

**TOWN OF BETHLEHEM
BOARD OF APPEALS
July 2, 2003**

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

Patrick Seely Attorney to the Board

Mark Platel Building Inspector

ABSENT: Richard Lewis

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 XI, Height Regulations, Section 128-44(C), General Limitations requested by George Magony for property at 455 Elm Avenue, Selkirk, New York. The Applicant wishes to construct a garage, which will exceed the height requirement at the premises of 455 Elm Avenue.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is seeking an Area Variance from Article XI, Height Regulations, Section 128-44. C., General Limitations.

The Applicant has proposed to construct a 2-story accessory structure with the first floor being used as a garage and the second floor to be used for storage. In any residence district the height of an accessory building may not exceed 18-feet. Under Article I, Definitions the Height of a Building is defined as "The vertical distance from the main level of the ground surrounding the building to a point midway between the highest and lowest points of the roof, provided that chimney, spires, towers, elevators, penthouses, tanks and similar permitted projections shall not be included in the height. The proposed height of the accessory structure will be 23.5-feet, which is 5.5-feet higher than the allowable.

The existing structure on the property is occupied as a single-family dwelling and is located in an "A" Residence Zone.

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 July 2, 2003, at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of George Magony, 455 Elm Avenue, Selkirk, New York for Variance under Article XI, Height Regulations, Section 128-44 (C), General Limitation of the Code of the Town of Bethlehem for construction of a garage, which will exceed the height regulations at premises 455 Elm Avenue, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the June 25, 2003 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 or in opposition of the Applicant. Anyone desiring to speak will be allowed to do so, we just ask 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. Mr. Magony if you would just introduce yourself to us and tell us what you want to do and why you want to do it and how you want to do it.

MR. MAGONY: I'm George Magony and on the...

CHAIRMAN HODOM: Would you just turn that microphone towards you, there you go.

MR. MAGONY: I need a place to put my stuff. My mother's house is filled with my stuff and I need my own garage and she wants to be able to park her car in there in the winter. I wouldn't mind - - I've been staying with her since my father died. Her house is filled with all kinds of stuff and I want to get the lawn mower out of the shed, it's filled with mice. I just need a place for storage.

CHAIRMAN HODOM: Mr. Magony, do you own the property currently?

MR. MAGONY: Well it's - - I forget what they call that.

MR. PLATEL: A living trust, I believe.

CHAIRMAN HODOM: Your mom owns the property currently?

MR. MAGONY: Yeah.

CHAIRMAN HODOM: If you would, I'm assuming that you're acting as her agent this evening. We would need a letter from your mother authorizing to represent her.

MR. MAGONY: Oh, she all ready said that I could.

CHAIRMAN HODOM: We do have it in here?

MR. MAGONY: I don't know if you have it but...

MR. PLATEL: I believe he's - - it's a living trust.

MR. MAGONY: Yeah, well my father died and then and it's going to be left to me when she dies anyways so..

ATTORNEY SEELY: I think Mr. Hodom is correct in that we would want to have something just in writing from your mom. It's just a formality and while you're the remaining person under the trust from what it sounds like, your mom still has an interest in it probably for so long as she lives. And therefore we would need just to have it on the record, we don't doubt that you're here representing your mom, but we need to have a paper trail for our own benefit, that's all.

MR. MAGONY: Well Mr. Wiggand talked to her today so she knows you know...

CHAIRMAN HODOM: Just for record purposes only.

MR. MAGONY: All right.

CHAIRMAN HODOM: All she has to do is say that you are her agent and is authorized to represent her at this hearing. If you can get that to us within the next few days that would be fine.

MR. MAGONY: All right.

CHAIRMAN HODOM: Just tell us why you need such a large facility and why it has to be so high.

MR. MAGONY: Her basement is filled right now with my stuff; her porch, the shed, and I have property in Albany that I'm in the process of selling and I have no place to put my things.

CHAIRMAN HODOM: But tell us what the - - I noticed on the site plan, it's called a garage and then it's referred as a shed, and you also have a back porch that seems to be used for storage as well. Tell us why that can't accommodate the materials that you want to store?

MR. MAGONY: I can't cause her basements filled with all my stuff; tools, everything. She wants it out of there.

ATTORNEY SEELY: The basement is - - the house on the property right now?

MR. MAGONY: Yeah.

ATTORNEY SEELY: Okay.

MRS. O'BRIEN: What kind of materials and tools are we talking about here? Do you have a business?

MR. MAGONY: Construction work, materials, tools...

MRS. O'BRIEN: Such as?

MR. MAGONY: Saws, wheelbarrows, 2 x 4's, insulation, sheetrock, doors.

CHAIRMAN HODOM: Are you proposing to operate a business out of this building?

MR. MAGONY: No, storage only. There's no business what so ever.

MRS. O'BRIEN: And you're going to store the sheetrock and the wheelbarrows and things on the second floor of this garage?

MR. MAGONY: No, the lighter stuff. Plus part of the garage I want to be able to park 2-vehicles in there.

MRS. O'BRIEN: So the garage would hold 2-vehicles plus the additional storage space.

MR. MAGONY: Yeah, so you're losing storage space right there with the car space, and the lawn mower, the snow blower.

MRS. O'BRIEN: And the shed would be used for what?

MR. MAGONY: Just hand tools or what ever, shovels, rakes. I just need the space.

CHAIRMAN HODOM: Mr. Magony, you have a 32-foot wide by 40-foot deep building, part of is for garage and part of it for storage and you have 2-vehicles.

MR. MAGONY: Yeah.

CHAIRMAN HODOM: You can store 2-vehicles in a 20-foot wide by 22-feet structure. Your 12-foot wider and 18-foot longer than a normal garage.

MR. MAGONY: I need that space.

CHAIRMAN HODOM: Plus the second floor.

MR. MAGONY: I need all the space I can get.

CHAIRMAN HODOM: You haven't convinced me of why you need it. I mean everybody would like more space. You could reduce the height of this building by using attic trusses rather than a finch truss that you have here. Have you looked into using an attic truss?

MR. MAGONY: No, cause I want that extra space up there.

CHAIRMAN HODOM: You need 8-foot high ceiling space on the second floor for storage?

MR. MAGONY: (no response)

CHAIRMAN HODOM: Mr. Magony?

MR. MAGONY: Yeah.

CHAIRMAN HODOM: What are you going to store up there?

MR. MAGONY: Well all my stuff.

CHAIRMAN HODOM: Tell me what you have again, please.

MR. MAGONY: I've got all kinds of stuff; I could bring you over to my mother's house and show you all the stuff I've got.

CHAIRMAN HODOM: Can you put together a list for us for what you're going to store up there and in the garage and get it to us within a couple of days?

MR. MAGONY: Anything that has to do with building materials I have.

CHAIRMAN HODOM: That's not what I'm asking. Can you put a list together for us of what you plan on storing in this building?

MR. MAGONY: Everything I own.

CHAIRMAN HODOM: Would you put a list together for us?

MR. MAGONY: I can't. I can't list every single cotton pickin' thing that I have.

CHAIRMAN HODOM: Why not? Well I'm not asking you to list everything you have, I'm just asking you to list everything you want to store in this building.

MR. MAGONY: Everything that's in my mother's basement.

CHAIRMAN HODOM: But we have no idea what's in your mother's basement George. That's what I'm asking you.

MR. MAGONY: I'm telling you, building materials and tools; refrigerators, stoves.

CHAIRMAN HODOM: How long have you lived with your mom here?

MR. MAGONY: Most of my life.

CHAIRMAN HODOM: Okay. You say you had a place in Albany?

MR. MAGONY: Yeah, I still do.

CHAIRMAN HODOM: You don't live there?

MR. MAGONY: Sometimes, but I want to sell it and get out of there.

CHAIRMAN HODOM: How long have you lived in Albany?

MR. MAGONY: I think I bought it in 78'. It's been like 10-years to get it done, around 88'.

CHAIRMAN HODOM: What type of structure is that?

MR. MAGONY: It's a 3-family, 3-story.

CHAIRMAN HODOM: You lease that out, do you?

MR. MAGONY: Not now. The neighborhood's bad, so I'm not renting anymore.

CHAIRMAN HODOM: So why can't you store what you own there?

MR. MAGONY: Cause it's only a little place.

CHAIRMAN HODOM: It's a 3-family, 3-story building.

MR. MAGONY: Yeah, but upstairs I'm not using that for storage. I want to sell it.

CHAIRMAN HODOM: Is it for sale now?

MR. MAGONY: (no response)

CHAIRMAN HODOM: Pardon?

MR. MAGONY: Yeah.

CHAIRMAN HODOM: It's on the market?

MR. MAGONY: (nods in agreement)

CHAIRMAN HODOM: Who do you have it with?

MR. MAGONY: Oh, what the hell is it? What's the guy's name? It's for sale, it's been for sale for like 8 or 9-months now.

CHAIRMAN HODOM: You don't recall who the realtor is though?

MR. MAGONY: What's that, Wellburn and - - the white and blue stick, the white and blue. It's right on Delaware Ave in Delmar.

CHAIRMAN HODOM: Prudential?

MR. MAGONY: Yeah.

CHAIRMAN HODOM: And who's the realtor that you're using? What's his or her name?

MR. MAGONY: John Manichuck or something like that. He's got a real long last name.

CHAIRMAN HODOM: You propose to take down that maple tree that's there currently?

MR. MAGONY: Yeah.

CHAIRMAN HODOM: That has to come down to accommodate this structure.

MR. MAGONY: That's gonna have to eventually come down anyways, it's to close to the house, along with some of the other trees there.

MR. BROOKINS: Since there's some elevation changes there in the back yard and moving down in there, have you considered - - you haven't convinced me either of what you're putting in here. But if you excavated for the parking, you could drop the height of the overall structure to ground level by having a drive down in, rather than up; follow me? You've got about what, 5-1/2 feet?

MR. PLATEL: Is what he's over, yeah.

MR. MAGONY: What? You're talking about putting a basement underneath it?

MR. BROOKINS: Instead of coming in at the ground level, you would taper your driveway back a little bit and you would come down. So, you're essentially sinking the structure as an alternate approach that would not bring you in front of us.

MR. MAGONY: Well I mean what's the difference, I don't understand. I mean there's a big huge barn across the street, there's trees; there's nobody within 200-feet of each side or anywhere's that it bothers. I've all ready talked to the neighbors; it doesn't bother them.

MR. BROOKINS: Have you talked with the neighbors?

MR. MAGONY: Yup. They said they'd even help me build it if I needed the help.

MRS. O'BRIEN: Mr. Magony, are you going to put electricity and heating in the building?

MR. MAGONY: Yeah, I want electricity, yeah.

MRS. O'BRIEN: And heating?

MR. MAGONY: Heating; no just like space heaters or whatever.

MRS. O'BRIEN: Water?

MR. MAGONY: Maybe somewhere down the road, but not now.

MR. WIGGAND: Are you still in the building business?

MR. MAGONY: (shakes head in disagreement)

MR. WIGGAND: Or have you ever been in the building business?

MR. MAGONY: No. Once I was in the landlord tenant business and sometimes you go to court and people got all kinds of stuff in the apartment and you've got to have a place to store it.

MR. WIGGAND: You know you do live in an "A" zone there, an "A" residential zone? I have a little bit of a problem being a builder in the business, as you know. The materials and everything that you're using in here and the windows and the entrances to the upstairs; the whole bit. I just don't quite understand the reason for that kind of an expenditure that you're going to be spending...

MR. MAGONY: Well on the top there, if I wanted to stay there and if I wanted to stick a computer in there; have a computer room I could do that. I don't see why I can't do that.

MR. WIGGAND: This building appears to me in my experience, and I've been on this Board for a long time. It appears to me that this is being used for something else other than storage. I just would like to hear from you exactly what you're going to be using this building for. Your building is 32-x 40-foot building, that's 1280 square feet on each floor. That's a big building. Both of them have 8-foot ceilings, that downstairs there if you put those 2-garage doors you have in here and the depth of that building you could store 6-cars in there. You've got a lot of floor space there, maybe more than you realize what you've got in there. I didn't realize that you were not a builder; I thought you were. Who drew these plans up?

MR. MAGONY: The architect.

CHAIRMAN HODOM: Ron Tozer.

MR. WIGGAND: Okay. I just don't quite understand why you would need 6 windows on that second floor.

MR. MAGONY: Well again, I can bring you to my mothers house and just for starters show you what's in the basement and that would give you an idea.

MR. WIGGAND: Well I won't argue with that, that's something that I don't want to get into, but it's a big building, it's a large building. It looks like more like a home than it does a storage space.

MR. MAGONY: It's not going to be a home.

MR. WIGGAND: You've got 2-stairways going up to the building. Over here, I think it's one of the streets on Delaware Avenue a number of years ago, a similar thing happened to us and all of a sudden we found out there were people living in it, it was an apartment and it started out to be a storage building. It did have stairs going up the outside just like this. This reminds me of that. Do have any other plans for that second floor other than storage?

MR. MAGONY: No.

MR. WIGGAND: None. And downstairs you're just going to store automobiles?

MR. MAGONY: 2-cars and the rest whatever else I got.

MR. WIGGAND: So you're a landlord and you have materials coming out of these apartments and back into them and so forth and so on and that's why you need storage. I'm majorly concerned; it's an "A" residential zone and you're abutting residential property and that's very important to people to know what's next to them. We have a lot of experience on this Board and we know what we can probably run into. We're the only Town government that can give you the right to break the law, a zoning law.

MR. MAGONY: Well I'm not trying to break the law.

MR. WIGGAND: Well it's not breaking the law. That was the education I got from many, many years ago. You've got to be very careful on what you okay especially in these "A" zones. If this was in an "CC" zone, or even a "C" zone, the whole picture would be different to us, but you are in an "A" residential zone and you've got neighbors all around you. As a matter of fact that piece of property across the road from you, I owned that at one time. I sold it many years ago and I re-built that old house there.

MR. MAGONY: The one with the big barn?

MR. WIGGAND: With the big barn, I owned all that at one time, 50 acres. And I was very careful to see, because I knew it was a residential zone and I built those two brick houses next to that place. I know how important it is to those people that I sold those homes to many years ago, how important it was to be in an "A" zone and they were worried about Elm Avenue. But that is an "A" residential zone on both sides of that road. I don't want to imply anything, but I just don't like the idea of anything being commercial on that property.

MR. MAGONY: I'm not trying to make nothing commercial.

MR. WIGGAND: As long as we understand that and as long as it's part of the record in that machine that's not your intent.

MR. MAGONY: No.

ATTORNEY SEELY: Mr. Magony, you said you were a landlord?

MR. MAGONY: Yeah.

ATTORNEY SEELY: Okay, and how many units do you own? How many rental units do you own?

MR. MAGONY: I own 3-houses, the one I never even bothered redoing it yet because it's in a bad area. They're just destroying my property.

ATTORNEY SEELY: How many rental units is that between the three structures?

MR. MAGONY: Six.

ATTORNEY SEELY: And these are located where?

MR. MAGONY: Albany.

MRS. O'BRIEN: Those are all currently leased; six units currently leased?

MR. MAGONY: No, they're all empty right at this second.

MRS. O'BRIEN: All of them are empty right now, and you're selling one of them?

MR. MAGONY: Yup.

MRS. O'BRIEN: And you're selling one of them?

MR. MAGONY: Two of them.

MRS. O'BRIEN: Two of them. So what's the size of the one that you will continue or you're not going to lease it?

MR. MAGONY: That's three.

MRS. O'BRIEN: Three units, but they're not leased right now; they're empty?

MR. MAGONY: (no response)

ATTORNEY SEELY: How long have the units been empty for?

MRS. O'BRIEN: Have they ever been leased since you've owned them?

MR. MAGONY: Yeah.

MRS. O'BRIEN: You talked about having some refrigerators and stoves that need to be stored there. How old are these, are these new appliances or are they taken from...

MR. MAGONY: Well I re-built all those houses in Albany; I made them all brand new. I didn't buy no used junk, so...

MRS. O'BRIEN: But the things you have stored currently at your mothers?

MR. MAGONY: Yeah, but it's all good stuff.

MRS. O'BRIEN: Good such as, I mean how old are the refrigerators and stoves and things that you have there?

MR. MAGONY: Well the one refrigerator is old, but it still works.

MRS. O'BRIEN: What do you intend to do with it?

MR. MAGONY: Just store it.

MRS. O'BRIEN: Forever?

MR. MAGONY: Well if I want to plug it in and put some beer and soda in there then I'll plug it in. If not, then I'll just leave it sitting there.

CHAIRMAN HODOM: Mr. Magony, how many people currently live at the property, just you and your mom?

MR. MAGONY: Yeah.

CHAIRMAN HODOM: Okay. I noticed that you're insulating the lower level with R-19 on the walls, R-19 on the ceiling but you're not going to heat it.

MR. MAGONY: Well if I've got to do something with my truck in the wintertime and I want to turn the heat on, I want it to hold the heat.

CHAIRMAN HODOM: So you're going to have heat in there?

MR. MAGONY: Not full time heat; maybe later on down the road I'll put heat in down there, but not now.

CHAIRMAN HODOM: Have you looked into the possibility of reducing the height of this building to make it comply with the Town ordinances?

MR. MAGONY: Well what if I dig it down - - if I put a basement underneath that then it'll cost a lot more.

CHAIRMAN HODOM: That doesn't answer my question. Have you looked into reducing the height of this building to comply with Town ordinances?

MR. MAGONY: Not really, but I'm just saying if I dig down and go down then it's not as high, then it'll probably cost more money that way.

CHAIRMAN HODOM: I don't know, I mean I'm still bewildered as to why you need so much space. I'm also a landlord in the city of Albany, and I don't need the kind of space you're looking for.

MR. MAGONY: I do.

CHAIRMAN HODOM: And I have six units in Albany as well. You haven't convinced me George. I haven't looked at what you have in your basement, but if it's in the basement of your mom's house, then it can stay there. It doesn't have to be moved.

MR. MAGONY: Yeah it does, cause she wants it out of her house.

ATTORNEY SEELY: Is it possible for you to have a different configuration on this so that we have a larger 1-story building as opposed to the 2-story building that we're looking at here?

MR. MAGONY: (no response)

CHAIRMAN HODOM: We're not dealing with any lot occupancy at this point in time?

MR. PLATEL: No, it's 3-acres.

MR. MAGONY: Well what if I wanted to build a house there, then...

CHAIRMAN HODOM: Then you would have to subdivide it.

MR. MAGONY: So, you still can't go that high?

CHAIRMAN HODOM: You would have to subdivide the land.

MR. PLATEL: If it's a house, you can go to 30-feet, but you'd have to subdivide the land in order to put a house on it.

ATTORNEY SEELY: Because it's zoned for a single family, each parcel has to have 1-single family house on it.

MR. MAGONY: But I need a garage.

ATTORNEY SEELY: Right. Let me go back to my question, have you considered reconfiguring this so that you have a larger 1-story structure as opposed to the 2-story structure that bumps up against the height requirements?

MR. BROOKINS: The Chairman suggested right at the very beginning that changing the trusses in the attic and dropping down the second floor wall to something more in keeping with a knee wall than a full H-foot wall would certainly bring you into compliance. It would provide you with a lot of storage and you'd probably have to reconfigure the outside stairs, but I'm not sure why you have outside stairs on both sides anyhow.

MR. MAGONY: Are you talking about just making that into a hip roof? Is that what you're saying?

CHAIRMAN HODOM: No, using attic trusses. You don't have a bottom cord like you show here. I mean your architect should have probably brought that to your attention that there's alternate ways of doing that to bring you within the height limitations. There are means and methods in the construction industry of doing that, but you can't maintain that eave height of 8-feet.

MR. MAGONY: I didn't know that there was height restriction. If I knew that, I wouldn't have spent 500 something dollars on the prints to begin with.

CHAIRMAN HODOM: Well then Mr. Tozer should have advised you of that. I'm assuming that he was acting on your advice, that you wanted two 8-foot floors. Otherwise he probably would have made some suggestions - - is he familiar with the Town Codes and Ordinances?

MR. MAGONY: I don't know, to tell you the truth.

CHAIRMAN HODOM: But if he's going to be drawing drawings for the Town of Bethlehem, he has to investigate them.

MR. MAGONY: All I know is I went to the Town and I said I wanted to build a garage and they said yeah and then I had prints made up and all of a sudden it's too high.

CHAIRMAN HODOM: Who was Richard, is it Mckfon?

MR. MAGONY: I called him cause he was one of the cheaper architects, that's why I called him.

CHAIRMAN HODOM: Does Mr. Tozer work for Mr. Mckfon? Am I pronouncing that correctly?

MRS. O'BRIEN: McKeon.

ATTORNEY SEELY: Maybe it's McKeon.

CHAIRMAN HODOM: Okay. Is he the architect who drew these up for you? I shouldn't ask that question.

MR. MAGONY: I don't really know, I couldn't tell you. All I know is I paid him and...

CHAIRMAN HODOM: Okay.

ATTORNEY SEELY: Fair enough.

MR. PLATEL: Actually for clarification on that, you've been saying it's a 8-foot first and a 8-foot second. The first floor is a 10-foot ceiling height.

MR. WIGGAND: It's 10-feet right now.

CHAIRMAN HODOM: I don't know why that's the case either. I think there is plenty of opportunity for you to re-evaluate your building to bring it into code compliance and in all sincerity I think that if you do, you would still have adequate storage space for the list that you're going to provide us of the equipment that you're going to store.

MR. MAGONY: I don't know. How big is my mother's house, is that on the...

CHAIRMAN HODOM: No, it's not showing.

MR. WIGGAND: It's on the plot plan here. This new building you're building is as big as your mother's house.

MR. MAGONY: Well her whole basement, you can't even barely walk through there with all my stuff.

MR. WIGGAND: You say you live there now in this home?

MR. MAGONY: On and off. So when you 2-cars in there and the lawn mower and stuff so you're back to almost where I was before so that...

MR. WIGGAND: Have you studied this plan after the architect gave it to you, as far as ceiling heights and things? On that first floor you've got a 10-foot ceiling height there.

MR. MAGONY: Yup.

MR. WIGGAND: An automobile doesn't require anything like that or a pick up truck. Is that also then for storage?

MR. MAGONY: Well it doesn't have to be 8, or...

MR. WIGGAND: Well we're trying to get the top of that roof down for you, that's the reason why you're here.

MR. MAGONY: I can make that 8-foot, I just figured 10-foot would be more storage if I need whatever.

MR. WIGGAND: We've got to be careful that you're not turning it into a real commercial...

MR. MAGONY: I don't have a dump truck or nothing like that. It doesn't have to be 10-foot, I just figured for storage purposes...

MR. WIGGAND: We're just trying to help you here to see if...

MR. MAGONY: That could be 8-foot.

MR. WIGGAND: I think you should go back to the drawing board myself to see what you can do with this.

MRS. O'BRIEN: Mr. Magony, is there a garage in your mother's house?

MR. MAGONY: Well it's not really a garage, it's just a basement filled with all my stuff.

MRS. O'BRIEN: But it was designed as a garage. There are garage doors coming in from the driveway?

MR. MAGONY: There used to be, not any more.

MRS. O'BRIEN: What's there now?

MR. MAGONY: All my stuff.

MRS. O'BRIEN: I mean what replaced the garage doors?

MR. MAGONY: A window and a door.

MRS. O'BRIEN: I'm sorry?

MR. MAGONY: A window and a door.

MRS. O'BRIEN: Okay. So you've closed that off?

MR. MAGONY: Yeah, there was too much heat loss. Like I said, I was told that I could do it, it's like 550 just for the drawings, and then you say go back and get the drawings, then there's another 550 just for that.

MR. WIGGAND: Has this architect been over to Town Hall in the Building Department asking any questions on this?

MR. PLATEL: I don't recall his name.

CHAIRMAN HODOM: Who told you that you could do it Mr. Magony?

MR. MAGONY: I just went into the Building Department and told them that I wanted to build a garage.

MRS. O'BRIEN: But that was before you had your designs.

MR. MAGONY: Yeah.

MRS. O'BRIEN: So a garage you can build. You can build a garage, you simply - - you know the zoning doesn't allow a garage this size, this height.

MR. PLATEL: What happened is Mr. Magony came in and he had plans. Any building that's over 400-square feet is either going to have to have foundation or a stamped set of plans if you're doing a slab. So he went back and he had some plans drawn up and this is what he came back with.

CHAIRMAN HODOM: Any other questions from the Board? Any questions or comments from the audience?

MR. BROOKINS: One last one, I'm not sure we ever got an answer for the 2-stair cases on either side. What were you thinking there?

MR. MAGONY: You've got to go up somehow.

CHAIRMAN HODOM: One wouldn't suffice? Why do you need two is the question I think.

MR. BROOKINS: It would be extra cost to get upstairs to have two separate staircases.

MR. MAGONY: Well I don't need two, but...

CHAIRMAN HODOM: But you show two, that's the whole point. It looks like you're building entranceways to a second floor with an 8-foot high ceiling, doesn't it? I mean if you didn't need two then why did you show two?

MR. MAGONY: I don't know.

CHAIRMAN HODOM: You just paid 550 dollars for a set of plans and you had no input into what they showed on the plans?

MR. MAGONY: Yeah, I had input.

CHAIRMAN HODOM: So you wanted to two sets of stairs?

MR. MAGONY: I didn't think it was going to be big deal.

CHAIRMAN HODOM: Anyone wishing to speak in favor of the Applicant? Anyone wishing to speak in opposition? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. You'll need a letter from your mom, and I would like a list of equipment that would help the Board in determining whether or not you've got too much space that you're asking for.

MR. MAGONY: In my thought it's not too much space.

CHAIRMAN HODOM: Okay. If you can provide that information for us we would appreciate it, okay? Thank you very much.

MR. MAGONY: All right. Thanks.

Hearing closed 8:04 p.m.

The next order of business this evening is a public hearing for a Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings, and Article XVIII, Rear Yards, Section 128-79 A (2), Required Depths requested by Douglas Bender for property at 14 Quail Hollow Road, Glenmont, New York. The Applicant wishes to construct a 4-season, which will encroach into the Rear Yard setback requirement at the premises of 14 Quail Hollow Road and also exceed the percentage of Lot Occupancy.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is seeking Area Variances from Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings, and Article XVIII, Rear yards, Section 128-79, Required Depths.

The Applicant had a 3-season room constructed without obtaining a building permit on top of the existing deck, which had an existing variance in April of 1991 for the rear yard setback encroachment. The rear yard setback will be 20-feet, which is 5-feet shy of the 25-feet required and the lot occupancy will be 17.11 percent, which is 2.11 percent over the 15 percent allowed. The total building area will be 1,941.57 square feet, which is 239.22 square feet over the 1,702.35 square feet allowed by a lot consisting of 11, 349 square feet.

The existing structure is occupied as a single-family dwelling and is located in an "A" Residence Zone.

CHAIRMAN HODOM: Mark, just to set the record straight the existing zoning currently is Zoned "A"

MR. PLATEL: Single "A", yes. It must have been a typo in the old resolution I believe.

CHAIRMAN HODOM: The previous resolution showed "AA".

MR. PLATEL: Yeah, it's actually single "A".

CHAIRMAN HODOM: Okay. It has been single "A" since...

MR. PLATEL: It has been and it went through the subdivision process and it's "A" zoned, it's always been "A", all that area is "A" zoned over there.

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 of Bethlehem, Albany County, New York will hold a public hearing on Wednesday, July 2, 2003, at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Douglas Bender, 14 Quail Hollow Road, Glenmont, New

York for Variance under Article XVIII, Rear Yards, Section 128-79 A (2), Required Depths of the Code of the Town of Bethlehem for construction of a 4-season room, which will encroach into the Rear Yard Setback requirement at premises 14 Quail Hollow Road, Glenmont, New York 12077. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the June 25, 2003 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. We'll use the same procedure that we used earlier. We'll hear your presentation and entertain any questions or comments from anybody else who may walk into the room. Mr. Bender, just tell us how you came about making an application for a Variance and building the structure without a building permit.

MR. BENDER: Well when we first...

CHAIRMAN HODOM: Just give us your name if you would.

MR. BENDER: My name is Douglas Bender. When - - back in February when we talked to the person we wanted to do the construction, his name is Tom Cronin and the - what's the word I want - agreement?

CHAIRMAN HODOM: Contract.

MR. BENDER: Contract, thank you. In the contract it said that the builder was going to get all the building permits and all that stuff that I needed to do it and so they came out and started construction and I - maybe I shouldn't have assumed, but assumed all the building permits and everything were taken care of when they started the construction.

When I got the notice, the thing was pretty much up and so I called the guy up, I said you know what the heck is going on, I mean I thought you were supposed to get all these, you know the building permits. And I guess he assumed that he could do it right towards the beginning of construction, he didn't realize that there might be some type of Variance needed. He didn't do it in time and I said what do we do now? He said well, we're going to have to go in and do the Variance and maybe - I don't know what the processes are, but maybe I shouldn't have assumed that he got all those permits and stuff but that was in the contract and so I assumed that.

CHAIRMAN HODOM: Do you have a copy of the contract with you?

MR. BENDER: Yeah.

CHAIRMAN HODOM: When did they actually start the work and complete the work?

MRS. BENDER: April.

MR. BENDER: No, it started beginning of May. End of April beginning of May I think. I don't remember the exact time. Did you want this contract?

CHAIRMAN HODOM: Yes. When did he complete the work?

MRS. BENDER: It's not completed.

CHAIRMAN HODOM: Well it looked pretty complete to me.

MR. BENDER: No, but there's a few things like...

CHAIRMAN HODOM: When did he complete it so that you could occupy it, put your carpet in and your furniture and so forth?

MR. BENDER: Yeah, yeah I'm trying to think. It was about the middle of May.

CHAIRMAN HODOM: So it was - - when you received a letter from the Town which was dated May 12th, was the addition substantially completed?

MR. BENDER: Pretty much, yes.

CHAIRMAN HODOM: When was the application for a building permit submitted?

MR. PLATEL: It would have had to have been real close to that.

MS. GUASTELLA: May 8th.

MR. PLATEL: Was it the 8th?

MS. GUASTELLA: Yes.

MR. PLATEL: Then by the time we got the letter out; they were notified probably on the 12th.

CHAIRMAN HODOM: Does Mr. Cronin do a lot of work in the Town?

MR. PLATEL: No, actually I just met him through this and through - - he's doing two other jobs in Town right now.

CHAIRMAN HODOM: Is he a local contractor?

MR. BENDER: He's local to the Albany area.

CHAIRMAN HODOM: But is he local to the Town of Bethlehem?

MR. BENDER: He has his card there, does that help?

ATTORNEY SEELY: Broad Street, Albany.

MR. PLATEL: I don't remember having to many dealings with him except for this year.

CHAIRMAN HODOM: Mr. Bender, you were the owner of the property for the previous Variance for your deck, correct?

MR. BENDER: Yes.

CHAIRMAN HODOM: And did you construct the deck or did you have somebody construct it for you?

MR. BENDER: I had someone do it.

CHAIRMAN HODOM: Okay. Was it their responsibility to obtain the building permit or did you?

MR. BENDER: They did.

CHAIRMAN HODOM: Did you make sure that they had a building permit before they started the deck?

MRS. BENDER: We went to...

CHAIRMAN HODOM: Ma'am, please. You certainly can speak later, I just was asking your husband. I'm assuming it's your husband anyway.

MR. BENDER: Yes. I'm sorry, would you say the question again please?

CHAIRMAN HODOM: When they started the deck, did you obtain the building permit or did they?

MR. BENDER: They did.

CHAIRMAN HODOM: Did you verify that they had a building permit?

MR. BENDER: I don't remember going through any type of verification, I just you know, assumed the builders' are going to do it.

CHAIRMAN HODOM: You see the problem with that is of course is that the homeowner is responsible for obtaining the necessary permits, Variances. So it is your responsibility. I can understand if you know, they put it in the contract that they're going to obtain all the building permits and so forth, but it's still your responsibility.

MR. BENDER: I apologize.

CHAIRMAN HODOM: I just can't visualize because what you went through for obtaining the deck Variance that you wouldn't understand that you would need another Variance for the 4-season room. Did that come into your thinking at all?

MR. BENDER: I didn't know because I mean we all ready had the Variance for the deck so you need another variance? I just don't know what you have to do to go through that.

CHAIRMAN HODOM: Did you contact the Town at all, or did you leave it totally up to the builder?

MR. BENDER: I left it up to the builder.

CHAIRMAN HODOM: Well tell us, even with the plans that you submitted, I really don't know what they built there. Tell us what it is and what it consists of, what the structural ramifications are because they're totally different for a fully occupied space used 4-seasons than they are for a deck. Did they submit foundation plans for the Town?

MR. BENDER: I don't know.

CHAIRMAN HODOM: Describe what they built for you if you would.

MR. BENDER: It's a - - can I kind of show you a picture like in their...

CHAIRMAN HODOM: Sure.

MR. BENDER: Kind of what it looks like, maybe it will help.

CHAIRMAN HODOM: I think you did part of that, this is it here?

MR. BENDER: Yeah, it kind of looks like - - can I show you this?

CHAIRMAN HODOM: Yes.

MR. BENDER: It kind of looks, you know a little like that one, but it of course doesn't have a step but it kind of looks like this where there's like a screen thing. These are like screen things that open up and it looks kind of something like that. It isn't as big as this one, but it looks something like that. Will that help?

CHAIRMAN HODOM: There's no foundation drawings or did he make any changes to the deck before he put that on?

MR. BENDER: There was a little piece that came out that they cut off.

CHAIRMAN HODOM: No, but I mean any structural changes to the deck itself? I don't remember what the deck foundation was constructed of or if it was adequate to carry a 4-

season room.

MR. BENDER: He put two new posts on each corner, I mean you know like he dug the holes down and put the concrete down and then put the posts up on the 2-corners. Two more posts he put in, is that what you're saying, I'm not a...

CHAIRMAN HODOM: Did he give you any plans of what he was going to do other than this brochure, any foundation plans or...

MR. BENDER: No.

MR. WIGGAND: Where did this picture come from here, Mike?

CHAIRMAN HODOM: It was in the file, I don't know.

MR. WIGGAND: Is that part of the structural plans that he submitted to Mr. Bender? It's got an architect seal onto it to. Where is the contract, do you have it down there?

ATTORNEY SEELY: Gil is looking it over Bob.

MR. WIGGAND: Oh, okay.

ATTORNEY SEELY: Mr. Bender, who actually came in and applied for the building permit?

MR. BENDER: It wasn't me – I'm assuming Mr. Cronin.

ATTORNEY SEELY: That application was on May 8th? The letter said that on May 8th an application was submitted to the office.

MR. PLATEL: Than that would be it, yes.

ATTORNEY SEELY: Do we know what prompted the application to come in on May 8th as opposed to before construction began?

MR. PLATEL: That's just when Mr. Cronin came in to submit the application.

ATTORNEY SEELY: So it's not a case of somebody from the Building Department went out and saw the work in progress and stopped it?

MR. PLATEL: No.

ATTORNEY SEELY: Okay. Did you have any conversations with Mr. Cronin that would have led him to come in and apply for the building permit on May 8th or thereabouts?

MR. BENDER: Not that I can recall, no.

ATTORNEY SEELY: Okay. Did Mr. Cronin ever tell you opps, I have to go get a building permit?

MR. BENDER: No.

CHAIRMAN HODOM: Tell us what the reason for the 4-season – why did you need a 4-season sunroom over the existing deck?

MR. BENDER: Well, I wasn't getting much use out of the deck because there is bugs and you go out there to try to eat and you know, you get bugs and you have to worry about now a days like West Nile Virus and tics and all that stuff. And then you're out in the sun and it just wasn't comfortable being out there and so I just wanted someplace where you go out there and you know, have a meal out on the deck and maybe sit out there at night basically.

CHAIRMAN HODOM: Wouldn't a 3-season room have sufficed then?

MR. BENDER: Well I don't know what the difference between a 3-season...

CHAIRMAN HODOM: Well generally a 3-season room is not heated so you don't use it all 4-seasons.

MR. BENDER: This isn't heated.

CHAIRMAN HODOM: Okay. What utilities do you have in there?

MR. BENDER: Just a couple of lights.

CHAIRMAN HODOM: You don't have any plumbing in there?

MR. BENDER: No.

CHAIRMAN HODOM: You don't have any - - what kind of heat do you have in the house?

MR. BENDER: Forced hot air.

CHAIRMAN HODOM: So you don't any duct work or anything extending out into that room?

MR. BENDER: No, I do not.

CHAIRMAN HODOM: So it's - - what would you use the room in the wintertime?

MR. BENDER: I probably won't. I don't think I'll be able to use it in the wintertime.

CHAIRMAN HODOM: It's not your intention now or in the future to run heat out there?

MR. BENDER: No.

CHAIRMAN HODOM: Whether it be hot air or electric?

MR. BENDER: No.

CHAIRMAN HODOM: It's not your intention now or in the future to use this – let me change that – your residence will remain at least for as long as you own it, a single family dwelling?

MR. BENDER: Yes.

CHAIRMAN HODOM: It's not your intention to create a living space for an apartment rental or any other kind of living space other than for your personal use?

MR. BENDER: No.

CHAIRMAN HODOM: You really put us in a dilemma here because we would have approached the request for a Variance on a much, I'll use the term easier mode because there wasn't anything built there. For some odd reason your contractor had decided on his own to, and I won't say his own because you had to give him the authority to proceed to complete the construction without a permit, plus it didn't have a Variance. What would you do if you had to tear it down?

MR. BENDER: I don't know.

CHAIRMAN HODOM: Have you paid your contractor?

MR. BENDER: Most of the money, not all of it.

CHAIRMAN HODOM: How many people live in the home?

MR. BENDER: Right now it's just me and my wife.

CHAIRMAN HODOM: Are there any medical reasons for the 3-season, 4-season room, I mean are you allergic to insects other than the new problems we have with ticks and so forth? Not allergic to bee stings or anything of that nature?

MR. BENDER: No.

CHAIRMAN HODOM: Had you asked your contractor to be with you this evening?

MR. BENDER: Well I said are you going to come and he said it's something that you can handle by yourself.

CHAIRMAN HODOM: Have you approached him on the problems that you're facing currently? I mean first of all you don't have a building permit and secondly you don't a Variance and he has no answers for any of this other than that you can handle it yourself?

MR. BENDER: (no response)

ATTORNEY SEELY: I guess the question Mr. Bender is that you have an agreement here that says the contractor is responsible for getting the permit.

MR. BENDER: Yes.

ATTORNEY SEELY: Obviously he didn't.

MR. BENDER: Yes.

ATTORNEY SEELY: What we're trying to find, I mean we assume that doesn't make you happy.

MR. BENDER: No, it doesn't.

ATTORNEY SEELY: Right.

MR. BENDER: I mean, I don't mean - if I may?

ATTORNEY SEELY: Please.

MR. BENDER: I mean, I don't mean to be trying to pull the wool over anybody's eyes and I really don't know what the process's are and I apologize for the situation but I'm kind of new at this and I don't know exactly what's going on. I kind of relied on the contractor, maybe I shouldn't have, but you know I don't do this all the time and I'm just trying to do what's right and the best thing to do and just correct whatever I can do and whatever. You know what I'm trying to say? I'm in a situation and I really don't know what the process's are and I'm just trying to do the best I can to rectify any type of situation that we might have got into.

CHAIRMAN HODOM: Mr. Bender let me ask you, if you want to give this information fine, if you don't I can understand that to. What did the addition cost you?

MR. BENDER: 17,000 dollars.

CHAIRMAN HODOM: That was the final price?

MR. BENDER: Yes.

CHAIRMAN HODOM: And how much have you paid?

MR. BENDER: 90 percent.

CHAIRMAN HODOM: do you have any performance bonds or payment bonds from your contractor?

MR. BENDER: I don't think so.

CHAIRMAN HODOM: Are there any stipulations in you contract that says that he must meet all Town or Federal, State, County and Town requirements?

MR. BENDER: I don't know.

ATTORNEY SEELY: It does say here that the contractor will submit to the Building Department a completed application for building permit together with the working drawings and the required fee and obtain the building permit project to meet local building code.

MR. WIGGAND: It does say that?

ATTORNEY SEELY: It does say that.

MR. BROOKINS: But interestingly on the front it says that the owner is responsible for getting building permits.

ATTORNEY SEELY: What we have here are...

MR. BROOKINS: There are two sections that are in conflict.

ATTORNEY SEELY: Right. We have a 4-season sunroom, outdoor living and indoors whatever, their sort of standard form boiler plate; 2-pages to which an additional 6-pages are attached to make a total of 8. The first 2-pages has – is the 4-season sunroom that Mr. Cronin apparently borrows from, but then in the scope of work which the 2-pager original agreement refers to clearly imposes the obligation upon the contractor. In this case Mr. Cronin or I should say – well let me step back for a second. 4-season sunroom, CEI Limited, whatever that is, is apparently the name of the company of which Mr. Cronin is the president. So this is an 8-page contract, which does have these contradictory terms on it. There's not much, but you can't reconcile the two provisions in any way that makes sense, which is why I want to come back to the conversation that you had with him after this was brought to your attention that you had a problem. What happened when you received this letter and no doubt spoke to Mr. Cronin?

MR. BENDER: Yeah, and I said you know what's going on. So he said I have to go down and do this and he said he talked to someone down at city hall, I don't know who.

And I said what am I going to do, I mean I got this all ready up and he said the guy down here said you might as well just you know, finish it up and go ahead with the process of trying to get the Variance. That's what he told me.

MR. PLATEL: I believe I spoke with Mr. Cronin, there was no mention that he had built this yet. This is the first time that - - because I remember dealing with him, the first time that I saw it was after Mr. Hodom went out to - as they all go out and look at the sites, he came back in and let me know it all ready built, which I had no idea. So Mr. Cronin never made mention that this was all ready built.

MR. BENDER: Yeah, what he told me was that he had spoken to someone down here in what he should do. That's what he told me.

ATTORNEY SEELY: He had spoken to them prior to you receiving this letter that...

MR. BENDER: No, which letter are you talking about? The letter that's...

ATTORNEY SEELY: This is the May 12th letter from Mr. Platel in which he advised you that your application for the building permit had been denied.

MR. BENDER: I talked to him after that letter. That's the first time I knew anything was wrong.

ATTORNEY SEELY: Okay. And he advised you at that point that he had all ready talked to somebody or that he was going to talk to someone?

MRS. O'BRIEN: Well he applied for the permit, that's why they got...

ATTORNEY SEELY: That's what I'm trying to figure out.

MR. BENDER: I'm not sure when I - - I had several conversations with him about this and I'm not sure after - - when I first said I got this letter what's going on and then we had another one or two conversations. I'm not sure if it was the first conversation I had with him or the second one I had when he told me he had spoken to someone down here.

MRS. O'BRIEN: But the addition was all ready under construction when you got the letter.

MR. BENDER: Yes ma'am.

MRS. O'BRIEN: Mark, if they have not you know, when he submits the foundation plans, if they're not adequate to code what is the process at that point?

MR. PLATEL: If they were inadequate, if he needed more - lets say if he needed more piers or if he needed a foundation, when we do a plan review we'll make a recommendation at that time and tell him that it's not meeting the State Code. It never got

to that point.

MRS. O'BRIEN: But the question is now.

MR. PLATEL: And now if he needs more he'd have to put more in there. He'd be required to.

ATTORNEY SEELY: At this aside from the issue of needing a Variance, had the Building Department received adequate drawings, sketches, whatever to demonstrate that this construction meets the building code?

MR. PLATEL: I don't know. I didn't get a chance to review them. I didn't do a review as far as structural review on that.

MR. WIGGAND: Was there anybody from the Building Department that was down there for an inspection?

MR. PLATEL: No.

MR. WIGGAND: Of the foundation or anything else?

MR. PLATEL: No.

CHAIRMAN HODOM: Because they didn't have a permit.

MR. PLATEL: Like I said the first that we knew about it that anybody in our department actually knew that it was built was two days ago when Mike came back and let me know that he was up at the site and said do you know that it's all ready built, and I said no.

MR. WIGGAND: Well I was down there today and it sure is built. An inspector couldn't even see the foundation under there right now unless you took some panels off.

CHAIRMAN HODOM: I double-checked with your neighbors' to make sure I had the right house.

MR. BROOKINS: I did the same thing. I was there today and I said wait a minute, am I in the right place? I went back to front to make sure I had 14.

MRS. O'BRIEN: Mr. Bender, you're aware that, you know if somebody submits the plans and the foundation are not adequate as Mark is saying it has to be up to State Code and your contractor would have to rectify that situation at no cost to you?

MR. BENDER: Yes ma'am.

MRS. O'BRIEN: A little inconvenience maybe.

CHAIRMAN HODOM: Did you ask your contractor to join you this evening for this hearing?

MR. BENDER: Yes. I thought – at first he told me that he was going to come down and represent me, that I didn't even have to come and then the last time he indicated that he thought that he really didn't have to show up and that I could handle it myself.

MR. PLATEL: I called his office and heard he was on vacation.

MRS. O'BRIEN: Mike, could we possibly adjourn this until we see the plans and have the contractor...

CHAIRMAN HODOM: Well I was going to suggest that. I don't know if he'll come, I mean we could adjourn but that's what I was trying to get at, if he's adamant in not attending, because we have several questions we would like to ask him, but we certainly can't force him to come here. Mark, what is the Building Departments normal process assuming that there wasn't a Variance requirement when somebody proceeds with construction without a building permit? What do you normally do?

MR. PLATEL: Normally we'll just give them a stop work order and require them to get all the permit papers in, issue the permit and then let them go back to work if everything's okay.

CHAIRMAN HODOM: I would recommend this to the Board as Marge suggested. I would recommend to adjourning the hearing. Let's see exactly what was built there, make sure it complies with code, the Federal, State, County and local codes and then we'll address it again. I would not like to close the hearing and make a determination; say in the affirmative without knowing what's currently constructed is adequate for your health and safety. That's not saying that we're going to approve it. I would like to have your contractor here to answer some questions and why he did what he did. Is that acceptable to you folks?

MR. BENDER: Sure.

CHAIRMAN HODOM: It certainly doesn't stop you from using the 4-season room or 3-season room currently, but I think there's a lot of unanswered questions here and especially for the structure itself. You can tell us after you had time to review it Mark if you've got adequate drawings to, I mean if you don't have adequate drawings then it has to go a step further with the Building Department. I hope we're not - - I not asking for the Building Department to do more than what they normally do.

MR. PLATEL: No that would be normally what we would do.

CHAIRMAN HODOM: Okay, but I think for the Zoning Board we would like to know what's currently constructed is adequate and then we'll go from there. So I would ask, Mr. Bender if you would just make a recommendation that we adjourn the hearing. I

don't know if we can set a date certain or not at this point in time. How long do you think it would take to get all this information together for your review?

MR. PLATEL: Oh, for me, I can review the plans. I just didn't review them because it was going through this process not knowing it was all ready built. From my understanding Mr. Cronin is on vacation because I called his office looking for him when I found out that the structure was all ready built and I don't know when he's coming back.

CHAIRMAN HODOM: Why don't we do this then, why don't we - - or Mr. Bender why don't you make a request that we adjourn the hearing to a date uncertain. This will give you an opportunity to talk to your contractor and see when he's available. Currently we have July 16th available and August 6th is available, those are our two next hearing dates. When do you need notice?

MS. GUASTELLA: Five days prior to the hearing.

ATTORNEY SEELY: It's usually in the spotlight.

MS. GUASTELLA: Two weeks before.

ATTORNEY SEELY: It'll be in the spotlight next Wednesday the 9th, if it's supposed to be the 16th.

CHAIRMAN HODOM: But do we have to re-advertise?

ATTORNEY SEELY: No, I don't - - actually that's a good point, that's true since we had a notice all ready, we've had a public hearing and we're merely adjourning it for further proceedings. Adequate notice has been given.

CHAIRMAN HODOM: Okay. But in order for us to include it on the July 16th agenda, when do you have to re-notify?

MS. GUASTELLA: I usually send the notifications out the day after the hearing. For our next hearing, I'll send all our notices out to the spotlight and to the Applicants and the neighbors tomorrow.

MRS. O'BRIEN: But we don't have to re-do all that.

CHAIRMAN HODOM: No.

ATTORNEY SEELY: We're continuing an existing hearing.

CHAIRMAN HODOM: Mr. Bender, why don't you check with Mr. Cronin and see when he's available, July 16th or August 6th in a timely fashion and notify the Building Department; Karen, Mark, either one and we'll go from there. But be in contact with the

Building Department to see if they need any further information from your contractor.

MR. BENDER: I should do that.

CHAIRMAN HODOM: Yes, I think you have to take hold of the matter now. We're not going to be waiting for your contractor for information or whatever else and we'll go from there. Is that a fair request?

MR. BENDER: Yes, thank you very much.

MR. BROOKINS: Just a quick question, did you or your wife have any conversations with any of your neighbors prior to beginning this project or subsequent to it being in the current state - - any conversations at all about how it looked, how it's functioning, any concerns they may have particularly your back neighbor on Bobwhite?

MRS. BENDER: They all like it.

MR. BENDER: The conversation I had with the person on the side towards Bobwhite, they came over and they liked it and the person behind me, they came over and they liked it. The only other conversation I had with the lady from across the street from me who got one of your letters. She came over and she said there's a hearing tomorrow, do you want me to come because I want to come and tell them how nice it looks. I said well, I mean you don't have to come for me and so those are the conversations I've had.

CHAIRMAN HODOM: If you are talking with your neighbors again, if they would like to put something in writing, it could even be on the notice that we sent them that they have no objection to the structure. We could put that on the record for our review and consideration.

MR. BENDER: I will do that.

CHAIRMAN HODOM: Would someone like to make a motion that we adjourn?

MRS. O'BRIEN: So moved.

MR. BROOKINS: Second.

CHAIRMAN HODOM: To a date uncertain pending Mr. Bender's notification of when his contractor can be here and Marks determination after review of the drawings submitted for the building permit. We'll adjourn this hearing to a date uncertain. Thank you both very much.

MR. BENDER: Okay, thank you.

Hearing adjourned 8:41 p.m.

- - -

The next order of business was to consider the application of Helen Ernst, 8 Boylston Drive, Delmar, New York. 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 Helen Ernst, 8 Boylston Drive, Delmar, New York for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings, Article XVII, Side Yards, Section 128-73, Required Widths, for construction of a screened porch, which will exceed the percentage of lot occupancy and encroach into the side yard setback requirement at premises 8 Boylston Drove, Delmar, New York, it is hereby ordered that a public hearing on this matter be held July 16, 2003 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 to consider the proposed resolution of Vincent and Eloise Potenza, 11 Peel Street, Selkirk, New York 12158.

The following proposed resolution was presented by Attorney Seely 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 Vincent and Eloise Potenza ("Applicants") for an Area Variance under Article XVI, Front Yards, Section 128-66, Required Depths, and Article XVII, Side Yards, Section 128-73, Required Widths at premises of 11 Peel Street, Selkirk, NY; 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 May 7, 2003; 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 makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicants seek an Area Variance under Article XVI, Front Yards, Section 128-66, Required Depths, Article XVII, Side Yards, Section 128-73, Required Widths for property at 11 Peel Street, Selkirk, New York. The Applicant wishes to construct an addition to the front and to the side of the existing dwelling, which will encroach into both the front and the side yard requirements at the premises of 11 Peel Street.

The Applicant wishes to construct two separate additions on the existing structure. The addition on the side of the existing structure will be 2-stories and the addition to the front will be a single story garage extension. These additions will create a side yard setback of 9.77-feet, which is .23-feet shy of the 10-foot required and a front yard setback of 29.6-feet, which is 5.4-feet shy of the 35-feet required.

The existing structure is occupied as a single-family dwelling and is located in a Planned Residence District with "AA" Residence requirements.

The Applicants seek the Front Yard setback variance in order to construct a full bathroom in place of an existing half bathroom, which is partially inside the garage. Extending the bathroom into a full bath across the back of the garage will exhaust space currently needed for a family vehicle. The Applicants had constructed a built-in pool and deck a couple of years ago and would find it more convenient to keep the foot traffic in and out of the house to a minimum.

The three-inch Side Yard setback variance was not believed to be necessary when the plans were drawn by the architect. Given the minimum incursion into the Side Yard setback, the Applicants agreed they could build this portion of the project by amending their drawings so as not to require a variance for extending into the Side Yard setback.

The Applicants have a large lot on the side of the house away from the project. The Applicant does not wish to place the project or any portion of it on that side of the Property because they feel the slope of the Property is not conducive to this project. They also do not believe the Project would complement the rest of the house if constructed on that side of the Property.

The Applicants spoke to their neighbors about the project and report no one objected. At the hearing, one person spoke in favor of the project and no one spoke in opposition.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the testimony and documents presented at the hearing, this Board concludes that the application for the Front Yard setback variance will be denied and that the application for the Side Yard setback variance will also be denied to the extent it was not withdrawn at the hearing.

The Board determined that the proposed project could be accomplished in a manner that would not require a variance by either reconfiguring the proposed bathroom layout or relocating the project to the other side of the existing home. They also determined the project would change the character of the neighborhood in which it is located. The evidence presented at the hearing did not demonstrate the project could only be located and configured in the manner shown. In addition, the variance for the front yard setback is to accommodate a four-month pool season that was not justified.

Accordingly, the Board denies the Applicants' request for the two variances sought.

July 2, 2003

Michael C. Hodom
Chairman
Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on July 3, 2003.)

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The next order of business was to consider the proposed resolution of Anthony Camoigno, 35 Elm Avenue East, Selkirk, New York 12158.

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

RESOLUTION

* * *

*

WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York an Area Variance under Article IX, Accessory Uses, Section 128-36, Private Garages in a Residence District requested by Anthony

Campigno (“Applicant”) for property at 35 Elm Avenue East, Selkirk, New York (“the Property”). The Applicant wishes to construct a detached garage, which will exceed the allowable storage of motor vehicles in an “AR” Zone; 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 June 4, 2003; 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 makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicant owns the Property and seeks a variance under Article IX, Accessory Uses, Section 128-36, Private Garages for permission to maintain a two-door garage that will allow him to store more vehicles at the Property than permitted under the town code. The code allows for a private garage in a residence district to provide storage for not more than 3-motor vehicles. The total number of proposed spaces will exceed the allowable by one space.

The Applicant wishes to store a truck, lawn equipment, an 8-foot trailer and wood in the garage. He would like the garage to have two doors instead of one. His Property is fairly large and the garage is located behind trees that make it difficult to see from the road.

Two neighbors spoke in favor of the project; no one spoke in opposition.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a variance to maintain and finish constructing the proposed garage. After reviewing the application, pictures submitted and testimony at the hearing, the Board determines that the proposed variance will be granted.

The garage will exceed the number of spaces historically allowed for motor vehicles by only one on a Property where the garage is not visible from the road. The garage will also be in keeping with the character of the neighborhood.

Accordingly, the Board grants the Applicant's request for a Variance to finish constructing the garage according to the following conditions:

1. The construction be in conformance with the application, documents and testimony at the hearing;
2. The applicant shall not use the garage for any impermissible commercial use; and
3. Construction shall be completed within one year.

July 2, 2003

Michael Hodom
Chairman
Board of Appeals

- - -

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 Robert Wiggand Gilbert Brookins Marjory O'Brien	None	Richard Lewis	None

(Resolution filed with the Clerk of the Town of Bethlehem on July 3, 2003.)

The next order of business was to consider the proposed resolution of Thomas and Joanne Coffey, 47 Clifton Way, Slingerlands, New York 12159.

The following proposed resolution was presented by Attorney Seely 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 Thomas and Joanne Coffey (“the Applicants”), for premises located at 47 Clifton Way, Slingerlands, New York (“the Property”) for Variance under Article XVII, Side Yards, Section 128-73, Required Widths of the Code of the Town of Bethlehem for construction of an attached storage shed, which will encroach into the Side Yard setback requirement at premises 47 Clifton Way, Slingerlands, New York 12159; 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 May 21, 2003; 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 makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicants are the co-owners of the Property and seek a variance under Article XVII, Side Yards, Section 128-73, Required Widths for the construction of an attached 10-foot x 23-foot shed with 8-foot wide door at the Property alongside the current garage. The proposed construction will create a side yard setback of 6.15-feet, which is 1.85-feet shy of the 8-foot required Side Yard Setback. The existing structure is occupied as a single-family dwelling and is located in an “A” Residence Zone.

The Applicants own a very large tractor that is approximately 8-½ feet long by about 5- ½ feet wide that takes a good portion of the existing garage. To store the large tractor in the garage it would have to be partially disassembled. They have owned this larger tractor for four years and the house for nine years. The Applicants stated that the large tractor is necessary to maintain the one-acre lot due to the slope of the back yard. The Applicants also stated that the current tractor was acquired when the prior tractor proved less capable of navigating the slope of the back yard. Within the garage there is also a snow blower, winter tires and a freezer/refrigerator along with 4 bicycles. The Applicants want to be able to store summer furniture in the winter and during the summer be able to get a car in the existing garage and be able also to store their tractor. The Applicant agreed that the tractor could be driven in and out of a shed with a six-foot door.

Mr. Coffey indicated his neighbors did not oppose the project. Mr. Gansle, the neighbor next door on the side of the proposed project, had no objection to the project. Mr. Gansle had constructed a 10-foot x 23-foot attached shed on the other side of his property, though he did not require a variance to do so.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a variance to construct the proposed attached shed. After reviewing the

application, sketches submitted and testimony at the hearing, the Board determines that the proposed variance will be denied.

The proposed encroachment is 1.85-feet, however the Applicants' need for the attached shed could be met by reconfiguring the project to an 8x 23 shed that would allow the Applicants to store in the shed the items currently stored in the garage. The Applicant also stated that a detached shed could be constructed on the rear of the property to meet their storage needs. Thus, the variance need not be granted because the need can be met by a non- intrusive alternative.

Accordingly, the Board denies the Applicants' request for a Variance to construct a shed in excess of the side yard setback requirement.

July 2, 2003

Michael 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 Robert Wiggand Gilbert Brookins Marjory O'Brien	None	Richard Lewis	None

(Resolution filed with the Clerk of the Town of Bethlehem on July 3, 2003.)

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The next order of business was to consider the proposed resolution of Stephen Picarazzi, 59 Royal Blvd., Delmar, New York 12054.

The following proposed resolution was presented by Attorney Seely 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 for an Area Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings requested by Stephen Picarazzi (“Applicant”) for property at 59 Royal Boulevard, Delmar, New York (“the Property”). The Applicant wishes to construct an addition, which would exceed the percentage of lot occupancy at the Property; 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 May 21, 2003; 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 makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicant is an owner of the Property and seeks an Area Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings and wishes to construct a 668.17 square foot addition to the existing 2,119.8 square foot main structure that will create a total main structure of 2,797.97 square feet. This is 545.92

square feet over the 2242.05 square feet allowed. The lot occupancy will be 18.65 percent, which is 3.65 over the 15 percent allowable in an “A” Residence Zone.

The Applicant is trying to create more living area in his house. He has a very small kitchen and no dining area and no family room area. The Property has an existing garage that can be made into a family room. There is an existing breezeway that connects the garage and the house that’s not heated, and on a slab that could become a dining area, but in order to make that a dining area he has to open up the area, which will cause him to lose the garage where he stores lawnmowers, 2- vehicles, rototiller and a woodpile. He also uses the garage as a work area.

The Applicant submitted a letter from the owners of three properties in the neighborhood in support of the proposed project. Mr. Maeder, who owns the property behind the Applicant, appeared at the hearing and had no objection.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a variance to construct the proposed addition. After reviewing the application, sketches submitted and testimony at the hearing, the Board determines that the proposed variance will be granted.

While the variance is more than minimal, the Property is located in an area of town where the lots are not as large so as to allow much expansion without exceeding lot occupancy. The proposed addition maintains the existing character of the neighborhood and could not be accomplished in a less intrusive manner.

Accordingly, the Board grants the Applicant’s request for a Variance to construct the addition according to the following conditions:

1. The addition will be constructed in accordance with the documents and testimony submitted at the hearing, including but not limited to the Applicant’s

statement that he will adjust the project to be in compliance with the setback requirement; and

2. The proposed construction will be completed within two years.

July 2, 2003

Michael Hodom
Chairman
Board of Appeals

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Mr. Brookins made a motion that the Resolution be adopted as amended. Mr. Wiggand seconded the motion and it passed by the following vote:

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

(Resolution filed with the Clerk of the Town of Bethlehem on July 3, 2003.)

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The next order of business was to consider the proposed resolution of Geraldine Aylward, 44 Montrose Drive, Delmar, New York 12054.

The following proposed resolution was presented by Attorney Seely 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 Geraldine Aylward ("Applicant"), for an

Area Variance under Article XVII, Side Yards, Section 128-73, Required Widths for property at 44 Montrose Drive, Delmar, New York. The Applicant wishes to construct a carport, which will encroach into the Side Yard setback at the premises of 44 Montrose Drive; 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 June 16, 2003; 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 makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicant is the co-owner of property located at 44 Montrose Drive, Delmar, NY (“the Property”) and seeks a variance under Town of Bethlehem Code Chapter 128, Article XVII, Section 128-73 for the construction of a car port to be added at the Property.

The property in question is in Residence Zone AA in which the side yard setback is a minimum of 10 feet. It currently has a one-car attached garage. The proposed carport addition to be attached to the side of the garage will be approximately 11 feet wide and will be constructed to within 7.9 feet of the adjoining property. Applicant wishes to be able to provide cover for a pick-up truck, firewood and a refuse container. The Applicant and her husband own three cars. The pickup truck proposed to be parked in the carport is approximately 16 feet long and 5 feet wide. The refuse container is approximately 30 inches wide and the firewood proposed to be stored in the carport is 14-16 inches long.

The Applicant currently has blacktopped approximately 11 feet wide next to the

current one-car garage and wishes to cover this area with the carport. The Applicant would prefer not to construct the carport at a width less than the current blacktop because it will require cutting holes in the blacktop and not be attractive. The proposed carport will be 22 feet long.

There is one carport in the neighborhood, around the corner from the Property, but no carports on Montrose Drive. The neighbor on the side of the proposed construction submitted a letter in favor of the project. No one spoke in opposition.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a variance to construct the proposed carport. After reviewing the application, sketches submitted and testimony at the hearing, the Board determines that the proposed variance will be denied.

The Applicant wants the carport in order to be able to park one vehicle that is 5 feet wide, store the refuse container and firewood. These items do not require a carport that is eleven feet wide. Many such structures are constructed with openings that are only eight or nine feet wide, which will provide the Applicant with enough space to park many types of vehicles including the pickup truck she or her husband own. Sufficient space will be left for the Applicant to store firewood as well as the refuse container. In addition, the neighborhood contains only one carport, but there are none on the street where Applicant lives. The proposed addition, therefore, is more than a minimal request and would not be in keeping with the character of the neighborhood.

Accordingly, the Board denies the Applicant's request for a Variance to construct the carport as submitted to the Board.

July 2, 2003

Michael Hodom
Chairman
Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on July 3, 2003.)

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The next order of business was to consider the proposed resolution of Cheryl Randell and William Carpenter, 114 Font Grove Road, Slingerlands, New York 12159.

The following proposed resolution was presented by Attorney Seely 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 Cheryl Randell and William Carpenter ("Applicants"), for Variance under Article XVIII, Rear Yards, Section 128-82, Fences & Walls requested by Cheryl Randell and William Carpenter for property at 114 Font Grove Road, Slingerlands, New York ("the Property"). The Applicant wishes to construct a fence, which will exceed the height requirements at the Property; 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 May 7, 2003; 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 makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicants own the Property and seeks a variance under Town of Bethlehem Code Chapter 128, Article XVII, Section 128-82 for the approval of a stockade fence to be constructed to a height of 6 feet at the rear of the Property. Fencing on the sides of the Property will be chain link, which may be constructed to a height of six feet without a variance.

The property in question is in Residence Zone AA in which fences may be six feet tall as long as at least the top two feet are semi-translucent. The Property is bounded by rail corridor that apparently does not have rail traffic any longer, a vacant lot and one neighbor. Applicants desire to construct a fence in order to keep out deer that regularly come in their yard and to provide some privacy from foot traffic on the railroad corridor that adjoins the back of their property. The deer have posed a health hazard from deer ticks, which the Applicants routinely pick off their dogs and one of the Applicants had one in the short six months they have owned the Property. They desire more than a four-foot fence because deer are capable of jumping that short a structure. The Property also has a small pond that is three-feet deep. Applicants stated their research showed the expense to construct a six-foot stockade fence is considerably less than a four-foot fence with an additional two feet of lattice on top. They submitted an advertisement from Home Depot showing a six-foot wooden, stockade fence cost \$21 per eight-foot section while a vinyl four-foot fence with an additional two feet of lattice was approximately \$70

per eight-foot section.

No one spoke in favor or in opposition to the proposal.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a variance to construct the proposed fence. After reviewing the application, pictures submitted and testimony at the hearing the Board determines that the proposed variance will be denied.

The Applicants did not present information indicating the proposed fence, as compared to a fence in conformance with the town ordinance, would achieve their stated goal of keeping out deer. In addition, the claimed additional expense for a fence in conformance with the town code is more the result of different materials in the examples provided than in the configuration of the two different types of fences.

Accordingly, the Board denies the Applicant’s request for a Variance to construct either a 5-foot or six-foot high solid fence.

July 2, 2003

Michael Hodom
Chairman
Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
Michael Hodom Robert Wiggand Gilbert Brookins	None	Richard Lewis	None

Marjory O'Brien

(Resolution filed with the Clerk of the Town of Bethlehem on July 3, 2003.)

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The next order of business was to consider the proposed resolution of David Burnham, 24 Iroquois Trail, Slingerlands, New York 12159.

The following proposed resolution was presented by Attorney Seely 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 for an Area Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings requested by David Burnham ("Applicant") for property at 24 Iroquois Trail, Slingerlands, New York ("the Property"). The Applicant wishes to construct a 3-season room, which will exceed the percentage of lot occupancy at the premises; 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 June 18, 2003; 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 makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicant is a co-owner of the Property and seeks a variance under Town of Bethlehem Code Chapter 128, Article XII, Section 128-50 for the construction of a three-season room. The Applicant is proposing to construct a 179.2 square foot addition to the existing main structure that will make the lot occupancy 15.97 percent, which is .97 percent over the 15 percent allowable. The total building area will be 1,954 square feet and this is 118.3 square feet over the 1,835.7 square feet that is allowed.

The existing main structure is occupied as a Single Family Dwelling. The back yard gets very hot in the warmer months, which makes using the area very uncomfortable. Several neighbors have constructed three season rooms to accommodate use of the area on warmer days. The Applicant submitted notes in favor of the project from the neighbors adjoining the sides of the Property. No one spoke in opposition to the Project.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a variance to maintain the construct the proposed three-season room. After reviewing the application and testimony at the hearing, the Board determines that the proposed variance will be granted.

The proposed addition creates a minimal extension of the lot occupancy, is necessary to be able to enjoy this portion of the Property in the warmer months, and would be in keeping with the character of the neighborhood.

Accordingly, the Board grants the Applicant's request for a Variance to construct the three-season room according to the following conditions:

1. The construction be in conformance with the Application, documents and testimony at the hearing;
2. Construction shall be completed within two years.

July 2, 2003

Michael 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 Robert Wiggand Gilbert Brookins Marjory O'Brien	None	Richard Lewis	None

(Resolution filed with the Clerk of the Town of Bethlehem on July 3, 2003.)

On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the minutes of the June 18, 2003 meeting were approved.

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

Meeting Adjourned: 9:35 p.m.

Respectfully submitted,

Secretary