

**TOWN OF BETHLEHEM
BOARD OF APPEALS
April 5, 2006**

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
Gilbert Brookins
Leonard Micelli
Anthony K. Umina

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. Is there anyone here for the Nicholas & Cherise Viltello hearing because that has been cancelled for this evening? If there's not, that's fine. The first order of business this evening is a continuation of a public hearing for a Use Variance under Article V, Section 128-26 B, Article XIII, Schedules of Uses, 128-99 requested by Robert & Carol Dunn for property at Elm Avenue East, Selkirk, New York. The Applicant wishes to construct a 6-unit dwelling, which is not a permitted use at premises Elm Avenue East, Selkirk, 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 6-unit apartment building in a Residence A District. Under the new zoning only single-family residences are permitted in this zoning district. The Applicant has received a variance in the past for access for using an easement over the lands of Niagara Mohawk (National Grid) and also received a sub-division approval from the Planning Board. The current parcel of land is 2.486-acres with no structures on it and as stated earlier is located in a Residence A District.

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 January 18, 2006 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of, New York for a Use Variance under Article V, Section 128-26 B, Schedules of Uses, 128-99 of the Code of the Town of Bethlehem for construction of a 6-unit dwelling, which is not a permitted use at the premises of 18 Elm Avenue, East, Selkirk, Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the January 11, 2006 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 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. Mrs. Dunn?

MRS. DUNN: Can you hear me all right?

CHARIMAN HODOM: I think we can. Just introduce yourself to us and proceed with your presentation.

MRS. DUNN: I'm Carol Dunn and I live at 22 Elm Avenue East. What I put together tonight were the questions that you had asked me the last time I was here. With the package that I gave you, you had asked me if I had the insurance on the property and if it was insured in Niagara Mohawks name and I do have a copy of that in the package there. The resolutions you asked me for the last time I was here, there's a copy of the resolution. Also we talked about Carriage Hill extension for the water and that proposal is also in there because I know nobody was aware of that the last time I was here that Carriage Hill was bringing the water around.

CHAIRMAN HODOM: Yes.

MRS. DUNN: The property pricing I did a market analysis of recent sales are \$18,000 to \$38,000 for a piece of residential land. That's not multi-unit; I couldn't find anything that was multi-unit that had sold recently. Pending sales in 1998 and 1999, lots are approximately \$20,000 to \$30,000. At the time of the purchase of the property I would break it up in lots because you asked me how much the property was worth back in 1998 and what my research showed was that they were - - the lots were valued at \$20,000 and the house at \$85,000. The original price on the property was 122. The total investment -

approximately \$20,000 plus all the taxes we paid on the property and also what we will have to pay in taxes because the full amount goes on our income for 2006. I calculated the land value in 1998, approximately \$20,000, the cost of the subdivision and other expenses approximately another \$20,000 in taxes and so forth that I never did calculate and also the mowing of the property continually every year which was 350. Selling price is 76, lot worth in 1998 – \$20,000, expenses \$20,000, taxes to be paid on the profit unknown meant 36-plus income tax that's to be paid on it and then I had given Karen another package. I don't have a copy of what I gave you.

MS. GUASTELLA: They have it.

MRS. DUNN: They have it – good.

CHAIRMAN HODOM: Did you want to go over that with us as well? I would rather have it in your own words than just reading it.

MRS. DUNN: When my husband and I first purchased the property, when the contractor sale of the property was written the property was still zoned for multi-family. This is the new contract on this. When I placed this on the market and I also have all my ads that were run on the property. It was at that time multi unit and I think I also included – yes I did, the original – what the Use Variance was on the property before the Zoning was changed and I think the zoning was changed like 1-month after we got a contract on our property and we had, had it listed since 2004. When this property was advertised it was advertised as a multi-unit and was zoned multi-family, see attached ad.

The contract we accepted on the property was accepted before the new zoning was in effect. We were never notified of the old zoning being changed so I had no awareness of it until I went to my attorney and found that I couldn't sell it the way it was.

The new zoning says what could be built on our lands; see attached list. I think I have all those there. A lot of these uses would be an advantage to our area having a medical clinic or – this is what it's really zoned for at this time you could have a medical clinic there, professional offices, bed and breakfast, clubs, fraternity, Lodges and my personal opinion is having an attractive 6-unit where people care for their property is a better preference. The units being built, each one will be over \$200,000, not to shabby a building. Also to direct my sales to this type of building like office building, fraternity – I don't think that's a real good location for it and that's my own personal opinion because I know office buildings and other types of business's like this want to be amongst business's or where other buildings are to bring them in business also. So I don't know if anybody has thought of that.

And then I listed everything that I had taken off of the page for the new zoning, schedule of use for regulations and everything has been marked here but the new zoning says that you can have a 1-family dwelling, accessory apartment, agricultural bed and breakfast, business office, club, fraternity, lodge, daycare center, non-public educational institution, home occupation, house of worship, medical clinic, nursery school,

professional office, and telecommunications which are the large towers.

MR. PLATEL: A lot of the uses that your talking about are for adaptive reuse and they're only within certain areas of the Town and they have to be I believe within a 1,000-feet of an intersection of a County or State highway and I don't think that the property that you're located at could use those uses. A lot of them that she's listing are not permitted in those areas.

MRS. DUNN: Really?

MR. PLATEL: I can read them down through for you.

CHAIRMAN HODOM: Now these are the ones that will not be allowed?

MR. PLATEL: Will not be allowed in the uses for that zone. It would be required to be a Use Variance. These are only adaptive reuses and it's only – I forget there's a percentage that you can expand on them to.

CHAIRMAN HODOM: Mark is that...

MR. PLATEL: It's listed right in the chart.

CHAIRMAN HODOM: It is listed in the chart as adapted uses?

MR. PLATEL: Adapted use of structure, yes.

MR. BROOKINS: Within a 1,000-feet?

MR. PLATEL: Yeah, I believe it's a 1,000-feet of certain sections of the Town. I don't have that with me right now but a lot of these uses will not be allowed there.

CHAIRMAN HODOM: Do you have the uses that would be allowed there currently.

MR. PLATEL: Single-family, an accessory apartment would be permitted after site plan approval from the Planning Board, Club, fraternity or lodge after site plan approval, conservancy after special permit, home occupations – those are after site plan approval, house of worship after special permit also, telecommunications facility's – there's special rules for that. That's by right but that's a total located facility that's if you already had a tower there and then you can also do a telecommunications facility after special permit.

MRS. DUNN: How about professional offices?

MR. PLATEL: No.

MRS. DUNN: Okay.

MR. UMINA: What's a conservancy?

MR. PLATEL: What is a conservancy? Good question, I'll have to look it up.

CHAIRMAN HODOM: A land conservancy?

MR. PLATEL: It can be a land conservancy and also in a land conservancy you can also have offices for that conservancy where you can have meetings possible so it's kind of a wide open definition, but a lot has to do with I believe with starting with the land conservancy part of it.

ATTORNEY MOORE: An establishment organized for the purpose of protecting, conserving and managing existing natural resources in valuable and historical areas.

CHAIRMAN HODOM: Well Mrs. Dunn I think there's some new information that's been brought up this evening that you were not aware of and I think most of us on the Board were not aware of either. And it really is an obligation that you have in presenting your case to this Board to demonstrate that every allowed permitted use in your zone that you cannot demonstrate a reasonable return if you use your property for those uses. Were you going to get into this evening in your presentation your argument for the allowed uses that you thought were allowed in that area this evening?

MRS. DUNN: I had a different list than what Mark has.

CHAIRMAN HODOM: If you were prepared to make your presentation that your property could not return a reasonable return to you for those other uses then I will certainly allow you to do that this evening. In order to prove your case for a Use Variance you have to address each and every allowed use.

MRS. DUNN: I didn't know that I had to go through each and every use that would be allowable. I do know that I cannot get as much for the property for a single family as I can for a multi-use. The property was never advertised as anything else other than a single family or a multi use. It wasn't advertised for telecommunications or home occupation or a conservancy, club, fraternity, lodge; it was never advertised as that because I was not aware of that.

CHAIRMAN HODOM: In your previous advertisements, which I gave you my copy of, you did list – and you're a realtor, that the property was being offered for sale and that a Variance was required for a 6-unit apartment.

MRS. DUNN: Yes, because I think in the old Variance it only went up to a 4-unit.

CHAIRMAN HODOM: It went up to 4-unit and multi unit with the site plan approval of the Planning Board.

MRS. DUNN: Yes a multi unit dwelling, 3 or 4-family dwelling and 2-family dwelling,

that's the old one – that's the old zoning.

CHAIRMAN HODOM: One thing we will consider is what the old zoning allowed you at that time because you have gone through some trials and tribulations with this property since the moratorium and then the water moratorium and so forth.

MRS. DUNN: Right.

CHAIRMAN HODOM: I'm going to leave it up to you if you want to adjourn the hearing to give yourself another opportunity to take another look at the...

MRS. DUNN: In other words you want me to dissect each one of those?

CHAIRMAN HODOM: The statute says that you must.

MRS. DUNN: Okay and I can do that.

CHAIRMAN HODOM: I would prefer that; it's really a betterment of your case to do that because in a Use Variance we're pretty much controlled by the statute established by the State of New York and I'll read it to you, it says that in order to prove such unnecessary hardship the Applicant must demonstrate to the Zoning Board of Appeals for each and every permitted use under the zoning regulations for the particular district where the property is located and then it lists those 4-items that you must prove, first being that the applicant cannot realize a reasonable return providing that lack of return substantial as demonstrated by competent financial evidence and I think you have all this information. And then that the alleged hardship relating to the property in question is unique...

MRS. DUNN: I do have that. I didn't realize that...

CHAIRMAN HODOM: That would be part of the old code.

MRS. DUNN: Okay I didn't know that I had to dissect each one of those.

CHAIRMAN HODOM: That's really a requirement.

MRS. DUNN: I never advertised for some of these things so I don't really know how that affects the land to be honest with you. A lot of them I don't think are appropriate for there.

CHAIRMAN HODOM: And I'm not going to put words in your mouth but if you address it in that manner with substantial information then you can do that.

MRS. DUNN: I put a sentence in there relating to that even.

CHAIRMAN HODOM: You did?

MRS. DUNN: Yes.

CHAIRMAN HODOM: I think you should address each and every issue.

MRS. DUNN: Each one?

CHAIRMAN HODOM: Yes.

MRS. DUNN: I can do that.

CHAIRMAN HODOM: It's a suggestion on my part, you don't have to if you feel that what you presented to date is adequate.

MRS. DUNN: If you want more I'll give you more; I don't have a problem with that. I can address each one of those, you know if that's what is required I'll do it.

CHAIRMAN HODOM: Do the other Board members have any comments that you would like to address to Mrs. Dunn?

MR. MICELLI: Do you have any information what the landscaping it going to look like?

MRS. DUNN: Oh, my builder is here so if you would like to take a look at what he has.

MR. MICELLI: Very much so.

MR. MAURO: I have some copies of everything so you guys can look at it.

MR. MICELLI: Okay.

MR. MAURO: That's actually what the units are going to look like.

CHAIRMAN HODOM: Will you introduce yourself to us please?

MR. MAURO: Oh, excuse me I'm actually sort of a rookie to the Planning Board but my name is Dereck Mauro and I'm a third generation builder who has done a lot in Delmar. Tony Mauro is my Grandfather, John Mauro is my uncle, Michael Mauro is my father so we're looking to, you know there's going to be town homes but we're looking to do custom town homes a little bit different then what you see what Michaels did in the area and stuff. We're trying to get something nice instead of just popping up, you know any town house is vinyl, you know we're trying to do a custom with some masonry, cedar shakes, and just something different.

I personally have a tendency for town houses and things because I think you are going after a lot of different markets. You're going after empty-nesters, first time homeowners, you know because everybody - - if it's not the little town houses Michaels

is putting up – they’re putting up 4-bedroom, 3-bath, you know 400,000-dollar houses so I really want to get into the market of supplying affordable housing to all the people I mentioned; empty nesters, first home owners, people on a budget. I think there’s a big market because not a lot of people go after them. So that’s why I think it will be a good place for this because no one does that. Like I said the town houses that you saw the Michaels put up I mean they’re just, you know, just one right after the other. There’s nothing special about them. I’m really looking to do something custom; my family has always done custom. So that’s what I’m really looking to do and I think it would be an asset to the community because of that for all those reasons – going after a lot of markets that a lot of people don’t market for and it’s something a lot nicer than what the average builder does. The average builder shoots them right up and I’m not looking to do that, I’m looking to do something nice.

Again this is myself but with the support of all my family members that have been building around here for quite a while and I think that they have a good reputation as far as the building part goes; that’s what they do. So hopefully that speaks good for me with the quality of work that they’ve done and the same thing, I plan on continuing to do.

CHAIRMAN HODOM: Just two points of interest. Is this the only copy you brought with you this evening?

MR. MAURO: You know I did everything I could short of the blueprints because, you know blueprints are quite a big expense and I didn’t want to think that by any means that this is going to happen so this is what I could come up with, you know without going through the expense of getting the blueprints but there’s a survey map plotting out where it would actually be on the lot addressing the setbacks. There would be, you know – it plots out what I have there on the actual lot of land showing the setbacks you know it sits in there without violating anything and there’s plenty of room to spare.

CHAIRMAN HODOM: What I was going to suggest is that we need 7-copies of each one of these documents so that the Board members have...

MR. MAURO: Again I must admit I’m working on that so I’ll keep that in mind for the next meeting that I will make one for each and every person.

CHAIRMAN HODOM: Not a problem. And the other point you mentioned addressing the Planning Board this evening. We’re one step up from the Planning Board. We are the Zoning Board of Appeals. Only kidding Mr. Mauro. If you would and I don’t think you have to give us a dimensioned floor plan and it appears that what you provided here will be adequate for our needs if you can get it to us within 5-days or so, so that each Board member has an opportunity to look them over before our next hearing.

MR. MAURO: Absolutely, that would not be a hardship.

CHAIRMAN HODOM Will you be in attendance at the next hearing?

MR. MAURO: Yes, absolutely.

CHAIRMAN HODOM: Good. I make a motion that we adjourn the hearing...

MR. BROOKINS: Mr. Chairman?

CHAIRMAN HODOM: Yes?

MR. BROOKINS: Do you want to hear any of these people that maybe are here to speak?

MRS. CATELLO: Could I just address this woman?

CHAIRMAN HODOM: Yes you may, come right up here in the front if you would and just introduce yourself to us.

MRS. CATELLO: My property is right behind it and...

CHAIRMAN HODOM: Just give us your name and address.

MRS. CATELLO: Anne Catello and I'm 49 Jericho Road so this would be directly behind me and I don't like the idea that it's not in unison with all the new homes that are going in that area and I think if it's facing Jericho it would still be in my backyard and it seems like it's going to be a little higher – a high rise or something.

MR. MAURO: 2-stories.

MRS. CATELLO: And there's going to be a lot of parking and well I just think the unison of that area right now with all the new projects going in and when I first bought there, there weren't even on Elm Avenue East. So I just think this would take away from all the new projects that are going in that area and if I were to build a home there I wouldn't want to look out my back yard and see a row of houses. I just think it would take away something from that area and is there sewers over there?

CHAIRMAN HODOM: I believe there are.

MRS. CATELLO: Okay because my area - - Jericho doesn't have sewer.

MRS. DUNN: I have sewer on the property.

CHAIRMAN HODOM: The sewer down there, water is going to be brought in by...

MRS. DUNN: No we already had sewers.

CHAIRMAN HODOM: I understand that.

MRS. DUNN: Yes and then Carriage Hill is bringing in the water.

MR. PLATEL: They will be bringing in the water down the road.

CHAIRMAN HODOM: Okay.

MRS. CATELLO: Well I just wanted to go on record that I object to the project.

CHAIRMAN HODOM: Thank you very much. Is there anyone else here, I didn't mean to shut anybody else off because we will reschedule the hearing and you may come again if you like and make any further comments. Is there anyone else wishing to speak to this issue this evening?

MR. MAURO: Am I allowed to actually address that concern or would I save that for the next meeting?

CHAIRMAN HODOM: If you would like to address it this evening you can.

MR. MAURO: Just one thing I wanted to say and I explained earlier when I talked about going after the different markets the units – again it is town homes, but they're very custom and just – make a focal point of one market say empty nesters, you know they're custom and they're nice and it gives someone something other to live in instead of a 4-bedroom, 3-bath house and you know it really gives them a chance to live somewhere nice without having a huge house and a big yard to take care of and living in a big development with say people who have children or couple starting out. I think it's a nice compliment to the families and everything I think to have a place like that and it's not going to look out of place on Elm Ave. As a matter of fact it makes - - with the masonry and the cedar shakes and whatever I think it's actually going to be you know nicer than some of the vinyl houses that are up on there. And again, I'm not just going after 1-market I think they're going to be really nice units and it's going to be something different than what's going up all around it. It gives the people that I'm talking about a chance to live in a nice community where maybe they don't want to have a 2,500-square foot house, but they want to live in a nice community and so that's what I think that some of the town houses do. So I think that's actually a plus that it's a little bit different than what's going on there – my opinion anyway.

CHAIRMAN HODOM: Thank you.

MRS. CATELLO: Does that object to children living there?

MR. MAURO: Well I said that actually but that's just a focal point I said empty nesters but what I said is you know going after about 5 different markets. You have your first home buyer, you have people, you know hard working people say that you know maybe they make 12 – 15-dollars an hour but they work hard and that also gives them a chance to live somewhere nice instead of saying well you have to live in downtown Albany you know if you want a 4-bedroom, 3-bath house it's not going to be a nice community. It

also gives those people the same chance to have a nice house, nice custom home in a nice area without having to make 100,000-dollars a year, but at the same it would be custom, you know have something nice and I think it would be an asset to the community. You can see again by what the plans show that it's just not vinyl sided, you know simple town houses they're going to be really nice. Again it gives - - the empty nesters were just one of the people I described but it gives a lot of people, different people a chance to own a nice home and be affordable. Not to many people do affordable housing that's custom and I think it's a plus in my opinion, but again that's just my opinion.

CHAIRMAN HODOM: Okay well you'll have another opportunity at the next hearing and maybe you can address that issue that you aren't just considering an empty nester development without children.

MR. MAURO: Yeah, absolutely.

MRS. DUNN: Or even single-families.

MR. MAURO: Yeah there's - - I mean I probably be getting a list, there's a lot of different markets like I said that I didn't address. I don't think it would be discriminative at all. I think if anything it would be discriminative putting up a 4-bedroom, 3-bath house. I think, really I'm looking at a lot of different people and people with children especially - children, that's probably one of the main ones because you know a middle class family when you have 2-kids that means you have a lot more bills to pay and that might mean you can't afford a huge mortgage so actually people with children would be at the top of the list with empty nesters that have some sort of a budget and they have 2-kids but they want to live in a nice home. There's a lot of bills that come with kids, I have a 2-year old and I know they start stacking up as the years go on so I think they would be right up at the top with empty nesters actually.

CHAIRMAN HODOM: Well actually it gets a little easier as the kids get older, when they become teenagers it's a piece of cake.

MR. MAURO: When they're two you can take them and get them a 10-dollar toy and they think it's the greatest thing.

CHAIRMAN HODOM: Were there any other questions or comments? Ma'am?

MRS. CATELLO: Not right now.

CHAIRMAN HODOM: Well let me make this motion because Mrs. Dunn has been here previously.

MRS. DUNN: Yeah I'm sorry I keep coming back.

CHAIRMAN HODOM: Maybe it was my error, I thought we had addressed that issue previously that you had to comply with New York State statute in a Use Variance.

MRS. DUNN: I just don't think the other uses for that.....

CHAIRMAN HODOM: But again you have to address each and every one and you don't have to have a litany for each one but a least address and of course the uses have changed now or at least the allowed uses; the permitted uses.

MRS. DUNN: Yeah it shortened for me, that's good.

On a motion made by Chairman Hodom, seconded by Mr. Umina and unanimously carried by the Board the Hearing was rescheduled to May 3, 2006 at 7:30 p.m.

Hearing adjourned 8:00 p.m.

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The next order of business this evening was a public hearing that is cancelled due to the lack of publication in the Spotlight newspaper. On a motion made by Chairman Hodom, seconded by Mr. Micelli and unanimously carried by the Board the hearing will take place on May 3, 2006 at 7:45 p.m.

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The next order of business was to consider the application of Mel & Janice Lamphron, 71 Fairlawn Drive, Selkirk, New York. The application was found to be in order and Mr. Umina made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Mel & Janice Lamphron for modification to a previously granted Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards for a second story addition, which will encroach into the side yard setback requirements at premises 71 Fairlawn Drive, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held May 17, 2006 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. Brookins 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 Timothy Gordon, 15 Beldale Road, Slingerlands, New York 12159. 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 Timothy Gordon for Variance under Article XIII, Use

& Area Schedules, Seciton 128-100A, Minimum Front Yards for an alteration to an existing garage, which will encroach into the Front Yard Setback requirement at premises 15 Beldale Road, Slingerlands, New York, it is hereby ordered that a public hearing on this matter be held May 3, 2006 at 8:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was a discussion of the previous public hearing held in the matter of Thomas & Laura Paonessa, 25 Pine Street, Albany, New York. The following points were brought up by the Board members: The parcel in question is pre-existing, nonconforming to the new code, but did meet the requirements on the old code. The existing dwelling is 1500-square feet in size which will conform to the previous and also the new code. The request is going to improve the situation in that area in terms of the lot sizes. There was no one who spoke against the proposed application. On a motion made by Mr. Brookins, seconded by Mr. Umina, 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 April 19, 2006.

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The next order of business was a discussion of the previous public hearing held in the matter of Thomas & Laura Paonessa, proposed lot 18 Grove Place, Albany, New York. The following points were brought up by the Board members: The lot depth of 90-feet will be accepted versus 120-feet and the lot size of 12,083-square feet versus the 14,520-square feet required also will be accepted. The current building envelope excluding the 30 by 30 triangular area on the side will accommodate a 2,700-square foot structure, but the maximum structure on this site 2416-square feet, which is 20-percent of the 12,083-square feet lot size. The rear yard of 25-square feet is similar to the house that it backs up to, which is also 25-feet. On a motion made by Mr. Umina, seconded by Mr. Brookins, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting 2 out of the 3 –Variances requested, for presentation at the next Board meeting on April 19, 2006.

The next order of business was to consider the proposed resolution of The Four Corners Luncheonette, 2 Grove Street, Delmar, New York.

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

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking variances under Article VI Supplementary Regulations, Section 128-52H, Off-Street Parking and Loading, Article XIII, Use and Area Schedules, Section 128-100A, Minimum Rear Yards, requested by the Four Corners Luncheonette (David Heffley, Applicant) and John Lane (Owner) for property at 2 Grove Street, Delmar, New York; and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on February 1, 2006 and March 1, 2006; 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 Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicant proposes to remove the existing outdoor deck on the restaurant structure at the property and expand his kitchen and dining area. The 2 proposed additions to the restaurant will create a rear yard setback of 10.5 feet for the left side of the addition and 3.4 feet for the right side of the addition. The property is located in a Hamlet District, where the required rear yard setback is 40-feet. The proposed encroachments will be 29.5 and 36.6 feet respectively.

Site plan approval will also be required for this project from the Town Planning Board.

With the additions, the new total building area will be 2,134-square feet, which will require 43 parking spaces. A total of 42 parking spaces were originally proposed, which was one shy of the requirement.

On the Owner's lot where the restaurant is located (2 Grove Street), there are 18 parking spaces available.

The Applicant's site plan originally proposed 20 additional spaces on the adjacent residential property (6 Grove Street) that he owns. Another 4 spaces were shown on the site plan as being rented from the adjoining property owner, Phil Giacone/Lighthouse Grille, Inc. (Tax Parcel No. 85.12-3-35; First Care, Tenant). Under the Zoning Law, these 24 "off-site" spaces can be counted for the restaurant's use only: 1) if they are all properly deed restricted for the use of the restaurant; and (2) if the four spaces are not also required for the uses on the Giacone property (Section 128-52[H]).

There are no written deed restrictions or other legal instruments binding the owners of either the Giacone or the Applicant's property to provide the proposed 24 "off-site" parking spaces for use by the restaurant. This is contrary to the requirements of Section 128-52 (H) of the Zoning Law.

Further, Mr. Giacone testified at the February 1 public hearing that he would not agree to a written deed restriction for the 4 parking spaces on the Giacone property, presently leased to the Applicant under an informal agreement. Therefore, pursuant to Section 128-52 (H), these 4 lots cannot be considered by the Board on this application.

At the March 1 public hearing, the Applicant modified his site plan to provide an additional six (6) parking spaces for the restaurant on the lot he owns (6 Grove Street), for a total of twenty-six (26) spaces on this lot. This, combined with the eighteen (18) parking spaces available on the Owner's property (2 Grove Street), satisfies the requirements of the Zoning Law (44 total spaces) without the four parking spaces on the Giacone property.

Thus, no parking space variance is necessary for the Applicant's project. However, see, Condition #3 under "Conclusions of Law," below.

At the February 1 public hearing, discrepancies were discovered involving the building and lot lines as between the Applicant's survey and site plan. These were reconciled at the March 1 hearing.

At the February 1 public hearing, the office manager of First Care (a tenant on the Giacone property) testified to the importance of adequate parking for the patients of the company's health services facility.

Other than as noted above, testimony at both public hearings was received from the Applicant and his engineer.

By Recommendation dated February 17, 2006 (Case No. 04-02/06-004), the Albany County Planning Board recommended a review of the project by the Albany County Department of Health for a food service and other required permits.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the public hearings, and other documents submitted by the Applicant, the Board determines that the proposed rear yard setback variances will be granted.

The Board has determined that the requested variances will be a benefit to the Applicant and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood.

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

The requested variances will have no adverse affect on the physical or environmental conditions in the neighborhood.

The requested variances are the minimum necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variances has not been created by the Applicant.

The requested rear yard setback variances are granted, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the February 1 and March 1, 2006 hearings, except as the same may be modified by the Town Planning Board;
2. In the construction of the additions the Applicant shall match, as nearly as possible, the existing roofing and siding on the structure;
3. Applicant shall fully comply with the provisions of Section 128-52 (H) of the Zoning Law with respect to the proposed twenty-six (26) parking spaces on its property at 6 Grove Street;
4. In its review of the site plan application, the Board recommends that the Town Planning Board reconsider the appropriate location of the proposed four (4) parking spaces at the rear (north side) of the restaurant on the Owner's property, pursuant to the testimony given for the Applicant and the comments of the Board at the February 1 and March 1, 2006 public hearings;
5. The project shall be completed within the time provided by Section 128-89(P) of the Zoning Law; and
6. Applicant shall comply with the recommendation of the Albany County Planning Board.

April 5, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
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Michael Hodom	None	None	None
Robert J. Wiggand			
Gilbert Brookins			
Leonard Micelli			
Anthony K. Umina			

(Resolution filed with the Clerk of the Town of Bethlehem on April 6, 2006.)

The next order of business was to consider the proposed resolution of Stewarts Shops Corporation, 33 Frontage Road, Glenmont, New York.

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 variances under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Front, Side and Rear Yards requested by Stewart’s Shops Corporations (“Applicant”) for property at 33 Frontage Road, Glenmont, New York; and,

WHEREAS, the Board, 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 March 1, 2006; 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 Zoning 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 2 additions to the existing structure (a freezer addition and a bathroom addition) that will create rear yard setbacks of .55-feet and 1.15-feet to the property line. This will be 49.45 and 48.85-feet shy of the required 50-foot setback. The freezer addition is located at the rear side of the structure and will also encroach into the front and side yard setback. The side yard will be 18-feet, which is 7-feet shy of the 25-feet required and the front yard setback will be 39-feet, which is 11-feet shy of the 50-feet required. Applicant will also be moving a storage building that is at this time encroaching 4.2-feet onto the adjoining property, and bring it into compliance with the required setbacks. The existing structure is occupied as a convenience market and gas station and is located in a Rural Light Industrial District.

By Resolution of December 7, 2005, this Board approved the Applicant's previous request for the variances needed for the installation of the freezer addition.

However, in preparing to construct the freezer addition, the Applicant discovered that the survey supporting the prior application was in error, with regard to the location of the property lines. As a result of this error, the proposed freezer, had it been constructed as approved, would actually have encroached onto the adjoining property. A concrete

base has been constructed for the proposed freezer that encroaches onto the adjoining property. This concrete base will be removed. As part of the present application, the freezer will be relocated within the correct property lines.

A corrected survey and site plan, with accurate property lines, has been submitted with the present application.

The existing bathroom in the structure has an outside entrance for customer use. This bathroom will be removed to provide a more efficient use of interior space in the store. A new bathroom addition, accessible from inside the store, will be constructed outside the structure on its north side.

The existing storage shed on the property will also be relocated to comply with applicable setbacks from the property lines. If it cannot be conveniently relocated, it will be removed from the property.

Applicant has not spoken with the adjoining property owner regarding these proposed changes, but the adjoining owner received notice of the public hearing.

Other than the Applicant's representative, no one spoke at the public hearing.

By Recommendation dated March 16, 2006 (Case No. 04-03/06-006), the Albany County Planning Board deferred to "local consideration" on this application.

CONCLUSIONS OF LAW

The Board rescinds its prior Resolution of December 7, 2005.

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed front, side and rear yard variances will be granted.

The Board has determined that the requested variances will be a benefit to the Applicant and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood.

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

The requested variances will have no adverse affect on the physical or environmental conditions in the neighborhood.

The requested variances are the minimum variances necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood.

The Applicant has not created the alleged difficulty necessitating the requested variances.

The requested variances are granted, on the following conditions:

7. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the March 1, 2006 hearing;
8. Applicant shall extend the brick exterior on the existing structure to the new bathroom addition, and shall also extend the existing mansard roof (without an overhang) over this addition;

9. Applicant shall close off the outside door to the existing bathroom, and replace this door with brick veneer to match the existing structure;
10. If the Applicant elects to remove the existing storage shed, it shall advise this Board and the Town Planning Board by a revised site plan.
11. The project shall be completed within the time provided by section 128-89 (P) of the Town Zoning Law.

April 5, 2006

Michael Hodom
 Chairman
 Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None	None	None
Robert Wiggand			
Gilbert Brookins			
Leonard Micelli			
Anthony K. Umina			

(Resolution filed with the Clerk of the Town of Bethlehem on April 6, 2006.)

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On a motion made by Chairman Hodom, seconded by Mr. Brookins, and unanimously carried by the Board, the minutes of the March 15, 2006, 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: 8:50 p.m.

Respectfully submitted,

Secretary