

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
July 19, 2006**

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

PRESENT: Michael Hodom  
Gilbert Brookins  
Leonard Micelli  
Anthony K. Umina  
Mark Hennessey

Michael Moore Attorney to the Board

Mark Platel Building Inspector

Chairman Hodom called the meeting to order at 7:00 p.m.

- - -

Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for Variance under Article V, Districts, Use & Area Requirements, Section 128-25 C (1a), Accessory Uses requested by Stephen Connolly for property at 39 Iroquois Trail, Slingerlands, New York. The Applicant is proposing to erect a storage shed, which will not meet the setback requirements 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 160-square foot storage shed that will be placed on the rear property line having no setback. This is 5-feet shy of the required setback for accessory structures. The existing structure is occupied as a single-family dwelling and is located in a Residence "A" District.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on, Wednesday July 19, 2006 at 7:00 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Stephen Connolly for Variance under Article V, Districts,

---

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

Use & Area Requirements, Section 128-25 C (1a), Accessory Uses of the Code of the Town of Bethlehem for the placement of a storage shed, which will not meet the setback requirements at premises 39 Iroquois Trail, Slingerlands, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 12, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. 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. All questions or comments should be directed to the Board and any discussions should be to the issue this evening. Mr. Connolly if you would just introduce yourself to us, give us your address and tell us what you want to do, how you want to do it and why you want to do it.

MR. CONNOLLY: Alright, my name is Stephen Connolly and I reside at 39 Iroquois Trail and I'm here seeking a Variance to the 5-foot setback requirement in the Town's Zoning Ordinance. This is my wife Christine and the reason we are seeking the Variance is because the property immediately behind our property line is the Niagara Mohawk land easement, right of way – I think it was explained to me it's their land, it's not an easement; they just own it outright and they've got a gas line and power lines that go overhead and to fully utilize our property and pool area, we would like to push the shed back those 5-feet to the property line and that will give us more area inside the pool. A slightly larger shed, not as big as I had hoped but it's something I can live with and from my perspective has no material impact on any of the neighbors because there is the buffer of the Niagara Mohawk land behind us that gives us a hundred feet to the road behind us and about 150-feet to anyone else's property that would be impacted or viewing our shed. I know my neighbors on either side support my request and it seems to me a logical request because it gives the appearance that the shed is actually setback 100-feet on our property because we maintain all of the land directly behind us. We mow the Niagara Mohawk land, planted flowers there and done things like that and basically everyone on the street does that.

CHAIRMAN HODOM: Can you locate the shed elsewhere on the property to stay in compliance with the current code?

MR. CONNOLLY: There's a small area on the other corner of the property but the slope is more severe. There is a flowering pear tree that's in the way and to make a shed work there would be more difficult and would also require a Variance to the setback because it would really need to go right to the Niagara Mohawk property line or right to our - - right to the edge of our property line to really make it functional and also we would lose access – it works where we presently have it sited because we can store pool equipment and things like that, you know it's inside; it would be part if the fenced area making it a

lot easier with the kids and everyone else to get stuff put away.

CHAIRMAN HODOM: Is that the area that Mr. Grave's had suggested, who resides at 18 Onondaga Court, is that the corner you're referring to?

MR. CONNOLLY: I assume that's what he's suggesting. I would like to point out that from his house there is about 100-feet of wild – you know 100-foot trees, shrubs, everything in between. You can't see his house from our house.

MRS. CONNOLLY: You can't see the shed at all from his house.

MR. CONNOLLY: I think his opposition is driving down the street he will see it and doesn't want to see it. You know, frankly my perspective is if we don't get the Variance we're still going to put it in that same spot, it will be smaller; it will not work as well; he will still see it because over the distance 5-feet over the course of 100 or 150-feet is meaningless. I mean it just doesn't make any sense.

CHAIRMAN HODOM: How far would the shed be from the pool if you did move it in the 5-feet required?

MR. CONNOLLY: If we moved it in the 5-feet, it would be at its current size 3-feet from the edge of the pool. Much too close for me, I would go to an 8-feet deep shed and pick up 2-feet that way, but the basic dimensions as seen from the road behind us are the same. You're going to see 16-feet wide, but you won't see the 2-feet that we've lost on the shed. I mean you can't see 2-feet over a 150-foot distance. It's the depth of the shed, the width is 16-feet and that does not encroach on any setback requirements. That's just the width we decided that worked best. I'd like to go wider but it just seemed like an odd size and it fit there.

CHAIRMAN HODOM: And that's going to be 7-feet from the other property line.

MR. CONNOLLY: Right from the other property line and there is a shed right there.

CHAIRMAN HODOM: And the proposed use for the shed is for what purpose?

MR. CONNOLLY: To store pool equipment and lawn mower and things like that.

CHAIRMAN HODOM: Where are they currently stored?

MR. CONNOLLY: The pool stuff is around the pool right now. It's a bone of contention but the lawn mower is in the garage and all the other stuff is in the garage.

CHAIRMAN HODOM: The other factor of course is if you move the shed in to meet the 5-foot setback requirement then you would have to continue the fence either back to the shed or straight across, probably logically it would be straight across I would think.

MR. CONNOLLY: Probably yes.

CHAIRMAN HODOM: Currently where you have the new fencing terminated on both ends – the shed fits right in between that spot, that 16-feet there – I didn't measure it...

MR. CONNOLLY: Yeah it's 16-feet and a couple of inches. They told me they only needed a couple of inches on either side and they could place it.

CHAIRMAN HODOM: So there wouldn't be enough room for somebody to get into the pool area?

MR. CONNOLLY: No and if there is we will fence it and close it off.

CHAIRMAN HODOM: When did you decide to purchase the shed?

MR. CONNOLLY: I haven't yet because I haven't been granted the Variance and I was afraid to – it takes 4-weeks for them to build it after I sign the contract and put down a deposit...

CHAIRMAN HODOM: Let me re-state the question why do you need the shed after you constructed the pool?

MR. CONNOLLY: Because now that we have the pool we are requiring more and more pool accessory's and floats, and cleaning equipment.

MRS. CONNOLLY: There's buckets and there's hoses.

MR. CONNOLLY: Chlorine and things like that and the garage is full. I haven't parked my car in the garage in quite some time so it would also be nice to at the same time move the lawnmower and things like that out.

CHAIRMAN HODOM: Okay. You do have several letters or at least responses that your neighbors provided. I didn't count them but there are several and the majority of them excluding the one by Mr. Graves were in favor. Are there any other questions from the Board members?

MR. BROOKINS: Your neighbor at 43, which is left...

MR. CONNOLLY: Facing our house directly to the left, yes.

MR. BROOKINS: He has a shed in the back yard. I didn't measure but it looks like probably closer to the 5-foot setback?

MR. CONNOLLY: He is right on the 5-foot setback.

MR. BROOKINS: Okay does that mean there's 5-feet to the line past his shed?

MR. CONNOLLY: Yes.

MR. BROOKINS: Then he's in conformance.

MR. CONNOLLY: He's in conformance, yes.

MR. BROOKINS: So your shed would be closer into the rear line than his?

MR. CONNOLLY: 5-feet, correct.

MR. BROOKINS: I was trying – there's a post out there and I assumed that was the back line.

MR. CONNOLLY: Yes.

MR. PLATEL: When the neighbor put his shed up it was only a 2-foot requirement. That's was the old zoning it was 2 and 2 and now it's 5 and 5.

MR. BROOKINS: It didn't look 5-feet.

CHAIRMAN HODOM: It was probably closer to 2-feet. Kenny anything?

MR. UMINA: No, I was just there a few minutes ago and the documents I have here and all I've seen I have no questions.

CHAIRMAN HODOM: Mark?

MR. HENNESSEY: Mr. Grave's letter was pretty grave for lack of a better word. Is there some longstanding problem with Mr. Grave's? Do you guys not get along with him?

MRS. CONNOLLY: If I may respond to that?

CHAIRMAN HODOM: Christine why don't you just introduce yourself to us.

MRS. CONNOLLY: Christine Connolly, I don't think we know him very well. He's has children that are on the football team and we've seen him but he complained when we were building our pool. He seemed to have a few complaints, when we were building our pool we needed some stones and we had a truck and he came in to deliver some stones and we had 3-days of rain.

MR. HENNESSEY: In the rear entrance past the...

MRS. CONNOLLY: Yeah and please understand his house is the farthest from us and there is no view at all. There is no view from his front driveway, his front yard or the

road in front of his house. He can't see our house unless he moves a couple of hundred of feet, you know driving up. You know so he, of all of our neighbors is the farthest, but we had to bring some stones in and we've had no contact with him and had no relationship either way – friendly actually, his son play's football with my son, but we basically needed stone for a retaining wall and it had rained and the landscaper didn't want to get stuck. It had gotten stuck the first day so he....

MR. HENNESSEY: This is on the NIMO property we're talking about?

MRS. CONNOLLY: Yeah so we had to leave some stone and some dirt right on that really for a day. He came over immediately and called the Building Inspector, which he could have put up the wall in 2-days but he called the Building Inspector and we had to stop for about 2-weeks and - - but we have no relationship really either way. Our relationship when we started constructing the pool and sort of surrounding landscaping pretty much in the form of him objecting to various things. So there was plenty of room, but he didn't want to drive around and that pile was going to be there probably a day, but as I said we had to stop work and it was there for longer and that was - - then he came over to our house and said how long is that going to be there and I think the only other contact in the relationship we had was the shed so that's our relationship.

MR. HENNESSEY: Okay.

CHAIRMAN HODOM: Mr. Connolly or Mrs. Connolly were you planning on doing any planting behind the shed as a buffer?

MRS. CONNOLLY: We've done quite a bit in fact we've discussed it and if you came and looked around we've done quite a bit of landscaping and even Mr. Grave's admitted it was really quite attractive. It's really tastefully done and really elegant – everything that we've built, we have put shrubs, trees, evergreens, flowers and we're perfectly willing to do that as well. Our only concern is that we plant on the Nimo property although people have done that throughout the neighborhood.

CHAIRMAN HODOM: It looks like they have.

MRS. CONNOLLY: It's an aesthetic instinct of course – I think the rest of the yard is pretty well done and I was probably going to do that anyway, but we really haven't talked about what specifically...

CHAIRMAN HODOM: Well that was one of Mr. Graves suggestions to buffer the site of the back of the shed and I guess my question to you is would you have any objection if we approve the application and made a condition that you plant some arborvitae or some kind or something behind it, would you have any objection with that?

MR. CONNOLLY: Only on principal because if we didn't get it and put the shed up without the Variance we wouldn't be required to do that.

CHAIRMAN HODOM: That's true and that's why there's a little give and take for both.

MR. CONNOLLY: I understand, but I maintain that whole area back there.

CHAIRMAN HODOM: It looks very nice.

MR. CONNOLLY: We've spent a lot of time mowing it and I mean it's a big swamp.

MRS. CONNOLLY: In fact my suggestion before we started, independently of Mr. Grave's...

CHAIRMAN HODOM: Do you have a written agreement with Nimo to be able to use their property or is it just a verbal understanding?

MR. CONNOLLY: It's more of a verbal understanding I mean everyone...

CHAIRMAN HODOM: There's nothing in writing that says that you can - - apparently there's an access road from Onondaga Court that goes into that area, that Nimo area that you had used for the trucking of the rocks and so forth.

MR. CONNOLLY: Right.

CHAIRMAN HODOM: And there was no objection to that?

MR. CONNOLLY: Niagara Mohawk was okay with that, they didn't...

MRS. CONNOLLY: In fact they came out and we spoke to more than 1-person and more than 1-person came out in fact they sent somebody and then we spoke to someone that was higher up but I don't remember the department or the name, do you?

MR. CONNOLLY: No.

CHAIRMAN HODOM: Okay.

ATTORNEY MOORE: Would they be required to give their consent to allow you to plant if we made it a condition?

MR. CONNOLLY: I don't know I mean since I mow back there I control what grows and what doesn't grow and there's interesting growth patterns depending on who mows. There's quite a bit of shrubbery and things back there.

ATTORNEY MOORE: Right, but it's a little different if the Board requires it.

CHAIRMAN HODOM: Well that's what I mean and that's why I asked the question if there was any agreement that you had with Nimo.

MR. BROOKINS: Was Niagara Mohawk advised of the hearing? I mean the neighbors were but Niagara Mohawk is in fact a major neighbor.

CHAIRMAN HODOM: You didn't include them on your list.

MR. CONNOLLY: I didn't, no because I thought the purpose of the setback was more for residential neighbors. I'm not going on to their land.

CHAIRMAN HODOM: No if you were able to install the shed as you had requested but then if we had requested if you plant some shrubbery behind it then you would be on the Nimo right of way.

MS. GUASTELLA: They were notified.

ATTORNEY MOORE: They were?

MRS. CONNOLLY: In fact they were very reasonable and accommodating.

MR. CONNOLLY: They prefer grass I think.

MRS. CONNOLLY: I think for their ease of it if they ever had to drive trucks even though it's not that close to our house.

CHAIRMAN HODOM: They can get some locust or something. Lennie do you have anything?

MR. MICELLI: No, I'm set.

CHAIRMAN HODOM: Any other questions from the Board? Any questions or comments from the audience? Any more comments you would like to make Mr. or Mrs. Connolly?

MR. CONNOLLY: No thank you. Thank you for taking the time for hearing our appeal.

CHAIRMAN HODOM: You're welcome. Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

Hearing closed 7:25 p.m.

- - -

The next order of business this evening is a public hearing for Variance under Article V,, Districts, Use & Area Requirements, Section 128-28, Core Residential Districts, C (1) for property at 79 Wisconsin Avenue, Delmar, New York requested by Robin & Jeff Suitor. The Applicant wishes to erect a storage shed, which will encroach into the setback requirement 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 a storage shed that will rest directly against the main structure. This will be 10-feet shy of the 10-foot separation that is required between the main and accessory structures. The existing main structure is occupied as a single-family dwelling and is located in a Core Residential District.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals, Albany county, Town of Bethlehem will hold a public hearing on Wednesday July 19, 2006 at 7:15 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Robin & Jeff Suitor for Variance under Article V, Districts, Use & Area Requirments, Section 128-28, Core Residential Districts C (1) of the Code of the Town of Bethlehem for the placement of a storage shed which will encroach into the setback requirement at premises 79 Wisconsin Avenue, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 12, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure as we did earlier. We'll hear the Applicants presentation; we'll hear any one wishing to speak in favor of the Applicant and any one desiring to speak in opposition to the Applicant. Mark before we get started, if this structure was attached to the back of the garage would there be a need for a Variance?

MR. PLATEL: It would be considered part of the main structure so it would just fall under the setback requirements for main structure's, lot occupancy.

CHAIRMAN HODOM: Have you folks pursued that at all by attaching this shed to the back of the garage thus making it part of the main building therefore not having to go through a Variance request and approval unless it affected some other part of the Code? Do you have any objection to attaching it to the house?

MRS. SUITOR: Should I introduce myself?

CHAIRMAN HODOM: Sure, go ahead.

MRS. SUITOR: I'm Robin Sutor and reside at 79 Wisconsin Avenue. I did speak to Mark about attaching it to the garage and he pointed out that if we were to attach it then we would need to put it on a foundation so we would have to put piers in and that would add significant expense and time.

CHAIRMAN HODOM: So you have discussed it with the Building Department?

MRS. SUITOR: Yes.

CHAIRMAN HODOM: Okay, I wasn't aware of that. Well very good, just proceed with your presentation and we'll go on from there.

MRS. SUITOR: Well we would like to put a storage shed behind our garage. It would be used to store – we have a deck in the back yard and we have furniture so in the wintertime we would be putting the chairs and table into the shed, other lawn equipment, you know gardening type equipment and anything maybe overflowing from the garage to create some extra space in the garage we might put in the shed. We do realize that it's not 10-feet from the house. It is 25-feet from the property line so it doesn't run into a problem there, it's well within the 5-foot rule on that side. We did consider other places on our lawn, originally we were going to put it way on the far side – the back of our lawn but that was under a lot of trees. We would have to remove trees or be concerned about trees or debris from trees falling in the shed and also it was just less convenient to our whole purpose of storing items near the house particularly my deck chair cushions, which every time it rains and seeking to preserve them for prosperity so right now I run and I put them inside of the kitchen so I'd like to have them right next to the deck and put them right there and also having it right behind the garage, well it wouldn't be attached it would kind of seem like an extension of the house so it doesn't affect kind of the view of the yard.

We back up into a wooded area that's actually owned by our backyard neighbor so and when looking out we would just see the woods and anybody driving down the street could see in between the houses would just see the wooded area as well and this area behind the garage is filled with weeds formally a garden by somebody who knew how to garden and so it's flat under those weeds so it's a nice easy place to install the shed as opposed to the other area's of our yard which are more hilly. The land is uneven and I think that about sums it up. We did speak to our neighbors, we didn't get this in time with the actual application but we got a few of our neighbors on either side and across the street signed that they are not opposed and we did speak to some of our other neighbors but we didn't get their signatures. When they got the letter, we saw them out on the sidewalk and they wanted to know what it was all about.

CHAIRMAN HODOM: I know you have stated some concern about locating the shed underneath the trees and so forth, but your lot is a treed lot anyway to begin with. Had you given any consideration to perhaps re-locating the swing set, which you also mentioned as a concern that you didn't want to have the shed obstruct the use of that and

perhaps put the shed in the location of the swing set, perhaps move the swing set over to the fairly flat open area on the right side of the back yard, was that considered at all?

MRS. SUITOR: Well that's our open play area so you know, the swing set if you're swinging on the swings and that precludes kind of the rest of the open area of the yard to be used for playing ball, running, you know multiple uses of the yard. We like the swing set over to the side so the kids can be playing to the side on the swing set and it leaves the rest of the area open for other uses, there's a badminton net that we sometimes have up.

CHAIRMAN HODOM: Okay.

MRS. SUITOR: And that part of the law and also isn't very level, you know I think it goes up.

CHAIRMAN HODOM: It just appeared to me when I was out there the other day that there are several locations where you could locate that shed that the ground isn't that uneven. There are some places either on the side yard or the back yard just before you get to the heavy wooded area and I don't think you can find to many places that you wouldn't have some concern about the trees falling on it. I mean if we have a severe storm then you would have concern of whether the trees are going to fall on the swing set or are they going to fall on the house or whatever. You have a beautiful piece of property but I think there are some areas other than just in the back of the garage that you could place the shed. That was one of the reasons I brought up attaching the shed to the garage so that you wouldn't have to go through this process.

MRS. SUITOR: Well I guess my question would be what would be the difference if it's just a structure sitting right behind the garage as opposed to the same structure somehow bolted to the garage.

CHAIRMAN HODOM: Well I think Mark told you that it would require a foundation.

MRS. SUITOR: No, I understand that it would require more but I'm saying if a structure can sit behind the garage what does it matter if it's attached to it or not.

CHAIRMAN HODOM: I guess that's just the way the Code is written.

MR. PLATEL: It's the way we usually interpret it is that if it's attached it's part of it and really just setting up against doesn't mean it's attached. It doesn't really make it part of - - It's a hard...

MRS. SUITOR: Right and it's going to be - - the shed that we - we haven't purchased it but it's from Lowe's and I think we included a copy of the brochure so the siding is to match the house. It would look just like the house. It just seems like it would be a significant expense of the whole process for putting in the piers and...

MR. MICELLI: Those doors will face the back yard when you open it? It's not going to

be on the side, It's going to be facing the yard so when you put the cushions in you want it facing the deck, the opening or is it going to be in the back?

MR. HENNESSEY: It's a rectangular shaped building so it would have to face out that way otherwise the doors would open this way.

MR. MICELLI: Is this steel or is this wood?

MRS. SUITOR: It's polyethylene plastic, which I don't know if it's similar to vinyl plastic type substance in the brochure. It felt like vinyl.

MR. HENNESSEY: Steel frame on the inside, vinyl on the outside.

MR. MICELLI: And this was flush against the garage or do you have a gap?

MRS. SUITOR: Well we would put somewhat of a gap so animals wouldn't hide in there or nest so we would be able to maintain, you know the siding on the back of the garage and the structure itself.

MR. MICELLI: Okay, thank you.

MRS. SUITOR: And we do realize that we have a big yard so there are other places 10-feet from the house that exist on the yard. It's not that we don't have a yard, but you know the most logical place to us is right behind the garage. It doesn't ruin our view; it's not visible from the road unless your driving by it would really look like that maybe it was an extension of the house.

MR. UMINA: That's the most convenient for you as well, is that right?

MRS. SUITOR: Yes to both the garage itself and you know the front lawn and to certainly to the deck itself as opposed to having to cross the lawn to store items or to retrieve items.

CHAIRMAN HODOM: How far away from the house would you propose to install the new shed? What space are you looking at there?

MRS. SUITOR: We were really looking at with about a half of foot. We were trying to get it as close to the house as possible but leaving room for maintenance and one of the reasons for that is to kind to line it up to the edge of deck would be even though there would be a space. Our deck is right behind our family room and then there would be space for the half of the garage and then the shed would be behind just one half of the garage, but it would really just extend approximately the same length about the same depth I should say into the yard as the deck. It would be out a little bit more, but in other words so that if we were in the - - if we were sitting on the deck it would look like the shed was, you know in the middle of the yard.

MR. HENNESSEY: I was just looking at how this is laid out and it looks like you could move that shed back a bit and still be okay in terms of being sort of in line with the deck. So you're talking about 6-inches and it looks like it's more than that that you could go.

MRS. SUITOR: The deck is 12-feet.

MR. SUITOR: The deck is about from the rear of the garage there's a jog in the corner of the house where the garage sticks out which you can see on the drawing. So the front edge of the deck is about 12-feet or so from the back of the garage and the shed is 8 by 12 or 8 by 12 ½ and yes I suppose we could come out a little bit more than 6-inches and not appear to extend past the front edge of the deck especially – there's 2-steps. It depends on how far out, certainly 10-feet would put it in the middle of the yard.

MR. HENNESSEY: So it could be moved a little bit though and you'd be okay with that?

MR. SUITOR: Presumably depending on what a little bit was.

CHAIRMAN HODOM: Mr. suitor just introduce yourself to us so that we can get you on the record.

MR. SUITOR: I'm sorry, I'm Jeff Suitor at 79 Wisconsin Avenue.

MR. HENNESSEY: I'm actually going to take that back because Mark was nice enough to draw out exactly how the shed is going to be and it's a little bit bigger than it looked – than what was given to us.

CHAIRMAN HODOM: Any other questions from the Board?

MR. MICELLI: I don't have any.

MR. HENNESSEY: What about rotating the shed?

MRS. SUITOR: If we rotate it then there's – it would either go out into the side yard so then that would kind of give it an odd shape and certainly from the road it would be more visible and – or if we put it the other way there's a window in the middle of the garage and then it would cover up the window.

MR. HENNESSEY: Okay.

CHAIRMAN HODOM: Do you know how far in from the corner of the garage this shed will be located? You brought up the window and I'm assuming the window is in the center of the garage.

MRS. SUITOR: I think that from the edge of the garage to the window is about 10-feet.

MR. SUITOR: Yeah the window is right in the middle and from the outside edge, outside corner of the garage is about 10-feet from the window frame.

CHAIRMAN HODOM: Okay so you would plan on splitting that dimension somehow?

MR. SUITOR: One on either side.

MR. MICELLI: Is this going to sit on slab concrete or just put it on the ground?

MR. SUITOR: It has a vinyl floor. I was going to try to get it off the ground maybe a block just so moisture doesn't seep in but it has a floor.

MR. MICELLI: Thank you.

CHAIRMAN HODOM: Any other questions? Any questions or comments from the audience? Anyone wishing to speak in favor of the Applicant? Anyone desiring to speak in opposition? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

Hearing closed 7:40 p.m.

- - -

The next order of business this evening is a public hearing for a Variance under Article III, Zoning Maps & Districts, Section 128-17 C, Exceptions for property at 41 Forsten Drive, Delmar, New York requested by Zak & Lubna Chauhan. The Applicant wishes to construct a 6-foot fence, which will exceed the height requirement for Front Yards at premises 41 Forsten Drive, Delmar, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant has installed a 6-foot fence chain link in the front yard, which is 2-feet higher than the 4-foot maximum allowable height for fences located in a front yard. For the boards information the applicants had contacted the building department and were given information in regards to fencing requirements prior to the adoption of the new zoning law. Unfortunately the requirements for fencing have changed since that time and a 6-foot chain link fence is no longer permitted in a front yard. The existing structure is occupied as a single-family dwelling and is located in a Residence "A" district.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals, Albany county, Town of Bethlehem will hold a public hearing on Wednesday July 19, 2006 at 7:30 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Zak & Lubna Chauhan for Variance under Article III, Zoning Maps & Districts, Section 128-17 C, Exceptions of the Code of the Town of Bethlehem for the construction of a 6-foot fence, which will exceed the height requirement for front yards at premises 41 Forsten Drive, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 12, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier this evening. We'll hear the Applicants presentation; we'll entertain any questions or comments from the audience and listen to anyone wishing to speak. Zak as we discussed when I talked to you on the premises just tell us what happened and what you want to do and why you want to do it.

MR. CHAUHAN: Mr. Chairman and the fellow Board members, my name is Zak Chauhan and reside at 41 Forsten Drive, Delmar, New York and I've been living there for the past 2-years. It's a new development and last year in June we were doing some – actually just in our back yard, front yard and I don't know how or when my wife got a deer tick right near the groin and she didn't notice and after 2, 3-days there was a red mark and she showed me and said what's this? And I said well let me see and at that time the tick was embedded in so I said it's just a rash or something and when I looked closely I said there's a hole in there. So when I looked and opened the skin a little bit and the tick was inside. So I said that's a deer tick and I called my friend and he said go right away to the emergency room so we went right to Albany Med and it was evening time and we were there for almost 6, 6 1/2-hours. Then the Doctor came and she surgically removed the tick and the redness was still there and then she gave her antibiotics that she was supposed to be on a couple of weeks. One course was for a couple of days and then another one. So then while we were there in the emergency room you know I said I have kids and what is the possibility that they will get it and the attending physician said the best way is to prevent deer or wild animals coming to your property. So when we came out from emergency in the next couple of days I called the Town Hall and I spoke to a lady over there and I said I need a permit for getting a fence around my property. She said what kind of a fence are you getting and I said chain link. She said you can get 6-feet all around your property so then I started calling...

CHAIRMAN HODOM: When was this exactly?

MR. CHAUHAN: In June of 2005. And a couple of fence people came and looked around the property and gave estimates. I called again because I have an easement at the front of my property and I spoke with – the second time I went myself and I had an old map that the builder gave to us. Then I came into the building office and I talked to Roger Griffiths and they copied me the map that the Town has and - - in that meantime when I

called they said now the rules have changed now you can go 6 on the side and the back and 4 in the front. So there was 6-feet here and 6-feet here and with the easement Roger mentioned that you have to be back 10-feet from the center of the road – no 15-feet from the center of the road and 10-feet for the easement and I went more than 10-feet. I went 15, 15 – 35-feet from the center of the road and from the easement. So I came back and I called my builder and said can you call also and verify that everything is fine because I don't want anything – the work should be stopped or anything that we are doing wrong. He called and they told him the same thing, 6, 6, and 4 in the front. So we went and the fence was all up.

CHAIRMAN HODOM: Just let me stop you for a minute. Do you now when you first talked to Roger Griffiths? Was that in June as well?

MR. CHAUHAN: Correct.

CHAIRMAN HODOM: And it was in June when you talked to the lady in the office as well?

MR. CHAUHAN: Correct because I asked how we should proceed and they said you have to have a permit and when I called they said in the Town of Bethlehem you don't need a permit for the fence and they asked me if it's solid 6-foot fence and I said no it's chain link fence and they asked if I'm getting slots in those and I said no it's just for prevention of wild animal and that's what it is and I don't want to get deer tick or something or my wife or my kids. And since then my kids are 9 and 12-years old and they don't like to go outside or in the front just because of that and since now the fence is there and you can see there is a trampoline that they like to play on and my nieces and nephews that come now.

CHAIRMAN HODOM: I'm going by the letter that you wrote to the Town, after hiring the contractor, The Chain Link Fence Connection, you learned that the maximum height for the fence had been changed to 4-feet just recently in the front.

MR. CHAUHAN: Correct.

CHAIRMAN HODOM: What was your understanding about what the front meant?

MR. CHAUHAN: Just from point A to point B where my property line is.

CHAIRMAN HODOM: Along Forsten?

MR. CHAUHAN: Correct.

CHAIRMAN HODOM: Okay.

MR. CHAUHAN: Because they said that the – where the road is it has to be 4 and in reality I wanted 6-feet all around.

CHAIRMAN HODOM: And do you remember approximately what date that was?

MR. CHAUHAN: Within 2 or 3-months was that from June then I contacted...

MR. HENNESSEY: Can I ask you 1-question, I drove over and I looked at your property, the face of the fence that you have there is 4-feet.

MR. CHAUHAN: Correct.

MR. HENNESSEY: Okay so the way that you interpreted it was the sides were not the front?

MR. CHAUHAN: Correct, the reason why and all my neighbors said 4-feet in the front and I said that's the law – I wanted 6 no matter but since what they told me that's what I interpreted and the fence person did that and then after a couple of months go by when they installed the fence I see this business card from David Rice saying that you're fence is to high so then I called David Rice and I spoke with him and he said I didn't know you were dealing with Roger Griffiths and he was out on sick leave. He said when he comes back you talk with him and I contacted Mr. Griffiths many times. I asked him about my easement – you know I wanted it all the way straight and he said no problem you can do that. So I tried my best 100-percent with the Town and you can come – the back and the side with the vegetation you can't even see and I have all my neighbors around that signed that they have no problem or they have no objection the way the fence looks. And I submitted 2-more actually 3-more neighbors that were on vacation; they were 28, 25 and 38.

CHAIRMAN HODOM: Have you finished Zak? You have provided the Board with 2-proposals with Chain Link Fence Connection and they were both dated October 7 of 2005, when did you finally accept the contract with them because the one you gave us doesn't have a date to when you signed it.

MR. CHAUHAN: See what happened was that when they said 6-feet all around – the firsts one is 6-feet all around and then he said the way you can do it and the next one is 6, 6, 6, and 4 in the front the one that I went final with.

CHAIRMAN HODOM: Right. What was the date that you signed that, the one that says 6, 6, 6, and 4? Is it the same date that the contractor signed it, there's no date after your signature?

MRS. CHAUHAN: My name is Lubna Chauhan and I live at 41 Forsten, the reason when we started the contract it became fall and they didn't want to start the work until the next spring, but he said that he was going to accept that price and that price would not change because yearly the prices would change, but since our contract was written in October and the work wasn't done until April that was fine that he would still accept the old price that we agreed to. We do have a signed contract with him and right now we

haven't even finished the payment because there's still some things he has to finish up on the fence so the work really started in April even though our contract was accepted in October.

CHAIRMAN HODOM: April of 06'?

MRS. CHAUHAN: Yes. We still have to sign another contract because we've only made 50-percent payment to him and the 50-percent after all of the work is done.

CHAIRMAN HODOM: When was your last contact with the Building Department, your contact or the fence contractor contact?

MR. CHAUHAN: When we received a note from David Rice and then we came and we spoke with Mark.

CHAIRMAN HODOM: When did that happen? When did David leave his business card there?

MRS. CHAUHAN: It was a little piece of paper and actually he said it was 3<sup>rd</sup> violation which I didn't understand because that was our first notice that there was a violation on our property and right away as soon as we got it we called him.

CHAIRMAN HODOM: 5/30/06?

MR. CHAUHAN: And then Roger wrote this and left it in my door. And this was the first time when that I came and that's his card and this is the map that he did and he said 6,6,6, and 4 here. And actually I took this one myself and I spoke with Marlyn Dunn and Karen. And for the signing...

CHAIRMAN HODOM: Can we keep these?

MR. CHAUHAN: Yes that's fine. You can keep everything. And the reason why – I don't know about this binding contract because this chain link fence order from someplace else and the steel was going higher price wise. So he said if you do that then they will give me the same price.

MRS. CHAUHAN: 2005 even though it was installed in 2006.

MR. HENNESSEY: So it was locking in your price basically.

MRS. CHAUHAN: Yes, prices were going up because many people – we had estimates and said we can't guarantee that this will be in April or next year when spring comes so we were kind of getting worried with the price of everything rising. We said well what can we do and we needed some kind of a fence – how would be the best way. I just want to make one other note – medically I'm a pharmacist and I did speak to my doctor about lymes disease and in fact there's a new article where there's a new tick that is traveling

40-feet and I have some information, but I was able to make copies for the Board for medical information. There's copies for everyone.

CHAIRMAN HODOM: Did you by any chance discuss with your contractor what the cost might be to reduce those 2-side sections from the front of the house to the road from 6-feet to 4-feet?

MR. CHAUHAN: Roughly 100-feet on one side then 98 on one side – that is the side of the house and my other neighbor when I explained to her is the reason why we're getting is first of all if you all visited her during the day time but if you visit at nighttime you can't even see anything back there and you know, myself my wife and my 2-kids, you know I don't feel comfortable if I'm out or something and the back of our property it's all wooded area and ground and you can see - - at nighttime if you come you can see coyotes when the fence wasn't there – howling and everything. In wintertime when there is no fence I will see people and they are walking right in front of my property and they would say that they are hiking here because Niagara Mohawk or National Grid lines are back there and they will just walk and hike and then they would say that we didn't know that it's private property and that's another reason and that has happened several times for the last winter and these - - and there's a trail that goes up on Forsten Drive under the National Grid lines and there are these motor bikes that will go up and then they will come and fish through and from the back of the house to the middle of the road.

MR. MICELLI: How long have you lived at the residence?

MRS. CHAUHAN: It will be 3-years in September of 06". And one other comment I just wanted to make, during the fourth of July we had a lot of teenagers with some vandalism in terms of fireworks – we did have a police officer come one day. They were shooting right in our yards. And they were riding their bike and they just think that it's no man's land.

CHAIRMAN HODOM: National Grid's right of way?

MRS. CHAUHAN: At least with our fence we have some sort of barrier that - - and they throw trash all time – I'm picking up bottles and cans and papers from my yard. You know they don't have any respect. We did inform the Police Department during that week and they were saying that there were some other complaints from other neighbors.

CHAIRMAN HODOM: But to get back to my original question, you did not go to your contractor and ask him for a price to reduce the fence height from 6-feet to 4-feet for that portion that the side yards are considered a front yard?

MR. CHAUHAN: Correct and the thing – the 4-feet fence, the deer can jump easily and usually the contractor will say if somebody is after them like coyote or something and usually they are in the wilderness. If they will jump they won't jump 6-feet, they will go around and go to the next house, but if it's 4-feet then they will jump and even though I have 4-feet in the front and I was thinking since nobody chases them in the front because

they will just go around and go to the other house. I tried everything; spraying, coyote urine – sorry for that, and everything. It cost us more money – somebody said rotten eggs and garlic and everything; Palmolive oil – nothing works. Actually this winter – this spring when I say and this is the first time that my hydrangeas and all those plants are not nibbled by any animal.

MRS. CHAUHAN: And one more note on that is we saw 3-deer one spring day – they crossed the road and they started to go on the side of the fence slowly, all 3 of them walked right by. They wanted to come towards us and I have even seen the deer droppings in my backyard before we had the fence when spring came. I could see them right – like as soon as I stepped down I said what are those small – which tells me that they are coming very close and they were, but now we saw the 3 and they just calmly walked right by the fence next to them. Thank you.

CHAIRMAN HODOM: You're welcome. Any other questions from the Board?

MR. CHAUHAN: And as for the size as you mentioned I have clematis vines that will grow on it and you won't even notice – one side is quite wooded and the other one you won't even notice whether its 6 or 4 because it slopes down. And I appreciate your time, thank you.

CHAIRMAN HODOM: Do you recall in the old code if that limits the front to 4-foot high?

MR. PLATEL: In the old code you could install a 6-foot chain link. Anything that was more than  $\frac{3}{4}$ -open anywhere on the lot. On a solid fence you could go 4-feet with 2-foot of lattice.

CHAIRMAN HODOM: Okay.

MR. CHAUHAN: This new house there, there's a ...

MRS. CHAUHAN: 164.

MR. CHAUHAN; 164 Hasgate and they have 6-feet right at the edge of the road now.

MR. PLATEL: Where the pool is?

MR. HENNESSEY: The one that we just gave the Variance to.

MR. PLATEL: There's also a change for the requirements for corner lots. On corner lots when we're ...

MR. CHAUHAN: So 6 in the front and 6 in the back?

MR. HENNESSEY: Not in the front.

MR. PLATEL: Yes, that's on the front.

MR. CHAUHAN: So 6 all around and they did file for a Variance.

MR. PLATEL: Yes they did.

CHAIRMAN HODOM: And they had a unique circumstance to with the pool and – but they also boarder...

MR. PLATEL: Well they had the wetlands in the back and back in that area where they had to push the pool over.

CHAIRMAN HODOM: Any questions or comments from the audience? Anyone wishing to speak in favor of the Applicant? Anyone desiring to speak in opposition. Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

Hearing closed 8:05 p.m.

- - -

The next order of business was to consider the application of Angela & Phil Halwick, 940 River Road, Selkirk, New York. The application was found to be in order and Mr. Hennessey made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Angela & Phil Halwick for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Side yards for the construction of an attached garage addition, which will encroach into the Side yard setback requirement at the premises 940 River Road, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held August 2, 2006 at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

- - -

The next order of business was a discussion of the previous public hearing held in the matter of Zak & Lubna Chauhan, 41 Forsten Road for Variance under Article III, Zoning Maps & Districts, Section 128-17 C, Exceptions for the construction of a 6-foot fence, which will exceed the height requirement for front yards at premises 41 Forsten Drive, Delmar, New York. The following points were brought up by the Board members: The Applicant has made a good faith effort with the town in attempting to follow the zoning code. The fence blends in with the property. No one spoke in opposition to the Applicant. The fence is to keep wild animals off the property. On a motion made by Mr. Hennessey, seconded by Mr. Micelli, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on August 2, 2006.

- - -

The next order of business was to consider the proposed resolution of Karen & Steven Bylsma, 7 Schuyler Road, Glenmont, New York.

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

**RESOLUTION**

\* \* \*  
\*

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a variance under Article XIII, Use and Area Schedules, Section 128-100, Maximum Lot Coverage, requested by Karen and Steven Bylsma for property at 7 Schuyler Road, Glenmont, New York; and,

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on July 5, 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 Applicants are now proposing to construct a 144-square foot 3-season sunroom addition to the rear of the existing 1,827.18-square foot main structure, creating a total main structure of 1,917.18-square feet. This is 48.52-square feet over the 1,922.07-square feet allowed. The lot occupancy will be 20.52-percent, which is .52-percent over the 20-percent allowed.

The existing structure is a single-family dwelling and is located in the Dowerskill Village Planned Residence District (PRD). The applicable standards for the requested variance are found in the Building Project Approval (BPA) for the PRD (BPA No. 25 for PRD No.4, January 10, 1990), Section 2B, Schedule A, Planned Development Districts (20% Maximum Building Area Ratio).

Mrs. Bylsma's medical condition and the treatment for this condition have affected her eyesight and sense of equilibrium, to the point where she easily loses her balance and falls. She will be retiring from her place of employment and spending her time in the home. The purpose of the proposed project is to provide her a spacious place

on the first floor of the home where she can be comfortable moving about and still enjoy a sense of the “outdoors.”

The proposed addition will have electricity but no heating or plumbing.

Applicants have spoken with their neighbors, all of whom are supportive of the project.

The Applicants, their contractor and one neighbor 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 Applicants, the Board determines that the proposed lot coverage variance will be granted.

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

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

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

The requested variance is minimal, and is the minimum variance that is necessary and adequate to the Applicants' needs, while still preserving the character of the neighborhood.

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

The requested lot variance is GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the July 5, 2006 hearing, except as the same may be modified by the Town Building Department or Planning Board;
2. In the construction of the addition, the Applicants shall match, as nearly as possible, the existing roofing and siding on the home;
3. The project shall be completed within the time required by section 128-89 (P) of the Town Code.

July 19, 2006

Gil Brookins  
Acting Chairman  
Zoning Board of Appeals

- - -

Mr. Micelli 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	None	None
Gilbert Brookins			
Leonard Micelli			
Anthony K. Umina			
Mark Hennessey			

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

- - -

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

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

Meeting Adjourned: 8:20 p.m.

Respectfully submitted,

---

Secretary