I. Call to Order

II. Public Hearings

III. Applications - Review and Possible Public Hearing Scheduling
   A. Comfort Inn-37 Route 9W, Glenmont for Area Variance(s) under Article VI, Section 128-59, G. Signs and 128-59, K (18-01000018)

IV. Resolutions
   A. Matthew VanDerlofske-207 Old Quarry Road, Selkirk
   B. Jon Montgomery-136 Orchard Street, Delmar

V. Discussion/Possible Action

VI. New Business

VII. Minutes Approval
   A. Wednesday, November 07, 2018

VIII. Adjournment

Next Regular Meeting December 19, 2018
October 26, 2018

Mukesh Fansiwala
37 Route 9W
Glenmont, N.Y. 12077

Re: Sign Permit Application 18-830
Comfort Inn, 37 Route 9W
Glenmont, N.Y. 12077

Mukesh,

On September 20, 2018 an application was submitted to this office for alterations to the existing signs at the above referenced location. Upon review of the application for compliance with the Zoning Law of the Town of Bethlehem it has been determined that your proposal does not meet the requirements of the Law therefore your application has been denied.

Under Chapter 128, Zoning, Article VI, Supplemental Regulations, Section 128-59, Signs, G. Signs in the R and C Zoning Districts, only one freestanding sign is permitted up to 40 square feet not exceeding 15 feet in height and Section 128-59, K., any preexisting nonconforming sign that is altered must meet the current requirements of the Zoning Law. Your proposed change to the existing signs do not meet the current sign requirement for height, size and number of freestanding signs. At this time you may either modify your application to meet the applicable sign requirements, withdraw your application or you may apply to the Zoning Board of Appeals to try and obtain a variance from the aforementioned Article and Sections of the Code. If you choose to apply to the Zoning Board of Appeals I would direct you to Kathleen Reid, the Assistant to the Zoning Board. Kathleen will be able to guide you through the variance process.

At this time you have 60 days from the date of this letter to apply to the Zoning Board, modify the proposal or withdraw your application. Failure to do so within the 60 days will result in the application being voided with no further chance for appeal.

Sincerely,

Mark J. Platel
Assistant Building Inspector
Town of Bethlehem
TOWN OF BETHLEHEM  
ZONING BOARD OF APPEALS  
Area or Use Variance  
VARIANCE APPLICATION

Address of Variance:  37 Route 9W, Glenmont, NY 12077

Presently Zoned:  C Zoning District  Tax map #:  

Name, Address and Telephone # of Applicant:  Mike Fayinwala
37 Rte 9W, Glenmont, NY 12077  
Phone #: 518 369-3115

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

Name, Address and Telephone # of Representative:  Mike Fayinwala
37 Rte 9W, Glenmont, NY 12077  
Phone #: 518 369 3115

For a variance under Article(s)  Chapter 128 Zoning, Article VI,  
Supplemental Regulations, Section 128-59

Requested for the purpose of  Replacing existing 7' Sign Free  
Standing Signs  

Was an application made for a Building Permit?  Yes ☑ No ___ When 9/20/2018
Estimated time required to complete the project Three months

Revised 8/23/2011

Variance Application
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 detrimental change to nearby properties or an undesirable change in the neighborhood character for the following reasons:

   - Existing Signs
   - New Replacement will be of smaller or
     close to existing
   - Should not impact Neighborhood

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.

   The property is located between two
   high way Rt 9W and I-87. Signage are
   required to represent property on both side.
   Due to visibility needed, size and height are
   required as proposed.
3. Whether the variance is substantial. The requested variance is not substantial for the following reasons:

- Similar layout and height as existing
- Smaller size than existing

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:

- No adverse or environmental impact

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.

Was not self-created

As per required by choice hotels international franchise with new sign requirements
**Short Environmental Assessment Form**  
**Part 1 - Project Information**

**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>Exterior Signage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Location (describe, and attach a location map):</td>
<td>Comfort Inn, 37 Rt 9W, Glenmont, NY 12077</td>
</tr>
<tr>
<td>Brief Description of Proposed Action:</td>
<td>Replace existing free standing signs at same location</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Applicant or Sponsor:</th>
<th>Myfansi, Inc / Mike Fansina/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>37, Rt 9W Glenmont</td>
</tr>
<tr>
<td>City/PO:</td>
<td>Glenmont</td>
</tr>
<tr>
<td>State:</td>
<td>NY</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>12077</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
   - If YES, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If NO, continue to question 2.

2. Does the proposed action require a permit, approval or funding from any other governmental Agency?  
   - NO  - YES
   - If YES, list agency(s) name and permit or approval:

3. a. Total acreage of the site of the proposed action?  
   - If YES: 11 acres
   - b. Total acreage to be physically disturbed?  
   - If YES: 0 acres
   - c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?  
   - If YES: 0 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

**Page 1 of 3**
5. Is the proposed action,
a. A permitted use under the zoning regulations?  
   ◼ NO ◼ YES ◼ N/A

   b. Consistent with the adopted comprehensive plan?  
      ◼ NO ◼ YES ◼ N/A

6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?  
   ◼ NO ◼ YES ◼ N/A

7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?  
   If Yes, identify:

8. a. Will the proposed action result in a substantial increase in traffic above present levels?  
      ◼ NO ◼ YES ◼ N/A

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

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

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:

10. Will the proposed action connect to an existing public/private water supply?  
    If No, describe method for providing potable water:
    ◼ NO ◼ YES ◼ N/A

11. Will the proposed action connect to existing wastewater utilities?  
    If No, describe method for providing wastewater treatment:
    ◼ NO ◼ YES ◼ N/A

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

   b. Is the proposed action located in an archeological sensitive area?  
      ◼ NO ◼ YES ◼ N/A

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 ◼ N/A

   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:

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

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 ◼ N/A

16. Is the project site located in the 100 year flood plain?  
   ◼ NO ◼ YES ◼ N/A

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 ◼ N/A

    b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?  
       If Yes, briefly describe:  
       ◼ NO ◼ YES ◼ N/A
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>[✓]</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>
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<tbody>
<tr>
<td></td>
<td>[✓]</td>
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</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>[✓]</td>
</tr>
</tbody>
</table>

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

Applicant/sponsor name: Mike Fanyikale  
Signature:  
Date: 11/6/2018
INN CODE: NY219

COMFORT INN
37 RT 9 W
GLENMONT, NY 12077

PROPOSED SIGNS:
1. WALL SIGN TO BE REMOVED.
2. 24" SET OF CHANNEL LETTERS [LINEAR STACKED]
3. 9-5 1/2" X 7-11" @ 23-5' OAH
4. 6-5 1/2" X 5' 4-7/8" @ 15'-5" OAH

EXISTING SIGNS:
1. 10'-5" X 8'-6" WALL SIGN
2. NO EXISTING CHANNEL LETTERS
3. 10'-5" X 6'-5" @ 23'-5" OAH
4. 10'-5" X 6'-5" MID-RISE @ 15'-5" OAH

NOTE: Elevation drawings are for customer approval only, drawings are not to be used as any installation guide, all dimensions must be verified before installation.

SIGN TO BE REMOVED/NOT REPLACED.
Oversize Signs on Rt. 9W
MRFANSI, Inc d/b/a Comfort INN, Glenmont
37 Route 9W, Glenmont, NY 12077

GLENMONT PLAZA
392 Feura Bush Rd, Glenmont, NY 12077

QUALITY INN
15 Frontage Rd, Glenmont, NY 12077

JOHNNY B'S GLENMONT DINNER
21 Frontage Rd, Glenmont, NY 12077

PETROL
294 Route 9W, Glenmont, NY 12077
Matthew VanDerlofske
207 Old Quarry Road, Selkirk

RESOLUTION

* * *

* * *

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York ("Board") seeking an area variance under Town of Bethlehem ("Town") Zoning Law, Chapter 128 of the Town Code ("Code"), Article VI, Supplemental Regulations, §128-67.2 E(3)(a)(1) Solar Photovoltaic Systems, small-scale ground-mounted Solar PV systems as accessory use (location in front yard prohibited) requested by Matthew Vanderlofske ("Applicant") for property at 207 Old Quarry Road, Selkirk, 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 October 17, 2018, and continued on November 7, 2018; and,

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

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

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

FINDINGS OF FACT

Applicant’s property is located at 207 Old Quarry Road and is occupied by a single-family residence. Applicant proposes to construct a small-scale ground-mounted solar PV array designed to supplement the existing solar array located on the Vanderlofske’s garage roof which will serve the Applicant’s electrical demands at his property. Due to the location of the house, topography, existing vegetation and property restrictions, the Applicant proposes to install the small-scale ground-mounted solar PV system in the front yard. Such solar arrays are not allowed in the front yard pursuant to Section 128-67.2 (E)(3)(a)(1) of the Code.

Applicant Matthew Vanderlofske testified in support of the application at both public
Applicant stated that the relief was required to accommodate the addition of a 12kW ground-mounted solar PV system that is intended to address the Applicant’s efforts to minimize his family’s carbon footprint and is needed due to the Vanderlofskes’ use of two (2) electric powered vehicles and a geo-thermal heat pump system. The Applicant stated that the original solar PV system consisting of 24 solar panels provided 100% of the family’s electricity needs until they added two EVs and a geo-thermal heat pump and additional electric load was required. As a result, Mr. Vanderlofske proposes to install this additional ground-mounted solar PV system consisting of 36 solar panels to enable the combined solar PV systems to provide 80% of their electricity needs. They intend to reduce the need for grid supplied electricity further by introducing energy efficiency measures.

The Applicant testified that he received evaluations from four (4) solar PV installers all of whom recommended placement of the new solar PV system in the front yard. Due to topography, the limited southern exposure in the back and side yards and existing vegetation in the rear of the property, installation of that location would result in inefficient and low output of the system as direct sun would be blocked from noon to sunset. To overcome these deficiencies at that location, a much larger and expensive system would be required. This additional cost, Mr. Vanderlofske testified, would make it uneconomic to install the solar PV array. For these reasons, Mr. Vanderlofske testified it is not feasible to install the system in compliance with the Code requirements.

Mr. Vanderlofske testified that his array would be located ±262 feet from the road (also shown on the site plans submitted by the Applicant) and due to topography would only be visible from one neighbor. Mr. Vanderlofske advised he spoke with that neighbor who supported the project and was willing to testify if needed. The array would be located to the right of his driveway and have existing mature vegetation screening it from neighbors.

Mr. Martelle stated that the Board and Town have supported the deployment of solar energy and other forms of clean energy and approved variances at other properties to accommodate installation of solar arrays. He noted the Applicant’s testimony that his property offered limited locational choices that would ensure sufficient sunlight for the solar PV system to operate efficiently. He also noted the Applicant’s testimony that, without a variance, a much larger and costlier installation would be required due the in greater inefficiencies caused by the limited sunlight exposure for an array in the rear or side yards.

Ms. Barnes stated that the unique topography and exposure of the property together with the
significant distance the array will be setback from Old Quarry Road and the nature of the neighborhood having large lots and distance between homes diminishes the possibility of a negative precedent being established. Mr. Beams agreed that this application stands on its unique facts and circumstances and will actually result in a positive environmental benefit.

The Albany County Planning Board received the referral of the application and determined that the application would have no significant County-wide impact.

Applicant testified that he has spoken with their neighbors about the proposed solar PV system, and none expressed any opposition or concerns.

The Board received no other written or oral testimony concerning the application.

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 photographs and documents submitted by the Applicants, the Board determines that the proposed area variance (allowing a small-scale ground-mounted solar PV system in a front yard) will be granted.

The Board has determined that the requested variance will be a benefit to the Applicants in the use and enjoyment of their home and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. The Board determines that the proposed solar array would provide a cost-effective means of providing a substantial amount of the Vanderlofske’s electrical needs without creating any negative effects on the surrounding properties and neighbors. The distance from the road, existing mature vegetation and topography all mitigate any potential impacts associated with placement of such equipment in a front yard.

The benefit sought by the Applicant, reducing his family’s carbon footprint by generating up to 80% of the family’s electrical power needs through clean, renewable solar energy, cannot be achieved by some method other than a variance.

The requested variance will have no adverse effect on the physical or environmental conditions in the neighborhood due to the distance of the array from the road and the unique topography of the property.

The requested variance is not insubstantial, but the Board determines that it is the minimum variance that is necessary and adequate to the Applicant’s needs, while still preserving the character of the neighborhood. In addition, the Board determined that the unique characteristics of the Applicant’s property (steep topography, limited southern exposure and significant set back from Old Quarry Road and neighbors) make it unlikely that this variance will create unwanted precedent for other properties in the town seeking similar relief.
The alleged difficulty necessitating the requested variance has been created by the Applicants desire to expand their solar PV array, but this factor is outweighed as described in the above Findings and Conclusions.

The proposed addition is a “Type II” action under the New York State Environmental Quality Review Act (“SEQRA”) (Environmental Conservation Law Article 8 and its implementing regulations at 6 NYCRR Part 617.5 [c] [9] and [10]), and no environmental impact review is required.

The requested variance (allowing a small-scale ground-mounted solar PV system in the front yard) is GRANTED, on the following conditions:

1. The project is subject to review by the Town Planning Board and must secure all necessary approvals prior to issuance of a building permit; and
2. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

November 7, 2018

S. David Devaprasad
Chairman
Zoning Board of Appeals

ROLL CALL VOTE

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Abstain/Absent</th>
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<tbody>
<tr>
<td>Chairman Devaprasad</td>
<td></td>
<td></td>
<td>X</td>
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<tr>
<td>Jeremy Martelle</td>
<td>X</td>
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<tr>
<td>Jane Barnes</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>Joshua Beams</td>
<td>X</td>
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<td></td>
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<tr>
<td>Donna Gilberto</td>
<td>X</td>
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The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on December ___, 2018.

Kathleen Reid, Secretary
Zoning Board of Appeals
WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York ("Board") seeking an Area Variance under the Town of Bethlehem ("Town") Zoning Law, Chapter 128 of the Town Code ("Code") Article VI, Supplementary Regulations, Section 128-47(B)(3) Fences (setback requirements for fences greater than four (4) feet on corner lots) requested by Jon Montgomery ("Applicant") for property at 136 Orchard Street, 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 November 7, 2018; and,

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

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

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

FINDINGS OF FACT

The Applicant proposed to construct a six (6) foot tall fence at his home located at 136 Orchard Street, Delmar, New York. The property is a corner lot at the intersection of Orchard Street and Brockley Drive. The proposed fence would replace an existing deteriorated and unsightly four (4) foot fence in the front yard and opposite the side yard, extend an additional six (6) feet near the house and an additional eight (8) feet at the rear of the yard and also extend along the rear property line sixteen (16) feet as shown in the sketch submitted by the Applicant.

The fence would be placed on the property line which does not meet the fifteen (15) foot setback required for fences exceeding four (4) feet as required by Section 128-47 (B)(3) of the Code.

Mr. Montgomery presented his application and testified in support of his requested variances. The proposed fence would serve several main purposes including: improving the aesthetics of the property by straightening the run of the fence, replacing the deteriorated fence with a new white vinyl fence, improving the safety of his children and pets by providing a more secure barrier to the traffic on Orchard Street and Brockley Drive, and by blocking on-coming
headlights from disturbing the Montgomerys in their yard and home.

Mr. Montgomery testified that since purchasing the home he and his family have undertaken significant efforts to improve the condition and appearance of the home and landscaping surrounding the property. After significant amounts of vegetation were removed at the direction of the Town Highway Department to ensure proper views at the corner and other removals of mature trees and vegetation done by the utility as part of its wires/right-of-way management practices, the Montgomerys suffered a significant decrease in privacy and had occasions where pets escaped from the yard due to the condition and size of the existing fence.

Mr. Montgomery testified that the proposed fence will be a clean, new white vinyl fence that will be easier to maintain and be an improvement over the existing fence which had become an eyesore to the property and neighborhood.

Due the removal of vegetation and the location of the existing fence, Mr. Montgomery testified that he did not have a feasible means of securing his yard in compliance with the requirements of Section 128-47(B)(3) of the Code. Based on past utility actions, he testified that it would not be feasible to maintain a vegetative barrier in that location. The height of the existing fence failed to adequately contain his pets and had a dog escape from the yard previously and that he worried that the condition of the existing fence was unsafe for his children.

Mr. Montgomery testified that visibility for traffic on Orchard Street and Brockley Drive would not be impacted by the installation of the fence. Existing buildings, trees and other vegetation block views of the side of the property from oncoming traffic.

Mr. Montgomery testified that the difficulty necessitating his need for the higher fence arose due to the utility actions to prune trees on his property in an unsightly manner and the safety issues arising from the existing fence condition which had exposed nails and had rotten pickets broken regularly. As such, his children and pets were in danger of injury. He is trying to correct the situation.

The Board received letters in support of the Application from several neighbors including Donald Moore, 112 Brockley Drive, Tami Richter, 142 Orchard Street, Louisa and Jeffery Soleau, 125 Brockley Drive, James Strohecker, 123 Brockley Drive, and Mr. Moore further testified in support of the Application at the November 7, 2018 Public Hearing. Mr. Montgomery testified he further spoke to several other neighbors who supported the project. The Board received no written or oral comments in opposition to the Application.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, after reviewing the application, sketches and photographs submitted, the testimony at the hearings and other documents submitted by the Applicant, the Board hereby determines that the proposed area variance to decrease the setback requirements for fences on corner lots greater than four (4) feet in height shall be GRANTED.

The Board has determined that he requested variance will be a benefit to the Applicant and his family in their continued use and enjoyment of the dwelling and will have no detrimental impact on the health safety or welfare of the community and the neighborhood. There will be no detrimental impacts and all oral and written testimony to the Board was in support of the
The benefits sought by the Applicant cannot be achieved by some method eliminating the need for the area variance. The location on a busy corner lot near the Bethlehem Central High School, Slingerlands Elementary School, and Eagle Elementary School necessitates the need for sufficient protection to ensure the safety of the family’s children and pets, provide adequate privacy and improve the appearance of the property.

The requested variance is not substantial and is the minimum necessary to and adequate to address the Applicant’s needs while still preserving the character of the neighborhood. The height requested complies with the requirements of Section 128-47 (B)(3) and the location was selected as it is the location of the existing fence.

The requested variance will have no adverse effect on the physical or environmental conditions in the neighborhood. In addition, as neighbors testified the installation of the fence will be an improvement to the condition of the property.

The difficulty necessitating the requested variance has been created by the applicant, but this factor is outweighed by the benefits of the proposed fence as described in the above Findings of Fact.

The Project is a Type II action under the State Environmental Quality Review Act (Environmental Conservation Law Article 8 and implementing regulations at 6 NYCRR Part 617.5 (c)(9),(10) ("SEQRA") and, therefore no environmental impact review is required.

The proposed area variance (for setbacks for fences greater than four (4) feet on corner lots) is hereby GRANTED on the following conditions:

1. The proposed fence shall be completed in accordance with the plans and sketches, testimony and exhibits given by the Applicant at the November 7, 2018 hearing except as the same may be modified by the Town Building Department;

2. The proposed fence shall be composed of white vinyl material as described by the Applicant at the November 7, 2018 hearing; and

3. The proposed construction shall be completed within the time required by Section 128-89(R) of the Code.

November 7, 2018

S. David Devaprasad
Chairman
Zoning Board of Appeals

- - -

ROLL CALL VOTE

Yes No Abstain/Absent
Chairman Devaprasad X
Jeremy Martelle  X
Jane Barnes  X
Joshua Beams  X
Donna Gilberto  X

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on December ____., 2018.

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 6:00 PM.

<table>
<thead>
<tr>
<th>Attendee Name</th>
<th>Title</th>
<th>Status</th>
<th>Arrived</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dave Devaprasad</td>
<td>Chairman</td>
<td>Excused</td>
<td></td>
</tr>
<tr>
<td>Jane Barnes</td>
<td>Board Member</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>Joshua Beams</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Donna Giliberto</td>
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<td>Present</td>
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<tr>
<td>Jeremy Martelle</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Mark Sweeney</td>
<td>Planning/Zoning Board Counsel</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>Mark Platel</td>
<td>Assistant Building Inspector</td>
<td>Excused</td>
<td></td>
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<tr>
<td>Craig Yaiser</td>
<td>Assistant Building Inspector</td>
<td>Present</td>
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</tr>
<tr>
<td>Kathleen Reid</td>
<td>Assistant to the Zoning Board of Appeals</td>
<td>Excused</td>
<td></td>
</tr>
<tr>
<td>Robin Nagengast</td>
<td>Assistant to the Executive Director</td>
<td>Present</td>
<td></td>
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1. Acting Chairman

Due to the absence of Chairman Devaprasad Jeremy Martelle served as Acting Chairman.

- INTRODUCE MARK T. SWEENEY-ATTORNEY TO THE BOARD OF APPEALS

Welcome Mark Sweeney as new counsel to the Board of Appeals to replace the position previously held by Michael Moore who has since retired. Mr. Sweeney’s position will be in effect until the end of 2018.

II. Public Hearings

A. Public Hearing for an application submitted by Jon Montgomery-136 Orchard Street, Delmar (18-01000017)

The Applicant is proposing to install a six foot high fence in the front yard, opposite the side yard. This will be two feet taller than the four foot allowed for front yards. The fence is proposed to be installed on the property line which will be fifteen feet short of the required setback.

A Motion to indent the Public Hearing notice into minutes was offered by Mr. Beams, Seconded by Ms. Barnes.
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, November 7, 2018 at 6:00 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Jon Montgomery for an area variance located at 136 Orchard Street, Delmar. The Applicant is proposing to construct a fence that does not meet the Town Zoning Code requirements under Article VI, Section 128-47(B) 3 Fences.

Mr. Montgomery spoke on his own behalf. The following items were discussed:

- Description of vegetation along Brockley Drive and Orchard Street when home was purchased.
- The Applicants rationale for requesting the additional fence height.
- Other options explored not feasible for Applicant.
- Clearing of vegetation by homeowner and Town.
- Description of proposed fence and location.

The Board received letters in favor from the following neighbors:

- Donald Moore - 112 Brockley Drive
- Tami Richter - 142 Orchard Street
- Louisa and Jeffrey Soleau - 125 Brockley Drive
- James Strohecker - 123 Brockley Drive

Donald Moore of 112 Brockley Drive was present to speak in favor of the proposal.

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

A motion to close the Public Hearing as follows:

RESULT: CLOSED [UNANIMOUS]
MOVER: Joshua Beams, Board Member
SECONDER: Donna Giliberto, Board Member
AYES: Jane Barnes, Joshua Beams, Donna Giliberto, Jeremy Martelle
EXCUSED: Dave Devaprasad

B. Public Hearing continuation for an application submitted by Cody Himelrick of Apex Solar Power on behalf of Matthew VanDerlofske-207 Old Quarry Road, Selkirk for an area variance Under Article VI, Section 128-67.2, Solar Photovoltaic (PV) systems. (18-01000016)

This Application was last before the Board for a Public Hearing on October 17, 2018 since then the applicant submitted an aerial photo as request by the Board. Albany County Planning Board determined that the proposed action would have no significant county wide impact.

Note - if the variance is approved the project will go to the town Planning Board for site plan
review.

The Applicant provided the Board with a brief summary of the presentation given at the October 17th Public Hearing.

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

The Board voted to close the Public Hearing as follows:

RESULT: CLOSED [UNANIMOUS]
MOVER: Jane Barnes, Board Member
SECONDER: Donna Giliberto, Board Member
AYES: Jane Barnes, Joshua Beams, Donna Giliberto, Jeremy Martelle
EXCUSED: Dave Devaprasad

C. Schools Out-81 Kenwood Avenue, Delmar - Applicant withdrew application for a Use Variance (18-01000001)

The project was last before the Board on March 21, 2018, at that time the Public Hearing was tabled. The Board received a letter dated October 12, 2018 from the Ferradino Law Firm advising that the Applicant has requested to withdraw the use variance request.

There was no one present to speak in favor or opposed to the request.

The Board voted to Close the Public Hearing as follows:

RESULT: CLOSED [UNANIMOUS]
MOVER: Donna Giliberto, Board Member
SECONDER: Jane Barnes, Board Member
AYES: Jane Barnes, Joshua Beams, Donna Giliberto, Jeremy Martelle
EXCUSED: Dave Devaprasad

III. Applications - Review and Possible Public Hearing Scheduling

IV. Resolutions

- MICHAEL KUZDZAL-49 ROTTERDAM DRIVE, GLENMONT

RESOLUTION

AV-1816

49 Rotterdam Drive, Glenmont

*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 Regulations, Section 128-40 G (Area, yard and bulk requirements of Dowerskill Village PDD; lot occupancy) requested by Michael and Christine Kuzdzal (“Applicants”) for property at 49 Rotterdam Drive, Glenmont, 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 October 3, 2018 and October 17, 2018; and,

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

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

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

FINDINGS OF FACT

Applicants propose to construct a 16’ x 20’ addition to the rear of their single-family dwelling in the Dowerskill Village Planned Development District. The total lot occupancy of the modified dwelling would be 21.83%, where the Town Code allows a maximum of 20%.

Applicant Michael Kuzdzal testified in support of the application.

The proposed addition would serve two purposes: 1) it would facilitate the future construction of a handicap accessible ramp in the garage leading into the dwelling, for use by Christine Kuzdzal; and 2) it would enable Michael Kuzdzal to relocate the equipment for his woodworking shop from the garage into the new addition.

There is a history of osteoarthritis in Mrs. Kuzdzal’s family. Applicants desire to remain in their home while making it more accessible for Mrs. Kuzdzal. The future ramp would allow her to drive into the garage and access the home directly by
wheelchair or walker from inside the garage. Mr. Kuzdzał’s woodworking hobby involves very heavy equipment including a vacuum system to remove dust and particulates. The dwelling was designed to enable Applicants to “age in place,” and Applicants do not wish to relocate.

There are no feasible alternatives which would allow Applicants to achieve these objectives without a variance. There is an 8’ x 12’ shed on the property; but removing the shed would not obviate the need for a lot occupancy variance, and would cost Applicants the storage space. Mr. Kuzdzał’s woodworking equipment and the vacuum system are very heavy and cannot be relocated to or operated in the basement of the home.

The proposed addition would be screened by trees at the rear and one side of the property, limiting any potential visual impacts.

The Board received a written letter in support of the application from one of the Applicants’ neighbors. Another neighbor, Chris Garabedian (43 Rotterdam Drive), spoke in favor of the application at the October 3, 2018 public hearing. By Resolution dated May 17, 2017 (AV-1712), the Board granted the Garabedians a larger lot occupancy variance (24.38%) based also in part on family medical needs (swimming facility for autistic child).

Mr. Kuzdzał testified that he has spoken with several of his neighbors on Rotterdam Drive about the proposed addition; and there was no testimony in opposition.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearings, and other documents submitted by the Applicants, the Board determines that the proposed variance (Area, yard and bulk requirements of Dowerskill Village PDD; lot occupancy) will be granted.

The Board has determined that the requested variance will be a benefit to the
Applicants in their continued use and enjoyment of the dwelling and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. There will be no detrimental visual impacts; and all testimony presented to the Board was in support of the project.

The two benefits sought by the Applicants, described above, cannot be achieved by some method other than a variance.

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

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

The alleged difficulty necessitating the requested variance has been created by the Applicants; but this factor is outweighed by the above Findings and Determinations.

The proposed addition is a “Type II” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 [c] [9], [10]), and no environmental impact review is required.

The requested variance (Area, yard and bulk requirements of Dowerskill Village PDD; lot occupancy) is GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicants at the October 3, 2018 and October 17, 2018 hearings except as the same may be modified by the Town Building Department;
2. In the construction of the addition, the Applicants shall match, as nearly as possible, the existing roofing and siding on the home; and

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

November 7, 2018

S. David Devaprasad
Chairman
Zoning Board of Appeals

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The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on November 12, 2018.

Kathleen Reid, Secretary
Zoning Board of Appeals

The Board voted to approve the Resolution as drafted by counsel as follows:

RESULT: APPROVED [UNANIMOUS]
MOVER: Joshua Beams, Board Member
SECONDER: Jane Barnes, Board Member
AYES: Jane Barnes, Joshua Beams, Donna Giliberto, Jeremy Martelle
EXCUSED: Dave Devaprasad

- - -

**ROLAND GRAVES-18 ONONDAGA COURT, SLINGERLANDS**

**RESOLUTION**

* * *
*

WHEREAS, pursuant to Town Code 128-90A, an appeal has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) by Roland Graves (“Appellant”) of 18 Onondaga Court, Slingerlands, New York, from a determination of the Town Building Inspector regarding an interpretation of the meaning of Town Code Section 128-56B (Off-street parking and loading, off-street parking space to be provided for all “dwellings”); and,
WHEREAS, the Board, acting on said appeal, 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 October 3, 2018; 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 determination regarding the proper interpretation of Town Code Section 128-56B:

BACKGROUND

This appeal by Roland Graves questions a decision made by the Town Building Inspector regarding the meaning and interpretation of the language of Town Code Section 128-56B. Pursuant to Town Code section 128-90A, the Board has the power to decide “any question involving interpretation of” Town Code Chapter 128 (Town Zoning Law). As set forth below, the Board determines that the Town Building Inspector’s interpretation of the meaning of section 128-56B is correct, and said interpretation is wholly affirmed.

UNDISPUTED PERTINENT FACTS

The Board finds that the following facts regarding this appeal are not in dispute. Appellant Roland Graves resides at 18 Onondaga Court, Slingerlands (Town of Bethlehem), New York. Appellant’s neighbor Ed Person resides at 14 Onondaga Court, Slingerlands. Mr. Person recently began parking on Onondaga Court, facing the Graves home, a motor vehicle which Mr. Graves and his family find offensive (“steer” horns, flags, decals, large vehicle). The vehicle is licensed, registered and inspected. Appellant has made complaints to various Town officials about the Person vehicle being parked near his home, seeking to have the Town direct the removal of the vehicle from Onondaga Court. On June 18, 2018, Chief Christopher Fuino of the Elmwood Park Fire District visited the area in question and sent a written
memorandum to Town Building Inspector Justin Harbinger reporting that in his opinion “the vehicle… did not impede fire apparatus from traveling on the roadway or conducting emergency operations.” On June 25, 2018, Town Attorney James T. Potter sent a letter to Appellant’s counsel Jeffrey Jamison, Esq. stating, among other things, that in the Town of Bethlehem “[p]arking cars on public streets is allowed unless parking restrictions are posted, except during restricted hours during the snow season. Parking restrictions are contained in Article III of Chapter 119 of the Town Code. There are no parking restrictions in front of 18 Onondaga Court.” On July 25, 2018, exercising his statutory powers (Town Code Section 128-81A), Town Building Inspector Justin Harbinger advised Attorney Jamison of his interpretation that Town Code Section 128-56B “requires off street parking spaces to be provided for all dwellings and is not applicable to the vehicle at issue parked on the street near 18 Onondaga Court.” On August 22, 2018, Attorney Jamison filed on appeal to the Board on behalf of Mr. Graves pursuant to Town Code section 128-90A contending that Town Code Section 128-56B prohibits the parking of the subject vehicle on Onondaga Court, and that the Town must act to compel the removal of the vehicle.

The Board held a public hearing on the Graves appeal on October 3, 2018. Attorney Jamison and Mr. Graves testified in support of the appeal. The Board also heard testimony from Mr. Person, and from Town Building Inspector Harbinger.

THE STATUTE IN QUESTION

Town Code Section 128-56 is entitled “Off-street parking and loading.” Section 128-56A provides, generally, that “Off-street parking spaces shall be required for all structures and uses” established after the effective date of Chapter 128. Other portions of Section 128-56 provide for the dimensions of off-street parking spaces (subsection C), the location of off-street parking in various zoning districts (subsections F and G), a Schedule of the number of required Off-Street Parking spaces for various Residential and Nonresidential Uses (following subsection H), “joint parking” lots (subsection J), landscaped areas
within larger “parking facilities” (subsection K) and off-street “loading facilities” (subsection L).

The full text of Section 128-56B reads as follows:

Off-street parking space shall be provided for all dwellings. No portion of the right-of-way of an existing or proposed street or highway shall be used for parking space(s) for a residential use. A parking space may be fully enclosed (as a garage), covered (as a carport) or open. An open parking space shall have a minimum length of 20 feet and a minimum width of nine feet, not including the access drive or maneuvering space.

BUILDING INSPECTOR INTERPRETATION

At the October 3, 2018 hearing, Town Building Inspector Harbinger stated that “Section 128-56B, when read in full and with the rest of Section 128-56, is a requirement for off-street parking spaces at all ‘dwellings’ in the Town… and does not prohibit parking of vehicles on Town streets in general, or on Onondaga Court in particular.”

APPELLANT’S PROPOSED INTERPRETATION

At the October 3, 2018 hearing, Appellant, through Attorney Jamison, proposed a contrary interpretation, based on what he referred to as the “plain language” of a single sentence in Section 128-56B. Appellant proposed that Section 128-56B allegedly prohibits the parking of vehicles on all Town-owned residential streets in the Town at all times. The single sentence relied upon by Appellant and his attorney reads:

“No portion of the right of way of an existing or proposed street or highway shall be used for parking spaces for a residential use.”

DETERMINATION

In deciding this appeal, the Board has reviewed and considered the entire text
of Town Code Section 128-56 in order to determine the objective and purpose of the statute. The Board hereby determines that the objective and purpose of Section 128-56 is to specify the required number of “off-street parking spaces” and the location and dimensions of such “spaces” for various uses of land and various zoning districts in the Town. Consistent with this purpose, Section 128-56B begins: “Off-street parking space shall be provided for all dwellings.” Section 128-56B goes on to describe the types of off-street “parking spaces” that may be provided, including “enclosed (as a garage),” “covered (as a carport),” or “open”. The Board further determines that the term “parking space” in each of the three sentences subsequent to and consistent with the first sentence stating that “[o]ff-street parking space shall be provided for all dwellings,” is intended to refer to, encompass, and mean “off-street parking space.” The Board, in reaching its determination on this appeal, is guided more by the statute’s objective and purpose than by particular phraseology. Contrary to the argument of Appellant and his counsel, the objective and purpose of Section 128-56B is not to establish parking prohibitions on Town residential streets.

In deciding this appeal, the Board has also construed Section 128-56B as a whole, harmonizing all the language of Section 128-56B and giving effect and meaning to every part and word of Section 128-56B. In contrast, Appellant and his counsel incorrectly tear a single sentence out of Section 128-56B and attempt to give that single sentence a special meaning that conflicts with the objective and purpose of the entire statute (as discussed above), as well as each of the other sentences in the section.

Finally, the Board has considered the meaning and purpose of the words “right of way” in the single sentence from Section 128-56B incorrectly relied upon by Appellant and his counsel. At the October 3, 2018 hearing, the Town Building Inspector testified that the Town-owned “right of way” of most residential streets in Bethlehem is 50 feet wide; and that this right of way frequently extends into the yards of residential uses adjoining the right of way. The Board thus determines that this view of the term “right of way” furthers the overall objective and purpose of Section 128-56 by prohibiting the use of any “portion” of the Town-owned right of way on residential property for the required “off-street parking space” at “dwellings.”

The Board’s interpretation of Town Code Section 128-56B is a “Type II” action under the State Environmental Quality Review Act (SEQRA) (6 NYCRR
The Town Building Inspector’s interpretation of Town Code Section 128-56B is hereby AFFIRMED, in its entirety, and the appeal seeking a contrary interpretation is DENIED.

October 17, 2018

S. David Devaprasad
Chairman
Zoning Board of Appeals

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on October ____, 2018.

Kathleen Reid, Secretary
Zoning Board of Appeals

The Board voted to approve the Resolution as drafted by counsel to DENY the appeal as follows:

RESULT: APPROVED [UNANIMOUS]
MOVER: Donna Giliberto, Board Member
SECONDER: Joshua Beams, Board Member
AYES: Jane Barnes, Joshua Beams, Donna Giliberto, Jeremy Martelle
EXCUSED: Dave Devaprasad

V. Discussion/Possible Action

• JON MONTGOMERY-136 ORCHARD STREET, DELMAR

The Board voted to APPROVE the variance request as follows:

Mr. Martelle-
Not a negative or environmental impact to the neighborhood
Aesthetically pleasing
Hardship not self-created
Height of fence would shield lights from approaching vehicles

Mr. Beams-
For all reasons previously stated

Ms. Barnes-
Proposed fence would improve the appearance of the property/neighborhood
For all reasons previously stated
Ms. Giliberto-
For all reasons previously stated
Safety Concerns
Neighbors in favor

- MATTHEW VANDERLOFSKE-207 OLD QUARRY ROAD, SELKIRK

The Board voted to APPROVE the variance request as follows:
Mr. Martelle-
Not a negative or environmental impact to the neighborhood
Positive environmental impact
Significant cost to locate elsewhere
Not and undesirable change or detriment to neighborhood
Not self-created
Ms. Giliberto-
Due to configuration of property no other feasible location
Not an undesirable change to neighborhood
Benefit cannot be achieved by any other feasible means
Variance is not substantial
Positive environmental impact
Ms. Barnes -
For all reasons previously stated
Parcel is unique
Mr. Beams -
Not a substantial variance
Positive environmental impact
Not undesirable change to neighborhood
Parcel is unique

- SCHOOLS OUT-81 KENWOOD AVENUE, DELMAR

VI. New Business

Due to the Thanksgiving Holiday the November 21, 2018 Board of Appeals Meeting is cancelled. The next Regular Meeting is scheduled for December 5, 2018.

VII. Minutes Approval

A. Wednesday, October 17, 2018
RESULT: ACCEPTED [UNANIMOUS]
MOVER: Jane Barnes, Board Member
SECONDER: Joshua Beams, Board Member
AYES: Jane Barnes, Joshua Beams, Donna Giliberto, Jeremy Martelle
EXCUSED: Dave Devaprasad

VIII. Adjournment

Motion To: Adjourn
RESULT: ADJOURN [UNANIMOUS]
MOVER: Donna Giliberto, Board Member
SECONDER: Joshua Beams, Board Member
AYES: Jane Barnes, Joshua Beams, Donna Giliberto, Jeremy Martelle
EXCUSED: Dave Devaprasad

The Meeting was adjourned at 6:46 PM

Next Regular Meeting December 5, 2018