

**TOWN OF BETHLEHEM
BOARD OF APPEALS
November 5, 2003**

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

PRESENT: Michael Hodom
Robert Wiggand
Richard Lewis
Gilbert Brookins

Patrick Seely Attorney to the Board

Kevin Shea Building Inspector

ABSENT: Marjory O'Brien

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

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for a Variance under Article X, Highway Frontage and Access, Section 128-42, Distance between Flag Lots requested by Grace Gidley for property at McCormack Road, Slingerlands, New York. The Applicant wishes to construct a driveway and install utilities for a building lot.

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

MR. SHEA: Yes, Mr. Chairman. The Applicant is seeking to provide access to an existing vacant flag lot. The lot in question directly adjoins an existing flag lot that has an existing single-family dwelling located on it with the access off a town street. Since the two lots share the same property line where they access the town street the distance between the lots is non-existent. The code requires that there must be a 50-foot strip of land between the two flag lots. At one time the section of this lot where the proposed access is being proposed was a paper street that the applicant has acquired.

As stated above the existing lot is vacant land and is located in an "A" Residence Zone.

CHAIRMAN HODOM: Thank you, Kevin. 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 November 5, 2003 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Grace Gidley, 21 Maple Avenue, Slingerlands, New York for Variance under Article X, Highway Frontage and Access, Section 128-42, Distance Between Access Strips on Flag Lots of the Code of the Town of Bethlehem for construction of a driveway and installation of utilities for a building lot at premises McCormack Road, Slingerlands, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the October 29, 2003 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor 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 stay with the issue this evening. Anyone desiring to speak, we just ask that you stand or sit close to the black microphone, it's for recording purposes only, it's not for amplification. Any comments or questions should be directed to the Board. Mr. Hite, would you introduce yourself, your association with the Applicant and tell us what you want to do and how they want to do it.

MR. HITE: Thank you Mr. Chairman, members of the Board and audience. My name is Paul Hite, Land Surveyor and Land Planner in Delmar, New York. I'm here tonight representing Mrs. Gidley and her mother, relative to a property owned by the m located on the northerly side of McCormack Road on an old paper street that is shown on the map of record as we refer to and it's titled "Becker's Improvement Company of Slingerlands," which was a number of years ago, filed in County Clerks Office as a matter of record. All the lots that you see shown on this portion of the map were all part of that subdivision all at that time and probably even now are meeting requirements for a building lot. The houses on Maple Avenue were all constructed, homes in this area constructed, homes in here constructed even to a re-subdivision of a portion of this property in here.

The lot adjoining my client's property on the south, owned by Peter's was 3-lots, the same as our 3-lots are. That was originally a single family home, very nice home constructed on it and I have pictures of that home shown here on the board adjacent to me, with the driveway that went into it as you see here. It was discovered that sometime after this home was built that the short keyhole of flag lot did not meet the requirements of the Town for a 28-foot width measured at right angles at any point along the line. Subsequent to that discovery they came before this Board and requested and received a Variance for the 28-feet, which is now I believe 26.5 or something like that, but that Variance was granted to Mr. Peter's because he had already constructed his home and

had I think maybe even occupied it when it was discovered.

On the west is a single family home located in here, very nicely built; very well maintained home and I also have pictures of that on the board here. The homes in this area are very nice homes all through out the entire area, all very nice, well built, maintained homes. Throughout this old paper street, which extended from McCormack Road all the way through to New Scotland Road was never constructed and therefore the lots were not built on. Numbers of them were required by the people that live here, here and made apart of lots that fronted on Maple Avenue. Theses lots back here were purchased by a couple of them by the people that own this lot and also back in here, but one of them is owned by my client and through out owned by other people.

When Mrs. Gidley first came to me, I said this was an old paper street. I don't understand why, if you really wanted to develop this that you couldn't build a road back in there and you know, build a home on it. She pointed out to me that in the proceedings and acquisition of the properties there was a court case that was brought by her attorney to quiet title on this entire piece of property, this street and the whole area. Through many meetings and of this - - agreements later, came to between her and this owner and a number of the - - one of the owners up here. There was a conveyance of property between this owner, Mrs. Werner received 22-feet of this original 50-foot street and Mrs. Gidley retained the 28-feet, which met the requirements for a keyhole lot. This occurred, again up here and this piece of property. The others either signed off or it was determined by that court order and that's a matter of record. I have copies of it that they did not show up for the court appearances and therefore whatever rights they had was null and void. Again, I have copies of that document if the Board so wishes to see it.

Mrs. Gidley simply wants to sell this piece of property to build one single family home on it. This lot is approximately 210- feet wide – or it is 210-feet wide and 160-feet in depth, which is a very, very large lot. A single family home located in the middle of it with a 12-foot driveway that would extend northerly from McCormack Road in this direction, turn in this somewhat manner into a driveway – side loaded driveway that would allow the automobile to turn around in it's own lot and then go back out to McCormack Road.

Sanitary sewer which exists on McCormack Road, installed by the Town a number of years ago would be tapped into and provide a sanitary sewer system back to the lot – would be a grinder pump because the depth of the sewer here is not deep enough to allow a gravity feed to this point. So therefore a grinder pump would be required to provide the sanitary sewer services. A water tap would be made to the existing water line, which is located on the southerly side of McCormack Road with a line large enough to accommodate a water feed to this single family dwelling. Somewhere in the early 90's the Town of Bethlehem decided that they needed to install storm drainage pipe and facilities through here to provide a drainage system, I'm not sure if it was really for McCormack Road or for a portion of McCormack Road and through here and into other facilities that they had located in this area. That pipe and storm drain structures are all in places and can by utilized to provide drainage and cellar drain as I've shown here for this

proposed single family dwelling. I believe that's about the extent of trying to keep it simple, to point out you know, it's simply what we want to do. I'll try to answer any questions that the Board or the audience may have. With me tonight is Mrs. Gidley, if questions need to be asked to her – she's a little nervous about speaking in public but if she has to I'm sure she can.

CHAIRMAN HODOM: Paul, do you have that court decision or the court order with you this evening?

MR. HITE: Yes, I do.

CHAIRMAN HODOM: Perhaps you could produce it and let our counsel take a look at it.

MR. HITE: Okay, Mrs. Gidley has it.

CHAIRMAN HODOM: Is there any other access that – I see that the paper street went from McCormack Road and it appears to have gone right over to New Scotland Road.

MR. HITE: Yes, it did.

CHAIRMAN HODOM: Is that area from the west side of the proposed property line - is that all developed and purchased? Is there any access from New Scotland Road?

MR. HITE: There is a 28-foot wide remaining portion, the same as it here from New Scotland Road that would provide access to it, access to this lot number 33 that is owned by the Gidley's also. Has nothing to do with this because one access was all we were asking for here, this would be an access to another piece of property.

MR. O'CONNOR: So does that mean you're going to...

CHAIRMAN HODOM: Hold on sir please. You'll have an opportunity. Thank you. So if I understood what you said earlier Mr. Hite, is that originally there was a 50-foot right of way...

MR. HITE: Yes.

CHAIRMAN HODOM: For a street. And through some litigation that 50-foot right of way was reduced to 28-feet?

MR. HITE: Not – yes, using those terms, yes. It was because of the long drawn out discussions and I don't like using the word "arguments" but meetings in court over possible ownership of some portion of this street. An agreement was come to and it's all part of that document that Mrs. Gidley would convey any right, title and interest that she had to the 22-foot strip of land extending from McCormack Road back to the property owned by the Werner's. In return for that, Mrs. Werner would give up any right, title and

interest that she may have to the 28-foot strip remaining of that 50-foot wide strip of land, which was required to provide Mrs. Gidley with a keyhole lot to reach her property. That satisfied apparently this person and Mrs. Gidley didn't feel that she had a problem with it because at the hearing for this, she had presented a letter and that's also a matter of record in your records and I also have a copy of that letter, that she had no objection to Mr. Peter's being granted the Variance as long as it did not interfere with her rights to develop her piece of property and the statement which is matter of record was said that letter has been shown to our counsel and we feel that there's no problem with your request to develop your property.

CHAIRMAN HODOM: Did the litigation take or occur prior to the Town having a 50-foot dimensional requirement between flag lots?

MR. HITE: Not that I know of. I think that been since...

CHAIRMAN HODOM: So that was already in place?

MR. HITE: Yeah, it was always – has always been, it had to be 50-feet between 2-keyhole driveways or you had to come into this Board and ask for a Variance. If for some reason you couldn't reach your property than any other means or method.

CHAIRMAN HODOM: But you can meet the 28-foot wide abutment requirement?

MR. HITE: Yes.

CHAIRMAN HODOM: Off the Town highway or County highway, okay.

MR. HITE: And that's why only 22-feet of this was conveyed to the adjoining owner because it then left Mrs. Gidley and her mother with the appropriate width of property to reach her existing lot.

CHAIRMAN HODOM: And how long have your clients owned the property?

MR. HITE: I'd have to go back and look at the records. It's been a number of years; actually her father and mother acquired the lot. She also – her home is existing right as you see just above this property and these lots were acquired, you know a number of years ago through her parents and then subsequent to that it was conveyed her and her mother. It's all a matter – in the record, I have it listed in deeds of record on the map. It's been a number of years though, would you say approximately 25-years?

MRS. GIDLEY: 38.

MR. HITE: 38-years or so.

CHAIRMAN HODOM: Do we have any idea what type of dwelling is being proposed for that location?

MR. HITE: None what so ever, it was simply to show this Board that we could put a driveway back to a building situate and I place this building in the middle here, which was to somewhat alleviate any view of adjoining neighbors up here and also adjoining neighbors up here looking down onto this lot. I put it in the middle of the lot. This house is basically about the middle of these 3-lots. And these lots are all about the same size up here, this one got to be a little bit bigger. Apparently it was a piece of property acquired along with the original lot. All these lots were the same as these lots here, 75-foot wide lots, and all of them have homes on them. This would be one home on 3-lots, same as the one here.

CHAIRMAN HODOM: The ornamental trees that you show north of the proposed dwelling, north and west, are they proposed or are they existing?

MR. HITE: They all exist.

CHAIRMAN HODOM: Do you know what is proposed to happen with the area that is indicated as woods?

MR. HITE: In this area here?

CHAIRMAN HODOM: Yes.

MR. HITE: I'm sure - - to very honest with you Mr. Chairman, the wooded area in here only contains a few trees that are of I guess you would consider of value in terms of providing some type of beautiful scene to the tree lots. Most of it's scrub-brush, small poplars. In all likelihood anyone going here - this would be cleared out, maybe a couple of - - there's a couple of large poplar tree's here that might be retained but poplars are not the most popular tree in the world, I don't know how they got the name. They do provide 10-million leaves when it comes time to rake as I'm well aware of so, but in all likelihood this area here would probably be cleared, maybe some of this could be left if it's worth it, but most of this would be cleared for a front yard and to provide grading down into this drainage structure.

CHAIRMAN HODOM: Am I correct in assuming that any proposed construction be it the driveway or the proposed dwelling would be totally in accordance with Town requirements?

MR. HITE: Absolutely. The Building Department I think in their letter to Mrs. Gidley has informed her or maybe the Engineering Department or both has informed her that before a building permit was issued here that they would have to look at the grading and the method of providing sanitary sewer and water to the proposed building before a permit was issued. Have I incorrectly stated that?

CHAIRMAN HODOM: He incorrectly stated it or he correctly stated it?

MR. SHEA: No, that was part of it, in other words after the Variance is granted it still has to also meet the requirement of engineering for drainage and the sewer and water.

CHAIRMAN HODOM: Okay, so they would have to go to the Town Engineering Department for review of any proposed site plan?

MR. SHEA: Yeah, that was told to a couple of real-estate people, we have letters on file.

MR. HITE: In doing the survey, we also did a topographic survey so we know that we're more than adequate drainage and area to provide that grading plan. I did a complete topographic survey that covers this entire area.

CHAIRMAN HODOM: My understanding is that it is not your client who proposes to construct a proposed dwelling but would like to sell the property to someone who would like to construct there?

MR. HITE: Yes. Either a single-family homebuilder or a contractor if they so desire, which is done through out Town.

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

MR. WIGGAND: Well Paul, actually the only thing that is brought up here of what you showed us is this entrance here.

MR. HITE: The one that exists right here?

MR. WIGGAND: Yes. Is that the only thing that we have to deal with?

MR. HITE: As far as I know Mr. Wiggand I'm not sure if Mrs. - - I guess we go back and look at it. If Mrs. Gidley had enough lots back in here that she could build on, she could tomorrow go to the engineering department and developed a street throughout this and build any number of homes in here regardless of this keyhole lot that exists here.

MR. WIGGAND: Well that is what's got me a little confused with that. I just don't know exactly what we are supposed to be discussing here tonight. Is there another portion of this street that...

MR. SHEA: Okay, it's not a street it's an access.

MR. WIGGAND: It's an access, I'm sorry I understand.

MR. SHEA: It fails to meet okay, is the 50-foot between the access. In other words as it so stated if you had one flag lot in relationship okay, to Peter's here okay, that has a 28-foot access to McCormack. Before we could put another flag lot on we have to add 50-feet from this access to this point, then you could go the 28-feet and then you would have to go another 50-foot to get another flag lot. If these were all flag lots, or what they call

estate lots or what ever in the back, you need that 50-foot and this is what you're contending with now is the 50-foot between the access to Mr. Peter's and Mrs. Gidley's. You don't have it, that 50-foot is not there.

MR. HITE: The only difference not having that statement by Kevin is that when you read that article under road frontage, it does not state that if I own this piece of property and you own this piece of property that I can not, and this is the only way I have to access mine, that I can't have a keyhole lot on mine and you have one on yours. I think the original intent of thing – or that law and even though it may not be written that way was that if I had a piece of property and wanted to develop it I could not put 3 or 4-keyhole lots side by side. But suppose we have 4 people that own property back in here somewhere and this is the only way they had to access it. This guy would not be using anybody's property but his own. Mrs. Gidley only uses hers and this person here would use only theirs because there is 3-separate pieces of property. And I don't believe that law was ever intended to mean that it had to be 50-feet between driveways if it was owned separately. It doesn't say that and it's not written that way, but when you read it you can interpret it either way and I sure the attorney to the Board could, you know read that and either agree with me or disagree with me, but that's the way it's written. It just simply says you have to have 50-feet between driveways or keyhole lots, but it doesn't distinguish a separate ownership which denies her the right to use this if that is the case.

ATTORNEY SEELY: Mr. Hite, there is reference in this court order to an easement that was granted to the Peter's in exchange for resolving this case. Do you know where that easement is and what it is for?

MR. HITE: There was an easement granted by Peter's to the Town. I'm not quite sure why the Town did that, but they needed to put this drainage in and not being sure who owned the street, I think they got the easement through a quitclaim deed from Peter's for a 20-foot wide easement down through here to install this storm drainage and from Werner I believe down through this part.

ATTORNEY SEELY: I'm referring to what is labeled as paragraph first on page 3 of the order that says that the plaintiff's will receive by quitclaim deed as set forth in exhibit, which is not attached and that's fine, annexed together with the necessary filing forms in exchange for which the plaintiff's, which in this case is the Gidley's or your client will grant to the defendant Peter's an easement that is attached which is described in another exhibit and I'm wondering what that easement is and what runs from and to and what it's purpose is.

MR. HITE: Do you know what that is Mrs. Gidley?

MRS. GIDLEY: Yeah, he has or that house has a pump that goes into that same sewer or drainage system underground.

ATTORNEY SEELY: Okay, that's shown on the drawing here I believe.

MRS. GIDLEY: That's what that is. If something happens to his pump then he can go and repair it, but he is responsible then to repair the ground on top to get to the sewer, to the drainage.

ATTORNEY SEELY: Do you know where that pump is located by any chance?

MRS. GIDLEY: Where it connects, no.

ATTORNEY SEELY: Okay.

MR. HITE: It comes from this building down through here and some direction into this storm sewer and in all likelihood we thought that it went into this thing here, I tried to open it, I couldn't get it open so you know the document that was there – I recall now what she saying. There was an easement granted to him to access that storm door for a cellar drain.

ATTORNEY SEELY: Okay.

MR. HITE: And that's simply what it was.

ATTORNEY SEELY: Yeah, that's okay because - - we just don't have the exhibits attached to this to...

MR. HITE: I will get those for you.

ATTORNEY SEELY: I would appreciate it, thanks.

MR. HITE: He had to have a cellar drain and that's - - he connects into that storm sewer system constructed by the Town.

CHAIRMAN HODOM: But as far as you know Mr. Hite, because there is a portion of that storm drain system that is on their property, it would seem strange to me that he would want to go all the way over to – through that right of way and connect to that storm drainage system in lieu of connecting to storm drainage system that's on his property.

MR. HITE: Mr. Chairman, I have no idea of why they did it. The easement was granted for him and he may have gone into this because it was lower structure, I don't know because it runs in this direction down. This thing that went from here over to there seemed to me as an after thought. I did not go in and look at all the engineering features of what was designed by the Town here, but it looked like to me that from this structure over to here and then out here was an addition to what was originally constructed in here. So at the time he built his house, this - - see there is a low area over in here that he's picking up so this may have been brought over there for that purpose.

CHAIRMAN HODOM: Perhaps the easement and the exhibits will explain that more

clearly.

MR. HITE: I'll dig those out for you.

ATTORNEY SEELY: Yeah, if you could have their attorney's just provide each of the exhibits that relate to this, thanks.

CHAIRMAN HODOM: Bob, anything else?

MR. WIGGAND: No, I still don't quite understand. Is this property here owned by a Cynthia Werner?

MR. HITE: Yes.

MR. WIGGAND: This long piece of...

MR. HITE: She owns a number of lots here like 1, 2, 3, 4 – 4-lots's I believe it is.

MR. WIGGAND: And there's no way that something can be resolved here with bringing this street here or the driveway away from this area?

MR. HITE: No, because Mrs. Werner now owns the 22-feet so the driveway has to come through here.

MR. WIGGAND: Well there doesn't appear to be any building lots in here. I was just wondering what that land is going to be used for.

MR. HITE: There is an existing dwelling here and I think there are dwellings here. I'm not sure, but...

MR. WIGGAND: Where it says the number 40, is there a dwelling there?

MR. HITE: Right, these are vacant lots back here, okay.

CHAIRMAN HODOM: There is a dwelling on number 40, Bob.

MR. WIGGAND: There is a dwelling there?

CHAIRMAN HODOM: Yes.

MR. WIGGAND: Oh, okay that changes my thoughts on that.

CHAIRMAN HODOM: Okay.

MR. HITE: This dwelling right here exists on that lot, very nice brown colored – tan colored building.

CHAIRMAN HODOM: Okay, anything else? Richard?

MR. LEWIS: No.

CHAIRMAN HODOM: Gil?

MR. BROOKINS: I'm fine.

CHAIRMAN HODOM: Okay. I'll open it up to questions or comments from the audience. This is not speaking in favor or in opposition. If anybody has any questions as to what's been stated up until now – anyone have any questions they want answered.

MR. O'CONNOR: I have just one question...

CHAIRMAN HODOM: Would you introduce yourself sir for us and give us your address if you would.

MR. O'CONNOR: Bob O'Connor, I live on 11 Maple just up the street by Grace. I just have a question about that you mentioned that Grace owned another now, so is there future plans for more building down there after this is done and we give the Variance for a driveway. Is there plans for another house?

MR. HITE: That's something that you're going to have to ask her or her husband. I'm only dealing with the piece right here.

MR. O'CONNOR: Would there be – I mean is this...

MRS. GIDLEY: If someone wants to purchase that land, whatever they want to do with it, they certainly can. If someone wants to put a house on it....

MR. O'CONNOR: But I mean the land you just recently purchased, the other lots not the one that you're talking about now.

MRS. GIDLEY: I have one other lot back there. If someone wanted to purchase that, whatever they chose to do with it they could.

MR. O'CONNOR: Okay.

CHAIRMAN HODOM: Thank you. Anybody else have any questions?

MR. HASKINS: Well I think that's our main concern, my name is Mark Haskins, 1462 New Scotland Road. I've been there for 40-years, grew up there. This land has always been land locked and I know a lot of the people that live back there. And our concern is, you know if somebody wants to build on their own property, you know no one really wants to nag them the right to do that. And if Grace wants to make some money by

making the land locked piece of property that's not valuable into a valuable piece by asking for this Variance, well we can understand that, but we've got potential for 6, possibly 7-houses in that area. If the right of way is granted through a driveway or through what was a paper street that's been there for 50-years, so our concern is – is not so much that she's going to develop her own property but that now that she owns another piece she's obviously saying if someone wants to buy it - - she wouldn't have bought that piece unless there is some reason for it, it's not contiguous to the lot she's on now. So obviously the plan is to sell them, once she gets access to this. That's the plan, why else would you buy the property. So there is a plan here and then there is realtor that's obviously involved in this that's gotten to do this because the amount of money it's going to cost to build a road and new electric and the sewer and all that's not something that she's going to have. So somebody – somebody is behind this who has money who expects to make more money from it by the opening of this property. Right? So, we all know that the plan behind this simple access to her lot is a plan prompted by turning this whole area, which was previously inaccessible, it's got wetland in there, there's a paper road that's been there for 50-years into an accessible and marketable piece of property. That's what is going to happen.

MR. O'CONNOR: I don't think...

CHAIRMAN HODOM: Hold on a minute sir. Were you finished?

MR. HASKINS: Yeah.

CHAIRMAN HODOM: Just to answer your question, our issue this evening is this one lot.

MR. O'CONNOR: Can you tell us that what you're going to do tonight is going to open this lot and no others?

CHAIRMAN HODOM: No I can't.

MR. O'CONNOR: Okay. That's my question. And I'd like to make – well go ahead, I'm sorry.

MR. HITE: Mr. Chairman could I address that and maybe before this lady.

CHAIRMAN HODOM: Sure Paul.

MR. HITE: Again, we go back to – you have to remember here, this is a 28-foot strip of land which allows one driveway to develop this piece of property to build one house on it. The remaining land here even though I'm not involved in it, I do know about it. The remaining land here that Mrs. Gidley owns is another 28-foot strip which is only going to allow the development of one lot if she comes before this Board or sells it and whoever comes before this Board which would allow simply a driveway to develop this piece of property. It's not going to open up six more lots because they do not have rights to this

roadway. Only Mrs. Gidley owns this driveway and this 28-foot strip that is left here when she sold off the 22-feet. So only this lot can be built on and only this lot can be built on. That is hopefully allays their fears.

CHAIRMAN HODOM: Thank you.

MR. O'CONNOR: And both of those are owned by Grace?

MR. HITE: Yes, and it has been owned by her for some 38-years.

MR. O'CONNOR: No, 2001 was the first...

MR. HITE: No this...

CHAIRMAN HODOM: Sir, - ladies and gentlemen just don't blurt out okay, stand up, introduce yourself again for it just so that we have the record straight, thank you. Yes ma'am?

MRS. FRIEDMAN: Hi, for the record my name is Amy Friedman and I live at 43 McCormack Road. I guess there are some fundamental issue's here that I really want to throw before the Board that should be considered. Mr. Hite came out and took these beautiful pictures on a nice sunny day. I live at 43, which is on the south side of the road.

He mentioned that this one house is going to tie into - - they want the sewer systems to tie into the current sewer systems and I think if the Town really goes back and looks prior to 1996 I believe it was in 94' or 95', there was a whole sewer system put in on that side of the street as well as on my side of the street where the property had to be excavated.

Now, the beautiful pictures from the nice sunny day don't show that every time we have a snow storm, every time we have a rain storm, any time we get any moisture on this street, we have the fire department there pumping out our basements, because the sewer system is not adequate to service the homes that already exist on that street. So, from my point of view I've had literally thousands of dollars worth of damage done to my home because this sewer system is not adequate and I don't care if you're putting one more home, I don't care if you're putting 10-more homes on that property, that's sewer system is still not going to alleviate the water problems that's there and I think that it's not just as simple as just hooking up a sewer. You have a sewer system that's backing up right now and adding one more is just going to exasperate the problem, which is going to eventually cost me a lot more money again.

So I throw that out, you're a surveyor you took the pictures on a nice day, when it's not a nice day and when it snows, which it does for at least 4-months of the year here. We're pumping out water and I mean that's all documented, you can talk to the Slingerlands Fire Department and the amount of times that they personally came to my house as well as my neighbors house to pump out our basements for back up of sewers

and drains, which is all documented. So I throw that out to the Board and I, you know before you grant this you really need to take a look at that.

CHAIRMAN HODOM: Thank you. Ma'am?

MS. FEIGENBAUM: My name is Polly Feigenbaum and I'm the attorney for Cindy Werner and I was involved in this litigation and I'd like to go to the map and explain a little about what went on. I have some documents to share with you. They were aware that this property had a title issue that it did - they did not have title to the access and their title has written a letter, which came into my possession as part of the litigation. So they never had a claim of, you know clear title to the property or having a building lot at any time. There were various title issues on this property so that paper was never clearly owned by the Town or by any individual, which led to the litigation over this whole issue.

My client Cindy Werner owns the house up here, but she also owns these back lots. She does meet the 50-foot distance from this flag lot and she could develop by adding another 6-feet to the 22-feet she has and build on her back lots and she does meet the 50-foot distance requirement, so by allowing this flag lot, you also have to recognize the potential for an additional flag lot. You would have 3-driveway's right in a row, additionally they forgot to mention that there's a building lot directly across the street, which also is going to need access. You're coming down a blind curve here so you're going to 1, 2, 3, 4 and there's another driveway there. I think there are safety issues, I think there are development issues, I think beyond the water issue you've got some real questions about what can be done here.

I do have a copy of the papers from the litigation, which I'll share with you and also a copy of the deed that was given as part of the litigation from Livoti and Gidley to Werner and part of that deed says that the party of the second part being my client shall not be denied, you know shall have the right of that 22-feet to access her rear lots. So in fact is part of the settlement on the litigation that 22-feet is part of what should be allowed to provide access to the back lots.

MR. SHEA: If it's only 22-feet ma'am it doesn't meet the Town's zoning.

MS. FEIGENBAUM: I understand but she has enough that she can add 6-feet on her additional land.

MR. SHEA: From her additional property, okay it might make that non-conforming.

MS. FEIGENBAUM: Right.

MR. SHEA: Okay, just be careful there, that 22-feet could be dangerous.

MS. FEIGENBAUM: There's where the access road is into the Peter's property, there's the Livoti's 28-feet, and there's my clients 22-feet and she's got another 124-feet.

MR. SHEA: Yeah, okay so you've got enough side yard.

MS. FEIGENBAUM: And her house is over here so she's got plenty of lot, she meets the 50-foot and she could do the flag lot to her back property. The other thing I want to point out is that that 22-foot goes all the way back, they could access from New Scotland and Livoti is the same family that owns this property on Maple. So this in effect was their additional back yard property. It's not this property is unrelated to property that's currently owned and they have access down this side. But to grant their flag would potentially impact my client's ability to get a flag lot, which she could currently get because she does meet those requirements. So I think you've got development issues beyond just what has been presented. On this map I think you have to look at the entire neighborhood, you've got to look at the lot across the street, which is a building lot that's for sale that could be developed and maybe coming out in the same location. You're going to have 1,2,3,4,5 driveways in very close proximity. I think there's a real issue here and I think that part of this litigation, which was protracted, you know and the reason it settled was because there was not a clear case that could win to continue on the litigation. So we settled, we said okay. They wanted 28-feet, we agreed to the 28-feet and we kept our 22-feet because that still allowed to develop our back lots at a later time should my client chose to do so.

ATTORNEY SEELY: Ms. Feigenbaum if I may, you handed out this copy of the order with the exhibits. Is this a copy for the Board to keep?

MS. FEIGENBAUM: Yes, it is.

ATTORNEY SEELY: And does this contain all the exhibits that were attached to the order?

MS. FEIGENBAUM: I believe it does.

ATTORNEY SEELY: It appears to?

MS. FEIGENBAUM: I believe it does.

ATTORNEY SEELY: Okay, thank you. You don't need to give me another copy.

MR. HITE: I thought we were giving you everything.

MS. FEIGENBAUM: Right. Did I give you a copy of the deed, I did didn't I?

ATTORNEY SEELY: Which deed is that? The quitclaim deed dated October 3, 2001?

MS. FEIGENBAUM: Yeah, which also highlighted that there is a reservation here to allow access to go through her lot.

ATTORNEY SEELY: Okay.

CHAIRMAN HODOM: Did I understand you correctly that 22-feet continues on through to New Scotland.

MS. FEIGENBAUM: Yes.

CHAIRMAN HODOM: So that Carol Turner is also...

MS. FEIGENBAUM: That's my understanding, yeah I wasn't really involved, but my understanding is that 28-feet...

MR. HITE: No, incorrect.

MS. FEIGENBAUM: No your - - the 28-feet your client has contains on.

CHAIRMAN HODOM: Yes but I thought you said that 22-feet...

MR. HITE: Yes, she owns the 28-feet all the way through, plus she owns the entire 50-feet here.

MS. FEIGENBAUM: No, no I don't know what – beyond our property line is.

CHAIRMAN HODOM: Okay.

MS. FEIGENBAUM: So our property line ends here.

MR. HITE: Mr. Chairman I also would like to answer the – one of things – Ms. Feignbaum is it?

MS. FEIGENBAUM: Yes.

MR. HITE: You brought up that your client meets the 50-foot distance, that's incorrect. This strip of land in itself is only 50-feet wide.

MS. FEIGENBAUM: Right.

MR. HITE: So therefore she would have to have the entire strip access on her property.

MS. FEIGENBAUM: She does, she has another 124-feet.

MR. HITE: Okay, if she can get that through there, then she can go through on her own property.

MS. FEIGENBAUM: She can.

MR. HITE: But you said that she meets it by here, she doesn't.

MS. FEIGENBAUM: I understand that.

MR. HITE: Okay. That 50-foot measurement is from line to line not driveway – line to line. You know we're not - - I'm not here to get into an argument about that it just – I wanted to point that out to this Board that, you know that 50-feet is the width of this right of way as it originally was, therefore doesn't - - would not allow her without the same Variance that we're asking for to use that 22 as a driveway or whatever the case may be.

MS. FEIGENBAUM: Well not to take exception, we wouldn't need a Variance because we have it within our own property line and we meet the 50-feet.

CHAIRMAN HODOM: Okay. Yes ma'am?

MRS. FOLGER: My name is Vicky Folger, I live at 1470 New Scotland Road and my property abuts the paper street on the New Scotland Road side. My concern is for the potential of environmental impact. We have wet land on our property and so I just think that it should be something that should be investigated if there are other lots developed in the future that could effect other peoples property. Thanks.

CHAIRMAN HODOM: Thank you. Yes sir?

MR. ZEH: I'm Dan Zeh, I live at 38 McCormack Road and I abut Cindy Werner's property. I represent Evelyn Zeh; it's on the map.

CHAIRMAN HODOM: Okay.

MR. ZEH: Right here. What he didn't tell you is this is all real steep here, alright I mean steep – steep, it's up to 20-30-feet in the air, alright and this is on the bottom of the hill and all this area in here is all low land, wet land. I mean it's wet. The Town of Bethlehem I love you, but I hate you. You came through with the sewers, okay and you ruined all our drains down there and that's why Amy has so much so much trouble. And mom lived there – we lived there in 1957, we came in. 13-years later I'm putting in a sump pump; everybody in the street is putting a sump pump in, all right. We didn't like that but I said well it's better that the septic tank, okay.

My concern is the Town of Bethlehem came in and put this drainage system, which doesn't adequately carry the water. The water still comes here and ponds in behind me and my next door neighbor Garry DeGonza and it lays there and our sump pump runs – it runs all fall and winter and spring, but we put up with that. Now if you clear this land, this land here what he didn't tell you all right, you clear that land – that water will intensify and pond over here.

Now where am I coming from? I used to be an engineer for D.O.T. for 34-years and that was my job, inspection of highways and design. And I know the water is going to come here over to here. If you - - I'm not going to stop progress, I'm not going to say

that, but if you don't get an easement from here and go out and put a good size 24 – 36-inch pipe to get an easement and drain this area, we're going to be in trouble. We're going to get more water and the water goes through my backyard now in the spring, this deep and 10-foot wide. I mean and you go out there and it's like running in a stream, but that's part of what the sewer is going through and everything else destroyed all our drainage. And you destroyed the drains over here on Amy's place; she gets 3-foot of water in here in the spring sometime with the heavy snowmelt all right.

What happened was all the old Orangeburg used to be in here and come out and went over towards the D & H tracks. Well that's all gone because there's a big sewer station there, which is part of the process because every time the power goes out within 45-minutes a big generator from the town pulls up and keeps that sewer going so we don't get sewer backed up in our systems which is fine you guys do a good job that way, but you didn't do a good job with our drainage. And that's the only reason I'm complaining. If you are going to go through with this make sure – I mean just don't put an extra catch basin over here and there because this system what it ties into up to New Scotland can't handle the water there now. And once you clear land that's like putting in a parking lot. I mean the water just intensifies immensely, okay and if you guys are going to okay this you better make sure that they put or somebody – either she does it or you do it, get a good drainage system in there even for one house or two houses, I don't care. As soon as you clear land, it's like putting a hose on pavement, and that was my concern. It's not - - I've got nothing to loose, I'm retired. Somebody's going to go to court, all right if you intensify this much more water. How do I know? I've been 34-years at it.

CHAIRMAN HODOM: Thank you very much.

MR. ZEH: I didn't want to threaten you, okay guys. I just – just call it as a suggestion.

CHAIRMAN HODOM: We have nothing to do with it. You can threaten us if you like.

MR. HITE: Again Mr. Chairman, I'd like to clarify something that the gentleman just spoke of up here. The bottom of this bank is approximately along where these ornamental trees are. All these lots up here are very high lots running on Maple Avenue come back through here and then drop down on to this. Probably the difference in elevation from here – this entire and this is all cleared. The only trees in this area is right through here in that brush area. This is all clear mowed yard. The difference in elevation from here out to this paper street is probably ballpark figure, maybe 3-feet or 4-feet. This house where the ...

UNIDENTIFIED PEOPLE: No, you're wrong.

CHAIRMAN HODOM: He's making his opinion.

MR. HITE: I'm simply stating the fact. I have the elevations is the Board wants to see them, I shot elevations all over. From here, yes it goes up 20-feet but from here down it does not. It all drifts out to here over a difference in elevation of approximately 3 to 4-

feet. I have the elevations to prove it, I am not going to stand up here and lie to this Board and these people. I know what's in here; this is all mowed clear area. This house if it's constructed will be graded to go into probably a split drainage into this catch basin and into that catch basin, the surface drainage. It was put in there by the Town, they generally – I know when I do a sub-division, anyone else comes in this Town and does a sub-division and when the Town themselves construct a system such as this, they design based on the criteria that have to use to size the pipe to take care of the water system. If it's blocked up down in here and I did walk down here to find this thing. It is grown up in here with cattails and weeds, it's not properly cared for, it's not mowed, it's not taken care of. I don't know who's job that is, but it is not able to get into this structure because I had to find it with a metal detector and peel the dead cattails off the top of it. It was completely blocked, so whoever's fault it is...

MR. WIGGAND: Paul, did you find that drain?

MR. HITE: Yes I did. I found it and I located it.

MR. WIGGAND: Is it a catch basin?

MR. HITE: It's a very narrow depth catch basin probably I'm going to say about 2 ½ - feet deep, maybe 3-feet.

MR. WIGGAND: Now where does that drain to?

MR. HITE: It drains off in this direction and goes down underneath New Scotland.

MR. WIGGAND: Oh, there's more pipe out of that then?

MR. HITE: Oh yeah, it heads down through here.

MR. WIGGAND: That just doesn't go onto the ground there?

MR. HITE: No, it doesn't just come down here. What happens is it comes down in here from this area all in here, but it could not get into this catch basin because it was blocked. It's like people we find in their backyards will go up and mow their yard and take the grass clippings and leaves and dump them on top of a catch basin because they think when it's going to rain, it'll wash down there and it doesn't do it. And then all at once the whole things blocked off, everybody's water backed up. If this was kept clean and this was mowed and then cleaned out, I think it would alleviate probably 60 percent of the problem that's in here.

MR. WIGGAND: Who owns that property?

MR. HITE: De Gonza, McCaffrey, Griffiths. I have the names of all the adjoining owners in here and I think any of them could tell you that if they walked backed there you would see nothing but a big wide area in here covered with cattails. This up here is

nice mowed high ground area; yard. This is a high lot up in here; droops off down into here. This is all mowed yard over in here; just this area right here around that basin is completely surrounded by cattails.

CHAIRMAN HODOM: Paul, perhaps you would provide the Board with the Topo of the lands you see here.

MR. HITE: Okay.

CHAIRMAN HODOM: Yes sir?

MR. ZEH: I think the ground is lower than basin and I used to go back here once, twice a year to clean the, you know especially this time of the year; we cleaned the damn thing off. It's my – even though it's on I think it's Werner's property, I'm not sure. I always clean there even one or two grates in there and I always keep them cleaned off. And he might have been in there when it was the summer, I don't go back there but during the fall I always go back and you know and especially when the leaves are out I always go back and keep that thing clean; open. I just don't think it's low enough to drain the area you know?

CHAIRMAN HODOM: Okay.

MR. ZEH: And plus I don't think it can handle what's there cause the water in that - - it goes over the cattails quite a ways and it lays there until it sinks in the ground and our sump pumps take care of it, but it takes a long, long time and the sump pump runs, runs continuously.

MR. WIGGAND: You mentioned it goes up over the cattails?

MR. ZEH: Not over the cattails I meant on the - - he's talking about the cattails and it's like dry area, no not that deep, no. It gets I'd say oh, maybe that deep you know and in the spring, my God it's this deep.

MR. HITE: It's like a 24-inch pipe – diameter pipe leaving this basin heading in this direction. I think it's an 18 coming down this way. You've got a good size pipe in there.

MR. ZEH: I'm not to sure about the outlet.

MR. WIGGAND: And who is responsible for that pipe – that drain?

MR. HITE: Town.

MR. WIGGAND: Town?

MR. HITE: They have easements that they required for all this pipe.

MS. FRIEDMAN: Can I just say something?

CHAIRMAN HODOM: Sure go ahead.

MS. FRIEDMAN: I just want to make sure that I'm being really totally clear to the Board that I'm not talking about a little splashing water. I'm talking about – I'm 5'5", and the water comes up to my knees it's – I've already lost one hot water heater, and I've had damage to my foundation. So we're not talking about a little water problem that goes away just by some sump pumps running. I'm talking about high water in the basement that the Fire Department has to pump out. So I just want to be very clear about that.

CHAIRMAN HODOM: Thank you. Yes?

MR. HITE: I'm not sure where she's located Mr. Chairman, I don't know how to answer the question.

CHAIRMAN HODOM: She's across the street on the corner.

MR. HITE: Over in here?

CHAIRMAN HODOM: Yes.

MR. HITE: This water over here has nothing to do with that.

MS. FRIEDMAN: It's all hooked up to the exact same sewer system that your talking about putting the new - - you just said you're looking to put the new property that they're looking to put up into the sewer system on the south side of McCormack Road, which is the exact same sewer system that branch's up right through my property.

MR. HITE: No, I'm talking about hooking into the sanitary sewer system.

MS. FRIEDMAN: Right.

MR. HITE: The storm water does not go in to the sanitary sewer system. That sanitary sewer system is simply an 8-inch pipe.

MS. FRIEDMAN: Okay, are you talking about the – and I'm not an engineer, you're talking about the manhole, the cover's that run through the middle of our street that the sanitary sewer and I'm telling you that those back up into the - - it backs up, there's a hole that comes out into my yard and it back rights up.

MR. HITE: Than that cannot be the sanitary sewer system otherwise you'd have a major health problem.

MR. SHEA: You'd have a health problem, yeah in other words it's raw sewage that your having backed up, it's gotta be a storm drain.

MS. FRIEDMAN: I'm telling you that when I walk out there, the stench of raw sewer is there. I know the difference between...

MR. HITE: Have you called the Town?

MR. SHEA: Have you ever contacted the Town?

MS. FRIEDMAN: I've called the Town on several occasions.

MR. SHEA: Who have you spoken to.

MS. FRIEDMAN: I have it written down at home, I don't know who I've spoken to but...

MR. SHEA: I'd be more than happy to follow up on that.

MS. FRIEDMAN: That would be great because I call every year and I get the run around.

MR. SHEA: I don't think we're talking about the same thing, it's a health hazard if it's sanitary sewer that's running out there.

MR. HITE: Now you will get a certain if that water backs up long enough and sits there on dead leaves and grass and whatever the case may be. You will note a certain aroma I'd guess you'd call it – odor, but it's certainly not sanitary sewer. If you had sanitary sewer coming out of there, you would know it and know it real quick.

CHAIRMAN HODOM: Yes, go ahead.

MS. FEIGENBAUM: I'd just like to say I walked the site. I went out there Sunday just so I could be familiar with exactly what was out there and he was indicating these houses are higher, there is a drop off, but in the area he's saying there's only 3 to 4-feet. That was all wet, I mean there was standing water in the grass, and there was pools; puddles. So it's not that the issue is coming down here, it's coming right from here. My client's house is up here, she has an in ground pool, which is also subject to damage if there's additional water pressure. If the water isn't taken off the property; directed off the property and this is clay. So you're down grading it from a clap hill, you're going to take the trees out and there are more than a few little shrubs, I mean there are trees in there. You've already got a standing water problem and one of the big concerns about any development, whether my client would choose to develop later on or you know a house going up here now is recognizing that not only these property owners but everybody in this region is dealing with an existing significant water issue as it stands and it's not something down here. And it is standing water in low section already coming down from that side.

CHAIRMAN HODOM: Thank you. Yes sir?

MR. OCONNOR: Excuse me but I have a question, how far is...

CHAIRMAN HODOM: This man here first, please.

MR. FOLGER: My name is Ralph Folger and I also at 1470 New Scotland Road. It seems to me before October 19 - - or 2001, there was a 50-foot right of way that nobody owned that gave the Werner's, Livoti's, the Gidleys, the Reynolds all access to their supposedly land locked lots. After the different dealings of October 3, 2001 nobody's got access any more, is that true? It seems like a road through there properly designed with the property at engineering for drainage, etc. could have given all the people access. They could have built houses if they wanted to, but now all of a sudden we've got no access rights, Cindy has to build on her own property to be able to put houses back there if she's able to do so with the right of way that you would have to deal with as a Variance. If you don't give the Variance then she still - - she said she still would using that would have to build her own property. We're up there, we have 28-foot apparently of driveway space. 22-feet was given to the Turner's under my understandings. The New Scotland side so at some point in the future you're going to be asked once again because my driveway is within 6 or 7-feet of the property line that you would have to put the 28-foot driveway and the Turner's has no more than another 20-feet down from that. So you're going to be looking at the same issue again, so whatever you decide this time, we'll all be back.

CHAIRMAN HODOM: Thank you. You had a question?

MR. OCONNOR: About that pool, you mentioned the pool with your clients. How close is this driveway to that pool? If you have 3-driveways in a row, which are all separated by about 2-feet, I mean the driveway is really close to that pool isn't it? Like a foot, 10-feet?

MR. HITE: No.

CHAIRMAN HODOM: Sir, would you give us your name again?

MR. OCONNOR: I'm Bob O'Connor. I'd like to just say something to follow up what Mark said, it's a little different map that Paul - and people talking about different things, but Paul, you drew this and it shows the catch basins down the bottom and it really did dry the area out down here at the bottom of this land. It also shows the paper street. Originally Flannigan the building inspector, he only hit when people were interested in this land, they went and they said how can we build down here and he said there's a 50-foot unnamed street, if you want to build you've gotta develop a street. So I think what this say's is this is a way that you know - - obviously developing a street is very expensive and putting all the utilities in, sewers, all the things you don't own especially if you don't own the lots. What we're doing here is we're circumventing the building of the street and we're going in by driveway by driveway and simply as Mark just was stating. That's the long range plan here, the plan is not to just go and - - the plan is to put in 3, 4,

5, and if you're going to build that then you should really build a street, put the sewer in and do the things and that's the way the map was originally built and showed; reflects that and that was the law of the Town that you had to put a street in and that's why it was put there with 50-feet.

CHAIRMAN HODOM: Thank you. Yes?

MS. FEIGENBAUM: I'd like to speak to the litigation issue within it. We did ask the Town if they had entrance in that street and they chose not to participate. They basically indicated they had enough money, which is why it ended up being a dispute among the neighbors. All the neighbors were notified, all the neighbors had an opportunity to participate in the litigation and as it progressed various neighbors decided not to continue their claim. So what ended up was a result of those parties who chose to stay in the litigation until a settlement was reached.

CHAIRMAN HODOM: Thank you. Any other questions? Do we want to proceed with this tonight?

ATTORNEY SEELY: Well I'm obviously going to need some time to look at these documents and then we'll see what we have here or not. In terms of public, I don't know that we need any more input.

CHAIRMAN HODOM: Okay.

ATTORNEY SEELY: Factual...

CHAIRMAN HODOM: So we could close it if we wanted to.

ATTORNEY SEELY: Yeah, I mean subject to me double checking the documents and making sure I don't have any questions. In fairness some of these documents I've just gotten for the first time tonight and it's going to take me a little bit of time to weed through them and figure out exactly what we have here, but I don't think I would have any questions factually as a result of reading those documents that would require us to get any more factual input. At least that's my anticipation right now.

CHAIRMAN HODOM: Well we could always reopen.

ATTORNEY SEELY: We could always reopen if necessary, yes.

CHAIRMAN HODOM: Any other questions?

MR. MUHLICH: Just let me look, I live at 1471 which would be where Mr. Hite is standing the drainage area that you pointed to, he said there was a catch basin on the side of New Scotland that was covered with cattails or whatnot. And that eventually drains into an area that reaches my side of the road, which would be the opposite side of New Scotland where the Folger's are and the Turner's and I think 4 to 5-years ago, the Town

asked if they could put a machine on my property to clean out the drain that that water – the tile, which I think is like a 24-inch pipe is at least half, maybe $\frac{3}{4}$ filled with silt. I don't know how much they got out; part of it's collapsed. A lot of the reason for the water not being able to get out from that side of the street is because they can't get through the existing drain that comes to my side. And water runs it really runs through there and it's not going to wash it away but it probably runs, you know 2 $\frac{1}{2}$ -feet deep and it's probably as steep as 4 $\frac{1}{2}$ -feet wide.

CHAIRMAN HODOM: Okay. Sound like a Town issue to me.

MR. MULICH: If the Town's going to replace it, it would be nice, you're talking 2,3, - 300-feet maybe. There's also a pond that a private owner excavated a number of years ago that actually left some of water in a pool there and that same water has to come out through that same drain and it can't. If the pond weren't there I think the water situation would be even worse.

MR. HITE: The problem one of the reasons to Mr. Chairman is that New Scotland Road is a State Highway – had this pipe under it probably, you know since the beginning of time. This storm drain is connected to that. I'm not sure what kind of agreement the Town forces have with the State to maintain and clear that pipe. It may be a State issue, I'm not sure but I do know that when the Town designs these they always try to design them with pipe large enough to handle the general area which will flow into them, either being graded into it or a structure going up here some where and picking up this lot and bringing it into a - - they don't go onto the lots themselves and grade it, that's not their purpose. Their purpose was to come in here and provide a method that these owners could get into that pipe and drain the water off their lots and into that storm drain. That's why there is 3-catch basins that's provided.

CHAIRMAN HODOM: Okay. Yes ma'am?

MS. WERNER: Hi, my name is Cindy Werner, I'm the owner of 40 McCormack Road. I'd like to address the Board.

CHAIRMAN HODOM: Please.

MS. WERNER: When I took ownership of my property in August of 1994 I was unaware that the Town had granted a drainage easement to that area. After getting a survey of my property I realized that that was granted to the Peter's – to the Town by the Peter's and when I purchased my property the appeal to me was that this paper street and the – this was all wooded area, this was all green, this was all wooded area, I acquired all this. And then after the purchase this was all dug up and when this all was put in, all this back in to my property, which now I cannot build on because there was a drainage easement. I have all the cattails and everything was torn out and really added to the water that we have today. I have photographs of the front of my property and the back property of the last storm that we had last week. There was just puddles probably about 6-inches above – or on the ground level of water not only in the back of property but also on the

front. I'm also concerned about damage to my pool, which is very close to this property line here that the Livoti's are now - they have the 28-foot strip. I'm afraid that the excess water, it is just not sufficient. I am, you know seeing the water levels rising and also I'm concerned about the damage of my pool in the future. I never had any desire to build up these lots in the back. I always wanted to have and remain wild, but it also adds - - but it does land lock myself and the rest of my neighbors in the back from development and I also sued from litigation because I wanted to maintain some kind of control so that I didn't have a road running up and down the side of my pool so that I have cars up and down and increased traffic to the area as well as concerns of safety to my land.

CHAIRMAN HODOM: Thank you very much. One last time.

MR. ZEH: May I add one more comment to that lovely surveyor.

CHAIRMAN HODOM: Just introduce yourself again for us.

MR. ZEH: I'm sorry, Jean Zeh 38 McCormack Road. When this gentleman behind me said that the pipe is half full you've automatically cut down your ability to drain anything in half. In other words you went from a 24-inch pipe to a 12-inch pipe, alright, because the best any pipe can do is run half full at maximum. It may look like it's coming - at the end of it's coming out while it's high. The best it can do is half full. If the pipe is half full, you're in trouble and so are we that's why probably what are problems are. And if you add to it with a new lot or 2-new lots or what ever it's going to be in there, you better look into that before you make a decision. That's the only comment I wanted to make it with him, he say's obviously your 18-inch pipe out front is fine, but when you connect into something that's half full, you might just as well - - it's no good.

CHAIRMAN HODOM: Okay.

MR. ZEH: I mean I've been around - how many have I done that? You know we've done this and had to go back.

MR. HITE: Again Mr. Chairman I'll try to answer his question. When we come back and look at this square foot area - this lot in terms of the entire area, it's a small area. The cubic feet per second runoff from this lot even fully graded, when we go into these structures, it's already going over here whether it drifts over there, whether it grades over there it runs in a storm. It's simply not going to be graded in such a manner that it will get into these 2-catch basins. It's going to go down here, somewhere along the line the Town has to be notified that this has to be taken care of and cleaned up. That's an easement, they acquired it, they built it. I don't know what else to say to him, it's something that has to looked at by the Town. It's a drainage structure and they always had before - I have never found Mr. Sagendorph not to be receptive to anyone that called him and told him that there was a problem here. That's why he was re-elected yesterday. I mean I'm not standing up here patting him on the back, he does a very good job but he can't do it if he doesn't know about it.

CHAIRMAN HODOM: Well it certainly appears to be a Town problem. Sure Cynthia.

MS. WERNER: Cindy Werner, 40-McCormack Road. My sump pump runs all the time. And due to the storm, it's still running now. I just wanted to make sure that you realized that we all have the same concerns with that. The other thing is I wanted to ask if I can submit some photo's to the Board, I don't have – I thought I brought them, but I'd like to submit them – the water on the land.

CHAIRMAN HODOM: Sure, if you get them to us within the next few days. Yes Ma'am?

MRS. FOLGER: I'm Vicky Folger, 1470 New Scotland Road. I just want to add that there is a "for Sale" sign on New Scotland for the other property on that side.

CHAIRMAN HODOM: Thank you. Yes sir?

MR. DE GONZA: Yes, my name is Garry De Gonza, 36 McCormack Road, which is right here – this property. My water table is so high my kids can't play in the back yard, it's very bad and still to this day the sump pump keeps running and I've been fighting this for 23-years. So I'm opposed to it.

CHAIRMAN HODOM: Thank you. Well lets move the important part of this issue this evening. I entertain wishing to speak in favor of the applicant. You can speak for yourself.

MRS. GIDLEY: No matter what, I can go in there tomorrow and clear my land. They have a drainage issue that has nothing to do with me or what I do to my land. It's my land even if I don't put a driveway; I can clear my land then what's the difference. I have the right amount of land to have a build able lot. I have the right amount of land to have a driveway. I have all of the paper work. This is just about that one piece of property with that driveway. I've owned that land for 30-something years intending on someday probably either building on it myself or selling it. I just want a driveway easement.

CHAIRMAN HODOM: Okay. Thank you. Anyone else wishing to speak in favor of the applicant.

MS. WERNER: I do have a petition here that I - - some of my neighbors signed that were opposed to the Variance.

CHAIRMAN HODOM: Sure.

MS. WERNER: I'd like to submit to the Board, I didn't get to everyone.

CHAIRMAN HODOM: Cindy this is something that you prepared yourself?

MS. WERNER: Yes.

CHAIRMAN HODOM: And you yourself went out and approached these various people at the addresses that you show on the petition?

MS. WERNER: Yes, and there were several others I wanted – I didn't get to.

CHAIRMAN HODOM: Okay, thank you.

MR. HITE: Are we privy to that Mr. Chairman?

ATTORNEY SEELY: Well you're certainly entitled to a copy.

CHAIRMAN HODOM: Yes.

MR. HITE: Okay, we would like to have that.

CHAIRMAN HODOM: Any one wishing to speak in opposition to the Applicant if you haven't already done so? Hearing no further questions or comments we'll declare the hearing closed. Mr. Hite, we request that you give us that information as soon as possible. Ms. Werner, the photo's tomorrow.

Hearing closed 8:45 p.m.

- - -

The next order of business this evening is a public hearing. For a Special Exception under Article VI, Permitted Uses, Section 128-17 B (15), CC Retail Commercial District requested by Bethlehem Auto Laundry, Inc for property at 462 Route 9W, Glenmont, New York. The Applicant wishes to receive a lot line revision giving Bethlehem Auto additional land for additional parking and modification to ingress/egress at the premises of 462 Route 9W, Glenmont.

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

MR. SHEA: Yes, Mr. Chairman. The Applicant is seeking a modification to an existing Special Exception to change lot lines and egress to the existing Bethlehem Auto Laundry. The Applicant is proposing to provide access to an existing lot to the rear of the existing Bethlehem Auto Laundry by cutting off a piece of land from the front lot and adding it to the rear lot. There will also be a parcel added to the front lot that will be taken from the rear lot that will provide additional parking and change the traffic flow on the Auto Laundry site.

The existing properties are located in a "CC" Retail Commercial District. The front parcel of land is built on and is occupied by Bethlehem Auto Laundry and Auto

Sales and the rear parcel is vacant land.

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, November 5, 2003 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Bethlehem Auto Laundry, Inc. for Special Exception under Article VI, Permitted Uses, section 128-17 B (15), CC Retail Commercial District of the Code of the Town of Bethlehem for lot line revision giving Bethlehem Auto additional land for additional parking and modification to ingress and egress at premises 462 Route 9W, Glenmont, New York 12077. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the October 29, 2003 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use will be similar to what we used earlier this evening. We'll hear the Applicants presentation; we'll entertain any comments or questions from the audience. We'll hear anyone wishing to speak in favor of the Applicant and anyone wishing to speak in opposition. Ralph before you start, there are some legal concerns that we have regarding the State Environmental Quality Review you submitted and Mr. Seely will address those issues to you. Whether or not you want to continue this evening, we'll leave up to you. We won't be able to close the hearing until we get the documentation that we need.

ATTORNEY SEELY: In the first sentence you've got the ingress and egress lines for the back parcel that's it's labeled as future development. That is right now unspecified as far as what that development intends to be, do you know what it is?

MR. MANCINI: We have a rough idea of what we want to do back there. Paul has a little bit of a sketch that we brought in tonight. The problem we have in responding to that issue is that to show a possible building back there is easy for us to do, whether we do or don't build it, but to show maximum development back there for something that may never be done is kind of like how many angels sit on the head of a pin. And that's one of the problems I've got. All of that in the rear parcel has to go before the planning Board is not really a purview of this Board. I understand the issue that was raised by the Planning Board.

ATTORNEY SEELY: The County Planning Board.

MR. MANCINI: The County Planning Board, I understand that issue. But I also understand the fact that several of the items they put in there - - I think maybe they did not totally understand it. I haven't done a new Environmental Assessment form because I really wanted to see what your thoughts were. I'd like you to - - I'd like to make a

preliminary presentation tonight. I'd like to point out to you what – we have an idea of what we're going to do in the back, but it's not coming before this Board. So that's one of the problems and I think of what they're concerned about is, about a year and three quarters ago we were before this Board on purchasing the parcel from Monroe Muffler. In fact Mr. Wiggand and I were chatting about that night and the problem we have with that parcel is it needs an access. So what we wanted to do is create a new access back there. We can show you a rough idea of what we would like to put back there which is allowed but I think if you allow me to make the presentation and then get into that, I think it would be helpful and it would build your record and maybe eliminate having to have a couple of extra hearings when maybe we can answer a lot of those questions tonight. And I was hoping if we made the presentation and then showed you what our, you know just kind of by guess and by golly what we would like to do back there that we could resolve that.

ATTORNEY SEELY: If you do have some idea that it is then we'll listen to that in the course of the presentation.

MR. MANCINI: Yeah, I would do that a little bit later so that you can understand why we're here in the first place. We're not really here for that, but we'll show you what we do have. Is that all right?

ATTORNEY SEELY: Are you talking about further subdivision of the back parcel?

MR. MANCINI: No, the land in the back would – we have already created a LLC to convey the property in the rear into. And we are hoping to put an office building back there. We have a preliminary design for an office building, but it's very preliminary and it's not something that this Board would deal with. It's a planning Board issue, but we can certainly give you a sketch on it and give you an idea and I think that would be helpful. The problem I have reading there from the Planning Board for them to say that we're, you know separating the project and all that and that we should try to have access maybe over Monroe Muffler, which they seem to integrate. I mean we're not going to - - Monroe Muffler isn't going to do that. When we made the presentation here before, Monroe Muffler – there was no intent for us to have a joint entrance way because we already had an entranceway, but if you'd allow me to make the presentation I think this would illuminate...

CHAIRMAN HODOM: I don't think that's what they're asking at all. Your SEQRA presentation did not include the egress from the back lot, did not include the rear parcel at all. It was not even mentioned in the SEQRA presentation.

MR. MANCINI: That's correct.

CHAIRMAN HODOM: Okay. This Board cannot make a determination for that entire parcel, which would include the back parcel without documentation impact on the land adjoining and the new land. It has to be addressed.

MR. MANCINI: Yes, we can address that but I – what I would like to do is point out what we're proposing, what we're proposing in the back and get some guidance as how to deal with this since we don't have an entire project all planned for the back. We have the possibility of a building in the back. And the question is – is that building going to take up all the property or only a portion of the property and then how far do you want us to go? Would you want us to do a sketch on the maximum number of buildings that could go back there? That's the problem that I had and that's why I presented in this manner recognizing the fact that there might be segmentation issue. Okay?

CHAIRMAN HODOM: Okay.

ATTORNEY SEELY: Precisely, okay.

MR. MANCINI: And I want to do everything I can to illuminate the Board on what we want to do. First of all, what we're applying for here is Special Exception, which would be the 6th Special Exception on this parcel. We tried to do a fairly detailed – we tried to do a very detailed narrative for you; an application and if you go back to July of 65' and October of 65', that's when the carwash approvals started and then there were additional approvals up through June 6th of 88' so there's five existing Special Exception's. We have copies of them; they're from your file.

And this would be a 6th, and basically what we're trying to do in the front and I'll deal with the front first if I may is that currently there's one access road back here and this runs along Monroe Muffler. What we wanted to do is convey this piece to the parcel in the back so that they can have access on the highway so that when financing occurred we do have access on a public road, and then to receive an easement for ingress and egress, basically for ingress to this parcel, because we have egress on the main highway. We felt that was the best way to do it and having represented banks for upwards of 40-years, I think they would be more comfortable with that when we do our financing. And that's why when we presented to the Building Department they understood what we were trying to do and this is how we wanted to start the process.

So there are really a couple of things that we're doing here, we also have a used car operation in here that allows I believe up to 12-cars. We also have a small building in the back for detailing doing clean up work on automobiles and stuff like that. There are limitations in these special permits as to what you can do and we're within those limitations. The existing - - there are cars parked sometimes along here and there are cars parked sometimes here and here, but basically what we decided to do is to make designated parking spaces which don't exist. Since this was approved many years before, you didn't have – there weren't requirements for spaces for parking so what we're trying to do is update this to have parking spaces here where we can display the cars that are for sale in the used car operation.

We also have parking in the rear, once again not designated so we decided that by adding this additional land we would create these 12-additional parking spaces, which really substitute for land and parking back here. And rather than having a lot of

new parking, what we're doing is making the existing parking more functional, meeting all the requirements of the current law and bringing it up to date. We also are putting in a handicap parking space, which the parcel doesn't have right now in a proper manner.

The third item that we want to do is we're extending the access in of additional roughly 100-feet to allow more stacking and to allow a better way to access through 2-access the carwash operation. Because the car wash has grown through 5-permits and through development, we felt that this would be a better way to access and stack. We think it will make it a more efficient operation and that's basically what we're here for and to do that we had to acquire some land from the parcel in the back. In addition to that, we had to create an in and out, an ingress and an egress to the land in the back so that's how this has been designed. Paul Hite will explain to you how he designed it, why it works and how it meets the Town requirements, and we did review this with the Building Department.

There's one other thing, there's a small kind of covered area or cupola area in the main carwash where you get the car washed automatically, their main carwash, there are also some individual carwashes where you do the work, but this pass through carwash – the end of that carwash if you'll notice and we show it here like 2-sheds and the 2-shed are really not very attractive and what we wanted to do is to take these 2-sheds, remove them and put in a new exit that would be much more modern, more colonial and attractive and maybe put a couple of cupola's on the roof giving it a more modern approach. That's our presentation on the site in the back. From the standpoint expanding anything, we're not expanding anything in the business. All we're doing is making it more efficient, modernizing it and improving it. The land in the rear we need to access to since we bought that land there was no access. We've created an ingress and egress of the northerly side along Monroe Muffler. We have – Paul has a plan, a sketch of a building, do you have it handy?

MR. HITE: What?

MR. MANCINI: I know he had a rough hearing so I'm trying to help the poor guy out.

MR. HITE: I was waiting for somebody to somebody to stand up and yell.

MR. MANCINI: I don't yell.

MR. SHEA: Just figure their drainage plan out.

MR. HITE: You have to remember this is a very rough sketch because – if Ralph wants me to explain I will or he can – whatever, and we started this and why we're in to what we're asking here tonight. This is a very rough sketch of the ideas that we have for the back parcel of the land.

MR. MANCINI: What we're hoping to do is eventually go to the Planning Board and build a building back here, but to develop this site we would have to show the Planning

Board the maximum development of the site. That would be this building and that building and Paul has roughed out the parking. We may not build anything like that, we may build this building and it may be bigger smaller, moved but we may never end up with 3-buildings but we will present a sketch a little better of course to the Planning Board when we get to the Planning Board phase.

We can't do anything before the Planning Board until we have access to the property to the rear and to be able to do the – you notice the additional land that we're adding here about 4/10 of an acre to modernize and create better stacking and usage of our existing carwash. From the standpoint of changing the Environmental Assessment Form, we can certainly check with counsel or with you Mr. Chairman and we can put on here what we propose and amend it and have it sent to the County. I don't have any problem with that.

All I have to say to you is that this is a dream, it's not a proposal and that was our problem. We didn't know how far to go and what we should disclose, because this is really a dream. What I'd like Paul to explain to you is how the roadway works and by this I mean the access to the various carwash facilities and how the ingress and egress approaches the rear. I would also like – Paul has done, you've done some Topo work on the rear Paul? So Paul has in addition to what's shown on here, he's done some work and has some idea of how this property in the rear can be developed. However until we get an approval from this Board we really can't go to the Planning Board because we haven't got any access. So I'd ask Paul now – well first maybe to have any questions about what I've presented so far? If you do – I'd be, anything to clarify. For example what we propose to do with the building.

As you know it's a very successful carwash operation and we want to keep it as modern as possible and we want to, you know be able to compete with other people who have these types of facilities in the area, and to do that we need to modernize. To do that we need to add that 4/10th of an acre to the rear and it was my idea and Paul's idea that since we were going to do that lets clean up all of the parking and display so that they are not a mish-mash, which to some extent they are now.

MR. WIGGAND: I'm going to say that I'm a little confused with this entrance road the way you have it.

MR. MANCINI: I'm going to let Paul explain it.

MR. WIGGAND: That's a little difficult for me to understand here.

MR. MANCINI: Okay, Mr. Hite?

MR. WIGGAND: Well after you're done explaining that, I'll have one major question for it that maybe you can answer.

MR. HITE: Actually Ralph has pretty much explained to you what we want to do. When Mr. O'Shaughnessy first came to me and we talked about, if you recall back a couple of years ago, he wanted to buy this piece of property back here. It was for sale and it certainly made sense, it was back there it was obviously – he was the one that needed it. These people had purchased it but they didn't really need for their operation and he bought it with the intent of doing something with it, had no idea and no more idea than a baboon and he can correct me if I'm wrong on that. It was a good deal and he bought it.

So then he came to me and said look, I want to do something with that piece of property back there. I said okay so I started looking at it and I said first it's got to have a good topographic survey. So I had the entire area flown, these are good contours taken from a topographic map that was flown this past year. All the topo is either there or we updated it. I started looking at this and I said, you know you can't do anything back here. You don't have access to it; absolutely no way can you do anything back there but go back there and put an outhouse. So he said what should we do, I said you better a good attorney and I recommended Mr. Mancini because he has worked in this type of thing for a number of years that we need to go to the Board of Appeals.

We first spoke with Kevin about it to see if we could come up with a method of accessing this piece of property. This driveway is already in place. It is 36-feet wide, which is 3-twelve lanes, which all lanes of traffic if the Town of Bethlehem on Town roads are 12-feet wide. So the fact is 3-Town highway lanes of pavement existing. I said okay, what we can do is continue to use the lane that goes in here and we take - - right now they all come through here in this area right here. I said what we would do would be to move this back and provide more stacking room and I designed a better entrance way into here with lane that would take traffic into this area and this lane would take traffic into these bays that like wash themselves, they're self serve, they do themselves. Here they are stacking, we have to have room to stack up cars and get into this automatic carwash.

CHAIRMAN HODOM: Paul, let me interrupt you a minute. Is one of these 3-main lanes to be designated as a stacking lane coming into the property or just on the rear?

MR. HITE: I think it just kind stands for itself to be honest with you. The distance from here back to there is a considerable distance and in fact it moves on through here I mean he cannot afford to have traffic stacked up here for, you know 2-hours. If for some reason there did begin to be a problem, that's why this is also an access road, this roadway is also that could come in and go through here. This driveway end would be for either this part or this part. Basically this is the main driveway that would take them into these 2-lanes, but if this would begin to be a stacking problem, this is also a driveway that they could use that and not cause a traffic problem on the road.

MR. MANCINI: It's important for you to look closely to see that those are both ingress, yes.

MR. HITE: And we would have ample arrows painted on these to indicate that these are

two “in” driveway lanes.

ATTORNEY SEELY: What kind of stacking issues are you dealing with now, and I don't know if that - - for you to answer or for Mr. O'Shaughnessy?

MR. HITE: It's something he has to answer. I can't answer that.

MR. O'SHAUGHNESSY: Actually right now, I've been there 30-years and a lot has happened over 30-years as far as the equipment. On my busiest day in the winter right now, which is the wintertime by the weekend, I don't have any cars stacked. Let's make it real simple, time is money or by I have an outside greeter now. I used to collect money from everybody right inside. You said the way to do it; they make hand-held electronic cash registers, credit card swipes and everything. I send a person outside walking 3 or 4-cars. They have collected money from the customer; piece of wax or soap on the windshield and they come in that building and boom, boom. The stacking is gone, I mean and actually what you haven't said yet is they left a wide enough path once you get off of our main driveway for me to stack 15-cars, 18-cars. I don't think I'm going to have anybody on - I don't think, but these people say that it's a possibility that we might.

ATTORNEY SEELY: We just wanted to get a sense of actuality.

MR. O'SHAUGHNESSY: Correct.

CHAIRMAN HODOM: Dennis, will you just introduce yourself for us.

MR. O'SHAUGHNESSY: I'm sorry I'm Dennis O'Shaughnessy, I'm the owner of the Bethlehem Auto Laundry Carwash.

CHAIRMAN HODOM: Thank you.

MR. HITE: We basically figure from here to there we can stack about 10-cars, so if there's a couple that gets out here it's certainly not going to cause a problem because by the time you got to here, these would be going on through there anyway. I've used this facility and there's no problem with stacking, but I wanted to make sure that's why I moved this in this direction. I moved it so that there was more stacking room and also created 2-lanes here with a column in between that would separate them and get people in. And once they start going in there like that, they'll realize where they go and we'll have signs with arrows on them to tell them which lane. But anyway, that was the thought behind this to look at what we could get an access through this existing pavement and create a I believe a 45 or 50-foot right of way, I'm not sure...

MR. MANCINI: It was 48.

MR. HITE: I believe it was 48-feet wide or something like that, anyway and that utilizing that I can continue this roadway on through and into an area back here that if and basically what we've talked about now is putting this building in. We've looked at a

design on it and it's going to be a very, very expensive building. If it works out and he is successful with it then we would go back to the Planning Board and ask to build these two.

MR. WIGGAND: Point that out on that other map, would you for us Paul where that building is going to be?

MR. HITE: Yes indeed. The first building would be in here.

MR. WIGGAND: Okay.

MR. HITE: The second building would be in here and the third building would be over here. There was actually room for 4-buildings, but because of the new laws that are passed relative to drainage we don't really have any place to take the drainage and just pour it off of this site. I have retained this area in this corner here that I can build a detention / retention that will meet the new permits that will be required for the storm drainage that will come off these parking lots and roadways before I release it. That's the reason I didn't try to get the fourth building in there. We felt that if we could get 3-nice buildings in there with this amount of parking that it's a total of about including handicap would be oh, somewhere around 120-cars or something like that going out through here and on to this roadway.

And that was another reason that we didn't want to try to combine that with this, why should this guy here running a business with these people running a business be faced with a line of cars exiting in the afternoon trying to get their people in there to do a business. It doesn't even make sense especially when this is a 36-foot wide pavement that's presently used for the purposes - - I don't know if 36-feet is needed but it's there. So that is kind of the idea we've looked at, I've kind of kicked around a couple of other things and we've even thought about putting a storage units back here but I kind of talked Mr. O'Shaughnessy out of that because I felt that the entire area was beginning to be flooded with storage buildings. At some point in time I - - maybe it's a good idea, I don't know.

It's probably the reason I'm not wealthy and other people are but I just felt that this is not the place for storage buildings. I thought it was a good place to put a nice park - professional buildings, what ever Doctors, lawyers you name it, architects, certainly not surveyors because we don't make enough money but...

MR. MANCINI: If I may just through - right now we own the 2-parcels, they're contiguous and they're in his same name. What we're going to do is take the rear parcel if this Board approves the lot line modification, which is what we're in here for a lot line modification, and convey it to an LLC and - which we already set up and that LLC will be the owner so that there will be 2-separate parcels with different identities so there's no problem to properly access it and taxes paid.

CHAIRMAN HODOM: Before you continue on, you already have a lot line approval do

you not?

MR. MANCINI: We have a lot line, but no access to the property in the rear. We have 2-parcels.

CHAIRMAN HODOM: Okay when you came back in 2002 that was a lot approval that you received.

MR. MANCINI: No, actually all that that was you – this Board authorized Monroe Muffler to cut off the piece in the back and sell it to us...

CHAIRMAN HODOM: Okay.

MR. MANCINI: So it was their lot line that was modified, not ours. The reason I refer to that is because that's what we have title to the property in the rear, which was in the...

CHAIRMAN HODOM: Tell us what lot line you're modifying?

MR. MANCINI: Okay, Paul can you show them?

MR. HITE: Yes. This is the original lot line at the time. We were before you 2-years ago, we purchased everything here off along this line over 16-feet through the original Muffler property to this boundary line on the north along back to the rear down through the rear and back. This was the original parcel of land that the Laundry sits on, but we're asking to modify is to simply take this line out of here and move it over to here and convey this piece of property to this entity to create this new driveway and a parking area in behind this building that will take these vehicles from view in here and place them in behind.

MR. WIGGAND: Paul, convey what piece of property that you just referred to?

MR. HITE: I'm sorry?

MR. WIGGAND: When you said convey this piece of property, which piece property did you mean?

MR. HITE: This piece right there.

MR. WIGGAND: Okay that piece there.

MR. HITE: Right. We go from this entity in the rear to the one in front and to become part of that.

MR. MANCINI: We want to get the entire operation on it's own parcel and to do that we had to be able to create these new and modern things that we want to do, we would have to add some land to it. Now there's a second parcel change. We have to convey the 48-feet that currently belongs to the first parcel to the parcel in the rear to create it's access

to the highway and then we will retain appropriate right to ingress over that property to be able to ingress our parcels.

ATTORNEY SEELY: The current front parcel?

MR. MANCINI: Yes, where the existing operation, the carwash operation. We need – we will convey the property to the parcel in the rear and then we will take back and ingress easement over a portion of it to allow us to operate the carwash and then the egress will continue to be the same right out onto the highway there. And the reason for that is and as Mike knows when you're doing construction, you go to a bank and the bank is going to say wait a minute you're in the back there and you're going to need to access. So that puts us out onto the highway and that makes the parcel in the rear have direct access to the highway and of course the existing carwash has all kinds of access on the highway. That will allow us to have 2-separate entities, allow us to finance separately for - - to build a new building we've got to get financing, to do that we need an access to the rear.

MR. WIGGAND: Pardon me. So you're deeding that existing driveway that you've got right of way parcel I believe you said it was 36-feet or something.

MR. HITE: 48-feet.

MR. MANCINI: This parcel will be conveyed to the property in the rear goes into a LLC, but we will retain when we deed it an easement of ingress over this property to come into the carwash. The property in the rear we will convey this piece to the property in the front to allow us to have more stacking and a new parking area here and to be able to more efficiently operate the carwash. So there's actually 2-lots eventually there will be 2-lot lines. This parcel here will look like this and this parcel will just be like a rectangle that's kind of almost like a parallelogram. In discussing this with the Building Department, it is my understanding that lot line changes are something that this Board would deal with and also since we already have 5-permits on a portion of the property we want to add some more property to it, we need another Special Exception so it's kind of - - that's why we needed the application and it's the 6th Special Exception so that we can add the existing 5-approvals with the 6th approval on the new larger parcel.

ATTORNEY SEELY: And so essentially what you want to do is make sure that this strip, this trapezoid that your attaching to the front parcel which currently did not have any of the Special Exception's attached to it. You want to them to be – just go over onto that parcel?

MR. MANCINI: Correct. And by doing that we're making it - it already operates very efficiently the way it is. It will now be bigger and should be a lot more efficient particularly with the way we've got the parking and the way we've designed this. And I'd be happy to get in to some of this design work because I think we can work out what you would like me to disclose and do a new form so that we can send the Assessment form on to the County and attach some more materials, but you can see this is so preliminary that

we don't even have a plan that's good enough to present I mean this is really just a sketch, and that's about all we have at this point.

CHAIRMAN HODOM: Have you had any conversations with D.O.T. as far as the impact of 120-vehicles – potentially 120- vehicles coming in the morning to work and leaving in the afternoon to go home?

MR. MANCINI: Paul – I don't think you've had that discussion yet?

MR. HITE: No. The whole thing Mr. Chairman is, you know we can't do anything until we came here to you.

CHAIRMAN HODOM: I understand that.

MR. MANCINI: And the other thing – the 120-potential parking spaces would only occur if we ever go beyond and build all 3-buildings. And that's one of our problems, we can show what the maximum development could be but that doesn't necessarily mean, I mean that that will happen and if so when?

ATTORNEY SEELY: Right, that would be your own separate segmentation issue.

MR. MANCINI: Yeah, and that's a problem. It's very hard, we spent quite a little time with Kevin trying to figure out the best way to make this presentation and we felt that if we did it in this manner we would get the main issue before the, be able to get the 6th permit if the Board so desired to grant it or as I understand the way they've written that thing we'd need the super majority, we'd need an unanimous vote from you.

CHAIRMAN HODOM: Right.

MR. MANCINI: And we would probably not require a unanimous vote if we were able to provide a new Environmental Assessment Form that they were reasonably satisfied with but if they're going array the issue to the County again and we're going to go through this and they raise the issue again, we may be still stuck with a super majority because potential of 120-cars.

ATTORNEY SEELY: Right, well you need four of us anyway.

MR. MANCINI: I'm sorry.

ATTORNEY SEELY: You need four Board members.

MR. MANCINI: I need four Board members, right. So, you know we're open to any kind of questions. I want you to understand that because it's important. This is the main business of the O'Shaughnessy's, they've worked very, very hard to bring it up to date and they continue to upgrade their equipment on a regular basis; a significant amount of money in to your – to continue to upgrade your automatic carwash and that we thought

that the new entrance way, which as I understand it the Building Department would just require us to present a sketch to them because it's not a very substantial building or anything. It's basically a roof cover and it would not...

CHAIRMAN HODOM: Well we'd want to know what it's being constructed out of and colors and so forth.

MR. MANCINI: So we would not have – it's not something that I believe that is necessary to go before the Planning Board at this stage. It relates basically to you, whatever you - - and we tried to create something there for you to, we just wanted your thoughts as how to do that. My problem was in putting this together and you may realize this has been very difficult to put together recognizing the fact that we wanted to get this issue before you and we're very happy to do whatever amendments we have to make so that we can satisfy you, satisfy SEQRA, satisfy the County Planning Board so we're here for direction.

CHAIRMAN HODOM: I think you said it earlier if you modify the SEQRA presentation and I would also recommend that even though you call that a preliminary plan that you provide that to the County Planning Board.

MR. MANCINI: We're going to have to make that a little neater.

CHAIRMAN HODOM: Yeah, it should be dimensioned, but if that's what your intent is to be the maximum of k-buildings...

MR. MANCINI: And we could add a small-amended narrative.

CHAIRMAN HODOM: Yes.

MR. MANCINI: To explain what's going on in the rear.

CHAIRMAN HODOM: Is there a potential for additional curb-cut off of 9W Paul?

MR. HITE: Not that we know of Mr. Chairman...

CHAIRMAN HODOM: That's an issue they're going to raise.

MR. MANCINI: We don't need it we have it. We have the existing curb-cut, we have the existing for ingress and we have egress cuts so there are really no cuts required. And what we're changing there is it's all there, it's all blocked out. It's all in its just striping. That doesn't necessarily mean, you know that D.O.T. is going to say hold on, but you know there isn't – there isn't a lot more you can do other than obviously it has to be approved by D.O.T.

MR. WIGGAND: Is this property then going to become under a separate ownership or

corporation including the driveways?

MR. MANCINI: The property in the rear will be an LLC, yes.

MR. WIGGAND: Including the drives?

MR. MANCINI: Including the drive it'll be almost like a keyhole lot.

MR. WIGGAND: So it'll be 2-separate ownerships for these properties?

MR. MANCINI: Correct. The property in the rear we've already named the entity and the entity is Woodridge Business Park, LLC and we need your approval so that we can convey the property to the rear on the front parcel and the property - - rear parcel to the front parcel based on these maps.

MR. WIGGAND: Then this piece of property here that shows you entrance, your ingress and egress will be part of this property back here?

MR. MANCINI: That's correct, with an easement for ingress.

MR. WIGGAND: With an easement for ingress to the carwash?

MR. MANCINI: Right, you've got it. It really is that simple and we tried – we went through a lot of different ways of designing it and we finally decided that this would be the easiest way to do it and this would be the best way for a bank to approve financing on these buildings in the rear.

MR. WIGGAND: I must say I started to be very concerned about that entrance, you know where your traffic – your main route of traffic for the carwash is that road. Now you're going to have a whole different specification of buildings for whatever your going to be building back here to use the same road, but now this corporation here is going to be owning this road. You're taking this piece from the carwash.

MR. MANCINI: Convey it to the LLC in the rear.

MR. WIGGAND: Okay. Now I understand you and that's where our lawyer comes into this thing. Is he listening to this?

ATTORNEY SEELY: Yes.

MR. MANCINI: We'd be guided by any thoughts that you could give us. I'd be happy to talk to counsel and we can prepare amendments of this and we really would like to do it because we kind of would like to keep the thing moving. Are there any other questions that any Board member's have?

MR. WIGGAND: You've answered mine thank you.

ATTORNEY SEELY: Right now the 2-parcels are owned by the same legal entity?

MR. MANCINI: Correct Dennis owns them both.

ATTORNEY SEELY: All right, so the back parcel can cross the front parcel without anybody complaining about it?

MR. MANCINI: Absolutely no problem. He has them he bought them at different times and he has 2-separate tax bills, but they're contiguous.

ATTORNEY SEELY: Right. It just so happens that legally right now the back parcel does not have an access, it's own separate access.

MR. MANCINI: That's correct and it does not - - they were never merged or anything; legally merged. They just are separate tax bills.

ATTORNEY SEELY: Okay. But a bank would definitely give you a hard time.

MR. MANCINI: I'm sorry?

ATTORNEY SEELY: The bank would definitely give you a hard time about that.

MR. MANCINI: Who will?

ATTORNEY SEELY: The bank if they haven't already.

MR. MANCINI: Oh yeah well that's - - my job is to make sure that a year from now if something is done and Dennis comes over to me and says what the hell is going on I can't get my mortgage. Right Dennis?

MR. O'SHAUGHNESSY: Correct.

MR. MANCINI: So I'm trying to think ahead and that's the reason we're designing it in this manner.

ATTORNEY SEELY: Okay. I think the County Planning Board's concerns on a general basis are well founded because it's difficult for them on paper. You've been very candid with us about where it is you're going but when they have sort of a cold record to look at...

MR. MANCINI: They don't have it.

ATTORNEY SEELY: Right, they don't understand that. So I – my initial take on it is to supplement what you have here at least as far as running it by the County Planning Board even if it's a dream stage whatever it might be. I mean ultimately the Planning Board's

and by that I mean the Town Planning Board is going to have to see the whole thing anything anyways.

MR. HITE: And tear it apart.

ATTORNEY SEELY: Of course, but for our purposes right now if there is more meat on the bones that goes to the County Planning Board and they still come back with the same whatever problems then we at least have more of a record or basis upon which to work.

MR. MANCINI: I don't disagree with you counsel.

ATTORNEY SEELY: To override that.

MR. MANCINI: I don't have a problem with that.

ATTORNEY SEELY: Yeah, and I think that if we do that it would be a problem because the County Planning Board meets once a month.

MR. MANCINI: I'm sorry?

ATTORNEY SEELY: Your problem is the County Planning Board meets once a month and I think their submission deadline date is probably within the next what week Karen?

MS. GUASTELLA: It's tomorrow.

MR. MANCINI: Yeah, we're going to need a couple of weeks to put this together.

ATTORNEY SEELY: Yeah, okay. Well I was hoping for the November meeting for you, but I think if we have that and have that in front of them so that they have a chance to look at it then perhaps their concerns are assuaged, they recognize the fact that the Town Planning Board is going to have to see this too and perhaps we get a different recommendation out of them because it is only a recommendation that this Board can accept or not.

MR. MANCINI: And the other thing is no matter how you draft this as carefully as you can, those 12-new parking spaces aren't additional parking spaces. They are replacing informal parking spaces along there and we're making them formal, meeting all reforms of the Town, blacktopping them, you know etc., etc. because we have that detail and in that detail building is a small office in which the used car operation is run out of. We felt that was to put the handicap spot because if someone's coming in to buy a used car the handicap spot ought to be right near that office where as anybody else using the property who is going through the car wash, they don't even have to get out of the car.

ATTORNEY SEELY: Okay.

MR. MANCINI: So that's part of our addition. We put a lot of thinking into the design

and the parking.

ATTORNEY SEELY: Have you had any conversations with folks at the County Board, probably not?

MR. MANCINI: No.

ATTORNEY SEELY: They're sort of this; you know entity that nobody has much contact with.

MR. MANCINI: No, my experience has been with the County Planning Board in 4-years doing this that to appear before the County Planning Board is generally not helpful.

ATTORNEY SEELY: I was thinking of more of an informal basis than any kind of presentation.

MR. MANCINI: Well, you call them and you talk to them but they really, you know they just – they're not going to put down anything other than they have on paper and their just - - I think if we, since I know what their talking about I think if I add that parcel into the Environmental Assessment Form, increase the acreage, indicate that we're proposing 1-building with 40-parking space with the potential maybe someday in the future 2-additional buildings for additional 80-parking spaces subject to Planning Board approval, something from D.O.T., subject to everybody in the world that maybe then they'll understand it and also maybe a little comment about the 12-new parking spaces are really re-locating parking. This is quite a large parcel and there is parking all over the back. When you go back there, there's all kinds of parking back there. Dennis wants to make it cleaner and neater and he can't really do it if he doesn't add this piece to it so this allows us to get that parking back behind the detail building. I can do that and I'd be happy to do that. I would urge the Board to adjourn this to allow us to do some additional work as advised by chairman and counsel.

CHAIRMAN HODOM: Let me ask you – Kevin there's a limitation as to the number of automobiles that can be displayed for sale, was it 10? Do you recall?

MR. MANCINI: It was 12.

MR. WIGGAND: Yeah, we approved 12, in fact that was a number of years ago.

MR. O'SHAUGHNESSY: By the way all the cars right are on that driveway. I want them out of there worse than you do.

CHAIRMAN HODOM: In many cases there has been more than 12.

MR. O'SHAUGHNESSY: Another – yeah, they're all going to be gone permanently.

CHAIRMAN HODOM: Dennis the reason I brought that up is because your note here,

or Paul's note, for the 12-spaces behind the existing metal building proposes dedicated for employee parking, detailing customers and auto sales.

MR. MANCINI: There's 10 in the front and 2 in the back because sometimes you've got a car that your fixing and detailing and you drive it out and bring another car in to detail then you would bring that one back in because the part didn't come that you had, you know like if you're putting a new windshield in because used cars sometimes need a little detail work.

CHAIRMAN HODOM: But it's not your intent to park 12-automobiles for sale back there.

MR. MANCINI: They intend to park 2 there, and if you notice the other 10 are up here in the front.

CHAIRMAN HODOM: I noticed that.

MR. MANCINI: Here and here and basically it's a fact I detailed that in my narrative.

MR. WIGGAND: Wait a minute, it doesn't say 10 it says 7.

CHAIRMAN HODOM: No, there's 3 over on the side Bob.

MR. WIGGAND: Where's the other one?

CHAIRMAN HODOM: By the roadway coming in.

MR. MANCINI: By the roadway right over here, there's 3-spaces here. These 3 here, 1, 2, 3.

MR. WIGGAND: Oh there, okay.

MR. MANCINI: And these 5 are 8 and then there's 2 back here and the reason we did that was we only want to display 10 and there's a couple cars that come in and you have to clean them, somebody's got to wash them up that type of thing. So we thought we want to meet the requirement of 12.

CHAIRMAN HODOM: Hours of operation don't change?

MR. O'SHAUGHNESSY: No.

MR. MANCINI: Kevin said that we didn't need anything regarding this new little copula that we're going build out but you want like some little idea of what it's going to be?

CHAIRMAN HODOM: I think so it would be helpful.

MR. MANCINI: All right.

MR. WIGGAND: If there would become a point in time when you wanted to separate the carwash from this rear business here because they're 2-separate corporations. What would you have available to do that as far as – I know you're separating them but now you're separating ownership.

MR. MANCINI: Yes, we're separating ownership.

MR. WIGGAND: Two different corporations.

MR. MANCINI: The property in the rear is going to this new LLC and so that now there's going to be 2-different - - and we're happy to make that a condition because that's our intent.

MR. WIGGAND: Well that might be important.

MR. O'SHAUGHNESSY: Just to let the Town know that this is a carwash...

MR. MANCINI: It will be a lot easier for the Town to access the carwash and access the property in the rear not that we're looking for a bigger assessment but it allows them to distinguish between the 2-parcels because they will have each operation separate. Those are good questions, I'm sorry I didn't go into a little more detail on that Mr. Wiggand.

CHAIRMAN HODOM: And you're going to provide us with that updated plan of your proposed first building and then the...

MR. MANCINI: We're going to show you the first building 2-possible buildings with the parking spaces and the road, driveways.

CHAIRMAN HODOM: Topo?

MR. MANCINI: And then narrative, he's got topo on there.

CHAIRMAN HODOM: Okay.

MR. MANCINI: We're going to amend the narrative and we're going to amend the Environmental Assessment form – short form.

CHAIRMAN HODOM: Okay. And he will show that retention basin on the site plan?

MR. MANCINI: I sure hope he does.

ATTORNEY SEELY: I don't know if all of these proposed changes are going to kick you pass the short form or not, probably not. Just keep that in mind.

MR. MANCINI: Well it won't be 10-acres we don't have a total of 10-acres.

ATTORNEY SEELY: No you don't.

MR. MANCINI: We've got 4 – a little over 5-acres, 1.75 and 3.45 so the short form is okay as I understand it.

ATTORNEY SEELY: I think you're right.

MR. HITE: You can possibly go to a longer form once we reach the Planning Board stage.

MR. MANCINI: The Planning Board might want it.

ATTORNEY SEELY: I'm sure they will.

MR. MANCINI: But at this stage I don't think that – because we haven't really got anything designed back there, that's our problem. Also, can I have your phone number where I can reach you?

ATTORNEY SEELY: 783-3843.

MR. MANCINI: You don't mind if I give you a call?

ATTORNEY SEELY: Not at all, next week is better than this week, thanks.

MR. MANCINI: Okay.

CHAIRMAN HODOM: Do you want to leave a date uncertain or do you have an idea how long it take, we need something back from the Planning Board don't we? The County Planning Board.

MR. MANCINI: Yeah, what I need to do is I need to get this stuff in and see if it's satisfactory, file it and then you've got to ship it off to the Planning Board.

CHAIRMAN HODOM: Right.

MR. MANCINI: If I know your drop-dead date, we'll get it here for that and then maybe you can – maybe you would give us a tentative date in December?

ATTORNEY SEELY: If we're going action from the County Planning Board, that's not going to happen until their December meeting, which means that you're looking at a meeting of this Board in January which would be whatever that first Wednesday is.

MR. MANCINI: It is possible to have an adjourned meeting here and if they haven't written, you just couldn't give a decision that night right?

ATTORNEY SEELY: That's correct we couldn't and since the hearing would remain open we're not kicking into any of our time for you to get things reviewed so we wouldn't be forced to do anything.

CHAIRMAN HODOM: But I don't think we have...

ATTORNEY SEELY: We don't have anything.

MR. MANCINI: It might make it easier if we got that in if it's kind of quiet. In December we could get this in and then if you have any other questions or any small amendments then we could come in in January for final.

ATTORNEY SEELY: Sure, that's fine.

MR. MANCINI: I just would like to utilize the benefit this 30-days to prepare for the County.

ATTORNEY SEELY: Yeah, and for the County's date and I don't have the schedule in front of me...

MR. MANCINI: Karen knows that.

ATTORNEY SEELY: It's probably along the 7th or 8th of December?

MS. GUASTELLA: I don't know December's deadline, I know that the deadline for this month is tomorrow.

MR. MANCINI: What's tomorrow – the...

MR. WIGGAND: The 6th.

MR. MANCINI: Well it's usually that first Thursday, isn't it, of the month?

MS. GUASTELLA: I think so yes.

MR. MANCINI: I'd be happy to make a further presentation that night and that might eliminate some additional questions or allow us to present some additional material and then, you know we would have a January meeting which would be just very vocal and short and the decision from the County Planning Board.

ATTORNEY SEELY: It looks like December 4th is the first Thursday.

MR. MANCINI: Great.

ATTORNEY SEELY: For us to have things in the County's hands.

MR. MANCINI: December 4th to have it in your hands?

ATTORNEY SEELY: Yeah, and probably a couple days before that just to be safe.

MR. MANCINI: Okay, so say December 1st?

ATTORNEY SEELY: Yeah.

MR. MANCINI: And would you want to give us a date in December?

ATTORNEY SEELY: Yeah we could. As you know we couldn't take any action, I don't know what our schedule looks like here but...

MR. MANCINI: But they also sometimes do give decisions before the 30-days.

ATTORNEY SEELY: Actually they usually – their meeting is usually the 3rd Thursday of the month, because it usually comes right after our last monthly meeting.

MR. MANCINI: I see.

ATTORNEY SEELY: I would expect that their meeting would be December 18th.

MR. MANCINI: Okay.

ATTORNEY SEELY: Holiday's not withstanding.

CHAIRMAN HODOM: Our meeting is December 3rd and December 17th, probably the soonest we could see it is December 17th.

MR. MANCINI: Do you want to do that or is it just a tentative that we can ...

CHAIRMAN HODOM: We can do that. Is the Board in agreement with that?

MR. MANCINI: It would give me something to shoot for.

CHAIRMAN HODOM: We can make it very short.

MR. MANCINI: I'll get those papers obviously into you around the first so that you can review them and get them off to the County and everything.

CHAIRMAN HODOM: The 3rd might be better, I don't know if that gives you enough time.

ATTORNEY SEELY: What we're thinking is that – my thinking anyways was if your going to have papers to us along about the first or second then...

MR. MANCINI: Do you want us to come in on the 3rd or the 4th?

ATTORNEY SEELY: The 3rd is the date that we have it might be that that fits better.

MR. MANCINI: Why don't we say December 3rd and we'll do what we can to meet it.

CHAIRMAN HODOM: Okay, we'll play it by ear.

MR. MANCINI: Yeah, that'll give me something to shoot for and I'll keep in touch...

CHAIRMAN HODOM: When do we have to advertise for that?

MS. GUASTELLA: 5-days before the hearing, we have plenty of time.

CHAIRMAN HODOM: Well I don't know if we have to re-advertise this anyway.

ATTORNEY SEELY: No.

CHAIRMAN HODOM: No, we don't.

MR. MANCINI: Mr. Hite, I'm expecting you to do your job I will do mine.

CHAIRMAN HODOM: Well we don't want to rush you that's for sure.

MR. MANCINI: No, you're not going to rush us.

MR. WIGGAND: What Paul doesn't know and also the Board here that I've been sitting on now for well a long time. I was on the County Planning Board for about a year back in 1970.

MR. MANCINI: That must have been a painful experience.

MR. WIGGAND: Yeah, I healed after I got off it about a year and I finally healed up and started talking straight. It was the worst experience I've ever had but I was on that County Planning Board so I know exactly what this is all about.

CHAIRMAN HODOM: I'll entertain a motion that we adjourn this hearing to a tentative date of December 3rd.

On a motion made by Mr. Brookins, seconded by Mr. Wiggand and unanimously carried by the Board, the hearing was adjourned to a tentative date of December 3rd at 7:30 p.m.

Hearing adjourned 9:50 p.m.

- - -

The next order of business this evening is a public hearing for a Variance under Article XVI, Front Yards, Section 128-71, Accessory Structures requested by Kim and Jeffrey Riker for property at 33 Ashgrove Lane, Selkirk, New York. The Applicant wishes to construct a shed, which will encroach into the Front Yard Setback requirement at the premises at 33 Ash Grove Lane, Selkirk.

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

MR. SHEA: Yes, Mr. Chairman. The Applicant is seeking a Variance to install a 8-foot by 12-foot, 96-square foot shed that will not meet the 70-foot front yard set back requirement. The proposed shed will have a setback of 60-feet, which is 10-foot shy of the required setback.

The existing structure is occupied as a single-family dwellings and is located in a Planned Residence District with "A" Residence Zoning Requirements.

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, November 5, 2003, at 8:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on Application of Kim and Jeffrey Riker, 33 Ash Grove Lane, Selkirk, New York for Variance under Article XVI, Front Yards, Section 128-71, Accessory Structures of the Code of the Town of Bethlehem for construction of a storage shed, which will encroach into the front yard setback requirement at the premises 33 Ash Grove Lane, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the October 29, 2003 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. Mr. And Mrs. Riker?

MR. RIKER: Yes sir.

CHAIRMAN HODOM: You're aware that in the Enclave you have a declaration of Covenants and Restrictions, which you initialed and signed?

MR. RIKER: Yes.

CHAIRMAN HODOM: We have been informed of that by the attorney for Charlew Builders. We're not here to authorize acceptance or rejection of their comments. There is a legal issue that you must face as long as you're aware of it.

MR. RIKER: We weren't aware there was a legal issue involved, we thought it was just more of a building code issue.

CHAIRMAN HODOM: It's not a building code issue for - - it's a code issue for us...

MR. RIKER: Correct.

CHAIRMAN HODOM: But it potentially could be a legal issue for you.

ATTORNEY SEELY: I think what the chairman's trying to say an issue has been brought to our attention regarding whatever restrictive covenants there are as far as can be constructed and placed on the property. This Board is not in business of enforcing what we consider to be private covenants but I think what he's doing is making you aware that this has been brought to our attention. It's a hot button issue for somebody and it may be something that you have to deal with separate and apart at some point. You're looking for a Variance and that's really the only reason it was brought up.

MR. RIKER: Understood.

CHAIRMAN HODOM: You should look into it before you purchase the shed.

ATTORNEY SEELY: Just to satisfy yourselves of what you may be getting into because we may grant the variance but that doesn't necessarily mean that ultimately...

MR. RIKER: It's not legally binding is what you're saying.

ATTORNEY SEELY: It gives you the ability to do it but perhaps doesn't necessarily conform with any other restrictions that we don't over see.

MRS. RIKER: Do you have any idea of what the issues are that they're saying so that we...

ATTORNEY SEELY: Apparently in restricted covenants that they have in there is well, first of all this is not an aluminum or metal shed so it doesn't apply there because there's none of those. What they do say is that a shed or particular restricted covenants that they say is that any exterior shed will match the existing dwelling, which we understand this will and not visible from the street. Well, from the drawing it appear to us that it may not be visible but that just is our take on it. Someone else may have a different take on it.

MR. RIKER: Understood.

ATTORNEY SEELY: And the other thing to is just probably - and I haven't gone through this because once I recognized what it was, I knew it wasn't anything that was going to involve the Zoning Board. You are certainly entitled to a copy of the letter that was sent to us by the attorneys for Charlew Builders along with the 2 or 3-exhibits that they attached; restricted covenants and some recitations that were included in the

schedule for your title policy, things like that. So you can see what they're thinking is.

MR. RIKER: Sure, yeah we'd appreciate a copy and that would be great.

ATTORNEY SEELY: And you're more than welcome to that. It was just to give you a heads up that just because we approve a Variance doesn't mean that there isn't this separate potential impact.

MR. RIKER: Separate and distinct issue that may come up at some point in the future.

ATTORNEY SEELY: Right.

CHAIRMAN HODOM: And I'm surprised that they didn't copy you on that either.

ATTORNEY SEELY: I didn't pick up on that either.

CHAIRMAN HODOM: All that being said...

MR. RIKER: Yes.

CHAIRMAN HODOM: Why don't you tell us what you want to do and why you want to do it and how you want to do it.

MR. RIKER: Our desire was to take and place the shed where it's illustrated up on the overhead there, which is essentially behind our attached 2-car garage which unfortunately we came to realize does not meet the front yard setback. Our desire to take and put it there was to take and keep it in an obstructed sort of position so that nobody else did have to take and view it from the street and more particularly so that our one neighbor to the east did not have to take and view it either as they looked out or enjoyed their back yard.

Secondly, it is a sensible sort of place for us to take and place it because it will take and keep with the construction lines that the house is constructed at this particular point in time. And it allowed us to take and keep our back yard freed up as it is right now for our own recreational use, and hopefully for construction of a pool of some point next year as well. Also, it is the flattest area in the back yard basically and probably the most easily place for us to take and place the shed. I think we have probably about a – and I don't have the topographic for it, but I believe it's about a 12 or a 14-foot drop from the back of the house to the back of the lot there.

MRS. RIKER: 8-foot vertical drop.

MR. RIKER: Dad said?

MRS. RIKER: I believe so yes.

MR. RIKER: Okay. We had taken and went around to all of our neighbors that was sent

a letter regarding this public, asked them if they would take and sign a petition in favor of us placing the shed where we want to place it. All of them have taken and signed it and we also have a letter from our closest neighbor who resides across the street at 34 Ash Grove who unfortunately is out of Town on business but he also gave us a letter to take and present to the Board in his absence.

ATTORNEY SEELY: Is that something you want to hand up?

CHAIRMAN HODOM: You want to put it on the record now?

MR. RIKER: Sure. This is from my neighbor at 34 Ash Grove and unfortunately my wife couldn't get my printer to work.

CHAIRMAN HODOM: Fine. And this is something you prepared yourselves?

MRS. RIKER: Yes.

CHAIRMAN HODOM: And approached each one of you're neighbors?

MRS. RIKER: Yes.

MR. RIKER: Correct, all of the neighbors that were mailed the letter regarding this hearing.

CHAIRMAN HODOM: Okay. And you described to them what your proposed plan was.

MRS. RIKER: I brought the picture with me and showed everyone.

CHAIRMAN HODOM: Okay, good.

MR. RIKER: I believe there are some photos circulating around and if you need some orientation with them, let me know.

CHAIRMAN HODOM: Describe to us if you would the storage ability that you have in the existing dwelling.

MR. RIKER: As of right now exteriorly just the garage obviously we have the basement, but our desire for the shed is to take in, store items such as riding lawn mower, snow blower, barbeque, so on and so forth. Right now my vehicle has been sitting in the driveway since I purchased the John Deer 3-months ago and I'd like to get my vehicle back into the garage before winter comes on. And those are really the items that we're looking to store more than anything else is the large riding mower, the snow blower and our barbeque.

CHAIRMAN HODOM: Do you know what the height is of the shed off hand?

MR. RIKER: I don't know what it is specifically off hand, I'm not quite sure if it's on the spec's.

CHAIRMAN HODOM: The outside.

MR. RIKER: Just the outside dimensions?

CHAIRMAN HODOM: The length and the width, but...

MR. RIKER: It's a standard shed and I'm not quite sure what the height of them specifically run and I don't know if you've seen them.

MR. BROOKINS: Usually about 8-feet, 8,9-feet.

MR. RIKER: 8, 9-feet somewhere around there, yeah I would imagine.

MR. BROOKINS: While they're looking at - - have you considered putting a shed here and now you have to understand what you're speaking of but it kind of - you're going to have a difficult to maintain ribbon around that shed between the shed and your existing house and back of the garage. You wouldn't actually be here if you considered an addition that was actually physically attached to the house and you would also not have to deal - although I don't know, I haven't looked at all the covenants but certainly the one about the shed would not be in effect for...

MR. RIKER: I was made aware by Mark in the Building Department that if it were attached we would be able to circumvent all of this. Quite Frankly when I asked him for how the Town or the Building Code defines attached it was kind of a convoluted answer and I wasn't really quite sure how one would go about attaching it quite frankly. And it just seemed it was more of a challenge to take and have it attached as opposed to just having it unattached at that particular point.

MR. WIGGAND: Well it would be a permanent structure with a foundation under it and everything.

MR. RIKER: Obviously it would be more costly for us at that particular point than having it unattached.

CHAIRMAN HODOM: And it's your feeling that the slope, the existing grade from the rear of your home to the back property line is too steep to store it or put a shed back in that area?

MR. RIKER: It is, it certainly is.

ATTORNEY SEELY: At what point at the back of your house or where ever on the property does the property start to slope down into that restricted open space area?

MR. RIKER: Where does the top of the slope begin?

ATTORNEY SEELY: Yes.

MR. RIKER: I'd say probably within about 5 to 8-feet of the back of the house and it slopes downward toward the back as well as sloping off to – not so much off the easterly side but rather significantly off to the westerly side there.

ATTORNEY SEELY: The easterly side is what is labeled as lot 27?

MR. RIKER: Correct. And the remainder of it is fenced at this particular point. Obviously not the deed restricted open space but down as far as we could take and go. So essentially it would be within the confines of our back yard but according to definition obviously it's still part of the front yard.

MR. WIGGAND: Mr. Riker, what is the distance on this wall here where you're planning on putting that shed? What is the distance from the back of the garage to the back of the house?

MR. RIKER: From the back of the garage to the back of the house is 16-feet, 4, plus another 2-feet here. So right to this corner it's about 16-½ -feet if I'm reading that correctly. I believe it's this dimension right here.

MR. WIGGAND: I missed that I didn't see that.

ATTORNEY SEELY: In looking at this drawing it appears as though you intend to place this shed so that it does not stick out as I'm looking from the front of the house either to the left or if I was on the easterly side I wouldn't see it sticking out on the back side either.

MR. RIKER: Correct.

ATTORNEY SEELY: Okay and right now that is that rectangular space that the shed is designed or intended to be in looks to be about 8-feet 4-inches from the side of the house to the interior corner there.

MR. RIKER: Correct.

ATTORNEY SEELY: And about 16-feet, 4-inches?

MR. RIKER: Correct.

ATTORNEY SEELY: Okay.

MR. RIKER: And there's some moderate landscaping along this portion of the home so that again it'll take in and obstruct the view of it from an angled sort of view from the

street down here.

ATTORNEY SEELY: Okay, so on the westerly most portion of your house towards the front I guess as we get close to where the garage door is you've got some shrubs in there?

MR. RIKER: Correct, this little walk out right here is blacktopped and then the space from the end of that blacktop back to this corner is landscaped and that landscaping probably extends about 5 to 7-feet in a westerly sort of direction.

ATTORNEY SEELY: What kind of shrubs do you have there?

MR. RIKER: Right now there is some rhododendrons and a couple of tall green things, I'm not quite sure what they're called.

ATTORNEY SEELY: I wouldn't know either.

CHAIRMAN HODOM: Which type of shed were you looking to provide?

MR. RIKER: It's the cottage.

CHAIRMAN HODOM: The cottage.

ATTORNEY SEELY: Which size, the 8 by 12?

MR. RIKER: 8 by 12, correct.

ATTORNEY SEELY: Was it that – again just to clear this up, it's going to be the style of the top left on only 8 by 12 or is it going to be the bottom one 8 by 12?

MR. RIKER: It's going to be the cottage in vinyl, oh all of these are cottages I'm sorry, actually the bottom one.

CHAIRMAN HODOM: The bottom one?

MR. RIKER: Yes. I didn't see the dimensions.

MR. LEWIS: Yeah, there's a marking in there.

CHAIRMAN HODOM: So you wouldn't be able to put any shrubbery in front of that, your doors are on the side.

MR. RIKER: Oh I'm sure I could if I wanted to. If we needed to that wouldn't be an issue.

CHAIRMAN HODOM: Okay.

MR. RIKER: And our desire for the yard next year, the entire – a good portion of the northwesterly portion of it, we were hoping to take in – get a patio and an in ground pool and so on and so forth and have that professionally landscaped as well. And that's one reason why we're looking to take and avoid having it over in this particular area of the yard.

ATTORNEY SEELY: You mean the northeasterly portion?

MR. RIKER: Yes the northeasterly portion.

ATTORNEY SEELY: That's okay I just want to make sure the records clear so that's all.

CHAIRMAN HODOM: And the color of the...

MR. RIKER: Matches the exterior of the house, the shutters as well as the shingles do, yes.

MR. WIGGAND: Your land drops off quite seriously to the back...

MR. RIKER: To the back of the lot what did you say it was 8 or 9-feet?

MRS. RIKER: I believe it's an 8-foot vertical drop.

MR. WIGGAND: You've got a real depression on the backside there. We were down there today. My only problem with it that I can see that it's not a problem it's just something to bring to mind that a good percentage of those homes are of a similar design and you ride through that development. I know that's one of the reasons why Charlew Builders produced this document here, because you're going – once this Board approves something like this that it'll open up a little Pandora's box so to speak. Others will want to do a similar thing. Now some of the houses there I wouldn't be quite a quick approving it because of the way they're positioned on their lot. This one here you do have a lot there that's kind of...

MR. LEWIS: Some with fire places.

MR. WIGGAND: Yeah, of course some of them have fireplaces where that goes.

MR. RIKER: Correct.

MR. WIGGAND: But as you look at them they do have similar cuts in their back portion of it there behind the garage. And they'll all be wanting something like that, see? I don't know how far this guy is going to go.

MR. RIKER: I'm assuming that that was just a letter that was generated by their attorney in response to the public notice. As far as we know all of our neighbors have been in

support of it so I'm not quite sure if it's a neighbor who was raising an issue or if it was just potentially a knee jerk response from counsel based upon the notice of the public hearing.

MR. WIGGAND: You're familiar with this paper that you signed?

MR. RIKER: Yes absolutely.

MR. SHEA: Pat, these are covenants and deed restrictions. These are not covered in our local zoning, is not enforced – enforceable by any part, okay?

ATTORNEY SEELY: Not by any governmental party, that's right.

MR. SHEA: This is a civil – this is definitely a civil action in all cases.

ATTORNEY SEELY: That's my understanding.

MR. SHEA: If you have a deed restriction, they can challenge it at any time.

MR. RIKER: Right, then it becomes a civil and the Town has no authority to take and say yeah, or nay at that point.

MR. LEWIS: Well their claiming that you can see it from the street, but you can't head on but if you drive around you would be able to see the side of the shed.

MRS. RIKER: In the winter time when there's no leaves on the trees you can see it, but you know part of the year you couldn't because there is actually a big tree line that goes all the way up.

CHAIRMAN HODOM: You can see it from the front of the property though.

MR. RIKER: Can I ask you a legal question Patrick? My question would be is it – would you consider it to be in violation of this covenant because you're able to view it from the street only or because you would be able to view it from the street and that it doesn't meet the 70-foot setback?

ATTORNEY SEELY: The 70-foot setback is a Town requirement...

MR. RIKER: Okay.

ATTORNEY SEELY: That accessory structures have to be at least 70-feet from the front line. It doesn't have anything to do with your restrictive covenants. That's why you're here for the Variance.

MR. RIKER: Correct, okay.

ATTORNEY SEELY: If the Board grants it then that takes care of that. Their issue with them is whether or not this – it appears as though it is going to hinge upon – hold on...

MR. RIKER: And the reason why I ask is because there are so many other sheds within that sub-division...

MR. BROOKINS: Yeah, there's one – your neighbor has one in there.

MR. RIKER: Yeah, that you can see – you can see it right from the street, exactly. And there are probably at least half a dozen that you can view very readily from the street, much more easily than you would be able to view this one from the street. That's why I'm wondering if it is just purely a potential violation of the covenant or if it were a combination of both.

ATTORNEY SEELY: Since it's not aluminum or metal, that doesn't – the restriction that they point to just so you know and I'll give you a copy of this.

MR. RIKER: Sure.

ATTORNEY SEELY: No aluminum or metal sheds shall be allowed, but exterior storage shed, which match the existing dwelling and are not visible from the street, will be permitted. So the only issue there that I think comes up is, is it visible from the street?

MR. LEWIS: Well the last paragraph on page two says since the placement of the shed in the front yard setback would violate the declaration of covenants and restrictions in that the shed would be visible from the street. We specifically request on behalf of Charlew Construction Company, Inc. that the Application be denied. So they're saying is...

MR. RIKER: It's visible.

MR. LEWIS: It's visible and that is in violation.

MR. RIKER: As long as I understand that that's what their point is if it ever does become an issue in the future, there are plenty other examples that one can take and utilize.

MR. BROOKINS: My guess is since they probably did not see your layout, they have a different thought in their mind that it's sort out next to your mailbox or something.

MR. RIKER: They're just looking at it – they're just looking at it as you referred to for one of the earlier applications as a cold record potentially and not knowing the details of it.

ATTORNEY SEELY: For all we know, your neighbors got the same.

MRS. RIKER: They may not even be aware that our neighbors have sheds that are visible because they don't drive through the neighborhood looking.

ATTORNEY SEELY: Or because they didn't need a variance to get their shed.

CHAIRMAN HODOM: That's right.

MR. RIKER: Yeah, that's probably the other issue.

MR. WIGGAND: See the other thing as I looked at this plan here and you're going to put a 8 by 12 shed and from the outside corner of your garage there in the back, you're 8-foot, 4, okay? Now you're going to be keeping that shed away from that side wall for whatever distance you'd want to keep it away so maybe you would want to be able to walk behind it, okay?

MR. RIKER: Right.

MR. WIGGAND: To clean your siding off and leaves and stuff that blows behind, whatever else. So now you're going to have that shed out there probably somewhere around a couple of feet anyway.

MR. RIKER: We were planning on probably on about a foot and as I was saying earlier that at this particular point we have a fair amount of landscaping along this aspect here and we can certainly take and look at putting some more landscaping.

MR. WIGGAND: You might want to consider if this Board approves this that to put more landscaping in.

MR. RIKER: Sure, that's not an issue at all.

MR. WIGGAND: This lawyer may be bringing up something there that you're not going to like to deal with.

ATTORNEY SEELY: But that's all separate from us.

MR. WIGGAND: It has nothing to do with us; I'm just saying that this could happen.

MR. RIKER: I appreciate that.

MR. SHEA: You're asking him to sign covenants and then you notify him that he's going to be in violation.

CHAIRMAN HODOM: Any other questions from the Board? All set? Any other comments you want to make?

MR. RIKER: No sir.

CHAIRMAN HODOM: Hearing no further comment or questions we'll declare the hearing closed and notify you in a timely manner. Thank you very much.

Hearing closed 10:15 p.m.

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The next order of business was to consider the application of Greg and Carol Roeder, 10 Fernbank Avenue, Delmar, New York. The application was found to be in order and Mr. Lewis made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Greg and Casrol Roeder, 10 Fernbank Avenue, Delmar, New York for Variance under Article XVI, Front Yards, Section 128-71, Accessory Buildings and Article XII, Percent of Lot Occupancy, Section 128-55, Accessory Buildings for construction of a detached garage, which will encroach into the Front Yard Setback requirement and exceed the percentage of lot occupancy at premises 10 Fernbank Avenue, Delmar, New York, it is hereby ordered that a public hearing on this matter be held December 3, 2003 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 a discussion of the previous public hearing held in the matter of Kim and Jeffrey Riker, 33 Ash Grove Lane, Selkirk, New York for Variance under Article XVI, Front Yards, Section 128-71, Accessory Structures for construction of a storage shed, which will encroach into the front yard setback requirement at premises 33 Ash Grove Lane, Selkirk, New York. The following points were brought up by the Board members: There is a significant grade drop in the back yard. The proposed shed will not affect the character or quality of the neighborhood. The request is both reasonable and minimal. On a motion made by Mr. Lewis, seconded by Mr. Brookins, and unanimously carried by the Board, the Board directed Attorney Seely to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on November 19, 2003.

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The next order of business was to consider the proposed resolution of Francis and Mary Beth Bonafide, 7 Shetland Drive, Delmar, New York.

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

RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Francis and Mary Beth Bonafide, for Area Variance under Article XVII, Side Yards, Section 128-73, Required Widths for construction of a carport addition to an existing garage, which would encroach into the Side Yard setback requirement at premises 7 Shetland Drive, 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 /, 2002; and,

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

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

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

FINDINGS OF FACT

Applicant seeks an Area Variance from Article XVII, Side Yards, Section 128-73, Required Widths of the Zoning Code of the Town of Bethlehem in order to construct a carport addition to his existing residence on certain premises located at 7 Shetland Drive, Delmar, Town of Bethlehem. The area is zoned "AA" Residential.

The Applicant proposes to build a 10-foot by 40-foot open-sided carport on the side of the existing garage. If constructed the carport would be only 8.4-feet from the sideline, some 1.6-feet short of the 10-foot requirement.

The applicant explained that the property consists of a one-family residence and presently only a one-car garage. The applicant has four (4) cars in his family, including a collector car. He explained that he needed a carport of the proposed size in order to protect most of these cars from the weather and be able to enter and exit from a parked car.

The carport addition would have open sides, be attached to the side of the existing structure and conform to its architecture. An existing small storage shed on the side of the house would be removed.

No one spoke in opposition to the Variance proposal at the hearing.

CONCLUSIONS OF LAW

The Applicant requires the Variance in order to construct the carport addition. Based upon the Findings of Fact herein, the Board concludes that the carport is in harmony with the intent and purpose of the Code, will not adversely impact the character of the neighborhood and is the minimal request necessary to alleviate the Applicants' existing problems.

Accordingly, the Board grants the Applicants' request for a Variance upon the following conditions:

1. That the proposed construction and use be in accordance with the exhibits and testimony given on behalf of the applicant at the hearing; and,
2. That the carport addition be used only for vehicles and no outside storage be allowed; and,
3. That the roof overhang not exceed 18-inches; and
4. That the proposed construction be completed within one (1) year from the date hereof.
5. The open walls cannot be enclosed by temporary or permanent means.

November 5, 2003

Michael C. Hodom
Chairman
Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on November 6, 2003.)

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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 October 15, 2003, meeting were approved.

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

Meeting Adjourned: 10:35 p.m.

Respectfully submitted,

Secretary