

Town of Bethlehem
BOARD OF APPEALS
March 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
 Robert Wiggand
 Gilbert Brookins
 Leonard Micelli
 Anthony K. Umina

 Michael Moore Attorney to the Board

 Mark Platel Building Inspector

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

- - -

Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. Our first order of business this evening was a public hearing for Robert and Carol Dunn for a continuation of a Use Variance. Mrs. Dunn has requested that she would like an extension to the time frame through April 5, 2006. I don't have a problem with that if the other Board members don't have a problem with that.

On a motion made by Chairman Hodom, seconded by Mr. Wiggand and unanimously carried by the Board the hearing was rescheduled for 7:30 on April 5, 2006.

That being the case our next hearing is scheduled for 7:45 so we'll take up some other business until that time arrives. Have you had time to review the Barkman resolution? We've been waiting on that to get a response from the Albany County Planning Board.

- - -

The next order of business was to consider the proposed resolution of Gary Barkman, 821 Route 9W, 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 VI, Supplementary Regulations, Section 128-54, Signs, requested by Gary Barkman (“Applicant”) for property at 821 Route 9W, Glenmont, New York (“the property”); 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 initially proposed to construct a freestanding sign that would not meet the applicable signage requirements in three (3) respects. The proposed sign will be 18-square feet, which is 16-square feet over the 2-square feet that is allowed and will be set back 2-feet from the State right of way and front yard property line, 8-feet shy of the 10-feet required. The sign will also have a total height of 6.18 feet, which is 1.18-feet over the 5-feet allowed. At the public hearing, the Applicant agreed to relocate the proposed sign to an area in compliance with the required 10-foot setback from the right of way and property line. With this modification, the Applicant requires only two (2) variances, for the sign height and sign size (square footage).

The structure accompanying the proposed sign will be used for office space and the property is located in a Rural Hamlet District.

The Town Planning Board has given site plan approval for the conversion of the structure to office space. The proposed sign would advertise the location of Applicant's professional office. However, Applicant's original plans for the sign no longer comply with the requirements of the Town's recently amended Zoning Law.

It is not practical for the Applicant to construct a functional sign attached to the structure, even though the amended Zoning Law would allow for a larger sign on the structure. The office is situated a considerable distance from Route 9W, and there are two large, attractive oak trees in the front yard, between the house and the road. Given

these conditions, cars traveling at the speed limit on Route 9W would have a difficult time seeing a sign on the structure.

By determination dated February 17, 2006 (Case No. 04-02/06005), the Albany County Planning Board has deferred to local consideration on this application, finding “no significant countywide or intermunicipal impact.”

At the public hearing, the Applicant made a presentation and one person spoke in favor of the Applicant’s proposal.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed variances for sign height and sign size (square footage) 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.

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

The requested variances for the height and size (square footage) of the proposed sign are granted, on the following conditions:

1. The sign will be constructed in accordance with the plans, specifications, testimony and exhibits presented at the January 4, 2006 hearing, except that the sign shall be located so as to conform with the setback requirement from the right of way and property line, said location to be selected by the Applicant;
2. Applicant shall inform both this Board and the Town Planning Board in writing of the final location selected for the proposed sign, by a revised or amended site plan.
3. The project shall be completed within the time specified by section 128-89 (P) of the Town Zoning Law.

Dated: March 1, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

- - -

Mr. Wiggand 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 Robert J. Wiggand Gilbert Brookins Leonard Micelli Anthony K. Umina | None | None | None |

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

- - -

The next order of business was a discussion of the previous public hearing held in the matter of Nicholas & Cherise Vitello, 207 Maple Avenue. The following points were brought up by the Board members: The Board received a letter from Mr. Christopher Dempf, counsel, extending the Board an additional 45-days if the Board deems it necessary. One of the main issues for the extension was that the property was up for sale and it is still up for sale. The Board was looking for clarification back in December and the Applicant agreed to extend the time period. The basis for the Application was that they didn't meet the frontage requirement, which was extended to 100-feet. The Boards understanding of the easement is that it goes to the person who owns the property, which is not the Applicant in this case, Mr. Vitello, Jr. but to the father, Mr. Vitello, Sr. There has been no indication from the owner of the property that he is going to give the property to his son or sell the property to the son, which then would allow the easement to be used by Mr. Vitello, Jr. without any question. There was some concern in the neighborhood of allowing the application to proceed as presented. The Board members felt either to re-open the hearing to another date or extend for another 45-days as requested by the Applicants attorney. On a motion made by Mr. Micelli, seconded by Mr. Wiggand, and carried by the Board with Mr. Umina abstaining, to re-open the hearing on April 5, 2006 at 7:45 p.m. The neighbors will be re-notified and the hearing will be re-noticed in the spotlight.

- - -

The next order of business this evening is a public hearing for a continuation of a public hearing for Variance's 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, (Applicant), John Lane, (Owner) for property at 2 Grove Street, Delmar, New York 12054. This is 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.

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 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 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.

There was a question of the number of spaces that are required for the Giacone property, which is where he would be leasing the 4-spaces from. There is the First Care office space with 2-apartments and a storage building that requires a total of 14-spaces. There are at this time at best count 20-spaces in the lot and another 3 behind the building. This will leave an additional 9-spaces over the required parking for this site.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday February 1, 2006 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of the Four Corners Luncheonette for Variance's 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 construction of a 1-story addition, which will not meet the parking requirements and also will encroach into the rear yard setback requirement at premises 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. 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. Mr. Green?

MR. GREEN: I'm Mr. Green. There were 2-comments from our last meeting, one was a survey question and we'll clear that up first. In the back rear part of the property the surveyor had 4135 and I had 4435 and I determined that this was a typo on our behalf and it even scaled 4135. So I have changed my map to match the language of the survey map as requested by the Board.

CHAIRMAN HODOM: And while you're on that area, does that – you've got a 20-foot deep parking space here, 4-spaces that are 9 by 20, which would leave you 21.33-feet from the back of the parking space or the back of the vehicle to the property line. Does that give you enough space to back up and...

MR. GREEN: Does it? This is what the Planning...

CHAIRMAN HODOM: That's not what I'm asking.

MR. GREEN: I know, it doesn't but this is what they told us to do. I want to keep – see the way this is here, I want to keep it this way and I've got all the room in the world to do all the radiuses and function ability. The Planning Department said we want them coming in this way; we don't want them driving across here. They said do it that way so I'm at a crossroads.

CHAIRMAN HODOM: Well let me ask you this then. What's the difference if you have the parking spaces on this side versus the parking spaces on that side? You will still have the 21.33-feet.

MR. GREEN: This is all black; they can back, back down here. This is 60-foot curb cut here so the curb cut comes all the way back out to the road and that's what they're doing now. There's all kinds of room for that type motion. There's all kinds of room for a truck to drive in here for deliveries. It's just – that's the way it's been for how many years?

MR. HEFFLEY: 25.

MR. GREEN: 25-years.

MR. HEFFLEY: 20-years.

MR. GREEN: 20-years, okay but they said this is what they want to see.

CHAIRMAN HODOM: So you're saying that if you can locate the 4-parking spaces to the...

MR. GREEN: Where they are now.

CHAIRMAN HODOM: Westerly side of that area of the restaurant....

MR. GREEN: Which there are 6 now.

CHAIRMAN HODOM: Correct. That would give you better use of that space for ingress and egress of the parking spaces.

MR. GREEN: That's 100-percent true.

CHAIRMAN HODOM: Okay.

MR. GREEN: Part two of the comments was – there was discussion on the 4-parking spaces that are being rented from the health center – health care place that if they could be located in the back parking lot, i.e. 6 Grove Street this would better the Board so we took the plan back; we re-engineered the back; we were actually 6 specific parking spaces in the back, one more than what the Board had asked at the meeting. So we've got the allowances for what the Board wanted; we've done the survey corrections and at this point we're – I believe answered all the questions that the Zoning Board has at this time.

CHAIRMAN HODOM: In reviewing this revised site plan, which the revision date is February 2, 2006 you now have adequate parking on the 2-lots. The one lot that Mr. Lane owns where the restaurant is located.

MR. GREEN: That's correct.

CHAIRMAN HODOM: And the other lot that Mr. Heffley owns that is currently also being used as parking for the restaurant. So you have if my mathematical calculations are correct on Mr. Lane's lot there are 18 existing parking spaces.

MR. GREEN: 14 and 4.

CHAIRMAN HODOM: Right. And then on Mr. Heffley's lot you can accommodate up to 26-spaces.

MR. GREEN: That's correct.

CHAIRMAN HODOM: Parking spaces, which gives you a total of 44...

MR. GREEN: That's correct.

CHAIRMAN HODOM: Which is one over the required 43 so we don't have to use any parking spaces on the First Care or Mr. Giacone's property?

MR. GREEN: That was the intent I believe.

CHAIRMAN HODOM: Well Mr. Giacone had emphatically stated that he was not going to give any kind of legal instrument or a deed restriction to use 4-spaces from their property and without that we can't consider those 4-spaces.

MR. GREEN: So we put them someplace else and we've done that.

CHAIRMAN HODOM: Thank you very much we appreciate that. I'm just going to make point of a couple of other dimensional corrections that I believe I noted from our hearing. These numbers come from the actual survey?

MR. GREEN: (nods in agreement)

CHAIRMAN HODOM: Prepared by Mr. Hite.

MR. GREEN: Yes.

CHAIRMAN HODOM: And as he refers to them as measured numbers.

MR. GREEN: Yes.

CHAIRMAN HODOM: On the easterly property line of Mr. Lanes property you show on your site plan 153.00-feet. Mr. Hite has indicated 152.14-foot actual measured distance?

MR. GREEN: Right.

CHAIRMAN HODOM: Okay. On the easterly property line of Mr. Heffley's property, which is 6 Grove Street – and I'm just doing this to keep – to be consistent with this lot is that that 88.00-foot dimension that you show on your site plan should be 103.97-feet, which goes from the abutting of Mr. Lane's property to the northeasterly corner of Mr. Heffley's property.

MR. GREEN: That is correct. This dimension here of 50.97 is added in, that's how that happened.

CHAIRMAN HODOM: That's correct.

MR. GREEN: This only represents from this dot to this dot.

CHAIRMAN HODOM: I understand that but this dimension up here, the westerly dimension...

MR. GREEN: Still at the post.

CHAIRMAN HODOM: So to be consistent lets use the easterly property full dimension and the westerly property full dimension.

MR. GREEN: All right.

CHAIRMAN HODOM: Then we're clear. Also on the southerly property dimension of Mr. Heffley's property you show 270.00-feet. The actual measured dimension of Mr. Hite's survey is 270.86-feet.

MR. GREEN: That's correct.

CHAIRMAN HODOM: Then we're all on the same page.

MR. GREEN: Okay, I want to ask a question to the Board. The numbers that I used are deed numbers. There's only 1-number that matches the deed and that was this measured number. Everything else is off plus or minus a foot measured wise. When we put the maps together we go by deed description not by measured description.

CHAIRMAN HODOM: Well I think for our purposes we will go with the surveyors measured dimensions.

MR. GREEN: I have a problem with that.

CHAIRMAN HODOM: Tell me why.

MR. GREEN: It doesn't match the written deed that he owns. The deed is what the legal document is, that's what he owns; that's what closes.

CHAIRMAN HODOM: What are your feelings on that? I don't think it impacts...

ATTORNEY MOORE: Well does it affect how many spaces you can get in here?

MR. GREEN: No, it doesn't. We're talking tenths of a foot.

CHAIRMAN HODOM: This is the only dimension that really impacted the...

MR. GREEN: And that's on the money.

CHAIRMAN HODOM: Right, okay. For our purposes we're going to use actual certified measurements provided by the surveyor.

MR. GREEN: So you want us to change deed and as measured, both numbers down?

CHAIRMAN HODOM: Well that's what you could do. You could show deeded dimension and as measured dimension and that's what he did on his survey.

MR. GREEN: That's true. How much more - - how much more do we have to - you know what I'm saying is....

CHAIRMAN HODOM: Just that so everybody is on the same page, that's all. All I'm saying is I want your site plan to match the survey's site plan.

MR. GREEN: Okay.

CHAIRMAN HODOM: Or actual survey, right.

ATTORNEY MOORE: And you could create a little table in the corner maybe.

CHAIRMAN HODOM: Well you can do that here. You could say deeded dimension 270, measured dimension - I mean that's what he did and I don't think it becomes too cumbersome.

MR. GREEN: All right.

CHAIRMAN HODOM: The other question I have is for Mr. Heffley and we did request a legal instrument or deed restrictions of the property that Mr. Heffley owns at 6 Grove Street and I can't agree with your letter to where you say guaranteed rights to negotiate for parking. This restaurant cannot operate without the actual required number of parking spaces.

MR. HEFFLEY: The restaurant as it's structured now or after an addition?

CHAIRMAN HODOM: After your addition I mean that's what we're here for.

ATTORNEY MOORE: Well unless you give a substantial Variance, but your intent is correct.

CHAIRMAN HODOM: Right, well he hasn't asked for that.

ATTORNEY MOORE: Correct.

CHAIRMAN HODOM: So do you have a problem of...

MR. HEFFLEY: No, I thought I was meeting the language made for the requirements. I asked Dick and said it sounded good to him so.

CHAIRMAN HODOM: Well to negotiate does not say that your giving them or the

restaurant the right to use your property for property and I think you would agree with that and Mr. Green would agree with that.

MR. HEFFLEY: That's true.

CHAIRMAN HODOM: I mean you can negotiate from here until Florida freezes over.

MR. HEFFLEY: Well my intent was to guarantee parking, but there's no guarantee on the price, that's negotiable.

CHAIRMAN HODOM: I will tell you this Mr. Heffley.

MR. HEFFLEY: I don't know how to word it otherwise.

CHAIRMAN HODOM: I will tell you this. If the Board decides to grant your Variance, there will be a condition in that Variance or that it will state that you will issue a legal instrument that will be reviewed by our counsel to meet those requirements. I would hope that you would have provided that to us but there's no way that we can approve it without having the required number of spaces and I hope you understand that. I'm not trying to be a hard nose with you at all.

MR. HEFFLEY: No I don't think that. I thought that met the intent of what you were asking for.

CHAIRMAN HODOM: Well it doesn't.

MR. HEFFLEY: Okay. Can you give me an example of what your looking for?

CHAIRMAN HODOM: I'll leave that to counsel.

ATTORNEY MOORE: It would be a deeded restriction.

MR. PLATEL: It's stated in the ordinance Mike.

ATTORNEY MOORE: I'm sorry?

MR. PLATEL: I handed it to Mr. Green it's stated right from the Zoning Ordinance of what you're going to need for that.

MR. GREEN: Page 82 of the ordinance.

CHAIRMAN HODOM: And the Planning Department is going to require the same thing so there's no getting around it.

MR. PLATEL: Bottom paragraph Mike.

MR. GREEN: Yeah, it says the Planning Board attorney shall approve an instrument – legal instrument.

ATTORNEY MOORE: Yes, maybe it will be the Planning Board attorney because ultimately this will have to go before the Planning Board for site plan approval. All this Board is doing is considering of whether or not to grant a Variance from the required number of parking spaces.

CHAIRMAN HODOM: No, well it is that's true part of it is true.

ATTORNEY MOORE: Right well we can make it a condition of approval that...

CHAIRMAN HODOM: Right and you were referring to section 128-52H?

ATTORNEY MOORE: Yes. It would be, you know this is an attorney issue. It would be a covenant or a limitation on the use of 6 Grove Street that would run with the land.

CHAIRMAN HODOM: Right.

ATTORNEY MOORE: I think we talked about this a little bit the last time. For so long as 2 Grove Street is in use as a restaurant facility that would require whatever it is – 20-parking spaces to set aside for the use by the restaurant.

CHAIRMAN HODOM: 25.

ATTORNEY MOORE: 25?

CHAIRMAN HODOM: 25 now, yes.

ATTORNEY MOORE: The legal term or the form it would take would be a covenant or a restriction that would run with the land at 6 Grove Street.

CHAIRMAN HODOM: Any other questions from the Board members?

MR. BROOKINS: Not so much a question but if I can – and I'm not putting words in your mouth but I'm trying to understand what you may be thinking. You're in the process of negotiating to buy 2 Grove Street.

MR. HEFFLEY: That's correct.

MR. BROOKINS: If that does – in a worse case scenario you don't buy 2 Grove Street, someone else buys 2 Grove Street your concern about providing parking from 6 Grove Street to a restaurant that you no longer have a business interest in is creating this kind of tenuous statement that you presented us with, is that at all accurate?

MR. HEFFLEY: No, not at all. I thought that's what the Board wanted from me so that's

what I provided.

MR. BROOKINS: So you don't have a concern about...

MR. HEFFLEY: No I don't.

MR. BROOKINS: Okay, good I'm glad.

CHAIRMAN HODOM: Any other questions from the Board?

MR. MICELLI: I don't have any.

CHAIRMAN HODOM: Just bare with me for a minute I'm just making sure that what we asked for that were in the minutes – I believe you did provide everything. And just to reaffirm what I said earlier Mr. Giacone stated very emphatically that he will not deed over 4-parking spaces for you to use so that does not meet the requirement of the new code.

MR. MICELLI: I know the fellow that was here that did own the urgent care, I mean what's going to happen there on Sundays? His concern was all the cars were in his parking lot that were going into the luncheonette. I mean how do you control that?

MR. HEFFLEY: I don't think it's the problem that he suggested it is. I take issue with her suggesting it's a problem, it's rarely a problem. Most Sunday's people park as close as they can to the restaurant. When their lot is full it's - - often people at the tavern or at the post office or any number of other places or the eight employees or more who work at First Care.

MR. MICELLI: I know because he did raise that concern and then I think the manager...

MR. HEFFLEY: Well like I said before they're happy to take my money for the parking spots. They've never asked me to stop parking there.

MR. MICELLI: I mean just for your sake, running the business I know that the on site manager had a big concern about that.

CHAIRMAN HODOM: Well she did and she wants to be a good neighbor but she has her own concerns.

MR. MICELLI: Thank you.

CHAIRMAN HODOM: Are there any other questions from the Board? Any questions or comments from the audience? Mr. Heffley, Mr. Green have you completed your presentation, anything else you want to add? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in timely fashion. Thank you very much.

Hearing closed 8:20 p.m.

- - -

The next order of business this evening is a public hearing for Variance's under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Front, Side and Rear Yards requested by Stewarts Shops Corporation for property at 33 Frontage Road, Glenmont, New York 12077. The Applicant wishes to place a storage freezer attached to the building and construct an addition, which will encroach into the Front, Side, and Rear Yard setback requirements 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 structure that will create rear yard setbacks pt .55-feet and 1.15-feet to the property line. This will be 49.45 and 48.85-feet shy of the 50-foot setback. The freezer addition located at the backside of the structure will also encroach into the front and side yard setback. The side yard will be 18-feet, which is 7-feet shy of the 25-feet required and the front yard setback will be 39-feet, which is 11-feet shy of the 50-foot required. They will also be moving a storage building that is at this time encroaching 4.2-feet onto the adjoining property and will have a setback of 1-foot, which is 4-feet shy of the 5-foot required. The existing structure is occupied as a convenience market and gas station and is located in a Rural Light Industrial 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 March 1, 2006 at 8:00 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Stewarts Shops Corporation for Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Rear Yards of the Code of the Town of Bethlehem for the placement of a storage freezer and construction of an addition, which will encroach into the minimum rear yard setback requirement at the premises 33 Frontage Road, Glenmont, New York 12077. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the February 22, 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. If you would just introduce yourself to us Mr. Barber and your association to the applicant.

MR. BARBER: Good evening Board. I'm Dan Barber and I'm with Stewarts Shops; project manager with Stewarts and I'm here today because we presently have been approved with this freestanding freezer outside. I was handed the project a few months ago; scheduled to have the project start and had the shed base put in the concrete. In doing such as I was going through the store I realized the scope of work that they have really didn't fit with Stewarts was looking to do at the time. So I looked at the bathroom, this is an old, old store and I said why aren't we putting the bathroom outside and expanding this for the public so we looked into it. Doing so we found out that this property lines; the existing property lines that they gave us as the survey originally to our drafters were incorrect and that's why I'm here today for a couple of other reasons.

This is what our drafters used at the time using as the property lines. They're not correct. These dark lines are the property lines, which put this freestanding freezer, which is now in; concrete base is in over the property line. So now we went back to the drawing board and said we need to come and present this again, lets look at this the right way. This is the proper location for the bathroom if it can be done in this building. There's nowhere else that we can put that makes sense inside to make the flow work. The shed location, which you have in front of you they moved it forward but as doing so on your plan it shows this pathway from the truck stop in front of it. That's not accurate. They would set that shed on that pathway, which to me is not correct it shouldn't be done that way. We should leave it available for the neighbors to be able to cross through. So I presented it as you have in front of you going up front into that green space which is here, which is a dead area that's not being used. The sidewalk is paved, we re-paved it when we did the gas and I just think that – I mean they do use it and to cover it and do away with it I don't think that's the route we should go. Up here we can get a better setback, which is in front of you here and it doesn't implement any of the parking spaces. It will be tight to this parking spot; it will be close to the property line, but I think it's a better location than covering this right here. Can we do this, yes but this would be gone.

CHAIRMAN HODOM: Just let me interrupt you a minute if I may. Have you seen this revised plan Mark?

MR. BARBER: I just brought it; I just had them do it today because I was down there today doing some layout measurements and that's when I picked it up.

MR. PLATEL: The freezer and the bathroom are still in the same location.

MR. BARBER: The freezer, the bathroom is correct. They're going to be in that location. This would be the bathroom if you're looking at the building itself. The freezer would now be torn out and changed going the opposite way getting it off the property line and the bathroom would be as you have it on your plan.

MR. MICELLI: Is that going to be 1-bathroom?

MR. BARBER: That's correct.

MR. MICELLI: Like the one that you presently have on the other side.

MR. BARBER: Yes.

MR. MICELLI: Okay.

MR. BARBER: Yeah, that one on the other side if you been there it's an outside access. This is going to be inside access, nothing outside.

MR. MICELLI: Okay I see what you're saying.

MR. BARBER: We're updating, right. We're trying to make it convenient for 1), the people that work there and 2), for the public.

MR. MICELLI: Now visiting the site this evening that slab is incorrect then, right?

MR. BARBER: That's correct, the slab has to be ripped out.

MR. MICELLI: So that's going to be taken out.

MR. BARBER: That's going to be jacked right out, right.

MR. MICELLI: And the shed location would be closer to the diner side?

MR. BARBER: Yeah, I mean we're looking at the shed location, moving it up there. It's a dead area. They were plowing snow there; we don't have any snow now. We had placed some shrubs, some small shrubs that we added when we did the landscaping here, I think that's a better location than over here. This back here, I looked at that again today putting it here and the blacktop the way this pitch is that's not a good location for it there as well.

MR. MICELLI: And what's going to go in the shed?

MR. BARBER: Well what they have is they use that shed as a district shed for belts, compressors, stuff for a variety of 15 different stores. It's kind of a convenience for the maintenance guys is what it is. We don't have anything connected to the store directly, you know there's no product in there, there's no cups or anything. So here are the setbacks on the building and on the change of the freezer location so we're looking for a Variance for these two here and then the re-location up here of the shed.

CHAIRMAN HODOM: Mark while we're reviewing it can you tell us what the setback requirements are for the shed in that corner.

MR. PLATEL: 5-feet and 5-feet and not in the front.

CHAIRMAN HODOM: 5- feet and 5-feet?

MR. PLATEL: Correct. I think that shows 6.1, what was the other?

CHAIRMAN HODOM: 6.85.

MR. BARBER: Right.

MR. PLATEL: So that would meet the requirement.

CHAIRMAN HODOM: So that there's no Variance required here.

MR. BARBER: Now to help this whole situation, when I go to do this if I can do it and it doesn't work the shed's going to go. We need it but I want to make sure we're satisfying everybody and the way I laid it out today it can be tight to keep it off the property lines.

CHAIRMAN HODOM: Well you move it 5-feet and 5-feet.

MR. BARBER: Right and I do have the room for it.

MR. WIGGAND: Well exactly what would that shed be used for?

MR. BARBER: Well they use it now for just storage for maintenance guys when they come.

MR. WIGGAND: I know there's a building there.

MR. BARBER: Yeah it's a shed sitting on blocks.

MR. WIGGAND: There used to be tanks there.

MR. BARBER: Yeah they use that at one time was tied in to the mediation system.

MR. WIGGAND: That's right.

MR. BARBER: Now whenever they did that when they changed the pumps last year and they use it for belts and compressors and whatever they need to do the coolers and maintain the compressor in the building.

MR. WIGGAND: I remember when it was used for that, but I was just wondering what it is going to be used for now.

MR. BARBER: Same thing, identical. We're just moving it for the guys to do the maintenance in the whole district.

MR. WIGGAND: So it's going to be a maintenance shed.

MR. BARBER: Same shed put up here.

MR. WIGGAND: It doesn't say maintenance shed.

MR. BARBER: Yeah it just says shed on here. It is a maintenance shed with the existing product that's in it now.

MR. WIGGAND: So it will also be used by other people in the district.

MR. BARBER: No there's one maintenance guy for the whole district. He's the only guy that goes in that shed.

MR. WIGGAND: So it's not something that's going to be...

MR. BARBER: No, he's the one that uses it.

MR. WIGGAND: So it will be locked at all times then.

MR. BARBER: Right, exactly. He's the only one plus the store has a key but the store never uses it because he's the one that does the maintenance and he does a variety – I think there's 12 or 15-stores in the district. This is a 24-hour store so we as in me and Bill Dake the owner – we thought that this would benefit everybody here and it's time to step up and make the store – update the store.

MR. MICELLI: How old is the store by the way.

MR. BARBER: I don't have the exact date on this but this bathroom that's on the side, I mean the flooring and everything dates back to the 60's, I mean it's really old and the problem with it is it's an outside access. It's a huge thing with women with children, I mean I've been there a few times already and people talked to me about it. Not only that over a period of time the way this is set up with mechanicals and stuff in the back room it makes it inconvenient for the people that are inside to have to come in, lock the door and then lock this door so they can use it. So it's a variation of doors on both sides.

MR. MICELLI: So you have access...

MR. BARBER: Inside the store, right.

MR. MICELLI: That's what I thought.

MR. WIGGAND: You really don't have a written agreement with the people next to you, Red Star?

MR. BARBER: We do not.

MR. WIGGAND: In other words if they come along and put a fence along there...

MR. BARBER: Oh, they have fence right here.

MR. WIGGAND: But I'm talking about their driving entrance here.

MR. BARBER: Down here?

MR. WIGGAND: Yes right there.

MR. BARBER: Okay.

MR. WIGGAND: If they did that I don't know how you would get around the building.

MR. BARBER: Well if that ever happened, well 1), we could access here and 2), deliver in the front.

MR. WIGGAND: So you do have this little area here that enters onto the highway...

MR. BARBER: Correct, right here. You can drive right up – I mean this is green space right here, this is available; this is all open right here; this whole area is blacktopped is open.

MR. WIGGAND: Thank you.

CHAIRMAN HODOM: Mr. Barber can you explain to me what changed from your application from October 11, 2005 and this application as far as the site plan?

MR. BARBER: The problem that I found when I got into the project was that the property line locations were wrong and that's what made us go back to the drawing board and review where the property lines were. We had the survey done, but it was sent to us and the drafters who drafted this incorrectly marked it on the site plan. They showed these lines here as the property line and they aren't correct.

CHAIRMAN HODOM: I don't know what lines your referring to.

MR. BARBER: The dotted line, the sketch line here that is the line that we presented to you back in October as the property line. That's incorrect.

MR. MICELLI: Well it looks like it's moved in more.

MR. BARBER: Correct.

MR. MICELLI: Much more.

MR. BARBER: It is moved in just a couple of feet off the corner of the building, which

is the dark line that is accurate, the dark line. So instead of moving forward and I'm glad I caught it. I don't think anybody would ever say anything unless this property was sold. We have a problem here, let's look at a bathroom outside and let's resolve this problem.

CHAIRMAN HODOM: What you had on your site plan for your most recent application before this one and the site plan was dated September 12, 2005.

MR. BARBER: Correct and we asked for a Variance.

CHAIRMAN HODOM: And you received that Variance.

MR. BARBER: That's right.

CHAIRMAN HODOM: But on that application and of course now you switched the freezer around because you can't...

MR. BARBER: Right, we haven't done that yet.

CHAIRMAN HODOM: From then it was 6-feet to the freezer from the property line.

MR. BARBER: That's right.

CHAIRMAN HODOM: 11-feet from the building to the property line.

MR. BARBER: That's right, that's not the right property line that you have in front of you, that's the problem.

MR. MICELLI: This is the incorrect one.

MR. BARBER: That's the incorrect one. The 6-feet and the 11-feet are not - - that's not the true property line. The true property line is what you received recently.

CHAIRMAN HODOM: And that's based on the...

MR. BARBER: The new survey that we had done, which if you don't have a copy...

CHAIRMAN HODOM: That you had done in December of 04'

MR. BARBER: Correct. The problem was the survey was sent to the drafters, the drafters implemented the gas and they made an error on putting that site plan onto their computer and locating the property lines and locating the building and everything. They messed up, the drafters did. So we had to go back to the surveyor and get the survey sent to us again and then we realized we're not even close.

CHAIRMAN HODOM: When you say the drafters, who are you referring to?

MR. BARBER: We have in-house licensed drafters. They are in-house; 2-guys who work for Stewarts.

CHAIRMAN HODOM: So this latest site plan agrees with the survey that was prepared by Santo Associates?

MR. BARBER: Yes here is the accurate one. I brought one down for you just in case you wanted to see it. I submitted one the other day and this is the survey that will coincide with the new plan that you have.

CHAIRMAN HODOM: Okay and it's dated 12/13/04?

MR. BARBER: I'm not looking at it but I think it's the same thing.

CHAIRMAN HODOM: Is that what they show there Lennie?

MR. MICELLI: Yes.

MR. BARBER: And it was an in-house error is what it was.

CHAIRMAN HODOM: Well even we make them on occasion.

MR. WIGGAND: No, not to many.

CHAIRMAN HODOM: Let's get into your....

MR. MICELLI: Do you want to take a look at this Mike?

CHAIRMAN HODOM: I have a copy of it, I just wanted to make sure that there wasn't an updated one.

MR. BARBER: And you have that plan in front of you. You see where he has the shed that's sitting now, that's not going to work.

CHAIRMAN HODOM: Okay.

MR. BARBER: Because it's going to sit on the blacktop there and that's why I wanted to move it out of there.

CHAIRMAN HODOM: Now you've made other changes since the last hearing. You've added a 2-door cooler, you moved...

MR. BARBER: They should have been on the original plan.

CHAIRMAN HODOM: But they weren't. You've added a counter layout.

MR. BARBER: Right.

CHAIRMAN HODOM: The bathroom is new.

MR. BARBER: The bathroom is the only thing new and the changing of the freezer location.

CHAIRMAN HODOM: Not from the previous submittal anyway.

MR. BARBER: Okay.

CHAIRMAN HODOM: Anything after 11/03/05 is added information to the site plan that was approved previously.

MR. BARBER: You're telling me because I didn't - - I had nothing to do with going through the approval process. I don't know that.

CHAIRMAN HODOM: And I have no reason to...

MR. BARBER: No, I understand.

CHAIRMAN HODOM: Not tell you the truth.

MR. BARBER: Right.

CHAIRMAN HODOM: Tell me why you can't modify the existing interior bathroom to meet the requirements that you're showing that's now on the outside of the building?

MR. BARBER: Well if you go - - the way this store is set up it's very confined on the counter space and the retail and what they do on a daily basis and how they sell. To change the slab and what drives this whole thing is about 15 to 20,000-dollars of electrical changes right here. This whole wall runs our gas consul, 400-amp 3-phase service. Everything runs in and connects on this system right here. This wall right here with the cooler kind of drives what we can and cannot do in the square footage of the retail area. So to answer your question where the bathroom is and to make that work for inside access everything would have to be redesigned and changed, which they would lose a lot of square footage on the layout of the retail because of the location of the cooler.

CHAIRMAN HODOM: I don't see a lot of changes from what your existing layout is...

MR. BARBER: The existing layout is going to stay it's the relocation of the bathroom. That's what makes this change, from here over to here.

CHAIRMAN HODOM: But why do you have to do that?

MR. BARBER: Why? Because of the cost factor of changing this completely right here. What you're saying is can we use this right here and redesign this so customers can access this? That's what you're asking?

CHAIRMAN HODOM: They access it now.

MR. BARBER: Outside, right. We're trying to update it for them and bring it inside.

CHAIRMAN HODOM: Why can't you have a dual entrance, outside and inside?

MR. BARBER: Because it changes everything right here.

CHAIRMAN HODOM: Well I guess I don't see it because...

MR. BARBER: Well we didn't do a layout for it; it changes this whole layout. We can't ask customers to come down through here. This wall can't be changed, this wall could be changed so we do a full access right here that means our whole store would have to flip flop and it doesn't operate this way with the cooler over here. You would have to change the cooler location, everything flows when you walk in and customers can – they can shop in the store here. They can get what they need in the beverage area and then back out through the store. If this was completely changed all your counter space would be over here, your registers would be over here. The gas pump location is kind of harder to see – biggest reason is flow of the store and cost factor but you would have to flip the store right around. We tried to keep the bathrooms - - if you look at some of our stores the bathrooms are right behind some of the counters and we've had a lot of theft problems with them so we've gotten away from that and we get them away from the register areas.

CHAIRMAN HODOM: You're currently removing the existing freezer back in the upper left hand corner.

MR. BARBER: That's correct.

CHAIRMAN HODOM: What is that area going to become?

MR. BARBER: That's going to become the storage area right here that they desperately need. The store is so compact in the back they don't have enough room to bring their stock and product in. It all sits on the floor; it all sits in the way. I mean they bring it in right now, a lock goes on the retail area until they can get to it and a lot of it sticks right in this area, which is a huge problem because right now when they load it up they can't even operate in here. So we wanted to move it out of there so they give that counter – or that shelving area that they need in the back here, open it up, give them a 3-bay sink. The old sink really doesn't work well for washing their utensils that they use. We've gone to a stainless 3-bay in all of our renovations and new stores.

MR. MICELLI: Let me ask you a question, how does the restroom play a factor with the

store anyway? Is it how many people sit down at the booth, I mean is that optional to have a restroom or say if you didn't have it? Do you have to have it, is that mandatory?

MR. BARBER: We have to have a bathroom, you know I don't know how the old grandfather clauses work, but the way it's set up this is not a must, we want to set up for the customers. We have a lot of complaints; you wouldn't believe the complaints these girls deal with on a daily basis because of where this is.

MR. MICELLI: Because they have to walk outside.

MR. BARBER: Sure a lot of people don't like it and that affects – that affects the whole process of people wanting to come to the store, residents.

CHAIRMAN HODOM: Are the patrons complaining or are the employees complaining?

MR. BARBER: Oh no, the patrons. Constantly the people...

CHAIRMAN HODOM: So none of your employees complain that they have to walk outside?

MR. BARBER: They complain all the time. They complain everyday and I don't blame them. I would do that I mean, there's some young girls there and for them to work and especially if there's one in the freezer, you know she wants to use the bathroom this girl has to come out and run the store but she's got to go outside and walk around. Right now they have access to come through here but this door has to be locked and then they come in and use that door, I mean it's kind of an inconvenience to the whole process the way it's set up.

MR. MICELLI: It's probably not a safe – I mean there's probably a safety concern to at nighttime.

MR. BARBER: Well that's one of our concerns. We have lighting right here on the soffet, there is a light on the building here. It's kind of dark, but once again it's an inconvenience.

MR. MICELLI: Do you have shrubs back there?

MR. BARBER: We have shrubs along this side right here that come right up approximately to the edge of the door, coming around to the back corner here and we have a sidewalk right here.

MR. WIGGAND: So which one of the 3-drawings here are we going to be using?

MR. BARBER: We like to look at the drawing – this hasn't changed except for the bathroom location, this retail area is all the same none of it has changed. We'd like to change this into an open office and put the bathroom over here and move the shed up in

the front corner.

MR. WIGGAND: Now that bathroom over there will also have an outside entrance?

MR. BARBER: No, all inside.

MR. WIGGAND: Where do you have your outside bathroom then?

MR. BARBER: It's over here where it exists and we'll update it with new handicap regulations. We put a baby changing table in there I mean it's set up the way it should be.

MR. MICELLI: That would be just 1-toilet?

MR. BARBER: Yes, 1-toilet, 1-sink.

CHAIRMAN HODOM: What is this area in here?

MR. BARBER: This area here? That's all your counters for your soda, your potato chips, all your grocery products that the store carries.

MR. WIGGAND: Can we rely on something showing us that that is what you're going to do?

MR. BARBER: What you have now with the layout here, it has been approved for this. Now we are changing it just to put the bathroom over here. This is an error; we really have no choice but to change this.

MR. WIGGAND: Oh you have to change that one.

MR. BARBER: Yeah because it's sticking over the property line now. It's a freestanding freezer. It runs this way, that's what it was approved for and it sits on the corner of the property 2-feet so we're addressing the fact that we made an error and in doing so we'd like to give the customer an access bathroom inside the store.

MR. WIGGAND: So all we're dealing with is that little 2-foot space that you can go through there.

MR. BARBER: Right. Well we have no reason to go through here. There's no reason to go through at all.

MR. WIGGAND: Not even because of the bathroom?

MR. BARBER: The bathroom has access inside.

MR. WIGGAND: You're right.

MR. MICELLI: And the sidewalk does give traffic from the truck drivers, which would make sense to keep that there.

MR. WIGGAND: Did you design this?

MR. BARBER: I didn't. The drafters at Stewarts did, I just brought back the information after we found the error – the only reason I found the error was because I questioned the bathroom – can we do a bathroom? And I had the drafter pull it up and I'm looking at the drawing and I'm saying something is not right here these property lines aren't accurate and that's how I got into this. So I brought it back to Bill Dake and I said we have a problem here, do you want to consider an outside bathroom so here we are.

MR. MICELLI: It's a good that you caught that before they did all interior work on it.

MR. BARBER: Right.

MR. MICELLI: The 2 by 4's, the sheetrock and stuff.

MR. WIGGAND: Where is the bathroom on your plan now?

MR. BARBER: It's right here now.

MR. WIGGAND: And that's the walk going to it?

MR. BARBER: Yeah this comes off the blacktop because the trucks park here.

MR. WIGGAND: I'm there every morning at 6:00 getting all the supplies for my home, but anyway that area there is well traveled by people that can pull in there quickly, enter the store and back out.

MR. BARBER: That's right. We're not going to do anything with that area; nothing is going to change. The only thing we're going to do is close off the bathroom door, everything is going to stay the way it is and put the bathroom side. That's what we'd like to do for the customers. I know one thing, my wife, if she went to that store wouldn't walk out there. She would go someplace else and it's old and it's out of time, the bathroom is.

MR. MICELLI: You probably get traffic in the diner to I bet people go over there.

MR. WIGGAND: Are the handicap parking spots changing at all?

MR. BARBER: No.

MR. WIGGAND: With the two of them right there.

MR. BARBER: Nothing is changing what so ever here. This has been approved; it's all

been upgraded. They've put a lot of money into this, nothing is changing except taking that area that they plow and putting that there and the reason why I had the drafter do that is because it didn't make sense covering this for these people.

MR. WIGGAND: I think that's a good idea, that corner up there. It's kind of by itself.

MR. BARBER: It's by itself; it's out of the way, you know and I'm looking at – and they came to us when we originally went back to the gas and said we would like to have a paved road. Chad Fowler did the gas and we had that conversation. I said then I can't do that to them; I can't cover that.

MR. WIGGAND: One other question, the property line between that and the diner – there's no change in that property line because over time we've heard from that lady that owned that diner. There's no change in that property line from what it is now.

MR. BARBER: That's right. That's the new survey and that survey right there indicates where they are; that is accurate; that was done for the gas reason.

MR. WIGGAND: I see the fence there.

MR. BARBER: I don't know the history of that but that fence tells us it's ours. I will tell you one thing and I've been with the company 4-years now and they'll bend and stretch over backwards to keep the neighbors happy.

MR. MICELLI: They do.

MR. BARBER: I mean we do a lot of things, I mean I spent 1700-dollars here when we had that warm spell 3 or 4-weeks ago on a fence up in Saratoga just because the lady has a trailer there and she didn't want to see the store anymore. The building has been there since 97'; we put the fence in.

MR. WIGGAND: There you go. Well you've always been a good neighbor.

CHAIRMAN HODOM: Mr. Barber, just so it's clear in my mind, the individual that was here for the previous hearing had no plans on doing any changes to the bathroom.

MR. BARBER: Correct.

CHAIRMAN HODOM: So when you came on board it was your suggestion to...

MR. BARBER: That's right, to build.

CHAIRMAN HODOM: And there's no way that you can modify either relocate that existing interior bathroom or modify it to meet the needs - - what I'm trying to do is minimize a number of Variance's your requesting.

MR. BARBER: I understand. If we do anything with it, it'll be to clean it up and leave it the way it is. On a business standpoint with what the store does and the amount of traffic it does and how small it is, this is the layout that works because of the location of the cooler. That's the flow; that's how it always worked. You would have to change this location; you would have to flip the store around and - - major expense for what we do for it, we would leave it alone.

MR. MICELLI: If a customer comes in with a child what is the inconvenience, what would they have to walk by the milk coolers to go all the way around to the access?

MR. BARBER: For the new bathroom?

MR. MICELLI: No for the old one, say if they don't like going out...

MR. BARBER: They can't go in the back; you can't use that.

MR. MICELLI: Oh, that's in that back to go that way so it's behind where the cash register is.

MR. BARBER: Right now they can't because we can't allow them back here because of security reasons.

MR. MICELLI: Right.

MR. BARBER: This is access just for people who work here, it's behind here and no they have to go around or they don't use it.

MR. MICELLI: Because that's behind, that's out of the store.

MR. BARBER: That's right and that's why I said - - I said Bill, come on I mean where this company is today we have to offer something better than this, I mean this is my doing on the bathrooms and I'll take the hit for it.

MR. MICELLI: What I'm saying is it's not impossible if they didn't want to go outside, that would cause for the clerk - the employee and the customer.

MR. BARBER: That's right and a matter of fact they did that for quite a while and they had a lot of cigarette theft of a period of time; they stopped it.

MR. MICELLI: Okay.

MR. BARBER: Because the cigarette rack is right here in the back.

MR. MICELLI: I was thinking that the door is by the ice cream display.

MR. BARBER: As a matter of fact not to long ago they had someone come back here

and use the bathroom and they left this door open. They don't know why the door was open but the clerk had walked out there and the door was open; who knows what was going on. So that stopped that and I think that was a year ago.

MR. MICELLI: Just thinking about it because if that door is open you can put product to the outside if a car waiting on the side.

MR. BARBER: That's right. I mean nothing was stolen but that happened.

MR. MICELLI: Right, there's always a possibility that could happen.

MR. BARBER: Right.

MR. MICELLI: Thank you.

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

MR. BROOKINS: No.

CHAIRMAN HODOM: Kenny?

MR. UMINA: No.

CHAIRMAN HODOM: Mr. Barber have you had any opportunity to discuss these changes with TNT Red Star Express?

MR. BARBER: No I haven't.

CHAIRMAN HODOM: Has anyone from Stewarts?

MR. BARBER: I don't believe so, not that I'm aware of. I know this was a public hearing I thought if there were concerns they might have shown some.

CHAIRMAN HODOM: Well I just think that it's a good neighborly thing to do is to show it to your neighbors to see if they have any concerns.

MR. BARBER: Sure, right.

CHAIRMAN HODOM: But you're right they were notified by the Town.

MR. BARBER: Yup. See normally Jennifer Howard applies for these and if there's any concern Chad Fowler or Brandon because they - - Chad's been in the company 19-years, they'll come to the Board meeting but they were busy so you know this is my project and I told them I would present tonight. So to answer your question I have not and I know neither of those guy's have mentioned anything to the neighbors.

MR. WIGGAND: We've never heard any real problems from them as far as having a problem with it. Otherwise they would be here if they thought there was any kind of a problem.

MR. BARBER: Right.

MR. MICELLI: Did you give any consideration of maybe sliding the bathroom more up so you fit in with the setback easier?

MR. BARBER: Up in here?

MR. MICELLI: Yes, the side setback.

MR. BARBER: Well there's a heating unit right here that's on the side of the building so that was another factor. I'd have to tear the wall apart, reconstruct the wall and relocate the heater and it's back to how much are you going to put into this to make it feasible?

MR. MICELLI: Right, okay. By doing it where it is it eliminates that obviously. So you'll be before the heater.

MR. BARBER: Well if you look at the side of the building there's a heater, it's just past it.

MR. MICELLI: So you're going to be in between the heater and the air pump.

MR. BARBER: Correct.

MR. MICELLI: Okay.

MR. BARBER: As a matter of fact I measured it out there was 21-feet from the corner of the building to that – the conduits or whatever the pump wiring is - - well not here obviously it's somewhere right in here and it fits on the walk through as far as location wise.

MR. MICELLI: When you walk in the store then where the one table is by the window you'll have access straight – you'll go past that to the right and right into the new...

MR. BARBER: Walk this way or this way right into the bathroom.

MR. WIGGAND: Where are the tables there – where you're pointing to now?

MR. BARBER: Like inside the store?

MR. WIGGAND: The table where they set to...

MR. BARBER: Existing – these are locations right here.

MR. WIGGAND: That doesn't change does it?

MR. BARBER: Nothing is changing, well the layout is changed when we did the inside layout this became the 1-booth and this became the booth over here or the 2-booths over here so three, still they just moved. That was part of the inside.

MR. WIGGAND: They are filled everyday, and everybody seems to get along there.

MR. BARBER: He's got a good staff and he's an excellent manager. They stock the store very well from what I see.

CHAIRMAN HODOM: Are there any other questions from the Board.

MR. JASINSKY: I'd like to make an answer as a resident of the Town.

CHAIRMAN HODOM: Please come up here and introduce yourself to us so you're on the record.

MR. JASINSKY: Robert Jasinsky and I usually speak before some of the other Boards on different projects and everything. I just want to say as I said - - I heard you talking about bathroom inside/outside and all the traveling I've down to Florida and everywhere else. It's got to be a problem on safety. The inside bathroom is the way to go. You're having a change with 9W down there and you've got other stores that are south that are drawing people with an increase in traffic and they're passing by this area so one of the safety concerns is an inside bathroom. You walk into a lighted store and you go into the bathroom - the women use it that way; it's much safer and it's a consideration that should be taken by this Board especially with the changes that place on 9W. Thank you.

CHAIRMAN HODOM: You're welcome, thank you. Any other presentation Mr. Barber?

MR. BARBER: No, chairman that's all I have.

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

Hearing closed 9:05 p.m.

On a motion made by Mr. Umina, seconded by Mr. Brookins, and unanimously carried by the Board, the minutes of the February 15, 2006, meeting were approved.

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

Meeting Adjourned: 9:15 p.m.

Respectfully submitted,

Secretary