

**TOWN OF BETHLEHEM
BOARD OF APPEALS
May 5, 2004**

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
 Marjory O'Brien
 Gilbert Brookins
 Leonard Micelli

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. The First order of business this evening is a public hearing for a Special Exception under Article VI, Permitted Uses, Section 128-12 B (1), Public Utility and Chapter 113-3 B, 113-4 A (1), Alternative Tower Sites requested by Independent Wireless One for property at 81 Jolley Road, Glenmont, New York. The Applicant wishes to install 6 PCS antennas and related call processing equipment to an existing tower at the premises of 81 Jolley Road.

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

MR. PLATEL: Yes, Mr. Chairman. The applicant is proposing to install 6 antenna on the existing 180-foot tall telecommunications tower and install a 9-foot by 12-foot concrete pad to support the associated equipment shelters. The property is located in an "A" residential zone and the current use of the leased property is for a public utility.

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town

on Bethlehem, Albany County, New York will hold a public hearing on, Wednesday May 5, 2004 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Independent Wireless One for Special Exception under Article VI, Permitted Uses, Section 128-12 B (1), Public Utility and Chapter 113-3 B, and 113-4 A (1), Alternative Tower Sites, of the Code of the Town of Bethlehem to install 6 PCS Antennas and related call processing equipment to an existing tower at the premises of 81 Jolley Road, Glenmont, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the April 28, 2004 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. Anyone desiring to speak will be allowed to do so, we just request that you come up, stand or sit close to the black microphone, it's for recording purposes only. Please direct all questions or comments to the Board. Please introduce yourself to us and your association with IWO and tell us what you want to do.

MR. CUSACK: Thanks. My name is Mike Cusack, C-U-S-A-C-K, I'm vice president now of Independent Wireless One, the Applicant. With me is also Rick Address, our radio frequency engineering manager for all of the northeast markets and the public hearing notice does describe accurately what it is we're doing, what we're proposing to do at this tower site from a construction standpoint. Touching briefly on why we're doing it, the purpose of the site is to clean up our existing coverage to the Glenmont area of the Town of Bethlehem. There's identified problems with the service there in certain areas and certainly during certain times and we can't get the mileage that we used to get in the years past out of our site that's down closer to route 32. There's so much usage on that site that the signal gets drawn in closer to that tower and just doesn't make it up as far out 9W as we would like and the specific areas that are going to be cleaned up by this facility include the new shopping centers that are there now and the areas out 9W to the south, a bunch of residential development out there.

We are presently on the Town's water tank that's out in that direction and believe it or not our usage has gone up so much when we were here, I think it was October on the church steeple site. We mentioned that we were looking at a couple other areas in the Town and we were going to try to use the existing towers that were there and this is one of the ones that were, you know hoping to deploy in the next couple of months to improve our service. It's really that simple. The other site that we have applied for is, which was just submitted today is the Feura Bush tower that's out by the Albany filtration plant. It's owned by Crown as well. So I don't know if there's any questions about why we're doing this.

CHAIRMAN HODOM: Do you want to just go over the coverage areas that – I know

you have the diagrams and the information that was submitted, but if you would just put on the record of where your lacking coverage and that these 6 new antennas will complete that coverage.

MR. CUSACK: Okay. The easiest way to describe the coverage problem is to first outline where our existing sites are right now in Bethlehem. The first tower is off Route 32 in the vicinity of the little league park. That would be closer to Route 32 and the interchange with 787. The next nearest facility to this particular site is the Elm Avenue extension water tank facility that the Town leased to us approximately 2-years ago. And then coming in towards where we are right now at Town Hall, we're on the water tank out here and the best way to describe it is between those sites and the heavy usage that we're getting on the system right now, it's just full. We have a high number of subscribers in Bethlehem and we have a lack of service. We have service deficiencies in between roughly the Route 32 site and the Elm Avenue site, a little bit into Feura Bush Road but as you get closer to Elm Avenue it starts to clean up because you're getting close to the water tank.

So I have to say it's between Wemple Road moving back towards the intersection of 9W along Feura Bush and then back out – was it Glenmont Road that goes across to the thruway over there and then we're having some problem down as the slope drops off toward the river. We have had missed coverage there, most of that coverage comes from very far away, some of it from Rennesslear county and it just doesn't work so well when you're driving down the road and you're switching from site and the Albany area, it's one and Rennesslear county it's one. Closer in Albany you go back and forth eventually the risk of a dropped call is very, very high so it just needs to have it's own service in that area just to clean it up.

CHAIRMAN HODOM: Will there be areas where you'll still have problems with coverage? I'm looking at your map here and it would appear that some of these yellow areas will still have no coverage.

MR. ANDRESS: It's not really no coverage.

CHAIRMAN HODOM: Introduce yourself to us please.

MR. ANDRESS: I'm Rick Andress. I work also for IWO. Those plots represent a certain coverage level that the green is basically in car, so you anticipate anywhere that's colored on that map you would have coverage in your vehicle if you were traveling around with your car. The - - excluding the yellow area previous to the map that you're looking at there, that's the area of the weaker coverage that we're trying to supplement. So that's showing that if we deployed the site, you know the coverage would expand throughout that entire region and as you just pointed out there are a couple of small areas that, you know the level wouldn't be quite up to par, but it wouldn't worth our while to build another site just to fill in those couple of small holes. You can never build a perfect system where you would have absolutely perfect everywhere. It's not feasible financially

or whatever so what we're trying to do now is just pick existing structures and do the best we can. It's cost effective as well as...

CHAIRMAN HODOM: And that's within you're FCC licensing program?

MR. ANDRESS: Yes.

MR. CUSACK: There are other areas in Town where we'll still have coverage issues but they aren't going to be addressed by either of the projects we're working on now. We're still as we mentioned at the last meeting when we were again, here on the steeple, we're still at a loss for the area out past the high school moving towards the Big Arena. That there is still choppy even though – and we're just going to try to add all the existing structures that we have at our disposal here at the Town before we go and propose anything new or even think of anything new.

CHAIRMAN HODOM: Is the steeple up and running now?

MR. CUSACK: The steeple is running. It's working wonderfully for the area it serves and we wish it would get further back there in Surry mall but it just can't - - there are limitations, but on the road and the new plaza and moving out towards the New Scotland Town line, it's doing wonderful. I wish it was doing better on Fisher Boulevard, I wish it was doing better in Surry Mall that way, but it's doing great for what it was designed.

CHAIRMAN HODOM: Good. Can you go over some of the equipment that you plan on installing on your pad? I guess you just brought some information with you tonight, but maybe you can describe the size of it and the color.

MR. ANDRESS: Well the cabinets are gray and very – I don't know how to describe, a bland looking gray.

CHAIRMAN HODOM: Will they match the cabinets that are currently on the site by the other companies?

MR. ANDRESS: Yeah all the colors are very standard I think everybody uses. I mean Nextel is within the compound but they're the shed.

MR. CUSACK: We don't have a shelter. Ours are outdoor cabinets equivalent to a refrigerator in size roughly.

CHAIRMAN HODOM: You don't have a shelter?

MR. CUSACK: Yeah, we do not have a shelter with a door on it, roof and such. There is no permanent generator, that's not our philosophy. The equipment functions that are very, very low power level and we do pretty well with the batteries. When there's an extended power outage that's when we bring a generator to the site, but we don't run

them 24-hours. They're not there 24-hours a day, they're aren't going off in the middle of the night test firing periodically to make sure – it's something that we do site by site as the circumstances warrant.

MR. ANDRESS: If you refer to this diagram here, this shows the very much expanded version. We'd only be looking at one of each cabinet. There's the three in a row that have an X on the top so it'd be one on those. So instead of the series of 6 that it shows three with the X's on the top and three without the X's. It would only be one of each mounted next to each other. And the dimensions of the one that does not have X on it is slightly smaller, but the one with the X on it is roughly 3 ½-feet by 3-feet by 6-feet tall.

CHAIRMAN HODOM: So are you proposing perhaps in the future that you would expand this?

MR. ANDRESS: We don't foresee at this point.

CHAIRMAN HODOM: Then why do you need such a big pad to put it on?

MR. ANDRESS: That's a good question.

MR. CUSACK: That's the design. We hope we get enough customers to add that much equipment but it really is driven by a number of people that are on the system. If you think of it in terms of, you know how much capacity can we put through a cabinet we can put 3T-1's into that cabinet before we have to expand it so it's not just one. The equipment is widely different, if you asked AT&T Wireless or T-Mobil they'd say they needed all six and they need X number of phone lines or whatever. This is a different technology, it's very efficient and we hope we get enough customers to actually have to past the fourth T-1 but there'd have to be a lot more growth and people basically using the internet 24-hours a day leaving it on before, you know we would be jumping to the next cabinet, but it's a fourth carrier to go to that cabinet, right?

MR. ANDRESS: Yeah that's correct.

MR. CUSACK: So we would have to have tremendous, tremendous exponential system growth to get there. We hope so, but...

MR. ANDRESS: Yeah I think the theory is that it's much cheaper to do it now and then if you ever do have to expand in the future there's -- the pad is already there versus having to go back in and ground space and all.

CHAIRMAN HODOM: The pad is within your leased space?

MR. ANDRESS: Yes.

CHAIRMAN HODOM: You have a cable rack running to the tower and how do you

install your – is it coaxial cable?

MR. CUSACK: Yes.

CHAIRMAN HODOM: Do you install it behind the legs of the tower so it doesn't run exposed up the outside? I think that's what everybody's done down there. Are you able to do that as well?

MR. CUSACK: Yeah, that's typically what's done, I'd want to look at the structural view to see if they put any restrictions on cabling but you're right. It doesn't contain any hour rate restrictions on cable running. Sometimes when you have a, lets say you have 5 or 6 people on a tower, they'll say don't bunch it on the leg. They'll say fan it out so you spread the load because maybe they don't want to overstress the leg. Here we're – I think we're the fourth, yeah we are the fourth carrier on this facility and I think it was – at least when we did it, it was originally; it was involved on the first time around. I think it was built for 6-carriers so I think we're okay there with the grouping on it, but...

CHAIRMAN HODOM: So it will be hidden behind one of the legs of the tower, must be you have the fourth leg.

MR. CUSACK: We're looking at 6-runs of coax initially to a maximum of 12. Verizon has 24-runs of coax so it's much more apparent and it's higher up so it's a bigger, probably a bigger of thickness of coax because of the extra distance. Nextel, which is underneath them has 12-panel antennas and 24-runs of coax so we're roughly half of what they are, half of what you're seeing now, you'll see for us.

CHAIRMAN HODOM: But again for our purposes here you don't have any problem of running the coaxial cable within the confines of the interior of the tower legs?

MR. CUSACK: No unless there's a...

MR. ANDRESS: Issue.

MR. CUSACK: Yeah, unless there's a structural engineering reason for it and I don't see one in the reports.

CHAIRMAN HODOM: Okay. What time frame are you looking at if the Board were to approve the Special Exception?

MR. CUSACK: We're looking at – I can tell you the projected completion date for turning it on line is June 30th.

CHAIRMAN HODOM: 2004?

MR. CUSACK: Yes. So it would be constructed in the next 6 to 8-weeks, it's about a 2

½ to 3-week project because the facility's all – it's basically set up for us, it's been designed as a multi user facility since day one, so we're down to rigging and digging.

CHAIRMAN HODOM: You're not changing any of the site conditions there? You're not changing the roadway or - - you will have some excavation there to bring in your power to your pad.

MR. ANDRESS: Just enough to get the pad in place, yeah and there'll be some trenching done to connect the boxes to the power supply that's there already.

CHAIRMAN HODOM: And that will be re-graded and compacted and left in a...

MR. ANDRESS: And reseeded, yes that's correct.

CHAIRMAN HODOM: I'm assuming that your metering is similar to what's already existing with the other companies there, are you going to mount a similar metering box on the panel?

MR. ANDRESS: It's already set up.

CHAIRMAN HODOM: Do you have – do you install on the fence or on the gate a notice listing telephone numbers and emergency numbers for IWO?

MR. ANDRESS: Yes.

CHAIRMAN HODOM: That will be installed?

MR. ANDRESS: Yes.

CHAIRMAN HODOM: With this kind of equipment do you have problems with fires or smoke or anything of that nature in the past?

MR. ANDRESS: No.

CHAIRMAN HODOM: Any other questions from the Board?

MRS. O'BRIEN: Yes, Mr. Cusack you indicated that the coverage would increase if people had their Internet on all the time; this is not just wireless phones, cell phones? This is for wireless computer use as well?

MR. CUSACK: Yeah, there's mobile and stationary wireless cards that we sell that you can put into PDA's or laptop computers or home computer can actually jump the internet over the airwaves. It's faster than dial up, it's not faster than – just to put in perspective, yet, it's not faster than a T1.

MRS. O'BRIEN: Is there any difference in radiation or anything from the tower? The other questions we've raised in the past.

MR. CUSACK: No. It's safe and it's also the lowest power - - Sprint is the lowest power carrier, you know which has its ups and downs but among the carriers, we are the lowest power both at the handset and at the tower.

MRS. O'BRIEN: And there's no interference with other signals when it's being used for the computers than, you know with the other carriers?

MR. CUSACK: No, they're very compatible. Standard FCC regulations apply to it, take your telephone and turn it upside down and you read that label that's on it. It says this device must accept interference from such and such, you know people look at it that way and say sometimes is it going to interfere and it hasn't yet. We're very fortunate to be where we are and other carriers have had issues. Nextel right now is going through a big proceeding at the Federal level to get out of 800-megahertz because they're interfering with public safety so they're trying to move them up to 2-gig where we are, which of course will mean they'll need more sides but it gets them out of the public safety. We're less and we don't have that particular problem.

CHAIRMAN HODOM: Do you do any testing prior to your installation and after your installation for radiation levels?

MR. CUSACK: No. This particular facility isn't even close to where, you know we would have to do that. It's deemed categorically excluded under the Federal regulations meaning that it's so remote on the power levels that they don't even require testing. There is a threshold that eventually you could pass at a site. It's usually passed on a rooftop site where there's say, 4 or 5 carriers all next to each other on the same rooftop and a person goes up to service the elevator and you're standing next to what we have passed. That type of situation may warrant some testing, it's still not considered unsafe but there are monitoring - - here's it's very tall structure, again set up for multi carrier use, clear separation distances between each carrier - very logical safe setup.

CHAIRMAN HODOM: So in essence you're complying and meeting all the FCC regulations?

MR. CUSACK: Right.

CHAIRMAN HODOM: And in your SEQRA report you are reporting that this - - the modifications are deemed insignificant.

MR. CUSACK: From a land use prospective, yes we would hope you would agree with that, yes.

MR. WIGGAND: Now what are you referring to there Mike?

CHAIRMAN HODOM: In their short form environmentalist.

MR. WIGGAND: Okay.

CHAIRMAN HODOM: The modifications I refer to is insignificant so we would have to review that and make a declaration that it's a negative.

MR. WIGGAND: So that's what you're referring to is this first one here, okay.

CHAIRMAN HODOM: And I think that's what we've done in the past. Any other questions? Any questions or comments from the audience? Anyone wishing to speak in favor of the Applicant? Anyone desiring to speak in opposition? Any further questions from the Board or counsel? 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.

MR. CUSACK: Thank you.

Hearing closed 7:54 p.m.

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The next order of business this evening is a public hearing for a Variance under Article VI, Permitted uses, Section 128-11, Residence "AA" District, Article XII, percentage of lot occupancy, Section 128-55, Accessory Buildings, Article XVI, Front Yards, Section 128-71, Accessory Buildings requested by Walter & Irene Wagner for property at Ackerman Avenue, Delmar, New York. The applicant wishes to construct a carport on a vacant piece of property, which is not permitted without a main structure in an "AA" Residence Zone. The proposed carport will also exceed the allowable percentage of lot occupancy for an accessory structure and encroach into the required front yard setback at the premises of Ackerman Avenue, Delmar, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 24-foot by 41-foot, 984 square foot accessory structure on a lot that has no main structure. It is required to have a permitted main structure on a lot in order to have an accessory structure such as a shed or garage. The proposed structure will have a front yard setback of 31-feet, which is 54-feet shy of the 85-feet required and the lot occupancy will be 12.46-percent, which is 7.46-percent over the 5-percent allowable.

The existing lot is located in an "AA" Residence Zone and is currently undeveloped.

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 of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday, May 5, 2004 at 7:45 p.m. at the Town offices, 445 Delaware Avenue, Delmar, New York to take action on application of Walter and Irene Wagner, 660 Feura Bush Road for Variance under Article VI, Permitted Uses, Section 128-11, Residence "AA" District of the Code of the Town of Bethlehem for construction of a carport on a vacant piece of property, which is not permitted without a main structure in an "AA" Residence Zone at premises Ackerman Avenue, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the April 28, 2004 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; we'll hear the applicants presentation; entertain and 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. Mr. Wagner if you just introduce yourself to us and tell us what you want to do and why you want to do it.

MR. WAGNER: I'm Bob Wagner and I want to put up a carport to put my camper and boat in and away from the snow and bad weather and that's mainly what it's for.

CHAIRMAN HODOM: Mr. Wagner this is a Use Variance that you're requesting and there are specific areas that you must direct your attention to and provide information for so the Board can make a determination in your application. By statute New York State, especially in Use Variances, the requirements are very stringent. Along with that we aren't going to be able to close the hearing this evening because the initial advertisement for the public record only included one of the requests and I think that was the installing your proposed building on a vacant piece of property and subsequent to your submittal of the plot plan, and other information there were two other areas that were found to be deficient. So we will re-advertise those 2 other items and continue the hearing to a future date once you have all the information to us. Were you familiar with the requirements for a Use Variance?

MR. WAGNER: Not really, no I've never put in any kind of application. I just made out the papers; whatever the Town gives me to make out and...

CHAIRMAN HODOM: I'm correct in saying that it is a Use Variance?

MR. PLATEL: Yes.

CHAIRMAN HODOM: Would you concur with that?

MR. PLATEL: Yes, it made me think.

CHAIRMAN HODOM: In the paperwork that you obtained from the Building Department when you first came in to make an Application. I think there was some information in there as to the criteria that you must meet for passage of a Use Variance by this Board. I'm just saying that you're not familiar with it and apparently you haven't read it. I'm going to recommend to you that we adjourn the hearing to a date uncertain to give you some time to look at those requirements, put together the documentation that you will need and then when you have all that information you can come in and meet with Mark or Karen and then we can reschedule the hearing. Do you find that acceptable?

MR. WAGNER: Yeah.

CHAIRMAN HODOM: Do you have a better site plan locating the properties and your property? The one I have it just seems to be a sketch and if I hadn't met you out there today or yesterday I probably wouldn't been able to find the property in question.

MR. WAGNER: You got the same one that's on the map on the board up there. That's the one you have.

CHAIRMAN HODOM: That's the one I have.

MR. WAGNER: That's the only one I got. When I bought the house that come along with it and I've had it ever since.

CHAIRMAN HODOM: So nothing's been done since 1949.

MR. WAGNER: Nothings really been changed in there or I built the 3-car garage with a apartment there and changed over back 30-years ago. All on that roads about the same.

CHAIRMAN HODOM: Okay well if this is the last document that you have I guess that's what we'll have to work with.

MR. WAGNER: My son owns the last house that's next to the property, the one house there that says John Leonard on – I have no idea who owns that. Some guy and he's got it up for sale, he's trying to sell it. And then the other 2-places is owned by myself and my other son.

CHAIRMAN HODOM: You purchased the 2-family dwelling that you're currently living in from Mr. & Mrs. Lawrence Sheely?

MR. WAGNER: No I originally bought it from my father in law, which is Amodeo. Sheely's originally are the ones that I believed owned it back years ago.

CHAIRMAN HODOM: Okay, but when you got your deed and mortgage the Town didn't require you to have an updated site plan?

MR. WAGNER: (shakes head)

CHAIRMAN HODOM: No? Then your mortgage company didn't require an updated site plan.

MR. WAGNER: All we ever had was this.

CHAIRMAN HODOM: Or you have may have paid cash for it to for all I know.

MR. WAGNER: No I don't think so.

CHAIRMAN HODOM: Okay. Perhaps you can at least update the plan showing the current owners of the adjacent properties.

MR. WAGNER: Okay.

CHAIRMAN HODOM: Like apparently John Hughes is no longer there and John Leonard is no longer there and Mac...

MR. WAGNER: Corquedale is no longer there.

CHAIRMAN HODOM: Okay and if you could perhaps, if you know of course, correct those names and then we'll have a better understanding of...

MR. WAGNER: Like I said John Hughes - I don't know the fellow is who owns it. Dave Smith owned it, he sold it to somebody out - - the guy said he came out of Hanacroy and he went in and did a little bit of work out on - - it's up for sale and I don't know who the gentleman is that owns that and the rest of the properties is owned by my two sons and myself.

CHAIRMAN HODOM: Did you then construct that 20-foot roadway going all the way back to your son's property?

MR. WAGNER: No that was there when I moved in. The roadway all the way back has been there since I've been there.

CHAIRMAN HODOM: Okay.

MR. WAGNER: The only thing they done since I went in is put water and gas in.

CHAIRMAN HODOM: Does the Town take care of that road.

MR. WAGNER: Yes they do.

CHAIRMAN HODOM: Maybe we have something in our archives that is more up to date. You can check with the Engineering Department or the Planning Department.

MR. PLATEL: It's a possibility.

MR. BROOKINS: That was my question, is this one lot or is this two lots?

CHAIRMAN HODOM: There are several lots in here.

MR. BROOKINS: But is this one continuous lot?

MR. WAGNER: Yes.

CHAIRMAN HODOM: My understanding is it's one continuous lot.

MRS. O'BRIEN: The road going through it?

CHAIRMAN HODOM: Yes.

MR. WAGNER: Yes. All the lots goes from the back line straight down to the creek. The creek is there and each one of those lots goes straight across the road to the creek.

MRS. O'BRIEN: So Mr. Hughes and Mr. Leonard's also go down that far?

MR. WAGNER: Right, all of them. The only one that don't have a road through it – the last one and that's my son. The road stops at his house and there's no road going down through there, he owns down to the creek.

CHAIRMAN HODOM: And I believe you told me he has something like 3 ½ -acres?

MR. WAGNER: Yes.

MRS. O'BRIEN: And who owns the property that you're proposing to put the garage on?

MR. WAGNER: I do.

MRS. O'BRIEN: You own that all the way across?

MR. WAGNER: For some reason the - - goes in, when my father in law bought that 33 feet across all the way down went with that land and that's the way it's always been.

MRS. O'BRIEN: They're not connected in any way?

MR. WAGNER: No. Everybody says why do you own it? I don't know that's the way it was sold. I have no idea.

CHAIRMAN HODOM: I am going to ask if there's anyone here that because we did advertise the hearing this evening if anyone here has any comments that would like to make this evening even though we are going to re-advertise and re-hear it. If you're here this evening to make any comments or have any questions now is the time to do it. Tim did you have anything you wanted to ask tonight?

MR. O'BRIEN: I've spoken with Mr. Wagner, for the record I think I can be heard. My name is Tim O'Brien, I live at 24 Macomb Drive in Delmar. Macomb Drive is just off Feura Bush road and it's on the other side of the Dowerskill. My only concern was the – as I mentioned to Mr. Wagner if he had deep root plantings around the site it would help prevent something that had occurred out here on Delaware Avenue where you had a building – it's common knowledge to all of the people on the Board that the building did slide after many years and as Mr. Wagner had spoken I think the idea of a deep root planting going around will hold the hill it might be an advantage. So that's the only commentary, it's neither up or down it's just a commentary as to a safety factor. Otherwise it would fall into the stream if, you know such, how shall I say without considering the angle without considering the weight – that kind of situation. But is it necessary, I'd leave it up to the engineers.

CHAIRMAN HODOM: Thank you. Anyone else? I'll entertain a motion to adjourn to a date uncertain.

On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand and unanimously carried by the Board the hearing was adjourned to a date uncertain.

Hearing Adjourned 8:10 p.m.

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The next order of business this evening is a public hearing for a Use Variance under Article VI, Permitted Uses, Section 128-13, Residence "AB" District requested by Delmar Health and Fitness for property at 28 Hudson Avenue. The applicant wishes to construct additional parking in a residential district, for an existing permitted business, which is not allowed in an "AB" district at the premises 28 Hudson Avenue, Delmar, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The applicant is proposing to construct an additional 34 parking spaces on the existing site in which 25 of those spaces will be located or

accessed in a residential district. It is required under article VI that all parking for a commercial use be located in the commercial zone and maintain a 5-foot buffer space along the adjoining boundaries. The existing structure is located in a “CC” Retail Commercial District and is operated as a health and fitness center. If approved this application will be directed to the Planning Board to re-establish the location of the buffer area.

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 of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday May 5, 2004 at 8:00 p.m. at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Delmar Health and Fitness for a Use Variance under Article VI, Permitted Uses, Section 128-13, Residence “AB” District of the Code of the Town of Bethlehem for construction of additional parking in a residential district, for an existing permitted business, which is not allowed in an “AB” District at premises 28 Hudson Avenue, Delmar New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the April 28, 2004 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. Mr. Hite introduce yourself to us and your association to the Applicant.

MR. HITE: I think most of the Board knows, my name is Paul Hite, Land Surveyor and Land Planner, Delmar New York. I’m here tonight representing Mike Mashuta, who is the owner of the Delmar Health and Fitness, LLC. I’d like to hand this to you if I could, Mr. Chairman it’s a soils report that I received from our soils engineer relative to the site and I will explain it’s significance later. I only received it tonight so that’s the reason I’m turning it in just to let everyone know that we have had this site looked at.

The existing building is I think everyone knows is the Delmar Health and Fitness club located on the northerly side of Hudson Avenue approximately 5 to 600 hundred feet westerly but intersects with Delaware Avenue. Tools restaurant, a couple of single family homes and then kind of a wooded ravine area and then this building. Next door is a single family home that was remodeled recently by Mr. Leka Gjona and his wife. I think his parents lived there. The long driveway you see here goes way back into a home that he is building back here and I have a picture of that home that I’ve shown on this photograph on the board. The other side of that building is a building that is owned by one of the people who work for the Town in the Building Department. This building and business was approved approximately 5 to 6-years ago with 40-parking spaces and

access to it through this double driveway. At the time we felt that that was adequate to provide parking for the business. Mike moved over from location in the Delmar Plaza or just in back of that and has been successful in his business through the years. It has grown; it's a very well known business in the Town and I think has been well accepted.

The biggest problem we've run into is that the parking has turned out to be not adequate for many reasons I guess and I don't know how to get into all of them, but one of the main things we found is that people using the facility and a lot of them are families that have 2 and 3-cars and they come at separate times and park – all of them trying to use the same thing. It has become a major problem in that they are parking out along the roadway in the grassed area. On the other side of the roadway all the way up through here in front of these properties and many times the police has been there and Mr. Mashuta has done his darndest to try to control this but when you have cars coming there they have to park somewhere and that is what has happened there. They have even moved over into this area, which we have proposed as a new parking area.

Mike came to me and says what can we do about this, we've got to do something. I've got to have more parking to get this problem resolved. The police are pushing me, the Town is pushing me; it has to be taken care of. We've looked at it from many directions; spoke with the Building Department, with Mike. The only solution we could come up with was to access from existing parking here with a roadway through and I went through all the zoning books and I couldn't find anything in there that said that I couldn't take a roadway into the AB Zone and then park in the commercial zone, but because of the fact that we wanted to put ample parking for the whole thing and get this over once and for all. We proposed to bring this driveway in as I've designed it here, meeting all requirements, 24-feet wide for 2-cars passing; parking against the side of the building here and then crossing over the zone line, which is "CC" and "AB" into lands owned by Mr. Mashuta, which consists of a number of acres back here that is undevelopable at this time. He has no access to those lands what so ever. There just remaining from all the lands he purchased when he first bought this property. Until we can come up with some way of trying to develop that back there, maybe building a bridge over the building. It's vacant land so as far as the buffer zone is concerned, he owns some 800-feet back through there is a buffer zone.

When I came in to get permission to put or try to get permission to do a building on this piece of property. We discussed with this Board the possibility of a Variance that would allowed a 50-foot strip of land back through here that Mr. Gjona and his wife could have conveyed off to someone or sold to someone that would allowed access through here to these lands and also to adjoining lands over here, but at time if the Board recalls – I can't remember his name, Lewis, I believe it was Mr. Lewis. He said that this Board cannot deal with that type of situation that this Board doesn't deal with planning, it only deals with Variance's and Special Exception's. So that took that possibility out of there. So right now we have a landlocked piece of property back here that can't be accessed for development other than to drive through like this.

So in looking at the problems we have here in front for the parking along the roadway and on the other side and I have taken some pictures here, tried to show the Board how these cars stack up on either side and this is even the mile pictures I was able to get because I went over there twice to take pictures in pouring down rain, try to take pictures with a Polaroid – pouring down rain but you can see from these pictures how they stack up along the side of the road. I even took some pictures here to show how – it looks like a couple of people got buried and probably had to be towed out. In the wintertime with the snow, it's about 3-times that bad. So this is what we're trying to resolve and that's why we've come to this Board and asked for what we're requesting to try to take this traffic and problem off of Hudson Avenue and build this parking and put it in behind and take care of the problem once and for all. I've shown elevations throughout the site, the difference in elevation as you can see even from the pictures that I took behind the building. They had done some grading back there, Mike didn't realize that he had to come back before this Board to do something like this and when I found out it was happening, the guy was grading it. I immediately stopped and we're here now. This was some 6-months ago, maybe more than that. Anyway he wasn't trying to do something he didn't think he could do. He couldn't do it and he didn't realize he had to come before this board so you can see from the pictures I've taken. This is standing up on the hill right next to Mr. Gjona's driveway looking down into the site, some probably 10 to 12-feet lower than the surrounding area. The elevation at this point is 212 and down on the site is around 201, so it's like a 11 to 12-foot drop off down into this site.

Mr. Gjona called me last week and said he was going to – or he had looked at the plan and had a couple concerns and I invited him to stop by my office and I would go over it with him and apparently like myself he's been busy as hell trying to get his house built or whatever. So we haven't had a chance to really do that, but he is here tonight with his wife. So I think I've tried to explain and hopefully I explained to the Board and the audience exactly what we were trying to do. With me tonight is Mr. Mashuta, Mr. Mashuta's counsel incase there's questions for back to legality what we're asking that your counsel can talk with him. We'll try to answer any questions.

CHAIRMAN HODOM: I'll state what I had said earlier to the previous Applicant is that there are specific criteria that you must meet for a Use Variance by New York State statue and you haven't approached any of them that I can see this evening. I think there are 4 or 5 different areas that you must address for us to be able to approve a Use Variance. Unlike an Area Variance, Use Variance's in New York State are – they are by statue. You have to meet the requirement set up in the statue to obtain a Use Variance, and we have some leeway but as of right now you haven't addressed any of those issues.

MR. HITE: Perhaps I've misunderstood what we tried to do. I went to all the zoning books that we have, I've discussed this with the Zoning Officials and maybe it's because we are not allowed to meet with this Board on an informal basis. What do we do to meet what you're talking about? I don't quite understand where we meet that criteria.

CHAIRMAN HODOM: Again, I think in your application request, I'm assuming that the

Town Building Department handed to you the application itself plus any of the descriptive literature that would explain to the applicant what they must provide to this Board for a Use Variance. If that didn't happen I apologize. I'm pretty sure it did happen that you were given the information. We can briefly go over it this evening but it's a really a mute point until you provide the information.

MR. HITE: I think we have to Mr. Chairman, I mean I've been appearing before this Board for some 35-years and I thought I filled out - - every question was asked on that application form, all the meetings we had what are we missing? I don't know what we're missing.

CHAIRMAN HODOM: When an applicant comes in for a Use Variance, what are they provided? Do you have the information with you?

MS. GUASTELLA: They're provided the standard paperwork for the regular variance and I also make a photo copy of what the 4-criteria are out of the Coon's Addition.

CHAIRMAN HODOM: Okay.

MS. GUASTELLA: But it's basically the same information that's provided, the fee is different, but the only thing different is that they get the copy of the 4-criteria.

CHAIRMAN HODOM: Okay and they were provided with that?

MS. GUASTELLA: I believe they were.

MR. HITE: I don't recall it but if I was then, you know apparently I missed it.

CHAIRMAN HODOM: Is your counsel familiar with the land use requirements for a use variance.

MR. SPIRO: I guess my thought just as maybe a question that might be helpful if you could enumerate. Are we talking about a difference of opinion as to whether the facts meet the criteria or you're saying it's an incomplete application? Are we talking procedural issue at this point? I did not help prepare the application. I have worked with Mike on the development of the health club, so I can't speak to the completeness and I guess I'm asking which direction are we discussing here.

CHAIRMAN HODOM: Let me explain to you and I believe the latest one I have is effective July 1, 1992 and I believe that's the latest information. It comes from Town Law, 267b, permitted actions by the Board of Appeals. And on our Use Variances, the Board of Appeals on appeal from a decision are a determination of the administrative official charged with the enforcement of such ordinance or local law shall have the power to grant Use Variance's as defined here in. No such Use Variance shall be granted by Board's of Appeals without a showing by the Applicant that applicable zoning

regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that 1.) Applicable zoning regulations the applicant is deprived of a reasonable use or benefit from the property in question, which deprivation must be established by confident financial evidence. 2.) That the alleged hardship related to the property in question is unique and does not apply to the substantial portion of the district or the neighborhood. 3.) That the requested Use Variance if granted will not alter the essential character of the neighborhood and 4.) That the alleged hardship has not been self-created. The Boards of Appeal's in the granting of Use Variance's shall grant the minimum Variance that it shall deem necessary and adequate to address unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health safety and the welfare of the community. That's a mandate by statute and that's what – that's really what you must address.

MR. MASHUTA: I believe we have.

CHAIRMAN HODOM: Okay if you think you've done that, that's fine and then we can proceed.

MR. MASHUTA: You know I think the only thing we lack based on the information that Mr. Hite has given you is tangible, written evidence documenting financial difficulty. I have proven the difficulty of doing business in Town and the danger and the liability that I'm facing as a Town owner by providing proof. Now, as part of the documenting the difficulties that I've run into, I'm sure that the police docket or record a number of visits documented by complaints.

CHAIRMAN HODOM: Michael that's evidence that you have to provide this Board if you think that's relevant.

MR. MASHUTA: I mean we were given an application and we filled out everything that we had that was on the application barring that again, what you read to me tonight, which I believe was covered by Mr. Hite and when I came here I had expected and I had assumed that these were the questions that we're going to be debating tonight that when you had a question concerning the character of the neighborhood, the difficulty of the situation, I believe that the Board's responsibility to take in the facts from the case lie in the evidence that we're providing tonight.

CHAIRMAN HODOM: Well the Board doesn't have any responsibility of presenting your application and your request. It is your responsibility to present your information to the Board. We don't go to the Police Department and find out if there's been problems down there. That's your obligation to do. We sit here primarily a quasi-judicial panel; it's just like a court of law. You present your evidence; we weigh the evidence. We can't go out and hold your hand or work for you Mike or Paul.

MR. MASHUTA: I'm not asking you to hold my hand. I'm asking you to weigh the

evidence.

CHAIRMAN HODOM: Again, if you feel that what you presented so far is following the law then that's fine.

MR. MASHUTA: Well I just feel outstanding prejudice now at this point because I'm sort of feeling like an ultimatum is being given to me to like leave and put something more in writing and put it off until a later date or take my chances on what we've worked hard to present tonight.

CHAIRMAN HODOM: There's no ultimatum Mike. It's up to you.

MR. MASHUTA: I mean if you want to give me a little bit of direction, I'll do whatever the Board, you know thinks is in the best interest of the Town or in my best interest, but really I'm trying to benefit the Town here. I'm going out and spending a lot of money to take the cars off the road, the liability and the difficulty that have been created as a result of a conflict between, you know people not wanting to walk to far or neighbors not wanting people to park on what be a Town right of way that they might think might be their property and now the people are parked, stacked up, you know on my property in a certain way. Now lately the police have come and said as long as the cars are parked along the road they can park along the road all the way up and down Hudson Avenue as long as they're parked in the same direction, but I wanted to do what I thought was the responsible thing as a business person in this Town was to remove any liability and safety that the Town would have through their snowplowing and difficulty and prevent, you know woman with kids from having any danger of walking along that road and, you know maybe getting hurt on the Town sidewalk or getting hit by the cars as they were coming in and out.

CHAIRMAN HODOM: And I understand that. I've given you the criteria that you must meet and I'm pretty sure that you were given that criteria when you made your application. I think you have another alternative, have you approached the Town, the Town Board for re-zoning of that back portion. If it's landlocked, have you approached the Supervisor or the Town Board asking them to re-zone that area?

MR. HITE: We haven't even discussed it with him because as you well know to get a property rezoned their first question they'd ask is why do you want to rezone it you can't access it? That would be the first question out of their mouth.

ATTORNEY MOORE: You don't have to rezone the entire piece. You can rezone only so much as you need or you can apply to rezone only so much.

MR. HITE: Well see that's one of the questions we came into when we first started this, we weren't even looking at parking in this area here, we were only looking at putting a roadway into here. No one has been able to answer that question yet as to whether we can not bring a driveway into the AB zone and park on the commercial zone. No one's ever

answered that question. It's not in the books, Mark has looked at it and John Flannigan's looked at it. Our late head of the Department, a very nice man, looked at it and no one has been able to answer that question. We had 3-different attorney's, other than counsel to my client, look at it and no one said we can't find it anywhere in the book so the easiest way to do this is going to ask for a Use Variance. Now here we are tonight - - let me just make sure of what you're saying to me is you're saying that all four of these items we have not met, which is one the financial responsibility that within year and the other three are what? Because I read through that and discussed it here tonight as to why those 4-items are taken care of, maybe I didn't...

CHAIRMAN HODOM: Again if you think you've done that then that's fine.

MR. HITE: I don't want to get into something and continue here if at the end of this you're going to take what we've done and say, no you're dead. If we've got to bring you something then we'll do it. You see that's one of the problems with dealing with this Board is you as a quasi-judicial Board we can not set down with you and discuss this type of thing....

CHAIRMAN HODOM: That's correct.

MR. HITE: So I guess we're asking advise to walk out of here tonight if we have to delay this thing for 2-weeks, then let us do it but I don't want to do it with prejudice. I definitely want to - I want my client to have his fair shot, so if you're saying come back here with that 4-items of information then I guess - - unless counsel says different. I don't want to make a presentation here that causes him to walk out of here without something. You can't even make a decision on it. We think we have but you apparently don't so that wipes that out right there.

MR. O'BRIEN: With permission of the chair, his fine presentation cannot be seen by the audience over here and if he used that one down there we might be better off.

CHAIRMAN HODOM: Okay, thanks Tim.

MR. HITE: I apologize to you for that. I thought you were looking at me. This drawing is the same as that one with the exceptions of a couple things.

MR. O'BRIEN: Oh, okay sorry.

MR. HITE: If you want me to I'll go up there.

MR. BROOKINS: Can I take a shot at this?

CHAIRMAN HODOM: Sure.

MR. BROOKINS: You may just in your most recent comments a very convincing

description of what you perceive as your moral responsibility in taking care of your customers and in your interest in relieving any responsibility legally in terms of a liability primarily to either the town or the neighbors or through any kind of incident with any of your customers and that's great, but essentially there's – unless I'm missing something there's nothing there that you have a legal responsibility for it and you certainly haven't demonstrated to us or at least to me that because of the situation you are – lets take something really obvious, you're loosing money.

MR. MASHUTA: I'm loosing money.

MR. BROOKINS: You know if you came and I don't want to go – I don't want to do your homework for you, but you haven't demonstrated that you're loosing money or that there have been excessive cost as a result of this or the financial component, which we are mandated by the State to address or to evaluate seems to be missing unless I miss something.

MR. SPRIO: Yeah, I did not prepare the application and I will be happy to take the application and refine it. I understand what your point is. If I can for a minute, part of the problem here – there was a lot of discussion about whether this is a Use Variance, Area Variance or something else entirely. This is one that from the beginning has been a little awkward and I think a lot of what your suggesting is something that people have had a lot of conversation about and kind of maybe was too presumptive in their assumptions.

Obviously if people can't park, they can't attend. If they can't attend, they can't join and pay dues. I can write that up clearly. We can get testimony from some members; we've lost members, but it's important to recognize this has been a little bit different because in a typical situation the gym exists, you know we're not looking for a Variance to build a business. So it's not a situation where you have no economic use of your property, which is the traditional situation, but what we have here is we have an ongoing relationship financed with Mike's hard money, Town involvement, etc. Approval of the business, the operation of the business and limiting factors, which are causing the business to not be able to be competitive and not be able to grow.

At the same time and just as importantly, Mike would be here either way, but Mike is here right now because came to us through it's police department, through it's officials, etc. and said we'd like you to fix this problem. Mike's business is legal; parking on the street is legal that's why it doesn't fit perfectly. We're here because the Town and Mike together recognize it's an issue that should be addressed. It would be Mike's economic burden to fix that because obviously that's - - he's the guy who owns the property. So on the economic interest it's 2-fold. It is loss of business, etc. It's not going to be a traditional you can't use your property to make money. Obviously the business is there, it exists. We'll be able to discuss for you and I will put in writing for you how it has limited growth. There are other discussions in Town, YMCA coming to Town for example; future competition. All of those economic factors are obviously critical to his future ability to use his property and grow. I just need you to recognize it's a little

different then coming and saying we've got a piece and we need to be able to build a health club.

It obviously has some economic value. We're making payments; we're paying off our debts. It's not the profitable that it could had we had this situation resolved so logically there's an economic interest, but it's also a deeper interest which is what Mike has addressed. As to the hardship being created by us, again everything that we're doing here today in the club, membership levels, looking at the business plan, looking at revenues, etc. were all part of the documentation when we went in to build the club and apply to the Town to receive financing through the JDA, etc. So this is not a situation where we built everything that was approved and it was all according to plan and we made money and now we're looking to do – where we've grown the business 10 –times bigger than everybody ever thought and therefore created a traffic problem for ourselves. This was a project where we are on target with all the projections. We're on target with all of what we initially put forth and thought would be required and again are now trying to rectify the situation that the Town and my clients. So the argument that somehow this hardship would be self-created, again just isn't there. This is exactly the use anticipated when the site was approved to build the business. And exactly the type of activity anticipated when we received the financing and went ahead with the project. So if you'll allow me the other two.

CHAIRMAN HODOM: Just before you continue, just give us your name and your association.

MR. SPRIO: Yes, it's Phil Sprio, S-P-R-I-O and again I am first a friend of Mike and a long time attorney who handles various issues. Again I did not put together the application. As to the character of the neighborhood, I think that to that issue we have submitted documentation being an existing business. The character of the situation is we have parking already. If anything, those issues were somewhat addressed by the location of the parking in the front of the building itself. And the fact that as Paul has addressed the buffer zones and everything else there would be little to no impact in terms of character of the neighborhood and different then maybe a typical situation where you're trying to do something that's outside the nature of the zone. It is obviously consistent with what is there right now, consistent with prior approvals to allow this business to be built and allow it to go forward. In fact we would likely argue that should this parking expansion be allowed it would enhance the character, because we would be solving those roadway problems that we've discussed and I'm sorry if you repeat the fourth for me, I'm sure I can address that.

MR. BROOKINS: How about unique to this particular hardship – unique to the neighborhood, surrounding neighborhood.

MR. SPRIO: Certainly, this would be in terms of the neighborhood if we consider the neighborhood as presented here by Paul, there is no other business entity in this neighborhood that has a parking problem, obviously O'Tools through the residential

areas. We're not talking about any other business that would even be in the neighborhood to argue that it wasn't unique. If you know the street it's in a wooded area, residential on one side – comes around on the curb and essentially that's probably the least contentious of the factors that it is also uniqueness of the site itself driven by some of the topography and uniqueness of the use itself in terms of the classes being taught, schedules being taught. The parking lot sits with plenty of space in the middle of the day. Again the uniqueness of this business is that people tend to come in a certain time prior to say 7 to 9:00 a.m. for example and again after work. It's not a typical supermarket flow lets say. So the original projections when this project was approved and the financing was received allocated a certain number of parking spaces per square footage. The unique use aspect of the club is that it's driven by peak periods; therefore that analysis has lead to the situation we find ourselves. I'll be happy to write all that up, I apologize it's not there. Had I prepared the application I would have gone through that for you and maybe I had assumed that some of that had already been sent in or discussed. So again I apologize for that.

CHAIRMAN HODOM: We would like that in writing and what I would really like Mr. Sprio, is that you address each item...

MR. SPRIO: Certainly.

CHAIRMAN HODOM: Of the Use Variance. But let me ask you some questions if I may. I think Paul eluded to this earlier that initially you were going to request that an access road in the "AB" zone for the 12-spaces adjacent to the building. You weren't going to have the 13-spaces on the north side. Is that correct or incorrect?

MR. HITE: In this area here?

CHAIRMAN HODOM: Right.

MR. HITE: Right. And what we did was to look at that, once I said well we've got to build this road in here and if we have to ask for this Variance to put the driveway or the roadway in then why not take these spaces and make them available to his staff that works for him. That then puts all them parking back here, which releases parking spaces out here along with the ones on this side. We're going to have a door here that will allow anyone that has to park here and use the facilities to come through, but all the working staff would park here and be completely out of the way. That's why I did that if I had to ask for this Variance then why not make use of the Variance and ask for the parking to be here for the staff.

CHAIRMAN HODOM: Do you know approximately how many vehicles park on the roadway on either side?

MR. HITE: I have in this photograph alone and this is not one of the areas, 1,2,3,4,5 just in that one little spot, 6,7,8,9,10,11,12,13, and while I was there taking pictures three of

them left. So there's 16-cars right there and that is not max of what parks along that road.

MR. SPIRO: Paul when were they taken?

MR. HITE: At various times. Like I generally try to take them on – I believe Mike said to me that Monday night was a very good night to get a general consensus of what the parking is like in difficult times.

MR. SPRIO: I'm asking the time of year, was this in the last couple of years?

MR. HITE: Oh, a couple of them was taken today, last week and three weeks ago or something like that.

MR. SPRIO: The reason to get to your question a little bit though is that it is also not only temporal in terms of usage driving volume, but seasonal. You know if you had pictures in a snowy day in January when we've all ate to much and had our new year resolutions and we're in there, it's a little different picture as well. Going to you're uniqueness again, it is temporarily important and seasonally very important. In August parking is much less an issue. In January that doesn't begin to tell the story.

CHAIRMAN HODOM: Well the reason I asked the question is because in reviewing the plan that Mr. Hite prepared and trying to maintain all the parking in the "CC" Zone, I came up with 16-additional spaces that you would have. If cars parked along the roadway, the maximum that could park there unless they went beyond your property lines is 10. And then across the street perhaps half of that could park across the street because of the way it narrows going towards the village. It would appear that if all the parking spaces were maintained in the "CC" area you would gain 16-spaces and that should be adequate for any overflow. I guess that's why I need you to address that as well. Now have you made any attempt to purchase across the street, which is probably with the DH – the railroad property?

MR. MASHUTA: It's Town first and then it's DH right of way. And I spoke to Sheila and I spoke to Terri and neither of them any interest in offering any of that property across the street because of the probable liability. With cars parking parallel in there, I mean cars pulling in and backing out there's sort of a blind hump that comes over Hudson Avenue and if they were to sell me or deed me or I wouldn't do that property. They perceive that they would be creating a liability if someone backed out or got hit going into that property. Similar to those apartments that are down the road is really what I had asked for.

CHAIRMAN HODOM: Do you have any of that in writing from the Town?

MR. MASHUTA: No, they wouldn't give it to me in writing and recently I proposed to Mark Bryant from B-Pack if the bike trail goes through I would like have access across the road and help the Town by purchasing that land and doing a parking lot across the

street so people could park across the street and maybe use my facility during peak hours, but not peak times and most of the other times, but if you approve the back part then my people won't be using it at all. But the Town will benefit because people will be able to access the bike trail, people will be able to walk across and use the memorial park, which there's no parking for now and people will be able to walk across, get onto the sidewalks of Delaware Avenue and use the businesses on Delaware Avenue. So I also concur with your idea and that was the first thought that came to mind. You know we really didn't think that we were going to need a Use Variance when we contained – when we spoke with and then we spoke with Mark and when I started the construction in the back. We never really thought we were going to be here and need a Use Variance because no where could we find that just driving on 4-foot feet of residential “AB” to access, to park, to maintain all the parking on Commercial was required as a Use Variance, but we wanted to do it the most legitimate way, the best way answer all concerns that you might have and cover any options.

ATTORNEY MOORE: All these spaces are in a residential zone, right?

CHAIRMAN HODOM: Well that's what he's saying, what they were saying is that initially they were looking to bring the access road to approach these parking spaces and they thought as long as they had to do that they would add these spaces. So would you consider eliminating those 13-spaces to the north?

MR. HITE: If that means getting out of a Variance, why not?

CHAIRMAN HODOM: Oh no you'll still have to go to a Variance because you're in a “AB” residential zone.

MR. MASHUTA: Mike, that's a very good question and I thought about that carefully, but there have been times when I've had 25-cars out there and woman carrying babies across snow covered roads and snow banks out there. I think my neighbor's can testify to the difficulty and how many cars. You probably have a better idea during max time how many cars have been out there during peak. Unfortunately it's – unfortunately it's not just 6 – at 16 will not take care of the problem. We've tried to stagger our aerobics classes because what had happened – what we realized had happened were if we had 20 people in an aerobics class and 20 people working out and the facility is relatively empty even with 40-people in it at 10,000-square foot building and we had another class coming in we had another 20-cars coming so we had 60-cars for 40-parking spots. So what we had to do is we had to change our class schedule which created a hardship because people - - it required more staff, different staff because staff couldn't wait around and teach another class.

What we did is we postponed classes, changed class times so that we created a time buffer in there so that when 1-class would end there would be a 15-minute or 30-minute time for those 20-cars to leave, but still hasn't elevated the problem. We still run into the problem where people are holding on waiting for the other class doing a cardio

workout and doing another class and we still run into the problem with overflow of cars. And problem is so bad that cars are parking in the main entrance of, you know the driveway. Every parking spot from the curve where the guard rail is down by the turn closest to Delaware past Stewarts on that side length by length and then I think when you figured out that there would be five in front of my place, there are five between my property that park length wise between my property and Erma and Leka's, but then we get another 8 to 10 that parallel park on the grass in the front.

MR. HITE: They'll pull in here and park and then the others will pull in behind them.

MR. MASHUTA: Yeah, so there's parallel parking. So now my green space, which, you know was beautiful, is just all mud and it's terrible and I want to replant that and re-grow that but again if I put a strip out there don't park on the grass or I put something out there then I think I'll also be creating a liability where people will be - - because of the nature of Hudson Avenue and the dips and the speed and this is what the police have told me and I'll just pass this along for your information. When you have a short cut, which Hudson Avenue is perceived to be a short cut, people go fast on a short cut. It's a short cut and it's a dangerous short cut because of what you talked about - the topographic slope. There's so many blind areas so if the speed limit's 30 and cars are going 40 or 45 and they come over that hill it's so dangerous right there because people are opening their car doors and you've got the ruts on the side where people have not been able to get out so you see there's a red car up there that's parked in the road and know if they go ahead that door it's just really dangerous.

CHAIRMAN HODOM: Well that was one of my questions was - but you brought it up, do you have stage use of the facilities and apparently you've tried that and it still hasn't alleviated the problem. Let me ask Mr. Hite a question, is it possible to build a retaining wall along the east portion prior to going down in the ravine....

MR. HITE: In here?

CHAIRMAN HODOM: Yes.

MR. HITE: No.

CHAIRMAN HODOM: To pick up the additional parking that might be in the back.

MR. HITE: No, because about - - which is the top of the hill it goes down at about a 36-degree angle. It's very, very steep.

CHAIRMAN HODOM: Okay.

MR. HITE: So this 24-foot driveway is about max development. The only reason we were able to this was we met with the soils engineer. We did soils test; we did analysis in that cars driving through here doesn't create any where near the weight on this slope that

a building or something like that would so he was able to determine that having this driveway through here was more than acceptable in terms of safety. And in even the parking areas here within 6-feet of the building is more than adequate. No parking on this side what so ever causes the steepness of the slope and even in here we probably could have put a couple in then. I didn't want to do it because of the slope there so I took it around the bend as I stated before. We were only going to put them here but Mike says but if we've got to ask for the Variance let's ask for them here and that way then we certainly clear up any problem that we may be facing out here now or in the future. So that's what we did. And again I'd like to and maybe your counsel can answer that question, where does it require a Variance to put that driveway in to the "AB" zone to access parking within the Commercial Zone? I can't find it anywhere and four of the lawyers, 3 of the lawyers other than him have not been able to find it and two of them are very, very learned in terms of Zoning Law and I've consulted with them.

CHAIRMAN HODOM: Well we can certainly look into that. I don't think that question has been broached at least since I've been on the Board since 1990.

MR. HITE: I have never had it come up before, but I started researching because I had to try to find some way to get back in here and, you know alleviate this problem and when I started looking, I mean Mark would have to admit here tonight we can find nothing in the books. Kevin couldn't, John Flanigan can't and if John Flanigan who's been here some 40-some years – if he can't find it I don't know – there's something wrong.

MR. SPRIO: But it's important, Paul that we didn't take the position that we could simply apply for a building permit, put in a road and build half of those slots. There's two things going on here, this is has been a collaborative effort to try to make sure we fix the problem. If that is something that the Town believes is an option or a preferable option then I suppose, you know we would like to know that, but I think together we've decided we like to fix the problem so...

CHAIRMAN HODOM: I don't know if we got an answer to the previous question I asked you about approaching the Town for a zoning change for allowing you to do this in the "CC" area and it really would be my recommendation that you approach the Town to see if they would consider it and if they turn you down then that's another consideration that we would have in front of us.

MR. HITE: I think the problem we're facing now with that, Mr. Chairman, is that with the moratorium that's on and the review of all the zoning in Town by this Saratoga Associates, they're not even going to look at it – remotely consider something like that.

CHAIRMAN HODOM: Well I'm not so sure that's the case Paul, the moratorium only deals with residential properties and...

MR. HITE: Well that what this is.

CHAIRMAN HODOM: Well but I'm saying development of a residential property. You're not going to put any homes on that property. That's what the moratorium's about, at least that's my understanding of it. That to me would be the easiest way of resolving the issue and then it's clear-cut, would you not agree?

MR. HITE: If it could be done quickly, yes but the problem is that we may run into a 6 or 8-month, you know time period to do that and then we're right back into winter again with the snow.

CHAIRMAN HODOM: Well but that's a summation on your part. I mean we don't know that, it's all speculation. In any event we could proceed and get the parking in for the "CC" district and that would alleviate some of the problem if not all of it. I'm only making a suggestion to you because this Board will consider everything that's presented to us and the more effort you make to mitigate your problem and the denials that you have, that's what we can act upon.

MR. SPRIO: I guess I would ask as a threshold then could we – how do we proceed to get an opinion whether a variance would be necessary to bring in that driveway and construct the first portion because what I could see then is perhaps a phased approach. If you tell us that we're okay to go ahead with the building permit on the first portion that might provide us the time necessary to go ahead and think about the Use Variance.

CHAIRMAN HODOM: I'm not quite sure I'm following you Mr. Sprio.

MR. HITE: If your counsel tells us that we can do this without a Variance or Use Variance, the only request we have to ever come back to you then would be to put the parking on this side.

CHAIRMAN HODOM: As I say our counsel can certainly look into that.

MR. HITE: Somewhere there has to be an answer to this.

ATTORNEY MOORE: Not necessarily.

CHAIRMAN HODOM: And that's one reason they're looking at the zoning throughout the Town as well. Certainly past history governs a lot of the determinations of item that are not covered specifically in the zoning law.

MR. SPRIO: I was reacting to your statement earlier that you'd still need a Variance. I wasn't sure what you meant by that and it'd seem to me if we were to keep it all in the commercial, do we still need a Variance is a very relevant question.

CHAIRMAN HODOM: No, if all the parking and access roadway remains in a "CC" zone you wouldn't be here tonight.

MR. SPRIO: Right.

CHAIRMAN HODOM: You can do that, I mean certainly the parking on the side of the building...

MR. SPRIO: Except for the roadway.

MR. HITE: We could put in these or 9 or 7-spaces is all we could put in.

CHAIRMAN HODOM: I think you can put – well I had 12 you could fit in there Paul, plus you can fit – when you show 2 in the front I think you can put 3 in there, but you know better than I do.

MR. HITE: Well there's 2 here and 7 here is 9, remotely could squeeze 1 here and squeeze 1 there.

CHAIRMAN HODOM: You're stopping – you're allowing for a green space in there the last parking space to the north along the east side of the building.

MR. HITE: Right there?

CHAIRMAN HODOM: Yeah you could pick up 3 more space there.

MR. HITE: No, that's only about...

CHAIRMAN HODOM: If it's strictly on – if it's strictly on "CC" Zone and that's using your scale 1-inch equals 30-feet so it's just a recommendation. Again if you folks think you submitted the proper documentation then we can discuss it further or we can close the hearing. I would rather see that we adjourn the hearing, you put together the documentation the Board's asked for meeting the requirements of the state statute in 267b for a Use Variance. I still think at this point in time you're lacking some information there. If you make an effort to the Town to see if they could re-zone, that portion at least they'll allow you to get the northerly parking spaces in the "CC" zone and if they say no then you can't at this point in time.

MR. SPRIO: There's obviously an issue of should we phase it in that fashion? How do we protect our hardship, in other words we're here before you today saying to truly fix the problem we need what we presented. Should we phase and I recognize that we add to the record should we be turned down by the Town for a change of use on that back parcel, okay, but should we add 12-spaces at this juncture it does work against our arguments on the financial hardship and the rest of it so that it's not an easy decision.

CHAIRMAN HODOM: I'm not so sure that it works against your arguments. It certainly helps to alleviate your problems.

ATTORNEY MOORE: I agree with the chairman. My reaction would be if you went to the Town Board, that would tend to support your request for a Use Variance, but obviously that decision is ultimately for the Board but off the top of my head I would tend to agree with the chairman.

MR. HITE: You don't feel that we'll run into a - what you call spot zoning there if we request that?

ATTORNEY MOORE: You're right; I mean this is a can of worms. I'm not going to try to answer every possible objection.

CHAIRMAN HODOM: The point of it is though if you don't make the effort, we don't know. Two things can happen, they can affirm your request or they can deny it.

MR. BROOKINS: I think what they're saying, and I don't want to put words in your mouth, but if the Town Board did either of those two things in a reasonable length of time you'd be happy with either because you'd have an answer. The biggest problem which will add to your financial hardship, in my estimation unnecessarily, is that this thing drags out, you phase it in and then potentially obscure the problem that you made clear today, but at least from some prospective. My guess is in a narrative already alluded to some of the financial support for your case, for example the chairman mentioned about the staging and the changing of your programs, I mean if you left 2-hours between every event in your club you would not have a parking problem but you also wouldn't have a business. So, you know those kinds of things that you've already done I think probably would at least go towards and I'm not speaking for the whole Board, but would go towards the things that seems to be most lacking at least in my estimation at this point.

MR. SPRIO: Then allow me to re-work the application and press some of those out again, I didn't prepare it but I can certainly...

MRS. O'BRIEN: Phil, another issue that I think needs to be addressed is when this was approved as a fitness facility, clearly there was an expectation of how many membership members you would have and was the parking based solely on the size of the facility or was membership included in that? That's something that needs to be addressed for us to consider your hardship here is, you know have you exceeded the membership that you anticipated when you were proposing the building. Was the parking adequate or more than adequate or not adequate at that time and how was it developed? How did you determine the number of spaces you needed, I mean you had another facility so you certainly had experience in how many members you would be having and what the parking needs would be so those are things that...

MR. MASHUTA: The job development came up with that along - - Kevin, Mark and the Town....

MRS. O'BRIEN: We need to see that in writing, you know we need to see these things

documented in order to be able to make decisions about whether, again it was a self created hardship, you know we have to see things.

MR. SPRIO: That's fine; we'll work on that. The initial parking requirement as understood be Mike, with an appreciation for the business and some of the issues we're talking about today with seasonality and some of the other things – anticipated more parking, the business and the loans we took and the public moneys, etc. were driven by an anticipated level of membership and level of use and level of revenues. Why I would argue to you that we've not created the hardship is we have not exceeded those. We are right where we had hoped to be, right where we based our financing plans, etc. on. At initial approval, unfortunately we were not able to get as much parking as we wanted because the code required essentially based on a 10,000-square foot building this was sufficient parking. We're really fixing a problem that should have been fixed.

MRS. O'BRIEN: So you were denied additional parking at that time?

MR. SPRIO: That's correct.

MRS. O'BRIEN: Had you planned where it would be?

MR. SPRIO: It would have been right where we're...

CHAIRMAN HODOM: Who denied the parking?

MR. MASHUTA: The Planning Board.

CHAIRMAN HODOM: Do you still have the plans that you submitted to the Planning Board?

MR. HITE: Yeah.

MR. SPRIO: This was not an unforeseen issue at all.

CHAIRMAN HODOM: Well basically, I mean for the 10,000-square foot building, based on the code you must have a parking space for each 250-square feet. So you're right on the nut, 40-parking spaces is what's required, that's the minimum. I have no idea why they denied you additional parking, but if in fact you had shown parking previously, I think that would be relevant to our considerations.

MR. MASHUTA: Yeah, we had the plans and that's why we went through subsequent engineering of the report you have. We hired, you know further engineering to go above and beyond and prove that all of the areas that we're proposing parking now are definitely safe, you know soils - soil engineering reports so – and we had them done at the time but the engineer that was involved with the Town prior to, you know we have all drainage all put in there now and has been in place for 5-years and it's 8-feet down and

it's 12-inches and it's surrounded by 4-feet of gravel, you know number 2 gravel and that is subsequently completely dried out – that side of the area so it's pulled all of the moisture out of the area so part of the concern was the unforeseen improvement to the property by the previous engineer, that's why we went to get further engineering documentation to sort of bolster our case that, you know maybe it wasn't okay...

MR. SPRIO: Succinctly put, the Planning Board because there were some questions about slope and whether it was workable and that project to get the approval had already gone for a while really decided that it was preferable to go ahead with the project since the project met code and despite our commentary that this was the situation we find ourselves. So there was a decision at the time that weighing what they knew at the time looking at the topography, looking at what would be entailed with what we have before you tonight that since we were okay with code lets build it, lets see what happens and we're 5-years down the road now Mike, give or take?

MR. MASHUTA: Yes.

MR. SPRIO: And, you know we had pretty good foresight at the time and here we are.

MR. MASHUTA: And I have less members today then I did in my 4,000-square foot place in Delaware Avenue as a result of this challenge because my cars were parking in the OTB parking lot and walking down that area and the parking was never as difficult as parking has become and dangerous as it has become here so I've gone, you know from a smaller, tighter, dirtier facility to a larger, more beautiful, more expensive tax and, you know job development sort of driving business but I find myself in the same more difficult hardship. One that I thought this was going to be the easiest solution. This Board would be the most receptive to the challenges. This criteria would be the most obvious to meet the demands of, but again I didn't actually see the four things that you had read off to me at the beginning or I obviously would have written out clearly and succinctly so you would have been able to read it, not just hear it.

MR. SPRIO: And part of the financial hardship also should consider looking ahead. The advantage to going to a new club and a 10,000-square foot building was to grow the business. The number one limiting factor on the ability to grow the business is the parking situation.

CHAIRMAN HODOM: Let me just - - because we did advertise and there might be some people here that had some questions or comments, but before we get into that you have no objection to adjourning the hearing to a future date uncertain at this time once you have the documents that we've requested we can reschedule it?

MR. MASHUTA: That would be great.

CHAIRMAN HODOM: Okay. Is there anyone that has questions or comments regarding this application? Just introduce yourself to us Tim if you would.

MR. O'BRIEN: My name is Tim O'Brien, I live at 24 Macomb Drive in Delmar and I happen to be a member of the health and fitness club. I know that's rather difficult to believe when you look at me but I haven't been over there for time. What Michael has as far as the requirements for the Board is that - - or there seems to be the 4 criteria not spelled out for a governmental body and the deprivation unique character, a conditional alternate use and self creation of a dilemma certainly is something that has to be presented to you so that it's there for decision making and I just want to say that I didn't think that the Board here this evening was being in any way obstructionist.

I have been at task force meetings, committee meetings, etc. 35-years with the State of New York codes, rules and regulations and if it's not there in black and white then it doesn't exist as harsh words. But with regard to speaking as a consumer this program has mushroomed from what that which was in the Delaware Plaza OTB area. We now have a nursery in there and it is protect by people who are supervising the youngsters. There are classes in health, which were not available in the previous facility. There is literature available, there is qualified personnel – has top of the line equipment. The equipment has been expanded in great measure from the old facility so one of the things I would say to Board is that this as far as your concept is not the gymnasium effect that was available some 10-years ago near the OTB parlor. This is truly a health and fitness center.

The parking needs are especially dangerous in the wintertime of November to March, those 5-months. One of the dilemmas with the parking here is that it is not a teardrop. The plow does not go around and come out the other side. The plow comes in and will take up a couple of parking spaces with the amount of snow that has been cleared from the access road and from the parking in general right outside the building. So even in the wintertime you're going to have a further dilemma.

The original thought as I had talked with Michael in the past was to have the back area as a nature walk. That was his thought process at that time, but during periods of rain and all I have to do is call your attention to the last 3-weeks. Anybody who is going to be walking through that back area is going to be walking in mud. That area back there as far as November to the March period would never allow for a nature walk but this was in the original thought process. This was something that was going to be the common good and it was going to be an exercise event. That right now is a treed lot and it isn't going to in any way represent anything more than a privacy buffer zone.

There is a safety factor with people in a hurry. As Mr. Hite had said before, there are individuals coming to the health and fitness club, okay, where there are two professionals. He is going one way, she is going the other way and they are in a hurry. As far as the parking out on Hudson Avenue, I have seen Mr. Essnic's, over here associate of Mr. Mashuta and Mr. Mashuta walk around and this is as professional and as a personal trainer. This is not their role, they have been walking around where they recognize that the car belongs to given client in that center saying why don't you move the car, the

police have been over here a couple of times this week and it's for your own good.

Now the facility is very heavily used in the Am and the Pm and those are just the hours of darkness and the wintertime so that you have people who are in a hurry to get home for supper or in a hurry to get to business in the morning in those dark hours. They are stepping on the accelerator, but they're not going forward, they're backing up. All of that parking is head in parking. Now as the precedent for the Planning Board denial, I think we did not address that this evening. If the Planning Board turns Mr. Mashuta down or if the Town Board down, has there been precedent set that an upper body, especially the Town Board saying no, has that set you to saying also no. And so this is something that I think counsel for Mr. Mashuta would want to look into. The previous facility was truly parking problem free. You had all of Delaware Plaza to park. You had the OTB area and people had the convenience of going to at that time the Grand Union and then on over to the luncheonette that was right next door. So then Mr. Mashuta and the planners came in, Mr. Hite at that time, and it came before the Planning Board parking wasn't how shall I say it an emotional issue. It wasn't a priority so that they went to the record and they said how many square feet do you have; enhance the parking to accommodate that amount of square footage.

However the program has gone from a gymnasium attitude to one of a full-blown health and fitness program and it runs all ages. I use to go to that facility over near the OTB parlor, the old one and you wouldn't find as many elderly people now granted you will say that the population trend over the last 10-years, that decade, we have had more senior citizens involved in health and fitness. Yes, that's part of his dilemma - - that is a big part of his dilemma.

As far as the railroad parking in on Hudson Avenue, I wouldn't see it because you're backing out into people who are coming over. I guess it's up by the beauty parlor where that hill is. I witnessed the same thing down on Feura Bush Road where they're coming out over Murray and their zooming down to get to the light. Where are they going so fast - to stop at the light. Now one of the dilemmas here is that Mr. Mashuta has expanded the program, he's got a fine program and just like all of you would know from your own experiences here on the Board, when you do provide a fantastic opportunity for travel you create your own traffic on the road. He has expanded his program and he's created his own traffic in an area of health and fitness.

Now as far as your request - - it's a reasonable one. The four items that you have just pointed out is most reasonable. Roman numeral 1, 2, 3, 4 – subset a,b,c, roman numeral 2, a, b, c and you review it and you make a decision on that. So in support of what you're quote attitude is and that's not - - it is something that you need to do because it has to go into the record. If we had a friendly chit chat back and forth and 5-years from now somebody comes and says lets take a look at the record, what are you going to produce, camaraderie? Can't, it won't stand up, so I do see where your needs are and I think the counsel and Mr. Mashuta and especially Paul who has been in the business for a long, long time in Town and is highly respected will be able to come back

and prove to you that as far as self creation of a dilemma, Michael doesn't park those cars on Hudson Avenue. And what is his responsibility, you go stand at the door and say don't park there; try to find some place else. That is not his responsibility, and as far as an alternate use, that back area as far as I'm concerned I don't see it as possibility at all. His original thought process as mentioned was for a nature walk. Again in keeping with health and fitness, but that aspect is not working out because of the elements. Thank you.

CHAIRMAN HODOM: Mr. Dembling?

MR. DEMBLING: My name is Dave Dembling, I live in Slingerlands; I'm an architect; I've been licensed in New York State for 41-years. I really - - I also drive on Hudson Avenue because I own a house on Hudson Avenue so I occasionally go through there and very familiar with the traffic problems. I'm one of the people that have been backed out on to a few times so I think it's a legitimate concern to solve that problem. I'm going to make this short because I just have a couple of things that I would like to suggest be considered here.

It is about a 10,000-square foot building. I don't know the exact building occupancy classification or the building construction classification, but I believe that a building like that has a specific occupancy rating by New York State Code and if that's being exceeded, which is producing the parking problem then I think that's another problem that should be considered. Also that type of building and occupancy which I believe is public assembly may require by New York State Building Construction Code access for emergency vehicles on more than one side and this plan obstructs almost 3-sides. And I think that should be considered in this situation and it may need more of a solution than is being proposed here. I would like to see the Board take those questions into consideration to.

CHAIRMAN HODOM: Thank you very much, Mr. Dembling. Those are valid questions. Paul you can address those in your memorandum to the Board. Anyone else have any questions or comments, neighbors now is your time to...

MRS. GJONI: We're all for it.

CHAIRMAN HODOM: Just come up and give us your name or you can sit there and give us your name.

MRS. GJONI: Erma Gjoni and we're next door neighbors to Mike and we've had a problem with the members over the sidewalk onto our lawn and parking on our lawn underneath pear that has a no parking, no trespassing sign on it. And also they block both our driveway and my in laws driveway. They park right in front of it so we can't get our cars out and - so Mike has been very nice and understanding and trying to, you know we go over and we call him on the phone to ask the people to move their cars.

CHAIRMAN HODOM: And you're located directly west of the property?

MRS. GJONI: Yes.

CHAIRMAN HODOM: You're in the house in the back and your in laws are in the house in the front?

MRS. GJONI: Yes. And also we found that is you leave a nice note on their windshield saying – really saying would you please not block in our driveway, they get enraged and slam their car doors and peel out of the parking space.

MR. HITE: Leaving nice ruts.

CHAIRMAN HODOM: Well that's why we have a nice Police Department in Town. Anyone else? I'll entertain a motion to adjourn to a date uncertain.

On a motion made by Mr. Wiggand, seconded by Mr. Brookins and unanimously carried by the Board, the hearing was adjourned to a date uncertain.

Hearing adjourned 9:35 p.m.

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The next order of business was to consider the application of New Visions, 334 Krumkill Road, Slingerlands, New York. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by New Visions for a modification to a previously granted Use Variance under Article VI, Permitted Uses, Section 128-12, Residence "A" District for the construction of an attached pavilion at the premises 334 Krumkill Road, Slingerlands, New York, it is hereby ordered that a public hearing on this matter be held June 2, 2004 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

The next order of business was to consider the application of Nick and Mary Perillo. The application was found to be in order and Mr. Brookins made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Nick and Mary Perillo for an Area Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings, for construction of a 3-season room, which will exceed the allowable percentage of lot occupancy at premises 12 Sheffield Drive, Delmar, New York, it is hereby ordered that a public hearing on this matter be held June 3, 2004 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mrs. O'Brien 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 Independent Wireless One for Special Exception under Article VI, Permitted Uses, Section 128-12 B (1), Public Utility and Chapter 113-3 (B) and 113-4 A (1), Alternative Tower Sites to install 6 PCS antennas and related call processing equipment to an existing tower at the premises 81 Jolley Road, Glenmont, New York 12077. The following points were brought up by the Board members: The proposed coverage would be an improvement and will be placed on an existing tower. There is plenty of room for additional antennas and is well camouflaged. On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Special Exception, for presentation at the next Board meeting on May 19, 2004.

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The next order of business was to consider the proposed resolution of Howard Freed and Rachel Michaud for Variance under Article XV, Width of Lots, Section 128-63 A (d), Minimum Required Widths for vacant property currently under site plan approval, which does not meet the required width of lot at premises McCormack Road, Slingerlands, New York.

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

RESOLUTION

* * *

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) by Howard Freed and Rachel Michaud (Applicants”), for a Variance under Article XV, Width of Lots, Section 128-63 A(1)(d), minimum required widths, requested by Applicants for vacant property at McCormack Road, Slingerlands, New York, currently under site plan review by the Town of Bethlehem Planning Board, 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 7, 2004; and,

WHEREAS, Members of the Board are familiar with the area in question and the specific site of the Applicant’s property; 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 Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

The Application has been referred to the Board of Appeals from the Planning Board. The Applicant is proposing a 1-lot subdivision in which the requirement for the width of lot at the building line cannot be met. The proposed location for the structure on the lot would create a lot width at building line of approximately 84.25 –feet. This

dimension is .75-feet shy of the 85-foot requirement set for a lot in an “A” Residential District. All other lot setback and area requirements will be met.

At the public hearing, the Applicants’ representatives corrected the record to reflect that the proposed building would be located 26 feet from the highway property line, at which point the variance required is .75 feet (9”). The application materials support this position.

Applicants purchased the property in 1983. At that time the applicable Lot Width requirement for the property was 60-feet, and the lot was in conformance with this requirement.

On February 22, 1990, the Town Board passed an Interim Development Law (Local Law No. 1 of 1990) which established the Lot Width requirement for the property at 85-feet, making the property non-conforming.

These Interim Development controls were extended thereafter, until made permanent by the Town Board’s enactment of Local Law #3 of 1998, the present Section 128-63 A (1) (d).

Applicants have moved out of the area, and now seek to sell the property. They have secured a potential purchaser, contingent upon securing the requested variance, so that a dwelling structure could be built on the property.

The property is approximately 88-feet wide at McCormack Road, but the lot lines converge south from McCormack Road.

The Applicants’ representatives testified that there are other lots in the neighborhood, which are narrower at the highway line than the Applicants’ property.

Applicants have attempted to convey the property to the adjoining landowner on the west, without success.

Applicants have attempted to purchase additional land from the adjoining landowner on the east, without success.

In addition to the Applicant, there was testimony at the public hearing from three adjoining landowners. The landowner adjoining the property on the east had no objection to the requested variance.

The landowner adjoining the property on the west was opposed to the variance, on the ground that the proposed dwelling would be located close to her adjoining garage. However, as noted, the dwelling proposed on the Applicants' property would be in compliance with all other setback and area requirements applicable to the property.

The landowners adjoining the property on the south were opposed to the variance. These landowners sold the property to the Applicants in 1983, retaining several acres of undeveloped land adjoining the property on McCormack Road, which they still own. They have proposed that the Applicants could convey the property back to them as an "unbuildable" lot. These landowners believe that this re-conveyance would enhance the development options for their adjoining property.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicants require the requested variance. The Board has taken into consideration the benefit to the

Applicants if the variance is granted, as weighed against the detriment to health, safety and welfare of the neighborhood or community by such grant. In making this determination, the Board has also considered the following factors, and concludes: 1) there will be no undesirable change to the character of the neighborhood or detriment to nearby properties created by the granting of the variance; 2) the benefit sought by the Applicants cannot be achieved by some other feasible method other than a variance; 3) the requested variance of nine inches (9") is insubstantial; 4) the proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood; and 5) the Applicants' alleged difficulty was not self-created, having arisen as a result of change in the Town Zoning Code subsequent to their purchase of the property.

The requested variance is granted.

May 5, 2004

Michael C. Hodom
Chairman
Board of Appeals

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Mrs. O'Brien 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
Robert J. Wiggand			

Gilbert Brookins

Marjory O'Brien
Leonard Micelli

(Resolution filed with the Clerk of the Town of Bethlehem on May 6, 2004.)

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On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand, and unanimously carried by the Board, the minutes of the April 21, 2004, meeting were approved.

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

Meeting Adjourned: 9:50 p.m.

Respectfully submitted,

Secretary