

**TOWN OF BETHLEHEM  
BOARD OF APPEALS  
September 3, 2003**

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  
Richard Lewis  
Gilbert Brookins

Patrick Seely Attorney to the Board

Mark Platel Building Inspector

ABSENT: Marjory O'Brien

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 128-11 B (1), Public Utility and Chapter 113-4 A(1) Alternative Tower Sites requested by Independence Wireless One for property at the Slingerlands Methodist Church, 1499 New Scotland Road, Slingerlands, New York. The Applicant wishes to install four PCS antennas and related call processing equipment within the church and/or steeple at the premises of 1499 New Scotland Road, Slingerlands, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant wishes to install four antennas to the existing church and install the related electrical equipment in the basement of the structure. Three of the antenna will be located inside of the existing spire and the fourth antenna will be located on the roof adjacent to the spire. There will be no additional buildings added to the site, nor will there be any substantial changes made to the structure.

The existing structure is located in an "A" Residence Zone and is occupied as a Church.

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 September 3, 2003 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Independent Wireless One, 52 Corporate Circle, Albany, New York for Special Exception under Article VI, Permitted Uses, Section 128-11 B (1), Public Utility and Chapter 113-4 A (1), Alternative Tower Sites of the Code of the Town of Bethlehem to install 4 PCS antennas and related call processing equipment within the church and/or steeple located at the Slingerlands Methodist Church, 1499 New Scotland Road, Slingerlands, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the August 27, 2003 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. Any questions or comments should be directed to the Board. Mr. Cusack, if you would just introduce yourself to us and your association with Independent Wireless One.

MR. CUSACK: I'm Mike Cusack. I run the legal department for independent Wireless One. I'm here for Kevin Savage who filed the application. The purpose of this project is to address missing sprint PCS coverage in the Slingerlands area of the Town of Bethlehem. It's our - - I believe our third attempt at a site in the community.

Our first site that we originally proposed back in 2001 was a new pole at the rear of the Price Chopper Plaza. The Town asked us to look at some other alternatives, we considered a spot proposed by another Tower Developer off Upper Font Grove Road just over the boarder in New Scotland and that site ran into a denial and litigation and as a tenant we have nowhere to go if the Tower Developer can't get that site approved.

And so we're back at the church; looking at the church as a spot to put our antennas. We originally discounted the church because we didn't think at the time, and this goes back again a couple of years that we could get approval from the New York SHIPPO, historic preservation approval to do to much with that facility to make it work for antennas.

The design that we had at the time, which was based upon work done by different engineers obviously called for completely removing the steeple and reconstructing it in stealth forms is what we call it in the industry; stealth technologies is actually a company that does this type of work. They have a long, long history. The first time I ran into them was in 1993 as part of training and what their background was they used, believe it or not they used to be a CIA owned company. They made bricks and devices that were microwave and listening antennas that looked like walls and different objects. With the collapse of the iron curtain they were set free so to speak and were leased on the commercial world. That's their background and they wanted to just come in and do something that was very, very complicated and expensive and we were afraid that it was just a little too intrusive and that it wouldn't pass muster.

Went back again this year with a different engineer, Rick Andress who is with me this evening; radio frequency engineer and took another look at the windows that are on the steeple. The horizontal – excuse me the vertical windows that are about, I want to say a third maybe half way up the steeple to see if we could get stealth instead come up with something that would work, basically taking those out that we thought would A) provide the level of service we needed and B) would pass muster with SHIPPO.

In fact we came up with something that worked, the New York SHIPPO did sign off on it, we were not optimistic at first but they did realize that there was a lot of controversy out there and they did approve what we were proposing and we wanted to get that approval in hand before we filed with the Town. So I do have a letter from them you know, indicating their review of the project as being favorable so this is the solution. It's not what we would call the best solution from purely an engineering standpoint. We like, you know how we think, we like to see tall structures in towers and it's not going to fly here. So we're going to try this facility and we hope that you like it and the public likes it and it's that it's something that you can approve. Is there any questions on any of the materials in the application?

CHAIRMAN HODOM: Can you tell us the actual quantity of the new antenna being proposed and I ask you this because your application and the statement of support of the application state 4-panel antennas. The short environmental form, the photo simulations, the Zoning drawings and the July 29<sup>th</sup> structural engineering opinion letter state 3-antennas. Can you clarify that for us?

MR. CUSACK: We have - - if you look at the steeple, let's go to tab three where the visual simulations are and it's easiest to see here. These windows right here where I'm pointing in the steeple are where we're talking about putting the antennas behind. There are only three of those windows on the steeple now.

CHAIRMAN HODOM: No, I think there are four.

MR. CUSACK: Well the back of it, at least when we were there we didn't see one on the backside, so pointing toward Surrey Mall.

CHAIRMAN HODOM: I think you'll find that there are four.

MR. CUSACK: There are four? Okay, that's the difference. We thought that there were three and in the engineering review we said that when we went before the Zoning Board that we would request permission for four antennas and have the, you know the fourth antenna being something that I thought we were going to have to fabricate. And if there is a fourth window there, that would be the difference between the three and four. It's a discrepancy and what our engineers thought was in the field.

CHAIRMAN HODOM: But did someone go out and look at the site?

MR. CUSACK: I went out and looked at the site myself and I didn't see the fourth window, but I'll take your word for it if you think it's there. The windows here, there's four of these windows on the brick part of the steeple but the narrow ones further up are the ones that we're talking about using for antenna location.

CHAIRMAN HODOM: Okay. The lower section is what I'm referring to. I guess then, what we need from you folks is to have consistency in your documents. You're either going to request for three or you can request for four, but I want the documents to be consistent especially the structural review letter, which only refers to three.

MR. CUSACK: Okay. The fourth – let me put it this way, if the fourth antenna is an issue, I can stipulate tonight we'll take the three that we originally proposed and if we want to come back for the fourth we'll file a separate application. It only appears in the form description that we're looking for four.

CHAIRMAN HODOM: Well, it's also in your application.

MR. CUSACK: Okay.

CHAIRMAN HODOM: And it's in your statement of support of the application.

MR. CUSACK: Okay.

CHAIRMAN HODOM: It's also on drawing LAL346 Z2, you show three antennas. But just to clarify again, you're proposing to mount your antenna behind the louvers or windows that are in the steeple not the lower masonry structure?

MR. CUSACK: That's correct. And that's where the confusion came in obviously even with our own engineers here that there's not a fourth window that high up on the back, it's more of a cosmetic thing for the front and the two sides. So we would have to fabricate something for there. If it's something that we can address tonight, I'll stipulate to the three and come back if I need the fourth. I'm trying to obviously come away with something tonight for the three, but if it's something you need addressed, I'll do that as well.

CHAIRMAN HODOM: Well I think we need it addressed. It's either three or four and your documents are inconsistent.

MR. CUSACK: All right.

CHAIRMAN HODOM: So are you asking for the three this evening?

MR. CUSACK: If I can get the three this evening, I'll take the three. If I come back next month, I'll come back with a package for all four.

CHAIRMAN HODOM: We won't promise any decision this evening, but if you want to adjourn the hearing and come back with another package requesting the four so that all the documents are consistent, we can do that.

ATTORNEY SEELY: It's your choice; I think is what he's trying to tell you. If you want to amend you application to limit to three to line up with the engineer's structural report for instance, you can do that or you can take the option of adjourning and coming back and updating your documents so that everything is in conformity. I think what Mr. Hodom is trying to convey to you is that right now you've got an engineer's report that say's it's structurally sound to hold three antennas, not for a fourth. It may very well be that there's not much of a difference, but for our purposes we have to make sure that everything's in line.

MR. CUSACK: If I can amend to the three tonight and have a ruling on it tonight, I'd like to do that. I'm trying to make a construction schedule and the fourth antenna was something that came up afterwards and that's why there is confusion there, because we thought there were four windows and there's not.

ATTORNEY SEELY: Okay, so just so the record is clear then, what you're doing then is you're going with the three.

MR. CUSACK: I'm going to three, yes. I'll stipulate to the three. I did want to file a copy of this for your records is a letter we did receive from the historic preservation folks earlier this summer.

MR. LEWIS: Have you determined that the three antennas that you're now are going to stipulate to will be satisfactory for your needs? You seemed at first to indicate that first of all you wanted to build a structure the Price Chopper Plaza and then something on Font Grove Road, and this is sort of a fall back position. And now you've retreated to this and you said that you wanted four antennas, but now you're saying three and I'd just like to get some idea of whether or not down the road a bit you're going to come in and say, well we've looked all this over and three isn't really going to be adequate for our needs and we need a fourth. Do your engineers believe that the three antennas that you're willing to stipulate here tonight is going to do the job that's required, it's going to give you the coverage that you desire?

MR. CUSACK: We think it will, we won't know until usage patterns develop and we see what the customer experience is like.

MR. LEWIS: But obviously four would give you additional coverage and would probably suit your needs better.

MR. CUSACK: It gets a little more complicated even than that because if we add the fourth antenna, and I'm going to let Rick answer the technical question but we have to split the power between one of the other faces; one of the existing three to feed that fourth. So then we might be giving up some coverage further away from the church in another direction so we were - - when we went to the four, we were kind of hedging to have the ability to do that if it didn't work out down the road, but we don't have any problems going in with our design on the three, which we think will work and if we have a problem, we'll approach it and we'll explain to you and ask for the extra antenna at that time. I think reasonably...

CHAIRMAN HODOM: Why don't you come up and introduce yourself.

MR. ANDERSON: I'm Rick Anderson, RF engineer with IWO. Three antennas is what we've been planning all along, it serves our immediate need. Our main coverage objective is Route 85 right in front of the church, there are two significant dips in the road where we have coverage holes. This church is more than adequate to fill those holes. There was some concern that Route 85 might at some point at some point be directed or re-directed behind the church. So the fourth antenna was more of a future consideration in case something happened to the west. For our immediate needs, three antennas are more than sufficient. I would just assume go with the three antennas and then...

CHAIRMAN HODOM: Why don't you then why you're here discuss the radio frequency coverage plots that are in the documents here if you would, because there seems to be an area that isn't covered.

MR. ANDERSON: From what you see there even with the fourth antenna that would still not be covered.

CHAIRMAN HODOM: It would not be covered?

MR. ANDERSON: Right. Because of the - - you know it's relatively low built where those windows are and they're below the tree line and the trees pretty much attenuate the signal so it's not going cover a large area as it is.

CHAIRMAN HODOM: Okay.

MR. ANDERSON: That would not significantly change; that fourth antenna.

ATTORNEY SEELY: This drawing, exhibit 7 was put in here to demonstrate how many antennas?

MR. ANDERSON: That's predicted with three. Basically our main areas of intent are due north, due east and due south.

MR. LEWIS: Well from this map we have, you're covered with the exception of this – this orange area.

MR. ANDERSON: Right.

MR. LEWIS: And the three antennas you believe will be sufficient to link up to other areas to give you full coverage?

MR. ANDERSON: That's correct, that orange blob is based on three antennas not the fourth.

CHAIRMAN HODOM: The area that's not covered, Dick, is the white area between the green and the orange.

MR. LEWIS: Oh, okay.

MR. ANDERSON: The orange coverage is the new coverage that would be gained from...

MR. LEWIS: Oh yes, okay. But right now you don't have that coverage.

MR. ANDERSON: No, this is true.

MR. LEWIS: And that's what you hope to gain with the three antennas?

MR. ANDERSON: Exactly, right. It's spotty at best traveling through there.

CHAIRMAN HODOM: And perhaps you can explain what kind of coverage you're trying to accommodate; the cell phone?

MR. ANDERSON: Yes exactly, mobile phone.

CHAIRMAN HODOM: Mobil phone, okay.

MR. ANDERSON: For Sprint PCS.

CHAIRMAN HODOM: And you currently have a proposed lease with the Church and the term at least the initial term on that is 5-years?

MR. ANDERSON: Yes.

CHAIRMAN HODOM: With possibilities of four extensions of 5-years each?

MR. ANDERSON: That's correct.

CHAIRMAN HODOM: Are you proposing to erect or come back to this Board for additional Towers or coverage in this vicinity or anywhere in Bethlehem?

MR. ANDERSON: The one area that we may consider are the power lines that run to the south, south west and it would be an existing structure.

MR. CUSACK: We were all looking at the ones that cut through basically 5-Rivers, around that area and come across in the direction of Voorheesville, but really through New Scotland. We were looking at that run of lines last night as, you know we're talking down the road a couple of years. We don't have it funded or we're not working on it right now, but we liked it. We like what we saw.

CHAIRMAN HODOM: Okay. So apparently the tower that you were looking for behind the Price Chopper is not going to be pursued any further?

MR. CUSACK: No.

CHAIRMAN HODOM: And by saying that, you're not committing yourself to anything?

MR. CUSACK: No, that was the trade off, I mean this is the second of 2-sites be built to avoid having to go to the tower and Price Chopper. The other site that we built, which takes care of part of that sites intending coverage is in the City of Albany up the hill from there. So we've already constructed that this year, and that's on line and we think we're there on that part of the Town. Everything else we have in the Town is either an existing tower or 2 or 3 water tanks that we lease from the Water Department. We're on all – we're on Kenwood and the one off Elm and there's one other that I'm missing.

MR. PLATEL: Jolley Road or Smultz Road?

MR. CUSACK: I think so. So we're on pretty much everything that's here.

CHAIRMAN HODOM: What is your proposed construction time frame if the Board were to approve the application?

MR. CUSACK: Fall. We'd like to start in the fall, end of the third quarter. September 30<sup>th</sup>, we'd like to start, beginning in October and try to get it in before the winter.

CHAIRMAN HODOM: Can you also describe somewhat what you're actually going to do on that steeple? You're going to remove the windows and install a louver.

MR. CUSACK: It's called RF transparent louver instead of the - - I believe there might be some lead glass up there and I'd have to see the SHIPPO letter. They want us to

preserve the parts that we take out, which we're working out with the - - you have to find a spot to put them in the church, and make sure that, you know all the original stuff is still available later on. It's the least obtrusive way we could get up there, because the way we were looking at as I was trying to explain before was to take the whole thing apart. Take down their slate, the roof I think is mostly slate on the steeple and they would have to remove all the slate and bring in material that looks like slate. It would really look like slate, but it wouldn't be the original authentic historic whatever – how the historic folks look at things.

CHAIRMAN HODOM: What are the RF transparent louvers constructed from? Is it aluminum, or is it...

MR. ANDERSON: It's more of a kind of a foam; it's kind of hard to explain. From a distance it would be - - the whole idea is that the radio waves penetrate through the material without any attenuation. They have preserved the natural look, so I guess it's kind of hard to describe the material. It's more of like - almost like a sheet rock looking piece of a very light weight; very thin.

CHAIRMAN HODOM: And then the color - - is the exterior color would match the slate finish of the roof as closely as possible?

MR. CUSACK: Match the trim that's there now as close as we could get. If there's a better color, we'll do that. The colors – we can direct the color.

CHAIRMAN HODOM: I would just be looking for something to blend in as easily as possible so it doesn't become intrusive to view.

MR. ANDERSON: The intent is to completely hide the antennas so that they're not visible.

CHAIRMAN HODOM: And all the coaxial cables or conduit or whatever you have to run back down to the electric panels or to your equipment is all within the building structure?

MR. CUSACK: Internal, yes.

CHAIRMAN HODOM: With nothing running down the steeple or on the outside of the building?

MR. CUSACK: Power meter maybe, standard power connection but not any...

MR. ANDERSON: But that would not be on the steeple, it would be inside the building.

CHAIRMAN HODOM: And even the - - any of the cable or wiring for that GPS antenna, that to would be within the interior of the building?

MR. ANDERSON: Right.

CHAIRMAN HODOM: And how tall and describe that GPS antenna for us if you would.

MR. ANDERSON: The GPS antenna is very - - maybe the size of your microphone, but 3-times – I would guess 6-inches tall by 8-inches wide.

CHAIRMAN HODOM: Okay.

MR. ANDERSON: It just looks like a snow cone with the bottom cut off.

CHAIRMAN HODOM: And will that also blend in with the existing architecture?

MR. ANDERSON: Yes.

CHAIRMAN HODOM: Okay.

MR. LEWIS: We have a letter from C & S Engineers that says in their opinion that the existing structure the existing structure is capable of supporting the additional loads imposed by the proposed Independent Wireless One equipment. Did they make an on site inspection, did they actually go up and look at the...

MR. ANDERSON: Yes, they do. They go right up into the steeple.

MR. LEWIS: So this wasn't somebody standing down...

MR. ANDERSON: No, they go right up in the steeple. And they use actual drawings of the, you know the way the church is constructed.

MR. LEWIS: So they made an on site inspection.

MR. ANDERSON: Yes, absolutely. I think these antennas are only 20 pounds, I mean they're not anything extremely heavy.

MR. LEWIS: Yes, but again this structure is a, according to your letter is a historical building and probably wasn't built yesterday.

MR. ANDERSON: No, right.

MR. LEWIS: And probably endured some harsh weather among other things and suffered some deterioration. That's why I asked and if somebody starts going up there with wires and other things and attaching them and we get a windstorm and the steeple starts to sway back and forth and partially winds up in somebody's yard.

MR. ANDERSON: Right.

MR. LEWIS: You'd want to be certain that that it has been thoroughly looked at and evaluated as to what it can withstand, if this particular procedure would be invasive.

MR. ANDERSON: I'm not a structural engineer, but I do know that they went up and they do do a thorough complete analysis and evaluation.

MR. LEWIS: Mike, do we need some kind of document, some kind of letter saying they need work and that they've looked at this?

CHAIRMAN HODOM: No, I think probably because I think in the last sentence of the letter, they made a stipulation that as long as it's installed based on their drawings, and I'm sure an engineering firm, if it's not installed in accordance with their specifications they're not going to approve it. They still have to get a building permit Mark, or no?

MR. PLATEL: Yes, correct.

CHAIRMAN HODOM: So then the final C/O won't be issued until I think the Town gets a letter from the engineer saying that everything is satisfactory installed. That's how it works?

MR. PLATEL: On this one it will, yes.

CHAIRMAN HODOM: Okay, good. It's going to operate 24/7, 365. You folks make monthly visits, is that what it is? Do you post any kind of signage for emergency phone numbers or the like in case something does happen?

MR. CUSACK: Yes, near the equipment we have contact a - - an 800 number and a local number that's - - the local number is even 24/7.

MR. ANDERSON: Yeah, there are people at the main switch that operate all the equipment 24-hours a day, 7-days a week.

CHAIRMAN HODOM: So if something does happen, there's a number there that somebody within the confines of the church; neighbor can go in there and find it.

MR. ANDERSON: Absolutely.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: Yes, I might have something to ask.

CHAIRMAN HODOM: Go ahead Robert.

MR. WIGGAND: You've answered a few of my jotted notes here, but on the antenna will there be any portions of those antennas be outside the steeple?

MR. ANDERSON: No.

MR. WIGGAND: Nothing?

MR. ANDERSON: No.

MR. WIGGAND: Now, they will be covered with these louvers that you spoke of?

MR. ANDERSON: That's correct.

MR. WIGGAND: Okay. This GPS antenna, the one you spoke about being like upside down – ice cream cone, that will not be very visible then?

MR. ANDERSON: No.

MR. WIGGAND: Okay, now are there any noises from any of this?

MR. ANDERSON: The base station equipment makes a very, very low humming noise but it's sealed in a room.

MR. WIGGAND: So this would not be any bother to the church or the quietness of the church?

MR. ANDERSON: No.

MR. WIGGAND: You're sure?

MR. ANDERSON: Positive.

MR. WIGGAND: I've been involved with church's for a long and that would be one of my biggest bothers, biggest trouble.

MR. ANDERSON: Rightfully so.

MR. WIGGAND: So there will be no changes to that steeple at all other than just the covers on those windows. The other questions you have answered for me, you did good.

CHAIRMAN HODOM: A couple other - - on this short environmental assessment form, maybe Mark you can – under item number 9 on part one. Both residential and commercial land use has been checked. Is there commercial use there, it's zoned what? "A"?

MR. PLATEL: It's zoned "AA" I believe. I don't know if they still run the nursery school out of there, but that wouldn't really be considered commercial. The only thing you have down the road is the Slingerlands Fire House and the Deli.

MR. CUSACK: The Deli was across the road.

CHAIRMAN HODOM: Okay.

MR. PLATEL: Village Deli, then you have to go the other way to get to Price Chopper.

CHAIRMAN HODOM: And then under item number 10, does any action involve permit approval or funding now or ultimately from any other governmental agency, Federal, State, and local and you checked no.

MR. CUSACK: Right.

CHAIRMAN HODOM: But you do have to get a building permit.

MR. CUSACK: Correct.

CHAIRMAN HODOM: So that should be checked yes?

MR. CUSACK: We can do it that way. I've done it both ways and it depends on how the Board approaches it. I always looked at this as a discretionary permit or approval for funding under SEQRA, where as the building permit is an administrative approval that's not subject to SEQRA. So in my mind that's why I did it that way.

CHAIRMAN HODOM: Any other questions from the Board?

MR. CUSACK: I just wanted to say I spent a lot of time talking about how we came to this design and I mentioned SHIPPO, I mentioned a whole bunch of other considerations. We also really wanted to do something that was in keeping with our original discussions with the church to try and be the least intrusive that we could be on this facility. It is their steeple and we're a tenant and we were trying to come up with something that made sense.

CHAIRMAN HODOM: Okay.

MR. WIGGAND: Is there presently any bells, large bells up in that steeple that ring or sound off with a rope?

MR. CUSACK: I didn't go inside the steeple, I don't know. I think they'd be in that lower section if they were there at all.

MR. WIGGAND: Now, would that be any interference with your equipment?

MR. CUSACK: No, not sound or physically.

ATTORNEY SEELY: Have you folks ever put antenna in a church steeple before?

MR. CUSACK: Yes.

ATTORNEY SEELY: Where?

MR. CUSACK: Canicville, Hurley. I'm asking Erin here, she did a few of the projects for us. Several in Vermont, if you've ever driven from Rutland to Burlington; at least 3- church steeples along Route 7 there. A few in New Hampshire, we have them all over. I'm in the middle of inventorying the sites by height and I think we have about a dozen of church steeples. More silos than church steeples for some reason.

MR. LEWIS: Well this is fairly common practice. I think I read an article over the weekend. A number of churches across the United States have done this.

MR. ANDERSON: There is a lot of Towns that that's their only way of providing a wireless services, because usually the church steeple is the highest point.

MR. LEWIS: And also it gives the church an income that they otherwise wouldn't have.

MR. ANDERSON: See we're good guys.

MR. WIGGAND: I'm going to start putting a steeple in my church this coming week. Maybe I can interest you in something.

CHAIRMAN HODOM: Any other questions from the Board? Are there any questions or comments from the audience? Mr. Allen?

MR. ALLEN: I'm here for another hearing but as a resident on Font Grove Road for 25- years now and I'm not a Sprint PCS customer, which Mike was telling me is my problem. But is this going to benefit anybody other than PCS – Sprint PCS customers, Number 1. And number 2, is there any ability, let me say it another way. Is what you're doing preclude any other carriers from doing anything at this location? The reason I ask the question, my service is one of your competitors and the minute I turn in my driveway, 4/10 of a mile from New Scotland Road I lose the signal. I cannot use a cell phone in my house. I've got to out to the front lawn and walk close to the road be able the use the cell phone.

MR. CUSACK: It depends on what service you have but we do - - our service does work on phones that are sold by our competitors on the basis of roaming and our largest roaming customer is Verizon Wireless. So just as an example, if you had a Verizon Wireless phone...

MR. ALLEN: Which I do.

MR. CUSACK: Then you would be able to just open your phone, make a call and it would work. Your Verizon features wouldn't work on it but you would get the call out.

MR. ALLEN: And it would be roaming?

MR. CUSACK: It would be roaming, but their plans the way there set up, I don't even think you'd get charged for it. I'm hoping it makes it that far. The trees are right there in the steeple. I'm hoping that we can get through there.

CHAIRMAN HODOM: Does that answer both of your questions?

MR. ALLEN: I think the second one was answered by not being answered, this is for Sprint PCS – does preclude - - there's no more room in the Inn so to speak, is what I'm taking.

MR. CUSACK: The problem with the church and we ran into this ourselves is that there's no room for equipment, the ground equipment. Forget about the antennas for a minute, when you get down into the basement, whatever space is there we're using. There's just not a lot of space to put the - - or you'd have to put it outside or build a shelter outside or a fence off an area like you see in a tower yard. You could get creative to use that steeple, but again you would probably looking at taking the steeple down and reconstructing it. That was our original design, that would have probably been able to accommodate some other people, but it was just to intrusive I thought.

MR. ALLEN: Okay.

CHAIRMAN HODOM: Thank you. Any other questions or comments? Yes sir?

MR. FARLEY: I am a neighbor of the...

CHAIRMAN HODOM: Just give us your name if you would.

MR. FARLEY: Eugene Farley, 9 Middlesex Drive, I'm a neighbor of the church on both sides. And I just came to make sure it wasn't going to be intrusive and the Board has done a good job addressing that, thank you.

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

MR. CUSACK: Thank you.

CHAIRMAN HODOM: Thank you very much Mr. Cusack.

Hearing closed 8:10 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 128-22, Schedule B-Off Street Parking and Article XX, Nonconforming Uses, Section 128-88, Alteration to Buildings devoted to nonconforming uses requested Conrad Kung, Andy Kung and Kawai Cheung, owners of the Gold Coin restaurant for property at 1360 New Scotland Road, Slingerlands, New York. The Applicant wishes to construct a new building to replace the existing nonconforming building at the premises of 1360 New Scotland Road, Slingerlands, New York.

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

MR. PLATEL: Yes, Mr. Chairman.

The Applicant wishes to demolish the pre-existing nonconforming structure and build a new structure on the same site. The building area of the existing structure is 1,852.62 square feet and has already been granted a variance for exceeding the 25 percent allowable expansions for a pre-existing nonconforming use. With the demolition of the old building and the construction of the new 2,466 square foot structure, they will be exceeding the allowable expansion. The proposed structure and use will not meet the required parking requirement of 54 spaces. The existing site has 19 spaces with one space being shown on the adjoining property and the proposed site plan shows 19-spaces with 18 on site spaces and 1-space also on the adjoining property.

As stated above the existing structure is a pre-existing nonconforming restaurant and is located in an "A" Residence Zone. The new structure will also be occupied as a restaurant.

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, September 3, 2003 at 7:45 p.m., at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of the Gold Coin Restaurant, 1360 New Scotland Road, Slingerlands, New York for Variance under Article VI, Permitted Uses, Section 128-22, Schedule B-Off Street Parking, Article XX, Nonconforming Buildings & Uses, Section 128-88, Alteration of Buildings devoted to Nonconforming Uses of the Code of the Town of Bethlehem for construction of a new building to replace existing nonconforming building at premises 1360 New Scotland Road, Slingerlands, New York 12159. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the August 27, 2003 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; we'll entertain any questions or comments from the audience; we'll listen to anyone wishing to speak in favor or in opposition to the Applicant. Any one desiring to speak will be allowed to do so, just please come and stand or sit close to the black microphone. Anyone desiring to speak will be allowed to do so and any questions or comments should be directed to the Board. Mr. Allen will you just introduce yourself and your association with the Applicant and tell us what you want to do.

MR. ALLEN: Thank you Mr. Hodom. My name is John Allen from the firm Shanley, Sweeney, Reilly and Allen in Albany. We're here on behalf of Conrad Kung, Andy Kung and Kawai Cheung regarding the Variance Application of which you've read notice. Basically, we have a building that has undergone over its history, much of it before the current owners acquired it some 16-years ago. But it's undergone a little bit of an expansion here, and a little bit there. And it's a building that quite frankly is not in the best of shape. The owner's would like to make a substantial investment to the property and we've looked at it from all ways. The most sensible thing from an architectural / engineering point of view would be to demolish the existing structure, remove and build a new structure. We need a Variance for the two reasons that have been raised, the piece meal additions that have been done on this building over the course of its life, put us in a position where the 25 percent limit on expansion of a nonconforming structure has been used up based on my conversations with Kevin Shea.

Secondly, we do not have parking as the restaurant is currently configured that complies with the code. We are, based on the Code, exacerbating that problem because the building that's proposed is bigger. However, while the building is bigger we are not proposing to increase the capacity of the building from a patron perspective. The existing building has 48-seats for patrons, I believe it's 6-seats at the bar and 8-seats in a waiting area. We proposed a bigger building some of which would be devoted to bigger kitchen, some of which will be devoted to more room within the dining room so the access is better. If you've been in there, things are pretty tight.

The building will be much more handicap accessible in terms of somebody in a wheel chair, being able to move around. We're not adding any tables, we're not adding any seats at the bar, we're not any seats in the waiting area. So from the building prospective we are simply trying to duplicate what's there. We have arranged to maintain the same parking that we have now and I think given that the restaurant has been in existence for 16-years, and I drive past frequently as I'm sure some of you folks do, I think a client gets educated and I certainly drive by it and I don't see cars parked out on New Scotland. People have learned to live with it; it's not a perfect situation were additional land available, it's something my client would consider. I know he talked to one of the abutting property owners and there's no interest in selling any additional property. So we really have no way to expand it. It's an existing issue; we don't believe we're going to make it worse by what we're proposing. I will acknowledge in fairness that we are proposing a patio for limited summer dining; it's an option a lot of people want to have. It exists at Mangia's, it exists at Beff's as I'm sure you folks are familiar,

but looked at this on a year round basis and it's still going to be the 48-seats to the dining room that we have right now.

What I'd like to do at this point with the Board's permission is I will ask Dan Tompkins with from EDP, Environmental Design Partnership to at least take folks through the site plan and John Lathrop from Keystone Architectural Service to talk about the elevation – the various elevations of the building and the floor plan, because they're more expert at that than I am.

CHAIRMAN HODOM: That's fine. Perhaps one of the first things you can discuss for us is that parking space number 19 that appears to be off the premises of the Gold Coin.

MR. TOMKINS: It is off the premises. What you have is a pre-existing situation with the contiguous Hess Express site. Where as over a period of years, they – and I don't know what legal standing there's been, but there's been pavement, and this is all existing pavement here, that's been in use – used by the Gold Coin restaurant through their benefit, but it does fall on the Hess Parcel. Just by coincidence John and I represented Hess when Hess was converted into the Hess Express a few years back. And, you know that was noted, Hess made no attempt to change it and they improved fencing and it improved trash enclosure for Hess were installed in such a way to work around that existing pavement condition. So until it's challenged on any legal basis, it appears reasonable to expect that the Gold Coin people can continue to use that pavement. What I will say is that let's say that it is challenged, and let's say that Hess is successful in taking that back if they ever chose to do that. You can still circulate around the building for purposes of getting around all 4-sides of the building without use of that pavement on the Hess property. There's enough room for a vehicle to get by the building and, you know there can be a fence right on the property line and a vehicle could squeeze by.

ATTORNEY SEELY: What's the best information we have on how long this pavement's been in place?

MR. ALLEN: It's certainly been there since before Hess appeared before this Board, which has to be – my guess is 6 or 7-years ago. It was there before that. I've represented Hess since 1990, Hess was aware of the encroachment, shall we say when it acquired the property at 1358 from the Nelson's, they had leased it for several years and then bought it sometime in the mid-90's. I didn't pull the file to check the date, but it was at least as early as 96, or 97. It could have been a year or two before that. As far as I know, that area has historically been used, I mean Conrad Kung is here I mean he can – he's owned the property for 16-years, he can probably address the issue as to when it was first used. It certainly - - once the Hess improvements were made and that fence went up, where Hess designed the sight recognizing that there was an encroachment did not seek to take a position in terms of the approvals. That was that there are no rights to that property, in fact it was designed to leave, if you will, to facilitate the continued use of that property. Although there is not, to my knowledge any legal agreement, but it may well be that the period of adverse possession has passed; it may well be.

CHAIRMAN HODOM: Perhaps you could address that issue, Mr. Kung. Is there any kind of written document between you and Hess.

MR. KUNG: No, as far as I know there's no written agreement.

ATTORNEY SEELY: You've never had any conversations with the Hess people about this?

MR. KUNG: No I never had conversation. Only one time I got a letter from – I want to say from Hess and he ask me to sign a paper. He say they supposed - - they can come to our restaurant to get to gas station. I don't know how they went?

MR. ALLEN: I think I can address that that has nothing to do with issue. There is a mutual easement. If you see the line that Dan is pointing to, but the parties had never used it. It's never been terminated of records, it's been terminated of fact for many years because the location that has a pylon sign, the historical location going back to the early 90's of where there was, where I at least observed parking on both parcels was such that it was inconsistent with that. And I believe Hess did send a letter saying why don't we – why don't we just get rid of it and that really wasn't responded to. I think it's something that could be addressed to get rid of that easement, but as I say as a practical matter given where the Hess fence is, given where the Hess sign is, given where the landscaping is, and given everything else, as a practical matter it's there on paper but Hess doesn't use it to get it's customer's there and by the same token Gold Coin Restaurant doesn't use the portion of the easement that's on the Hess property to get it's customers there. So it's a vestige of long, long ago that the parties have in fact – they've in fact terminated even though they haven't terminated it legally.

ATTORNEY SEELY: Okay. But as far as going back to this 19<sup>th</sup> parking spot that we've been talking about, we're not aware of anything formal or informal by way of an agreement between the parties as far as any permission to use that space?

MR. ALLEN: To my knowledge no permission has ever been requested nor has it been granted. And as I say when the Hess site was re-developed after it's acquisition and the convenience store was put in, the use of the Hess property was designed as it was recognizing that there maybe some right that had been obtained by the abutting land owner by virtue of the historical use of that property. Mr. Kung can answer the question better than I, I mean since you've owned the property has – I guess the Board's asking is this area where the last parking space is, this area had been used by your customers to ark and go in out.

MR. KUNG: Which area?

MR. ALLEN: See this is the property line, here's where the last space is, here's kind of where the Hess fence goes but your people have used this historically since your owner ship.

MR. KUNG: Uh-huh.

MR. ALLEN: I think as a practical matter, you know if an action were brought depending on who was bringing it – let's put this way if it was mute court exam, I think I would know whose side I'd want. I think the Gold Coin wins.

ATTORNEY SEELY: Despite your ability to take either side.

MR. ALLEN: Right, exactly. Despite my ability to take either side. If I had no conflict then I could flip the coin and I know which way I want it to land because I think I know who would win.

CHAIRMAN HODOM: Okay.

MR. TOMPKINS: Essentially the building's located at the same location as the existing building, the proposed building. It does have a larger footprint, but it's essentially in the same location. You can see the back here where it's gone beyond the walls, but my point is it's not markedly closer to the road or significantly you know, back further. It is a little bit back further which is probably an improvement and why that's been done is to assure that we can get parking set in the front just like it is now. We can get it so that it conforms to the requirements of 9-foot wide parking spaces and an adequate isle space fully within the property to back up and maneuver. And 24-foot plus is provided to the property line so that's meets that requirement. That would be the same as any standard parking lot. We are now showing a handicap parking space with a curbed ramp that would be handicap accessible into the front door.

The patio that was referenced earlier would be right here and it's a small one. You might get two or three table tops in there, and not a big occupancy. And in discussions with the Building Department, they made it quite clear that they will expect a grease trap and other infrastructure improvements on site. I don't want to get into all that to much, but that is being provided for so things will be brought up to Code not only inside the building but in the exterior of the building.

And just to touch on just one little bit, there will be some additional landscaping and also screened fencing, but low level screened fencing. There's no reason to make this you know, too much over kill but what we're proposing is fencing along the back. There is existing fencing along the side but that would be replaced and these symbols here represent the additional plant materials and then plant materials placed in front of the building as well.

CHAIRMAN HODOM: What were you proposing the use for the screened fencing?

MR. TOMPKINS: Well that has not been fully detailed, I mean they could - - usually there's two products that you could use. You could use vinyl products and it sounds worse than it really is. At a distance they look quite good and they have advantages of - - in terms of maintenance and durability, or you could go obviously into treated wood

products. Frankly, we're only looking at something to soften the appearance of cars, not to be 6-foot high. I think oh, we have to stay in something of the neighborhood of four, which is more consistent with what is out there now. As a matter of fact, I'm not even sure this is a full screen out here right now, partially at least post and rail or picket. So we want the thing to have a warm feeling to it and not to aggressive, if you will. Just basically to enhance what's out there now. Really there's not that much more to say about the site. It's a very simple job obviously, it's just making sure that the building is placed in such a way that cars can circulate around all of the 4-sides and parking would work adequately and that it was just a matter of you know reconciling, getting the building to be fully handicap accessible and still work with the existing grades and it's just a matter of you know, shimming some pavement if you will.

CHAIRMAN HODOM: Your drainage, your storm drainage system is strictly surface drainage?

MR. TOMPKINS: That's correct. We're not significantly altering anything I mean there's really no alteration in the existing drainage pattern. It's all surface drainage out there now. We have not done a soil study at this point, frankly we want to see if this a stage that we can go through here you know with the ZBA before additional money is spent on that. Having some experience next door, we suspect that you're not looking at soils that are going to accommodate dry wells for example where you might have a catch basin into a drywall structure that you know perks the water into the ground. We suspect it's going to be just the opposite of that. So basically what you have here now is surface runoff. It would be running to a low area in the back or at some point you hit a drainage divide and it goes off into the front, and that's exactly what it is now. We might be altering the percentage of green space by 1-percent or so; it's insignificant. So basically we're working with the existing drainage pattern.

CHAIRMAN HODOM: Has - - you're not changing any of the ingress or egress dimensioning?

MR. TOMPKINS: No, it's fully open is what it is and unless indicated by D.O.T. or the county, we would propose to leave that alone. I think it works. There hasn't been any comment to date in terms of any kind of a traffic safety issue. If that comes up, then I'll see it has to be addressed, but sometimes you can put a little too much curbing in and then what you have is people you know, hitting with their tires. Right now it's open and that seems to work quite well. The important thing in my mind was just to make sure that we had adequate backing space so a car could maneuver full on site without having to back up to the road. That's not the case here at all.

CHAIRMAN HODOM: Have you made any contact with D.O.T. or the County?

MR. TOMPKINS: No, no direct contact. As I understand the process generally this kind of material tends to forwarded to the County anyway. There's no reason you know, independently do that.

ATTORNEY SEELY: And we haven't heard back from them yet just for your information.

MR. LEWIS: How old is the building? I can remember it when it was - - that was quite a while ago.

MR. WIGGAND: It goes back 40-50 years.

MR. KUNG: Ask Jason, Jason know how old it is.

MR. WIGGAND: Red Bolson was the owner first, a retired State Trooper.

MR. TICE: That was my grandfather.

MR. WIGGAND: That was your grandfather, well then you know Red.

MR. TICE: It was there before he bought it; it was an ice cream stand before that.

MR. WIGGAND: Yeah, I believe there was something there.

CHAIRMAN HODOM: Does anybody have any questions for Dan about the...

MR. PLATEL: Between these here and the building itself, I don't know - when I scaled it out quickly I knew the measurement was 24-feet. I believe there's only 22 in this area.

MR. TOMKINS: Yeah, and the rational for that is I didn't want to creep into the existing green space too much further than that. Some of the employee parking will occur there, so I felt that was going to be a sufficient enough distance. And then having the curb to protect the building wall and back will also work well to. So I felt that was a reasonable compromise, then obviously in the backing you're not worried about coming out along side of the road. But you're right it's not a full 24 here. I will say though that your parking spaces are 20-feet in length and just to point out a lot of municipalities get by quite well on 18-foot, so there's a little bit of play there to. You know, the average car might be about 16-foot in length.

ATTORNEY SEELY: What's the current distance from the front edge of the property to the front edge of the parking currently?

MR. TOMKINS: Your question was again?

ATTORNEY SEELY: The distance currently from the front edge of the property...

MR. TOMKINS: The property line?

ATTORNEY SEELY: Where it meets the road.

MR. TOMKINS: Oh, where it meets the road?

CHAIRMAN HODOM: The property line.

MR. TOMKINS: This is the right of way, do you mean the right of way or do you mean the edge of pavement?

ATTORNEY SEELY: Let me start with the property line first and then maybe we will go longer than that, but currently from the property line to the furthest point closest to the building where the parking is. So in other words where you pull the front of your car in.

MR. TOMKINS: Okay, that...

MR. ALLEN: 46.3-feet.

ATTORNEY SEELY: Is it on here and I'm just not seeing it?

MR. ALLEN: I don't know whether you have this or not. This is an existing base map and existing conditions.

ATTORNEY SEELY: Okay.

MR. ALLEN: If I'm reading it right, actually the side of that I think it's going to be here. It's actually - that's a 4-foot section, 42. Am I reading that right, Dan? Here's 46.3 so to the concrete walk would be 42.3.

MR. TOMKINS: About 42 and change.

ATTORNEY SEELY: Okay.

CHAIRMAN HODOM: That's the existing?

MR. TOMKINS: That's right.

MR. ALLEN: That's existing.

CHAIRMAN HODOM: So that's not changing.

MR. TOMKINS: Well actually it probably - - we're showing 42 here, let me explain the building is not totally parallel or square to the front property line as it exists now. What we did is - - I wanted to make sure that you had 42 here, see so what we did is we squared it and that will be the difference. On the existing condition it's a slight angle, what we chose to do is keep it straight with the property so we got 42. It's essentially the same with some variation on the - going to the cocked angle in the existing condition.

ATTORNEY SEELY: Okay, thank you.

CHAIRMAN HODOM: I had asked Mark earlier about the differential between your parcel area of 13,907-square feet versus the Building Departments 14,249-square feet. Do we know how that comes about?

MR. PLATEL: The only thing I can figure is that one time made the mistake from the numbers that I had from a previous, possible mistake. Might have taken some extra property from it, that's the only thing I can figure that might have happened or else it was just a numerical error from past hearings.

CHAIRMAN HODOM: You've actually plotted that square footage?

MR. TOMKINS: Yes, that's my understanding. I mean we did prepare a topo and boundary survey, so it should be pretty spot on.

MR. ALLEN: We'll take the other 300-square feet if you tell us where they are.

CHAIRMAN HODOM: I think they're in that gray area to the north. Any other questions on the site? Anybody in the audience have any questions on the site? Thank you.

MR. TOMKINS: Okay, thank you.

MR. ALLEN: Perhaps John Lathrop can take you through the elevations on the building.

CHAIRMAN HODOM: Introduce yourself to us John and your association to the applicant.

MR. LATHROP: Certainly. My name is John Lathrop and I'm employed with Keystone Architectural services, we're right up the road on Delaware Avenue. We were retained by the owner to come in and actually evaluate the existing restaurant to see if there is anything we could do to kind of alleviate the crowding, and to open up his kitchen and his dining area. And what we found when we got there was a vestibule, which is a very good idea. It's very energy efficient, but it didn't meet the handicap accessible code.

We found toilet rooms, which you know met the requirements of the code but again they weren't handicap accessible. We found very narrow aisle ways and a very congested kitchen. And as we went through it and did studies of the existing, which is what John alluded to earlier was added on to in a very farmhouse kind of fashion.

There's a lean-to shed on the side and you know a little bit on the back, and then they went out a little bit further. It very much precluded just kind of knocking down the walls, opening up the space and really going at an open cloak floor plan and a flowing layout. So what we did was we came up with a plan, which still incorporates the same air lock vestibule by meeting the current and handicap accessible requirements.

A bar area, which as John mentioned before, we've got 6-seats which is the same number of seats that they currently serve. A small waiting area with only 6-seats in it, which is a slight reduction. And then we've got 48-seats in the dining area, a circulation area in here, and an area for coat racks. We've got an exit door over here, so we meet all of our exit requirements. Considerably more wide open, definitely conforms to handicap accessibility.

The way we accomplish that in part was by growing the building a little bit. The other thing we've done is we've added a basement and some of the increase in addition for you know; the increase in area of the vestibule and the woman's rooms and all the circulation areas is that we added a stairway. There's some limited dry storage in an attic above just – what's the other section? Only above this portion of the building and this is sort of open to above, and then we have a basement. We're concerned about the water issues, so that's why we provided a dry storage upstairs and then a basement downstairs. The walk-in cooler and the walk-in freezer are located here.

What we've done is wrapped a mansard around the area where the walk-in cooler and the walk-in freezer are in an effort to conceal the condensing equipment. That would be mounted on the outside. The elevation kind of takes a sort of – I don't want to say – well it looks old and kind of cleans it up a little bit, gives it something of a oriental feel. A lot of glass on the front; a lot of glass around the side of the dining area and as I said that we've got a mansard screen that's concealing all of the equipment. That would be mounted on the roof, which would be air conditioning as well as the condensers for the walk-in cooler and walk-in freezer.

The owner, Conrad has selected some very you know, friendly kind of neutral tones. The brick itself is – I have a sample in here if you want to take a look at that, sort of a beige and forest green as you see on this chart here as number 11. It would be the color of the trim and standing seam metal roof.

MR. WIGGAND: Now, where did you say that forest green is going to be?

MR. LATHROP: Forest green will be the roof and there will various trim elements. There's - actually the brick is actually on wanes coating about 2, 3 ½ -feet and then there's vinyl siding above until we get to the fascia. Then the fascia is going to plied with aluminum and then we have a standing seam metal roofing. And then a nice copula feature over the dining area and that's actually a light well so that's open right down into the dining area.

CHAIRMAN HODOM: John, can you give us and maybe you have and I've missed some specific reasons on why the existing footprint couldn't be maintained?

MR. LATHROP: Well, that would be a – John did you happen to bring in your pictures of the existing building?

MR. ALLEN: Well I have several of them.

MR. LATHROP: What they did was they created a single building with a gable roof on it and then when they added on to the back...

MR. TOMKINS: You can see here in photograph one, and two...

MR. LATHROP: The original building is a gable roof there and then they added a shed, lean-to on the back. I'm not sure what exactly the order was between this addition and some of the others, but the roof bears on that wall and that used to be the existing back of the building. So that entire wall there is a structural wall, I mean if you start taking that out...

CHAIRMAN HODOM: Well I'm just saying, if you were to demolish the building as it currently existed, tell me why you can't build a new building on that same footprint to accommodate all the needs of code changes and restaurant operation today.

MR. LATHROP: Well the reason - - what I would lose is - in order to enlarge the bathrooms and in order to enlarge the vestibule and the aisle ways, the only wasted space really would be where the patrons sit. So, we would have to start losing seats basically to make up that area.

CHAIRMAN HODOM: So the 435-square foot additional area that your looking at is really being required by code requirements, handicap access ability?

MR. LATHROP: Specifically - - on the handicap requirements. The bathrooms that he has right now, if you go into them you can't turn a wheel chair in it. It would very difficult to do a wheel chair transfer and it doesn't meet - I mean at the time that it was built it met the requirements of the code but it doesn't meet the current handicap accessibility codes. Same thing with the vestibule, there's a requirement that when a door is open and you're in a wheel chair or you have a walker or some kind of assistance, there's square footage - there's a floor space that's required. That permits you to get out of the way of the swing of the door and approach door in series and open that, so that you know, there's a little bit in the vestibule, there's a little bit in each one of the toilet rooms. And then the passage way between all the table, right now somebody with a walker or somebody with a wheel chair would have a very difficult time negotiating their way if the only table was all the way in the back or all the way in the side of the existing dining area. I don't know if you're familiar with the facility, but when you go in and you turn immediately to the right the waiting chairs are right up against the wall and the stools for the booth are right here and we don't meet really our requirements for getting in somebody with a wheelchair down there. So that doesn't meet the Code.

CHAIRMAN HODOM: In the bar area you're referring to?

MR. LATHROP: In the bar area, yes. So I mean as everything grows you know a foot or two or whatever the requirement was to meet the accessible aisle width whatever length of that is and you know it all adds up just a little bit at a time.

MR. ALLEN: Again, we're not proposing any additional seating capacity. The building has gotten bigger to really meet the Code requirements to make it utilitarian for all the potential patrons. The 48-seats hasn't gone to 50 or 60 or anything like that. And I think if we kept the same building footprint we have now with what you would have to do for accessibility, with what you have to do for the bathrooms, you wouldn't have 48-seats in the dining room.

CHAIRMAN HODOM: In looking at your design and the requirements that you need to comply with by the new international code and the State, County or local Code, is there any areas where you can reduce the proposed 2,313-square feet without hindering any other areas?

MR. LATHROP: Obviously our requirements were to maintain the – pretty much the same size, working kitchen that he's got now just to make it a little bit more usable – not quite as congested and a little bit more logical layout. We approached the design with an eye towards cost and also knowing that we were having to go for a Variance. And when we grew that 400-square feet you know, very grudgingly and only a little bit at a time as we like looked at different areas, trying to get access to the you know, circulation is wasted space but it's a requirement to get to the toilet rooms and to get to the you know the stair areas. You know if there was something that we could do, we would have already tried to do it. I mean we're trying to limit cost for the owner and also to minimize the amount relief we were seeking from the Variance.

CHAIRMAN HODOM: So this design that you've come up with currently is what you would consider the minimum expansion that you could live with?

MR. LATHROP: Yes absolutely. This was as sharp as we could get our pencil on. I mean in fact if you just grew a little bit each time we time we looked at you know a different section of the Code basically. I mean we didn't start off with this footprint, we started off smaller and as we studied it and found areas where we needed you know, a little bit more clearance along the swing of the door or you know, circulation space to the toilet rooms. I mean that's how it kind of sort of grew up into best fit that we could come up with.

CHAIRMAN HODOM: Currently that outside patio is strictly for seasonal use, it's not a roofed over area?

MR. ALLEN: No sir. It's not proposed to be, I mean there is none now. What's proposed would not be roofed over, no.

CHAIRMAN HODOM: Maybe I can ask this to Mr. Kung. You've had some expansion on the building since you purchased it?

MR. KUNG: Yes.

CHAIRMAN HODOM: Just describe to the Board what that was if you would.

MR. KUNG: When we first started business, that kitchen really, really small and as a small – you couldn't believe it. We have when we comes into work, we have to carry the grinder, the meat grinder to out side. We have a shed like come out adjacent – had a shed coming out. So we have bring the grinder outside and end of the day we got to bring the grinder inside before somebody stole them. That's how small a space and we have to – on the counter, dishwasher, which was my mother – it's really inefficient. Bring up to there and then do the dish so that's what we have. So we come over and get the addition for the piece the shed to enclose, that way we can put the storage. So that's what happened. And the second time – addition really small, it's as small as I don't know how to describe and the reason why is the one our cool walk-in cooler – I don't know the walk-in cooler be how long and of course every time the Health Department comes over because it's so congested and parts so old. So we have to like move to the one the shed we use and we lose all our store room. It push that the other side - - the other side is past the emergency room so that we can get a little bit of storeroom. Since we been there, we had like 2-addition.

CHAIRMAN HODOM: Do you recall what the total square footage of those additions were by any chance?

MR. KUNG: No, I have no idea. This is small.

CHAIRMAN HODOM: Okay.

MR. LEWIS: Well the original structure was primarily a bar. It wasn't a restaurant.

MR. KUNG: Yes. Original structure as far as I know is a bar and something – Italian restaurant.

MR. ALLEN: There was an Italian restaurant in there at one point.

MR. KUNG: Comes over and make it to a restaurant and that's what they talking about like restroom, a kitchen. And then they only last for like half a year and then when we come over like it's so small kitchen and when the people deliver they come in and say I never see such a small kitchen.

CHAIRMAN HODOM: Do you know – part of your business is take-out?

MR. KUNG: Yes.

CHAIRMAN HODOM: Do you have a percentage break down of what percentage is take out or what percentage is eat in?

MR. KUNG: I will say probably maybe 35-40 for eat in and then I think it's more to take out. So that's why we don't have much parking problem.

CHAIRMAN HODOM: Have you ever had an occasion where people were parking along the roadway?

MR. KUNG: No, we have never have that happen. Usually what we do is – the worst scenario I might do this, I pull my car and park in Hess so I can get extra space for customer. Hess never bother call to somebody tow I mean they got plenty of parking. I mean I know - - but that's the worst scenario.

CHAIRMAN HODOM: Are there occasions where you use the entire restaurant eat-in area, the 48 seats? Are there occasions where all the 48-seats are occupied?

MR. ALLEN: Are there times when all the tables are occupied.

MR. KUNG: Yeah, uh huh.

CHAIRMAN HODOM: Okay. So in your viewpoint, you couldn't reduce the number of tables to accommodate a somewhat area.

MR. KUNG: No, uh huh.

CHAIRMAN HODOM: Is that correct?

MR. KUNG: Yes, correct.

CHAIRMAN HODOM: Is it fair to say Mr. Kung that – just to make sure you understand part of the Zoning Code for nonconforming use structure allows up to 25 percent expansion of the building. It doesn't allow any more than that. And I'm assuming that the majority of that expansion took place prior to your purchasing the building. As I remember you did have - - you had 2 small additions and that's why I was asking the square footage of those. I don't know if Mark came up with those or not, but is that a fair statement that the majority of that expansion took place prior to your purchasing the building if you know?

MR. ALLEN: I think we would have to know what size the building was originally to - - and I don't whether that's in the records or not.

CHAIRMAN HODOM: Okay, well let me go on here anyway.

MR. ALLEN: Because I don't know the answer to the question.

MR. PLATEL: If you would like, I can answer that question for you.

CHAIRMAN HODOM: Please.

MR. PLATEL: The - - originally the 25-percent expansion was exceeded because part of

that building was a residence and at one time it was – Jason probably knows this, they had a residential part of the building, which was considered residence. And then the other part was the commercial aspect so anytime they expanded the commercial aspect even though it was inside the building it was considered an expansion. So that was used up in 1978, there was a hearing for Private Bennis, I believe it was for that. That was back in 1978, that was inside expansion. That was even before they even started building on the outside.

CHAIRMAN HODOM: Okay. Then you've owned the building since what year?

MR. KUNG: I think it's in 1986.

CHAIRMAN HODOM: 86 – 87, something like that?

MR. KUNG: 86- 87.

CHAIRMAN HODOM: I think John made the comment earlier, maybe you could address it Mr. Kung, is that have you approached any adjoining land owners to perhaps purchase additional from them?

MR. KUNG: Uh yes. I approached to Jason I think like 2 or 3- years ago and try to buy additional land so I can have more parking and something. And then – but Jason's mother don't feel well so it delayed the whole thing so until his mother pass away and then I approach Jason for a final drawing. And Jason, he say he decide he probably want to sell the whole lot – the whole piece. So in that time we have to go on what we have, what land we have.

CHAIRMAN HODOM: Okay. Bring it back to John, can you describe – are you changing any of the signage on the site or on the building?

MR. TOMPKINS: There is no signage on the building now is there?

MR. KUNG: It's the sign?

MR. TOMPKINS: It's a pylon sign.

MR. KUNG: We have a sign, we just replaced the old sign. It's just a replace so we gonna keep the sign right now.

CHAIRMAN HODOM: So you don't plan on expanding any of the signage?

MR. KUNG: No.

CHAIRMAN HODOM: Either on the front pylon or on the building?

MR. KUNG: No, no. It's a brand new sign so we kind of keep that.

MR. ALLEN: There is no signage on the building.

MR. LATHROP: There is no signage proposed on these elevations.

CHAIRMAN HODOM: Why don't you describe to us if you would what kind of external lighting would be on this building, if any.

MR. LATHROP: Well what we have envisioned so far is just soffit lighting washing down the building and you know I haven't really given much thought as to what we were going to do out on the patio area there. Maybe Dan can address that you know as a site issue. Other than that as far as site lighting, again I defer to Dan on that question.

MR. TOMKINS: Well we weren't proposing any poles and there are none now that I'm aware of so we weren't proposing any pole lights. There are products out on the market now that actually work quite well as wall packs. When people hear the word wall-pack, their assuming that well it's a glorified flood lamp, but if we need any lighting for the parking you can use what they call a fully shielded sconce and that has the advantage of not creating glare going out horizontally. It pushes the light outward but by using refractors inside the unit, so you don't have the annoying occurrence of light hitting you in the eye if you happen to be in the parking lot. So that's the approach that I would take. If it becomes apparent that additional lighting is required for the site, my approach would be to use these sconces that would be attached to the building.

CHAIRMAN HODOM: But in any event the closed lighting would be directed on the property itself and not directed onto any of the adjoining properties?

MR. TOMPKINS: Oh, absolutely. That sconce that I was referencing is a version of what you would call cut-off lighting, which has a very discrete directed cone of light downward onto the pavement. And then that's what I would anticipate using, just avoiding that condition that you're concerned about.

MR. BROOKINS: John could you give us an idea of how tall this building is and compare it to for example to the current building and also lets say the island canopy next door? I know you don't have that but ...

MR. LATHROP: I would probably clear it from the underside of that pump island canopy, Dan – would be about 16-feet, is that correct?

MR. TOMKINS: I think that's what they made so that a truck can pass underneath it, that's correct. And it's been a few years since we presented that to folks but I would imagine that the thickness of that canopy is at least 2 or 3-feet.

MR. LATHROP: The ridge line of the proposed building here is 27-feet above grade and the little – the copula, the little feature there is say 31 ½ -feet above grade. Probably with the existing structure and again I don't have that in front of me here, I'm guessing that's

around 22, 24 maybe.

MR. TOMPKINS: That's a good as guess as anything.

MR. LATHROP: Do you have a picture of it relative to the canopy or anything.

MR. TOMPKINS: What do you think of this?

MR. LATHROP: Yeah, if we could see it.

MR. TOMPKINS: You know I bet I we can almost spot one.

MR. PLATEL: While there doing that, a quick follow up – for the additions that have been put on since Conrad has owned it. When they closed in the roofed area, so there's already a shed area, that was 90-square feet that they had enclosed but that 90-square feet was already existing and the other addition was only 33 ½ -square feet.

CHAIRMAN HODOM: Okay, we're talking some minor...

MR. PLATEL: Really what they've done is added 33-square feet as far as the new building area goes. The other 90 was existing.

MR. TOMPKINS: I just wanted – the reason I grabbed the photos is that I just wanted to point out that the house, as you look at the front of the exiting restaurant there is a 2-story structure to the immediate right and it also sits on a you know, I don't want to say hill but it's a mounded condition. So what we're proposing to do is going to more than fit in with the existing condition immediately adjacent to us. We have a full 2-story house that sits up higher than grade if you will. Just on the photos I think you folks probably have them – you can just see it on photo 2 the edge of it where you can make out the 2-stories.

CHAIRMAN HODOM: Which photo was it?

MR. TOMPKINS: Photo number 2.

CHAIRMAN HODOM: Okay.

MR. TOMPKINS: I just wanted to verify that, but from memory I knew that that house was - sat up on a mound and that it was 2-story.

CHAIRMAN HODOM: Does that answer your question?

MR. BROOKINS: Yeah, thank you.

MR. LATHROP: Actually to give you an idea this is the top of the mansard here is about 17-feet. I would be willing to venture a guess that the Hess Mart is probably a couple feet taller than that and it's going to be – the roof line is actually similar, the mansard style

roof.

CHAIRMAN HODOM: What about noise? Are you going to be generating any additional noise from either the kitchen equipment or the mechanical equipment for eating and air-conditioning?

MR. LATHROP: It will be the same type of equipment. It'll be because of the size of the building so close to the same, it'll be pretty much the size equipment. But again, the mansard roof here is a screen. Some of the equipment out on the site is just you know, currently is just in little nooks and crannies and corners outside the building without any screening at all so there's nothing to attenuate the sound. Its just going to diffuse out and it's actually so close to the building, what happens now is that the sound is going to hit the building structure and then radiate out in all directions. The purpose of the mansard roof is to – one is aesthetic, to conceal that equipment and two is for sound attenuation, because what it does is it'll - - it's still a hard surface for the sound to bounce off of, but it will direct all the sound up and then it will start to spread out as it goes out so if anything this should require that configuration.

CHAIRMAN HODOM: Air pollution? Any changes in odors or smoke or anything of the like?

MR. LATHROP: No, same operation.

CHAIRMAN HODOM: It should be an improvement of what's there now, I think there was just a few exhaust fans?

MR. LATHROP: Well the one exhaust fan that we have is - - the current exhaust fan is on the side of the building isn't it?

MR. TOMPKINS: Yeah.

MR. LATHROP: And we would relocate it around the back of the building. So I mean that should be an improvement.

CHAIRMAN HODOM: Are we changing any of the delivery schedules, or services?

MR. KUNG: Same.

CHAIRMAN HODOM: Same?

MR. KUNG: Yeah.

CHAIRMAN HODOM: Are we changing anything with the trash pick-up?

MR KUNG: No, gonna be the same.

CHAIRMAN HODOM: The trash area that you show in the site plan, is that enclosed only on 3-sides?

MR. TOMPKINS: That was my intention unless you know there was concern to have it gated. I wanted to keep it as simple as possible. If that was a strong concern of the Board, it's certainly easy enough to design a gate. More often than not, you know like a chain link with vinyl slats is used frequently because it's a good balance between cost and durability. Because it was set into the back and is adjacent to a commercial use, I reasoned that it might be reasonable to just have it enclosed on the sides and the back. That was the rationale for that.

CHAIRMAN HODOM: Well what is the enclosure itself that you're proposing?

MR. TOMPKINS: Excuse me?

CHAIRMAN HODOM: What is the enclosure material that you're proposing at this time?

MR. TOMPKINS: Well, what I would propose to do is match it with the fence. So whatever we selected with the fence, we would probably look to do the same thing with the enclosure. If we went with a wood product for the fence we would match that. There might be some introduction of steel and a couple of places that might be likely to get cemented by the truck for example, but what I would not be proposing is anything majorly different than the screened fence. In terms of material I wouldn't be introducing a masonry construction for example. I think that would be over kill for this kind of use and it represents kind of a surprisingly high expense. So I would be looking to match the fence.

CHAIRMAN HODOM: How often do you have trash pick-up.

MR. KUNG: Once a week.

CHAIRMAN HODOM: Once a week?

MR. KUNG: Yes.

CHAIRMAN HODOM: How about your deliveries, how often do you have deliveries and what times of day do you have them?

MR. KUNG: It depend, it might be like - - the biggest truck I will say probably 5 times a week.

CHAIRMAN HODOM: Do you have your deliveries during the off hours before you're open or after you're closed?

MR. KUNG: No, nothing after close. Sometimes for the convenient – they say, I mean they usually come when we are open. I mean our open hours on weekend we see the sign – the invoice.

CHAIRMAN HODOM: Do any of the deliveries that you have, do they interfere with any of your parking spaces?

MR. KUNG: Oh no not at all.

CHAIRMAN HODOM: Where are they delivered to?

MR. KUNG: They just go in the back and in the back I think – usually what they do is they come in right here and pull over right here and then deliver and then go around.

CHAIRMAN HODOM: You get your deliveries through the kitchen area in the back?

MR. KUNG: Yeah, uh huh – so it's real convenient for the delivery.

CHAIRMAN HODOM: What are your hours of operation?

MR. KUNG: Monday to Thursday's, 11 to 10. And the Weekend's one hour longer, 11 to 11, and Sunday's 11 to 10

ATTORNEY SEELY: Are you going to keep those the same afterwards?

MR. KUNG: Yes.

CHAIRMAN HODOM: So you're open 7-days week?

MR. KUNG: Yes, correct.

MR. LEWIS: Mostly the delivery's you're talking about, they take place before you're people – you start serving lunch?

MR. KUNG: Yeah, uh-huh.

MR. LEWIS: Generally in the morning?

MR. KUNG: Generally morning, yes.

MR. LEWIS: When you're in shaping the restaurant up and cooking for your lunch crowd.

MR. KUNG: Yeah.

CHAIRMAN HODOM: What time frame are you looking at if the Board were to

approve the Application for start of construction and completion?

MR. KUNG: Well, within a year.

CHAIRMAN HODOM: Within a year?

MR. KUNG: Yeah. I to look if I have time now.

MR. LEWIS: You're talking about being shut down 3 to 4- months?

MR. KUNG: But once your shut down, our insurance possible because I have no income so I have really work.

MR. ALLEN: But I think the question was, you anticipate the period from when you shut down to when you're done with the construction.

MR. KUNG: I would say 3 to 4- months.

MR. ALLEN: 3 to 4- months. You just have to decide when you want to start having no income, I guess.

MR. PLATEL: They're also looking for not having to extend the Variance if it were granted.

MR. ALLEN: Right, I understand.

CHAIRMAN HODOM: You would have the work done within a year's time, I mean if we were to grant the Variance you would start once the plans were finalized. Would you be doing anything this winter?

ATTORNEY SEELY: Not after last winter.

MR. KUNG: What's a good time construction, I have no idea.

MR. TOMPKINS: Let me ask a question before we try to pin that down. Is it necessary to have the construction completed or just the issuance of the building permit within that one year period?

CHAIRMAN HODOM: Well the reason I'm asking the question is that if we grant the application for a Variance, we put a time frame on it and what we don't want to happen is that construction is not completed within that time frame, then you've got to come back for an extension and so forth and so on. I'm just trying to get a time frame.

MR. TOMPKINS: I'm thinking 2-years just to be safe minimal. There's a concern - - he has to finesse his schedule just right so that he hits a low period where he's looking at his

books and if there's a seasonal low period where it's a little bit more of an advantage to wait.

CHAIRMAN HODOM: Sure.

MR. TOMPKINS: Or he you know, has to find something for his cooks and you know you'd rather do the construction obviously where business is a little bit slower as opposed to a peak period. And you know, if he ends up waiting until lets say next spring for example, I just didn't want to get into a situation where maybe we run up against the end of the year period. That would be my concern. Everyone always has the best intentions in terms of wrapping up construction as quickly as possible, but we all know that unforeseeables do occur even before you put a shovel in the ground. So I'm always a little leery about to small of a window.

CHAIRMAN HODOM: Fine.

ATTORNEY SEELY: As are we. I mean we're not looking to drag anybody back here a second time.

MR. ALLEN: You're nice people, but we don't want come see you for that.

CHAIRMAN HODOM: Are there any other questions from the Board? Are there any questions or comments from the audience? Do we have any other questions from the design consultants for Mr. Allen?

MR. ALLEN: You have our attachment for the application, which takes you through our analysis.

MR. TICE: Just to speak in favor of the Board, Jason Tice. I'm Mr. Kung's adjacent neighbor both to the rear and to the side. I'll give you a little history on it like you already said, I believe the building was built roughly in the early 30's – mid 30's. So it was an ice cream stand and went from there to a bar. And as Mark said there was a residence. Somebody over there knew my grandfather and grandmother; Red Bolson ran it. It ran from 55 to about 67. Bob being in the fire service probably remembers the building also did burn in the early 60's. And growing up in that house behind there all my life, I've only not been there the last 3-years, I've seen everything and anything that's happened to that building. When people who had the Italian restaurant bought it, they went through it; re-did a lot of the floors and stuff like that. There is still wood burn scaring inside that structure from that fire. I can only say that Conrad is a positive influence to the community. He runs a clean business, keeps the place neat and tidy. We have no issues what so ever with him. I would welcome a structure that looked like that there. The issue with the multiple, multiple additions on the structure is your typical farm style and that's what that area was. The farmhouse next door, which I owned dates back to the early 1800's as well. So you're talking you know, right in that general vicinity. I can't speak highly enough of Mr. Kung, he's been great to our family; treated us well throughout the years. We've taken care of his snow removal for the last probably 15-16-years. And like I

said I would welcome a building that looked that. I think it would definitely and positively influence the New Scotland Road area as definitely opposed to what's there now.

CHAIRMAN HODOM: Thank you very much.

MR. TICE: You're welcome.

CHAIRMAN HODOM: Is there anyone else who would like to speak in favor of the Applicant? Yes sir, please introduce yourself.

MR. BAKER: Hi, I'm Dan Baker. I live down next to Ross's. Pretty much the same thing Jason said, he's an outstanding member of the community and it would be a plus I think, positive; looks a lot better. It would help him out a little and I think it would be a pretty thing.

CHAIRMAN HODOM: And your address was again?

MR. BAKER: 1328, I'm over next to Ross's.

CHAIRMAN HODOM: Next to Ross's.

MR. BAKER: Yeah, I've been there since 78.

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

MR. KUNG: Thank you, thank you so much.

Hearing closed 9:20 p.m.

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The next order of business was to consider the application of AT & T Wireless, 15 East Midland Avenue, Paramus, New Jersey application was found to be in order and Mr. Lewis made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by AT & T Wireless, for Special Exception under Article VI, Permitted Uses, Section 128-12 B (1), Public Utility, and Chapter 11304 A (1), Alternative Tower Sites for the installation of a communication antenna on an existing water tank at premises 308 Kenwood Avenue, Delmar, New York, 12054, it is hereby ordered that a public hearing on this matter be held Wednesday September 17, 2003 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was a discussion of the previous public hearing held in the matter of Independent Wireless One, 1499 New Scotland Road, Slingerlands, New York. The following points were brought up by the Board members: There are gaps in the surrounding area where calls are dropped and this could, through roaming, help all providers. The placing of the antennas in the church steeple will suit their needs for anticipated coverage. The proposed location will not affect the character, welfare or safety of the surrounding area. The church will benefit financially from the project. On a motion made by Mr. Lewis, seconded by Mr. Wiggand, and unanimously carried by the Board, the Board directed Attorney Seely to prepare a proposed resolution granting the Special Exception, for presentation at the next Board meeting on Wednesday September 17, 2003.

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The next order of business was a discussion of the previous public hearing held in the matter of The Gold Coin Restaurant, 1360 New Scotland Road, Slingerlands, New York. The following points were brought up by the Board members: The existing building is old and has had many uses over the years. The plans were well thought out and many revisions were made prior to the public hearing to give the Applicant a larger kitchen, more storage space and to meet the handicap accessibility requirements. The site is awkward and there is no way that more parking spots can be accommodated to meet the Code. On a motion made by Mr. Lewis, seconded by Mr. Wiggand, and unanimously carried by the Board, the Board directed Attorney Seely to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on September 17, 2003.

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The next order of business was to consider the proposed resolution of David Lawrence, 4 Magee Drive, Glenmont, New York 12077.

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

RESOLUTION

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WHEREAS, an application has been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York seeking an Area Variance under Article XII, Percentage of Lot Occupancy, Section 128-49, Total Building Area and Section 128-55, Accessory Structures requested by David Lawrence for property at 4 Magee Drive, Glenmont, New York. The Applicant wishes to construct a detached garage, which will exceed the total building area and also exceed the lot occupancy for accessory structures at the premises of 4 Magee Drive; and,

WHEREAS, the Board of Appeals, 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 August 20, 2003; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

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

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

## FINDINGS OF FACT

The Applicant is seeking an Area Variance from Article XII, Percent of Lot Occupancy, Section 128-49, Total Building Area and Section 128-55, Accessory Buildings

The Applicant is proposing to demolish the existing 446.88 square foot detached garage and construct a new 624 square foot detached garage in the same location. The total lot occupancy will be 20.39 percent, which is .39 percent over the 20 percent allowed and the accessory lot occupancy will be 7.31 percent, which is 2.31 percent over the 5 percent allowed.

The existing structure is located in an "A" Residence Zone and is occupied as a pre-existing nonconforming 2-family dwelling. A 24-foot by 26-foot garage that would give the Applicant some added storage for himself and his tenant, and beautify the property. The Applicant also would like to provide a wider driveway to permit more cars to park at the property. Currently he and his tenant use the adjoining lot at Alteri's restaurant for additional parking.

No one spoke regarding the application. The Albany County Planning Board deferred to local considerations.

## CONCLUSIONS OF LAW

Based on the above Findings of Fact, this Board concludes that the Applicant requires the variances sought in order to construct the proposed new garage.

This Board has balanced the benefit to the Applicant with the detriment to the health, safety, and welfare of the neighborhood and community and concludes that permitting the proposed garage, which is a minimal request, would not result in any undesirable change in the character of the neighborhood, would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district or be detrimental to adjoining property owners and that the benefit could not be achieved by some other means.

Accordingly, the Board grants the Applicant's request for a Variance to construct the proposed addition, subject to the following conditions:

1. The Applicant shall complete construction in accordance with the plans, specifications, testimony and exhibits submitted to the Board in support of the application, and,
2. The Applicant shall complete construction of the garage within two years of the date of this resolution.
3. Maximum of four (4) 9-foot by 20-foot parking spaces in front of new garage, and extending to the east side of the garage.

September 3, 2003

Michael C. Hodom  
Chairman  
Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
Michael Hodom Robert J. Wiggand Richard Lewis Gilbert Brookins	None	Marjory O'Brien	None

(Resolution filed with the Clerk of the Town of Bethlehem on September 4, 2003.)

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On a motion made by Mr. Brookins, seconded by Mr. Wiggand, and unanimously carried by the Board, the minutes of the August 20, 2003, meeting were approved.

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

Meeting Adjourned: 10:00 p.m.

Respectfully submitted,

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Secretary