

**TOWN OF BETHLEHEM
BOARD OF APPEALS
September 15, 2004**

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

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

 Leonard Micelli

 Michael Moore Attorney to the Board

 Mark Platel Building Inspector

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

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings requested by Kathryn & William Jones for property at 92 Brockley Drive, Delmar New York. The Applicant wishes to construct an attached garage and breezeway, which will exceed the allowable percentage of lot occupancy at the premises 92 Brockley Drive, Delmar, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The applicant is proposing to construct a 636-square foot garage and breezeway addition to the existing 1,249.3-square foot main structure that will create a total main structure of 1,885.3-square feet. This will exceed the 1,575-square feet that is allowed for the main structure by 310.3-square feet. The lot occupancy will be 17.96-percent, which is 2.96 over the 15-percent allowable. The proposed front yard setback of 31-feet will be 4-feet shy of the 35-foot front yard setback requirement.

The structure is currently occupied as a single-family dwelling and is located in an "AA" Residence Zone.

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 September 15, 2004 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Kathryn and William Jones for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings of the Code of the Town of Bethlehem for construction of an attached garage and breezeway, which will exceed the allowable percentage of lot occupancy at premises 92 Brockley Drive, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the Wednesday September 8, 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 of the Applicant. Anyone desiring to speak will be allowed to do so, we just request that you come up, stand or sit close to the black microphone, it's for recording purposes only. Mr. Jones will you be making your presentation? Just introduce yourself to us; tell us what you want to do and how you want to do it and why you want to do it.

MR. JONES: Kathryn and I live at 92 Brockley Drive. I've lived here for 31-years and we're wanting to build a 2-car garage with a connecting breezeway to the house to be built by Stannard & Sons. The reasons we wish to do this are as follows.

One, we own 2-cars and we both drive. We need a place to house our cars. Two, having a garage will not only secure and protect the cars, it will make it easier and safer for me as a performing musician and teacher to get to work in view of breaking my right wrist last year. Three, in looking at similar small homes in our immediate area Kathryn and I noticed that many 2-car garages and even 1-car garages have a breezeway. The breezeway makes the home more attractive looking and as well off for further living space. At the same it makes it easier to connect the garage to the house. The breezeway prevents the whole house from looking like a long boxcar.

Four, my wife Kathryn has a handicapping condition and the garages and breezeway would enable her to safely leave and enter her car especially during the winter months with minimal risks of falling, which might result in broken bones. She's been encouraged to be active, but not to take undue risks. The garage and breezeway will further aid her in removing groceries or packages from the car and bringing them into our

house. The garage will also offer an easier, more accessible entry into the house. Five, I have reconfigured the front entryway into our home to accommodate Kathryn's muscular dystrophy by adding railings, increasing the depth of the front porch and decreasing the height of the steps. During good weather the front entrance can be safely be used. This is not true during inclement weather.

Six, a 2-car garage will also enable Kathryn to remove her 3-wheeled walker from her car. Seven, Kathryn are aware that our proposed requires a Variance that we will encroach on the 15-foot drainage easement. We're prepared to make modifications in our proposal in good faith. In keeping with the 35-foot road ordinance, we are prepared to line the garage up with the front side of the house. We would also like to move the side garage door to the breezeway entrance next to the window. Further we would add a rear door to the garage and they're 5-short letters, which neighbors gave me. I don't know whether you want me to read those or not?

CHAIRMAN HODOM: They're attached and they'll be placed on the record.

MR. JONES: Okay and one neighbor called me just before we left. They were away and they wanted to say that they're in favor of the proposal.

CHAIRMAN HODOM: Thank you very much. Mark did you look further into that encroachment into the 15-foot drainage easement?

MR. PLATEL: Yeah, I spoke with Mike Cirillo with the Engineering Department. He has no problems with it right now. He does have a letter drafted up; he's still just waiting to hear back from Greg Sagendorph from the highway just to make sure that he doesn't have any issues with it because it would be his guys going in there to service that drain line if they ever had to. He just want to make sure that Greg has no problems with it and if so he would submit a letter to the Town Board asking permission for them to go onto that easement.

CHAIRMAN HODOM: Okay. Do you have any time frame?

MR. PLATEL: I believe he's going to try to get that letter to them for the next meeting, which I believe is next Wednesday.

CHAIRMAN HODOM: So the next Town Board meeting?

MR. PLATEL: I believe so, yes.

CHAIRMAN HODOM: Thank you.

MR. PLATEL: Yeah, that would be next Wednesday.

CHAIRMAN HODOM: Mr. And Mrs. Jones I thank you for reconsidering the Front Yard encroachment problem and now we only have to deal with the percentage of lot

occupancy and because you have agreed to move the garage back in alignment with the front of the house, which eliminates the Front Yard encroachment. Thank you very much. The proposed construction of the garage and breezeway, can you describe to us somewhat the architectural features that you're using? Will it match the house as close as possible and the roofing and the window structure?

MR. JONES: The siding, right and the roof as well, yup, as closely as we can.

CHAIRMAN HODOM: You'll endeavor to match the siding and the roofing and the window layout as closely as possible, okay. Do you have a time frame that you're looking at if the Board were to approve the Application as to when you would start the construction and completed?

MR. JONES: He'd like to start as quickly as the approval, what ever it'd be and I think he said 3 to 4-weeks for completion once it was started.

CHAIRMAN HODOM: And who was this?

MR. JONES: Stamend and Sons.

CHAIRMAN HODOM: Stannard and Sons, they're your contractors?

MR. JONES: Right.

CHAIRMAN HODOM: Are you currently under contract with them?

MR. JONES: No.

CHAIRMAN HODOM: Okay.

MR. JONES: Verbally, yes.

CHAIRMAN HODOM: Did the home have a garage previously?

MR. JONES: Yes it did.

CHAIRMAN HODOM: And that was changed over...

MR. JONES: When I moved into the house the garage had heaved. It was never able to be used as a garage. It was so badly heaved when we moved in it would have required major surgery and with 2-children we decided to make that into a family room with a half bath so now that the children are gone our circumstances have changed and we need a garage or garages.

CHAIRMAN HODOM: And how many cars do you have in the family?

MR. JONES: 2-cars, my wife's car and mine.

CHAIRMAN HODOM: And you currently do not have a garage?

MR. JONES: Right.

CHAIRMAN HODOM: And how long have you lived at the premises as a couple?

MR. JONES: 3-months.

MRS. JONES: Just 3-months.

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

MR. WIGGAND: I have one. Now the breezeway is also going to be moved back? You're moving the front of the garage back in line with the front of the house? Am I saying that right?

MR. JONES: Right.

MR. WIGGAND: Okay, now is the breezeway going to be moved back approximately 4-feet?

MR. JONES: Initially we'd like to leave the breezeway where it is because the side entrance of the house now is a foot back from that – the location of the breezeway so we'd like to keep that opening if possible. So we would only move the garage back we figured 4-feet so it would be behind the breezeway.

MR. WIGGAND: Okay I see. So in other words you have your steps going up there presently?

MR. JONES: Right, the 3-steps that go into the side entrance.

MR. WIGGAND: Now they take up more room than just that 2-foot. They're going up parallel to the house, am I saying that right? Don't you walk in onto those steps from the front?

MR. JONES: From the side.

MR. WIGGAND: Oh, I'm sorry.

MR. JONES: From the side of the house.

MR. WIGGAND: From the side of the house, okay. I looked at 2 or 3 different things today and I think maybe I...

CHAIRMAN HODOM: The existing side entrance is further back than the 2-foot setback that you're showing here, is that correct? I believe it is.

MR. JONES: Okay.

CHAIRMAN HODOM: From taking a look at it myself so that with the 2-foot setback for the enclosed breezeway you're not encroaching into your side entrance or are you?

MRS. JONES: We were trying to be able to hopefully use the door that goes out onto that, you know to go into the breezeway if possible rather than having to have another door cut...

MR. JONES: Another hole.

MRS. JONES: In the same room to get into it so we were...

CHAIRMAN HODOM: Would the layout that you show here currently for the breezeway, the existing door is within the depth of the breezeway, am I saying that correctly?

MRS. JONES: Absolutely. I think the door is about 2-feet in.

CHAIRMAN HODOM: I think your photo shows that adequately. Let me just give Mr. Wiggand – he can verify that. What Bob is asking you was in fact that wasn't going to create any problem and it doesn't appear that they're creating a problem because you've already taken into account of that location. Let me ask you this, you mentioned earlier that you were prepared to deal with the encroachment into the drainage easement if the Town would not allow you to encroach into their easement, how would you deal with that if they said no you can't encroach?

MR. JONES: Eliminate the breezeway.

CHAIRMAN HODOM: You would eliminate the breezeway.

MR. JONES: But we're finding as we looked at the houses in the area, the ones we've seen all have breezeways pretty much so.

MRS. JONES: So many do, they seem to - - those that have had added garages have also added the little connecting breezeway just for aesthetics and convenience and whatever. We rode around quite a bit and looked in the area to see what other people have done.

CHAIRMAN HODOM: You don't think by reducing the width of the garage to say 21-feet would be adequate for a garage? I'm not trying to make any suggestions to you but rather than eliminate the breezeway I'm just speculating that if the Town does come back and say no you can't encroach into their easement, another alternative would be to reduce the width of the garage to 21-feet and that would put you outside the easement.

MRS. JONES: Right. Can you actually get 2-cars in 21-feet, okay? I mean just normal size cars not real big ones?

CHAIRMAN HODOM: I believe you can. Any other questions from the Board?

MRS. O'BRIEN: We don't have any drawings of the dimensions of the breezeway or the garage or any of that, I mean I just have this one. I don't have that one. A question about the breezeway and the garage to because the percentage of lot occupancy is fairly substantial, is it your intent with the breezeway to put any kind of a ramp to make it easier to get into the house from the garage or will you continue with the steps that are there?

MRS. JONES: Well we had talked about that as a possibility of perhaps just low steps. I can do low steps alright, you know or maybe divide it between the garage and the breezeway or something. In other words the front steps right is he re-configured it are 6-inches high and I can do the 6-inches. It's a little bit of a struggle but here in dry weather but during winter if it was snowy or icy I don't know if it would be very safe for me to go to try to step from them.

MRS. O'BRIEN: Is this something that you have discussed with your builder as far as, you know how to make the transition or whether a ramp would be feasible or the....

MRS. JONES: It's been mentioned possibly a ramp instead of low steps.

MRS. O'BRIEN: And what - - my concern is, you know for looking at cutting down the percentage of lot occupancy whether you reduce the size of the width of the garage or you reduce the width of the breezeway. Is there a certain width you have to have in order to make a ramp feasible from say the garage into the house?

MR. JONES: Probably not.

MRS. JONES: Probably not because I don't use a wheelchair or anything like that and you know I can walk up and around - - if it's got a railing with nothing.

MR. JONES: Would the 21-foot garage still infringe on the...

CHAIRMAN HODOM: Percentage of lot occupancy?

MR. JONES: Yeah.

CHAIRMAN HODOM: 3 times 24 is what?

MR. PLATEL: 72.

MR. BROOKINS: You're still over occupancy.

MRS. O'BRIEN: How much would that reduce it Mark?

CHAIRMAN HODOM: Currently there's – a little over 310-square feet in excess of the 15-percent allowed. One of the problems that you do have is that you have a small lot. In the older parts of Town, a lot of the lots were smaller. Today I think there's a requirement to have at least 12,500-square feet, you have 10,500-square feet so that creates a problem as well.

MRS. O'BRIEN: Without the breezeway – that would reduce it to.

MR. PLATEL: 16.7.

MRS. O'BRIEN: Okay, thank you.

MR. PLATEL: That's without breezeway and 21-feet.

CHAIRMAN HODOM: That's what she wanted to know, wasn't it? The combined?

MRS. O'BRIEN: Yes that was it cut down.

MR. PLATEL: With both them cut down because if they take the breezeway out...

MRS. O'BRIEN: Well that's true it doesn't effect the – if you move the garage closer you could still go with the 24-feet.

MR. BROOKINS: If you eliminated the breezeway and you moved the garage you wouldn't even have an issue because that's an accessory building. It wouldn't be over because it's not part of the house anymore.

MR. PLATEL: Yeah it would because then you'd have to be 85-feet back from the front yard setback now.

MR. WIGGAND: That's true.

MRS. O'BRIEN: So the 24-feet without the breezeway brings it back to 17.3?

CHAIRMAN HODOM: While Mark is figuring that out Mr. And Mrs. Jones, we would need a revised plan from you as well showing that you're bringing the garage back in alignment with the front face of the house in any event so that we're not dealing with the second Variance.

MRS. O'BRIEN: What's it above?

MR. PLATEL: 17.4 if the garage was on 24 by 24.

MRS. O'BRIEN: They are small lots.

MR. JONES: Would you repeat that?

MR. PLATEL: 17.4.

MR. JONES: With the 24-foot...

MR. PLATEL: That's with a 24 by 24-foot garage.

CHAIRMAN HODOM: Do you think we can close the hearing without the determination from the Town on the encroachment?

ATTORNEY MOORE: No.

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

MR. JONES: Are we encroaching on the 15-foot easement with the 24?

CHAIRMAN HODOM: Without the breezeway?

MR. JONES: Yes.

CHAIRMAN HODOM: No, you would be 3-feet away from it. Right now you're basically encroaching in the 15-foot easement by approximately 3-feet. That may or may not be an issue but what I was going to mention to you is that we won't close the hearing this evening because we really need a determination from the Town on that encroachment for us to make a proper decision.

MR. JONES: Okay.

CHAIRMAN HODOM: Is there anyone in the audience that has any questions or comments. If you could just move closer to the microphone, your name please?

MR. FOSTER: Foster, Robert and Rita Foster, 93 Brockley Drive. We live effectively live right across the street from them and we approve of everything that they wish to do.

CHAIRMAN HODOM: Thank you very much. Yes Ma'am?

MRS. DOLDER: My name is Patricia Dolder and I'm at 96 Brockely on the other side of the easement and I approve of what they would like to do as well.

CHAIRMAN HODOM: Thank you.

MRS. FOSTER: I'm Rita Foster and I'm the other half across the street. He has that shed as a shed in the back, is that over compensating or taking up too much - - is it possible to

take that down? Would that give that him whatever on the side.

MR. PLATEL: No the shed is separate. They allow 5-percent for accessory structures so you don't count that in for the lot occupancy for the main building.

MRS. FOSTER: Oh, you don't okay.

MR. PLATEL: That's a separate issue.

MRS. FOSTER: Thank you.

CHAIRMAN HODOM: Thank you. Anyone else? With your permission I'll make a motion to adjourn the hearing to a future until we get a resolution from the Town regarding the encroachment into the 15-foot drainage easement.

MR. JONES: Okay.

CHAIRMAN HODOM: And I'd make that motion.

On a motion made by Chairman Hodom, seconded by Mrs. O'Brien and unanimously carried by the Board, the hearing was adjourned to a date uncertain.

Hearing Adjourned 7:55 p.m.

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The next order of business this evening is a public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings requested by Glenn and Kelly Jeffers for property at 8 Keith Road, Delmar, New York. The applicant proposes to construct an addition, which will exceed the allowable percentage of lot occupancy at the premises 8 Keith Road, Delmar, 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 total of 303.33-square foot of new building area to the existing 1,226.11-square foot dwelling creating a total of 1,529.44-square feet. This will be 164.44-square feet over the 1,365-square feet that is allowed for the main structure. The lot occupancy will be 16.81-percent, which is 1.81 over the 15-percent allowable lot occupancy for the main structure.

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

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

the hearing.

Notice of Public Hearing. Notice is hereby given that the Town of Bethlehem Board of Appeals, Albany County, New York will hold a public hearing on Wednesday September 15, 2004 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action of application of Glenn and Kelly Jeffers for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings of the Code of the Town of Bethlehem for the construction of an addition, which will exceed the allowable percentage of lot occupancy at the premises 8 Keith Road, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the September 8, 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; we'll hear the applicants presentation; we'll entertain any questions or comments from the audience, anyone desiring to speak will be allowed to do so. Mr. Jeffers will you be making your presentation or would your....

MR. JEFFERS: Actually Ron the contractor.

CHAIRMAN HODOM: Ron if you would just introduce yourself to us and your association with the Applicant.

MR. FRETTO: My name is Ronald Fretto. I own Prime Homes, Inc.; I would be the contractor for Mr. And Mrs. Jeffers.

CHAIRMAN HODOM: That's F-R-E...

MR. FRETTO: T-T-O.

CHAIRMAN HODOM: Okay.

MR. FRETTO: That's Prime Home's Inc.

CHAIRMAN HODOM: And where are you located Mr. Fretto?

MR. FRETTO: It's 31 Ontario Street in Cohoes, New York.

CHAIRMAN HODOM: Why don't you describe for us what you propose to do and how you want to go about doing it.

MR. FRETTO: Okay. We have as you know a rather small house. It's 21 to 25-feet in depth and 32-feet wide. We have had additions to...

MR. PLATEL: I apologize.

CHAIRMAN HODOM: Thanks Mark.

MR. FRETTO: We've had an addition to the family and we are very limited on living area in the house. Presently there is a back porch on the house; it is unheated and with the baby – can't utilize the back porch area in an unheated condition. So Kelly and Glenn called me and asked me to come in and attempt to design something that would work within the framework of the house. So what we did was we designed a family room that we would be able to enter from the existing living room or the existing kitchen into a family room. In designing it on the rear of the house as we look at the drawing the right hand side is the garage and we have a gable roof that dumps into the yard and so what we did was we removed the porch; we made sure we stayed within the setbacks and rear lines of the code and we tied the new addition right into the garage peak so that we don't have the dumping of snow that presently is dumping in that approximately 8-foot, 1 area. So now from the garage we can enter into a mudroom and with the baby Kelly is finding it very difficult – the baby upstairs and she's trying to do laundry in the basement. So we created a laundry area in the mudroom back, which would be washer / dryer and wash sink and then we have our stairway to exit into the back yard. So what we've done is created a mudroom, a family room and a laundry and we used the bottom of your drawing to flush with the back of the garage to square off the house so aesthetically we have our garage line going to the back straight across and return and in returning allowing to make sure that we're within the setback on the side.

We would be roofing the house; matching existing shingle. We would be siding the house with vinyl siding; match existing siding. We would be matching the windows of the house and that is the overall picture of what we were hoping to be able to do. What else would...

CHAIRMAN HODOM: Mr. Jeffers just give us a picture of your family structure currently, the layout of your existing house; how many bedrooms; other rooms that you may have.

MR. JEFFERS: Sure. My wife and I have a 1 ½-year old son and we love our house; we love our neighborhood; we love our neighbors; we want to stay there. We're finding that with just one child our living room is the toy room. The upstairs are the bedrooms and my wife is home now; left her job staying home with the family and the stairs just aren't an option as far as a 1 ½-year going up and down, not really going up and down by himself. Hopefully having another one very soon and we're just finding that the upstairs is great for sleeping but there's no room to actually do anything play wise; small kitchen, dining room, the main entrance hallway with the stairs going up and then just the living room. So what we're hoping to do is just change really the 3-season porch that's out there that we have tried to figure out ways to heat, it just isn't effective because it wasn't built with any insulation; it wasn't built for anything more than a 3-season porch. I would like to just take it down and put a nice big family room and when we spoke with Ron we thought the possibility of filling in that area that currently exists between the porch and the garage because it's just dead space at the moment. It just accumulates and all the snow and it'll

be a great to have the laundry there; Kelly and I, I also do the laundry. It would be helpful to both of us to have it on the first floor in terms of not just one but hopefully, possibly three kids.

CHAIRMAN HODOM: You currently do not have a family room.

MR. JEFFERS: No.

CHAIRMAN HODOM: Okay. How long have you lived at the premises?

MR. JEFFERS: Since 2000, about 4-years now.

CHAIRMAN HODOM: Okay. Are you currently under contract to have the work done?

MR. JEFFERS: Yes, if everything goes well Ron will be starting as soon as possible.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: I have a question for you. Is it your intent to take down that existing room that's there now then?

MR. FRETTO: Yes, that will be gone.

MR. JEFFERS: We're reusing those windows as part of the addition.

MR. WIGGAND: I would imagine you would, those are pretty decent windows.

MR. FRETTO: Yeah they're all thermal paned brand new windows.

MR. WIGGAND: We were over there today and looked at it but there was no way we could see what kind of a foundation that was underneath that - - there's probably piers under there isn't there?

MR. FRETTO: Exactly, and I think when it was built it was built as a porch then it got closed in so there was no structure to work with and that's why in our proposal was to totally remove that and build the footings / foundation and do it the proper way.

MR. WIGGAND: See what you have setting there now is only a little over 9-feet in depth.

MR. FRETTO: Yes, it's 9-feet, 5 by 21-foot, 3.

MR. WIGGAND: So you have to take that whole side wall right out of that thing because it wouldn't pay you to try to work around that.

MR. FRETTO: That's correct.

MR. WIGGAND: And there's probably not a foundation under that. I'm concerned more about that foundation, it's probably piers or something else.

MR. JEFFERS: I think there's only the piers.

MR. WIGGAND: So now you're going to be putting a probably a...

MR. FRETTO: Crawl area.

MR. WIGGAND: Crawl area.

MR. FRETTO: About 4-foot deep footings then pour in walls tying it right in to the back wall of the garage; tying it into the house and then frame up a floor system, 2 by 6 frame and with the windows to reuse because they were newly put in. There all low E-glass thermal pane slide-in windows and the house – they've got nice vinyl siding on it so match existing, which we're able to do. And then the roof because we have to keep a shed roof structure because if we were to do a gable we would infringe on the wind dust of the second floor which now would eliminate the egress factor and the light and ventilation that would be required for the bedrooms. So by doing the shed and bringing the shed over – when you were in the back if you looked at the peak of the garage, that will be the point of where the shed roof will tie right into. So at that point we eliminate the problems that are occurring with the garage there.

MR. WIGGAND: Yeah, you wouldn't have to take that roof off the garage, you can tie right into that.

MR. FRETTO: Right into the peak, that is correct.

MR. WIGGAND: And you'll be about the right height.

MR. FRETTO: That's correct, exactly.

MR. WIGGAND: You've lucked out on that part of it.

MR. FRETTO: I've lucked out on everything.

MR. WIGGAND: Because that garage seems to be pretty well stationed there.

MR. FRETTO: Yeah, we need to build one cricket where on the back where the house steps on the second floor, we've got to do a cricket there. We want to dump the water on the other side of the garage and that's all part of in the structure.

CHAIRMAN HODOM: Mr. Jeffers had you had an opportunity to discuss your proposed addition with your neighbors?

MR. JEFFERS: Yes.

CHAIRMAN HODOM: And any comments pro or con?

MR. JEFFERS: Everyone thinks it's a great idea. Most of our neighbors still love the fact that we're fixing up the house because before we bought it, it was a foreclosure. They all saw it as an eyesore because it just wasn't kept up. So no-one, the Dunlavey's, the O'Leary's, the people in the back who would actually see the back side of the house are all for it. They're ecstatic that we're going to stay and try to do the house the way we want it.

CHAIRMAN HODOM: One final question I have for you is that it's your intent now and in the future to have this home remain as a single family dwelling?

MR. JEFFERS: Yes.

CHAIRMAN HODOM: You don't intend to use the space as a rental parcel of the house?

MR. JEFFERS: No.

CHAIRMAN HODOM: It will strictly be used by you and your immediate family?

MR. JEFFERS: Yes, there's a lot of toys that are going to go in there.

CHAIRMAN HODOM: Any other questions from the Board? Any questions or comments from the audience? Anyone wishing to speak in favor of the applicant? Now is your opportunity if you'd like to. Anyone wishing to speak in opposition? 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. JEFFERS: Thank you.

Hearing closed 8:10 p.m.

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The next order of business this evening is a public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings requested by Ajay and Sue Sanghi for property at 50 Dover Drive, Delmar, New York 12054. The Applicant wishes to construct a 3-season room, which will exceed the allowable percentage of lot occupancy at the premises 50 Dover Drive, Delmar, 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 144-square foot addition to the existing 1,770.41-square foot main structure creating a total main structure of 1,914.41-square feet. This is 144.53-square feet over the 1,769.88-square feet that is allowed for the main structure. The lot occupancy will be 16.22-percent, which is 1.22-percent over the 15-percent allowable.

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

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeal for the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday September 15, 2004 at 8:00 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on Ajay and Sue Sanghi for Variance under Article XII, percent of Lot Occupancy, Section 128-50, Single Family Dwellings of the Code of the Town of Bethlehem for construction of a 3-season Room, which will exceed the allowable percentage of lot occupancy at premise 50 Dover Drive, Delmar, New York 12054. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the September 8, 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. Sanghi or your representative from PEI.

MR. SATALINO: How you doing. My name is Tony Satalino; I'm with Patio Enclosures at 1240 Interstate Avenue and we're proposing to build a sunroom on an existing deck, adding structural concrete pier footings; used for seasonal use, no heat or electric by Patio Enclosures and the lot occupancy maximum is 15-percent and this is 16.22-percent so it's 1.22-percent over so that's why we're here.

CHAIRMAN HODOM: Will you just give us the depth of the addition. I know you have the 9-foot, 11 wide. Is it the full deck of the 15, 10 ½ ?

MR. SATALINO: Yes it is.

CHAIRMAN HODOM: Is that the dimension that you used?

MR. PLATEL: I don't believe so. I had 9,11 by - - yeah 9,11 by 15,10 ½ , I had that.

MR. SATALINO: Okay, yeah that's what it shows on here.

MR. PLATEL: Right because I saw where you brought your extra piers out all the way to the end.

MR. SATALINO: Okay. I'm not the actual salesman on the job. The actual salesman on the job is no longer with the company so I'm representing him trying to explain as much as I possibly can. I thought 10-foot, 9-inches plus the 5-feet 1 ½-inches.

CHAIRMAN HODOM: Are you also removing that existing deck and reconstructing it?

MR. SATALINO: I believe we're just adding - - we're adding piers to the existing deck, just adding more piers to the existing deck.

MR. SANGHI: My understanding was that they will put the porch up, you know from the deck, existing deck. They will take the - - up and then reinforce it and then put the posts back.

CHAIRMAN HODOM: Okay. That's what it looks like what they were going to do is with the reinforcing and then with the new piers it would be very difficult to put those piers in with the deck there.

MR. SANGHI: Right.

CHAIRMAN HODOM: Okay.

MR. SATALINO: We do put piers in, in between – just by taking this deck surface off, going down in between with post-hole diggers and then putting the deck boards back down, that's common.

CHAIRMAN HODOM: So you're adding 8 new piers?

MR. SATALINO: Yes.

CHAIRMAN HODOM: And new posts?

MR. SATALINO: New 4 by 4 posts.

CHAIRMAN HODOM: And a new double 2 by 8 raised header?

MR. SATALINO: Around the rim we always do a double 2 by 8 rim.

CHAIRMAN HODOM: Okay, but you're also running a new double header on the interior piers?

MR. SATALINO: Yes because of the distance from the house to the front edge, 15-feet – 15, 10 ½ we actually do a cross beam underneath the roof in the center to support the roof load and 15-feet is over span for 2 by 8 construction so that's why the rim in the

center - - or the beam in the cross center takes the bounce out of the deck.

CHAIRMAN HODOM: Okay. Just going over your general engineering notes and they seem to be on every one of your drawings that any foundation work is the responsibility of the owner?

MR. SATALINO: No, Patio Enclosures does the foundation work.

CHAIRMAN HODOM: Okay. So then you're warranting that the soil will except 3000-psf loading?

MR. SATALINO: Yes, that is what our engineer stamp is designed to do. Each one of these diameters of the piers will be noted. They're saying 24-inch piers at the base.

CHAIRMAN HODOM: Okay.

MR. SATALINO: And it's 3000-pound concrete - - right, 3000-pound concrete, 24-inches at the base.

CHAIRMAN HODOM: That's contrary to your last general engineering note which says your professional engineer cannot be responsible for soil bearing analysis, but you're saying that you folks are responsible for it because you are putting the piers in.

MR. SATALINO: Correct.

CHAIRMAN HODOM: Okay. That's fine. And I don't Tony if you can answer this or not but the B-wall elevation relative to your work is fine. Is the existing deck that's there currently going to be changed to what's changed to what's shown here? I think there was probably some work done between the time that you folks got together and did this drawing and then you added on to the existing deck.

MR. SANGHI: We added on to the existing deck and the existing portion was left as is because that sunroom was coming on there.

CHAIRMAN HODOM: Okay. So this drawing isn't totally correct, but it's correct for your work?

MR. SANGHI: Right.

CHAIRMAN HODOM: Mr. And Mrs. Sanghi, I think it was back in May of 94', 1994, this Board approved a sunroom addition at that time. I think it was a little bit smaller, it was - or maybe it was a little bit bigger...

MR. SANGHI: Much, much larger.

CHAIRMAN HODOM: Well, it was 14 by 15.

MR. SANGHI: 14 by 15, yeah okay – the size of deck.

CHAIRMAN HODOM: If you would explain to the Board why you didn't proceed with that approved sunroom at the time.

MR. SANGHI: Yes, members of the Board I would like to try to explain to you at that time when we were granted that Variance I lost my job at the State, you know and I think we had once more applied for the Variance and we again got it, you know but the financial condition did not permit, you know. That was a more of a regular room you know, now we have a found a way to make it smaller and cheaper and to have it only 3-season. You see so it was the financial condition and the loss of my job which prohibited us in going ahead with it.

CHAIRMAN HODOM: Of why you didn't do it back in 1994?

MR. SANGHI: Yes.

CHAIRMAN HODOM: Okay. Are there reasons for your request for the 3-season room primarily the same as they were back in 1994?

MR. SANGHI: Yes sir.

CHAIRMAN HODOM: Okay, you still have your mom...

MR. SANGHI: My mother - - a little bit room between my mother and her.

CHAIRMAN HODOM: And maybe if you would reiterate that for us so that we can get it on this record.

MR. SANGHI: It is...

MRS. SANGHI: We are friends though; very good relationship.

MR. SANGHI: It is to some degree cultural, differences between the Western society and from India from where we come. The daughter-in-laws and mother-in laws can be friends but they're not necessarily the same way as it is here so she feels that if she is in that room she has more freedom in cooking and sitting down and watching T.V., etc. that's why we requested or maybe my mother can be in the regular family room and she can lie down there and not feel that in some ways she's not being respectful, you know it's culture.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: No, I'm all set.

CHAIRMAN HODOM: What if the Board were to approve your application, what time frame are you looking at as far as commencing work and completing work?

MR. SANGHI: Well hopefully before the winter because this is only a 3-season room. So winter is 1-season, you know harsh winter of the northeast will preclude it's use so we will - - if the Board was kind enough and we got the permission, we'd like to proceed as soon as possible.

CHAIRMAN HODOM: And what utilities are you proposing to bring out into this room?

MR. SANGHI: Basically...

MRS. SANGHI: Electric fan.

MR. SANGHI: Electric fan and that kind of thing.

CHAIRMAN HODOM: No plumbing?

MR. SANGHI: No plumbing.

CHAIRMAN HODOM: No heating?

MR. SANGHI: No heating. Maybe a gas line for a standing a small unvented heater.

CHAIRMAN HODOM: Okay, very good. Any more presentation or are you pretty well set?

MR. SATALINO: I know that there was no objection by their neighbors.

MRS. SANGHI: No, I talked to both the neighbors myself.

MR. SANGHI: 8-years back there was serious objections you know.

CHAIRMAN HODOM: Well we did receive a letter this evening from Mr. Modris Morozovs. He lives in Albany but he owns the property adjacent to your residence and I'm not quite sure which one it is.

MR. SANGHI: Is it some guy behind us?

MRS. SANGHI: Maybe he's the guy behind us.

MR. PLATEL: It's the lands of Secor. It's that lot that...

CHAIRMAN HODOM: Is that the one in the back?

MR. PLATEL: The one in the back. He's building a house back there.

MR. SANGHI: Right. He's always against everybody the town sometime back people have a lot objection because he put a barbed wire fencing up and they complained to the city and the town and that's why I think – I haven't even seen the gentleman, but you know...

MRS. SANGHI: It is a big fence that he has.

CHAIRMAN HODOM: It's a 6-foot high chain link fence and it did have barbwire at one time, but it has been removed.

MRS. SANGHI: But I don't know that, we have no connections with him.

CHAIRMAN HODOM: But other than Mr. Secor you have discussed what you proposed to do with at least the 2-side of it which would be most effected by it.

MR. SANGHI: No problems.

CHAIRMAN HODOM: Okay. Thank you very much. Board members, I think we're all set? 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 and have a nice evening.

MR. SANGHI: Thank you very much.

Hearing closed 8:30 p.m.

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The next order of business was to consider the application of Dominick Carota & Dr. Stephen Sipperly, 1406 River Road, Selkirk, New York 12158. 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 Dominick Carota & Dr. Stephen Sipperly for Special Exception under Article VI, Permitted Uses, Section 128-23, Rural Districts Not Zoned for the construction of a dog kennel at the premises 1406 River Road, Selkirk, New York 12158, it is hereby ordered that a public hearing on this matter be held October 6, 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.

The next order of business was to consider the application of AT & T Wireless, 308 Kenwood Avenue, Delmar, New York 12054. The application was found to be in order and Chairman Hodom made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by AT&T Wireless for Special Exception under Article VI, Permitted Uses, Section 128-12 B (1), Public Utility & Chapter 113-4 A(1), Alterative Tower Sites to request an extension of time to collocate antennas and related equipment on an existing water tank at premise 308 Kenwood Avenue, Delmar, New York 12054, it is hereby ordered that a public hearing on this matter be held October 6, 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. Micelli seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of Bob Hughes, 2 Knights Way, Albany, New York. The following points were brought up by the Board members: The foundation was constructed without obtaining a building permit and encroached into the side yard requirement as well as substantially exceeding the allowable percentage of lot occupancy at the premises. Even with new plans reducing the square footage and eliminating the side yard encroachment, the existing foundation would still be exposed. On a motion made by Mrs. O'Brien, seconded by Mr. Micelli, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution denying the Variance, for presentation at the next Board meeting on October 6, 2004.

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The next order of business was a discussion of the previous public hearing held in the matter of 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 premises 8 Keith Road, Delmar, New York. The following points were brought up by the Board members: the existing lot is small. The proposed addition is a reasonable request and will not effect the character of the neighborhood. The applicants family is growing and the need for more room is necessary. 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 October 6, 2004.

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The next order of business was a discussion of the previous public hearing held in the matter of Ajay & Sue Sanghi for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for the construction of a 3-season room, which will exceed the allowable percentage of lot occupancy at the premises 50 Dover Drive, Delmar, New York. The following points were brought up by the Board members: The Applicants were before the Board in 1994 for a similar request and was approved. The previous proposed sunroom was larger than the new proposed sunroom. The Applicants never built the original sunroom due to financial issues. The proposed sunroom would match with the existing décor and the request is minimal. On a motion made by Mr. Micelli seconded by Mr. Wiggand, 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 October 6, 2004.

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The next order of business was to consider the proposed SEQRA resolution of Stephen Ziamandanis (Applicant), School House Road Associates (Owner), 299 School House Road, Albany, New York 12203.

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

RESOLUTION

WHEREAS the Zoning Board of Appeals for the Town of Bethlehem held a public hearing on August 18, 2004 to take testimony and comments on the application of Stephen Ziamandanis (“Applicant”), School House Road Associates (“Owner”) for a modification to a previously granted use variance under Article VI, Permitted Uses, Section 128-12, Residence “A” District, to convert a previous daycare facility with an office and apartment to entirely office space at premises located at 299 School House Road, Albany, New York; and

WHEREAS the Board reviewed the testimony and documents presented at the public hearing, including a review of the environmental impacts that may arise as a result of this project; and

WHEREAS the Board has determined that there are no significant environmental impacts associated with the project; and

NOW THEREFORE, BE IT RESOLVED THAT:

The Board adopts a negative declaration pursuant to the New York State Environmental Quality Review Act as set forth on the attached document.

September 15, 2004

Michael C. Hodom
Chairman
Board of Appeals

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York on September 16, 2004.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT
DETERMINATION OF SIGNIFICANCE**

This notice is issued by the Zoning Board of Appeals of the Town of Bethlehem (“Board”), acting as lead agency, in an uncoordinated environmental impact review, pursuant to and in accordance with Article 8 of the New York State Environmental Conservation Law and the regulations promulgated under Article 8 and set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations (collectively referred to as “SEQR”).

The Board has determined that the proposed installation of 3 telecommunication antennae at a centerline height of 167" feet on an existing 180" foot lattice tower (“Tower”), the installation of a GPS antenna at the base of the existing tower, and the installation of related equipment at the base thereof (collectively “Project”), will not have a significant adverse impact upon the environment and that a negative declaration pursuant to SEQR may be issued. Reasons supporting this determination are fully explained below.

Applicant: Independent Wireless One

Project Name: Co-location of PCS Antennae and GPS Antennae at Existing Tower Site

SEQR Status: Type [_____] Unlisted: XX

Project Description: The Project consists of the installation of telecommunication antennae on an existing 180" Tower and the installation of a GPS antenna and related equipment at the base thereof.

Location: S.B.L. 120-2-19 Bethlehem, State of New York (“the Project Site”).

Reasons Supporting This Determination:

1. The Board as Lead Agency conducting an uncoordinated review, has considered the full scope of the Project and has reviewed the environmental assessment form and the application of the Applicant for a special exception and site plan approval, and all supporting documentation and testimony.
2. The Project Site is used for telecommunication purposes. The proposed use is consistent with existing land uses and will avoid the need for a new telecommunications tower in the Town of Bethlehem.
3. The Project Site has no unique or unusual land forms (cliffs, dunes or other geological formations), and the Project Site is not used by the community as open space or recreation areas.
1. There will be no air emissions from the Project.
2. The Project will not substantially affect water discharges from the Project Site.
3. The Project will not generate solid or hazardous waste.
4. The Project will not significantly alter the visual and/or aesthetic resources in the area of the Project Site and will not have significant adverse visual impact upon the scenic quality of the landscape.
5. While the Project may result in the removal of minimal vegetation at the Project Site, the Project will not significantly affect plants and animals in and around the Project Site.
6. The Project will not impact agricultural land.
7. The Project is not substantially contiguous to, nor does it contain, a building, site or district listed on the State or National Registers of Historic Places, and thus will not have an adverse impact upon historic or archeological resources.
8. There are no anticipated changes in traffic flow to and from the Project Site as a result of the Project.

- 9. The Project will not generate any unpleasant noise or odors.
- 10. There will be no adverse environmental impacts as a result of the Project.

For Further Information Contact: Town of Bethlehem
 Zoning Board of Appeals
 445 Delaware Avenue
 Delmar, New York 12054
 Attn: Karen Guastella, Secretary

Copies of this Negative Declaration shall be filed with the Town Clerk of the Town of Bethlehem.

Authorized Signature

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on September 16, 2004.)

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The next order of business was to consider the proposed resolution of Stephen Ziamandanis (Applicant), Schoolhouse Road Associates (Owner), 299 Schoolhouse Road, Albany, New York, 12203.

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 seeking a modification to a previously granted Variance under Article VI, Permitted Uses, Section 128-12, Residence "A" District, requested by Stephen Ziamandanis ("Applicant"), School House Road Associates ("Owner") for property at 299 School House Road, Albany, 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 August 18, 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 a modification to a previously granted Use Variance. The existing Variance allows the property to be used for a day care center within an accessory office and 2nd floor apartment. The Applicant is proposing to have three separate office spaces with two being located on the first floor and the third on the second floor where the apartment is currently located. The parking requirements for this use would require 14-spaces. The site plan of the existing site shows 15-spaces.

The existing building is currently vacant and is located in an "A" Residence Zone.

The Board previously granted a use variance to the property by Resolution dated October 5, 1988. As set forth in the prior Resolution, though it is in a Residence A zone, the property has been devoted to non-residential uses since about 1960, as a day care/nursery school and a community mental health facility. The most recent use of the property as a nursery school closed when the business proved no longer economical.

The Applicant has agreed, if the modified use variance is granted, to comply with all conditions imposed by the Board in the October 1988 Resolution, except condition #3, which would not be applicable.

The Board received written evidence and oral testimony from a real estate agent documenting the Owner's efforts to market the property for a use permitted in the Residence "A" zone, and documenting the significant economic burden that would be imposed to convert the existing buildings on the property to residential uses.

The Board finds that the modified use proposed by the Applicant will generate less traffic than the previously approved use of the property.

At the public hearing, the adjoining owner (Mosall) gave testimony regarding past instances where users of the subject property occasionally parked on his property on School House Road during periods of severe winter weather.

No one spoke in opposition to the application at the public hearing.

The Albany County Planning Board has recommended to the Board that the Applicant submit the proposed project to the County Department of Public Works for assessment of the access to County Route 204 (School House Road).

CONCLUSIONS OF LAW

The Applicant and the Owner have demonstrated that the zoning regulations and use restrictions presently applicable to the property have caused unnecessary hardship.

The Applicant and the Owner have demonstrated, based on competent evidence, that they cannot realize a reasonable return under the current regulations and restrictions.

The hardship related to the property is unique, and does not apply to a substantial portion of the neighborhood.

The requested modification of the use variance will not alter the essential character of the neighborhood.

The alleged hardship has not been created by the Applicant or the Owner.

The requested modification of the use variance is the minimum variance that is necessary and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Accordingly, the Board grants the Applicant's request for a modification to the prior use Variance on the following conditions:

11. The project will be constructed in conformity with the testimony before the Board and the documents submitted to it;
12. The Applicant shall submit the project to the Town Building Department and Planning Board for any necessary approvals or permits;
13. All conditions to the Board's prior use variance (except condition #3) shall be complied with;
14. The Applicant shall comply with the Albany County Planning Board's recommendation for County review of the highway access;
15. The converted office space shall not be used for business's that experience high traffic volume including but not limited to medical or dental offices;
16. The Applicant shall ensure that parking does not occur on the adjoining Mosall property; and
17. The proposed project will be completed within two years of the date of this resolution.

September 15, 2004

Michael C. Hodom
Chairman
Board of Appeals

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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 Wiggand			
Richard Lewis			
Gilbert Brookins			
Marjory O'Brien			

(Resolution filed with the Clerk of the Town of Bethlehem on September 16, 2004.)

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The next order of business was to consider the proposed resolution of Patricia Caporta, 106 Fernbank Avenue, Delmar, New York 12054.

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

RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York for a Variance under Article XII, Percentage of Lot Occupancy, Section 128-50, Single Family Dwellings, requested by Patricia Caporta for property at 106 Fernbank Avenue, Delmar, New York; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on August 18, 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

The Applicant is proposing to construct a 278-square foot addition to the existing 1,831.53-square foot main structure creating a total main structure of 2,109.53-square feet. This is 84.57-square feet over the 2,025-square feet allowed by the 13,500-square foot lot. The lot occupancy will be 15.62%, which is .62 over the 15% that is allowed for the main structure.

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

The Applicant proposes to convert the area containing an existing, deteriorated deck at the rear of the property to an enclosed three-season room.

The proposed three-season room will have electric service, but no heat, air conditioning or plumbing.

At the hearing, no one spoke in opposition to the project.

At the hearing, the Applicant testified that she had spoken to her neighbors and no one had expressed opposition to the project.

CONCLUSIONS OF LAW

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

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

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

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

The requested variance is minimal.

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

Although the Applicant commenced construction without Town approval, the Applicant's difficulty necessitating the Variance was not self-created.

Accordingly, the Board grants the Applicant's request for a Variance to replace the current deck with a three-season room on the following conditions:

18. Prior to resuming construction, the Applicant shall provide the Town Building Department with revised plans showing the exact intended design and configuration of the three-season room; and
19. The proposed project will be completed within two years of the date of this resolution.

September 15, 2004

Michael C. Hodom
Chairman
Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
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 September 16, 2004.)

The next order of business was to consider the proposed resolution of Geraldine Aylward, 44 Montrose Drive, Delmar, New York 12054.

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

RESOLUTION

* * *

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York seeking a Variance under Article XVII, Side

Yards, Section 128-73, Required Widths, requested by Geraldine Aylward for property at 44 Montrose Drive, Delmar, New York; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on August 18, 2004; and,

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

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

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

FINDINGS OF FACT

The Applicant is proposing to construct a 250.08-square foot carport addition on the side of the existing main structure at 44 Montrose Drive, Delmar. The proposed carport addition would create a side yard setback of 8.48-feet. This is 1.52-foot shy of the 10-foot setback that is required.

Applicant seeks to build the carport over a blacktopped area in her side yard, adjacent to a side door entrance to the house.

In 2003, Applicant applied to the Board for a larger variance (approximately 24") to construct a larger carport and for outside storage of materials. By Resolution dated July 2, 2003, the Board denied the requested variance as too large and not in keeping with the neighborhood.

Applicant now seeks a smaller variance for a smaller carport. At the public hearing, it was established on the record that the presently requested variance is approximately 18" (eighteen inches).

The Applicant testified that the carport will also alleviate a potentially hazardous condition by keeping rain and snow-melt off the driveway during the winter months. Icy conditions now result, which pose a danger to persons entering the home by the side door entrance.

The Board has received a letter from one of the Applicant's neighbors supporting the requested variance.

At the hearing, two other persons testified in support of the requested variance.

The Applicant testified that three other homes in close proximity have carports.

CONCLUSIONS OF LAW

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

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

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

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

The requested variance is minimal.

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

Accordingly, the Board grants the Applicant's request for a Variance to construct the proposed carport on the following conditions:

20. The project will be constructed in conformity with the testimony before the Board and the documents submitted to it;
21. The Applicant shall match, as nearly as possible, the roof shingles on the carport roof has to the roof on the house; and
22. The project will be completed within two years of the date of this resolution.

September 15, 2004

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 Robert Wiggand Richard Lewis Gilbert Brookins Marjory O'Brien	None	None	None

(Resolution filed with the Clerk of the Town of Bethlehem on September 16, 2004.)

- - -

The next order of business was to consider the proposed SEQRA resolution of Delmar Health & Fitness, 28 Hudson Avenue, Delmar, New York.

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

RESOLUTION

WHEREAS the Zoning Board of Appeals for the Town of Bethlehem held a public hearing on May 5, 2004 and August 4, 2004 to take testimony and comments on the application of Delmar Health & Fitness, LLC ("Applicant"), Michael Mashuta ("Owner") for a use variance under Article VI, Permitted Uses, Section 128-13, Residence "AB" District, to allow the construction of additional parking spaces for the

Applicant's existing gym/health center on premises located at 28 Hudson Avenue, Delmar, New York; and

WHEREAS the Board reviewed the testimony and documents presented at the public hearing, including a review of the environmental impacts that may arise as a result of this project; and

WHEREAS the Board has determined that there are no significant environmental impacts associated with the project; and

NOW THEREFORE, BE IT RESOLVED THAT:

The Board adopts a negative declaration pursuant to the New York State Environmental Quality Review Act as set forth on the attached document.

September 15, 2004

Michael C. Hodom
Chairman
Board of Appeals

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York on September 16, 2004.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT
DETERMINATION OF SIGNIFICANCE**

This notice is issued by the Zoning Board of Appeals of the Town of Bethlehem ("Board"), acting as lead agency, in an uncoordinated environmental impact review, pursuant to and in accordance with Article 8 of the New York State Environmental Conservation Law and the regulations promulgated under Article 8 and set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations (collectively referred to as "SEQR").

The Board has determined that the proposed grant of a use variance to allow parking for the Applicant's commercial gym/health center on property in a residential zoning district, will not have a significant adverse impact upon the environment and that a negative declaration pursuant to SEQR may be issued. Reasons supporting this determination are fully explained below.

Applicant: Delmar Health & Fitness, LLC; Michael Mashuta (Owner)

Project Name: Use Variance; Additional Parking

SEQR Status: Type [_____] Unlisted: XX

Project Description: The Project consists of the grant of a use variance to allow extra parking spaces for a commercial business to be constructed in a residential district.

Location: S.B.L. No. 85.12-2-26, 28 Hudson Avenue, Delmar, Town of Bethlehem, State of New York (“the Project Site”).

Reasons Supporting This Determination:

1. The Board as Lead Agency conducting an uncoordinated review, has considered the full scope of the Project and has reviewed the environmental assessment form and the application of the Applicant for a modified use variance approval, and all supporting documentation and testimony.
2. The Project Site includes the Applicant’s existing gym/health center with parking spaces. The proposed use variance will not alter the essential character of the neighborhood, or impact the health, safety and welfare of the community. The variance will enhance public safety by providing an alternative to the present use of Hudson Avenue as a parking area for the Applicant’s business.
3. The Project Site has no unique or unusual land forms (cliffs, dunes or other geological formations), has no steep slopes, and is not used by the community as open space or recreation areas.
23. There will be no air emissions from the Project.
24. The Project will not substantially affect water discharges from the Project Site.
25. The Project will not generate hazardous waste. The project will not generate solid waste.
26. The Project will not significantly alter the visual and/or aesthetic resources in the area of the Project Site and will not have significant adverse visual impact upon the scenic quality of the landscape.
27. While the Project may result in the removal of minimal vegetation at the Project Site, the Project will not significantly affect plants and animals in and around the Project Site.
28. The Project will not impact agricultural land.
29. The Project is not substantially contiguous to, nor does it contain, a building, site or district listed on the State or National Registers of Historic Places, and thus will not have an adverse impact upon historic or archeological resources.

- 30. It is expected that the use variance will improve and enhance traffic flow to and from the project site, and in the surrounding neighborhoods.
- 31. The Project will not generate any unpleasant noise or odors.
- 32. There will be no adverse environmental impacts as a result of the Project.

For Further Information Contact: Town of Bethlehem
 Zoning Board of Appeals
 445 Delaware Avenue
 Delmar, New York 12054
 Attn: Karen Guastella, Secretary

Copies of this Negative Declaration shall be filed with the Town Clerk of the Town of Bethlehem.

 Authorized Signature

Mr. Wiggand made a motion that the SEQRA 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 September 16, 2004.)

- - -

The next order of business was to consider the proposed resolution of Delmar Health & Fitness, 28 Hudson Avenue, Delmar, New York 12054.

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

RESOLUTION
 * * *
 *

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a Variance under Article VI, Permitted Uses, Section 128-13, Residence AB District, requested by Delmar Health & Fitness, LLC (“Applicant”), Michael Mashuta (“owner”) for property at 28 Hudson Avenue, Delmar, New York; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on May 5, 2004 and 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 Applicant is proposing to construct an additional 32 parking spaces for its existing business at 28 Hudson Avenue, Delmar, a gym and health center. Nineteen of these spaces are proposed to be located in the CC-Commercial Retail District.

These nineteen spaces are a permitted accessory use, subject to site plan approval by the Town Planning Board. The remaining thirteen spaces, the subject of the use variance application, are proposed to be located in the adjoining AB Residential District.

Applicant owns a single parcel of land of approximately 7.2 acres at 28 Hudson Avenue, Delmar. The parcel is located in two different zoning districts of the Town. Approximately 1.4+ acres fronting on Hudson Avenue is located in the CC Commercial Retail district (the commercial parcel). On this smaller parcel is located a 10,000 square foot building containing the Applicant’s gymnasium and health center, and 40 parking spaces.

The larger portion of the property owned by the Applicant, approximately 5.7+ acres, is located north and behind the gym/health center and is in the AB Residential District (the residential parcel). On the residential parcel, per advice of the Board’s counsel, parking for commercial entities like the Applicant’s gym/health center is prohibited by the Town Code. A use variance is needed to allow parking spaces on the residential parcel.

In addition, the larger residential parcel is presently landlocked, with no point of access other than from Hudson Avenue.

At the time the site plan for the Applicant's gym/health center was approved by the Planning Board, in about 1998, the Applicant requested 60 parking spaces, but was approved by the Planning Board for 40 spaces.

Since that time, the Applicant's business has changed significantly, and the 40 parking spaces are no longer sufficient. Given the number of classes and services offered at the business, there is not enough parking to safely accommodate the patrons and staff of the facility. As a result, patrons have begun parking on Hudson Avenue. At times, the number of cars parking on Hudson Avenue has impeded traffic flow on Hudson Avenue, and encroached onto neighboring properties. Especially in the winter months, when Hudson Avenue is made narrower by snowfall and snowbanks, the parking on the roadway has been a potentially serious public safety issue. The Town Police Department has been contacted on a number of occasions about this problem.

The smaller commercial parcel has severe physical limitations (unstable soils and steep slopes). Only a limited number of additional parking spaces are possible on the commercial parcel.

The Applicant has attempted to arrange for additional parking rights for its business on adjoining parcels, without success.

The Applicant's business has been impeded by the inability to provide additional, safe parking spaces for patrons and staff.

The Board has received numerous written statements from members of the public regarding the application for a use variance, all of them supporting the Applicant's request for additional parking on the residential parcel.

All testimony received at the public hearings on the application has been in favor of the Applicant's request for the additional parking on the residential parcel.

The public hearing was adjourned in order to provide the Applicant the opportunity to address the Board's questions regarding the hardship allegedly caused by the zoning regulations and restrictions applicable to the residential parcel. The Applicant provided the Board with all information requested.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires the requested Use Variance in order to locate additional parking spaces on the residential parcel.

The Applicant has demonstrated that the zoning regulations and use restrictions presently applicable to the residential parcel have caused unnecessary hardship.

The Applicant has demonstrated, based on competent evidence, that it cannot realize a reasonable return on its property under the current regulations and restrictions. Given the residential parcel's landlocked state and its location immediately behind the existing gym/health center, uses related or accessory to the gym/health center are most appropriate.

The hardship related to the Applicant's property is unique, and does not apply to a substantial portion of the neighborhood.

The use variance to be granted by the Board will not alter the essential character of the neighborhood.

The alleged hardship has not been created by the Applicant or the Owner.

The use variance to be granted by the Board is the minimum variance that is necessary and will preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The use variance to be granted by the Board will also enhance public safety by providing a safe and lawful alternative to the present use of Hudson Avenue as a parking area for the Applicant's business.

Accordingly, the Board grants the Applicant's request for a Use Variance to allow additional parking on the residential parcel on the following conditions:

- Applicant shall be limited to a maximum of twenty (20) parking spaces on the residential parcel.
- The exact number, location, design, screening, and other features of all additional parking spaces requested by the Applicant (on both the residential and commercial parcels) shall be as determined by the Town Planning Board pursuant to an application for site plan approval. Applicant shall prepare proper plans and supporting materials needed by the Planning Board for its site plan review of these additional parking spaces (on both the residential and commercial parcels). No construction of additional parking spaces (on either the residential or commercial

parcels) shall commence without site plan approval by the Planning Board.

- Given the above noted public safety problems associated with the Applicant's current parking situation, the Board recommends that both the Applicant and the Planning Board proceed expeditiously with the necessary site plan review.
- In the event that site plan approval is granted by the Planning Board for additional parking on the residential parcel, the Board also recommends to the Applicant that it apply to the Bethlehem Town Board for an amendment of the zoning district classification for all or part of the residential parcel, pursuant to the provisions of Article XXVI of the Town Zoning Law.

September 15, 2004

Michael C. Hodom
Chairman
Board of Appeals

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Mr. Brookins made a motion that the Resolution be adopted, Mr. wiggand 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 September 16, 2004.)

- - -

The next order of business was to consider the proposed resolution of Albert & Carol Penk, 395 Clapper Road, Selkirk, New York 12158.

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

RESOLUTION

* * *

*

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 XVI, Front Yards, Section 128-66, Required Depths, requested by Albert and Carol Penk (“Applicants”) for property at 395 Clapper Road, Selkirk, New York; and,

WHEREAS, the Board of Appeals, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on September 1, 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 covered 6-foot by 30-foot, 180-square foot open porch addition to the existing main structure, replacing the existing uncovered concrete steps, which will create a front yard setback of 44.5-feet. This is 5.5-feet shy of the required 50-feet from yard setback.

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

Applicants own approximately 10 acres of land on which they have two residential buildings. The subject application concerns one of these buildings, on which there is a badly deteriorated set of concrete steps and concrete porch, and on which the roof is leaking. Applicants propose to replace the steps and enclose the porch area with a new covered porch structure.

Applicants' nearest residential neighbors are some distance away (1/4 mile).

At the public hearing, other than the Applicants, no one appeared to address the Board on the subject application.

CONCLUSIONS OF LAW

Based on the above Findings, this Board concludes that the Applicants require the requested variance.

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

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

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

The requested variance is minimal.

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

Accordingly, the Board grants the Applicants' request for a Variance to replace the existing concrete steps with a new concrete porch on the following conditions:

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

before the Board and the plans and documents submitted to it; and

2. The project will be constructed within two years of the date of this resolution.

September 15, 2004

Michael C. 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 16, 2004.)

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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 September 1, 2004, meeting were approved as amended.

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

Meeting Adjourned: 9:20 p.m.

Respectfully submitted,

Secretary