

**TOWN OF BETHLEHEM
BOARD OF APPEALS
August 2, 2006**

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

PRESENT: Michael Hodom
Leonard Micelli
Anthony K. Umina
Mark Hennessey

Michael Moore Attorney to the Board

Mark Platel Building Inspector

ABSENT: Gilbert Brookins

Chairman Hodom called the meeting to order at 7:00 p.m.

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Good evening Ladies and Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. The first order of business this evening is a public hearing for a Variance under Article Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards for property at 940 River Road, Selkirk, New York 12158 requested by Angela & Phil Halwick. The Applicant wishes to construct an attached garage addition, which will encroach into the side yard setback requirement at the premises.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 676-square foot attached garage to the existing main structure that will create a side yard setback of 9.2-feet. This is 5.8-feet shy of the 15-setback required.

The existing structure is occupied as a single-family dwelling and is located in a Rural Riverfront District.

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

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

Notice of Public Hearing. Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on, Wednesday August 2, 2006 at 7:00 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Angela & Phil Halwick for a re-opening of a public hearing for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards of the Code of the Town of Bethlehem for the construction of an attached garage addition, which will encroach into the side yard setback requirement at premises 940 River Road, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 26, 2006 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone desiring to speak in opposition of the Applicant. Anyone desiring to speak will be allowed to do so, we just ask that you come up, stand or sit close to the black microphone, it's for recording purposes only. Mr. Halwick if you would just introduce yourself to us and give us your address, tell us what you want to do, how you want to do it and why you want to do it.

MR. HALWICK: Okay, my name is Phil Halwick. We live at 940 River Road and as you discussed we want to build an attached garage onto the side of the current house. Basically the house was constructed and completed in March of last year and at that time we had planned to add the garage in the future, probably this year or the year after and at that time we were under - - the zoning laws were 8-feet from the side of our property so at that time we had planned to have the garage completed within 9-feet so that it would be in - or within the zoning law. Obviously the end of last year it changed to 15-feet so now when we applied for the building permit this year we found the new zoning law. The reason we - there's really no other place to put it. The only other place to put it on the other side is first of all the living room where we don't want to walk in from the garage into the living room. Also there's a lot of rock under there so we're not able to go down or put a foundation for a garage in on that side and I think that's about everything.

CHAIRMAN HODOM: Have you discussed this proposed garage with your neighbors?

MR. HALWICK: Yes we discussed it with - if you're standing facing the house from the road, the people on the left. The lot on the right is actually vacant. It was sold to a builder by the closest house to us on the right that person actually bought both lots and recently sold the one in between us and sold it to a contractor.

CHAIRMAN HODOM: Had you actually made any attempt to purchase additional land to mitigate the encroachment?

MR. HALWICK: When the person next to us put that lot up for sale we asked – we just kind of inquired as to what the cost of the land was and at that point he was asking \$60,000 for the lot, which, you know we didn't really feel was fair and didn't have the money to do that.

CHAIRMAN HODOM: Did the rock problem that you suggested earlier as one of the reasons why you don't want to build on the other side. Did that prevent you from moving the house over as well?

MR. HALWICK: Yeah, when we originally plotted the house, we wanted it to be closer to the center of the lot but were unable to go any further to the left – facing the house from the front we were unable to go any further to the left due to the rock.

CHAIRMAN HODOM: Have you considered perhaps reducing the width of the garage?

MR. HALWICK: We really – I mean that's just the normal for the 2-car garage that we wanted and that's really as far as we've gone.

CHAIRMAN HODOM: And how many cars do you have in the family?

MR. HALWICK: Two.

CHAIRMAN HODOM: Regular sedans?

MR. HALWICK: They're regular SUVs.

CHAIRMAN HODOM: The architecture that you're proposing to use on the garage would match the house as close as possible as far as siding, roofing, doors, windows?

MR. HALWICK: Yes they will all be the same.

CHAIRMAN HODOM: Do you have a construction time frame that you were considering?

MR. HALWICK: I'm going to have to refer that one to the builder.

CHAIRMAN HODOM: Why don't you just introduce yourself to us please.

MR. IMMEDIATO: My name is Joe Immediato and Patsy and I are the contractors who built the house originally and with the plans to build it – he was saying but we could not move the house because of the rock on the left hand side, it was massive; it would have almost have to be dynamited; it was big and we prepared for drainage and everything was all built into the house – the drainage off the hill already has the drain, the pipes and the stone underneath the ground to go around the garage. It was all preplanned when we built the house. We knew we were close and so we had the surveyor out there and everything and then you changed the rules. Oh, time frame I'm sorry I lost track, as soon as it's

approved we're going to start.

MRS. HALWICK: But how long will it take?

MR. IMMEDIATO: About 6-weeks by the time you dig the foundation, footings, 7-weeks.

CHAIRMAN HODOM: Was the garage shown on the original construction drawings for the building permit?

MR. IMMEDIATO: No, because of their finances they could only go so far at that time and they built equity up in the house and then redid the house so to speak so they could afford to build the garage.

CHAIRMAN HODOM: Any other questions from the Board?

MR. MICELLI: I have one, on your blueprint you show windows above the garage, is there going to be a bedroom up there?

MRS. HALWICK: For now it will be storage.

MR. MICELLI: It's going to be a storage area, okay.

MRS. HALWICK: We hope to make it a bedroom in the future but not now.

MR. MICELLI: Okay, thank you.

CHAIRMAN HODOM: That is currently cold storage that you're proposing?

MR. HALWICK: That's correct.

MRS. HALWICK: There's no access to it at this time.

CHAIRMAN HODOM: I didn't see any access to it either from the garage ceiling or from the existing house.

MR. IMMEDIATO: What's going to happen eventually is...

CHAIRMAN HODOM: Just introduce yourself to us again.

MR. IMMEDIATO: Sorry. Joe Immediato, eventually what will happen is if you look on the second floor closets, one of the closets will be made wider and will become the hallway to come into the garage above if they ever decide to do that.

MR. PLATEL: Are you going to have access from the garage into the storage area for now?

MR. IMMEDIATO: The Building Department won't allow it.

MR. PLATEL: Yes it will – some type of access just for emergency, which they were worried about the fire rating I believe along the house side but you can actually put a scuttle up in it.

MR. IMMEDIATO: Then we will.

MR. PLATEL: A minimum 4 feet away, you can do that.

MR. IMMEDIATO: Oh, okay so then...

CHAIRMAN HODOM: Is that a new requirement?

MR. PLATEL: Yeah you want to have an access up to an area; you don't want a dead area that big.

MR. IMMEDIATO: I thought we weren't allowed to but okay.

CHAIRMAN HODOM: Any other questions, Mark, Len?

MR. MICELLI: I don't have any.

MR. HENNESSEY: No.

CHAIRMAN HODOM: Kenny?

MR. UMINA: No I was down there tonight and I looked the site over and I don't have any questions?

CHAIRMAN HODOM: Any questions from the audience? Any comments? Anyone wishing to speak in favor of the applicant? Go ahead.

MR. IMMEDIATO: This is Joe Immediato again. I hope that it gets approved because we did plan it and did not know that the rules were going to change so I hope that they will be able to get a permit.

MS. FISHER: I'm Patsy Fisher and I am their contractor and I definitely would like to see this happen and we know that Angela and Phil are expecting a baby and they need to have a place to put the stroller and stuff.

CHAIRMAN HODOM: Where are they going to put it, up in that attic space? Is there anyone wishing to speak in opposition to the applicant? Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much and good luck to your first-born.

Hearing closed 7:10 p.m.

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The next order of business was to consider the application of Benderson Development (Owner) Marshall's (Applicant) 384 Feura Bush Road, Glenmont, New York 12077. 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 Denderson Development for Variance under Article VI, Supplementary Regulations, Section 128-54, Signs E (2) for the construction of a wall sign that will exceed the minimum signage requirements at premises 384 Feura Bush Road, Glenmont, New York 12077, it is hereby ordered that a public hearing on this matter be held August 16, 2006 at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was a reopening of the previous closed public hearing held in the matter of Angela & Halwick, 940 River Road, Selkirk, New York. The following points were brought up by the Board members: An adjoining neighbor showed up after the close of the hearing and had comments to make about the proposed application. The Board could not take his comments under consideration because the hearing was closed. On a motion made by Mr. Hennessey, seconded by Mr. Umina, and unanimously carried by the Board, the Board reopened the public hearing to be scheduled August 16, 2006 at 7:15 p.m.

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The next order of business was a discussion of the previous public hearing held in the matter of Stephen Connolly, 39 Iroquois Trail, Slingerlands, New York. The following points were brought up by the Board members: The proposed shed location is right on the

property line leaving the rear yard setback 5-feet shy of the required setback. The previous rear yard setback for an accessory structure was 2-feet. The Board felt that the Applicant could maintain a minimum of 2-feet for the proposed location of the shed, thus minimizing the Variance requested. On a motion made by Chairman Hodom, seconded by Mr. Mr. Micelli, 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 August 16, 2006.

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The next order of business was a discussion of the previous public hearing held in the matter of Robin and Jeff Sutor, 79 Wisconsin Avenue, Delmar, New York. The following points were brought up by the Board members: There are too many other areas on the property in which the shed could be located and still meet the Town's zoning requirements. The proposed location is more of a convenience for the applicant and no hardship was proven to the Board. On a motion made by Chairman Hodom, seconded by Mr. Micelli, and unanimously carried by the Board, the Board directed Attorney Moore to prepare a proposed resolution denying the Variance, for presentation at the next Board meeting on August 16, 2006.

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The next order of business was to consider the proposed resolution of Zak & Lubna Chauhan, 41 Forsten Drive, Delmar, New York 12054.

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

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York ("the Board") seeking a Variance under Article III, Zoning Maps and Districts, Section 128-17 (C), Exceptions (Fences or

Walls), requested by Zak and Lubna Chauhan for property at 41 Forsten Drive, Delmar, New York; and,

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

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

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

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

FINDINGS OF FACT

Applicants have constructed a 6-foot high chain link fence around three sides of their large lot (in excess of 88,000 square feet); and a 4-foot high chain link fence on the fourth side, fronting on Forsten Drive. Portions of the 6-foot high fence (on the north and south side of the lot) encroach into the “front yard” of the lot, as that term is defined in Chapter 128 of the Town Code (see, section 128-22, “Terms Defined,” p. 27, “YARD, FRONT”). In a “front yard,” the height limitation for fences and walls is 4-feet. A 6-foot high fence is permitted in “rear” and “side” yards of the property, also as defined in Chapter 128 of the Town Code.

The property is located in a Residence “A” district and is used as the Applicants’ residence.

Under the above-noted section of the Town Code, a “front yard” is defined as

A space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the ‘front yard’ shall be measured between the front line of the building and the street line...

The depth of Applicants’ “front yard,” as defined above, is over 180 feet.

Not only is the Applicants’ lot large in size, it also includes significant areas of federally-regulated wetlands, which apparently attract wild animals to the property.

In June 2005, Mrs. Chauhan was treated for an infectious tick bite. As a result of the infection, Applicants’ children became afraid to play in the yard on the property. Applicants’ doctor has recommended a fence around the yard in order to deter access by deer and other animals.

In June 2005, prior to constructing a fence, Applicants contacted the Town Building Department and inquired as to any height limitation. They were advised that for a chain link fence, there was a height limitation of 6 feet.

Shortly thereafter, in August 2005, the Town Code was amended to limit the fence height in a “front yard” to 4-feet.

Following passage of the amended Town Code, Applicants’ contractor again contacted the Town and was advised of this amendment. Applicants’ fence contract was

modified to provide for a 4-foot high fence along that portion of the lot along Forsten Drive, and a 6-foot high fence along all other portions of the lot. This fence was erected in the Spring of 2006.

When notified that portions of the 6-foot fence encroached onto the “front yard,” contrary to the amended Town Code provisions regarding fences, Applicants applied for the subject variance.

Applicants provided the Board with written statements from neighbors expressing no objection to the height or appearance of the fence as constructed.

Applicants also provided the Board with a note from Mrs. Chauhan’s doctor attesting to their desire to deter animals from entering the property, in response to the tick infection.

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

The Board finds that the Applicants proceeded in good faith to erect a fence that they believed was in compliance with the Town Code, and that the encroachment was not intentional.

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CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicants, the Board determines that the requested fence height variance will be granted.

The Board also determines that the above facts are sufficiently unique that this Resolution need not be regarded as precedent in any subsequent application to this Board for a similar variance.

The Board has determined that the requested variance will be a benefit to the Applicants and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood.

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

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

The requested variance is the minimum variance that is necessary and adequate to the Applicants' needs, while still preserving the character of the neighborhood.

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

The requested fence height variance is GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the July 19, 2006 hearing; and

2. The project shall be completed within the time required by section 128-89 (P) of the Town Code.

August 2, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None		None
Leonard Micelli		Gilbert Brookins	
Anthony K. Umina			
Mark Hennessey			

(Resolution filed with the Clerk of the Town of Bethlehem on August 3, 2006.)

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The next order of business was to consider the proposed resolution of Peter & Kristen Zilgme, 10 Groesbeck Place, Delmar, New York 12054.

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

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals in the Town of Bethlehem, Albany County, New York (“the Board”) seeking a Variance under Article XIII, Use and Area Schedules, Section 128-100, Minimum Front Yards,

requested by Peter and Kristen Zilgme for property located at 10 Groesbeck Place, Delmar, New York; and,

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on July 5, 2006; and

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

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

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

FINDINGS OF FACT

The Applicants are proposing to demolish an existing 127.98-square foot front porch and construct a new 170.93-square foot front porch, which will create a front yard setback of 23.39-square feet. This is 1.61-feet shy of the 25-feet required. However, it is slightly less of an encroachment into the front yard setback than the existing porch by .19-feet or roughly 2 ¼ -inches.

The existing structure is a single family dwelling and is located in a Core Residential District.

Applicants have an existing 3-season porch on the front of the home, constructed on metal piers. They propose to convert this porch into enclosed living space over a full foundation, as an extension of the living room at the home. The new living space would be slightly wider than the existing porch, and slightly less of an encroachment into the front yard than the existing non-conforming porch.

The Board has received one letter from a neighbor supporting the proposed project. At the public hearing, three persons spoke in support of the proposed project.

The Applicant and his contractor also spoke at the public hearing.

By Recommendation dated July 27, 2006 (Case No. 04-07/06-019), the Albany County Planning Board deferred to local consideration on the requested variance.

CONCLUSIONS OF LAW

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

The Board has determined that the requested variance will be a benefit to the Applicants and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood.

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

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

The requested variance is minimal, and is the minimum variance that is necessary and adequate to the Applicants' needs, while still preserving the character of the neighborhood.

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

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

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the July 5, 2006 hearing, except as the same may be modified by the Town Building Department or Planning Board;
2. In the construction of the addition, the Applicants shall match, as nearly as possible, the existing roofing and siding on the home;
3. The project shall be completed within the time required by section 128-89(P) of the Town Code.

August 2, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
	None		Michael Hodom
Leonard Micelli Anthony K. Umina Mark Hennessey		Gilbert Brookins	

(Resolution filed with the Clerk of the Town of Bethlehem on August 3, 2006.)

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

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

Meeting Adjourned: 7:55 p.m.

Respectfully submitted,

Secretary