

**TOWN OF BETHLEHEM
BOARD OF APPEALS
April 19, 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
Gilbert Brookins
Leonard Micelli
Anthony K. Umina

Michael Moore Attorney to the Board

ABSENT: Robert Wiggand
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. Our first hearing this evening is going to be delayed because the applicant is not here but he does have a representative. What we can do is go on to some other business. We have a new application to consider for Bart and Lisa Robinson for Variance under Article III, Zoning Maps & Districts, 128-17, Exceptions C for the construction of a fence, which will not meet the requirements at the premises 164 Hasgate Drive, Delmar, New York. On a motion made by Mr. Micelli, Seconded by Mr. Umina, and unanimously carried by Board the application will be heard on Wednesday May 17, 2006 at 7:45 p.m.

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The next order of business was to consider the proposed resolution of Thomas & Laura Paonessa.

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 XII, Use & Area Schedules, Section 128-100A, Minimum Lot Depth and Minimum Lot Area, requested by Thomas and Laura Paonessa (“Applicants”) for property at 25 Pine Street, Albany 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 15, 2006; and,

WHEREAS, Members of the Board are familiar with the area in which the property is located 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 Applicants are proposing to divide an existing corner lot into two lots. The existing lot is situated between Grove Place and Pine Street, near their intersection with

Bower Avenue(a paper street). The subject lot is at 25 Pine Street. If divided as proposed, the subject lot will not meet the minimum requirements for lot size and lot depth. The depth of the lot will be 90 feet, which is 30 feet shy of the 120 feet required and the lot size will be 12,082.94 square feet, which is 2,437.06 square feet shy of the 14,520 square feet required. The existing structure at 25 Pine Street has pre-existing, non-conforming setbacks that do not require a variance. The lot is located in a Residence “A” District and the structure is occupied as a single-family dwelling.

The garage structure on the existing lot, situated at the corner of Grove Place and Bower Avenue will be removed.

The other portion of the lot proposed for division is a vacant parcel at 18 Grove Place, Albany. Applicants’ request for variances on 18 Grove Place is decided by the Board along with the present application, in a separate Resolution of this date.

Also pending before the Board is the Applicants’ request for variances on a lot designated as 21 Grove Place.

The subject parcel, and the two lots that would be created by the proposed division, are depicted on a map entitled “Preliminary Plat, Proposed Subdivision, ‘The Grove,’ Lands of Thomas Paonessa, Town of Bethlehem,” dated January 10, 2006 and prepared by Paul Hite, Licensed Land Surveyor (Map No. 336).

The existing corner lot is proposed to be bisected along a line running generally east to west, beginning at the intersection of Grove Place and Bower Avenue and running to the northwest corner of an existing lot at 21 Pine Street, Albany (N/F Staltieri, Book 2397, Page 217).

At the public hearing, the Applicants' representative provided a history of the larger subdivision, its lots and streets.

Other than Mrs. Paonessa and her representative, no one spoke at the public hearing.

By Recommendation dated March 16, 2006 (Case No. 04-03/06-009), the Albany County Planning Board has recommended that Applicants seek review by the Albany County Department of Health for water supply, waste water discharge and other permits; and that Applicants notify the Town of Guilderland of their proposal.

CONCLUSIONS OF LAW

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 Applicants, the Board determines that the proposed variances will be granted.

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

The benefit sought by the Applicants 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 Applicants' needs, while still preserving the character of the neighborhood.

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

The requested lot size and lot depth variances are granted, on the following condition:

1. The project will proceed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the March 15, 2006 hearing, except as the same may be modified by the Town Planning Board; and
2. Applicants shall comply with the Recommendations of the Albany County Planning Board.

April 19, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

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Mr. Micelli 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
Michael Hodom Gilbert Brookins Leonard Micelli Anthony K. Umina	None	Robert Wiggand	None

(Resolution filed with the Clerk of the Town of Bethlehem on April 20, 2006.)

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The next order of business this evening is a continuation of a public hearing for Variance's under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Lot Width and Minimum Front Yards requested by Thomas & Laura Paonessa for property at proposed 21 Grove Place, Albany, New York 12207. The Applicant wishes to construct a single-family dwelling, which will not meet the minimum lot width and minimum front yard setback requirements at premises proposed 21 Grove Place, Albany, New York.

CHAIRMAN HODOM: Ms. Guastella, would you give us the reason for the hearing, please?

MS. GUASTELLA: Yes, Mr. Chairman. The Applicant is seeking Variance's from width of lot and minimum front yard setback requirements. The proposed lot will have a lot width of 95-feet. This is 5-feet shy of the 100-foot required. Also the applicant is proposing to reduce the setback on the corner lot front yard from the 35-feet required to 25-feet. The proposed lot is located in a Residence A District and is vacant land.

CHAIRMAN HODOM: Thank you, Karen, and 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 March 15, 2006 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Thomas & Laura Paonessa for Variance's under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Lot Width and Minimum Front Yards of the Code of the Town of Bethlehem for construction of a single-family dwelling, which will not meet the minimum lot width and minimum front yards for property at proposed 21 Grove Place, Albany, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the March 8, 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 will use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone wishing to speak in opposition 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 should be directed to the Board. Prior to our starting here Mr. Hite, I would like to have counsel respond to the information that you provided us as requested from the last hearing.

ATTORNEY MOORE: Thank you Mr. Chairman. After the initial hearing on this matter in March Mr. Hite gave a discussion of these paper streets in this old subdivision and there was some question remaining as to what the Town Planning Board had directed or advised the applicant to do with respect with those paper streets. Mr. Hite, as promised subsequently delivered me copies of various deeds to some of the lots in the subdivision, some of which as he indicated conveyed some rights in these paper streets and some of which did not. The upshot of which as Mr. Hite indicated was that there was a rather uncertain state of the title to these paper streets and I then spoke to Mr. Silliman the Planning Board counsel who confirmed to me in writing that the Planning Board has advised the applicant that given that uncertain state of the title the Planning Board would not approve of any construction or building lot lines within the bounds of these paper streets unless the applicant elected to take some action to clear up these title issues. I fully concur with Mr. Silliman's approach and would recommend to this Board as well that consistent with what the Planning Board has done this Board should not take any action which would authorize construction or lot lines within those paper streets.

CHAIRMAN HODOM: And along those lines Mr. Hite and maybe you Mr. Paonessa, has there been any discussion as to the applicant extinguishing those deed restrictions legally in order to let you use or extinguish the paper streets?

MR. HITE: I don't think - - I'll be honest with you I don't know how - I've spoke with a couple of attorney's about it and also a title company and they said that none of the title company's would say that they would write title to it - cover it under title. The attorney's - both attorney's I've spoke with said that in all likely hood the only way we could do it would be go back and try to start at day one and find out where title may lie. The deeds I've sent to the attorney here that - well take this lot here for instance had in there that clause about also intending to convey as far as they're capable to do so any right, title and interest to the street. How far, I'd have to track that back - I don't really know. If you track it all the way back to day one and the first lot conveyed it out it would seem to me that all right title and interest to the street were gone then because they conveyed it out and Mr. Mancini who is a very learned attorney in terms of real estate - I spoke with him about it and he said you're absolutely right Paul, but you know you would have to track it back and prove that. The cost would just be enormous and we just felt that - - and even at that point I don't if we could get a title company to insure it because you would have to go to court and get a - correct me if I'm wrong I believe a quiet title and who know what the judge can give you so basically we just took the position and actually we really didn't care at the time. This lot was established before this new zoning came in to being and the 95-feet that's more than adequate to satisfy the zoning at the time but when the new zoning came in it brought us here before you and that was on the recommendation of the Planning Department of the Town to meet the new zoning requirements and we couldn't do it so we're here to ask for a Variance from you.

CHAIRMAN HODOM: Fine.

MR. HITE: Would you like me to put the other map up I believe that's where I marked the - - where I asked to move the - I think you asked me to show the 25-foot strip. I think

it's in there. As I stated at the last meeting perhaps where I continue with me tonight is Thomas Paonessa Jr. he is - - his mother and father were called out of Town a few days ago and he is a partner in the business with his father and mother so he can answer any questions that are related to the project.

Our proposal was to request from you a Variance to utilize the lot in its existing configuration, which is a width of 95-feet. The house to be constructed on this lot would front Grove Place when it's constructed into a cul-de-sac. All the houses would front out into that street as all of these do all the way down the line. They all front out here. The reason I asked for the Variance here was that in coming back the new required width on a street corner lot in the Town now in the new zoning is that it requires 35-feet on both streets. This is a paper street and again as stated in the public hearing before this street in all likely hood will never be built because of wetlands that are back here and the number of lots back here would make it just basically impossible to build that amount of street and acquire lots out of it.

So the original zoning would have allowed a 25-foot – actually it would have allowed a 20-foot side yard. This would have been 25; this would have been 20. I'm simply asking to allow me to use the 25 and use this additional 10-feet to make a width of building lot which would be about 60-feet wide and face the house out on the street and it would be a house probably in the same mode as you see in the building next door, which I also have pictures of on the board, very nice well built home, very well maintained. The line is about 13-feet off the sideline. This one we could push it over a little to put some more room between the two and a typical house that Mr. Paonessa Builds; his colonials are about 51,52,53-feet wide by about 42 to 44-feet deep. So with that – even if the Board doesn't see it clear to give me the 10-feet, I think 5-feet would be more than sufficient. It would give us enough of an envelope to put his nice colonial type building on it. I just simply ask for the 10-feet because it had met what it was before, that's all.

CHAIRMAN HODOM: Is that what the intention is to build that size colonial on all the lots?

MR. HITE: Yes. These lots are more than adequate to accommodate that size of home it's just this one – actually this one accommodates it, it just won't do it without the Variance because a 50-foot wide building – and you have to allow, you can't just set it right on the 50-feet so you would actually be down to a 50-foot wide building and it just does not fit a colonial.

CHAIRMAN HODOM: Well the lot itself would allow a home with accessory's or 3600-square feet. The building envelope that you currently show will accommodate...

MR. HITE: I believe now you can go 20-percent.

CHAIRMAN HODOM: 20-percent, yes.

MR. HITE: Yes in that neighborhood, right.

CHAIRMAN HODOM: And the building envelope that you show here is 6500-square feet so that's much bigger than what the current zoning would allow. You're not asking for any change in percentage of lot occupancy.

MR. HITE: I'm not asking for anything this way at all.

CHAIRMAN HODOM: Correct.

MR. HITE: I'm simply asking for that - that paper street will never be used. That's all I'm asking.

CHAIRMAN HODOM: And just to reiterate it is not the Paonessa's intention of ever developing the balance of Bower Avenue up through?

MR. HITE: No because he only owns this little piece of property right there.

CHAIRMAN HODOM: He doesn't own these other lots up in here?

MR. HITE: Up in here, no. In all likelihood sometime down in the future these will probably be conveyed to these 2-lots. They can't convey the street - well I guess they could but these people then they couldn't use it to build anything on either but they could use this as, you know whatever. It's not really worth anything because you walk back in there it's kind of damp.

CHAIRMAN HODOM: Okay.

MR. HITE: Well you can see the crosshatched area as to the wetlands that are affected.

CHAIRMAN HODOM: That area that we're talking about also is - the elevation is considerably higher than Grove Place, is it not?

MR. HITE: Right. That will have to all come out of there. It's mostly poplar trees and scrub trees, they're not what you would call your desired trees. They're mostly, like I said poplar and scrub trees and brush and the peak of it is about through here and once you go over that and walk down in the back it really drops off so this will basically line up being a flatter area being about 3-feet higher than the road - something like that, 4-feet higher. This one had quite a bit of fill taken out of it also and you can see how that lot turned out how nice it is.

CHAIRMAN HODOM: And again just to reiterate what you had said earlier, you're basically looking for something that will accommodate a 52 or 53-foot wide...

MR. HITE: Right.

CHAIRMAN HODOM: Colonial that faces onto Grove Place.

MR. HITE: Exactly.

CHAIRMAN HODOM: And in actuality you don't need the full 25-foot that you're asking for you could have less than that?

MR. HITE: I just make the proposed line to be at 25, if the Board feels that they would rather have it at 30 we can live with the 5-feet because that would give us a 55-foot wide building envelope, which is more than adequate.

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

MR. BROOKINS: No.

CHAIRMAN HODOM: All set? Any questions or comments from the audience? Mr. Paonessa, Jr. is there any comments you would like to make about the application request?

MR. PAONESSA, JR.: It's just that if we had that 5-foot all the houses would be....

CHAIRMAN HODOM: Please just give us your name and address?

MR. PAONESSA, JR.: Tom Paonessa, Jr., 31 Pine Street. It's just if we had the additional footage all the houses would look the same in a sense, you know what I mean? Everybody would have the same width house and everything would be more together in a sense I mean you wouldn't have a house that would just look real wide and then one that looked more narrow, you know what I'm saying; looked better.

MR. UMINA: How big of a house do you plan on building there?

MR. PAONESSA: Probably anywhere from 2200 to 2500-square feet.

CHAIRMAN HODOM: I think the house that you had proposed was upwards of 2700-square feet.

MR. HITE: This was a rather large home, that's what they wanted but again it's a colonial. Mr. Paonessa has built a number of homes down off of Feura Bush Road in behind the apartments that are built on 9W, somewhere in the neighborhood of about 50-homes down there and he just recently built like 19 up in Colonie and they all range from 51 to 53-feet wide, 42 to 44-feet deep. The 44 is if they put in a 2-foot cantilever on the back because some people like to have a deeper kitchen or a larger rec-room or whatever the case will be and you go to like a cantilever type thing.

CHAIRMAN HODOM: Any other questions from the audience? The Board members all set? Anyone wishing to speak in favor of the applicant? Anyone desiring to speak in opposition? Hearing no further questions or comments we'll declare the hearing closed

and we'll notify you in a timely manner. Thank you very much.

Hearing closed 7:55 p.m.

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The next order of business this evening is a public hearing for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Front Yards for property at 53 Wheeler Road, Glenmont, New York requested by Charles Wooster. The Applicant wishes to construct an addition, which will encroach into the front yard setback requirement at premises 53 Wheeler Road, Glenmont, New York.

CHAIRMAN HODOM: Ms. Guastella, please give us the reason for the hearing.

MS. GUASTELLA: Yes, Mr. Chairman. The Applicant is proposing to construct a 2-story addition that will create a front yard setback of 32.3-feet. This is 7.7-feet shy of the 40-foot front yard setback required from the property line. The setback from the centerline of the roadway will be 52.3-feet, which is 12.7-feet shy of the 65-feet required. The setback of the existing structure is a pre-existing condition that does not require any consideration by the board.

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

CHAIRMAN HODOM: Thank you, Karen. 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 April 19, 2006 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Charles Wooster for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Front Yards of the Code of the Town of Bethlehem for construction of an addition, which will encroach into the front yard setback requirement at premises 53 Wheeler Road, Glenmont, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the April 12, 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. We'll use the same procedure that we used earlier this evening. We'll hear the Applicants presentation, we'll entertain any questions or comments from the audience; we'll hear any one wishing to speak in favor of the applicant and anyone desiring to speak in opposition. Any questions will be addressed to the Board. Mr. Wooster if you would just introduce yourself to us and tell us what you want to do and why you want to do it.

MR. WOOSTER: Thank you Mr. Chairman and members of the Board. My name is Charles Wooster and I live at 53 Wheeler Road. I'm here tonight because I hope to build an addition off the side of my house, which as was discussed already, that will encroach upon the minimum front yard setback. The reason I want to do the addition is to add a kitchen and a bedroom to my house and a small bathroom off the back of the house and the reason I want to go off the side of the house and work within the new setback is for a couple reasons. There's an existing side gable on my house which I simply would like to extend – the width of that gable out 15-feet to create approximately a 15 by 20-foot, 2-story addition. In addition to that there will be an open porch behind the house and a small bump out for a small bathroom behind the house, which are not affected by the new setback.

So by going off the side actually there's historical precedence for doing such an addition on historic farmhouses of this age. That's one reason why I want to do it. Also I really want to avoid having to relocate the septic system in the back of the house, which any addition on the back, a larger addition of the back would entail relocating my septic and also by doing this I'm maximizing the east, west access of the house, maximizing southern exposure. That was an additional reason to get more southern light into the house so in a nutshell those are the reasons why I'm asking for relief from the minimum front yard setback.

CHAIRMAN HODOM: Can you give us the approximate location of the existing septic system as how it relates to the back of the existing house?

MR. WOOSTER: Directly at the center of the back of the house it's approximately 20, 22-feet from the back of the house is where my septic tank is.

CHAIRMAN HODOM: And the sanitary line from the house to the system, where is that located?

MR. WOOSTER: It's almost exactly in the middle of the back of the house.

CHAIRMAN HODOM: Okay. Wheeler road is a very narrow road, is it not? I measured as 17-feet wide.

MR. WOOSTER: I'm sure that's true.

CHAIRMAN HODOM: I'm just trying to compare the distance from the centerline of the road to the front of the house is a lot smaller than most and that would certainly be a reason for it. Why don't you tell us why a new kitchen and bath and bedroom are required?

MR. WOOSTER: Sure. The house – when we purchased the house in 1999 and it's a very small house. The footprint is approximately 24 by 30-feet and the amount of usable square footage is about 1300-square feet. There essentially was no viable kitchen when

we bought the house. You walk in the back of the house – the back entrance is a kitchen and probably less than 100-square feet; very small and difficult to work with. So our main objective with this product is to build about a 15 by 20-foot kitchen so we have a workable, good size kitchen. And while we're doing this we also decided to go up 1-story within the same footprint to add a bedroom above because we have one average size bedroom and two very small bedrooms upstairs. There's just an opportunity to essentially address our kitchen needs and at the same time add a bedroom.

CHAIRMAN HODOM: And what is the size of your family currently?

MR. WOOSTER: My family – my wife, myself and my son, the three of us.

MR. BROOKINS: Have you spoken with your neighbors?

MR. WOOSTER: Yes I have and they're all very supportive. Our neighbors are I believe actually very appreciative of the fact that we bought the house in 1999 and it was vacant when we bought it and it was in very poor condition. I mean the last 6 or 7-years we've been working mostly ourselves to fix it up and restore it to its original condition and overall have been very pleased I believe. I believe 1-neighbor sent a letter – they told us they sent a letter in, in supporting the project. It would be from the Masons.

CHAIRMAN HODOM: Yes, 66 wheeler Road?

MR. WOOSTER: That's right, that's across the street from us.

CHAIRMAN HODOM: They did send in a letter on April 10th.

MR. WOOSTER: Okay and then my neighbor probably most affected by the project he's my nearest neighbor facing the side of the addition. His property line is about 250-feet because we have almost 6-acres, but he did speak to me and offered to write a letter – couldn't be here tonight but I didn't ask him to write a letter but he is supportive of the project.

CHAIRMAN HODOM: But you did take the time and effort to..

MR. WOOSTER: Certainly, yes.

CHAIRMAN HODOM: Did you also show him the plans that you were proposing?

MR. WOOSTER: Oh, yes, yes.

CHAIRMAN HODOM: I know you mentioned the size of the kitchen – I'm trying to find your floor plan here. Your existing first floor, can you describe basically the sizes of the other rooms and what those rooms are?

MR. WOOSTER: On the first floor?

CHAIRMAN HODOM: Yes.

MR. WOOSTER: Yes I can. If I can just come over.

CHAIRMAN HODOM: Sure. The front – if you're looking from the road to the front of the house, the first room to the left is?

MR. WOOSTER: Sure I can start there. That room that we're looking at there is 13 by 13-feet, that is our living room. That's what we use as our living room.

CHAIRMAN HODOM: Okay.

MR. WOOSTER: Just below that on the drawing you have there is our front entrance is also a small study, it's a combination foyer and study – a small desk and a closet and as you can see there's a very small bathroom right off there.

CHAIRMAN HODOM: And roughly that size is?

MR. WOOSTER: Of the bathroom?

CHAIRMAN HODOM: No, just include the bathroom and the closet, the study/foyer area is?

MR WOOSTER: Including is I would say it is probably...

CHAIRMAN HODOM: 13 by?

MR. WOOSTER: 13 by 9 or 10 maybe, it's no bigger than that.

CHAIRMAN HODOM: And then the room right beyond the living room?

MR. WOOSTER: Right that's probably the largest room, that's the dining room and that's about 12 ½-by 15-feet.

CHAIRMAN HODOM: And then to the right of that is your?

MR. WOOSTER: That is a kitchen, yes.

CHAIRMAN HODOM: And you said roughly 10 by 10?

MR. WOOSTER: Yeah, it may be 9 by 10.

CHAIRMAN HODOM: And then out of the kitchen you have stairs going upstairs?

MR. WOOSTER: Right, that's correct.

CHAIRMAN HODOM: And stairs going downstairs?

MR. WOOSTER: To the basement, that's correct.

CHAIRMAN HODOM: And the little room off of the...

MR. WOOSTER: A small pantry, yes.

CHAIRMAN HODOM: And then on the second floor there are 3-bedrooms?

MR. WOOSTER: That's correct. The one on the front of the house that's a master bedroom and on either side are really crawl spaces, which are not usable because the knee-walls are about 2 ½-feet high.

CHAIRMAN HODOM: Okay, it's not really a full story; it's considered a half story because of how the ceiling follows the roofline?

MR. WOOSTER: The ceilings come down to 2 ½-feet so that room upstairs is not usable, correct.

CHAIRMAN HODOM: Approximately how large is that master bedroom if you know?

MR. WOOSTER: Yes I do know it's about 10 ½-feet by 15-feet.

CHAIRMAN HODOM: And the middle bedroom?

MR. WOOSTER: That's my sons bedroom and as you can see it's much smaller. I don't know off hand the dimensions but maybe 9 by 10-feet and then there's also another bedroom in the back corner, which you just labeled there.

CHAIRMAN HODOM: Are the plans drawn to scale?

MR. WOOSTER: Yes.

CHAIRMAN HODOM: I know they show a quarter inch.

MR. WOOSTER: They're quite accurate, yes.

CHAIRMAN HODOM: And you have a full bath on the second floor?

MR. WOOSTER: That's correct, yes.

CHAIRMAN HODOM: And you purchased the property in 99'?

MR. WOOSTER: 99', yes.

CHAIRMAN HODOM: Had you looked at any other layouts that....

MR. WOOSTER: Yes I did. I've worked on this for quite a while actually and initially I was trying to go off the back and that was actually before the re-zoning when I didn't think there was an issue about the side. I initially did want to go off the back, I just couldn't find any viable way to make it work with circulation and with the look of the house really I was concerned how it made the house look because again it's only 24-feet wide so of all the schemes I've tried the side gable essentially really seemed to work the best for a number of reasons.

CHAIRMAN HODOM: The - - I'm just going by your site plan where the front of the main house - the existing house from the property line is 31.6-feet?

MR. WOOSTER: I believe what that is, yes.

CHAIRMAN HODOM: And then your addition, but that's from the centerline.

MR. WOOSTER: That's from the original survey when I purchased the house, I believe.

CHAIRMAN HODOM: 32-feet from - I'm just trying to put it in perspective. It appears that the front of your proposed addition it set back from the existing house...

MR. WOOSTER: It's about 8-feet back from the front.

CHAIRMAN HODOM: Is that what it is?

MR. WOOSTER: The main body of the house there's actually a front porch, which is a little bit closer to the road - existing porch, but if you look at the main 2-story part of the house the addition would start about 8 or 9-feet, maybe 7-feet. I'm not sure back from there.

CHAIRMAN HODOM: The reason I bring it up Mr. Wooster is that on the site plan it shows the existing house if I'm reading this correctly and do you have a copy of it with you?

MR. WOOSTER: Yes.

CHAIRMAN HODOM: It shows that from the property line the front face of the existing house is 31.6-feet and...

MR. WOOSTER: That's the existing property line.

CHAIRMAN HODOM: Pardon?

MR. WOOSTER: To the existing property line, yes.

CHAIRMAN HODOM: And then the Building Department has said that the front yard setback to the addition is 32.3-feet.

MR. WOOSTER: Again that 31.6, I believe came off the original survey by Paul Hite. I do have it. I was just copying what the original survey said in 99' when I bought the property, 31.6 I believe and maybe the property line is – I see what happened maybe the highway boundary instead of the property line. I was confused as to where the property line was which is why I took the centerline of the road measurement and used that because frankly I couldn't tell from my own survey where the property line was. I didn't know if it was the same as the highway boundary or not.

CHAIRMAN HODOM: Well maybe we can decipher it in house and I just want to make sure that it was on record that your proposed addition is approximately 8-feet farther back from the property line than the existing house is.

MR. WOOSTER: That's correct, yes.

CHAIRMAN HODOM: And that's the only encroachment we have is the front yard setback?

MS. GUASTELLA: Yes.

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

MR. MICELLI: I have one, Mr. Wooster do you have any intentions of finishing off the basement in the future?

MR. WOOSTER: The existing basement?

MR. MICELLI: On the new one – on the addition.

MR. WOOSTER: Ultimately yeah, I would like to finish off the basement.

MR. MICELLI: Just to have more room?

MR. WOOSTER: Yes.

MR. MICELLI: Thank you.

MR. BROOKINS: One of the reasons stated for doing your addition was you mentioned that the - - it would give a historically accurate addition and then restore historical precedence for extending the gable.

MR. WOOSTER: Right.

MR. BROOKINS: That's suggest to me that this has been done elsewhere and...

MR. WOOSTER: I did a little bit of research and I studied this a little bit because the house type I recall, a farm house type with the slightly off center cross gable was typical of that time of the early century – early this century and I did look at other houses of the same era and often if the house was to grow from the original the addition would come off one of the side gables similar to what I want to do from the side of the house. We would have a smaller wing on the side of the house as opposed to - - some were also done in the back but I mean primarily I noticed a lot were done on the sides so I wanted it being a historic house I wanted to do something that would be in keeping with that type of house so that's why.

MR. BROOKINS: Anything on Wheeler Road or in the...

MR. WOOSTER: No there's really nothing that's really similar to my house. There's a real mixture of house styles and some houses are actually much, much older than my house down in the neighborhood so I can't say that there's something similar in style to my house in the immediate neighborhood.

MR. BROOKINS: So your research was based on...

MR. WOOSTER: Reading books on American architecture and things like that.

MR. BROOKINS: Okay, thank you.

CHAIRMAN HODOM: Ken, anything?

MR. UMINA: No, I'm well aware of what he wants to do and it was all staked out and I understand it.

MR. MICELLI: Do you have Town water or a well?

MR. WOOSTER: I have a well.

MR. MICELLI: No effect – would be looking at the property that's away from the addition obviously.

MR. WOOSTER: That's right, all services in fact are on the opposite side of house.

CHAIRMAN HODOM: Any questions or comments from the audience? Anyone wishing to speak in favor of the applicant? Anyone desiring to speak in opposition? Any more questions from the Board members? 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. WOOSTER: Thank you for your time.

Hearing closed 8:15 p.m.

- - -

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 Front Yards requested by Timothy Gordon for property at 15 Beldale Road, Slingerlands, New York. The Applicant wishes to make an alteration to an existing garage, which will encroach into the front yard setback requirement at the premises 15 Beldale Road, Slingerlands, New York.

CHAIRMAN HODOM: Ms. Guastella, please give us the reason for the hearing.

MS. GUASTELLA: Yes, Mr. Chairman. The Applicant is proposing to relocate the existing garage and bedroom wing of the house to a location that will create a front yard setback of 11.5-feet to the front property line. This is 23.5-feet shy of the 35-foot required.

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

CHAIRMAN HODOM: Thank you, Karen and 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 April 19, 2006 at 8:00 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Timothy Gordon for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Front Yards of the code of the Town of Bethlehem for an alteration to an existing garage, which will encroach into the front yard setback requirement at the premises 15 Beldale Road, Slingerlands, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the April 12, 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. We'll use the same procedure that we used earlier. Tim if you would introduce yourself to us, your residence and tell us what you want to do and why you want to do it.

MR. GORDON: Okay, good evening, members of the Board, Ms. Guastella, Mr. Moore. My name is Tim Gordon and I live at 15 Beldale Road and we are seeking to literally move our addition forward approximately 14-feet. A situation exists; we have a slope

failure behind the home, a rather substantial slope failure stretching about 60,70-feet from north to south. It's created a situation behind – I guess some of the materials you have there, you have the surveys. The existing house you can see in the survey there the slippage of the slope – stopped moving fortunately, but it's got a mound about 7-feet behind the back of the house. Where the addition is really the soil has come just about up really to the addition so we're not using that portion of the home right now and we moved out of those bedrooms.

So right now what we're doing is really considering a number of different options to remediate the slippage of the hill and preserve the home. I'm told it's better to be at the bottom of the slope than the top of one, but I don't know if it's much better or not. So one of the options is to – the more space that we can create behind the addition, the better. As far as grading a reasonable grade as we try to reconstruct the hill. I'm not entirely certain that that's actually the route that we're going to take, we looked at a lot of options and still need to decide but wanted to see if the possibility of moving the addition forward was something that we would be allowed to do. For the same money we could demolish the addition, but that's not our first choice or perhaps remove the back room, but that would be a lot of money to reconstruct perhaps a new roof or engineering – if we were to move the addition, I don't know if you saw the photographs or not. There's some photographs here. It gives you an idea of the addition a little bit.

CHAIRMAN HODOM: When did the slide occur?

MR. GORDON: It started developing about 2-months ago we noticed it. I think what precipitated I'm not entirely sure about the specific factors. It would be a number of factors, but we know it didn't freeze most of the winter so we did end up getting rain in the early part of the winter with no frost to run off. There can be other contributing factors to.

CHAIRMAN HODOM: Do you own that back hillside?

MR. GORDON: Yeah, I actually do own to the top of the hill. One of the shots you might see, there's a pine tree at the very top. I own to about 2-feet shy of the pine tree. If we do chose to move the addition forward, I've spoken to Larmen House Movers and they've done a couple jobs in town and they're well known as being very good in that field. They actually moved Supervisor Terry Egans home on Elm Avenue – well this was on Cherry but it was moved. Ed Klienke a landscape architect also had his home moved by the firm so it is possible. What they would do – we would detach the addition from the existing home and then the new construction would be for the foundation essentially and then we would also – the architect would have to reconfigure the hallways inside, which wouldn't have anything to do with the setback particularly but before we went and had the engineering done and to put in the new foundation and then fill in parts of the existing one. Again, wanted to seek the Variance or see if it was possible.

CHAIRMAN HODOM: Have you had consultation with a structural engineer or a geotechnical engineer?

MR. GORDON: Yes we have.

CHAIRMAN HODOM: Any recommendation as to retaining walls, steel sheeting, wood sheeting?

MR. GORDON: Steel sheeting is one option. The estimates we've received though have just been out of this world.

CHAIRMAN HODOM: Can you tell us what they were?

MR. GORDON: Yeah, one was for \$89,400.00 and another one was for \$90,000.00 so we would save \$400.00 with that one guy. That's only for driving the steel sheet piles to. That's not the excavating that would have to be done and frankly the sheet pile – pile drivers weren't crazy about the – there were all kind of waivers that we would have to sign incase there was damage to the house, which they thought was very possible. It was an awful lot of money to roll the dice I thought. So we are looking at some other options.

CHAIRMAN HODOM: Are you at liberty to tell us what the house is worth?

MR. GORDON: Well we did have the re-val, I think – I'd say 225, 250.

CHAIRMAN HODOM: So it's close to half the value of the house.

MR. GORDON: Right.

CHAIRMAN HODOM: How about a retaining wall – a concrete retaining wall?

MR. GORDON: Yeah that's something that we might end up looking at or doing. In fact moving the addition would actually be part of that solution that may include – or it would probably include a retaining wall. Frankly you would probably start with a retaining wall and then consider moving the addition later. So I don't know if we have the cart before the horse here, but we're weighing all of our options and knowing that this process does take a little while I thought we best would seek the Variance sooner than later.

CHAIRMAN HODOM: And your existing addition consists of?

MR. GORDON: 2-bedrooms and...

CHAIRMAN HODOM: The garage?

MR. GORDON: And the garage, yes. So we've been camping out in the living room. In fact we were out of the house for about 10-days when this started developing in the winter and there was a fair amount of movement at that time but it has kind of settled since then.

CHAIRMAN HODOM: And the proposed addition would consist of the same 2-bedrooms and the garage?

MR. GORDON: Yes, we would literally would move it forward so the garage - - the only new construction would be the foundation for the garage so to speak.

CHAIRMAN HODOM: I noticed you had some plywood with framing members behind it holding back the embankment. How far in the back of the existing house does your concrete foundation go up?

MR. GORDON: I would say maybe – from the backside?

CHAIRMAN HODOM: Yes.

MR. GORDON: Well the siding comes down pretty low so I would say a foot as best I guess.

CHAIRMAN HODOM: That was not designed to act as a retaining wall incase there was any slippage?

MR. GORDON: No, so there's a fair amount of stress on it now and the plywood is really to keep the moisture for the most part from getting into the walls.

CHAIRMAN HODOM: Okay.

MR. BROOKINS: Have you talked with anyone about – because we've had a very dry spring. Have you talked to anyone about what you might expect in terms of future shifting should we have a couple inches of rain in a relatively short period of time?

MR. GORDON: Well it's not a good situation so that's why we continue to stay out of those rooms and not use those rooms.

MR. BROOKINS: So whomever you spoke to doesn't see this as a stabilized condition now...

MR. GORDON: No it's not – no it's not we need to get in the back so again I guess moving the addition is just part of a potential solution to give us more room. Again the addition is about 4-feet further back than the existing house so that makes it a little tighter and just the nature of the hill itself kind of curved in that direction so it all converged at the corner there.

CHAIRMAN HODOM: And that tends to be the highest part of that embankment is right behind that addition and it slopes away as you go towards the pool area.

MR. GORDON: That's right.

MR. UMINA: From what I saw tonight I think time is of the essence with this matter, it would seem to me anyway.

MR. GORDON: I was hopeful we would get underway with some remedy but then when we got some of those prices that – and the fact that the pile drivers weren't crazy about even doing the job even though it was one potential solution.

CHAIRMAN HODOM: Well a recommendation I would have is the first thing you really want to do is develop some kind of swale in the back there to mitigate that water coming down the embankment if we do get any rainfall. That would certainly would slow down any further slippage of the hillside and also prevent any new water coming into the house. That's only a suggestion. Any other questions from the Board?

MR. MICELLI: One quick question I meant to ask you earlier is there any mildew forming in the bedrooms yet?

MR. GORDON: No fortunately, beyond the plywood there's some studs behind there and I don't know if the pictures reveal it although the earth is coming....

CHAIRMAN HODOM: Did you want these back?

MR. GORDON: The ones that are numbered I guess I could have back. It doesn't - - if you look from the front of the house it looks like you have maybe 5-feet of earth on the back of the house, but really it's quite a sharp little pitch at the back so maybe it's up a foot or two.

MR. MICELLI: I know this weekend they're calling for a lot of rain that's probably going to cause a little back there do you think?

MR. GORDON: Well sure and we've been worried and we look out every morning and night and look for any differences or changes. Before we felt maybe just the freeze was keeping it from....

MR. MICELLI: Right.

MR. GORDON: We're apt to get some more movement and the suns – well I don't know.

MR. MICELLI: Thank you.

MR. GORDON: We're curious to hear the forecast everyday.

CHAIRMAN HODOM: Are there any more questions from the Board? Any questions or comments from the Audience? Yes ma'am?

MS. CAROL: Are you asking for opposition and in favor issues?

CHAIRMAN HODOM: If you would like to speak to that issue, just give use your name and your address please.

MS. CAROL: Certainly, my name is Corlis Carol. I live at 20 Beldale Road; my property is kind of kitty-corner with the Gordon property. I want to thank the Board for the notification we read the letter and I say we, my husband and myself and I regret that he's not here tonight because we have a failure in our septic system and he's just finishing that repair – one of our pipes broke, but he would be here in opposition to this also. We've lived on Beldale Road since 1991, bought the property at Beldale Road, mad significant improvements to that property over the course of the years; put an addition on. The Gordon family has done also. Harry Bucker owned the Gordon property prior to my being there and the DeCerce owns the property adjacent to the Gordon property.

When we got the letter Bob and I sat and we talked about it. We were extremely saddened by the challenges that face the Gordon family right now. To have your home being encroached upon by a falling hillside is most very sad. And Bob and I talked about it, having made some constructions, having gotten a building permit from the Town of Bethlehem many some years ago. We talked about what we would do with a young family faced with the same challenges that the Gordon family currently face. We came to some conclusions between the two of us, we've been married 25-years and we decided we wanted to talk to Tim. So I waited until he was out in the neighborhood and we went over and we talked about the situation, we talked about what's really going on there.

I've been driving down Beldale Road for 15-years now and for 15-years I've been watching the water fall off that hillside and roll across Beldale Road down into the Krumkill. The Gordon's built an addition on the property after they bought it. There was never any slippage prior to the addition. When they put the addition on the property they cut back into the hillside with that addition, put in a garage, a concrete wall and I'm not sure what the configuration is over that addition, but in essence what they did was they built a damn. Water is heavy. I talked to my neighbor, Frank DeCerce and Carolyn who have lived down that street longer than I have. Frank indicated to me that he has never paved his garage because he always has a problem with water in his garage, he shares the same hillside with the Gordon family. He has put in drainage systems that run into the public culverts and ultimately get down into the creek. He still has standing water in his garage.

Moving the Gordon addition forward 14-feet in my estimation and in the estimation of my husband and I cannot speak for the DeCerec family but I can speak for Bob, only moves the problem 14-feet forward. My concern of course is for the value of the property's in that area should something more tragic happen than what has already occurred with the falling of the hillside. I'm concerned about the people who live above the Gordon property and I'm concerned about of course my own value to my own property. I'm not an engineer, I'm a business owner in the Town of Guilderland; I'm an artist; I'm a mom; I'm a wife; I'm not an engineer; I'm not the sharpest tack but I'm not

the dullest either.

I believe that what really has to happen there is for there somehow to be a way for that water to flow again. Now that may mean that the back wall of the garage be removed. If you go down to North Carolina and you look at some of these houses that are built on piers, it might be a way for that hillside to have an opportunity to bleed again. Right now if you walk behind the Gordon house it is wet beyond belief. We have a dam there in the addition. I regret that the family is having to suffer this and I mean that, but none the less that's the situation that exists. I would suggest to the Board that there be a further investigation into the things that I'm saying here. I have a history of living here for 15-years, seeing the water flow off that hillside, noticing that nothing has shifted in the earth in the past 15-years until the addition went on. It's worth investigating. The house above the Gordon house if that was my property I would be terrified. We've had a relatively dry winter, what happens if we get a winter where we've got 30 or 40-inches of snow and the melt that will accompany that? The slope of the land where that portion of Krumkill Road is like this and we are right in the shallow part of that so I am really here to just say I'm sorry about the situation but I don't think that continuing to support that hillside with any kind of construction – it needs to breath, somehow it needs to breath. If we haven't had a problem in 70-years, we build an addition and now we have in a dry weather situation a hillside that's falling down. One must conclude that the reason for that is the presence of the addition and moving the problem 14-feet forward does not solve the problem. Tim, I hope the best for your family I really do and I mean that. Thank you.

CHAIRMAN HODOM: Thank you very much. Anyone else have any comments or – yes ma'am? Just introduce yourself to us and give us your address.

MRS. MILLER: My name is Amy Miller I live at 9 Milton Street; I live at the top of the hill, top of the slope behind the DeCerco family. I know – we know Frank and Carolyn, my husband Bob and I from the firehouse and stuff. I've seen their garage; I've seen their basement. The water just flows, it's like an open spring it just keeps on going through there. Over the years – we've lived there – we just purchased the house but my family – my parents owned the house, we bought it from them. I've lived there almost 31-years. My mom has always told Frank, you know we need to plant bushes or something on the hillside to help take up some of that drainage because over the years it's kept sloping and sloping and dropping and we've seen the backyard decrease in size because of it. And just recently Tim dropped down – and besides that Frank planted – Frank DeCerco planted a whole bunch of bushes and trees down at the bottom - willow trees that have soaked up some of that water so isn't as bad but there's still water flowing through but hill – and he built a retaining wall to try to help and apparently it's helped somewhat. He's also done drainage systems to help him keep the water away from his house. He did a lot of work last year trying to get it so that the hill would stop sliding and recently Tim all these trees cut down on the hill and he said they were dead. The problem is even though they were dead they had all these root systems that were trying to hold the hill up and absorb some of that water but at least they were holding some of the hill up and now it's just totally come down and it's like a horrible thing to have it fall down by your house

but you know I think some of that could have caused some of the problem maybe some of the trees falling down. I'm not saying that I'm against Tim moving his addition forward. My only concern is for my neighbor who lives next door, she's, you know almost a 90-year old woman who owns the property exactly above him whose hill – you know who owns up to that pine tree, the 2-feet in front of the pine trees but you know I'm only concerned that her property just doesn't keep on falling where she loses out also but I want something besides just moving the house forward maybe putting some growth back into that hill, willow trees, something to help absorb that water because it's really bad. It just flows constantly down there and I think that's the only other solution besides moving the house forward is you need to put something there to help absorb it. That's all. I'm not opposed to it and I'm not in favor of it I just, you know – fine he can build forward if you guys approve it he can do it. I just hope that he puts something in that hill to help solve the problem so it won't happen again.

CHAIRMAN HODOM: Thank you very much.

MR. BROOKINS: Can you show us where you live?

MRS. MILLER: Yes. Where is his house?

MR. BROOKINS: Here's his house.

MRS. MILLER: I live right here.

MR. BROOKINS: So you're over here.

MRS. MILLER: Right.

MR. BROOKINS: And have you noticed any changes in your property line?

MRS. MILLER: It's decreased – we put a fence in, in 2000 or something we put a fence around our property and when we did that we noticed that because we brought it in from and we noticed that the hill just keeps on dropping behind there but our property more affects the DeCerco family than his, but we're buying this lot over here and when we buy this lot it's going to, you know that's more of his property.

MR. MICELLI: Could you show me the property that you're buying? Is it this here?

MRS. MILLER: We're buying this one right up here.

MR. MICELLI: Up here, okay.

MRS. MILLER: Yes we live right up here.

MR. MICELLI: And this is where the neighbor with the pine tree is up in this area?

MRS. MILLER: Yes the pine tree is like right up here.

MR. MICELLI: Thank you.

MR. BROOKINS: You're more above the pool?

MRS. MILLER: We're above the pool – we're right above the DeCerco house but our house is right above this house but our property extends a little over so it kind of – going towards his pool area so it's not really near the area that fell right by his house but it's all adjacent. That hill just keeps on coming and coming because it's like a natural spring it just flows.

MR. BROOKINS: That was going to be my next question and I know you're not an engineer but it doesn't sound that this is water - - rain water, it is ground water of some sort and it's coming from some place.

MRS. MILLER: It's both. When it does rain it just comes on down but it's always wet, it's always got a spring. Frank has a dirt basement; you know his garage is all dirt because it just keeps on flowing and flowing and flowing. I don't know why but it's got to be a natural spring underneath you know in this hill somewhere....

MS. CAROL: Our deed on our property shows an artesian well. There's a lot of springs, underground springs but I never really dug it up I mean I know where it is.

MRS. MILLER: I know there's a lot of sand up there.

MR. MICELLI: Would that be considered like a wetlands maybe a long time ago?

MS. CAROL: It's like Andover is here and where these folks live here and Beldale is here...

MR. MICELLI: Well just trying to get to the point here in conclusion is that we would make it is like a beaver dam where the addition is saying that if that goes on pedestals or if that's removed and it's going to be free to flow.

MRS. MILLER: It's going to flow regardless. I think something needs to be done overall not just for Tim but for everybody. All the houses – needs to go in there and to help correct the water and get it away so that – I mean our house sits back some but you know – who knows it may fall down even more. I think just something needs to happen to help collect all the water and get the water out of there. I mean we don't have sewers or anything we all have septic's you know...

MR. MICELLI: It doesn't affect the septic tanks does it?

MRS. MILLER: No because I think ours sets back. We're back quite a bit, but you know who knows someday my daughter will you know live in the house and it may, you know

we don't know.

MR. MICELLI: You don't know.

MRS. MILLER: I'm just hoping that you know I don't mind if Tim moves his house forward, that's perfectly fine with me. I just hope something gets put on the hill to help keep it so it doesn't fall down.

CHAIRMAN HODOM: Tim, just a couple questions for you. I noticed there were a lot of the trees were cut down and I guess I made an assumption they were cut down because of concern of falling onto the house...

MR. GORDON: That was done post to the failure and by the recommendation of the geotechnical engineer who said that the failure was actually below the root line at this point and the possibility of those trees falling on the house was very real. So that was his first instruction was that and my response was that to, well all the roots are doing some good – well yes the roots will still be there for a while but the failure is below the roots and you need to get those out. Now when we were looking at having the pile drivers come in they were going to have to build a ramp to get their 10 – or hundred ton pile driver in so there was about 4 or 5-trees up behind the house that we took down that needed to be taken down in any circumstance. Next to the house at the bottom of the slope there's probably maybe 4-trees that we still need to be seeing whether or not those ultimately need to be taken down so I wish they were still there. The excavators may need – they might have needed to be removed ultimately, I assume they were going to be needed to be taken down when we thought the pile drivers were coming in so we were getting that done – prepare for that portion of the job.

CHAIRMAN HODOM: Have you made any contact with the Town Engineering Department to take a look at that?

MR. GORDON: I don't know if Eric took a look or not. They are really hands off – it's your problem.

CHAIRMAN HODOM: Do you have a report from the geotechnical engineer that you can share with the Board, recommendations or what caused the failure and so forth?

MR. GORDON: Yeah there was a geotechnical engineer report or...

CHAIRMAN HODOM: Do you have a copy?

MR. GORDON: I don't have it with me.

CHAIRMAN HODOM: Well if you could give it to us in a couple of days.

MR. GORDON: Where he was suggesting the pile drivers. I guess that was in response to the trees. The failure that Amy is speaking of behind the DeCerco house is a separate

failure actually. The geotechnical engineer said the failure that I'm suffering here from the back of my addition is about 60-feet to where about the pool house is – the northern end of the pool house so although there has been a failure in the DeCerces back yard – is not what it used to be because there's a lot of dirt there to because whatever goes on underground with the springs and the runoff and naturally there's a stream there so the water is naturally gravitating down under the stream bed but that is a separate failure that they're experiencing, but I understand certainly their concern. I don't know about the DeCerces garage, I understand that he has running water through it. I've had no running water coming through my garage during this entire episode. There was drainage put in around the foundation to the garage that goes to a dry well a little closer to the road so that's actually been working marvelously because there is fair amount. Certainly behind the addition there's moisture in the dirt there but none of it has come through to the garage. It's all going down into the gravel through the pipes that go out to the – I guess it's called a drywell.

CHAIRMAN HODOM: When was the addition put on?

MR. GORDON: 2002.

CHAIRMAN HODOM: And prior to that had you had any other failures – mudslides?

MR. GORDON: No, not on my property. Again I understand the DeCerces – the kids used to ice skate years ago because there was more room and the water used to pool there in the winter and I just learned that a few weeks ago, but I was never aware of that. I never witnessed anything on my property.

CHAIRMAN HODOM: If you can get that report for us.

MR. GORDON: Yeah sure.

CHAIRMAN HODOM: In a couple of days, we would appreciate it. Any other questions from the Board?

ATTORNEY MOORE: If you got the Variance what would be the next thing that happened?

MR. GORDON: Really regardless of the Variance we would like to proceed with retaining wall. The water would still – there would need to be drainage behind the retaining wall - - the retaining wall does just that, not the idea to retain water but it's amazing the way the dirt has not moved once the foot of it reached the back of the foundation so it seemed like very little to make it slow down and not that we couldn't move it more but it really needs to rest on something other than the house.

CHAIRMAN HODOM: That's exactly correct I mean the retaining wall would help hold back the earth and within that retaining wall development would be drainage – it would put gravel behind the retaining wall so that the water could seep down into the drainage

pipe and disperse it around your property into the culvert system.

MR. GORDON: There is a culvert that runs between our property and the DeCerces.

CHAIRMAN HODOM: I certainly – no matter what this Board does I would recommend that you get out of there very quickly because that’s really – that’s going damage the rest of your house if that slope goes any further.

MR. GORDON: So really the Variance is some insurance really to get just a little further from the hill and further from the retaining wall.

CHAIRMAN HODOM: Not to put words in your mouth the Variance to you at this point in time is not an urgent need.

MR. GORDON: It’s not the first priority.

CHAIRMAN HODOM: Correct.

MR. GORDON: But it’s certainly an important factor to the ultimate solution.

CHAIRMAN HODOM: Right. Any other questions or comments.

MS. CAROL: Yeah I have a couple more comments.

CHAIRMAN HODOM: Sure.

MS. CAROL: I would like to say first of all this may be a matter of semantics, the – Tim said that the failure at the DeCerces property is a separate failure I would say that it’s not a separate failure but adjacent failure. There was one other item that I wanted to comment that you said Tim. Well it totally slips my mind and I can’t think of it at this point but - - I do know what it was. I would encourage the Zoning Board to maybe even take a look at the original building permit for the addition to – or maybe have the Town engineer make a comment with regard to whether or not the cutting back into the hillside with the addition did in fact contribute to the failure to the hillside. That’s all, thank you.

MR. UMINA: I was over there the other night and I looked at the situation and to me it looked like time was of the essence and I don’t want to put words in anybody’s mouth but it would seem to me if there was a significant rainfall coming off that hill and you’ve moved out of the addition because I’m sure you’re concerned that there was a significant rainfall that could affect the addition so you know is time of the essence or is it not of the essence I guess the question is.

MR. GORDON: It depends where the placement of the retaining wall. The further towards the street we can place the retaining wall the better the slope, the more reasonable the grade can be. Frankly, a geotechnical engineer by certain standards that standards weren’t met by any of the houses on the street really in their existing state so

we really just have to do the best we can. So to answer your question if it's economically feasible – either way I think we're going to have to put the wall in but if we knew we were moving the addition it would make a difference. The distance from where the house is right now if we felt we were going to move the addition forward we would go as close as we could to the existing house.

MR. BROOKINS: What kind of time frame estimates did the house movers give you for when they could start and how long this would take.

MR. GORDON: Well really the first thing was to get the Variance. The house movers generally they move the house and leave it jacked up and the foundation is brought up to it. However the house mover thought in this case they could do it in a different manner almost like a prefab house and since the construction is relatively new you can actually put the foundation in place then when they lift it off and move it and set it down all in the same day – I was a little amazed to find out normally, again they jack it up and they build a foundation up to it because since it's a new addition; it's 24 by 20 they felt that really they could probably get away with the foundation in place so, but I assume I can work it into their schedule but obviously getting contractors to pour the foundation – it's not the most tricky job for an architect to build a foundation – we need a footing here but I do have contractors that I've spoken to – a lot of people I've spoken to in the last couple of months so their availability at this particular month when construction is getting rolling it's an issue I guess.

CHAIRMAN HODOM: But I would think that your immediate concern is developing a retaining wall that's going to hold that hillside back and divert any slippage.

MR. GORDON: Ultimately I would like not to have to move the addition.

CHAIRMAN HODOM: Exactly. If you build a retaining wall you don't have to move the addition but you still have to build a retaining wall whether you move the addition or not. I guess it's a catch 21, you don't want to spend the extra money in moving the house when you still have to build a retaining wall.

MR. GORDON: I want to see what we encounter when we actually start the process because there is a fair amount of water and the cement wall – the cement is going to have to be pumped up into the forms and the footing would probably be like an L-shaped footing so the weight of the hill is actually pushing down on the bottom of the hill so I've been told. So we'll see what we encounter when we try to do it.

MS. CAROL: I have one more comment. I guess my question is what are we retaining? Are we retaining the earth, are we retaining the water that's in the earth? How much more of a problem might we create with further slippage behind a retaining wall? The earth – the quality of the earth behind and in that area is very heavily clay so absorption – it's an issue there. So my question to the Board is what are we retaining and are we once again building another dam?

CHAIRMAN HODOM: The Board is not going to comment on that because we're not engineers either.

MS. CAROL: Right but I'm not asking you to comment I'm just...

CHAIRMAN HODOM: You have to find a way of slowing that slippage down.

MS. CAROL: Well I'm suggesting a way to do that is to make a vent – is to create some kind of a vent in the dam that currently exists to allow the water to flow through which is what the DeCerco's had dealt with their problem.

CHAIRMAN HODOM: But you're not an engineer either.

MS. CAROL: I'm not but that's how they've dealt with it.

CHAIRMAN HODOM: I would tend to leave it in the hands that have more knowledge than you or I do and I think that's the way we are going to proceed.

MS. CAROL: I would also ask you to entertain the fact and the wisdom of the people who have lived through the problem for the last 25-years that's certainly is valuable time – is certainly a wonderful teacher.

CHAIRMAN HODOM: We'll take that under advisement, thank you.

MS. CAROL: Thank you.

CHAIRMAN HODOM: Any other questions or comments? Anyone else wishing to speak in favor or against 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.

Hearing closed 9:00 p.m.

The next order of business was to consider the proposed resolution of Thomas & Laura Paonessa.

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 Lot Depth, Lot Area and Front Yards, requested by Thomas and Laura Paonessa (“Applicants”) for property at 18 Grove Place, Albany 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 15, 2006; and,

WHEREAS, Members of the Board are familiar with the area in which the property is located 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 Applicants are proposing to divide an existing corner lot into two lots. The existing lot is situated between Grove Place and Pine Street, near their intersection with

Bower Avenue (a paper street). The subject lot would be at 18 Grove Place. If divided as proposed, the subject lot will not meet the minimum requirements for lot size and lot depth. The depth of the lot will be 90 feet, which is 30 feet shy of the 120 feet required and the lot size will be 12,082.94 square feet, which is 2,437.06 square feet shy of the 14,520 square feet is required. Applicants are also proposing a front yard setback of 25 feet for the lot, which is 10 feet shy of the 35 feet required.

The subject lot is located in a Residence “A” District, and is used by the Applicants as a garden and for storage.

The garage structure on the on the existing lot, situated at the corner of Grove Place and Bower Avenue, will be removed.

The other portion of the lot proposed for division is a parcel at 25 Pine Street, Albany, which has an existing single-family dwelling. Applicants’ request for variances on 25 Pine Street is decided by the Board along with the present application, in a separate Resolution of this date.

Also pending before the Board is the Applicants’ request for variances on a lot designated as 21 Grove Place.

The existing corner lot, and the two lots that would be created by the proposed division, are depicted on a map entitled “Preliminary Plat, Proposed Subdivision, ‘The Grove,’ Lands of Thomas Paonessa, Town of Bethlehem,” dated January 10, 2006 and prepared by Paul Hite, Licensed Land Surveyor (Map No. 336).

The existing corner lot is proposed to be bisected along a line running generally east to west, beginning at the intersection of Grove Place and Bower Avenue and running

to the northwest corner of an existing lot at 21 Pine Street, Albany (N/F Staltieri, Book 2397, Page 217).

The existing residential structure at 17 Grove Place, directly opposite the subject lot, has a front yard setback of 35 feet. The existing residential structure at 31 Pine Street also has a front yard setback at or close to 35 feet.

Three remaining undeveloped lots on the Grove Place cul-de-sac in the Applicants' subdivision (designated as lots "3," "4" and "5" on the above-noted Hite Preliminary Plat) are proposed to comply with the 35 foot front yard setback requirement in the Zoning Law.

The right-of-way of Grove Place is 40 feet wide and Bower Avenue which is approximately 10 feet narrower than is customary. Houses on Grove Place thus appear to be closer to the roadway, even with a 35-foot setback.

At the public hearing, the Applicants' representative provided a history of the larger subdivision, its lots and streets.

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

By Recommendation dated March 16, 2006 (Case No. 04-03/06-009), the Albany County Planning Board has recommended that Applicants seek review by the Albany County Department of Health for water supply, wastewater discharge and other permits; and that Applicants notify the Town of Guilderland of their proposal.

CONCLUSIONS OF LAW

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 Applicants, the Board determines that the proposed lot size and lot depth variances will be granted.

The Board determines that the proposed front yard setback variance will not be granted. The proposed front yard setback variance would have a detrimental impact on the community and the appearance of the neighborhood, and is denied.

The requested lot size and lot depth variances will be a benefit to the Applicants and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood.

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

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

The requested lot size and lot depth variances are the minimum necessary and adequate to the Applicants' needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested lot size and lot depth variances has not been created by the Applicants.

The requested lot size and lot depth variances are granted, on the following condition:

- i. The project will proceed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the March 15, 2006 hearing, except as the same may be modified by the Town Planning Board; and
- ii. Applicants shall comply with the Recommendations of the Albany County Planning Board.

April 19, 2006

Michael Hodom
Chairman
Zoning 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 Gilbert Brookins Leonard Micelli Anthony K. Umina	None	Robert Wiggand	None

(Resolution filed with the Clerk of the Town of Bethlehem on April 20, 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 for Variance's under Article XIII, Use & Area reschedules, Section 128-100 A, Minimum Lot Width & Minimum Front Yards. The following points were brought up by the Board members: The width of lot currently is 95-feet and the old code stated that it needed to be 85-feet, the new code states that it needs to meet a 100-foot width requirement. The Board has no problem with the 95-foot width that currently exists. The Applicant is also requesting a 25-foot front yard from the paper street, of which 35-feet is required. The Board will grant a 30-foot setback, which will be 5-feet shy of the current code. On a motion made by Chairman Hodom, seconded by Mr. Umina, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance as amended by the Board, for presentation at the next Board meeting on May 3, 2006.

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The next order of business was a discussion of the previous public hearing held in the matter of Charles Wooster, 53 Wheeler Road, Glenmont, New York. The following points were brought up by the Board members: The proposed addition will not effect the essential character of the neighborhood. No one spoke in opposition to the applicant. The proposed addition could not go in the rear of the home due to an existing septic tank that would have to be removed. On a motion made by Mr. Brookins, seconded by Mr. Micelli, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on May 3, 2006.

On a motion made by Mr. Micelli, seconded by Mr. Umina, and unanimously carried by the Board, the minutes of the April 5, 2006, meeting were approved as amended.

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

Meeting Adjourned: 9:25 p.m.

Respectfully submitted,

Secretary