I. Call to Order

II. Public Hearings
   A. Public Hearing for an application submitted by Anthony DeThomasis for an area variance located at 456 Russell Road. Applicant proposes to combine a portion of the parcel located at 14 Eastland Circle to the existing lot at 456 Russell Road, where a lot line revision will be required, and then subdivide the new parcel into two parcels. The proposed lots would not meet the Town's lot width requirements.

III. Applications - Review and Possible Public Hearing Scheduling
   A. Accept application and set public hearing for an application submitted by Jennifer Howard on behalf of Stewarts Shops for an area variance located at 309 Delaware Avenue. Applicant would like to add an addition that does not meet the Town's setback requirements.
   B. Accept Application and set public hearing for an application submitted by Thomas Andress of ABD Engineers on behalf of Real Estate Assets II, LLC for an area variance located at Dunkin Donuts, 232 Delaware Avenue. The Applicant would like to construct a drive-thru to the rear of the building. The project does not meet the Town's code for parking requirements.

IV. Resolutions
   A. Delmar Full Gospel Legacy Church - 282 Elsmere Avenue

V. Discussion/Possible Action
   1. DeThomasis-456 Russell Road, Albany

VI. New Business
   A. Resolution - Nicholas Cartagena

VII. Minutes Approval
   A. Wednesday, September 07, 2016

VIII. Adjournment
      Next Regular Meeting October 5, 2016
TOWN OF BETHLEHEM
ZONING BOARD OF APPEALS
Area or Use Variance
VARIANCE APPLICATION

Address of Variance: 232 Delaware Ave

Presently Zoned: Commercial Hamlet Tax map #: 86.09-4-16
86.09-4-17 (portion)

Name, Address and Telephone # of Applicant:

Fyo Garcia 1676 New Scotland Road
Slingerlands NY 12159 518-858-974

If other than owner, state interest in property and attach proof: Affidavit attached

Applicant operates the Dunkin Donuts store

Name, Address and Telephone # of Representative: Thomas Andress

ABO Engineers, LLP 411 Unimst Schenectady
NY 12305

For a variance under Article(s) 128-56H - Parking spaces 35 required
22 proposed, 10' variance

128 - Attachment 2 - rear yard setback 40' req 30' outline

Requested for the purpose of Adding a drive-thru to the rear
of the existing Dunkin Donut building

Was an application made for a Building Permit? Yes No Yes When

Estimated time required to complete the project 2 months

Revised 8/23/2011 2 Variance Application
NARRATIVE DESCRIPTION
Site Plan/Special Use Permit/Subdivision/Variance
Dunkin Donuts
Drive Thru Addition and Site Modifications
232 Delaware Avenue

Ivo Garcia, the operator of the Dunkin Donuts at 232 Delaware Avenue is proposing the add a drive thru to the rear of the building. The property is owned by Dunkin Donuts Brands, Inc. The owner has given permission to the Applicant to construct the drive thru.

In order to accommodate the drive thru, land from the adjoining property owner at 7 Lincoln Avenue needs to be added to the 232 Delaware Avenue parcel. It is proposed to adjust the property line so that a portion of the Lincoln Avenue property, all in the Commercial Hamlet (CH) zone, is added to 232 Delaware Avenue. A small portion of 232 Delaware Avenue in the rear will be added onto the 7 Lincoln Avenue property.

As part of the site improvements the parking lot for the Dunkin Donuts will be redesigned and one access point onto Delaware Avenue will be closed. The existing access on Lincoln Avenue will be relocated further to the south, away from Delaware Avenue.

7 Lincoln Avenue will remain as a residential home. The existing garage on 7 Lincoln Avenue will be removed as part of the site development.

While the Dunkin Donuts has operated with the existing parking without any issue, the new zoning requires additional parking spaces for the building size. A variance is being sought for the number of parking spaced provided. The parking required is 35 spaces and 22 spaces are provided, this a variance for 13 spaces is being requested.

The existing Dunkin Donuts building is only 2.5-feet from the rear property line. With the lot line revision the drive thru will be 30-feet from the rear property line. If the line is considered a rear property line then the requirement is 40-feet and a 10-foot variance is required.
Part A

For an Area Variance:

Before an area variance can be granted, State Law requires that the ZBA take into consideration 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.

To grant an area variance, the ZBA must balance the benefits to the applicant and the health, safety, and welfare of the neighborhood and community, taking into consideration the following factors. The ZBA must consider each of these factors, but no one factor is determinative and the weight to be given to each of them will vary with the facts of each particular case.

1. Whether the granting of the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons:

The variance requested will not create an undesirable change to the neighborhood. The improved parking design and closing of one of the Delaware Avenue access points will provide access management, which is a desire of the Town. The construction of the drive thru will reduce the parking demand on the site as more customers utilize the drive thru, instead of parking. The variance for setback is being improved from the existing condition.

2. Whether the benefit sought by the applicant can be achieved by other feasible means. Identify what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc.) and why they are not feasible.

There are no alternatives to increase the amount of parking spaces, as the land behind is zoned Core Residential, and thus does not allow commercial parking lots. The existing site has twenty (20) parking spaces and the proposed site increases the parking spaces to twenty-two (22). There is no alternative to increasing the setback to 40-feet without having a major effect on the adjoining residential house, by removing a large portion of the existing driveway.
3. Whether the variance is substantial. The requested variance is not substantial for the following reasons:
   The variances are not substantial as the drive thru actually reduces the demand for onsite parking and
   the setback variance, by virtue of the lot line revision is substantially less than the existing condition.

4. Whether the variance will have adverse physical or environmental effects on the neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons:
   The variance will not effect the neighborhood as the site is already a Dunkin Donuts and the addition
   of the drive thru will be behind the building. The adjoining residential house to the rear is a participant
   in the subdivision that will allow the drive thru to be built and will be buffered by additional plantings
   along the new property line.

5. Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of
   an area variance). Explain whether the alleged difficulty was or was not self-created.
   The variances are not self-created in that the zoning was changed after the building was constructed
   to require a greater number of parking spaces and the greater setback requirements of the CH Zone.
BOARD OF APPEALS AFFIDAVIT

TO BE COMPLETED BY OWNER OF THE FOLLOWING PROPERTY:

(ADDRESS) 7 Lincoln Ave

State of New York ss:
County of Saratoga

Dana Laymon being duly sworn, deposes and says:

1. That he/she resides at 7 Lincoln Ave Delmar NY in the County of Albany and the State of New York. That he/she is the Owner of the property as described in the foregoing application for a Variance under Article (s) 128-5C H Parking Requirements and that the statements contained therein are true to the best of his/her knowledge and belief.

2. That he/she hereby authorizes Polly Ferenbaum, ESG of Law Offices of Polly Ferenbaum, PLLC of Two Barnard and ABO Engineers Ltd., to act as our representative in all matters regarding the application that may come before the Town of Bethlehem Board of Appeals.

3. That he/she has the legal right to make or authorize the making of said application.

4. That he/she understands that the Town of Bethlehem Board of Appeals intends to rely on the foregoing representation in making a determination on the application and to issue the requested approval(s). That under penalty of perjury he/she declares that he/she has examined this affidavit and application and that it is true and correct.

5. That he/she swears that the proposed variance will be constructed and operated in accordance with the standards and qualification hereinafter set forth in the Zoning Code of the Town of Bethlehem.

Dana Laymon 8/25/16

Property Owner

Antoinette M. Bradley
Notary Public

8/25/16

Date

ANTOINETTE M. BRADLEY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01BB6179332
Qualified in Saratoga County
Commission Expires 10/9/19

Revised 8/23/2011

3

Variance Application

Attachment: Application (ZBAAI-2016-18 : Dunkin Donuts - 232 Delaware Avenue)
BOARD OF APPEALS AFFIDAVIT

TO BE COMPLETED BY OWNER OF THE FOLLOWING PROPERTY:

(ADDRESS) 232 Delaware Avenue

State of MASSACHUSETTS
County of Norfolk

DB Real Estate Assets II, LLC being duly sworn, deposes and says:

1. That he/she resides at 130 Boylston St, Boston MA 02116 in the County of Norfolk and the State of Massachusetts. That he/she is the Owner of the within property as described in the foregoing application for a Variance under Article (s) 128-56 H Parking Requirements and that the statements contained therein are true to the best of his/her knowledge and belief.

2. That he/she hereby authorizes Polly Fegerbaum (Law Offices of Polly Fegerbaum PLLC) of The Coelho & ABO Engineers, LLP, to act as our representative in all matters regarding the application that may come before the Town of Bethlehem Board of Appeals.

3. That he/she has the legal right to make or authorize the making of said application.

4. That he/she understands that the Town of Bethlehem Board of Appeals intends to rely on the foregoing representation in making a determination on the application and to issue the requested approval(s). That under penalty of perjury he/she declares that he/she has examined this affidavit and application and that it is true and correct.

5. That he/she swears that the proposed variance will be constructed and operated in accordance with the standards and qualification hereinafter set forth in the Zoning Code of the Town of Bethlehem.

DB Real Estate Assets II, LLC

LINDA M. MORRIS
ASSISTANT SECRETARY/CLERK

Property Owner

Notary Public

Date

Attachment: Application CBAAI-2016-18 : Dunkin Donuts - 232 Delaware Avenue)
### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

#### Part 1 - Project and Sponsor Information

<table>
<thead>
<tr>
<th>Name of Action or Project:</th>
<th>Dunkin Donuts - Drive Through Addition and site modifications - Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Location (describe, and attach a location map):</td>
<td>292 Delaware Ave Bethlehem</td>
</tr>
<tr>
<td>Brief Description of Proposed Action:</td>
<td>Variance request for area variances for parking and building setbacks in conjunction with the site plan/special use permit application for a drive through addition on the existing Dunkin Donuts</td>
</tr>
<tr>
<td>Name of Applicant or Sponsor:</td>
<td>Ivo Coarla</td>
</tr>
<tr>
<td>Address:</td>
<td>1676 New Scotland Road</td>
</tr>
<tr>
<td>City/PO:</td>
<td>Slingerlands</td>
</tr>
<tr>
<td>State:</td>
<td>NY</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>12159</td>
</tr>
<tr>
<td>Telephone:</td>
<td>518-858-9756</td>
</tr>
<tr>
<td>E-Mail:</td>
<td></td>
</tr>
</tbody>
</table>

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?  
   - NO | YES  
   - Y  

2. Does the proposed action require a permit, approval or funding from any other governmental agency?  
   - NO | YES  
   - Y  

3a. Total acreage of the site of the proposed action?  
   - 0.59 acres

3b. Total acreage to be physically disturbed?  
   - 

3c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?  
   - 0.79 acres

4. Check all land uses that occur on, adjoining and near the proposed action.  
   - ☐ Urban  
   - ☐ Rural (non-agriculture)  
   - ☐ Industrial  
   - ☑ Commercial  
   - ☐ Residential (suburban)  
   - ☐ Forest  
   - ☐ Agriculture  
   - ☐ Aquatic  
   - ☐ Other (specify):  
   - ☐ Parkland
5. Is the proposed action,  
   a. A permitted use under the zoning regulations?  
      | NO | YES | N/A |
   b. Consistent with the adopted comprehensive plan?  

6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?  
   | NO | YES |

7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?  
   If Yes, identify: 
   | NO | YES |

8. a. Will the proposed action result in a substantial increase in traffic above present levels?  
   | NO | YES |

   b. Are public transportation service(s) available at or near the site of the proposed action?  
   | NO | YES |

   c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?  
   | NO | YES |

9. Does the proposed action meet or exceed the state energy code requirements?  
   If the proposed action will exceed requirements, describe design features and technologies:  
   | NO | YES |

10. Will the proposed action connect to an existing public/private water supply?  
    [If Yes, does the existing system have capacity to provide service?  
     If No, describe method for providing potable water:]  
    | NO | YES |

11. Will the proposed action connect to existing wastewater utilities?  
    [If Yes, does the existing system have capacity to provide service?  
     If No, describe method for providing wastewater treatment:]  
    | NO | YES |

12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?  
    | NO | YES |

   b. Is the proposed action located in an archaeological sensitive area?  
    | NO | YES |

13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?  
    | NO | YES |

   b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?  
   If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:  
   | NO | YES |

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:  
    - Shoreline  
    - Forest  
    - Agricultural/grasslands  
    - Early mid-successional  
    - Wetland  
    - Urban  
    - Suburban  
    | NO | YES |

15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?  
    | NO | YES |

16. Is the project site located in the 100 year flood plain?  
    | NO | YES |

17. Will the proposed action create storm water discharge, either from point or non-point sources?  
    If Yes,  
    a. Will storm water discharges flow to adjacent properties?  
       | NO | YES |

    b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?  
       If Yes, briefly describe:  
       | NO | YES |
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?
If Yes, explain purpose and size:

<table>
<thead>
<tr>
<th>NO</th>
<th>YES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?
If Yes, describe:

<table>
<thead>
<tr>
<th>NO</th>
<th>YES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?
If Yes, describe:

<table>
<thead>
<tr>
<th>NO</th>
<th>YES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: [Signature: ___________________________]
Date: 9/15/16

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

<table>
<thead>
<tr>
<th></th>
<th>No, or small impact may occur</th>
<th>Moderate to large impact may occur</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Will the proposed action result in a change in the use or intensity of use of land?</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Will the proposed action impair the character or quality of the existing community?</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?</td>
<td></td>
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<tr>
<td>5.</td>
<td>Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?</td>
<td></td>
</tr>
</tbody>
</table>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?

11. Will the proposed action create a hazard to environmental resources or human health?

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency ___________________________ Date ___________________________

Print or Type Name of Responsible Officer in Lead Agency ___________________________ Title of Responsible Officer ___________________________

Signature of Responsible Officer in Lead Agency ___________________________ Signature of Preparer (if different from Responsible Officer) ___________________________
LIBER 2847 PAGE 296

Albany County Clerk
32 North Russell Rd.
Albany, NY 12206-1324

Return to:
ROPES AND GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON MA 02110  ATTN ANNMARIE PAVONE

Instrument: Deed


Grantor
THIRD DUNKIN DONUTS REALTY LLC

Grantee
DE REAL ESTATE ASSETS II LLC

Number of Pages: 7

Filing Date/Time: 06/14/2006 at 9:09 AM

Receipt Number: 308539

Note:
THIS PAGE CONSTITUTES THE CLERK’S ENDORSEMENT, REQUIRED BY SECTION 316A(5) & 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH.

Thomas G. Clingan, County Clerk

Attachment: Application (ZBAAI-2016-18 : Dunkin Donuts - 232 Delaware Avenue)
Bargain and Sale Deed

WITH COVENANT AGAINST GRANTOR'S ACTS

THIRD DUNKIN' DONUTS REALTY LLC,
a Delaware limited liability company

TO

DB REAL ESTATE ASSETS II LLC,
a Delaware limited liability company

PREMISES: 232 Delaware Avenue
Delmar, New York

SECTION: 85.9
BLOCK: 4
LOT: 16
COUNTY: Albany

RETURN BY MAIL TO:

Ropes & Gray LLP
One International Place
Boston, Massachusetts 02110-2624
Attn: Annmarie Pavone
BARGAIN AND SALE DEED WITH COVENANT AGAINST GRANTOR'S ACTS

THIS INDENTURE, made as of this 26 day of May, 2006

BETWEEN THIRD DUNKIN' DONUTS REALTY LLC, a Delaware limited liability company, having its principal office at 130 Royall Street, Canton, Massachusetts 02021, party of the first part, and DB REAL ESTATE ASSETS II LLC, a Delaware limited liability company, having an address at P.O. Box 9141, Canton, Massachusetts 02021, party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Delmar in the Town of Bethlehem, County of Albany and State of New York, more commonly known as 232 Delaware Avenue, Bethlehem, New York, and more particularly described on Exhibit A attached hereto and hereby made part hereof.

Being and intended to be the same premises as conveyed by Deed dated June 29, 1984 and recorded in the office of the Albany County Clerk on July 2, 1984 in Liber 2263, Page 1081 to Dunkin’ Donuts of New York, Inc., predecessor to Third Dunkin’ Donuts Realty, Inc. by Articles of Merger of Parent and Subsidiary Corporations, dated April 29, 1994 and filed with the Secretary of State of the Commonwealth of Massachusetts on April 30, 1994, which entity was converted into Third Dunkin’ Donuts Realty LLC pursuant to a Certificate of Conversion dated March 1, 2006 and filed with the Secretary of State of Delaware on March 1, 2006.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part, covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for
any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

[Signature Page Follows Immediately]
IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

THIRD DUNKIN' DONUTS REALTY LLC,
a Delaware limited liability company,

By: _____________________________

Name: Kate Lavelle
Title: Treasurer and Chief Financial Officer

STATE OF MASSACHUSETTS ) ) ss.: 
COUNTY OF NORFOLK )

On the 12th day of MAY in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Kate Lavelle, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument and that such individual made such appearance before the undersigned in Norfolk, Massachusetts.

______________________________
Signature and Office of individual taking acknowledgement

______________________________
BRIDGET A. GALLAGHER
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 16, 2012
EXHIBIT A

LEGAL DESCRIPTION OF PARCEL

ALL that certain plot, piece or parcel of land, situate, lying and being in the southwest corner of Delaware and Lincoln Avenues at Elsmere in the Town of Bethlehem, County of Albany and State of New York, more particularly bounded and described as follows:

TRACT I:

BEGINNING at the intersection of the center line of Delaware Avenue (66 feet wide) with the west line of Lincoln Avenue (50 feet wide) produced; thence running southerly and along the westerly line of Lincoln Avenue a distance of 155.90 feet to a point 50 feet northerly, measured along the westerly line of Lincoln Avenue, from the northeasterly corner of Lot No. 5 shown on an "Application for Land Title County of Albany, City of Albany, State of New York" made by N.C. Martin November 20, 1924, and filed in Albany County Clerk's Office December 2, 1924; thence running westerly and along a line parallel with the northerly line of said Lot No. 5, a distance of 100 feet to a point in the easterly line of Lot No. 1 shown on said map; thence northerly and along the easterly line of said Lot No. 1 a distance of 128.90 feet to a point in the said center line of Delaware Avenue; thence running easterly along the center line of said Delaware Avenue 103.60 feet to the point or place of BEGINNING.

BEING Lot No. 2, as shown upon the aforesaid map (with the exception and reservation therefrom of the most southerly 50 feet of said Lot No. 2).

AND ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Bethlehem, County of Albany, State of New York, being known as Lot No. 1 on Amended Map of Lincoln Avenue Subdivision, E.J. Bedell Farm at Elsmere, Albany County, New York, which said map was filed in the Albany County Clerk's Office on December 2, 1924, and more particularly bounded and described as follows:

TRACT II:

BEGINNING at a point marked by an iron pipe set in the southerly line of Delaware Avenue (formerly Delaware Turnpike – 66 feet wide), said point being distant westerly 103.58 feet from the point of intersection of the westerly line of Lincoln Avenue (50 feet wide) with said line of Delaware Avenue, as measured along said line of Delaware Avenue; extending thence (1) South 76 degrees 38 minutes 25 seconds West along said line of Delaware Avenue 77.69 feet to a point; thence (2) South 1 degree 45 minutes West along the easterly line of lands now or formerly of Albin A. Sturdiv 124.28 feet to a point marked by an iron pipe; thence (3) South 88 degrees 15 minutes East along the northerly line of lands now or formerly of one Haswell 75 feet to a point marked by an iron pipe; thence (4) North 1 degree 45 minutes East in part along the westerly line of lands now or formerly of one Bedell and in part along the westerly line of lands of the party of the first part (Tract I) 144.73 feet to the point and place of BEGINNING.

The two above described parcels, with the exception of portion lying in the bed of Delaware Avenue, are together bounded and described according to a recent survey as follows:
BEGINNING at the point of intersection of the southerly line of Delaware Avenue with the westerly line of Lincoln Avenue and runs thence South 01 degrees 47 minute 10 seconds West along said westerly line of Lincoln Avenue 121.64 feet; thence North 88 degrees 12 minutes 50 seconds West a distance of 100.00 feet; thence South 01 degrees 47 minutes 10 seconds West a distance of 50.00 feet; thence North 88 degrees 12 minutes 50 seconds West a distance of 75.00 feet; thence North 01 degrees 47 minutes 10 seconds East a distance of 124.27 feet to a point in said southerly line of Delaware Avenue; thence North 76 degrees 38 minutes 30 seconds East along said southerly line of Delaware Avenue 181.30 feet to the point and place of BEGINNING.
Albany County Clerk
16 Eagle St. Rm 128
Albany, NY 12207

Return to:
BOX 87

Instrument: Deed

Document Number: 11254551 Book: 3046 Page: 815

Grantor

AUSTIN, TIMOTHY E
AUSTIN, DAWN E

Grantee

LAYMON, DANA

Number of Pages: 4

Amount: $220000.00  

Recorded Date/Time: 10/12/2012 at 8:58 AM

Receipt Number: 727828

Note: **DO NOT REMOVE - THIS PAGE IS PART OF THE DOCUMENT**

THIS PAGE CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTION 316-a(6) & 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK.

Thomas G. Clingan, County Clerk
WARRANTY DEED

THIS INDENTURE made this 9TH day of October, Two Thousand and Twelve.

Between TIMOTHY E. AUSTIN and DAWN E. AUSTIN, residing at 7 Lincoln Avenue, Delmar, New York, 12054, party of the first part, and

DANA LAYMON, residing at 15 Harmony Hill Road, Albany, New York, 12208, party of the second part

WITNESSETH that the party of the first part in consideration of ---ONE--- Dollar ($1.00 ) lawful money of the United States and other good and valuable consideration paid by the party of the second part do hereby grant and release unto the party of the second part, his heirs, successors and assigns forever,

SCHEDULE A DESCRIPTION

ALL that certain lot, piece or parcel of land, situate at Elsmere, Town of Bethlehem, Albany County, New York, as laid down on a map of building lots, known as “Lincoln Ave. Subdivision, E.J. Bedell Farm, Elsmere, Albany County, N.Y.” which said map was filed in the Albany County Clerk’s Office on the 13th date of October, 1923, and a copy thereof filed in the Town Clerk’s Office of the Town of Bethlehem; said lot is known as Lot Number Five (5) as laid down on said map, and situated on the westerly side of Lincoln Avenue and being fifty (50) feet in front and rear and one hundred and seventy-five (175) feet in depth, all as shown on said map.

ALSO all that lot, piece or parcel of land, situate lying and being on the West side of Lincoln Avenue, Elsmere, Town of Bethlehem, Albany County, State of New York, being more particularly described as follows:

BEING the Southerly fifty feet of Lot No. 2 as shown on map entitled “Amended Map of Lincoln Avenue, Subdivision E.J. Bedell Farm at Elsmere, Albany County, N.Y.” made by W. R. Mardin November 20, 1924 and filed in the Albany County Clerk’s Office December 2, 1924. Said premises being bounded on the East by Lincoln Avenue, on the South by Lot 5 on the aforesaid map, on the West by Lot 1 on said map, and on the North by that part of Lot 2 on said map which was heretofore conveyed to the Atlantic Refining Company by deed from Edward J. Bedell recorded in the Albany County Clerk’s Office on October 17, 1946 in Book 1038 of Deeds at Page 42. Said premises being 50 feet wide front and rear and 100 feet deep.

Subject to enforceable easements, covenants, conditions and restrictions of record, if any.
BEING the premises conveyed to Timothy E. Austin and Dawn E. Stevens by deed dated July 30, 2003, and recorded in the Albany County Clerk’s Office on September 16, 2003, in Liber/Reel 2744 of Deeds at Page/Frame 683.

TOGETHER with all the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, her heirs, successors and assigns forever.

AND said party of the first part shall covenant as follows:

FIRST, That the party of the second part shall quietly enjoy the said premises;

SECOND, That said party of the first part will forever Warrant title to said premises;

THIRD, That, in compliance with Sec. 13 of the Lien Law, the grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied for the purpose of paying the cost of the improvement and will apply the same first, to the payment of the cost of the improvement before using any part of the total of the same or any other purpose.

IN WITNESS WHEREOF, that party of the first part has hereunto set his hand and seal the day and year first above written.

In The Presence Of: ____________________________
Timothy E. Austin

STATE OF NEW YORK )
COUNTY OF ALBANY ) ss:

On this ______ day of October, 2012, before me, the undersigned, a notary public in and for the State, personally appeared Timothy E. Austin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

Packet Pg. 21
In the Presence Of:

Dawn E. Austin

STATE OF NEW YORK  )
COUNTY OF ALBANY  ) ss:

On this _01_ day of October, 2012, before me, the undersigned, a notary public in and for the State, personally appeared Dawn E. Austin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

Record and Return:

Box 87
WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking three (3) Variances under Article VI, Supplementary Regulations, Section 128-59 E (1) and (6), (Non-residential signs, Core Residential District, illumination, height and area) requested by No Name Sign Company (“Applicant”), Delmar Full Gospel Legacy Church (“Owner”) for property at 282 Elsmere 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 20, 2016 and September 7, 2016; 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

Applicant and Owner are proposing to remove an existing freestanding sign and install a new sign that is 6.83 feet tall, 51 square feet per side and internally illuminated. Each of these features of the proposed sign requires a variance from the Town Code for a non-residential sign in the Core Residential District, as follows: maximum height of 6 feet allowed; maximum area of 10 square feet per side allowed; external illumination required. The property is presently used as a house of worship.

Leo Valenchis and John Doucette of No Name Sign Company, along with the Church’s Pastor David Gericke, testified in support of the requested variances.

Pastor Gericke testified that the Church has been an active participant in the community’s civic and spiritual affairs for many years. The Church has recently changed its name, but expects its community mission to continue, and wants a new sign, with its new logo, to enhance the entrance to its house of worship and announce its new name and continued presence to the community. The Church is not visible from Elsmere Avenue.

The present sign, proposed for replacement, is about 9 feet tall and about 30 square feet per side.

The proposed internal illumination was represented to the Board as a more modern form called “push through” lettering, in which only the text and letters would be internally lit. This is different than typical internally lit signs, where the entire sign structure is illuminated. Applicant testified that this technology is less visible or intrusive than the typical method of internal illumination. Applicant also testified that the “push through” lettering could include a timer or light sensor that would turn off when not needed. Applicant expressed its belief that external illumination can actually be more bright and visually intrusive, and possibly more expensive to construct. Applicant produced for the Board pictures of other signs using “push through” lettering but no such signs are presently in use in the Town of Bethlehem.

At the July 20 public hearing, several neighbors of the Owner expressed concerns regarding an illuminated sign in a residential neighborhood, and with the size of the proposed sign. Two persons spoke in opposition to the requested variances. Other than from Pastor Gericke, there was no written or oral testimony in support of the requested variances.

By Resolution dated July 21, 2016 (Case No. 4-160702600) the Albany County Planning
CONCLUSIONS OF LAW and DETERMINATIONS

At the September 7, 2016 public hearing, after additional testimony from the Applicant and Owner and public discussion on the application, the Board determined to vote separately on the three requested variances (sign illumination, sign height and sign area), so that the varying views of all Board members on the issues involved could be reflected. 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 Applicant and Owner, the Board determines as follows.

Illumination, Town Code section 128-59 E (6)

The application for a variance to allow an internally illuminated sign is DENIED; any new signage erected by the Owner must be externally illuminated. The Board is concerned with setting a precedent allowing any internally illuminated signage in a residential neighborhood. Similarly, while the Board appreciates the presentation by Applicant regarding the nature and merits of “push through” lettering, this is still a form of internal illumination, which is prohibited throughout Town Code section 128-59. Allowing “push through” lettering as an acceptable form of “internal” illumination is a policy decision which the Board determines is more appropriately left to the Town Board and Town Planning Board.

As a further condition intended to protect the character of the residential neighborhood, the Board conditions its partial grant of the requested height and area variances (below) by requiring that the external illumination on the Owner’s sign must be turned off by 10:00 pm each day.

The Board unanimously agrees however, in recommending that these other Town agencies, as part of their periodic review of the Town Zoning Law, give careful consideration to “push through” lighting and determine if it could be an acceptable form of “internal” illumination for signage in the Town and, if so, to make the necessary amendments to the Town
Height Above Finished Grade, Town Code section 128-59 E (1)

The requested variance for a sign not greater than 6.83 feet in height is GRANTED. The Board determines that a sign at this height will be a benefit to the Applicant in identifying itself to the community and, as conditioned (external illumination turned off at 10:00 pm) will have no detrimental impact on the health, safety or welfare of the community or the neighborhood.

The benefit sought by the Owner, “reintroducing” itself to the community, cannot be achieved by some method other than a height variance.

The limited height variance granted will have no adverse effect on the physical or environmental conditions in the neighborhood.

A variance of .83 feet in height is not significant, and is the minimum variance that is necessary and adequate to the Owner’s needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating a height variance has been created by the Owner, but this factor is outweighed by the Findings and Determinations in this Resolution, and the condition imposed on the external illumination.

Maximum Area, Town Code section 128-59 E (1)

The requested variance for a sign of 51 square feet per side is DENIED. The Board will GRANT a variance to allow a new sign not greater than 30 square feet per side. The Board determines that a sign of this area will be a benefit to the Applicant in identifying itself to the community and, as conditioned (external illumination turned off at 10:00 pm) will have no detrimental impact on the health, safety or welfare of the community or the neighborhood.

The benefit sought by the Owner, “reintroducing” itself to the community, cannot be achieved by some method other than an area variance.

An area variance allowing a sign of 30 square feet per side is significant, but will allow for a sign of the same size as the existing sign on the property. A new sign of this size will have
no adverse effect on the physical or environmental conditions in the neighborhood. An area variance allowing a sign of 30 square feet per side is the minimum variance that is necessary and adequate to the Owner’s needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating an area variance has been created by the Owner, but this factor is outweighed by the Findings and Determinations in this Resolution, and the condition imposed on the external illumination.

The proposed sign is a “Type II” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 (c) (2) and (7), and no environmental impact review is required.

The requested variances (Freestanding sign, Core Residential District, illumination, height and area) are DENIED, GRANTED and CONDITIONED, as set forth above, and in accordance with the following:

1. The proposed sign will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant and Owner at the July 20, 2016 and September 7, 2016 hearings, and the above Determinations, except as the same may be modified by the Town Building Department;

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

3. The Board recommends to the Town Board and Town Planning Board, as part of their periodic review of the Town Zoning Law, to give consideration to “push through” lighting, as described by the Applicant in this matter, and determine if it could be an acceptable form of “internal” illumination for signage in the Town and, if so, to make the necessary amendments to the Town Code.
September 21, 2016

Daniel Coffey

Chairman

Zoning Board of Appeals

The foregoing Resolution was filed with the Clerk of the Town of Bethlehem, Albany County, New York, on September ___, 2016.

Kathleen Reid, Secretary

Zoning Board of Appeals
I. Call to Order

A Regular Meeting of the Zoning Board of Appeals of the Town of Bethlehem was held on the above date at the Town Hall Auditorium, 445 Delaware Avenue, Delmar, NY. The Meeting was called to order at 7:00 PM.

<table>
<thead>
<tr>
<th>Attendee Name</th>
<th>Title</th>
<th>Status</th>
<th>Arrived</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daniel Coffey</td>
<td>Chairman</td>
<td>Present</td>
<td></td>
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<tr>
<td>Holly Nelson Lutz</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Matthew C. Watson</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Dave Devaprasad</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Nicholas R. Cartagena</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Michael Moore</td>
<td>Planning/Zoning Board Counsel</td>
<td>Present</td>
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<tr>
<td>Kathleen Reid</td>
<td>Assistant to the Zoning Board of Appeals</td>
<td>Present</td>
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<tr>
<td>Mark Platel</td>
<td>Assistant Building Inspector</td>
<td>Present</td>
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II. Public Hearings

A. Public Hearing for an application submitted by Anthony DeThomas for an area variance located at 456 Russell Road. Applicant proposes to combine a portion of the parcel located at 14 Eastland Circle to the existing lot at 456 Russell Road, where a lot line revision will be required, and then subdivide the new parcel into two parcels. The proposed lots would not meet the Towns lot width requirements.

The Applicant is proposing a subdivision to a parcel of land which is the combination of an existing vacant lot with a portion of another existing occupied lot. The two new proposed lots will be 77.94' and 72.06' wide at the building line which would be 22.06' and 27.94' shy of the 100' required.

The property is located in a Residence "A" Zoning District and the current use of the properties are as a single family dwelling and vacant land. The Applicant advised that the existing shed on the property will be removed.

A Motion to indent the Meeting into the record was made by Mr. Watson, Seconded by Ms. Lutz.
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, September 7, 2016 at 7:00 PM., at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Anthony DeThomasis, for an area variance located at 456 Russell Road, Albany. Applicant is proposing the construction of two single family dwellings that does not meet the minimum lot width requirement as required by Town Law under Article III, Section 128-100(A).

Tom Shepardson, Esq. represented the Applicant, Anthony DeThomasis, who was also present to answer questions from the Board.

The following items were discussed:

- Asking price of homes proposed
- Size of homes proposed
- Location of homes in orientation to the lot
- Design of homes

The Board requested the following: examples of other homes in the vicinity with the same lot width, drawings of the proposed homes and letters from neighbors in favor of the project.

David Fischer of 27 Pinewood Avenue located adjacent to the property spoke in favor of the variance.

There was no one present to speak in opposition to the variance.

The Application will go to the Albany County Planning Board for review at its September 15, 2016 Meeting.

The Board voted to table the Public Hearing as follows:
RESULT: KEPT OPEN

B. Public Hearing continuation for an application submitted by Leo Valenchis of No Name Sign Company on behalf of Delmar Full Gospel Legacy Church - 282 Elsmere Ave, Delmar. Applicant would like to erect signage that does not meet the requirements of the town code under Article VI, Section 128-59.

The application was first before the Board for a Public Hearing on July 20, 2016 at that time the Board requested the applicant come back with the following:
1. A cost comparison of internally illumination opposed to goose neck lighting
2. Expenses incurred to construct an externally illuminated sign that complies with Town Code
3. Pictures of similar signs with the same illumination

The Application was before the Albany County Planning Board (ACPB) on July 21, 2016 - where they found that the proposed action will have no significant countywide or intermunicipal impact and deferred for local consideration.

Leo Valenchis of No Name Sign Company and Pastor David Gericke presented information the Board requested at the July 20, 2016 Meeting. The Board inquired if the Applicant would consider a smaller sign. A discussion ensued regarding the benefits of the “push thru” internal illumination proposed compared to external illumination required by the Town’s Zoning Code. While the Applicant was not opposed to a lesser variance to bring the size of the sign closer to the codes requirement he would prefer the proposed internal illumination be approved.

There was no one present to speak in opposition or in favor of the variance.

The Public Hearing was closed as follows:

RESULT: CLOSED [UNANIMOUS]
MOVER: Nicholas R. Cartagena, Board Member
SECONDER: Holly Nelson Lutz, Board Member
AYES: Coffey, Lutz, Watson, Devaprasad, Cartagena

III. Applications - Review and Possible Public Hearing Scheduling

IV. Resolutions

V. Discussion/Possible Action

- DELMAR FULL GOSPEL LEGACY CHURCH - 282 ELSMERE AVENUE

Motion To: Vote on Internal Illumination for Proposed Signage
Chairman Coffey -
Denied internal illumination as the code requirement is for external lighting only.
Mr. Devaprasad -
Approved the internal illumination of the sign as the benefits of the new internal lighting technology out weigh the external lighting as required.
Mr. Watson -
Approved internal illumination and felt the code has not kept up with new lighting technology and would suggest a timer for the lights to turn off at 9 PM.
Mr. Cartagena -
Denied the internal illumination as the code requirement is for external lighting.
Ms. Lutz -
Denied the internal illumination as the code requirement is for external lighting and suggested the Applicant request the Town review the new technology for lighting and consider revising the code due to the number of sign variances received by the Board of Appeals.
RESULT: DENIED [3 TO 2]
MOVER: Nicholas R. Cartagena, Board Member
SECONDER: Holly Nelson Lutz, Matthew C. Watson
AYES: Daniel Coffey, Holly Nelson Lutz, Nicholas R. Cartagena
NAYS: Matthew C. Watson, Dave Devaprasad

Motion To: Vote on Height Variance for Proposed Signage
RESULT: APPROVED [3 TO 2]
MOVER: Dave Devaprasad, Board Member
SECONDER: Nicholas R. Cartagena, Board Member
AYES: Daniel Coffey, Dave Devaprasad, Nicholas R. Cartagena
NAYS: Holly Nelson Lutz, Matthew C. Watson

The height of the sign was approved up to 6.83'

Motion To: Vote on Size Variance for Proposed Signage
RESULT: APPROVED AS AMENDED [UNANIMOUS]
AYES: Coffey, Lutz, Watson, Devaprasad, Cartagena

The Board voted to amend the variance for overall size of the sign to reflect 30 square feet.

VI. New Business

A. Nicholas Cartagena

Chairman Coffey noted that Committee Member Nicholas Cartagena will be leaving the Board of Appeals his last meeting will be September 21, 2016.

VII. Minutes Approval

A. Wednesday, August 17, 2016
RESULT: ACCEPTED [UNANIMOUS]
SECONDER: Dave Devaprasad, Nicholas R. Cartagena
AYES: Coffey, Lutz, Watson, Devaprasad, Cartagena

VIII. Adjournment

Motion To: Adjourn
RESULT: ADJOURN [UNANIMOUS]
MOVER: Holly Nelson Lutz, Nicholas R. Cartagena
AYES: Coffey, Lutz, Watson, Devaprasad, Cartagena

The Meeting was adjourned at 8:02 PM

Next Regular Meeting September 21, 2016