I. Call to Order

II. Public Hearings
   A. Public Hearing for an Appeal Application submitted by Andrew W. Leja, ESQ. of Barclay Damon LLP on behalf of Florence A. Santiago of 3 Bedell Avenue, Delmar, for an appeal of the Building Inspector's determination for 224 Delaware Avenue, Delmar site plan application related to lot density under Article 128-90(A) Interpretations. Section 128-100, Schedule of Area Yard and Bulk Requirements. (19-01000015)
   
   B. Metabolic Meltdown-28 Hudson Avenue, Delmar-for an Area Variance under Article VI, Section 128-59, D Signs(6) (19-01000012)

III. Applications - Review and Possible Public Hearing Scheduling

IV. Resolutions
   A. Eileen Thornberry-39 Gladwish Road, Delmar

V. Discussion/Possible Action
   1. Florence A. Santiago-224 Delaware Avenue, Delmar
   2. Metabolic-28 Hudson Avenue, Delmar

VI. New Business

VII. Minutes Approval
   A. Wednesday, October 16, 2019

VIII. Adjournment
   Adjourn

Next Meeting November 20, 2019
WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York ("the Board") seeking an Area Variance under Article VI, Supplemental Regulations, Section 128-47 Fences and Freestanding Walls in Residential Districts, (B) Fences (2) Height between four feet (4’) and six feet (6’) allowed in side or rear yards (to allow a seven foot (7’) tall fence in the side yard) requested by Eileen Thornberry ("Applicant") for property at 39 Gladwish Road, 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 October 16, 2019; 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’s property is located on Gladwish Road in the Core Residential District and is occupied by a single-family residence. Applicant proposes to construct a ± seven foot (7’) tall fence in one side yard (the other fencing to be installed will be six feet (6’) as permitted in the Code). The proposed fence would exceed the height restriction by one foot (1’) which is not permitted under the Town Code.

Applicant Eileen Thornberry testified in support of the application.

Applicant chose the proposed location for the seven foot (7’) tall fence due to the unique slope of the side yard which slopes down and away from the house. Ms. Thornberry testified that the additional height is necessary to maintain a pleasant aesthetic and appearance from the street. In addition, Ms. Thornberry testified that she has deer entering her yard and eating shrubbery.
and posing a potential health risk due to deer borne ticks which can carry lyme disease. Ms. Thornberry further testified that she and contacted the Cornell Cooperative who recommended deer resistant shrubbery and ground cover as well as a fence height of 10’-12’ to deter deer from jumping the fence. The 7’ tall fence will be installed at the same time as compliant 6’ tall fencing in the opposite side yard as there are no slopes requiring taller fencing. The rear property line is already fenced from an adjacent property.

Applicant submitted to the Board photographs of the property and drawings showing the location of the 7’ tall fencing to be installed.

Bill Dunne, 47 Gladwish Rd submitted an email to the Board in support of the variance. Michael Mullen, 42 Gladwish Road and Thomas Daniels, 13 Dumbarton Road, Delmar were present and spoke in favor of the variance.

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 documents submitted by the Applicant, the Board determines that the proposed variance (§ 128-47 (B)(2) fence height above 6’) will be granted.

The Board has determined that the requested variance will be a benefit to the Applicant in the use and enjoyment of her home and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. The Board determines that the fence will be a benefit to the neighborhood by improving the property’s appearance and utility.

The benefit sought by the Applicant, improving the appearance of the home and deterring deer from the yard where yard slopes away from the house, 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 not substantial, but the Board determines that the unique sloping of this side yard of the parcel mitigates any impact of the additional height of the fence and that the requested variance is the minimum variance necessary and adequate to the Applicant’s needs and, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variance has been created by the Applicant’s desire to add a taller fence than is permitted, but this factor is outweighed by the
The proposed addition is a “Type II” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 [c] [9] and [10]), and no environmental impact review is required.

The requested variance to allow a seven foot (7”) tall fence in the side yard from the provisions of Article VI, § 128-47, (B)(2) of the Code 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 16, 2019 hearing 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.

October 16, 2019                                      S. David Devaprasad
Chairman  
Zoning Board of Appeals

ROLL CALL VOTE

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<tr>
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<th>Yes</th>
<th>No</th>
<th>Abstain/Absent</th>
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<tbody>
<tr>
<td>Chairman Devaprasad</td>
<td>X</td>
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<td>Jeremy Martelle</td>
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<td>Jane Barnes</td>
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<td>Joshua Beams</td>
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<td>Donna Gilberto</td>
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The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on October ___, 2019.

Kathleen Reid, Secretary
Zoning Board of Appeals
To: The Town of Bethlehem  
From: AJ Sign Co  
Re: 28 Hudson Ave  
   Metabolic fitness sign variance  

To Whom it may concern,  

Please accept this letter as official notification that we will be withdrawing our application for a 12 sq. foot internally lit sign for Metabolic at 28 Hudson Ave. We will submit new sign plans for an externally lit sign at a later time.  

Sincerely  

Kristen MacLeod  
AJ Sign Co
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>
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<tbody>
<tr>
<td>Dave Devaprasad</td>
<td>Chairman</td>
<td>Present</td>
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<tr>
<td>Jane Barnes</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Joshua Beams</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>Donna Giliberto</td>
<td>Board Member</td>
<td>Excused</td>
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<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>
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<tr>
<td>Craig Yaiser</td>
<td>Assistant Building Inspector</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>
<td></td>
</tr>
</tbody>
</table>

II. Public Hearings

A. Eileen Thornberry-39 Gladwish Road, Delmar, Article VI, Section 128-47, Fences, B.(2)

The Applicant is proposing to construct a 7 foot fence in the side yards. The fence will be one foot taller than the allowed 6 foot fence for side and rear yards.

The lot is located in the Core Residential District and is currently a single family dwelling.

A motion to indent the Public Hearing notice into the minutes was offered by Chairman Devaprasad, 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, October 16, 2019 at 6:00 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by Eileen Thornberry for an Area Variance located at 39 Gladwish Road, Delmar. The Applicant is proposing to erect a fence that does not meet the Town Zoning Code requirements under Article VI, Section 128-47, Fences B (2)
Eileen Thornberry was present to speak on her own behalf. She expressed the need for a 7 foot fence to deter deer from her garden area.

She testified that the fence contractor recommended a higher fence on the right side of the property due to the unique grading of the lot. The higher fence would create a level elevation constituting a desired look.

Ms. Thornberry submitted a memo dated 8/26/2019 from Cornell Cooperative Extension recommending a 10-12 foot fence to deter deer.

The Board received a letter from Bill Dunne of 47 Gladwish Road in favor of the request. Thomas Daniels of 139 Dumbarton Drive and Michael Mullen of 42 Gladwish Road spoke in favor of the request.

There was no one present to speak in opposition.

The Board voted to close the Public Hearing as follows:

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

B. The Pike Company - Airco-76 West Yard Road, Feura Bush - ACTION - Close Public Hearing that was left open at the October 2nd Meeting.

The Board voted to close the Public Hearing that was left open in error at the October 2nd meeting.

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

III. Applications - Review and Possible Public Hearing Scheduling

- ACCEPT APPLICATION AND SET A PUBLIC HEARING FOR AN APPEAL APPLICATION SUBMITTED BY ANDREW W. LEJA., ESQ. OF BARCLAY DAMON LLP ON BEHALF OF FLORENCE A. SANTIAGO OF 3 BEDELL AVENUE, DELMAR, FOR AN APPEAL OF THE BUILDING INSPECTOR'S DETERMINATION FOR 224 DELAWARE AVENUE, DELMAR SITE PLAN APPLICATION RELATED TO LOT DENSITY UNDER ARTICLE 128-90(A) INTERPRETATIONS. SECTION 128-100, SCHEDULE OF AREA YARD AND BULK REQUIREMENTS. (19-01000015)

The Board voted to accept the Application and set the Public Hearing for November 6, 2019 at 6:00 pm.
RESULT: APPROVED [UNANIMOUS]
MOVER: Dave Devaprasad, Chairman
SECONDER: Jeremy Martelle, Board Member
AYES: Dave Devaprasad, Jane Barnes, Joshua Beams, Jeremy Martelle
EXCUSED: Donna Giliberto

IV. Resolutions

- 76 WEST YARD ROAD-SEQR RESOLUTION

SEQRA RESOLUTION
CLASSIFICATION OF ACTION and NEGATIVE DECLARATION
FOR MESSER, LLC

76 West Yard Road, Feura Bush
(Tax Parcel No. 108.00-1-9)

HEIGHT VARIANCE

WHEREAS, Messer LLC (“Applicant”) has submitted to the Town of Bethlehem Zoning Board of Appeals (“ZBA”) an application for an area variance to exceed the maximum building height of sixty feet (60’) in the Heavy Industrial (I) District (“Project”);

WHEREAS, the ZBA has received a Short Environmental Assessment Form (“EAF”) for the Project with Part I completed by the Applicant;

WHEREAS, the New York State Environmental Quality Review Act (“SEQRA”) regulations found at 6 NYCRR Section 617.3(a) require that no agency shall carry out, fund or approve an action until it has complied with the requirements of SEQRA;

WHEREAS, 6 NYCRR Section 617.6(a) requires that when an agency receives an application for approval of an action it must: (1) determine whether the action is subject to SEQRA, (2) determine whether the action involves a federal agency, (3) determine whether other agencies are involved, (4) make a preliminary classification of the action, (5) determine whether a short or full EAF will be used to determine the significance of the action, and (6) determine whether the action is located in an Agricultural District;

WHEREAS, this Project is the construction of a “Cold Box” used in the liquefication of gases as part of an existing industrial facility that will also require special use permit and site plan approval from the Town of Bethlehem Planning Board (Town Code section 128-67.2 [E]);
WHEREAS, this Project is an “unlisted” action under SEQRA;

WHEREAS, 6 NYCRR Section 617.6(b)(4) indicates that when more than one agency is involved in the review and approval of an unlisted action, an agency may conduct an “uncoordinated” review under SEQRA; and

WHEREAS, the ZBA has independently considered the information provided in the EAF and application materials, comments and testimony made during the public hearings held on September 4, October 2, and 16, 2019, the Recommendation of the Albany County Planning Board, and has completed Part II of the EAF.

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals hereby determines:

1. The Proposed Action (a) constitutes an Unlisted action which is subject to SEQRA, (b) the proposed action does not involve a federal agency, (c) is located in, or within 500 feet of, an Agricultural District and an Agricultural Data Statement has been prepared, and (d) a Short EAF is adequate for determining the significance of the proposed action;

2. An Uncoordinated review can be undertaken for the requested variance;

3. Based upon its review of the Project application materials and the EAF, review of the comments and testimony made during the public hearings held, and comparison with the Criteria for Determining Significance found at 6 NYCRR Section 617.7(c), the Zoning Board of Appeals hereby finds that approval of the area variance for the Project constitutes an action which will not have a significant adverse impact on the environment and, therefore, does not require preparation of a Draft Environmental Impact Statement;

4. This Determination of Significance shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law;

5. This Determination of Significance shall be transmitted to the Town Building Department and Town Department of Economic Development and Planning; and

6. That the Town Department of Economic Development and Planning is hereby authorized to file any and all appropriate notices so that the intent of this Resolution is carried out.
ROLL CALL VOTE

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

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on October 17, 2019.

Kathleen Reid, Secretary

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

THE PIKE COMPANY - AIRCO-76 WEST YARD ROAD, FEURA BUSH

RESOLUTION

AV-1915
Messer LLC
76 West Yard Road, Feura Bush

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 Article XIII, Use and Area Schedules, Section 128-100, A Schedule of Area, Yard and Bulk Requirements, Heavy Industrial (I) District, (maximum
building height of sixty feet (60’)) requested by Messer LLC (“Applicant”) for property at 76 West Yard Road, Feura Bush, 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 September 4, October 2, and October 16, 2019; 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’s property is located on 76 West Yard Road in Feura Bush and is the location of the current, operational gas plant owned by Messer LLC within the Heavy Industrial (I) District. Applicant proposes to construct a ± 70’6” Cold Box used in the liquefaction of gases as a back-up system for the existing plant. The proposed Cold Box would exceed the maximum building height requirement of sixty feet (60’) by 10’6” which is not permitted under the Town Code.

Applicant’s representative Daniel Hershberg, PE of Hershberg and Hershberg Consulting Engineers and Land Surveyors of Albany, NY testified in support of the application.

Applicant proposes to install a second Cold Box at its existing gas plant to serve, in the short term, as a back-up system in the liquefaction of gases which is an essential part of the Applicant’s business. It is part of a wider modernization program for the facility which is or will be under review by the Planning Board. Mr. Hershberg testified that the existing Cold Box on-site is ±125’ tall and, once the newly installed system becomes operational, the Applicant plans to eventually...
remove the much taller existing Cold Box (a prior variance was granted for the exceedance of the height restriction). He did confirm there is not currently an application to remove the old Cold Box but that the Applicant intended to do so. This project is located within the existing plant location and will ultimately reduce the exceedance of the height restriction by 54’6” when the old Cold Box is removed. Mr. Hershberg testified the that newer liquification processes allow the new Cold Box to be much smaller and that the proposed height is the minimum need to function properly.

Applicant submitted to the Board photographs of the property (including the existing Cold Box) and site plans and elevation drawings of the Cold Box which are similar in color nature and scale to the existing plant infrastructure.

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 documents submitted by the Applicant, the Board determines that the proposed 10’6” variance from the maximum building height restriction (§ 128-100, Schedule of Area, Yard and Bulk Requirements, Heavy Industrial (I) District, maximum building height of sixty feet (60’)) will be granted.

The Board has determined that the requested variance (i) will be a benefit to the Applicant in the use and enjoyment of its property, (ii) will have no detrimental impact on the health, safety or welfare of the community and the neighborhood as the property is located within the Heavy Industrial District and an existing industrial facility. The Board determines that the new Cold Box and eventual demolition of the much taller existing Cold Box will substantially reduce the visual impacts of the facility to the area.

The benefit sought by the Applicant, sufficient height for the liquification of gases, cannot be achieved by some method other than a variance and that the Applicant demonstrated that the 10’6” variance is the minimum necessary and adequate to the Applicant’s needs and, will not negatively affect the character of the
The requested variance will have no adverse effect on the physical or environmental conditions in the neighborhood.

The requested variance is not substantial and the Board notes that the ultimate removal of the much taller existing Cold Box will mitigate and reduce the existing impact of the facility.

The alleged difficulty necessitating the requested variance has been created by the Applicant need to install a back-up, modernized system to liquify gases but this factor is outweighed by the above Findings and Conclusions.

The proposed addition is an “Unlisted” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 [c] [9] and [10]), and the Board has undertaken a review of the proposed action and adopted a resolution determining that no significant adverse environmental impact would result.

The requested variance for a 10’6” exceedance of the maximum building height in the Heavy Industrial District (Article XIII, Use and Area Schedules, Section 128-100, A Schedule of Area, Yard and Bulk Requirements, Heavy Industrial (I) District, maximum building height of sixty feet (60’)) 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 January 2, 2019 hearing 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.

October 2, 2019

S. David Devaprasad
Chairman
Zoning Board of Appeals
ROLL CALL VOTE

Yes  No  Abstain/Absent

Chairman Devaprasad
Jeremy Martelle
Jane Barnes
Joshua Beams
Donna Gilberto

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on October 17, 2019.

Kathleen Reid, Secretary

Zoning Board of Appeals

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

V. Discussion/Possible Action

- **EILEEN THORNBERRY-39 GLADWISH ROAD, DELMAR**

  The Board voted to Approve the variance request as follows:

  Chairman Devaprasad-
  - for all reasons stated in the application and testified by the Ms. Thornberry
  - for aesthetics - due to grading on the lot creating an uneven elevation
  - fence L-shape would not create an undesirable effect
  - benefit cannot be achieved by any other means
  - not substantial due to grading of lot
  - no negative environmental or physical impacts
  - self-created mitigated by other factors mentioned
  - will deter deer from entering
Mr. Martelle-
• not substantial
• will deter deer from entering
• improvement to area
• no negative environmental or physical impacts

Mr. Beams-
• not substantial
• grade of property unique to house bringing cause to request for 7' fence

Ms. Barnes-
• grading on property is unique
• fence proposed will be level and aesthetically pleasing

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

VI. New Business

VII. Minutes Approval

A. Wednesday, October 02, 2019

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

VIII. Adjournment

Motion To:

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

The Meeting was Adjourned at 6:34 PM

Next Regular Meeting November 6, 2019