

**TOWN OF BETHLEHEM
BOARD OF APPEALS
October 15, 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
 Marjory O'Brien

 Donald DeAngelis Attorney to the Board

 Mark Platel Building Inspector

ABSENT: Patrick Seely

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. Our first order of business this evening has been withdrawn, which was an application of Mr. McQuide. We'll continue on and we'll have another hearing at 7:45 so we can handle some other business this evening. We have some new applications.

The next order of business was to consider the application of John & Joanne Danaher, 102 Berwick Road, 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 John and Joanne Danaher, for area Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings for construction of an addition, which will exceed the allowable percentage of lot occupancy at premises 102 Berwick Road, Delmar, New York 12054, it is hereby ordered that a public hearing on this matter be held November 19, 2003 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955, extension 158.

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The next order of business was to consider the application of Kim and Jeffrey Riker, 33 Ashgrove Lane, Selkirk, New York. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Kim and Jeffrey Riker, 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 Ashgrove Lane, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held November 5, 2003 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. Brookins seconded the motion and it was unanimously carried by the Board.

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CHAIRMAN HODOM: The next order of business this evening is a public hearing for an Use Variance under Article VI, Permitted Uses, Section 128-11 requested by William Gregory for property at Waldenmaier Road, Feura Bush, New York. The Applicant wishes to sell Christmas trees at the premises of Waldenmaier Road, Feura Bush. Mr. Platel will you give us the reason for the hearing please?

MR. PLATEL: Yes, Mr. Chairman. The Applicant is seeking a Use Variance to sell Christmas trees at the old Dyndor Tree Farm. A Variance was granted in 1992 to this property, which was given a 10-year time limit that expired on the 31st of December 2002. At this time the Applicant is seeking to obtain a new Use Variance to sell only the trees that exist on the property.

The original Variance was granted to a 9.2-acre parcel with a single-family dwelling located on it. The house was sold off along with a 2.1-acre parcel leaving a 7.1-acre parcel with no structures on it. The property is located in an "AA" Residence Zone and currently is vacant land.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday October 15, 2003 at 7:45 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of William Gregory 270 Waldenmaier Road, Feura

Bush, New York for Use Variance under Article VI, Permitted Uses, Section 128-11 of the Code of the Town of Bethlehem for the selling of Christmas trees at the premises Waldenmair Road, Feura Bush, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the October 8, 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 ask that you stay on the issue of the application this evening. We ask anyone wishing to speak to come up front, stand or sit close to the black microphone; it's for recording purposes only. Mr. Gregory just introduce yourself to us and tell us what you want to do and how you want to do it.

MR. GREGORY: Well I'm respectfully requesting the Use Variance as aforementioned. I had purchased the former Dyndor Christmas tree lot, if you will; not the actual house probably about 2 ½ -3-years ago now and have operated the selling of the Christmas trees, which are located there for the purpose of recouping some of the investment of purchasing the property and in an attempt to kind of keep it more of a rural and farmy area.

Those trees were planted under Dyndors back in the early 90's and somewhat replanted as they were harvested up. They were planted for that purpose of selling the Christmas trees. The trees are mature and they're ready for cutting at this point. I've been taking care of those and the property at this point. The only difference that I've been doing other than what the Dyndors was he was using herbicides, pesticides and chemical fertilizers, which I have chosen not to use because the trees seem to be pretty hardy and not needing any enhancements like that.

It's been continually operating for probably between 5 and 7-years of selling the trees, growing them prior to that. In fact back when the Dyndors owned it, I own the property right next door to that and there was frequently people in the tree farm very close to our property within probably 100-feet of the house or less, and they never seem to really cause a problem to us. The only thing that they requested – or that Gordon had requested, was not doing any target shooting or other activities that might intimidate or scare Christmas tree people, so we had no problem in stopping that.

There's hundreds of local families that enjoy this Christmas tree farm. We asked that they fill out a 3 by 5 card for a drawing every year. This is a partial stack of the local families that would be purchasing these things. If anybody wants to see those, I'd be happy to pass those around. They pretty much enjoy the experience of coming and cutting the Christmas tree's down, they bring families, dogs and sometimes we even had a couple of people picnic there and get their Christmas Tree's, last year when it was very nice weather. So it's a very community friendly type of atmosphere. They get to cut a very fresh tree; it's a very local community within a few miles. We also cut some of them ourselves so that people can select a pre-cut tree for just for convenience or if their

physical abilities should dictate that.

We're really not proposing any changes, aside from scheduling. The Dyndor's were retired and they were able to sell them 7-days a week. We've only been selling them 4-weekends a year, just prior to Christmas so for a total of 8-days of actual business time. To the best of my knowledge, we haven't had any complaints of any problems, vandalism or anything like that as we've owned it. I understand that there was a situation prior to my owning it where a tree was cut on the street. That's pretty much what I had to add and we would like to find out, I don't know what the time frame is for these types of decisions because we would like to get a mailing out to the people so that we didn't have a lot of people stopping by if it goes in the wrong direction.

MR. LEWIS: Mr. Gregory, you're asking for a Use Variance. In order for us to grant you a Use Variance, there are 4-points that are required by State Law that you address. So far, you've addressed none of them. One of them is that you - - that under the Zoning regulations, you - unless we grant you a Use Variance, are going to be deprived of all economic use or benefit from the property. The second is that the hardship you would suffer is unique and does not apply with the substantial portion of the district with the neighborhood and then granting the Variance will not alter the essential character of the neighborhood and then that whatever hardship you would suffer is not self created. I assume that when you applied for this - - these points were given to you.

MR. GREGORY: Yes, I did receive a copy of a paper outlining some of the stipulations that need to be met. As far as the economic use goes, there's approximately 2500 Christmas Trees on that property, which are nearing the mature state. Those are worth between 25 and 40-dollars per Christmas tree. That would add up to, you know somewhere in the range with some losses and some trees that aren't perfect of potentially 50,000 dollars in revenue. For me to do something other than that, I mean I could look at potentially subdividing the property and putting up houses, which doesn't really fit in with the character of the land but that would be permitted from what I understand. It would be my intent in more keeping with the character of it being somewhat rural and agricultural area to keep it as a Christmas tree farm at this point. As far as it being a unique - what was the second one - was unique?

MR. LEWIS: Yeah.

MR. BROOKINS: Unique hardship.

MR. GREGORY: From what I understand, there may even be something on the books as to it being grand fathered in as an ongoing business prior to a Zoning change, and I'm not really sure of that, that was just - someone pointed that out to me earlier. As far as it being unique, you know the property was purchased for this specific use of that. I was told by both Gordon Dyndor when I purchased the property and also when I came in here to check on the status of the Variance that as long as I re-applied within 1-year of the Variance expiring that I could just get a continuation of the existing Variance. And then I was notified, when I came in to go ahead and make sure that I was under that 1-year with enough time for this to go through it's course of advertisement and scheduling and met

those criteria, but then was informed that they're not going to consider this as a continuation, but rather I now have to get a whole new Variance. I'm not exactly sure why.

MR. LEWIS: The trouble here is that a Use Variance's are not granted to individuals, they're granted to the land and it stay's with the land.

MR. GREGORY: Okay, so what was the Variance before? Was that a Use Variance?

MR. LEWIS: It was a Use Variance.

MR. GREGORY: So then we don't – so then it's already...

MR. LEWIS: I don't know. It was granted with a 10-year - - said it would – the Use Variance would cease to exist in 10-years.

MR. GREGORY: I've asked a couple of legal people that same question. They haven't heard of an expiration on an Use Variance on that. So was that...

CHAIRMAN HODOM: Mr. Gregory, have you had an opportunity to look through the conditions of the past resolution? Have you looked at the past resolution at all?

MR. GREGORY: No, I did not.

CHAIRMAN HODOM: The past resolution was based on request made by Mr. Dyndor of allowing him to sell the trees that were on the property that he had planted, thinking that he had the ability to sell the trees at a later date, which in fact he did not. The Variance that was issued previously was a conditional Variance. This Board at the time believed that was an allowable action under the Use Variance restrictions, and it was to terminate. This Variance issued to Mr. Dyndor was to terminate on December 31, 2002, which in fact it did. Here we are in October of 2003 and you're coming in to, as I understand it, request a new Variance. Is that your understanding?

MR. GREGORY: Originally it was a continuance and then I was informed that a continuance couldn't be granted, that that one had completely ended. So originally I was told that I could get a continuance and just recently I was notified within the last 3-months or so – notified that it wasn't going to be a continuance, but it would have to be a whole new Variance.

CHAIRMAN HODOM: When were you notified it could be continuance, and who gave you that notification?

MR. GREGORY: The first indication of that was from Gordon Dyndor himself when I purchased the property. The second was when I came in here prior to the expiration of the current Variance of the one that just expired, and was told as long as I came in within 1-year of the expiration date, it couldn't be over 1-year it had to be less than 1-year that a

continuance could be granted.

CHAIRMAN HODOM: Did Mr. Dyndor show you the resolution that adopted by the Board back in September of 1993?

MR. GREGORY: I probably received that in the paper work somewhere.

CHAIRMAN HODOM: Okay. You should have in an exchange of property.

MR. GREGORY: Okay. I'm assuming that I did.

CHAIRMAN HODOM: Lets go over some of the things that have transpired since you have purchased the property. You purchased some 9.2-acres from Mr. Dyndor.

MR. GREGORY: 7.1.

CHAIRMAN HODOM: 7.1? So he maintained 2.8-acres with the house and he sold that on his own?

MR. GREGORY: Correct. It was either – well he sold the house to Bill and Beth Barands.

CHAIRMAN HODOM: Okay.

MR. GREGORY: And they live in the house actually right there.

CHAIRMAN HODOM: So you purchased the surrounding property from Mr. Dyndor?

MR. GREGORY: Yes.

CHAIRMAN HODOM: At that time did you make any visits to the Town Building Department or did your legal counsel have any questions as to what could happen with that property that you purchased from Mr. Dyndor?

MR. GREGORY: At the time I purchased it?

CHAIRMAN HODOM: Yes.

MR. GREGORY: No, when I purchased I did not have those questions. There was an existing Variance in effect and was assured by Mr. Dyndor that he had talked to the Town Board – or the Town Building Department. They indicated to him that a new Variance had to re-apply within 1-year of the existing Variance expiring. I check prior to the Variance when it just expired, prior to January 31 – December 31 of last year, I did come in and check and was also informed that I just needed to re-apply within 1-year of that expiration date. So that's why I'm re-applying within that 1-year time frame. However the Building Department then informed me that that had now changed and a

continuation could not be granted. They were going to now have me go for a full new Use Variance.

MR. LEWIS: Well who in the Building Department told you that you could just get another continuation?

MR. GREGORY: That was over a year and a half ago and I cannot tell you exactly which person told me that. I did not write anything down at that point. I mean I take people for their word and that's...

MRS. O'BRIEN: You purchased this property for the purpose of conducting the business of selling the trees?

MR. GREGORY: Of continuing the business. That was also the Dyndor's...

MRS. O'BRIEN: But you knew at the time that there was a specific date, December 31, 2002 that the Variance ended?

MR. GREGORY: Yes, and that's why I went ahead and checked prior to the – that sun setting and was assured that a continuation was not going to be a hardship.

MRS. O'BRIEN: Is there anything in your bill of sale or the papers that you signed that indicated that this was a part of the condition for purchasing the property, that the Variance would be continued?

MR. GREGORY: No, I had no reason at that point. I mean the Dyndor's are good neighbors. I had no reason to doubt them and everything that they advertised to me was true. The only mis-information that I received probably was that prior to the existing or the Variance that just expired – prior to that, the information that I had gotten and that Gordon had gotten proved to be at this point not true.

ATTORNEY DEANGLIS: Mr. Gregory, prior to purchasing the property, did you check with the Building Department or anybody here regarding the continuance of this Variance, before purchasing?

MR. GREGORY: I can't recall if I did at time or not. That was probably about 3 ½-years - - 3, 3 ½-years ago and I...

ATTORNEY DEANGLIS: How long have you owned the property?

MR. GREGORY: I don't know – hey Kim? What year did we purchase the Dyndor's farm?

MRS. GREGORY: Say again.

MR. GREGORY: What year did we purchase the tree farm, 2000?

MRS. GREGORY: (inaudible)

MR. GREGORY: I would say it was probably at least 2000, because we let them harvest the Christmas tree's the first year. They had done all the work; even though we owned it we let them have the financial benefit at that point of harvesting the Christmas trees.

MRS. GREGORY: Yeah, November – it might have been...

MR. HAMM: The Deed is dated January 26th, 2001.

CHAIRMAN HODOM: We've got to get some names on the record here. Why don't you introduce yourself.

MR. HAMM: I'm sorry my name is Kenneth Hamm. I live at 210 Waldenmaier Road and I do have a copy of the deed and it's dated January 5, 2001.

ATTORNEY DEANGELIS: Also, the lady that had just spoke can you tell us who she was.

MR. GREGORY: That was Kimberly Gregory.

ATTORNEY DEANGELIS: Oh, okay.

CHAIRMAN HODOM: Mr. Gregory, in the original resolution to Mr. Dyndor there are other conditions that were included such as wreaths and arrangements and items of this nature to be sold from harvesting items from the property. Do you plan on continuing with that operation as well?

MR. GREGORY: The only thing that we have done in the past and with permission to do so would be that Helen Payne is an elderly woman who lives right next to the tree farm. She makes crafts in her spare time, tree aprons, stockings to hang and things like that and she has requested that we put a little table up and sell a few and we've done that for the last 2-years. We've sold, you know maybe half of dozen tree aprons and maybe a dozen stockings.

CHAIRMAN HODOM: Where are you selling this merchandise from?

MR. GREGORY: It's a parking area that was put up specifically for the Christmas tree farm. It's right at the edge of the property right on Waldenmaier Road.

CHAIRMAN HODOM: Is that 244 Waldenmaier Road?

MR. GREGORY: Oh, I'm not sure of Bill's address. Actually there's - - he just signed this – it probably has it right on here...

CHAIRMAN HODOM: Mr. Gregory, have you planted any new tree's on the property?

MR. GREGORY: Not at this point, no. I wasn't looking to maintain this forever I was just looking to go ahead and continue the work - - yes, it is 244.

ATTORNEY DEANGELIS: Mr. Gregory, earlier when you started to tell us about the project, you did say I believe that you were only going to sell the tree's that are presently existing on the property. Is that correct?

MR. GREGORY: Correct.

ATTORNEY DEANGELIS: And you're not going to plant some more and continue a farm for the ages then?

MR. GREGORY: At this point I'm not planning on doing that.

ATTORNEY DEANGELIS: Okay. And in answering to Mr. Hodom's question about selling other - other knick-knacks at the farm, at this tree farm, we were wondering specifically about wreaths and dried flower arrangements or other things like that. You mentioned tree aprons or something like that, but what about the wreaths and other products that could be made from certain parts of a tree?

MR. GREGORY: We have not sold any other arrangements or wreaths or anything like that. We do allow the people to take a lot of pine bows and things like that; you know to do arrangements of their own. We do not sell other items.

ATTORNEY DEANGELIS: How long do you feel it would take you to quote "sell out" your tree farm?

MR. GREGORY: The tree's seem to be getting pretty much matured out. I can't see that taking much more than 3 or 4- years.

MR. LEWIS: When the original temporary Use Variance was granted in the resolution it said that Mr. Dyndor informed the Board that he planted the tree's from 7 or 8-year's ago, which would be 7 or 8-years prior to 1993 and he expected to harvest them over the next 6 or 7-years at most. It said that he did not plan on replacing or planting new trees as the existing tree's were harvested and planed to sell what he had planted. Now, somebody must have planted some trees.

MR. GREGORY: At this point I would have to say, you know - - the tree's that are there are not all fully matured. I would say about 80-percent of the tree's are fully matured and of harvesting size. There are smaller trees that are still on the property, a lot of those are planted right around the Barand's house, which is actually on their property. There's a few in areas that I actually own that are not fully matured, but those are very limited. I would say that there's probably less than 50 or 70-trees...

MR. LEWIS: Again I'm saying that in 1993, a decade ago Mr. Dyndor told the Board members at that time that he had planted the trees 7 or 8-years to 1993 and he expected to harvest them over the next 6 or 7-years which would get you to the year 2000. And the Board in granting the temporary Use Variance gave him a decade, which was 3 more than he asked for and he said he did not plan on replacing or planting new trees, he just wanted to sell what was on hand. And now you're back saying well I want to just sell what's on hand and I'm trying to figure out if Mr. Dyndor said 10-years ago it would take him 6 or 7-years at most to get rid of the trees that he had planted, where are the trees that you are planning on selling now come from. Who planted them?

MR. GREGORY: I have not planted any Christmas tree's on that property. I've planted no trees, period. So they were - - every tree that is there was pre-existing to my purchasing the property.

CHAIRMAN HODOM: Mr. Gregory, I'm referencing back to the original resolution again and that I'll ask you the same questions that - - only tree's and arrangements from this property would be marketed. Do you agree with that?

MR. GREGORY: Yes.

CHAIRMAN HODOM: So the lady that you have selling items there now based on this resolution will not be able to do that because it doesn't come from the property.

MR. GREGORY: Okay.

CHAIRMAN HODOM: Do you have any wholesale sales of trees?

MR. GREGORY: Very few.

CHAIRMAN HODOM: But you do have some?

MR. GREGORY: The first year we sold 20-trees to a wedding party.

CHAIRMAN HODOM: Again, that is not allowed by the resolution. Have you imported any trees?

MR. GREGORY: No.

MR. BROOKINS: Can we go back to the wholesale?

CHAIRMAN HODOM: Sure.

MR. BROOKINS: Is selling 20-trees to a group at maybe a preferred discounted price your understanding of wholesale, because it's certainly isn't my understanding of wholesale?

MR. GREGORY: I was not selling it to another business, no. I was selling it to a person who was conducting a wedding. It was her wedding and she wanted to buy 20-trees in one shot and I gave her a discounted price, so I considered that a wholesaling of them.

MR. BROOKINS: I don't think that was our intention.

CHAIRMAN HODOM: Does your process or your proposed process the same as Mr. Dyndor's, was to chose and cut?

MR. GREGORY: Yes.

CHAIRMAN HODOM: You don't cut them down and place them out in front for people to come and buy?

MR. GREGORY: No, I do cut down some of the trees because not everybody wants to travel back in there and chose and cut a tree. So I usually keep a dozen or so trees out front and so far I've only had to - - had 2-trees both years that weren't actually purchased.

CHAIRMAN HODOM: I would have to make a recommendation to the Board that in order for us to proceed on your request that you copy the resolution, you review the resolution that was passed back in 93' and you tell us what changes you're going to make from this resolution. Do you understand what I'm saying?

MR. GREGORY: Yes.

CHAIRMAN HODOM: There are a lot of contrary statements that you're making that are totally different that was allowed by the resolution that was previously passed.

MR. GREGORY: Okay.

CHAIRMAN HODOM: Which in my thinking would void – null and void this resolution completely. I don't know how all the Board members feel, but do you have a copy of the resolution in front of you?

ATTORNEY DEANGELIS: Well mine says terminate in it.

CHAIRMAN HODOM: I think what Mr. Gregory's philosophy is that he thinks that the resolution is continuing and be continuous.

MR. GREGORY: I was notified that it could not be continued.

ATTORNEY DEANGELIS: He knows that now I think.

MR. GREGORY: And as far as if I'm helping some people out by, you know the elderly people that can't go, you know traipsing back through 7-acres and cut down a tree, which is a little bit of physical work. No, they still like to come out and sometimes they go for a

walk and a lot of times what we'll have is, is we'll have one of the local kids that I hire go out and cut the tree down for them. So you know maybe we're violating it that way too, I don't - - so there would be some subtle changes I guess that we would be, I guess looking for the ability to cut the trees down for the people if they needed to have them cut down and potentially a couple of trees up front but other than that the only changes that we're proposing are, you know only 8-days a year and not selling wreaths and flower arrangements and things.

CHAIRMAN HODOM: What are the 8-days of the year that you are talking about?

MR. GREGORY: The 4-weekends between - - just after Thanksgiving through just prior to Christmas.

MRS. O'BRIEN: Mr. Gregory, you indicated before that you did get a copy of the requirements for a Use Variance?

MR. GREGORY: Yes, I did.

MRS. O'BRIEN: Because the Variance that we granted to Mr. Dyndor, which has now expired, okay? That was under State Law – that State Law that was in existence at the time. That Law has changed and what you find in the memo that you got about the Use Variance are the four specific issues that must be addressed.

MR. GREGORY: Okay.

MRS. O'BRIEN: As Mr. Lewis indicated. We have no choice but to follow that State Law that says you have to meet these four specific criteria in order for this Town, this Board to be able to grant you the Variance. And so in addition, you know as Mr. Hodom is saying, you know you have to look at this resolution. You really have to look very carefully at the requirements for the Use Variance and address every single one of them and be able to prove to us that indeed you meet the qualifications for us to be able to grant the Variance. It's not a, you know – you would like to do it, but...

MR. GREGORY: Okay.

MRS. O'BRIEN: We don't have any choice.

MR. GREGORY: Okay, and as far - - have we met any of the criteria in your estimation at this point?

MRS. O'BRIEN: You have to meet all four criteria.

MR. GREGORY: I know. I mean have we met any of them yet?

MRS. O'BRIEN: Not one or two.

CHAIRMAN HODOM: You haven't shown...

MR. GREGORY: I'll continue to address those issues if we can.

CHAIRMAN HODOM: Mr. Gregory, what the State mandate also says is that you must show us financial hardship in writing. It has to be proven; it just can't be a statement. It's not that we don't believe you, they say you have to show us in writing where your losses are, okay? I would, again...

ATTORNEY DEANGELIS: So you may very well have financial hardship if you've got, as you say, 50,000 dollars in trees sitting in a field and you can't harvest them. That can go towards financial hardship, but Mr. Hodom is saying that you have to address that in writing and give us some facts and figures, give us some kind of idea. Again, numbers – all right? And then take a look at the statute and there's - - everybody's been saying there's four specific things that the statute requests. One of them is financial hardship, one is the property is unique in some fashion that it would not alter the essential character of the neighborhood and that the hardship is not self created. Those are basically the four, it's all under the Town law as in section 267 B of the Town law and I would recommend that you take a look at that and get together with your advisor's and maybe put together some kind of a package that can be presented to the Board to try to demonstrate how you comply with each of those four.

MR. GREGORY: Okay.

ATTORNEY DEANGELIS: That would be the very best way to do it.

MR. GREGORY: All right.

ATTORNEY DEANGELIS: And I don't think that the Board is saying that presently you don't qualify, but what they're saying is you haven't shown them that you qualify.

MR. GREGORY: Okay, you want something in writing addressing those four items.

ATTORNEY DEANGELIS: I think you need some numbers; some facts, things like that to show that you have a financial hardship and you cannot retain a reasonable return from your property.

MR. GREGORY: Okay.

CHAIRMAN HODOM: The statute is very specific as to what you can show to obtain a Use Variance. Mrs. O'Brien did mention earlier the lot did change somewhat back in 92'-93', in that era. Would you then request, Mr. Gregory that the hearing be adjourned to a future date to allow you to obtain this information?

MR. GREGORY: Yes, I would.

CHAIRMAN HODOM: And we won't set any specific date tonight until you can apprise the Board of when all of the information is obtained.

MR. GREGORY: How often do you meet?

CHAIRMAN HODOM: We meet twice a month, the first and third Wednesday's of each month. But what I am going to do this evening though because there are so many people here, I'm assuming they're going to speak in favor of you or in opposition to you. But because they came out this evening and were notified, I am going to allow them to speak this evening.

MR. GREGORY: Okay.

CHAIRMAN HODOM: And it might be for you benefit as well because perhaps it'll be - - we'd return to the hearing date, you might be able to address some of those questions and concerns as well.

MR. BROOKINS: You might want to include, and I'm just guessing but when you purchase in addition to the potential retail value of the inventory that you have in your fields, that property that was purchased, which was intact, would probably be valued differently and you would pay a differential value if there were no trees when you originally bought it so you may want to be able to - or may want to provide us with that kind of information as well, which would help to demonstrate your economic condition.

MRS. MEAD: Excuse me Mr. Hodom, would you allow me to speak first so that I can leave?

CHAIRMAN HODOM: I was just going to ask Mr. Gregory - I know that you had mentioned earlier that you proposed to sell your wares 4-weekends prior to Christmas. Our earliest hearing date would be November 19th. Would you be able to have your information by then? We would need it at least a week to 10-days before that so that we have time to review it.

MR. GREGORY: Yes, I would be able to have it prepared by then.

CHAIRMAN HODOM: Okay.

MR. GREGORY: I apologize for not having that specific stuff prepared better. I didn't know - - I have never been to one of these forums. I didn't know what you were looking for exactly.

ATTORNEY DEANGELIS: The Board's under the gun now because of your time frame that you have, you know if you...

CHAIRMAN HODOM: Well that's not necessarily true, I mean we're trying to help out Mr. Gregory...

ATTORNEY DEANGELIS: I understand that but let me finish. What I'm trying to say if you had come in earlier in the year, everybody would have had a lot of time and if you needed more time to go back and get more facts and figures, you wouldn't have had a problem, see?

MRS. O'BRIEN: This is where we are now.

ATTORNEY DEANGELIS: Yes, that's right.

MR. GREGORY: No, it's just – it's been a very hectic year. I apologize for procrastinating.

ATTORNEY DEANGELIS: The Board's trying to help you out and we'll put it on the 19th for you, but you've got to have the material to them at least a week a head of time or better so they can get it to their members to read ahead of time.

CHAIRMAN HODOM: Ma'am if you'd just come up and identify yourself.

MRS. MEAD: I can't stand but I can talk as loud as you want me to.

CHAIRMAN HODOM: Okay, just introduce yourself.

MRS. MEAD: I will. My name is Wanda Mead, I own with my husband the farm on Meads Lane. We do cattle sheep, and one of my daughters has a horse farm on Waldenmaier. Bill Gregory's business is an agricultural business and I think I'd check and make sure that he's not in the Ag. District before I made the ruling.

CHAIRMAN HODOM: It has been checked ma'am.

MRS. MEAD: It has been checked, okay. Are you also aware that on the 13th of August the Town adopted a new local law pertaining to the definition to agriculture?

CHAIRMAN HODOM: Yes.

MRS. MEAD: And the things that are pertaining to agriculture. I think it would be in Mr. Gregory's best interest to get in the Ag. District where the commissioner of Ag. And Markets would make those decisions pertaining to the uses of farm's and farmland. I'd hate to see Mr. Gregory give up this tree farm. Christmas tree farms are one of the largest segment of the agricultural industry in the State of New York. The largest right now being horses, that we have some understanding of making things expedient for the farmers because we're always under the gun and there's a lot of things about tree farming, about any kind of agriculture that the Town's don't understand and can't rule on properly. I don't know if this is going to help him, this new law that we are defining for the Town and for their Boards what agriculture is and what its uses are.

CHAIRMAN HODOM: As we said earlier, the Board did verify that it currently does not – is not included in an agricultural district.

MRS. MEAD: That can be changed.

CHAIRMAN HODOM: It's very possibly can, but it's not going to be changed this evening.

MRS. MEAD: No, but we can - - I'll get Bill the paperwork to...

CHAIRMAN HODOM: The area is currently zoned and is zoned correctly and that's what this Board has to review and go under.

MRS. MEAD: Right. I understand that it's double "A" or triple "A" residential; whatever it is. All of our farms are all that and that's why we had to go to another level of Government to protect us from those who don't know enough about agriculture to make the proper rulings. I'm going to leave this for Bill so he can read it, he and his attorney. I just wanted to make sure that you were aware of it and it is my job to see that agriculture is protected in this Town. I'm a member of Albany County Farm Bureau and I'm not looking to fight with you and I'm not looking to make a problem. We're looking to keep these agricultural business's because in those agricultural business's and in the things that they make, not only do they make great contributions to the Town not only financially but to the State of New York. We are the largest industry in the State of New York and many of the farms now a days are the same size as his. And by the way, we got notified on Mead's Lane of this hearing and my two daughters who live less than - - who own property less than 500-feet were not notified.

CHAIRMAN HODOM: Well the Town requirement and it's only a courtesy, but the dimensioning is 200-feet from the property line.

MRS. MEAD: Okay, well they're not 200-feet, but I'm a mile and a half.

CHAIRMAN HODOM: Well then you were fortunate.

MRS. MEAD: Okay. That's really all I wanted to say and it's not that we don't appreciate the work that these Board's do, but the sensitivity of agriculture in general has put us on about a 10-year quest with these Town's to bring them on board that these are business's that have to make money, have to pay taxes and we want them there and we want the open space that they provide and we want the rural ness that that provides and we bought a lot of property around us to protect our farms so that we not loose that or be forced to develop because you know they're running in your backyard. Like last night we had an incident with the kids - - we have a pins petition home across from the horse farm and when my husband was out chopping corn in our back field on our Meads Lane field, there's four of those little kids running around in the field. They had escaped from the thing, so farming becomes harder and harder, and it becomes harder and harder to make a dollar at it. And we get more and more interference and it's the interference that will take

us all out of here. And it will all be houses and you can thank the guy's in 62' who really did the original zoning.

CHAIRMAN HODOM: Thank you. Is there someone else that would like to speak this evening? Yes sir?

MR. HAMM: My name is Ken Hamm. I live at 210 Waldenmaier Road, I own a parcel of land that's adjacent to Mr. Gregory's parcel. I'm here in opposition to the granting of the Variance. I was prepared to make a submittal tonight to the Board, but since this is going to be continued to a later time, I'll wait until that time to make a formal presentation. I think that from the comments I've heard from the Board tonight and the testimony presented so far by Mr. Gregory it's obvious that none of the four criteria set forth in Town Law 276 B2 have been complied with yet. I think he's going to have an especially hard time to show that this is not a self-created hardship because he purchased knowing what the Zoning classification was or at least he should have known. He knew or should have known about the expiration date in the Variance and this Zoning Board does not guarantee a persons personal financial investment. If they make poor financial decisions and I feel sorry for him but that's not the Boards role. So I would also ask that...

CHAIRMAN HODOM: Excuse me just a minute, ladies would you go out in the corridor please? Thank you. Go right ahead.

MR. HAMM: Yes. I would ask that – it was unclear to me the date by which Mr. Gregory's required to submit his evidence to you. Could you please set a firm date for that so that I may have a chance to look at it also and prepare a response?

CHAIRMAN HODOM: I think we could do that. Can you have that to us by November 10th?

MR. GREGORY: Am I required to provide copies of that to the opposition?

CHAIRMAN HODOM: It's not opposition. It has to be on the record so that anybody looking to come to the hearing would have to same opportunity as the Board has to review the documents. It's public information.

MR. GREGORY: Okay.

MR. HAMM: Okay, thank you and lets go Cubs.

MR. BROOKINS: Mr. Hamm, how long have you lived in the neighborhood?

MR. HAMM: I've lived there just before the original Dyndor Variance was granted, moved there in 92' – in spring of 92'. I actually supported the Dyndor Variance back then, there's a letter in the record that show's my support. At the time I didn't understand the impacts that were going to felt on my property by the business. We can get into that

more at the next meeting. I can explain some of the problems that we've had with the business.

CHAIRMAN HODOM: Okay. Thank you Mr. Hamm.

MR. HAMM: Thank you.

ATTORNEY DEANGELIS: Have you talked to Mr. Gregory about some of those problems, Mr. Hamm?

MR. HAMM: I did inform Mr. Gregory 2-years ago my position with respect to continuance of the tree farm beyond the expiration date. Also at the time I talked to Mr. Gregory about the problem of Mr. Dyndor who had been buying trees from elsewhere and bringing them to the site and selling them on the site and I told Mr. Gregory I was not going to allow that anymore. He indicated to me at the time that he had been planning to do that, but I guess after I spoke with him he decided not to. That may be one reason why there is so many trees on the site because trees were being brought in from outside. Also I know that Mr. Dyndor did plant a number of new trees after a new pipeline went through his property. If you look on the photographs the Waldenmaier Road side of the pipeline corridor you'll see a whole bunch of really small trees and those trees were planted after the Variance was granted in violation of the provision in the Variance.

CHAIRMAN HODOM: Thank you Mr. Hamm.

ATTORNEY DEANGELIS: Thank you very much.

CHAIRMAN HODOM: Anyone else like to speak this evening? You will have an opportunity to speak at the 19th. Introduce yourself if you would.

MR. TOUHEY: I'm John Touhey. I'm also a resident on Waldenmaier Road, 170 Waldenmaier. I don't know – for some reason I didn't receive one of these letters, I just happened to get wind of this today and just wanted to come out and say that my family, my wife and I feel as though, if anything this operation enhances the character and the quality of live on Waldenmaier Road.

We – you know it's a very brief time of the year – time span during which these trees are sold and, you know to me I'm not sure what Mr. Hamm's issues are. I've kind of heard through the grape vine that one of the things he was concerned about was extra traffic on the road and I think one time there might have been some sort of an incident where one person who had a tree on the car was driving recklessly or something along those lines, but in my mind the prospective that needs to happen here is in light of the fact and I know that you are powerless to stop this – I think it's called a group home. I'm not sure what it's called but we went from a quiet rural setting on our road and as the opening of that group home where by now we have shift changes with lots of social workers. We have every imaginable kind of delivery truck between the food services and the laundry services and the lawn service. The constant escaping of the girls who are supposedly being held or whatever there and there are police up and down the road.

The worry's that are created with my wife as a result of that, in other words, we went from a quiet country road where there were times of the day where sometimes half an hour might go by and you wouldn't even see a car where now I'd say we've got a hundred vehicle trips including commercial vehicles up and down that road every single day, all times of the day, which never even occurred in the past so to me to complain about a few extra vehicles of people coming out to buy Christmas trees four weekends a year just opposed with the fact that we now have this on going may-lay of constant strangers back and forth on our road. It's the two things as compared with one another seem almost like ludicrous in a way.

You know I'm not exactly sure what the concerns of the opposition are and I guess we won't find out until the next hearing but I know for a fact that Bill has been a phenomenal neighbor since he arrived on our road, hosting get togethers for all of the neighbors on a regular basis, hiring underprivileged kids from Albany City Schools were his wife teaches to come out and get some fresh air and work at the Christmas tree farm. We all applaud his efforts and he works very hard at it, he's very industrious about it, he's a great guy and you know I see absolutely no reason why he shouldn't be allowed to continue. I wouldn't even care if he was allowed to go out and cut trees off the property and sell them.

As to the question that you answered earlier – or asked earlier about why are these trees not all gone by now? Dyndor – I had had conversations with him and he was completely naïve at the time when he first began this whole Christmas tree thing as to what it was going to be like. He really didn't know anything about it. He didn't understand that the deer were going to be constantly pruning those trees down as they were attempting to grow. He put up fences 10-foot high after a while and still the deer got in there. And the other thing is, in the clay things don't grow. These trees – a lot of them have trunks this big around. You can tell they're old, they won't even fit in Christmas tree stands and some are only this tall. They just don't grow between the deer and the clay and that's I think, would answer why aren't they all gone by now.

Dyndor admitted to me, he said I didn't know – I thought this was going to be a great thing when I got into it, but for the money I made it wasn't that worthwhile for him because it was a hobby. He was retired and it was very difficult, but I do know that you know Bill paid the money for the land based on the fact that there's – the value of the trees was something he was going to be able to realize over a period of time. I know that's not anyone's problem here, but I do know that, so from where we are on Waldenmaier Road, we absolutely no problem with it. We think it's a great thing and we hope it continues indefinitely. We'd love to see that group home cease and desist. I understand there are three of them in the Town of Bethlehem and there's not a thing you can do about them but that has ruined life on our road. This as far as we're concerned enhances the quality of life on our road.

CHAIRMAN HODOM: Thank you very much. Is there anyone else wishing to speak?

MR. CONWAY: Good evening. My name is George Conway. I am an attorney and was a life long resident of Bethlehem until recently when I moved to Saratoga. Mr. Gregory is a friend of mine. He contacted me the night before last and we discussed this matter and

frankly we did not have time to prepare for this. He did not understand what he would need to do to prepare for this. He thought it would be an informal procedure and I admire this Board for giving him additional time to make a proper presentation to the Board. I understand there's some opposition and I would only ask on behalf of Mr. Gregory that that opposition be filed also at the same date so that we may address the issues that are presented in those papers so that the Board can see both sides. And in fairness, if Mr. Gregory is going to present his papers and if there opposition papers and there appears to be formal papers, I think it would be to the benefit of this Board and to this community that we be able to see those papers so that we can also address them to you.

CHAIRMAN HODOM: Mr. Conway, they're not formal papers.

MR. CONWAY: They look to be.

CHAIRMAN HODOM: Well, we haven't seen any of them. Mr. Hamm can speak this evening or he can speak on the 19th. The request of Mr. Gregory was so that to have them in time to allow this Board to have adequate time to review them and research them. I don't think 10-days is an unrealistic request of Mr. Gregory.

MR. CONWAY: I fully understand and I believe that's - - I admire the Board for wanting to review those papers for 10-days so they'd be fully prepared for the hearing, but it's also my understanding that Mr. Hamm intends on reviewing those and responding to those. I was just asking in the interest of fairness that Mr. Gregory have the opportunity to see what the opposition papers are so that those issues could be addressed.

CHAIRMAN HODOM: We have no authority to ask Mr. Hamm to present any kind of documentation to us.

MR. CONWAY: Okay. I would also like to speak as a former resident of Bethlehem. I grew up here for 40-years. My father was a Supreme Court Judge here in this Town. He lived in this Town. There are certain things that, and I had four children who lived in this Town and I wouldn't have moved from this Town, but other than the fact that my wife took a job with a Judge in Saratoga. There are certain things in this Township that you enjoy within the Township and just outside of the Township.

Picking apples at Indian Ladder, I know that's not within the Township, but that's one activity we used to enjoy with our kids here. We also enjoyed going out near 5-Rivers and getting the pumpkins and one of the other things and how I know Mr. Gregory is going out to his tree farm and it's a family activity and while your out there, there are multiple families just like mine who have their young children and they're out there and they're enjoying the outdoors and they're enjoying the weather. And I know that that doesn't go to the four criteria, but you should keep it in mind because it's what makes this community better. It gives us activities that we can do with our children. Activities that we can do outside and it's harming no one, it's 4-weekends out of the year. There's not heavy traffic, I've been there on multiple occasions and it's a wonderful thing. It's one of the things that makes this community beautiful and prior to finding out about his farm we used to travel all the way to Vermont to do the same thing. It's something that

you may want to keep in mind when you're making your decision that it's a benefit to this community as evidence by those cards and I'm sure there's more than that. There's a lot of people that enjoy that and we ought to keep that in mind. That's the end of my comments for tonight.

CHAIRMAN HODOM: Thank you very much. Anyone else desiring to speak? Hearing no further comments I'll entertain a motion to adjourn this hearing to November 19th.

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

Hearing Adjourned 8:45 p.m.

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The next order of business was a discussion of the previous public hearing held in the matter of Francis and Mary Beth Bonafide, 7 Shetland Drive, Delmar, New York for Variance under Article XVII, Side Yards, Section 128-73, Required Widths for construction of an attached carport, which will encroach into the side yard setback requirement at the premises 7 Shetland Drive, Delmar, New York. The following points were brought up by the Board members opposed to the proposal: The proposed carport can be constructed adhering to all local codes and requirements. The following points were brought up by the Board members in favor of the proposal: The car has to approach at an angle, so the proposed 10-foot carport would be logical. This is a fairly minimal encroachment. Anything less than 10-feet would not allow a passenger to get out on one side of the vehicle. On a motion made by Mr. Lewis to approve the carport addition, seconded by Mrs. O'Brien, was approved by the Board, the Board directed Attorney DeAngelis to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on November 5, 2003.

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The next order of business was to consider the proposed resolution of AT & T Wireless, 15 East Midland Avenue, Paramus, New Jersey.

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 AT&T Wireless Services, Inc. (“Applicant”), for a Special Exception under Article VI, Permitted Uses, Section 128-12 B (1), Public Utility and Chapter 113-4 A (1), Alternative Tower Sites, requested by AT & T Wireless for property at 308 Kenwood Avenue, Delmar, New York to collocate antennas on an existing water tank, 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 September 17, 2003; 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

AT&T Wireless Services, Inc. (“Applicant”) seeks site plan review under Chapter 13-3(B), Telecommunication Tower Sites, Section 113-4 (A)(1) Alternative Tower Sites for a Special Exception to collocate antennas on an existing water tower at premises 308 Kenwood Avenue, Delmar, New York. The Applicant is proposing to install up to 3-antennas on the existing water tower and also install 2-equipment shelters on a 6-foot by 10-foot concrete pad. The water tower is located in an “A” Residence Zone.

The Applicant submitted the following in support of its application:

1. Construction drawings with Site Plan;
2. AT&T Wireless FCC License;
3. Radio Frequency Propagation;
4. Redacted Site Lease
5. A completed short environmental assessment form (EAF) with completed visual EAF addendum;
6. An engineer’s report certifying that the tower, foundation and anchors are structurally adequate to accommodate the existing and proposed additional antennae;
7. Photo Simulations of the proposed appearance of the water tower before and after the proposed addition; and
8. A Proposed Negative Declaration.

AT & T wireless is a federally licensed wireless communications carrier. Pursuant to its federal license it is obligated to build out a system to provide adequate service coverage. AT & T has determined that the Town of Bethlehem does not have sufficient AT & T facilities currently. AT & T previously identified two sites where there are existing towers in the town, and is collocating antennas on those existing towers, pursuant to resolutions of this Board, dated March 19, 2003.

The antennae to be installed on the existing water tower will be up to three panel antennas, one panel per sector as outlined by AT&T at the hearing. The panels will be at an elevation of 160 +/- feet. The antennas themselves are about 4 ½ or 5-foot tall,

and approximately 5-inches wide, which means they will not extend above the top of the existing water tower. The antenna will match the existing water tower colors. There will be 6 co-axial cables used, black in color, and would run typically up the tower legs so that there would be nothing-external hanging off the tower.

There will be two equipment cabinets installed on a 6-foot by 10-foot concrete pad.. The cabinets will match the color of the existing equipment cabinets for the other wireless antennae on the water tower.

The Albany County Planning Board (“ACPB”) recommended the Board notify the City of Albany, Village of Vooheesville and the Towns of Guilderland and New Scotland of this application in order to facilitate intermunicipal coordination and potential co-location of facilities.

Several neighbors inquired about the environmental impact created by radio frequency transmissions. AT&T’s representatives indicated that there is no evidence of these types of radio frequency emissions that would impact on health. AT&T followed up inquiry from the Board and provided a bibliography of articles supporting this position.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a Special Exception in order to install the proposed antennae. This Board has considered the materials submitted by the Applicant and finds that the modifications are insignificant. Accordingly, the Board grants the Applicant’s request for a Special Exception to install the proposed antennae, subject to the following conditions:

1. The Applicant shall complete construction in accordance with the plans, specifications, testimony and exhibits submitted to the Board in support of the application, including but not limited to that the maximum number of antennae to be installed by Applicant will be three, and,

2. The Applicant shall complete construction of the proposed antennae within one year of the date of this resolution.

October 15, 2003

Michael C. Hodom
Chairman
Board of Appeals

- - -

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on October 16, 2003.)

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The next order of business was to consider the proposed resolution of Gold Coin Restaurant, 1360 New Scotland Road, Slingerlands, 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 seeking a Variance under Article VI, Permitted Uses, Section 128-22, Schedule B-Off Street Parking and Article XX, Nonconforming Uses, Section 128-88, Alteration to Buildings devoted to nonconforming uses requested by Conrad Kung, Andy Kung and Kawai Cheung, owners of the Gold Coin restaurant for property at 1360 New Scotland Road, Slingerlands, 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 September 3, 2003; 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

Conrad Kung, Andy Kung and Kawai Cheung ("Applicants"), are Owners of property located at 1360 New Scotland Road, Slingerlands, New York, improved by the Gold Coin Restaurant. The Applicants wish to construct a new building to replace the existing nonconforming building at the premises. The building area of the existing

structure is 1,852.62 square feet and has already been granted a variance for exceeding the 25 percent allowable expansions for a pre-existing nonconforming use. With the demolition of the old building and the construction of the new 2,466 square foot structure, they will be exceeding the allowable expansion. The proposed structure and use will not meet the required parking requirement of 54 spaces. The existing site has 19 spaces with one space being shown on the adjoining property and the proposed site plan shows 19-spaces with 18 on site spaces and 1-space also on the adjoining property. The existing structure is a pre-existing nonconforming restaurant and is located in an “A” Residence Zone. The new structure will also be occupied as a restaurant.

The original building was constructed in the 1930’s and has been expanded intermittently over the years, last in the 1980’s and most of the additions occurred before the Applicants acquired the building in 1987. The building, while a pre-existing nonconforming use, is not in compliance with the Americans with Disabilities Act (“ADA”) or current building codes applied to new construction. The Applicants want to modernize their operations, improve workflow in the kitchen and update the restrooms, bar and main dining room. The current structure would be replaced with a building having an Asian motif, would provide improved dry storage not in the basement, and a more efficient kitchen space.

While the proposed building is bigger the Applicants are not proposing to increase the capacity of the building from a patron perspective. The increased size of the building is required to meet certain code requirements such as the ADA. The existing building has 48-seats for patrons, six seats at the bar and eight seats in a waiting area. The Applicants propose a larger building--some of which would be devoted to a larger kitchen, some of which will be devoted to more room in the dining room so that access is improved--but no increase in the number of seats inside the building. The Applicants do seek approval for patio seating for an additional 12 patrons beyond what the property can currently accommodate. Otherwise the Applicants will keep the same hours of operation with no changes to the manner in which they operate the property in terms or trash pick-up, deliveries, and odors. Lighting will be directed towards the ground so as not to disturb the adjoining properties any more than the current design.

The Applicants contacted the one abutting property owner that owns land that could help alleviate the issues that are the subject of this application, but there was no interest in selling the additional property the Applicants would need to address the situation. The Applicants considered a smaller increased building size so as to eliminate the need for the variance but that would undesirably eliminate some seating for patrons.

The Albany County Planning Board recommended that the matter be referred to both the New York State Department of Transportation and to the Albany County Health Department for review of the project.

Two residential property owners from the area spoke in favor of the application.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicants require the variances sought in the application under Article VI, Permitted Uses, Section 128-22, Schedule B-Off Street Parking and Article XX, Nonconforming Uses, Section 128-88, Alteration to Buildings devoted to nonconforming uses.

After considering the documents submitted on behalf of the Applicants and the testimony at the hearing, the Board determines that while the requested variance is substantial and has been self created, the proposed project would not be detrimental to the character of the neighborhood, could not be achieved by any other means and would not adversely affect the physical or environmental conditions in the area. The Board determines that the current operation of the property will not change in any substantial manner and that the current older building would be replaced by a modern, code compliant structure without increasing any adverse impact on the area.

Accordingly, the Board grants the Applicants' request for a Variance to replace the current building with a new building on the following conditions:

1. The project will be constructed in conformity with the testimony before

- the Board and the documents submitted to it;
2. The Applicant submit the project for review to any required governmental agencies; and
 3. The proposed project will be constructed within three years of the date of this resolution.

October 15, 2003

Michael C. Hodom
 Chairman
 Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on October 16, 2003.)

- - -

On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand, and unanimously carried by the Board, the minutes of the October 1, 2003, meeting were approved.

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

Meeting Adjourned: 9:00 p.m.

Respectfully submitted,

Secretary