

**TOWN OF BETHLEHEM
BOARD OF APPEALS
September 1, 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 continuation of public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings and Article XVIII, Rear Yards, Section 128-79, Required Depths requested by William & Ellen VanValkenburg for property at 18 Werner Avenue, Delmar, New York. The Applicant wishes to construct 2-additions, which will exceed the allowable percentage of lot occupancy and encroach into the rear yard setback requirement at the premises of 18 Werner Avenue, Delmar, New York.

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

MR. PLATEL: Yes, Mr. Chairman. This is a reopening of a previously adjourned public hearing. The Applicant is proposing to construct 2-additions totaling 554.75-square feet and a deck to the existing 1,852.79-square foot main structure. The total main structure will be 2,407.54, which is 220.09-square feet over the 2,187.45-square feet allowable. The lot occupancy will be 16.51-percent, which is 1.51 over the 15-percent allowed. The proposed rear addition will leave a rear yard setback of 17.3-feet, which is 11.7-feet shy of the 29-feet required. The 29-foot was required during the sub-division process by the Planning Board due to the location of the City of Albany water line that abuts the rear yard property line.

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

The existing structure is located in an “A” Residence Zone and is occupied as a single-family dwelling.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday July 21, 2004, at 7:45 p.m., at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of William and Ellen VanValkenburg for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings and Article XVIII, Rear Yards, Section 128-79, Required Depths of the Code of the Town of Bethlehem for construction of an addition, which will exceed the allowable percentage of lot occupancy and encroach into the rear yard setback requirement at the premises 18 Werner Avenue, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 14, 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 desiring 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. Mr. VanValkenburg the floor is yours; just introduce yourself again for us.

MR. VANVALKENBURG: I’m William VanValkenburg, myself and my wife Ellen who’s with me are the owners of the property, 18 Werner Avenue. I realize this is a continuation of a previous meeting; we did incorporate some changes, which I believe you each got a copy of on the primary addition. We downsized it somewhat and made it 2-feet narrower so it’s 2-feet less close to the adjoining property line and we moved the deck up to the rear wall of the property whereas before it was out 6-feet with a space in between and someone I think asked about why it wasn’t adjacent to the house so we did move it up adjacent to the house.

CHAIRMAN HODOM: Were you able to get any kind of affirmation from the Albany County Water Board?

MR. VANVALKENBURG: It’s a long story sir, are you ready?

CHAIRMAN HODOM: I’m ready.

MR. VANVALKENBURG: To answer your question it’s not a long answer, the answer

is no. I sent them – I called them several times after our last meeting including the second, third, fourth, fifth and sixth of August on a daily basis. Each time I was told that the person was unavailable that he was out of the office in a meeting but they would get back to me; they never did. So on the day that I made the last phone call I wrote them a second letter, there are seven copies there addressing it to Mr. Ferrara, the chairman of the water board who was the gentleman who responded the last time with a copy to commissioner Robert who he had Cc'd in his response to me. To date I have not received a response from that; I went down one time and nobody was there and nobody would help me. I called yesterday for the commissioner this time and I was told he was in a meeting, but that he would be out shortly and he would definitely get back to me, he had my number; he did not. I tried to get him today and I've heard the same story.

CHAIRMAN HODOM: I guess I'm in a quandary as to whether we should proceed without that affirmation from Albany County because also in the site plan requirements of deed restrictions by the Planning Board. It's in their additional requirements which much be or have been satisfied in the development of the one lot subdivision are listed below and in paragraph C it says that all structures including pools on lot 18 Werner Avenue shall be located at least 75-feet from the City of Albany water transmission line. See 29-foot building restriction line shown on the final plat or as otherwise required by the City of Albany Department of water supply.

MR. VANVALKENBURG: I understand what you're saying sir but I'll site Mr. Ferrara's brief letter to me that I presented last time where he said we have no problem with the deck but we don't - - we can't recommend construction of a porch and he cited a 50-foot building line in that letter within a distance of the water pipe. A few other things that I might point out.

CHAIRMAN HODOM: Sure.

MR. VANVALKENBURG: I didn't engage an attorney on this matter but I did speak with my attorney when I was meeting with him on an unrelated matter and as to the wording of Mr. Ferrara's response, we can't recommend construction, he believes they did that to cover themselves in the event that there was a water pipe break or something and there was damage to the property. You see in my letter one of the many things I offered them was to sign a waiver to any damage to the property if anything should occur with the water line. He also told me that all of - - they might have to right to set a building setback limit, it's within the right of the Town to grant me a Variance. The day after I wrote the letter, which was August 6th, which I didn't get a response to walking my dog on the water line about 300-yards away, which I do everyday and know most of the neighbors and noticed that a house is undergoing renovations so – and it was one of the houses I cited in my letter today as being within 30 to 35-feet of the water pipe. So I came up to the Town Building Department and I filed a freedom of information request; got a copy of the building plans, which I have the entire plan here which you're welcome to look at but I made 7-copies of the plot plan of the addition and the house itself is 20-feet from the water easement and approximately another 15-feet from the water pipe or 35-feet from the water pipe and it's situated at or below the level of the water pipe and

it's - - construction, i.e. it's on a concrete foundation. The Town is telling me that they find no evidence of a setback restriction on that property. I can't understand why someone can build something within 35-feet of the water line and I can't build something within 65-feet of that.

CHAIRMAN HODOM: Well I guess I'll defer to counsel as to - - there are some restrictions set forth when they subdivided that property and one of the restrictions was that you had to maintain 75-feet from the water line.

ATTORNEY MOORE: If I may, or as otherwise required by the City of Albany Department of Water, which is why I think we asked that you get some kind of an answer from them.

MRS. VANVALKENBURG: Would that not apply to all houses on the water line then, if some are 35-feet and some are 65-feet?

ATTORNEY MOORE: It would apply to all houses in this subdivision presumably if these are conditions that went with the subdivision.

CHAIRMAN HODOM: I'm not familiar where this house is located, but it may have been there for a long period of time in that....

MR. VANVALKENBURG: It was, it was built in 1969.

CHAIRMAN HODOM: 69?

MR. VANVALKENBURG: 40-years after the water line went in.

CHAIRMAN HODOM: I don't have an explanation as to why they don't have a restriction and that you do.

MR. VANVALKENBURG: I don't know that I'm so much looking for one Mr. Chairman as asking if it's equitable for these people - - and more power to them that they're getting their addition, but they're building a permanent addition within 35-feet of the water pipe and I can't even get somebody from the City of Albany to answer my phone calls and my letters to build a 3-season room within approximately 66-feet of the water pipe. That does not seem fair.

CHAIRMAN HODOM: I can't speak for the City of Albany. I don't know why they don't respond to your several requests.

ATTORNEY MOORE: We can't compel the Albany Water Board to give us an answer. It certainly appears that Mr. VanValkenburg has tried to get an answer. The question would then - - if the Board determines that they'll proceed without an answer from the City, I think the question becomes whether this Board can vary any conditions attached to the subdivision that were imposed by the Planning Board.

CHAIRMAN HODOM: Which I don't think we can.

ATTORNEY MOORE: That's just what I was pondering, I mean...

CHAIRMAN HODOM: Well why don't we continue with the hearing, I mean you're here and other people are here to address the issue as well. I'm really reluctant to close the hearing until we get this issue resolved because if I close it and we don't get it resolved we must make a determination within 62-days and I think we would be hard pressed to make a determination without some kind of affirmation or comment from the City of Albany, and if you're agreeable to that let's continue with the hearing and we'll leave it open if you want to leave it open and then we'll see if we can't get some kind of response from the City.

MR. VANVALKENBURG: I'm sure I know what that means sir, to leave it open or not.

CHAIRMAN HODOM: To leave the hearing open so that we don't have to make a determination within the statute – to state a time by statute, which is 62-days. If we close the hearing we have to make a determination within 62-days. We can close the hearing if you prefer to do it that way.

MRS. VANVALKENBURG: Can I ask the question how long would you leave it open? Is this every month we have to keep trying to get a response? It's almost 2-months that they have not responded so I would think their response is – we're not going to say definitely no or they would have issued something formal.

CHAIRMAN HODOM: Okay. We can if you prefer close the hearing and I would ask counsel to look into the requirements set forth by the Planning Board. If we can waiver that – I don't think we can, but if we can't then that would certainly carry some weight with our decision in your request.

MR. VANVALKENBURG: My attorney seems to think you can but I don't know how much of an expert he is on Town matters or anything.

CHAIRMAN HODOM: It's a specialized field.

MR. VANVALKENBURG: I think I'd prefer, which I'm very ignorant – learning as I go along. I think I would prefer the second option because this can continue forever and not...

CHAIRMAN HODOM: Okay that's fine.

MRS. VANVALKENBURG: Can I ask a question if we close the hearing as far as the decision would be not to put a foundation that does not close it as far as our option of building with pylon or something that we had discussed earlier as far as the seasonal room?

CHAIRMAN HODOM: I think if it's a permanent structure, that's what the City of Albany is referencing.

MRS. VANVALKENBURG: Okay.

CHAIRMAN HODOM: The deck they apparently don't have a problem with because basically it can be removed fairly easily if they have some problems with their water line, and they're talking about possibly putting in another water line closer to your property line. That's why they were looking for that 75-feet that they stated in the restrictions.

MR. VANVALKENBURG: But even if they were to do that Mr. Chairman our screen room would be no closer to the new proposed water pipe and the addition on the house I pointed out to you is to the existing water pipe.

CHAIRMAN HODOM: We'll certainly take this on the record but again if it doesn't have any of the restrictions that you have then it really carries very little weight. I can't answer why they don't have the same restrictions as you do, but apparently they don't.

MR. VANVALKENBURG: It just doesn't seem fair to me. If anything our property is higher, it would not suffer water damage.

CHAIRMAN HODOM: I understand that and again it's not part of the issue that we're dealing with this evening.

MR. VANVALENBURG: I understand.

CHAIRMAN HODOM: Okay.

MR. VANVALKENBURG: Can I ask a question?

CHAIRMAN HODOM: Sure.

MR. VANVALKENBURG: Can someone from the Town try contacting the City of Albany is what Mark I think did on - - because I also had building permits pending for storage sheds and the City would likewise not respond to me on that matter so I think Mark called up and got an answer a lot quicker than I did. I never got an answer.

CHAIRMAN HODOM: I have no objection if the Town Building Department wants to make a call on your behalf.

MR. PLATEL: I can get a call in and see if they'll...

MR. VANVALKENBURG: Thank you.

MR. PLATEL: Because he verified on the one letter for a shed, he differentiated because

it was not a permanent structure and did not have a foundation. They have no problems with sheds.

CHAIRMAN HODOM: I mean that seems to be the main difficulty is something that is more permanent. A shed is not permanent and your deck is really permanent but not permanent.

MR. VANVALKENBURG: I guess I don't understand – my house has different restrictions because it's brand new and my neighbors whose houses have been there longer evidently don't have restrictions because even the matter of the storage sheds, there are other storage sheds 10-feet from the water line. I just - - I don't want to get off track but I just can't understand how different houses can have different restrictions.

CHAIRMAN HODOM: It's just built at a different time and things change over time and that's the only explanation I can offer to you and of course we don't get into that. It's a Planning Board issue or a Town Board issue. Did you want to go over some of the changes that you've made on the...

MR. VANVALKENBURG: I can recap it quickly because I think the two things that we moved the deck in next to the rear of the house whereas before it was out, I believe, 6-feet.

CHAIRMAN HODOM: Yes you closed up that opening between the deck and the house.

MR. VANVALKENBURG: Yes and whereas before the addition was, the proposed addition was 17-feet wide, it is now 15-feet wide.

CHAIRMAN HODOM: Well it's actually 19,6.

MR. VANVALKENBURG: The addition?

CHAIRMAN HODOM: You're talking about your proposed home office?

MR. VANVALKENBURG: Yes.

CHAIRMAN HODOM: Yes, it's actually 19-foot, 6 to the outer part of the addition.

MR. VANVALKENBURG: Oh, okay but I mean the bulk of the room whereas before I was 17-feet all the way back not including that stair well, now it's 15-feet in the stairwell.

CHAIRMAN HODOM: Okay. I had noted that it was 1-foot shorter than what you had previously proposed, but it's also 2-foot longer in width. It went from 22,6 to 24,6.

MR. VANVALKENBURG: That was because of a basement window, but the width is 2-feet narrower, again not including the stairwell, but the width of the room is 2-feet

narrower. Before it was 17, now it's 15.

CHAIRMAN HODOM: And then your deck is larger than previously proposed?

MR. VANVALKENBURG: I'm not sure, is it Steve?

MR. BOLDUC: I don't remember.

MR. VANVALKENBURG: All I remember it was being moved back against the house; I didn't ask him to make it bigger.

CHAIRMAN HODOM: It's 17 by 12,6 and I think before it was 14 by 12-feet.

MR. VANVALKENBURG: He probably did that to cover the edge of the house.

CHAIRMAN HODOM: Steve do you want to go into some of the construction features?

MR. BOLDUC: I'm Steve Bolduc from Keystone Builders. I think we tried to utilize the properties dimensions that were there as best as could and used the corners of the buildings as best as we could. There was a basement window on the front corner there that I - - went I came over to re-measure things, it just made sense to pull it away from that window so we could use the window so we could use the window for access into the new basement because otherwise we have to saw-cut a new opening totally - there was a window there so we'll use it. As far as the dimensions, we changed them a little bit. We tried to pull it in away from the neighbor, that 15-feet, you said it was I think 17-feet. We kept the back - the rear wall dimension right where it was. There's an electrical meter there that we have to work around and then as far as the deck goes, we just went to the corner of the structure from the proposed porch. That was the reason for that and eventually he's going to put a lower level deck there on the ground to put a hot tub on it, so that's the reason for that. The porch remained the same and the only other structural change I think we did was to - we put a flat area up over that part of the office area there to just to give it an architectural - I think it looked better and they agreed and it gives them a balcony up there if they want to have coffee or something in the morning. So that's pretty much the changes, I didn't do the original design that was done by another person. So we worked together based on what you guys had talked about at the meeting and that's what we kind of came up with that there's a compromise in some of the space and the architectural features I think worked out better. We talked a lot about the room size, he really wanted more space, but I think he's compromising in trying to get it down to a size where he still feels it's comfortable for what he wants to do and you know just make it work for him and also trying to compromise on the side.

CHAIRMAN HODOM: But again the architectural features will try to match the home as best they can?

MR. BOLDUC: Yeah, we shouldn't have any trouble doing that because it's such a new house so we can match the siding and the roofing. We tried to balance the windows so

they went well with the front of the house. The backs going to have some transit windows, but - - because we've got some high ceilings to work with and we utilized the height, but the front is going to have the same look as the front of the house now and there's very few windows on the side facing the neighbor that there was a concern about the only window on that side is the high window up in the stairwell there to get some light into that. So I think he's taking advantage of the view out the back and trying to keep the architectural integrity in the front to go with the existing house.

CHAIRMAN HODOM: Okay.

MR. VANVALKENBURG: That's also why we extended that stairwell out of foot to block the view from the house next door that we wouldn't be looking down into her house and she wouldn't be looking up onto ours. If you look at the wall the way it extends out - I think, what is it - I think 4, 4 1/2-feet.

CHAIRMAN HODOM: Where the spiral stair is?

MR. VANVALKENBURG: Yeah.

CHAIRMAN HODOM: I believe Mrs. VanValkenburg had mentioned something that you're also potentially thinking of putting that 3-season room on - rather than a crawl space with a solid foundation?

MR. BOLDUC: At this point we had him propose it with piers, structurally it's better to put it on a frost wall which is 4-foot in the ground, a block foundation or poured. We might do poured I'm not sure, but up to the height of the existing foundation so it's more of a substantial base for the porch to be built on. There was a time that John Flannigan, when he Inspector before he retired, now he's back again but he wouldn't allow those porches to be built without a foundation under them. A lot of people were enclosing them and making them year round rooms so they weren't ready for that with heating and you couldn't heat them to the new codes, energy codes. It's more of a structural issue; it's just a better way to build it the addition than up on piers. They don't look as good, they're not - you know they're kind of hanging there. I think Bill would go with that if it made a difference with getting approval for that room if that what the water district wants.

MR. VANVALKENBURG: I did cite that in my letter to them as one of the main things I'd be willing to do.

CHAIRMAN HODOM: Okay. Mr. VanValkenburg at the last meeting you had made some comments regarding that you're required to have a dedicated office space for your position. Is that in writing from the Federal Government or anyone else?

MR. VANVALKENBURG: I could probably find something.

CHAIRMAN HODOM: Okay. I mean it would be helpful if there is certainly a mandate that you have to have dedicated space for your office. So if you do have something, if

you could get it to us within a few days. Any other questions from the Board?

MR. MICELLI: No, I'm set.

MR. WIGGAND: All set.

CHAIRMAN HODOM: Are there any questions or comments from the audience?

MR. VANVALKENBURG: I have a question.

CHAIRMAN HODOM: Oh, I'm sorry I thought you were finished.

MR. VANVALKENBURG: It's not an item before the Board because I didn't – it would request another Variance, but I guess I was just going to ask the Board if they have any predisposition I would consider – I'm going to have a 6-foot fence between the property, 4-foot solid, 2-foot lattice if my neighbor would prefer a 6-foot solid and the Board would grant a Variance because I noticed one of my neighbors has a 6-foot solid fence. I would be willing to file for the Variance and go through that to get the - - just for that length between the 2-houses.

CHAIRMAN HODOM: I really don't want to get into trying to preclude any future variances but the Board somewhat frowns on 6-foot high solid fences.

MR. VANVALKENBURG: Enough said.

CHAIRMAN HODOM: Okay. Mrs. Fuller, please.

MRS. FULLER: I'm Doreen Fuller; I'm a resident of 16 Werner. I have a question, how close will the – with the changes, how close will that house be to my house?

CHAIRMAN HODOM: Does it show on the plan?

MRS. FULLER: I know it's 29-feet right now.

MR. VANVALKENBURG: I would estimate, which is all it is but probably within a foot. I would estimate it would be about 15-feet, 10-feet on my side, 5 on yours.

MRS. FULLER: I'm sorry, say that again.

CHAIRMAN HODOM: It has to be at least 8-feet I mean we're not encroaching into that side yard.

MR. VANVALKENBURG: I would estimate 15-feet, approximately 10-feet from my property line and another 5-feet from your house to the property line.

MRS. FULLER: My comment is that I appreciate the work that's been done to

accommodate my concerns last time. I still have a problem with it being so close, but certainly will help because I also want you to know that I still have concerns with it, my privacy with the addition being so close.

CHAIRMAN HODOM: Okay. Previously before he reduced the width of that major part of the addition from 17 to 15-feet, it would have been 8-feet from the corner of that addition to your property line. So by reducing it 2-feet, it's probably going to be between 8 and 10-feet from the corner of that addition to your property. I mean he has to meet an 8-foot setback requirement anyway so somewhere in that range between 8 and 10-feet and then whatever the distance is from your property line to your house.

MR. VANVALKENBURG: 5-feet.

MR. PLATEL: Scaling it off on the map, it's approximately 19-feet house to house. That would be from the corner of the addition to your existing front corner.

MRS. FULLER: Okay, thank you.

CHAIRMAN HODOM: Are there any other comments or questions from the audience?

MRS. O'BRIEN: We don't have an updated map showing placement of the changes.

CHAIRMAN HODOM: Not of the changes, no. That was submitted previously.

CHAIRMAN HODOM: Any other questions from the audience? Anyone desiring to speak in favor of the Applicant? Anyone desiring to speak in opposition? Mr. VanValkenburg we're going to close the hearing at your request and hopefully we'll get a response from the City of Albany. Hearing no further questions or comments, we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

MR. VANVALKENBURG: Thank you.

Hearing closed 8:00 p.m.

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The next order of business this evening is a public hearing for a Variance under Article XVI, Front Yards, Section 128-66, Required Depths requested by Albert and Carol Penk for property at 395 Clapper Road, Selkirk, New York 12158. The applicant wishes to construct a front porch addition, which will encroach into the front yard setback requirement at the premises 395 Clapper Road, Selkirk, New York 12158.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 6-foot by 30-foot, 180-square foot open porch addition to the existing main structure, which will create a front yard setback of 44.5-feet. This is 5.5-feet shy of the required 50-foot front yard setback.

The existing structure is occupied as a single-family dwelling and is located in a Light Industrial District.

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

Notice of Public Hearing. Notice is hereby given the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday September 1, 2004 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar New York to take action on application of Albert & Carol Penk for Variance under Article XVI, Front Yards, Section 128-66, required depths of the code of the Town of Bethlehem for construction of a front porch addition which will encroach into the front yard setback requirement at the premise of 395 Clapper Road, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the August 25, 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 this evening. Mr. Penk if you would just introduce yourself to us, give us your address and tell us what you want to do and how you want to do it.

MR. PENK: My name is Al Penk. I reside at 387 Clapper Road in Selkirk, New York. I intend to put a new porch on the front of the house that was built in 1950 by my dad. The porch will be fix the front roof primarily. I've got to put a new roof on where the roof is leaking so the only expense of the roof and the replacement of the current shingles. It will be now advantageous to put a porch on and plus my daughter wants to sit on the front porch.

CHAIRMAN HODOM: Could you describe for us if you would please the surrounding

area around this property, what it involves and how close the neighbors are.

MR. PENK: It's set in the middle of 10-acres that I own. I'd say roughly there's 1200, and I don't know for sure, I'd say 1200 road frontage if you needed the size of this house directly across the road from the house the property's owned by the Town of Bethlehem from the edge of Clapper – well right of way including the water line, it runs up the opposite side of the road. So actually the setback on the other side of the road, I don't know what they're going to do with that because that water line is back in I'd say a good 50, 60-feet from the edge of the road.

CHAIRMAN HODOM: Can you tell us how close your neighbors are and if you've had an opportunity to discuss what your proposed addition is.

MR. PENK: Nearest neighbor be about ¼-mile away I would say.

CHAIRMAN HODOM: Other than yourself.

MRS. PENK: Other than ourselves, right.

MR. PENK: That's all one package so both houses are the same entity actually for the Town purposes I would imagine, but both houses are in the same parcel.

CHAIRMAN HODOM: Is it all one parcel?

MR. PENK: It's all one, we did that for tax purposes – combined them together.

CHAIRMAN HODOM: What was your proposed...

MR. PENK: I think I gave you a copy of the plot plans, right Mark?

CHAIRMAN HODOM: Yes.

MR. PENK: The house with the plot plan. The plot plan should show the location of it.

CHAIRMAN HODOM: It does.

MR. PENK: Okay.

CHAIRMAN HODOM: Is this something that you propose to construct yourself or...

MR. PENK: Yes I'm going to do it all myself.

CHAIRMAN HODOM: What time frame would you be looking to start construction and completing construction?

MR. PENK: Well Labor Day weekend, as soon as I get back from Michigan, which

would be next Wednesday I'd like to start getting the old porch off it and start putting the foundations in.

CHAIRMAN HODOM: Is there a problem with that existing entrance porch, that concrete?

MR. PENK: Concrete, yes it's deteriorating badly and the bottom step is teetering.

CHAIRMAN HODOM: So again the porch....

MRS. PENK: It's a health and safety issue, basically you couldn't - - if you step on that bottom step it teeters, that concrete is 50-some years old and I'm sure if you hit it with a sledge hammer it's just going to crumble away. It's a health and safety issue, our daughter doesn't use the front door, but the roof is leaking when it rains hard she has 3-pails up there catching water in the attic.

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

MR. WIGGAND: I presume you're waiting for our decision on what you're going to do with that step?

MR. PENK: I'm going to take it out of there one way or another, it's going. Actually the porch is on the house now and if that's infringing in the same area - if I remove the porch the house wouldn't have any way of exiting from the front of the house and I don't know how you can do that.

MR. PLATEL: It's an open porch right now, there's no roof over it.

MR. PENK: That's fine, but...

MR. PLATEL: Stairwells are - - you can have a step coming out, that's acceptable.

MR. PENK: But once I move the porch I'd have to still get a Variance from you to put the new porch because it would still be infringing.

CHAIRMAN HODOM: Well if you wanted to put a roof over the porch that you were going to take away, yes you would have to have a Variance. If it's an open entrance without a roof over it, you do not need a Variance. When you enclose it with a roof, then it becomes a more stable structure the way the code was written. Any questions or comments from the audience? Anyone wishing to speak in favor of the Applicant? Anyone desiring to speak in opposition? Hearing no further questions or comments, we'll declare the hearing and we'll notify you in a timely manner. Thank you.

Hearing closed 8:10 p.m.

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The next order of business this evening is a continuation of a public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings and Article XVII, Side Yards, Section 128-73, Required Widths requested by Bob Hughes for property at 2 Knights Way, Albany, New York. The Applicant wishes to construct a sunroom addition, which will exceed the allowable percentage of lot occupancy and encroach into the side yard setback requirement at the premises 2 Knights Way, Albany, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 16-foot by 32-foot, 512-square foot sunroom addition to the existing 1,595.89-square foot main structure. The total building area will be 2,107.89-square feet, which is 373.01-square feet over the 1,734.88-square feet allowed by an 11,565.87-square foot lot. The lot occupancy will be 18.23-percent, which is 3.23 over the 15-percent allowed. The side yard setback at the existing foundation where the sunroom will be placed is 4.76-feet; this is 3.24-feet shy of the 8-foot side yard setback required.

The existing patio structure was constructed without a permit. A typical patio that would be placed at ground level and constructed of patio block or other similar concrete product and would not require a permit. This type of patio however would require a permit and is subject to the same setback requirements, as a wood deck would have to meet.

The existing structure is located in an "A" Residence Zone and is occupied as a single-family Dwelling.

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

Notice of Public Hearing. Notice is hereby given that the Town of Bethlehem Board of Appeals, Albany County, New York will hold a public hearing at the Town Offices, 445 Delaware Avenue, Delmar, New York on Wednesday August 4, 2004 at 7:45 p.m. to take action on application of Bob Hughes for variance under article XII, Percent of Lot occupancy, Section 128-50, Single Family Dwellings and Article XVII, Side Yards, Section 128-73, Required Widths of the Code of the Town of Bethlehem for construction of a sunroom addition, which will exceed the allowable percentage of lot occupancy and also encroach into the side yard setback requirement at premises 2 Knights Way, Albany, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 28, 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 this evening. Mr. Wing will you be making the presentation?

MR. WING: Sure. The last time we were here we had a few things that we wanted to take care of and report back so I guess I'll go over those.

CHAIRMAN HODOM: That's fine.

MR. WING: We broke it up, I did a few of them and Bob did one. Bob did the conditions that were in Mr. Hites survey – the original survey. The 4,000 psi was a question, we got delivery tickets and dropped off from Bonded Concrete. Our engineering – the question to make the room smaller, we wanted to take a look at what we could do. You gave some suggestions on some sizes, 26 by 14 and 24 by 15. We consulted engineering to find a way to make that work. We decided with engineering help that we need to go out the 16-feet from the house so that we could be on the foundation on the outer edge and then tie a beaming system back into the house so that we can take the snow load off of the unfooted area if we're going to make the room smaller. So with the sizes that we came up with were 22 by 16 and 25 by 16 and the reason there's two different sizes is there's window in between so we're basically going on one side of a window with bringing it on in. The - - we have it in engineering right now but to continue on any farther we have to open up the house wall and we have to inspect the inners of his house wall to tie it in and without having a resolution here and just want to open up different sizes and open up Bob's house walls so that's where we are in the engineering. It can be done, it just needs some information to finish up that aspect of it.

CHAIRMAN HODOM: When you say it can be done, it can be done to at least for the proposed 4-season room would not encroach into the side yard setback requirement, is that what you're saying?

MR. WING: Correct, I believe at 25-feet would be 8-feet away from the 32, so I think that we would - - I think we needed another 4, approximately 4-feet. I believe both those sizes.

MR. PLATEL: You'd be almost 13-feet away from the side yard, 12.76-feet away if they went with the 25.

CHAIRMAN HODOM: 25 by 16?

MR. WING: Yes, they need to be 16-feet for the engineering to work.

CHAIRMAN HODOM: For the foundation?

MR. WING: Yes to be able to carry the snow load onto the foundation.

CHAIRMAN HODOM: Your two sizes again were 16 by 22?

MR. WING: That's correct.

CHAIRMAN HODOM: And 16 by 25?

MR. WING: That's correct.

CHAIRMAN HODOM: And those sizes are acceptable to you Mr. Hughes?

MR. HUGHES: Well there acceptable to me, but I would still like, you know I'm still asking for the Variance to put the 16 by 32 in, you know I would prefer that because I have the radiant in and the tubing in and if I leave that exposed then everything that I did would be wasted as far as the heat escaping going into the room.

CHAIRMAN HODOM: There's no alternative way to reduce that size zone where you would only have the piping in the suggested smaller area? I mean this all came about because you didn't have a building permit and you went ahead with the foundation work and you went ahead with the slab.

MR. WING: Right.

CHAIRMAN HODOM: Had you had the building permit, the Building Department would have notified you immediately that you were encroaching into the side yard setback requirement. We're trying to help you out here rather than having you demolish the foundation to bring you back into compliance to see if there's another method to work. That's what I'm asking you if these sizes are acceptable.

MR. HUGHES: There acceptable I'm just saying I would still ask for the Variance if we look at to see if we could get the 16 by 32. I mean I've had letters, you know signed and written by all my neighbors that they have no problem with the Variance as far as taking up that much of the back yard, etc. etc.

CHAIRMAN HODOM: Mr. Wing perhaps you can discuss with a little bit more detail the letter from Patio Enclosures to Mr. Dan Jesco, branch manager.

MR. WING: Yes about the New York State Energy Codes?

CHAIRMAN HODOM: Right.

MR. WING: Mr. Chairman, sure absolutely. I'm sorry – we did get some information today so I threw it on Karen a little bit on the last moment so I apologize but, you know it's been discussing back and forth because it's an ongoing issue and we talked to Mr. Rockland who is the New York State assistant in – I can get you his exact title but he's in charge of the - - Steve Rockland is the assistant director for energy services for New

York State Department of State so he is well versed on what the energy codes are, but the process was supposed to be in for conditioned sunrooms in 2004 with the condition that a sunroom has to be isolated from the house, the sunroom has to meet - - we're in a heating degree area of I believe 9000 so our conditions are you have to have R30 roof, you have to have a U-factor of .50 or less and a U-factor is for glass. A R-factor is solid walls so incase anyone was interested and any solid walls in the structure should be at least R-13. The room that we're proposing is R-30 in the roof, it's .33 in the glass and R-15 in the walls so we exceeded the process unfortunately is dragging along so Mr. Rockland has said that's it really not the local Towns responsibility to decide and to grant a permit or a Variance on this as far as the Energy Code is concerned so what we're supposed to do is take it right to him and he'll grant the State Variance with the information from our rooms so that I guess how the process is going now in New York State because it might be a couple years before the other codes for conditioned sunrooms are on the books. So as of today they're not but they're approved but they're not on the books so it's not fair for the Building Department to have to make that decision. So that's what we found out so I wanted to kind of get to the bottom of it because it's something that's been dragging on for a couple of years.

CHAIRMAN HODOM: Okay, is that your understanding?

MR. PLATEL: It's the first I heard of it. We've always been under the influence that sunrooms don't meet the requirements so you couldn't condition the space, you know for winter, heating just like he said. You can always get a Variance from the State for anything, you know as long as it's reasonable. So what he's saying sounds like what the process you would go through to get a Variance for that.

CHAIRMAN HODOM: You do have a letter?

MR. WING: I have a letter from Mr. Rockland, yes from New York State. I faxed over to Karen, but if she didn't get it time...

MR. PLATEL: Actually I think I have it. I just found it on my desk on the way here.

MR. WING: Yeah, and again I apologize but I thought it might be appropriate and it came at the last moment.

MR. PLATEL: Somebody set it on my desk and I just picked it up on the way down here.

MR. WING: It takes about 30-days for the State to grant a Variance for the Energy Codes for the sunrooms. It's pretty straight forward.

CHAIRMAN HODOM: Mr. Hughes when you constructing the foundation for your proposed 4-season room did your excavator come close to the foundation drainage that was provided for the house? I think that was one of the restrictions that you found that were part of the plot plan that you submitted that every home in that subdivision had to

have a foundation drainage tying into the main storm sewer system. Did you construct any foundation drainage around this addition?

MR. HUGHES: No. There will be gutters on the sunroom but as far as drainage on the lot that I have there's no problem with drainage – there's never has been. I'm probably one of the only houses in the area that doesn't have a sump pump because I'm up higher than everybody else on the corner lot.

CHAIRMAN HODOM: Do you know if you have foundation drainage on the home itself?

MR. HUGHES: I can't answer that; I don't know that for sure.

CHAIRMAN HODOM: Any other questions from the Board?

MRS. O'BRIEN: If we're referring to this as a 4-season room, you're going to have the heating in the foundation correct?

MR. HUGHES: Yes.

MRS. O'BRIEN: But it's not being constructed as a normal addition to the house?

MR. WING: Because of the - - for that amount of glass you've got to keep a door between the house and the sunroom and you have to separate the heat sources. We've known that the code changes are coming so when you design a room for future use, you know we're just trying to set it up to meet the Codes and that's what it is, it's conditioned year round. It can't be used on an everyday basis, but it's designed to meet the energy efficiency.

MRS. O'BRIEN: You will be able to heat it sufficiently for use most of the year?

MR. WING: Right, you know a glass room is really not designed to be out there when it's 20-below at night because of the amount of glass on the walls. You know in our climate with a separate heat source if you want to use it for a few hours in the day in the winter time, it's designed to meet the energy codes sufficient to that type of a room.

MRS. O'BRIEN: Is it your intent to, Mr. Hughes, to use the room on a year round basis for living?

MR. HUGHES: Well I don't believe I'll be out there in January and February and actually my intent is if all goes well probably go south January, February and March.

MRS. O'BRIEN: Well you said at one point that there are additions to your family or...

MR. HUGHES: Additions to my family?

MRS. O'BRIEN: I thought I had something here but...

MR. HUGHES: I hope not.

MRS. O'BRIEN: Sorry about that. What does your family consist of now?

MR. HUGHES: 2-daughters and a wife and a dog.

MRS. O'BRIEN: Okay and they would all go with you to go to Florida?

MR. HUGHES: For the most part, yes at least for a month at a time.

MRS. O'BRIEN: I'm just trying to ensure that this is not used, you know as a separate living facility for anybody.

MR. HUGHES: It definitely won't be used for a separate living facility for anybody, no.

MRS. O'BRIEN: Okay, thank you.

MR. BROOKINS: I'd like to go back to the question that the Chairman had earlier about the heating. I notice the thermal tubing on the end going in and I think there were 4-tubes. Do you know if they run the length, do they run loops, do you have any idea what it's like in that floor which gets back to the question of that end piece being disconnected, non heated or where we're at? Do you have a layout of that?

MR. HUGHES: I know exactly how they run. They run loops back and forth and around 12-inch centers all the way back and forth for the length of the room and I put them in myself.

MR. BROOKINS: So the shortened width would be difficult to just disconnect, do you know what I mean? I just wanted to ask, sorry to rub salt in the wound.

MR. WIGGAND: So what are you going to do? Are you going to open that floor up and re-locate those where they terminate? How are you going to handle that with – you've got 1-size here 16 by 25 or 22 by 16?

MR. HUGHES: I'll make that determination after I find out what I get approved for. I might just have to leave it go unheated, you know the floor.

MR. WIGGAND: Well that's still a possibility then. You're going to quite a time finding those pipes aren't you?

MR. HUGHES: Well they're on 12-inch center, but you're right I mean they're not exactly on 12-inch center.

MR. WIGGAND: It's not going to be easy.

MR. HUGHES: No.

MR. WIGGAND: Those pipes are surrounded by concrete.

MR. HUGHES: Yeah and they're all tied to rebar.

MR. WIGGAND: Lots of luck.

CHAIRMAN HODOM: Any other questions? Any questions from the audience? Anyone desiring to speak in favor of the applicant? Did you have anything more Mr. Hughes or Mr. Wing that you want to present?

MR. WING: I think that's what we talked about last time and no that's it.

CHAIRMAN HODOM: Do you know if the larger of those 2-sizes, the 16 by 25, if that keeps you within the percentage over the allowable that we talked about?

MR. PLATEL: I have the numbers figured out. For the 22 by 16 would give him a total of 1,947.89-square feet, which winds up being 16.84 percent. The larger one, the 25 by 16, 1,995.89-square feet is 17.26 percent.

CHAIRMAN HODOM: I think the last time you were hear you could make these structures in increments of 1/8 of an inch?

MR. WING: That's correct.

CHAIRMAN HODOM: And I think the last time we met we were trying to keep the percentage of lot occupancy less than 17.

MR. WING: Right.

CHAIRMAN HODOM: So can that 25-feet be reduced?

MR. WING: The problem is there's a window. On the house wall the window is basically 3-foot so you're separating, you've got to start your wall on one side of the window or the other. So the 25 is on one side of that window, the 22 is on the other side so I really can't go 24 or 23. I'm going right out the house window that was the determination of size. We've got to keep it as close as we could.

MRS. O'BRIEN: The measurements that your talking about the 22 or the 25-foot, I'm assuming that's bringing it further away from the side yard?

MR. WING: That's correct.

MRS. O'BRIEN: You're not measuring...

MR. WING: Yeah we're trying to accomplish...

MRS. O'BRIEN: I mean that's where the window is on that end of the house?

MR. WING: Right.

MRS. O'BRIEN: Okay.

MR. WING: We're trying to accomplish the, you know the square footage and setback at the same time. Mr. Hughes is interested in a 16 by 32 but we wanted to come up with an alternative and get it - - at least the pre-engineering to make a determination, you know if it was possible that was the question. We really weren't sure if we could just bring that room in and set it on an unfooted section of the concrete with a concentrated roof snow load on just 4-inches of concrete if it would fly so we had to come up with some tying in and going out to the end of the foundation, but it can be done. We'll have to continue when we find out what size.

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

MR. WING: Thanks.

Hearing closed 8:34 p.m.

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The next order of business was to consider the application of Kathryn and William Jones, 92 Brockley 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 Kathryn and William Jones for Variance under Article XII, percent of Lot Occupancy, Section 128-50, Single Family Dwellings for construction of an attached garage and breezeway, which will exceed the allowable percentage of lot occupancy at the premises 92 Brockley Drive, Delmar, New York, it is hereby ordered that a public hearing on this matter be held September 15, 2043 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

The next order of business was to consider the application of Glenn and Kelly Jeffers, 8 Keith Road, Delmar, New York. The application was found to be in order and Mr. Micelli made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Glenn and Kelly Jeffers for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for the construction of an addition, which will exceed the allowable percentage of lot occupancy at the premises 8 Keith Road, Delmar, New York, it is hereby ordered that a public hearing on this matter be held September 15, 2004 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of Feura-Bethlehem Heights alliance, Inc. 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 Feura-Bethlehem Heights Alliance for Appeal under Article XXIII, Board of Appeals, Section 128-99, Appeals to schedule a public hearing for an appeal of the determination of the Building Inspectors decision to allow mining in a Rural District Not Zoned, it is hereby ordered that a public hearing on this matter be held October, 2004 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of Ajay & Sue Sanghi, 50 Dover Drive, 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 Ajay & Sue Sanghi, for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings to construct a 3-season room, which will exceed the allowable percentage of lot occupancy at premises 50 Dover Drive, Delmar, New York, it is hereby ordered that a public hearing on this matter be held September 15, 2004 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. Wiggand seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of Stephen Ziamandanis (Applicant), School House Road associates (Owner). The following points were brought up by the Board members: The proposed project will have limited amount of employees therefore parking will not be an issue. There would be no impact on the surrounding area. The proposed project would be a good use for the building. The requirements for the Use Variance have been met. On a motion made by Mrs. OBrien, seconded by Mr. Brookins, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on September 15, 2004.

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The next order of business was a discussion of the previous public hearing held in the matter of Patricia Caporta, 106 Fernbank Avenue, Delmar, New York for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for the construction of a screened porch, which will exceed the allowable percentage of lot occupancy. The following points were brought up by the Board members: The proposed porch addition is a minimal request. There was an existing deck that will be replaced and the screened porch will be built on top of it. It will not affect the character of the neighborhood. On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on September 15, 2004.

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The next order of business was a discussion of the previous public hearing held in the matter of Geraldine Aylward for Variance under Article XVII, Side Yards, Section 128-73, Required Widths for construction of a carport, which will encroach into the Side Yard Setback requirement at premises 44 Montrose Drive, Delmar, New York. The following points were brought up by the Board members: The proposed carport addition went before the Board last year and was denied. There were modifications made to the Applicants plan. The proposed addition is a reasonable request. On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on September 15, 2004.

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The next order of business was a discussion of the previous public hearing held in the matter of Delmar Health & Fitness for a Use Variance under Article VI, Permitted Uses, Section 128-13, Residence "AB" District to construct additional parking in a residential district for an existing permitted business, which is not allowed in an "AB" District at the premises 28 Hudson Avenue, Delmar, New York. The following points were brought up by the Board members: The proposed parking would alleviate cars parking up and down Hudson Avenue. In the original design showing the 60 parking spaces, it was flawed. They couldn't build the 60-spaces where they showed because of the shear factor in the embankment. There was an overwhelming amount of letters written on Mr. Mashuta's behalf requesting that the Board grant relief. On a motion made by Chairman Hodom, seconded by Mrs. O'Brien, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Use Variance, for presentation at the next Board meeting on September 15, 2004.

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The next order of business was a discussion of the previous public hearing held in the matter of Albert & Carol Penk, for Variance under Article XVI, Front Yards, Section 128-66, Required Widths for the construction of a front porch addition, which will encroach into the front yard setback requirement at the premises 395 Clapper Road, Selkirk, New York. The following points were brought up by the Board members: The proposed addition would not affect the character of the neighborhood. The area is rural. The existing steps need to be replaced and adding the front porch will add to the appearance to the house. On a motion made by Mr. Brookins, seconded by Mr. Micelli, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on September 15, 2004.

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The next order of business was to consider the proposed resolution of Frank & Wendy Mancini, 94 Trinity Place, Selkirk, New York.

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

RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Frank and Wendy Mancini (“Applicants”), 94 Trinity Place, Selkirk, New York, for a Variance under Article XVI, Front Yards, Section 128-71, Accessory Buildings; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on August 4, 2004; and,

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

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

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

FINDINGS OF FACT

The Applicants are proposing to construct a 12-foot by 16-foot, 192 square foot storage shed with a proposed front yard setback of 38.8 feet. The minimum setback for

an accessory structure is 70-feet so the proposed shed will encroach into the setback by 31.2-feet.

The existing main structure is occupied as a single-family dwelling and is located in an "A" Residence District.

Applicants seek to construct a storage shed to hold larger objects such as bicycles, a motorcycle, and a ride-on tractor. Moving these items from the garage would enable the Applicants to move their cars into the garage. Presently, the Applicants' cars are parked outside on a sloped driveway.

The Applicants' back yard slopes steeply upward, and contains bedrock close to the surface. This topography limits the areas within which a storage shed could be placed and still comply with the 70-foot setback requirement.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires a variance to place the proposed storage shed in their desired location. After reviewing the application, pictures submitted and testimony at the hearing, the Board determines that, despite the above noted condition of the property, the proposed variance will be denied.

The existing pool is not a permanent structure, and could be moved to another location. This would enable to the proposed storage shed to be placed in an area that would comply with the 70-foot setback requirement.

Given this option, the requested variance of over 31 feet is quite excessive.

Accordingly, the Board denies the Applicant's request for a Variance from the Front Yard setback restrictions for the proposed storage shed.

September 1, 2004

Michael Hodom
Chairman
Board of Appeals

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

(Resolution filed with the Clerk of the Town of Bethlehem on September 2, 2004.)

The next order of business was to consider the proposed resolution of CVS Pharmacy, 256 Delaware Avenue.

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

RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by CVS Pharmacy (“the Applicant”), Mullen Capital (“Owner”) for premises located at 256 Delaware Avenue, Delmar, New York (“the Property”) for a Variance under Article VI, Permitted Uses, Section 128-17(D), Accessory Business Signs, of the Code of the Town of Bethlehem, for construction of an enlarged sign with electronic message board on the property; and

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on February 18, March 17, and July 21, 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 seeking an Area Variance to replace an existing pylon sign which when combined with the remaining signage on the structure will exceed the allowable signage for the structure. The building frontage on the principal street is 60.44-feet, which allows 120.88-square feet of total signage for the site. After the existing pylon sign is replaced with a proposed new 166.49-square foot pylon sign, the total signage on the site will be 224.49-square feet, which is 103.61-square feet over the 120.88 square feet allowed. The new sign proposal would also have a changeable electronic message board, and this part of the Applicant's proposal requires a use Variance under the same article for flashing or animated lights.

The premises and the building are occupied by CVS Pharmacy and are located in a "CC" retail Commercial District.

At the public hearings, residents of the neighborhood and representatives of the Elsmere Elementary School (located across Delaware Avenue from the CVS store) testified that, in their view, the proposed electronic message board would be a distraction to motorists passing by the CVS store, and that this distraction would pose a threat to the safety of school children and school crossing guards at the intersection of Delaware Avenue and Elsmere Avenue.

The Board received evidence that there have been a large number of reported motor vehicle accidents at the intersection of Delaware Avenue and Elsmere Avenue.

The public hearing was adjourned and continued to provide the Applicant

with the opportunity to submit additional material explaining and justifying its request for the both the enlarged pylon sign and, in particular, the electronic message board.

The Applicant did not provide the Board with evidence or testimony regarding the alleged financial benefit of the electronic message board, or addressed to its alleged inability to realize a reasonable return at the premises with the present sign configuration.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires two variances to construct the proposed sign with electronic message board. After reviewing the application, sketches submitted, testimony at the hearing, and other documents and reports submitted by the Applicant, the Board determines that the proposed variances will be denied.

The Board concludes that the Applicant has not justified or explained the alleged benefit that it would realize from the granting of the requested variances. The Board also concludes that the Applicant has not demonstrated that it would suffer unnecessary hardship if the use variance were denied. The Board further concludes that any alleged benefit to the Applicant is outweighed by the detriment to the health, safety and welfare of the neighborhood that would be caused by the proposed electronic message board.

The corner where the proposed sign and electronic message board would be placed is a busy intersection, and the electronic message board would be a distraction to motorists. This increases the potential risk to the safety of children crossing to and from the Elsmere Elementary School.

The proposed enlarged sign and electronic message board would produce an undesirable change in the essential character of the neighborhood.

The proposed enlarged sign and electronic message board would have an adverse effect on the physical and environmental conditions in the neighborhood.

The requested area variance is substantial.

Accordingly, the Board denies the Applicants' request for Variances to construct the proposed enlarged pylon sign with electronic message board.

September 1, 2004

Michael Hodom

Chairman
Board of Appeals

- - -

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on September 2, 2003.)

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

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

Meeting Adjourned: 9:30 p.m.

Respectfully submitted,

Secretary