

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
February 1, 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

                      Mark Platel                        Building Inspector

ABSENT:           Robert Wiggand

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

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a continuation of a Use Variance under Article V, Section 128-26 B, Schedules of Uses. Section 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 the premises.

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 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

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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 Robert and Carol Dunn for Use Variance under Article V, Section 128-26 B, Schedules of Uses, 128-99 of the Code of the Town of Bethlehem for the construction of a 6-unit dwelling, which is not a permitted use at premises 18 Elm Avenue East, Selkirk, New York. 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. Mrs. Dunn before we get started, Mr. Wiggand who is a member of the Board has recused himself this evening from this hearing. He has some health problems as well, but he or his family has recently or has purchased property on Jericho Road, which are the first two lots.

MRS. DUNN: Right next door to mine.

CHAIRMAN HODOM: And it would give the appearance of conflict or some other matter.

MR. DUNN: Understandable.

CHAIRMAN HODOM: So he will not be participating in this hearing or any kind of determination in the hearing as well. I just wanted to get that on the record.

MRS. DUNN: Okay.

CHAIRMAN HODOM: If you'd like, Mrs. Dunn, or Mr. Dunn to start where we left off.

MRS. DUNN: I would kind of like to re-cap what I have in my book here and what I've presented to you. Do you want me to stand or is it okay if I sit?

CHAIRMAN HODOM: I think...

MRS. DUNN: Can you hear me okay?

MS. GUASTELLA: I'm fine.

CHAIRMAN HODOM: If you can address each of those 4 issues that are part of the use Variance in the proper order that would be beneficial to the Board.

MRS. DUNN: Okay.

CHAIRMAN HODOM: I would appreciate that.

MRS. DUNN: I think I've addressed each one of them separately and I'd just like to basically go over the history of where we're coming from. We purchased the property on March 12, 1998 and at that time there was a 6 acre lot there and before we purchased the property we did come into the Town to look at the zoning on this and it was zoned multi-family, so on and so forth. The zoning did get changed as soon as I got a contract on this, but I'd like to go over the rest of the history on this. The reason we purchased the property was because we were going to build a multi-unit in the back and have my parents come up and – they were getting elderly and they were in South Carolina and we needed to bring them home and this was the reason – what was in the back of our minds of doing that. We proceeded and we hired Howie over to Boutelles to do the subdivision for us and first we were told the Corp of Engineers had to look at it because it might be possibly wetlands. That took us about 9 months to have that taken care of and finally on September 20, 1999 we hired Boutelle and Son to do the actual sub-division and actually in your book and in my book here to I have a copy of what the zoning was at the time when we purchased the property. I also have the listing in here; I have all of the maps on the property.

MR. DUNN: They have the similar book, don't they?

MRS. DUNN: Yes. We found that there was a problem to get the Town water, however and Town required us to hook up to the water after our sub-division was granted to us. In 2002 we wrote a letter to Bruce Secor about the water and I have the attached letter to that. At that time there was a moratorium on the water, which stopped us from proceeding to do whatever we wanted to do with these lots, selling them or doing our multi-unit that we wanted to do in the back. I did get my parents finally back here. They were both in their 80's at that time in 2002, however since then my mom has passed away. When the moratorium was over we proceeded to sell one of the lots in order to get our money back, see attached listing agreement. We were able to sell our largest lot for 75,000 to Derrick Mauro who would bring the water in, however I understand just recently I just signed a petition saying that Carriage Hill was going to bring the water down Elm Avenue East and over Jericho Road so....

MR. DUNN: Is that true?

CHAIRMAN HODOM: I have no idea.

MRS. DUNN: Let me see that paperwork over there. That just happened this week.

MR. PLATEL: They're going to have to bring water in to that sub-division. I don't know exactly what direction it's going to be heading but I would assume probably down Elm Avenue East.

MR. DUNN: The proposed – yeah from down there. Across from - - tie in down by the drive-in, I live down there and then go around.

MRS. DUNN: I thought I had brought that – well that's what we were told and it's going to cost them 470, 000 dollars to bring that water in. Anybody know about that?

MR. DUNN: That's Carriage Hill developer's rights. That's their portion on it.

MR. PLATEL: Well normally for a sub-division of that size where they're going to have that many lots they are going to use Town water and sewer. I don't know where it's coming from – which direction whether it's coming from 9W up Elm Ave. East.

MRS. DUNN: I have a map showing where it was coming from and I missed placed it I guess.

CHAIRMAN HODOM: While you're looking for that Mrs. Dunn did Mr. Secor ever respond to your letter of August 19<sup>th</sup>?

MRS. DUNN: Yeah, he said it wasn't going to happen. I couldn't get water.

CHAIRMAN HODOM: Did he say it in writing or just verbally?

MR. DUNN: Well we had letters.

MRS. DUNN: Yeah we were refused.

MR. DUNN: Yeah we had letters to that effect.

CHAIRMAN HODOM: I didn't see one in your submittal that's why I'm asking the question.

MR. DUNN: Well we did have a lot of phone calls.

MRS. DUNN: Yes. You know being that our lots were subdivided before the moratorium went we felt as if we should be able to get the water and at that time we weren't so everything just stopped as far as us selling the lots or building on the lots because it was required in the sub-division that we have Town water and not well water.

MR. DUNN: Before we could sell the lots that was one of our – we had to do it.

MRS. DUNN: It was one of the stipulations. So anyhow, we did have a contract with Mr. Derrick Mauro and he was going to bring the water in. At this time I think that

changes and he's not going to, but I did speak to several of the neighbors that are on our street Elm Avenue East and they were pretty excited about that because up until that point we haven't had Town water, we've had well water on that street.

MR. DUNN: As she was saying about....

CHAIRMAN HODOM: Mr. Dunn just so you're on the record just introduce yourself to us.

MR. DUNN: Okay I'm Robert Dunn, husband of Carol. What they were going to do was extend the water district to include us. I think even the Town garage is out of the water district from what I understand. The line is somewhere up there, now they want to include us and come all the way down to Elm Avenue and include all of Carriage Hill, which would be in the water district. That was the petition that we signed.

CHAIRMAN HODOM: But isn't there water brought down to....

MRS. DUNN: Yeah it's across the street from us.

CHAIRMAN HODOM: Across the street from you folks.

MR. DUNN: Yeah he pays for that.

CHAIRMAN HODOM: Say that last hydrant.

MR. DUNN: Right but he's still outside the water district. He pays double the water rate, that's Anthony – I forgot his last name though. They pay double the water rate.

CHAIRMAN HODOM: Okay. But in any event you weren't allowed to connect to that water source because of the....

MRS. DUNN: Moratorium.

CHAIRMAN HODOM: DEC moratorium. I don't want to confuse the moratorium that was set on the development.

MRS. DUNN: The building, yeah. This is a water moratorium.

CHAIRMAN HODOM: It was because of the drought periods that we went through.

MR. DUNN: The drought, that's right.

MRS. DUNN: Yeah that's correct.

CHAIRMAN HODOM: Okay. And has that been released, the moratorium on the water uses extension down there?

MRS. DUNN: Yes now it has been.

CHAIRMAN HODOM: Do you know when that occurred?

MRS. DUNN: No I don't – I can find out though.

CHAIRMAN HODOM: That's okay, we'll find out.

MRS. DUNN: Do you know Mark by any chance?

MR. PLATEL: If it has been done, it's been recently because the water emergency was still on and if it has been done it's been done very recently.

CHAIRMAN HODOM: Okay.

MRS. DUNN: We signed a contract with this builder on July 6, 2005 and when we went to do the closing we found out that the zoning had been changed, which meant that a 6-unit couldn't be built on that lot. So that's basically why we're here and I do proceed to tell what we have in expenses. We have over 20,000 dollars in the cost of doing this subdivision. It was 14,000 dollars for Boutelle and then other fees, taxes, and so on and so forth. I have also attached copies of land values, single family high estimate, 40,000 large single family multi-units, 95,000 and I did notice today that there was a new piece that came up on Elm Avenue East, single residences is listed for 49 so there is a big difference between a single family and multi unit as far as selling it.

CHAIRMAN HODOM: Before you go on in your narrative here you do reference – you were able to sell the largest lot for 75,000.

MRS. DUNN: Yes.

CHAIRMAN HODOM: Does that correspond with the Capitol Region multiple listing service?

MRS. DUNN: Yes.

CHAIRMAN HODOM: Which says 76,000, is that the same?

MRS. DUNN: Does it say 76; I thought it was 75 that we sold it for. Let me see, yeah it is 76 I'm sorry about that – get a thousand dollars more.

CHAIRMAN HODOM: Would you like to share that thousand?

MR. DUNN: We just found it.

CHAIRMAN HODOM: But this is what you were referring to in your narrative here?

MRS. DUNN: Right when I'm talking about the contract, we did go to contract in July and when did the moratorium be...

MR. PLATEL: The building moratorium?

MRS. DUNN: Zoning change? What is the date on that because it was months after this?

MR. PLATEL: August 24<sup>th</sup> is when it became effective.

MRS. DUNN: Okay so it was month after...

MR. PLATEL: The moratorium was lifted about the same time also, just after that actually is when it was voted on.

MRS. DUNN: So it was literally a month after I signed the contract and when we went to do the closing we couldn't close because of that reason. The builder wanted...

CHAIRMAN HODOM: Because of the Code change?

MRS. DUNN: Right because of the zoning change. I also make a comment to date, it's been over 8 years I've been working on this project not that that means too much to too many people, but it has been a long haul for all of us and it also is going to be a hardship now at this point because of we're looking at retirement now 8 years later. It's not like we're young and can do big projects like this. And also I did attach our personal income tax and you know I won't review the amounts on this but you certainly can take a look at them. I don't care to share that with the whole Town of Bethlehem.

CHAIRMAN HODOM: It's understandable.

MRS. DUNN: Thank you, I appreciate that.

CHAIRMAN HODOM: But you aware that it is public record?

MRS. DUNN: Yes. My builder - - I talked with my builder today and he was supposed to meet with Boutelle yesterday. Yesterday's meeting got cancelled so they did meet this morning, however Howie said that he could not get any plans or drawings to the builder until next week. It would take him week to put the plans together on how the building is going to be faced on the lot and also about the landscaping how that was going to be. So that is the only thing that I haven't come with today is my builder and how the building is going to be placed on the lot. However I did make sure that you got copies of the easements this week and also copies of what the lots were selling back in 1998 and 1999, which you asked for the last time we met.

CHAIRMAN HODOM: Correct.

MRS. DUNN: Also the last time I was here I addressed that you know it's really a mixed area. We've got Jericho Drive-Inn, we've got the Town building on our road; we have Carriage Hill going in back of us and I understand there's 90 houses going in, in the first phase of that.

MR. DUNN: The barbershop.

MRS. DUNN: The barbershop, that's true and then there's Dowerskill Village that's right across the street from us to. So it is a mixed neighborhood, it's not just solely single-family residences where we are. And the maps are attached also to the book.

CHAIRMAN HODOM: Let me ask you, in your closing narrative, which was tagged number 4 you did state in the last paragraph, I think a nice 4 or 6 unit on the 2 ½ acres would contribute to the neighborhood.

MRS. DUNN: Yes.

CHAIRMAN HODOM: You are still looking at a 6-unit to be installed there?

MRS. DUNN: Yes.

CHAIRMAN HODOM: I shouldn't say installed, to be constructed there.

MRS. DUNN: Well I'm going to be honest with you, I think if you came back and refused the 6-unit and told the builder he could only do a 4-unit I think he would be just as happy.

CHAIRMAN HODOM: Can you describe this map for me, what it depicts? I don't know if it's correct or not, but I couldn't make much of it as far as...

MR. DUNN: Well that's the water district.

MRS. DUNN: Oh is that what that is?

MR. DUNN: That's the map that you were talking - - isn't this Carriage Hill here in the back?

MRS. DUNN: Yeah, this is Jericho Road over here. This is the Jericho Drive-Inn.

CHAIRMAN HODOM: Well you have Elm Avenue East, which is on the bottom there below the orange and the yellow. This says Elm Avenue East.

MR. DUNN: Is that what it says on yours?

CHAIRMAN HODOM: That's what it says on mine.

MRS. DUNN: Yeah, it says Elm Avenue East right here.

CHAIRMAN HODOM: And it shows the Niagara Mohawk Power Corporation right of way, but I don't know if that's really where Jericho Drive-Inn is located.

MR. PLATEL: Dowerskill Village.

MRS. DUNN: Oh, that's the other end of Elm Avenue East.

MR. PLATEL: Well this is across the street of the property in question because you have Dowerskill Village here.

MRS. DUNN: Here's Hague Boulevard.

MR. DUNN: If that's Jericho Drive-Inn then we're right here if that's Jericho Drive-Inn.

MRS. DUNN: No, that's not it.

CHAIRMAN HODOM: I didn't understand why it was in here.

MRS. DUNN: I don't understand why it's in there either. Let me see yours because I do have it colored.

MR. PLATEL: You did put a star on 35 Elm Ave – on number 35 here is that where you tried to depict that that's the last place that there is water?

MRS. DUNN: That could be, that's a good question.

MR. DUNN: Where did you get this map?

CHAIRMAN HODOM: Was that indicative of where the water line ended, is that what you were trying to show in this map?

MRS. DUNN: This is the other end of Elm Avenue as you can see Hague Boulevard is way down here and this is...

MR. DUNN: You know that map is upside down I think.

CHAIRMAN HODOM: Well okay we don't have to explain it this evening but for the purposes – I didn't understand it either so.

MRS. DUNN: This is the opposite side of us, in other words we're on this side of the road and this is the photo of the other side of the road. As you come down Elm Avenue East there's Jericho Drive-Inn then there's these lots here and then as you go down here – the Town building is on this side and this Hague Boulevard here.

CHAIRMAN HODOM: And what were you trying to depict there?

MRS. DUNN: Well I just identifying these people who lived on this side as you can see over here I've pulled up each one of those.

CHAIRMAN HODOM: Well I didn't find 35 on that page 1 of 2 or 2 of 2, I found 21 Jericho Road, which you had highlighted.

MRS. DUNN: Yeah well this is not Jericho Road this is Elm Avenue East.

CHAIRMAN HODOM: But the sheets that I have page 1 and 2 after the map...

MRS. DUNN: Oh that's got Jericho Road on it.

CHAIRMAN HODOM: Is all Jericho Road.

MRS. DUNN: But that's what that is, that's across the street from us, okay if you go further you can see where I identified everyone Elm Avenue East. Where's Anthony here, what number is Anthony do you know?

CHAIRMAN HODOM: 35?

MRS. DUNN: Yes he is 35.

CHAIRMAN HODOM: Campigno?

MRS. DUNN: Yes he's across the street from us and that's what that shot is. That's Elm Avenue East but it's on the opposite side of where we are and that's where the water goes. If you look at that he's on lot 85 and that's where the water goes to. It comes up on the opposite side of the street.

MR. DUNN: That's where the hydrant - - that's where his hydrant is there now, it stops there so then we're actually over here.

MRS. DUNN: This is where we are over here.

MR. DUNN: This is Anthony. That's showing the other side of the street.

CHAIRMAN HODOM: I couldn't put it together with the map that was attached to it.

MRS. DUNN: Now can you?

CHAIRMAN HODOM: Well...

MRS. DUNN: That's across the street from us and the water goes to that lot 35.

CHAIRMAN HODOM: I see lot 35.

MRS. DUNN: Yeah and the water comes right up Elm Avenue East on that side of the road.

MR. DUNN: The Town building is up here.

CHAIRMAN HODOM: And the reason to highlight 34, 33, 32, and 31?

MRS. DUNN: Well they were my neighbors.

CHAIRMAN HODOM: But again none of them are shown, 32 is – again I'm going by your color-coded chart here. The only one that really is indicated is 35 and 32, Donald and Jean Wood?

MRS. DUNN: They're on my side of the street.

MR. DUNN: Right.

MRS. DUNN: The green is my side of the street, the orange is the...

CHAIRMAN HODOM: But the purpose of this map and those names were...

MRS. DUNN: To show you who my neighbors were and also where the water came up to.

CHAIRMAN HODOM: Where the water came up to, okay. Mrs. Dunn the previous resolution that was issued for this property back in August 2<sup>nd</sup> of 2000 had referenced a 50-foot easement through the property owned by Niagara Mohawk.

MRS. DUNN: Right.

CHAIRMAN HODOM: Okay.

MRS. DUNN: And I think I gave everybody copies of that to, do you have one?

CHAIRMAN HODOM: You did.

MRS. DUNN: Okay.

CHAIRMAN HODOM: You understand that Niagara Mohawk has only issued a 35-foot wide easement to you.

MR. DUNN: For access?

CHAIRMAN HODOM: For access.

MRS. DUNN: Right.

CHAIRMAN HODOM: And...

MR. DUNN: That will have to be transferred, right?

CHAIRMAN HODOM: If you sell it to someone else it would have to be transferred and then the Town has a 15-foot easement for their drainage, which...

MR. DUNN: On the edge of the road.

CHAIRMAN HODOM: Which is on the edge of the road, which totals 50 foot in width.

MRS. DUNN: Right.

CHAIRMAN HODOM: And that's the way you understand it because I think back in 2000 your plan showed a 50-foot wide easement through Niagara Mohawk property and that's what you were looking for.

MRS. DUNN: (nods in agreement)

CHAIRMAN HODOM: They didn't issue that to you, they issued you a 35-foot wide easement.

MRS. DUNN: Right.

CHAIRMAN HODOM: Okay, but then when you went to the Planning Board they needed a 15-foot wide easement for their storm drainage.

MR. DUNN: Right.

CHAIRMAN HODOM: And that's how the reverted back...

MRS. DUNN: That's how the 15 feet came in the storm drain that needs to be put in.

CHAIRMAN HODOM: Okay as long as you understand it.

MRS. DUNN: Yes.

CHAIRMAN HODOM: You also understand that in your easement from Niagara Mohawk, they don't allow you to pave over that easement, are you aware of that?

MRS. DUNN: No, I'm not are you?

MR. DUNN: It was never brought up, no.

CHAIRMAN HODOM: Well it's in their easement, I think it's paragraph 19 in their easement. Mark maybe you can enlighten us to for a multi-family unit is there any specific requirement to pave the access to that unit?

MR. PLATEL: No.

CHAIRMAN HODOM: Okay so it doesn't have to be paved.

MR. PLATEL: No, it can be a gravel driveway.

CHAIRMAN HODOM: Okay. If you review that paragraph 19, there's no pavement allowed unless you get that waived by Niagara Mohawk.

MR. DUNN: Okay.

CHAIRMAN HODOM: Also in the previous resolution of 2000 on page 2 there was a requirement that the easement as to form is to satisfactory however said easement would have to be recorded with the Albany County Clerk prior to any approval of this Variance taking affect.

ATTORNEY MOORE: That's the prior ZBA resolution I think you said the easement and maybe I misunderstood you.

CHAIRMAN HODOM: Well out of the previous resolution...

ATTORNEY MOORE: Of the Zoning Board.

CHAIRMAN HODOM: Has that easement been submitted for record to Albany County?

MRS. DUNN: I would have to ask Howie that. I thought he took care of that; I thought everything was finished with it but I can check on it.

CHAIRMAN HODOM: Because it goes on to say that prior to any building permits being issued a copy of that recorded document has to be provided to the Town Building Department and the Zoning Board. I went through your file and there's nothing recorded in that.

MRS. DUNN: Okay.

ATTORNEY MOORE: Normally Mrs. Dunn if this were a copy of the recorded document there would be a stamp from the county clerks office on it. It may have been recorded and just not be reflected on this copy, but when these get filed in the county clerks office there's a stamp with a date and time.

MRS. DUNN: The one I've got to ask is Howie.

CHAIRMAN HODOM: From Boutelle?

MRS. DUNN: Boutelle, yes.

CHAIRMAN HODOM: And that's also stated as part of the conditions of the resolutions in item number 1 along with any construction of a driveway has to be...

MR. DUNN: Before.

CHAIRMAN HODOM: Pardon me?

MR. DUNN: Before a driveway can be installed.

CHAIRMAN HODOM: Before a Building Permit can be issued, yes. In your booklet you've included a copy of the Town Planning Board's final approval if I can find it here, and there were various requirements that you had to comply with as part of paragraph 12.

MR. DUNN: I think one of them had to do with drainage didn't it?

CHAIRMAN HODOM: Well in paragraph 12 prior to granting final plat approval various conditions had to be met and in D, the owner shall satisfy one of the following prior to the signing of final plat with respect to the proposed water main extension. There was a choice either install the proposed water main along Elm Avenue as shown on the final plat, which hasn't been done.

MR. DUNN: Right.

CHAIRMAN HODOM: Or execute a written security agreement approved by the Town Board and Town Attorney which requires the owners to complete the installation of the water main prior to the issuance of any building permits. Was that done, do you know? Had you given anything in writing to the Town?

MRS. DUNN: No.

MR. DUNN: I don't think we have.

MRS. DUNN: No, we couldn't proceed because there was a moratorium, we wanted to.

MR. DUNN: I mean you're talking about the water – you're talking about the water?

CHAIRMAN HODOM: Right, it says that you either do one or the other. You either install the proposed water main along Elm Avenue.

MRS. DUNN: Right.

CHAIRMAN HODOM: Or you give them a security, a bond to say that you will complete the installation of the water main prior to the issuance of any building permits.

MRS. DUNN: Right and that wasn't done because of the moratorium.

CHAIRMAN HODOM: Okay so you have no recollection of doing that?

MRS. DUNN: No, it wasn't done.

CHAIRMAN HODOM: It also in paragraph 12 E, it offers the same obligations either one and this is – the owner shall satisfy one of the following prior to signing of the final plat with respect to the proposed drainage facility's to be installed by the owner. And so the person the proposed drainage facilities within lot 18 Elm Avenue East, which hasn't been done.

MRS. DUNN: Right.

CHAIRMAN HODOM: Or actually you could have written a security agreement approved by the Town Board and Town Attorney, which requires the owners to complete the installation of the portion and to your best recollection that hasn't been done either.

MRS. DUNN: No.

MR. DUNN: No

MRS. DUNN: We didn't follow up on anything. The most important thing was to get water to the lots.

MR. DUNN: No, it hasn't been done yet.

CHAIRMAN HODOM: Okay. And it also goes on to say in 13-A, and this is referring back to the Planning Board's conditional approval of the final plat that to comply with the conditions of the Variance granted by the Board of Appeals of the Town of Bethlehem on August 2, 2000....

MR. DUNN: Copy of the easement.

CHAIRMAN HODOM: Well it goes on to say that prior to any issuance of any building permit a copy of the easement granted by the Niagara Mohawk, the said easement shall grant the owners, their successors – you have the easement from Niagara Mohawk.

MRS. DUNN: Yes.

CHAIRMAN HODOM: And have you given the Town of Bethlehem the right to install and maintain the drainage facilities, which cross-lands of NIMO?

MRS. DUNN: When we couldn't get water we didn't proceed with anything, you know they can certainly - - they're granted the availability to the land when the time comes.

CHAIRMAN HODOM: Okay. In paragraph 22 of the conditional final approval of the plat. It says that this approval shall expire October 29, 2001 unless the requirements stated in item 12 above have been completed to the satisfaction of the Board. I raise these issues because I don't want any decision of this Board to be controversial to any decisions of the Planning Board and it appears that and I would have to go with the advice of counsel that there conditions set forth in the conditional approval of the final plat, which would have given you authority to proceed with the building on that property, however it appears that that time frame has elapsed.

MRS. DUNN: Yes.

CHAIRMAN HODOM: And I guess I don't know where we're left at.

ATTORNEY MOORE: I would just note for the record as you and I discussed earlier today, Mr. Chairman that on the subdivision map that the Applicants have submitted there is a stamp from the Town of Bethlehem Planning Board dated November 27, 2001 signed by Chairman Douglas Hasbrook which indicates that the final plat was approved. That would lead me to think that those conditions in 12-D, and E were complied with but that in order to be sure of that we'd have to check the record of the Planning Board, but you are correct that those conditions are in there and we would have to check with the Planning Board to see if that was done, but the plat was given final approval.

MR. DUNN: It was approved right?

ATTORNEY MOORE: Yes.

MRS. DUNN: Yeah the stamp is on it.

ATTORNEY MOORE: We would assume that the Planning Board read it's conditions that those matters were satisfied, but we can't tell from the record that's in front of us.

CHAIRMAN HODOM: And then finally in paragraph 24 of the conditional approval of the final plat, it says not later than 62 days after the Chairman of the Planning Board has endorsed the final plat with his signature pursuant to item 23 above, the owner shall file a copy of the approved final plat in the office of the Albany County Clerk or final approval shall expire. Do you know if that was...

MRS. DUNN: I'm pretty sure that Howie did that, but again I can verify that. I mean he's the one that did all of the maps and took care of the easement and took care of all of the paperwork.

MR. DUNN: But we can't tell you for sure until we check with him.

CHAIRMAN HODOM: Well I think these items you really have to resolve before we can make a final determination. That doesn't mean we continue with the hearing but we won't be able to close it this evening. Are there any other questions from the Board?

MR. MICELLI: Mrs. Dunn I know at the last hearing you were going to submit us plans of what the building was going to look like, is there any possible way we can see that?

MRS. DUNN: They will be ready next week.

MR. MICELLI: Okay, because I would really...

MRS. DUNN: He originally had hired Mr. Hite down in Ravena and Mr. Hite did not do the job so he hired Boutelle this week to do it, Boutelle's office and Boutelle is familiar with the lots there, but Howie said he couldn't have them ready until next week.

MR. MICELLI: So next week they will be available, thank you.

CHAIRMAN HODOM: I think along with that also where you propose to locate facility on the site.

MRS. DUNN: Yes that's what he's doing. He's placing it on the map along with landscaping.

CHAIRMAN HODOM: Okay, but your also going to provide some architectural features of the proposed 6-unit apartment.

MRS. DUNN: Yes, what the insides like?

CHAIRMAN HODOM: Your builder was going to be here to discuss that with us?

MRS. DUNN: Yes.

CHAIRMAN HODOM: Okay. Gil you had some questions the last time and I don't know if they were resolved in these recent submittals or not.

MR. BROOKINS: Not yet. A couple of things, first of all as you know a Use Variance there are some very specific conditions that you need to respond to that aren't ours that these are set by the State that we have to operate under. You've begun that process but I don't think, at least in my mind we haven't finalized it. One of the things – one of the conditions under the area of unnecessary hardship the applicant cannot realize a reasonable return on the property as demonstrated by competent financial evidence. What would be helpful to know is what your perception of a reasonable return and I tried to get to the last time and I'll try again. You bought this parcel 6 acres plus or minus and subdivided it so of that original purchase price you need to help us to understand the relative value of each of those parcels.

MRS. DUNN: At that time?

MR. BROOKINS: Either at that – well at that time and then we can make a test as to the hardship that you’re claiming based on what you perceive – I mean we already have one offer or you already a contract that says that your proposed buyer will pay you I think we finalized 76 on that particular parcel. The code says okay, there are – this category of acceptable approved uses for that and then there’s your application for a Variance and we have the application for the Variance and the value that you’ve established there, but we don’t have is what would that parcel sell for if you had to sell it for example for a single family. Do you follow me?

MRS. DUNN: Yeah, if I had to sell it as a single family I would probably get 40 or 45, maybe 49 out of it, something like that.

MR. BROOKINS: Okay so now I go back to my first question.

MRS. DUNN: But that’s with the water.

MR. BROOKINS: Okay, what would you determine to be the value of this particular parcel out of the original 6 plus or minus acres at the time when you bought it and now at the time that you’re selling it and then you can tell us whether it’s a reasonable return.

MRS. DUNN: I think I did a market analysis on lots what they were selling for back in 1998 and 99 and I think you have copies of that and they were running about 20,000 dollars with water and sewer on them. Today of course, you know there is one on Elm Avenue East right now for 49 so probably it will sell anywhere between from 43 to 45, 46, in through there.

MR. BROOKINS: Okay.

MR. DUNN: Is the other one with the same acreage that you’re talking about?

MRS. DUNN: No but it’s city water and city sewer and it is a lot.

MR. BROOKINS: We’ve got some of that, in fact some of the - - were all over in terms of you had some in the Town of Coeymans and some in Ravena and Town of Bethlehem and I think you really need to help us to make your case as to take 2 or 3 of those pieces of property and say this one is comparable to what ours was in 1998. this is comparable in 2006 and here are the prices and so we can establish a base price and a current selling price.

MRS. DUNN: The reason the Town of Coeymans came into that is because we are in RCS district, which makes a difference.

MR. BROOKINS: I understand the school district town issue but...

MRS. DUNN: I think there's enough of them on there that I can segregate them for you I mean....

MR. BROOKINS: We don't need a ton but I would like rather and it would actually help you to help us, rather than us try to guess at comparables and guess at appreciation rates and guess at return rates if you can point to specific ones to make your case I think you would be served.

MRS. DUNN: Okay. I just pulled up a lot of them, but I can keep them closer to where I am located.

MR. DUNN: We can do that.

CHAIRMAN HODOM: Again Mrs. Dunn if you can address each of those issues that are part of a Use Variance requirement individually where you feel that you cannot realize a reasonable return or that the alleged hardship relating to the property in question is unique and the requested use Variance will not alter the essential character of the neighborhood and that the alleged hardship has not been self created. If you can address each one of those issues with statements, other information that can back your presentation that makes it much easier for us to make an informed decision and I think that is what Gil is asking for and that's what we need, but we also now need that other data that was required by the Planning Board and also was a requirement of the last resolution that was certified that the easement was sent to the Albany County Clerk and you have a copy of that, Mr. Hasbrook's conditional final plat, which lists all those requirements.

MRS. DUNN: Yes.

CHAIRMAN HODOM: Do you have a copy of the resolution that was drafted back in 2000 for your initial request to get an easement through the Niagara Mohawk property?

MR. DUNN: Yeah we have that.

CHAIRMAN HODOM: So if you review those and review the conditions that are set forth in each one of those documents and then either if you had provided them, please provide us a copy or if you haven't then what you intend to do to correct it at this point in time.

MRS. DUNN: I thought I had them with me but I don't have the resolutions with me.

ATTORNEY MOORE: Who would they check with in the Planning Department.

MS. GUASTELLA: Nancy Moquin is the secretary to the Planning Department, but I can help you out Carol, just give me a call.

MRS. DUNN: Okay.

CHAIRMAN HODOM: Are there any other questions from the Board? Were there any questions or comments from the audience this evening if you came for this? Yes Ma'am, just introduce yourself to us.

MRS. HUNT: My name is Marie Hunt, can you hear me.

CHAIRMAN HODOM: Just come up and sit next to that microphone.

MRS. HUNT: My name is Marie Hunt.

CHAIRMAN HODOM: And your address Marie?

MRS. HUNT: 57 Jericho Road. I live around the corner from the proposed property. I received a letter indicating that I was in that close proximity of the area. I'm here just to express my opposition to the change in the Variance. I've been on Jericho Road for almost 20 years and the properties – the commercial that were mentioned were there before I even came. They were already established and all of the new development has been residential, mostly the 1-family dwellings and I just personally would prefer that the neighborhood would not change in nature that it would stay residential 1-family dwellings. The property that is being proposed around the corner is - - it is mentioned that it's going to be back from the road, however the exact location of the new apartment building would be right behind my home. I'm not sure if it's abutting my property or the property of the Vanderise beauty parlor, but it is in that field behind my home so it would be quite near where I am.

MR. DUNN: It would be on the west side of the power lines, actually behind our home.

CHAIRMAN HODOM: Where your property is. Let me show you a map, is it Mrs. Hunt?

MRS. HUNT: Yes.

CHAIRMAN HODOM: This is where you are here and that proposed lot that they're looking to develop is on the other side of the Niagara Mohawk lands.

MRS. HUNT: I understand.

CHAIRMAN HODOM: This is subject to change because we don't know where they intend to now put that on the property.

MRS. HUNT: Just the proximity of it in addition to the fact that it would change the – by having an apartment building in that area would change the nature of the neighborhood and that's what I'm opposed to.

CHAIRMAN HODOM: Okay, thank you very much. Is there anyone else that has any

comments they would like to make?

MR. UMINA: I would just like to ask Mrs. Hunt a question, just for clarification. It's your position that if this went forth that would change the essential neighborhood, is that what you're saying?

MRS. HUNT: Yes, to have an apartment building there, yes.

CHAIRMAN HODOM: Anyone else have any questions, statements? Mrs. Dunn when do you think you could have that information for us and the reason I ask is that we have February 15<sup>th</sup> that's open or March 1<sup>st</sup>. Some of this information may be time consuming to obtain.

MRS. DUNN: So why don't you put us back on docket for March 1<sup>st</sup> then.

CHAIRMAN HODOM: March 1<sup>st</sup>?

MRS. DUNN: Yeah.

CHAIRMAN HODOM: And that should give you sufficient time to obtain that information?

MRS. DUNN: Yeah that will give me enough time.

CHAIRMAN HODOM: Is that agreeable with the Board?

On a motion made by chairman Hodom, seconded by Mr. Micelli and unanimously carried by the Board, the hearing was adjourned to March 1, 2006 at 7:30 p.m.

Hearing adjourned 8:25 p.m.

- - -

The next order of business this evening is a public hearing for a Variances under Article VI, Supplementary Regulations, Section 128-52 H, Off Street Parking & Loading, Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Rear Yards requested by The Four Corners Luncheonette, David Heffley (Applicant), John Lane (Owner) for property at 2 Grove Street, Delmar, New York. The Applicant wishes to construct a 1-story addition, which will not meet the rear yard setback requirement and also will not meet the minimum number of parking spaces at the premises.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct 2 additions to the existing restaurant that will create a rear yard setback of 10.5 feet for the left side addition and 3.4 feet and 4 feet for the right side addition. In a Hamlet District the required rear yard setback is 40 feet so the encroachments will be 29.5 and 36.6 feet.

The new total building area will be 2,134-square feet, which will require 43 parking spaces. There are a total of 42 spaces proposed, which is one shy of the requirement. On the lot that the restaurant is located there are 18 spaces proposed. The applicant has 20 additional spaces provided on the adjacent lot that he owns and another 4 spaces shown on the site plan as spaces rented from First Care. Under the zoning law these 24 spaces can be counted for the restaurants use as long as they are properly deed restricted for the use of the restaurant only, and the deeded spaces cannot be required parking spaces for the uses on the adjacent lot.

CHAIRMAN HODOM: Mark before we go on to Ms. Guastella, does the 4 parking spaces on the First Care lot infringe on the number of required spaces that they require?

MR. PLATEL: I did a quick calculation on that. I don't believe so – the total site requires 18 spaces. There's 4 parking spaces behind the First Care, there is a 4-car garage back there which you would count those as 4 parking spaces for the First Care and I believe there's probably about 20 spaces located in the other lot that's there so there's a minimum of 24. There are 4 extra spaces.

CHAIRMAN HODOM: As long as we verify that.

MR. PLATEL: I'd have to re-check it, but just doing a quick check on it earlier today it appears...

CHAIRMAN HODOM: Because we couldn't grant that if in fact that would take away from the parking spaces required for First Care.

MR. PLATEL: Correct.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals, Albany county, Town of Bethlehem will hold a public hearing on Wednesday February 1, 2006 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of The Four Corners Luncheonette for Variances under Article VI, Supplementary Regulations, Section 128-52 H, Off Street Parking & Loading, Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Rear Yards of the Code of the Town of Bethlehem for the construction of a 1-story addition, which will not meet the rear yard setback requirement and also will not meet the minimum number of parking

spaces required at the premise 2 Grove Street, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the January 25, 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 applicant's 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. Any comments or questions should be directed to the Board. We just ask that you come sit or stand close to the black microphone it's for recording purposes only. Mr. Green introduce yourself to us and your association with the applicant please.

MR. GREEN: My name is Richard Green; I'm a licensed engineer here in Town, 321 Delaware Avenue. I'm the engineer for this site improvement in the design of the new kitchen addition. Two or three years ago Mr. Heffley came to me and asked to try to do an improvement of adding on to his present restaurant for a kitchen addition, which would be out the back here as we've see it. Since we started this project we had met with the Town Engineering Department, Planning Department in private meetings and about 2 or 3 months ago the area was rezoned into a Hamlet, which changed our rear setback to a 40-foot setback so our planning process was reverted back to the Zoning Board of Appeals to get permission to build in the new non-permitted zone of a 40-foot setback. We also after reevaluation there was 2 parking spaces that the present use does not have delineated on the maps but we have plenty of space on our 2 Grove Street for many more parking spaces. They have not been added on the map, I just found this information out about – when were you sick, Monday? You called me Monday and told me we had to put 2 more on here.

MR. PLATEL: Well I informed you that you were going to be a space short, yes.

MR. GREEN: Yeah I was a space short. My numbers and his numbers were 1 number different so we have to for final site plan approval add 1 or 2 more parking spaces in the back to meet the new design criteria.

CHAIRMAN HODOM: Before you go on with that, that was – you're saying that you have 42 spaces.

MR. GREEN: 42, that's correct.

CHAIRMAN HODOM: And Mark is saying that 43 spaces are required.

MR. PLATEL: Are required, yes.

CHAIRMAN HODOM: You may continue Mr. Green.

MR. GREEN: Basically my argument, you know we've had those 2 issues that are stumbling blocks in the final design of this project and we have to ask the Board for permission to use the area for the construction of the building that has been in that area for many, many years and would like to continue that same use. We are not getting any closer to the building, the setback than we were before. We put the building in, in accordance with the planning of previous years, which would make the usability of the floor plan work. 40-foot is not feasible, it would technically make us not even be able to any part of a building in because the building is only 25-foot wide.

CHAIRMAN HODOM: Let me ask you a question Mr. Green did Mr. Platel go over with you how he arrived at the 40 parking spaces requirement?

MR. GREEN: No he just called me up and said our numbers are 2 difference.

CHAIRMAN HODOM: Okay. Mr. Platel comes up with a total of 2, 134.37-square feet building area and you come up with 2,050 and maybe you can explain how you arrived at your 2,050 so we can determine where the discrepancy is. I don't have any plans from you folks showing the existing building to dimension.

MR. GREEN: I only thought the elevations – I didn't bring the floor plans with me.

CHAIRMAN HODOM: Please move closer to the microphone, you can leave it in the stand.

MR. GREEN: I didn't bring the floor plans with me tonight I only brought the elevations. We use a computer system to do our areas from our building plans. My guesstimate is that we are putting a little bump out on this end here and maybe the computer didn't pick that up on this sketch and maybe Mark did.

CHAIRMAN HODOM: Okay.

MR. GREEN: There's another thing we're having a bilco door – we don't consider bilco doors as area but someone might think that's got a roof over it and count that as roof area. I don't know those answers.

CHAIRMAN HODOM: I don't think Mark included the bilco door.

MR. PLATEL: No I did not. Where the discrepancy came was not from the size of the additions. It actually came from the existing building. I used a survey that you got from Mr. Hite, was it Chuck Hite?

MR. GREEN: Yes.

MR. PLATEL: Yeah I used the survey I got from that and then also there was a couple of numbers missing from his survey that I got from your plans and I put them all together and wound up getting the proper numbers I believe.

MR. GREEN: Okay our mapping goes back over several, several years and Mr. Hite was just retained 2 months ago to do a survey for this Board and this application and I had not taken the time to see the proximity of the closeness between them other than the fact we have 2 different addresses.

CHAIRMAN HODOM: I noticed that and that was one of my questions. Why don't you clarify that now, Mr. Hite shows 6 – or not 6, 4 Grove Street?

MR. GREEN: What happened is when we started this project the number 4 was given to me as the lot. Number 6 is the next lot, but in reality number 2 is the lot of record through the assessors and I think number 4 was probably joined in number 2 over the years and then just wiped off the numbering system but I don't have any information to verify how that actually worked.

CHAIRMAN HODOM: But from your knowledge and information this survey map is for the property in question this evening?

MR. GREEN: Yes it is. He took my map and made it survey correct and then we moved our building to match his numbers so that they would be exactly the same as the legal survey was and then we found out that the lot numbers through assessment inspection or whatever was actually 2 and at that time he had already been given the direction to redraw the map and I had 4 on mine and that's why kept his with a 4.

CHAIRMAN HODOM: Before we go too much further is Mr. Lane here this evening?

MR. LANE: Yes.

CHAIRMAN HODOM: Mr. Lane I don't have anything on record from you authorizing Mr. Heffley to proceed with this program on property that you own.

MR. LANE: It's right there.

CHAIRMAN HODOM: Thank you. Were you finished with your presentation?

MR. GREEN: Yes I'm waiting for questions.

CHAIRMAN HODOM: Mr. Green you may not be able to answer this question, but Mr. Heffley is here, Mr. Lane is here. Are there any deeded rights or other legal instruments allowing The Four Corners Luncheonette to use the 4 parking spaces on the adjoining property?

MR. HEFFLEY: We've had a long...

CHAIRMAN HODOM: Mr. Heffley just come up here if you would and give us your name and address just so that you're on the record.

MR. HEFFLEY: David Heffley, proprietor, Four Corners Luncheonette. We've had a long standing agreement with the last 4 owners with the property in question. First Jack Heely, then Vince Rabid, then I dealt with Mike Furman at First Care but Vince owned it at that time and I have a new agreement with the Giacone family I think. I spoke to Jim Giacone and he's cashing my rent checks so.

CHAIRMAN HODOM: Well let me ask you this Mr. Heffley.

MR. HEFFLEY: There is no deed...

CHAIRMAN HODOM: Do you have a written instrument?

MR. HEFFLEY: We have no written instrument.

CHAIRMAN HODOM: So there's nothing on the record that says 2 weeks from now these folks can say you can't use those 4 parking lots anymore?

MR. HEFFLEY: Not legally, common sense would dictate otherwise.

CHAIRMAN HODOM: I understand that you own the property where the 20 parking lots are proposed to be.

MR. HEFFLEY: There are 20 parking spots there and I do own the property.

CHAIRMAN HODOM: Have you issued any deed restriction or legal instrument giving the right to use – for the luncheonette to use that property for parking?

MR. HEFFLEY: No, but it's my intention to purchase the Luncheonette property if this deal is consummated in which case I'll own both properties.

CHAIRMAN HODOM: Is that something that's in the works currently, do you have a contract that's been established?

MR. HEFFLEY: No, we have an understanding. There will be no more lawyer fees until we have an okay on the project.

CHAIRMAN HODOM: They never lose. Just to clarify some of the discrepancies from the survey map to your site plan. There are several dimensional discrepancies from the survey and then the dimensions that you show on your site plan. Did you take these dimensions from the survey?

MR. GREEN: Yes.

CHAIRMAN HODOM: Up along the northerly property line of the actual restaurant property there's a dimension that's shown as 45.87 feet and the survey shows it as 41.33

feet. I raise that because that may very well impact your parking here whether it gives you enough room to do that with a drive in and drive out.

MR. GREEN: Once again is I believe I got this from the deed that I got and that's what he re-surveyed it and I didn't take the survey information and go backwards. All I did was to make sure that the setback numbers – when I was talking to Mark he said make sure you have the building right at the same that the survey does as far as setback from the back line. So what I did is I took my building, his building and this distance A and B is the same distance A and B that I have.

CHAIRMAN HODOM: I bring up this area because there's 4-½ feet difference, which is – even as a surveyor that's a big discrepancy.

MR. GREEN: He did not bring that to my attention that this map was that different. I'd have to ask him why that is different or any other boundaries are different.

CHAIRMAN HODOM: Well the westerly property line, again for the 2 Grove Street on your plan shows 182 feet but on the survey which he noted it as a measured dimension is 178.84 feet, which again is a little more than 3 feet.

MR. GREEN: 41-point what?

CHAIRMAN HODOM: Pardon me?

MR. GREEN: 45 was what?

MR. PLATEL: 33

CHAIRMAN HODOM: Which one do you want there?

MR. GREEN: The first one.

CHAIRMAN HODOM: 45.87, that's what you show, 41.33 is what he shows and on the westerly line you're showing 182 feet and he's showing 178.84 feet. On the easterly side you're showing 153 feet and he's showing 152.14 feet.

MR. GREEN: And what about the 94?

CHAIRMAN HODOM: The 94? You're showing 94.4, he's showing a combination of 54.5 and 39.23 for a total of 93.73.

MR. GREEN: All right, I don't want to confuse the Board but there was requests in the survey from the deeds that was on here. There's a line down here that was 2 or 3-foot off and when I came up with these numbers we had to adjust some numbers because there was nothing that was close so he made this close in the surveying sense and that's why the differences are...

CHAIRMAN HODOM: Well that's why he's showing a recorded or dimension as of record vs. an actual measured dimension.

MR. GREEN: Probably my numbers were recorded.

CHAIRMAN HODOM: Yes where he lists them as recorded.

MR. GREEN: That's what I put down because that's the only information available for us to use.

CHAIRMAN HODOM: I guess what I'm saying is we need further clarification on those dimensions especially that one up here with the 2-property 6 and 2-join because I do think that that has an impact on the parking that you're proposing there.

MR. GREEN: Well what I'm saying is I know I've been on it and I've got elbow room on it, you know we've put the building - - we've stacked the building out and it works, mathematically the 2 numbers aren't jiving.

CHAIRMAN HODOM: That's correct. I want to make sure that those 4 spaces you show here work with the actual dimension of 41-point whatever it is, 41.33 feet.

MR. GREEN: I understand that, I understand that.

CHAIRMAN HODOM: Just for clarification that existing deck is being removed and not being located anywhere else, is that correct?

MR. GREEN: Yes, no decks for the record.

CHAIRMAN HODOM: Up in this, again on your site plan there's an area here...

MR. GREEN: To the trashcans?

CHAIRMAN HODOM: I don't know, it's a dashed line that runs from the easterly property line back so many feet, but it's not designated as to what it is, what that space is.

MR. GREEN: Is there a 10-foot easement on the side there?

MR. HEFFLEY: Which property?

MR. GREEN: 6 - on the left hand side going to the trashcan.

MR. HEFFLEY: There's a easement that starts at the back of the Town parking lot and goes to the rear of the property next to 6 and then ends.

CHAIRMAN HODOM: You have to come here Dave or speak a little louder.

MR. HEFFLEY: It's David Heffley, there's an easement that runs I think from the back of the Town parking lot...

CHAIRMAN HODOM: No, I'm not talking about that one.

MR. GREEN: That's marked.

MR. HEFFLEY: There's a water line in back of...

CHAIRMAN HODOM: Let me show you on this map, if you know, I mean don't guess at it. It's this area right here.

MR. HEFFLEY: There's a water line under there.

MR. GREEN: Oh, this water line comes up here and goes back under that area.

MR. PLATEL: It would have to be an easement.

CHAIRMAN HODOM: Pardon me?

MR. PLATEL: I'm saying if it's the Town water line I'm assuming that the dotted line is some kind of an easement.

ATTORNEY MOORE: It should show up on the survey.

CHAIRMAN HODOM: We should have it correctly.

MR. GREEN: On his survey?

CHAIRMAN HODOM: Yes, we should have it dimensioned and also designated as to what it is. It's the same as this 10-foot right of way.

MR. GREEN: I did that myself.

CHAIRMAN HODOM: What is that?

MR. GREEN: There's a 10-foot Gillis written right into the deed description, that's how I picked that up.

CHAIRMAN HODOM: Is it an easement?

MR. GREEN: There's a 10-foot right of way easement, I don't know what the use of it is but there's a 10-foot easement back there.

MR. PLATEL: It goes all the way back to the other end.

MR. GREEN: What's the length of this about 100-foot?

CHAIRMAN HODOM: No, 270.

MR. GREEN: Oh, this is total?

CHAIRMAN HODOM: If I have my scale with me.

MR. PLATEL: The 10-foot spot in the back, I was looking at the tax map earlier, it said something like it was an old walkway supposedly.

CHAIRMAN HODOM: Okay.

MR. PLATEL: That goes back towards the railroad tracks where they used to be.

CHAIRMAN HODOM: Okay, that's back on the westerly part of that – Mr. Heffley's property.

MR. PLATEL: Right you can actually see it on that map there that I got for you. You can see how it starts then stops then it continues down through.

CHAIRMAN HODOM: Okay.

MR. PLATEL: Okay at one time I think it was supposed to be a 10-foot easement all the way through there or actually it looked like it was separate property.

CHAIRMAN HODOM: Mr. Green also on that – Mr. Heffley's property where the half of the 20 parking spaces that's shown there's a line that says it's a property line. It's lighter than the highlighted property lines but was that property line changed?

MR. GREEN: If you read the description, the deed description than it, A added to B and this is the whole thing so what I did is I put that map line in there so if anybody read the deed they would know a reference point. It's an old property line in deed.

CHAIRMAN HODOM: So you've used it as a - - there was 2 dimensions to that?

MR. GREEN: So that when I ran my numbers around I wouldn't be 10 or 15- or whatever the width of that is short.

CHAIRMAN HODOM: Well for some reason that survey agreed with your dimensions.

MR. GREEN: I can just say that the numbers on the front access – the legal descriptions and the way they put them together years ago is a mathematical nightmare.

CHAIRMAN HODOM: Let me ask you a question while I have your site plan out.

Currently on the back of the restaurant property where the deck is located there are 6 existing parking spaces.

MR. GREEN: That's correct.

CHAIRMAN HODOM: Those do not work with the new layout?

MR. GREEN: I didn't think we were going to get into this. I want them to work; engineering said this is what they want.

CHAIRMAN HODOM: When you say engineering your referring to?

MR. GREEN: The Engineering Department, when I reviewed this with the Engineering Department of the Town of Bethlehem they came up, they took my idea of the one's in the back, my idea was just to take off 2 concrete bumper stoppers, use the 4, allow the site the same use except only 4 but due to the regulation of access along the front here they didn't want this, you know right across the road so they wanted to condense the access to 1-single point and this is what they said they would like to see. Subsequent to that time I have been there and they have deliveries, large trucks and I'll be honest with you large trucks fit in there to the bilco door. And they come up in that - - and that's a nice spot, it's the least used parking area but it's a great spot for deliveries. If the site plan people say this is the way that the way they want to go they're going to have to say allow us to leave the trucks in the street during deliveries and I'm saying the old system works fine, it doesn't bother anybody, we keep 6 down to 4, it works fine but I believe that's the site plan people they have to give us the final decision but I changed this back because of their request but I can show 4 or 5 maps ago it was 180-degrees the other way and you and I were thinking the same way there.

CHAIRMAN HODOM: This plan that you proposed to us this evening has already been reviewed by the Planning Board?

MR. GREEN: Not the Planning Board, the Engineering Department. We've had engineering reviews with Mark and who else has been in there at different times? Janine's been there.

MR. PLATEL: Before a project goes ahead they're allowed to come in and talk to Economic Development and Planning Department which does include the Town Planner, it includes the Town Engineering Department so that when they look at something real quick to try to head off problems before they happen – what he's designing so they will give some kind of input to say lets try it this way because I think this is a problem. This is going to work if anything is going to work.

CHAIRMAN HODOM: If we were to approve the application it would have to then go to the Planning Board?

MR. PLATEL: This is going to the Planning Board.

CHAIRMAN HODOM: For site plan review?

MR. PLATEL: Yes.

CHAIRMAN HODOM: Mr. Heffley, currently none of the 20 spaces on your property nor the 4 spaces on the First Care Property are paved or lined?

MR. HEFFLEY: 20,000-dollars, that's where it is.

CHAIRMAN HODOM: So how do you intend to – well first of all is it your intent to pave?

MR. HEFFLEY: Yes it is my intention to pave them.

CHAIRMAN HODOM: So paving them and then you would line them so there are designated parking spaces.

MR. HEFFLEY: Well you lose a lot of parking that way but yes if it's required.

CHAIRMAN HODOM: Well I don't know if you lose a lot, I see them park on existing parking there now and it's tough, sometimes you can't open your door but your intent is to pave these areas?

MR. HEFFLEY: That's right.

CHAIRMAN HODOM: What about the areas down here, have you had any conversation with the First Care – these areas aren't paved either.

MR. HEFFLEY: Well there's new owners there and I think we've only been talking for a month so I'm not sure what their intentions are.

CHAIRMAN HODOM: Would it be your intent to pave those areas?

MR. HEFFLEY: Well I just recently filled the chasm in that area, it's certainly worth talking about but what that area is now is the run-off for that big parking lot. There's no unified drainage plan. What that does is it holds a lot of run water instead of dumping into my parking lot and down Grove Street.

CHAIRMAN HODOM: So there's not surface drainage out to Grove Street from this parking lot?

MR. HEFFLEY: No there's surface drainage into my parking lot from that parking lot.

CHAIRMAN HODOM: Okay.

MR. HEFFLEY: Can I point out there's 20 spots in this lot back here because the Building Department that I could put 20 spots in there and wouldn't even need a permit, which is what I did. There's immediately for at least another 4 in here. I never put them in because there's a tree there I didn't want to cut down but it could be sacrificed.

CHAIRMAN HODOM: Is the tree within the fenced area because this is all fencing up here now?

MR. HEFFLEY: I can always move the fencing.

CHAIRMAN HODOM: So if in fact what you're really saying is then that there is no discrepancy with the number of parking spaces because you can put them here?

MR. HEFFLEY: Tomorrow if I have to.

CHAIRMAN HODOM: Okay. So you would have no objection to that?

MR. HEFFLEY: No.

CHAIRMAN HODOM: Who maintains this lot right now?

MR. HEFFLEY: I do.

CHAIRMAN HODOM: You plow it as well?

MR. HEFFLEY: When the grounds frozen we plow it. If the ground is not frozen it's different than plowing, you're plowing up the parking lot.

CHAIRMAN HODOM: Well to be honest with you when I was there looking at it, it was dangerous I mean it was slippery.

MR. HEFFLEY: Salt doesn't work on a gravel lot. We've been putting shavings on it.

CHAIRMAN HODOM: I see that you've used the mulched chips or whatever.

MR. HEFFLEY: But in the I think 7 years that we've had it, oddly enough this has been the worst year. We had a couple of real icing events and we just couldn't get off of it. The plus side of the coin is when weather is crummy and it's not busy and people don't park there.

CHAIRMAN HODOM: Well that was my next question is how often do patrons use that parking lot?

MR. HEFFLEY: I go out and thank them sometimes when I see somebody parking out there, it's occasional.

CHAIRMAN HODOM: Thanks.

MR. MICELLI: Dave before you go could I just ask you a question?

MR. HEFFLEY: Sure.

MR. MICELLI: On the map here what does this belong to in the back where parking is?

MR. HEFFLEY: It's a rental unit.

MR. MICELLI: It's a rental unit?

MR. HEFFLEY: A single-family rental unit.

MR. MICELLI: Okay.

MR. UMINA: I have just one quick question if you didn't have those 4 spaces from First Care you would still have enough square footage for parking?

MR. HEFFLEY: According to my engineer, yeah.

MR. GREEN: There is more land – unparked land designated that this - - this is what there was permitted from the Building Department without site plan approval so they've grabbed them all together. Now when this goes in if we have to move this to 24-26 whatever the number comes out to make the 42 work that would go into the site plan approval process of putting them there.

MR. UMINA: You could do that?

MR. GREEN: Yes there's 30 or 40 feet back here that you could park on each side but we didn't go that engineering task until push goes to shove.

MR. UMINA: Okay thank you.

MR. BROOKINS: Excuse me you could regain access to your bilco door for deliveries if you slid some of these back over here not to throw our engineering department under the bus but that's sounds like what you were getting at.

MR. GREEN: What I'm saying is there are several different engineering options to put the parking you know obviously the one that's closest to the building is going to be more attractive to the users. If engineering pushes it all to that back and takes these out people might keep on driving right by but if they see it in the back there, they will pull in there and I should also add the deliveries are twice a week and they are at noon for about an half an hour so there's not a lot of commercial deliveries.

MR. BROOKINS: But that's going to be ultimately your call one way or another

anyhow.

MR. GREEN: We'll let the site plan people and the engineering there, they'll make the final decision where to put all the vehicles and the sizes and the striping and the handicap and all that kind of good stuff.

CHAIRMAN HODOM: Well for our purpose this evening we don't have to worry about that 1-parking spot, issue a Variance for that because you can at least put that back there.

MR. GREEN: I can put it there and if they want more for some other reason we've got room and when we finally sit down and agree on what number the area requires we'll put that in there.

MR. MICELLI: Are there any times where there is a delivery where they do have to do it on the street probably if you have customers back there, is that often?

MR. HEFFLEY: I've noticed they'll often park up at the end of Grove Street and deliver the pizza place and Beff's and then me at the same time.

MR. MICELLI: Okay and the reason for the addition?

MR. HEFFLEY: My kitchen's 20 years old and it's too small.

MR. MICELLI: Okay.

MR. HEFFLEY: It needs a lot of maintenance and rather than throwing money just to keep the status quo....

MR. MICELLI: Just start new, build a little bigger, okay thank you.

CHAIRMAN HODOM: Mr. Heffley we've talked about it briefly earlier, the 20 or so parking spaces that you have on your property, which you own you currently lease the restaurant property from Mr. Lane.

MR. HEFFLEY: That's correct.

CHAIRMAN HODOM: I know your intent is to purchase that property sometime in the future, do you have any objection to issuing either a deed restriction on your property or a legal instrument acceptable to the Board authorizing the use of those 20-plus parking spaces for the restaurant should you not be able to consummate an agreement with the owner of the restaurant?

MR. HEFFLEY: It's my intention to join the 2 properties.

CHAIRMAN HODOM: You didn't answer the question.

MR. HEFFLEY: I'm not sure I understood it then.

CHAIRMAN HODOM: Well suppose you can't get together with Mr. Lane and purchase the property, you don't want to pay the money he's asking for now we have 2 separate properties. You own one and he owns the other; you get into an argument and you say well you can't use those 20 spots anymore for whatever or he sells it to somebody else who runs the restaurant, the question is would you issue a legal instrument allowing the use of those 20 parking spaces for whoever is operating that restaurant?

MR. HEFFLEY: I haven't given it any thought, I don't know.

CHAIRMAN HODOM: Okay.

MR. HEFFLEY: It just never occurred to me that anybody else would be foolish enough to run a restaurant there.

CHAIRMAN HODOM: There's a lot of things that happen in society today and I mean if you gave up the restaurant for whatever reason, health...

MR. HEFFLEY: Then my heirs and assignees will have to deal with it.

CHAIRMAN HODOM: Right. Any other questions from the Board.

MR. MICELLI: I don't have any.

MR. UMINA: I have no questions.

CHAIRMAN HODOM: Is there anyone in the audience who has any questions or comments? Mr. Giacone?

MR. GIACONE: Phil Giacone, 115 Mosher Road. I'm the president of Light House Grill, which owns the building that is now First Care and the adjacent parking lot. One question I have for the Board to ask is about the parking lot for First Care and they said they have the main parking lot and also the parking lot in back of the building. Well they don't have any parking back there, there's 4 garages there that I rent out and 2 apartments on the top. So my question is with these 4 spots is First Care covered for the parking?

CHAIRMAN HODOM: You're talking about the 4 spaces that are shown on your...

MR. GIACONE: No, forget the 4 spaces. Somebody had brought up earlier that does First Care have enough parking spots without the use of those 4 spots and then someone had said you know because they have the parking spots behind the building, they don't have those parking spots. They're leased to tenants and to people lease the garages. I just wanted to make note of that.

CHAIRMAN HODOM: Okay that's something we'll have to check into with the total

quantity.

MR. GIACONE: Another thing I want to bring up with the use of these parking spots and I think we all know that Dave has been using those 4 spots for I don't know how many years. I guess like he said it was 4 or 5 owners, but in all reality they use a lot more than the 4 spots as do people pulling into that parking lot – I've seen them because I've been keeping track, they'll go over to the Post Office; they'll walk to the bank; they'll come back and go in. In other words they will park up in the front and my concern is for First Care. They bring in the most rent into that building and I do not want to take any chances of losing them as a tenant because of parking. Now we all know and I think somebody else brought it up, you thank people when they go park in that back parking lot. They're not going back because it's muddy and obviously up in the front by First Care is a lot closer if that makes any sense to you and I don't know how many more – there has been crowds but you know there's never been any major arguments I mean everybody's kind of worked together and I don't know by putting on the addition of how many extra people will be going in that restaurant but I do know they will fill up that parking lot in front before they drive all the way around in back and walk that 150 feet to get into the building.

MR. MICELLI: So obviously nobody complies with those signs on that wall?

MR. GIACONE: Myself included.

MR. MICELLI: And my other question is how do you monitor that?

MR. GIACONE: Well this is the thing I'm not going to lose a tenant...

MR. MICELLI: Right, I understand fully where you're coming from but I've been there many of times where people....

MR. GIACONE: I mean let's face it I know at night Andriano's is closed at 9:00, the doctors is closed I think by 7:00 and I know a lot of people from Beff's park there and walk around but that really hasn't been a problem but I just feel with all these extra tables you know don't get me wrong I like to everybody expand their business, bringing on the extra tables also brings additional help and a lot of additional customers and you know as the Four Corner's Luncheonette you know I might say Mr. Chairman why don't meet you there and talk about it, well here's 2 people with 1 table and we're taking up 2 spots and those 2 spots as people go to the Four Corner's Luncheonette they go to the front part of Dave's thing there and next they start filling up the other way.

MR. MICELLI: I always thought it was the other way around, hit your parking lot first and then - - I don't mean being sarcastic I mean it's always – every time I've been to the restaurant and the food is excellent, the quality of it, no but I have to be truthfully speaking it's always been full in your lot and people have the tendency to go in. Nobody ever knows that's there's anything because when you see those dumpsters you think that's a wasted area that you can't park there.

MR. GIACONE: I would like to know about the parking with the building, the rental on the apartments on that part of the parking lot. And the other concerns were the traffic aspect down there and I'm sure everybody's probably eaten at the Luncheonette or have been in the parking lot, getting in and out of there each time I go it gets worse and worse depending on the day and if we're going to bring in all these more cars it can't help. I mean you've got people coming out of the Post office, you know because it only comes out on Grove Street to go up to Delaware and you've still have got the auto repair shop, the radiator shop and Curtis Lumber also - - you know the people coming in and out. I think that's something else that should be considered.

CHAIRMAN HODOM: Mr. Giacone you have purchased the property where First Care is located now.

MR. GIANCONE: Yes.

CHAIRMAN HODOM: And have you granted Mr. Heffley permission to use those 4 spaces for parking areas.

MR. GIACONE: He has been talking to my brother Jim on that and apparently they worked out a deal to use those 4 spots as they always have and he was going to pay the rent and then we've been having a problem with snowplowing and getting it down and he was working on a deal with Dave on that but as far as I've looked into the legal aspect of this thing I will not deed over those 4 lots. Say okay I'm deeding these over because like you say I may want those lots for something else down the road.

CHAIRMAN HODOM: Okay any other questions from the Board for Mr. Giacone?

MR. GIACONE: Thank you.

CHAIRMAN HODOM: You're welcome, thank you. Mr. Heffley how many more tables or seats are you planning to increase the restaurant by?

MR. HEFFLEY: Actually we're decreasing it, I know it seems silly but we have 32 seats on the deck which we're going to remove and we'll be putting 18 to 24 seats in what's now the kitchen trading off year round use for that frenzy 15 days out of the year when I can use the deck.

CHAIRMAN HODOM: So the total inside seating goes from what to what?

MR. HEFFLEY: 50 to approximately 65 or 70.

CHAIRMAN HODOM: And the 65, the 70 variation is what at Holidays you'll increase the seating or...

MR. HEFFLEY: No I haven't planned out the kitchen seating yet. I have to pay

somebody to do it.

MR. GREEN: We have done a floor plan; we've got 4 tables or 16 chairs currently provided in that area, but that same area would have more out in the deck that we're taking away so the net impact on traffic or parking is a decrease.

MR. HEFFLEY: What I'm anticipating with a larger kitchen is get a better turnover and increase the catering business. Like you said yourself I don't go there because I don't like to wait.

CHAIRMAN HODOM: That's right, I don't.

MR. MICELLI: Terrible parking to, just kidding.

ATTORNEY MOORE: The required number of parking spaces Mark are based on the size of the building rather than...

MR. PLATEL: Strictly on the size of the building.

ATTORNEY MOORE: Not the seating?

MR. PLATEL: The seating is based on I believe the occupant load for that building is allowed to be around 70, which is calculated by square footage. Parking is also calculated by square footage.

CHAIRMAN HODOM: 1-space for 50-square feet?

MR. PLATEL: By law he can have 70 people inside that restaurant now and when he increases his space obviously it would increase the number of people that he could have in there.

CHAIRMAN HODOM: Mr. Green let me ask you in the back parking area where the 20-existing are indicated currently on Mr. Heffley's property is there any trouble to add 5-more spaces back there?

MR. GREEN: Once again doing the actual 9 by 18-spot requirement I feel 4 can get back there, 5 now we're at an odd size and we may have to put one at a little bit of an angle or side by side like it's coming in here so...

CHAIRMAN HODOM: I think the Board would like to look at that and it's 9 by 20 I think is the minimum of 180 square feet.

MR. PLATEL: 9 by 20 are minimum sizes for parking, yes.

CHAIRMAN HODOM: But I think we would like to be able to look at that, how many you can fit back there by eliminating the 4 spaces from Mr. Giacone's property and we

won't close the hearing. Mr. Heffley I'd like you to give some more consideration about issuing a legal instrument of some kind giving the right to use these spaces to the restaurant property. Of course if you do in fact purchase that property it becomes moot anyway or maybe it doesn't because it's 2 separate parcels.

MR. PLATEL: They would have to be combined. It is a requirement that the Planning Board has to have that.

CHAIRMAN HODOM: Pardon me?

MR. PLATEL: Even before the Planning Board could give them a site plan approval on that, that would have to be done anyway.

CHAIRMAN HODOM: What would have to be done.

MR. PLATEL: He would have to turn them over.

ATTORNEY MOORE: Right.

MR. PLATEL: Or he needs a Variance for every spot that he's lacking.

MR. HEFFLEY: Well what I told them at those meetings that we could formulate a contingency that I indeed go ahead with it.

ATTORNEY MOORE: I was just going to say that.

MR. HEFFLEY: That's the point I don't have to myself any...

ATTORNEY MOORE: Correct.

MR. HEFFLEY: We could just make it a contingency.

ATTORNEY MOORE: I think that could be done for so long as it is a restaurant business on the property, right that would expire.

CHAIRMAN HODOM: That would be fair I think as long as the restaurant there the spaces would have to be associated with the restaurant. Once the restaurant is no longer there then it could revert back to non-parking spaces.

MR. HEFFLEY: Well we certainly wouldn't be able to sell it without it.

CHAIRMAN HODOM: Any other questions?

MR. BROOKINS: And you wouldn't have to be giving those spots away to a future owner because you could negotiate the value of them so it's probably a win, win.

CHAIRMAN HODOM: Any questions or comments from the audience, Mr. Giacone you're all set?

MRS. FURMAN: Well I just I mean I've been here so I...

CHAIRMAN HODOM: Just come up and introduce yourself to us please.

MRS. FURMAN: I'll get the last word in.

CHAIRMAN HODOM: Don't they always.

MRS. FURMAN: Always. I'm Roberta Furman, I'm the office manager at First Care and first let me say that I also promote growth of any business but for First Care I am concerned about the parking space issue. We're urgent care, we're the only facility open in Delmar on the weekends for urgent matters and I happen to be there on Sunday around 11:00 and there was not 1 spot available. We had about 5 patients sitting in our waiting room and you know I saw the traffic going back and forth into the Four Corners and you know it's great to share, it's just that I have to think of our patients and where they're going park and during lunch hour, you know I know that they're in all different - - you know going into all different business's but the majority of the traffic is going into Four Corners and you know there's nothing worse than having your patients you know who are sick and not well come in complaining that there's no place to park so those are just my concerns about the parking situation. Thank you.

CHAIRMAN HODOM: Thank you. Anyone else? Mr. Green do you think you can have the information requested by the Board?

MR. GREEN: Well if I can get a hold of the surveyor.

ATTORNEY MOORE: I would assume that the survey is accurate I mean that would be the operative document, what ever numbers are in the deed have to be confirmed on the ground and Mr. Hite has his professional stamp on there I assume the survey numbers are accurate.

CHAIRMAN HODOM: Well I guess the question is the information that's been requested a week prior to our February 15<sup>th</sup> meeting.

MR. GREEN: The information that we're talking about is the corrections on the survey numbers?

CHAIRMAN HODOM: And the layout for the parking in the back.

MR. GREEN: And the maximum parking layout.

CHAIRMAN HODOM: Right.

MR. GREEN: I just want to identify these, I've been writing all these notes.

CHAIRMAN HODOM: We would need this information by February 9<sup>th</sup>, is that a problem otherwise we can put you on for March 1<sup>st</sup>.

MR. GREEN: Well it's not a problem for me I just have to be able to meet with the surveyor and it took 4 months just right before this meeting Mr. Hite didn't do one of the things that she asked him to do but I mean let's put a February 1<sup>st</sup> as a deadline and if I don't hear back from him and we don't have it ready I can call Karen and say bump me up another meeting but I can do my end of it in 2 days but when you call the surveyor it's 2 weeks before he calls back.

MS. GUASTELLA: That's fine Richard but I would still have to get permission from the Board to bump you up for another meeting.

MR. GREEN: I'm just saying is we're all in a phone tag situation, too many hours of my day are phone tagging.

CHAIRMAN HODOM: We're just trying to expedite the process and get you to the Planning Board faster.

MR. GREEN: February 9<sup>th</sup> – you want it done by that? That is not going to happen.

CHAIRMAN HODOM: How about March 1<sup>st</sup> is possible I mean that's our meeting date and we would need it a week ahead of that.

MR. GREEN: Yeah so that would be - - I can get back from Florida and get it done.

CHAIRMAN HODOM: Florida?

MR. GREEN: I have to check out my old man you know.

On a motion made a motion made by Chairman Hodom, seconded by Mr. Brookins, and unanimously carried by the Board the Hearing will be adjourned to March 1, 2006 at 7:45 p.m.

Hearing adjourned 9:25 p.m.

- - -

The next order of business was a discussion of the previous public hearing held in the matter of Econo Lodge, Daniel Patel (Owner) for Variance under Article VI, Supplementary Regulations, Section 128-52 H, Off Street Parking & Loading, Article XIII, Use & Area Schedules, Section 128-00 A, Minimum Rear Yards for the construction of a 1-story addition, which will not meet the rear yard setback requirement and also will not meet the minimum number of parking spaces required at premises 2 Grove Street, Delmar, New York. The following points were brought up by the Board members: The area in question is commercial in nature. There will be not negative impacts on the adjoining property owners. No one spoke in opposition to the Proposed project. The Applicant tried to purchase additional property to alleviate the need for a Variance. 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 February 15, 2006.

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The next order of business was to consider the proposed resolution of Allen Hicks, 125 Jefferson Road, Glenmont, 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 a variance under Article XIII, Use and Area Schedules, Section 128-100A, Minimum Rear Yards, requested by Allen Hicks for property at 125 Jefferson 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 property in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on January 4, 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 an addition to the existing garage, and a sunroom addition with attached deck on the existing main structure. The proposed project will create a rear yard setback of 5.5-feet to the deck surrounding the sunroom, 17-feet to the sunroom and 20-feet to the garage addition. The required minimum rear yard setback is 25-feet. The existing structure is located in a Residence B District and is occupied as a single-family dwelling.

Applicant owns three vehicles, and proposes to add a second bay to his garage.

The existing deck on the house is in disrepair, and would be replaced by the proposed sunroom and a wrap around deck.

Applicant's lot is 108 feet deep, which is a pre-existing non-conforming condition.

Applicant's lot is irregularly shaped as a large triangle, with its longest dimension abutting undeveloped property owned by Niagara Mohawk (National Grid). The three requested variances would encroach into the required setback from the Niagara Mohawk property.

At the public hearing, the Applicant corrected the record to reflect that the size of the proposed garage addition would be 14 feet wide by 22 feet deep.

The proposed sunroom will have electricity only. The proposed deck will not be covered.

At the public hearing, the Applicant agreed to construct the deck with mitered corners, not square corners, in order to minimize the rear yard encroachment.

Applicant has spoken to his neighbors, who expressed no opposition to the proposed project.

Other than the Applicant and his contractor, no one spoke at the public hearing.

#### 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 Applicant, the Board determines that the three required 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 variances 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 three 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 January 4, 2006 hearing, including the modifications noted above;
2. In the construction of the sunroom and garage, the Applicant shall match, as nearly as possible, the existing roofing and siding on the home;
3. The deck, where it faces the rear yard, shall be constructed with mitered corners, not square corners.
4. Applicant's project shall be completed within the time specified by section 128-89 (P) of the Town Zoning Law.

February 1, 2006

Michael Hodom  
Chairman  
Zoning Board of Appeals

- - -

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on February 2, 2006.)

The next order of business was to consider the proposed resolution of Cumberland farms, (Applicant), Big Main Truck Stop (owner).

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 & Rear Yards; Article VI, Supplementary Regulations, Section 128-35D(1), Specific Regulations for Districts; and Article VI, Supplementary Regulations, Section 128-54E(4), Signs, requested by Cumberland Farms (Applicant), The Big Main Truck Stop (Owner), for property at 68 N.Y. Route 9W, 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 November 16, 2005 and December 7, 2005; 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 demolish the existing Big M Truck Stop on the property and construct a new Cumberland Farms Convenience Mart with gasoline sales and a drive-through Dunkin Donuts.

The property is located in a General Commercial “C” district and is currently used as a truck stop/gasoline station.

The proposed structure will have a front yard facing N.Y. Route 32, and front /side yard facing N.Y. Route 9W.

The variances requested by the Applicant are listed in two tables attached to and made a part of this Resolution. The first table is labeled “Exhibit 1,” and is entitled “Zoning Analysis Table.” Exhibit 1 lists sixteen (16) variances required from certain minimum setback standards of the Town Zoning Law.

The second Table is labeled “Exhibit 2,” and is entitled “Signage Table.” Exhibit 2 lists eight (8) variances required from the Town Zoning Law’s requirements pertaining to signs (quantity of signs and total sign area [s.f.]).

Applicant applied to the Board for a limited number of variances in August 2005, shortly before the new Zoning Law was adopted by the Town Board. The variances listed in the attached Exhibits are required under the new Zoning Law. The project itself has not changed substantially; although the proposed site layout and associated features have been modified in response to comments from the Board and members of the public.

The property has been the subject of six (6) prior Resolutions of this Board, dated November 5, 1974, December 15, 1977, April 20, 1978, July 12, 1979, June 6, 1984, and July 1, 1987. These Resolutions all pertain to a Special Exception permit and amendments issued in connection with the former use of the property as a gasoline filling station.

Under the recently amended Town Zoning Law, Special Exception permits (now called “Special Use” permits) are issued by the Town Planning Board. The Applicant’s proposed use will require Special Use permit and Site Plan approval from the Planning Board.

At the initial session of the public hearing, the Applicant withdrew its original proposal for a number of American flags on the building, in order to reduce the square footage of the “signs” proposed at the property.

At the second session of the public hearing, the Applicant also withdrew, for the same reason, its original proposal for a 50-foot high 192 square foot fuel “price” and brand-name sign on the property, intended to be visible to vehicle traffic on Interstate 87. This was confirmed in a December 27, 2005 letter to the Board from the Applicant’s attorney. The Applicant reserved its right to re-apply in the future for the variances needed for this sign, if its business is negatively affected by the absence of such a sign.

At the public hearings, representatives of the Applicant, the Owner, and the Applicant’s legal and engineering consultants spoke.

At the public hearings, residents living in the vicinity of the proposed project also addressed the Board on issues falling within the Planning Board's Special Use permit and Site Plan jurisdiction, as well as issues related to the requested variances before the Board.

In response to questions from the Board and the residents at the public hearings, Applicant has proposed to modify its Site Plan ("Cumberland Farms, Inc., Prop. Food Store & Gas Station, April 11, 2005 [last revised November 22, 2005], Sheet 4 of 20, Bohler Engineering, PC) to add additional green space on the project site's eastern boundary. Attached to and made a part of this Resolution is a copy of a portion of the Site Plan labeled "Exhibit 3," depicting this proposed green space modification.

### CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, other documents submitted by the Applicant, and the Exhibits attached to this Resolution, the Board determines that the Applicant's request for 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 that are necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood. With respect to the requested "Total Sign Area" variance listed on Exhibit 2 (attached), with the Applicant's amendments discussed above, the total square footage of the signs on the project site will be close to the amount allowed under the prior Town Zoning Law.

The alleged difficulty necessitating the requested variances has not been created by the Applicant; but is due in large part to the odd configuration of the lot.

The requested variances listed in the attached Zoning Analysis Table (Exhibit 1) and Signage Table (Exhibit 2) are granted.

The Applicant shall comply with the Recommendations of the Albany County Planning Board for this project, as set forth in the County Board's determination of November 17, 2005 (Case No. 04-11/05016).

The Board recommends that the Town of Bethlehem Planning Board review the prior Zoning Board of Appeals Resolutions listed above to determine what provisions of these, if any, may be applicable to the continued and modified use of the property. The Board also recommends that the Town Planning Board adopt the Applicant's proposed increase in green space depicted on Exhibit 3 (attached).

The Board also recommends that the Town Planning Board review the minutes of this Board's public hearings of November 16, 2005 and December 7, 2005 on this project regarding the adjoining residents' concerns and comments.

February 1, 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	None	Robert Wiggand	None

Gilbert Brookins  
Leonard Micelli  
Anthony K. Umina

(Resolution filed with the Clerk of the Town of Bethlehem on February 2, 2006.)

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On a motion made by Mr. Brookins, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the January 18, 2006, meeting were approved as amended.

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

Meeting Adjourned: 9:50 p.m.

Respectfully submitted,

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Secretary