

ZONING BOARD OF APPEALS

March 7, 2005

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 7, 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.

PRESENT:	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Joan Turner	-	Member
	Victor Carlson	-	Member
	Bill Flaherty	-	Member
	Tim Pagones	-	Counsel

ABSENT:

Vincent Cestone - First item on the agenda, I am going to take these out of order, I am going to do reviews for completeness first so those people here they can go home and not stay here for public hearings. James M. Copeland, Hudson Design.

Tim Pagones - I had spoken to Mr. Copeland earlier, I called his office earlier today, I had told him that they are missing a statement of use which he is supplying today and that some of the items contained in 175.36 for site plans which is needed for the special use permits were not addressed, or at least I didn't see them. And also there were no dimensions, I didn't see anywhere on any of the plans. So at this time, I advised them either way he is going to need it. When they go to the Planning Board, they are going to need all these things and in their referral back to you wants to see all these things in the 175.36 which shows the parking, the roads, lighting and stuff like that. So at this time I would say that it is incomplete. I am sure they will work on it very quickly. If you want to put it on for the 21st for completeness and hopefully he'll have everything.

Vincent Cestone - Okay we will do it then

Joan Turner - Are we amending our previous special use permits? Does anyone remember

Tim Pagones - What do you mean amend

Joan Turner - Do we have a special use permit on the Walter Hoving home

Tim Pagones - They listed like two or three different ones in the appeal that they had received prior.

Vincent Cestone - Okay. So they are down in the file to review them

Tim Pagones - Yes

Vincent Cestone - Okay.

Tim Pagones - So I would say put it on for the 21st and I am sure, I would think we will get everything.

Vincent Cestone - Next for completeness is Laurie Brown and Mark Mazzye.

Tim Pagones - That one we have been waiting for some time for a survey. That's the one where they hand wrote in and we had contacted them saying you can't just handwrite it in we need someone to do an actual survey. So I would say if you want to put it on for the 21st put it on. If you want to put it on for April, put it on for April. And if we don't hear anything, it has been out there for a while, so I would say another month or so you can tell them that we can determine it withdrawn. I think there is a violation though, so. We should cc the Court and cc Mr. Monroe and if there is a violation pending, then they go back to Justice Court for the violation

Vincent Cestone - Okay.

Victor Carlson - Which one is this?

Tim Pagones - Laurie Brown and Mark Mazzye. Do you want to put it on for April

Vincent Cestone - Yes let's do it for April. And if they don't do it for April we will withdraw it

Tim Pagones - April 4th.

Vincent Cestone - Tim, as far as Donovan is concerned did you do a resolution or no

Tim Pagones - No I did not do anything either way.

Vincent Cestone - Okay

Tim Pagones - Only because I know some people wanted to discuss it. I mean I

don't mind billing the Town but you know I spend some time on these resolutions and if there is a possibility that we weren't sure which way it was going, so I held off on doing anything. I mean it is up, we are not holding off anything so you have your 62 days. So I would say put that on after the public hearings for discussion and talk about it some more.

Vincent Cestone - Okay the public hearing of Paul J. Kaye and Cathy Duke Appeal #760. Is someone here for the applicant? Okay, where did we leave off?

Architect - You wanted some extra dimensions and I dropped them off, if everybody doesn't have a copy I have extra copies here.

(Too many papers ruffling to hear the applicant's architect)

Vincent Cestone - So refresh us, we are looking for a variance

Architect - On this back corner, this is the 15 foot setback line which is required and here is the back corner a 15 foot radius around that corner, you can see how it cuts into where the existing corner of the house is and what we want to do is we want to extend on this side of the house and we are cutting back on a diagonal so that we don't intrude, we are trying to minimize the intrusion into the setback as much as possible. This is the model of the proposed addition

Vincent Cestone - So the triangular is the

Architect - Is part of the addition

Vincent Cestone - Right

Architect - This line right here is the existing corner of the house. So we are coming out in this direction and coming on a diagonal. Just so that, this is the area of the living spaces and in order to minimize the amount of square footage we are adding on to the house, we are keeping all of that in this particular area and it makes, and this is the location that makes the most sense to put the living spaces. The kitchen is going to be coming into the front of the house and we are also adding on, bumping the kitchen out just a little bit so that we can have sufficient space to have the kitchen and the dining room and living areas in this area. This part is all the bedroom areas of the house as it stands. And we are also asking to put a covered entrance over the existing steps. These steps that you see on the plan and the ones that are noted on the dimensions, the steps are already existing. But they will need to be rebuilt because they are in a bit of disrepair. So this platform here exists

Lenny Lim - So you are replacing the steps. You are not moving

Architect - No we are not moving them any further forward and this brick that

you see on this model, that is not going any further forward than what it is. But this wall of the house right here, is coming forward. The dimensions from the property line from the steps perpendicular to the property line _____ covered porch and that porch is existing but we are now adding a cover to it. So the distance from the overhang to the property line is noted. All the survey information is from the Badey & Watson survey. They provided me with their CAD file and then I put the building in there. So we have all the dimensions. The dimensions to the corner of the new construction to the front line also to the overhang and I have the diagonal distance to the corner that you requested and also the distance from the overhang to the corner on the diagonal. And then I also put in the distances on this side which _____ because we have this long tail on the property.

Vincent Cestone - Now explain to me why this addition couldn't be on the front of the house

Architect - There is massive chimney right here. If we were to put this addition on the front of the house, two things, currently this is a living room where the big chimney is and we are planning on keeping the fireplace that exists. If we were to tear it down, and move it to the front of the house, then it, two things, you would have the extra cost of tearing it down and you would have this big mass there plus the location of the front entrance is such that it wouldn't afford as much space for the living space there. And then this would have to grow farther in order to have a living space. The kitchen is a galley kitchen and you just have an entry corridor coming into the back. We were able to have the living space, living room and dining room space come over farther over in this direction so that we don't have to project so much of a distance out. So we were trying to keep the intrusion to a minimum. Also, we wanted to take advantage of the views of the lake. We kept this whole corner _____ so that you could see, these windows wrap around the corner so that they will have a light appearance when you are looking from the street. You will be able to see straight through that corner.

Joan Turner - So it is designed to give maximum square footage with minimum setback and minimum cost

Architect – exactly.

Cathy Duke - And the other thing that she mentioned last time when you weren't here was that this is where the sun comes in in the morning so that it becomes like a little sitting area right in the front of the house and then the sun moves around this way as it goes into the evening. So we will have light the whole way.

Architect - So basically in the morning when you are having your breakfast, you have your light. And then in the afternoon when you are actually using your living spaces again you are using that light. We are trying to maximize the amenities of the site. Also I wanted to pull it in this direction because we do have this nice

long wooded area over here and we wanted to basically make use of that wooded area and open up with windows so that they could take advantage of part of the property that they don't really have a lot of connection with because of the massive chimney and there is just one sliding glass door on that side of the house.

Vincent Cestone - Who lives on this side of the property?

Cathy Duke - I'm sorry, which side?

Vincent Cestone - Here

Cathy Duke - On this side

Architect - Yeah

Cathy Duke - That's Helmut's property, gosh I don't know his last name but he wrote us a letter.

Architect - His house is on the far side

Cathy Duke - Because there is a slope and so his house is actually over here but further down near the edge of the street so that

Architect - There is a wooded area in between his property has a big wooded area in here before you get to the clearing of his house

Vincent Cestone - So guess 100, 200 feet

Architect - Well it's a hundred, it's 94 feet from the addition to the property line and his house is farther than that.

Cathy Duke - I would say at least another 75 feet maybe 100 feet more

Architect - Probably a good, because he has a fairly large area between his property line and his house.

Bill Flaherty - I think we even have a letter from your neighbor having no objections to addition that you are planning to put on. And I believe he said in that letter that it added substantially to the aesthetic view of the home itself. I can see here that it certainly does.

Architect - Here are a few pictures of the existing house. This actually is a telephoto view of that neighbor in question. Actually I was outside on the corner with a telephoto lens so I could take a picture.

Vincent Cestone - Any other questions from the board?

Joan Turner - Just what are the variances for the numbers that we are looking at for the record. I know there are a number of them in the front. But maybe we can consolidate

Architect - Do you want it from the existing steps or from the overhang of the new construction? If you go from the existing steps, the front yard would be 31.2

Joan Turner - That's the variance you are looking for

Architect - No that's the actual, we need 40 feet

Joan Turner - So subtract the difference

Tim Pagones - So it would be 8.72 on the front

Joan Turner - And on the corner you are looking for

Tim Pagones - It should be 15 I believe and if you go to the corner of the house that is 10.12 and the overhang is 7.19. So you figure another 7.71, right?

Architect - What

Tim Pagones - 7.71 for the back because of the overhang

Architect - if you go from the overhang

Tim Pagones - We'll get them all in there

Architect - That's why I gave them all to you just in case.

Joan Turner - And the third one. Is there a third variance on that one corner with the overhang?

Tim Pagones - No. I'll reference the corner of the house and the overhang and you have the front steps

Architect - And if you go right to the existing front steps, then that gives us the ability to you know rebuild the steps in their current location. That actually is not an intrusion. In this particular location 40 feet is only the front yard and 15 on all other sides.

(Everyone talking at once)

Vincent Cestone - Any other questions from the board? Any comments from

the audience on this? Motion to close the public hearing?

Bill Flaherty - So move

Victor Carlson - And I'll second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - I'll make a motion for a straw poll. Do I have a second

Joan Turner - Second.

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Vic?

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Lenny Lim - I vote in favor

Vincent Cestone - Joan?

Joan Turner - I vote in favor

Vincent Cestone - And so do I

Tim Pagones - We can try for the 21st

Vincent Cestone - April 4th

Tim Pagones - Okay April 4th. What will happen is they will take their final vote on April 4th. They've got five days to get it downstairs and I will let Mr. Monroe know

Architect - Okay. Thank you very much

Cathy Duke - Thank you very much

Vincent Cestone - Next item on the agenda is the continuation of a public hearing John Pielmeier, Irene O'Garden and Karen Southard. This is about the

garage. Let me ask the owner, did the sale go through?

Mr. Gagnon - No

Vincent Cestone - So is it pending

Mr. Gagnon - I don't think so

Vincent Cestone - Does the board have any questions on this? This is that garage?

Victor Carlson - No work has been done on the garage yet?

Mr. Gagnon - Yes there has been work done

Vincent Cestone - In what way

Mr. Gagnon - Excavation. There is about \$10,000 worth of excavation work.

(Papers being shuffled around...cannot hear)

Joan Turner - You know I have difficulty hearing you. So maybe you can just stand up before us and address us a little bit better. Thank you

Mr. Gagnon - Once the weather breaks I can put the foundation in.

Joan Turner - I would certainly like you to restate your case again to refresh our memory and I also asked for the building application, the building permit application. Did we get that

Tom Whyatt - I don't have that.

Joan Turner - Tom do you have the building application? Not the building permit itself but the application

Tom Monroe - I don't have it with me. I would have to go downstairs and get it

Joan Turner - Could we take a look at it

Tom Monroe - I believe Mr. Whyatt has it

Joan Turner - Is the survey submitted along with the application Tom?

Tom Whyatt - Here is a copy of the application and the building permit

Vincent Cestone - Thank you

Joan Turner - You don't by any chance have a copy of the survey?

Tom Whyatt - No I don't

Joan Turner - The current acreage is what

Mr. Gagnon - 2.02

Joan Turner - Why are you against this structure? Just for the record

Tim Pagonos - Well I guess their feeling is it is going to be used for commercial purposes. They look at the bays, you've got two huge bays. I think originally when the owner went to apply for the permit there was some mention about him storing some of his vehicles there every once in a while. I think he discussed that with Mr. Monroe and that was nixed. But they don't believe him. I believe that is the gist of it. I think last time the owner was here, he said look I've got a boat, I've got an RV, I'll put a note on the plat that says I will not store any commercial vehicles here and we adjourned it because we wanted to see if he was going to sell the property, it would do away with the whole problem.

Joan Turner - So maybe Mr. Whyatt can go ahead and make his presentation.

Tom Whyatt - It was our understanding that in fact that he intended to park his trucks there certain times such as vacation and part of the permit that was permitted it was not our understanding that that had been nixed.

Tim Pagonos - Well I guess last time he was here he said he won't do it. He'll put a note on the plat. I mean, my feeling is that it comes down to an enforcement issue. He might promise you everything and you know what, as soon as you rule one way he might start parking commercial vehicles there. And then it is up to Mr. Monroe to come there and cite him. I don't know.

Tom Whyatt - I think our concern is that in the totality of this application. The circumstance of the application. The conversation with the Building Inspector and the design and the nearness of the shop. And the applicant's intention to use it for commercial purposes that when you look at the whole package, you have an enforcement problem as soon as the approval is made. I believe that the Town is authorized to prevent itself from having an enforcement problem and that is why we are asking the board to nullify the permit.

Joan Turner - I am going to go first on a statement about generally how I feel about applications and permits such as this. It is really a gray area of interpretation about is this legal, what are we going to do, how do you handle a situation. You can make an argument that it is totally legal to do it. On the other hand this board is charged with the responsibility of orderly development in the

community. According to our zoning codes that is what we do. We allow for the orderly development in a community and we also allow for the protection of the health safety and welfare of the community and we also are charged with protecting property values. So you have a building, a garage coming in which has the potential for commercial use. It is an enormous building with bays here, for what purpose, for an RV. Does an RV need this kind of space to get into it? Does a boat need that kind of height to get into it? Those are all areas of question. I for one think that if you've got a potential enforcement issue, it is not, it should not be permitted because the neighbors should not be the enforcers. Tom Monroe is not going to be jumping up there every five minutes. And it is a question of you say you may use or you may not use it for vacation. It is not an appropriate use I think for this. You want to put a garage up there for your antique cars, modify your plan. This plan really lends itself to commercial use and I don't think that this board should get into an enforcement issue. Modify your plan. You don't need a second story. I have a garage. I don't have a second story. Bring it to, conform it to where it is more compatible with the property. That's the first point on the zoning issue. Second problem I have with this, not with this particular interpretation, but with the property. You have two houses on less than 10 acres of land. And I would like to know how you got a permit to renovate a barn when you have an existing house there. And if the house is abandoned, or it is derelict, then it should be torn down before you are allowed another house there. So as far as I am concerned you are in violation of the code and I think that matter needs to be addressed before you even come to this board or even allowed to get another building permit. And those are my feelings on the matter. In fact, Tom, I would like him to be cited for being in violation.

Tom Monroe - He is not in violation so I cannot cite him.

Joan Turner - How does he have two houses on 2 acres.

Tom Monroe - Let the court continue on and if you want we

Joan Turner - We'll speak to that issue later.

Bill Flaherty - What is the zoning down in that area?

Joan Turner - It is R-80

Bill Flaherty - It is residential

Tim Pagones - I guess, right now, if he never puts a commercial vehicle in there, this is a legal building. You might not like the design. You might not like the large bay. But if there is never the storage of commercial vehicles, it is legal. They are here because they are saying you know what, he is going to store his commercial vehicles

Vincent Cestone - I agree that it is legal because

Bill Flaherty - Well it's a vanity or an assumption, rumor

Tim Pagones - I am advising you. They're here saying that you know what, and we can ask Mr. Monroe. I don't know what the conversations were. I think they were told the conversation with Mr. Monroe originally were that Mr. Gagnon said I'm gonna store some commercial vehicles there when I go on vacation. And I believe, I think he even said that's what I was going to do and Mr. Monroe said you know what, you are not going to do it. Okay fine. So right now the owner has agreed and he stated it before you as a quasi judicial board I will put a note on the plan, I am not going to store commercial vehicles. I have an RV there and a boat there. And unfortunately, it is an enforcement issue. And that is past your powers of the zoning board. You are not an enforcement, you're there to make sure everyone complies with the zoning requirements. And you know what, unfortunately that becomes the neighbors problem and if he does store commercial vehicles there, they are going to be on the phone 20 times a day and they are going to be busting Mr. Monroe's chops and if he doesn't go out and cite him, then you know what then I hope they go to the Town Board and say, we made 50 complaints. Mr. Monroe didn't cite him, here is pictures of the commercial vehicle.

Joan Turner - You know I have a really hard time with that kind of argument. Whether it is legal

Tim Pagones - That's the law though

Joan Turner - But let me just tell you about an incident out on 9D where there was a huge barn put in by somebody who was in the landscaping business. And I talked to the building inspector at the time about it. When traffic was blocked on 9D because a huge trailer truck came in with a load of mulch. And it wasn't you Tom, it was your predecessor. And I was told, does this man sell a few plants. I say yes but he is a landscaper and he's got trucks coming in up and down this private driveway, residential neighborhood and he has truck loads of stuff coming in for his business. He can sell a plant, a nursery, it's allowed. This is the kind of fuzziness in the code that needs to be addressed and it is also again an enforcement issue. You mean to tell me that this board is absolutely powerless to prevent these kinds of situations from arising?

Tim Pagones - I think that if the owner said I am going to store my vehicles, my commercial vehicles, then you know what, it is being used for commercial purposes. That's not allowed. Then you can sit there and take away his permit.

Joan Turner - But we cannot do anything to forestall that you are saying

Tim Pagones - Nothing has happened. Right now nothing has happened. Right now he has a permit to build probably a very big and maybe ugly garage.

Joan Turner - Is it in the purview of this board to ask him to justify why he needs two big bays like this

Tim Pagones - No. I don't believe so.

Joan Turner - It's not

Tim Pagones - It's legal. It is a legal structure. He can build a 40 foot house as long as he complies with the code. He would have never been here but for the fact the neighbors were concerned with him storing commercial vehicles. It doesn't happen. Maybe those are loop holes in the code because he can build the ugliest, he can paint it the ugliest thing, you know, if he violates the code he comes before the board or he gets cited. But right now they are here, the neighbors are here because there was discussions about storing his commercial vehicles.

Vincent Cestone - How many structures on this lot?

Mr. Gagnon – 2. And the 2 small sheds

Joan Turner - So you have 2 houses and 2 sheds and you want to put this up

Mr. Gagnon – Yes

Vincent Cestone - All on the same piece of land?

Mr. Gagnon – Absolutely. I have my right to do that.

Lenny Lim - Why do you need such a high second floor? Explain that again. Why do you need that second floor. I am just asking why you need it sir.

Mr. Gagnon – I need it for storage

Lenny Lim - Storage of what?

Mr. Gagnon – I've got a lot of stuff in my house.

Lenny Lim - Commercial stuff

Mr. Gagnon – No

Lenny Lim - Or just your stuff

Mr. Gagnon – Residential stuff.

Lenny Lim - Are you putting heat up there? Water?

Mr. Gagnon – No.

Lenny Lim - Electricity?

Mr. Gagnon – nope

Lenny Lim - How do you access the top floor?

Mr. Gagnon – You’d have to look at the plans

Vincent Cestone - You don’t know? You are spending all this money and you don’t know?

Mr. Gagnon – Because I don’t plan on using the second story that much.

Vincent Cestone - You don’t know how to get to the second story and you are spending over a hundred thousand dollars?

Mr. Gagnon – Can I ask a question

Vincent Cestone - Answer the question I asked you

Mr. Gagnon – I am going to use a staircase

Vincent Cestone - And the staircase is where

Mr. Gagnon – I don’t know I haven’t looked at the plans in a while

Lenny Lim - I don’t have any more questions

Vincent Cestone - Any comments from the audience? Any comments from the board?

Bill Flaherty - I am somewhat concerned over the fact that there is already two structures existing on the property and I realize that this becomes a legal issue for the most part in terms of what’s there and what’s going to be built there. But I also think in as much as people are making an assumption that that is going to be used as a commercial site due to the fact that your intention may be to occasionally park some commercial vehicles in front of this building or perhaps use it to that purpose. Now obviously if that were the case, you would be in violation of the zoning laws. So therefore it would be incumbent upon the enforcement officer, Mr. Monroe, to _____ violation. And that would be a

horrendous task on his part unless you have your neighbors here looking at your facility 24/7 and the minute you put your commercial vehicle to the site, call Mr. Monroe and have him come down and cite you. It's a very very thorny question that becomes before this board and I realize the legality of it. As I understand it from our attorney here it is perfectly legitimate and perfectly legal. I think however there should be some manner of compromise on your part. In order to make the provisions for that in your plans, perhaps reduce the height of the two bays that you have there so that you can be assured that there wouldn't be any large vehicles, RVs or boats or whatever else you have going to be stored in that facility. I think that would be a good compromise and gesture on your part to do that in order to negate the situation so that everyone can be satisfied with the conclusion. I don't think that is too much for us to ask you.

Vincent Cestone - Okay.

Lenny Lim - I think that is a good suggestion Bill.

Vincent Cestone - With that if there are no comments from the board or from the audience. I will make a motion to close the public hearing.

Tim Pagonis - Does anybody have any questions for Mr. Monroe? He is sitting here. I mean he is sitting here for a couple of things but you know there are a lot of questions about what happened. I don't know if you want to ask Mr. Monroe what happened, what was said? I mean he might sit there and say you know what the guy is going to use it for commercial purposes, that makes your decision easy. I don't know.

Joan Turner - Well, Tom, let's hear what he said when he

Tom Monroe - Mr. Gagnon and I had several discussions regarding the use of the structure and I made it very clear during all those discussions that the, I won't say exactly what I told him this afternoon, but if he did use it for commercial purposes that he would definitely be hearing from me. I think from the logical standpoint, first off I gave the building permit because I think it is totally legal and there is no reason to be here. But, that aside, I don't think it really makes much sense on Mr. Gagnon's part to put up a \$120,000 building when he has been told on numerous occasions that the first time he violates the code, he is going to get a violation and if push really came to shove, he would be in court and he would lose in court and now he is stuck with a \$120,000 building that he can't use. So that really doesn't make a whole lot of sense on his part if he thinks he is going to put up a building and then turn around and use it for commercial purposes and get away with it. And I don't think I have to worry too much about code enforcement issues as far as me being able to keep an eye on the building because I think there will be multiple eyes on the building if it gets built so that if there is a violation, I am sure I will know about it day, night, weekend, or whenever it is.

Joan Turner - You know what happens with buildings like this though they get sold. And it is not the same owner. It's a mess

Tom Monroe - Well Ms. Turner I understand completely what you are saying but I agree totally with Mr. Pagones and he and I have discussed this, that it is a matter of the law and what is permissible and this building in, as far as I am concerned no way shape or form is contrary to the code of the Town of Philipstown. And as far as the number of structures on the property, it is well within the 10% and 20% limits that are outlined in the code. So those are not exceeded. As a matter of fact, he is very far under those

Joan Turner - I know I did the math, you're right, I did the math on that.

Tom Monroe - And as far as the two buildings, one building which was a barn was converted to living space with appropriate building permits is a single family residence. The other building is empty and is being used for storage. So it is actually no different then a shed. It has also been made clear to Mr. Gagnon and that would carry over to anyone purchasing the property that if at such time anyone decided to rehab the main house, and convert that to a single family residence, they would have to make the decision of what was a single family residence and what would be essentially part time guest quarters. It would be their option but if they did rehab that house, they are not going to occupy both structures as full time residents in a single family residence.

Joan Turner - So you are saying to me that somebody with 2 acres of land can put up a guest house? That is used occasionally? In addition to their own house? And that is acceptable under the code

Tom Monroe - That is an extremely gray area. Because I don't know what comes after gray, it is not quite black but it is extremely gray

Joan Turner - Try mud

Tom Monroe - And I had this discussion with Mr. Doyle on many occasions regarding guest house, care taker's quarters, etc. It is a very gray area

Joan Turner - So this provision in the code about not having two houses on less than 2 acres really doesn't mean anything?

Tom Monroe - No, if two single family residences.

Joan Turner - But the transition area between caretaker/guest house, how long the guest is there

Tom Monroe - Exactly.

Joan Turner - And that's another enforcement issue.

Tom Monroe - Exactly. And especially with caretaker's quarters because caretaker's quarters potentially would be

Joan Turner - Permanent

Tom Monroe - Would be permanent and the care that they are providing is picking up the mail everyday. The potential is there.

Vincent Cestone - Any other questions from the audience or the board? Any comments? I'll make a motion to close the public hearing. Do I have a second?

Joan Turner - Second.

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - I am not going to make a motion for a straw poll. I want to think about this.

Tim Pagones - Okay. Put it on for April 4th?

Vincent Cestone - Yes.

Tim Pagones - For discussion

Vincent Cestone - Review of minutes of January 24th. Are there any corrections or modifications?

Joan Turner - I read them. There was one but I left it at home. It was just a word. Nothing important. So they are fine.

Vincent Cestone - A motion to accept the minutes as amended?

Lenny Lim - I'll so move

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - aye

Vincent Cestone - Minutes of February 7th? Any additions, corrections or

modifications?

Bill Flaherty - I had none.

Lenny Lim - I have none.

Vincent Cestone - Motion to accept the minutes?

Lenny Lim - So moved

Victor Carlson - Second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Next item on the agenda we are going to discuss Tim and Mary Donovan's application. I think most of the board members went to the applicant's house to review and subsequently there has been some change in the opinion of several of the board members. Do we wish to discuss this or do we just want to state our opinions?

Bill Flaherty - Well I would like to state my opinion about this issue. Vic and I both visited the home several weeks ago and looked at the addition and it is a substantial well built addition to the home. And there is no question that if this would be removed from the existing home it would impose a rather substantial financial problem to the homeowners in order to have this done. In my opinion at any rate and I think it would undermine the entire rear of the house, because this addition is rather large. So therefore I am going to change my prior vote and change it to an approval vote because of the problems that would exist if this would be removed from the home. It just doesn't make sense to me, it's just a common sense standpoint alone that the problem for everyone concerned. And it is my understanding of the prior hearing that we had on this that while your neighbor did not object essentially to the addition as it exists today. And therefore I have no reason why any other neighbor would object to it as well. As a matter of fact, I don't think your neighbors can hardly see this because you have an 8 foot fence bordering your property which substantially blocks the addition from her view. But it's an addition, it is a nice looking addition I might add. I think it also points out the fact that people in our community cannot indiscriminately go ahead and make changes to their home and build additions to them without the necessity of going through the proper authorities to have building permits issued. And this board has a substantial number of those in our town. Most of them are decks or porches or something to that nature. Not substantial in nature at all as opposed to what this addition is. But never the less it does point out the fact that we have to be mindful of the zoning laws here in our town and go through appropriate authorities in order to have things done right the

first time every time and not get involved with these contentious situations that arise from time to time because of these additions. As I said, I am going to change my vote on this because I think it would certainly be a hardship. With that said

Vincent Cestone - Lenny do you want to say anything? Or do you want to pass?

Lenny Lim - I'll pass.

Vincent Cestone - Vic do you have anything to say?

Victor Carlson - After looking at the building, well first of all the plans that were submitted were all together different from what I seen. What I've seen was constructed very well and it's a really nice, everything was done nice. So I have to change my decision on that to be in favor.

Lenny Lim - Vic also brought me down for a site visit to look at it also and I absolutely changed my mind also. I mean you are not coming any closer to any of your neighbors. It is actually fits to the outside of the house. I had the same problem Bill had. It was just the way you went about it guy. Not even trying to get a permit.

Vincent Cestone - Joan do you have anything to say because you were in favor of it

Joan Turner - I was in favor of it before but I just wanted to know if the neighbor was here tonight? Because I think in her comments from the last meeting we had that she was not opposed to the, correct me if I am wrong, she was not opposed to the addition she just wanted to make sure that Tom made sure that it was structurally sound and that you had an electrician's certification that it was fine. And so as long as that is put into the

Tim Pagones - That will be a condition. If it is not sound

Joan Turner - And she was happy with that so that was it. So in view of that, again my position stands as it was, in favor.

Vincent Cestone - And my opinion has not changed.

Tim Pagones - So you just did a new straw poll and I will have a resolution for the 4th.

Vincent Cestone - Okay.

Joan Turner - Do you need to have that

Tim Pagones - Why don't you take it as an official straw poll\

Vincent Cestone - Okay. I make a motion for a straw poll

Victor Carlson - I'll second

Vincent Cestone - All in favor

All Board Members - aye

Vincent Cestone - Len?

Lenny Lim - I'll vote in favor

Vincent Cestone - Joan?

Joan Turner - I vote in favor

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor

Victor Carlson - I'll vote in favor

Vincent Cestone - And so will I.

Tim Pagones - Okay

]
Vincent Cestone - with that I am going to take a 5 minute recess

(RECESS)

(Turning tape over. NO dialogue lost)

Vincent Cestone - Next item on the agenda is resolution for Nextel

Tim Pagones - Okay

RE: DECISION AND FINDINGS OF THE PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #703 Applicant: Nextel Communications
Special Use Permit for removal of 3 whip antenna and replacement of 9 panel antenna on the existing HUD radio tower

Dated: March 7, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on November 15, 2004, January 3, and February 7, 2005, to hear the appeal of Nextel Communications for a special use permit to allow for replacement of 3 whip antennas by 9 panel antennas and continued co-location on the existing HUD radio tower. The property is located on 22 Sky Lane, Garrison, in the Town of Philipstown, Putnam County, New York.

At the public meeting of the Board on March 7th, 2005, upon all the discussion that preceded it, including the public hearing, all prior public meetings, site visits undertaken by individual Board Members, and a review of all exhibits and 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:

THE APPEAL OF NEXTEL COMMUNICATIONS(#703) FOR A SPECIAL USE PERMIT TO REPLACE 3 WHIP ANTENNAS WITH 9 PANEL ANTENNAS AND TO CO-LOCATE ON THE EXISTING HUD RADIO TOWER AND RELATED BASE EQUIPMENT IS HEREBY GRANTED WITH THE FOLLOWING CONDITIONS, BASED ON AN EVALUATION OF THE APPLICATION IN LIGHT OF THE STANDARDS AND CONDITIONS ENUMERATED IN THE PHILIPSTOWN CODE FOR THE ISSUANCE OF SPECIAL USE PERMITS AND FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE THE FINDINGS OF THIS ZONING BOARD OF APPEALS.

THE CONDITIONS¹ OF THE SPECIAL USE PERMIT:

The Board hereby finds that the following are reasonable and imposed for the purpose of minimizing any adverse impacts on the neighborhood or community:

- A. The structures on the subject premises granted conditional special use permit by this decision shall not be further enlarged except in accordance with all applicable provisions of the Philipstown Code and shall remain in the configuration as shown on the Applicants' maps and plans. No further

¹ Town Law 274-b (4) authorizes the Zoning Board to impose "reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit."

enlargement or reconfiguration of the structures is authorized without the required approvals.

- B. The equipment shall be used only for the purposes enumerated in the application materials and shall not be converted to any other use without compliance with applicable provisions of local, regional and/or state laws.
- C. The applicant must immediately remove the antennas and any equipment upon obsolescence and/or discontinuance of use and applicant must thereafter reclaim the site or portion thereof and return it to its original natural state.
- D. The applicant shall perform an emission test as well as a complete safety inspection of the communications tower yearly. The safety inspection shall consist of, but not be limited to the items enumerated in section 175-49.10(F)(5) of the Town of Philipstown Code. Said results shall be given to the building Inspector within thirty (30) days of the test being completed.
- E. The applicant shall post a bond sufficient to provide for the removal or repair of the antennas and building with the Building Department pursuant to section 175.49(t) of the Town of Philipstown Code. The amount of the bond shall not be less than \$25,000.00.

Tim Pagones - Mr. Warden is here for the applicant and I think his concern is the amount of the bonds. He is looking for less.

Mr. Warden - We had, I am sorry do you want me to speak now?

Tim Pagones - They ask for \$5,000

Vincent Cestone - You can't remove anything for that amount of money. You can't even get the people to drive their trucks for that amount of money.

Mr. Warden - I think where we left it at the last meeting was that the board was going to check I guess with the Building Department for a more reasonable amount. \$5,000 might be in your eyes a little

Vincent Cestone - I am not prepared to do that because that would be precedent setting and we always have people, we are going to leave it where it is. Sorry.

Mr. Warden - My objections are noted

Tim Pagones –

- F. The applicant shall provide proof of liability insurance to the Building Inspector before the issuance of the building permit.
- G. Upon receipt of applicable invoices, the applicant shall pay the Town for any fees paid or due to the consultant in regards to review of the application, per the Town Code.

FINDINGS OF FACT:

1. The Applicant, Nextel Communications made an appeal (#703), dated February 14, 2003, to the Philipstown Zoning Board for an Interpretation/ Special Use Permit. The Applicant first appeared on March 3, 2003 by its counsel Cuddy & Feder & Worby LLP seeking an Interpretation/Special Use Permit in regards to replacing the existing 3 whip antennas with 9 panel antennas. The Applicant had replaced the antennas by merely obtaining a permit from the Building Department. The Appeal was adjourned for further discussions on April 21, May 5, May 19, June 2, July 7, 2003. On July 7th, the Applicant by its Counsel withdrew the request for an interpretation and advised the Board that it would be going forward with the Special Use Permit. The appeal was adjourned until September 13th, 20th and again until October 18, 2004 in order to supply the Board and its' Advisors with additional material . The appeal was filed with various exhibits and the Board accepted additional materials and revised submissions at public meetings and during the public hearing process, all of which were reviewed by the Zoning Board and made available to the public. A composite list of the Exhibits considered by the Board in reaching a determination is attached as **Exhibit "A"**.

And Kim is going to attach that

2. The subject property is located in a R-80 District in the Town of Philipstown, New York. According to the Zoning Law of the Town of Philipstown at Section 175-49.10, Paragraph B(4); Permit Regulations, co-location of communication equipment on an approved communication tower is permitted in an R-80 District subject to the securing of a special use permit from the Zoning Board of Appeals.
3. The Board reviewed the application materials. The application was

deemed complete and the Zoning Board referred the Application to the Planning Board in accordance with Philipstown Code §175-52 for their input and report prior to scheduling the public hearing.

4. Copies of the application materials were referred to Putnam County Planning Department in accordance with General Municipal Law §239-m. A copy of the Putnam County Planning Department response is attached as **Exhibit "B"**.

And Kim will attach that

5. The action is subject to review pursuant to SEQR. The Zoning Board determined the project as unlisted based on a review of the Short Form EAF as supplied by the Applicant. The Zoning Board conducted an uncoordinated review. The Zoning Board declared itself lead agency and reviewed and adopted the Short Form EAF which was supplied by the applicant. No potential large impacts were identified. Therefore, no Part 3 was required.

Tonight you are going to declare yourself lead agency and we are going to review their short form. There is no significant impact so we can adopt it.

6. The Planning Board report was received and reviewed by the Board. A copy of the Planning Board report is attached as **Exhibit "C"**.

Kim will attach that

7. A Public Hearing was conducted on November 15, 2004, January 5 and 24, 2005 and completed on February 7, 2005. A copy of the Public Hearing Notice is attached as **Exhibit "D"**. The Zoning Board conducted a straw poll vote concerning a Negative Declaration and a straw poll vote concerning the Special Use Permit. The straw poll vote was unanimous in giving a Negative Declaration and granting the Special Use Permit.

FINDINGS AND CONCLUSIONS (IN ACCORDANCE WITH THE STANDARDS AND CONDITIONS ENUMERATED IN SECTION 175-53 OF THE CODE OF THE TOWN OF PHILIPSTOWN:

The Zoning Board hereby finds that the Applicant has demonstrated compliance with the following standards and conditions:

- I. The location, type, character and size of the use and any buildings, structures or facilities in connection therewith will be harmonious with the character of the neighborhood, will not detract from the appearance and beauty of the neighborhood, will not hinder or discourage the appropriate and orderly development of the town and the neighborhood

The site already consists of an existing 392' radio tower. The proposed use is to replace 3 whip antennas with 9 panel antennas to the existing radio tower. The 9 panel antennas will be flush mounted to the tower so as not stick out further and limit the visibility of them. Three of the antenna will be placed at a height of 244 feet above grade level as shown on the Applicant's plans. There was no evidence in the record from which the Zoning Board could determine that the proposed use would either hinder or discourage the appropriate and orderly development of the town or neighborhood.

- II. The nature and location of the use and of any building or structure in connection therewith will be such that there will be adequate access to it for fire and police protection purposes.

The proposed use involves merely replacing 3 whip antennas with 9 panel antennas to the existing facility. Access for the proposed use will be derived via the same driveway used by the radio station caretaker. The nature of the use and the location of the buildings will not interfere with access for fire and emergency apparatus. A chain link fence will surround the leasehold area, secured by a locked gate. This fence will not be an obstacle to emergency service personnel in the event of an emergency requiring access.

prospective traffic, that provision is made for entering and leaving the property in such a manner that no undue hazard to traffic or undue traffic congestion is created and that adequate off-street parking and loading facilities are provided.

The Applicant has proposed to use the existing parking spaces that are currently at the site. These spaces are in accordance with the requirements of the Philipstown Code for the proposed use. Visits to the site will be infrequent consisting of approximately one visit per month. Therefore the existing driveway is adequate to carry prospective traffic for the proposed use.

- IV. The lot on which the use is to be established is of sufficient size and adequate dimension to permit conduct of the special use and provision of buildings, structures and facilities in a manner that will not be detrimental to the neighborhood or adjacent property.

The proposed change in use will affect only a tiny portion of the 525,334 sq. ft. parcel. The only structure besides the existing radio tower is the caretakers quarters. Therefore, there should be no further impact to the neighborhood.

- V. The buildings, structures, facilities and site layout will be suitably landscaped and maintained and will have adequate land area, yards and setback area so as to maintain the character of the neighborhood.

The applicant proposes to continue to co-locate on an existing radio tower and replace the existing whip antennas with panel antennas and install an equipment cabinet. The applicant will comply with all the required setback requirements and height requirements. There is already natural screening consisting of both deciduous and evergreen trees. Further, the applicant will flush mount the antennae in order to blend in with the existing radio tower.

- VI. The proposed use and the buildings, structures, facilities and site layout will not be detrimental to the public health safety and property values in the neighborhood.

The proposed use and the buildings, structures, facilities and site layout will not be detrimental to the public health, safety and property values in the neighborhood. The applicant provided a report by Expert Wireless Solutions, Inc., dated March 29, 2002. The report concluded that there would be no health danger to the public.

COMPLIANCE WITH STATE ENVIRONMENTAL QUALITY REVIEW ACT²

as its notice of determination of non-significance pursuant to Article 8 of the Environmental Conservation Law. A copy of the Negative Declaration is attached as **Exhibit "E"**.

² Town Law Section 274-b (8) requires compliance with the State Environmental Quality Review Act and its implementing regulations.

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for GRANTING the requested Special Use Permit with conditions was put to a vote on roll call on the 7th day of March, 2005, the results were as follows:

Vincent Cestone, Chairman	Voting _____	the special use permit
Victor Carlson, Member	Voting _____	the special use permit
Leonard Lim, Member	Voting _____	the special use permit
Joan Turner, Member	Voting _____	the special use permit
Bill Flaherty, Member	Voting _____	the special use permit

FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS YOUR RESPONSIBILITY. THE GRANTING OF A SPECIAL USE PERMIT BY THE ZONING BOARD OF APPEALS IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY, BOTH OF WHICH CAN ONLY BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE PHILIPSTOWN BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.

Tim Pagones - The first thing you have to do is declare yourself lead agency.

Vincent Cestone - Motion to declare us lead agency?

Lenny Lim - Second.

Vincent Cestone - All in favor?

All Board Members - Aye.

Tim Pagones - The applicant had, actually Cuddy Feder & Worby had supplied a short form EAF and I have gone over it. There is no large potential impact. There is no likely public controversy. There is no impact on the environmental characteristics. So you can check no for everything and adopt it as your own. You need a motion to do that.

Vincent Cestone - Motion to adopt it as our own?

Joan Turner - So move

Bill Flaherty - Second

Vincent Cestone - All in favor?

All Board Members – aye

Vincent Cestone - Okay now straw poll on the resolution.

Tim Pagones - So you are doing a straw poll to do a negative declaration and accept or grant the special use permit

Vincent Cestone - We just did the neg dec

Tim Pagones - Straw poll for the resolution, excuse me

Vincent Cestone - This is not a straw poll. This is the actual vote.

Tim Pagones - Okay the actual vote

Vincent Cestone - Joan?

Mr. Warden - Can I interject?

Vincent Cestone - Sure

Mr. Warden - I am sorry. I noted on the agenda tonight that it says this is a continuation of a public hearing. I thought it was closed last time

Kim Shewmaker - You know what, that is cut and paste. That's my fault. Sorry.

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Vincent Cestone - Len?

Lenny Lim - I'll vote in favor

Vincent Cestone - I'll vote in favor

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - Campbell is next

Tim Pagonis -

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #752; Applicant: Tom & Heather Campbell
Area Variance**

Date: March 7, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on January 25 and February 7, 2005 to hear the appeal of Tom and Heather Campbell from the denial of a building permit for construction of a second story addition, rear extension and new deck having insufficient front setbacks. The property is located on 159 Old West Point Road East, Garrison, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on March 7, 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 GRANTING THE APPEAL OF TOM & HEATHER CAMPBELL FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR CONSTRUCTION OF A SECOND STORY ADDITION, REAR EXTENSION AND NEW DECK HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS³, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

CONDITIONS OF THE VARIANCE:

³ Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property."

Now I've changed this because of the problem we are having with Doyle. Okay, so let me know what you want to do.

1. The structures granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No modification to the plans shall be done without Building Department approval. No further enlargement or reconfiguration of the structures that would increase any granted variance is authorized without Zoning Board approval as needed.

Vincent Cestone - This goes back to where we've been saying

Tim Pagones - It used to be building department and zoning board approval as needed. We took out the building department. So now it's you can't change the plans or the maps without zoning board approval. So what has happened now is Mr. Monroe is here, Mr. Doyle is here. We've granted him a variance, this is for Doyle, they've changed some windows. They've changed some doors. They can't change it without zoning board approval. So there is a stop work order. So I am changing it just to say that I guess there are certain things that can be changed without the zoning board having to approve.

Joan Turner - But I thought it was this board's position that building plans that Vinnie signed off, the chairman signed off on that's as built. So rather than, prior to us getting to a stop work order if you are going to do those changes, why didn't one of the applicants come up here and say this is what the problem we've run into and in an informal way modified the plans

Tim Pagones - Well I think Mr. Monroe had some discussions with him and we've been waiting for them to come here and now I finally called Mr. Brennan and I said call Mr. Doyle and tell him to come before the board and tell them what's been changed. I guess, I don't know if that is something that this zoning board, the zoning board should be worried about. If they want to put instead of a single pane window a double paned window, do you want them, and legally I don't know if they should be coming back, if it is not affecting anything that the zoning board has granted, other than the design. In other words it is not going higher, it is not going wider, it is not affecting any variances, I don't know if that is something that should be coming before this board.

Vincent Cestone - But how do you word that? This doesn't say that

Tim Pagones - Well I mean, this is saying that they can't modify without the building department approval and if it is going to affect any of the variances you granted, or we can even put down that or if it should even increase the height

because I know that is one of the big issues. So I guess what I would say is no further enlargement or reconfiguration of the structures that would increase any granted variance or increase any height is authorized without zoning board approval as needed. Now the other suggestion that Mr. Monroe and I discussed was the Chairman has to sign the plans. Before he even signs the plans, Mr. Monroe should sign the plans. Because one of the things that happened with Doyle is Mr. Cestone signed the plans but when it goes before the building department you know what the chimney doesn't comply with the law. The chimney is not high enough. And that is the law that it has to be so many feet above the roof. So what Mr. Monroe is suggesting is you know what, let me look at it and I can point out all the stuff that is wrong right off the bat so if there is something with the code or the law I can make those changes and Mr. Monroe can talk about that, I don't know if you want to do it now or

Tom Monroe - Well one of the other issues also is that I know Ms. Turner has built a house and Mr. Lim has, during construction of a house even though you have the plans on paper everything looks great and all of a sudden you go to open the closet door and then you can't open the front door. Those things happen. So in a lot of cases things do get changed on site and if those things haven't, if that job hasn't come before this board for any reason and it is just a house that is being built and it didn't require any kind of zoning approval, they come back to me and a lot of times it is a phone call I got to move the front door. Okay I've got the plans out what are you going to do. I'm going to move it to the left 3 feet. Okay fine red ink that in and move it over to the left 3 feet and it is a done deal. Those are the kinds of things that I'm suggesting or requesting from the board that if someone comes in for a variance and they want a variance for a setback and maybe there is a question about the specific height of the building, those kinds of things and they are granted that variance, then fine. I have no authority and I have no desire to go there to even tamper with those things. But when they come in and they say okay I had a variance for a setback but I want to move my front door and replace the window with a sky light and I want to make my basement 2 feet deeper and I want move the deck over 2 feet to the left or something and that had nothing to do with the variance, I really think that it should be up to me to be able to approve those and, because it wasn't even discussed, or even if it was discussed, it doesn't affect what the final resolution was all about.

Joan Turner - You can put that in some language that encompasses that

without the building department approval and

Tom Monroe - I kind of thought my two paragraphs were better than yours, but that's

Tim Pagonis - Well we can add that in the future but you didn't give me them.

We just started over the phone. Any further enlargement or reconfiguration of the structures that would increase any granted variance or increase any height in the structure has to be authorized or is not authorized without zoning board approval.

Tom Monroe - Actually I did put those in writing and I gave them to you but apparently you didn't get a copy

Tim Pagones - No I didn't get one

Tom Monroe - I'm sorry

Tim Pagones - It's the thought that counts

Bill Flaherty - Well why can't we just say no structural changes will be made to the plans submitted to the building department without the building inspector's approval?

Tim Pagones - Well before it used to be and/or zoning and building department approval as needed. And we wanted to take that out because we were concerned about the Cooper situation right or wrong

Tom Monroe - Why keep it separate. Whatever was involved in the variance needs to be separate from

Tim Pagones - Well what I am saying is very specific for the plans submitted and approved by the building inspector. If it is something in relation to the height or something of that nature or, then that becomes our problem

Bill Flaherty - That's why I am just saying you can't make any changes to the plans unless you have building department approval.

Tom Monroe - That's correct

Tim Pagones - Okay. But if you are going to change the plans and that is going to increase or affect the variance, or the height of the structure, because right now you are giving down there on the waterfront, you are granting the variance and you are saying you know what you are not going higher than 32 feet, well if they make changes to the plans and now it is 38 feet you know what you might not have granted it or there might have been a lot more public outcry. So what we are proposing is if it is going to affect the variance, increase the variance not if they make it smaller. I don't think you really mind if they make it smaller. Or if they are going to increase the height, or the footprint, then they should have to come back before you because that changed what you have granted. I mean basically you are saying you can build a house but you better be so many feet from the property line. We get into the minutiae here about you know what you

are going to have windows, don't enclose that deck because you are down at the river. But for the most part when somebody gets a variance for a regular house, you are just saying okay don't be closer than this property line. I use what's his name, Campbell. They told us we got all these windows that's fine but I don't think we are as concerned if they got rid of the windows and made it a solid wall. I don't think you are as concerned as you are down by the river. But right now the way the other ones were worded they have to come here if they want to change the windows. Which I think is really a waste of everyone's time and energy.

Victor Carlson - Here is my opinion. When the plans come to the zoning board here, they should be the final plans. They should not be changed and changed and changed and changed and when it comes back it is all together different. Now we can go to the Cooper's place. They were just on the foundation right? The next thing we know we've got an 8 foot cellar. We said nothing about an 8 foot cellar. Now the same thing we are discussing the height of the chimney now. When it was before the planning board the architect said he would make arrangements to bring the house down so that the chimney would be that high. That's what is in the minutes. And now we are worried about the chimney being higher.

Gabe Levinson - The chimney did not change on that land. I just wanted that noted. The chimney was drawn exactly the way, we are not raising the chimney above what you approved on the drawings.

Tim Pagones - I guess you know what, you've all got to admit as he pointed out, Dr. Turner you know what, I want to move the closet. He is changing the plans. If you build a house and you change your closet, right now the way you want it is you have to come back to the zoning board because you were here for a variance.

Victor Carlson - Well shouldn't it be changed before it goes in the zoning board?

Joan Turner - Those things happen

Tim Pagones - That's life

Joan Turner - You do a hole and you come in to ledge rock and your plans go askew, but there has to be some kind of judgment issue here where it is a change in double pane versus single pane. I mean where roof lines are going to get into, you know how we had down at Hudson Lane where you don't want to shadow the other person or block the view. Those are major structural things that I think minor internal closet door, front door, those are issues you might give the building department that leeway to make those kinds of things

Tim Pagones - That's what I am suggesting. If they are going to come back

here because they are putting 2 pane windows instead of single windows

Vincent Cestone - But how do you word that?

Joan Turner - But you know how you do it, you also get maybe to keep us so that we are not worried about what is going on is that you just inform us. You know a letter about what is happening. These changes have been done because of the following reasons and you just memo us

Tim Pagonos - Yeah but the problem was in like the Doyle's

Joan Turner - It is because of the wording of our

Tim Pagonos - It is worded that you can't make any changes to your plans without zoning board approval.

Joan Turner - The wording is unreasonable

Tim Pagonos - Right. So right now Mr. Monroe has issued a stop work order and they didn't get back here soon enough, they should have come back right away.

Tom Monroe - Do you all have a copy of, I thought I put a copy in the basket

Joan Turner - A letter

Tom Monroe - Yeah a memo suggesting or requesting that this change be made

Joan Turner - I didn't get a copy of that. I just got a copy of the letter from Doyle

Lenny Lim - None of us got it

Tom Monroe - I wrote a very specific request to the board and what I requested is that that portion of each resolution be split in two paragraphs similar to what Mr. Pagonos is saying but split into two paragraphs. I should have a copy down stairs. But the way I worded it was specifically saying that in paragraph one that no change can be made to anything pertaining to what the variance was granted for. So if somebody came in and you specifically said height restriction, these are the setbacks, this is the bulk area of the house, etc, those can't be tampered with. Anything else that they want to change, if they decide they want to make the living room 2 feet smaller and the dining room 2 feet bigger, fine. There is no problem with doing that. Any house that I have a building permit for that hasn't been before the zoning board can make those changes with no problem at all.

Vincent Cestone - I don't think this board has any problem with an interior change.

Tom Monroe - Well it is not necessarily an interior change. We don't have historic or architectural review here. So if people want to move the front door over 2 feet, in the Village of Cold Spring you get hammered for doing that, I know.

Vincent Cestone - But how do you word that so there is no gray matter?

Tim Pagones - Well it has always been zoning board and/or building department approval as needed

Vincent Cestone - We've got burned before

Bill Flaherty - I think issues such as this should only come before this board if in fact we grant a deviation from the zoning and that during the course of the construction that deviation is violated by the contractor or by the owner and it is found to be out of compliance, that it should come back this board for further review. That makes sense to me. But to change something minute to the plans doesn't appear to me to be an issue that should come before us for correction. Only if it is in violation of the zoning law.

Tim Pagones - Well Mr. Monroe proposes a structure granted a conditional variances by this decision shall not be further altered with respect to the specific nature of the variance application and the variance granted herein without further approval of the zoning board. So they can't do anything to affect the variances you've given them. Setback, height, stuff like that. Overall dimensions, the footprint. And then, the structures granted conditional variances for this decision shall not be further altered with respect to items not specifically included in the application and variance granted herein without further approval of the zoning board or the building department.

Tom Monroe - That gives me the ability to do on that second paragraph is when somebody comes in to me and says I want to move a window that by saying the zoning board or building department, I can look at that and say well I remember in the minutes they really discussed where that window was, so this is not a decision I'm going to make.

Tim Pagones - I mean down there where the Hatfield's and McCoy's are you might grant them because the person might say you know what my whole front of the house is going to be glass. So the neighbors say okay I can at least look through that glass and I don't lose my view. Now they go to Mr. Monroe and they say you know what, I'm making it all solid wood. Well you know what, the neighbor would have been a little upset if, so something like that if it is an issue that was specifically addressed, I can see coming back even though it is not affecting the variance as far as the setbacks or something.

Vincent Cestone - I don't know how to handle this

Tim Pagones - Well right now we can

Joan Turner - Just reword it

Tim Pagones - Right now what we can do is we can the language in for this one that says, we can put in those two paragraphs and if it is going to specifically affect any of the application the variance granted, it has to come back to the zoning board and I will give the language to Kim. And if it doesn't affect something that was specifically granted, then they can go to the building department or zoning board. That will take care of Campbell and then what we will do is when we finish Campbell, we are going to discuss Doyle and see what you want to do. Can Mr. Monroe lift the stop work order and allow them to make those revisions to the\

Joan Turner - We should do that now

Tim Pagones - We can do that right now, he just has to tell us. I mean I just wanted to finish this

Vincent Cestone - Lets finish this

Tim Pagones - Let's finish Campbell okay. So we are going to add that language.

2. The setback from the side yards for the addition shall not be less than 27.1 ft. on the North and 24.7 ft. on the South side (a variance of 2.9 and 5.3 ft. respectively). The setback from the deck shall not be less than 25.1 ft. (a variance of 4.9 ft.)

3. The deck shall not be further enclosed, screened, covered or converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal, plastic or asphalt shingles.

4.

FINDINGS OF FACT:

1. The Applicant made this appeal (#752), dated August 25, 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 second story addition, rear extension and new deck having insufficient setbacks. 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's gonna do that

2. The property, a 14,151 sq. ft. parcel on Old West Point Road East, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the side or rear property lines.
3. The Applicant acquired title by a deed dated February 3, 1995. The structures at the property, appear on a map dated October 22, 2004, as prepared for Thomas & Heather Campbell by Badey & Watson Surveying & Engineering P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on September 13, 2004 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. [The application had been filed with a survey which did not indicate the structures involved in this appeal. The Board requested a professionally executed map clearly indicating setbacks and the current configuration of all structures on the premises, especially the proposed addition. The Appeal was adjourned until October 4, October 18, November 1 an November 15, 2004. On November 15th additional materials were received and reviewed and the Board determined the Application complete. A properly noticed public hearing was scheduled for January 24, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached

as Schedule "A".

That should be Schedule B and Kim will attach that

7. The Board met on January 24, 2005 for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, no members of the public spoke at the hearing. The public hearing was continued until February 7th, in order to have a full Board vote on the Appeal. On February 7th, the public hearing was duly conducted and closed. The Board engaged in further deliberations and a motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The Applicants are proposing to add a second story addition, rear extension and new deck to the existing house. The Applicants are staying in line with the existing home and are not coming any closer to the side property lines than the current house. The requested variances will not adversely affect property values because the additions should increase the value of the home. The structure should not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structures will not be obtrusive. No members of the public spoke at the hearing. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but 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. Due to the location of the current house, the Applicant can not modify it without coming into conflict with the Philipstown Code. The Applicants have designed the proposed additions in such a way as to stay in line with the current structure and not encroach any further on the side setback requirements. Given the relatively minor intrusion into the setback, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicants request a variance of 2.9 ft on the North side setback and 5.3 ft. on the south side setback for the addition and a variance of 4.9 ft for the deck. The setback should be 30 ft.. The reduction to the required setbacks are minimal.

Effects on Physical/Environmental Conditions

4. The proposed variances would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The construction of a second story addition and deck on the rear part of an existing home is not an activity usually associated with such environmental concerns. No additional traffic will be generated. Air quality should not be disturbed. Water quality or quantity should not be affected. Additionally, no increase in runoff or change in the drainage will be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is self created⁴. The Applicant wishes to construct the proposed addition and deck and has applied to the Building Department for permits. The applicants are aware of the need for variances.

THE BALANCING TEST:

Based upon the above findings, and taking into consideration the benefit to the Applicant if the variance was 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 granting the variance with conditions.

⁴ **While self-created hardship is not alone reason to deny an area variance, it is a factor to be considered.**

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 7th day of March, 2005, the results were as follows:

Vince Cestone, Chairman	Voting <u>for/against</u> granting the variances
Victor Carlson, Member	Voting _____ granting the variances
Leonard Lim, Member	Voting _____ granting the variances
Joan Turner, Member	Voting _____ granting the variances
Bill Flaherty, Member	Voting _____ granting the variances

ATTENTION APPLICANTS

FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS ENTIRELY YOUR RESPONSIBILITY. A VARIANCE IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY. ALL NECESSARY PERMITS MUST BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.

Vincent Cestone - Motion to accept the resolution as amended

Joan Turner - So moved

Vincent Cestone - And I'll second. All in favor?

All Board Members - Aye.

Vincent Cestone - Roll call vote. Bill?

Bill Flaherty - I'm in favor

Vincent Cestone - Vic?

Victor Carlson - I'm in favor

Vincent Cestone - Joan?

Joan Turner - I will vote in favor

Vincent Cestone - Lenny?

Lenny Lim - I'll vote for

Vincent Cestone - And so will I. Do we have Leuthner?

Tim Pagones - Leuthner I don't have now. Where did Mr. Monroe go?

Vincent Cestone - He went downstairs

Tim Pagones - I had spoken to him, I guess the Leuthner's spoke to him and wanted to discuss with the board about the difficulty of moving it. And I don't know whether they wanted to see if you people could come back and take another look and see the uniqueness, I told Mr. Monroe that I believe there were site visits made and the applicant said they could move the shed and the feeling was move it. So I don't know if Mr. Monroe is going to come back up and hopefully he might have some further information. So we can talk about that in a second. Old business was Doyle.

Vincent Cestone - What specifically is Doyle asking?

Tim Pagones - Where is Mr. Doyle? Is Mr. Brennan here too? I had spoken to Mr. Brennan and I said look come here

Vincent Cestone - What specifically is Mr. Doyle asking for?

Mr. Brennan - I just wanted _____ your original appeal granted and I highlighted and I just want to assure you that I didn't change anything as far as the setbacks, height or anything in there and I just made some red marks, and I don't have copies for everyone, but

Tim Pagones - I think they are just looking for a list of the things that you are changing

Mr. Brennan – right. On December 20th we sent this to you and I marked everything just exactly why and the reasons we had in doing it. And that was a list of things, it became necessary upon getting involved in this building process.

Vincent Cestone - Well, I will read this. Why do you need to increase the basement height to 6 feet

Mr. Brennan - Well what we had was a plan that read 5 foot 4 inches and I wanted to flood proof that space, the crawl space. And the price for flood proofing a 5 foot 4 or a 6 foot 10 space were identical. And I approached, actually the reason why I am building this house is because the house that I built for the Bracke's down the road said that I did a good job and that I was able to put a basement in with Mr. Tomann's approval at the time. And because I did that, the Bracke's had made a mention, the only thing I would have had Jay do differently is I would have enlarged the basement because I needed more room for storage. So the flood proofing company from Manhattan came up and said

there is no reason we can't flood proof this space as easily and cheaply as the 5 foot 4 space you were given. Now we did approach Tom Monroe and I said is there going to be any problem with this? And we started off on the right foot by me asking him is this a problem for me to do. Giving him reasons, well it is really not a skull breaker when you are, I mean if you have a crawl space and you are down on all fours, you are not going to bang your head. But if you are walking around like this and you have to watch a 5 foot 4 height, why not give them head room. And I was able to do that officially as far as the building code was concerned by flood proofing that

Joan Turner - So you are really just digging out more? You are not raising the foundation

Mr. Brennan - Oh I did not. I did not. And I have a suggestion also that would solve all of this as far as the existing grade because all the existing grade can do is change. People can add more, take away, the grade is higher in the front than it is in the back and we did have problems with the plans there. Because we had two different heights. One in the front and one in the back. Only 3 inches different. But there was about a foot and a half in the grade officially. So with that I said why don't we just start with the base flood elevation given to us by FEMA. That wasn't in the resolution so I really had nothing to go on. I again had to approach Tom Monroe and said what numbers do I use? It says the 100 years, in other words in the resolution there you state bring it up 16 inches a couple of courses of block until you reach the point, or you are over the point of the 100 year flood plane. Well there happens to be two 100 year flood planes. So Tom decided well the latest activity down on Hudson River Lane was that pertaining to Bracke and Lang. You stated in Lang's resolution that the NGVD 29 was to be used. That was tested. It seemed to make sense to us. Well if they used that and only a few months later you are going to do the same thing, why don't you use the same thing. So we did. We hired a surveyor, a licensed surveyor and we came in and he made a monument 3 ½ feet deep, marked it so we wouldn't, so none of the other neighbors would have this problem again. And then we transferred that mark and put a pin in the tree on Doyle's property and that's what we used for the elevation that you gave us in the resolution. And I didn't increase it by not even a tenth of an inch. It was right on the money. Because he came back and did an as built right away. So we have an as built showing that foundation being absolutely within the setbacks you gave us. And we didn't go any closer to the River and we didn't go any closer to the street and we are below the height that you specified in the resolution and it all worked out. All the numbers worked out and everything is in order and I am certainly not gonna mess around with this board when it comes to increasing the basement height by a couple of feet. But I did this person a service by saying well we did it for the Bracke's. The Bracke's can open their door, walk down into a perfect mechanical room that would have had to be in a closet somewhere. Which again that takes up a lot of space and things like that.

Vincent Cestone - And the next thing is move the front door 18 inches. I don't see that as a problem. Eliminate the entry to the crawl space. That's the one on the outside. Basement entry through the garage to the crawl space

Mr. Brennan - The reason we did that is because the original door, external door which is called a bulkhead door, like a bilko door was right in the front of the house and it was below the base flood elevation. That means that in a hundred year storm the water would have just poured right in this hole and gone in and filled up whatever space they had.

Tim Pagones - An indoor pool for free.

Mr. Brennan - Then they would have had hazards.

Vincent Cestone - Okay. Relocate rear door, change rear door window and stair configuration. What does that mean?

Mr. Brennan - There was an extra rear door on the plans and it was in an inappropriate spot but they didn't want it. The owner said we can just go out the kitchen door. So why don't we take this one out because there were two doors in the plans that were within 5 feet of each other. So the idea was to eliminate this one and make this one, we have the approval for the stoop. We didn't change the dimensions of the stoop. We haven't gone any closer to the north neighbor, the River, or anything. It stays in the same configuration but we wanted to do it. The owners wanted me to consider this that's why I approached the Building Department with this list on December 20th.

Vincent Cestone - Move south side door approximately 4 inches. That's not a problem. Add a three foot door to the south side of the garage wall. Relocate the second floor rear door, that's to the deck. Relocate the second floor front door to align with the first floor door. Eliminate windows on the north side of garage and guest bedroom. Add 4 skylights to the north side roof. Change garage door from 11 feet to 9 feet. Discrepancy in 3 feet in the length between the drawing and the garage. I don't know what that means.

Mr. Brennan - Well in other words if you go by the configuration of the plans, if you look at the north and south elevation, the plan was much blown out of proportion. So the plans gave us X amount. But if you were thinking about the configuration and, in other words it went from 75 feet to 81 feet in the plans. And I took the lower number because it was actually numbered. So if you look at the plans you approved, you would see that the north and south elevation were completely missed somehow. The old drawings, way before we, apparently I wasn't at the meeting but you offered a 4 foot reduction for the breezeway extension or something like that. So, but the plans hadn't been changed. They were configured on the longer end rather than the shorter end. So when you looked at that set of plans, you would have said well this is fine. This is as much

room as he is ever gonna need. But quite frankly we didn't increase the size of the garage but it is the tiniest little garage you ever saw. Because we stayed within the plans.

Vincent Cestone - Okay. Eliminate 2 windows on the south side of the garage and the house. Add 2 skylights to the south side roof. Chimney height exceeds height by 2.6 feet because of Code. I don't see anything that is really earth shattering on this.

Joan Turner - Me either.

Vincent Cestone - I'll make a motion

Victor Carlson - Wait. Before we go on that

Vincent Cestone - Yes go ahead

Victor Carlson - Now here is the whole thing. This could have been finalized before the final plans were before us instead of having it now. Going on going on. This is what I am saying. Fine make it. But come back to the zoning board and we can all talk it over and see what is going on instead of getting all these surprises. Neighbors come down and ask what is all the soil going out for. There was nothing about the cellar on this one either. We didn't know anything about this.

Mr. Brennan - I think a work shop would be the best thing that has ever happened to this town.

Victor Carlson - But why didn't they come back and give us the final plans before they signed them. Like down at the Coopers place. They say there are two plans. The plans you gave and the plans that the building department has

Mr. Brennan - Vic. Vic. It could have been right this time because I have two sets of plans. I have one signed by Mr. Cestone and I have one presented to the customer after the fact. And they are different

Victor Carlson - This is what I am saying

Mr. Brennan - But I wouldn't touch those plans because of what happened at Cooper and I use the plans that you signed. To the T.

Tim Pagonis - One of the other things Mr. Monroe is also saying is let him look at the plans first. So he will be able to point out like this chimney thing. You know what, the Code requires that it should be so many feet above the roofline, that's a problem. This this and this. So I would suggest in the future that you don't sign the plans until Mr. Monroe has signed the plans. At least any code

violations we will know up front. You know anything that has to be changed. As far as

Victor Carlson - Yeah but all these could have been done before the final plans were signed.

Joan Turner - But not all of them

Mr. Brennan - Well because it leaves you, what do I do now? Do I lay the framers off, in the middle of a pour if you stop pouring concrete you've had it. You may just as well throw the whole thing away because of a dry line between two pours of concrete. So the idea is, yeah maybe, not only the building department but maybe you ought to find out who the builder is and let him go over the plans and then get right back to you and say hey you've signed off on some plans that are really

Joan Turner - There are some problems with and then I think between the builder and Tom you can just send a memo like this

Mr. Brennan - Well that's why Tom and I got together on it. We got together on every issue. I was in his office to get a demolition permit to start. Do I need a demolition permit yes or no? Then I didn't know how high to make the foundation because there was nothing in the resolution except the 100 year flood plane but no numbers.

Tim Pagones - I think everyone dotted their I's and crossed their t's here and did it right. But unfortunately because of the way the language read even changing the windows, the skylights, they had to come back before the board

Victor Carlson - That should have all been done before the final plans

Tim Pagones - Yeah

Victor Carlson - But for the next time

Tim Pagones - But you can't.

Victor Carlson - Yes you can.

Tom Monroe - There is two issues. One issue is that these are really things that shouldn't even concern the zoning board.

Tim Pagones - Right.

Tom Monroe - Eliminating a window and adding a skylight really shouldn't concern this board

Victor Carlson - Yeah but didn't the cellar and footings and things like that

Tom Monroe – But the other part of that issue is too is that every house, I can't remember ever giving a building permit for a single new family house since I had this job that the builder didn't come back in and say gotta change this. Whether it is windows, roof pitch, a back door, whatever it is. A house does not get built by the plans that are submitted trust me. It doesn't happen.

Lenny Lim - Well how about someone who hands in plans with no basement and then all of a sudden we have an 8 foot basement. What about something like that?

Tom Monroe – What was that?

Lenny Lim - What about somebody who hands in plans with no basement and comes in with an 8 foot basement? And you just say okay, it's okay

Tom Monroe – No. No. That's a different story. That situation were somebody came in for a slab and then they call me up and say that now they want to add a basement, sure you can. Bring me the engineer's drawings of the basement and we will look at those and make sure that they are okay and now we will issue you an additional permit for that basement.

Mr. Brennan - I had to do that with Ken Tomann. When I wanted to put in, the plans that Chuck Smith gave me to build the Bracke house had only a slab on grade. So in order to prove that we could, I got an engineer. So because Chuck moved out of town, I hired Larry Belluscio. And he drew up the plans and set footings and so on. We submitted them to Ken Tomann and Ken approved them and we were able to go down. We were able to put a basement so to speak. Not really, they call it a bunker. But at least they have a door where they can go downstairs...

(Inserting new tape, may have lost some dialogue)

Tom Monroe – There is a house up way up on the top of East Mountain Road that was a house with a basement, all mechanicals in the basement, they got down two feet or so and they called, the engineer called me up and said you've got to come up and look at this. It was, I mean it was just absolute solid ledge. It was probably \$50,000 worth of blasting to be able to put a basement in. So we, they changed their plan completely to a slab house but they didn't do that without the engineer reviewing it and redesigning it. But again that house wouldn't get built by the submitted plans. I mean that required engineer's work to be able to further approved.

Lenny Lim - I just want to say one thing, I am trying to find a fine line where we

do our job and where you can, like I say cosmetic things, changing a window, I have no problem with that. If someone wants to move a door a few steps or anything like that. Any major structural changes, roof going higher maybe a basement too but then I do think there is a problem and they should come to us

Tom Monroe – But why? Your job is you are looking at setbacks and things like that

Vincent Cestone - Certain areas of the town are very sensitive to stuff like that. Certain areas of the town

Tim Pagones - I realize that but Mr. Monroe is saying you know what, what if he digs 200 feet in the ground and the house is not going 1 inch higher than you granted him. How does that affect anything?

Joan Turner - It doesn't

Tim Pagones - So that is what really happened here. He had a whatever, 5.6 foot and he was able to go down 6 foot 10

Joan Turner - Without changing anything?

Tim Pagones - The height did not change one iota. The neighbors might be upset and say you know what it is basically 3 floors because he has a basement, he's got this this and this. If it is not affecting the height

Joan Turner - He just dug a basement

Mr. Brennan - Yeah. I just went deeper. It wasn't 2 feet deeper but

Tim Pagones - I know that

Mr. Brennan - It was less than that. It was just obvious that if I were going to spend this kind of money on flood proofing this house, that I wouldn't give him what he can really put stuff in

Joan Turner - We ought to lift the stop work order

Tim Pagones - We can advise Mr. Monroe to lift the stop work order and they can make those changes and we need to things to our resolution to cover this. We've got this draft we can use that language for the new one. So Doyle is done. Quickly Leuthner. I didn't do a resolution because they wanted to come and talk to the board. I guess Mr. Leuthner what we had done we did a straw poll to deny it and I believe they came in and spoke with Mr. Monroe and to see, they didn't express how difficult or how much, it doesn't suit to move the shed.

Lani Leuthner - If we move the shed like I thought we could, we won't be able to access it.

Vincent Cestone - Why is that?

Lani Leuthner - Because there are doors on it and we need to come around and put in lawn mowers and things like that and we won't be able to because it is too close to the rocks and hills. You see the driveway is here and you come down the hill and we are right up against that hill.

John Leuthner - We have a pear shaped property

Joan Turner - This is on West Point Road?

Lani Leuthner - Yes

Joan Turner - We drove by that today

John Leuthner - If that were moved I envision in the future if my property was cleaned, like if there was a nice lawn when you are looking out of the house and have a nice long line, but if you put that shed it is going to make the property look short and stubby. You won't be able to have that beautifully cut lawn

Lenny Lim - Is the lawn cut all the way to the shed now?

John Leuthner - No, I've been clearing the property. I was all vines and junk and it is taking me a long time. I just dream about that in the future. When you see it from the house where the shed is and I hope maybe all the way to the narrow part maybe have some nice fruit trees

Lenny Lim - How far is the shed from your house?

Joan Turner - Here is the house here

Lani Leuthner - All the septic fields are out there

John Leuthner - There is a big weeping cherry, I don't know if that is in between there. And I asked Mr. Monroe if you (can't hear him)

Lani Leuthner - And you don't even see the shed in the spring, summer and fall

Joan Turner - What is your setback requirement now? 20 feet?

Lani Leuthner - Where I drew it right now is 20 feet.

Joan Turner - That's where you would have to come back to.

John Leuthner - It is really weird to see

Joan Turner - We've been, all of us have been down there. We generally make site visits

Tim Pagones - I think it is 40, 40 feet.

Tom Monroe – Yes because that is on street side

Tim Pagones - Yeah

John Leuthner - I have no excuse when I bought it at the fair it was beautiful, I had no idea it

Lenny Lim - I don't see why they can't move the shed

John Leuthner - I don't want to be rude, I certainly have to abide with you, but if you were up there looking at the property and I heard you say throughout the evening you talk about aesthetics a lot, so my question is why do you want it moved?

Tim Pagones - Well I guess the law requires that the zoning board give the minimal variance needed so what happens is you can move your shed and not require any variance

John Leuthner - Yes

Tim Pagones - Now you have to tell the board you know what, demonstrate why if I move the shed this is what's going to happen. It is going to affect this, it is going to look like garbage, but right now that wasn't brought up last time and it is a movable shed. Whether or not that is enough, does the detriment to the town out weigh the benefit to the applicant. I don't know. That is up to them.

John Leuthner - I hear you talk about aesthetics a lot so I assume that you find that important. Certainly if you look at that and we turn it some way, the property certainly wouldn't be as nice looking.

Bill Flaherty - As I remember correctly the last time you were before the board you had a neighbor who objected so _____ about the shed being in the location where it was. It was somewhat of an obstruction or a view or whatever and that you were in fact, or at least she thought you were, conducting a business out of the shed

Joan Turner - Landscaping business

John Leuthner - I am a retired teacher and I cut grass. I don't have a big lawn business.

Bill Flaherty - You have a lawn business?

John Leuthner - I cut grass. I don't have a big business. I am a retired teacher.

Bill Flaherty - Are you in fact conducting a business from that location? Are you storing your equipment there?

John Leuthner - It is in my garage. A lawn mower

Bill Flaherty - A lawn mower is in your garage. But there is no business being conducted per se on that location, in a residential area?

Lani Leuthner - My husband has his, he is a lawn maintenance person and yes he has a lawn mower

Tim Pagones - People aren't coming to that shed and doing business there?

Lani Leuthner - Absolutely not. That woman was a little out of line

John Leuthner - That lady, she is an old friend of mine from high school. I haven't spoken to her, I have no idea why she,

Tim Pagones - Can you move the shed at all?

Lani Leuthner - It would be very costly

Tim Pagones - I mean, they are looking to have you comply to the code. I don't know if you can move it and I would think one of the things the board might say is you know what move it in a little bit and you are going to plant some trees to block the view

Lani Leuthner - There are trees

Tim Pagones - I have never seen it

Lani Leuthner - You don't see it in the spring time, summer and fall. There are trees.

Joan Turner - I think what we should do is go back there. I would like to go back and walk the property. And with this survey in mind and I would feel more comfortable. If you are going to be granted the variance, I think you can put some hemlocks or evergreens in front

Lani Leuthner - We would do that

John Leuthner - No problem

Joan Turner - And that is something

Lani Leuthner - Can we be there when you walk it

Lenny Lim - We are all volunteers so we come on our days off and stuff like that

Joan Turner - It is erratic the time. I mean we actually drove by there today. Vic and I were out looking at something else and we

Tim Pagones - I would just ask you, the law allows, the board has 62 days from the close of the hearing to do a resolution. Now I was going to have a resolution for the 21st but they are looking to go back and maybe reconsider. So I am asking you to extend the board's time

Lani Leuthner - Oh I will extend it

Tim Pagones - Beyond the 62 days

Lani Leuthner - Absolutely

Tim Pagones - Just so you know.

Lani Leuthner - I would really like the variance.

Tim Pagones - So what I would suggest is put it on for April 4th for further discussion

Lenny Lim - What did you originally come in for? You didn't originally come in for the shed

Joan Turner - This is for a variance for the shed

Lenny Lim - This is just for the shed

Vincent Cestone - April 4th we will discuss this further. Everybody has to

Tim Pagones - So they are going to go look at your property

(everyone talking at once)

Tim Pagones - so they will discuss it further on April 4th. You can be here if they have any questions. But what is going to happen is on April 4th they may take

another straw poll. Right now they have taken a straw poll to deny it.

Lani Leuthner - Yes I know

Tim Pagones - So they are going to re-look at some issues and then, a straw poll is not binding

Joan Turner - Just one quick question for you, you have people helping you with your business? Do you have any other

John Leuthner - No it is just myself

Joan Turner - Just yourself. So you don't have any workers

John Leuthner – It's a very small business

Tim Pagones - All right. See you on the 4th.

Lani Leuthner - Okay. Thank you.

Vincent Cestone - Do you people have any business with the board or are you just here

Tim Pagones - Shelley, that is the one with the big garage

Tom Monroe – Can I interject here. Mr. Shelley came in to see me earlier this week, last week. I hadn't had a chance to talk to Mr. Pagones because he had been out on vacation.

Tim Pagones - Conferences please

Tom Monroe – The situation according to the wetlands code. There are three permitting authorities for a wetlands permit. The wetlands committee, the zoning board and the planning board. I'm sorry, four. The town board. And the way the code is worded is that the permitting authority in this particular case because Mr. Shelley is coming to you for something else, you then become the permitting authority for the wetlands permit. So I believe when he was here last time you referred him to go back to the wetlands when in actuality, I really didn't know what to tell Mr. Shelley to do. So I think between all of us, Mr. Pagones

Tim Pagones - Well I think we wanted him to make application

Tom Monroe – Have you done that now?

Mr. Shelley - I have and I heard from the gentleman from the wetlands committee and he mentioned that I didn't even have to apply to him for that

because the authority was

Joan Turner - Vested in us which I didn't even know.

Tom Monroe – So he should get a wetlands application and submit it to the zoning board

Tim Pagones - Yeah. I mean someone has to go out and make sure

Tom Monroe – Well I kind of thought what might happen is that Dave, the wetlands inspector would pretty much go and look at it since he is the expert

Tim Pagones - Right and give us a report

Tom Monroe – And give a report to you and then you can proceed

Vincent Cestone - That's it

Tom Monroe – Okay

Tim Pagones - So whoever the new wetlands guy is has to go out and look at it and give us a report and then when we get that report we will set it down for a public hearing.

Tom Monroe – Okay. Does he have your application now?

Mr. Shelley - He does.

Tom Monroe – Okay. I will call him and get that from him and we will just submit that to the zoning board. So I will do that for you

Mr. Shelley - Okay

Vincent Cestone - And do you have something with us?

Laurie Brown - Yes. I am Appeal #756

Vincent Cestone - I can't hear you

Laurie Brown - I am the Appeal #756 Brown and Mazzye

Tim Pagones - Right. We need a survey.

Laurie Brown - I submitted a survey already

Tim Pagones - But it was handwritten

Laurie Brown - I just paid \$2,000 for it. I just saw on line that it had been on but I never heard from anybody

Tim Pagones - We've sent letters to you. Let's see here. It doesn't show any setbacks. There are no numbers on it. You got ripped off. So you are asking for a variance for the deck. But you can sit there and say you know what I need a 10 foot variance and really you need a 12 foot variance. So the board's code requires that a surveyor, engineer, or architect has to draw the line from the deck to the property line and put in the figure and then they stamp it. So he is certifying that that is the distance. And that has been the whole hold up.

Laurie Brown - I look at your website and I see that this is the third time so I figured that I should come because I haven't heard anything.

Vincent Cestone - Motion to adjourn?

Lenny Lim - Second

Vincent Cestone - All in favor?

All Board Members - Aye.

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