

**TOWN OF BETHLEHEM
BOARD OF APPEALS
August 16, 2006**

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

PRESENT: Michael Hodom
Gilbert Brookins
Anthony K. Umina
Mark Hennessey

Michael Moore Attorney to the Board

Mark Platel Building Inspector

ABSENT: Leonard Micelli

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

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Good evening Mr. Van Wormer. This is a regular meeting of the Board of Appeals for the Town of Bethlehem. Our first order of business this evening for Benderson Development (Owner) and Marshall's, the applicant has been adjourned to a date uncertain. There are changes in the revision to the Zoning Code that may mitigate them having to come to the Zoning Board of Appeals for approval of their sign and once that new code has passed or amendments have passed, we'll go from there. We have some other business this evening.

The next order of business was to consider the application of Patricia VanValkenburgh, 174 Maple Avenue, Selkirk, New York. The application was found to be in order and Mr. Hennessey made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by Patricia VanValkenburgh for Variance under Article XIII, Use & Area Schedules, Sections 128-100A, Minimum Front Yards for Corner Lots and Minimum Rear Yards for the construction of an addition, which will encroach into the minimum setback requirements at premises 174 Maple Avenue, Selkirk, New York, it is hereby ordered that a public hearing on this matter be held September 6, 2006 at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

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

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The next order of business was to consider the application of McDonalds Corporation, 132 Delaware Avenue, Delmar, New York 12054. The application was found to be in order and Mr. Brookins made the following motion:

An appeal having been filed with the Board of Appeals of the Town of Bethlehem, Albany County, New York by McDonalds Corporation for Variance's under Article VI, Supplementary Regulations, Section 128-52, Off Street Parking & Loading, Article VI, Supplementary Regulations, Section 128-54E, Signs for the re-development of an existing site, which will not meet the off street parking requirements and for new signage, which will exceed the allowable square footage and height requirements at premises 132 Delaware Avenue, Delmar, New York, it is hereby ordered that a public hearing on this matter be held September 6, 2006 at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar for the purpose of hearing all those interested in this matter.

Mr. Hennessey 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 resolution of Stephen Connolly, 39 Iroquois Trail, Slingerlands, New York.

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

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York ("the Board") seeking a variance under Article V, District, Use and Area Requirements (Residential "A" District), Section

128-25(C)(1)(a), Accessory Uses, requested by Steven and Kristan Connolly (“Applicants”) for property located at 39 Iroquois Trail, Slingerlands, New York; and

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

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

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

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

FINDINGS OF FACT

The Applicants are proposing to construct a 160-square foot storage shed that will be placed on the rear property line, with no setback. This is 5 –feet shy of the required 5-foot setback for accessory structures. The existing structure is occupied as a single-family dwelling and is located in a Residence “A” District.

Applicants’ rear property line borders a grassed strip of land owned by Niagara Mohawk (National Grid). The Niagara Mohawk property is located between the lots on Iroquois Trail and Onondaga Court, and is regularly mowed by the residents of these two streets. There has also been some landscaping placed on this property by Town residents.

Applicants have recently constructed a swimming pool in their rear yard, and propose to build a shed to house pool equipment and their lawnmower. The proposed shed would be located within the area enclosed by a fence around the pool, for ease of access.

If the shed were to be moved five feet from the rear property line (ie., in compliance and no variance required), it would be three feet from the pool.

The other potential location for the proposed shed, in the opposite corner of the Applicants' lot, is problematic. This area is sloped, has a flowering pear tree, would require a side yard variance and would be outside the fenced area around the pool.

The Town Code formerly required a 2-foot setback for accessory structures. An adjoining property owner has a shed in the rear yard that is set at this distance (2-feet) from the property line.

Applicants provided the Board with several written statements from neighbors expressing no opposition to the proposed shed.

One neighbor has objected in writing to the proposed shed (Graves, 18 Onondaga Court). Mr. Graves has requested that the shed be located in the opposite corner of the Applicants' lot and that it be screened with landscaping.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicants, the Board determines that a rear yard setback variance for the Applicants' proposed accessory structure will be granted, but not as requested. The Board requires

that the proposed accessory structure have a minimum set back of two feet from the rear property line, which is a three-foot variance from the five feet required. Applicants' request for a five-foot variance (zero setback for the accessory structure) is denied. The granted variance is further conditioned below.

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

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

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

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

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

A rear yard variance for the Applicants' proposed accessory structure is GRANTED, on the following conditions:

1. The proposed accessory structure will be set back not less than two feet (2') from the rear property line on the Applicants' property. The proposed accessory structure shall be screened with appropriate landscaping in this 2-foot area. Applicants shall consult with the Town Building Department regarding this screening.
2. The proposed construction will otherwise be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the July 19, 2006 hearing, except as these may be modified by the Town Building Department or Planning Department;

3. In the construction of the shed, the Applicants shall match, as nearly as possible, the existing roofing and siding on the home;
4. The project shall be completed within the time required by section 128-89 (P) of the Town Code.

August 16, 2006

Michael Hodom
 Chairman
 Zoning Board of Appeals

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

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

(Resolution filed with the Clerk of the Town of Bethlehem on August 18, 2006.)

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The next order of business was to consider the proposed resolution of Robin & Jeff Sutor, 79 Wisconsin Avenue, Delmar, New York

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

RESOLUTION

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WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking a variance under Article V, District, Use and Area Schedules, Section 128-28(C)(1)(a) (“Accessory Uses”), requested by Robin and Jeff Sutor (“Applicants”) for property at 79 Wisconsin Avenue, Delmar, New York; and,

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

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

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

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

FINDINGS OF FACT

The Applicants are proposing to construct a storage shed that will rest directly against the main structure. This will be 10-feet shy of the 10-foot separation that is required between the main and accessory structures. The existing main structure is occupied as a single-family dwelling and is located in a Core Residential District.

Applicants propose to locate the storage shed behind the garage on the property, in an area close to the deck on the rear of the house.

As proposed, the shed would not be attached to the garage.

If the shed were attached to the garage, it would be considered by the Town Building Department to be part of the “main” building or structure on the property, and not an “accessory” structure. If attached to the garage, the shed would be subject only to the setback and lot occupancy regulations applicable to the “main” structure, and not to the 10-foot separation requirement.

If the shed were attached to the garage and part of the “main” structure, the Town Building Department and the State Building Code would require a foundation and piers. At the public hearing, Applicants expressed a reluctance to undertake this additional expense for the shed. Applicants provided no figures on the costs of a foundation and piers.

The cost of the shed proposed by the Applicants is approximately \$1200.00

At the public hearing, Applicants also expressed a reluctance to relocate the proposed shed to other areas of the rear yard, and so comply with the 10-foot separation requirement for a detached “accessory” structure.

Applicants have spoken with their neighbors about the proposed project, and the neighbors expressed no opposition.

The Board finds and determines that there are alternate locations for a detached shed on the property that would meet the 10-foot separation requirement.

The Board finds and determines that the additional costs associated with attaching the shed to the main structure are likely minimal, given the cost of the shed itself.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that the Applicants require a variance to construct a detached shed at the location proposed. After reviewing the application, sketches and other material submitted, and the testimony at the public hearing, the Board determines that the requested variance from the separation requirement for “accessory” structures will be DENIED.

As found and determined by the Board, there are feasible alternative locations for the proposed shed (if detached) and feasible alternative methods of construction for the proposed shed (if attached), either of which would avoid the need for a variance from the Board.

Accordingly, the Board denies the Applicants’ request for a variance to construct the proposed shed in a manner contrary to Town Code section 128-28 (C)(1)(a).

August 16, 2006

Michael Hodom
Chairman
Zoning Board of Appeals

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

YES	NO	ABSENT	ABSTAINING
Michael Hodom	None		None
Gilbert Brookins			

Leonard Micelli

Anthony K. Umina
Mark Hennessey

(Resolution filed with the Clerk of the Town of Bethlehem on August 18, 2006.)

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On a motion made by Mr. Umina, seconded by Mr. Hennessey, and unanimously carried by the Board, the minutes of the August 2, 2006, meeting were approved as amended.

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The next order of business this evening is a re-opening of a public hearing for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards requested by Angela & Phil Halwick for property at 940 River Road, Selkirk, New York. The Applicant wishes to construct an attached garage addition, which will encroach into the Side Yard setback requirement at the premises.

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

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

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

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

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 16, 2006 at 7:15 p.m. at the Town Offices 445 Delaware Avenue, Delmar, New York to take action on application of Angela & Phil Halwick for Variance under Article XIII, Use & Area Schedules, Section 128-100A, Minimum Side Yards of the Code of the Town of Bethlehem for construction of an attached garage addition, which will encroach into the side yard setback requirement at premises 940 River Road, Selkirk, New York. Michael C. Hodom, Chairman, Board of Appeals. Attached to this Notice is notarized proof of its publication in the August 9, 2006 edition of the Spotlight, official paper of the

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

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

MR. HALWICK: My name is Phillip Halwick and as discussed we would like to add a 676-square foot garage on the side of our existing home. The home was finished – or the construction was completed in March of 2005 and at that time we had plans to add a garage either, you know in the next year or two. At that time the plan was to meet the current requirements of an 8-foot distance between our structure and the nearest property line and at that point our garage plans were to be within 9.2-feet of the side which was at that point in compliance of the Zoning Law. When we first initially built the home we wanted to have it further to the other side, we were unable to do that because of rock so this was the most logical place – really the only other place we could put the house. At this point the only place to put the garage is where we're putting the garage and that's the reason we chose to do it there.

CHAIRMAN HODOM: Thank you. We're there any other questions from the Board members? If there are none I'll just ask Mr. VanWormer to speak and we'll go on from there. We're there any questions?

MR. HENNESSEY: No additional at this point.

CHAIRMAN HODOM: Mr. VanWormer just introduce yourself to us and give us your address.

MR. VANWORMER: My name is Charles VanWormer and my address is 2 Fuller Place, Albany, New York 12205.

CHAIRMAN HODOM: Do you have any questions or comments that you would like to make?

MR. VANWORMER: My biggest concern with the garage setback – like I said I brought a set of plans for what was originally designed, you with the property as far as what the engineers put there as far as where the topo is and where the house locations and driveways are going to be. Since it took so long for me to close on this piece of property we were originally started about 2-months ago putting a driveway system in, you know and I wouldn't have known about the expansion where he wants to encroach on the easement. My question is – I'm just worried about erosion because of the steepness of

grade in there how you plan on controlling the erosion being that you're going to be so close because of the driveway that I intend to put in is going to be within 15-feet of the actual property going up there. So if he's encroaching by 9.2-feet obviously the water is going to be coming off the side of that garage running towards my property and I don't want to have - - the property is pretty steep, the driveway's are steep getting in, you can't exceed more than 10-percent grade on these lots so it's a little concern how the erosion is going to be and how we're going to control the erosion factor. I'm not too opposed as far as encroaching onto you know giving him the permission for the encroachment. I'm just wondering how it's going to be handled as far as erosion factor, you know not this year but next year or 10-years down the road the water that's going to be - you know when you swale away from the garage it means you're not going to have enough property left at 9.2-feet to create a proper swale unless you put some sort of drainage in.

CHAIRMAN HODOM: Mr. VanWormer you had mentioned something about an easement in your statements.

MR. VANWORMER: I meant the sideline setback, excuse me.

CHAIRMAN HODOM: Okay. You have some documents?

MR. VANWORMER: Yes, right here.

CHAIRMAN HODOM: Mr. VanWormer just for the record you currently own the adjacent property?

MR. VANWORMER: Yes I do, I had the closing on July 20th.

ATTORNEY MOORE: That's the lot on the south side?

MR. VANWORMER: It would be the south side, considered lot 3 in these plans right here. Okay this is what was designed and you guys can keep a copy of this from the engineer. This is a topo. As you can see this is the lot location that I purchased right here, this is how all the houses were set up - everything is relative to change I know in the building world.

CHAIRMAN HODOM: You know what, why don't you put this up on the Board and then everybody can have a look at it and as you're describing it, just be as specific as you possibly can with your comments. And if you would just take the microphone with you to please.

MR. VANWORMER: Sure. As you can see the way the engineer had set up all the sites that were broken up on the parcels down here, tentatively putting the houses closer to 144 because of the ditch and the hill factor here. As you can see on the topo map coming off River Road you're at like 50-feet, elevations and changes up to if I can read this thing here. Yes 110, so we have a 50-foot rise in the property in a short period of time here so that's why I think he was keeping the houses closer to 144 for this reason. Most of the

people that have built here - - and this is the last one that's not built, all the driveways are basically as you see them close to the property line setback so where I'm considering on building this house is bringing the driveway up and I'm probably going to put the house more towards the center. I'm not worried about anything encroaching on to the sideline setback for the house, more so for the actual driveway because this house is now located over here and we're encroaching by 9.2-feet, we're going to be right on top of that - - the dotted line is the setback right now on here so we're going to be over top of that and my driveway - I'm wondering how steep the property how we're going to control the erosion for the driveway system that I'll be putting in. That is my big question.

CHAIRMAN HODOM: Mr. VanWormer, who laid out this site plan?

MR. PLATEL: Hershberg & Hershberg.

MR. VANWORMER: Yup.

CHAIRMAN HODOM: And they did that for whom?

MR. VANWORMER: Whoever owned the property I guess at that point in time. I got this during my closing of the property I received all this information. I mean I had it about a month before hand knowing - I knew where the location was and how everything was going to be - how the topo was is why I was waiting for the closing on the property.

CHAIRMAN HODOM: Do you have any narratives from the design engineer that states that's exactly why they located those houses on the property that way?

MR. VANWORMER: That's the only reason I can see what they did because there's a huge ditch coming off of 144 in here. This is natural drainage as you can see they have swale systems in here. There's no culverts needed underneath the actual driveway systems - what's being stated here but we have to leave water containment at the very bottom for everything running down on the properties and off of 144 in there. I mean the drop - - it drops down, let's see we start at - you're at 55, 60 where we're coming up. Some of the stuff drops off, you know a good 10-feet immediately off of 144 into the area.

CHAIRMAN HODOM: I guess my question to you is that I think without any narrative that he probably just showed a house on that site for the sake of showing a house on the site.

MR. VANWORMER: Well I think he showed the house on the site like this also so you have more than a 10-percent grade on the driveway doing a straight driveway in. If you're not going to exceed the 10-percent grade on the driveway you're going to have to do a switch back in order to get up higher on the hill. Otherwise it's very steep there. The parcel who I purchased the property from next door he barely made it under the 10-percent with his driveway, okay and his house is actually located up here a lot further but it's very steep. If there's an icy situation in the wintertime I can see him sliding out onto

144. I think that's one of the reasons - - the property doesn't take off going up the hill this distance right here until it starts sitting here, okay climbing up further.

CHAIRMAN HODOM: Go ahead Mike.

ATTORNEY MOORE: Are you saying, Mr. VanWormer the driveway on your lot has to be somewhere on the north side of that lot?

MR. VANWORMER: Not exactly closer but I was going to come in and actually come in and turn probably and bring it back in to this way so I can get the house further up the hill, but I'm going to stay on this side - that's what my intent was because this driveway is right on top of basically the property line right now. Because when you start at the top of grade and where it swales down it's actually his driveway is down to the property system right there.

ATTORNEY MOORE: What I'm trying to understand, are you saying you have to stay on that side because of those drainage features down by 144?

MR. VANWORMER: Well this one here, I have a telephone pole right in the middle of where I'm coming up through and like I said I don't have to stay over here, no I do not.

ATTORNEY MOORE: Okay.

MR. VANWORMER: But looking at how steep it was over here, this is actually less than over here by going on the topo on it. So it was looking easier for me to access the property off this side to come in and make a switchback up to where I was going to pull into the garage system for the house that we're going to put up here.

CHAIRMAN HODOM: Had you seen the applicant's site plan as how they proposed to install their driveway?

MR. VANWORMER: No I have not.

CHAIRMAN HODOM: Okay. Because they're actually coming from the garage switching around to the front of the house and coming back down to - what is it, 9W?

MR. VANWORMER: Right, they're driveway comes in over here that I remember because I think I pulled in their driveway and knocked on the door one day. Their driveway comes in and comes up over this way right now.

CHAIRMAN HODOM: Okay. Let me ask you a question Mark, are there any other constraints except for front, side or rear yard setbacks in locating the house?

MR. PLATEL: Not really. The only issues is we do have houses, there's one I believe - It's - I forget which one it is, it's one of the first or second lots that's way up on the hill and they actually had to get everything re-engineered, which is what you're allowed to do

because they put these catch basins in here only as - - here's basically what we want – the recharge area, we're just looking for a certain size in those. It doesn't state that you have to have them exactly there but if you do alter from this plan they just want a report from the engineer for the size that you're changing to an where it's going so it's not set in stone where these go, just strictly by like you said, front yard, rear yard, side yard setback requirements. I believe there might be some other areas that are too steep that are automatically taken out.

CHAIRMAN HODOM: But there's nothing there that would prevent a....

MR. PLATEL: No.

CHAIRMAN HODOM: An owner of anyone of those lots to put the house 200-feet back on the property?

MR. PLATEL: As long as they can meet – like I said they had to re-engineer the one – it's a S-shaped driveway for the 10-percent grade on the driveway making your access for fire.

CHAIRMAN HODOM: Is that what the restraint is, a 10-percent grade on the driveway?

MR. PLATEL: Yes.

CHAIRMAN HODOM: Okay.

MR. PLATEL: And it's a 3 on 1 slope I believe for other finished grades – grades that you're messing with, you have to wind up with a minimum 3 on 1.

MR. VANWORMER: Correct. That was my whole question I mean I'm not opposed to it, I'm just wondering how we're going to handle the drainage because a lot of this drainage will be coming over on to the property. No matter where I put the driveway somehow I'm going to do a switchback because I plan on putting the house up a little further into the hill system. I don't want to have it that close to 144 so I won't be doing a straight driveway like the Hotaling's did over here. This is my easiest route because of where the telephone pole is their showing it there; it's actually closer to this corner of the property right now.

CHAIRMAN HODOM: If I may, do you know what your percent of grade is for the driveway?

MR. HALWICK: It's less than 10-percent.

CHAIRMAN HODOM: And as far as the drainage concern, if I remember correctly at the previous hearing you have put in some drainage – yes, please introduce yourself again to us.

MR. IMMEDIATO: My name is Joe Immediato, I'm the builder – we built the house and the proposed garage. When we built the house we knew of the drainage problem because we were up on the hill. The road/driveway goes crossways 200-feet on a 45 – let's say from left to right going up to their house as you can see on the drawing. I'm not an architect but this is the best I could do. Right now we have in the back of house, the swale goes from – like a horseshoe around the house. There's 40-ton of stone in the back and there's 20-ton on each side, there's 4-inch pipes that go down because when we were building the house the guy over to the left, which – I don't know what lot he would be – this one here I think it is. We're 4 right? Yeah north of us – he had these big swale things built back in his house to catch the run off. So what we did was when the hill comes down it's about 50-feet, 40-feet behind the house – there's a swale that's built in that goes around the proposed garage – the pipes are all there and everything's there so that their basement would be dry and they wouldn't have any runoff onto your property next door.

The red line on the side that shows the swale or the pipe – that's actually at the same grade – just a slope going down and when we dig the garage out we won't even be touching that area – that area all stays the same as it is right now so any runoff that he's getting now would be exactly the same and we've brought everything over to the center so that the, you know water would stay on our property – or their property. The pipes that go around cross the driveway in our catch basin is actually the whole front just like his would be probably to in that, you know the whole area that goes right across here – it starts out pretty grade level like with the road and then it just gets deeper and deeper and deeper as it goes this way. I mean this is actually a pond, I mean in the rainy season we could go fishing. It's a pond down there. We've designed the property so that they have a perfectly dry basement, it's rock and clay and shale and topsoil – it's a mixture of every mess you think of up there but we did want to move the house 10/15-feet to the left but we hit a rock so big that – it was just huge. We are 2-feet from the rock, we had just enough space to have people in there to put the foundation in, that's how close we pushed it to the left. We weren't to concerned because we were in the side setbacks and we had talked to the building department about it and they said, you know it was 8-feet or whatever it was at the time and we knew we had 2-feet to play with and we thought we were okay until you changed the rules.

CHAIRMAN HODOM: But the pipe that you show is red – is that daylight at that location or does that run all the way down to the...

MR. IMMEDIATO: No, it runs down to – just about it should be down farther a little ways – it actually runs – the pipe doesn't actually come out because of animals. It's actually into stone – like a leach that comes out.

CHAIRMAN HODOM: Like a French drain?

MR. IMMEDIATO: Right. It comes out there and it comes out on the left hand side and it also comes out – there's a 120-ton of stone in their cellar on the floor below the concrete and all of that is tied into a drain and it runs out – well you see where it say's

sewer pump on that green line – just about like that there’s a pipe that comes out and that does come to daylight where waterline is written. If you go over there you can see the pipes come out there. So we drained all of the property from above and brought it down to the center in the front...

MR. HENNESSEY: Basically coming down from the center into the catch basin in the front.

MR. IMMEDIATO: Right, so we’re not going to destroy any of the property on the right hand side of the garage that’s already flat – it’s already has gravel on it – it’s all set. It was designed to take the water – we knew there was a water problem and that’s something he has to be really careful of up on the hill – water comes down the hill and you’ve got to design it properly so we did, like I said about 100-ton in the cellar and there’s probably about another 80-ton scattered around throughout the house. Actually there’s a 4-foot deep trench that goes in a U around and it just comes around the left hand side where the blue is and it just goes out that way. It works very well we don’t have any - - there’s no runoff, there’s no water pouring, there’s no streams, it’s a nice kind of gravity feed type of system that just filter’s out and drains out and we’ve had some horrific rains here lately and they can tell you the cellar is dry and there’s no problem what so ever.

CHAIRMAN HODOM: The way that the property has been constructed other than the house, you’ve maintained 10-percent or less grade on the driveway?

MR. IMMEDIATO: Correct, yeah the driveway comes...

CHAIRMAN HODOM: What about the 3 on 1 slope as far as...

MR. PLATEL: That’s the finished areas.

MR. IMMEDIATO: We haven’t really changed much, you know in that respect. This property on the...

CHAIRMAN HODOM: I guess the question I should ask then you will comply with the Town requirements...

MR. IMMEDIATO: Of course.

CHAIRMAN HODOM: Prior to issuance of approval of the garage. Do they need a site plan approval?

MR. PLATEL: No they don’t need site plan approval. Basically with this here, with anytime you go through planning board, part of the approval states that anything that you do on your lot has to stay on your lot. All the drainage has to be maintained on your property to go to the front, to go to a catch basin. What happened here was there wasn’t really any drainage so that’s why they put these recharge basins in here because like he

said it turns into a pond because it always had. So basically these were designed for that purpose but it still states that all the water that's created on your property has to stay on your property.

MR. IMMEDIATO: It actually works very well – that whole hill, you know if you build up that way and you can go over and look what we did. If you swale it right and put the right drainage in you won't have any problem and that's what we did.

CHAIRMAN HODOM: Mr. Halwick you were aware of all these requirements when you purchased the property as far as drainage, maintaining it on your property, the 10-percent grade on the driveway, the 3 on 1 slope?

MR. HALWICK: At the time that the house was built, Joe and Patsy actually owned the property and the land. We bought the house and land from them finished so...

MR. IMMEDIATO: We had a turnkey thing, they wanted the property, they picked it out. We bought the property and built the house and complied with the Building Department and all their regulations and then turned it over to them, you know it's - - it worked out well.

CHAIRMAN HODOM: Mr. VanWormer, you had another question?

MR. VANWORMER: Yes I did. My question is you have all the stone in, I mean I'm a builder also I mean I know you have a lot of stone in with leach tile in there. Is it perforated tile you have in there or is it solid tile?

MR. IMMEDIATO: The pipe is a perforated pipe and it's covered with fabric.

MR. VANWORMER: Obviously, but with all the stone in there and I know with leach field systems, okay, all the water is being caught into the stone and it will actually go both directions. It will dissipate every direction here.

MR. IMMEDIATIO: It's clay; nothing will dissipate.

MR. VANWORMER: Right it's all clay but with the stone in there you're creating that whole trunk basically coming down so my question is how far – I mean you have a red line here but how far does it really exceed down?

MR. IMMEDIATIO: It goes down to about to the edge of their driveway.

MR. VANWORMER: About to the edge of the corner of the driveway?

MR. IMMEDIATIO: Right.

MR. VANWORMER: Okay well my point is I mean it's going to leach through all the stone both directions...

MR. IMMEDIATIO: Sure.

MR. VANWORMER: So depending on how far you have the stone right now on the side of the property right here it's still going to be leaching in that direction towards the other property – opposing properties, correct? And then if we're going to do the 3 on 1 slope off the side of the garage here I'm wondering how you're going to do that with this drainage right here in order to create that grade and still swale away from – well you're doing the 3 on 1 grade off the side of the property, off the corner of the garage here, correct?

MR. IMMEDIATIO: Right, the property back there is flat.

MR. VANWORMER: Exactly, but when you put it in you have to have a batter coming down, now you're going to have another one coming back up and...

MR. IMMEDIATIO: What is there now, which was approved by the Building Department and inspected by the Building Department – we're not touching the swale that's there. It's all pretty flat and that property right there runs pretty flat straight across into your property.

MR. VANWORMER: Correct. That's my point it means the stuff is now draining in that direction towards this catch basin and when you put this garage system in, now in order to achieve the grade along the side of the garage...

MR. IMMEDIATIO: You don't have to change the grade along side the garage, the garage...

MR. VANWORMER: You have to pitch away from the garage.

MR. IMMEDIATIO: Yeah, but our maximum on 3 on 1...

MR. VANWORMER: 3 on 1, so I'm just wondering how you're going to achieve that in...

MR. IMMEDIATIO: We're going to stay just like it is because that gravel that's there now...

MR. VANWORMER: Can I finish? I'm just wondering how you're going to achieve it within 9-feet, that's less than a bulldozer – putting up there blade wise. I'm just wondering because it's going to come out – even if it's 1-percent that you're going to have, okay, you're still going to be at 9-feet away now, alright, so I'm just wondering all this stuff is going to come this way and supposedly it's going to be picked up into nothing but gravel, okay, which leaches in both directions. When you have a tile in the center, that's the object of it, you have gravel around it, it leaches in both directions and

to dissipate to take the water away that much quicker, I understand that. So I mean if this was dug with grade coming all the way down you know I would see this coming down a lot further and turning and coming into the center of the property instead of running down the side of the property so now it's actually there's a ton of water probably still dumping onto my side of the property over there for erosion.

MR. IMMEDIATO: Actually, actually it's very, very little water, I mean you can't stand there and watch it come out. I don't know if you think - - we're not looking at a pond or stream.

MR. VANWORMER: No, but I know when I dig a hole I'll see it. When I'm trenching out 4-feet down, 5-feet down to 8-feet down, okay, water does leach and finds the quickest...

MR. IMMEDIATO: In front of all their property, it's really low, in other words....

MR. VANWORMER: I've seen it; I've walked the properties and...

MR. IMMEDIATO: If you want us to add a little pipe on to kick it over the other way, I have no problem with that but I really don't think that it's a really a concern and I've worked on the property for 2-years, okay and I know how the water goes and all that.

MR. VANWORMER: Right, but you nothing along side of you, opposing so now if I put a driveway up within 15-feet, now I've got gravel coming down so now we have opposing water situations so we're going to have....

MR. IMMEDIATO: Your driveway is going to come up to where their house is?

MR. VANWORMER: No, I'm not saying that but if it is and I come up along the side within 15-feet, with the pitch and that stuff I'm going to have a batter coming down so my water is going to slope to that side also to create a swale there also so we have twice as much water dumping down this line here, now you've just encroached that much further onto that line.

MR. IMMEDIATO: We're not encroaching onto that line because nothing is going to change from existence to what's there.

MR. VANWORMER: You're going 9.2-feet.

MR. IMMEDIATO: Yeah, but there's a gravel driveway there now about a foot thick which goes past where the existing garage is going to be built - the end of the garage, it's all gravel right there. We're just going to dig out in our little gravel pit of where this thing is.

MR. VANWORMER: What if I run into the same situation you do where you have a bolder on the one side and you have to move it so now I have to move my house closer to

this direction, change the driveway situation so now...

MR. IMMEDIATO: There's no way you can put your driveway on that side of the house. I mean it's about 15-feet from the top of where their driveway sits down that hill. I mean you can't meet anywhere the pitch, I mean you've got to go from the left hand side of that property diagonally across that property to get up where we are just like we did you would almost the same type of thing. I mean – the guy the next lot down he built a dyke to get his road in.

CHAIRMAN HODOM: Let me ask you a question. It appears – you're lot number 3?

MR. IMMEDIATO: We're lot 4.

CHAIRMAN HODOM: It appears that the grades are pretty even all the way down. I mean if any flows starts at the top it's going to run down evenly throughout...

MR. VANWORMER: Correct but when you put a batter next to your house and then now everything is coming this way, now you have a batter on the side of your house so then you have everything coming this way and going that direction also.

CHAIRMAN HODOM: Well the garage itself will drain to the back and to the front.

MR. VANWORMER: It will drain to the front and to the side.

CHAIRMAN HODOM: No, I'm talking about the roof drainage. The ground drainage is natural I mean that's been there for eon's so you're not going to change that.

MR. VANWORMER: Obviously it has been changed though.

CHAIRMAN HODOM: Only by adding - - it's been changed in a manner to trying to concentrate the location within that swale.

MR. VANWORMER: Correct.

CHAIRMAN HODOM: The maximum slope you can have don that property is 3 on 1. If it's less on 3 on 1 than nothing has changed so he doesn't have to have a 3 on 1. If it's flatter than a 3 on 1 that's acceptable.

MR. VANWORMER: I'm just curious if we're going to have an issue later on from both adjoining properties, you know with both waters draining because...

MR. IMMEDIATO: Everything drains towards the road. Their property doesn't slope towards your property and your property doesn't slope towards it. It's one big sheet that comes down just like this so whatever we drop off here is going to wind up down in that pit down in the front.

MR. VANWORMER: I think my concern is your house sits a little bit lower and Kevin's sits up a lot higher and the other two sit up higher to, where I planning on putting that house is up a little bit higher than where their house is. Like I said if I come in one direction and come back around, okay and have the house there so now I'll have drainage coming down to that side again also so I wondering if it's going to be an issue.

MR. IMMEDIATO: If your house is behind their house, than there's no way any water is going to affect you because what we've done is taken the slope that's there and we've leveled off our flat spot on top and just came right down the side keeping everything on our property.

CHAIRMAN HODOM: Just so we don't belabor the point, I understand your concerns Mr. VanWormer but for this Board the concern is the side yard setback.

MR. VANWORMER: Correct.

CHAIRMAN HODOM: We are not going to get into changing any grades. That will be up to the Building Department. If they don't construct this site in accordance with the Code in the Building Department then they're in error. If they do than they're fine. The same thing would apply to you. If you don't construct yours in compliance with the Town Code or the engineers original plan then you have a problem.

MR. VANWORMER: I think my biggest concern for this close and I'm going to be that close later on or either one of us if going to have a problem with the water if I have this much gravel up to the line here also because we know how things slide especially on clay.

MR. IMMEDIATO: The stone is in the back of the house that catches the thing. The pipe comes out the side.

MR. VANWORMER: So there's no stone here on the side here than.

MR. IMMEDIATO: Very, very little.

MR. VANWORMER: Very little?

MR. IMMEDIATO: Yeah the stone that comes up the side is what you would put around a normal septic system just to catch the...

MR. VANWORMER: So to catch the stuff that's coming out the side you're looking at about a foot of stone on either side of this thing?

MR. IMMEDIATO: Well it's a 2-foot bucket.

CHAIRMAN HODOM: So it's a trench?

MR. IMMEDIATO: We dug a trench, put some stone in it like a septic system and put the pipe in it that goes up the side and the back is a well.

MR. VANWORMER: You said you had a large pile of stone in there so I'm wondering if you have a pipe in the middle of like a bigger of 12-feet wide of stone in there.

MR. IMMEDIATO: No, no the back is about 8-feet wide, okay going across the back of their property. It's about 4-feet deep and it was just made that when we first built the house the – during construction it would pond you know from the water from the rain.

MRS. HALWICK: It doesn't pond there anymore.

CHAIRMAN HODOM: Well that's good so your drainage system is working.

MR. PLATEL: So basically what you do is you have the big area of stone is in the back here collecting the water and then you just have a drain pipe basically – an underground pipe just relieving the water in this area.

MR. IMMEDIATO: Yes. What happened was when we were under construction and there was nothing on the hill for grass, I mean it's all grass now and that takes care of a lot of it, but what happened is we would have this pond in the back yard and it would go away, you know so not to have a muddy pond in their back yard we dug a trench about 4-feet deep – about 5-feet wide and we filled with 2-loads of stone and hooked it up to the pipe and goes down the other side and that just takes care of the surface water that runs down the hill. So actually it's to his benefit because it kind of contains it and it doesn't slope because actually our property kind of slopes north.

CHAIRMAN HODOM: I was going to say, if I remember your property from when I made my visit that's a pretty good drop off from their property.

MR. IMMEDIATO: Correct, 15-feet.

CHAIRMAN HODOM: So you're going to have your natural run-off come through on that side on the northerly property line anyway because that's just the natural flow of the land.

MR. IMMEDIATO: As neighbors I'm sure they don't want to have water running onto their property and we did see...

MR. VANWORMER: Well I don't want to run on their property either when I build later on.

MR. IMMEDIATO: We did see the problems with the first house that was there and we did not want to have those problems.

MR. VANWORMER: The left hand side all the way – the north house?

MR. IMMEDIATO: Yeah so we didn't want to have that and the house right next to them has a trench going through their back yard it looks like an army. So we kept it back – kept it up and met the Building Departments requirements.

CHAIRMAN HODOM: Do you remember Mark if there was any narrative submitted by the engineer...

MR. PLATEL: For their house?

CHAIRMAN HODOM: For any type of development.

MR. PLATEL: I know we had all sorts of stuff – for this here?

CHAIRMAN HODOM: For the Apple Landing development.

MR. PLATEL: There's all sorts of notes on here when you read through them about changing it, what you can and can't do. I didn't get a chance to go through the subdivision approval. There probably are some issues on there just stating – they're all standard.

MR. IMMEDIATO: You have to be less than 200-feet from the road.

CHAIRMAN HODOM: That was a stipulation as well?

MR. IMMEDIATO: Well like about 160, or something like that.

CHAIRMAN HODOM: So if we were to approve your application for the side yard setback and we made conditions that you must comply with the engineers report and the Town of Bethlehem code requirements other than the setback, you don't have any problem with that?

MR. IMMEDIATO: Not at all.

CHAIRMAN HODOM: Okay and I'm sure that that allieves some of your concerns?

MR. VANWORMER: Right, well I wasn't aware of that you changed your side line setbacks either.

CHAIRMAN HODOM: Either did they.

MR. IMMEDIATO: I mean we built the house knowing what the setbacks were and stayed within them by a couple of feet and we actually had the surveyor there to make sure.

MR. PLATEL: Yeah they used to be 8-feet.

MR. VANWORMER: Because everything that I build is 15 to 25-feet.

CHAIRMAN HODOM: Is there anything else Mr. VanWormer?

MR. VANWORMER: No that was it.

CHAIRMAN HODOM: Do you folks have any other comments you would like to make or anymore presentations Mr. Immediato?

MR. IMMEDIATO: No we're pretty much all set we just hope everything's all right because we're way behind schedule now.

CHAIRMAN HODOM: The Board will probably take some time to review this latest document that was submitted tonight and probably talk to Mark about other conditions that the Town may have but we do have 62-days to make a decision and more than likely we'll make a decision at our next Board meeting which is the first Wednesday in September. It's not a promise but more than likely we will. I say that because this is the first time I've seen this document. Any other questions from the Board members?

MR. HENNESSEY: No.

CHAIRMAN HODOM: Hearing no further questions or comments we'll declare the hearing closed and we'll notify you in a timely manner. Thank you very much.

Hearing closed 7:50 p.m.

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

Meeting Adjourned: 7:55 p.m.

Respectfully submitted,

Secretary