

**TOWN OF BETHLEHEM
BOARD OF APPEALS
May 3, 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.

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. Our first order of business this evening is a continuation for a Use Variance under Article V, Districts Use and Area Requirements, Section 128-26 B, Article XIII, Schedule of Uses, Section 128-99 requested by Robert and Carol Dunn for property at Elm Avenue East, Selkirk, New York. The Applicant wishes to construct a 6-unit dwellings, which is not a permitted use at the premises.

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

MR. PLATEL: Yes Mr. Chairman. The Applicant is proposing to construct a 6-unit apartment building in a Residence A. Under the new zoning only single family residences are permitted in this zoning district. The applicant has received a Variance in the past for access for using an easement over the lands of Niagara Mohawk (National Grid) and also received a sub-division approval from the Planning Board. The current parcel of land is 2.486-acres with no structures on it and as stated earlier is located in a residence A District.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, would you please read the 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 January 18, 2006 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Robert & Carol Dunn for Use Variance under Article V, Section 128-26B, Schedules of Uses, 128-99 of the Code of the Town of Bethlehem for the construction of a 6-unit dwelling, which is not a permitted use at premises Elm Avenue East, Selkirk, New York 12158. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the January 11, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone wishing to speak in opposition of the Applicant. Anyone desiring to speak will be allowed to do so, we just ask that you come up, stand or sit close to the black microphone, it's for recording purposes only. Any questions or comments should be directed to the Board. Mrs. Dunn, please introduce yourself.

MRS. DUNN: Hi.

CHAIRMAN HODOM: Hi how are you tonight? Good to see you again.

MRS. DUNN: Nice to see you sir.

CHAIRMAN HODOM: If you would just introduce yourself to us.

MRS. DUNN: My name is Carol Ann Dunn and I live at 22 Elm Avenue East in Selkirk and tonight I would just like to present the questions that was asked of me at the last meeting which was about the zoning and why I couldn't have sold it for different purposes out of the property itself. I'd like to address the new zoning regulations saying that our land could be used for – since the change could not be used as a multi-unit since the change in the zoning. A single-family dwelling – when we marketed the property it was zoned multi-unit and that is how I marketed the property. We have no objection to selling it to a single-family house however we received a much better offer than we would have received for a single family dwelling and also the property itself was sold before the zoning law went into effect and we were not notified that the zoning was changing.

CHAIRMAN HODOM: When was the property sold?

MRS. DUNN: 8/24/05 and the – let's see it was listed 8/24/05 and it sold 6/05 the contract was signed and it was listed 10/8/04 so it was listed in 04' – 2004.

CHAIRMAN HODOM: You had it on the contract in 05'?

MRS. DUNN: I had in...

CHAIRMAN HODOM: You didn't actually sell it?

MRS. DUNN: I sold it on 6/05 that was before the new zoning laws.

ATTORNEY MOORE: It's just under contract Mrs. Dunn, there hasn't been a closing yet, a transfer of title?

MRS. DUNN: No.

ATTORNEY MOORE: Okay, so you have a contract to sell it?

MRS. DUNN: It's contingent on....

ATTORNEY MOORE: Correct.

MRS. DUNN: Finalizing this. The other uses that I was given was that this property could be sold for a lodge, a club, a fraternity with site plan approval, however this area is not really conducive to a lot of traffic, you know like if you have a 100-members to a fraternity you've got a lot of traffic in the back. Also there's a special use permit for a church and as you know churches have quite a few cars. We've had 1-person object to a 6-unit and I can't imagine if we were going to put a church in there – 200-cars every weekend coming through there and plus the fact it's only 2-acres and really wouldn't know if it would be conducive to that. Home occupation was sited, again we marketed the lot. We did not know the zoning was going to change or else we would have marketed to that particular kind of person. Conservancy with special site plan are not conducive to the area, this would not be large enough. Again we did not sell we did not sell to any of the above. At the time the property was listed we were not aware that the zoning of the property was going to change. If we had been able to sell the property a few years ago it would have been zoned differently. We could not sell the property since we had it in 1998 because of the water moratorium and then there was the building moratorium on the property. The property was listed on 10/08/04; the property was advertised as multi-family because it was multi-family at the time. We sold the property after several months on 6/05 and the new zoning was passed on 8/24/05. And that's all I have to address at this time.

CHAIRMAN HODOM: Is it your contention Mrs. Dunn that you are not able to realize a reasonable return on the property for these other uses?

MRS. DUNN: I mean we would have sold it back in 1998 if we could have but you know we had the water moratorium then they had the building moratorium and then when the moratorium went off of the building we did – went ahead and marketed the property, but you know several months after we had a contract on it then the new zoning came into

effect.

CHAIRMAN HODOM: I understand that and that's all on the record. Does this hardship that apparently you're going through at this point in time, is that unique to your property or is it consistent within the neighborhood?

MRS. DUNN: What you mean is it unique to my property, I mean I don't think anybody else on the street owns 6-acres any time on Elm Avenue East there. This is something we bought in 1998 and we were going to subdivide it and that's the way it was advertised at the time that we could subdivide it.

CHAIRMAN HODOM: Well we've gone over this just about every time we've re-convened here and what I'm referring to are requirements by New York State statute that you're aware of that you should have addressed.

MRS. DUNN: I think I did if you're talking about the hardship everything is in that book.

CHAIRMAN HODOM: That's all I'm saying, that's fine and you're comfortable that you've addressed all the requirements of the New York State statute?

MRS. DUNN: Yes, all of them are in that book. This is the last thing that I thought was necessary to come to the Board with – why I didn't sell it to somebody else.

CHAIRMAN HODOM: And when you say that they're all in that book...

MRS. DUNN: The book that was presented to you the first night that I came here – the one that's in the binder. Everything is in there including our taxes and what our income is and why we need to get our money back out of this.

CHAIRMAN HODOM: Okay. I believe you said previously that if you couldn't get a 6-unit approved, a 4-unit would be acceptable. Is that still the case?

MRS. DUNN: I don't know, would that be acceptable to you?

MR. MAURO: Absolutely, you know....

CHAIRMAN HODOM: Introduce yourself Mr. Mauro if you would.

MR. MAURO: I'm sorry, my name is Derrick Mauro of Mauro Development and Construction. I'm actually a third generation builder in the Delmar area and I'm pretty proud of what my family has done for quite a few years around here and I'm the one that looking to put together this 6-unit dwelling on Elm Avenue and I think it's a pretty good custom plan that I put together – a very nice addition to the community in my view. To answer the question that was presented, you know I don't think it's area where you can make it back on a single family home on my knowledge of the area but with a 4-unit I

think it would still be possible to make money and you know it would obviously – it would be different plans but it would be along the same line of custom units and it's something I could do.

CHAIRMAN HODOM: If you would, Mr. Mauro could you just approach that site plan and address what your intentions are.

MR. MAURO: Elm Avenue East...

CHAIRMAN HODOM: Why don't you take that microphone.

MR. MAURO: It's located at the bottom of the map is Elm Avenue, the proposed driveway would be coming off Elm Avenue. It would go back five or take about 300-feet or so in the road - - a driveway coming into the 6-unit. It's happens to meet all the requirements for the side and all the back off-sets and there's actually – it's a pretty big space back there for it. It's not going to dwarf the road since it sits back 300-feet – it's going to be like a – almost like a private estate. I might with Board approval I'm thinking of putting some nice brick piers where the driveway is going to be and again it's kind of almost – it leads to it's own estate. It's definitely not going to dwarf any of the houses on the street because it's going to sit so far back. They're going to be very custom units with brick cedar siding so it's definitely not something that's getting slapped up. It's really going to look nice from the street. I'll do some nice things with the landscaping that's really going to make it stand out and I think it's going to be a great addition to the community if it does pass. Again they're really nice units and they would make Elm Avenue nicer in my opinion and bring the market value up for whatever lies around it.

CHAIRMAN HODOM: While you're up there Mr. Mauro I didn't see any landscaping plan.

MR. MAURO: Well I think basically he went to say forever green on a lot of the landscaping, you know that's a lot of it that I was leaving open maybe to do some white birch's. Again I didn't actually put that – the brick piers that I plan to do because I didn't know the ramifications of doing that. What if any problems I would have by trying to so and whatnot so I tried to keep it basic and then after - - if and when I got approval to knock that out kind of with the Planning Board so to speak and iron out any wrinkles. For now it's considered on the plan as forever green.

CHAIRMAN HODOM: Were you considering perhaps creating a tree line buffer zone on the Niagara Mohawk Power Corporation side of that development, and I ask that question because there was some concern mentioned to the Board previously from people who live along Jericho Road and if there was a buffer there of some kind it may alleviate some of the concerns of a multi-use in that location.

MR. MAURO: Honestly, I would have to say that I'm very open to that, again I was hoping to as this process unfolds I was hoping to get a feel in situations like that of what I could do to alleviate the concern to the community or the Board itself and that was

actually what I was hoping is to get some ideas on to what you guys and the community would like to see and that's by no means a request that I couldn't do. That's very reasonable and I could do something along those lines.

CHAIRMAN HODOM: Mark, they have to go for site plan approval?

MR. PLATEL: That's correct.

CHAIRMAN HODOM: But you don't have any objection to creating a buffer zone there if it's required?

MR. MAURO: No, exactly or even if it's strongly recommended, you know if it would make the Board and the community feel better that would not be a problem for me at all.

CHAIRMAN HODOM: Again most of these units are 2-bedroom?

MR. MAURO: Yes.

CHAIRMAN HODOM: Are they all 2-bedroom or....

MR. MAURO: Yes. They're all – the inside 4-units are all identical and they're all 2-bedroom, 1-bath. The one story end units both actually are again those are going to be 2-bedrooms to, but the inside 4-units will be 2-story's and the end units are just the 1-story, but they're all 2-bedroom units. As I said last time in front of the Board I think it would be a great addition to the community because you know it gives a lot of diversity for who you can come live there and I mentioned just a few of the people would benefit by it such as empty nesters and it allows people to own – I should actually say that I'm going to be selling these units individually. They're not going to be rented so it's kind of going to give you know there's going to be a lot of pride in them because they're custom units at the same token the people are going to be buying them. They're going to be homeowners so this isn't just, you know 6-apartments that are being stocked up. You know each person is going to own their own hold and take pride in it. Again they're very custom but they're not quite a 4-bedroom, 3-bath, 2500-square foot home, you know where only one group is a family or what not is probably to live in this and this gives a lot of opportunity to someone to own their own home that might be a empty nester, single family, single parent family or along that nature. It really adds some diversity to the community and lets some real nice custom homes go in that don't require \$400,000 to purchase and at the same token they're good for the eyes and the community's well being as far as financial returns on their – what goes in there. So I'd be pretty proud of what we could put up and again my family's reputation speaks for itself. We've been here for 3-generations and I'm fairly new to the building but you know I take all their knowledge into the project with me.

CHAIRMAN HODOM: Thank you Mr. Mauro. Any other questions from the Board members?

MR. UMINA: I have one Mr. Chairman. Mrs. Dunn that's essentially a residential area and one of the...

MRS. DUNN: It is now, yes.

MR. UMINA: Just in your view do you think that the construction of these units would alter the area?

MRS. DUNN: No I don't.

MR. UMINA: You don't think it would alter the essential character of the neighborhood?

MRS. DUNN: No I mean it's a mixed neighborhood, I mean you've got the drive in across the street, a barber shop over on Jericho Road, you've got the Town building down Elm Avenue East so it's really – it's a mixed area. I've seen the prints of what he's building and they're very nice compared to some of the stuff that's being built.

CHAIRMAN HODOM: Do you have similar projects in the neighborhood that could be visited Mr. Mauro?

MR. MAURO: Well I have – I have a single family home that I just built in Ravena, but...

CHAIRMAN HODOM: Nothing similar to what you're proposing to do here?

MR. MAURO: No, but you can see a lot of the workmanship involved actually from that project. I mean obviously it's in Ravena so it's going to – you know I went after – so it's really a nice work. I put some stone on it, you know it's – any of the projects that I've been involved with, you know especially my uncle John who's done quite a bit around Delmar. He's going to be doing the foundation, that's his field so I couldn't even begin to tell you where to go to look at some of his work. I'd be at a loss and he's going to be handling that. The framing will get subbed out to my father Michael and again I can show you thousands of houses that he's done so the only one that I can show you personally that has been mine at this current time is Ravena but hopefully you can take me up on some of my family who act as the subs in my development company.

CHAIRMAN HODOM: Well I was just interested to try to find something that was close to what you're proposing here. If there are none, there are none.

MR. MAURO: No, there are not honestly to tell you the truth. Again I come from a family of many years of builders but me, myself I've been building for a little over a year now.

CHAIRMAN HODOM: Thank you. Are there any questions or comments from the audience regarding this applicant? Yes ma'am, please just come up and introduce

yourself.

MS. JASINSKY: Linda Jasinsky, my family and I own some properties in the area. On 6/05 I was involved a lot with the comprehensive plan and the zoning and on 6/05 the zoning was pretty well in the works for what they were planning on doing there. I think everyone knew about the comprehensive plan and how it would affect our zoning, if they didn't they were living in a tunnel because this was a big thing around the Town so I mean even when this contract went through there was some idea of what was going to happen with the plan. I don't think a 6-unit fits in there, every other house around there is a 1-family. All the new developments going in are 1-family. The Town has taken a lot of time to look at the comprehensive plan, how they want things built, what they want to see and zoned it appropriately and this is not what they zoned it for there because that's not what they thought belongs there. I can't imagine 2 1/2-acres would not sell as a wonderful huge home site. I mean everybody wants a couple of acres so maybe they won't get the most money out of it but those of us who have bought and sold and own real estate know you don't always get the most of what you would like. And even some properties that I have now, the new zoning has taken – I think it has taken away some of the value but I've got to live with it and I've got to deal with it so I would not like to see this go in.

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

Hearing closed 7:55 p.m.

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The next order of business this evening is a re-opening of a public hearing for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Highway Frontage requested by Nicholas and Cherise Vitello for property at 207 Maple Avenue, Selkirk, New York. The Applicant wishes to construct a single family dwelling, which does not meet the Highway Frontage requirements at the premise.

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

MR. PLATEL: Yes, Mr. Chairman. This is the re-opening of a previously closed application. The applicant is proposing to construct a dwelling on a parcel that does not have the required highway frontage. The parcel of land in question is land-locked and access is provided by an easement connecting the property to Route 396 (Maple Ave.)

The property is located in a Rural District and there is currently a trucking business operating out of the existing structure.

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 May 3, 2006 at 7:45 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Nicholas and Cherise Vitello for the re-opening of a Variance under Article XIII, Use & Area Schedules, Section 128-100 A, Minimum Highway Frontage of the Code of the Town of Bethlehem for the construction of a single family dwelling, which will not meet the highway frontage requirements at the premises 207 Maple Avenue, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the April 26, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier this evening; we'll hear the applicant's presentation; we'll entertain any questions or comments from the audience. Anyone desiring to speak will be allowed to so. Mr. Dempf if you would just introduce yourself.

MR. DEMPFF: Chris Dempf and I represent Mr. Vitello in connection with this application. I believe that this process initially started in August with the filing of the application. We've have meetings and hearings periodically since. I believe the meeting was closed but there was an issue raised because the property had been for sale and there was some concern that the Board be advised and it be clarified what exactly was going to happen with the property. And again honestly the Vitello's have been in the state of flux, not quite knowing what to do with themselves and with the property. Nick Vitillo, Mr. Vitillo owns the property and it's held by his LLC. His son Nick wishes to construct a single-family house there. Presently Mr. – Nick Jr. lives on – in center Delmar wishes to move further out of Town where taxes will be hopefully a little bit less and wants to move his family there. Again this is a single family application and I think that the Board wanted also specifications for the proposed that would be going in there and we submitted those also as well as the plans.

CHAIRMAN HODOM: I think there was also a requirement Mr. Dempf that the owner of the property – the actual owner of the property Mr. Vitillo, Sr. provide a written statement that his son is authorized to seek a Variance for the purpose of construction a residence on his property. Has that been done?

MR. DEMPFF: I believe my letter states that, but Mr. Vitillo is here and he can address that specifically. I think that my letter was very specific.

CHAIRMAN HODOM: I think we were looking for something in the owners handwriting, letterhead...

ATTORNEY MOORE: Sworn statement.

MR. DEMPFF: Mr. Vitillo is here tonight and he can put it on the record if you would like.

CHAIRMAN HODOM: Yes.

MR. DEMPFF: Okay.

CHAIRMAN HODOM: Fine why don't you come up here Mr. Vitillo and...

MR. VITILLO, SR.: You have to speak up because I can't hear and I can't walk.

CHAIRMAN HODOM: And I can't help you.

MR. VITILLO, SR.: I think I heard something that you wanted me to be sure that he is going to be the owner of this property.

MR. DEMPFF: No, no you're going to continue to be the owner but he has permission to build.

MR. VITILLO, SR.: Oh, absolutely he has permission, he's my child.

CHAIRMAN HODOM: Well why don't you go on the record and state that you're authorizing your son...

MR. VITILLO, SR.: Okay I'm authorizing my son Nicholas J. Vitillo to construct a single family dwelling on the property.

CHAIRMAN HODOM: Okay. Is the property still up for sale?

MR. VITILLO, SR.: No, no the only reason it went up for sale is because this has been carried on since the meeting in last August and they were getting a little bit nervous, you know which way to go on it and then they finally said well we're going to take that down and we're going to take our chance and that's what happened, it's not for sale.

CHAIRMAN HODOM: Is the for sale sign down now?

MR. VITILLO, SR.: It's been down for a month.

MR. VITILLO, JR.: Since the last meeting I took it down. I couldn't speak last time because it was closed, but it was supposed to be removed by a realtor and he didn't do that. I didn't speak to you to tell you that but...

CHAIRMAN HODOM: Why don't you just again put your name on the record.

MR. VITILLO, JR: Nicholas Vitillo. Do you want me to repeat that?

CHAIRMAN HODOM: Please.

MR. VITILLO, JR.: Yes the property isn't for sale. The sign was supposed to be removed at the last meeting but it wasn't and I couldn't speak to you because it was a closed session. I removed it the next day.

CHAIRMAN HODOM: Has there been any further determinations made as to the trucking business or any other business being operated off of this property?

MR. VITILLO, JR.: Tri-Village trucking, LLC runs out of that property and that's where we're staying with it – looking to maybe rent or lease some space whatever I want to do. I really haven't thought about it and we haven't discussed it.

MR. MICELLI: Nick, just to understand that the business is still running – your trucking business?

MR. VITILLO, JR.: No.

MR. MICELLI: Okay. And if you do decide to build the home is it going to be this home – the same blueprint that you issued a while back? Is it the same building?

MR. VITILLO, JR.: Yes.

MR. MICELLI: Thank you.

CHAIRMAN HODOM: Is there any site plan approval requirement for this project Mark?

MR. PLATEL: I don't believe so because it's not a Use Variance and Use Variance's all have to go for site plan approval. I don't believe an area Variance has to go to site plan I'll double check.

ATTORNEY MOORE: Can we just clarify will or will not continue to operate.

MR. DEMPFF: I can clarify that. The – Mr. Vitillo owns a trucking business and it's a DBA.

CHAIRMAN HODOM: Mr. Vitillo Jr.?

MR. DEMPFF: Yes. The real property is owned by the LLC.

CHAIRMAN HODOM: Which is Mr. Vitillo, Sr.?

MR. DEMPFF: Correct. So if the property is going to be leased to another business

enterprise it will be leased by the LLC and not by Nicholas J. Vitillo. It would be leased by the father who is the owner of the LLC.

CHAIRMAN HODOM: Mr. Vitillo Jr., do you have any intent to purchase the property?

MR. VITILLO SR.: Let me answer that. Yeah he has intentions of purchasing - - I'm giving it to him for a dollar.

CHAIRMAN HODOM: Has that been consummated – that agreement?

MR. VITILLO, SR.: No, not yet but - - I've only got 1-son and he's getting it. I'm not going to take it with me.

MR. DEMPFF: Again subject to further discussion and planning and that type of thing and again I think it's premature to - - at a public hearing like this what intentions like that are so I want to reign my client in a little bit.

CHAIRMAN HODOM: I raised the question Mr. Dempf because as I read the easement requirements the owner of the property has access to the land and Mr. Vitillo Jr. who wants to build a home on that property in essence based on an easement doesn't have access to that property through the easement.

MR. DEMPFF: I mean that's an interesting thought and you know quite frankly the development of that property would be I think structured in such a way that I believe anyway that Mr. Vitillo, Sr. through the LLC at least right now will continue to own the property whether there's a land lease given to the son or not so really Mr. Vitillo Sr. is going to remain at least right now his property through the LLC. Does that clarify things?

CHAIRMAN HODOM: Well it does. The ownership of the property at this point in time is not going to change.

MR. DEMPFF: That's correct.

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

MR. UMINA: I have none.

CHAIRMAN HODOM: Are there any questions or comments from the audience? Sir?

MR. JOHNSON: I'm Les Johnson and I live on the end of John Street which backs up to the property. I heard the question asked tonight whether the trucking business would be resumed or continued or whatever and I don't think it was really answered.

CHAIRMAN HODOM: My understanding is that the trucking is still a viable business and – is that correct Mr. Dempf?

MR. DEMPFF: Mr. Vitillo, the person who is going to be building the house is not operating a trucking business right now. Presently he drives truck for another company so he does not have right now a trucking business that is operating. As far as what might go there in the future it could be a trucking business, it could be another landscaping business; it could be, you know any type of commercial business that might not be affiliated with either Nick the son or Nick the father. It could be rented out to a third party.

CHAIRMAN HODOM: Okay.

MR. JOHNSON: Well my major concern or reason for asking is that by attending one of the previous hearings here it seemed that one of the objectives of putting a residence on the property is to be closer to the business and operate the trucking business and if that is the case what – then it becomes part of the business in the neighborhood as far as the neighborhood is concerned. And what steps are going to be taken for noise abatement because when the trucking business was operating out of that – mind you I'm a block and a half away and I can't sit out on my deck in the evening because of the sound, the revving of truck engines, the slamming of tailgates and the dropping of dump-beds well into the night. That's my objection not to the house but the business operating in the manner that it was operating a year or so back.

CHAIRMAN HODOM: Okay thank you. Anyone else desiring to speak? Anyone desiring to speak in favor of the applicant? Anyone desiring to speak in opposition to the applicant? Anymore questions from the Board? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

Hearing closed 8:10 p.m.

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The next order of business was to consider the application of Betty Nolan. The application was found to be in order and Chairman Hodom made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Betty Nolan for Variance under Article VI, Supplementary Regulations, Section 128-54 D, Signs, And Article XIII, Use &

Area Schedules, Section 128-100, Minimum Front Yards and Minimum Front Yards for corner lots, subnote 1, for the construction of a canopy with 3-fuel pumps for retail sale and construction of a freestanding sign at premises 1250 Route 9W, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held June 7, 2006 at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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

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

RESOLUTION

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking Variances under Article XIII, Schedule of Area, Yard and Bulk Requirements, Section 128-100, Minimum Lot Width, Front Yards, and Side Yards, requested by Thomas and Laura Paonessa (“Applicants”) for property at 21 Grove Place, Albany New York; and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on March 15, 2006 and April 19, 2006; and,

WHEREAS, Members of the Board are familiar with the area in which the property is located and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicants are seeking two variances for a “corner” lot located at 21 Grove Place, Albany, at the intersection with Bower Avenue (a paper street). Applicants propose a lot width of 95 feet, which is 5 feet shy of the 100 feet required. Applicants also propose a front/side yard setback of 25 feet on the Bower Avenue side, which is 10 feet shy of the 35 feet required. The front yard on Grove Place will meet the required 35-foot setback.

The lot is located in a Residence “A” district, and is undeveloped.

Bower Avenue is a “paper” street. At the March 15 public hearing, the Applicants’ representative discussed the unsettled state of title to the land including Bower Avenue and other “paper” streets in the subdivision, and the Town’s Planning Board’s determination regarding proposed development of the land in these “paper” streets. The public hearing was adjourned to allow for a further consideration of this issue.

In a memorandum dated March 21, 2006, counsel for the Town Planning Board advised counsel for this Board of the Planning Board’s earlier determination in connection with Applicant’s request for subdivision approval:

In order to use portions of the papers streets to increase the size of the adjacent building lots, [Applicants] would have

to extinguish the preexisting rights contained in other deeds to the original subdivision to use the paper streets.

The Planning Board's determination, as set forth in the March 21, 2006 memorandum, has necessitated the present request for variances.

Counsel for the Board concurs with the Planning Board's analysis and determination on this issue.

Applicants have not taken action to extinguish any preexisting rights that may exist to the land encompassed by Bower Avenue and the other "paper" streets in the subdivision.

Along with the present application, Applicants presented to this Board a request for variances on two other lots in the subject subdivision, designated as 25 Pine Street and 18 Grove Place. These applications were decided by the Board in two Resolutions dated April 19, 2006.

The subject lot is depicted on a map entitled "Preliminary Plat, Proposed Subdivision, 'The Grove,' Lands of Thomas Paonessa, Town of Bethlehem," dated January 10, 2006 and prepared by Paul Hite, Licensed Land Surveyor (Map No. 336).

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

By Recommendation dated March 16, 2006 (Case Nos. 04-03/06-007, 008 and 009), the Albany County Planning Board has recommended that Applicants seek review by the Albany County Department of Health for water supply, waste water discharge and other permits; and that Applicants notify the Town of Guilderland of their proposal.

CONCLUSIONS OF LAW and DETERMINATION

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the

Applicants, the Board determines that the Applicant's proposed lot width variance will be granted. A front/side yard variance (Bower Avenue side) is also granted, but for 30 feet (variance of 5 feet), not the 25 feet (variance of 10 feet) proposed by the Applicants.

The above lot width and front/side yard variances will be a benefit to the Applicants and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood.

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

The above lot width and front/side yard variances will have no adverse affect on the physical or environmental conditions in the neighborhood.

The above lot width and front/side yard variances are the minimum necessary and adequate to the Applicants' needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the above lot width and front/side yard variances has not been created by the Applicants.

The above described lot width and front/side yard variances are granted, on the following conditions:

1. The project will proceed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the March 15, 2006 and April 19, 2006 hearing, except as the same may be modified by the Town Planning Board; and
2. Applicants shall comply with the Recommendations of the Albany County Planning Board.

May 3, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on May 4, 2006.)

The next order of business was to consider the proposed resolution of Charles Wooster.

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

RESOLUTION

* * *

*

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a Variance under Article XIII, Schedule of Area, Yard and Bulk Requirements, Section 128-100,

Minimum Front Yards, requested by Charles Wooster (“Applicant”) for property at 53 Wheeler Road, Glenmont, New York; and,

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on April 19, 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

Applicant is seeking to construct an addition to the existing residence that will encroach into the required front yard setback. As proposed, the addition would be 32.3 feet from the property line, which is 7.7 feet shy of the 40 feet required, and 52.3 feet from the centerline of the road, which is 12.7 feet shy of the 65 feet required. The property is located in a Rural Riverfront (“RR”) district and the structure is used as the Applicant’s residence.

The existing front porch on the structure encroaches into the front yard setback. This is a pre-existing condition and does not require a variance.

The existing structure is a nearly-100 year old farmhouse with approximately 1400 square feet of living space. Applicant seeks to add an additional 660 square feet of

living space for a new and larger kitchen, and a bedroom and bathroom on the second floor.

Applicant proposes to construct this addition on the west side of the structure in order to: provide for a historically accurate addition to the structure (extending the existing gable), maximize the east-west axis of the house which enhances its southern exposure and appearance, and avoid the need to relocate the existing septic system.

The front of the proposed addition will be approximately 8 feet further back from the property line and road than the existing front porch; in other words, less of an encroachment than this pre-existing condition.

Applicant has provided a written statement from his neighbor across the street supporting the project.

Applicant has spoken to the adjoining neighbor on the south side of Wheeler Avenue (about 250 feet away) who also expressed support for the project.

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

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed front yard variance will be granted.

The Board has determined that the requested front yard variance 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 a variance.

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

The requested front yard variance is the minimum that is necessary and adequate to the Applicant's needs, while still preserving the character of this rural neighborhood.

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

The requested front yard variance is granted, on the following conditions:

- 3. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the April 19, 2006 hearing, except as these may be modified by the Town Planning Board;
- 4. In the construction of the addition, the Applicant shall match, as nearly as possible, the existing roofing and siding on the home;
- 5. The project shall be completed within the time specified by section 128-89(P) of the Town Zoning Law.

Dated: May 3, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

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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	None	None	None
Robert Wiggand			
Gilbert Brookins			
Leonard Micelli			
Anthony K. Umina			

(Resolution filed with the Clerk of the Town of Bethlehem on May 4, 2006.)

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On a motion made by Mr. Micelli seconded by Mr. Wiggand, and unanimously carried by the Board, the minutes of the April 19, 2006 meeting were approved as amended.

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

Meeting Adjourned: 8:30 p.m.

Respectfully submitted,

Secretary