

**TOWN OF BETHLEHEM
BOARD OF APPEALS
March 3, 2004**

A regular meeting of the Board of Appeals, of the Town of Bethlehem, Albany County, New York was held on the above date at the Town Offices, 445 Delaware Avenue, Delmar, New York. Michael Hodom, Chairman, presiding.

PRESENT: Michael Hodom
Robert Wiggand
Gilbert Brookins
Marjory O'Brien
Leonard Micelli

Michael Moore Attorney to the Board

Mark Platel Building Inspector

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

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for an Area Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings requested by William and Elizabeth Gray for property at 22 Birchwood Place, Delmar, New York. The applicant wishes to construct an addition, which will exceed the allowable percentage of lot occupancy at the premises of 22 Birchwood Place, Delmar.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 59.5-square foot single story addition to the rear of the existing 1,117.22-square foot main structure that will create a total building area of 1,176.72-square feet. The new building area will be 21.72-square feet over the 1,155-square foot that is allowed by a lot consisting of 7,700-square feet. The lot occupancy will be 15.28 percent, which is .28-percent over the 15 percent allowable.

The existing structure is located in an "AA" Residence District and is occupied as a Single Family Dwelling.

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 March 4, 2004 at 7:30 p.m., at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of William and Elizabeth Gray, 22 Birchwood Place, Delmar, New York for variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings of the Code of the Town of Bethlehem for construction of an addition which will exceed the allowable percentage of lot occupancy at the premises of 22 Birchwood Place, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the February 25th 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. Mark before we get started, I notice that the existing side yard setback is not within code requirements. Could you explain that for us a little bit?

MR. PLATEL: Yeah, actually I was looking at the survey the other day and I wound up going out there. It was a patio or it's really a ground level deck, which isn't very high and I believe it's been there well before I even started working for the Town. So I don't know when it was constructed but it's ground and it's within 2-feet I believe of the side yard. And it's really just a pre-existing condition, when it was done I don't really know.

CHAIRMAN HODOM: But it doesn't have anything to do with our hearing this evening?

MR. PLATEL: No, it does not.

CHAIRMAN HODOM: Thank you. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone wishing to speak in opposition. Anyone desiring to speak will be allowed to do so, we just request that you come up, stand or sit close to the black microphone, it's for recording purposes only. Mr. Gray, just introduce yourself to us if you would. Give us your address and tell us what you want to do and why you want to do it and how you want to do it.

MR. GRAY: Sure, my name is Bill Gray and I live a 22 Birchwood Place with my wife. We've been there for approximately 11-years or so and we want to expand our kitchen. We were going to do it within the confines of the existing structure except the doorway would lead into our new dining room that we wanted and my wife didn't want that. So to accommodate my wife so the door wouldn't come from the garage right into her dining room, we decided to go out 3 1/2- feet out the rear of the structure and over 17 so we

would come in through the garage into the back way and we wouldn't come into our kitchen or our dining room.

CHAIRMAN HODOM: The survey of land submitted did show an enclosed porch sometime ago and apparently that porch has been removed?

MR. GRAY: Yes, we took down that structure that – because it was kind of falling down when we first moved in so I just knocked out the roof part of that structure and just put a barrier around the pre-existing floor that was there.

CHAIRMAN HODOM: If I'm reading this correctly, the level of your proposed addition which is approximately 3-foot, 6-inches deep by 17-feet wide will be all on the same level so that proposed entry into the garage will be at the same level as the addition? You would walk down into the garage.

MR. GRAY: Correct. You're going to walk up the - - if you go into my garage now there's a little – just a couple of steps to get into the kitchen. All we're doing is knocking that – we're moving that door and you're just going to go up the back way into the rear of the....

CHAIRMAN HODOM: Into that addition?

MR. GRAY: Right, I wasn't explaining myself right.

CHAIRMAN HODOM: Okay. Are there any other changes you're making either to the garage or to the kitchen area that involves any structural changes?

MR. GRAY: The only thing that – whether you consider it structural, the wall between the kitchen and the dining room has to come down.

CHAIRMAN HODOM: Okay.

MR. GRAY: I would like to make it one - - but there are no other structural changes that we're making.

CHAIRMAN HODOM: The architectural features you propose to use especially on the exterior of the building will – your intention is to match as closely as possible the siding materials and the roofing materials and the windows as it currently exists?

MR. GRAY: Correct.

CHAIRMAN HODOM: Okay. Did you have an opportunity to speak with your neighbors regarding the addition?

MR. GRAY: Yes I did.

CHAIRMAN HODOM: Comments?

MR. GRAY: They had no problem with it what so ever.

CHAIRMAN HODOM: And how many neighbors did you have an opportunity to speak with?

MR. GRAY: Seven or Eight, the ones that are most directly affected by any structural change.

CHAIRMAN HODOM: No one had any adverse comments?

MR. GRAY: No.

CHAIRMAN HODOM: What is the proposed time frame should the Board approve your application, when you would commence construction and complete construction?

MR. GRAY: I'd kind of have to be - - gray area on that. I know we're going to have to - about 2-weeks before or after we either get approved or don't get approval, we have to order our cabinets so then it usually takes 4 to 6 weeks so it would probably be a couple weeks before he begins the starting of the project. And I would assume it wouldn't take him, I mean you probably know better - 3 to 4 weeks probably, maybe 5.

MR. PLATEL: Depending on the weather.

MR. GRAY: Depending on the weather.

CHAIRMAN HODOM: So a year's time if the Board were to grant the application that would be adequate time to complete the work?

MR. GRAY: Oh, a year would be more than adequate I would hope.

CHAIRMAN HODOM: Mark, our building inspector, building department representative had brought up to the Board the difference in a dimension from your plan, which shows a 17-foot width of the proposed addition and then the rear view elevation which shows a 15-foot dimension. You're basing your proposal on the 17-foot dimension?

MR. GRAY: I'm going to go 17-feet, the full length that we're going to go out. I don't know whether Charlie intended that to be - or just the garage, like he was going to come out just the 15-feet and then come back in 3, you understand what I mean?

MR. PLATEL: Well the only thing is the dimensions are shown from outside of...

MR. GRAY: Right, I don't know. I would say it's 17 just for safety sake, but I don't whether he intended to just come back in 3 back the existing garage again. I think he's

going to go 17 all the way across. I'm almost positive that's the way it's going to be, but that could be one of the reasons why he put this in there.

CHAIRMAN HODOM: But for the purpose of our hearing this evening, we'll use the 17-feet by the 3-foot. Is the kitchen currently an eat-in kitchen?

MR. GRAY: Yes.

CHAIRMAN HODOM: Okay. So the expansion out just gives you additional room for family, and guests?

MR. GRAY: As the way the kitchen originally was in the small house was small kitchen and a small dining room to make it one big room, I mean you could have 4-people - - in an eat-in kitchen you can have 4-people eating in the kitchen, but you couldn't have more than 4-people eat in that kitchen and you'd be separated by walls to accommodate family gatherings – expanding it so that we could have a family gathering at the one big table.

CHAIRMAN HODOM: Okay. And the current make up of your family is – how many people?

MR. GRAY: 4 total.

CHAIRMAN HODOM: 2 adults, 2 children?

MR. GRAY: 2 adults, 2 children.

CHAIRMAN HODOM: And they're all home at the current time?

MR. GRAY: Yes they are.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: Well I thought I was going to have a question here but I figured out what the architect did. That was the door in the rear of your garage there.

MR. GRAY: Yes, the existing door now?

MR. WIGGAND: That was part of my question, is that the existing door?

MR. GRAY: There is an existing door that leads to the back deck. We're going to move that over so we still have a door that leads to the back deck from our garage.

MR. WIGGAND: You've answered my question, in other words you're going to move that door?

MR. GRAY: That's correct sir.

MR. WIGGAND: Okay, because the way it's drawn here that would be quite right the way it's drawn.

MR. MICELLI: No, he's going to move that door over so he still has access.

MR. WIGGAND: Then you're going to be walking into that garage area from the level of the existing deck that you have there?

MR. GRAY: That's right. There's like a little deck that comes right off the...

MR. WIGGAND: That's one thing I kind of missed when I was there. I didn't really pay much attention to that deck or that - - it was kind of covered with snow and things. Is that a masonry deck?

MR. GRAY: It was a masonry deck underneath - well it's a wooden deck, but it's...

MR. WIGGAND: It's a wood deck there?

MR. GRAY: Right. It was a deck that was already on the house at the time.

MR. WIGGAND: Okay.

MR. GRAY: There was a back porch and a deck or a patio, what ever you want to call it on the back. I just knocked off the back shed part of the porch, all right, because it was going to cave in.

MR. WIGGAND: That gives me a little better understanding of it. That is going to remain...

MR. GRAY: Yeah, we're not going to touch that. The only thing we're going to do with the deck is since we're going out 3-feet, we're going to lose 3-feet of our deck.

MR. WIGGAND: Yes. This is all a complete foundation as you're showing here on all of the new structure?

MR. GRAY: Yes that's correct. He's going to put in a new...

MR. WIGGAND: Well it got me a little confused was the way that - the location of that door. I didn't know exactly where that was in regards to that existing deck.

MR. GRAY: Yeah, patio/deck what ever you want to call it.

MR. WIGGAND: Did that have a roof over it at one time?

MR. GRAY: A portion of it did, it was actually two. There was a, how do you want to

call it, an enclosed porch and then the patio right next to it is the way it was, both about 12 by 12 or so.

MR. WIGGAND: Was that roof over that deck when you...

MR. GRAY: When we moved in, yes it was.

MR. WIGGAND: And you removed it?

MR. GRAY: I removed that, yes.

MR. WIGGAND: and you've been there about 10/11-years?

MR. GRAY: 11-years.

MR. WIGGAND: And it has not had a roof over it since?

MR. GRAY: No, it has not.

MR. WIGGAND: And it's not your intent to put a roof over it?

MR. GRAY: No there's no roof that's going to go on that.

MR. WIGGAND: Because this would change things a little.

MR. GRAY: Absolutely. There's no shed in the back either.

MR. WIGGAND: You'd have him serving you with another piece of paper.

MR. BROOKINS: There's no covered steps on the front either, is there?

MR. GRAY: No, there are no covered steps on the front. When we first moved in, again it was part of the existing structure; we took that off to.

MR. BROOKINS: I just have a question out of curiosity more than anything else. Where is the refrigerator in new kitchen?

MR. GRAY: Where the refrigerator going to go – if you – on the left hand side as you're looking at the – the refrigerator is going to be, well the way it's going to be is the refrigerator, okay an 18-inch tall cabinet, 30-inch base – the refrigerator is going to be here.

MR. BROOKINS: I was kind of thinking that must be the spot, thank you.

MR. GRAY: As cold as it's been this winter we're just going to keep it outside.

MR. WIGGAND: I also have one more question. That entry that we're looking at here from the new addition....

MR. GRAY: Right.

MR. WIGGAND: That's going directly down into the garage?

MR. GRAY: Right.

MR. WIGGAND: Just like 3-steps or 3-risers?

MR. GRAY: That's correct.

MR. WIGGAND: And that is going directly to the concrete floor in the garage and nowhere else?

MR. GRAY: Right.

MR. WIGGAND: It's not going into another...

MR. GRAY: No, it's not going into the basement or anywhere else. It's going right onto the floor.

MR. WIGGAND: You get to the basement on the inside of this building somewhere?

MR. GRAY: Yes.

MR. WIGGAND: It's not in the garage?

MR. GRAY: No, we don't get to the basement by the garage at all.

MR. WIGGAND: I was going to say you don't really have enough room for that there.

MR. GRAY: No, there's no way. The only way to get to the basement is through the house and we're not changing that at all.

MR. WIGGAND: And you do have an entry to the house – that's the other thing that has me a little confused here. Do you have stairs going up to the house from the garage?

MR. GRAY: Yes, currently we do. It just leads right into the garage.

MR. WIGGAND: I don't see them here in the design. Where are those stairs?

MR. GRAY: Well currently the stairs would lead into the kitchen here, okay?

MR. WIGGAND: So out of that entry you're going to be able to get the kitchen, that's

the way they are now.

MR. GRAY: That's the way they are now and all we're doing is we're just putting the entry in away this so the door doesn't go into the kitchen or the door doesn't go into the dining room.

MR. WIGGAND: That makes sense to me. I was going to say you have it out of the garage now.

MR. GRAY: Correct, we have it out of the garage, but it comes right into the kitchen so we just wanted to move it so you don't directly come into the kitchen or directly come into the dining room.

MR. WIGGAND: My question's was going to be is how are you going to put kitchen cabinets against an entry there because that's where it is now. Okay, my questions are answered. Thank you.

CHAIRMAN HODOM: Any other questions from the Board. Mr. Gray I'm just going to ask you to initial that change on that elevation for me.

MR. WIGGAND: Are we referring to the width of the building?

CHAIRMAN HODOM: Yes, the changes from 15 to 17.

MR. WIGGAND: And the elevations?

MR. PLATEL: Just the elevation drawings, it showed 15 rather than 17 so he just changed that to 17.

MR. WIGGAND: Okay.

CHAIRMAN HODOM: On counsels advise it's on the record now and we're all on the same page, the 17-foot on the plan and 17-feet on the elevation.

MR. PLATEL: They also showed 17-feet also.

MR. WIGGAND: I thought I was going to catch Mark in something but I didn't.

CHAIRMAN HODOM: Any other questions from the Board? Are there any questions or comments from the audience? Is there anyone wishing to speak in favor of the applicant? Yes Ma'am, please come up if you would. Just give us your name and address for the record.

MRS. JONES: My name is Mary Elizabeth Jones and I'm at 23 Birchwood Place and I'm in favor.

CHAIRMAN HODOM: You're in favor of the addition?

MRS. JONES: Right.

MR. GRAY: Thanks Mary.

CHAIRMAN HODOM: Thank you. You don't want to ask to be invited to their first party for the addition?

MRS. JONES: Oh, no.

CHAIRMAN HODOM: Thank you for your comments. Sir?

UNIDENTIFIED MAN: I'm just a law student.

CHAIRMAN HODOM: Okay. Hearing no further questions or comments, we'll declare the hearing closed and we'll notify you in a timely manner.

MR. GRAY: Thank you.

CHAIRMAN HODOM: Thank you very much.

Hearing closed 7:47 p.m.

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The next order of business was to change the already scheduled public hearing on application of Galaxy Communications, L.P. at the premises of Old Quarry Road, Selkirk, 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 Galaxy Communications, L.P., 235 Walton Street, Syracuse, New York for a Special Exception under Chapter 113-3, and 119-9 (F), to allow construction, operation, and maintenance of a 300-foot FM Radio Tower Facility at premises Old Quarry Road, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held April 7, 2004 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of Michelle and Daniel Sanders, 45 Carolanne Drive, Delmar, New York 12054. 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 Michelle and Daniel Sanders, for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for construction of two additions, which will exceed the allowable percentage of lot occupancy at premises 45 Carolanne Drive, Delmar, New York, it is hereby ordered that a public hearing on this matter be held March 17, 2004 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. 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 Howard Freed and Rachel Michaud, 3518 35th Street, Washington, D.C. 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 Howard Freed and Rachel Michaud for Variance under Article XV, Width of Lots, Section 128-63 A (D), Minimum required Widths for vacant property currently under site plan approval, which does not meet the required width of lot at premises McCormack Road, Slingerlands, New York 12059, it is hereby ordered that a public hearing on this matter be held April 7, 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. 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 application of Stewarts Shop's Corporation, P.O. Box 435, Saratoga, New York 12866. 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 Stewarts Shop's Corporation for Special Exception under Article VI, Permitted Uses, Section 128-20 C (3), Light Industrial District to remove existing canopy, islands and pumps and replace with larger canopy, concrete pad, and 4-fuel dispensers at premises 33 Frontage Road, Glenmont, New York 12077, it is hereby ordered that a public hearing on this matter be held April 21, 2004 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. 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 application of Stewarts Shop's Corporation, P.O. Box 435, Saratoga, New York 12866. 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 Stewarts Shop's Corporation for Special Exception under Article VI, Permitted Uses, Section 128-17 C (3), CC Retail Commercial District to remove existing canopy, dispensers and underground gasoline storage tank and replace with new canopy, 2-fuel dispensers and 2 new storage tanks at premises 309 Delaware Avenue, Delmar, New York 12054, it is hereby ordered that a public hearing on this matter be held April 21, 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. Brookins seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of William and Elizabeth Gray, 22 Birchwood Place, Delmar, New York. The following points were brought up by the Board members: The lot is small. The proposed addition is minor and reasonable in size. The plan is well developed and the proposed addition will not affect the character of the neighborhood. On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on March 17, 2004.

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The next order of business was to consider the proposed resolution of Maria Candido, 21 Frederick Place, Delmar, New York.

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

RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Maria Candido (Applicant) for an Area Variance under Chapter 128 of the Town Code, Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings, for property at 21 Frederick Place, Delmar, New York. The Applicant wishes to construct a roof over an existing deck, which will exceed the allowable percentage of lot occupancy at the premises of 21 Frederick Place, Delmar, 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 February 4, 2004; and,

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

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

BE IT RESOLVED, that the Board of Appeals has reviewed the evidence and testimony presented to it and makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicant is the Owner of property located at 21 Frederick Place, Delmar, New York (Town of Bethlehem). The Applicant proposes to construct a 240-square foot roof addition over an existing deck, at the rear of her house which, when combined with the existing 1,557.45-square foot main structure creates a total structure of 1,797.45-square feet. The new total square footage will exceed the total main structure allowed by 128.69-square feet. The lot occupancy will be at 16.61-percent, which is 1.16 over the 15-percent allowable under Article XII.

The property is located in an AA Residential Zone and is occupied as a Single Family Dwelling.

The rear of Applicant's home presently has a deck, which is so situated that it receives full sun during much of the day. The proposed roof addition will shield the deck from the full sun, and enable the Applicant to utilize the deck without prolonged sun exposure.

A similar roof addition has been constructed on a neighboring property in the District.

The Applicant has no plans to enclose the deck so as to expand the year round living space of her home.

The Board has received no written or oral objections to the Applicant's proposal.

Because of the physical condition and location of the Applicant's parcel, the strict application of the provisions of Chapter 128 of the Town Code would unreasonably restrict the use of the building for which the variance is sought.

The granting of the requested variance is necessary for the reasonable use of the Applicant's property.

The variance requested is the minimum that will provide for the reasonable use of the Applicant's property.

CONCLUSIONS OF LAW

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

This Board has balanced the benefit to the Applicant with the detriment to the health, safety and welfare of the neighborhood and community and concludes that permitting the proposed project is the minimum variance that would provide for the reasonable use of the property, would not result in any undesirable change in the character of the

neighborhood, would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district or be detrimental to adjoining property owners, and that the benefit could not be achieved by some other means.

Accordingly, the Board grants the Applicant's request for a Variance to construct the proposed roof addition, subject to the following conditions:

1. The Applicant shall complete construction in accordance with the plans, specifications, testimony and exhibits submitted to the Board in support of the application.
2. The deck area, with roof addition, shall not be further enclosed without prior approval of this Board.
3. Construction authorized by this Resolution shall be completed within one (1) year of the date of this Resolution.

March 3, 2004

Michael C. Hodom
Chairman, Board of Appeals

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

(Resolution filed with the Clerk of the Town of Bethlehem on March 4, 2004.)

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The next order of business was to consider the proposed resolution of Amna Enterprises (Owner), US Mart (Applicant).

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 for a Special Exception under Article VI, Permitted Uses, Section 128-17 C (3), CC Retail Commercial District, requested by US Mart, Inc. (the "Applicant"), Amna Enterprises (Owner), for property at 414 Route 9W, Glenmont, New York. The Applicant wishes to alter an existing structure to allow the sale of items not listed under the previously granted Special Exception at the premises at 414 Route 9W, 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 August 20, 2003, October 1, 2003 and February 4, 2004; and,

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

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

BE IT RESOLVED, that the Board of Appeals has reviewed the documents and exhibits submitted by the Applicant, and the testimony presented at the public hearing and now makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Applicant is seeking a modification to a previously granted Special Exception under Article VI, Permitted Uses, CC Retail Commercial District, Section 128-17 C (3), Gasoline Station.

The Board of Appeals originally granted a Special Exception for this use at the property by Resolution of May 23, 1969; which was modified by the Board's Resolution of September 8, 1988.

The Applicant is proposing to renovate the existing 2-bay service area of the building and turn it into a retail sales area. Under the existing Special Exception the Applicant is confined to the sale of individually packaged items and other listed items for an "Other Motor Fuel Station" as stated in Article I, 128-1, Definitions and Usage.

The existing structure is located in a "CC" Retail Commercial District and is occupied as an Other Motor Fuel Station.

At the public hearing, there was no opposition to the Applicant's proposed modification.

CONCLUSIONS OF LAW

Applicant requires the requested modification of the Special Exceptions previously granted by the Board on May 23, 1969 and September 8, 1988 in order to renovate the station to provide the services customarily offered to and expected by the public at modern gasoline stations. Accordingly, the Board grants the application for modification of the previously approved Special Exceptions, subject to the following conditions:

1. Prior to construction, Applicant shall consult with the Town Planning Department regarding the Department's recommendations for building and site design, particularly with respect to ingress and egress at the property.
2. Prior to construction, Applicant shall secure all necessary review and approvals from the New York Department of Transportation and the Albany County Department of Health.
3. Construction, renovation and use of the property shall be done in conformance with the plans, specifications, exhibits and testimony offered by the Applicant, specifically drawings "1 of 4" through "4 of 4" prepared by Thomas J. Wickman, PE, and dated October 23, 2003, October 25, 2003, November 21, 2003 and November 24, 2003, respectively and as finally approved by the Town of Bethlehem Building Department.
4. Applicant agrees that all work shown on drawings "1 of 4" through "4 of 4" shall comply with the current New York State Building Code, and all other applicable federal, State, County and local governmental codes rules and regulations.
5. Applicant agrees that the hours of operation shall be from 6 A.M. to 11 P.M., seven days per week.

6. Applicant agrees that all prior terms, findings, restrictions, limitations, safeguards and conditions in this Board's Resolutions of May 23, 1969 and September 8, 1988 which are not specifically modified by this Resolution and/or the Town Planning Department recommendations shall continue in full force and effect.
7. Applicant agrees that the items to be sold at the property shall be limited to those items listed in the Applicant's letter dated September 8, 2003. Applicant agrees that there shall be no food preparations conducted at the property, other than coffee.
8. All food items sold at the property shall be consumed off-site.
9. Applicant agrees to comply with the recommendations of the Albany County Planning Board, as set forth in its determination of August 21, 2003.
10. Landscape plantings at the property shall be low in height, not to exceed three feet (3'). All plantings shall be properly maintained and cared for, and perished plants shall be replaced within 30 days of perishing.
11. All construction authorized by this Resolution shall be completed within two (2) years from the date hereof.

March 3, 2004

Michael C. Hodom
Chairman
Board of Appeals

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	None	None	None
Robert Wiggand			
Gilbert Brookins			
Marjory O'Brien			
Leonard Micelli			

(Resolution filed with the Clerk of the Town of Bethlehem on March 4, 2004.)

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On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the minutes of the February 18, 2004, meeting were approved.

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

Meeting Adjourned: 8:30 p.m.

Respectfully submitted,

Secretary