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 Ave, Delmar New York.

**PRESENT:**  
Daniel Coffey, Chairman  
Michael Moore, Board of Appeals Counsel  
Lennie Micelli, Board of Appeals Member  
Kenny Umina, Board of Appeals Member  
David DeCancio, Board of Appeals Member  
Matthew Watson, Board of Appeals Member  
Mark Platel, Assistant Building Inspector  
Justin Harbinger, Assistant Building Inspector  
Ed Kleinke, applicant  
Frank Hessari, applicant  
Fred Hessari, applicant  
Clay Slaughter, applicant  
Sejal P. Shah, applicant  
Ed Languish, applicant  
George & Mary Bercharlie, applicants  
Eric Brown  
Chuck Radliff, Sr.  
Bob Rivers

Chairman Coffey called the meeting to order at 7:00pm noting that there is a quorum with all members present as well as Attorney Michael Moore.

**CONTINUANCE OF PUBLIC HEARING:**  
Delmar Holdings/Valero, 594 Delaware Avenue, Delmar for a use variance under Article XIII, Uses and Area Variances, Section 128-99, Schedule of Uses.

Chairman Coffey noted the board requested competent financial evidence at the applicant’s December 15, 2010 public hearing. Chairman Coffey submitted into the record Mr. Kleinke’s response Supplemental Documentation dated February 23, 2011. Mr. Kleinke presented a report from Hopkins Appraisal Services dated August 27, 2009, alternate uses for the existing building, financial data on adaptive reuses and car wash reuse, an estimate from a local contractor of the cost of demolishing the building, tax liability of the building based on the most recent tax receipt from the Town of Bethlehem, and presentations and internet discussions on the status of the gas station and car wash industries. Mr. Kleinke identified five permitted uses that might be viable for the car wash building and presented the data and methodology for determining the data. In each of the five uses, the rental dollars needed exceeded the rental dollars expected in the present market and resulted in a negative cash flow. Applicant presented an estimate that it would cost approximately $66,000 to remove the existing car wash building.

Frank Hessari said there will be improvements to the property in accordance with a previous approved site plan that will bring the total cost of the project to approximately $1,400,000. The anticipated yield from operation of the car wash would represent an important and positive contributor to the overall cash flow needed to support the business’ operations. If the use variance is granted, the project would go back to the Planning Board for a site plan amendment.

At its December 16, 2010 meeting, The Albany County Planning Board (ACPB) recommended deferral to local consideration.

Chairman Coffey asked if there was anyone present who wished to speak in favor or in opposition to the application. Hearing no response, he closed the public hearing.
Hot Harry’s Fresh Burritos, 365 Feura Bush Road, Glenmont for an area variance under Article VI, Supplemental Regulations, Section128-56, Off Street Parking and Loading.

Chairman Coffey noted there have been the following submissions to the record since continuance of the applicant’s public hearing February 2, 2011: a traffic analysis and parking analysis proposal from Hershberg & Hershberg dated 2/15/2011 including estimated costs; email comments from Clay Slaughter dated 2/23/2011; a letter of support dated 2/5/2011 from all the tenants in the Centre; and an email submission of an informal assessment of the parking availability from tenant Tattered Pages Used Books, forwarded by the applicant.

The current proprietor at Romeo’s Pizza, formerly known as A Little Bit of Italy where a previous variance was denied, signed the letter of support.

Chairman Coffey said he was inclined to support the Albany County Planning Board’s recommendation to conduct a traffic study. As stated in his comments letter dated 2/23/2011, Mr. Slaughter advised the estimate of $9,200 for a traffic analysis is more than the owner Pri. Shah can afford. After some discussion, it was determined the Board felt a parking analysis may be more consistent with the reason for the requested variance. Chairman Coffey advised Mr. Slaughter to be sure to provide a copy of the ACPB’s recommendation to whoever is contracted to conduct the parking analysis.

Mr. DeCancio moved to request the applicant to conduct a parking analysis only, Mr. Micelli seconded and the motion carried with all members in favor.

Chairman Coffey left the public hearing open. Chairman Coffey asked if there was anyone present who wished to speak in favor or in opposition to the application.

Eric Brown, Impulse Tattoo, doesn’t feel there is a problem with the parking at the strip center. There is always plenty of parking in the area of the proposed Hot Harry’s store. He has been operating his shop in the Center for three years. He feels a burrito store will bring more people into the plaza and generate business for the other stores.

Sejal Shah, owner of the Glenmont Center, has had much difficulty renting the space and would like to have a good anchor store, like Hot Harry’s, to draw more business to the Center.

APPLICATIONS:
On a motion from Mr. Umina, seconded by Mr. Watson, a public hearing was scheduled for March 16 at 7:00pm, on an application by Barbara & John Riegel, 26 Glendale Avenue, Delmar for area variances under Article V, Section 128-30, Core Residential District, Accessory Uses and Article X111, Section 128-100, Area, Yard and Bulk Requirements, Total Lot Occupancy.

On a motion from Mr. Umina, seconded by Mr. Watson, a public hearing was scheduled for April 6 at 7:00pm, on an application by George & Mary Bercharlie, 29 Old River Road, Glenmont for area variances Article V, Districts, Use and Area Requirements, Section 128-39C(1), Front Yard Setback and Article V, Section 128-39, Rural Light Industrial District, Accessory Uses.

The application will need to be reviewed by the Albany County Planning Board (GML239 referral) due to the property’s proximity to a state road (less than 500 feet from the ROW of State Route 144). The Public Hearing was scheduled after the March 17 ACPB meeting date to minimize the number of times the applicant must appear before the Board.

DISCUSSIONS:
Delmar Medical Arts, 250, 254 & 256 Delaware Ave.

Chairman Coffey opened the discussion to consider a response to a letter dated February 2, 2011 from Rob Leslie with the Department of Economic Development and Planning notifying the Board
that, due to its proximity to the Rail Trail, the project is now a Type I action and requires a
coordinated review under SEQR. The Planning Board would like to assume Lead Agency. Attorney
for the applicant, Peter Lynch, sent an email to Rob Leslie indicating he had no objection. After a
brief discussion, Chairman Coffey asked for a motion that he send a letter to the Planning Board
advising the Zoning Board has no objection. Mr. Micelli made the motion, Mr. Umina seconded, and
the motion carried with a vote of 4 to 1 with Mr. Watson opposed due to a concern about procedure.

Delmar Holdings/Valero, 594 Delaware Avenue, Delmar
On a motion from Mr. Umina, seconded by Mr. Watson and approved with all in favor, the Board
decided to do an uncoordinated review of the unlisted action under SEQR. Chairman Coffey
reviewed Part II of the short Environmental Assessment Form. The Board determined that the
proposed action will not result in any significant adverse environmental impacts. Mr. Umina moved
to authorize Chairman Coffey to complete the SEQR form as reviewed, seconded by Mr. DeCancio,
and the motion passed with all members in favor.

Chairman Coffey gave his reasons in support of granting the use variance. The applicant submitted
competent financial evidence that they will not realize a reasonable return on the property just as a
gas station and convenience store without the car wash. There would be a significant cost to remove
the existing building. An adaptive reuse analysis demonstrated that there are no permitted reuses in a
Hamlet district that would be viable. The car wash revenue is needed for the applicant to pay down
the mortgage on the property. The property was operated as a car wash in the past and the applicant
purchased the property with the understanding that it could continue. There was no opposition to the
request for a variance. The ACPB has deferred to local consideration. The hardship is unique due to
the existence of the building and was not self created. The project will not change the character of
the neighborhood.
Mr. Umina said it would be a hardship to remove the building. Mr. DeCancio said the approval to
operate the car wash lapsed because the previous owner went out of business and no fault of the
current owner. Mr. Micelli and Mr. Watson agreed.

On a motion by Mr. Micelli, seconded by Mr. Umina, the variance was granted with all members in
favor. Chairman Coffey directed Attorney Moore to draft the SEQR and use variance resolutions.

MINUTES:
The minutes of the February 2, 2011 regular meeting were approved on a motion from Mr. Watson,
seconded by Mr. Micelli, with all members present in favor.
The meeting was adjourned on a motion from Mr. Micelli and seconded by Mr. DeCancio with all
members in favor at 8:11pm.

Respectfully submitted,
Robin Nagengast