

**TOWN OF BETHLEHEM
BOARD OF APPEALS
April 7, 2004**

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

PRESENT: Michael Hodom
Robert Wiggand
Gilbert Brookins
Marjory O'Brien
Leonard Micelli

Michael Moore Attorney to the Board

Mark Platel Building Inspector

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

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. Welcome. Our first order of business this evening has been postponed to a date uncertain. It was for Galaxy Communications and William Banahan, the Owner of property. They weren't able to provide the Board with the documentation that was requested so they've asked that the hearing date to be postponed to a date uncertain.

Mr. Wiggand made a motion to accept the request by Galaxy Communications, Mr. Brookins seconded and it was unanimously carried by the Board to postpone the hearing to a date uncertain.

CHAIRMAN HODOM: Our next hearing is scheduled for 7:45 and we do have other business that we can take care of.

The next order of business was to consider the application of Walter and Irene Wagner, 660 Feura Bush Road, Delmar, New York. The application was found to be in order and Mr. Wiggand made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Walter and Irene Wagner for variance under Article VI, Permitted Uses, Section 128-11, Residence "AA" District for the construction of a carport on a vacant piece of property, which is not permitted without a main structure in a "AA" Residence Zone at the premises of Ackerman Avenue, Delmar,

New York, it is hereby ordered that a public hearing on this matter be held May 5, 2004 at 7:45 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of Independent Wireless One. The application was found to be in order and Mrs. O'Brien made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Independent Wireless One for Special Exception under Article VI, Permitted Uses, Section 128-12 B(1), Public Utility, and Chapter 113-3 (B), and 113-4 A (1), Alternative Tower Sites. To install 6-PCS antennas and related call processing equipment to an existing tower at the premises of 81 Jolley Road, Glenmont, New York 12077, it is hereby ordered that a public hearing on this matter be held May 5, 2004 at 7:30 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of Delmar Health and Fitness, 28 Hudson Avenue, Delmar, New York. The application was found to be in order and Mr. Micelli made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Delmar Health and Fitness for Use Variance, Permitted Uses, Section 128-13, Residence AB District. To construct additional parking in a residential district, for an existing permitted business, which is not allowed in an "AB" District at the premises 28 Hudson Avenue, Delmar, New York 12054, it is hereby ordered that a public hearing on this matter be held May 5, 2004 at 8:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mrs. O'Brien seconded the motion and it was unanimously carried by the Board.

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The next order of business was a discussion of the previous public hearing held in the matter of Michelle and Daniel Sanders, 45 Carolanne Drive, Delmar, New York 12054 for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings for construction of two additions, which will exceed the allowable percentage of lot occupancy at the premises 45 Carolanne Drive, Delmar, New York. The following points were brought up by the Board members: The proposed additions would be reasonable and an improvement to the neighborhood. The plans were well designed. The Applicant agreed to reduce the overhangs to 18-inches, which lowered the total overage. On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution granting the Variance, for presentation at the next Board meeting on April 21, 2004.

CHAIRMAN HODOM: The next order of business this evening is a public hearing for a variance under Article XV, Width of Lots, Section 128-63 A (D), Minimum required widths requested by Howard Freed and Rachel Michaud for property at McCormack Road, Slingerlands, New York. This is for a vacant parcel of land currently under site plan review and approval by the Planning Board, which does not meet the width of lot requirement at the premises of McCormack Road, Slingerlands, New York.

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

MR. PLATEL: Yes, Mr. Chairman. This Application has been referred to the Board of Appeals from the Planning Board where it is currently being reviewed. The Applicant is proposing a 1-lot subdivision in which the width of lot at the building line cannot be met. The proposed location of the structure on the lot would create a lot width at building line of approximately 81.5-feet. This dimension is 3.5-foot shy of the 85-foot requirement set for a lot in an "A" Residential District. All other lot requirements will be met.

CHAIRMAN HODOM: Do you want to correct that 81 to what the engineering department came up with?

MR. PLATEL: They came up at the 25-foot setback, which is the minimum that the house could be set at, 84.45 I believe. I just went off where the proposed location of the house was as best as I could with a scale and measured that back and I came up with about 81-½ -feet. Depending on where the house would be set is where we would take the measurement from.

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

April 7, 2004 at 7:45 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Howard Freed and Rachel Michaud for Variance under Article XV, Width of Lots, Section 128-63 A (3), Minimum Required Widths of the Code of the Town of Bethlehem for vacant property currently under site plan approval, which does not meet the required width of lot at premises McCormack Road, Slingerlands, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the March 31, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition of the Applicant. Anyone desiring to speak will be allowed to do so, we just ask that you come up, stand or sit close to the black microphone, it's for recording purposes only. We also request that you direct any questions or comments to the Board. Any questions or comments should be directed to the issue this evening, which is the width of the lot at the building line. Mr. Johannessen, you're with...

MR. JOHANNESSEN: Edward W. Boutelle and Son.

CHAIRMAN HODOM: Boutelle and Son. And you are the agent representing the...

MR. JOHANNESSEN: The Applicants.

CHAIRMAN HODOM: Just give us your name and address and your association with the Applicant and tell us what you want to do.

MR. JOHANNESSEN: Okay, it's Howard Johannessen and I work for Edward W. Boutelle and Son and I'm representing the Applicants Howard Freed and Rachel Michaud. As stated by the Board the essence of the application for the variance is the issue with the width of the lot at the building line. The property is located on the south side of McCormack Road and it's approximately 600-feet from McCormack road's intersection with Maple Avenue. I won't go up there because I'll have to drag the mic with me, but Maple is off to the right at you're looking at the drawing.

The Applicant's purchased this property in March of 1983. When it was purchased it was a buildable lot. Since that time, since purchasing it in 83' there had been a - - I'm not sure if there was one change of the zoning requirements, but there was at least one, which was adopted in 1995 maybe even later than that. As a result of the new regulations that were adopted, the width of the lot amongst other requirements was changed. And so as a result of that it currently is not in conformance. It cannot comply with that regulation.

The lot is actually about 88-feet along the frontage, but because of the converging lines of the side lines, the further you go back on the lot the narrower it gets and that's why Mark's dimension is different than what we had indicated in the Application simply because he took it where the building was actually depicted on that drawing, which is just really approximant, where we had in the application sited in the application – we had figured it at 26-feet, that the building would be placed no closer than 26-feet from the property line, so that's why there a difference between what Mark had come up with and what we had indicated in the application. When we said in the application – we said also that it was at 26-feet.

CHAIRMAN HODOM: So you're 84.25-feet in width is based on a setback of 26-feet?

MR. JOHANNESSEN: Right. If I can go up and - - What it is, you know here's the road right of way here and here's the property line. Most of you can't see this, but there's a 25-foot minimum setback as required by zoning and – well we're saying it's just - - it's very dangerous to try to put a building right up to the setback line. Everybody gets into trouble because builders can't build and surveyors aren't perfect either and so just to provide somewhat of a buffer I had said well instead of 25, lets say 26. It gives every - - you know it gives a little bit of leeway so that we don't get it right up to the setback line and having - - if you place it so that the building is no closer than 26-feet that's where it came up with the 84.25-feet. I was trying to do a minimum, you know and not and minimize the variance granted and so I didn't want to, you know go to far back and that's why I said 26-feet.

CHAIRMAN HODOM: Do you know what it would be at 25-feet?

MR. JOHANNESSEN: I think somebody – somebody, I don't know if it was you Mark, said 84.45. Somebody had said that – the engineering department calculated and I believe that's correct because I had done it at 25 and that sounds familiar although I can't say for sure that's what it is, but that's what it sounds like, I believe it is. I understand to that when the – when the new reg's were adopted there wasn't any provision for grandfathering the existing lots, which would not now comply and I did not read the reg's., but after speaking with planning that's what I understand, that's what I was told so that causes us to come before the Board for a variance just because there wasn't any provision for grandfathering existing lots. Again, when the applicants purchased this property it was a buildable lot and they purchased it in good faith. The difficulty is that if there's a strict application of the Town's existing code – Zoning Code, that it would unduly or unreasonably restrict the use of the property and that's why it's being requested that a variance be granted so that there can be reasonable use of this property.

The only really viable – well its not even viable, but the only alternative or option that I could come up with is if a piece of an adjoining property was made part of this parcel, which isn't possible – which is not possible because the applicants do not own any of the adjoining properties so that wouldn't work. Other than that if the Board were to grant the Variance, it would not be detrimental to the neighborhood. There would be no undesirable change in the character of the neighborhood; the requested variance is

insubstantial, being only 9-inches. The requested will have no impact on the physical and environmental conditions of the neighborhood and the difficulty requiring the Variance was not created. I guess that really concludes what I have to say.

CHAIRMAN HODOM: All right, let me just ask you a few questions if I may and perhaps Ms. Michaud can answer them if you can't. In your addendum, you did make a statement that this however is not possible since the owner of subject premises does not have title to any of the adjoining lots. Do you know or you may speak, have you made an attempt to purchase additional from either of the adjacent property owners or the property owner in the back?

MS. MICHAUD: My neighbor Ed Homiller and...

CHAIRMAN HODOM: Miss, just come up to the mic.

MS. MICHAUD: My neighbor, Ed Homiller is here and he was willing for me to purchase a wedge from him, but there was a problem – Ed I understand you have something like a home-equity loan on his – yeah there's a complication with his bank. The property owner on the other side I offered the land to them; the people who bought from us and then a subsequent person and they weren't interested in buying the property and there's not much space on their side because it's their driveway and garage. So the person to buy from to make it larger would have been Ed Homiller.

CHAIRMAN HODOM: And you did approach him to purchase additional property, but apparently there's some conflict with his title. Had you – we have a letter here from another adjoining property owner, Mr. Dembling.

MS. MICHAUD: Yes, my former neighbors, the Dembling's. Ed Homiller and I each bought property from them in 1983 and subsequently when we put it up for sale we were in negotiation with them. At that time what I understood was they wanted to put a road there, which would have impacted my former neighbor Ed. We were all ready gone by that time but the fact that it would have a road there and also we couldn't agree on the price with the Demblings.

CHAIRMAN HODOM: Okay.

MS. MICHAUD: One thing I wanted to say more was that when you looked at other lot sizes of footage on the map, you were talking about impact on the neighborhood. I saw other lots had footage of like 70-feet, so I don't feel like our lot size is outside of the neighborhood norm.

CHAIRMAN HODOM: You purchased the property in March of 1983?

MS. MICHAUD: Yes and at that time we owned 43 McCormack Road an adjoining property and subsequently we sold the house and bought another home in Slingerlands. Now we no longer live in Slingerlands, we live out of state.

CHAIRMAN HODOM: When you originally purchased the property, the property in question, what was your intent at that time? Were you going to develop that for a building lot?

MS. MICHAUD: It was far into the future. We basically we, you know we didn't want a road put there and I also – there were plans that I saw from the Dembling's where there was multiple housing in the back and then I since understand that the number of houses in the proposed development was scaled down.

CHAIRMAN HODOM: Initially when you purchased that parcel and I understand that the parcel was larger at one time and it was pretty much divided equally between yourself and Mr. Homiller, what was your intent at the time of purchase? Were you buying it for an investment to develop it or were you buying it for a buffer to secure your property against other development, I mean what was your mind thought at that time?

MS. MICHAUD: Our thought at the time was to slow down development and to protect the value of our property. And then as we moved we held on to it because we thought that it was a building lot and that it would be something that we could then cash in, in the future later on. And so now that is the case, with our son in college, you know this would represent like a years tuition. So we've made, you know overtures over the years to get something done but now we've got it to this point because we have paid taxes on it for more than 20-years and it's not creating value to us, it may be creating value to Ed and the person who lives at 43 McCormack Road and the Dembling's and maybe the people across the street. But since we live out of state, it's a drain now instead of an asset.

CHAIRMAN HODOM: So the home as proposed on this property is that to be built for you and your husband or...

MS. MICHAUD: No, we have a potential buyer who has expressed interest in building a home there.

CHAIRMAN HODOM: Just for the record, it's been 20-years?

MS. MICHAUD: (nods in agreement)

CHAIRMAN HODOM: And I think the actual law went into effect in 98', February of 98' where they finally changed the lot width requirement. Up until that time there was concern about density, which I think you meet the density requirement but there was an interim development density program set up by the Town. It went from 89' I think through 95', it was ultimately decided in 98' or it was at least amended – the last amendment that I have is in 98'. So many years have passed where it could have been developed under the old Code because in that interim development density requirement there was I'll use the term grandfather clause in it, that any existing lots or sites which met the requirements of the zoning ordinance in respect to housing density and width of lot prior to the effective date of the local law were accepted, they were an exception to

this law.

MS. MICHAUD: Yes time has passed.

CHAIRMAN HODOM: Were you aware of the changes in the law or the discussions and the changes of the law or the interim development density act?

MS. MICHAUD: I got some paperwork from my husband, you know he has a file at home, you know so I'm not sure about the answer to the question. All I can say is that it was like out site, out of mind. We didn't need the money and I was not closely following changes in the local zoning.

CHAIRMAN HODOM: Okay.

MR. JOHANNESSEN: I think Rachel brought up a good point and that was one of the things I had said is if you look at the surrounding lots you'll see lots that are very similar in size. Frontage wise there are lots - - there are a number of lots that are smaller, you know from 60, 70-feet. Immediately adjacent - - well actually adjacent or just beyond these lots in the immediate area there are quite a few lots comparable to this. Now there are some across the street if you go out there and look it looks like a big broad lawn, like a big lot but part of that is a paper street. So to grant the Variance you're not changing the flavor of the existing lots in this area. I think that was Rachel's point.

CHAIRMAN HODOM: Mr. Johannessen just referring back to your site plan, you have various notes; standard notes attached or included in that site plan. I'd like you to review and explain notes number 2, 3, and 4 to the Board, why they're on the map and what the consequences are if any.

MR. JOHANNESSEN: General notes 2, 3, and 4?

CHAIRMAN HODOM: Please.

MR. JOHANNESSEN: The standard notes here or the ones...

CHAIRMAN HODOM: Standard notes. Number 2, why don't you answer this, is the building envelope going to be located on the downhill side of the safe setback line?

MR. JOHANNESSEN: No these are standard notes that are actually again this map was put together for the purpose of submission to the Planning Board and I didn't make any changes to the map when I learned that in needed to go to the ZBA so these are standard notes that pertains to the application for the Planning Board. This - - specifically number 2, I'm going to answer it with some - not with complete confidence because I believe this is a standard note that the Town requires. In certain areas the - - which exceed 15-percent you have to create a line that is on the drawing that shows that you can't put building on that line because of the steepness of the slope. The short answer it's got nothing to do with this lot.

CHAIRMAN HODOM: Number 3?

MR. JOHANNESSEN: That's a standard Town note. And number 4?

CHAIRMAN HODOM: Yes.

MR. JOHANNESSEN: Ditto.

CHAIRMAN HODOM: In your professional opinion the changes that you're proposing to this lot to build the house on, will it affect the wetlands at all?

MR. JOHANNESSEN: No.

CHAIRMAN HODOM: Any other questions from the Board?

MR. WIGGAND: You show a home for proposed building on the site. Is that a true size of the building that is going to be built on that site?

MR. JOHANNESSEN: No, that was something that was just a concept, building envelope that was placed on there. I mean I came up with that just to show that you can put a house on it, you can grade it. That house can be, you know could be different.

MR. WIGGAND: You have known right at the present time contemplating on building a home there?

MS. MICHAUD: There is someone who is considering building a home there, but I understand they would need to get some other permits to have it built.

MR. WIGGAND: From the Town?

MR. JOHANNESSEN: Right, we would have to go if we were to - - if the applicants were to be granted a Variance, the next step would be to go to the Planning Board. We originally submitted this to the Planning Board, but because of the lot width issue at the building line, the Planning Board could not consider it until had been before this Board.

MR. WIGGAND: So at no time this has ever been an approved building lot and I'm referring to when you bought the property. You mentioned that you were contemplating on building on it at that time.

MS. MICHAUD: I have different paperwork here from the late Kevin Shea where on the one hand he said at the time of the original split in 1983 these were buildable lots.

CHAIRMAN HODOM: Just to clarify that for you, back in 83' I believe required lot width at the building line was 70-feet and it would have complied with that at that time, but it's changed from whatever - it was either 60 or 70-feet.

MR. JOHANNESSEN: I think it was 60.

CHAIRMAN HODOM: Was it 60-feet?

MR. JOHANNESSEN: Yeah I think it was 60.

CHAIRMAN HODOM: But since that time its been changed, it went into a interim density act and it was changed, recommend to be changed to 85 in an "A" Residence District and it was ultimately approved to be 85-feet in a Residence "A" District. But answer your question in 1983 it was a buildable lot.

MR. PLATEL: I was just wondering with the letter from Kevin if there's a qualification in there stating it would have been if it had gone through site plan approval at the time, because normally – I'm assuming that piece came off from the piece from the back.

MR. JOHANNESSEN: Yeah, this was all and I'm not sure how far it went, but yeah this is all owned by one entity.

MR. PLATEL: Possibly when it was the one large piece the four one's were sold off because you're in site plan review for a reason.

MR. JOHANNESSEN: Well a one-lot subdivision.

MR. PLATEL: For a one-lot subdivision so what I'm thinking is there is no qualification of there stating it would have been - - it would have met all the requirements but still needed site plan approval.

MR. JOHANNESSEN: Well I think the last letter, I don't know if you have it there. The last letter that we had - that the applicants had received from Kevin, I believe what - - there was confusion about the status of this lot and the – you had received 2 or 3 letters from the Town Planning Department, excuse me the Town Building Department because the applicants had asked the Building Department, you know can I build on this lot.

MR. WIGGAND: And when was that?

MR. JOHANNESSEN: These letters?

MR. WIGGAND: Over the last year and a half I'd say.

MR. PLATEL: 2003.

MR. JOHANNESSEN: And I believe the last letter that was received said that no, it's really not a building lot. You have to go to the Planning Board for a one-lot subdivision because back in 83' it wasn't - - it was supposed to have been subdivided because of the number of lots that were sold off. I believe that's one of the letters.

MR. PLATEL: I'm trying to get through all of them. I went through the street file and I didn't find any of these in there, that's why when you said you had letters I was a little....

MR. WIGGAND: Well this is a map of the land that you have owned since you've purchased it back in the 80's?

MS. MICHAUD: Yes.

MR. WIGGAND: Has that land changed at all or did you deed any of the land off of that parcel?

MS. MICHAUD: Did I...

MR. WIGGAND: Did you deed any land off of that parcel?

MS. MICHAUD: We sold 43 McCormack Road, but we didn't change that parcel.

MR. WIGGAND: It has nothing to do with this one?

MR. JOHANNESSEN: Right, that had...

MR. WIGGAND: The odd numbers are on the other side of the road.

MR. JOHANNESSEN: Right, that parcel that she sold was a separate lot; separate deed, which was this piece here. That had nothing to do with this. This, correct me if I'm wrong Rachel, but you owned this first and you had lived there and then in 83' you bought this adjoining piece.

MS. MICHAUD: Yes, this map here might help. This is 43 McCormack Road, and then this is the piece that my husband and I bought from the Demblings and this is the piece that Ed Homiller bought from the Demblings. And then my husband has also highlighted some of the lots that are 70-feet in the neighborhood.

CHAIRMAN HODOM: Your home initially was where Ms. Friedman has her property currently?

MS. MICHAUD: Right.

CHAIRMAN HODOM: Okay, but in any instance the purpose of our hearing this evening is to determine whether a Variance is required to reduce the 85-feet required now by Town Code compared to the 84.25-feet that currently exists at a setback of 26-feet or roughly 9-inches. The Planning Board did recommend to this Board prior to making any final determination on the site development at the building line.

MR. WIGGAND: Its kind of fitting together a little different than what I thought.

CHAIRMAN HODOM: They can't do anything until we make a determination to either affirm or deny the applicants request. Any other questions? Marge, Gil at this point?

MRS. O'BRIEN: No.

CHAIRMAN HODOM: Mr. Johannessen, anything else you want to say?

MR. BROOKINS: Mark, just a question and maybe you have an idea, this concerns the Homiller parcel, is that a buildable lot? I know that's not part of the issue today.

MR. PLATEL: My assumption is that since this one is going to the Planning Board for a site plan approval, that one would also have to go.

MRS. O'BRIEN: And what Kevin says there, it would.

MR. JOHANNESSEN: The one adjacent to this, the one...

MR. BROOKINS: To the east side.

MR. JOHANNESSEN: Right, what her neighbor owns is an identical lot.

MR. BROOKINS: Well it looks like it's the reverse in terms of the trapezoidal affects; it has a larger front than the one next to it.

MR. JOHANNESSEN: Well he's got a number of lots here, but correct me if – are you speaking of the one – it's vacant actually.

MR. BROOKINS: Yeah, there's the Friedman property, the Michaud/Freed property and then directly to the east of that which is the Homiller property that was apparently the other half of this split.

MR. JOHANNESSEN: Well kind of, he – what was it, 3-parcels that your property consists of?

MR. HOMILLER: Both of those parcels are 88.-something wide at the road.

CHAIRMAN HODOM: Mr. Homiller?

MR. HOMILLER: Yeah.

CHAIRMAN HODOM: Can I just interrupt you a minute and ask you to come up to the front and introduce yourself to us so we can get you on the record please.

MR. HOMILLER: My name is Edward Homiller and I own that other piece.

CHAIRMAN HODOM: You can sit if you prefer.

MR. HOMILLER: Oh, that's all right. The 2-pieces are identical, the property was bought by mutual agreement by Chip Freed and Rachel and my wife and myself. And we split it right slap dap down the middle so those 2-lots are as close to identical as surveyors can make them. And just beginning to realize that the problem here is that at a 26-foot setback, the Freed and Michaud lot fails to qualify by 9-inches. As far as I'm concerned I can think of no objection to granting the Variance.

CHAIRMAN HODOM: Did he answer the question?

MR. BROOKINS: If they're technically identical then that's fine.

CHAIRMAN HODOM: Thank you. Did you have anything else you wanted to...

MS. MICHAUD: Do you have any more questions for me?

CHAIRMAN HODOM: Well we may have but I was going to open it up to the audience, if there are any questions or comments and then perhaps some additional questions may arise from that. Mr. Dembling?

MS. FRIEDMAN: Can I go before you because I'm going to forget what I have to say?

MR. DEMBLING: I defer to Amy.

MS. FRIEDMAN: Thank you.

CHAIRMAN HODOM: Go ahead please; introduce yourself for us.

MS. FRIEDMAN: My name is Amy Friedman and I own the lot right next to the proposed lot that they're trying to build on. And I will tell you I know nothing about planning and all the rest of that so I just - - if you have questions, I'll answer as best I can.

I just want to give a little bit of history from my prospective. I purchased my property in 1996 from the Sheehans who had bought from the Freed's. At the time that I was looking at the property - my current property, 43 McCormack Road, I was told by the Sheehans that the lot adjacent was a non-buildable lot and that when they had purchased 43 McCormack road, they had an opportunity to purchase the adjoining lot, however they couldn't afford it. They could only afford the main lot and get a mortgage on that; that's what they did. They indicated to me that in the future if I wanted to purchase it, the reason that that next lot was purchased was to keep the privacy of the lot that I'm on. And as Ms. Michaud said, it would significantly - if a house or a road went in there would significantly decrease the value of my home as well as the privacy as well as several other things.

So that essentially is how the whole thing came and I believe Mr. Homiller and Mr. Freed and Mrs. Michaud purchased that land and split it to keep the privacy for their own homes. That's what my understanding was according to the Sheehans and I also – I personally contacted Dr. Freed a couple of years ago because I wanted to purchase that property to maintain my privacy because I had heard that Mr. Dembling was thinking about putting a road in and I didn't want a road in there. And at that point he said yes, they were thinking about selling and he threw out a number of sixty thousand dollars for that half lot. And I not knowing a lot about real estate checked with real estate people and said, you know what is the value – it's a non-buildable lot because I had checked to see if it was buildable – not buildable. It's a non-buildable lot and they want sixty thousand dollars.

I didn't pay a lot more than that for my home and all property; I mean if you look at the chart, I mean I have a rather large chunk of land. I think it's .65 acres and I was told you're out of your mind to purchase a non-buildable lot for sixty thousand dollars, you're being had. And so I then contacted Dr. Freed back and I said I was told that this is way over priced and if you want to come down, I very much want to buy the property to maintain the privacy and to stop the building that was going to happen on the land. He said at that point well I want the sixty thousand dollars for it and that's my price and I said well I'm not going to buy it for sixty thousand, that's unreasonable. I then contacted him, I want to say maybe about nine months later and again I - - cause I saw a for sale sign up and I said I still see that you haven't sold your property. I'm still interested in the property, how much are you asking for it? Again he told me sixty thousand dollars and in fact he said that he wanted to pay for his sons, I think, education with the proceeds.

I said to him at that point I would love to buy your property but sixty thousand dollars for that lot, number one, I can't afford because the value of my home I can't take out an equity loan for that amount and number two, it's just not worth it. I mean it's a non-buildable lot in the Town of Bethlehem. I bought my house that's next to it and I was told it was non-buildable at the time and I'm willing to buy it if it's a reasonable going price and he said I need to sell it. I want to put the proceeds to put my son through school. And I felt like I'm not being had to put his son through school. And I said well if you ever get into the position that you're willing to sell it to me at the going rate, I'm willing to talk to you about it and entertain it because I would like to keep the privacy of my lot.

Fast forwarding to August of this year, I was at my home and I was approached by an elderly gentleman who knocked on door and he said – it was a Monday or Tuesday, and he said I'm closing on the lot next door and I saw you out and about and he said I just wanted to introduce myself. And I said your closing on the lot next door? I said what are planning on doing with it; he said I'm building a house. And I said well do you know that that's a non-buildable lot. He looked at me and he said it's the first I'm hearing of it. I said before you go to closing on Thursday, you need to go to the Town and ask because my understanding is it's a non-buildable lot and if you buy it thinking your going to build, I'm telling you that I'm going to fight the building because when I purchased my home this was my understanding and in addition it's going to significantly impact the value of my home and my land that I paid the going rate for my property for. So I'm

assuming either that's the buyer or that fell through and then of course I got the letter about this hearing.

I also want to throw out the drawing that was made also concerned me and again I don't know the drawings but I did stop by the office and I looked at it and I also heard the gentleman here say that that's not the exact building lot; the building that's going to go up there. I want to bring to the Boards attention that according to what I'm seeing on there, my understanding which again is very limited, it looks like this home is 15-feet from my garage, I mean – and I don't know your name over there.

MR. PLATEL: Mark.

MS. FRIEDMAN: You do measurements and stuff?

MR. PLATEL: Yes.

MS. FRIEDMAN: I mean if you could show what 15-feet - - 15-feet is not that long.

MR. PLATEL: Probably from me to Gil.

MS. FRIEDMAN: Okay, that's the distance from the building to my garage, I mean they're going to be right on top of me and I just guess I come to the Planning Board to say please consider this because it is going to significantly impact my investment and, I mean everybody knew this when they purchased their lands and when they made their decisions, everybody knew what was going on. I will tell that I feel like if this goes through that I totally been had on my property. And I would just like you to seriously consider that because, you know you all live in Delmar and if this happened to you it would be a really horrible situation you were in. Anybody have questions?

MR. BROOKINS: I have one. To the best of your knowledge when you had these conversations was the property being represented as a buildable developable lot?

MS. FRIEDMAN: To me – Dr. Freed and I had the conversations and he represented to me that the reason he had bought the lot originally was to keep the privacy for home because of a potential road going in there. He didn't want the road to go in and so he bought it to protect the value of his property and his home, which is now mine. When the gentleman came to me in August he said to me well I'm buying it to buy a house and what he represented me and the reason I guess the deal fell through was because he was under the impression and he was told that it was a buildable lot. I said I don't know if you're going through a real estate agent or what, go directly to the Town because I don't think it's a buildable lot that's how I was told.

MR. BROOKINS: I'm not concerned with what he thought or what we think we thought, I was just concerned about your conversation directly.

MS. FRIEDMAN: I was told directly it was a non-buildable lot. I was told directly by

the people – the Sheehan’s who I bought my home from. I was told directly when I came to here – around the time that I was purchasing my home to see if it was a buildable lot and when I spoke to Dr. Freed, he represented to me that it was a buildable lot – excuse me it was a non-buildable lot. He was very well aware in our conversations that it was a non-buildable so my question to him was well if your not willing to sell it to me and Mr. Homiller – maybe he wants more property, but I can’t imagine that he wants more property because he has a lot of property. I said I’m the only one that would have interest in this so let’s talk reasonable because you know it’s not a building lot. So is he aware that it was a non-buildable lot at the time that I spoke to him? He absolutely was, but like I said he was trying to get sixty thousand for this little piece of land that’s non-buildable and I just didn’t want to be had. Did that answer your question?

MR. BROOKINS: Yes thank you.

MS. MICHAUD: My husband isn’t here to speak up for himself, but part of this is – is this a buildable lot or not and I can’t speak to the conversations that you had with the person who sold you the house because I wasn’t privy to that conversation.

CHAIRMAN HODOM: Mr. Dembling?

MR. DEMBLING: Ladies and gentlemen, thank you I’m Dave Dembling, I’m here with my wife Francis. We live at 33 McCormack Road; I’m an architect. I work in Albany. There’s been a lot of questions and discussion and from my point of view; I’ve observed some confusion over some of the issues. I do have a couple of questions – at least one question before I address those things. When you talk about a setback of 25-foot minimum, is there anything in the Town regulations about where a house is to be setback? Is there something about setting back the average of other houses on the street?

MR. PLATEL: No, it’s just the minimum setback line that you have to keep past the line.

MR. DEMBLING: So any house built on any lot anywhere can be set to the minimum regardless of the other houses on the street?

MR. PLATEL: That’s correct by Town standards, yes.

MR. DEMBLING: Okay. To clear some confusion, you have my letter. I don’t know if everybody has it?

CHAIRMAN HODOM: Yes, they do.

MR. DEMBLING: Attached to it was a drawing, has everybody seen this drawing?

CHAIRMAN HODOM: Yes.

MR. DEMBLING: It was attached to the letter. If you refer to that drawing it might clear up some of the issues, because I heard something about too many lots being subdivided.

There was somebody said something about that.

MR. JOHANNESSEN: Well there's a letter from the Town.

MR. DEMBLING: Okay the - - on the left side, on the bottom it says Dembling property. All of that property from the entrance at the driveway to the left of the drawing all the way to the far narrow point on the right is our property. We purchased – originally purchased the property on the left that's labeled 1.79-acres, 1.81, 1.36. Along with the 2-lots at the front at the road they were all purchased at one time and divided by deed into 5-properties and 2-houses were built on that 2 legal lots that met the Zoning at that time, and they are 70-feet wide.

Then we purchased these other – the other property, the 2.86-acres, the 2.28-acres and then what is now owned by Freed and Homiller. That was all one property and we purchased that in 4-deeds and that was all legal at that time to subdivide that way. And it was our intention at that time to sell the piece at the road, at McCormack Road because we had access. We have access at the end here, on DOT maps that line is labeled with access. So we retained that as an access into this area at the lower right. We also have a 50-foot access where our driveway is located and the 2-rectangles there are our house and an adjacent barn. So we have 50-feet there and that could be a road to a cul-de-sac back here if we develop that way.

When we purchased this land that includes what Freed and Homiller now own I advertised that piece and a builder came to look at it and I was there looking at it and Mr. Homiller came out and said you're on my land and he thought that was his land but it wasn't. So after he saw what was going on, he got together with Freed and they expressed to me that they wanted to buy the land to protect their – for the very specific purpose of protecting their property that nothing would be built on those lots. And that is the understanding we had in dividing it exactly in half, Paul Hite surveyed it and divided it precisely in half and I sold half to each for seven thousand dollars that was in 1983.

Since then I've contacted Dr. Freed several times over the years expressing an interest because it's difficult to develop the land we have here and maybe we made a mistake selling it to them in the first place, but if we could have access through there we could create a key-hole lot. I suggested, number one, buying the property outright and Dr. Freed wanted sixty thousand dollars, which was an outrageous price just as Amy had the same experience I had. I've written a letter to Dr. Freed, I suggested to them that we combine our property and create a key-hole lot because he had an un-buildable lot, which surprisingly enough a few years ago John Healy put up a sign there said it was for sale. He was told by Dr. Freed that it was a buildable lot, but after it was not a buildable lot. The next day the sign disappeared, but I specifically suggested to Dr. Freed that we combine our land and create a keyhole lot; sell it and split the proceeds and he didn't want to do that.

So I submit to you that they had several alternatives. One alternative was that when they sold 43 McCormack Road, they could have combined the properties and

created a legal lot if that's what they intended to do because they sold it after 1989 when the interim rule went into effect and they should have known at that time that the regulation was coming that the lot had to be 85-feet wide at the building line. So that was one alternative that they had at that time. They could have combined the property and created a line that allowed for a legal buildable lot. And then they could have sold to Amy, they could have sold to me, they've had at least three or four different opportunities as alternatives to this Variance. And it's my understanding that one of the criteria that has to be considered in the law regarding a variance is specifically whether the benefit sought by the applicant can be achieved by some method feasible to pursue other than an area variance. I would like the Board to please take that into consideration.

There's also been discussion, I'm not going to read the whole letter, I'm going to summarize it. I'm sure you can read the letter. There's been some discussion about – or the presentation has been presented that there's no impact on the surrounding neighborhood and I would like to explain how I see it. It is a relatively nominal distance of, you know 9-inches doesn't seem to be very much but I'd like to show you these photographs that I took recently. You could pass them around. These are photographs of Homiller/Freed lots. These are pictures of, and you know the alternative for a keyhole lot is not unprecedented in that neighborhood. There are 3-existing keyhole lots. I live in a converted barn that is one keyhole lot. The old Westevald house down the street from me is a keyhole lot that was also a converted barn that was probably done back in the 40's. And Peter's built a house across the street from this lot that is a keyhole lot and these are pictures of the 3-keyhole lots.

Concerning the impact on the neighborhood, I checked up and down the street and there really isn't a single other property that has 2-structures or 2-properties that have 2-structures that are 15-feet apart. The closest to anything comes or the two 70-foot lots in front of my property where the houses are 16-feet apart and I've got pictures of that here you can see. For instance this one on the lower right is of those 2-houses, and these are pictures of the houses on the south side, just typical immediate area houses and the amount of land that's around all of those houses is significant, 15-feet is going to be a significant change from those dimensions. The last one here is the houses on the north side of McCormack Road and they also - - they all have significant land around them even a couple of houses that were built just a few years ago.

Of course Amy spoke about the 15-foot dimension to her garage. Her garage is pretty close to the property line. I think that garage pre-dated Rachel's buying the property. I don't think – did you build that garage?

MS. MICHAUD: No.

MR. DEMBLING: It was there already, yeah previous owner built it. And I would submit that it is a self imposed hardship because the applicant had an opportunity when they owned the property; owned both properties to make a change. They should have known about the interim rules that the rule was coming that 85-feet is going to be a requirement and before they sold the property they should have known that if they

wanted to make that a buildable piece of land they could have done it. And then after that they could have sold it to me, they could have sold it to Amy and although I may have indicated to some people that we were interested in putting a road through, maybe I told people too many things, but we have never applied for a subdivision approval on that property. We have been holding on to our property since 1977. I guess you could call it an investment in the future and our feeling is that whatever we do with that property in the future it should be consistent with the planning principles of planning intent of the Town. In fact at this point I really have gotten very interested and welcome the idea of the moratorium and the comprehensive plan that is going to be developed and I know one of the focus areas is going to be our neighborhood and I'm really looking forward to the possibility and working with the Town to develop our land in the sensitive and appropriate way. And I think the applicants intent here to sell the property is an expression of greed more than anything else because I would still buy that piece of property and I had offered about twenty five thousand which I thought was very reasonable.

CHAIRMAN HODOM: Are those photos for our record or did you want them back?

MR. DEMBLING: You're welcome to them.

CHAIRMAN HODOM: Please. Thank you. Anything else, Mr. Dembling?

MR. DEMBLING: Is there anything I missed that you have any questions about?

CHAIRMAN HODOM: I think your letter covers...

MR. DEMBLING: Can I give my wife an opportunity? She thinks I missed something.

CHAIRMAN HODOM: Absolutely.

MR. DEMBLING: My wife says that I didn't say that I knew from my conversations with Dr. Freed that he knew it was not a buildable lot. I know John Healy told him that when he took the sign back down and I've had conversations with him going back years.

CHAIRMAN HODOM: Is there anyone else that has any comments or questions, who would like to speak in favor or opposition to the applicant? Any other questions from the Board?

MR. JOHANNESSEN: Yeah, my involvement with Dr. Freed has been in the last 2-years; something like that and in that time he has contacted me and spoke to me about this lot in whether it was buildable or non-buildable. He did not rely on his own memory or hearsay he went to the Town, he went to the Building Department and asked them is this a buildable lot? And I don't know if you've got all the correspondence, we passed around one. I know there's like two letters that he received from the Building Department if not three and one of them specifically says it's a buildable lot. I know that he has had somebody interested in buying them. It's an elderly guy, semi retired and he's very

interested in living in the area. He's had his eye on that lot for probably 18-months now because he's been in contact with me asking me what's the status. He's very interested in the lot. Dr. Freed - - I'm just telling you what I know from my end of it and he checked with the Town and the Town told him it was a buildable lot. My understanding is it was at that point that he entered into a contract with the gentleman that walked up to you and everybody thought it was buildable lot because he asked the Town and he got a letter from the Town. Then he got another letter, which said that it wasn't a buildable lot and that's why we're here. I state that just to clear up because I know that, you know realtors have been coming to you and, you know it kind of - - you're left with the impression that maybe they've been given bad information and I'm just trying to - - he's not here to speak and I'm just saying what my conversations and knowledge of the situation is.

With respect to the 15-feet to the building, that's largely not because, I mean - and again if you look at the map this is the building envelope. It doesn't mean that it's exactly where the - - what this building's going to look like; it doesn't mean that the size of it. The purpose of showing this is just so that, again because this was submitted to the Town Planning Board and they're going to want to see if we put a reasonable size home on this lot that it'll work, and that's why this map was generated. So this is a concept of where this building will go. The 15-feet is more a function of the closeness of this garage to the property line. This building, and I don't have my scale here but if this is an 8-foot setback, it's not twice but I'd say it's probably 12 or 13-feet back from the property line which only requires to be 8. Yeah, it's like 13-feet, thanks. So I mean yes, you know if it's seems close it's not because this building is being proposed close to the property line. It's well within the minimum setbacks.

CHAIRMAN HODOM: Mr. Johannessen, you mentioned numerous letters from the Town referencing this property as being a buildable lot. I don't have any of those letters here. I don't know if Ms. Machaud....

MS. MICHAUD: Okay, lets see. Do you have the letters from Shea?

MR. PLATEL: I gave you two back.

MR. JOHANNESSEN: Oh you have that one?

CHAIRMAN HODOM: I have this one here, which is for the Planning Board.

MS. MICHAUD: Okay here's one that I told you about that these were buildable lots. And then here's another one.

CHAIRMAN HODOM: Do you have originals of those, or may the Board have copies of these?

MS. MICHAUD: I can make copies for you.

CHAIRMAN HODOM: Would you do that?

MS. MICHAUD: Yes.

CHAIRMAN HODOM: Any correspondence that you do have from the Town referencing this we would like a copy of. Mr. Dembling go ahead.

MR. DEMBLING: I was aware of that letter because I was told about it by a surveyor in Town who told the author of that letter that it wasn't a buildable lot and I believe he told me it was rescinded.

CHAIRMAN HODOM: We can check into that to. Mark can check into that.

MR. DEMBLING: And I don't know if I made the point but if certainly if the variance is granted for this lot, a variance would follow for Mr. Homiller's lot should somebody come along and apply for it so it would double the impact on the area.

CHAIRMAN HODOM: Well that's an assumption on your part.

MR. DEMBLING: Sure, that's why I said if.

CHAIRMAN HODOM: We view each application individually. We don't associate one...

MR. DEMBLING: Right, but it's part of the impact on the general neighborhood I think. Can I just say one more thing?

CHAIRMAN HODOM: Sure.

MR. DEMBLING: A recent interest in the lot is based on making it a keyhole lot and I think that would be more consistent with the open space distribution of buildings in the neighborhood than to put a house on this lot the way it's proposed. I think it would be a desirable alternative.

CHAIRMAN HODOM: Well perhaps you and the current property owner's can get that resolved.

MR. DEMBLING: Oh I wish we could as well as Amy.

CHAIRMAN HODOM: Any other questions, comments? Mr. Johannessen all set?

MR. JOHANNESSEN: I just wanted to address those two things.

CHAIRMAN HODOM: Okay. Ms. Michaud, is it Michaud?

MS. MICHAUD: I answer to both. Michaud if you speak French and Michaud if you don't speak French. I certainly understand Ms. Friedman's concerns because I had them

when I lived in her house. Each of us wants to be the last one to move into the neighborhood. The value of the house changes very much on whether it's a building lot or not.

CHAIRMAN HODOM: Okay. Any other questions from the Board? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you all very much for participating.

Hearing Closed 9:00 p.m.

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On a motion made by Mrs. O'Brien, seconded by Mr. Wiggand, and unanimously carried by the Board, the minutes of the March 17, 2004 meeting were approved.

The meeting was adjourned on a motion made by Mrs. O'Brien, seconded by Mr. Wigand and unanimously carried by the Board.

Meeting Adjourned: 9:15 p.m.

Respectfully submitted,

Secretary