

**TOWN OF BETHLEHEM
BOARD OF APPEALS
September 21, 2005**

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. Welcome. Just for point of order we are using the new zoning code starting this evening so please bear with us if there is some uncertainty about which way we find with any issue. The first order of business this evening is a continuation of a public hearing for a Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Highway Frontage requested by Joseph Rappazzo for property at 126 Smultz Road, Glenmont, New York. The Applicant is proposing a 1-lot subdivision of a parcel, which does not meet the highway frontage requirements, which is now 75 feet.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to subdivide the existing lot, which does not have highway frontage. With the split, the residential portion would be required to have 75 feet of highway frontage. At this time the property is accessed by an easement and does not meet this requirement.

The property in front of the Board is located in a Rural District and the existing structure is occupied as a single-family dwelling. The remainder of the property is a proposed golf course that is currently under construction.

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

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 June 1, 2005 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Joseph Rappazzo for Variance under Article X, Highway Frontage & Access, Section 128-39, Residential Lot to abut accepted highway or street of the Code of the Town of Bethlehem for a 1-lot subdivision of a parcel, which will not meet the 28 foot road frontage access for an existing residence at the premises 126 Smultz Road, Glenmont, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the, August 10, 2005 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. You'll note that from the statement that our secretary made, the previous frontage requirement was 28 feet and now it is 75 feet under the new code.

ATTORNEY MOORE: Can I ask a question just before you start Mike?

CHAIRMAN HODOM: Sure.

ATTORNEY MOORE: The prior code, Mark also said that an easement was not an acceptable form of ownership but the new code does not have that limitation, is that right?

MR. PLATEL: No it does not. It's just 75 feet.

ATTORNEY MOORE: Okay.

CHAIRMAN HODOM: 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 ask that you come up, stand or sit close to the black microphone, it's for recording purposes only. Any questions or comments should be directed to the Board and should be specific to the issue at hand this evening. Mr. Rappazzo?

MR. RAPPAZZO, JR.: My name is Joe Rappazzo and I reside at 536 Wemple Road. As you know we have widened the Road and we're working with Bob Ausfeld of Regent's Communication to get a larger easement then what we have and he has agreed to give us that easement. He sent a very generic letter to the Board about that.

CHAIRMAN HODOM: Is that the 50-foot easement?

MR. RAPPAZZO, JR.: Yes. I didn't realize it was going to be a 75-foot easement now so we're going to have to talk to Mr. Ausfeld again and see if we can get a larger easement.

MR. PLATEL: It doesn't have to be that.

MR. RAPPAZZO, JR: Oh it doesn't have to be?

MR. WIGGAND: You don't fall under that.

MR. RAPPAZZO, JR.: He is willing to give us and he's going to have the deed recorded with the 50 foot easement as well for us.

ATTORNEY MOORE: Excuse me Mike; I'm sorry again another question Mark and again the new code does not require any sort of approval for the golf course?

MR. PLATEL: Actually they have the vested rights in it that we had discussed at one time so what they have there is permitted as it was under the old code.

ATTORNEY MOORE: Grandfathered or vested?

MR. PLATEL: Yes.

ATTORNEY MOORE: Thank you.

MR. RAPPAZZO, JR.: As far as the state of the road I did send a letter depicting what we were going to do with the road after all the heavy equipment has left the site.

CHAIRMAN HODOM: That's your letter of August 24th?

MR. RAPPAZZO, JR.: Yes that's right.

CHAIRMAN HODOM: Have you made any attempt to purchase that property, the 50-foot right of way or 75-foot right of way from Regent Broadcasting?

MR. RAPPAZZO, JR.: They're not interested in subdividing the property.

CHAIRMAN HODOM: Okay, but I mean you did make the attempt to purchase the property from them? You asked them if they would sell it?

MR. RAPPAZZO, JR.: Did you guy's ever come out and ask them?

MR. RAPPAZZO: No we didn't come out.

MR. RAPPAZZO, JR.: No.

MR. RAPPAZZO: See I don't believe they would because of the tower system that they have there. The legs of the tower when they come down it takes up pretty much their whole area.

CHAIRMAN HODOM: But don't you maintain that tower access for them now?

MR. RAPPAZZO: Yeah right I brush-hog it for them.

MR. WIGGAND: And you're referring to the cables and everything there opening that tower up?

MR. RAPPAZZO: Right.

MR. WIGGAND: They cover pretty much a lot of that ground area.

MR. RAPPAZZO: Yes they do.

CHAIRMAN HODOM: Maybe you can explain it a little bit further Mark where you say the easement does not affect the application at this point due to the new code. Right now he has a 50-foot easement right of way...

MR. PLATEL: Correct.

CHAIRMAN HODOM: For the property owner to go back to his existing residence.

MR. PLATEL: Yes.

CHAIRMAN HODOM: And that driveway is not discussed in the new code.

MR. PLATEL: No the new code doesn't address that the driveway has to be located in a street abutment, it doesn't address that it has to be owned. The only thing that the new code address's – it just states that for a lot you would either need 75 feet of road frontage or if it's a keyhole lot, which this one isn't, you would need 28 feet for a keyhole lot.

CHAIRMAN HODOM: So if he was to obtain a 75-foot right of way...

MR. PLATEL: He still won't have 75 feet because the road leading to that is only 30 feet wide.

CHAIRMAN HODOM: But if he has 75 feet I mean it's really a Town's problem then isn't it? If the Town doesn't have a 75-foot wide right of way for their roadway then he can't meet that situation anyway.

MR. PLATEL: Right he cannot meet it.

ATTORNEY MOORE: Are we talking about – maybe not, two different things. There's a difference between the width of the easement and the frontage on a public street, right? Am I correct I mean I think what he needs the Variance from the latter from the codes requirement of frontage on a public street. It doesn't matter how wide the easement is. The easement can be 200 feet wide.

MR. PLATEL: Correct.

ATTORNEY MOORE: It doesn't matter; it still needs a Variance.

CHAIRMAN HODOM: What I'm getting at there's no way that he can meet that 75-foot requirement.

ATTORNEY MOORE: Correct unless the Town took over the road, which isn't going to happen.

CHAIRMAN HODOM: That's all I wanted to clarify. Have you had an opportunity to review that June 23rd memorandum from the Town Engineer Eric Deyoe?

MR. RAPPAZZO, JR.: Yes.

CHAIRMAN HODOM: Do you have any comments or...

MR. RAPPAZZO, JR.: Yeah as we discussed at the last meeting we shouldn't be responsible for re-doing a section of road, nearly half the amount of road that the Town currently owns. As far as blacktopping the road later on down the line we did plan on doing that once we open the golf course and had business we're going to blacktop the road. Right now it's not in the budget.

CHAIRMAN HODOM: Understandable but as far as the property that you have access to which is in the easement right of way.

MR. RAPPAZZO, JR.: Right.

CHAIRMAN HODOM: Down to where the Town maintenance of that – Smultz Road ends...

MR. RAPPAZZO, JR.: Right.

CHAIRMAN HODOM: Do you have any problem about meeting the Town's requirements for your roadway?

MR. RAPPAZZO, JR.: We had – we had gotten an estimate to blacktop it and again it's not really affordable to do that.

CHAIRMAN HODOM: And what estimate did you obtain?

MR. RAPPAZZO, JR.: To basically put the sub-base in and to blacktop it according to Town spec's basically.

CHAIRMAN HODOM: And what was that cost?

MR. RAPPAZZO, JR.: It was nearly 50 thousand.

CHAIRMAN HODOM: That was the 45,000 you talked at the last hearing?

MR. RAPPAZZO, JR.: Yes, 45,000.

CHAIRMAN HODOM: But you do recognize and correct me please if I'm not saying it correctly that because of the public use for the golf course you need a roadway that will accommodate 2-way traffic to your golf course. You don't necessarily need it for your residence.

MR. RAPPAZZO, JR.: That's right.

CHAIRMAN HODOM: But you do need an adequate highway from the existing highway where the Town line ends to the golf course.

MR. RAPPAZZO, JR.: Right.

CHAIRMAN HODOM: As far as a safety issue for yourself and any patrons to the golf course.

MR. RAPPAZZO, JR.: That's right.

CHAIRMAN HODOM: And any Town residents – or any residents. Any other questions from the Board?

MR. MICELLI: No, I'm fine Mr. Chairman.

MR. WIGGAND: No I have none.

CHAIRMAN HODOM: Are there any questions or comments from the audience? Is there anyone wishing to speak in favor of the applicant that has not already done so? Is there anyone wishing to speak in opposition to the Applicant? 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. RAPPAZZO, JR.: Thank you.

Hearing closed 8:43 p.m.

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The next order of business this evening is a public hearing for a Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Highway Frontage for property at 207 Maple Avenue requested by Nicholas & Cherise Vitello. The Applicant is proposing to construct a single family dwelling, which does not meet the highway frontage requirements at premises 207 Maple Avenue, Selkirk, 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 dwelling on a parcel that does not have the required highway frontage. The parcel of land in question is land-locked and access is provided by an easement connecting the property to Route 396 (Maple Avenue).

The property is located in a Rural District and there is currently a trucking business working out of the existing structure.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals, Albany county, Town of Bethlehem will hold a public hearing on Wednesday September 21, 2005 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Nicholas & Cherise Vitello for Variance under Article X, Highway frontage & access, Section 128-39, Residential Lots to Abut accepted highway or street of the Code of the Town of Bethlehem for the construction of a single family dwelling, which does not meet the Highway Frontage requirements at premises 207 Maple Avenue, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the September 14, 2005 issue 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 applicant's presentation and entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor or in opposition to the applicant. Anyone desiring to speak may be allowed to do so. Mr. Vitello or...

MR. DEMPFF: Yes, I'll introduce myself. My name is Chris Dempf; I'm an attorney in Albany and represent Mr. Vitello. The land is actually owned by a corporation, which is owned by his father, Mr. Nicholas Vitello so there are two, Nick Vitello's here and hopefully it won't get to confusing. Mr. Vitello lives on Minnowbrook in Delmar and has lived in the Town since 1932. His family built some of the homes on Royal Boulevard and Minnowbrook. Mr. Vitello, Sr. – sorry...

MR. VITELLO, SR.: We put the roads in to on Minnowbrook and Royal Boulevard.

MR. DEMPFF: Put the roads in to, okay, so Mr. Vitello acquired this property basically for his – for the use by his son who has the trucking business and that building on the site has been a trucking business for many, many years. I don't know I haven't done the research but it's been a very long time. We're here tonight asking for an Area Variance to permit Mr. Vitello, Jr. – I'll call him Junior, the son; to live where he works, which is at the garage. Again right now Mr. Vitello lives on Royal Boulevard, the son lives on Royal Boulevard and he would be moving to this site, you know as we progress through our I guess various, you know applications to the Town. So we do have some information – we have a survey and I'm not sure whether that survey has been submitted to the Board. Mr. Vitello has done quite a bit of the legwork on this by himself and I've just recently gotten involved.

MR. VITELLO: They have those copies.

MR. DEMPFF: Okay.

CHAIRMAN HODOM: We do.

MR. DEMPFF: And this is approximately an 11-acre site and the frontage on the road, the road was built at some point to weather big trucks. So I don't know the specifications of the road right now, but it's a substantial road, able to hold the loads of trucks. There is 52 feet of frontage of that road along Maple Avenue and I do have actually a better survey that I would like to hand up as part of this proceeding. It's actually the meets and bounds for that road going in. I'm not sure whether your survey has that or not.

CHAIRMAN HODOM: It does not.

MR. DEMPFF: Yeah I think this would really help as far as describing the dimensions of that road.

CHAIRMAN HODOM: It is described in the deed as far as attachment A is.

MR. DEMPFF: Right.

CHAIRMAN HODOM: Before you go on Mr. Dempf the existing trucking business that's currently on the property is Tri-Village Trucking and Services, LLC?

MR. DEMPFF: Yes sir. As part of I believe that Mr. Vitello, Jr. has had some discussions with at least one neighbor, maybe two neighbors relating to additional frontage or acquiring frontage. I think that – I don't think he was successful in getting them to part with their land, but he did make the inquiry. Who did you speak with Nick?

MR. VITELLO: Mrs. Keneston.

MR. DEMPFF: Mrs. Keneston and...

MR. VITELLO: I don't have the paper that...

MR. DEMPFF: Okay, but the person in the Vasto property.

MRS. KENESTON: That's Derek right here.

MR. SHIENKE: Hi how are you.

MR. DEMPFF: Chris Dempf, what's your name?

MR. SHIENKE: Dereck Shienke.

MR. DEMPFF: Dereck Shienke lives at 205 Maple Avenue. And again I don't think anything has come of those discussions at least at this point.

CHAIRMAN HODOM: Okay.

MR. DEMPFF: And Mr. Vitello, Jr. has actually gone and spoken to some of his neighbors not all of them but some of them. It's difficult to catch everyone home and I would like to hand this up as an additional exhibit by indicating his neighbors, which he spoke to which have signed this document not opposing and actually in favor of granting this area Variance.

MR. MICELLI: Can I ask you a question, who owns that road?

MR. DEMPFF: The road is split up between two parties, Mrs. Keneston.

MRS. KENESTON: I own 200 yards of...(inaudible)

MR. MICELLI: So that's considered a private road basically?

MRS. KENESTON: Yes.

MR. MICELLI: So two parties own that road?

MRS. KENESTON: I own the entire 200 yards back with full frontal and then it goes to my neighbor who owns – it's split up really strange.

CHAIRMAN HODOM: Your name again first of all?

MRS. KENESTON: Kellie Keneston.

MS. GUASTELLA: I can't hear her.

CHAIRMAN HODOM: Just come up front and speak we can't pick it up that far back.

MRS. KENESTON: Kelly Keneston.

CHAIRMAN HODOM: Will you just describe what you previously described.

MRS. KENESTON: Excuse me?

CHAIRMAN HODOM: Will you describe what you had previously described regarding the existing road?

MRS. KENESTON: I own – I had – he let the Town store some dirt back there when they were putting a sidewalk in, in Selkirk and I didn't say anything about it. It went on for a week, bulldozers and dump trucks and just – from morning 'til night every single day for a week and I didn't say anything about it. They were going across my line I thought it was for his business. I didn't say anything about it till Sunday, his father came to me and told me we want to swap you, your right of way for some worthless property that we have back here closer to our trucks. We'll swap you and I said no and he said I just want you to know you don't use our property over there but if anyone gets hurts over there you are liable. And the next day I called the Town and I said if I'm liable – they've got guys hanging off of the back of dump trucks and bulldozers. I don't want them to – I don't want anymore going over my property. If I'm liable for this I don't want anymore of this.

CHAIRMAN HODOM: Okay, but the question that Mr. Micelli asked...

MR. MICELLI: We kind of got off course a little bit. I just wanted to know how far – I was there today so when I pulled on that road looking at that road, you live to the left of that of that road obviously.

MRS. KENESTON: Yup.

MR. MICELLI: Just how far back do you own, you said 200 yards back on that?

MRS. KENESTON: In back of my house?

MR. MICELLI: No on the road.

MRS. KENESTON: Oh, 200 yards back.

MR. MICELLI: Okay, and you own property on that road also?

MR. SHIENKE: I own, from my understanding...

CHAIRMAN HODOM: Sir, your name again.

MR. SHIENKE: My name is Derek Shienke, I live at 205 Maple Avenue and from my understanding, my wife and I recently purchased the house in April – moved in, in May so...

MR. MICELLI: Of this year?

MR. SHIENKE: Of this year, 2005 so we're learning the area; learning our neighbors; learning where our end of our property line is exactly. From my understanding I mean I have the deed books, you know with the County Clerk here of what my lines are right here and that's in the book 2800 and page 1024, document number 9480959 and I received it on 5-13-2005. I know from my understanding there is an easement. I was under the assumption from the surveys that I had looked at that I owned half of the road which Kelly is speaking of so depending on what those surveys say and what the Town survey has I'd like to see that because I'm new I haven't seen that yet. I only have what's from my bank with – the assessor went out and did a title search for us so.

CHAIRMAN HODOM: Well Mr. Vitello submitted to the Town a deed with full covenants in which Cram Industries, LLC – do they still own that property back there?

MR. DEMPFF: No Cram does not own it, that was conveyed to Tri-Village Trucking, LLC.

CHAIRMAN HODOM: So Tri-Village, LLC owns the 11-plus acres?

MR. DEMPFF: Yes.

CHAIRMAN HODOM: And who owns Tri-Village Trucking, is it you Mr. Vitello?

MR. VITELLO, JR.: No.

CHAIRMAN HODOM: Okay who owns Tri-Village Trucking?

MR. DEMPFF: It's owned by Mr. Vitello, Sr. He's the sole member, but his son Nick runs the trucking business there.

CHAIRMAN HODOM: Okay so the father owns the property.

MR. DEMPFF: Right.

CHAIRMAN HODOM: Who owns the business?

MR. DEMPF: The trucking business itself?

CHAIRMAN HODOM: Yes.

MR. DEMPF: That's a DBA, it's owned by Mr. Vitello, Jr.

CHAIRMAN HODOM: Okay. Where is the property owned by Grace and Ralph Hallenbeck that was referred to in the deed?

MR. DEMPF: It's not shown on the survey. I'd have to probably go back and take a look at the back title and see where exactly that was located.

CHAIRMAN HODOM: Because I'm assuming reading through this deed and the easement covenant that the permanent easement for ingress and egress over lands now and formally owned by Grace W. Hallenbeck and Ralph G. Hallenbeck by deed back in 1981. I don't have anything in front of us that shows that property has changed hands.

MR. DEMPF: Yeah that would be in the back title that you'd have to trace that through, again that's a meets and bounds description probably done many years ago showing who are the adjoining owners were. So in order to trace that to the present, you know I'd have to do a little work on that for you.

CHAIRMAN HODOM: Okay.

MR. DEMPF: But I think it's fair to say that the current adjoining owners are the two individuals sitting next to me who just spoke.

CHAIRMAN HODOM: That's true but we have in front of us is that the permanent easement is issued by the Hallenbeck's.

MR. DEMPF: It runs with the land.

CHAIRMAN HODOM: So if that has changed then I think the Board would like to see that that parcel has changed that somebody else has purchased that.

MR. DEMPF: Sure what I can do is I can get you the – an abstract tracing the deeds from 1981 or however far back you want to go up to the present.

CHAIRMAN HODOM: Up to the present from the issuance of this deed and full covenant to the present time just so that we're up to date on who owns what property and so forth.

MR. DEMPF: That's fine.

MR. SHIENKE: If I may could my address also be on this. I know I heard when we started it was just 207 and my address is nowhere in this request.

CHAIRMAN HODOM: 205 is in here somewhere.

MR. SHIENKE: Well I didn't hear it at the beginning I just heard 207, maybe I'm mistaken.

CHAIRMAN HODOM: As far as the application?

MR. SHIENKE: I don't want us all to come back here just for my sake that's what I mean.

CHAIRMAN HODOM: No, no the application was made for 207...

MR. SHIENKE: 207, that's not me I'm 205.

CHAIRMAN HODOM: No it's Mr. Vitello, 207 is Mr. Vitello or actually it's the Tri-Village Trucking services.

MR. SHIENKE: You're right.

MR. DEMPFF: I think one of the things that the process is that the adjoining – you want the adjoining neighbors to have notice of any area Variance application so they can come and be heard and you can have a discussion.

CHAIRMAN HODOM: Exactly.

MR. SHIENKE: Well that's why we're here.

CHAIRMAN HODOM: That's why the Town as a courtesy notifies any property owner within 200 feet of the property in question.

MR. SHIENKE: I'm glad I called because I had to call to get told about that but that's okay I did get a letter in time.

CHAIRMAN HODOM: Where do you propose to locate the new home on the property Mr. Vitello?

MR. DEMPFF: Should he go up to the map Mr. Hodom?

CHAIRMAN HODOM: Yes. Is it going to be in the building that you currently operate of or are you going to have a business there and then build a house there.

MR. VITELLO: Build a house there.

CHAIRMAN HODOM: Why don't you show us up on the Board there, maybe we can turn this mic around there and see if we can pick him up. You're going to have to speak up to Mr. Vitello.

MR. VITELLO: We don't have the exact location yet but if you look at the building as you come in the driveway to the right where you see a concrete pad.

CHAIRMAN HODOM: Yes.

MR. VITELLO: And to the corner.

CHAIRMAN HODOM: Where it says gas tank?

MR. VITELLO: Come to the other side right here it say's CO. If you follow this line back somewhere in this area right here.

CHAIRMAN HODOM: So it's going to be within 20 feet of the existing...

MR. VITELLO: No.

CHAIRMAN HODOM: One story metal garage?

MR. VITELLO: No that would be at least 150 feet or better beyond that garage. That's quite a distance that gravel area you see right there.

CHAIRMAN HODOM: So if we go by the bearings on your site plan your proposed location of the new residence will be approximately 150 feet east – southeast of the existing one story metal garage.

MR. VITELLO: That's correct. My measurements could be off, I'm just guessing. It's quite a distance; it could be up to 200 feet. This is all gravel here. This is probably from here to here is at least 150 feet. This is less, maybe a 100 feet. It's a large area.

CHAIRMAN HODOM: Okay.

MRS. O'BRIEN: You're going to be going out beyond the gravel area?

MR. VITELLO: We're not quite sure. Right to the area or maybe just a little bit beyond.

CHAIRMAN HODOM: And Mr. Vitello how long have you operated your business at that site?

MR. VITELLO: Two years.

CHAIRMAN HODOM: And what was there previously?

MR. VITELLO: garbage – a garbage company, Cross Brothers.

CHAIRMAN HODOM: Was that owned by you as well?

MR. VITELLO: No sir. Shaun Anderson owned that.

CHAIRMAN HODOM: Did Cram Industries, LLC own the property when Cross had his garbage business there?

MR. VITELLO: No sir. Cross was before Cram and then Cram had trucks in there, garbage trucks. What their name was what he operated under, I don't know the name. Before that it was always a trucking terminal it was Trans Gas. They had 50-60 tankers in there, propane tankers. I know that because I worked for them when I was younger. I used to work out of that building.

CHAIRMAN HODOM: Where is Royal Boulevard is that in Selkirk?

MR. VITELLO: No, right down here off of Minnowbrook, Bennette, between Bennett and Minnowbrook that cul-de-sac.

CHAIRMAN HODOM: Okay. And your reason for moving from Royal Boulevard to Maple Avenue is – what is your reason from 1-location to the other?

MR. VITELLO: My reason is my business is run there; I'm there 7 days a week, all hours of the night and that's where I want to live and run my business and have a home. It's kind of a hardship for me running back and forth all the time and that's the reason.

CHAIRMAN HODOM: So you intend to maintain the operation of the business after you build a new home?

MR. VITELLO: Yes sir.

CHAIRMAN HODOM: Okay. Are there all existing utilities there?

MR. VITELLO: Yes, Town water, septic and 200-amp service updated. I did that.

CHAIRMAN HODOM: But it's on septic there?

MR. VITELLO: It's on septic. There is sewer but it's not back to the property.

CHAIRMAN HODOM: At Maple Avenue?

MR. VITELLO: And there's also sewer coming in from the back. There's some new developments in the back that our property borders, there is some new homes back there and there is sewer there to and gas to, natural gas.

MR. WIGGAND: So this entrance that you show there is also the only entrance to that property?

MR. VITELLO: Yes sir.

MR. WIGGAND: There's no other entrance anywhere?

MR. VITELLO: No.

MR. WIGGAND: Maybe I missed it but do you own that or just a right of way to it?

MRS. KENESTON: I own it.

MR. WIGGAND: You own it.

MRS. KENESTON: He has the right of way just for that business.

MR. DEMPFF: He has an easement to the property, period.

MR. WIGGAND: Is that right?

CHAIRMAN HODOM: It's a permanent easement to the property. Apparently you purchased your property from Vasto?

MRS. KENESTON: No (inaudible)

CHAIRMAN HODOM: Steven & Monica Vasto at 205, no?

MR. SHIENKE: I purchased the property from William and Nancy Wilson, they lived a short period and then moved to Florida because of MS – she had to move.

CHAIRMAN HODOM: And when did you purchase the property?

MR. SHIENKE: In April.

CHAIRMAN HODOM: Of 2005?

MR. SHIENKE: April 14, 2005.

CHAIRMAN HODOM: Do you have in your possession an updated site plan that shows the previous owners after Vasto? This is February 17, 2004 and it shows Steven and Monica Vasto as the property owners of 205 Maple Avenue.

MR. DEMPFF: Yeah this is the survey that we had prepared by Vollmer Associates when he acquired the property, I mean it's possible that maybe Vollmer has other surveys, I don't know.

CHAIRMAN HODOM: I would just like to be working off of latest information that's why I asked you.

MR. DEMPFF: Right.

CHAIRMAN HODOM: If there is another survey showing the previous property owner, actually the property owner after Vasto and then the current property owner I'd like you to submit that to the Board.

MR. DEMPFF: Okay, I guess...

CHAIRMAN HODOM: Along with the information about the Hollanbecks.

MR. DEMPFF: I guess 1-thing that I would say about surveys is that we relied on the Vollmer survey. I don't know what other surveys have been done in the past out there. Maybe the Town is aware of surveys that have been done, but we're relying on this Vollmer when we acquired this property.

ATTORNEY MOORE: Mike you're concerned with just – that we've identified the correct current owners of all the adjoining lands.

CHAIRMAN HODOM: Exactly.

ATTORNEY MOORE: If I may suggest the survey doesn't necessarily tell you that. What you need is something like the abstract that Mr. Dempf mentioned earlier just to update who the present owners of all these parcels are.

CHAIRMAN HODOM: That would be fine.

ATTORNEY MOORE: The survey is just going to show you boundary lines.

MR. DEMPFF: I'll do that. So you want current owners of all the properties?

ATTORNEY MOORE: Yes.

MR. DEMPFF: That would be great I'll do that.

CHAIRMAN HODOM: In addition to that Hollanbeck information as to...

MR. DEMPFF: Right going back and in the future.

CHAIRMAN HODOM: Right.

CHAIRMAN HODOM: Okay. And Mr. Vitello can you describe to us somewhat the size of the home, the architectural features as far as roofing, siding, doors, windows, colors?

MR. VITELLO: I believe we submitted – I submitted – okay.

CHAIRMAN HODOM: I have this here. Why don't you in your own word describe what the house is going to look like.

MR. VITELLO: I can't do that because I was on the road and my wife and my father picked it out so he'll have to do the description. I was working.

MR. DEMPFF: I believe that Mr. Vitello, Sr. can describe it.

MR. VITELLO, SR.: Yeah it's colonial, 2-story colonial. It's 27.8 by 40 feet wide and it'll be 4 – well you can either have 3 or 4 bedrooms. They opted for the 4 bedrooms because he's got 5 children. It's got kind of a front porch all across the front, you see it on there? You can see it on the elevation; the black elevation there shows it.

CHAIRMAN HODOM: It shows something there but the floor plan doesn't show a porch.

MR. VITELLO, SR.: No it's just – you know that's just like a little preliminary sketch of it. That isn't the whole plan.

CHAIRMAN HODOM: I couldn't read the dimensions on the plan but you clarified it as one at 40 feet...

MR. VITELLO, SR.: One is 27.8 by 40; it's right on there.

CHAIRMAN HODOM: On this here it's – maybe I need better glasses I guess. 2-story colonial?

MR. VITELLO, SR.: Yeah, 4 bedroom it's going to be. That's about it with a front porch; it's very, very simple. No garage, 4 foot crawl space, no cellar. It's a nice house, nice compact house.

CHAIRMAN HODOM: Did you have any proposed time frame as to when this would all take place?

MR. VITELLO, SR.: Yeah just as soon as he gets the permit he's going.

MR. VITELLO: Yes we're waiting to see what was going to happen with the Variance before – We're ready to go.

CHAIRMAN HODOM: So it's something you would do within the next year or two?

MR. VITELLO: Yes.

MR. BROOKINS: This is a modular home?

MR. VITELLO: Yes sir.

MR. BROOKINS: Did they give you any indication how long it would take to...

MR. VITELLO: Four months.

MR. BROOKINS: Thank you.

MR. MICELLI: Is this built on site?

MR. VITELLO: It's built – I believe is built as 4 packages, transported and then put together.

MR. MICELLI: Thank you.

CHAIRMAN HODOM: I believe your attorney did mention earlier Mr. Vitello that you did contact your neighbors in an effort to perhaps purchase additional property?

MR. VITELLO: Yes sir.

CHAIRMAN HODOM: And who did you speak with?

MR. VITELLO: Mrs. Keneston.

CHAIRMAN HODOM: And her response was?

MR. VITELLO: No.

CHAIRMAN HODOM: No, okay and did you speak to anyone else, the adjacent property owner other than Mrs. Keneston?

MR. VITELLO: Yes and I don't mean to be rude but I keep...

MR. SHIENKE: Shienke.

MR. VITELLO: Shienke. He's only been there for a short time. We've discussed some options, trading some land for that 28-foot I need and we've talked about it and discussed it and we're still doing so.

CHAIRMAN HODOM: Okay. Mrs. Keneston if I may, you don't want to give up any of your property?

MRS. KENESTON: No.

CHAIRMAN HODOM: Is that correct, okay. And of course with the new code it's not 28 feet any longer it's 75 feet.

MR. VITELLO: Yes sir.

CHAIRMAN HODOM: All right, at least you're making an effort to purchase some additional property to mitigate some of the problems. Are there any other questions from the Board?

MR. DEMPFF: I would like to make a couple other comments if I could.

CHAIRMAN HODOM: Sure, please.

MR. DEMPFF: And first of all Mr. Vitello, Jr. has been doing quite a bit of on the road trucking and as you know when you're on the road you depend and rely on people in the office and he's in a period of transition right now. I want the Board to be aware of that and this has just come to a head in the last week. So right now he has not – he has backed away from the trucking himself. He's trying to get his finances in order with his business so again, I don't want to mislead the Board and have you think that he has – you know right this second, you know actively trucking. He's stepped back from that a little bit, re-organized. This is part of his reorganization is what he's doing with his house and that type of thing so again I just wanted to make it clear to you that possibly he might step back, he might rent out the other garage to someone. He's at the point where he's thinking it through. So I don't want anyone to be misled with respect with that.

CHAIRMAN HODOM: What type of trucking do you do?

MR. VITELLO: I own 4-dump tractor-trailers and dumps and we just haul norlites and brewers yeast from Budweiser. We go all over; salt, anything that can go in a dump truck we pull it and haul it. Mostly through New England, you know Maine, New England and New York and New York City.

CHAIRMAN HODOM: And what are your hours of operation, when do you pull out of the facility, when do you pull back in to the facility?

MR. VITELLO: Twenty-four hours a day, 7 days a week. The trucks never stop.

CHAIRMAN HODOM: Okay.

MR. VITELLO: Unless there's a mechanical breakdown, which could be at anytime, midnight, morning, afternoon and it's dealt with and we continue to drive.

CHAIRMAN HODOM: But it's your intent at this point in time to continue the business, the trucking business if at all possible?

MR. VITELLO: If at all possible, yes.

MR. BROOKINS: Have you – I know you spoke with both of your neighbors, your direct neighbors, but have you explored any other or maybe you know that's not possible – other options into your property through any other means other than either buying the existing easement or continuing it, is there any other obvious or possible routes through this – into your back yard?

MR. VITELLO: By the print there's some new homes were being built in the back other than that I don't see any other entrance in except for buying another home that already exists, which is something that we're not able to do at this point.

CHAIRMAN HODOM: Any other questions from the Board?

MR. MICELLI: I don't have any more.

MR. REVERLY: I have a few.

CHAIRMAN HODOM: This is questions and comments if you're going to speak in opposition or in favor I would just ask that you hold it off. I just – the question or comment if you have questions about what we discuss this evening...

MR. REVERLY: Absolutely I have a few about some of the comments that were made tonight.

CHAIRMAN HODOM: Fine. Just introduce yourself to us if you would and your address.

MR. REVERLY: My name's Edward Reverly. My wife and I live at 191, which is property right up against Derek's, which is part of the easement. The first thing I'd like to bring up is I feel bad for those peoples' signatures on that piece of paper because his wife and him have come around to get signatures and one of the ways they persuaded people to sign this is they said they were shutting the trucking down and no trucks would be in there because people complain about these trucks because they run 24/7, all the time, 2:00 in the morning, 3:00. I don't know what the law is about running these trucks all the time but I do not believe they can idle longer than a few minutes. So they've tried to get everybody to sign this by saying they're shutting the trucking company down. Okay. And the next thing we asked her what she was going to do with the garage. Nothing. Her husband was going to become an electrician and they were just going to live there.

The next concern I have is the road – the trucks drive up this little road like maniacs and they slam on their brakes all the way down the street. They throw the J-brake and they pull in there so they pulled the trucks out in the last week I think to try to persuade everybody that they're going to build their house back there. I mean the road is dirty, they run their trucks back and forth and there hasn't been a trucking company there for 8 years until they came here. The garbage company hasn't been there for 8 years and I don't when there was ever 50 truckers back there because my father-in law lived on the

street for 60 years and it used to actually be a pond there so until they put all the fill in so I don't know where all these trucks are coming from, you know but this is their thing for getting people to sign this. So – and I know I see their survey map there and I would be concerned about the – I don't know why the swamp and all the wetlands that go through there and the culverts that go around peoples land how that's going to get affected when he starts putting in a house and landscaping around there. So I think there's a lot more issues that haven't been brought up until, you know now. So – and I know the easement where the whole road is according to the survey I have she owns the whole driveway that butts on the road. His easement is actually the grass between his house and the road and that's where his easement is. He doesn't even own any of the driveway that butt's against the road. She owns the whole driveway to the road on the survey that I have.

MRS. KENESTON: Right the entire...

MR. REVERLY: The whole road frontage she owns...

CHAIRMAN HODOM: One at a time.

MR. REVERLY: The driveway. He only owns the grass from his house from his house to where her line is according to the survey I have. I haven't had a chance to look at theirs to see where it's been updated. So – I mean for him to get this cleared he would have to put in a whole new road on his easement. I mean because she actually owns the road – the driveway.

CHAIRMAN HODOM: He has a permanent ingress/egress that was granted by the Hollanbeck's to this property. And as far as your questions regarding the drainage and so forth that would be handled by a different division in the Town. The only reason we're here this evening is to discuss the access from Maple Avenue to this property and that he doesn't have a 75-foot abutment to the existing roadway. That's why we're here. The Building Department, Planning Board, what ever, if we were to approve the access road or access to the property or give him a Variance to let him use the easement he would still have to go to the Building Department, Planning Department to get those kinds of approvals.

MR. REVERLY: Okay I mean I just – I mean one of the big things about getting the signatures and I don't agree with that and again about the trucks that go back there and run 24/7.

CHAIRMAN HODOM: Mr. Vitello could you just respond to that.

MR. VITELLO: I certainly would like to respond to that.

CHAIRMAN HODOM: Please.

MR. VITELLO: I don't remember your name.

CHAIRMAN HODOM: Where's the sheet?

MR. REVERLY: Edward.

MR. VITELLO: First of all, did I speak to you personally?

CHAIRMAN HODOM: Excuse me; it should be addressed to the Board, okay. I want you to answer the question how you propose do this...

MR. VITELLO: Those signatures is that what you're speaking about?

CHAIRMAN HODOM: Yes.

MR. VITELLO: Those signatures I personally got myself tonight and I didn't make any promises to anyone of those people and I will go back if need be and I told them exactly what was going on. They weren't concerned with the trucking business. This fella here – I wasn't there. I was in the truck. My wife spoke to this fella. I don't know what my wife told the fella, okay and that's the truth. I didn't get those signatures under false pretense. I have no reason to and I'll go back if need be and get more letters stating that I didn't. I understand where he's coming from. He feels he has been mislead but not by me.

CHAIRMAN HODOM: But the signatures were obtained yesterday?

MR. VITELLO: No sir. The first two, Micelli, he didn't even sign it so he's not even on there. Micelli and there were only 3 signatures, the rest I got tonight because it was short notice before this meeting and I didn't have time to finish them all.

CHAIRMAN HODOM: Well I say September 20th because that's the date that's on there.

MR. VITELLO: Yes.

CHAIRMAN HODOM: So it's the 20th and the 21st?

MR. VITELLO: Correct sir. Tonight I received the rest of the signatures. There's 9 total, there was – the first 3 signatures were there last night, my wife got them. I drove her around. Micelli was one that I remember and 2 others and the others I got tonight myself personally.

CHAIRMAN HODOM: Okay. Are you finished I don't want to cut you short. Anybody else have any questions?

MR. SHIENKE: Yeah I have a question.

CHAIRMAN HODOM: Or comment, go ahead.

MR. SHIENKE: Since I'm new to the area and with the survey I have if I submitted the survey from my bank is that going to impede on this decision this evening at all.

CHAIRMAN HODOM: I don't follow what you're asking.

MR. SHIENKE: If my survey is not the same as the Vitello's.

CHAIRMAN HODOM: If you would like to submit something to the Board for their review that's acceptable. Mr. Dempf is going to prepare some information for us anyways so we're not going to close the hearing this evening.

MR. SHIENKE: Okay.

CHAIRMAN HODOM: So there is time if you want to submit it as a comparison to what they have. He's also going to do some research into...

MR. SHIENKE: Yeah I mean we should really find out what the actual lines are.

CHAIRMAN HODOM: Sure.

MR. SHIENKE: And the easement.

CHAIRMAN HODOM: Mr. Dempf?

MR. DEMPFF: I can tell you that when we did this survey what came back initially was what you see up there on the wall, which is – we didn't have a meets and bounds for the roadway, but I knew it was an easement to this property and felt it was very important to have. That's why we went back and had him do a meets and bounds and do a survey that I handed up and I'd be happy to provide any of you here tonight a copy of what I have. One other thing, this just happens to be a piece of property with a trucking business on it and what we're asking for is an area Variance to permit you know a single family home to be built on the back of the property. Again we have a business, kind of a mixed use going on here, there is a business, you know people are not pleased about the trucks that are going up and down the roads, but this is a long standing trucking business at this site respective of whether Mr. Vitello is going to himself continue with his trucking business or whether there's another trucking business there. Thank you.

CHAIRMAN HODOM: You're welcome. Is there anyone else with any questions or comments?

MR. DEPAULA: Can I see that list that people that signed there?

CHAIRMAN HODOM: Sure, just give us your name and your address please.

MR. DEPAULA: Tom Depaula, 187 Maple Avenue.

CHAIRMAN HODOM: Sir do you live next to Mr. Depaula.

UNIDENTIFIED MAN: Yup, in between.

UNIDENTIFIED WOMAN: Next to the Vasto property – where it says Vasto on there.

CHAIRMAN HODOM: My secretary jumps all over me when there are too many people talking. You purchased the property from the Engel's?

UNIDENTIFIED WOMAN: No.

CHAIRMAN HODOM: Okay. Do you have any further questions?

MR. DEPAULA: No I don't.

MR. MICELLI: I have a question for you, you said that your survey, this survey is this the correct date 2-20-04 – this is the newest survey that's on the Board there?

MR. DEMPFF: That's the only survey that we have.

MR. MICELLI: And how old is your survey?

MR. VITELLO: I'm not sure it's older than that.

MRS. KENESTON: I have an older one also from when I bought my house 18 years ago.

MR. SHIENKE: The survey I would have would be from April.

MR. WIGGAND: Now have you people seen this survey?

MRS. KENESTON: Yes, he stopped by and gave me one.

CHAIRMAN HODOM: It's public record I mean you can look at it this evening or you can look at it at your leisure at the Building Department. Anyone else with any questions? We aren't going to close the hearing this evening because we do have some information that the applicant is going to provide to us, but as long as you're here if you have a desire to speak in opposition to the Applicant this we'll certainly allow you to do that. Is there anyone wishing to speak in opposition to the applicant this evening? Mrs. Keneston?

MRS. KENESTON: I have called....

CHAIRMAN HODOM: Just introduce yourself again.

MRS. KENESTON: Kelly Keneston. I live at 211 Maple Avenue. I own the right of way and he rented out the back, he did all this without my permission to fill in his potholes

back there. He did this all without my permission.

CHAIRMAN HODOM: Where is that microphone? Why don't you put it in the holder Mr. Dempf and then we'll be able to pick it up. Thank you.

MRS. KENESTON: They were doing roadwork in Selkirk, putting in a sidewalk. He made a deal with the Town that they could put all their dirt back there. I let it go on for a week, trucks and bulldozers and tractors and just on and on all day, all night from 6 a.m. to 7 p.m. and I didn't say a word about it until the following Sunday. It went all week long I didn't say a word about it.

His father came to me with a proposition we want to trade you not purchase – we want to trade you your right of way for some worthless property further back closer to the trucks. I said I don't want any property back there. He told, which I took as a threat that you don't use that property at all over there but if someone gets hurt on that property you are liable and I took that as a veiled threat so the next morning I called – I called out here to the Town and I spoke to Theresa Egan and I spoke to her and I said if I'm liable for anyone for anyone getting hurt people, you know hanging off of bulldozers as they're cruising up and down that – I don't want anybody trespassing over my land. That's for his business to use and not for him to rent out for his profit and that I'm going to be held accountable for if anything happens to anyone on that property so they could not take the dirt back out of where it was because it was going to have to go back over my land to get it back out.

So I finally made a deal with the DelSignor people who were hired by the Town that they were doing all this work back there to clean his land – flatten his land out. He was using my property illegally and profiting from it so I said they couldn't take it back out and then they fixed a dip in my driveway and shut me up and I let them take it back out. And I let it go on until his father said that, that I took that as a veiled threat that I was responsible for anyone else on that property getting hurt. That was my responsibility.

CHAIRMAN HODOM: Okay.

MRS. KENESTON: So I took action after that.

CHAIRMAN HODOM: Anyone else wishing to speak in opposition to the Applicant.

MR. DEPAULA: I do.

CHAIRMAN HODOM: Sir?

MR. DEPAULA: Tom Depaula, I live at 187 Maple Avenue. My concern is health concern. The dust that is stirred up by the trucks, it's all dried – I don't what it is kind of dirt but if the wind is blowing just right and it blows towards our house I have vacuum our pool every two days. How are they going to live back with that kind of dirt? You

know it's a health issue, too.

MRS. KENESTON: Excuse me can I add one more thing to that. When I go out there, there are layers of silt on my Jeep. I'm right on the other side – right in the front of the garage. There are layers of silt, layers of them and I've called – they let the trucks runs there – I've made a log, 12 hours, 12 hours straight just idling and I called the EPA and said isn't there – trucks can't idle, isn't there a new law that they cannot do that. I spoke to the guy running his truck as I was hanging my laundry out, could you please if you're going to let the truck just run while you sit in it can you pull to the back of the garage. He told the father, he threw a fit – came barging right at me – said we can do what ever the hell we want to do back there and that's exactly what he said to me. I didn't find it as funny as he's finding it now, but apparently he can't do what ever he wants to do back there. And it's just the fumes are horrible – 12 hours of just constant running, constant idling; 12 hours. You go out in the morning and the trucks idling, you go out in the afternoon the same truck is in the same spot, you go out at night, same truck, same spot still idling.

CHAIRMAN HODOM: Thank you.

MR. DEMPFF: I guess the only thing that I would say is I don't think that Mr. Vitello, Sr. was laughing and I'll take exception to that characterization.

CHAIRMAN HODOM: Again to – I know Mrs. Keneston is upset, however my understanding would be even if we were not to grant the Applicant the right to access a new home he does have a permanent ingress and egress from that property for the business and he can operate that.

MRS. KENESTON: I understand that. And I've lived there for 18 years and all those businesses back there with all those trucks, the trash, everything, I've never had a problem, never. I bought that property knowing that that was a truck space back there and I've never had a problem like this ever – 18 years.

CHAIRMAN HODOM: Is there anyone else wishing to speak in opposition? Is there anyone wishing to speak in favor? Yes sir? Just introduce yourself again.

MR. SHIENKE: My name is Derek Shienke I live at 205 Maple Avenue. I am neither for or against Mr. Vitello building a residence in the back of my property line if one, I don't have to see it out my back window and he doesn't have to look at me changing every morning. I hate to have him go through that and I'm not sure that it's just for a residence. I don't mind having a neighbor. I like neighbors. I've lived myself personally with my father who has had neighbors who dislike him and he dislikes the neighbors and it's not a way to live. I know the Board doesn't have to live there everyday but we will and hopefully we can come up with something that – and this is a residence. My suggestion is if he wants to move the business maybe he should do that if he wants to build a residence there build the residence, move the business or keep the business and have to find a residence someplace else. That's the only thing I can think of if he wants to make this a

pit stop for his trucking workers and rent out his garage or whatever room of the house I don't think I would appreciate that as a neighbor. I don't mind knowing my neighbors but lots of things can go on with people that you've never met so if it's the residence fine, if it's rental property that's a business to me and if he's building another business there than you know maybe that's what he's trying to get at. If he's building a rental house, but if he's building a permanent that's another story.

CHAIRMAN HODOM: Thank you. Anyone else? Any other questions from the Board at this time? Do you have any idea when you can provide that information to us otherwise I'll postpone or adjourn the hearing to a date uncertain and once you have it we'll reschedule, would that be better?

MR. DEMPFF: Well I don't know. You would have to post another notice then or how does that work.

CHAIRMAN HODOM: We would probably put another notice out, yes with a date uncertain.

MR. DEMPFF: Well I mean I can get back to you within a week and let you know how quickly I can get this information put together.

CHAIRMAN HODOM: Well why don't we just adjourn it then to a date uncertain and when you have the information together you can bring it to Karen.

MR. DEMPFF: Actually if you want to adjourn it for 30 days, that ought to be sufficient time I would think.

CHAIRMAN HODOM: That would give you enough time?

MR. DEMPFF: I think so.

CHAIRMAN HODOM: So if we set it for November 2nd, that would give you enough time?

MR. DEMPFF: Yes.

MR. SHIENKE: I have 1-more question if I may.

CHAIRMAN HODOM: Sure.

MR. SHIENKE: I heard that 75 feet needs to be the code now because when I got this I thought it was 28, did that just recently happen?

CHAIRMAN HODOM: The new code was just adopted, yes.

MR. SHIENKE: Two days ago?

CHAIRMAN HODOM: Okay.

MR. PLATEL: The effective date is actually the 9th of September.

MR. DEMPFF: Just for the record when we submitted our application, you know in August it was 28 feet.

MR. MICELLI: So it's still 28 feet?

CHAIRMAN HODOM: No, the new code requires 75 feet. The Board would take that under consideration as well. Is it acceptable for November 2nd at 7:30?

On a motion made by Chairman Hodom, seconded by Mr. Micelli and unanimously carried by the Board the hearing was adjourned to November 2, 2005 at 7:30 p.m.

Hearing adjourned 8:40 p.m.

- - -

The next order of business this evening is a public hearing for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Side & Rear yard requirements requested by Thomas & Susan Cunningham for property at 25 Middlesex Drive, Slingerlands, New York. The Applicant is proposing to construct a screened porch addition, which will encroach into the rear and side yard setback requirement at premises 25 Middlesex Drive, Slingerlands, 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 an addition and deck to the existing main structure that will create a rear yard setback of 14 feet, which is 11 feet shy of the 25-foot required and a side yard of 7.86 feet, which is 2.14 feet shy of the 10-foot requirement. The existing deck is encroaching 8 feet into the rear yard setback and was constructed without a permit sometime in the past.

The existing structure is located in a residence "A" District 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 Board of Appeals, Albany county, Town of Bethlehem will hold a public hearing on Wednesday September 21, 2005 at 8:00 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take

action on application of Thomas & Susan Cunningham for Variance under Article XVIII, Rear Yards, Section 128-79, Required Depths of the Code of the Town of Bethlehem for the construction of a screened porch addition, which will encroach into the rear yard setback requirement at premises 25 Middlesex Drive, Slingerlands, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the September 14, 2005 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. Just a clarification the side yard Variance requirement was not stated in the legal notice. It was determined after the legal notice was issued, but I believe and Mark correct me if I'm wrong that the side yard currently is a non-conforming existing condition?

MR. PLATEL: Correct. I believe at the time that the house was built the side yard requirement was only 8 feet. After that it had been changed to "AA" zoning district that would have required 10 so it was already pre-existing non-conforming.

CHAIRMAN HODOM: Okay.

MR. WIGGAND: "AA" now?

MR. PLATEL: No, now it's residence "A" in the new zoning which has basically the old "AA" requirements with 35-foot front yard, 10 for the side, 25 for the rear.

CHAIRMAN HODOM: Okay we'll use the same procedure that we used earlier this evening.

MR. CUNNINGHAM: We weren't here earlier.

CHAIRMAN HODOM: You were very fortunate then. We'll hear your presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of your application and anyone desiring to speak in opposition. If you would just introduce yourself to us and tell us what you want to do and why you want to do it and how you want to do it.

MR. CUNNINGHAM: Okay I'm Tom Cunningham at 25 Middlesex Drive and my wife Susan. We're looking to build a screened porch on the back of our existing residence. Approximate is 16-feet deep by 20-feet long and an adjacent deck approximately the same size and in the same location. Did you want to know why we wanted to do this?

CHAIRMAN HODOM: Yes.

MR. CUNNINGHAM: We're just looking to add some new private space in the back of the home so that we can spend more time out there during the nicer weather – nicer 3 seasons and improve our quality of life I guess.

CHAIRMAN HODOM: When did you purchase the home?

MR. CUNNINGHAM: 1980.

CHAIRMAN HODOM: Was the current deck on the house at the time?

MR. CUNNINGHAM: No, no we added that.

MRS. CUNNINGHAM: There was a deck.

MR. CUNNINGHAM: There was a deck along side the one that's there now.

CHAIRMAN HODOM: Okay and apparently no one got a building permit for...

MR. CUNNINGHAM: Apparently not.

CHAIRMAN HODOM: Either one of the decks?

MR. CUNNINGHAM: I don't know about the first one.

CHAIRMAN HODOM: Did you ever have a permit application for either one of the decks, Mark?

MR. PLATEL: No I did not find any for either of them.

CHAIRMAN HODOM: How many in the family?

MR. CUNNINGHAM: Just my wife and myself.

CHAIRMAN HODOM: Two adults. Are there any medical reasons that you might have to have an enclosed porch?

MR. CUNNINGHAM: No.

CHAIRMAN HODOM: Allergic to any – bee stings or anything of that nature?

MRS. CUNNINGHAM: I have seasonal allergies.

CHAIRMAN HODOM: Join the crowd, right?

MRS. CUNNINGHAM: Who doesn't have.

CHAIRMAN HODOM: Have you had an opportunity to discuss your proposed plans with your neighbors?

MR. CUNNINGHAM: I did with the people at 21 Middlesex and I brought a letter with me that they signed having no objections to what our plans are.

CHAIRMAN HODOM: Would you like to submit that for the record. They're the ones that you're open to on that side?

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: Thank you.

MR. CUNNINGHAM: I didn't inquire of any of the other neighbors because they're about the only ones who will be able to see what's going on there. The people on the other side of the house have a row of pine trees between us and them and their house is set farther in the front than ours does. They wouldn't be able to see what's going on there anyway.

CHAIRMAN HODOM: Can you describe to us somewhat what the proposed porch and deck will look like?

MR. CUNNINGHAM: Well the porch is going to have a roof on it that is perpendicular to the roof on the garage/family room and we'll probably have some combination of windows and or screens around the 3 exposed sides and the rest will be vinyl siding that will match the rest of the house.

CHAIRMAN HODOM: So the intent is to match the siding?

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: Are you currently putting new siding on the house?

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: And the roofing product will tend to match the existing house as close as possible?

MR. CUNNINGHAM: Hopefully, the roof on the house now is about 4 or 5 years old so I assume we could probably find something fairly close.

CHAIRMAN HODOM: Are you proposing to bring any utilities into the proposed porch?

MR. CUNNINGHAM: We hadn't thought about that as yet.

CHAIRMAN HODOM: You don't plan on having any water or plumbing?

MR. CUNNINGHAM: No. We may have some lights but...

CHAIRMAN HODOM: Some electrical?

MR. CUNNINGHAM: Right.

CHAIRMAN HODOM: And the reason I ask that is because it's your intent now and in the future to maintain this property as a single family home?

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: You don't plan to build a room that you would rent out to anyone?

MR. CUNNINGHAM: No.

CHAIRMAN HODOM: Is your only access to the enclosed porch from the open deck or are you going to have access from the interior of the house?

MR. CUNNINGHAM: Yes, there will probably be French doors where the existing picture window is.

CHAIRMAN HODOM: It does say that you're removing the existing door and window. It doesn't say what you intend to do there.

MR. CUNNINGHAM: French doors is our current thinking.

CHAIRMAN HODOM: Can you describe to us the layout of the existing home?

MR. CUNNINGHAM: It's a 2-story colonial, side-hall colonial. On the end where the addition is going to be – there's a garage in front and the family room is behind that and the other section going the other way is – kitchen in the back along with the dining room and the living room in the front and upstairs 4 bedrooms.

CHAIRMAN HODOM: So the kitchen, dining room will overlook open deck?

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: And you have a family room on the interior?

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: Which will adjoin the proposed enclosed porch.

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: Do you have a proposed starting and completion time?

MR. CUNNINGHAM: We're just waiting for this to happen and then hopefully within a couple of months after we get the okay.

CHAIRMAN HODOM: Are you currently under contract to have it done?

MR. CUNNINGHAM: Yes, well I have a proposal from the contractor.

CHAIRMAN HODOM: We don't have any percentage of lot occupancy concerns?

MR. PLATEL: Not any more.

MR. CUNNINGHAM: Why not anymore?

MR. PLATEL: With the new zoning you're allowed to build a larger house.

CHAIRMAN HODOM: Because there was some concern about the percentage of lot occupancy previously.

MR. WIGGAND: And that only happened in the last few days.

CHAIRMAN HODOM: Any other questions from the Board?

MRS. O'BRIEN: This is actually a 3-season room?

MR. CUNNINGHAM: Yes.

MRS. O'BRIEN: And you'd be able to put windows in place of the screens?

MR. CUNNINGHAM: Yes.

MRS. O'BRIEN: And behind your house what is...

MR. CUNNINGHAM: There's a wooded area between – that runs between Middlesex Drive and Couse Lane, which is up on top of the hill that runs parallel.

MRS. O'BRIEN: Nothing...

MR. CUNNINGHAM: And it's on a slope, Couse Lane is...

CHAIRMAN HODOM: It slopes off very fast.

MR. WIGGAND: I have to agree with that.

MR. CUNNINGHAM: Right. Couse Lane is probably 50 to 75 feet higher than we are.

MR. WIGGAND: Must be a little trouble mowing.

MR. CUNNINGHAM: Yes.

CHAIRMAN HODOM: Well Susan's the one who mows it.

MR. CUNNNINGHAM: No.

MRS. CUNNINGHAM: I have on occasion though.

MR. CUNNINGHAM: Once or twice in the 25 years that we've been there.

MRS. CUNNINGHAM: Well one of the reasons we decided to do this is because we like where we live. We like living in Slingerlands and we like our area so we had thought about moving and we looked around and couldn't find anything that we liked better so we just decided to stay and do what we wanted to do with this house so that's how this all came about.

CHAIRMAN HODOM: Any other questions from the Board? Are there any questions or comments from the audience? Please.

MR. MALSAN: My name is Steven Malsan, M-A-L-S-A-N. My wife and I we live at 1465 New Scotland Road and we own the parcel of land that comes off of Couse Lane that comes down and backs up toward their house and we have no opposition to their plan so we're fine with it.

CHAIRMAN HODOM: Thank you very much. Anyone else? 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.

Hearing closed 9:00 p.m.

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The next order of business was to consider the application of Robert Kempter, 638 Kenwood Avenue, Slingerlands, 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 Robert Kempter for Variance under Article XIII, Use and Area Schedules, Section 128-100 A, Minimum Front Yards for construction of a front porch addition, which will encroach into the front yard setback requirement at premises 638 Kenwood Avenue, Slingerlands, New York, it is hereby ordered that a public hearing on this matter be held October 5, 2005 at

8:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mrs. O'Brien 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 Mary Claire Cox, 625 Kenwood Avenue, Slingerlands, 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 Mary Claire Cox, for Variance under Article XIII, Use and Area Schedules, Section 128-100 A, Minimum Front Yards for the construction of a front porch addition, which will encroach into the front yard setback requirement at premises 625 Kenwood Avenue, Slingerlands, New York, it is hereby ordered that a public hearing on this matter be held October 5, 2005 at 8:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was a discussion of the previous public hearing held in the matter of Joseph Rappazzo, 126 Smultz Road, Glenmont, New York for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Highway Frontage. The following points were brought up by the Board members: The granting of the Variance will be conditioned that the roadway must comply with final review and approval by the Building Inspector. There will be stipulations on traffic. There will be a building permit required on his project and will be the determination of the Building Inspector that the roadway is to be maintained to Town standards. 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 granting the Variance, for presentation at the next Board meeting on October 5, 2005.

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The next order of business was a discussion of the previous public hearing held in the matter of Thomas & Susan Cunningham for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Side & Rear Yard requirement. The following points were brought up by the Board members: The side yard encroachment is an existing non-conforming condition. There are no neighbors in the back yard that would be affected by the proposed addition. The request is minimal. It will not affect the essential 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 October 5, 2005.

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On a motion made by Mr. Micelli, seconded by Mrs. O'Brien, and unanimously carried by the Board, the minutes of the September 7, 2005, meeting were approved.

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

Meeting Adjourned: 9:45 p.m.

Respectfully submitted,

Secretary