem Day's, you know it's certainly something that we can put on that Board and let the Board have – or the Board or the community itself have access to that sign.

CHAIRMAN HODOM: Do you know if there have been any studies made on these types of signs by a national – Department of Transportation or the New York State Department of Transportation as far as the probability of accident or...

MR. MERRIT: There are no – actually yes, I'm very familiar and very knowledgeable in that aspect of reports. There are no studies to date that these signs are a traffic safety hazard or that they cause accidents. We watch that closely and we certainly have through the International Sign Association a team of respected individuals as well as attorneys that do watch court cases that have come up and they look for the outcome and decision, but there are no known studies that these signs or this electronic variable message board will cause a traffic accident.

CHAIRMAN HODOM: Along with the question that Marge asked earlier regarding CVS perhaps losing income because of the lack of a more appropriate or updated sign, is there any documentation that you have that impacts the customers or the clients of CVS?

MR. MERRIT: We certainly can show a line site study as any individual approaches the roadway and that's something that we can provide to the Board. We can actually show the sign superimposed at the appropriate setback from distances from 100-feet to 200-feet, 300-feet of how that will impact this corridor. That is essentially is probably all that we will be able to provide. Financially, no not without having someone actually at the store soliciting information from individuals that, you know like I said before maybe just a local community of shoppers that always shop there or someone that might looking for 24-hour locations that's not from this area.

CHAIRMAN HODOM: But I would think and I would have to rely on you and your associate and CVS that there must be some kind of documentation to show the number of customers in 1999 versus the number of customers in 2003.

MR. MERRIT: I can check with operations and see if they have something – I don't think they're going to have something without – obviously divulging financial information on that particular store, that I cannot obtain; I know that for a fact. I've been asked that question before in a different setting and I was unable to obtain that information. I certainly can approach CVS and say that you are requesting number of individuals coming in and out of the store at peak hours. I think that we can probably do that, but just short of that I really can't ask for any information other than that.

CHAIRMAN HODOM: Okay. It doesn't necessarily just have to be a peak hours, if the number of patrons has decreased since 2000 to 2004 that may be some kind of indication that the signage could be a part of the problem.

MR. MERRIT: Certainly I can check to see if, you know if there's any type of demographic study that they're proposing for a new site from the area. I don't know if maybe we want to talk with the developers if they've done any research on them. I can certainly check.

CHAIRMAN HODOM: Do you know if in fact the reason or what the reason is that CVS is doing the redefinition of their signage?

MR. MERRIT: Their re-imaging?

CHAIRMAN HODOM: Yes.

MR. MERRIT: They periodically update their signage and this particular sign has been updated to conform with the new style. And that new style would be their signature topper, the actual dimension of the sign and how it's located on top of the poles; how it's situated as well as the location of the electronic message board.

MRS. O'BRIEN: So you're saying it wasn't that CVS in Delmar indicated that they needed some new signage to attract customers.

MR. MERRIT: Actually it was – no it's handled by a regional individual for CVS, they have regional reality representatives and this store was slated for this particular sign. It was requested that we approach this community and request the sign.

MRS. O'BRIEN: For what purpose though, I mean were they saying that...

MR. MERRIT: For the purpose of updating the aesthetics of the sign.

MRS. O'BRIEN: Just make it look nicer?

MR. MERRIT: Well not only just making it look nicer but also incorporating the electronic message board. They felt that this was a suitable location and the location they felt they'd like to have this board.

MRS. O'BRIEN: Okay, but again it wasn't that what they have is inadequate to attract customers?

MR. MERRIT: No they – no I don't want there to be any misconception. That sign is too small in CVS's eye, but that's to answer the question. They certainly don't feel that that sign is of adequate size. They wanted the new style sign to attract customers to the store. Now, is it solely based on revenue? I can't say that and under certain criteria that we need to adhere to, to insure that the relief if provided under the ordinance. Now, I can't determine without having some type of financial statement that the store is suffering, financially I can't do that. But because of our study and in speaking with CVS Pharmacy and specifically their regional representative, this sign is appropriate for this corridor and it's not completely out of character from this corridor either. It's not a sign that's garish, it's not a sign that's too tall, it's not a sign that's too wide; it's an appropriate sign for the corridor and we have taken our time. We're not going to locate a sign in a community and then be ridiculed, you know from years to come that – we don't want a sign like a CVS sign; we certainly would not do that.

CHAIRMAN HODOM: We had talked about earlier and you had mentioned some line of site studies for the signage, if you would provide those to the Board that would be beneficial. In your narrative you make reference to that the new pylon sign will provide the motorist safe, way finding guidance. Can you just elaborate a little bit more what way-finding guidance is?

MR. MERRIT: It's the ability to – the ability to see the sign, assimilate the message and date, obviously the time is impending and locate the facility and make the necessary driving maneuvers for there is a deceleration lane, you know locating the facility, determining it's location, finding the entrance. The sign is currently located on a hard

corner and not located at the entrance. We certainly can show and prove that the motorist is trained, it's conditioned to look for the sign and locate the entrance. We certainly can provide that in our study.

CHAIRMAN HODOM: Okay. You also make reference to that CVS will ensure that the signage will not present any traffic hazard to the motorist entering or exiting the site and I think I can agree with that but I think as we talked earlier, the statement leaves out any passing traffic so any documentation, any data you can provide the Board that this proposed signage will not be a hazard to not only the people entering and exiting CVS but passing on either Delaware Avenue or Elsmere Avenue will not be impacted as well.

MR. MERRIT: Certainly.

CHAIRMAN HODOM: Okay.

MR. BROOKINS: While you're looking Mr. Chairman, I just want to go back to the issues of signage related to sales and income. I'm not sure that that linkage is fair either for our purposes or certainly for your purposes, but it might be helpful and the local store personal may have some indication of this in a more antidotal fashion, requests for assistance. If the phone rings and someone says "where are you," that would suggest that they haven't had the success in finding it visually and it's but one measure but I think any types of information that you can provide us that would link really awareness more than revenue. Revenue is a separate issue and it's...

MR. MERRIT: What we can do is we can propose that question to the store manager and have basically a letter or however you wish us to propose and enter that into record.

CHAIRMAN HODOM: That would be helpful and also your last sentence of the narrative where it says the relief sought will not be detrimental to the public, any documentation D.O.T. studies, National Highway studies that...

MR. MERRIT: Actually there is an actual highway study and I can provide that study. I think to date that New York did Highway - - Commissioned to provide a complete study on electronic message boards specifically. And I can certainly research to see if they have any thing on signs and I think it would probably be more - I think it would probably be directed towards a highway rather than a residential community. I think it would be for more of a 55/65-mile an hour plus zone, but I would be more than happy to look it up.

CHAIRMAN HODOM: If you would because Delaware Avenue is such a heavily traveled highway and I believe - what's the speed limit on Delaware, 40?

MR. PLATEL: 40.

CHAIRMAN HODOM: And that's a pretty good rate of speed.

MR. MERRIT: It is a good rate of speed.

CHAIRMAN HODOM: So any kind of documentation you can provide to the Board for our review, thanks.

MRS. O'BRIEN: The sign that you show on this P-50, the signage on that CVS Pharmacy, is that the way it will be? It will not include what the current sign say about being open 24-hours or is that going to be added to this?

MR. MERRIT: It's currently as it's proposed there.

MRS. O'BRIEN: So it's not going to say open 24-hours?

MR. MERRIT: Correct, that's why they have the electronic changeable copy board on there, but the stipulations set forward in the municipal ordinance and hasn't looked further into it – details as far as, you know saying open 24-hours on the electronic changeable copy board.

MRS. O'BRIEN: I'm sorry I'm not understanding what you're...

MR. MERRIT: So no we wouldn't have the 24-hours.

MRS. O'BRIEN: It's not going to be on the signage?

MR. MERRIT: Correct.

MRS. O'BRIEN: CVS Pharmacy thing would be – if it appears at all to tell the public this fact, it would be on the electronic message board?

MR. MERRIT: Well it's currently on the building as well and I think that with the artwork and the illustration that it does not show up 24-hours.

MRS. O'BRIEN: It's on the current sign, that's why.

MR. MERRIT: Right, it's on the building as well.

MRS. O'BRIEN: Okay and the electronic message board you said that could be set at a 15-second interval that it would be flashing a different message every 15-seconds?

MR. MERRIT: I want to make sure that we're careful in saying that this is not a flashing message, its...

MRS. O'BRIEN: But it's changing from one message to another.

MR. MERRIT: I only say that because if you've seen one of these boards flashing then it's very obvious to the eye that it's actually flashing. What we're proposing is something – every 15-seconds, or every 30-seconds, whatever is deemed appropriate by either the

ordinance or the Board itself that's what we'll adhere to.

MRS. O'BRIEN: And how much information would be....

MR. MERRIT: The 2-line - - they allot for 2-lines.

MRS. O'BRIEN: 2-lines at what size for each line?

MR. MERRIT: I believe this board will entertain to or accommodate an 8-inch character.

MRS. O'BRIEN: Okay, it's 2-lines not the 3-lines that is shown here?

MR. MERRIT: Right we just used that for our presentation.

MRS. O'BRIEN: So 2-lines of text could be shown and changed every 15-seconds?

MR. MERRIT: Right, it could be if it was set at 15-seconds, yes. If there was a condition of approval that it be changed every 10-minutes....

MRS. O'BRIEN: Is it conceivable it won't be flashing but it could be the same message that is replaced every 15-seconds?

MR. MERRIT: Positively not.

MRS. O'BRIEN: But it could say...

MR. MERRIT: It could have one message all day long. It would not have the message repeated.

MRS. O'BRIEN: You're saying that you could have things like time and temperature and community messages, that would take up a part of the 2-lines that are available?

MR. MERRIT: Well we would obviously – now, we're not going to run time, temp., community message and then to this message all in the same interval, we would not do that. It would be time, whatever the time is and that would be an interval. That would be one message. It would then change to, you know flu shots February 20<sup>th</sup> and that would be a message and so on. It would not be something where it was - - the intent here is to make the sign and the message conspicuous and legible not flashing, rotating, you know something of that nature. That's not what we're getting at and I think certainly within the power of this Board that the condition of approval would reflect that. We would not be allowed to have a message that was streamed flashed or considered a nuisance.

MRS. O'BRIEN: But you didn't indicate before that there are any of these signs in the near bi-area that we could see just what it looks like I mean we have as you know the signs on the highway to go by and they're terribly distracting...

MR. MERRIT: This sign is essentially a time and temperature board, it's the same sign. It's an LED display and if you've seen a time and temperature board, it's the same thing. It just has that message on it; it conveys that message instead of a numeral you just have a letter and as indicated it will entertain 2-lines. So I don't think that the message that what we're intending would be considered a nuisance or distraction. I'm not sure that the highway signs that you're referring to – I'm not sure that – have you seen a sign that's like a time and temperature board that's, you know a flashing sign that's been a nuisance?

MRS. O'BRIEN: Not the time and temperature, I mean the only one that I'm aware of at this point is the one that's along 787, but it's up quite high and that's stationary, you know it's not doing anything. The signs that you see like the entrance to Crossgates, many of those signs – they put so much text on it that you can't possibly read it as you go by and it's very distracting.

MR. MERRIT: No, Dextronic's who is the manufacturer of the board has indicated exactly how many characters and what's appropriate; incorporates height for the board installation and we can go ahead and provide that documentation for you.

MRS. O'BRIEN: This is where you know seeing it in operation some place would be a great help if we saw how it was functioning.

MR. MERRIT: We certainly can provide a location that has a electronic message board.

CHAIRMAN HODOM: Back in October – October 8, 2003 specifically there was a letter from Image Point sent to Mr. Mullen and they refer to other information that we haven't discussed this evening and maybe this letter is so outdated we don't have to discuss it but they're referring to this program includes the use of electronic message units or manual reader board, MRB. Are we still talking about the same information?

MR. MERRIT: The Image Point – do you have a copy of the letter?

CHAIRMAN HODOM: Are they now out of the picture?

MR. MERRIT: Image Point is a national sign company; they handle numerous states. There's 2-sign company's that handle account management per say and in which I had mentioned to Mark that we would have a local sign installer to install the sign. It's not something that's handled from, you know Indiana or Tennessee or someplace else. We have a local sign installer that would install the sign.

CHAIRMAN HODOM: Well they are referencing the local Hanley Sign Company.

MR. MERRIT: Right Hanley will actually install it.

CHAIRMAN HODOM: Just so that we're all on the same page, what they're describing here is EMU's and MRB's and I don't know what they mean.

MR. MERRIT: Right that letter is outdated; it was an original letter back in October.

MR. MULLEN: Excuse me I didn't receive that letter, may I see it?

CHAIRMAN HODOM: You signed it Luke.

MR. MULLEN: I did?

CHAIRMAN HODOM: You may look at it, but you withdrawal it from this submittal?

MR. MERRIT: I don't have a letter from October, any dates.

CHAIRMAN HODOM: By your presence this evening, we can withdrawal that letter from your submittal so that we don't have to consider that any further?

MR. MERRIT: Yes.

CHAIRMAN HODOM: Thank you. Just let me refer back to the Code if I may, it's your intention that no sign will extend over the public sidewalk or a public driveway in your updated proposal?

MR. MERRIT: In my interpretation of the ordinance, yes.

CHAIRMAN HODOM: Okay. Your sign is illuminated, but I think you've already said this earlier and for the sake of being redundant I'll just repeat it and ask you to agree with it. The lights shall be non flashing and non-animated?

MR. MERRIT: Correct.

CHAIRMAN HODOM: And the source of the light shall not be directed into any street highway or adjacent property?

MR. MERRIT: Yes.

CHAIRMAN HODOM: And also with your proposed signage you do not intend to have any fluttering banners, pennants or similar advertising devises such as oscillating lights or rotating devises on this sign?

MR. MERRIT: No.

CHAIRMAN HODOM: Mark, are there any height restrictions for signage? I couldn't find any.

MR. PLATEL: Well not particularly there's accessory structures, but signs aren't considered accessory structures. There's nothing really that restricts the height of the sign.

CHAIRMAN HODOM: Okay. Any other questions from the Board?

MR. MICELLI: Just one quick question. The letters, would they be red or clear letters?

MR. MERRIT: The boards actually come in red and amber.

MR. MICELLI: Okay. And I noticed in the blueprint that there's landscaping and I don't think you have any intentions of landscaping or shrubs underneath that stone?

MR. MERRIT: It's actually an asphalted area, if the ordinance requires or if it's a condition of approval I think that there probably could be accommodations made.

MR. MICELLI: Thank you.

CHAIRMAN HODOM: Were there any questions or comments from the audience? Yes ma'am if you would come up by the microphone. You can still sit, just introduce yourself and give us your address if you would.

MS. KLOSS: My name is Kate Kloss, I'm a Bethlehem Town resident but I'm also the principal of Elsmere Elementary School which is located on Delaware Avenue across the street from CVS. While we want to be good neighbors, the safety of our students is the number one concern. We recognize that that street is already a very busy street and it's a dangerous crossing for our students. Already our crossing guard has been hit once this year and we are gravely concerned that the added distraction of an electronic message board would compromise the safety of our students and family's as they cross that street.

CHAIRMAN HODOM: Okay, thank you very much. Any one else wishing to speak, yes ma'am?

MS. BLANK: My name is Susan Blank and I have a child who attends Elsmere Elementary School and the same as Kate say's, I'd like to be a good neighbor to CVS but the fact that there are already so many problems. So many people who don't notice when you say there's a cross walk here or I didn't see it because of all these signs around or because I think that – and it terrifies me anyways that you want to propose – I don't have a problem with re-imaging a sign per say but the message text really disturbs me that you would want especially as we all know living in this Town how dangerous this intersection is already with everything that's going on that you would want to put something up there to distract a driver on a roadway to look off the road and not pay attention to their surrounding in an area where there is an existing problem. People already are not aware of the students crossing. As Kate Kloss has mentioned the crossing guard has been hit there because of it and I would just like to say that the idea of the message board part of it I find would seriously compromise the safety not only of the students who are in and out of that school everyday, but anyone who walks in this Town anymore. I realize that's becoming somewhat of an endangered species but anyway anyone who walks around there or tries to cross either in front of the school where there is a cross walk as well as

the designated areas to cross right at the intersection of Delaware and Elsmere. So I have to say that I am opposed to an electronic message board going up in that particular area and I also being a neighbor there, I actually live there – that parking lot is packed all the time, I can not believe that anyone has a problem finding that CVS and I'd be interested to see if it would disclose that CVS has lost any money over the fact that their sign is not clearly represented at that corner and thank you for letting me speak.

CHAIRMAN HODOM: Okay, Susan give us your last name again.

MS. BLANK: Blank, B-L-A-N-K.

CHAIRMAN HODOM: And your address?

MS. BLANK: 26 Elsworth Avenue, that runs parallel to Delaware right against the tracks by the CVS.

CHAIRMAN HODOM: Thank you. Anyone else, ma'am?

MS. MILLER: Hi, my name is Linda Miller and I'm a member of Elsmere PTA and I also have 2-children who cross on Delaware Avenue at the crosswalk and again I was there the day that the crossing guard was hit and I have been consistently concerned about the distractibility of drivers on that stretch of road and it is heavy traffic and over the course of the years that we've been crossing there I think the traffic in fact has become heavier and the speed of course. My concern would be with the electronic message board, anything that would further distract drivers as both Susan and Kate have stated would be a further concern for pedestrian safety. And not only do children cross there from the elementary school but they come from the middle school and they walk home to all those neighborhoods behind Elsmere School.

CHAIRMAN HODOM: Thank you very much. Any one else have any comments, questions? Anyone else like to speak in opposition to the Applicant? Now we won't be closing the hearing this evening because of the documentation that we requested but because you're here if you have something you'd like to comment on or if you would like to speak in favor of the applicant or opposition to the applicant now is the time to do it. We will also have the same opportunity the next time we meet. Doug do you have any idea of how long it would take you to put together the documentation we've asked for?

MR. MERRIT: When is the next meeting?

CHAIRMAN HODOM: First Wednesday in March.

MR. MERRIT: Probably the second Wednesday.

CHAIRMAN HODOM: Which would be the 17<sup>th</sup>. Do you think that would give you enough time?

MR. MERRIT: Yes, we actually have a member of the ISA within our company and most of that information is readily available in our office.

CHAIRMAN HODOM: Okay. I would ask that you have the information to the Board at least 10-days before the 17<sup>th</sup> to give us time to review it.

MR. MERRIT: The only thing I would request is that we will certainly contact, you know the State. The State has – maybe Mark can share – I don't know if we can get that much documentation back in that time limit – that quick. I can't speak for the State.

CHAIRMAN HODOM: Why don't – if they do have documentation and you find that they're not submitting it to you fashion then we can extend it from the 17<sup>th</sup> until you get the documentation. We found them to be pretty good, pretty responsive especially in the matter of this situation. That's of course if in fact they had the documentation. Any other questions?

MS. BLANK: The meeting on the 17<sup>th</sup> is at 7:30 again?

CHAIRMAN HODOM: It will be determined but it will be advertised and I think we have some other applications to consider.

MR. PLATEL: You can also go to the Town's website and keep up on whenever the hearings are scheduled.

CHAIRMAN HODOM: It probably would be the second hearing on the 17<sup>th</sup>, which would be 7:45. We have one rescheduling that has asked for the 17<sup>th</sup> and they have been here before. I think at this point probably we would set them up at 7:30 and set you folks up at 7:45 and go from there as long as we have the documentation that was requested. And you don't have any problem with that – us adjourning the hearing to a future date?

MR. MERRIT: No.

CHAIRMAN HODOM: I will ask you, Steve or Doug to just date and sign that plan even though you're going to re-submit it updated with a new date but the changes that you've made here tonight.

On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand and unanimously carried by the Board the hearing was re-scheduled to March 17, 2004 at 7:45 p.m.

Hearing adjourned 8:30 p.m.

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The next order of business was to consider the application of William and Elizabeth Gray, 22 Birchwood Place, Delmar New York. The application was found to be in order and Mr. Brookins made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by William and Elizabeth Gray, 22 Birchwood Place, Delmar New York for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for construction of an addition which will exceed the allowable percentage of lot occupancy at premises 22 Birchwood Place, Delmar, New York 12054., it is hereby ordered that a public hearing on this matter be held Wednesday March 3, 2004 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mrs. O'Brien seconded the motion and it was unanimously carried by the Board.

The next order of business was to consider the application of Galaxy Communications. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Galaxy Communications (applicant), William Banahan (Owner), for Special Exception and Variance under Chapter 113-3, 113-9 (F), to allow construction, operation and maintenance of a FM Radio Broadcasting Facility including a +/- 300-foot Tower at premises old Quarry Road, Selkirk, New York, it is hereby ordered that a public hearing be rescheduled on this matter be held March 17, 2004, at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. Brookins seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of Maria Candido for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for construction of a roof over an existing deck, which will exceed the allowable percentage of lot occupancy at premises 21 Frederick Place, Delmar, New York 12054. The following points were brought up by the Board members: The proposed roof addition is similar to the adjacent neighbors. It would not affect the character of the neighborhood. The request is minimal and the plans were well designed. On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on March 3, 2004

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The next order of business was a discussion of the previous public hearing held in the matter of Amna Enterprises, Inc. (Owner), US Mart (Applicant) for Special exception under Article VI, Permitted uses, Section 128-17 C (3), CC Retail Commercial District for alteration to an existing structure at premises 414 Rout 9W, Glenmont, New York. The following points were brought up by the Board members: The Zoning Board approves the application with conditions and requests review and recommendation from the Planning Board. On a motion made by Mr. Wiggand, seconded by Mr. Micelli, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Special Exception, for presentation at the next Board meeting on March 3, 2004.

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The next order of business was to consider the proposed resolution of Bethlehem Auto Laundry, Inc., 462 Route 9W, Glenmont, New York.

The following proposed resolution was presented by Attorney Moore for the Board's consideration.

## RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) by Bethlehem Auto Laundry, Inc. (“Applicant”), for a modification to an existing Special Exception under Article VI, Permitted Uses, Section 128-17(B)(15), Motor Vehicle Sales Agency, for property at 462 Route 9W, Glenmont, New York, to change the lot lines of the two adjoining parcels on that property in order to provide additional parking spaces on the rear parcel, and facilitate the construction of a new point of access, and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the application 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 November 5, 2003, continued on December 3, 2003 and January 4, 2004; and,

WHEREAS, members of the Board are familiar with the area in which the proposed project is to be undertaken 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 public hearing; now therefore,

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

### FINDINGS OF FACT

The property is located in a “CC” Retail Commercial District.

The Applicant now seeks permission for revisions as shown on the map of

proposed revisions to Bethlehem Auto Laundry. Lands of Bethlehem Auto Laundry, Inc., U.S. Route 9W, Town of Bethlehem, prepared by Paul E. Hite, LLS, Map No. 2165, revised November 20, 2003, and described as follows:

(1) Expanding the front parcel containing the existing Bethlehem Auto Laundry, to provide more auto stacking area, improved access to the car wash, additional parking for auto detailing shop, relocation of employee parking, and continuation of a limited use car sales operation; and

(2) Adjusting the lot lines for two (2) contiguous parcels of land owned by Bethlehem Auto Laundry, Inc., identified as tax map numbers 97.15-2-9 and 97.15-2-8.2:

(a) Parcel 1 (a/k/a front parcel) containing 1.75+/- acres located on the easterly side of U.S. Route 9W and containing the existing car wash, auto detailing and used car sales operation; and

(b) Parcel 2 (a/k/a rear parcel) containing 3.45+/- acres of vacant land contiguous to and located to the rear (east) of the front parcel.

Special exceptions impacting the front parcel were granted by the Bethlehem Zoning Board of Appeals on July 22, 1965, October 8, 1965, June 17, 1987, April 20, 1988 and June 6, 1988. The special exception(s) granted by the Board permitted the existing car wash, automobile detailing and used car operations on the front parcel.

The rear parcel was purchased by Bethlehem Auto Laundry, Inc. on June 6, 2002. Each parcel is separately assessed and taxed.

The Applicant proposes to provide for improvements to the “front parcel” by adding and incorporating 0.38+/- acres of the rear parcel, to add a new and better designed entrance driveway and longer stacking area, which will improve efficiency and traffic flow into the existing car wash building. In addition, a new (12 space) parking area is proposed for the rear (east side) of the existing auto detailing building, which also

contains a small office for the operation of the used car dealership on the premises. A new handicapped parking space will be provided on the west side of that building, near the entrance to the used car sales office. The Applicant proposes to display used cars on 10 designated parking spaces, to be lined and provided in front of the existing car wash building, generally located along U.S. Route 9W.

The Applicant also proposes to make aesthetic changes to the front of the existing car wash building, in order to give the building a more contemporary look and “feel.” The automatic car wash currently exists through a “shed-style” extension of the car wash building, which will be removed and replaced by a more aesthetically pleasing glass brick, glass and pillared exit/building extension, which will extend approximately twelve (12') feet further than the current “shed” structure. The peaked roof located over the automatic car wash bay will be extended over the entirety of the expanded portion of the bay. One or two small cupolas will also be placed on the structure as additional design elements. All of the foregoing changes are proposed for aesthetic purposes only. Application for any required building permit(s) will be made to the Town Building Department and all proposed construction will meet New York State building code standards.

The revised front parcel will contain 1.87 +/- acres after the lot lines are re-adjusted. The rear parcel will contain 3.33 +/- acres after lot line adjustment. It is the intent of the Applicant to convey the reconstituted rear parcel to a new limited liability company, to be owned and managed by the principals of Applicant. Bethlehem Auto Laundry, Inc. shall retain ownership of the modified front parcel (which will still contain the car wash, auto detailing and used car operations). This division of ownership will provide easier financing for the Applicant, and will clearly distinguish the two (2) parcels for tax purposes.

Final approval, if any, of the location and design of the proposed office building, parking areas, and proposed access point will be issued by the Town Planning Board in the course of the Planning Board’s review of a proper application for Site Plan approval

under Article VII.

Prior to rendering its decision on this application for a Special Exception, the Board has considered the items enumerated in Article XXIII, Section 128-100 (C), (1) through (4).

The Board also finds that the use proposed by the Applicant for the property will be in compliance with the Performance Standards set forth in Article VI, Section 128-24 (C).

#### CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that the Applicant requires a Special Exception in order to change the existing lot lines, and expand the front parcel containing the existing Bethlehem Auto Laundry. This Board has considered the materials submitted by the Applicant and finds that the modifications to the previously approved Special Exception are insignificant. Accordingly, the Board grants the Applicant's request for a Special Exception to modify the lot lines and expand the front parcel containing the existing Bethlehem Auto Laundry on the above-described property, subject to the following conditions:

1. As recommended by the Albany County Planning Board, the Applicant shall seek review and approval of the New York Department of Transportation for the new proposed point of ingress and egress to both parcels.

2. Final Site Plan review and approval shall be secured from the Town of Bethlehem Planning Board before any construction for the ingress and egress, and the proposed new building(s) and parking areas in the rear parcel is commenced.
3. The Board recommends that any Site Plan approval issued to the Applicant by the Planning Board should prohibit the parking of vehicles on the proposed ingress and egress to the parcels.
4. The Board was favorably impressed with the style and appearance of the proposed building design modifications presented by the Applicant, and recommends that these design features be incorporated into the Special Exception as shown in the owner's sketch and material list for the addition at the Glenmont car wash dated November 20, 2003.
5. The Applicant shall complete construction in accordance with the plans, specifications, submittals, exhibits and testimony submitted to the Board in support of the application, subject to the final site plan review and approval by the Planning Board.
6. All work shown within the front parcel will be completed within three (3) years from the date hereof.
  - a. Parcel 1 (a/k/a front parcel) containing 1.75+/- acres located on the easterly side of U.S. Route 9W and containing the existing car wash, auto detailing and used car sales operation.

February 18, 2004

Michael C. Hodom  
Chairman  
Board of Appeals

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Mr. Wiggand made a motion that the Resolution be adopted as amended, Mrs. O'Brien seconded the motion and it passed by the following vote:

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None	None	None
Robert J. Wiggand			
Richard Lewis			
Gilbert Brookins			
Marjory O'Brien			
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on February 19, 2004.)

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The next order of business was to consider the proposed resolution of Diane Fortier, 7 Reinemann Street, Albany, New York.

The following proposed resolution was presented by Attorney Moore for the Board's consideration.

RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Diane Fortier ("Applicant"), for an Area Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings, Section 128-49, Total Building Area; and Article XVI, Front Yards, Section 128-66, Required Depths for property at 7 Rienemann Street, Albany, New York. The Applicant wishes to construct an addition to her home, which would exceed the allowable percentage of lot occupancy and also encroach into the front yard setback requirement at 7 Rienemann Street, Albany, New York; and

WHEREAS, the Board of Appeals, 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 January 7 and January 21, 2004; 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 Board of Appeals has reviewed the evidence and testimony presented to it and makes the following Findings of Fact and Conclusions of Law in this matter:

#### FINDINGS OF FACT

Applicant is the Owner of property located at 7 Rienemann Street, Albany, New York. She seeks to add a one-story addition to the existing main structure. The proposed addition of 416.85-square feet along with the existing main structure of 1,089.99-square feet will create a total structure of 1,506.84-square feet, which is 381.84-square feet over the 1,125-square feet of allowable building area. The lot occupancy will be 20.09-percent, which is 5.09 over the 15-percent allowable of the lot occupancy for the main structure and .09 over the 20-percent allowable total building area. The addition will also create a front yard setback of 23.1 feet, which is 1.9-feet shy of the 25-foot setback required for the main structure.

The property in question is in the Residence Zone "A".

Applicant seeks to build the addition in order to provide more room for her family as they have outgrown the present house. There is approximately 800 square feet of living space in the present house, and the proposed addition will accommodate her two small children. While this construction project is under review, and during the construction period, the family will be living in alternative housing. The Applicant will construct the addition to match the current architecture and colors of the home.

Several neighbors submitted letters to the Board in support of the Applicant. No one submitted any opposition to the Applicants proposal.

The granting of the requested variances will alleviate a clearly demonstrated hardship of the Applicant, which is peculiar to the property and the building thereon and does not apply generally to land or buildings in the vicinity or neighborhood, and has not resulted from any act of the Applicant subsequent to the adoption of Chapter 128 of the Code of the Town of Bethlehem.

#### CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires the variance sought.

This Board has balanced the benefit to the Applicant with the detriment to the health, safety, and welfare of the neighborhood and community and concludes that permitting the proposed project is the minimum variance that would provide for the reasonable use of the property, would not result in any undesirable change in the character of the neighborhood, would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district or be detrimental to adjoining property owners, and that the benefit could not be achieved by some other means.

Accordingly, the Board grants the Applicant's request for the two Variances to construct the proposed addition, subject to the following conditions:

1. The Applicant shall complete construction in accordance with the plans, specifications, testimony and exhibits submitted to the Board in support of the application, and
2. The Town Engineering Department shall review and approve the planned construction to ensure water drainage from the property handled appropriately.
3. That the construction be completed within two (2) years from the date hereof.

February 18, 2004

Michael C. Hodom  
Chairman  
Board of Appeals

Mrs. O'Brien made a motion that the Resolution be adopted, Mr. Brookins seconded the motion and it passed by the following vote:

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None	None	None
Robert Wiggand			
Richard Lewis			
Gilbert Brookins			
Marjory O'Brien			
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on February 19, 2004.)

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On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the minutes of the January 21, 2004, meeting were approved.

On a motion made by Mrs. O'Brien, seconded by Mr. Brookins, and unanimously carried by the Board, the minutes of the February 4, 2004, meeting were approved.

The meeting was adjourned on a motion made by Mr. Wiggand, seconded by Mrs. O'Brien and unanimously carried by the Board.

Meeting Adjourned: 9:20 p.m.

Respectfully submitted,

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Secretary