

**TOWN OF BETHLEHEM
BOARD OF APPEALS
May 17, 2006**

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
Gilbert Brookins
Leonard Micelli
Anthony K. Umina
Mark Hennessey

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 an introduction to our newest member, Mr. Mark Hennessey who is sitting at the end of the table to the right. This is his first meeting on the Zoning Board of Appeals, welcome aboard Mark.

MR. HENNESSEY: Thank you.

And then actually the first order of business this evening is a public hearing for a modification to a previously granted Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards requested by Mel & Janice Lamphron for property at 71 Fairlawn Drive. The Applicant wishes to construct a second story addition, which will encroach into the side yard setback requirement at the premises.

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 second floor addition over a garage addition that was previously granted a side yard Variance on October 19, 2005. The proposed addition will be located directly above the garage and will be 2-feet longer than the first floor garage. The setback of the second floor will also be 7-feet, which is 3-feet shy of the 10-foot required in this Planned development district. The additional 24-square feet of building area will not affect the percent of lot occupancy

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for the main structure.

The existing structure is located in a Planned Development District with a previous "AA" Zoning Requirements and is occupied as a Single-Family Dwelling. There is an active permit on the property currently for the previously approved addition.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on, Wednesday May 17, 2006 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Mel & Janice Lamphron for a modification of a previously granted Variance under Article XIII, use & Area Schedules, Section 128-100A, Minimum Side Yards of the Code of the Town of Bethlehem for the construction of an addition, which will encroach into the side yard setback requirement at premises 71 Fairlawn Drive, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the May 10, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

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

MR. LAMPHRON: Okay this is my wife Janice and I'm Mel. We posted the garage and then you know it was late in the year by the time that application was formalized and everything and then we started thinking about it and you know we could use a little more room upstairs, number one and number two the big thing though I'm looking at the house aesthetically, you know you move it all the way out and the addition is exactly – my architect shows is just a continuation of what's presently there. It's just - - if I can match the roof to the existing roof tiles, next year you won't know it's an addition. It will look like it's the original thing so basically that was the thing. Also of course it increases the property value and tax value I might add. That's primarily it – we looked at it and we thought it would look better with the second floor on it and so I put the proposal in.

CHAIRMAN HODOM: The second floor that you submitted is 26-feet long.

MR. LAMPHRON: Right because that's the overhang on those.

CHAIRMAN HODOM: The plan shows it at the same – ending at the same location as the back of the house, it doesn't show an extension off the back.

MR. LAMPHRON: No, the extension is on the front of the house. The addition - - all of the raised ranches there have the overhang – is 2-feet, 2-inches on the front of the property. If that shows it on the back or is it...

CHAIRMAN HODOM: It shows it in the same plane as the existing house or as the garage addition, which is 24-feet.

MR. LAMPHRON: The garage addition – because the second floor as I say in front of you if you're looking at the end of my house looking at the end of it you'll see that the second floor sticks out 2-feet, 3-inches I think it is. The addition is going to stick out the same distance so we're putting in a second stall garage on and if we get approval of the addition above it is going to look like the original home was built just like that with 2-stalls on the garage.

CHAIRMAN HODOM: Okay so the extra 2-feet is in the front of the house?

MR. LAMPHRON: Right.

CHAIRMAN HODOM: Which is the overhang that currently exists on the main structure.

MR. LAMPHRON: Right.

CHAIRMAN HODOM: Does that present any problems?

MR. PLATEL: Possibly, but if it does it's for the entire house because I have a measurement here of 36-feet and this is just a foundation location so that would be the foundation so if we have a 2-foot overhang it would make it 34-feet.

CHAIRMAN HODOM: Which is an encroachment of a foot.

MR. PLATEL: Yes it would be an encroachment in the front yard of 1-foot.

MR. LAMPHRON: Which means my whole house is an encroachment. So I think in essence if we – I mean the house has been there 29-years now.

CHAIRMAN HODOM: I would recommend that if in fact the Board decides to grant this Variance that both items be included in the Variance, the side yard and the front yard so that there's no question if when you go to sell the house...

MRS. LAMPHRON: Good idea.

CHAIRMAN HODOM: Do you have any elevations as to what the addition is going to look like from the side and the front.

MR. LAMPHRON: Yeah from the front it is going to look exactly like we're just putting new siding on our house and then we'll continue that siding around and so when we get done, God willing, it's going to look like it's exactly like it's always been there as a family house.

CHAIRMAN HODOM: The eave lines in the front will match up?

MR. LAMPHRON: Everything is going to match up exactly.

CHAIRMAN HODOM: For the addition?

MR. LAMPHRON: Right. This is - - I have a couple friends of mine who are professional carpenters up in Maine and they are coming down for gratis for me so this isn't a cob-job that I'm going to get a black and blue thumb trying to get involved in.

CHAIRMAN HODOM: But you see in Maine they use the metric system.

MR. LAMPHRON: True - I'll have to really, really push the fence over this.

CHAIRMAN HODOM: And just to clarify that on your roof extension the roofline will remain the same as the existing house.

MR. LAMPHRON: The roof line is going to be the same, right we're going to get the pre-form - what are they?

MR. PLATEL: Trusses.

MR. LAMPHRON: Trusses, right.

CHAIRMAN HODOM: I know you show the second floor as a new room. Can you tell us what the new room is going to be used for?

MR. LAMPHRON: It's probably going to be a continuation of the bedroom. In fact I may cut it in half and enlarge my den if my wife doesn't get opposed to that.

CHAIRMAN HODOM: Well are you opposed to it?

MRS. LAMPHRON: No.

CHAIRMAN HODOM: Good, okay.

MR. LAMPHRON: It's just a little more room inside the house, you know the two of us

are living there by ourselves but it's just the idea that if we have friends come in – we have friends from out of state so you know it would give us a little extra room to put them and I always grew up in these little bedrooms, you know that look like closets. I like a little room and I want to be able to move my elbows. It's probably all up here now but it's still....

CHAIRMAN HODOM: Well we'll leave that one alone. And again the construction finishes, the aesthetics will match, the siding will match, the existing....

MR. LAMPHRON: The only thing I can't guarantee is the roofing and I'm going to try because the roof has been on there for 12-years now. I will try to, you know get....

CHAIRMAN HODOM: You'll match it as closely as possible.

MR. LAMPHRON: Right, as closely as I possibly can. I want people to go by there and never know that there was an addition quite frankly.

CHAIRMAN HODOM: I believe we received 1-letter from your neighbor, Maritza Barcia?

MR. LAMPHRON: Yes.

CHAIRMAN HODOM: Okay. Had you spoken with other neighbors in the neighborhood?

MR. LAMPHRON: Oh yes, and nobody has any objections. They're all like, go for it. Evidentially we're well liked in our neighborhood.

CHAIRMAN HODOM: I'll leave that one alone too. Any other questions from the Board?

MR. MICELLI: Is there going to be any windows in the garage?

MR. LAMPHRON: The garage?

MR. MICELLI: Yes, there's no windows and...

MR. LAMPHRON: The only thing that will be in the garage is the existing garage has a door on the side of it.

MR. MICELLI: Okay and that's going to stay.

MR. LAMPHRON: Right the garage is on the left hand side of the house and there's a door leading out of that other side. With the addition that door will just be from one garage to the other garage. The existing garage walls will stay there and then I will put a back door in the second stall garage so I can go through there into my back yard.

MR. MICELLI: Okay and do you plan on putting any shrubs or anything on the side of the garage?

MR. LAMPHRON: At the moment – the 20th we have people coming in to put the underground watering system in, then we have people coming in to put the topsoil on, then we have the people to come and spray green. When it all gets done and all the mess is – we're going to put a new driveway in and so when we get all done we have 9-aborvities that we have to find a home for. They're just sitting there so we're working towards making it aesthetically as pretty as we can.

MR. MICELLI: Excellent, thank you.

CHAIRMAN HODOM: Anyone else, Ken?

MR. UMINA: No.

CHAIRMAN HODOM: Any questions or comments from the audience? Anyone wishing to speak in favor of the applicant? Mrs. Lamphron this is your time to speak if you would like.

MRS. LAMPHRON: I think he said it all, thank you.

CHAIRMAN HODOM: You are in favor of the proposal?

MRS. LAMPHRON: Yes I am.

CHAIRMAN HODOM: Thank you. Anyone desiring to speak in opposition to the applicant? 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. LAMPHRON: Thank you.

Hearing closed 7:45 p.m.

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The next order of business this evening is a public hearing for a Variance under Article III, Zoning Maps & Districts, 128-17, Exceptions C requested by Bart & Lisa Robinson for property at 164 Hasgate Drive, Delmar, New York 12054. The Applicant wishes to construct a fence, which will not meet the requirements at the premises.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to install a fence that will be located in the front yard of the property that will be 6-feet in height. The proposed fence will extend 20-feet into the front yard, 14-feet from the property line. In the front yard a fence is only allowed to be 4-feet in height. The Applicant is seeking a Variance for both the location and the height of the fence. For the Boards information there is a proposed change being presented to the Town Board that will change the requirements for fencing relating to corner lots that will allow a 6-foot fence up to 15-feet from the front property line on the front/side yard.

The existing structure is located in a Residence "A" District 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, Albany county, Town of Bethlehem will hold a public hearing on Wednesday May 17, 2006 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Bart & Lisa Robinson for Variance under Article III, Zoning Maps & Districts, 128-17, Exceptions C of the code of the Town of Bethlehem for the construction of a fence that will not meet the requirements at the premises 164 Hasgate Drive, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the May10, 2006 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 applicant's 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 direct all questions or comments to the Board. Mr. or Mrs. Robinson if you just introduce yourself to us, give us your address and tell us what you want to do and why you want to do it.

MR. ROBINSON: Okay. I'm Bart Robinson and this is my wife Lisa and we live at 164 Hasgate, which is on the corner of Hasgate and Forsten and we are asking for a Variance

to erect a fence that is higher than 4-feet along the Forsten side of our – which is actually our side yard I guess is what you would call it. We - - the fence that we're proposing will run parallel and would be 25-feet from the road. After what Mark had said earlier that is actually 14-feet from the property line and we'd be more than willing to move to 15-feet inside the property line for the proposed fence. We didn't hear about this until today so under what you guys are looking at that would suit us as well. The key for us really is two things. It's about being able to have safety and liability for our children and the children of the neighborhood if you ever been to our lot around the corner there of Hasgate and Forsten is a very heavily traveled area. It's got a sidewalk there; a lot of children both supervised and unsupervised children and more importantly teenage kids are out and about the neighborhood. It's a very populated neighborhood with kids and they're out and about after dark and unsupervised. Our fear of course is that a 4-foot fence – they could jump that fence fairly easily and get into the back yard where if you know where the NIMO is back there – there's a large hill up there that a lot of them go at night and I'm not here to talk about what kids do at night but as we all know nothing good is happening after 10:00 p.m. so that's one of our big fears. We put a pool in and that's really the reason that we're wanting the 6-foot fence so that you can't just jump right into the back yard where the pool is because it would be very visible from the sidewalk.

The other this is also privacy, you know we bought a corner lot in order to have the back of our lot is all trees so no one can see us there. We have no one on this side and we only have 1-neighbor. Privacy is important for us in the pool area and also from an aesthetic standpoint anytime you have a pool, we have pool toys and everything out there and if you look at our lot we kind of sit down a little bit so as you're walking along the sidewalk you actually could see right down and look over a 4-foot fence so we think the extra 2-feet, the 4-foot with 2-foot of lattice would keep us - - with a little more privacy and also give us a secure lot. We understand why the Town put the law into place, we heard it had to do with being able to see as you approach the corner from a driving standpoint but where our house sits we sit far enough back that we're a good 75-feet from that corner of Hasgate so you would be well past the fence and be able to see oncoming traffic. In fact our house would be the reason you can't see oncoming traffic more than the fence would be. We know every lot has it's own reasons and we just think that you guys could see that this is an exception to the rule that you know if you're talking about our fence being in our front yard there is no house behind us so it wouldn't go into someone's front yard which I could see that being a problem if we did have someone on the backside of our house. That's really it, anything else?

CHAIRMAN HODOM: Okay, just let me clarify a note that you had on your site plan. On the 20-foot section coming from the house towards Forsten...

MR. ROBINSON: Yes.

CHAIRMAN HODOM: It says that 20-feet from the house, 2 8-foot sections with a 4-foot gate.

MR. ROBINSON: Correct.

CHAIRMAN HODOM: The 8-foot sections you're referring to are the length not the height?

MR. ROBINSON: Correct.

CHAIRMAN HODOM: All the fencing that you're proposing is 4-foot solid, 2-foot lattice?

MR. ROBINSON: Correct.

CHAIRMAN HODOM: Okay. Who is installing the fence or proposing to install the fence for you? Is it your pool installer?

MR. ROBINSON: No it's Ken Joslen.

CHAIRMAN HODOM: Is he local?

MR. ROBINSON: Yes.

CHAIRMAN HODOM: Okay. And the material that you're proposing to use for the fence?

MR. ROBINSON: Is a cedar – it's a 4-foot cedar with a 2-foot of lattice.

CHAIRMAN HODOM: It's a wood fence, okay. Have you had the opportunity to discuss your proposed fence with your neighbors?

MR. ROBINSON: Quite extensively. We have a very close neighborhood there and we have talked to anybody within probably 300-yards of the house. We actually have 2-letters that were sent.

CHAIRMAN HODOM: We do have one from the Royle's.

MRS. ROBINSON: And there's another one from the MacQuoid's.

MR. HENNESSEY: What about the house directly facing where the fence is going to go up, have you talked to them?

MR. ROBINSON: Yes absolutely.

MRS. ROBINSON: Yes we're good friends with them. They would actually prefer not to see all the junk in our back yard, but they're fine with it.

CHAIRMAN HODOM: Mark, just for clarification in section 128-50, paragraph A, swimming pools, fences there is an allowance for a 6-foot high fence. I know there's

some verbiage in there that says it's strictly around the pool but it also says a reasonable distance from the pool.

MR. PLATEL: Correct.

CHAIRMAN HODOM: Would this configuration be under the inclusion of reasonable so that there's not a concern about a 6-foot high fence?

MR. PLATEL: Yeah for that section. Normally you're looking at a pool under the way we always looked at them in the past where you're allowed a solid 5-foot fence in a pool area. We always considered reasonable in the yard area, 15-feet, 20-feet from the pool is what we would consider reasonable and if I remember the pool edge is right along – I think it's right along that front property line, not the front property line but the line that would have been considered – the rear yard separation from the front yard so that 15-foot would have been a reasonable distance.

CHAIRMAN HODOM: Is there a reason why you've extended the fencing a considerable distance away from the pool itself? Was it to enclose a yard for the youngsters?

MR. ROBINSON: Yes and a dog.

CHAIRMAN HODOM: And a dog as well?

MR. ROBINSON: We have a dog coming July first so there's nothing like a pool and a dog at the same time.

CHAIRMAN HODOM: And then also Mark for clarification under 128-50 H, pool locations which says that a pool is not to be located in a front yard.

MR. PLATEL: Correct.

CHAIRMAN HODOM: And of course a corner lot you actually have 2-front yards so as long as it's primarily behind the house it's considered in the back yard?

MR. PLATEL: Correct.

CHAIRMAN HODOM: So we don't have to deal with the front/side yard?

MR. PLATEL: No.

CHAIRMAN HODOM: Okay, good. I'm glad to hear that. Do we have a time frame as to when the existing code is going to be changed?

MR. PLATEL: I believe it's going to be August sometime. I can't remember the exact scheduling but I thought it was sometime in August.

MR. MESSINA: There's a May 30th public meeting on that subject and I'll think we'll be into July or August.

CHAIRMAN HODOM: But it's a definite change?

MR. PLATEL: Unless the Board objects to it.

ATTORNEY MOORE: But it's a moot point if they move it back anyway to within 15-feet.

MR. PLATEL: If they were to move the fence back where you consider the front to the back – if they were to move it there which is 20-feet closer to the house – off the back corner of the house it would be - - if the fence were 4-feet high it would be a moot point. It's kind of like a catch 22, if it were 4-feet it would be okay where it's located but if it was 6-feet it would have to be 20-feet back more.

CHAIRMAN HODOM: But 15-feet from the roadway would suffice at least as the proposed code change stands right now and you have no objection to meeting that requirement.

MR. ROBINSON: None.

CHAIRMAN HODOM: Any other questions from the Board? Gil, Ken all set?

MR. UMINA: I looked over the proposal and I have no questions.

CHAIRMAN HODOM: Is there any questions or comments from the audience? Anyone wishing to speak in favor of the applicant?

MR. MESSINA: Mr. Chairman not to violate what I'm supposed to do with the Town Board...

CHAIRMAN HODOM: Just introduce yourself to us please.

MR. MESSINA: I'm Sam Messina and I have taken interest in the request and I did look at the property, talked to Mark; talked with Mike Morelli and George Leveille when it first came up and just add at least my perspective on this I think it was Planning and Development departments position that what is being proposed here is really a correction to when the zoning amendments were done and done with an attempt for both safety as well as aesthetics. It's easy to overlook that with a corner yard you really have 2-fronts and the Planning Department, Mark, everyone was really very considerate of that so I think this is a reasonable request and I know the folks here if given the option of going forward so they can deal with their pool and things like that as well as waiting till the amendments were made down the road. The trouble with waiting is I say July or August and all you need to have is a couple of other things jump up and it will be October or

November. So I just wanted to give you the background on this site if nothing changes at least from my piece of the Town Board action I will support this.

CHAIRMAN HODOM: Thank you very much.

MR. MESSINA: Thank you.

CHAIRMAN HODOM: I have no further questions, just looking at the shale back there I hope we don't have a post that falls on one of the shale boulders that you use for fill. Hearing no further questions we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

Hearing closed 8:00 p.m.

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The next order of business was to consider the application of Thomas & Joanne Coffey. The application was found to be in order and Mr. Umina made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Thomas & Joanne Coffey for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards for the construction of an attached carport addition, which will encroach into the Side Yard Setback requirement at premises 47 Clifton Way, Slingerlands, New York, it is hereby ordered that a public hearing on this matter be held June 7, 2006 at 7:15 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.

The next order of business was to consider the application of Delmar Reformed Church. The application was found to be in order and Mr. Brookins made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Delmar Reformed Church for Variance under Article XIII, Use & Area Schedules, Section 128-100Ad, Minimum Rear Yards for the demolition of a back porch and construction of a 1-story addition, which will encroach into the rear yard setback requirement at premises 77 Adams Place, Delmar, New York, it is hereby ordered that a public hearing on this matter be held June 7, 2006 at 7:30p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. Hennessey 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 Robert and Carol Dunn for a Use Variance under Article V, Section 128-26 B, Schedule of Uses, 128-99, for the construction of a 6-unit dwelling, which is not a permitted use at premises Elm Avenue East, Selkirk, New York. The following points were brought up by the Board members: The proposed 6-unit dwelling would negatively impact the essential character of the neighborhood. The Applicant didn't show substantial financial evidence, which is required for a Use Variance. On a motion made by Mr. Umina, seconded by Mr. Hennessey, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution denying the Use Variance, for presentation at the next Board meeting on June 7, 2006.

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The next order of business was a discussion of the previous public hearing held in the matter of Mel & Janice Lamphron for a modification to a previously granted Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards for a second story addition, which will encroach into the side yard setback requirements at premises 71 Fairlawn Drive, Selkirk, New York. The following points were brought up by the Board members: The proposed addition will not affect the character of the neighborhood. There was a letter sent in from the adjoining neighbors in favor of the application. On a motion made by Mr. Hennessey, seconded by Mr. Brookins, 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 June 7, 2006.

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The next order of business was a discussion of the previous public hearing held in the matter of Bart & Lisa Robinson for Variance under Article III, Zoning Maps & Districts, 128-17, Exceptions C for the construction of a fence which will not meet the requirements at premises 164 Hasgate Drive, Delmar, New York 12054. The following points were brought up by the Board members: The Zoning Code is currently being amended to allow a fence which is 6-feet in height. The visibility for traffic will not be affected. The applicants have a pool and would like more privacy. On a motion made by Mr. Micelli, seconded by Mr. Brookins, 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 June 7, 2006.

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On a motion made by Mr. Brookins, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the May 3, 2006, meeting were approved as amended.

The meeting was adjourned on a motion made by Mr. Micelli, seconded by Mr. Umina and unanimously carried by the Board.

Meeting Adjourned: 8:35 p.m.

Respectfully submitted,

Secretary