

**TOWN OF BETHLEHEM
BOARD OF APPEALS
August 4, 2004**

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

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

 Michael Moore Attorney to the Board

 Mark Platel Building Inspector

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

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Good evening Gentlemen. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. We'll wait a few minutes for Mr. Mashuta to show up. We can handle some additional business. We have an application from Albert and Carol Penk for a variance under Article XVI, Front Yards, Section 128-66, Required Depths.

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 Albert & Carol Penk for Variance under Article XVI, Front Yards, Section 128-66, Required Depths for the construction of a front porch addition, which will encroach into the front yard setback requirement at premises 387 Clapper Road, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held September 1, 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. 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 proposed SEQRA resolution of Galaxy Communications (Applicant), William Banahan (Owner).

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

RESOLUTION

WHEREAS the Zoning Board of Appeals for the Town of Bethlehem held a public hearing on January 21, 2004 and July 7, 2004 to take testimony and comments on the application of Galaxy Communications LP (“Applicant”), for a special permit following site plan review and height variance under Chapter 113, Telecommunication Towers, 113-3(B) and 113-9(F) New Tower Design, to construct a new 300-foot tall FM radio tower and 15-foot by 25-foot equipment shelter on property at Old Quarry Road, Selkirk, New York; and

WHEREAS the Board reviewed the testimony and documents presented at the public hearing, including a review of the environmental impacts that may arise as a result of this project; and

WHEREAS the Board has determined that any environmental impacts of the project will not be significant;

NOW THEREFORE, BE IT RESOLVED THAT:

The Board adopts a negative declaration pursuant to the New York State Environmental Quality Review Act as set forth on the attached document.

August 4, 2004

Michael C. Hodom
Chairman
Board of Appeals

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York on August 5, 2004.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT
DETERMINATION OF SIGNIFICANCE**

This notice is issued by the Zoning Board of Appeals of the Town of Bethlehem (“Board”), acting as lead agency, in an uncoordinated environmental impact review, pursuant to and in accordance with Article 8 of the New York State Environmental Conservation Law and the regulations promulgated under Article 8 and set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations (collectively referred to as “SEQR”).

The Board has determined that the proposed construction of a 300±’ FM radio transmission tower, and the installation of related equipment in a shelter at the base thereof (collectively “Project”), will not have a significant adverse impact upon the environment and that a negative declaration pursuant to SEQR may be issued. Reasons supporting this determination are fully explained below.

Applicant: Galaxy Communications LP

Project Name: Construction of new FM radio transmission tower

SEQR Status: Type [_____] Unlisted: XX

Project Description: The Project consists of the construction of a new 300± foot FM radio transmission tower and equipment shelter.

Location: 120-1-7, 120-1-10; Town of Bethlehem, State of New York (“the Project Site”).

Reasons Supporting This Determination:

1. The Board as Lead Agency conducting an uncoordinated review, has considered the full scope of the Project and has reviewed the environmental assessment form and the application of the Applicant for a special exemption, site plan approval and height variance, and all supporting documentation.
2. Properties at and adjacent to the Project Site are presently the site of four (4) telecommunication towers, including Applicant’s existing FM radio transmission tower. The proposed use is thus consistent with existing land uses.
3. The Project Site has no unique or unusual land forms (cliffs, dunes or other geological formations), and the Project Site is not used by the community as open space or recreation areas.
4. There will be no air emissions from the Project.
5. The Project will not substantially affect water discharges from the Project Site.

6. The Project will not generate solid or hazardous waste.
7. The Project will not significantly alter the visual and/or aesthetic resources in the area of the Project Site and will not have significant adverse visual impact upon the scenic quality of the landscape.
8. While the Project may result in the removal of minimal vegetation at the Project Site, the Project will not significantly affect plants and animals in and around the Project Site.
9. The Project will not impact agricultural land.
10. The Project is not substantially contiguous to, nor does it contain, a building, site or district listed on the State or National Registers of Historic Places, and thus will not have an adverse impact upon historic or archeological resources.
11. There are no anticipated changes in traffic flow to and from the Project Site as a result of the Project.
12. The Project will not generate any unpleasant noise or odors.
13. There will be no adverse environmental impacts as a result of the Project.

For Further Information Contact:

Town of Bethlehem
Zoning Board of Appeals
445 Delaware Avenue
Delmar, New York 12054
Attn: Karen Guastella, Secretary

Copies of this Negative Declaration shall be filed with the Town Clerk of the Town of Bethlehem.

Authorized Signature

Mr. Wiggand made a motion that the Resolution be adopted, Mrs. O'Brien seconded the motion and it passed by the following vote:

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

(Resolution filed with the Clerk of the Town of Bethlehem on August 5, 2004.)

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The next order of business was to consider the proposed resolution of Galaxy Communications.

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 Board of Appeals of the Town of Bethlehem, Albany County, New York for a Special Exception and height variance following Site Plan review under Chapter 113-3 and 113-9F, Telecommunication Towers, by Galaxy Communications ("Applicant"), William Banahan (Owner), for property at Old Quarry Road, Selkirk, New York; 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 January 21, 2004 and continued on July 7, 2004; 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 a Special Exception and Site Plan approval for the installation of a new 300-foot tall FM Radio tower and a 15-foot by 25-foot equipment shelter. The height of the proposed tower is in excess of the 190-foot height restriction as stated in section 113-9 by 110-feet. There are no other structures located on this parcel, which is located in a RNZ (Rural Not Zoned) District.

The Applicant proposes to construct a new 300+ foot lattice tower and associated equipment for the broadcast of FM radio station WRCZ (94.5 FM) and delivery of wireless telecommunications services on property owned by William Banahan off Old Quarry Road in Selkirk, Town of Bethlehem. The Banahan property and adjacent properties presently have four existing telecommunications towers, including one utilized by the Applicant. The Applicant proposes the new tower to replace its existing tower and provide enhanced radio broadcast services pursuant to its Federal Communications Commission (FCC) license.

The Applicant applied initially to this Board on November 26, 2003 for a Special Exception and Site Plan approval, submitting the information and material required by Chapter 113, and for a height variance from the 190-foot limitation found in Section 113-9(F). Included with the application was a full State Environmental Quality Review Act (SEQRA) Environmental Assessment Form (EAF).

On February 9, 2004, following the initial public hearing on the application and a second review of the application materials by the Albany County Planning Board, the Applicant submitted to the Board additional materials related to: ongoing negotiations with the owner of its existing FM radio transmission tower (Callanan Industries) to secure the removal of the existing tower upon construction of the new proposed tower (the parties' lease agreement provides that, if the existing tower is no longer used by the Applicant, title shall revert to Callanan); an expanded Visual Impact Assessment; correspondence with the New York Department of Environmental Conservation regarding possible impacts from the tower to migratory birds; and negotiations with the owners of an adjoining radio transmission tower for an upgrade of the second tower's transmission capabilities if the existing tower were to be retained (also an option under FCC regulations), leading to the Applicant's conclusion that this "mutual upgrade" of the two towers was not feasible and that the new, second transmission tower was the only viable option.

On May 26, 2004, the Applicant submitted to the Board additional materials related to questions raised by the Board at the January public hearing, including: applicable FCC requirements and regulations, and the upgrade of the Applicant's broadcast capability pursuant to its FCC license, which make use of the existing tower infeasible and construction of the new tower necessary; ongoing negotiations with Callanan for removal of the existing tower; correspondence from the New York State Office of Parks, Recreation and Historic Preservation stating that there will be no adverse impact on historic resources in the area of the tower; a determination of the Federal Aviation Administration (FAA) that the proposed new tower would pose no hazard to air navigation; and updated site plans.

The Applicant has agreed that, if the new tower is constructed, it will allow co-location by wireless telecommunication service providers, as needed.

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

At the July public hearing, the Applicant advised the Board of ongoing negotiations with the Albany County Water Board (an adjoining landowner) for an amended agreement for access to the proposed tower site, in the event that the present Application is approved by this Board.

At the July public hearing, the property owner (Banahan) agreed to accommodate the Applicant's setback requirements for the new proposed tower.

At the July public hearing, the Applicant agreed to provide the Board with copies of its FAA approval and FCC construction permit.

CONCLUSIONS OF LAW

Based upon the above Findings, the Board determines that the Applicant's request for a Special Exception, Site Plan approval and a height variance should be granted.

The materials submitted to the Board by the Applicant meet all requirements of Chapter 113 and, with respect to the variance, Chapter 128.

The Board has considered the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, and concludes: (1) no undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the variance; (2) the benefit sought by the Applicant can not be achieved by some method, feasible for the Applicant to pursue, other than a variance; (3) given all pertinent facts and circumstances, the requested variance is not substantial; (4) the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) the Applicant's alleged difficulty related to the variance is not self-created.

The Board also concludes that the required variance is the minimum variance that is necessary and adequate, and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

The Application is granted, on the following conditions:

1. The project shall be completed in strict conformance to the plans, specifications, exhibits, documents and testimony presented to the Board;
2. The Applicant shall provide the Board with copies of its licenses from the FAA, FCC and its modified access agreement with the Albany County Water Board;
3. The Applicant shall notify the Board of any changes or updates regarding its negotiations with the current tower owner (Callanan) for removal of the existing tower that may occur subsequent to the date of this Resolution; and
4. The project shall be completed within two (2) years of the date of this Resolution.

August 4, 2004

Michael C. Hodom
Chairman
Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
Michael Hodom Robert Wiggand Richard Lewis	None	None	None

Gilbert Brookins
Marjory O'Brien

(Resolution filed with the Clerk of the Town of Bethlehem on August 5, 2004.)

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

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 an additional 34 parking spaces on the existing site in which 25 of those spaces will be located or accessed in a Residential District. It is required under Article VI, that all parking for a commercial use be located in the commercial zone and maintain a 5-foot buffer space along that adjoining boundaries. The existing structure is located in a "CC" Retail Commercial District and is operated as a health and fitness center. If approved, this application will be directed to the planning board to re-establish the location of the buffer area.

CHAIRMAN HODOM: Thank you, Mark. Ms. Guastella, 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 August 4, 2004 at 7:30 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Delmar Health & Fitness for a Use Variance under Article VI, Permitted Uses, Section 128-13, Residence "AB" District of the Code of the Town of Bethlehem for construction of additional parking in a residential district for an existing permitted business which is not allowed in an "AB" at the premises of 28 Hudson Avenue, Delmar, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the April 28, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. The procedure that we use this evening; we'll hear the Applicants presentation; we'll entertain any questions or comments from the audience; we'll hear anyone wishing to speak in favor of the Applicant and anyone wishing to speak in opposition. 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. Sprio just for your information our counsel did research the question raised about parking and a driveway into a residential district from a commercial district and this application remains a Use Variance. You may want to refer to some case law, which is in the matter of Partition Street Corporation, the Appellant versus the Zoning Board of Appeals for the City of Rensselaer. It's a very similar case.

MR. SPRIO: I have seen the case. I think that went to whether a variance would be required if a piece of the driveway accessed over from one zone into another, and we had that question at the last hearing so I do appreciate that.

CHAIRMAN HODOM: Okay. We did receive your letter, Michael, to our supervisor Theresa Egan on May 10th requesting the possibility of a Zone change for that residential area and also her response back to you on June 22nd advising you that she had passed that request on to the Board members and also to Jeff Lipnicky, the Town Planner, but there was also a statement in here to prior to making a decision on your zoning requests there are various documents that you needed to submit and she requested that you contact Jeff Lipnicky. Is that still in the process I mean are you still going that route?

MR. SPRIO: We may, speaking for Mike, we may formalize an actual request for zoning as we had discussed. This Board and the Zoning Board should they decide to take on the whole parcel. We effectively need a decision should we be successful on our application here tonight; it does not necessitate re-zoning the whole parcel. Should we get an adverse decision that would be one option that would be open to us. They each would have impact upon the other. We did have some discussions; we took a look at the appropriateness of rezoning the whole parcel compared to the special circumstances presented by this parcel. And we took under advisement what had been discussed at the last meeting and we believe that this is the appropriate venue. And of course we would look at any other options should we have to down the road. There's a timing that I think gave great weight to our decision making. We know that there's a safety issue associated with this. We know that there's a commercial issue of hardship associated with this. With the recent announcement of the YMCA and that being on the horizon, we think that it's more than ever critical to solve this problem before this winter so that we don't go through another winter snowplowing, snow removal, parking on the street in those conditions. And we believe that this forum would allow us to solve that problem before this winter. So both being that we feel is an appropriate forum as well as a timely one.

CHAIRMAN HODOM: Okay, then lets continue.

MR. SPRIO: I would be happy to review the basic facts for anyone who would like to. I did, as you saw in the packet of information approach this as either an area or use. Having heard you, Mr. Chairman, I will discuss it as a Use Variance if that's your preference. And Paul if you want to add anything effectively as was just stated - - we have a parcel that has 10,000-square foot give or take commercial building located on what amounts to the front of what is one contiguous parcel. The parcel is dissected by a change in zoning from commercial to "AB" Residential.

One of the things that makes this application both necessary and a little bit awkward is that generally speaking in zoning codes when you do have one parcel with 2-different zoning schemes, there's flexibility in there to address the situation such as ours. Our code doesn't seem to allow that therefore we are all working on trying to find the most appropriate method to find the solution. What we believe is that the general character of this parcel, and again whether our two zoning schemes it is one parcel, but this parcel allows commercial use and residential use. And effectively we examine the argument on the basis of the whole parcel and not on the basis of the 30 by 300-square foot strip and you'll see in your packet of information is we - - as we looked at the information and went through the statutory criteria, we viewed the parcel as a whole and I think that that's appropriate.

It got a little confusing, you know to try to argue whether we're talking about that one strip that would require a change or we're talking about the whole parcel. It seems to give you that for how I did address it. We believe that the statutory criteria under a Use Variance needs to be specifically addressed and outlined; we've attempted to do that in what was submitted and we obviously believe that we meet those requirements. I think as we had discussed last time the general proposition is that there is both a financial hardship created by the zoning scheme. There is a history to this application that included at the time site approval and initial approval by the Planning Board. A discussion about the need for more spaces being driven by the particular use of the health club and along with that some safety and traffic issues that are unique to this parcel, both because of the curb and the road on Hudson Avenue as well as some of the soil and slope conditions on the parcel.

As you move further along Hudson Avenue, and this goes to why maybe a re-zone versus a Variance is part of the question. There is far more residential development further along Hudson Avenue on the front parcels in addition the characteristics that are fairly unique to this parcel that require a change in zone including the curb in Hudson Avenue. Visibility as that road dips - comes back up and some of the ravine issues make this parcel very unique. So that was probably the last bit of my explaining why we're seeking this relief rather than something different. I would be happy to address each of the criteria if that's necessary.

CHAIRMAN HODOM: If you would please.

MR. SPRIO: Okay. As you are well aware under the statute the first criteria to being granted this type of relief is a showing that the applicant is unable to realize a reasonable return on the investment. What we've presented to you is the evidence that the initial business plan required a certain level of activity and membership. And obviously in any business as your fixed costs go up whether it's your taxes, your power costs, or anything else, you hope to grow that business. In this case not only have we failed to achieve the level that was initially anticipated in the business plan, the business due fairly directly to the parking problem. The business has failed to be able to grow its business to keep up with its rising costs.

The applicant has submitted in here evidence of membership levels, which is a key driver of revenue for the business and as you can see membership is not only not growing, it is in fact declining. While the Board is not under an obligation to solve competitive issues for this applicant, we do want you to be aware of it. Presenting a hurdle to the applicant in the shape of parking, convenience and safety for the members is something that is within the Board's discretion to deal with and should be considered in light of - - both but he needs to get a return in the competitive which does include the YMCA on the horizon.

So what we have is a history here since 1998, 1999 of a business that has been essentially stacked has failed to be able to grow and the limiting factor being parking, being access, and being the ability to offer the types of classes and services and part of that hardship as we've expressed in here beyond membership - one of the things that drives revenue and drives membership is types of services and classes that you can offer. Mike has been forced because of the situation to limit his classes and has reduced basically the services he's able to offer those members by approximately 33-percent and we went through this briefly last time but effectively Mike has had to stagger his classes. He's able to offer effectively one class in the morning where he might have been able to offer three.

If you can appreciate for a minute the health club atmosphere, you have a number of people coming in for let's say a 6:00 a.m. class, they all need to access the property; they all need to park; they all enter the building. There are other members that are coming to the health club who might not be taking the class, but maybe doing their own fitness or aerobic activities. When that class empties out, those folks all leave at the same time. When you do not have the parking that Mike is requesting here; if you have a 7:00 am class, you need to allow enough time for one class to fully empty, to enter their vehicles to leave the site and enough time in-between the for the class that's coming in to not be trying to get in there at the same time. So if you consider that the prime time for health club services are a.m. prior to work as well as p.m. after work. Mike has to earn his money to pay his bills and receive his return on a number of small windows during the day and what's happened is the parking situation has dramatically limited his ability to effectively utilize those windows. It really doesn't help Mike if people can park there at 2 in the afternoon. The activities of the health club require sufficient parking to handle that specific usage. We can go into more detail if everyone has questions but I think we

probably understand that part.

The second application requirement is to show that the hardship is unique to the property. And I think as I've attempted to explain because of the geography of the site, because of the fact that Hudson Avenue has certain geography as well because of the soil samples that do not allow us and did not allow approval of a sufficient number of parking spaces initially. We have some things here that make the site very unique. In addition to that if you compare the site to other sites along Hudson Avenue, which is another appropriate thing to, we really are the only - - we have a 10,000-square foot building, I think there maybe some other commercial which generally are older residences converted to commercial uses like LeGallez Electric I believe.

We have a very unique set of facts in that we do have a 10,000-square foot building in there. The commercial use is very unique and effectively part of that analysis is whether this would better be served with type of relief versus changing the zone. And again to my earlier point, this really is the only parcel along Hudson Avenue that would require this type of change. The other piece to this that I haven't yet mentioned but it becomes critical to the uniqueness factor is that the residential area located in the rear of this parcel is landlocked. It's landlocked by a ravine. At this point in time the only way to access that is over and across the commercial parcel. That presents a unique set of facts to realizing a return, again on the whole parcel. I go back and forth about parcel - when I say parcel I'm always talking about the entire parcel because that's in fact what it is. The - - if you go along Hudson Avenue and look at some of Mike's neighbors, often times those residential area's in the back have access out to Hudson Avenue. So they would have commercial use and or a value as residential use effectively Mike has no ability to get any return as a residential use at this parcel is the point. Therefore he's left with the commercial return and again, the commercial return is being severely limited.

The essential character of the neighborhood not being altered is always an important aspect of this type of relief and we've argued in here as the third criteria - it's very clear that the essential character and use of this parcel is as a commercial property. Again the back part being land locked, effectively there's only one residential neighbor who would be at all within a view sight of this parcel. They were at the public hearing the last time. They spoke in favor of this, it would be doing them in their words quite a service to have the traffic removed from Hudson and put back into the parcel; safety issues and visual issues that go along with that. This is not again, unique somewhat to the parcel, it's on that curve; it's landlocked by a ravine on one side. This is not a parcel that is in a residential character neighborhood. Keeping in mind as well that we have a very large parcel here, 7.2 acres total and we have 5.77 acres that is zoned residential and 1.43 acres that is commercial and what we're requesting effectively is relief for a strip that is about 30 by 300 so as to the character of the parcel, should the relief be granted not only will - - there will be not effective noticeable change to the character. You still will have a parcel that is drastically and predominately residential in it's zoning including the same ravines, the same treed areas, etc. Unlike other things that Boards will look at in these circumstances, you know we're not clearing forests; we're not putting up a Walmart. This is a very small encroachment upon what is still predominately by land area in a

residential parcel and yet is by any method of looking at it commercial in nature.

CHAIRMAN HODOM: If I could interrupt you a minute Mr. Sprio. In your narrative for the character of the neighborhood, you refer to an exhibit C and I don't find an exhibit C in your packet, nor do I find an exhibit A. I believe exhibit A is the site plan, but exhibit C is referenced in your narrative.

MR. SPRIO: I believe that exhibit was intended to reflect the testimony given at the initial segment of the public hearing by, and you know their names Mike, your neighbor that had come and spoken.

MR. PLATEL: The last name is Gjonaj.

MR. SPRIO: And I don't know if we have a transcript of that. When I drafted this that's what I had contemplated.

MR. MASHUTA: And also exhibit C were the letters that were submitted.

MR. SPRIO: Those have not been attached?

MS. GUASTELLA: They've received them.

CHAIRMAN HODOM: I don't know if they were noted as exhibit C.

MR. SPRIO: Okay. That is what we were referring to.

CHAIRMAN HODOM: Then you clarified it, fine.

MR. SPRIO: Yeah, we had both general letters speaking of the character of it and need to solve an issue and specifically the effective neighbor speaking at the last meeting, Gjonaj in favor of the applicant. Lastly there's a question always raised under Use Variance analysis whether the relief requested and the hardship addressed was in effect self created. Self creation can take a number of things, a number of views about self created include a very, very - - very difficult view of whether or not the zoning pre-existed the use. Mike purchased this parcel and was given approval to operate a health club on the parcel. It's important to point out again that I said in the initial submission, I believe it was 60-parking spaces that were requested by the applicant as being necessary and required. There were a number of things that could not be known at that time, specifically until they started really working the site and did some soil sampling. I believe the Planning Board was unsure of how many would be appropriate particularly if you did see the exhibit along that right side of the building where the ravine is - is located. So there are a number of circumstances that only became and could only become known after site development and after site plan approval that had been changed. Again that normally goes very specifically to whether the applicant self created the hardship.

In addition this is not a case where Mike has grown his business and therefore

outgrown his parcel. As indicated earlier in my comments, this business is not growing. It remains stagnant. Mike has basically operated the exact business that he anticipated operating and received approval to operate and that also goes to whether this hardship is self-created. So while I realize that's a difficult burden, I believe we certainly presented facts to address that.

MR. MASHUTA: I have one point; exhibit A is the map.

CHAIRMAN HODOM: That Mr. Hite has prepared?

MR. MASHUTA: Yes and I believe you all have a copy.

MR. SPRIO: That was obviously a highlight on the factors. If there are any questions I'll be happy to answer them.

CHAIRMAN HODOM: Initially you did show 60-spaces were required to accommodate 1,000-memberships. Unfortunately we only have an 8 ½ by 11 sheet of paper called the grading utilities plan, which shows those 60-spaces being incorporated into the commercial zone. I would assume that there was some engineering work performed to prepare this site to assure your client, Mr. Mashuta that this site would accommodate the 60-parking spaces. Apparently it's come about that the 9-parking spaces shown on the easterly side of the property cannot be constructed in that location. Is that a fair statement?

MR. MASHUTA: Yes.

MR. SPRIO: I would say yes, but I'd like Paul to answer that for us.

CHAIRMAN HODOM: Yeah Paul would you? Just introduce yourself again for us.

MR. HITE: Paul Hite, Land Surveyor. The spaces you're speaking of originally was proposed and the ones we have shown here and on the other side of the roadway that we're now proposing to go through here. In the analysis of the soil conditions there was some concern and if you read through the report that's been prepared presently by the engineer that we retained to do that. Back when this was first done the test, soil test was done, they felt that this slope was so steep that it would not have the ability to hold the parking that was proposed on the side. We even then there was discussion that this would be okay but when he put his safety factor on and laid it out on here, the curve line that met the criteria that he was using at that time made the Planning Board feel that even these spaces were a little bit on the iffy side. I don't believe – it's been a long time since I've read it. I don't believe that they were actually against this but we were in such a state of needing to move at that time that the Board felt that these spaces would fit the situation we were in and so they approved this to go ahead. That's why we have now looked at a new soils report that says that these spaces are okay and we gave them profiles to show them that there had been no movement what so ever and we took 4-cross sections to show that there was no movement in this area since the construction of this building. So the

soils report I think reflects that and I hope that answers the question.

CHAIRMAN HODOM: When was the original soils report prepared?

MR. HITE: I believe it's on the report I submitted to you today. When did we build this thing?

MR. MASHUTA: 99'.

MR. HITE: 99'.

MR. MASHUTA: It was during the landslide problem. That had an overall effect on this property.

MR. HITE: And everybody was concerned with that because of the severity of the slope that was here.

MR. SPRIO: I would only add one thing to that Mr. Chairman that the Town Code at the time had a formulate view of how many parking spaces based on the square footage of the building and effectively when there was issue raised about safety and slope issues the decision was to remain conservative and rely on the Town Code and say therefore it's sufficient.

CHAIRMAN HODOM: The Town Code states that you must have so many spaces based on a formula for that size building. So you had to have at least 40, it didn't limit you to have no more than 40. The original test report apparently was - - these are the test pits location diagrams and the test fit logs and the geotechnical report were in 1998. So they were done before construction commenced.

MR. HITE: Right. And they were also done, Mr. Chairman if you look at the plan that we've submitted here they did not take into consideration the fact that we were going to construct a storm drainage system throughout and exit into the stream down here which would tremendously relieve the burden of any waters that were located within this entire area because we also installed in the rear of the building a storm drainage system, which completely almost solidified this entire site by virtue of the fact that we pulled the water down and into that storm drainage system and had it exit down into the existing stream. So when we did these cross sections again it proved beyond a shadow of a doubt that this thing had not moved one iota. The cross-sections just laid right over the top of the original ones that was taken in 1998 I believe. And the gentleman that prepared the report for us is very well known throughout the entire capitol district area for analysis of soils reports and certainly would not have put his name if he didn't think...

CHAIRMAN HODOM: I understand that. I guess what I was getting at is that this information was known that there was some concerns about the stability of the soil prior to the actual construction of the facility.

MR. HITE: That's correct. But I believe if you went back and read and I'm not sure if this - - there was discussions that the Town that you know perhaps when this done and the construction is taken care of and the storm drainage in, you might want to go back and take another look at whether you could put this in or not because at that time they couldn't do anything not knowing what would happen. They just felt that the slope based on the tests that were taken there that the slope may not be stable enough to hold it and now they are.

CHAIRMAN HODOM: Well they aren't for those 9-spaces.

MR. HITE: No not the ones over here, only the ones here.

CHAIRMAN HODOM: Correct, okay.

MR. MASHUTA: The driveway in and the spaces along the building.

MR. HITE: And that's why he specifically do those cross sections to show him that there had not been movement in that slope.

CHAIRMAN HODOM: I know we touched on this briefly at the last hearing but is it possible to construct a concrete retaining wall along that slope to allow you to put those 9-spaces where they're shown currently?

MR. HITE: On the right hand side?

CHAIRMAN HODOM: Yes.

MR. HITE: No.

CHAIRMAN HODOM: Tell me why.

MR. HITE: The concrete wall itself would have to be installed right at the very, very critical edge of the slope and that in itself, you know is a tremendous amount of weight and you are then digging down into the very edge and top of the slope. I spoke with the soils expert that did this and he didn't feel that that was a good idea and I can have him even send a letter to you stating that back if you want me to, but he didn't feel that that was a good idea but we did discuss that.

CHAIRMAN HODOM: That would be helpful because he doesn't address that in his report to you.

MR. HITE: Okay.

MR. MASHUTA: Well that is the largest factor for destabilizing a slope is how much weight is near the top of the slope.

MR. HITE: Even digging down into it.

MR. MASHUTA: The reason why that slope has become stabilized is there is drainage and it's dried it out. It's effectively made that top of slope weigh less because there's not a lot of water stored there and to put soils, weight, concrete, anything at the top of the slope at that huge severe elevation is going to cause the bottom of the slope to give way and have everything slide down.

CHAIRMAN HODOM: Well I wasn't talking about putting it at the top of the slope but I would prefer a letter from your soils engineer stating that a retaining wall is not practical in that location and it would be perhaps a detriment to the stabilization of the slope.

MR. HITE: I can ask him to review that and address a letter to that affect to you.

CHAIRMAN HODOM: Thank you.

MR. HITE: But I know we did definitely discuss that because that was one of the things we talked about is because we knew this was going to be a problem back here and we were hoping to be able to do what was originally proposed and that's why we hired him to review.

CHAIRMAN HODOM: Well I remember you mentioning that but I thought perhaps it would have been in his report but it wasn't addressed at all.

MR. HITE: Right and I think the reason he didn't do it was just that this proposal is what we asked him to review.

MR. SPRIO: There's probably one final discussion point on the self-creation or not a hardship and that is that the industry has changed. When this was planned in 1998 the health club industry was different. People are more and more educated about the health club industry and there's more and more folks taking advantage of classes and things like that. It's changed from a weight lifting industry to an aerobic cardio person training service orientated and group activity industry. So to the degree that Mike had the ability to foresee some of the specific traffic patterns that have been created and that was not foreseeable in 1998.

CHAIRMAN HODOM: Okay. You did address that in your narrative and I wondered if you have any substantiation to those remarks from the industry and that you can share with the Board for our review. You may not have them with you this evening but if there are those kinds of changes stated as an industry standard then it would be helpful for our review.

MR. SPRIO: I agree. I make the statement based on the testimony of this area having Mike Mashuta as the most established expert on those issues having been both in this area and in this industry for how many years now Mike?

MR. MASHUTA: 25 in the current location and 6 in managing two other facilities.

MR. SPRIO: Right. But we will - - Mike belongs to a number of national associations and we'll see if we can find some objective facts for you but to give you my basis for making the statement. That's my basis.

CHAIRMAN HODOM: I'm not trying to say that you're not misleading us. If you could have the substantiation it just makes it easier for us in our review. In your Use Variance analysis in the 2nd paragraph and it may be just a typo but it says in 2000 at the slowest time of year the health club had approximately 885 members. In 2001 at the busiest time of year the club had 923 members already showing a decline. That's actually an increase unless I'm...

MR. SPRIO: No it is an increase but and I know that at first that seems counterintuitive but effectively when you compare the summer season and the slow time of season in any other situation - maybe that's what I should have included. If you compared those same 2- analyses over a number of different you would see dramatic differences in the numbers. Effectively at the health club at it's slowest time has the same numbers as it has at it's busiest time in the following year. What you're seeing is dramatic increase even though yes, as a total number it's 9 versus 800 something. And I've probably should have gone into more detail for explaining it but effectively Mike...

MR. MASHUTA: That's why there are 3-sheets on here. One representing the slowest time and one representing the busiest time and one representing the busiest time again and the third sheet will show you that the busiest time is slower than the slowest time in 2000 so in effect we've gone from having 923 at our busiest time in 2001, 885 during our slowest time in 2000 to 832 during our busiest time in 2004 so our membership is basically 50-memberships down and that's not even inclusive of the slowest 2-busiest time ratio that we have but the comparison of that additional 100-members from 9/23 to 8/32 are 91-members would be a further indication of the downfall that we're realizing as a result of the traffic pattern and the changing.

CHAIRMAN HODOM: Along with the fewer number of members in 2004, how does that relate to the financial status? Have you had dues increases from 1998 to 2004?

MR. MASHUTA: Well it's represented right there; during our busiest time we have 45,125 in accounts receivable in 2004. In 2001 we had 66,000-thousand dollars in accounts receivable and then in 2000 we had 58,000 in accounts receivable so we've effectively lost 21,000-dollars.

CHAIRMAN HODOM: But that doesn't represent the paid in full memberships, it just shows what your accounts receivable is at that time of year at that month, correct?

MR. MASHUTA: Yeah, but...

CHAIRMAN HODOM: I mean it doesn't have any relationships to your total income.

MR. MASHUTA: It sure does because with a 100 fewer members - - with a 100 fewer members and 21,000-dollars less in accounts receivable there's no way that those two factors combined in more revenue.

CHAIRMAN HODOM: Well they could if in fact the membership dues have increased 1998 to 2004.

MR. SPRIO: Let me address that point, in the health club industry the accounts receivable are effectively the revenues. It's not a business model where people pay a lot of money up front for example, I mean you're members pay on a monthly basis, correct?

MR. MASHUTA: Yeah, the Attorney General has forced us into primarily a monthly sort of....

MR. SPRIO: So what you see reflects pretty darn close to a monthly revenue number. It's called accounts receivable and I can understand where that could ask your question that way Mr. Chairman, but effectively those are the revenues. The membership numbers along with, you know potentially some drink revenues or some personal training revenues. Those are the revenues of the club so when you see it as accounts receivable it's not simply an accounting trick of what he's carrying on his books. It's a very close parallel to revenue.

CHAIRMAN HODOM: Okay. If the 60-parking spaces that you originally proposed to the Planning Board were approved and granted, would you be in front of us here today?

MR. MASHUTA: In all honesty I don't think I would be in front of you today for this parking challenge because of the dangers that I witness on a regular basis, daily basis in the winter and the hardship that I have suffered as a result of people not joining the club and people leaving the club and people finding an excuse but I would find a way to at this point to try to position myself to rezone the entire parcel or more of the parcel so that if I could park enough people that would be interested in joining the club I would find a way to expand my club and other services that may generate more income but right now my limiting factor is really parking and without adequate parking I lose so much revenue that I can't continue to meet the needs of my business expenses. I hope I've answered that to your satisfaction.

CHAIRMAN HODOM: To some degree you have.

MR. SPRIO: There may be better future commercial uses for the parcel that have yet to be realized. That goes above and beyond what we believe we're asking relief for today to answer it my way. Where had we had enough parking to not have created the current set of facts we wouldn't be here. If we had a big expansion plan as Mike has suggested that would involve a different question of zoning of the entire parcel and potential commercial use of the rear parcel which still makes up the bulk of the parcel and some

other stuff, but effectively that's still back there and landlocked and we have the security, safety, and financial issue of – that would not – but for the lack of 60-spaces would not have been created so I would say to you no we would not be here seeking this relief if that's sufficient.

CHAIRMAN HODOM: Well the question is 2-fold because you're currently asking for I believe 74-spaces. In my analysis of the site plan if use the entire side of the - - easterly side of the building and the two or three additional that Paul is showing on the front part, in my opinion I think you can get 56-spaces in that commercial zone, which is only four shy of the 60 you needed initially for 1000-memberships. That's where I'm coming from.

MR. SPRIO: I agree, but at the same time we're going to have to undertake a very different capitol expenditure and process to create those spaces now. I mean we were looking at 60-spaces at the time of construction. In addition at that time we were on a forward looking curve for growing a business to plan in 2004 to only meet the bare minimum of what you may have needed 1998. We have no room for competitive change, rising costs and all the other things I had mentioned. It's not sufficient. I understand your point Mr. Chairman but we have seen the industry change as I have indicated and we expect it to continue to change. Had we been within 4-spaces and not had as many cars as those pictures indicate you know we end up with on the road – we didn't undertake that capitol expenditure right now, we muddle along for a while.

MR. MASHUTA: And the other factor is that we have up to 28-cars on the road so at 40 and 28 out on the road is 68 and then I require more staff to teach the classes and the turnover – way more staff with a massage person and an instructor coming in and an instructor going out and personal trainers so with more staff and 28-cars on the road, you know 56 - - we're still going to have that same liability and challenge on the road unfortunately. Believe me if it would work that way I would be the first person to say, you know that would be a wonderful option for me and I would be able to live with that but with the danger that I go through daily and see daily I just don't feel that I'm doing the community a service and my membership a service by risking their health and safety as a result of saving the money on my end by not taking the expenditure of adding those parking spots and putting them in danger and also risking the possibility of being able to survive as a viable business.

MR. HITE: Mr. Chairman if I could point out something else to you if I may?

CHAIRMAN HODOM: Sure.

MR. HITE: If you recall our initial presentation we had talked to - - we knew that this was going to be a problem again and we had proposed to put these parking spaces, these 2-spaces and to come around this bend and put all these parking spaces within the bonds of the commercial district. The only thing that we would have been asking you at the time that we were even sure we needed this type of Variance because we couldn't find anywhere in the book that said that we had to have that after your attorney did do that research and it was determined that we needed this. We said okay if we've got to ask for

this Variance to bring this road through here, why not utilize the backspace to turn it around. If you took those spaces out it would bring us back to about 62 spaces or something like that. There's 13 over there, it would have brought us back to 61-spaces. As Mike just pointed out we could probably live with that if we had to but if in our determination to look into this and speak with Mark about it - - even back when Kevin was in charge of the Building Department it was determined that this may have to have a Variance and we said okay lets look and utilize this because all the land surrounding it is so much higher that putting the staff back here certainly would not create any major problems what so ever and that's why these spaces were added. We just didn't feel that, you know granting the Variance here if this Board so felt they could do it, what would be the difference to add to the spaces and then take care of the problem once and for all.

MR. SPRIO: Well there is a point to be made though about is the relief being sought the minimum required and that is effectively something is both within the judgment of us as applicant and the discretion of you all as the Board and we believe with what we see in the industry and with our long experience of the type of overflow that's created on the road that what we are requesting is the minimum required to grant the Variance.

MRS. O'BRIEN: Well in a way but I guess my question is, you know you've got 40-spaces, 28 parked on the road, I guess I would say that if I came along and saw that many cars parked on the road I'd say I'm going to come back later or I'm not going to come. You're saying, you know additional staff so are the 74-spaces going to be adequate or is there a reason why you would not be considering expanding it further, you know getting the zoning that you need to do the kind of a parking lot that you really need, I mean is this a stop gap measure?

MR. SPRIO: I don't believe that it's a stopgap. I see your point and I guess part of my answer would be we can't survive if you drive by and see the cars and keep going that's why we're under such duress. We don't need to take a major capitol expenditure in addition debt to expand the business that's already not sufficiently full for where it is. So whether or not it's a stopgap is not what we believe, we believe this fixes our problem. This lets us meet what our business plan has been and the future of this industry particularly in light of what's on the horizon from a competitors standpoint is not less service, it's more service for this business to survive against business's that enjoy sufficient, you know substantial tax breaks and financial incentives. It's going to have to differentiate itself and to do that it's going to have to offer services. When Mike anticipates additional staff I think what he's really to say is you know the difference between a Mike Mashuta's health and a YMCA for example is he has a cliental that's sophisticated and expects services. You have to have parking; it has to be convenient and you have to have the staff there to give them those services so if we wanted to have 3000-members Marge, I think we'd be looking expanding a major parking, taking on an additional building, etc. With what we see on the competitive horizon, we're trying to keep this place at this size with it's doors open and we believe that this is the minimum request to get that done. I understand your point if we're going to come back in 3-months with a major expansion....

MRS. O'BRIEN: Well not only, you know you're going to come back with major expansion but I'm concerned that you get these spaces in and we're still going to see people parking on the road because if you're saying that you're adding services that's going to mean that the people who come - - either you're going to have more people coming or they'll be there for a longer time which talks to the issue of moving the cars in and out. If there for a longer period of time to access the additional services then you haven't got room for more people to come in to the next class or whatever is going on. It's a question of, you know a Variance to allow you to build, you know get up to 74-spaces or looking to change the zoning in order to be able to put in adequate parking for whatever it is your plans are.

MR. SPRIO: This is the judgment call between as the chairman said 60-spaces or the 74 we're requesting or 200 if we we're a lot more successful. It's the judgment of the applicant that the building is right size for the market, we need the right size parking to make use of the building and see the return and then in his judgment 74 is the minimum right size. I can't make it too much easier than that because ultimately those are judgment calls but effectively we do need more people to join; we do need more people to stay longer, people who stay longer hopefully will do it in a revenue generating capacity. That's one of the things that Mike going to have creative about is beyond the monthly dues, which is what we talked about is the revenue driver. What additional services - - when I say more services I just mean for the same money treating them better, but what additional services to create revenue - keeping in mind that since 1998 if you looked at power costs alone, which is one of Mikes chief issues here his revenues have been flat or declining it's not true of his costs. His costs are taking off so we believe this is the minimum and it's dealing with survival. This is not a long range forward thinking what's best for this business but this is saying that we need some relief to keep the doors open and I don't mean to overstate that Mike but that's how it is. So Marge we're not looking at this as you know an opportunity through zoning to, you know make better profits until we can take on a huge expansion. We're looking at a hardship that's causing us to be under duress.

MR. HITE: Marge also if I could point out something and I think this was also brought up when we had the public hearing. We get into rezoning and I'm sure that all the members of this Board are well aware of it if we go before the Town Board and ask them to re-zone a portion of just this piece of property or even the entire parcel we're going to get it handed to us. They're not going to spot zone and specifically now with the moratorium to look at our plan for building in the future whatever they determine they're going to call this I just don't think we have a snowballs chance and that's my opinion after 40-some years of being in this Town and working, we don't have a snowballs chance of getting that property re-zoned. I think you know that as well as I know it.

MR. MASHUTA: Well there's a time issue as well.

MR. HITE: There's also another thing that the Board I'm sure is aware that this may be a residential and when we speak in terms of residential don't forget this "AB" zone allows the construction of duplexes, triplexes and quads. This thing - - at one time there was a

plan here this piece of property was covered with 4-unit buildings and also the adjoining property. I was a member of that group that planned the one here and then the other outfit came and moved that one so this entire area if it had gone through at the time today would consist about probably 35 or 40, 4-unit apartment buildings, which today is not going to happen.

CHAIRMAN HODOM: I only have one final question and it was - - there's 2-questions that were raised by Mr. Dembling, a local architect and I had asked Paul to address the 2-issues and I haven't received anything as of tonight. The first question was the specific occupancy rating for the New York State Code and if that's being exceed and if that's being exceeded there may be a problem with the parking and also the type of building occupancy which he thought was a public assembly may require access for emergency vehicles on more than one side of the building.

MR. HITE: I spoke with Mr. Sprio about this and also with Mike and I believe that they spoke with Mark about this in terms of construction of the building and the types of access they need to it. I will let them address that, you or Mark, but I don't think that we need - - I don't know what Mr. Dembling was even talking about in terms of other types of access to the building. The roadway as proposed is 24-feet wide, which would certainly allow any emergency vehicle to reach to the rear. On the left is handicapped leaving open access to the building with the door into the building that the emergency equipment can be within right at this point probably 25-feet of that doorway with the emergency vehicles, but I think we have more than adequate access to this building in any terms to meet those requirements so hopefully Mark could address that question.

MR. PLATEL: When the building was constructed it was - - the size was determined for access just from 1-side of the building so the size of the structure at 10,000-square feet. The size of the building was fine, if it was oversized it would have been sprinklered or other things would have been done to make it smaller. So there's no problem with it as far as fire apparatus access.

CHAIRMAN HODOM: And the occupancy issue?

MR. PLATEL: No problem.

CHAIRMAN HODOM: Okay as long as they're addressed.

MR. HITE: That's the reason I didn't specifically write something - we did speak with Mark about it and felt that he could answer things better than we could.

MR. SPRIO: Those questions were raised at the public hearing - the initial segment of the public hearing and we did research those.

MR. MASHUTA: And we met with Mark and we specifically went to the Town Hall and met with Mark and went through those questions, question by question and Mark came up with, you know all of the answers and we thought it would be best if he

answered those questions based on his knowledge of the code.

CHAIRMAN HODOM: Okay, he must have forgotten to.

MR. PLATEL: And Mr. Shea who actually reviewed the plans when they first came in for - - you do it for the access and everything so it's reviewed before the permits issued to make sure those are all met.

MR. SPRIO: Remember to we're not drastically - - we hope as you indicated Marge to increase usage and obviously there will be some more people in there but those people, a great deal of those people are already in there, they're just parking on the street.

CHAIRMAN HODOM: Any other questions from the Board? Are there any questions or comments from the audience? Yes sir, please come up and introduce yourself.

MR. PITTS: I'm Jerry Pitts. I live off of Hudson Avenue and I'm also a member of the club. About a year ago I quit my membership because parking was an absolute joke. I wanted to come to the club when I felt it was convenient. I didn't want to be dictated as to when I could come based on when parking was available. So after I left the club I immediately put on about 15-pounds. In January Sam kept after me saying you've got to come back we're putting more parking in. Okay, you know out of a page of fields of dreams if you build it I will come. I rejoined my membership, the weights gone down again and now it's looking like the parking is 50-50 and now the Y is coming into Town. When I left the club a year ago there was no other game in Town. I just stayed home on the couch. Now people who leave the club have a choice at the Y. The Y is not going to pay a nickel in property tax or school tax. This guy is paying property tax and school tax. Gee-Wiz give him the parking please.

CHAIRMAN HODOM: Thank you. Yes Sir?

MR. KELLY: Jim Kelly. I live on Louise Street. I've lived in Town for 20-years. I'm incredulous; I'm a trial lawyer. When I see the traffic on this roadway I can't believe that you as the Town officials would want this to continue. This guy is willing to put his money where his mouth. He's willing to build parking. My biggest concern is that I have a 16-year old daughter. She doesn't drive well; she goes to this club. When she's driving on Hudson Avenue and there's cars on the road, a problems going to happen. Now I hope nobody gets hurt but that's what's going to happen. That's what this man is trying to do for the sake of public health and safety I can't understand why you don't approve this. Now I understand there are zoning law things, I'm not a zoning lawyer but what I can say is that I know that the Town is supposed to encourage not discourage commercial use. In this particular neighborhood and I don't know if any of you have walked back there, you've got Tools restaurant, you've got a landlocked parcel. This is not as if Mike wanted to put extra parking spaces in my back yard on Louise Street, that would be an issue. He wants to do it in an area that's perfectly consistent with doing. I don't think you should get any more articles, I don't think you should get any more letter, I think you should approve this guy so come December when we have the first snow there's places

for little kids, 16-year old kids to park and not be a danger to themselves and every other driver in the community. Thanks.

CHAIRMAN HODOM: Thank you. Anyone else have any comments. Is there anyone else wishing to speak in favor of the applicant other than those who've already spoken? Is there anyone wishing to speak in opposition? Mr. Sprio the information that we asked for and Michael, is that something you can put together within 4 or 5-days? I don't want to close the hearing if it's going to take you some time to provide that information to us about how your industry standards have changed. You must have periodicals that...

MR. MASHUTA: I have tons of periodicals but I really don't know if the burden of proof is really that critical to the core issue that is in front of the Board again tonight and it's worth postponing and here we go again.

CHAIRMAN HODOM: No, the question I asked was if you could provide it to us within 4 or 5-days we can close the hearing. If you can't then I'll - - we can close the hearing anyway.

MR. SPRIO: Oh I see what you mean.

CHAIRMAN HODOM: But if you don't provide the information it's just less information we have to work with.

MR. SPRIO: I'm not really - - I'm sure I could find something within the broad terms of what you're looking for.

MR. BROOKINS: An internet search should do it. Google in 5-minutes.

MR. HITE: I'm not sure about the engineer; he may be on vacation. He has reached that age in life where I haven't yet, but I will certainly contact him as long as Mike has no problem - - contact him and ask him if he would address the letter to this Board. I know it would only take him a few minutes because we certainly did discuss it; believe me. We have looked at this thing from every aspect of trying to accomplish what would resolve this problem not only for the Town but for Mike.

CHAIRMAN HODOM: Hearing no further questions or comments we'll declare the hearing closed, hopefully you will provide the data that we ask for and we'll go on from there. Thank you very much one and all.

Hearing closed 8:40 p.m.

- - -

The next order of business this evening is a public hearing for a Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings and Article XVII, Side Yards, Section 128-73, Required Widths requested by Bob Hughes for property at 2 Knights Way, Albany, New York. The applicant wishes to construct a sunroom, which will exceed the allowable percentage of lot occupancy and encroach into the side yard setback requirement at the premises of 2 knights way, Albany, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 16-foot by 32-foot, 512-square foot sunroom addition to the existing 1,595.89-square foot main structure. The total building area will be 2,107.89-square feet, which is 373.01-square feet over the 1,734.88-square feet allowed by an 11,565.87-square foot lot. The lot occupancy will be 18.23%, which is 3.23 over the 15% allowed. The side yard setback at the existing foundation where the sunroom will be placed is 4.76-feet, this is 3.24-feet shy of the 8-foot side yard setback required.

The existing patio structure was constructed without a permit. A typical patio that would be placed at ground level and constructed of patio block or other similar concrete product and would not require a permit. This type of patio however would require a permit and is subject to the same setback requirement, as a wood deck would have to meet.

The existing structure is located in an "A" Residence Zone and is occupied as a single-family dwelling.

CHAIRMAN HODOM: Thank you, Mark. There was no permit issued for that existing...

MR. PLATEL: No there was not.

CHAIRMAN HODOM: Concrete foundations, nothing was inspected?

MR. PLATEL: No.

CHAIRMAN HODOM: Okay, thanks 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 of Bethlehem, Albany County, New York will hold a public hearing on Wednesday

August 4, 2004 at 7:45 p.m. at the Town offices, 445 Delaware Avenue, Delmar, New York to take action on Application of Bob Hughes for Variance under Article XII, Percent of Lot Occupancy, Section 128-50, Single Family Dwellings, and Article XVII, Side Yards, Section 128-73, Required Widths of the Code of the Town of Bethlehem for construction of a sunroom addition which will exceed the allowable percentage of lot occupancy and also encroach into the side yard setback requirement at the premises of 2 Knights Way, Albany, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 28, 2004 edition of the Spotlight, official paper of the Town of Bethlehem. All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. We'll use the same procedure that we used earlier this evening. Mr. Hughes tell us why there was no building permit obtained for the existing patio and the concrete foundations.

MR. HUGHES: I was under the impression with the conversation that I had with Jim Wing from Patio enclosures that they were going to get all the permits for everything that was to be done there. I sub-contracted separately the concrete work because I knew I could get it done cheaper than having them do it and I thought they were going to get the permits for it.

CHAIRMAN HODOM: Was that your understanding?

MR. WING: No, I mean obviously there's some confusion here between Bob and myself. Patio Enclosures doesn't do concrete foundations and we contracted out to get the permit for the room only. With any help we could give Bob to do that, we actually gave him an old foundation plan that we engineered for a mason or a contractor 5 or 6-years ago so that he could get his - - price out his foundation plan. Obviously the confusion is very upsetting, you know we want to help to make the process go smoother so we're both under 2-different assumptions.

CHAIRMAN HODOM: Who constructed the foundations for you Mr. Hughes?

MR. HUGHES: Grant Paving out of Troy.

CHAIRMAN HODOM: Did they indicate to you at all that they had a building permit to proceed with the work?

MR. HUGHES: No, he asked me what about the building permit and I said I'm under the impression that Patio Enclosures was going to get it and we proceeded from there.

CHAIRMAN HODOM: And how was the foundation constructed? Was it per the plan that Patio Enclosures prepared for you?

MR. HUGHES: Yes, exactly. And I had pictures taken of that as I went along.

CHAIRMAN HODOM: Did you bring them with you?

MR. HUGHES: I submitted them.

CHAIRMAN HODOM: In your original submittal you have a foundation plan which shows a 3000-PSI concrete foundation however the attached drawing through the Robert Angelini, PE consulting engineer letter requires 4000 PSI concrete so which did you install?

MR. HUGHES: 4,000.

CHAIRMAN HODOM: Do you have any affidavits to that? Do you have any concrete delivery tickets from the concrete people?

MR. HUGHES: I have the contract that I signed with Grant Paving that says it's 4,000-PSI.

MR. WING: I don't. Mr. Angelini has it, it's not the ticket it's just the estimate that Grant Paving gave Bob. I'm sure we can get from Grant Paving the tickets – the concrete tickets that come off the truck.

CHAIRMAN HODOM: Would you do that?

MR. WING: Sure.

CHAIRMAN HODOM: Could you provide us the estimate saying that it's going to 4,000-pounds.

MR. WING: Absolutely. I did call them earlier this week but I haven't gotten it. I was hoping to have that with me tonight.

CHAIRMAN HODOM: When was this work done?

MR. HUGHES: Sometime - - June, the month of June.

CHAIRMAN HODOM: 2004?

MR. HUGHES: Yeah, 2004.

CHAIRMAN HODOM: Well the concrete companies – who provided the concrete, do you know?

MR. WING: Bonded.

CHAIRMAN HODOM: They have a record of concrete tickets and the strength of concrete that was delivered and all you have to do is call them and they'll provide the information so if you could provide that the Board I would appreciate that.

MR. WING: Absolutely.

CHAIRMAN HODOM: Is that stamped concrete?

MR. HUGHES: Yes.

CHAIRMAN HODOM: It is stamped.

MR. HUGHES: Yes.

CHAIRMAN HODOM: Is part of that permanent wall going to have to be demolished, taken down or am I interpreting this detail incorrectly for you engineer where it says the full 8-inch wall was carried to approximately 8-inches above the grade and is flat across the top with anchor bolts inserted in place at 6-feet apart. Both details show a 5-inch wall so how was it constructed?

MR. WING: Right, that's a guide. That's another persons project for the City of Saratoga. If you look at the wall it was constructed with an 8-inch continuous...

CHAIRMAN HODOM: Continuous full height wall.

MR. WING: All the way on up. And then it was 8-inches above the ground and then it was poured slab inside that and on top of that so it's a smooth pour on top of it for the concrete wall.

CHAIRMAN HODOM: So the top of the concrete wall and the top of the concrete floor are at the same elevations?

MR. WING: Yes.

CHAIRMAN HODOM: And the concrete floor abuts the wall and has an expansion joint?

MR. WING: Yes.

MR. WIGGAND: Is that more of an Alaskan slab type structure?

MR. WING: No I believe - - the footing is 4-foot into the ground.

MR. WIGGAND: Is this 4-foot into the ground?

MR. WING: Yes, the pictures should be able to show that.

CHAIRMAN HODOM: You should have a copy of that drawing Bob.

MR. WIGGAND: Okay now I see it, and that's what's presently there right now?

MR. WING: Yes.

MR. WIGGAND: Did you ever have anything else on top of that besides what your plan is now?

MR. HUGHES: No.

MR. WIGGAND: What was your intent to do with that?

MR. WING: It's for the sunroom is to sit on the whole structure, yes.

MR. WIGGAND: So you put that slab in there for a future sunroom?

MR. HUGHES: Yes.

CHAIRMAN HODOM: Why don't you start your presentation or whoever's going to do it and tell us...

MR. WING: As far as the area Variance?

CHAIRMAN HODOM: Yes.

MR. WING: Sure - just to ask any questions please, but for the Variance I just go back to my initial notes. I'm the factory rep the sales rep so when I was originally out at Bobs house to - - as far as the use of the sun porch initially I just try to take notes and write them down, you know Bob would need an extra anticipated use for his family was one of the reasons he wanted the sun room. And like most people to enjoy the winter sun, we have such a long winter season for health purposes to enjoy that is important to a lot of people and it is not uncommon and it was one of the reason that Bob wanted the space and to sit out and enjoy and read. So that was the initial purpose for the room and as I said the - - we contracted out, 99-percent of our rooms are on - we build deck, engineering decking systems for them to sit on so once in a while when you run into the concrete the communication has to be tight and obviously I fell like I didn't do my job. I'm not fool proof out of this we didn't construct the foundation but we just wanted to help in anyway that we can by giving him some examples of what typical foundations are. Obviously the communication on that part of it was dropped.

CHAIRMAN HODOM: You tend to have the same general engineering notes that we've had in the past. Registered professionals certifying these plan does not personally inspect at the job site.

MR WING: Right. We had Mr. Angelini, you know is a local engineer. We did do that.

CHAIRMAN HODOM: Did he stamp any of the documents?

MR. WING: Yes he did sir, the one that's addressed to you. That's a local - - Bobby Angelini, East Greenbush Town Supervisor, he's a professional engineer.

CHAIRMAN HODOM: Okay, but he's strictly for the foundation work?

MR. WING: Yes.

CHAIRMAN HODOM: Not for any of your project?

MR. WING: For the room work, well the - - if you read the details that's really they're talking about the foundation. The only thing that has to be verified on site in the notes is the house site and what we recommend is a PEI representative or a building department to verify the site ahead of time for attaching the structure and we do that. We go on out and Bethlehem's very good by visiting sites ahead of time. I think that's the only - the notes about visiting other than the foundation work.

CHAIRMAN HODOM: It also says that the registered professional stamp on this drawing cannot be responsible for soil bearing analysis or analysis of existing structures or proposed work performed or coordinated by the owner. So did your consultant, Mr. Angelini did he take a look at the soils?

MR. WING: I believe so I mean we gave him the information and the address to take a look at the site.

CHAIRMAN HODOM: His letter doesn't address the soils review. Perhaps you can get another letter from him saying that he did in fact review the excavation prior to concrete placement and they were satisfactory.

MR. WING: He didn't review - - the foundation was put in ahead of time. What Mr. Angelini could do is all he could do is take a section and take a look at it, but he wasn't there ahead of time while they were doing it; you know that was the communication problem. The foundation without a permit and Mr. Angelini what he is doing is verifying, looking through the pictures, looking through the structure what there you know to verify the best that he can that the site - the way it was constructed was to code and the pictures are fairly dramatic, fairly...

CHAIRMAN HODOM: Mr. Hughes do you know what type of soil you have on your property?

MR. HUGHES: I believe it's a mixture of mostly clay.

CHAIRMAN HODOM: Is it a wet property?

MR. HUGHES: No, I have no sump pump on my property.

CHAIRMAN HODOM: How long have you lived on the property?

MR. HUGHES: About 13-years since the house was constructed.

CHAIRMAN HODOM: And major structural cracks in the floors, foundations, walls, ceilings?

MR. HUGHES: No.

CHAIRMAN HODOM: Any cracking at all?

MR. HUGHES: Just in the garage floor. That's normal for most garage floors.

CHAIRMAN HODOM: The problem we have Mr. Hughes, one of the problems we have is that because you didn't obtain a building permit, your foundation encroached into the side yard setback requirement. Had a building permit been requested the building department would have reviewed the plans and they would have told you up front and possibly it wouldn't have been constructed that way. It's unfortunate; I'd really hate to make you tear it out.

MR. HUGHES: I do have a letter from my next door neighbor you know saying that he has no problem with the building going up or the encroachment on the property.

CHAIRMAN HODOM: I've looked at that.

MR. HUGHES: And several other neighbors around where I live.

CHAIRMAN HODOM: The site plan that you submitted prepared by Paul Hite, it's dated April 16, 93'. In the general notes at the top, note number 4 it says subject to conditions, restrictions and agreements, book 45 of miscellaneous recordings, page 1146. Do you know what they are? Do you have a copy of what they are?

MR. HUGHES: I have no idea.

CHAIRMAN HODOM: Can you obtain that for us because I don't know if you're restricted in doing this work at all and you really should find out what those restrictions and conditions are.

MR. WING: Would Mr. Hite - - he's the gentleman that was here earlier tonight?

CHAIRMAN HODOM: Yeah, but Mr. Hughes should have a copy of his plan.

MR. HUGHES: He gave it to me, yes he did.

CHAIRMAN HODOM: But the Board would want to see what those conditions, restrictions, and agreements were. Did you get a permit for the pool?

MR. HUGHES: Yes.

CHAIRMAN HODOM: When did you build the pool?

MR. HUGHES: Three years ago.

CHAIRMAN HODOM: Did you do it yourself?

MR. HUGHES: No I had Cypress Pools do it.

CHAIRMAN HODOM: And who got the building permit for that?

MR. HUGHES: They did.

CHAIRMAN HODOM: They did. Did they show you a copy of it when they obtained it?

MR. HUGHES: I can't remember but there was something hanging up on the wall of my house that said building permit, yes.

CHAIRMAN HODOM: Your intention I believe is to enclose that entire 16-foot wide by 32-foot long area. Is that correct?

MR. HUGHES: That's correct.

CHAIRMAN HODOM: That's one heck of an addition for a sunroom. Can you tell us why you need such a big room?

MR. HUGHES: Well for relaxation, I want to put some of my work out equipment out there in the back corner and to make the other half like a reading room with a TV. and everything in there.

CHAIRMAN HODOM: How many in the family?

MR. HUGHES: Three more females and a dog. The dog could take up the whole dog.

CHAIRMAN HODOM: Nice dog though. So there's four altogether plus the dog?

MR. HUGHES: Yes.

CHAIRMAN HODOM: Can you reduce the width of that sunroom to at least make the sunroom with the 8-foot setback requirement and I think it would be right around 28-feet

so you'd be losing 4-feet? Would you have a problem in doing that?

MR. HUGHES: As long as the foundation that I poured – the footing that I poured and everything would support it and I don't know if that would be a problem or not.

CHAIRMAN HODOM: We have 4-inch concrete floor on compacted sub-base on existing soil and the floor is 3,000 –PSI concrete.

MR. HUGHES: 4,000.

CHAIRMAN HODOM: And I don't think you'll have any trouble with that but that's something you have to investigate.

MR. HUGHES: If that would make everything work I would have no problem with that.

MR. WING: The frost wall – my question again, I'm not a structural engineer, the frost wall you're coming back 4-foot from it on a wall or the wall closest – we can get information.

MR. PLATEL: I'd have to get an engineer to really look at it not knowing what's underneath the slab really.

CHAIRMAN HODOM: Perhaps you can have your consultant take a look at it, Mr. Angelini.

MR. HUGHES: One issue that would be there is I put radiant heat in the concrete and I did go right out to the frost wall so I don't know how much heat I would lose being exposed you know to the outdoor elements.

CHAIRMAN HODOM: Well it would certainly keep the snow away from that side wouldn't it? Have your engineer take a look at that. Other than I think the structure is quite large for a sunroom. Is there a standard I mean is there a regular standard in the industry?

MR. WING: There really isn't I mean this is larger than normal but we do make them to the 8th –inch increment and make them to what people - - what their use is.

CHAIRMAN HODOM: You make them to the 8th of an inch?

MR. WING: Yes we do. We cut the glass to the 8th –inch increment, there's no standard sizes. We're an in-house manufacture.

CHAIRMAN HODOM: Well what I was really trying to do was 2-fold. I was trying to reduce the size of the sunroom, but also trying to get the percentage in excess of the allowable 15-percent below 2-percent.

MR. HUGHES: What – 3.4-percent or 3.2-percent?

CHAIRMAN HODOM: No, that's your encroachment.

MR. HUGHES: Oh.

CHAIRMAN HODOM: Right now you have...

MR. PLATEL: 18.23.

CHAIRMAN HODOM: What is it?

MR. PLATEL: 18.23.

CHAIRMAN HODOM: So you're 3.23 over the allowable 15 and I came up with 2-values one if 14-feet by 26-feet and the other is 15-feet by 24-feet which would result in a total percentage of lot occupancy of 16.95-percent which is just below the 2-percent. We try to maintain it so it doesn't go over 2-percent of the allowable. How do either one of those numbers sound to you?

MR.HUGHES: Right now at this point, you know this has been going on since March and I gave him my money.

CHAIRMAN HODOM: I understand.

MR. HUGHES: If I have to reduce it by 3-percent or something like that I have no problem with that at all.

CHAIRMAN HODOM: I'm not trying to be hard on you believe me that's not why we're here. Had the proper procedures been followed we wouldn't be here talking about this anyway. We can approach in that manner if you have no objections to keep it under 17-percent and maintain the side yard at least to the 8-feet dimension of the structure. If you would contact your engineer - - is Mr. Angelini working for you or is he working for Mr. Hughes?

MR. WING: We're helping out - - because of the situation we talked to the building department after I turned in my permit and you know we realized the foundation was built without a permit and how to move forward on this. It's a bad situation and you just try to make the best of it so we did, you know we went to Mr. Angelini through Patio Enclosures even though we didn't put the foundation in to try to get local engineering help and reviewing it the best that they could with pictures with the existing site taking a look at it – the walls. So yes I'm happy to be able to work with that and also with Mr. Angelini through Patio Enclosures.

CHAIRMAN HODOM: If you would do that I would appreciate that.

MR. WING: What size Mr. Chairman – I didn't write them down?

CHAIRMAN HODOM: 14-feet by 26-feet.

MR. WING: 26-foot wide, 14 – now one of the walls – the two A and C-walls, the two side walls on the original, one is 16 and one is 14 because the house jets out 2-foot. When you're saying 14-foot...

CHAIRMAN HODOM: Well I was going by square footage to get it below the 17-percent. I don't know – do you show it on here which side is...

MR. WING: The side closest to the neighbor's setback is actually 16-foot projection. The other side – far side is 14-foot, the glass wall space – the square footage is 32 by 16.

CHAIRMAN HODOM: What we're trying to do is maintain the 8-foot setback on the neighbor's side.

MR. WING: So 14 by 26 – square foot total.

CHAIRMAN HODOM: Or 15 by 24. They both come pretty close to the 16.95.

MR. WING: I understand. We'll have to look at the site because there's existing windows and see obviously what fits in to that site the best.

CHAIRMAN HODOM: We won't close the hearing tonight, we'll give you an opportunity to take a look at that. Maybe you'll some other options you want to discuss, some alternatives.

MR. WING: Should we get that information back to the Building Department?

CHAIRMAN HODOM: Anything else the Board desires?

MRS. O'BRIEN: I have a question about – you noted Mr. Wing that it's unusual to build on a concrete foundation, why?

MR. WING: I think people go with the easier route. They don't want to mess up their yard as much by bringing in equipment and digging down 4-foot so you know you can engineer a decking system with 24-inch pier footings and go that route with less mess. So if you have the space from your house coming on out, people tend to attach a deck just like you would have an open deck but you can design that deck for a room to sit on it by engineering it – the walls and footings appropriately.

MRS. O'BRIEN: But this has been designed first of all with a concrete foundation and you noted, Mr. Hughes that you had heating put in and the unit has insulated glass windows. This obviously is going to be more than a 3-season room.

MR. HUGHES: That's why I put it down for a 4-season room. It actually is a 4-season room that's why I'm putting the heat in.

MRS. O'BRIEN: So it's an addition?

MR. WING: In our area you keep your doors to your home – you know it's not a – you don't open it up as a full addition. I mean there are no glass rooms that are year round rooms in the northeast. It's used for solar gain or occasionally to take the chill off the room.

MRS. O'BRIEN: But if you're going to have as you noted books and furniture and other things in there it's certainly not something that you're going to be moving seasonally. It will be used on a year round basis.

MR. HUGHES: It could be wickered furniture or something.

MR. WING: That's what our rooms are – you know we're not contractors that build the full time additions where you open up your house wall that. You know you have different various degrees but they're mostly seasonal rooms with the amount of glass. There's really not – these are not the type of rooms that you want to heat on a full time basis.

MRS. O'BRIEN: There'll be electricity there though right?

MR. WING: Yes. And most of our sunrooms people have outlets for TV or for a radio or for lights.

CHAIRMAN HODOM: Do your structures meet the New York State Energy Code?

MR. WING: As far as the Energy Code, there's no sunrooms right now that the text is in. We meet the text that was approved by the sunroom association, we're approved by that, but it's not the New York State - - the text has not been adopted into the 2002 edition right now so it will be coming out into the new one – all sunrooms.

CHAIRMAN HODOM: Does that create a problem?

MR. PLATEL: Normally they're for heating if it's in the winter – tough question. A lot of homes may build homes and they'll do an energy calculation sheet on it, which basically they'll take the entire house and calculate the heat loss and gain would be by walls, ceilings you know the amount of area that's exposed and you get a plus and minus so if you're on the plus you got it.

CHAIRMAN HODOM: Let me ask you this then is it a violation if the room is not energy efficient?

MR. PLATEL: Yeah it would be – you wouldn't be able to construct it if it didn't meet

the calculations, if it was heated all year long – unheated space you wouldn't calculate it.

MRS. O'BRIEN: This is heated; this has radiant heat in the floor so you would have to consider it as heated space.

MR. PLATEL: Yes you would.

MRS. O'BRIEN: Whether they shut thing off or not, it's a heated space.

CHAIRMAN HODOM: That's something else you're going to have to address Mr. Hughes.

MR. PLATEL: That would be heated in the wintertime because that's when they take it – the calculations that they use part of it is mostly for your winter weather. It will actually have a zone that your in that gives you a specific numbers that you calculate. So if it was shut off and not heated in the winter then obviously you wouldn't count it. It's making sure it does get turned off in the wintertime.

MR. WING: Sunrooms were – when the new text came out in 2002, the new energy codes for New York State sunrooms were – they were approved the text for a sunroom is a separate entity for being able to heat but they didn't get onto the code books. They are approved; they will be on for the next one. Sunrooms are a different entity. What you have to do is you do have a space between the house and the room and you can't turn your heating system as part of your house. You can't like connect a section and bring it on out there and we do meet all those and we are approved on the new text. As of right now with this amount of glass it's hard to compare a sunroom with the house with walls and windows, you know we don't. It wasn't meant to be that. It just was basically a glitch not getting that text written up so everything's included into one. We aren't doing anything as violations in the sense that we are approved but...

MRS. O'BRIEN: But you don't normally build these with a concrete floor with radiant heating in it.

MR. WING: Some people do. It's not a normal thing if - - you can insulate a deck to have it to R-26, you know if someone wants a warmer floor that deck can be insulated with siding underneath so it can be very compact. There's different ways of doing it and making the floor warmer you know this is more of – a little more elaborate. They want to have a stamped book that gives them a different look than carpet inside their home.

CHAIRMAN HODOM: Well it's something that the building department will have to look into I mean if you need a calculation that meets specific energy code because it is a 4-season room now.

MR. HUGHES: Well I haven't hooked up the radiant heat yet either.

CHAIRMAN HODOM: You can and that's the whole point. You've got the system and

it's strictly a system for this area and it may be a simple change in design or something to meet the energy code, I don't know. I mean if you've got insulated glass...

MR. WING: It's difficult with that amount of glass Mr. Chairman. The energy code was written for homes, not for sunspaces. Not for single pane, not for insulated – any sunspace in general wasn't written for and wasn't intended for. As I said sunrooms - - it's a different text that was approved, it just didn't go on the 2002 energy codes when they came out. Any sunroom in the Capital district is really not approved as a year round space. Actually you could do a - - and it makes no sense, you could do a glass room that's completely glass and that would be approved on the text but any room that has walls and knee walls that are insulated are not. There's really discrepancies and I know it's a confusion but...

CHAIRMAN HODOM: Well again that will have to be addressed in a future hearing. On your sheet 1 of 5, you have underneath your elevation May 26,04' the B-wall elevation, what was the original elevation.

MR. WING: I'm sorry I don't...

CHAIRMAN HODOM: To the right of the stamp it says revision 05/26/04, B-wall elevation.

MR. WING: Yes we raised it up. We weren't sure in the winter time when we were looking at the site where Bob wanted it to be and then in the Spring you know there was no snow on the ground you could look at it. We realized we had to raise the site up so from the earlier elevation that you know with an exceptional drawing we made, we had to raise things up 6-inches. It's just a wall height issue of the glass and knee wall.

CHAIRMAN HODOM: Okay. Mr. Hughes were you going to run any plumbing into that facility.

MR. HUGHES: No.

CHAIRMAN HODOM: I'll ask you this question as I ask anyone who puts an addition on. It is not your intent now or in the future to rent out the space or lease the space for anyone that's not part of your family.

MR. HUGHES: No.

CHAIRMAN HODOM: So it's strictly for your family's use.

MR. HUGHES: Yes.

CHAIRMAN HODOM: Any other questions from the Board? Do you have any other questions or presentation you'd like to make?

MR. WING: I just wanted to – I know that you a list of a few things and I just want to make sure that I'm aware of those.

CHAIRMAN HODOM: Sure.

MR. WING: I just wanted to look into the 2-different sizes you gave me as far as engineering issues with those and how they would effect those sites with the existing foundation that's there now.

CHAIRMAN HODOM: Correct.

MR. WING: You wanted to get the ticket for the mix from bonded concrete stating the 4,000.

CHAIRMAN HODOM: Yes.

MR. WING: Is there anything that I'm missing?

CHAIRMAN HODOM: Yes there was information from Mr. Hite regarding the conditions, restrictions and agreements.

MR. WING: I missed that, thank you.

CHAIRMAN HODOM: The energy code information that will have to be provided to the building department. The dimensions are somewhat arbitrary. What the Board is looking to do is try to keep the total percentage of lot occupancy below 17-percent and also maintain with this structure that 8-foot setback requirement to so we can at least eliminate for the structure the one areas that we have to issue. I don't know how to handle that with the foundation. It's a fact that it's encroaching; we have a third element here now. We have the foundation that's encroaching into the side yard so that would be - which is already there. I mean the other alternative would be to remove it and I don't know if we want to get into that.

MR. WIGGAND: Are you saying Mike that we're going to forgive this setback now on this 8-foot?

CHAIRMAN HODOM: That's something the Board will have to discuss. What I'm suggesting is Bob that at least for the structure that he's proposing that that maintain the 8-foot setback requirement but right now the foundation is already encroaching into that setback requirement. So the 2-alternatives for that is for him to remove the foundation to meet the setback requirement or to allow the foundation to stay and that would need a Variance.

MR. WIGGAND: A side yard Variance then. We're not here tonight for that, that's not part of the plan.

CHAIRMAN HODOM: Well it is and it isn't.

MR. WIGGAND: For their plan but not ours. Ours is dealing with it but you're reducing the entire size of that building aren't you.

CHAIRMAN HODOM: I'm asking the applicant to do that and he seems willing to do that to keep it under 17-percent and he's willing to keep the 8-foot setback with the structure. Do you know how long it might take you to obtain all this information?

MR. WING: Hopefully a few days.

CHAIRMAN HODOM: Because our earliest available hearing date now is September 1 at 8:00 and we'd like to have all the information at least 7 to 10-days before our hearing date.

MR. WING: Sure.

CHAIRMAN HODOM: So you don't foresee any problems obtaining all that information for the Board so we can establish that September 1 date this evening?

MR. WING: No.

CHAIRMAN HODOM: Is the Board agreeable to that?

MR. BROOKINS: What's the anticipated building time for this once you start an enclosure of this nature?

MR. WING: This size it would be probably at least 10-days to install this size of room, the foundation is already done and we've been doing that for 40-years. That's are sole business, manufacturing and installing the rooms.

MRS. O'BRIEN: Using you dimensions here you just said you manufacture things to specifications. Have you already ordered all of the...

MR. WING: No.

MRS. O'BRIEN: Okay so nothings cut yet?

MR. WING: That's correct, yeah.

MRS. O'BRIEN: So it's not going to charge you anymore?

MR. WING: More of a disaster than it is right now. This is a tough one yes. Our policy to get the permit first and then when we get the okay then we order the room and have it made.

MRS. O'BRIEN: So that's not going to stop any possible changes?

MR. WING: No, not at all. The engineering obviously, you know we'd have to do new drawings and new specs on that.

On a motion made by Mr. Wiggand, seconded by Mrs. O'Brien, and unanimously carried by the Board the hearing was rescheduled to September 1, 2004 at 8:00 p.m.

CHAIRMAN HODOM: Please get us the information that we requested as soon as possible. Thank you very much.

Hearing adjourned 9:25 p.m.

- - -

The next order of business this evening is a public hearing for a Variance under Article XVI, Front Yards, Section 128-71, Accessory Buildings requested by Frank and Wendy Mancini for property at 94 Trinity Place, Selkirk, New York. The applicant wishes to construct a storage shed, which will encroach into the front yard setback requirement at the premises of 94 Trinity place, Selkirk, New York.

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

MR. PLATEL: Yes, Mr. Chairman. The Applicant is proposing to construct a 12-foot by 16-foot, 192-square foot storage shed with a proposed front yard setback of 38.8-feet. The minimum setback for an accessory structure is 70-feet so the proposed shed will encroach into the setback by 31.2-feet.

The existing main structure is occupied as a single-family dwelling and is located in an "A" Residence District.

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

Notice of Public Hearing. Notice is hereby given the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday August 4, 2004 at 8:00 p.m. at the town offices, 445 Delaware Avenue, Delmar, New York to take action on application of Frank and Wendy Mancini for Variance under Article XVI, Front Yards, Section 128-7, Required Widths of the code of the Town of Bethlehem for the construction of a storage shed, which will encroach into the front yard setback requirement at the premises 94 Trinity Place, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the July 28, 2004 edition of the Spotlight, official paper of the Town of Bethlehem.

All persons listed in the petition as owning property within 200 feet of the premises in question were notified by mail at least five days prior to this hearing.

CHAIRMAN HODOM: Thank you, Karen. Mr. And Mrs. Mancini just tell us what you want to do and how you want to do it and why you want to do it.

MR. MANCINI: Okay, well the garage is full and you have pictures - - pretty much as soon as you get behind the house it's a pretty steep pitch and it's solid rock. I believe we're going to build a 12 by 16 shed; vinyl sided. It will match the house and have a stone foundation. It has to put up further due to the - - like I say because of the hill but it's not within the 70-foot Variance.

CHAIRMAN HODOM: Did you get a permit for the pool that's there?

MR. MANCINI: It's a blow up pool from Walmart.

CHAIRMAN HODOM: Because that setback is 70-feet from your base for the pool...

MR. MANCINI: Correct.

CHAIRMAN HODOM: To the front edge of that base is 70-feet. I thought maybe that's why you put it there because you had to have it....

MR. MANCINI: The closest that I could - I don't know if - - when I did the pool was actually set level because the hill is actually coming down and the rest of it is filled with some dirt to kind of get it somewhat level.

CHAIRMAN HODOM: Let me ask you this, how difficult would it be to relocate the pool say closer to the deck?

MR. MANCINI: I don't know if it would actually be possible due to the drainage as far as the way it comes down.

MRS. MANCINI: The drainage comes down right there and around...

MR. MANCINI: The deck.

MRS. MANCINI: Right.

MR. MANCINI: So if I was to relocate the pool I think it would stop all my drainage and like I say everything is rock so it pretty much runs right around that area and I don't want to block that off.

CHAIRMAN HODOM: Have you considered installing the shed on the far side of the

pool area between the pool and your property line because you have currently about 21-feet from the pool to the property line, to your neighbor on the left.

MR. MANCINI: That again if you look at the lay of the land it's actually another dip and a ridge, again and I tried putting in a close line and it took me 2-days to dig a post hole.

CHAIRMAN HODOM: You would have to do the same thing that you did for the pool, put a little barricade around and then fill it with crushed stone and then you might have to ramp it up to the doors but if you were to put the 16-foot parallel to the property line and the 12-foot with the roadway.

MR. MANCINI: Right, I believe with where you're talking about - - in order to make it so it will be level to a point it would probably be about 4 or 5-foot height.

CHAIRMAN HODOM: No I think it's closer to 10 to 12 -inches at least the area that I'm talking about, to the left of the pool.

MR. MANCINI: Again it's a...

CHAIRMAN HODOM: Your grade starts going up steeper probably 5 or 6-feet beyond the pool and then it levels off at the top where you've got the little tent.

MRS. MANCINI: Directly behind the pool is the incline.

MR. MANCINI: It's actually starting, if you look at the pool...

CHAIRMAN HODOM: It does start there but it starts to incline a little steeper 4 or 5-feet behind the pool I think.

MR. WIGGAND: It starts beyond the pool.

MR. MANCINI: If you look at the pool - the 4 by 4's, that one is actually flush into the ground. It meets the ground here and I believe it's a 12-foot span and by the time you stretch forward to the 12-foot you are already up 14-inches, 12 or 14-inches.

MR. WIGGAND: That could be. I did walk all around there today.

MR. MANCINI: I understand this is a Variance. I intend to do it and make it look very nice.

MRS. MANCINI: It's going to match the house.

MR. MANCINI: It's actually going to be recessed - I don't want to say recessed, the front of the shed won't start until 13-foot behind the furthest point of the house towards the front. So if you were to stand at the garage the sheds doors would actually be 13-feet behind where you were standing so it won't be even with our home. It'll be behind it by

13 or 14-feet.

CHAIRMAN HODOM: I took a lot of measurements in fact I went there a couple of different times and thought that you could either locate the shed in the existing pool area and relocate the pool but you said you didn't want to do that.

MR. MANCINI: I'd rather not.

MRS. MANCINI: That's actually the only pretty flat space that my kids can really play other than that little bit of space I think you're talking about.

MR. WIGGAND: Is that where your garden is you're referring to?

MRS. MANCINI: My flower garden's here, the little pool is here and that little bit of space I think he's talking about right at the pool I think is pretty much it.

MR. WIGGAND: I spent some time there today and I see where some of your problems are. One question I do have is you have a 16 by 12 storage shed planned here, what were you going to use that building for? That's a pretty good size building.

MRS. MANCINI: Well my kids have bikes, my husband has a motorcycle, we have a ride on tractor and we can't even fit our...

MR. WIGGAND: You're going to use it for another garage type building also.

MR. MANCINI: Just gardening.

MR. MANCINI: Just to store like the lawnmower and the miscellaneous junk that's taking up space. I can't even fit one car in the garage.

MR. MICELLI: You presently have a 2-car garage now?

MR. MANCINI: Yeah with no cars in it. And it is quite a pitch, I actually went out last winter and I found my truck in the road. The emergency brake was on, it was in gear and it actually slipped down.

MR. WIGGAND: It a very serious pitch, that driveway.

MRS. MANCINI: Parking it there just like...

MR. MANCINI: Another reason I'm doing – I'm trying to hope to convince you a little bit. A positive on putting a shed where it would be also as far as clearing the driveway I have a small plow for my tractor. It's just a regular garden tractor to be able to pull it out of the shed right onto the driveway will be much easier otherwise I have to keep that into garage. This way I can pull it right out and clear the driveway and I wouldn't have to worry about anybody breaking their neck on the driveway.

MR. WIGGAND: So where you have that gravel now is where you'd like to put the shed?

MR. MANCINI: Right, yeah.

CHAIRMAN HODOM: Any other questions from the Board?

MR. BROOKINS: Have you talked with any of your neighbors about this?

MR. MANCINI: Yeah they're fine with it and have no problem with it.

MRS. MANCINI: Both sides and the people across the street all know and they're fine with it.

MR. MANCINI: I had to submit the list so I went over and got everybody's name and number and nobody has a problem. They know it's going to look good and they know the reason why we're having the meeting was because we weren't going to be setback as far and we showed them where we want it and they said they didn't have a problem with it.

CHAIRMAN HODOM: Most of the sheds in your vicinity are all setback the required depth. Did you notice that?

MR. MANCINI: I really hadn't paid attention. I know a few of them look like they might be borderline. I wasn't actually aware until we decided to put in for a permit that there was actually required setbacks.

CHAIRMAN HODOM: Okay. No other question from the Board. We'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

MRS. MANCINI: Thank you.

Hearing closed 9:35 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 July 21, 2004, meeting were approved.

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

Meeting Adjourned: 9:45 p.m.

Respectfully submitted,

Secretary