

**TOWN OF BETHLEHEM
BOARD OF APPEALS
November 17, 2004**

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

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

Michael Moore Attorney to the Board

Mark Platel Building Inspector

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

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings by Scott & Barbara Rogler for property at 139 Marlboro Road, Delmar, New York. The Applicant wishes to construct an addition, which will exceed the allowable percentage of lot occupancy at the premises.

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

MR. PLATEL: Yes, Mr. Chairman. The applicant is proposing to construct a 662.51-square foot addition to the existing 2,113.49-square feet, which is 562.16-square feet over the 2,213.84-square foot that is allowed. The lot occupancy will be 18.81-percent which is 3.81 over the 15-percent that is allowable.

The existing structure is located in an "AA" Residential District and is occupied as a single family dwelling.

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

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955.

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 17, 2004 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Scott and Barbara Rogler for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings of the Code of the Town of Bethlehem for construction of an addition, which will exceed the allowable percentage of lot occupancy at the premises of 139 Marlboro Road, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the November 10, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

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

MR. ROGLER: Okay, thank you Mr. Hodom. By means of introduction my name is Scott Rogler together with my wife Barbara seated here, our 2-boys Jimmy and Conner and our family dog, we reside at 139 Marlboro Road in Delmar. We would like to thank the Board for giving us this opportunity to address our compulsion for the proposed addition and answer any questions that may surface.

I first moved to Marlboro Road in 1973 when my parents moved myself and my sisters from Elsmere where they had set up housekeeping in 1963. Just over 6-years ago my wife expecting our first child and I jumped at the chance to move into the neighborhood where I grew up, went to school and attended church. We are ecstatic at the opportunity to have neighbors whom we knew especially our quote new neighbors across the street, my parents.

We could not think of a better opportunity for our offspring then to have grandma and grandpa across the street. Ever since we moved to our current home we have been firmly entrenched in the neighborhood and I'm pleased to see many of my neighbors here, hopefully lending support to us tonight. I've been a life long resident of Delmar. My wife has come to love our Town and all of its amenities. My wife is an avid walker and although the scenery is a bit different from the rural setting where she grew up, Delmar still holds that small town atmosphere especially in our neighborhood. Our family is active in Bethlehem Soccer club. Jamie our oldest boy started kindergarten this year at Slingerlands, ELC and is very exited about playing his first of many baseball games at Magee Park this spring, some 30-years after I played my first games there.

Much like the Building Department, Planning Department and Zoning Board are tasked with looking at the future of the Town as a whole. I'm looking to the future of my family, both immediate and extended with this proposed addition. As our family grew we found the need to address the physical topology of our house and make appropriate plans for the future. When we began the process of planning for our addition, the - - for the addition to our existing structure, we tried to identify the areas of the home that needed the most attention. From the space prospective I kept in mind – we intended to be in the home for an additional 20-plus years and tried to plan accordingly. We identified the primary need as our kitchen, the current floor plan is a galley kitchen that does not accommodate 2-busy working parents and their over exuberant kitchen helpers prepare a meal nor does it afford any space for casual dining. Because of this, all too often the children have to be attended by one adult while the other one prepared a meal in another room. To resolve this need we envisioned a large kitchen with an attached family room, an open floor plan so the entire family could be in the same space during the preparation and meal times.

The next need that surfaced was the need for easy access to the bathroom from the outside. During our all to short northeast summers we spend a large amount of time outside in and around our in ground pool entertaining family, friends and neighbors. In the current floor plan people must walk completely through the house usually with wet feet to use the bathroom much to the chagrin of my wife. To resolve this we pictured a bathroom close to the rear entrance of the house. Additionally we'd like to bring our laundry facilities from our basement to the first floor and it made sense to have those facilities in the proposed bathroom.

The final need we identified was a master bedroom. As many of the houses built in the same – or excuse me, as many of the houses built in the same area as ours, rooms tend to be smaller and often have inadequate closet space. We visualize in expansion of the existing bedrooms to more modern proportions for both the living area and closet space. To encompass all of these needs, we envisioned and plotted out the addition that is before you tonight. I believe the overall information was covered Mark earlier in the statement of fact. We believe that the proposed project will provide a reasonable use of the property, will not result in any undesirable changes in the character of the neighborhood, will not have any adverse affect on the impact or physical or environmental conditions in the neighborhood or be detrimental to adjoining property owners. To make sure the impact is minimal we intend to have the proposed addition as much as possible match the roofing, siding and trim of the existing home. I know many of the Board members made a point of stopping by the property and reviewed the addition with myself or my wife. For those who didn't get a chance I do have some artistic renderings of the proposed addition, which I could pass out to the Board.

I hope I've covered many of your general questions during my presentation. I now will along with my contractor, John Shatro from Modern Domains attempt to answer any specific or technical questions and I thank the Board for their time. Let me grab the renderings. There's 7 there, 7 is the magic number that we give to Karen.

CHAIRMAN HODOM: Mr. Rogler had you brought any drawings with you showing what the new rooms are?

MR. ROGLER: Sure.

CHAIRMAN HODOM: And could I ask you who prepared the drawings, both the engineering drawings and the architectural drawings?

MR. ROGLER: The engineering drawings were done by, I'm sorry.

MR. SHATRO: The Bill Domery; the draftsman and they were reviewed by an engineer.

MR. ROGLER: And then – oh I'm sorry, I thought you were finished John. And then the floor plans I did myself.

CHAIRMAN HODOM: Do you have some additional plans for us sir?

MR. ROGLER: Yeah I do.

CHAIRMAN HODOM: And the reason I asked that question earlier was that by my calculations the dimensional information from the architectural drawings does not agree with the dimensional information from the engineering drawings.

MR. ROGLER: Could you specify – I'm sorry the engineering are...

CHAIRMAN HODOM: If I used the scale that's shown on the existing, I'm sorry the engineering drawings are the 1-inch equals 10-feet?

MR. ROGLER: Correct.

CHAIRMAN HODOM: Okay. And then the architectural drawings I refer to are the drawings that are either 1/8 of an inch per foot or quarter inch per foot.

MR. ROGLER: Okay and those were the ones that were done by John Straffman and reviewed by the engineer. The engineering drawing that you're referring to I did.

CHAIRMAN HODOM: Well based on the plan on the engineering drawings, the garage scales 16-feet wide by 20-feet deep. On your architectural drawings the garage is 20-feet wide by 35-feet deep.

MR. ROGLER: For the proposed or new?

CHAIRMAN HODOM: For the existing garage.

MR. ROGLER: For the existing garage. The architectural drawings were taken from a

site tape measure by the contractor and the engineer. I can't attest to their validity. The only real measurement should be the ones that came from the survey, which you have a copy of as well.

CHAIRMAN HODOM: Well that's - - the other concern I have is the survey drawing that I have most of the dimensional data is not legible.

MR. ROGLER: I provided a copy to the Board although not 7-copies of the actual signed copy from the surveyor. I do have an additional copy if you'd like.

CHAIRMAN HODOM: Unfortunately we don't have a lot of time to – do you have more of these?

MR. ROGLER: I have 1-more. An exact duplicate of that was turned in with the other paperwork that you have, just one.

CHAIRMAN HODOM: Well here again going from this plan that you've submitted this evening and there may be one in the file that was done by McGrath Land Surveyors, dated September, the plat number date is October 1, 2004. They show the garage as 33.1-foot wide by 20.4-feet deep so there's nothing that I have to relate back to the other documents and it's puzzling to me. I think what we really need is a compilation of – if you want to use the engineering drawings that you've submitted and the architectural drawings that you submitted, they have to agree. We're not going to sit here as a Board trying to figure out what dimensions go where and so forth. I think you can understand that.

MR. ROGLER: I truly do understand that and I'm not so sure that we're not talking the same dimensions, but 2-different points. I'm – just by a quick calculation in looking at the back, I don't believe the garage is 33-feet by 20-feet.

CHAIRMAN HODOM: I don't either but that's what this one shows.

MR. ROGLER: I'm looking at on the survey 12, 16 and 33 is 62, which would be the entire length of the southern end of the house and that correlates to the engineering drawings.

CHAIRMAN HODOM: I think that the length of the house, the 80-feet, those 2-dimensions agree. It's the integral dimensions adding up to that total that don't agree, which would lead to what the existing sizes are and what the room sizes you plan on changing. And that's what I couldn't put together between the 2-sets of documents.

MR. ROGLER: Okay.

CHAIRMAN HODOM: Okay. Again the plan that you submitted this evening, again has to be scaled off, it's not dimensioned and I think the documents that you were given for the Variance requested dimensional documents.

MR. ROGLER: And I was basing that drawing off of the engineering drawings.

CHAIRMAN HODOM: There's no scale shown on this and there's no date but let me just see if it agrees with the – this drawing for the - - are you changing the garage at all?

MR. ROGLER: None.

CHAIRMAN HODOM: Okay because this drawing scales for the garage in width 16 ½-feet, which would agree with the engineering drawings however it doesn't agree with the architectural drawings, which scale 20-feet in which are dimensioned 20-feet. What I'm going to ask you to do Mr. Rogler is I'm going to adjourn the hearing and I want you to put together a set of documents that we have the correct dimensions of the existing home, dimensioned as existing with dimensions shown and then the dimensions that you proposed for the new addition dimensioned with dimensioned on the drawing. That way we have time to take a look at it, we won't be trying to make changes this evening as to what room is what room and so forth and so on. Is that agreeable to you folks?

MR. ROGLER: That's fine; I have no problem with that at all.

CHAIRMAN HODOM: What we can do; we can continue the hearing because there are so many people here this evening that may have some questions or may want to speak in your behalf or make some comments, but we won't close the hearing, we'll leave it open until we get the corrected documents.

MR. ROGLER: Very good.

CHAIRMAN HODOM: Okay. Just bear with me a minute, off the back of the garage you're proposing to add a family room?

MR. ROGLER: Correct.

CHAIRMAN HODOM: Okay and next to that is a breakfast nook...

MR. ROGLER: And the addition of a kitchen – or excuse me the extension of the kitchen.

CHAIRMAN HODOM: Right, okay. And then next to that is a home office?

MR. ROGLER: A home office space, yes.

CHAIRMAN HODOM: And then the – it still doesn't - - and is that a laundry room?

MR. ROGLER: Laundry room and half bath combination.

CHAIRMAN HODOM: Okay, so the other room is a master bedroom, again this doesn't

agree with your contractors plan for what you've submitted so rather than belabor the point about the drawings, lets prepare the proper drawings and submit them to the Board. The size of the family I think you mentioned was yourself and 2-children?

MR. ROGLER: Correct.

MRS. ROGLER: And wife.

CHAIRMAN HODOM: The two of you?

MRS. ROGLER: Yes.

CHAIRMAN HODOM: That's what I meant anyway, right. And you've lived in the residence for?

MR. ROGLER: 6-years.

CHAIRMAN HODOM: And I know there was some data submitted earlier regarding – you have rheumatoid arthritis?

MR. ROGLER: Correct.

CHAIRMAN HODOM: Okay. And how long have you had that Mr. Rogler, active and diagnosed?

MR. ROGLER: Slightly more than 6-years.

CHAIRMAN HODOM: Okay. Any other questions from the Board? Is there any questions or comments from the audience at this time? How long do you think it would take you to have the plans prepared?

MR. ROGLER: Just so everything matches up, John do you have a sense of that?

MR. SHATRO: Probably a week, not even. When would you like them done?

CHAIRMAN HODOM: Well I'm just trying to put you back into the schedule.

MR. SHATRO: I myself and Scott and I believe this man at one time came and we had reviewed all the numbers on the engineered plans and they were accurate. I think what is the confusion of it is the floor plan that you said that....

CHAIRMAN HODOM: I think the confusion is that this floor plan here does not typify the actual dimensions as the engineered plans show. If you scale it and again, the problem is that it's not dimensioned by dimensioned, you have to go through and scale it. And again if you look at this layout here compared to the proposed new floor that we received this evening that doesn't match so what we would like to see is what you really propose

to do from the existing house to the new house accurately so that one typifies the other.
Okay?

MR. SHATRO: Yes.

CHAIRMAN HODOM: It looks like based on the current schedule that January 5th will be our earliest open hearing night. Is that acceptable? I realize that you can get the documents prepared that much sooner but unfortunately we've got some applications that we'll be moving on this evening. We probably could hear it December 15th perhaps. What's the Boards feeling on December 15th? I think we have December 1 we can have at least one of them on there because I think the other one would take up most of the evening.

MR. BROOKINS: We're going to continue part of this tonight so we'll get some feedback.

CHAIRMAN HODOM: We'll get some of it done, yes. It'll be tight but it's – I don't want him to – we'd like to have the documents at least 10-days ahead of the hearing so that we can have an opportunity to review them and make sure everything corresponds. We'll tentatively set it for December 15th at 7:30. Does everybody agree with that?

On a motion made by Chairman Hodom, seconded by Mr. Micelli and unanimously carried by the Board the hearing was set to continue on December 15, 2004 at 7:30 p.m.

CHAIRMAN HODOM: So you if you can get the documents to us just as quickly as you can to give us plenty of time to take a look at it. Is there anyone else that has any questions or comments regarding this application this evening, I mean as long as you're here I just wanted to give you an opportunity to speak and your certainly welcome to come back on December 15th. That seems to be a busy time of year for everyone just before the holidays.

MRS. ROGLER: No, I just had a question I was asking my husband...

CHAIRMAN HODOM: If you'd just introduce yourself to us.

MRS. ROGLER: Yes. My name is Mary Rogler. I had a question about the questions, in other words I thought we were concerned with the footprint of the house per say on the lot and do all of these documents which I don't have privy to, do they all agree or are you talking about interior dimensions that do not agree?

CHAIRMAN HODOM: The documents on the footprint apparently don't agree.

MRS. ROGLER: Okay. So somebody says the size of the garage is this and somebody says...

CHAIRMAN HODOM: That's correct.

MRS. ROGLER: Okay.

CHAIRMAN HODOM: And there's some other dimensional information that is not correct comparing one to the other. So what we're looking for is to have - - if you're going to use composite drawings then they should agree.

MR. ROGLER: I understand.

MRS. ROGLER: Okay as long as you understand. I'm an English major, not too good at the math.

CHAIRMAN HODOM: Okay. Anyone else have any questions?

MR. ROGLER: I just have a question.

CHAIRMAN HODOM: Sure.

MR. ROGLER: Do you have time that you could avail yourself that you could show us specific points on what you have that are not matching so we could review them outside the public hearing, you know it doesn't have to be tomorrow or the next day just when you have time just to make sure that we're clear on where we maybe missing information or make sure that we're not misaligning things or that kind of thing.

CHAIRMAN HODOM: I'd be happy to do that with you.

MR. ROGLER: Okay, excellent.

CHAIRMAN HODOM: Just give the office a call tomorrow and give me some times and dates or give them some times and dates and I'll fit my schedule to meet yours.

MR. ROGLER: Thank you.

CHAIRMAN HODOM: We'll adjourn this hearing to December 15th at 7:30 p.m. If you're going to use this, this is also incorrect compared to the other drawings. If that 33-foot is correct here, I don't know where he comes up with the 33.1-foot.

MR. ROGLER: The only thing I can say was it was my understanding that the licensed land surveyor was the only true measurement of the house.

CHAIRMAN HODOM: Mr. Rogler all I'm saying to you is that on this plan he's showing the garage that he's showing at 33.1-foot wide...

MR. ROGLER: Can I see it?

CHAIRMAN HODOM: This is titled garage, 33.1-foot wide...

MR. ROGLER: That's this dimension right here with a hash.

CHAIRMAN HODOM: No, I mean it's all hashed – see it's all hashed. If you're going to do that then use some dimensional arrows from point to point.

MR. ROGLER: I didn't make that drawing.

CHAIRMAN HODOM: Just so everybody's on the same page, that's all we're asking for.

MR. ROGLER: Okay.

CHAIRMAN HODOM: I'll give that back to you, but any of the other documents that you submit give us 7-copies so that every Board member has one and counsel has one and the Town has one. Thank you very much and have a marvelous Thanksgiving.

MR. ROGLER: Thanks.

Hearing adjourned 8:00 p.m.

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The next order of business this evening is a public hearing for a Use Variance under Article VI, Permitted Uses, Section 128-12- Residence "A" District requested by Robert LaFave for property at 445 Krumkill Road, Albany, New York. The applicant wishes to allow 2-horses to remain on the property, which is not a permitted use in an "A" Residence District at the premises 445 Krumkill Road, Albany, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is asking for a Use Variance so that he may continue to stable 2-horses on his property for his private use. The property is located in an "A" Residential District where the confinement of livestock is not a permitted use. The use of the property at this time is for a single-family dwelling and as stated earlier is located in an "A" Residence District.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals, Albany county, Town of Bethlehem will hold a public hearing on Wednesday November 17, 2004 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Robert LaFave for a Use Variance under Article VI, Permitted

Uses, Section 128-12, Residence “A” District of the Code of the Town of Bethlehem to allow 2-horses to remain on the property, which is not a permitted use in an “A” Residence District at premises 445 Krumkill Road, Albany, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the November 10, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We’ll use the same procedure that we used earlier; we’ll hear the applicant’s presentation; we’ll entertain any questions or comments from the audience; we’ll hear anyone wishing to speak in favor and anyone wishing to speak in opposition to the applicant. Mr. LaFave just introduce yourself to use.

MR. LAFAVE: Robert LaFave Sr.

CHAIRMAN HODOM: Your address sir?

MR. LAFAVE: 445 Krumkill Road.

CHAIRMAN HODOM: And just tell us if you would – let me ask you this first, when you made the application to the Town you were given certain documents regarding the Use Variance. Do you recall that?

MR. LAFAVE: Before I got the horses you mean?

CHAIRMAN HODOM: No, when you made an application to the Town of Bethlehem...

MR. LAFAVE: Yes.

CHAIRMAN HODOM: For this application hearing for a use Variance. You were given certain documents explaining what the procedures are and what you should provide this Board for a Use Variance?

MR. LAFAVE: Right, yes.

CHAIRMAN HODOM: Okay and you’re prepared to offer that information this evening?

MR. LAFAVE: Yes.

CHAIRMAN HODOM: Okay. Just tell us what you would like to do, what’s happened, address all the issues that are required by the Use Variance and we’ll go from there.

MR. LAFAVE: Well I had a heart attack, I don’t know what you want to know but I had a heart attack and then my blood pressures real high and my heart doctor was giving me medication for my blood pressure but it was still way high. So he recommend that I have

a pace maker put in so he could increase my medication and just down the road shortly afterwards I had a stroke. I lost my eyesight for a while; I got it back and I was just moping around the house. My doctor scared me and told me not to use the push mower; you know it was tough on me. So I bought these horses and it got me motivated. It was like therapy to me and it gets me out of the house in the morning and in the evening it gives me something to do. I don't know what else to say. I enjoy them; they're my pets.

CHAIRMAN HODOM: I understand that and I certainly can empathize and sympathize with it however for a Use Variance there are very specific criteria that you must provide this Board to prove your case for a Use Variance and I believe that information was provided to you from the Town when you made your application. There are 4-specific requirements that you must address to this Board to show cause why we would issue you a Use Variance and until you do that sir we can't by statue give you a Use Variance. Is this your counsel here with you this evening?

MR. LAFAVE: Yes.

MR. MANEY: I just want to – excuse me my name is Kevin Maney, M-A-N-E-Y, and my address is 100 State Street, Albany, New York 12207 and I was just letting – to let Bob make his statement first and then I would address questions, but in regard to setting forth, you know a case for meeting the requirements for a Variance I think that Bob can, Bob LaFave can set forth a case to show that he was unaware of the prohibition at the time he purchased his horses 4 ½-years ago even though he does live in the “A” residential area.

He lives in the corner of the Town west of School House Road, north of Krumkill Road directly across the street from Krumkill Road from a horse farm where there are – between 20 to 40-horses are boarded there. He was not aware of any prohibition at the time. As far as what he has done, Bob LaFave's lot is quite large, it's 100-feet in – or 110-feet from Krumkill Road and it's over 550-feet deep where he has provided I believe a survey map on which it shows where he has a small barn and a pen for his horses which is over 300-feet from the road and you really if you're driving by in a car or walking fast you can't even see back that far.

It's also, although it is near and neighboring properties, it's not near any of the structures on any neighboring properties. It's well over 200-feet from any structure on any other property near by. He said he's had the horses for over 4-years, the fact that, you know it wasn't proper then is not excusable but that to the best of his knowledge he's received no complaints about them for all that time. His horses are well cared for, they're regularly seen by a veterinarian, you know they're in good shape. His having horses there Bob feels that it does not alter the existing essential characteristics of the neighborhood and even though it is a residential neighborhood it's almost boarding on a rural neighborhood in the fact that what is directly across the street and the size of the lots and the rear of the property is Mosalls Grove, which has quite a bit of green space as well so it's not a concentrated residential area.

His having 2-horses there which aren't seen and really aren't noticed unless you come onto the property he feels doesn't really effect you know the essential use of neighborhood and it is quite unique to him. You heard a little bit of what he had to say about that that in granting any Variance to Bob LaFave really is not going to affect – he feels really won't affect the characteristics of the neighborhood. He mentioned about emotional and moping and therapy for him and I mean it's more of an emotional hardship to him if his horses would be removed and it would be an economic hardship although he feels he could make a case for economic hardship – pressed that if he had to move the horse – if he had to board the horses someplace else, even if he boarded them across the street at Jean Bigaoutte's that it would be extremely expensive and on a fixed income that he is, he probably couldn't afford to do that for a long time. So he doesn't make any money on the horses, he would not lose money but rather if he had to board them than it would be – economically would be a substantial cost. I think that that meets part of the requirements for a case that he has there and I don't know what else specifically you would ask for.

CHAIRMAN HODOM: Well there are four specific requirements that must be met to prove unnecessary hardship in a Use Variance and the first being that the applicable zoning regulations the applicant is deprived of a reasonable use or benefit from the property in question, which deprivation must be established by competent financial evidence. Now you've addressed in general terms but there is no evidence provided unless you feel that what you've provided this evening is adequate and I'm not trying to run your case for you but I want to be fair with Mr. LaFave and I want to be fair to anyone else here in the audience that Use Variance's are established by New York State statue. We as a Zoning Board of Appeals are really tied to that statue and we have very little leeway in making decisions if those criteria are not met. I want to make sure that you understand that Mr. LaFave and your counsel if you want additional time to prepare better we will give that to you. If you feel that what you're proposing this evening is adequate then we will accept that.

MR. LAFAVE: A few years back My Aunt – that was a chicken farm and same as across the way from me that was a dairy farm and she has horses over there but at one time my aunt came here and got a permit, they gave her the permit and she told them she wanted chickens there and she's had chickens there for a few years, she sold eggs. I don't know how things change I mean you can have animals there at one time and now you can't.

CHAIRMAN HODOM: The zoning has changed in the Town over the years and I don't know when your aunt had her alleged chicken farm.

MR. LAFAVE: Well that was year's back.

CHAIRMAN HODOM: Quite a few years back and I don't know, I can't tell you specifically. It's certainly in the records of when that part of town of your property was re-zoned for "A" residential, but once it was re-zoned those items that your requesting this evening were not permitted uses in an "A" residential zone.

MR. LAFAVE: How did it get changed? I mean did the Town just change it?

CHAIRMAN HODOM: The Town fathers made some decisions based on their infinite wisdom and made the changes and I honestly don't know when they were changed to be very frank with you but again I ...

MR. MANEY: Can I interrupt for a second? What I would ask would be to the Board to request an additional period of time for Mr. LaFave to bring – to submit further documentary evidence to the Board in support of his application for a Variance if that would be possible. I think that's the best way to go know.

CHAIRMAN HODOM: Do you feel that you can have that information to us prior to our January 5th meeting?

MR. MANEY: Yes.

CHAIRMAN HODOM: And again we would like we would like it at least 10-days, 2-weeks prior to the hearing date.

MR. MANEY: Sure.

CHAIRMAN HODOM: Is that acceptable to the Board?

MR. WIGGAND: Yes.

MR. MICELLI: Yes.

On motion made by Mr. Brookins, seconded by Mrs. O'Brien, and unanimously carried by the Board the hearing was re-scheduled to January 5, 2005 at 7:30 p.m.

CHAIRMAN HODOM: I know that there are some people here this evening that came here specifically for the hearing and I will certainly give them an opportunity to speak. Any one desiring to speak?

MR. MOSALL: I've got some pictures here that...

CHAIRMAN HODOM: Introduce yourself to us Mr. Mosall.

MR. MOSALL: Oh, I'm sorry. My name is Milt Mosall and...

CHAIRMAN HODOM: Your address?

MR. MOSALL: My address is 283 Schoolhouse Road, the grove is 289 and the Mosall family has operated that grove for well over 50-years. I no longer operate it myself but I still own the property and my nephew Robert is the operator as of now. May I get the

pictures?

CHAIRMAN HODOM: Certainly, please.

MR. MOSALL: These are the pictures that can be seen from any point from my grove.

CHAIRMAN HODOM: Are these for the record Mr. Mosall?

MR. MOSALL: Yes, sure. I do thank this Board for the opportunity to express my or opposition to the horses even though we sympathize with Mr. LaFave's health and we wish him well but the story is – I would like to preface my remarks by saying that we did – the family is, the Mosall family has been Bethlehem for almost 120-years and we operated the grove as I've said for over 50-years and in all that time, all that 50-years we've never had one complaint that I know of, of the grove. We close at 7:30 on picnics and 8:30 on bakes so that there's no noise in the neighborhood; we've never had a complaint until Mr. LaFave moved in.

Shortly after he moved in, he and his son built a large pile of brush and other debris that is seen from the grove but the main thing is it diverts water onto our grove that we've never had before. We didn't - - we complained about that, we made a complaint about that because it was hurting our business.

CHAIRMAN HODOM: Excuse me, you made a complaint to Mr. LaFave or to the Town?

MR. MOSALL: Oh, we're talking Mr. LaFave but to the Town as well, my nephew did.

CHAIRMAN HODOM: Okay.

MR. MOSALL: We didn't complain about the horses until the odor becomes so offensive. Now we serve food and that's just not compatible with horse manure's odor and on some of the hot days in the summer it was very offensive and while we're serving food that is definitely a threat to a business that's been there for over 50-years. That's all about all I have to say and I'm sorry about Mr. LaFave's health but I can't see what we can tolerate those horses and that smell and the looks of it there and you'll see by the pictures – not very good. Thank you very much.

CHAIRMAN HODOM: Thank you sir. Anyone else? Just introduce yourself to us and your address.

MR. MOSALL: Okay. I'm Douglas Mosall I live at 447 Krumkill Road right next to Mr. LaFave. I've been a resident since 1993 prior to Robert moving to 445 Krumkill Road. I inherited it from a deceased aunt. I better stick with my letter here.

CHAIRMAN HODOM: Take your time, relax.

MR. MOSALL: Okay. Mr. Lafave's since his moving to 445 Krumkill Road has not been a very neighborly person. I've heard a lot of rumors from his past neighbors and from what I'm told they were glad to see go. They say he's a pain in the ass, constantly causing trouble so I took this as a warning that he's going to be a problem when he's moves next to me.

CHAIRMAN HODOM: Doug I would just ask you to not get into personalities but let's stay with the issue this evening regarding the horses.

MR. MOSALL: Since living to Mr. LaFave I've been subjected to some problems. I try to mind my own business and do my own thing; Mr. LaFave has turned me into the dog warden, Mr. LaFave has had an on-going feud with my brother Robert Mosall who operates Mosalls grove. Most of it trivial stuff for accusing my brother and myself of moving property stakes that was eventually found where they belonged. To my brother cutting down brush that hung over the property line that interfered with the volleyball court.

Most of the problems could have been avoided if we had two reasonable people meaning Mr. LaFave and my brother Robert, but the two of them are like water and oil. They don't mix and both are not reasonable and they get under each other's skin. Mr. LaFave asked me to sign this petition to keep his horses and my response was that I didn't care to get into his battle with my brother and that it wasn't right for me to sign it. The horses don't bother me because I live across from Krumkill Stables and I enjoy having them across the street however I didn't care for the threats and intimidation that Mr. LaFave pushed on me saying he was going to make it very uncomfortable if I didn't assist him and he didn't get his way keeping the horses.

You see Mr. LaFave is old school. He believes that the way to get things his way is to threaten physical harm by kicking ones ass. Mr. LaFave has made such threats to myself, which were pretty much laughed off. You see Mr. LaFave has done things in attempts to create harm to my brothers' livelihood, his business by turning his back yard into a dump and raising his property creating water flow problems. Mr. LaFave intentionally started cutting wood with a chainsaw at the property line while a wedding was taking place at the grove. And he has also threatened to continue his evil ways if he does not get his way. Mr. LaFave has gone to the county in attempts to find out if the purchase of property from my uncle or to my uncle from his aunt was legal where he ran into a family member of ours. Needless to say that was a dead end. He's made threatening comments that he's going to the Town of Guilderland in attempts to get my fathers small engine business closed down. Honestly I can't support his petition because he's just a bad neighbor.

CHAIRMAN HODOM: Thank you. Anyone else have anything to say? Now is your opportunity. Young man? You have to come up and introduce yourself to us and give us your address if you would.

MR. FARRELL: My name is Eric Farrell, I'm Bob Mosall's stepson and I live at 506

Russell Road and I was just wondering what the four requirements are to keep the horses at Mr. LaFave's.

CHAIRMAN HODOM: We can provide those to you. I don't want to go through them now because it will take some time. We can get that information to you, it's available at the Town Hall in the Building Department. That's probably the best way to get it because then you'll get the accurate description of what the requirements are for a Use Variance. So if you stop up there tomorrow and ask them what the Use Variance requirements are, they'll be happy to give you a copy.

MR. FARRELL: Thank you.

CHAIRMAN HODOM: Mr. Mosall?

MR. MOSALL: I think everything's been said.

CHAIRMAN HODOM: Okay. Does anyone else have any comments? Okay the hearing has been adjourned to January 5th at 7:30 p.m. We'll see you then, have a good Thanksgiving everyone.

Hearing adjourned 8:30 p.m.

- - -

CHAIRMAN HODOM: Mr. Dertinger just let me preface the hearing that there's a question whether or not you or Mr. Dunbar –

MR. DERTINGER: Dunbrook.

CHAIRMAN HODOM: Dunbrook, right?

MR. DERTINGER: Right.

CHAIRMAN HODOM: Has any standing in the hearing this evening and I say that because my understanding as the owner of the property is Mobile Corporation.

MR. DERTINGER: The owner of the property is Mobile Corporation but he leases...

CHAIRMAN HODOM: I understand that but the decision and I'll direct to counsel, the decision to allow any accessory uses on that property has to come from the owner, not from the lessee.

ATTORNEY MOORE: It could come from the lessee depending on the terms of the lease.

CHAIRMAN HODOM: I don't know if we have that.

ATTORNEY MOORE: We don't have the lease.

MR. DERTINGER: Well when I talked to Matt Dunbrook about that he said that everything that – Mobile pretty much – the way he explained it was he can pretty much do whatever he want with the property as his even though – because he's paying the lease.

CHAIRMAN HODOM: And I don't disbelieve that, believe me but just to make sure everything's on the up and up. We do have a letter from Mathew Dunbrook giving you permission to sell Christmas Trees on the property. I'll guess what I'll ask you to do is when you're talking with Mr. Dunbrook – you don't deal with Mobile Corporation?

MR. DERTINGER: No.

CHAIRMAN HODOM: Okay. We would need a copy of his lease showing that he has authority to allow this type of business to occur without their approval or we will need a letter from Mobile Corporation authorizing you to sell Christmas Trees on his property.

MR. DERTINGER: Okay.

CHAIRMAN HODOM: Okay?

MR. DERTINGER: Fine.

CHAIRMAN HODOM: So in saying all that just introduce yourself to us and tell us what you want to do and why you want to do it, but let me – I haven't gone through the thing have I?

The next order of business this evening is a public hearing for a modification to a previously granted Special Exception under Article VI, Permitted Uses, Section 128-17 C (3), "CC" Retail Commercial District requested by James Dertinger, (Applicant), Dunbrook Mobile (Owner) for property at 415 Route 9W, Glenmont, New York 12077. The Applicant wishes to sell Christmas Trees at the premises 415 Route 9W, Glenmont, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is seeking a modification to an existing Special Exception for the purpose of selling Christmas Trees. The existing facility is currently operating under a Special Exception for a motor fueling station with auto repairs and is located in a "CC" Retail commercial District.

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 3, 2004 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of James Dertinger (Applicant), Dunbrook Mobile (Owner) for a modification of a Special Exception under Article VI, Permitted Uses, Section 128-17 C (3), "CC" Retail Commercial District of the Code of the Town of Bethlehem to sell Christmas Trees at the premises 415 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 27, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. You were here for the earlier presentations; we'll abide by those same regulations. So just introduce yourself and tell us what you want to do.

MR. DERTINGER: Okay. Jim Dertinger; friends with Matt for a while and just got an idea from a friend of mine who did Christmas Trees in the past at another location and I thought that that would be a location to do that. I talked to Matt about doing it, apparently there's certain questions that would come up would be – first of all we're not looking to make it into anything elaborate. We're not going to set up anything that's going to be permanent. The only structure that we're going – would set up in the spot would be in the back of the building. It's just a fence, a temporary fence, fencing – just to have the trees in there so you know so they don't get stolen overnight and stuff like that. There's not going to be much – it's not going to be a really elaborate program. Some of the questions would be environmental issues, I don't really see too many environmental issues with selling Christmas Trees. I mean after, you know we're going to keep the place clean and afterwards we're going to make sure that everything that came onto the property as far as fencing and stuff like that gets off the property and gets stored in an appropriate location.

As far as traffic goes, I don't really see more traffic than what is already in that area. It's a really busy intersection as it is but I just expect people that are driving by, you know see the sign that says Christmas Trees and just stop in and get a Christmas tree. We're not looking to sell anything else with the Christmas trees except for maybe a few Christmas wreaths. We're not going to sell like lights or anything like that.

What were the other issues? As far as - - the reason for doing it is pretty obvious just to make a little extra money during that time of year. We're also willing to give some money per Christmas tree to the little league just as a nice jester to the community. We're not looking to sell the Christmas trees at a overly expensive price over to what we bought them for so it's not like we're looking to take people – just to make a little extra profit. It's not anything like that. To me it seems pretty simple but of course you probably have some other questions. All we're doing is in the back we're planning on setting up a make-shift fence – fencing area just to put the trees in. I think it gets kind

of dark back there at night so we were going to probably have some kind of lighting there, just one set, nothing really high powered or anything like that where it's going to bother anybody in the neighborhood.

CHAIRMAN HODOM: While you're talking about those items, the fencing, why don't you describe the fencing a little bit better than just say fencing. What are you proposing to place there?

MR. DERTINGER: Well we were looking at 2-different things. The one that we think is probably going to be the easiest would be like the construction type fencing. It's a plastic – it's like a...

MR. MICELLI: They call it a snow fence, like a wind barrier where you see on the highway where there's an open field that's orange.

MR. DERTINGER: Right something like that. Basically when we're there it's just going to be pulled back and pushed towards the wall and then at night it's just going to come back and rap around the area where the Christmas trees will be.

CHAIRMAN HODOM: So what purpose then does this type of fencing provide to you?

MR. DERTINGER: Well obviously – I mean if people really want to steal a Christmas tree, I mean it's just like breaking into a house. If somebody really wants to get into a house they can break the windows in the house but it's just a deterrent to – from people coming and just picking up Christmas trees and taking off with them, it just makes it a little bit more difficult. You know if somebody comes in and does that hopefully somebody will spot them and it's just a deterrent that's the whole reason why it would be there.

CHAIRMAN HODOM: So you're proposing to install and correct me if I'm not saying it correctly, roughly a 40-inch high orange colored, vinyl material fencing – construction type fencing would post at what? 10-foot on center, I mean the fencing is only about 40-inches high so I mean if somebody wants to reach over and grab a Christmas tree they certainly can do that. I thought you were talking about a temporary construction chain link fencing but you're not talking about that.

MR. DERTINGER: We haven't exactly – we haven't exactly figured out exactly what type of fencing we were going to use but I thought the fencing was a little bit – the fencing I'm talking about was probably about my height which would be 6-feet.

CHAIRMAN HODOM: But you won't find any fencing in the vinyl construction type fencing that size, you'll find it more in a chain link fence.

MR. DERTINGER: Okay.

CHAIRMAN HODOM: And that also can be a temporary construction fence. So what you're saying is it's going to be about 6-feet high and it's there to provide security for your product?

MR. DERTINGER: Right.

CHAIRMAN HODOM: Okay.

MR. DERTINGER: It's not going to be a permanent thing; we're not going to drill any holes in the ground. It's not going to be any attachment to a wall or anything it's just basically going to be a free standing thing that can be taken – put up and taken down with relative ease.

CHAIRMAN HODOM: Why don't you describe the area that you're talking about. You have a plan here that basically shows where you're going to have the temporary fence, what area are you talking about. I know you started at this existing 4-foot high metal fence and you go to somewhere around the far corner. There's a little fence here that you're starting at and then you're terminating over here. How far out from the building are you coming out?

MR. DERTINGER: Probably about 8-feet, not too much.

CHAIRMAN HODOM: 8-feet, okay.

MR. DERTINGER: Say 10-feet.

CHAIRMAN HODOM: And then the width to within what, 3 or 4-feet of the corner, the far corner?

MR. DERTINGER: Right.

CHAIRMAN HODOM: Okay. So 10 feet out from the building and terminating it roughly 4 feet from the south corner?

MR. DERTINGER: Right.

CHAIRMAN HODOM: Okay. Lighting, what kind of lighting were you planning on using?

MR. DERTINGER: The only thing that I thought about was we were thinking about using a – just one string of lights of the white lighting just going out from - - it really depends on how dark it is back there. I think there's enough light but...

CHAIRMAN HODOM: Well there's 3-fixtures there currently on the back of the building.

MR. DERTINGER: Right.

CHAIRMAN HODOM: Two of them happen to work and one doesn't. Have you been there at night to see if that's adequate lighting for you?

MR. DERTINGER: I haven't really checked it out thoroughly yet.

CHAIRMAN HODOM: Your string of lights are what, incandescent lights?

MR. DERTINGER: Right just regular...

MR. MICELLI: 60-watt light bulbs?

MR. DERTINGER: I don't know about – no, not that strong. They would be more like Christmas tree lighting.

CHAIRMAN HODOM: Okay. Not that you're not planning anything that would shine out into the street...

MR. DERTINGER: No.

CHAIRMAN HODOM: Into Feura Bush Road?

MR. DERTINGER: No.

CHAIRMAN HODOM: Have you given any thought to the traffic flow as far as coming into the area to purchase the trees and leaving?

MR. DERTINGER: The way I thought about it was people who were going to come in for Christmas, they – the people who are using the gas station would be in the front of the gas station. People coming in for Christmas trees would come in through the back, it would sort of be like a drive through. When you look at that map it sort of makes it look like there's actually a barrier there. This whole area here - -it's all paved, there's no - - I guess it's like a....

CHAIRMAN HODOM: Well no it just says sewer lateral. There is a curb here.

MR. DERTINGER: There's no guardrail here.

CHAIRMAN HODOM: This is underground.

MR. DERTINGER: Existing guardrail, none of that exists. This is all paved area right here so people driving in this way, they'd just stop here and we'd throw the Christmas tree on top of the car and tie it down and then you can pull out or visa-versa and coming the other direction.

CHAIRMAN HODOM: Where do they park when they pull in?

MR. DERTINGER: Well they can park pretty much anywhere along back here and there's parking spots right here and then there's parking spots on this side of the building. There's a lot of parking over here.

CHAIRMAN HODOM: Okay. Are all these vehicles going to be removed, is that what you're saying?

MR. DERTINGER: I would have to talk to Matt about that.

CHAIRMAN HODOM: Okay.

MR. DERTINGER: Hopefully we can get him to move some of those vehicles.

CHAIRMAN HODOM: And what hours of operation were you planning on?

MR. DERTINGER: Talking to a friend that's done it the best times to do it is from I mean we can work with whatever the Town wants and we were thinking 3 to 9 during the week days and then pretty much all day Saturday and until like 6:00 on Sunday.

CHAIRMAN HODOM: And what kind of advertising were you going to have, any signage?

MR. DERTINGER: We were planning on having 2-signs, one on each – one on 9W and the other on Fuera Bush Road, just right in the – just on a pole, just painted on.

CHAIRMAN HODOM: Like an A frame type of sign?

MR. DERTINGER: Right.

CHAIRMAN HODOM: One on each road, one on 9W and one on Fuera Bush Road?

MR. DERTINGER: Right.

CHAIRMAN HODOM: Will they be lighted or just free standing?

MR. DERTINGER: We didn't have any plan on lighting them. I would say no that would be too much.

CHAIRMAN HODOM: Do you already have an order in for Christmas trees now?

MR. DERTINGER: Not presently no. You'd have to get – I have a friend who's doing Christmas trees on Central Avenue in Colonie and if we get everything done we can go on his shipment on his Christmas trees but we don't have an order in yet.

CHAIRMAN HODOM: Well if you had to place an order what's the time frame from your placing an order to obtaining the trees.

MR. DERTINGER: We would have needed to do it already.

CHAIRMAN HODOM: Okay.

MR. DERTINGER: Basically what we're doing is because there's just a lot of things going on, this year we probably wouldn't even sell Christmas trees and if we did it would be a very small just like a very small scale compared to what it would be maybe a few hundred trees to maybe 4 to 500-trees on a normal basis. You're supposed to order trees back in September like early September because that's the time when their cutting them and everything else and counting them out.

CHAIRMAN HODOM: Do they actually cut them that early?

MR. DERTINGER: Yeah.

CHAIRMAN HODOM: No wonder they dry out so fast.

MR. DERTINGER: I mean - - they go quick to because there's a few places that we called in October just to see what, you know see what kind of time frame that we could get trees in, they were already all sold out. They pretty much all come from Canada, all the trees.

CHAIRMAN HODOM: And again the time frame that you were looking at was?

MR. DERTINGER: Right after the Thanksgiving to pretty much Christmas Eve. The biggest days are going to be Friday after Thanksgiving, that's a big day and then the weekends.

MR. BROOKINS: So you're not going to order this year, you do have a source from your friend out in Colonie that you can get some from.

MR. DERTINGER: Right.

MR. BROOKINS: Okay.

MRS. O'BRIEN: And you're planning to do this on an annual basis?

MR. DERTINGER: Right. The idea of getting the Variance was you know something that we would have in place and just so we would be able to do it from year to year.

MR. MICELLI: How did McDonalds feel about that? Did anyone approach the management over there to tell them what you might be doing?

MR. DERTINGER: No we didn't.

MR. MICELLI: I'm just saying that it might be wise in case they might complain, you never know I mean you might want to touch base with them and say hey we might be doing this just to save some heartache down the road.

MR. DERTINGER: Right. I can definitely stop over and say hello.

MR. MICELLI: I think that would be a good idea.

MR. DERTINGER: And you know tell them if they have any problems to come and see me. I would be - - the other thing to is there is - there are trees between the Mobile and the McDonalds which shelter a lot of - any - the small lighting would even go through that. There's enough distance and enough trees and stuff that really - to blind it from them.

MRS. O'BRIEN: Mr. Dertinger are you planning to operate this by yourself or with other people?

MR. DERTINGER: Pretty much myself and my girlfriend was planning on doing the accounting part of it, paperwork. I was going to do all of the physical work.

MRS. O'BRIEN: So you'll be there from 3 to 6 every day and on the weekends?

MR. DERTINGER: Most of the time right. If not it would be just - most of the time it would be me, if not it would be just friends helping out.

MRS. O'BRIEN: Do you have a full time job?

MR. DERTINGER: Yes. I'm a financial advisor but this was just something that I was planning on doing on the side just for Christmas time most people don't want to talk about anything except for Christmas presents so it's not like - I don't do anything pretty between Thanksgiving and Christmas anyway so this is just something to fill in.

CHAIRMAN HODOM: Do you offer that as a recommendation to your clients as well?

MR. DERTINGER: I might give them a free one you know depending on how good the client is.

MR. BROOKINS: A related issue on selling Christmas trees that may create some immediate time frame difficulties and that is if my memory serves me correctly you've got to collect sales tax. Do you have a sales tax number and a sales tax permit?

MR. DERTINGER: We can...

CHAIRMAN HODOM: Details, just details.

MR. BROOKINS: Sorry I had to bring it up.

MR. DERTINGER: I could just run it – I also do a – a buddy of mine is into automobiles and we have a DBA and we have a sales tax ID and stuff like that so we can just run it through that business just not a problem.

CHAIRMAN HODOM: Any other questions?

MR. WIGGAND: I have something here.

CHAIRMAN HODOM: Go ahead Bob.

MR. WIGGAND: The existing drive areas and I noticed that it's a wide area there. Now that is going to remain is it not? You're not going to do any – because your plan shows the area against – this is your building...

MR. DERTINGER: Right.

MR. WIGGAND: And your existing drive area is around here and you have cars parked along here. Is that existing drive area going to stay open or are you going to be storing trees in this open area over here?

MR. DERTINGER: No, no the trees would be right here.

MR. WIGGAND: Just only in that one area?

MR. DERTINGER: Right.

MR. WIGGAND: Okay. That's one of my questions and the fencing – I've guessed you answered that, there's going to be plastic fencing?

MR. DERTINGER: Right either that or...

MR. WIGGAND: And that's going to be just around this area here and this is going to be some kind of - - it's taken down when you're selling the trees?

MR. DERTINGER: Right.

MR. WIGGAND: Okay, and the lighting you've already described that and the traffic flow is not going to be changed from what is now because I know many of us go out very frequently in this area so you're not going to be changing as far as drive in and out from the main road?

MR. DERTINGER: From that point no, this is all going to be left open.

MR. WIGGAND: Because this is your fuel delivery area here.

MR. DERTINGER: Right this makes it look like that there's not a lot of room here, there's actually going to be a lot. They're actually more over this way. This makes it look like there's not a lot of room there but there is a lot of room.

MR. WIGGAND: And you've already mentioned about advertising, you're going to have 2-signs. Are they going to be out by the road I don't know if that was picked up from what you mentioned.

MR. DERTINGER: There's a median right here and right here.

MR. WIGGAND: I was just going to ask you where are you going to put those signs, out here?

MR. DERTINGER: Right, just on a post here and then there's one – there's another median up, probably this one.

MR. WIGGAND: Well it's good for us to get that on the record so we know where these signs are going to be.

MR. PLATEL: We don't want anything disturbing site distance and look into the signs – these type of signs would be part of the Special Exception.

MR. WIGGAND: Right. That's why I'm mentioning this because that leads into something a little heavier than just putting a sign out here. If they're out here, fine but if you planning on putting signs anywhere else on this property you'd have to refer to Mark here to see if that's legal.

MR. PLATEL: My biggest concern is site distance, not blocking.

MR. DERTINGER: They're not going to be huge signs.

MR. PLATEL: Usually A frames are right on the ground and they're usually about 4-feet high right in the eye view of people sitting in their car so that's the concern that he's having is where they're going to be located so you're not going to block somebody's site of a car coming on or a tractor trailer.

MR. DERTINGER: I don't see it – the signs are really not going to bigger than...

MR. WIGGAND: It's happened to us many times you know all of a sudden there's – a sign is very light all of a sudden we ought to put a sign out here. I'd like to have a little bit more of an idea of what your going to do with the signs. Is it going to be down here on Fuera Bush Road or is it going to be out here on 9W?

MR. DERTINGER: We were just planning on putting one here..

MR. WIGGAND: One here, okay.

MR. DERTINGER: And one in here.

MR. WIGGAND: Mark you've got the cap on this?

MR. PLATEL: Yes.

MR. WIGGAND: He's the boss when you start talking signs.

MR. MICELLI: See that's by the pump island, the gas pumps.

MR. DERTINGER: Yeah and there's a little bit more room between the pump islands.

MR. WIGGAND: I realize that they're going to be like a regular billboard sign probably about 4-foot high, 3 ½-foot high and traffic could see over it but I just assume have it on the record now that you're asking for some areas to put signage.

MR. PLATEL: Well most of the concerns for the signs would be the people pulling out of the gas station.

MR. WIGGAND: That's it; we're more concerned about that because you have you're large canopy here and your gas pumps.

MR. DERTINGER: I can see a concern there, you don't want accidents and stuff like that but judging from when I pull out of there...

MR. WIGGAND: Well see you have a pretty busy business here operating all the time.

MR. DERTINGER: Right.

MR. WIGGAND: Now if they were just coming in off of Fuera Bush Road or coming in off of 9W back in here it wouldn't be to bad but they may be coming through in all directions. I don't know; you couldn't help that. You can't be there to check where all these cars are going when they're filling up at your pumps and things like that.

MR. DERTINGER: Right.

MR. WIGGAND: You have other business's going here is what I'm trying to relate to you.

MR. DERTINGER: Right I don't see...

MR. WIGGAND: You don't see a problem with it?

MR. DERTINGER: No.

MR. WIGGAND: Everything's going to be centered here in your back wall of your building.

MR. DERTINGER: They're not going to be that big where I think they would come and complain.

MR. WIGGAND: I don't want to sound difficult with it. We have to approve you to do this and also this – I don't believe Mike that this is going to be a year to year thing that we're giving him know is it?

MRS. O'BRIEN: That's what he's asking for.

MR. WIGGAND: That's what I thought he said that he wanted a permanent approval of this business or you'd have to come back to us each year like this.

MR. DERTINGER: I wouldn't expect to come back here every year to do this.

MR. WIGGAND: I think the Chairman will cover that a little more.

MR. DERTINGER: That's a lot time and energy wasted for...

CHAIRMAN HODOM: You mean you don't want to come back and see us?

MR. DERTINGER: Sure.

CHAIRMAN HODOM: I understand that you were given a copy of the 1967 and the 1986 resolutions that were passed by previous Boards.

MR. DERTINGER: Right.

CHAIRMAN HODOM: Have you had an opportunity to review those?

MR. DERTINGER: I read them quickly and the only thing I would say about those is – I mean one of them was made before I was even born and...

CHAIRMAN HODOM: But they all go with the property.

MR. DERTINGER: Right.

CHAIRMAN HODOM: And the requirements stated in these resolutions are to be maintained.

MR. DERTINGER: Right.

CHAIRMAN HODOM: Unless we change them and if you looked at it the resolutions were both made to the Mobile Oil Corporation, not to Mr. Dunbrook so it leaves me to believe that Mr. Dunbrook doesn't own the property and probably his lease doesn't say that that he has the right to make these changes so I'm going to ask you again that we need a copy of the lease and I would also ask that you have Mobile Oil Corporation submit a letter requesting that this use be allowed on their property.

MR. DERTINGER: Okay.

ATTORNEY MOORE: If it's not otherwise specified in the lease.

CHAIRMAN HODOM: Right. I can do it in one or two ways, I can leave the hearing open until a later date or we can close the hearing and you'll get the information to us within 7-days. Can you do that?

MR. DERTINGER: Knowing Matt I would leave it open.

CHAIRMAN HODOM: When do you think you can have the information to us?

MR. DERTINGER: That depends on, well Mobile Oil is really slow I mean you're dealing with a big corporation and stuff like that.

CHAIRMAN HODOM: I would expect that if the lease doesn't give him the right to make these changes that he would have already contacted Mobile to request this change. I'm sure he has a copy of these resolutions as well.

MR. DERTINGER: Right when I talked to him though he said – I mean he has a right to put in like what he was thinking about doing is putting a Krispy Kreme shelving into his business. He doesn't have to contact Mobile Oil to do something like that.

CHAIRMAN HODOM: Well again I would suggest that you read the resolutions, that he would read the resolution and then we'll proceed from there. We'll leave the hearing open and I request that you have the information to us within 15-days at the latest.

MR. DERTINGER: Okay.

CHAIRMAN HODOM: Does the Board agree with that to leave it open?

MR. MICELLI: Yes.

MR. WIGGAND: That's all right.

MR. DERTINGER: As far as time frames I wouldn't expect to come here every year but on the flip side I'm sure you're not going to say well we're not going to give you permission to do this forever but I would say to meet somewhere in the middle.

CHAIRMAN HODOM: Well the problem with that Mr. Dertinger is that if we were to approve the application it goes with the land.

MR. DERTINGER: Right.

CHAIRMAN HODOM: You don't have to be there if you decide to leave the area somebody else could sell Christmas trees later on and that's one of our concerns and that's why we need all the information.

MR. DERTINGER: Okay.

CHAIRMAN HODOM: And if you have any more specifics of what you propose to do because you weren't very specific this evening about what your plans were and how to operate the business, put that down in writing for us and also give that to us within 15-days.

MR. DERTINGER: It's really kind of - we're, I'm not - - going back to what I was saying in the beginning it's not going to be an elaborate thing, it's not...

CHAIRMAN HODOM: Just tell us in simple terms on what you plan on doing.

MR. DERTINGER: It's very simple, it's getting about 400 to 500-trees, which might sound like a lot but it's not. Having them down there, you know they come in on 1-truck, you know they pretty much get piled in the 1-fencing area and then we have wooded - we're going to make like these simple wood things that you can place the trees in and hold them up so people can take a look at them. And then you know they buy the tree and we throw them onto the car; we tie them onto the car and they're off the way they are. I mean we're not going to sell anything additional like, you know dolls and you know lighting or anything like that. It's not an elaborate thing, it's just plain and simple; selling a few trees and we're going to set up and any - - when we leave there after Christmas day you're not going to know we were there. There's not going to be any signs left. There's not going to be any fence left. There's not going to be any holes. There's not going to be anything except for maybe a couple of pine needles here and there.

MR. WIGGAND: That was going to be one of my questions when does the clean up take place, the day after Christmas?

MR. DERTINGER: Pretty much, it wouldn't be Christmas day. I mean we're going to keep the place clean.

MR. WIGGAND: I'd like to have it on the record that you are going to take care of it.

MR. DERTINGER: Sure.

MR. WIGGAND: Sometimes things can lay around for a while.

MR. DERTINGER: Right. We're not planning on leaving anything.

MR. WIGGAND: Okay.

MR. DERTINGER: And we're going to keep the place clean as we go.

CHAIRMAN HODOM: Mr. Dertinger I guess it's really somewhat late in the season for you to operate this year, would you say that?

MR. DERTINGER: Sure.

CHAIRMAN HODOM: So if we were to give you to January 5th to provide that additional data to us, you can have it to us by then?

MR. DERTINGER: Sure.

CHAIRMAN HODOM: Okay.

MR. PLATEL: Also Mike you mentioned you wanted more specifics that would be important, get specifics on the sign and the location.

CHAIRMAN HODOM: Yes.

MR. PLATEL: The size of the signs.

CHAIRMAN HODOM: I'd like something more specific on the fencing, the lighting and the signage, the area of the fence, what type of fence you really are going to install there.

MR. DERTINGER: Okay.

CHAIRMAN HODOM: Firm hours of operation and anything that we talked about tonight that - - a lot of it you weren't to specific on.

MR. DERTINGER: Okay.

CHAIRMAN HODOM: And I'd rather have more specifics than not.

MR. DERTINGER: Okay.

MRS. O'BRIEN: You'll probably also have to address how you're going to take care of plowing or whatever in case of snow because cars are still going to have to get in and out.

MR. DERTINGER: I'm sure whatever Matt has - does for plowing is going to be still...

MRS. O'BRIEN: Well that's - - you know you'd have to be sure that that was included.

CHAIRMAN HODOM: You may feel that this is a lot of information for a small operation, but you're asking for it to be a continuous operation year to year and in order for us to review that and make a determination on that, we need pretty much a total package of what's going to happen there.

MR. DERTINGER: Okay.

CHAIRMAN HODOM: Because that would be part of a resolution that would be adopted by this Board if in fact granted your application. So those terms would have to be adhered to by you and by anyone else who would follow you, okay?

MR. DERTINGER: All right. I mean as far as plowing goes I'm sure Matt has somebody who comes in and plows his lot and that's not going to change his...

MRS. O'BRIEN: Well you would have to be sure that that was included as a part of your agreement to use that parcel, that part of his property.

MR. DERTINGER: Well we're not responsible for plowing – he's not making us responsible for plowing his lot, I mean he's going to plow his lot in his normal – I mean...

MRS. O'BRIEN: But does he normally clear back there were you'd be expecting to have cars parked?

MR. DERTINGER: He clears back there. All of that whole area gets cleared I mean anything else that would be needed – I mean we'd probably would have to shovel out where the Christmas trees are but that's not going to be his responsibility but he would take care of his lot as he normally would and we have no responsibility in that.

MR. WIGGAND: He does do a pretty good job with that. I've used that lot for many years now driving in and out for fuel and he's always kept the lot clear. I don't know if it's his own snowplow but he does a good job keeping that place clear all around that building because I drive around it myself just to watch for fire. I'm an ex-fire chief and I'm very observant of that type of thing just to make sure the fire trucks can get around there.

CHAIRMAN HODOM: Can I have a motion to reconvene on January 5th at 7:45?

On a motion made by Mrs. O'Brien, seconded by Mr. Micelli and unanimously carried by the Board, the hearing was rescheduled to January 5, 2005 at 7:45 p.m.

Hearing adjourned 8:55 p.m.

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The next order of business was to consider the application of Michael Rowe, 350 Elsmere Avenue, Delmar, New York. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Michael Rowe for Variance under Article X, Highway Frontage and Access, Section 128-41, Driveway Placement on Residential Lots for the removal of an existing driveway and replacement in a different location, which will cross over a 50-foot PRD setback at premises 350 Elsmere Avenue, Delmar, New York, it is hereby ordered that a public hearing on this matter be held January 5, 2005 at 8:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of Joanne Lenahan, 3 Longmeadow Drive, Delmar, New York. The application was found to be in order and Mr. Brookins made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Joanne Lenahan for Variance under Article XVIII, Rear Yards, Section 128-79, Required Depths for construction of an attached garage, which will encroach into the rear yard setback requirement at premises 3 Longmeadow Drive, Delmar, New York, it is hereby ordered that a public hearing on this matter be held January 19, 2005 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was a discussion of the previous public hearing held in the matter of Walter & Irene Wagner for a Use Variance under Article VI, permitted Uses, Section 128-11, Residence “AA” District to construct a carport on a vacant piece of property, which is not a permitted without a main structure in an “AA” Residence Zone at the premises Ackerman Avenue, Delmar, New York. The following points were brought up by the Board members: The Application was considered withdrawn due to lack of any information or documentation the Board requested to continue a public hearing. More than 60-days has passed since the Applicant has shown an interest to continue with another public hearing. On a motion made by Chairman Hodom, seconded by Mrs. O’Brien, and unanimously carried by the Board, the Board considered the application as withdrawn.

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The next order of business was to consider the proposed resolution of Karen McGuire, 38 Pineview Avenue, Delmar, New York 12054.

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

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a Variance under Article XVI, Front Yards, Section 128-66, Required Depths requested by Karen B. McGuire (“Applicant”) for property at 38 Pineview Avenue, 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 November 3, 2004; and,

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

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

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

FINDINGS OF FACT

The Applicant is proposing to construct a 5-foot by 6-foot, 30 square foot roof over the existing front steps. The new roof will create a front yard setback of 30.5 feet. This is 4.5-feet shy of the 35-foot front yard setback that is required. The existing structure is located in an "AA" Residence District and is occupied as a single-family dwelling.

The Applicant seeks to construct a roof over the existing concrete steps for several reasons. Primarily, the present uncovered steps are a safety problem in the winter months. Water drips off the roof onto the steps and freezes, and the ice builds up. The freeze-thaw cycle has, over time, damaged the condition of the concrete steps. Deliveries to the home could remain covered if a roof existed, and the Applicant also testified that a roof would improve the appearance of the front of the house.

The existing concrete steps are not proposed to be replaced.

At the public hearing, the Applicant presented letters in support of the project from two neighbors. No one spoke in opposition to the project.

CONCLUSIONS OF LAW

Based on the above Findings, this Board concludes that the Applicant requires the requested variance.

The Board has considered the benefit to the Applicant if the requested variance is granted, as weighed against the possible detriment to the health, safety and welfare of the neighborhood by such grant.

The requested variance will work no undesirable change in the character of the neighborhood and will not be a detriment to nearby properties.

The benefit sought by the Applicant cannot be achieved by some method other than a variance.

The requested variance is minimal.

The requested variance will not have an adverse effect on the physical or environmental conditions in the neighborhood.

Accordingly, the Board grants the Applicant's request for a Variance to construct a roof over the existing concrete steps on the following conditions:

1. The project will be constructed in conformity with the testimony before the Board and the plans and documents submitted to it;
2. The project will conform as nearly as possible to the existing color of the house and roof; and
3. The project will be constructed within two years of the date of this resolution.

November 17, 2004

Michael C. Hodom
Chairman
Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on November 18, 2004.)

The next order of business was to consider the proposed resolution of Dominick Carota & Dr. Stephen Sipperly.

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

RESOLUTION

* * *

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a Special Exception under Article VI, Permitted Uses, Section 128-23, Rural Districts Not Zoned, requested by Dominick Carota and Dr. Stephen Sipperly for property at 1406 River Road, Selkirk, 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 October 6, 2004; and,

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

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

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

FINDINGS OF FACT

The Applicants are seeking a special exception to construct a 1,718-square foot structure that will be used as a kennel for the housing of up to 10-dogs. The structure will meet all area requirements in a Rural District Not Zoned.

The Application states that the structure will enable the residents to care for their show dogs. The site plan does not show any additional parking, which would only be required if the kennel was to be operated as a business with outside employees, leased space and other business related operations.

The existing structure on the property is occupied as a single-family dwelling and is located in the Rural District Not Zoned.

Under the Town Zoning Code, a dog kennel consists of three (3) or more dogs. A dog kennel is allowed in the Rural District Not Zoned by Special Exception.

Applicants are presently operating a dog kennel on the property without the requisite approval of the Board. The dogs are housed in the garage at 1406 River Road, with adjacent kennel runs that allow the dogs to be outside.

Applicants now propose to construct a 1700+ square foot Morton building to house up to 10 dogs. The building would have inside and outside runs for the dogs, and appropriate facilities for heating and cooling.

The dogs would be owned by the Applicants, by two American Kennel Club certified handlers, and by third parties. The dogs would reside on the property when not being taken off premises by the handlers for shows.

The proposed kennel would not be open to the public for boarding of dogs.

Applicants have a breeding license from the New York Department of Agriculture and Markets, but not a boarding license. The property is not located in an Agricultural District.

Applicants propose that, in warmer weather, the dogs would be outside in the proposed structure from 7:30 AM to 8 PM. A former employee of the Applicants had allowed the dogs to run free at night, prompting a complaint from one of the neighbors.

Applicants have recently held 4 events at the property described as dog shows for the Hudson River Valley Hound Association, which brought significant numbers of persons to the property and increased motor vehicle traffic.

The property is located off a private road, which is used both by the Applicants and a neighbor for access to their respective properties.

The Board received a written statement from 4 neighbors of the Applicant supporting the project. At the public hearing, one neighbor spoke in favor of the project.

At the hearing, the adjoining neighbor also spoke in opposition to the project, citing concerns over the effect of the proposed project on his residential property (chain link fence, kennel runs, kennel building), and also concerns for the excess traffic that could be generated by the operation of the proposed kennel.

The members of the Board have visited the property, and have also viewed the surrounding properties, both developed and undeveloped.

CONCLUSIONS OF LAW

After reviewing the evidence submitted by the Applicants, after visiting the property and the neighborhood, and in review of the above findings, the Board concludes that the proposed project would not be appropriate at the location proposed, and the application is denied.

The proposed location of the kennel building, the location and appearance of the chain link fence around the property, the need for landscaping to screen the view of the proposed operation, and the potential for increased noise and traffic are such that the proposed use will hinder or discourage the proper development and use of adjacent vacant land, and may also impair the value of adjoining residential properties.

The public convenience and welfare will not be substantially enhanced by the proposed project, and the appropriate use of adjoining properties may be substantially injured by the proposed project.

The application for a Special Exception is denied.

November 17, 2004

Michael C. Hodom
Chairman
Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on November 18, 2004.)

On a motion made by Mrs. O'Brien, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the October 20, 2004, meeting were approved as amended.

On a motion made by Mrs. O'Brien, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the November 3, 2004, meeting were approved as amended.

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

Meeting Adjourned: 9:40 p.m.

Respectfully submitted,

Secretary