

**TOWN OF BETHLEHEM
BOARD OF APPEALS
March 15, 2006**

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

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

Michael Moore Attorney to the Board

Mark Platel Building Inspector

ABSENT: Robert Wiggand

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

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for a Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Lot Width and Minimum Front Yards requested by Thomas & Laura Paonessa for property at proposed 21 Grove Place, Albany, New York. The Applicant wishes to construct a single-family dwelling, which will not meet the minimum lot width and minimum front yards 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 seeking Variance's from width of lot and minimum front yard setback requirements. The proposed lot will have a lot width of 95-feet. This is 5-feet shy of the 100-foot required. Also the applicant is proposing to reduce the setback on the corner lot front yard from the 35-foot required to 25-feet. The proposed lot is located in a Residence A District and is vacant land.

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

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday March 15, 2006 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Thomas and Laura Paonessa for Variance's under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Lot Width and Minimum Front Yards of the Code of the Town of Bethlehem for construction of, a single-family dwelling, which will not meet the minimum lot width and minimum front yard requirements at premises of proposed street number 21 Grove Place, Albany, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the March 8, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we 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. Hite you can make the presentation for your client if you would just introduce yourself to us and your association with the applicant.

MR. HITE: Thank you Mr. Chairman and members of the Board. My name is Paul Hite and I'm a land surveyor and land planner in Delmar, New York. I'm here tonight representing the Paonessa's in the hopes of getting the Variance's that we've requested for these lots that we have shown here, here and here and the one for this public hearing is on this lot that you see here. If you don't mind I'd like to give the Board a little background on this entire subdivision so that you'll understand the reason for our request and I think it will make it clear to all of you if you'll indulge me a little bit.

The Three Hill subdivision of which all these lots that you see throughout here and here and here was at one time consisted of – I'm guessing from a neighborhood of probably 1,000-lots established back in 1913 and at that time no planning board was around. The properties are located in the Town of Guilderland and the Town of Bethlehem. All the lots were laid out at 30-feet wide and anywhere from 90 to 100-feet deep. Most of the people throughout the years have bought lots in here – bought 2, 3, 4-lots and went to the building department and got a building permit and I'm not even sure if a building permit was required back in those days but all the lots just about are built on the entire subdivision known as Three Hills. The only lots that were finally left over were these in this area and some in here that are basically are unbuildable lots. The Thruway went through here, as you know a number of years ago and took a tremendous number of lots so there was some on even the other side of the thruway.

Some of these lots as you can see are small, 90-feet wide by 90-feet deep. Some of them they bought for 5 and 6-lots and even as many as 7-lots, 8-lots but the configurations are all different throughout the whole thing. So in the early 80's the Paonessa's purchased all these remaining lots and I think they were just about all the lots that were left in the subdivision at that time. The rest had been sold out to someone else and I have the names up here and I won't go in and - - all that. It's just that the only one's that Mr. Paonessa and his wife own other than these on this proposed subdivision are these here and they're located in what we call Federal Wetlands so they couldn't be built on anyway. So the Paonessa's built their residence on this number of lots that you see here and I believe therefore ever since the early 90's. The building here was constructed on a number of lots that ran in this configuration – all of these lots.

A friend of the Paonessa's wanted to build a home and they came to him and said we'd like to buy enough lots here to build a house – have you build us a home on it. We went to Mr. Flannigan who was the building inspector at the time and he said that I will give you a permit to build 1-lot and if you want to do anything else you will have to go through subdivision procedure which at that time, you know meeting all the requirements of that zoning code. This was done and nobody paid any attention to the fact that there was only 95-feet left here because that met the requirements of the lot at that time in the zoning code. The house was built – sold it off and later on the Paonessa's said look, we've got these lots sitting here, let's subdivide them and see what we can do, you know come up with some nice lots. Well we made a layout and we went in before the Board and made a presentation, we didn't have this cul-de-sac proposed because we didn't feel that it was needed there because it was only going to be a couple of lots down here. I have proposed a T-type turn around. Well the engineer at the time said we can't do that because this street dead ends and can never be extended so the rule says you've got to build a cul-de-sac. Through about 6-different layouts trying to not effect the single-family home of the Paonessa's themselves this was laid out as far as we could get it this way and that basically was okay but then we found out the Corp had changed their rules – the Core of Engineers, they changed their rules. They don't want a building placed within 50-feet of these Federal wetlands. So it was back to the drawing board again – lay it out again so that we had the 50-feet in here and can get buildings in here in these 3-lots. Even though it does affect this I managed to keep it as far away from it as I could and in doing that I have proposed to basically close off this street because it's a paper street and it's never going to be built. It was our feeling that it was never going to be built and make this 40-foot wide strip of land part of these lots.

In some of the deeds that were in this subdivision there was really a weird clause and we've never been able to figure out why the attorney that put it in there did but I will basically tell you what it said. We convey like these 4,5-lots and then in it said and also intending to convey any right, title and interest that the party of the first part may have to all the streets in the subdivision and this was in some of the deeds and was not in some of the deeds so we just felt his intention was to try to make sure that everybody had a easement or right of way to get to their lots that they bought. And it also said further after that that subject to the rights of the property owners to develop the streets to develop their land as shown on this subdivision, well on the old Three-Hill subdivision. So the

Planning Board attorney reviewed that and he said no, you cannot use any part of these streets as part of your lots. You have to leave them alone.

So back to the drawing board we went again and we came up with this and we thought we had everything settled, everybody seemed to be relatively happy with it until the Engineering Department said that we had to get into here because of this drainage ditch that comes under the thruway – comes down through here and we had to relocate that – pipe it, you know the whole bit. I said we can't afford to do that we're already building a cul-de sac and this thing – engineering wise it didn't make sense of what they wanted us to do here. So we went round and round and all at once we got caught up in the moratorium. So after the moratorium I managed to meet with the new Town Engineer and we worked out this problem and again I thought we were okay and they said no, since you did not have preliminary approval your lots don't meet the new zoning. I said okay, recourse, go to the Board of Appeals and make your case with them.

So that's why we're here tonight and I hope I explained, you know in enough detail that you now know why I'm here so this lot we only have from here to there – 95-feet. There is no more land to make this a bigger lot and it would have met all of the requirements in the Zone that we proposed it for. It's a beautiful lot, I mean absolutely a beautiful lot and it's 95-feet wide, only 5-feet short of being the 100 that's required today and when you do that and then put in – it's now required instead of – on a corner lot we used to have what they call a fluxuating setback lines. We had 20 and 25, now it's required a 35-foot setback from both streets and 10-side line so when you do that it reduced the building envelope width to 50-feet. Most – the colonial type homes, which is what Mr. Paonessa builds unless he goes into a much larger subdivision and builds huge homes like he did over in Loudonville.

His colonial type homes such as the one that he built here and I have a picture of that, here it is pass it around if you want to take a look at it. It's a very nice home, very well built. The people love it, they take care of the place; it's a very nice home and that's the type of home that he builds in this type of a subdivision, which would fit in with his home and the surrounding area. So that building is about 53 to 54-feet wide and most colonials will range from 52 to 54-feet wide, so you know I can't get it on a 50-foot wide lot so that was the reason for asking for – and since this street I don't think will ever be built – it's a paper street and back into a wetland. We're just asking for a Variance to take it back to what – even 5-feet or within what it would have been, you know under the old rules and regulations. The house will then fit in here nicely and make a nice lot along with the width Variance. If the Board doesn't feel they can't grant something like that then, you know I guess we would have to live with it and come up with some other kind of design it just seems to be that you know to make an envelope that you can build a nice home on it would be recommended to do so. It more than meets the square foot area, meets lot depth. The only thing it doesn't meet is the width of the lot and it actually meets the setback lines it just makes the envelope too small I think so that was my reason for making the request for 10-feet. I believe I've explained the reason we're here and why and I'll try to answer any questions that the Board may have.

CHAIRMAN HODOM: Paul on the site plan that you submitted that the Board members have, you did comply with the corner lot setback requirements. It shows 35-feet, 35-feet.

MR. HITE: Right and that's what I thought I was supposed to be showing. I showed it at 35 that required today. So in order for you to see what I was requesting I showed it in red so that you could see what was happening.

CHAIRMAN HODOM: So on the westerly property line where you show 35-feet on the site plan that was submitted.

MR. HITE: Right.

CHAIRMAN HODOM: What are you proposing there?

MR. HITE: To make it 25 and allow us to have a 60-foot wide building envelope because before this lot - - we could have had a 20-foot offset line over here and a 25 off of this. Right now we would have 35 and 25 if you granted the Variance.

CHAIRMAN HODOM: The building envelope that you show there currently with the setbacks that you show currently there that concur with the present zoning code gives you an envelope of 50-feet by 130-feet.

MR. HITE: Right.

CHAIRMAN HODOM: The other homes, at least by scaling it from your plan all fit in within that dimension.

MR. HITE: No that one doesn't. The home that's here doesn't fit into that 50-feet.

CHAIRMAN HODOM: Well if you scale that - the widest width which is the westerly side is 40-feet.

MR. HITE: Okay.

CHAIRMAN HODOM: The length of it is 57-feet.

MR. HITE: Right, which is where it would set this way just like setting in here, 57-feet.

CHAIRMAN HODOM: But you could go to drive to the side or off of Bower Avenue to fall within that envelope, isn't that correct?

MR. HITE: Well if I did it the way you're talking about turning the house and facing it out to here...

CHAIRMAN HODOM: Correct.

MR. HITE: If I did that, 35 and 40 would be 75-feet – would leave me a 20-foot back yard.

CHAIRMAN HODOM: Well you have 35 and 50 now.

MR. HITE: If I take this house and turn it around, the depth here is 40-feet and I take 35 plus that 40 is 75 would only leave me 20-feet back here. The lot is only 95-feet wide.

CHAIRMAN HODOM: Correct.

MR. HITE: And I need 25-feet for a rear yard.

CHAIRMAN HODOM: Well I think it all depends on what you want to call the rear yard on a corner lot, isn't that correct? You could still have the 25-feet at the top – call that the rear because you have 2-fronts and if the 10-feet that you show there is still a side yard by the existing zoning, actually by the previous zoning as well.

MR. HITE: But it only gives me a 20-foot back yard total no matter how I do it.

CHAIRMAN HODOM: No, no if you used the dimensions that you show on this plan, 35, 35, 10 and 20, you could put this house within that envelope and still meet all the requirements because that 25-feet that you show up on the northerly end of the lot can still be considered as a back yard.

MR. HITE: Right I realize that but the house you've got to look at it in this terms – legally I'm meeting what you're talking about but if I take this house and turn it and face it on here at 35-feet and then 40-feet for this house is 75-feet. That only brings leaves me for the back of that house to this line 20-feet...

CHAIRMAN HODOM: Okay.

MR. HITE: Or - - I can make it a sideline or whatever it's still only going to be usable 20-feet of back yard. Yes it would meet the side yard requirements but you would only have a 20-foot back yard and that's not much of a back yard.

CHAIRMAN HODOM: well, but then you would have if you took the 35 and lets say that's 60-feet long, that's 95 and subtract it from the 190, you would have 95-feet.

MR. HITE: Okay.

CHAIRMAN HODOM: Side yard would be considered the back yard, that's the way I look at it. Certainly this lot as I see it – it meets all the requirements of the existing code except for the 100-foot width.

MR. HITE: Right.

CHAIRMAN HODOM: That is 5-foot shy.

MR. HITE: Right.

CHAIRMAN HODOM: Those are the points that I wanted to make.

MR. HITE: Okay and I'm not disagreeing with you that I don't meet this but what I'm saying is when you take this house and set it on there even though you're calling this now the side yard, you're going to have a 20-foot side yard on that side but the back of the house being the side of the house so when you walk out of the back of the house you've got 20-feet from the back to that side line. I mean for that type of a home you'd certainly wouldn't do that you would just say I'll have to re-design that house and put a different type of a house on here that would fit within the 50-foot envelope because 20-feet just doesn't give you any kind of a back yard to do anything in so that was the reason, again the reason I was asking for this Variance to give me a chance plus not only that but I'm facing that building then out into here and you know, the best way to do it is to face it out here.

CHAIRMAN HODOM: Well let me ask you this then. The proposed building that you submitted with your application, center hall colonial, 2-story, there again if the scale is correct the width of the house in the front is 54-feet.

MR. HITE: Right.

CHAIRMAN HODOM: The depth of the house from the garage to the rear 2-foot extension is 40-feet. Again that house will fit on that lot.

MR. HITE: And again...

CHAIRMAN HODOM: All be it give you 20 or 25-foot backyard.

MR. HITE: 20-foot backyard, right.

CHAIRMAN HODOM: But I would also say that in this community a lot of lots with 20-foot back yards on a corner lot or even less.

MR. HITE: Well they must be some really, really old houses because I haven't seen one in the last - - unless it was a situation where - over off of the new subdivision off of Murray Avenue went on through.

MR. PLATEL: Haswell Farms?

MR. HITE: Haswell Farms and they had large, large areas of Federal Wetlands and they went in and at that time the Corp wasn't requiring this 50-foot distance away from the wetlands and some of them with 20-foot backyards. If you go through there now you'll find a number of them that's been filled in that wasn't supposed to be filled in or one of

the reasons that the Corp went to this – they were getting calls everyday from people wanting to know if they could fill in some of that wetland so that’s the reason they said no more of that, 20-feet was just not enough for these people to call and ask you to fill in some of the wetlands to make a bigger backyard.

CHAIRMAN HODOM: Well I understand your point of view and I hope you understand my point of view that the building envelope that you show will certainly accommodate a satisfactory home, actually it will satisfy a 6500-square foot home within that building envelope.

MR. HITE: Right. No argument with you there at all Mr. Chairman because my point in doing this was that only a year and a half ago if this thing – we could have worked it out to be approved, this lot would have been in this configuration and this house would have been able to place it on that lot and they’d be living in it today because this paper street I don’t think will ever be built, you know you just made a nice lot and if we have to live with it we can if the Board doesn’t feel they can grant the Variance then we’ll live with the 50-feet but the building will have to be redesigned to place some 49-foot wide building, you know looking out into this direction because the 20-feet, I mean you’ll never sell that house I mean you can build it up there and the first thing that some lady of the house will go up there and say I’m not putting my kids there in a 20-foot back yard looking at these people. It just won’t sell.

ATTORNEY MOORE: I have a question Mr. Hite, is the Planning Board or its counsel state why they wouldn’t allow any construction in the – that paper street when it looks like – am I reading your map correctly further below there, there appears to be some construction in those other paper streets, driveways?

MR. HITE: Yes there’s driveways, you can put driveways in there and people put, you know pipe easements and stuff like that but you just can’t put a building in there.

ATTORNEY MOORE: Did they say why they didn’t what you to mess with this...

MR. HITE: Well they said because of the clause in those deeds that they felt that there was multiple ownership of all the streets so therefore we could not take that that there was a possibility that maybe owned by someone else and make it a part of our lots.

ATTORNEY MOORE: Okay.

MR. HITE: The only thing we could do is to use it for street purposes.

ATTORNEY MOORE: Was that a recent determination?

MR. HITE: About 2-years ago, just before the moratorium.

ATTORNEY MOORE: Okay.

MR. HITE: And we researched and we researched until we turned blue in the face and we couldn't come up with it. Even the title company said well, we don't exactly think that's the case but you know I wasn't about to fight with the attorney to the Board.

ATTORNEY MOORE: Without hauling everybody into court you don't know.

MR. HITE: I mean we've already been 10-years with the thing so we just said we'll do what we have to do.

CHAIRMAN HODOM: Paul on the - - you've already answered the question why you couldn't borrow 5-feet on that paper street because the Planning Board attorney said - and do you have a date of when this subdivision was submitted and approved previously? Or was it never approved previously?

MR. HITE: April 29, 1913.

CHAIRMAN HODOM: And that was?

MR. HITE: That's the only approval that's ever been given to this subdivision that I know of and maybe Mark can correct me but until recently under our new rules and regulations I did what they call a land division which was to combine a number of these 30-foot wide lots on the corner of Arche Street and Inman Avenue and made a building lot out of it.

CHAIRMAN HODOM: Okay.

MR. HITE: And then the one that the Town line cut through just like that and we were able to take these lots in the Town of Bethlehem and make a building lot out of it and the Town of Guilderland had this one over here; they said it was okay.

CHAIRMAN HODOM: And then Paonessa's purchased the property - when was that?

MR. HITE: Around 90' or 91', I believe 91'. He actually built - purchased at different times; I think these were in 91' - correct me.

MRS. PAONESSA: No, where my house is?

MR. HITE: Yes.

MRS. PAONESSA: That was in the 80's.

MR. HITE: These in the 80's and the rest of them were in the 90's, right.

CHAIRMAN HODOM: And the reason they weren't developed in the 80's or 90's - is there a specific reason why they weren't developed back then?

MR. HITE: Tom was building in other places and never had any need to or reason to and so around 90' – somewhere around 94' – I believe it was 95' he said, you know I want to do a layout in there. One of the reasons was that we were having problems with the street and we finally got that straightened out, that deed to the street that he had the same rights as everybody else did in the subdivision to develop the streets to improve his lots. We went through quite a rigmarole over here that some of the neighbors said that he didn't have any right to do that, well we got that straightened out and under that deed reference there says subject to the rights of the other people in the subdivision develop their lands. I'll be glad to give the Board a copy of one of those deeds if you want to see it. That's basically what it says.

CHAIRMAN HODOM: It might be helpful.

MR. HITE: Okay.

CHAIRMAN HODOM: We'll have counsel look at it and explain it more fully to us as to what it really means.

ATTORNEY MOORE: I'll talk to my counter partner on the Planning Board to just so we understand exactly what he's concerned about.

MR. HITE: Yeah, he's been through it with me. We've had a few conversations.

CHAIRMAN HODOM: Was a new subdivision proposed to the Planning Board?

MR. HITE: Yes. I think we went through like 4-presentations or something like and each time we would come up with something else – we would redesign it and as I said it finally got down to this was pretty much okay and accepted it's just that we ran into this problem down here and that got into the moratorium.

CHAIRMAN HODOM: And then once the moratorium was lifted you got tied up in the new zoning.

MR. HITE: And then they told me these lots – I couldn't have them because they didn't meet the new zoning and it's clear that I think these are probably the only lots left in that entire area to develop.

MR. MICELLI: When was the first time it was submitted to the Planning Board?

MR. HITE: I'd have to go back and look to be honest with you but it's probably I'm guessing maybe 7 or 8-years ago or something like that. One of the other things we ran into also was we had to – it was determined by the Planning Department that we had to do an archeological determination on as to whether it was significant or not. I'm not sure if you guys know what that's about – some test that can get to be real hairy. I got a letter out of that organization that – nothing, forget it, go on about your business. It took considerable effort.

CHAIRMAN HODOM: If you didn't receive the Variance for the westerly front yard from 35' to 25' because it doesn't appear that you can change the lot width, you can't purchase any property or can you? Can you purchase property from Trichilo I mean have they been contacted?

MR. HITE: I don't think we've ever approached them. They've got like 85-feet now so you would be reducing it more if you purchased from them and we were very, very close on the side yard and it would be like 12-feet and I don't think we could purchase enough to make it work. It would probably through this in violation, what the scale Mark, like 12-feet or something?

MR. PLATEL: It's scaling right around like 14, but I don't if the house is located exactly where...

CHAIRMAN HODOM: What the side yard here?

MR. PLATEL: Yeah, they would have to have a 10-foot side yard.

CHAIRMAN HODOM: I scale 15, but then by doing that if they could purchase 5-feet that would reduce the property width by 80 so then that would put them out of compliance with the new code to right?

MR. PLATEL: That would make their lot less conforming which you can't do either so they would be in for a Variance for that to.

MR. HITE: That's the reason I didn't even think about it because it would be making it less conforming.

CHAIRMAN HODOM: I'm just looking for ways to help you out.

MR. HITE: I appreciate it, believe me I've run this thing in every direction known to computer possibly to lay a building on there.

CHAIRMAN HODOM: Okay.

MR. BROOKINS: Paul what's your understanding of what can be done with the wetlands portion near the intersection of the undeveloped Norfolk Street and Bower Avenue up there.

MR. HITE: The present rule under the Corp of Engineers is that you can disturb 1/10- of an acre without a permit. If you go over that then you have to go through the permit process and that is something that you - - I just went through 2-years getting a permit to put a driveway in off of Wemple Road. I mean it's incredible, absolutely incredible.

MR. BROOKINS: Okay, related question to that following Bower down to the paved

portion, is that maintained by the Town?

MR. HITE: Yes.

MR. BROOKINS: So it actually is Bower Avenue.

MR. HITE: Right, all the roadways in the entire subdivision either Guilderland or Bethlehem or what they call user roads – as people build a house they extend the road up. The same thing - - and finally after a number of years the Town took them over and maintained them in fact I think they even built this one here because back in the 80's I believe there was sewer put through here, it went down through here and the Town when they built this in order to get a roadway up in here to build a sewer and then it got paved and now they maintain it through the years. Also the same thing up to here and then all the other streets in that entire subdivision...

MR. BROOKINS: I was out there yesterday and at the end of Grove where the pavement ended and then walked in there, it was getting a little soggy but I was wondering whether they were driveways, roads, as they went beyond those...

MR. HITE: We extended from this point that you see here.

MR. BROOKINS: Yes.

MR. HITE: That was about 3-years ago I think extended up to here to provide the Trichilo's with a driveway because before they used to have to come this way over a gravel driveway and it just got to a point where it was total maintenance all the time trying to keep the thing so you could traverse it. So Tom said, you know lets build this thing up here and take care of it and get it over and done with because we're going to have to get into here sooner or later anyway so that was done. And I said Tom, I mean Mr. Paonessa so he spent that money to bring this driveway up to the limits of their lot.

CHAIRMAN HODOM: Which eventually will be have to be brought up further to tie into Bower anyway.

MR. HITE: If this is approved – if the subdivision is approved it will have to be around the cul-de-sac and out and tied into this.

CHAIRMAN HODOM: Right.

MR. HITE: That's one of the other things that we ran into and that the Engineering Department - - all these streets are 40-feet wide, every one of them in the subdivision, 40-foot wide and this being considered, as far as I was concerned, was a Town road, maintained, built there and being used by everyone; the general public yet the Engineering Department said that I had to work out a way to make sure there was a 50-foot usable area. The only way I could do that was to grant a 5-foot easement on this side and a 5-foot easement on this side because if I took it off they would reduce the square

foot area and reduce the setback line on the existing house so that's why that dashed line that you see that's in there in case there was questions. Believe me, we've been through I think – we could probably write a law book on this subdivision.

CHAIRMAN HODOM: Any other questions from the Board on this 21 Grove Place?

MR. HITE: I will supply the Board with a couple of these deeds where you can see what they do say or talk to Keith.

CHAIRMAN HODOM: Why don't you get us a copy of it anyway so we'll have it in the record.

MR. HITE: I can fax one down to your office. It's like in this general area there's like – I think this one has it, this doesn't have it, this one does, you know it's kind of scattered but I'll give you a couple of deeds that does have that clause in it.

CHAIRMAN HODOM: Okay. Mrs. Paonessa is there anything that you wanted to comment on regarding this lot anyway?

MRS. PAONESSA: No.

CHAIRMAN HODOM: Anyone else have any comments, questions? How does the Board feel, do you want to close the hearing or do you want to leave it open until we get a chance to look at those deeds – do it that way? How about we do it that way, we won't close the hearing and...

MR. HITE: Tomorrow morning I'll bring Karen those copies, in fact they've got them in Planning.

CHAIRMAN HODOM: Well they don't like us.

MR. HITE: Keith is tough to get in touch with so it's better off that I can get you the deeds so you can look at them. I'll bring them to Karen.

CHAIRMAN HODOM: And just for clarification, Paul again, the 35-feet on the westerly property for 21 Grove Place you would like to change to 25-feet?

MR. HITE: Correct. That gives us a 60-foot building envelope and if the Board feels that 30-feet is more acceptable we can live with that but anything less that we just have to withdrawal that application, but we do need the Variance for the width and depth and this just makes it by doing this just makes it a much more buildable - - able to place a home in there that it's nicer in the neighborhood in that general area.

CHAIRMAN HODOM: Well just one final point the house at 21 Pine has a 23-foot back yard.

MR. HITE: This one here?

CHAIRMAN HODOM: Yes.

MR. HITE: I'd like to clarify that no one was home and I didn't want to go into their back yards to do a complete and absolute location so the way I had to locate that house was down through the side yards here and get a location here and one here and then get one out in the road and try to just - - it's basically a picture you know it could be within a couple of feet. If the Board deems it that I need to go in there and do that, you know locate it more accurately - - it's probably 25-feet but this is some kind of a porch that they have back there.

CHAIRMAN HODOM: Right.

MR. HITE: The 25-feet is what's required even back in the prior zoning. I'm sure that when he applies for that building permit that it had to be 25 for the back yard. I just could not get in there to actually locate it without someone being home. Under the law I think that I have the right to do that but I don't really like to do that - go into somebody's yard without, you know at least knocking on the door, leaving a note or trying to reach them in some way shape or form.

CHAIRMAN HODOM: Understood and I scaled it from your plans.

MR. HITE: And I scaled it also. Sometimes my draftsman, you know he could have shifted it and it would have been 25.

On a motion made by Chairman Hodom, seconded by Mr. Brookins and unanimously carried by the Board the hearing was adjourned to April 19, 2006 at 7:30 p.m.

Hearing adjourned 8:15 p.m.

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The next order of business this evening is a public hearing for Variance's under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Lot Depth and Minimum Lot area requested by Thomas and Laura Paonessa for property at 25 Pine Street, Albany, New York. The Applicant wishes to reconfigure an existing lot, which will not meet the minimum lot depth and minimum lot area at the premises 25 Pine Street, Albany, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to subdivide and existing lot, which will not meet the minimum requirement for lot size and lot depth. The depth of the lot will be 90-feet, which is 30-feet shy of the 120-feet required and the lot size will be 12,082.94-square feet, which is 2,437.06-square feet shy of the 14,520-square feet that is required. The existing structure has pre-existing, nonconforming setbacks that do not require a Variance. The lot is located in a residence A District and the structure is occupied as a single-family dwelling.

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 15, 2006 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Tom & Laura Paonessa for the reconfiguration of an existing lot which will no longer meet the minimum lot width and minimum lot area at the premise of 25 Pine Street, Albany, New York of the Code of the Town of Bethlehem. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the March 8, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier this evening. Paul why don't you just introduce yourself again and go on with your presentation.

MR. HITE: Thank you Mr. Chairman, members of the Board, Paul Hite Land Surveyor and Land Planner, Delmar. Mr. Chairman if I may ask a question I realize that this is a totally different hearing; do you want me to go through that thing?

CHAIRMAN HODOM: No.

MR. HITE: So I'll just explain what we're doing.

CHAIRMAN HODOM: Yes.

MR. HITE: Thank you very much. The lot we're speaking of is a corner lot located at the corner of Pine and Bower. At one time it was situated on a number of lots that I spoke of before being 30-feet wide and 90-feet in depth. The lots fronting on Pine Street are 90-feet in depth and the lots fronting on Grove Place is a paper street and in back of it is also 90-feet in depth, all of them being 30-feet wide. When it was decided that we wanted to re-subdivide these lands of the Paonessa's we looked at this entire layout and came up with the plan – we tried everything – stupid looking configurations and just said the best way to do this is just to split it like this from that corner up to the corner curve right through the middle of it. It still left a nice back yard here and would be a nice side yard over on this lot and I realize that this lot has nothing to do with what I'm speaking about but that's how this whole idea came about for the 2-lots.

This is an existing home that is presently rented I believe by you and Tom and again when I refer to Tom I'm referring to Mr. Paonessa. We simply wanted to subdivide this into a lot that consisted of some 12,082-square feet which met the zoning requirements of that time and this lot over here would have met those requirements. Again, going through the whole procedure we came down to – this has more than ample back yard for this building that exists and as I said it's presently a rental. It could be sold but even if it was offered for sale it has enough of a back yard that even someone with children would have room to fence this in and still have a nice back yard back here. I did take some pictures if I can try to show them to you. I went up - - this is the back yard of that looking from the side street into the back yard. That's looking into the back of the house that exists there now and then the other pictures standing here takes this one looking through the back yard and then you move up and on the corner is this little garage that we propose to remove so that would open up that whole back yard area.

ATTORNEY MOORE: That's the garage that you're new property line is kind of bisects right in here?

MR. HITE: Right, which would be that little building right there. That would be removed so that then could create that backyard area also so any fence or anything was constructed there would go right through there and create still a very nice backyard back here.

CHAIRMAN HODOM: Then I suppose you took the pictures before that limb came down from the tree?

MR. HITE: Mark I think – could you scale that distance – I believe it's about 35-feet right in line with that building back to that proposed line.

CHAIRMAN HODOM: It is 35-feet.

MR. HITE: And that's the shortest distance that you would have and that's right behind

the garage. The garage is right here with a little side load parking area so the main house is right in here and I mean it has a very nice back yard back there. That was the reason I finally came up with this configuration that would give it that.

MR. UMINA: Could you just point out the garage that you're going to tear down again?

MR. HITE: Right there.

MR. UMINA: Right there, that's okay yes I see it.

MR. HITE: It's not the greatest building in the world.

MR. UMINA: Then that's part on 2-properties then isn't it?

MR. HITE: It would be – it is now, right or proposed to be but I'm not sure – what did Tom use it for, storage?

MRS. PAONESSA: The garage?

MR. HITE: Yeah.

MRS. PAONESSA: Just storage.

MR. HITE: Yeah just storage in there. I don't think it was ever used as a garage unless maybe some prior owner did. There was a swimming pool on this area here at one time – a big swimming pool and then that was taken out. It may have had some of the cleaning equipment and pumps and stuff may have been housed in that building for that pool. I'm not really sure.

CHAIRMAN HODOM: The setbacks for the existing house on that lot, 25 Pine, it met all the requirements – that was the 20-foot...

MR. HITE: Right, it met all the requirements...

CHAIRMAN HODOM: A corner lot was a 20 and 25-foot setback.

MR. HITE: Even with the porch out there it met the other requirements.

CHAIRMAN HODOM: Right. And then it was an 8-foot side yard, which it complies with currently. I believe you said earlier Paul that this lot took in both areas of what you refer to know as lot 1 and lot 7.

MR. HITE: That's correct. I believe there's a survey in the package that I submitted to you that may even show that. If not I can get that for you also. There was a survey at one time that encompassed that area. It showed the house and the swimming pool that was back there. It was done some 20-years ago when I felt young.

CHAIRMAN HODOM: Are you saying that you don't feel young today?

MR. HITE: Yeah I do.

CHAIRMAN HODOM: Just a point of interest Paul the property at 21 Pine Street.

MR. HITE: Yes.

CHAIRMAN HODOM: Is that a 90-foot by 90-foot lot?

MR. HITE: Yes.

CHAIRMAN HODOM: It is.

MR. HITE: That's what the gentleman owns.

CHAIRMAN HODOM: Okay. And the reason I'm asking that Paul is because this lot at 25 Pine Street complies with all the previous code requirements. I'm just getting myself into trouble here but if we were to make that a 90-foot by 90-foot parcel what would we be looking at?

MR. PLATEL: You're looking at area Variance, for percent of lot occupancy most likely.

CHAIRMAN HODOM: Lot width, lot depth?

MR. PLATEL: Once you change the lot it has to conform.

CHAIRMAN HODOM: Okay.

MR. PLATEL: So you'd be looking at...

CHAIRMAN HODOM: A lot.

MR. PLATEL: You would still be looking at the same Variance's for that lot.

MR. HITE: But there again Mr. Chairman we would get back into the same thing we talked about over here, creating a back yard that even though it's 25-feet I was just trying to give everything I could to make this a nice lot in case they ever wanted to sell it off.

CHAIRMAN HODOM: I was trying to make the other lot comply.

MR. HITE: I appreciate that. I think that probably is about the smallest lot in that entire area. There might be one up in here that's a little small but it doesn't have a house on it. It's used like a yard – just like I think this one here is 60-wide but it's all part of this big

lot over here and he uses it like a garden and yard area.

CHAIRMAN HODOM: And also for clarification I had some difficulty trying to read the lot boundaries. I realized the dashes are the old 30-foot wide by 90-foot deep lots at one time but then your line, slash slash, line – that’s currently the existing property line.

MR. HITE: Yes.

CHAIRMAN HODOM: Okay. Any other questions from the Board on this parcel? Any questions or comments from the audience? Any one wishing to speak in favor of the applicant? Mom and dad you can say something if you want you know. You can say that you’re for it. Anyone desiring to speak in opposition? Hearing no further questions or comments we will adjourn the hearing until in receipt of the deed information on the highways for 7:45 on April 19th.

MR. PLATEL: Did you need the deed information on that?

ATTORNEY MOORE: It’s not pertinent to the requested Variance’s but it is for the first one.

CHAIRMAN HODOM: Well that’s true.

MR. HITE: That lot is basically, has Town maintained highway around it.

CHAIRMAN HODOM: How does the Board feel? Would you like to close the hearing on this parcel or would you like to keep them all open for discussion?

MR. UMINA: It doesn’t appear that we need more information Mr. Chairman.

CHAIRMAN HODOM: No as far as the deed information as to the undeveloped portion of Bower Avenue. We’re going to close the hearing.

Hearing closed 8:30 p.m.

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The next order of business this evening is a public hearing for Variance’s under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Lot Depth, Lot Area and Front Yards requested by Thomas & Laura Paonessa for property at proposed 21 Grove Place, Albany, New York. The Applicant wishes to construct a single –family dwelling, which will not meet the minimum lot depth, lot area and front yard 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 subdivide an existing lot, which will not meet the minimum requirements for lot size and lot depth. The depth of the lot will be 90-feet, which is 30-feet shy of the 120-foot required and the lot size will be 12,082.94-square feet, which is 2,437.06-square feet shy of the 14,520-square feet that is required. The Applicant is also proposing a front yard setback of 25-feet for the lot, which is 10-feet shy of the 35-feet required. The lot is located in a residence A District and the structure is occupies as a single-family dwelling.

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 15, 2006 at 8:00 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Thomas & Laura Paonessa for Variance's under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Lot Depth, Lot Area and Minimum Front Yards of the Code of the Town of Bethlehem for the construction of a single family dwelling, which will not meet the Minimum Lot Depth, Lot Area and Front Yard requirements at proposed 18 Grove Place, Albany, New York Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the March 8, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier this evening. Paul if you would, again on the plan that you submitted to the Board you did show a 35-foot front yard setback so clarify that if you would.

MR. HITE: Thank you again Mr. Chairman, members of the Board, Paul Hite, Land Surveyor and Land Planner in Delmar and I will ask the same question you don't want me to go through all of before, okay. The lot we're speaking of is this lot, again it was formed as I spoke of before in terms of trying to make both lots equal in size that would meet the zoning at that time of 12,000-square feet. The lot depth I couldn't make any deeper, it's fixed. The envelope that it created at the time was the ones that you see that I am presently requesting which would be a 40-foot deep envelope and 25-foot setback from the street.

With the advent of the new zoning and now is required a 35-foot setback and it creates only a envelope of some 30-feet deep, which you can design a home that fits on that but 30-feet deep is not the deepest house in the world I mean you can put a small ranch or something like that on it and if we have to live with it I guess we can but I just felt that this gives us 2-options. It gives us a chance to maybe design a home that's like 35-feet deep, push it forward 5-feet and create a 30-foot back yard back here instead of 25-feet. I tried to look for something like this when you're doing planning of a lot where there's not a lot of room to move in any direction. You try to extract the best you can out

of it so that's why I was asking for the 10-foot Variance for the street and it's a corner lot. It's the only one in that area. The building next door is not setback very far either and that's a big, huge house down through here. The lot right now is vacant. It's used by Tom for his garden. He has a very large garden in that entire area there, but I guess he's decided he doesn't want to raise that anymore and he wants to put a home in there. He basically needs to do that to offset some of the cost of having to construct this cul-de-sac, which is not a cheap project. It takes a considerable amount of money to build this roadway and that cul-de-sac so this is one way to try to offset some of that cost and also utilize what land he has there to make a decent lot out of it.

CHAIRMAN HODOM: Paul, the plan of the proposed structure that was submitted with the application, were the Paonessa's proposing to build this structure on each lot?

MR. HITE: That house would probably be built on these lots you see here. Actually one of the things that has come about because of the new zoning is that before under the A Zone you can only use 15-percent of the lot. You can now use 20-percent, which increases the size of a building considerably that you can put on this lot so with the 40-feet I can fit that building on there. We may design something smaller because of the fact that it is a different configuration lot with the back yard. Looking at the back yard you'll have here, here, here and here. This is a very small back yard and even though this will be 25 because it's required and I think that this one is 25-feet also but it would be nice to maybe increase that by say 5-feet and maybe design a house that's 35-feet in depth or something like that. You could fit that building on this lot though with that 10-foot Variance. Without that then you're going to have to design a home that would fit within the 30-foot envelope. And also in terms of these lots being very nice lots, very large lots you can put a much bigger, nicer home on them as compared to this area. This is a very nice home if you were over there today I mean it's not a bad looking home and this guy takes very good care of his house, clean, taking care of the yard. So it's not a bad lot. In terms of these lots I don't think it meets you know the same criteria, but it's still a nice lot.

CHAIRMAN HODOM: Do all of these lots currently have water and sewer?

MR. HITE: Water and sewer and power. Do you have cable there? I think cable is even there. All utilities are there even gas.

CHAIRMAN HODOM: Any other questions from the Board? If the Variance's were granted do you have a proposed schedule of starting date and completion date?

MR. HITE: Well if you do grant us the Variance's then I have to go back before the Planning Board for the 6-lot subdivision and hopefully it wouldn't take - - if everything goes because the Town Engineer has said that, you know that if I receive my Variance's from you and we decide to go ahead with it that he would write a letter to the Board taking out the clause that they wanted us to do before and saying that what we propose now is okay. So hopefully that would put us through the Planning Board so 6-months maybe. If that did we might start to build the road and possibly build houses through the

winter. If it took longer than that – we got caught up in that we probably wouldn't start it until the spring and if the economy stays the way it is it would probably take a year to build 4 or 5-homes. So you're talking 2-years, something like that.

CHAIRMAN HODOM: I have no further questions. Is there any questions or comments from the audience? Is there anyone desiring 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.

Hearing closed 8:40 p.m.

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The next order of business was to consider the application of Charles Wooster. The application was found to be in order and Mr. Umina made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Charles Wooster for Variance under Article XIII, use & Area Schedules, Section 128-100 A, Minimum Front Yards for the construction of an addition, which will encroach into the front yard setback requirement at premises 53 Wheeler Road, Glenmont, New York 12077, it is hereby ordered that a public hearing on this matter be held April 19, 2006 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was a discussion of the previous public hearing held in the matter of The Four Corners Luncheonette. The following points were brought up by the Board members: The proposed addition will not affect the character of the neighborhood. There will be a condition to use the parking on the neighboring property set forth in the resolution. The 4-spaces owned by First Care will not be counted as parking for the luncheonette. On a motion made by Mr. Umina, seconded by Mr. Brookins, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on April 5 2006.

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The next order of business was a discussion of the previous public hearing held in the matter of Stewarts Shops Corporation. The following points were brought up by the Board members: The lot is a pre-existing non-conforming lot. The proposed freezer location and proposed addition will be an improvement to the site. The Applicant had come before the Board before and was granted a Variance for the placement of the storage freezer. On a motion made by Mr. Brookins, seconded by Mr. Umina, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on April 5, 2006.

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On a motion made by Mr. Brookins, seconded by Mr. Micelli, and unanimously carried by the Board, the minutes of the March 1, 2006, meeting were approved as amended

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

Meeting Adjourned: 9:05 p.m.

Respectfully submitted,

Secretary