

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
July 21, 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  
                      Marjory O'Brien  
                      Gilbert Brookins  
                      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 continuation of a public hearing for variance under Article VI, Permitted Uses, Section 128-17 (D), Accessory Business Signs requested by CVS (Applicant) and 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 166.49-square foot pylon sign, the total signage on the site will be 224.49-square feet, which is 103.61-square feet over the 120.88-square feet allowed. The new sign proposal will also have a changeable reader board. This part of the proposal will be required a variance under the same article for flashing or animated lights.

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 continuation of a public hearing on, Wednesday March 17, 2004, at 7:45 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of CVS Pharmacy (Applicant), Mullen Capitol, LLC (Owner), 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 will exceed the allowable square footage at the 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 March 10, 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 desiring to speak in opposition. 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. Jacks just introduce yourself again for us and continue with your presentation.

MR. JACKS: Sure. Good evening, my name is Steve Jacks a representative of Site Enhancement Services. I'm a sign consultant for CVS Pharmacy. CVS Pharmacy is respectively requesting relief under the Town of Bethlehem municipal ordinance, Section 128-17 (D). As you're aware from the last meeting of March 17, 2004, CVS Pharmacy is going through a nation wide brand identification program on their freestanding signs and we're updating those signs.

As of the last meeting there was some questions that were of concern to the Board that I did some research on and talked to the DOT and also talked to various other people and I put all those documents into a booklet here and provided those to you. If you like I'd like to go over that now if we could.

CHAIRMAN HODOM: Please.

MR. JACKS: If you open the booklet, I've marked in yellow one, two and three; those are the items that are provided in the booklet. Below this, items four through nine are

information that I had provided that I submitted with my submittal to Karen and we can go over those separately but now I'd like to go over the booklet. One of the first questions that arised at the last meeting was show sign dimensions on the original sign, basically show the existing sign with dimensions next to the proposed sign with dimensions and that is on the next page.

CHAIRMAN HODOM: The width of that existing CVS sign, is that 5-feet as well?

MR. JACKS: Correct.

CHAIRMAN HODOM: You show the height but you don't show the width.

MR. JACKS: Yes and my apologies that's something I missed. It's actually a 5 by 5 cabinet. I believe that Mark can probably attest to me that it's 5 by 5. Again, this is the left side is the existing and the right is the proposed. The - - if you turn to the next page, we had a stamped engineered drawing that I had provided to you along with the construction drawing. I believe that the stamped engineering was provided with the documents. I had an engineer in New York actually get it for me.

CHAIRMAN HODOM: Is this the item 2 circled?

MR. JACKS: Yes sir.

CHAIRMAN HODOM: I don't see any stamps on the...

MR. JACKS: In the submittal that I submitted to you, it should have been an actual stamped engineering cover sheet.

CHAIRMAN HODOM: Well go ahead.

MR. JACKS: I do have one if you like.

CHAIRMAN HODOM: Okay. We may very well have it in the pile, but it's not part of your...

MR. JACKS: It was not part of that. It was like a front cover with his stamp on it. I just provided the construction part of it in the booklet. If you turn to the next page...

CHAIRMAN HODOM: Before we go off of this page...

MR. JACKS: Sure.

CHAIRMAN HODOM: Is this a standard detail sheet that they provide to you? And the reason I ask that is because you're showing some additional signage in these plans such as 24-hours, the 1-hour photo and the drive thru pharmacy. Has that changed, I mean are

you proposing to include those?

MR. JACKS: No actually this is - - unfortunately that's how they provided to us. It's like a prototypical freestanding sign when we have them sent out. When they send them back and they have them stamped engineered for us, they sent it back with a prototypical freestanding sign. That's how a lot of the signs that they propose is put in 24-hour and drive thru pharmacy and a food shop below the actual CVS pharmacy logo.

CHAIRMAN HODOM: And so what you're showing on the proposed P-50, circle one, and we have talked about before is what you're proposing here.

MR. JACKS: Correct.

CHAIRMAN HODOM: And those other little signs are not part of your proposal?

MR. JACKS: Correct and the 24-hour below on the construction drawing - - no those as we call them angular messages, no those are not proposed. If you turn to the following page, I've been working with Karen and Mark on this and what I did is I went out and physically measured where the sign is for the setbacks. The way I measured because I don't know exactly where the right of way is, I went from your curb line and I measured from the curb into the actual pole itself. The one concern that I can think of now that I think I probably should have done honestly is that everything that I measured was from the curb to the pole on each side. Now, if you actually really think about it if you drew out the 5 by 5 cabinet and you came down - - if you came down each side of the 5 by 5 cabinet it would be a different measurement than the actual pole. Do you see what I mean?

CHAIRMAN HODOM: Yes.

MR. JACKS: I mean you're not talking a lot respectively, but just so you are aware. I didn't want to - - just for the record I want to make sure, you know if you were to measure from one side of the cabinet it might be off, you know a foot and a half or 2-feet.

CHAIRMAN HODOM: But this gives us a general...

MR. JACKS: This is pretty accurate.

CHAIRMAN HODOM: The only question that I have is the 13-feet that you show here which is from the Jones, Stevens Corporation sewer cover.

MR. JACKS: Yes.

CHAIRMAN HODOM: That dimensions also to the existing single pylon pole.

MR. JACKS: Yes it is.

CHAIRMAN HODOM: It's not to the far side of the new sign.

MR. JACKS: No, it's actually to the existing...

CHAIRMAN HODOM: So everything is dimensioned to that existing support pole for the existing pylon sign?

MR. JACKS: Yes sir.

CHAIRMAN HODOM: And in that regard with your proposed new sign, which will have 2-posts you will actually lose one parking space. Is that correct?

MR. JACKS: Well I wouldn't say – as long as respectively place it so it's not in the right of way and we place it far enough. I don't think we should lose a parking spot I don't think.

CHAIRMAN HODOM: Well because you're adding a second post and because the sign is wider - - that your proposing is wider than the existing 5-feet. You will be into that one parking space, now I don't know if that affects the overall parking requirements of the facility, but in my opinion you're going to lose at least one parking space.

MR. JACKS: We can reposition that sign to, you know accommodate it, but I didn't think we're...

CHAIRMAN HODOM: You actually show it in the parking space and dimensionally it is in the parking space.

MR. JACKS: Okay.

CHAIRMAN HODOM: I mean that's something that the Board will have to look into and the Building Department will have to verify whether or not the loss of 1-parking space is going to effect the total requirement for the facility.

MR. JACKS: Sure, I understand.

MR. PLATEL: Do you have an overall site plan? I can tell you in a couple of minutes.

CHAIRMAN HODOM: Okay go ahead.

MR. JACKS: I believe that was all that was in the booklet that I provided for you. If you turn to the front of the page again of the booklet there's items provided separately. This was the stamped engineered drawing.

CHAIRMAN HODOM: Is this the drawing you're referring to?

MR. JACKS: Correct, yes. The other was a - - we were to provide the sign study from

the Pennsylvania State and the USSC. We did provide booklets; there were 7 or 8 booklets that I sent to you.

CHAIRMAN HODOM: This one here?

MR. JACKS: There's also a letter - - you'd like to have us provide a letter from CVS.

CHAIRMAN HODOM: Yes.

MR. JACKS: Regarding the existing sign and the proposed sign for comments on it. There was also another document that we did provide from highway commission - document. There's one from Cheryl Duprey from the DOT and I think there's also an e-mail attached with it.

CHAIRMAN HODOM: Yes. There's one from Cheryl Duprey and you're referring to the other - the CVS reality company letter from...

MR. JACKS: Judy.

CHAIRMAN HODOM: Judy Lapiere.

MR. JACKS: Yes.

CHAIRMAN HODOM: Okay we did receive that letter. There was also a letter from William Logan from DOT.

MR. JACKS: Correct. Bill Logan was one of the traffic engineers who directed me over the Cheryl.

CHAIRMAN HODOM: Just let me verify this drawing one from Lois Cortina, P.E., which is dated May 4, 2004. Was this specifically for this facility?

MR. JACKS: In a sense it was more of trying to get the submittal in, honest truth. We needed a stamped engineered drawing of a P-50 freestanding sign and for illustration purpose and for our stamped engineer that what we had submitted.

CHAIRMAN HODOM: Okay because it doesn't correlate to the dimensional sign that you're proposing to use at this facility. This again is showing for the electronic sign that's 10-foot, 9 wide by 3-foot, 7 high.

MR. JACKS: Correct.

CHAIRMAN HODOM: And then for the other sign, the CVS location sign, 9-foot, 0 and an 1/8-high by 11-foot, 5 and 11/16-wide compared to 6-foot and 1/4, 11-foot, 1/32.

MR. JACKS: Correct. Actually if you were to turn to, if you keep that open, if you turn

to page 2. I'm just going to give you an example here. The way we measure the - - if you look at the sign face, we measure it 8-foot 4 and 13/16 and we just actual measure the sign face of the cabinet. Now if you look on the SED, I believe he has 9-feet, 7 and 3/8. He actually measures to the inter edge of the topper compared to what we measure.

CHAIRMAN HODOM: He doesn't show that dimension. His 11.5 and 11/16 compares to your 9-foot, 8. And his 9-foot, 0 and - - that doesn't compare to anything. I'm using this here compared to this here.

ATTORNEY MOORE: Right.

CHAIRMAN HODOM: To the outside here, 11.5 and 11/16<sup>th</sup> would be compared to this dimension of 9-foot, 8. In that regard the dimensions that you're proposing are still as shown on your P-50, circle one. Is that correct?

MR. JACKS: Correct.

CHAIRMAN HODOM: Because he's even showing the center line of posts almost 2-feet wider...

MR. JACKS: Is he?

CHAIRMAN HODOM: Than what you're proposing to use.

MR. JACKS: I must have looked over that because this is actually the same guy that I use throughout the New York - different areas.

CHAIRMAN HODOM: Unless I don't have the correct - - do you have a copy of this Steve?

MR. JACKS: Yeah, I sure do. The other thing I was referring to was, for example because I had this question arise at another hearing, if you turn to page 3 I'll just use this as an example. I know it's hard to read but if you look on there on top of the cabinet where it says 9-feet, 7 and 3/8.

CHAIRMAN HODOM: Yes.

MR. JACKS: If you see where he measured it; he actually measured it from the inside of the topper, which is basically outside of the cabinet itself without the sign face.

CHAIRMAN HODOM: Yes. That 9.7 and 3/8 on this drawing that you're referring to is code P-50, circle two.

MR. JACKS: Correct.

CHAIRMAN HODOM: Would correspond to his 11. 5 and 11/16 on the drawing that he

stamped.

MR. JACKS: That's an error and I apologize. He made an error and I overlooked it.

CHAIRMAN HODOM: Can you have that corrected for us?

MR. JACKS: I can, sure.

CHAIRMAN HODOM: Just have him stamp and sign and date this document.

MR. JACKS: Alright.

CHAIRMAN HODOM: And then I think we're all on the same page if he does that.

MR. JACKS: Sure but I think what we'll end up doing, honestly I'll just have him just go to our drawings so we're all on the same page on, you know the one's that I'm proposing.

ATTORNEY MOORE: We just want one set that has all the same dimensions and stamped by a P.E.

MR. JACKS: Yeah, exactly I'll make sure it's, you know reflects what we're proposing.

CHAIRMAN HODOM: And for clarification it does not appear that the loss of that one parking space will be a penalty to the site as far as the number that's required. We left this as - - you're going to have him either redraw this, stamp it and seal this or are we going to have him stamp, seal and sign this document?

MR. JACKS: I think the best thing to do honestly is, yeah if we just take this document here and just have him stamp it here, just reflect dimensions that we are proposing if that's alright with the Board. There was also 2-other documents that I provided for you. One was the Daktronics operation guide for an electronic message board, and then the electronic message board video.

CHAIRMAN HODOM: You're referring to this sales brochure?

MR. JACKS: Correct, yeah exactly. I tried to get some kind of manual or - - but that's the best I could do. I did a lot of research into this, I really did, I put a lot of time and effort.

CHAIRMAN HODOM: What part of this document are we supposed to look at?

MR. JACKS: Actually when you open it up here, what this basically shows - - let me grab it real quick, it just shows - I wanted to give you a variety of different electronic message boards, you know cause some actually are very animated and some are just very text orientated. And the one we're going to be looking at here, I have marked it for us,

here it is if you turn to page 16, the 7.62. It's a monochrome outdoor full matrix 1000 series. And it's very similar - - where it says up in the left hand corner there, the God Bless America, that's very similar to the electronic message boards. I talked to Jennifer over at Daktronics and these boards that CVS pharmacy proposed are especially made for CVS so they can fit the dimensions cause the ones that they have the standard dimensions here, you know are what CVS Pharmacy goes for. It's either the two that CVS Pharmacy proposed are 2-foot, 6-inches and 3-foot 6-inches and then they can vary them in width, but it's very similar with this. The poles of the proposed free-standing sign go through the electronic message board whereas you can have like a electronic message board on one side of the pole and one on the other side, they both go right through if you can visualize that.

CHAIRMAN HODOM: But the Daktronics is strictly for the electronic message board?

MR. JACKS: Correct and there's a company that's called - it's called Venus 1500 and what that is - that's a software program that is operated by the CVS Pharmacy Rhode Island location and that's where they can, you know type in a message that the community wants and what CVS pharmacy also would like.

CHAIRMAN HODOM: Is that described in here or no?

MR. JACKS: Yes, correct I think where your right hand is there's a little model specification. It says, well it just says Venus 1500. I believe....

CHAIRMAN HODOM: Okay.

MR. JACKS: It's just a software program that they use so they can communicate long distances in a sense, but that's the model that we are proposing.

CHAIRMAN HODOM: In the matrix size refers to the actual sign, size or your lettering size.

MR. JACKS: The actual sign copy.

CHAIRMAN HODOM: Sign copy, okay.

MR. JACKS: Yes.

CHAIRMAN HODOM: Which in this case is?

MR. JACKS: If you do the whole board it's 2-feet, 6-inches as a whole face for the sign copy. It takes almost every square inch of the board.

CHAIRMAN HODOM: Okay. And the first number that's listed in the matrix size is the height of the sign?

MR. JACKS: Correct. I think the last and final submittal on our document that I submitted to you was the electronic message board videotape. It was a 20-minute tape that you guys would like to see that I submitted for you.

CHAIRMAN HODOM: That was interesting.

MR. JACKS: Was it?

CHAIRMAN HODOM: Yes, I thought it was beneficial.

MR. JACKS: I think that was like every 3 or 4 seconds that it changed.

CHAIRMAN HODOM: There was a variety of different time frames.

MR. JACKS: That's possible to. Honestly the jurisdiction of where I'm from is pretty lenient on the restrictions on what I can change.

CHAIRMAN HODOM: The USSC submittal, were there specific areas that you wanted the board to look at relative to your proposal here?

MR. JACKS: No there was actually - - there was a viewer reaction study. Remember last time we were talking about it and the Board wanted to see - to read up on legibility and viewer distance. That book there provides a lot of information that's great material. I didn't mark any specific area in the book. It all pertains to basically is when a customer travels down the roadway is to see the sign, to read the message, to assimilate the necessary driving functions to slow the vehicle down to make the turn. That's basically in a nutshell - that's what the book talks about. It talks about the viewer reaction, the distances, what size the sign should be; text, color, height and so on and so forth, and it's all on one.

CHAIRMAN HODOM: Is this the document that Doug was suggesting that he was going to provide the balance of the study that the traveling motorist is trained and conditioned to look for this sign and locate the entrance? Is that in here?

MR. JACKS: Yes, correct.

CHAIRMAN HODOM: That is in here somewhere, okay.

MR. JACKS: For easier purposes I did bring along - I don't know if I can submit this or not, but this is easier understanding because the USSC and the Pennsylvania University; they work closely together on the viewer reaction study, but this is an easier - if I can submit this?

CHAIRMAN HODOM: Sure. You just have the one copy?

MR. JACKS: Correct, yeah that's my only copy honestly. It shows the viewer reaction

studies of if the posted road speed is 30-miles an hour, what you should time it by. If you take the legibility index and you implement that into this formula and it tells you what the sign should be and how far and so on and so forth. I mean that's the only copy I have I can get more copies.

CHAIRMAN HODOM: Well we can make copies of that to. Did you have anything else Mr. Jacks?

MR. JACKS: Just like I said we've came here, you know we've had a continuance you know to – I think this is the third time and we're working with staff and we're trying to answer all the questions that we can. We really would like to put an electronic message board at this roadway at this intersection. We feel the CVS Pharmacy is just not – doesn't provide enough information on the – for building wall signs that we'd like to advertise for their food shop and their 1-hour photo. And again what we've been working with the Board on or what we empower the Board to do is, for the electronic message board that is, is that the - - it will not blink, flash, scroll, rotate, so on and so forth. It would be great if the Board can make stipulations and set them – that hey, you know this sign can only display drive safe from 6:00 in the morning to 4:00 in the afternoon and then from 4 to 8 it can only display – I'm just throwing out ideas, that it can only display, you know Gillette 1.99 once and hour, you know or stipulations like that. We'd like to work with the community, we don't want to make it a tool that's going to, you know be like Las Vegas coming to the Town of Bethlehem. And we understand that it is a very busy intersection, but we feel this is a better tool. It is modern technology and we feel it works better than a manual board. A manual reader board if you have a major storm, you can miss – the letters can blow off, someone could actually misspell a word.

CHAIRMAN HODOM: The latest submittal, which is 5/12/04, other than the change in the structural, you're going to have stamped and signed and sealed. Are there any other changes that are made that differs from your 3/12/04 submittal? The only other we have would be to compare this one to this one, so I guess I'm asking for a short circuit. If there are other changes that you're making to these documents then you want to cover those as well.

MR. JACKS: As far as the proposed sign no that's not changing. I think there's some additional features that we added as far as the proposed sign next to the existing sign. That's what we implemented in the last submittal. The first one there was a - - we did a site analysis study from I think it was like 200-feet, 300-feet, but no actually we just kind of - - from each time it's been continued the questioned that you asked me I made sure that I, you know in depth as much as I could and get detailed information and submitted that to you. That's what we basically did. I do understand the concern that we are over in square footage, but I do have a – if the board doesn't mind I do have a P-30 in here, which is a smaller sign with the electronic message board attached. If you look at it, aesthetically it doesn't look great because you got this small sign face, well when we say P-30 or P-50 that's sign face, like the one we submitted respectively is a P-50, it's 50-square feet per sign face. This one here is a P-30 and you've got a small sign face and then you have this electronic message board that sticks out on the side quite a bit. So it

doesn't look aesthetically attractive compared to the one that we're proposing. I know from the very first submittal we showed a P-70, which is a 70-square foot sign face at 24-foot tall and then at the concerns we reduced the sign face and the height to accommodate what the Board requested.

CHAIRMAN HODOM: And that was the question I had is in essence the CVS Pharmacy location sign width dimension is pretty much controlled at least in your submittal by the width of the electronic message board.

MR. JACKS: In a sense somewhat to a certain degree. We can make custom boards; we can make custom boards just to fit about anything. They're just 2-sizes really. There's one I said that's 2-feet, 6-inches in height and one that's 3-feet, 6-inches in height and they're made to basically match the P-70 or the P-50. If you go with a P-30, there's no matching like, you know matching the sign face. It's really wide.

CHAIRMAN HODOM: So there is no signage including the electronic message board that you have available that would comply with the signage square footage for this facility?

MR. JACKS: What I'd like to do if you don't mind, I'd like to submit that P-30 and again I only have 1-copy, but it is to show you what it would look like with the new square footage.

CHAIRMAN HODOM: You could provide it to us for the record.

MR. JACKS: I apologize it's in here I just have to grab it.

CHAIRMAN HODOM: Do you have an answer to my question?

MR. JACKS: We can comply with the sign face. I can come down in square footage for that but as far as the electronic message board like I said they make 2-sizes. I can get with Daktronics and see if they can make a smaller one but that would be going out of the norm honestly of what CVS Pharmacy offers. And honestly with all of the stores that we work from nation wide from west to east coast, like I said we have 2-sizes. We never went out of the - - if we came down in the square footage for the sign face, we could down to 30-square feet for the sign face itself and then the electronic message board would be additional.

CHAIRMAN HODOM: Well actually it's 30 times 2.

MR. JACKS: Correct.

CHAIRMAN HODOM: It's 60, because one face is 30. I mean for this facility roughly there's 121-square feet of signage area allowed by code.

MR. JACKS: Correct.

CHAIRMAN HODOM: And currently on the building signage you have 58 square feet I believe.

MR. JACKS: I think it's 56 or 58, yes.

CHAIRMAN HODOM: Which would only leave you 70-some square feet for - - that is to maintain compliance with the local code for both the location sign and the electronic message board. Is that something that you can do?

MR. JACKS: I could reduce the square footage. I'd like to submit this if possible.

CHAIRMAN HODOM: Sure.

MR. JACKS: Again I'm sorry I just have the 1-copy.

CHAIRMAN HODOM: Okay.

MR. JACKS: This is a P-30 with the electronic message board attached, I mean if you just compare them it would be a dramatic difference.

CHAIRMAN HODOM: The electronic message board has to be 9-foot, 8-wide? Is that really the case?

MR. JACKS: Unfortunately yes.

CHAIRMAN HODOM: Is it? Okay.

MR. JACKS: They're made to be - like I said CVS Pharmacy from speaking with Jennifer at Daktronics they're custom made for CVS.

CHAIRMAN HODOM: Well if they're custom made for CVS, but are there other business's out there using smaller signs?

MR. JACKS: Yes, I'm sure there is. Like I said, again as far as CVS, no they just use 2-sizes to answer your question.

CHAIRMAN HODOM: Again I'm referring back to the electronic message board, so that's really a dictate from CVS, it's not Daktronics that's dictating that?

MR. JACKS: It's actually - - exactly. It's one thing that I can't change and say hey can I make a custom board. If I could say that tonight - say hey sure we can make a custom board to fit that, I would but as far as CVS is concerned there's 2-sizes that they offer.

CHAIRMAN HODOM: Let me ask you this Mr. Jacks if you know the answer please tell us, if you don't just tell us that you don't. Was CVS asked to have a representative

here at this meeting?

MR. JACKS: Yes.

CHAIRMAN HODOM: Is there a representative here from CVS here this evening?

MR. JACKS: Oh, I'm sorry they want a representative as far as Site Enhancement Services here, correct.

CHAIRMAN HODOM: From CVS directly?

MR. JACKS: No.

CHAIRMAN HODOM: Because at the last hearing we had I believe the request was to have a – at least a suggestion was to have a representative directly from CVS who could answer some of these questions.

MR. JACKS: Was there, okay.

CHAIRMAN HODOM: And I don't know if that got back to CVS or not but there hasn't been any representative directly from CVS at any of the 3-hearings.

MR. JACKS: Sure, sure. No, actually I believe that did not get back to CVS. I can say I did not to answer honestly. I can say that we work with 4,191-stores through out the United States and then they just bought Eckards, which is another 1300 stores and Site Enhancement Services takes care of all of those. As far as representing I'm new in this obviously but I'm getting into the field and learning more and more, but as far as representing all of those stores are represented by Site Enhancement Services.

CHAIRMAN HODOM: At the last hearing in March there was a question made that CVS provide information on customer traffic from 1999 to the present. Was that ever provided?

MR. JACKS: I'm sorry can you repeat the question?

CHAIRMAN HODOM: That CVS provide information on customer traffic from 1999 to the present time as to whether or not there's been a decrease in traffic because of the lack of finding the sign or their establishment. Was that ever provided?

MR. JACKS: No that was never provided.

CHAIRMAN HODOM: Has the local store manager or a representative of CVS corporate provided any kind of correspondence indicating problems locating the facility from potential customers?

MR. JACKS: No actually I just spoke to Dave not to long ago who's the manager over

there at the CVS Pharmacy and he has not indicated that.

CHAIRMAN HODOM: I believe Doug was going to, Doug Merrit, was going to provide an actual highway study related to electronic message boards. Has that been provided?

MR. JACKS: The viewer reaction site is what he was referring to and that was at the last meeting if you open up the booklet I believe.

CHAIRMAN HODOM: I thought it went beyond that.

MR. JACKS: I believe – isn't that where we did the 250-feet, the 300-feet and I think it was the 350-feet.

CHAIRMAN HODOM: This was at the March hearing and the question was you were also going to provide an actual highway study related to the electronic boards. Is that information available? That was a question to Mr. Merritt and Mr. Merritt said yes there is actually, yes that information is available I did not provide it in the packet, I will provide it. And I don't see anything addressing that issue so apparently it hasn't been provided.

MR. JACKS: No obviously it has not been provided. I would again I'd like to say is, you know we're proposing the free standing sign I mean the obvious question would be would CVS – I think you asked it before, would CVS if we took off the electronic message board and just went with the actual proposed free standing sign, is that something you want to do? I am just trying to let you know how CVS Pharmacy is going with this. Since they're going through this nation wide brand identification program, when they propose their freestanding sign they'd like to seek relief for the electronic message board to. Now I can tell you this from talking to Judy Lampier from the corporate office at CVS Pharmacy, she did ask me today that if the Board does not feel that the electronic message board is something that the community would like, would they go for a manual reader board, which is what gas stations have where they hang the signs up manually? And the reason I say that is because the manual reader board is we can make those in different sizes.

CHAIRMAN HODOM: But we don't have any information based on the manual reader boards in front of us this evening.

MR. JACKS: Correct. Those are meant to fit whatever specifications we can make fit on those. Again the only bad part about it like I said is they can have misspelled words up there, the letters can fall off and if the manager's not doing his job it doesn't look aesthetically pleasing to the community. We're just all for the electronic message board, it's great I mean it's low maintenance; we haven't had any problems. We've been implementing in all these stores in the last – it's been almost probably almost a year now that we're doing all these stores. The communities are working with us. Are you familiar with the Town of Colonie just to get off the subject real quick? We have an electronic message board going up there. They do have conditions set where it only can display time

and temperature. It cannot display advertisement yet. They're going through a process of, you know bringing these in slowly.

CHAIRMAN HODOM: Where is this now?

MR. JACKS: The Town of Colonie on Wolf Road and Sand Creek. I just did that one recently. They're very, very strict and I just wanted to let you know different communities what they're thinking.

CHAIRMAN HODOM: Has it been constructed yet?

MR. JACKS: No, not yet.

CHAIRMAN HODOM: You just had your presentation?

MR. JACKS: Correct.

CHAIRMAN HODOM: Any approval yet?

MR. JACKS: Yes for the electronic message board, correct.

CHAIRMAN HODOM: And were you in compliance with their square footage?

MR. JACKS: No actually we had to seek relief.

MR. BROOKINS: Any other installations in this area?

MR. JACKS: Not in the general area, no.

CHAIRMAN HODOM: Other than Ossining?

MR. JACKS: Yeah Ossining is one. A lot of them are on Long Island. I just did one in Valley Stream. Valley Steam just so you know they didn't go for the electronic message board. We put a manual reader board up, and again we had to seek relief.

CHAIRMAN HODOM: We're you asking if there's any manual reader boards?

MR. BROOKINS: Just any of the new signage; any of your new imaging.

MR. JACKS: Not that I'm handling. We have many throughout the area, but that's the closest one that I am handling – that I handled that I know of.

MRS. O'BRIEN: I just want to clarify the electronic message board is designed so that it would be read on each side?

MR. JACKS: Correct.

MRS. O'BRIEN: Not just one direction.

CHAIRMAN HODOM: Mr. Jack's I think for this hearing because we don't have any documentation on your manual reader boards or the sizes your proposing we really can't address that issue. What we can address is that currently you're allowed 121-square feet of signage.

MR. JACKS: Correct.

CHAIRMAN HODOM: And currently you have 108-square feet of signage so you are under the required or allowed square footage. In taking down that single pole sign that you currently you're eliminating 50-square feet, which brings you down to 58-square feet.

MR. JACKS: Correct.

CHAIRMAN HODOM: Which then will leave you roughly 63-square feet of available signage area to stay in compliance with the code.

MR. JACKS: Correct.

CHAIRMAN HODOM: I guess that was my question earlier, can you design something that will satisfy and CVS that will comply with that 63-square feet area? And that's basically 31 ½-square feet on each face.

MR. JACKS: Well to answer your question if you don't mind if I can elaborate on it. There's 3-sizes of the sign that we offer that we offer all of the communities. Even when we go into new development for CVS we have – I'll call them by the model names if that's okay. The P-30, which is the 30-square feet; the P-50 and the P-70 and those are the standards that they go off of. They don't deviate off them. They either don't put a sign there or they put them up on the walls, but they seek them somehow. That's what they do. To answer your question directly as far as meeting your – the 63-square feet, if I went down to the P-30 that you're passing around there.

CHAIRMAN HODOM: It's actually 60-square feet.

MR. JACKS: Exactly. It's actually 60-square feet. Right there takes up basically the allowable code compliance square footage. Now if we were to even...

CHAIRMAN HODOM: What is the smallest manual reader board that is generally used in the industry?

MR. JACKS: Well again, when we put them on, the P-30's, if you put them between the poles it's too small. It's too small to read at an adequate amount of distance as we call it the viewer reaction time. It's set the posted road and so it's a long formula, but I mean

it's too small you can't read it. It would defeat the purpose of putting up advertisement. In a sense it might even cause a traffic safety hazard because it's so small for someone trying to read the sign. And if you go with - - it's usually the width of the actual P-30 or the P-50 or the P-70. That's the standard and usually the standard is anywhere between 2-feet to 4-feet.

CHAIRMAN HODOM: Okay. How do the other Board members feel about either we close this hearing based on the electronic data board that is being proposed or we continue the hearing for additional information on the manual reader board. We can close it and then because they're making a substantial from electronic reader board to a manual board they can reapply.

MR. JACKS: If I may I would like to interrupt. I understand, you know the concerns that we can go from a substantial change from an electronic message board to a manual reader board but we really honestly like to stay with the electronic message board. I mean in a sense it really is – it sells itself just the way it is. I know a lot of communities say well if you're bringing this in you're going to set a precedent for everybody else. They're going to come walking in and say well hey they have one down the road why can't we have one? Well if you set the conditions, well hey you can only change, you know once an hour once a day. It can only display time and temp on it. People are going to back away and say well you know what I don't want to work with the community like that. We want to work with the community. We want to say hey you know what you're allowed to put, you know football games or you know free flu shots, free blood pressure screening up there. You know it's not going to blink, flash, scroll and when it does change it's very similar to your digital alarm clock. It's the same kind of change instantaneously.

CHAIRMAN HODOM: So for this hearing you would prefer to stay with the electronic message board?

MR. JACKS: Absolutely, I sure would.

CHAIRMAN HODOM: Okay. And it would be based on your original proposal or your alternative to a P-30?

MR. JACKS: Well I would be working with the Board after working with the square footage I would rather go with the P-30. I mean I know it's a little more - - aesthetically it doesn't look great, but if it's going to be a square footage problem I'd rather reduce - - come down in square footage. Honestly we're requesting relief anyways for either one, this would just be a little less. Now I do feel sense the way the sign is posted, you do have that telephone pole - - intersection right there and then if you're driving – I believe it's east, there's a big tree that sticks out. Are you familiar when you're heading towards CVS Pharmacy? I mean you can barely see the sign until you get underneath that tree and then you can actually see the sign. If you went with a P-50, that wouldn't be a problem unless, you know you go back and say cut those trees back but for right now if you're familiar with the area, which I know you guys are, you go down there you can't really see the sign until you're at the actual stop light.

CHAIRMAN HODOM: Are you offering to cut the tree down?

MR. JACKS: If I could I sure would. But I'm just trying to, you know to tell you facts; you know just to let you know what we think.

CHAIRMAN HODOM: Well we thank you for your help, you've been very courteous and providing us with the information that we've requested. Any other questions from the Board?

MR. WIGGAND: No, I think it's been covered very well. I don't have anything else.

CHAIRMAN HODOM: Any questions or comments from the audience? Mr. Jacks any further presentation?

MR. JACKS: I would say I believe the proposed sign meets the intent of the municipal ordinance although we are seeking relief for square footage. It's not blinking, flashing, scrolling, rotating and we empower the Board to put the messages – what they would like on there and set times and not just only setting times but only text messages so we think it's a great tool not only for CVS Pharmacy but for the community and I would like to - - sense the Board would probably rather – I would rather go with the P-30 if the square footage is going to be major issue compared from the P-50 to the P-30. That's it, I thank you so much for your courtesy and your...

MR. WIGGAND: Say that last comment again, you'd rather go with what? The P-50 or the P-30?

CHAIRMAN HODOM: The P-30.

MR. WIGGAND: The P-30, okay.

MR. JACKS: If the square footage is going to be an issue. I mean like I said when you're going down there if you can cut that tree down the P-30 would be great. I mean you'd see it; you'd be fine but with it there it's really hard to see the sign.

CHAIRMAN HODOM: Anything from the audience? Anyone wishing to speak in favor of the applicant? Anyone desiring 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. Thank you very much Mr. Jacks.

MR. JACKS: Thank you very much.

Hearing closed 8:25 p.m.

The next order of business this evening is a public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings and Article XVIII, Rear Yards, Section 128-79, Required Depths requested by William and Ellen VanValkenburg for property at 18 Werner Avenue, Delmar, New York. The applicant wishes to construct 2-additions, which will exceed the allowable percentage of lot occupancy and also encroach into the rear yard setback requirement at the premise.

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

MR. PLATEL: Yes, Mr. Chairman. The applicant is proposing to construct 2-additions totaling 582-square feet and a deck to the existing 1,852.79-square foot main structure. The total main structure will be 2,434.79-square feet, which is 247.34-square feet over the 2,187.45-square feet allowable. The lot occupancy will be 16.7-percent, which is 1.7 over the 15-percent allowed. The proposed rear addition will leave a rear yard setback of 17.3, which is 11.7-foot shy of the 29-foot required. The 29-foot was required during the sub division process by the Planning Board due to the location of the Cit of Albany water line that abuts the rear yard property line.

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

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

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 21, 2004 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on Application of William and Ellen VanValkenburg for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings and Article XVIII, Rear Yards, Section 128-79, Required Depths of the Code of the Town of Bethlehem for construction of an addition, Porch and deck which will exceed the allowable percentage of lot occupancy and encroach into the rear yard setback requirement at the premises of 18 Werner Avenue, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 14, 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. We'll use the same procedure that we used earlier this evening; we'll hear the Applicants presentation; we'll entertain and questions or comments from the audience from the audience. Anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition will be heard. Mr. VanValkenburg just introduce yourself to us and give us your address.

MR. VANVALKENBURG: Good evening, as you know I'm Bill VanValkenburg. My wife Helen is sitting behind me and our proposed builder, Steve Bolduc from Keystone is also here. I think you fairly well summarized what our proposals are so I don't know if you want me elaborate on that or more answer questions. This is a new experience for me.

CHAIRMAN HODOM: I think we'd like you to elaborate on what you're proposing to do and why you want to do it; how you want to do it.

MR. VANVALKENBURG: Well we bought this house in February from Tim Hannifin. It was a new home under construction by the time we bought it. It's our first new home and probably will be almost undoubtedly our only new home so we'd like to make it pretty much perfect by the time we're done with it. We like a little more space, you know it wasn't the perfect house but we like it very much. We'd just like to make it a little better by adding more space. I need a home office space and we'd like a deck and a screened in porch.

CHAIRMAN HODOM: Why don't you elaborate a little bit more on why you need a home office space.

MR. VANVALKENBURG: Right now I recently retired from the Coast Guard reserve. I was active duty last year, and they agreed to continue me to allow me to telecommute from my home using my own computer, because of some of the skills I have in the office I was working in. That technically requires a dedicated office space, which I don't have right now; I'm using the kitchen. I'm also planning on – I'm a retired federal criminal investigator and I'm planning on conducting background investigative work and as a subcontractor for a number of various private companies that work under contract with the government, which will also require having an office space.

The porch issue – it's a very wooded area and we'd like to enjoy it, I mean the deck would be fine for the daytime but for the evening I have 2-dogs and I walk them several times a day and it's a very mosquito ridden area. It would be nice to be able to enjoy the property by sitting on a back porch; a screened in porch. It would be 3-season – a 3-season room. I know I spoke to you Mr. Chairman briefly the other day when you stopped by my house and the only thing different between when I filed the application and this evening was a couple days ago I got a response back from the Albany City Water Board. Before I even filed the application I spoke to them on the phone because I was aware of the 29-foot setback.

On the phone they told me that all they cared about was a 50-foot setback from their water pipe, which is an additional 46-feet pass my property so that being the case we went ahead with the building application process and planned for the deck and the porch, and Karen notified me to get something in writing from the Albany Water Board. So I sent them a letter, which I have a copy of here along with their response and in their response they sort of changed their story a little bit. They say they'd like – they site the 50-foot distance from the water pipe, but they're also sighting a future possible

water line, which might be closer to my property. In which case, although they have no problem with my building a deck, they don't recommend building a screened in porch.

Now I'm not a lawyer, I don't know what do not recommend means whether it carries the weight of law or whatever. I intend to pursue if further with Albany Water Board because I just got this a couple of days ago and I haven't have time to get further sense that time. I meant to make a copy for everybody but my fax machine malfunctioned and jammed so there's only one copy of my letter to them and their response.

CHAIRMAN HODOM: Are there any deed restrictions on your property regarding this water line?

MR. VANVALKENBURG: I believe that is a deed restriction – there's a 29-foot building...

CHAIRMAN HODOM: Easement?

MR. VANVALKENBURG: Right. That would be the Albany water line behind me. It's mostly 29-feet across the back of the property and on the one end it's only 25-feet. It's almost a uniform 29-feet across the back of the house, which leaves me like 2 ½-feet as you come out the kitchen door.

CHAIRMAN HODOM: So at this point the City of Albany Water Board is saying no, you can't build in their easement. Is that correct?

MR. VANVALKENBURG: They're saying they have no objection to the deck but they don't recommend construction of the porch.

CHAIRMAN HODOM: The enclosed porch?

MR. VANVALKENBURG: Correct.

MRS. O'BRIEN: In other words if they do their building you're going to have to tear it down?

MR. VANVALKENBURG: I'm sorry?

MRS. O'BRIEN: I read that to mean that if you – if they put their water line closer, they're going to have you remove the – not the deck, the deck would be easy to remove, but if you put a screened porch and they say sorry it's too close.

MR. VANVALKENBURG: That's something that I guess you're right, but it's something I want to investigate further. I mean I don't know how wide their easement is - - I shouldn't assume but it looks to be like 75 to 100-feet. And if they want to get in there to do anything they have that wide easement with a gravel road the entire length with gated access on all roads it crosses. Why they would even need to impinge on

somebody's private property when they have all that space to begin with, I don't understand.

ATTORNEY MOORE: Did you show them the plans that you submitted to the board?

MR. VANVALKENBURG: Yes I sent them 2-photocopies with the distances marked from the...

CHAIRMAN HODOM: At least on the 8 ½ by 11 site plan that you provided us it does say building restriction line, which I would interpret that it means what it says.

MR. VANVALKENBURG: Right and the first thing I did was to call the City of Albany and my conversation was just don't build within 50-feet of the water pipe knowing that it was 46-feet beyond my property. I saw no problems in planning for the deck and the porch. It was when I went back to them for something in writing that they threw a little monkey wrench in.

ATTORNEY MOORE: And is this a portion of your current survey Mr. VanValkenburg?

MR. VANVALKENBURG: Yes sir.

MR. BROOKINS: Maybe there's some notations on it.

CHAIRMAN HODOM: Can you provide us with a copy of your original?

MR. VANVALKENBURG: I think I have the larger one with me.

CHAIRMAN HODOM: What is the current size of your family Mr. VanValkenburg?

MR. VANVALKENBURG: Three.

CHAIRMAN HODOM: Three adults? Two adults and one child?

MR. VANVALKENBURG: Three adults.

CHAIRMAN HODOM: Okay.

MR. VANVALKENBURG: One's 19, I guess we're going to call him an adult, right?

CHAIRMAN HODOM: I would.

MRS. VANVALKENBURG: It depends on what day it is.

CHAIRMAN HODOM: Again, just to elaborate a little bit more on the screened in porch, it's primarily to enjoy the - - it's a 3-season room?

MR. VANVALKENBURG: Yes.

CHAIRMAN HODOM: It's not going to be used for off season?

MR. VANVALKENBURG: Yes, no heat.

CHAIRMAN HODOM: There's no foundation under it or a basement I mean?

MR. VANVALKENBURG: Steve Bolduc was - - not a basement but he was recommending a poured concrete foundation as opposed to piers.

CHAIRMAN HODOM: Okay.

MR. VANVALKENBURG: Just for I guess it's better construction.

CHAIRMAN HODOM: So it's just going to have a crawl space underneath it?

MR. VANVALKENBURG: Yes.

CHAIRMAN HODOM: Are there medical reasons as well that you need a screened in area; allergies or allergies to stings or bee bites or hornets?

MR. VANVALKENBURG: My wife does, I don't. They haven't hit me yet.

CHAIRMAN HODOM: There is a crawl space under the screened in porch though? Maybe you want to answer that Steve, I don't see it on your submittal here.

MR. BOLDUC: Do you want me to introduce myself?

CHAIRMAN HODOM: Okay I guess it is on the first page, but go ahead and describe it for us anyway if you would.

MR. BOLDUC: I'm Steve Bolduc from Keystone Builders. My feeling was to construct it on a foundation 4-feet below frost just because it's a more substantial room. We could build it on piers, that's allowed now. There was a time when John Flannigan was the Building Inspector when he wouldn't allow that and the reason being people were enclosing them and they didn't meet the energy codes so it's still is a better way to construct it. It's more substantial; it's got a foundation underneath the whole framing and the piers aren't going to shift or - - so that's why I recommend it that way. It's a cost issue; it's a better way to do it.

CHAIRMAN HODOM: But it is a crawl space? It's not a full basement?

MR. BOLDUC: No, just a crawl space.

CHAIRMAN HODOM: And what utilities are you planning to incorporate into the area Mr. VanValkenburg?

MR. VANVALKENBURG: At least 1-light, 1-outlet and maybe a ceiling fan.

CHAIRMAN HODOM: No plumbing?

MR. VANVALKENBURG: No sir.

CHAIRMAN HODOM: This room as well as the proposed sitting room or office space on the first floor, it's not your intention now or in the future to lease that out to any non-family member or to rent part of the property?

MR. VANVALKENBURG: No sir, never.

CHAIRMAN HODOM: Okay. And you've been in the house sense March?

MR. VANVALKENBURG: My Wife – sense...

MRS. VANVALKENBURG: The first week in March.

MR. VANVALKENBURG: March and May and April, because we got married in March.

MRS. VANVALKENBURG: We were there March 21<sup>st</sup>.

MR. VANVALKENBURG: Yes I was.

MRS. VANVALKENBURG: Late April?

MR. VANVALKENBURG: That's when we got back from the honeymoon.

MRS. VANVALKENBURG: We may need plumbing in that room.

CHAIRMAN HODOM: Let me ask you Mr. VanValkenburg or Mrs. VanValkenburg it appears to me to be a good size home without your proposed additions especially for 3-people. Had you discussed these changes with your builder initially?

MR. VANVALKENBURG: Yes sir. The house was substantially completed. It was completely framed and sided when we first saw it and looked at it. It was to late to make any major change, we did make some minor cosmetic changes; doorways and kitchen counters and flooring and stuff like that. We also agreed back then to do the addition that we're talking about there and I had those plans drawn up at his behest. He subsequently told me he could no longer do that because he lost some key employees and he was to busy at which I took my plans, which I already paid for over to Mr. Bolduc and asked him if he would be so kind to do it and he agreed that he could. We did plan that from the

outset the first time we looked at the house and before we signed the agreement with him he had agreed to put an addition on for us.

CHAIRMAN HODOM: If you were only to do that screened porch, you wouldn't have to come in front of this Board.

MR. PLATEL: Yes for a setback.

CHAIRMAN HODOM: Oh for a setback I'm sorry. The office area, sitting room – that still would have been over by some 73-square feet.

MR. VANVALKENBURG: Correct.

CHAIRMAN HODOM: During your discussions with your builder initially, was the Town Building Department approached to see if you were in compliance with the lot occupancy?

MR. VANVALKENBURG: No. This was our first new home and I'm learning something new everyday. I did approach the Building Department on a number of unrelated things, restrictions on fencing and requirements for a pool, storage sheds but it wasn't until well into the process that I learned of the 15-percent lot occupancy.

CHAIRMAN HODOM: Is there a possibility that this phase 1 addition could be decreased in size to comply?

MR. VANVALKENBURG: I don't think you could decrease it to comply, I mean you could decrease anything, but...

CHAIRMAN HODOM: Well you'd have to decrease it by something like 72 ½-square feet, which would be probably 3 ½-feet by your 22 ½-wide. Is that a possibility, which would bring you roughly at 13 ½-feet?

MR. VANVALKENBURG: I don't have the figures in front of me sir, but I thought we were over by 1.7-percent, which would seem to be more than 70-feet to me.

CHAIRMAN HODOM: Well it is, I'm eliminating the screened in porch.

MR. VANVALKENBURG: Oh, okay.

CHAIRMAN HODOM: Because I think that's an issue that going to have to be addressed separately based on whatever the City water board responds to.

MR. VANVALKENBURG: Understood. In that case to answer your question, of course anything can be decreased but I really would prefer not to because it's in addition will be an expensive matter to begin with making a room that's long and narrow or just plain small for the cost involved all for relative small percentage increase in the cost you're

going to have a much more comfortable room. I would much prefer that, we have a small lot size to begin with.

CHAIRMAN HODOM: Well it's a good size room. I mean 17 by 22 ½ is a good size room.

MR. VANVALKENBURG: It will be the biggest room in the house, right?

CHAIRMAN HODOM: Correct. And then you have a sitting room on the second floor off of the master suite and the master suite is a good size room as it's designed currently.

MR. VANVALKENBURG: Right, but it has one small walk-in closet so right now I'm sharing closets and the other bedrooms. The sitting room is just because of the fact of where the addition is located, I mean I wouldn't build the addition just for a bedroom/sitting room but because it's right underneath it there's a window there that would be made into a door. I mean to me it fits perfectly. If the addition was on another corner of the house then I wouldn't worry about a bedroom/sitting room but because the major part of your construction is the foundation and the framing. It doesn't cost that much more to add the second story at least I've been led to believe.

CHAIRMAN HODOM: And then there's a full basement underneath that proposed office area, office and den?

MR. VANVALKENBURG: That is to be determined. When I went to have the plans drawn up I told the person that drew them up to do them for a crawl space. She did them for a basement. Steve and I are still discussing which is best or not best.

CHAIRMAN HODOM: One of the criteria Mr. VanValkenburg that this Board must consider is that if in fact we decide to approve your application it's an approval based on the minimum requirements and at least looking at your proposed addition at this point in time compared to the rest of the house it seems somewhat excessive to me anyway. And that's why I'm asking you if there's a possibility to reduce that in size especially since the enclosed porch is an uncertainty, and until you have that resolved with the City of Albany Water Board we really can't take action on that.

MR. VANVALKENBURG: I understand.

CHAIRMAN HODOM: Would you agree?

ATTORNEY MOORE: Looking at these plans the deck is actually closer at least on this one to the edge of the Cities easement than the porch one so I don't understand what their objection to the porch would be. And two, I can't conceive of any legal bases for the Water Board objecting to either of those structures on the back because they simply don't encroach or in any way based on my view of this with the easement. Now if some counsel to the Board wants to explain to us with a legal opinion why that is so then I think we'd consider it, but sitting here this evening I can't conceive of any reason why

either of those 2-structures on the back should be objectionable to the Water Board.

CHAIRMAN HODOM: Even though there's a building restriction line?

ATTORNEY MOORE: That's the Town's building restriction line, right?

MR. PLATEL: That was determined by the Planning Board probably in conjunction with the Water Board where they wanted it put. So when this went through subdivision the Planning Board made it 29-feet rather than the normal 25 to take in consideration of the Water Board.

CHAIRMAN HODOM: Okay.

MR. PLATEL: I believe the problem was...

ATTORNEY MOORE: I'd still like to hear from the Water Board as to why they have a concern with the structures on the back.

MR. PLATEL: I believe the problem that they had with the porch from – and I've only dealt with him a couple of times, is because it's got a foundation.

CHAIRMAN HODOM: Right.

MR. PLATEL: Decks they don't mind because they're on piers. I think what their problem is, is some of their concerns is if they had a water break where is the water going to go? They have setbacks for certain reasons, they don't want to have a water break and have everybody's basement flooded out. That's why they have certain setbacks from the lines as part of their reasoning. So that's what I think may be part of problem that it's got a foundation not that it a full foundation but it's a crawl space. I think that's part of their concerns.

CHAIRMAN HODOM: All right, so maybe - - did they give you any idea when they would respond back.

MR. VANVALKENBURG: And I understand what Mark is saying and I think that would hold true for the houses on the other side of the water line because they're all - - they're at the same level as the waterline whereas my house and my neighbors houses I imagine approximately 5 or 6-feet higher. I mean if there was a water break it's not going to reach our property. And there are, although he sited to me in the letter and on the phone call that the main requirement was to be 50-feet from the water pipe. There are various structures within 50-feet. There's 2-houses on Bower that appear to be 30-feet from the water pipe, not additions or sheds or porches but 2-houses proper. And I'm assuming, maybe I shouldn't, that the water pipe was there first...

MR. PLATEL: But they might have changed their restrictions.

MR. VANVALKENBURG: But those houses are closer than my porch would be if it was ever approved and built, those houses would be closer than the porch and the houses are level with the water pipe whereas I'd be 5 or 6-feet above the level.

CHAIRMAN HODOM: Have you had an opportunity to speak with your neighbors regarding all the additions

MR. VANVALKENBURG: Just two. The two nearest and I only know one other neighbor. I mean we've been there a couple of months, but other than...

CHAIRMAN HODOM: I think your narrative says that you spoke with the neighbors at number 16, Mrs. Dorine Fuller and 17 Mr. Raleigh.

MR. VANVALKENBURG: Yes Mr. Raleigh.

CHAIRMAN HODOM: Okay. Had either one have any objections to the proposal?

MR. VANVALKENBURG: I never showed Mrs. Fuller the plans. I told her verbally and I never got back to her, my mistake, I've been a little busy.

CHAIRMAN HODOM: Any other questions from the Board?

MR. BROOKINS: Mr. VanValkenburg, did you or maybe Steve can comment on this. In order to mitigate some of the back line and building restriction lines did you ever consider flipping the porch/deck configuration and putting your porch abutting it against family room? That would draw it closer to the house and therefore not extended into the backyard as much irrespective of the square footage issue at least that would – as you slide it down southeast it moves away from the - - you're still going to be in the building restriction line, but it's not as much.

MR. VANVALKENBURG: Right. The thing is where it is now is the proverbial sliding glass door that everybody has in the kitchen, that's where that is and you open it up now you've got 2-cheap wooden steps that just go down into the sand. That would be the ideal place. If it was off the family room, which is our - - relatively small size room and you know a large triple window in there, which you'd have to replace whereas with the sliding glass door it's already there.

MR. BROOKINS: And it also is a nice place to step onto a deck.

MR. VANVALKENBURG: Correct.

MR. BOLDUC: I think it would be that it's close to the kitchen and a lot of time you want to dine on the porch, it's just closer.

MR. VANVALKENBURG: I also don't think it would look as aesthetically pleasing if it was down at one corner of the house as opposed to more towards the center.

CHAIRMAN HODOM: But were you talking about bringing it closer to the house rather than having that 6-foot space. I mean that's what he's referring to rather than having the 6-foot space between the house and the deck. Move the deck and attach it to the house or very close to the house.

MR. VANVALKENBURG: I thought you were talking about moving the porch down to the family room.

MR. BROOKINS: Move the porch down to the family, move the deck were the porch is but eliminate this, this area which is essentially going to become a difficult to maintain area. I can speak from experience. We don't need an answer it's just a suggestion that as we look at this and there's probably as many good arguments for it being one place as there is for it being in another place.

MR. VANVALKENBURG: Well the major argument as Steve said that the sliding glass door off the kitchen is where we would like the porch and off the family room it's a very nice window unit in there now, but I really wouldn't want to have to replace it.

MR. BROOKINS: I understand.

CHAIRMAN HODOM: Maybe you can explain the reasoning that you want a space between the house and the deck.

MR. VANVALKENBURG: I didn't want the deck right up against - - there's a large triple window there that's 9-feet approximately long. I didn't really want the deck up against the siding of the house and the window plus I also envision that that might be a good spot for a heater and pump for a swimming pool, which is a separate application.

CHAIRMAN HODOM: But that would – if you could move that closer to the house or reduce the size of the deck so that's it at least in the same plane as the outside face of the screened porch. That would minimize your rear yard setback encroachment.

MR. VANVALKENBURG: Yes sir, but they're not having any problems with the deck evidently.

CHAIRMAN HODOM: No, I'm talking about this Board; I don't care about Albany.

MR. VANVALKENBURG: Sorry. Well you could put it even with the porch. I wouldn't have major heartburn over that accept you'd only have 2-foot space and I don't think that would be big enough to put – like I said I was planning the heater and the filtering for a swimming pool to go in there.

MR. WIGGAND: You did have a plan then for that 6-foot area?

MR. VANVALKENBURG: Yes sir.

MR. WIGGAND: I was wondering what are you going to do with that.

MR. VANVALKENBURG: I'd figured it would be out of the way instead of having it out like right under a window or out in front of the door or something. It would be hidden.

MR. BROOKINS: These indicate and these were dated April 22<sup>nd</sup> and this is where my confusion – indicate you have 2-windows on the back of your family room. This obviously you have 3-windows on the back of your family room.

MR. VANVALKENBURG: Right. The survey or the plan is wrong.

MR. BROOKINS: Okay.

MR. VANVALKENBURG: I caught that to.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: I have one for Steve here. Steve did you draw these?

MR. BOLDUC: No I didn't.

MR. WIGGAND: I didn't think it looked like your drawing here.

MR. BOLDUC: No.

MR. WIGGAND: Who did that?

MR. VANVALKENBURG: (acknowledges)

MR. WIGGAND: It changes from one page to other here and it doesn't seem to be consistent with anything.

MR. VANVALKENBURG: I did the best I could.

MR. WIGGAND: Okay no more said, but we've looked over many, many plans from Steve and...

MR. BOLDUC: Eventually if he gets approval, we'll draw them.

MR. WIGGAND: Well sometimes we work the other way.

MR. BOLDUC: We didn't have the time.

MR. WIGGAND: It would be nice if we had more of a plan that would actually tell us

what you're going to be doing. I've been a builder for many, many years and I'm getting a little more confused every time I look at this. Have you reviewed this yourself?

MR. BOLDUC: Just briefly, Bill sketched them in my office.

MR. WIGGAND: You're representing him tonight and you haven't really involved yourself with this plan that he wants to build.

MR. BOLDUC: Just in the size and the details will be what we normally would do with a porch and I think you've seen a lot of my porches, that's what we'd end up doing.

MR. WIGGAND: I'd love to see it a more accurate plan to be honest with you.

MR. BOLDUC: Okay. If he's going to come back...

MR. WIGGAND: I just can't find what I'm looking for in here.

MR. VANVALKENBURG: I would have had it sketched sir.

MR. WIGGAND: I don't want to say anything about your drawing or anything. I don't want to get involved with that, but you know what I'm talking about.

MR. VANVALKENBURG: I understand. It wasn't part of the original plan of the addition at the end of the house. It came up afterwards when after talking to Albany City it appeared that the 29-foot restriction wouldn't be a problem so that's when we thought about adding the deck and the porch. It was a little late because we already had the plans from the draftsman on the other addition and it took quite a few months to get them so I knew I couldn't go and get a set of plans from them in a relatively short period of time for the deck and the porch so I got with Steve and worked on the dimensions and told him what I wanted.

MR. WIGGAND: I can understand some complications there, but even looking at this plan – have you seen this Steve?

MR. BOLDUC: He showed me – I don't know if I even saw that.

MR. WIGGAND: It looks like the deck – entrance to the deck is running in front of this, part of the main room. I don't quite understand how this is here with the steps going here. It's just a little confusing. I would much rather see you get your heads together here and draw something up.

MR. VANVALKENBURG: Actually that isn't what I did sir.

MR. WIGGAND: Who did that?

MR. VANVALKENBURG: I think that's the one you gave me as an example or

something. The other one I - - just the A-frame done perspective is the one I did.

MR. WIGGAND: Okay. You have that one and this one here?

MR. BOLDUC: That's the job we're building now, that's where that came from.

MR. WIGGAND: This has no - you can't recognize this page from that one. There's nothing that's the same.

MR. BROOKINS: That was my question to.

MR. BOLDUC: I think that was meant to give you an idea the aesthetics of what the porch would look like but not the detail, or not the footprint or dimensions. It's similar to what the construction overview would be but not - I don't think it was meant to...

MR. WIGGAND: I'm looking at it as an experienced builder and I can't figure it out.

MR. BOLDUC: Well it's a different job that's why. I think I gave it to Bill as an example of what the porch would look like, but not - that's probably why you're confused.

MR. WIGGAND: We have to do it right. We may have to get another plan.

MR. BOLDUC: Okay. If Bill comes back with and you need to wait on making a final decision, I can do a rendering that would be more accurate.

MR. WIGGAND: I would be more pleased and Mike I think there should be something done with this.

CHAIRMAN HODOM: Okay, we can do that Bob. Any other questions from the Board? Any questions or comments from the audience? Mrs. Fuller?

MRS. FULLER: Can you hear me from here?

CHAIRMAN HODOM: Just introduce yourself and give us your address.

MRS. FULLER: I'm Doreen Fuller and I live at 16 Werner Avenue and 20-years ago my husband and I moved out to Delmar from Albany and we did that because there was more room between the houses. You had yards; you space and you weren't right next to each other. A few years ago when my husband passed away I moved to Werner. I loved the cul-de-sac, it was all woods except on one side of my house where I had a neighbor. I had lots of privacy; it was a quiet neighborhood. Two years ago myself and many of my neighbors appeared in this building in front of the Town to question and voice our concerns about the builder - the subdivision of the 2-lots at the cul-de-sac and the builders proposal for 2-homes there. Our concerns were the lots are very narrow lots and the homes were going to be very close to my property and on the other side, my

neighbor's property.

The other concern was the woods were going to be gone. The other was that the houses would not be built to fit the setting of that neighborhood. That neighborhood has split-levels; the homes are over 50-years old. The one's that are 2-storys are small homes and the builder mentioned that he was going to build these big colonial homes. During the course of the discussion he said that he would try to leave some trees up and he would try to fit the 2-colonials into the setting of our neighborhood. That didn't happen. The homes are beautiful homes. They just don't fit in the setting that's there. The Vanvalkenburg's home is currently less than 29-feet, the corner of their house to my house. My sunroom, which is on that side of the room – my back yard, now I have barely any privacy now and this addition is what my concern is because it's going to bring it - - it's going to be right on that same side of the yard and I have no - - I mean the house overwhelms me now. It's built – it's above, I think Bill had said 5-feet above where my lot is now. So it's already raised above, it's a huge home over 2-stories including the attic so it overwhelms my house now and then to have such a large addition put right next to me.

I have a concern with this and 3-years ago you people or the Planning Board upheld the law and said the houses could be built and I'd like to ask you to at least take into consideration what I've said and uphold the law this time and require that it not exceed the lot occupancy, and I want to thank you for listening to me.

CHAIRMAN HODOM: Thank you. Anyone else have any comments or questions? Is the Board in consensus that we should adjourn the hearing until we get some – Bob wanted some additional plans that are truly, architecturally as to what you're proposing to do and we'd like to get some kind of response from the City of Albany Water Board. Would you have any objections to adjourning the hearing to a future date?

MR. VANVALKENBURG: My only concern is with Steve's schedule, not that we're going to start tomorrow or something if we had approval, but that's my only concern is Steve's schedule in the fall or the winter.

CHAIRMAN HODOM: When do you think you would have a response from the City of Albany?

MR. VANVALKENBURG: This letter was only dated a couple of days ago. I've been reaching out through several different venues without success. If need be I'll engage legal counsel because I don't see the rational for it.

ATTORNEY MOORE: Is there anything in the records related to the subdivision approval that might clarify the 29-foot or the reason behind it?

MR. PLATEL: Yeah, I'm sure I can find that. I'm pretty sure that's what it's for.

ATTORNEY MOORE: Yeah, but I mean they may have elaborated on it.

MR. VANVALKENBURG: I understand why there are restrictions and setbacks and that but to me that area is so wide I see no reason to impinge on anybody else's adjoining property when they have a wide area with a road in there. If they want to do construction work or repair work they don't have to go through peoples yards.

CHAIRMAN HODOM: How soon could you get the drawings done? I'm assuming that Mr. Vanvalkenburg wants you to do the drawings.

MR. BOLDUC: By the next meeting I can have them ready. I don't know if you need them much ahead of time.

CHAIRMAN HODOM: We have 3-applications to schedule currently which would take up August. It would appear that September 1<sup>st</sup> would be the first available hearing date.

MR. BOLDUC: It's okay with me. I couldn't start much before probably October or sometime anyway so even if we got approval.

MR. VANVALKENBURG: Fine.

CHAIRMAN HODOM: Is that acceptable to the Board?

MR. MICELLI: That's fine.

MR. WIGGAND: That's fine.

On a motion made by Chairman Hodom, seconded by Mr. Micelli and unanimously carried by the Board, the continuation of the public hearing will take place on September 1, 2004 at 7:30 p.m.

CHAIRMAN HODOM: I don't know if you want to get involved in calling the City of Albany Water Board and probably shouldn't but lets see what the subdivision papers say and maybe the answers there.

ATTORNEY MOORE: They ought to give you a legal - - it's just if they're really going to object.

MR. VANVALKENBURG: Plus changing their story from what they told me verbally and when I asked for it in writing.

ATTORNEY MOORE: I mean they may have a legal basis or a more elaborate basis as Mark alluded to.

MR. BOLDUC: Would you have any problem if we modified the entire application with the resubmittal of the porch as far as the addition also? If we were to re-design that somewhat to hopefully meet the neighbors concerns.

CHAIRMAN HODOM: No, as long as we have it in front of us at least 7 to 10-days before the hearing so it give the Board members a chance to take a look at it. No one has any objection to that do they?

MR. WIGGAND: As long as we have those to look at.

CHAIRMAN HODOM: Take a look at that office/den area to see if you can't maybe re-do something.

MR. VANVALKENBURG: Well I thought about that from the start because I don't like – actually I don't like Mrs. Fullers house being so close to mine either and I understand how she feels about - - I've lived near woods before and I wouldn't like it if I lived there for 20-years next to woods and all of a sudden I get a house - - went up here. I perfectly understand it. On the other hand if you really like the woods that much maybe you should have bought them. I mean I don't like looking out and seeing her any more than she likes seeing me, but if anything she'll be more private because right now she has a window looking down onto her porch or sunroom. That window will be gone. We're not envisioning any glass facing her house other than 2-windows on the lower rear side. There will be no glass looking down on her; no window looking down other than a little window like you - - that little - - which would be above eye level, it wouldn't be to look out but the glass would be front and rear. I mean I don't want to look at anybody else's any more than anybody to look into mine.

CHAIRMAN HODOM: Understandable. I think they call that progress don't they?

MR. VANVALKENBURG: We'll have fencing up in the near future also to further enhance privacy.

CHAIRMAN HODOM: As soon as you can get that to us we would appreciate it. anybody else have any other questions while you're here?

MR. VANVALKENBURG: I would like to thank the Board for their time especially thank Karen and Mark help and guidance and the stupid questions I asked them.

CHAIRMAN HODOM: There are stupid questions.

MR. VANVALKENBURG: I had some.

CHAIRMAN HODOM: These were for us correct?

MR. VANVALKENBURG: Yes I would have made more copies but I said fax jammed.

CHAIRMAN HODOM: And if you could make the copies of that for us as well, a large copy which is more beneficial to look at that the whole picture. Thank you very much.

Hearing Adjourned 9:10 p.m.

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The next order of business was to consider the application of Stephen Ziamandanis (Applicant), School House Road Associates (Owner). The application was found to be in order and Mr. Wiggand made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Stephen Ziamandanis for a modification to a previously granted Use Variance under Article VI, Permitted Uses, Section 128-12, Residence "A" District to convert a previous daycare facility with an office and apartment to entirely office space at premises 299 School House Road, Albany, New York, it is hereby ordered that a public hearing on this matter be held August 18, 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.

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

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The next order of business was to consider the application of Patricia Caporta, 106 Fernbank Avenue, 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 Patricia Caporta for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for the construction of a Screened porch, which will exceed the allowable percentage of lot occupancy at the premises of 106 Fernbank Avenue, Delmar, New York, it is hereby ordered that a public hearing on this matter be held August 18, 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.

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

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The next order of business was to consider the application of Geraldine Aylward. The application was found to be in order and Chairman Hodom made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Geraldine Aylward, 44 Montrose Drive, Delmar, New York, it is hereby ordered that a public hearing on this matter be held August 18, 2004 at 8:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. Wiggand 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 Harold Denkers, 201 Bender Lane, 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 seeking a Variance under Article XVI, Front Yards, Section 128-71, requested by Harold Denkers for property at 201 Bender Lane, Glenmont, 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 July 7, 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 makes the following Findings of Fact and Conclusions of Law in this matter:

#### FINDINGS OF FACT

The Applicant is proposing to construct a 22-foot by 30-foot, 660-square foot 3-car detached garage that has a proposed front yard setback of 50-feet from the front yard property line. The required front yard setback for an accessory structure in an “A” Residence Zone is 70-feet from the property line leaving the proposed structure 20-feet shy of the requirement. The existing main structure is occupied as a single-family dwelling and is located in an “A” Residence Zone.

The portion of the Applicant’s property that is beyond the 70-foot setback line is at an elevation significantly below (approx. 6’) the elevation of the house. This area also contains the Applicant’s leach field for his septic system. These physical constraints make compliance with the setback restriction impractical.

The location of the garage proposed by the Applicant would place the garage parallel to the Applicant’s house.

The Applicant has spoken to several of his neighbors who expressed no concern with the location of the proposed garage.

The proposed garage will be constructed to match the siding and trim on the Applicant’s house, with white overhead doors and a poured concrete floor.

The garage will be supplied with electricity, but no other utilities, and will be used solely for the storage of motor vehicles owned by the Applicant.

No one at the public hearing spoke in opposition to the application.

#### CONCLUSIONS OF LAW

Based upon the above Findings, the Board determines that the Applicant's request for a variance should be granted.

The Board has considered the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, and concludes: (1) no undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the variance; (2) the benefit sought by the Applicant can not be achieved by some method, feasible for the Applicant to pursue, other than a variance; (3) the requested area variance is minimal; (4) the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) the Applicant's alleged difficulty is not self-created.

The Board also concludes that the required variance is the minimum variance that is necessary and adequate, and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

The Applicant's request for a variance is granted on the following conditions:

1. The project will be completed in strict conformance to the plans, specifications, exhibits and testimony presented to the Board; and
2. The project will be completed within two (2) years of the date of this resolution.

July 21, 2004

Michael C. Hodom  
Chairman

Board of Appeals

Mr. Wiggand 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 J. Wiggand Gilbert Brookins Marjory O'Brien Leonard Micelli	None	None	None

(Resolution filed with the Clerk of the Town of Bethlehem on July 22, 2004.)

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On a motion made by Mr. Wiggand, seconded by Mr. Brookins, and unanimously carried by the Board, the minutes of the July 7, 2004, meeting were approved as amended.

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

Meeting Adjourned: 9:30 p.m.

Respectfully submitted,

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Secretary