

## ZONING BOARD OF APPEALS

January 24, 2005

### MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 24, 2005, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 8:00 p.m.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Victor Carlson	-	Member
	Tim Pagones	-	Counsel
<b>ABSENT:</b>	Joan Turner	-	Member
	Bill Flaherty	-	Member

**Tim Pagones** - Do you want to do the completeness ones real quick and get them out?

**Vincent Cestone** - Sure

**Tim Pagones** - Okay, I guess just for the record Clair has submitted directions and a copy of the Deed so we can schedule that. That is complete. I think we told her February 21<sup>st</sup>.

**Vincent Cestone** - Albanese?

**Tim Pagones** - Is Ms. Albanese here?

**Maryann Albanese** - Yes

**Tim Pagones** - Can you explain to the Board which you are looking for variances, which sheds, what are you doing? You got shed 1, shed 2, addition. Which property is yours? Is both yours? So the same side of pool where it says wood shed

**Maryann Albanese** - And a little piece here

**Tim Pagones** - Its right on the line. It looks like it is over the lot. We can't give you a variance, you have to speak to your neighbor. We can't give you a variance on your neighbors property. You are not doing any construction are

you?

**Maryann Albanese** - No.

**Tim Pagones** - That's .04 or .03 so it is right on it. Okay so we got this, and we got that. So that is three things. I just couldn't tell what it was.

**Lenny Lim** - How many sheds all together?

**Tim Pagones** - If you look at the house

**Vincent Cestone** - There is one right next to the house

**Tim Pagones** - There is one that is like almost in the house

**Maryann Albanese** - That is a side entrance

**Tim Pagones** - And that is right on the property, and then there is a shed in the front. I just didn't know where that second shed was.

**Maryann Albanese** - The side entrance is really not on the property line

**Tim Pagones** - The building is though, that's a little bit off

**Maryann Albanese** - About this much Joe

**Tim Pagones** - Yeah a tiny bit

**Joe Albanese** - More than that. You can walk down through there

**Tim Pagones** - And then behind it is this little wooden thing

**Lenny Lim** - Okay so we found the shed

**Tim Pagones** - I just couldn't tell where that wood shed was. I didn't realize it was right in the house

**Maryann Albanese** - It is part of the house

**Lenny Lim** - I couldn't find it either on the map

**Vincent Cestone** - What do we have on for the 21<sup>st</sup>?

**Tim Pagones** - With that it is complete

**Kim Shewmaker** - Tuana

**Vincent Cestone - Okay**

**Kim Shewmaker - That's it**

**Vincent Cestone - Okay**

**Tim Pagones -** We are going to do it February 21<sup>st</sup> for a public hearing. So someone has to come and just tell us what was going on, what you did, when it was put up, if you have any permits or anything like that. CO's

**Maryann Albanese -** Because they were there when I bought it in 1969

**Tim Pagones -** Okay. So you just have to come and explain to the board what happened and why all of a sudden we are trying to legalize it

**Maryann Albanese -** Well

**Tim Pagones -** Yeah, I know. Okay so February 21<sup>st</sup>. Thank you

**Vincent Cestone -** Okay. Next one is Brown and Mazzye for completeness

**Tim Pagones -** Two things. Did we ever get, we got a letter but that letter really does not say anything as far as, there is nothing on the survey showing it. It just says you know what I went out and measured it. It is a wonderful deck, it is very strong but no one has put anything on the measurements. So it is still incomplete. And the other thing,

**Victor Carlson -** Which one is this?

**Tim Pagones -** Mazzye, Brown and Mazzye. The other thing just in the public notice, it is an unimposing deck according deck, not an imposing. So it is still incomplete. I have the letter, I will try and call the attorney and just let them know we need a survey. Someone just can't write it in.

**Vincent Cestone -** Okay. Next one is DeVito.

**Tim Pagones -** We will put that on for the 7<sup>th</sup> for completeness again. DeVito, is anyone here? They didn't fill in number 3. Which is the what sections of the code. I know certain members are sticklers about that. I am sure it is 175.25b so, I think it is complete and you can set it down for a public hearing and we can just have them fill that in when they come back. When do you want to put it down? This is a deck that has been there for a while also.

**Vincent Cestone -** Put it on for the 21<sup>st</sup> and that will be the end of it.

**Tim Pagones - Okay.**

**Vincent Cestone - Okay.** Now we are going to go into the public hearings. First item on the agenda is Nextel Communications a continuation of a public hearing. There are a bunch of things that need to be completed and Mr. Bogie over here is our RF Engineer and he can explain to you what we are looking for for completeness of this application.

**Tim Pagones - Right.** I guess before we begin let me just for the record Cuddy and Feder used to be the attorney for the applicant. And it went back and forth and they originally had requested an Interpretation and or special use permit. After some lengthy discussions and some numerous appearances, they agreed that it would be a special use permit. I believe that they had paid the Town the \$5000 fee and everything was referred to the Planning Board. I think we had agreed that we would use the structural analysis from the Sprint application. We would use as much information as possible from the Sprint application. I know we had waited some time for the structural analysis. I believe, I don't know if it was Cuddy & Feder or Snyder and Snyder, someone finally obtained the structural analysis because the Town did not have it. So we were lucky to get that. And I believe we know have a new firm Snyder and Snyder. I had some discussions with Mr. Gaudioso and I don't know what if anything is missing. I know we were trying to use as much as possible

**Vincent Cestone - That is what Mr. Bogie is here for tonight**

**Tim Pagones - Okay**

**Russ Bogie -** When we originally got this package from Cuddy Feder we reviewed it and we found that it did not contain several major items that we usually want to see in an application. One was structural, which you say you now have. There are also was no analysis of the RF emissions that is the \_\_\_\_\_ Analysis. That was not there. You could also, I could also recommend if you wanted to use the one submitted by Sprint last year, that was the last, they were the last ones to go on the tower so that is a current emissions report. Then the other issue is proof of need. The ordinance requires, and we also expect the carrier to submit proof of need. Now if it is a new facility that's fairly elaborate. That is done with propagation maps and since this is not a new facility, they simply replaced the antennas we would have reason to believe that they were not trying to increase their coverage area. They may or may not have done that. But what we would really like to see here is their engineer's, their explanation as to why they made this change. There is some vague wording in Cuddy Feder's application that says that they need it to be state of the art or something like that. But we would like to see a specific explanation of why changes were made.

**Vincent Cestone - Okay** so we are looking for RF emissions which they could probably use Sprint's if you can get your hands on it and proof need which he

just stated.

**Russ Bogie** - Which would be a document that I would assume their engineer people

**Vincent Cestone** - They probably already have it, they justified it financially.

**Robert Gaudio** - Well if I can just respond quickly.

**Vincent Cestone** - Sure

**Robert Gaudio** - Robert Gaudio of Snyder and Snyder. We submitted both the emissions report and structural analysis.

**Vincent Cestone** - Okay.

**Robert Gaudio** - Regarding the proof of need, \_\_\_\_\_ in the code doesn't require it simply in this section. It is the determination of the building inspector

**Vincent Cestone** - Well that is your opinion

**Tim Pagones** - Well lets just let him finish

**Vincent Cestone** - I am telling you that I require it

**Robert Gaudio** - Then the question would really be, what would satisfy your Board as far as what we need to prove to establish that need?

**Vincent Cestone** - I think Mr. Bogie stated it eloquently

**Russ Bogie** - I think in the case of \_\_\_\_\_ where it is not the goal to change the coverage area. And I am assuming that that is true. If it was in fact the goal to change the coverage area, then you would submit existing coverage propagation and proposed coverage propagation. But it just might be that it was done for to accommodate new things in service.

**Vincent Cestone** - Right. New technology. The engineer's at Nextel had to justify the upgrade. What the reason for the upgrade would be sufficient for us.

**Tim Pagones** - I guess would an affidavit

**Robert Gaudio** - Well that's my thing. That's my question, the affidavit is fine, I guess the question is I don't want to submit something not knowing what the standard is and have the board say well that does not justify our standards. For instance, if the standard for a floor area ratio was .4 and I submitted an affidavit and showed that the application met the .4 floor area ratio, I have a standard to

be able to analysis my case files.

**Vincent Cestone** - Let me give you a perfect example similar to yours. Most cell companies up until a couple of years ago were using CDMA or TDMA as their standard transmission. AT&T and Cingular went to GSM. And they had to change their antennas. That is a reason for the upgrade. So they changed the antennas because of the change in technology. The technology that changed was this and this is what we did.

**Robert Gaudio** - I understand what you are saying. The reason that wouldn't be appropriate in this case is simply because Nextel uses actually a different standard than everyone else. I know it wasn't because of "change in technology"

**Tim Pagonis** - How about just an upgrade?

**Russ Bogie** - They didn't do it for no reason. There has to be a reason and we want to know what that reason is.

**Vincent Cestone** - Right. And I am sure they had to justify, I am sure Nextel had to justify the expenditure to do this upgrade and I am sure it cost tens of thousands of dollars and they didn't do it because they like the color of the antennas. There has to be a reason for it.

**Robert Gaudio** - And I am not arguing that point. I am not even arguing the point that we should give you what you are looking for. I just want to make sure I know what the board is looking for so that I don't give it and we are back here in another month and you say to me that you are unhappy with that we need more, and you need your consultant to review it more. We need more, we need more, we need more. Not knowing the clear standard I am at a disadvantage and I am quite frankly uncomfortable representing my client.

**Tim Pagonis** - I guess his concern is that are we going to dispute it or we just want to know why. If he says the reason is this, are we going to say that is not a good need.

**Russ Bogie** - I don't know how I can say that when we don't know what the reason is. I am assuming they had a good reason. We think the ordinance does require proof of need.

**Robert Gaudio** - Can I just ask what sections of the ordinance so I can look it up myself

**Russ Bogie** - This would be \_\_\_\_\_

**Robert Gaudio** - The Board has \_\_\_\_\_ granted satisfactory as to the mass that

**Vincent Cestone** - We want an explanation of the reasons why they did the upgrade

**Russ Bogie** - We haven't seen any maps. I haven't seen any maps.

**Robert Gaudio** - That would be propagation maps in the other application as far as that was submitted.

**Russ Bogie** - The original ones in 1997.

**Robert Gaudio** - No, 1997 I guess that is the basis of our argument. 1997 pre-dated the ordinance.

**Russ Bogie** - Yes

**Robert Gaudio** - So the original facility was permitted by building permit. And this is merely a modification rather than

**Vincent Cestone** - And the ordinance said any modifications you have to come before the zoning board.

**Robert Gaudio** - No, the opposition of the ordinance actually said that unless

**Vincent Cestone** - I am not going to debate with you okay about this. So the two things that we need is an RF emission and proof of need. I think we made this very clear

**Robert Gaudio** - We have given the RF emissions report. We submitted that last week.

**Russ Bogie** - I have that from the Sprint application. We would not normally accept information submitted by a different carrier for a current application. But if the Town tells us that's what they are willing to do, that's fine. I have those documents and I have reviewed them and they are acceptable.

**Vincent Cestone** - Okay

**Russ Bogie** - That's what we told them when Sprint submitted them.

**Tim Pagones** - I think we had agreed

**Vincent Cestone** - Yes and we had agreed because of the fact

**Tim Pagones** - Because a lot of the stuff from Sprint, I think Nextel was already up

**Vincent Cestone - Yes**

**Tim Pagones -** And Sprint came and did everything so that is why we agreed to the structural analysis, Nextel was already on the tower when Sprint did their structural analysis so if Sprint can make it, then whatever is on it is okay

**Vincent Cestone - Right**

**Tim Pagones -** I guess, Mr. Gaudioso is there anything that you can present to the board tonight so that we can do the public hearing. I am assuming that you will get the correspondence or whatever, the statement for the need next time. In the meantime, I could probably start working on a resolution. If we get it, there is no problems, close the public hearing.

**Robert Gaudioso -** The only thing I would have to add in at that point is that we could certainly say

**Vincent Cestone -** There is no rush for a resolution

**Tim Pagones -** Oh I know that, I mean he is up and running

**Vincent Cestone - Right**

**Tim Pagones -** But it has been pending.

**Vincent Cestone -** My goal is to close this as soon as possible. If you have something now that is acceptable to the parties involved to look at that. If not, I will put you on for two weeks. You get the engineering reports make sure that Mr. Bogie gets a copy of that. Mr. Bogie will send me the standard thing which will complete our record and then we will proceed from there.

**Robert Gaudioso -** So a letter from our engineer explaining why they made the changes.

**Vincent Cestone -** Exactly. It was an upgrade for some reason. What is the reason for that upgrade?

**Russ Bogie -** If that includes to change the coverage area, then we would like to see the documentation that establishes that.

**Vincent Cestone -** Yes. If they are increasing coverage area, explain the increase in coverage area. But my guess it is just a change in the technology. Because you added 9 antennas and there was only three there

**Robert Gaudioso -** There were 3 whip antennas. And that is the change. It



went from

**Vincent Cestone** - 3 antennas to 9 antennas

**Robert Gaudio** - No more importantly it went from an omni directional site to a sectorized site. So that way they could focus their signal, they could focus their service

**Vincent Cestone** - For capacity reasons

**Robert Gaudio** - Possibly for capacity, possibly for additional services. It is basically going from an antiquated antenna to a sectorized antenna.

**Vincent Cestone** - So have the engineer say what you just said and I think we are good.

**Robert Gaudio** - Okay

**Tim Pagones** - The 7<sup>th</sup>?

**Vincent Cestone** - The 7<sup>th</sup>.

**Tim Pagones** - February 7<sup>th</sup>. Take the rest of the night off

**Robert Gaudio** - Thank you very much

**Vincent Cestone** - You're welcome. Mr. Bogie thank you for coming

**Russ Bogie** - February 7<sup>th</sup>

**Robert Gaudio** - I am assuming if we can satisfy the consultant he doesn't have to attend the next meeting

**Tim Pagones** - I don't think so. We wouldn't need Mr. Bogie here

**Vincent Cestone** - No Mr. Bogie doesn't need to be here. Unless you have a problem then that's

**Russ Bogie** - Okay

**Vincent Cestone** - Then we are good. Okay. Tom and Heather Campbell for continuation.

**Gabe Levinson** - Hello.

**Vincent Cestone** - Can you just, I wasn't here at the last meeting. Can you

explain exactly what was going on and what was discussed if you would

**Gabe Levinson** - Yes. It is a small 3 bedroom, 1 bath, a growing family with a real need to expand. They like the house, they like the property but they just don't have enough living space for their family. And we added 10 feet in the back of the property plus we went up  $\frac{3}{4}$  of a flat top second story on half the house in the back. It's a small addition. I have some numbers here with respect to what we did.

**Lenny Lim** - They want to go up and out right?

**Gabe Levinson** - We went almost a full story. I am trying to keep the, I'll go into it. The new square footage is 885 foot. Not all of it is usable. Attic space. The small square foot of the house is 2085 which is not bigger than anything out there in the neighborhood. There are a lot of bigger houses around out there. I am going to go through some of the design some element that I tried to implement, The left side of the property is the one that is near a neighbor and that

**Vincent Cestone** - Show me on the survey

**Gabe Levinson** - It would be right here. This side

**Vincent Cestone** - Okay and what you are asking for your variance?

**Gabe Levinson** - This 10 feet addition right here, this square plus a deck.

**Vincent Cestone** - And this is crossing the setback

**Gabe Levinson** - What I did here was I created a line

**Vincent Cestone** - This is the line of the setback?

**Gabe Levinson** - No. The setback is 30 feet. It is 24.3 and that is the variance we are asking for

**Vincent Cestone** - And where, is this the existing?

**Gabe Levinson** - Right. That is the existing house, the corner

**Vincent Cestone** - So you are not increasing

**Gabe Levinson** - correct. I am not, I drew a line between the two corners parallel to the property line and I kept all my additions to the right of it.

**Vincent Cestone** - So you are not increasing

**Gabe Levinson** - No increase in the encroachment whatsoever

**Vincent Cestone** - On the side

**Gabe Levinson** - On the side. Actually I did a lot of zigzags in order to avoid increasing the encroachment on that side. That side is not a problem because we are moving away from the property line and also the neighbor here, the house is way up here. There is another lot in here, an extra large lot.

**Vincent Cestone** - And this is equivalent to 30 foot on this side right? So basically the building area really is only in here is that correct?

**Gabe Levinson** – yeah. This part of the building, I go up another story. This stays exactly the same, this goes up a story that little addition

**Vincent Cestone** - Tim do you have the certified copy of this drawing?

**Gabe Levinson** - You have the survey, the certified survey. I have an extra copy if you need it.

**Vincent Cestone** - So these dotted lines are the setback requirements on this drawing. Is that correct?

**Gabe Levinson** - Yes

**Vincent Cestone** - So these are the setbacks. So you are encroaching here and

**Gabe Levinson** - This, we own all the property over here

**Vincent Cestone** - So you are just encroaching a little bit on this side and where else?

**Gabe Levinson** - No I don't think this is an encroachment. This is not correct. This 25.1 to the corner the setback is 30 feet

**Vincent Cestone** - Right

**Gabe Levinson** - So this will not be an encroachment on, this is just

**Vincent Cestone** - So the encroachment line would be somewhere in here

**Gabe Levinson** - What those lines represent is it is 3 lots. It used to be 3 lots. This is three pieces that were combined to create one lot. No one could build on that 25 feet piece of land.

**Vincent Cestone** - Okay.

**Gabe Levinson** - So we, the existing corner of the house is about 25 feet or 24.1 shown here on the dimensions. That is the existing encroachment. He is already not in compliance when that house was built.

**Tom Campbell** - 1925

**Gabe Levinson** - Yeah 1925 so it was before zoning on that

**Vincent Cestone** - So all the addition is this here

**Gabe Levinson** - Half of this. Just this portion.

**Vincent Cestone** - And that is just going up, staying in the same footprint

**Gabe Levinson** - Exact same footprint

**Lenny Lim** - But he is not. He is enlarging the footprint

**Gabe Levinson** - On the front, in the back

**Lenny Lim** - Are you enlarging it

**Gabe Levinson** - Yes

**Lenny Lim** - Okay. That's all I need

**Vincent Cestone** - And the enlargement is this

**Gabe Levinson** - Yes that is correct. This piece here and then there is a deck in front of that

**Vincent Cestone** - Okay. So this is the enlargement here

**Gabe Levinson** - Yes

**Vincent Cestone** - And it is coming up 2 stories but it is not changing the footprint

**Lenny Lim** - He enlarged the footprint over here. By how much

**Gabe Levinson** - 10 feet

**Lenny Lim** - He is enlarging 240 square feet

**Vincent Cestone** - But you are, very little of this, none of this is going forward

**Gabe Levinson** - That's correct. And a matter of fact, I kept it in plan and stepping back from the property line. And the elevations, I kept it to the minimum by not really putting a full height in there. I put 6 foot in dormers to create minimum impact as far as massing on the property. And you can see that on Elevation drawing and you can see I have a dotted line of the existing house and then, let me show you the dotted line, and then the addition comes on top of the existing house. The back is the most dramatic aspect of this. The front you see has very little impact.

**Vincent Cestone** - Okay

**Gabe Levinson** - And then the part that is really adding is above the dotted line. The chimney exists there. And it set back from

**Vincent Cestone** - What is the total height of the house? 32.6 feet

**Gabe Levinson** - Right 32.6 feet

**Vincent Cestone** - And what is the total size of the structure when as proposed

**Gabe Levinson** - About 2085

**Vincent Cestone** - Okay

**Gabe Levinson** - And it is about 2000 because some of that space is underneath the dormer, it is not full height

**Vincent Cestone** - What is the tallest part in the attic

**Gabe Levinson** - There is really no attic. We are in the attic. The bedroom upstairs is in the attic.

**Vincent Cestone** - So there is no storage, nothing up there

**Gabe Levinson** - No, because I didn't use the full height. I have 6 foot on one side and then I used cathedral ceilings in order to give them the head room and I actually built in a bench into the lower heights so that people won't run into the low ceiling. I just wanted to keep the massing to minimum and the setbacks away from setbacks not increase setbacks. Just to keep the minimum impact and still give the client what they needed for living space for their family. In the back they have a basement that is ground level. But in front, it drops to the back. Where you see the deck, that is the first floor. You can see in the front it is only one story.

**Victor Carlson** - This is the back?

**Gabe Levinson** - In the back there is more of an impact on the back.

**Vincent Cestone** - So this basement. This basement room is 10 by 10?

**Gabe Levinson** - 10 by 24

**Vincent Cestone** - okay

**Gabe Levinson** - There is nothing there. Just the foundation

**Vincent Cestone** - But it looks like it could be turned into living space. Is that correct?

**Gabe Levinson** - It could be finished technically yes, I guess

**Vincent Cestone** - We will make the assumption that it will be finished

**Gabe Levinson** - Okay. I am not disputing that but we are not planning on it at this point. I don't have much

**Lenny Lim** - But it won't take much to turn it into living space

**Gabe Levinson** - That's true

**Vincent Cestone** - So it is 2085 square feet and then about another

**Lenny Lim** - It is an expansion of a pre-existing nonconforming. It doesn't sound like a lot then all of a sudden it is sounding like a lot of living space, 3 floors

**Tim Pagonis** - Well, it's not on the plans to finish it. He has to apply for a permit and everything. And if he doesn't, it's illegal. And he will get caught up again.

**Lenny Lim** - We are just talking about how much square feet he is actually putting on to this now.

**Victor Carlson** - What is it 2085

**Lenny Lim** - He is going from about 1200 to 2100

**Gabe Levinson** - I am adding 812 square feet

**Lenny Lim** - Is that with that basement space?

**Gabe Levinson** - Without the basement

**Lenny Lim** - Put the basement space in. How much more space will that be?

**Gabe Levinson** - 800 square feet of living space

**Vincent Cestone** - then we add the basement, just for discussion

**Gabe Levinson** - Okay. For discussion. Then it is another 240

**Vincent Cestone** - So you are 1000 plus

**Gabe Levinson** - Yeah

**Lenny Lim** - Basically doubling the size

**Gabe Levinson** - If you add the basement yeah.

**Lenny Lim** - Well you are building it

**Gabe Levinson** - I just needed a foundation. And if you want me to fill

**Vincent Cestone** - There are windows and a sliding door

**Gabe Levinson** - I'll take that out. I regret even putting it in. It just made it for the back yard and that's where the kids play and it just made sense for them to come in through the basement and take their shoes off. Right now there is a car garage in there in the middle there. If anything, they are going to make that into a garage.

**Victor Carlson** - Now I have another question. Is there an inside stairs to the cellar.

**Gabe Levinson** - Yes.

**Victor Carlson** - Okay. So we know that

**Gabe Levinson** - There is existing right now. There is a stair right now

**Vincent Cestone** - Not to the addition

**Tom Campbell** - It's \_\_\_\_\_ when we talk about doubling the size. I also have the existing basement which is unfinished

**Lenny Lim** - No sir, we are counting the addition basement, not your basement you have now

**Tom Campbell** - I realize that but you are saying that we are doubling it from

1200 to

**Lenny Lim** - Well if you count the full square feet that you are adding

**Tom Campbell** - But if you include the existing basement that is not finished then

**Lenny Lim** - But the way he drew it here he put in windows, sliding doors, that looks like a room. We have to go by what the architect is showing us

**Gabe Levinson** - It was not my intention of finishing it at all. It is storage

**Vincent Cestone** - Maybe not the current owners, but the next owners will

**Gabe Levinson** - They may, yeah I know. I just wanted to do the minimum impact on the side and it still gives the client the space that, that was my only intention

**Vincent Cestone** - Any other questions

**Lenny Lim** - I have one other suggestion, do you want to wait for the full board to have a vote

**Gabe Levinson** - That's fine by me

**Lenny Lim** - Or do you want to have it tonight

**Gabe Levinson** - I have no problem

**Vincent Cestone** - My intention was if we, that we close it and we not, and we wait until we have a full board at the next one to give the attorney the straw poll

**Lenny Lim** - Okay no but sometimes, because if he gets three votes he is going to win. But if he gets one no, he will lose. That's why if he wants to wait for a full board or this

**Gabe Levinson** - I definitely don't want to take a chance of losing one vote unless you know that you are going forward

**Lenny Lim** - I'm not letting you know what I'm voting. You tell me. Do you want to vote now or wait for a full board?

**Gabe Levinson** - I can't

**Vincent Cestone** - Do you feel lucky?

**Gabe Levinson** - I can't the chance for the client. I've been here before.



**Tim Pagones** - I would suggest that if you are not going to, I would not close the public hearing. Only because if he is waiting for a full board, Mr. Flaherty shows up, he might have some questions. The public hearing is closed, he is not going to get any questions. Joan might have questions. So if you are not going to vote, if he is not asking for a vote, I would say keep the public hearing open because they might have questions about that basement. It would give him the opportunity to address it. So, when do you want him back on?

**Vincent Cestone** - I don't know what we have

**Tim Pagones** - Right now on the 7<sup>th</sup> you have Leuthner, Donovan, that Interpretation and Nextel.

**Vincent Cestone** - That's three

**Tim Pagones** - No that's actually four. On the 21<sup>st</sup> you have Novello, Clair and Albanese

**Vincent Cestone** - So we have 3 on the 7<sup>th</sup>. We can do it on the 7<sup>th</sup>.

**Gabe Levinson** - Thank you.

**Vincent Cestone** - Okay. Next on the agenda is John Spina Appeal. Is this a continuation also?

**Tim Pagones** - Yes.

**Lenny Lim** - We put everything off

**Vincent Cestone** - Just explain where we were

**John Spina** - We had, I believe we had to make an amendment to the existing variance on the house. We asked for an amendment

**Tim Pagones** - Right. They didn't include the 175.82 which is the increase of a prior nonconforming structure. So Joan, Ms. Turner had just pointed that out and we were going to add that to what sections they were going to add. So we were going to write it in that they are going to add enlargement of a prior nonconforming structure.

**John Spina** - There were some notes

**Lenny Lim** - This was the one, we have to go back to, this is the one where the son was selling it to the father

**Tim Pagones** - This is Houghton

**Lenny Lim** - We already gave variances for certain things and then at the end we put our usual you can't enlarge it or anything else

**Tim Pagones** - Now, I guess in reading the minutes, you always put the condition that it can't be enlarged without zoning and or building department approval. And what that really is is for the applicant

**Lenny Lim** - Right

**Tim Pagones** - In other words Mr. Houghton couldn't make any changes. If you gave him a 5 foot setback for the deck, he couldn't enlarge it to make it 4 feet. There is nothing that precludes anyone, the new owner from coming back and saying I am making some modifications

**Lenny Lim** - But don't the variances run with the land?

**Tim Pagones** - Variances run with the land. I mean they could not change it automatically. Typically what will happen is lets say you have a jog in the house and we give them a setback variance for that jog. What we are saying is you can't change it, don't bring the rest of the house up now with uniformity with that jog. Whatever is there is staying there. But if Mr. Houghton still owned it, he could have come back and said, look I want to make some changes.

**Vincent Cestone** - So the addition is this, that you are talking about is this area right here, this white area. That's a deck? This here

**John Spina** - No. That's the proposed addition up there and this is the existing, that had the variance on it, this little square

**Vincent Cestone** - Okay

**John Spina** - And what I would like to do is take this down because

**Lenny Lim** - So we are giving another variance on top of a variance

**John Spina** - ...and just square it off, well not quite square it off. Bring this one foot back for cosmetic and increase it by 4 feet this way

**Vincent Cestone** - and it's one story

**John Spina** - one single story

**Vincent Cestone** - okay.

**John Spina** - This is about 6 feet in the front but it is all rock so there is no basement.

**Vincent Cestone** – okay. And you are going 12.8 feet and it is currently at 18.5 feet

**John Spina** - Right. 18.5 to the corner. And 12.8 over here

**Lenny Lim** - I got 13.9 underneath. My numbers don't match yours

**Tim Pagonos** - But the problem is in that circle

**(Everyone talking at once)**

**Tim Pagonos** - was there a deck there?

**Mrs. Spina** - A fire place

**Tim Pagonos** - A concrete pad or something

**Lenny Lim** - Oh no he had the winding staircase going to the side, to the deck. He had staircases going up that side

**Tim Pagonos** - We can see two small arrows right next to each other

**Lenny Lim** - We had him tear everything down, that was the stairs, the deck and the back deck

**Vincent Cestone** - What did we do? Did we make him take down the stairs?

**Lenny Lim** - Stairs. I think the enclosed porch in the back, there was a deck. He started with a porch and then he closed it and then he made it a room. Took this piece off, the deck and the staircases

**John Spina** - It's all gone now. He ripped it down

**Mrs. Spina** - And then we ripped even more down

**Vincent Cestone** - Every once in a while, we ran into one person that did 5 additions with no building permits. On other people's land,

**Mrs. Spina** - Oh my goodness

**John Spina** - So that room is really

**Vincent Cestone** - You are doing it the right way. I don't know what to say.

**Lenny Lim** - You can ask them also if they want to wait to vote for a full board

**Vincent Cestone** - Well first is there anyone who wishes to speak on this? Now, let me explain to you why you may want to wait till we have a full board. If one of us votes no, it is denied. While with a board of five, 2 can vote no and you still pass.

**Lenny Lim** - You need 3 votes to pass

**Tim Pagones** - There is 5 on the board and you need a majority

**Vincent Cestone** - You need a unanimous vote here

**Tim Pagones** - Tonight you need a unanimous. I wasn't here at the last meeting, why are we putting the addition here? What is this getting connected to? Because one of the things is the board has to consider any alternatives. I mean if you are just looking to increase the space, why don't you go in the back or something like that.

**John Spina** - My property line is very close over here. But in addition it doesn't work well because I have two bedrooms over here

**Lenny Lim** - They are squaring off where the ugly steps.

**(Everyone talking at once)**

**Tim Pagones** - Do we have the proposed plans?

**Mrs. Spina** - Yes you do, one of you have pictures too

**Kim Shewmaker** - Anyone want to see the pictures, I have them in the main file

**Vincent Cestone** - So this is the structure

**Lenny Lim** - Wait a minute, wasn't this an ugly red.

**Vincent Cestone** - Did you paint your house

**Mrs. Spina** - The outside we painted and we also sided it.

**Vincent Cestone** - It was a terrible color the last time we saw it.

**Tim Pagones** - Who is next to you?

**John Spina** - On the side that the room is on is Putnam County

**Lenny Lim** - How many square feet is your house?

**John Spina** - Just under a 1000

**Lenny Lim** - I remember it being small

**John Spina** - Yeah it's small

**Lenny Lim** - This will give you another 300 square feet

**John Spina** - It is 16 by 23

**Vincent Cestone** - About 300 square feet roughly

**Lenny Lim** - So 1300. You are going from 18.5 to 12.8. Basically 6 feet

**Vincent Cestone** - Any more questions?

**Lenny Lim** - I have none

**Vincent Cestone** - Any comments from the audience? Do we want to close the public hearing?

**Lenny Lim** - I wouldn't even assume how everyone else is going to vote.

**Tim Pagones** - Well I guess the same thing as with Campbell. If you close the public hearing tonight and they take a vote, it is a straw poll vote. It has to be unanimous. If it is not unanimous then there really is no action

**(Turning tape over...may have lost some dialogue)**

**Tim Pagones** - ...public hearing to be very long. It will just be the resolution.

**Mrs. Spina** - And it will be 2 weeks from now

**Tim Pagones** - I can start

**Vincent Cestone** - What's the board's pleasure? Do we want to close it and not even take a straw poll on it and do a straw poll when we have a full board

**Tim Pagones** - My only concern is if they are going to come back, and I am not going to do a resolution for next time, then it doesn't hurt to keep the public hearing open just in case there are any questions. If you are going to close the public hearing

**Mrs. Spina** - Last time thought what she had said was the only reason she wanted to wait was because you weren't here and she wanted to make sure it was legal to do an amendment to the variance

**Victor Carlson** - It is up to you

**John Spina** - No it's up to you

**Vincent Cestone** - If you are approved, you won't start building until April anyway

**Tim Pagones** - So it doesn't hurt you

**Vincent Cestone** - Then there is no real rush here. You are not going to shovel the snow and start blasting the frozen ground

**Tim Pagones** - Only one of you needs to be here

**John Spina** – Okay

**Tim Pagones** - So why don't you put it on for the 21<sup>st</sup> because you've got like 4 or 5 for the 7<sup>th</sup>

**Lenny Lim** - I don't think it's going to be more than 5 minutes

**Vincent Cestone** - Yeah.

**Tim Pagones** - Then what will happen is after they close the public hearing they will take a straw poll and give me a couple of weeks to do it so I would say by March you will have your resolution to start doing whatever you've got to do

**John Spina** - Great

**Tim Pagones** - So put it on for the 21<sup>st</sup>

**Vincent Cestone** – okay.

**Lenny Lim** - We don't have Monday night football tonight

**Kim Shewmaker** - That's why the meeting is going so long

**Vincent Cestone** - Next on the agenda is Kaye and Duke Appeal #760. Is this a continuation also?

**Lenny Lim** - Yeah

**Tim Pagones** - No this is a new one.

**Lenny Lim** - Okay. I am confused on this one. There is some numbers that don't make sense to me.

**Vincent Cestone** - What's your problem?

**Lenny Lim** - Well first off, you are asking for front and side setbacks

**Mary Staikos** - Right

**Lenny Lim** - I don't see any measurements to the side setback. But the front setbacks, when I went over the application, on Type of Appeal details of the appeal, on B. A. 1 you have front setback of 33 feet. Right? Then if you go factors to be considered number 3, you have 32 feet

**Mary Staikos** - Right there was a

**Lenny Lim** - There were two different numbers so that made me look closer at your maps and everything. There are no measurements from any of the sides,

**Mary Staikos** - The sides are not the issue

**Lenny Lim** - Are they closer

**Mary Staikos** - The side is

**Lenny Lim** - It has to be. Is this the wall your property line? Is this the way the property line, this wall here, is this it?

**Mary Staikos** - Yes

**Lenny Lim** - Okay. If you are only, how many feet are you right now from that side property? You see you have a measurement, is your property line?

**Mary Staikos** - Yes

**Lenny Lim** - Would that be the back setback or the side setback?

**Mary Staikos** - Well the current house is overlapping

**Lenny Lim** - Is this addition look like it is coming closer?

**Mary Staikos** - It is coming in a parallel line with the existing house and then it is going into the

**Lenny Lim** - The way I see it here, it looks like it is coming closer. Because here is your house here and here is the corner of the house here. Is this corner on

**Mary Staikos** - Wait but do you measure on the diagonal or do you measure on the offset

**Lenny Lim** - The closest point to the side or the back. The closest point to the house

**Mary Staikos** - Because typically other jurisdictions have gone with offsets from the line. You go by diagonal? Okay. Well then by diagonal, then yes, we are coming closer

**Lenny Lim** - You are coming closer. That's what I am saying. And I have no measurements here. Because when I spotted the 33 and the 32 then I said hold on, there are no lines here. There are no measurements. So I don't think this is complete until we have the drawings in and until they re-do their application to either 33 or 32

**Mary Staikos** - Now which do you want? The closest point, the closest point would be 5 ½ feet.

**Vincent Cestone** - But it has to be certified

**Mary Staikos** - It has to be certified. Okay

**Lenny Lim** - And number two, your application has two different numbers. I don't know which number you want

**Vincent Cestone** - And you have to amend it to pick the right number

**Mary Staikos** – okay

**Vincent Cestone** - That's not a big deal

**Mary Staikos** - Okay. That was just an issue of a miss understanding

**Vincent Cestone** - That's exactly what it is. That's not a big deal

**Lenny Lim** - And because you are coming a little bit closer, we need the exact measurement

**Vincent Cestone** - We need the exact measurement

**Lenny Lim** - We have to give an exact variance



**Vincent Cestone** - Because we have had people come back that have gone an inch more than they had and they had to apply for an amendment. You don't want to do that

**Mary Staikos** - Okay

**Tim Pagones** - Well, it is on for a public hearing

**Vincent Cestone** - So why don't you make your presentation and then we are going to continue it so that you can provide us with the information that we are requesting

**Mary Staikos** - Okay.

**Tim Pagones** - What are you doing? Why are you doing it? Why can't you do it somewhere else?

**Paul Kaye** - We have lived there a long time

**Tim Pagones** - No. Why is it going on that side and not the other side

**Lenny Lim** - Are we still going to have the public hearing even though I believe it is incomplete without the numbers drawn in and everything

**Tim Pagones** - I mean, I think they are telling the board that she is going to certify it. Why waste the time. Might as well do it. We are going to continue it.

**Vincent Cestone** - Let them make the presentation and then we are going to continue it

**Tim Pagones** - Nothing is going to close

**Vincent Cestone** - I am not going to close it until this is complete

**Lenny Lim** - Okay

**Vincent Cestone** - Does that make sense?

**Lenny Lim** - Yeah. And the next map you bring, leave out the topo lines. It really threw me off trying to read this

**Mary Staikos** - Right. I thought that if I started taking out the surveyor's topo lines then you might be upset with us taking out their information.

**Lenny Lim** - No no. I mean you have them here but it got very hard reading the addition with the topo lines going through everything.

**Mary Staikos** - I can take all those out. I have that CAD file. This kind of gives you a good indication. My name is Mary Staikos. I am the architect on the project and Paul Kaye and Cathy Duke are the owners.

**Paul Kaye** - We would like to add a little bit of living space. Change the orientation of the house more to the yard here that we own and expand the kitchen and the living space a little bit to the front. Basically, we are keeping the house a one story house as it has been. We have been there 22 – 23 years and we haven't changed a thing.

**Mary Staikos** - This main roof is the existing roof of the house. There is a small addition here, this green area here that doesn't encroach anywhere. And then there is a small addition in the front and you can see the setback lines are on a slight angle so depending on where you are relative to the house it is a little different

**Vincent Cestone** - So we will consider it that it is this area and this area

**Mary Staikos** - Right. One question for you, this area that is the hatch green is the condition space. This area here which gets us to that 32 – 33 feet is covered porch. This is an existing front porch. And we just wanted to put a roof over it so that they have protected entry.

**Vincent Cestone** - So this is previously approved including the stairs?

**Mary Staikos** - No that was there when the house was built.

**Vincent Cestone** - Okay

**Mary Staikos** - It is this little brick base here

**Vincent Cestone** - And what you are just doing is putting a top over it

**Mary Staikos** - And we just want to put the top on it. The actual condition space is here. It is only a matter of 4 feet out from the main house

**Vincent Cestone** - Okay

**Mary Staikos** - But this, this roof and the columns are on the existing porch.

**Vincent Cestone** - When was this house built?

**Paul Kaye** - 1971

**Vincent Cestone** - so it was built in violation because this is a violation. The

stairs going out past the setback.

**Mary Staikos** - This is the existing, you can see that brick pad that we just wanted to move over and partially with condition space on to that and just move over the balance of it.

**Vincent Cestone** - Now are you changing these stairs because that is the area in violation

**Mary Staikos** - No those are the stairs. Here is the 40 feet right here

**Vincent Cestone** - Oh okay. So this whole area

**Mary Staikos** - Yes. 40 feet goes right to the corner of the existing house

**Vincent Cestone** - And we need a measurement from here

**Mary Staikos** - Now we are not changing the stairs except

**Vincent Cestone** - It doesn't matter. This is in violation

**Mary Staikos** - Okay. So you need that measurement too

**Vincent Cestone** - Because even if we made the adjustment here this whole area here is still in violation

**Mary Staikos** - Okay

**Vincent Cestone** - That's why I asked when was it built. If it was built prior to 1957 then that is grandfathered in. This is not grandfathered in. This the building inspector didn't catch it or whatever. This whole area is in violation and sometimes when you sell it your title search will show that as a violation

**Paul Kaye** - Even though that is outside space

**Vincent Cestone** - Yep

**Cathy Duke** - Even though that is how we bought it from the original owners?

**Vincent Cestone** - You got lucky. So the reason why I am doing that is if we are bringing it into conformity, we should bring it all into conformity so that if you plan to sell you don't run into a situation when you sell that you can't sell because of that. Then you are back before us before the new people would buy the house trying to get this made legal. So I am trying to save you future grief. You are already here.

**Mary Staikos** - So you want diagonal measurements here, you want the measurements from the steps to the front yard

**Vincent Cestone** - And the exact measurements of this

**Mary Staikos** - And you want them on the perpendicular to the property line

**Vincent Cestone** - Exactly. And this exact measurement here because we are going to say that this can't be bigger than this whatever this measurement is. The stairs are this size and this opening is this size. So we need one, two, three. So we need this right here, this right here and this here.

**Mary Staikos** - Now just out of point of interest if we decided to make this a little less of an encroachment. That wouldn't be an issue in the actual construction if you find a rock in the way or something

**Vincent Cestone** - That's not a problem. If you make it more, then it's a problem.

**Lenny Lim** - Do we measure from the overhang or do you measure from the wall?

**Vincent Cestone** - It has to be from the over hang

**Mary Staikos** - The over hang?

**Lenny Lim** - That's what I am trying to say

**Vincent Cestone** - That's encroaching.

**Mary Staikos** - Okay

**Lenny Lim** - I just realized she is doing everything from the wall. We need from the over hang. The exact distance to the side.

**Vincent Cestone** - Generally these drawings

**Mary Staikos** - All surveyors give me dimensions to the actual body of the house

**Lenny Lim** - And we are asking from the closest point of the building

**Vincent Cestone** - So that would be the closest point and distance would be the over hang

**Mary Staikos** - Okay

**Paul Kaye** - Then the whole house is probably not in compliance

**Vincent Cestone** - Anything that has been pre-existing here I am not too concerned about. I just want to, if we grant you the variance, I just want to make sure that you are fully covered so that you don't have your C of O revoked and then you have to come before us again

**Victor Carlson** - The Building Inspector is catching an awful lot of them and sending them back to us

**Vincent Cestone** - He is systematically going through the town finding violations and pulling the COs

**Lenny Lim** - And he is finding over hangs and beams

**Vincent Cestone** - And then you have to spend the money again to do what we can do now

**Mary Staikos** - Because all the other boards I have been before they don't include the overhang unless it's

**Lenny Lim** - Welcome to Philipstown

**Mary Staikos** - Well now I know

**Vincent Cestone** - That's why we're telling you now

**Mary Staikos** - Well thank you very much. Now just to tell you what it is we are doing and why we are doing it. Paul and Cathy wanted to add on to the house and what we wanted to try and do was, they basically live on the upper level. They have a garage over here and then just some service area storage area here. There is a large rock in this area so the whole half of the back half of the house on the lower level is unusable. So they just have the upper level as usable space. So we wanted to limit the amount of square footage that we are adding to just, so we just wanted to put the square footage in the area that makes sense so that we can tie it into existing space so that we don't have to add on a whole lot of space. So basically this is what we are planning on doing. The bedroom, this whole area here are bedroom areas currently. So this part of the house while it doesn't have any setback issues over here it is in the bedroom area where they need \_\_\_\_\_. So they have a very long piece of property extending this way. And it is a lovely piece of property and has some nice views and they wanted to be able to take advantage of this property and not turn their back on it so we wanted to bring the house into here. So we wanted

**Vincent Cestone** - So you built like a modified turret

**Mary Staikos** - A bit of a tower so we wanted to minimize the distance that we were coming along this line and then pull it back into this property. And then this is all windows here so that it gives a very transparent look from across the street. So it won't be blocking anybody's view. And then that way this is outdoor living space and they can take advantage of the yard here. So because we have the kitchen, we are bringing the kitchen here and then the dining room and living space in here, we can combine these two spaces and thereby have just a little bit of extra square footage instead of adding on

**Vincent Cestone** - Another box

**Mary Staikos** - Right. Another box somewhere. We looked at trying to do this in another location. One of the problems is that there is a big masonry fireplace here which totally precludes you from doing anything on this side where you won't have a setback issue. So that is why we chose to do this because it was, it took advantage of the site and it didn't have to deal with this expense of the chimney plus you get to keep your fireplace. So that is basically

**Vincent Cestone** - And then you are just adding this on to

**Mary Staikos** - Just adding this portion on just to give a little bit of extra space in the kitchen for a desk area in the little eating area here and an entrance with some coat storage and then access to the kitchen. So this is morning light here and then the sun comes around during the day and then they will be able to take advantage of that in the living space here.

**Vincent Cestone** - Okay

**Mary Staikos** - So that is the concept in a nut shell

**Vincent Cestone** - Any questions

**Paul Kaye** - We had, I think you have letters from most of our neighbors.

**Lenny Lim** - I think 6 out of 7.

**Paul Kaye** - We have worked with the neighbors in the neighborhood

**Cathy Duke** - And they seemed very happy

**Lenny Lim** - That was commendable. I saw your adjoiner list and then I checked off each name. I think every adjoiner but one.

**Cathy Duke** - That was very thorough of you

**Lenny Lim** - Once I started reading and I saw numbers change, so I said lets

read the whole thing carefully and see what's going on

**Paul Kaye** - The one neighbor who may not have sent you maybe the spouse of one of the other neighbors

**Lenny Lim** - Listen 5 out of 6 or 6 out of 7 is terrific.

**Mary Staikos** - We have to amend this setback to include the stairs

**Vincent Cestone** - This is the 40 foot line here

**Mary Staikos** - Right

**Vincent Cestone** - The red line

**Mary Staikos** - No this is 15 in the back

**Vincent Cestone** - So this would be the violation and this whole area here would be in violation.

**(Board members talking among themselves)**

**Vincent Cestone** - Okay. Is there anyone who wants to comment on this? With that what we need is the amendment to the application, a drawing with the additional measurements

**Mary Staikos** - And I will take off the topo lines

**Tim Pagonis** - Yeah clean it up

**Vincent Cestone** - Make it a little easier to read. Try to get it to us before the next time we meet. And lets see now, I guess we are already into March

**Paul Kaye** - Any help you can give us would be appreciated because we have some rental abilities

**Vincent Cestone** - But you wouldn't start until the weather got better anyway. Is that correct?

**Mary Staikos** - Well the vast majority of this work is going to be inside and we weren't going to do the exterior work until the weather broke. So the intent was to

**Vincent Cestone** - Well the interior stuff you can do. You just have to get a building permit for that

**Mary Staikos** - Right. The question

**Vincent Cestone** - Only the additions would have to be

**Mary Staikos** - If we have any things that crop up that we need to change the shape in a way that may impact what happens inside

**Vincent Cestone** - Oh okay. Well we already have 5 public hearings for the next two meetings. So we have 5 on the 7<sup>th</sup>, 5 on the 21<sup>st</sup>. What do we have on the 7<sup>th</sup>

**Tim Pagones** - Of March or February?

**Vincent Cestone** - March

**Tim Pagones** - I have nothing written down for March 7<sup>th</sup>

**Vincent Cestone** - We'll have to do it then. It will be quick and I will push the attorney after we do our straw poll, he will talk to the building inspector and the building inspector can issue you a temporary building permit until the resolution comes down.

**Victor Carlson** - What date is it?

**Vincent Cestone** - March 7<sup>th</sup>

**Paul Kaye** - If anybody calls you up and decides to go to Florida instead, they can move us up

**Vincent Cestone** - Actually the only person that really needs to be here is your architect if you wanted to go on vacation

**Mary Staikos** - No I think he wants an opening

**Cathy Duke** - There is no way we can move it up

**Vincent Cestone** - No. I am not staying till midnight. I work in Manhattan. I do this gratis. We don't get paid to do this.

**Lenny Lim** - I'm on the 5:00 train to Manhattan too.

**Mary Staikos** - All right. Thank you very much.

**Vincent Cestone** - Review of minutes of November 29<sup>th</sup>. Any additions, corrections or modifications? Motion to accept



**Lenny Lim** - I'll so move.

**Vincent Cestone** - All those in favor?

**All Board Members** – Aye.

**Vincent Cestone** - Minutes of January 3<sup>rd</sup>. Any changes? If not, motion to accept as written?

**Lenny Lim** - I'll so move.

**Victor Carlson** - I'll second.

**Vincent Cestone** - All in favor?

**All Board Members** – aye

**Vincent Cestone** - Okay you're on.

**Tim Pagones** - Okay

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #741; Applicant: Winifred Rehak (R & G Wrought Iron Railing, Inc.)  
Area Variance**

**Date: January 24, 2004**

The Philipstown Zoning Board of Appeals conducted a Public Hearing on October 4, November 1, and November 15, 2004 to hear the appeal of R & G Wrought Iron Railing, Inc. from the denial of a building permit for construction of an addition to a pre-existing nonconforming building having insufficient setbacks. The property is located on 3165 Route 9, Cold Spring, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on January 24, 2005, upon all the discussion that preceded it, including the public hearings, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

**BE IT RESOLVED** by the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, as follows:

**THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF  
DENYING THE APPEAL OF WINIFRED REHAK ( R & G**

WROUGHT IRON RAILINGS, INC.) FOR AREA VARIANCES TO CONSTRUCT A ADDITION TO A PRE-EXISTING NONCONFORMING BUILDING WITH INSUFFICIENT SETBACKS, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

1. The Applicant made this appeal (#741), dated April 12, 2004, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of a 480 sq. ft. addition to a pre-existing nonconforming structure. The basis of the denial was insufficient setbacks from the street line of Route 9, insufficient setback from the centerline of Route 9, insufficient setback from another street and insufficient setback from a residential district. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach that.

2. The property is located on 3161 U.S. Route 9, in a B-2 District in the Town of Philipstown. According to Schedule B of the Philipstown Zoning Code, the B-2 District requires a setback of 50 feet from the street line of Route 9, 100 feet from the centerline of Route 9, 50 feet from another street line and 35 feet from residential district.
3. The Applicant acquired title by a deed dated November 10, 1977. The structures and proposed improvements at the property, appear on a survey map dated March 2, 2004, as prepared for R & G Wrought Iron Railings, Inc. by Badey & Watson, Surveying & Engineering P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular meeting on May 3, 2004. The Zoning Board informed the Applicant that he should go the Planning Board first and obtain site plan approval before trying to obtain variances. The applicant appeared before the Philipstown Planning Board and was sent back to the ZBA to get the needed variances before a site plan review would be held. The Zoning Board reviewed the appeal on September 13, 2004 and the application was determined to be complete and a public hearing was scheduled for October 4, 2004. The public

hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach that

7. The Board met on October 4, November 1 and November 15, 2004 for the purpose of conducting the public hearings. Several members of the public spoke at the hearings along with the Members of the Board and the Applicant. On November 15, 2004 the public hearing was duly conducted and closed. Following the close of the hearing, the Board engaged in further public deliberations and a straw poll motion was entertained to deny the requested variance.

## FINDINGS AND CONCLUSIONS:

### Adverse Effects on the Neighborhood

1. The requested variances are for construction of an addition to a pre-existing nonconforming structure with overall dimensions of 24' x 20 ft. R & G Wrought Iron Railings Inc. originally had been renting the building from the applicant and was looking to extend the building in order to put in a spray painting booth instead of doing painting outside in violation of the Town Code. Since that time, R & G has purchased the property which is triangler in shape and contains several other buildings besides the one proposed to be enlarged. All the buildings are in violation of the setback requirements but are pre-existing nonconforming. Although the "neighborhood" consists of other commercial properties, if the appeal was granted the property would become more congested and the overall nonconformity of the property would be increased. Additionally it would set a dangerous precedent<sup>1</sup> and the cumulative impacts from such variances may cause far reaching problems within the community resulting in a proliferation of businesses trying to enlarge and over burden the properties instead of reducing the amount of nonconformity on the properties. Various members of the public attended the hearings and spoke out against the proposed appeal. Many of the people felt the property was

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<sup>1</sup> A Zoning Board may be ordered by the courts to issue variances and/or permits based on precedent. See, Knigh v. Amelkin, 68 NY2d 975 (1986).

already overburdened. Others were concerned with the fumes that would be coming from the paint booth even though the applicant said the booth would meet air quality guidelines.

In support of the appeal, although all were form letters, the applicant supplied 7 letters signed by various businesses and people. Opinions of neighboring property owners, whether supportive or in opposition, are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

#### Feasible Alternatives

2. Various alternatives were discussed at the hearing. Now that the property has been bought by R & G Wrought Iron Railings Inc. the applicant can use the entire property. The Board discussed using one of the other buildings to place the spray paint booth in rather than build on to the existing structure. This could possibly be done without coming into conflict with the Code, thus eliminating the need for the variance.

#### Extent of Variance

3. The required setback is 50 ft. from the street line of Route 9, 100 feet from the centerline of Route 9, 50 feet from the street line of other streets and 35 feet from a residential district. The requested variances are 48.5 ft., 69 ft. 42.9 ft. and 11 ft. respectively. The requested variances are quite substantial. Additionally, the Board pointed out that the applicant also required a 100% variance of section 175-82 concerning enlarging a prior nonconforming structure.

#### Effects on Physical/Environmental Conditions

4. The proposed variance has the potential to adversely impact the look of Route 9 by further overburdening an already over crowded location as well as potentially impact air quality with the paint booth. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have a detrimental effect on the physical conditions in the neighborhood.

#### Self-created Hardship

5. The need for this variance is self created<sup>2</sup>. The Applicant (R & G Wrought Iron Railings Inc.) purchased the property from the original applicant while this appeal was pending. Therefore the need for the variance was known and in fact is due to the desire by the applicant to increase its' business.

**THE BALANCING TEST:**

Based upon the above findings, and taking into consideration the benefit to the Applicant if the variances were granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community, the Board finds that the balance weighs in favor of denying the area variances.

**THE ROLL CALL VOTE:**

The question of the foregoing resolution calling for denial of the requested variance was put to a vote on roll call of the Board on the 24th day of January, 2004, the results were as follows:

Vince Cestone, Chairman	Voting __ denial of the variance
Victor Carlson, Member	Voting __ denial of the variance
Leonard Lim, Member	Voting __ denial of the variance
Joan Turner, Member	Voting __ denial of the variance
Bill Flaherty, Member	Voting __ denial of the variance

**ATTENTION APPLICANT(S)**

**FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS YOUR RESPONSIBILITY. ALL NECESSARY APPROVALS AND PERMITS MUST BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.**

**Tim Pagones** - And as you are aware since there are only three of you, it has to be an unanimous decision in denying this variance.

**Vincent Cestone** - Okay motion to accept the resolution as amended. I'll make

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<sup>2</sup> While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.

that.

**Victor Carlson** - I'll second.

**Vincent Cestone** - All in favor?

**All Board Members** - Aye

**Vincent Cestone** - Okay, Lenny?

**Lenny Lim** - I am voting against this.

**Tim Pagones** - So you are voting for the denial of the variance?

**Lenny Lim** - Right. I am voting for denial

**Victor Carlson** - I am voting for the denial

**Vincent Cestone** - And I vote for the denial

**Tim Pagones** - Okay.

**Vincent Cestone** - Any old business

**Tim Pagones** - I have, actually I have old business new business just real quick. In our Appeals when we have been granting stuff, we have crossed off that any modifications can't be done without the, we just put zoning board approval. So the building department is out.

**Vincent Cestone** - Right

**Tim Pagones** - What has happened and I don't know if they are coming back or what, I have been speaking with Mr. Monroe and got a couple of letters, what is happening is this, you are having people who have their plans now instead of a door they want to put two windows. Or instead of two windows they want to put a sliding glass door. They cannot make any changes to the plans without coming to the zoning board. Or what happened was you had the property down in you know the Hatfield and McCoys I forget who, Doyle I think. And what happened was instead of having a crawl space they said lets go down 15 feet, let's go down 10 feet and have a full basement. Didn't change the height of the structure. So the actual height will be if it was 29 feet, that structure will be 29 feet. What they have done is gone deeper. The neighbors said no no no. That's not what your plans say. So now they have to come back to the zoning board because they can't make any modifications to the plans without zoning board approval. The building department is out. So that is why we always had and or building department approval as needed because if it didn't affect the dimensions or the

height, legally who cared if they went 100 feet into the ground

**Victor Carlson** - Okay. Now lets get back to the Coopers. If you read over what the court case says on it and what the Coopers attorneys are saying, they are saying they had a right to do, well they didn't say they had a right, they said they went to the building inspector and the building inspector okayed it. And that is the trouble. Now we are getting sued because the building inspector increased it and the neighborhood opposed it.

**Tim Pagones** - But I guess what happens is there is a remedy. The neighbors said you are not talking about just adding a window, you are changing the whole thing.

**Victor Carlson** - Yes

**Tim Pagones** - So they brought an Interpretation. And they said Mr. Monroe it is in violation, no it's not. Write your determination. He wrote a determination saying it is not in violation. They asked for an interpretation of that. But what is happening is by taking out the building department

**Vincent Cestone** - There's another thing they can do. They can write a letter to zoning board and say we want to change this window from this dimension to that dimension and then we can give it an okay

**Tim Pagones** - Yeah but what happens now is you are talking a month or two. As opposed to

**Vincent Cestone** - Isn't that a motivation for them not to change it?

**Tim Pagones** - Yeah but I think, I personally think you are taking on more than you need to and that is purely a building department.

**Victor Carlson** - Let's see what this court case comes out now with Cooper

**Tim Pagones** - Cooper fine, that's a major thing.

**Victor Carlson** - And it is being thrown back to the building inspector said we can do it and gave his approval on it.

**Tim Pagones** - And there was a remedy. The neighbors had the remedy

**Vincent Cestone** - What Vic is saying we wouldn't be in this fix if we had this written into the

**Tim Pagones** - But what I am pointing out is you had good intentions and

**Victor Carlson** - And he has good intentions

**Tim Pagones** - But now no one can change their plans instead of a two window he can't put one window. Instead of a single window they can't put a double window

**Lenny Lim** - Tim I think this discussion would be better off for the whole board. I am sure Joan would have something

**Vincent Cestone** - What I am going to say is let's chew on this and we will discuss

**Tim Pagones** - You can't sit there and say zoning board approval except for minor things because what is minor things?

**Lenny Lim** - Boy that's going to open a can of worms

**Victor Carlson** - All of a sudden we gave no variance for a cellar and all of a sudden we have a cellar. And the neighbors are suing and it goes to court

**Vincent Cestone** - Let me think about this

**Tim Pagones** - But if he put a cellar in and he didn't raise it 40 feet, I don't think the neighbors would have cared.

**Lenny Lim** - Let's mull it over

**Tim Pagones** - I guess looking at it the other way, you grant someone a variance down there and they had all windows. And the neighbors say well that's okay I can look through the windows. Now he sits there and he says you know what I just want one little window. So he writes a letter, but does the neighbor have the right to say you know what you changed everything, I want another public hearing. It is a catch-22. You open things up, just think about it, chew the fat, think about it.

**Vincent Cestone** - Motion to adjourn

**Lenny Lim** - Second

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Tim Pagones** - It's got to be unanimous.



**NOTE:** These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

**DATE APPROVED:** \_\_\_\_\_

Respectfully submitted,

Kim Shewmaker  
Secretary