

## **ZONING BOARD OF APPEALS**

**April 18, 2005**

### **MINUTES**

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, April 18, 2005, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

<b>ABSENT:</b>	Vincent Cestone	-	Chairman
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**Victor Carlson** - Our Chairman isn't here tonight and we will try and struggle through without him. The first thing on the agenda is the public hearing for Matthew A. Novrello on behalf of Joseph Tuana for a variance. Property was subdivided by deed by prior owner with the review and approval of the Building Department. No one noticed that the side yard setback for the studio was less than Code. Currently the current lot and neighboring lots cannot be reconfigured to avoid the need for other variances. This is a continuation of a public hearing held on April 4, 2005. Located 996 Old Albany Post Road in Garrison in an R-80 district. Is anyone here for the meeting? All right.

**Joan Turner** - What do you do?

**Tim Pagones** - Well

**Victor Carlson** - We can go ahead. We have a map and it shows the shed and the shed was there prior to the zoning and it shows right here on the map it's 19.

**(Everyone talking at once and opening their copies of the map)**

**Joan Turner** - Tim, I went down to look at the property and I did a site visit, did you do a site visit?

**Victor Carlson** - No I didn't get a chance

**Joan Turner** - Bill did you?

**Bill Flaherty** - No I didn't

**Joan Turner** - On this particular subdivision it is an R-80 but the lots are not 2-acre lots. So my question is, was a subdivision filed? So there are questions about the subdivision itself.

**Tim Pagones** - Well he came before the planning board and the planning board said until you get a variance, we are not even going to look at it. I mean according to the paper, somehow he was granted a subdivision

**Joan Turner** - Yeah by Deed. So what does that mean? Could you explain that to me?

**Tim Pagones** - In other words he just did it by Deed. They split it into two lots.

**Joan Turner** - No there are more than two lots.

**Tim Pagones** - Well however many lots there are. It was split up through deeds without going to the planning board. So now he is in front of the planning board

**Joan Turner** - But can you do that? I mean it is not my understanding of a subdivision regulation.

**Tim Pagones** - Somehow it happens

**Joan Turner** - So he's got a subdivision here that doesn't quite gel

**Tim Pagones** - Right.

**Victor Carlson** - It says 80,000 square feet on the survey. It states that it is 80,000 square feet. This says 52. It's 2,000. 2 acres and one-tenth acre it says. This is a 52 and there it says what the acreage is.

**Joan Turner** - So they

**Victor Carlson** - He has the two acres

**Joan Turner** - But on the other subdivision he doesn't have the two acres. That's what I am saying. The subdivision itself has problems.

**Tim Pagones** - Well I guess I would suggest, no one is here for them

**Joan Turner** - Right

**Tim Pagones** - You've got a lot of questions, you've opened your public hearing,

I would say if you want to continue it, adjourn it to the next time or write him a letter and make sure he gets here.

**Joan Turner** - Maybe he thinks it is an 8:00 meeting

**Tim Pagones** - Well that's the thing

**Joan Turner** - He might be here at 8

**Tim Pagones** - So if he shows up at 8 you can continue it again. But I mean you've got some questions and I don't have the answers

**Joan Turner** - And then there is also a boundary dispute that is related to this thing too. So there are issues here that

**Tim Pagones** - Right

**Joan Turner** - Before it is even granted. And this is not a shed that is being changed. This is a building.

**Tim Pagones** - This is a studio

**Joan Turner** - It was a shed

**Tim Pagones** - And it was converted to a studio

**Joan Turner** - And then the shed was converted at some point to a studio and then after that it is not converting into

**Tim Pagones** - I think you definitely need the applicant to come here and explain how did they do it by Deed. What did the building department grant them?

**Lenny Lim** - I mean originally if you look at the original drawings here it says stall one, stall two, hay storage

**Tim Pagones** - It's a barn

**Joan Turner** - And they have converted that barn into a studio or a small house or whatever it is

**Tim Pagones** - But I mean you have a lot of questions, no one is here for them

**Victor Carlson** - But this shed was built way back, one of the first buildings on the place

**Joan Turner** - But it is not a shed now

**Victor Carlson** - It's a studio now. But it was originally a shed

**Lenny Lim** - The problem is the way they broke up the lots. It might have been a shed when it was all one piece. But the way he seemed to have broken up the lots

**Bill Flaherty** - Well the lots are in dispute. We have a letter here from Mr. Whyatt relative to a Mr. Sorenson who is apparently in dispute with the manner in which these lots were subdivided and in the letter dated April 18<sup>th</sup>, Mr. Tom Whyatt who is representing, I guess he is representing Mr. Turoff asked us to respectfully suggest that the board may wish to defer your decision on this variance until the parties have resolved the boundary lines. A dispute involving the boundaries of at least four of the six lots in the subdivision including the lot for which the variance is required. So I think that in accordance with this in as much as no one here is representing it anyway that should defer this matter until such time as the boundaries get squared away with the disputing parties and then we can act on it.

**Joan Turner** - Tim, I don't understand about this particular subdivision. It is before the planning board now?

**Tim Pagones** - Right

**Joan Turner** - Why is it before the planning board?

**Tim Pagones** - I don't remember I believe they somehow had tried to legalize whatever was done. And the planning board said we are not going to look at it, you have to get some variances first of all, we are not going to look at it.

**Joan Turner** - If that is the case, then why doesn't, why isn't this board informed about what the planning board is doing?

**Tim Pagones** - I thought there was a letter from the planning board

**Joan Turner** - I don't have one

**Bill Flaherty** - I don't have one

**Joan Turner** - And it's like operating in a vacuum.

**Tim Pagones** - I'll check. I can't find it but I remember reading something from I believe the Planning Board which said

**Joan Turner** - Because I think this board should really be informed about what the planning board is doing with this application.

**Tim Pagones** - I'll check on that. But there is no one here for the applicant so you really can't do anything on it.

**Joan Turner** - But also, I think we should, if we get some notification or some information from the planning board that would help also.

**Tim Pagones** - So why don't you for now, you can adjourn it to like May 16<sup>th</sup>. If he shows up at 8:00, he can answer any questions and you can put it back on. But there is no reason to go any further

**Victor Carlson** - When?

**Tim Pagones** - May 16<sup>th</sup>

**Victor Carlson** - Next is John Pielmeier, Irene O'Garden and Karen Southard Appeal #758 for an Interpretation. Applicants request to revoke and nullify permit issued for a commercial structure that permittee intends and has been told he is permitted to use for commercial purposes which are not permitted in the R-80 District. Located 5 Fox Glove Lane in Garrison in an R-80 District. Do you want to say anything on this Joan?

**Joan Turner** - I have a lot to say but maybe other people would like to say something first. I am going to need about 15 minutes.

**John Pielmeier** - Mr. Whyatt is not here yet

**Tim Pagones** - Well it is not a public hearing

**Joan Turner** - So there is no comment. This is a discussion for us. Okay

**Lenny Lim** - Okay I think one of the problems we are having is figuring out what is a private garage and what is a commercial garage. We have absolutely nothing in the zoning code that says what a garage is. So what did I get the New York Zoning Law Practices language of zoning. And they have a few definitions of garage private. I would like to read two of them. One is an accessory building for the storage of one or more motor vehicles provided that no automotive business, occupation, or services is conducted therein. And no space therein for more than one vehicle is leased to a non-resident of the premises. And then they have a second definition of what a private garage is. A building used for the storage of not more than 3 privately owned passenger automobiles. Not trucks. And used by the occupants of the \_\_\_\_\_ which is erected. No business, occupation or service connected to the motor vehicle shall be permitted in the private garage. Now the way that I read it from the State, the private garage actually says three. They actually put a number there. Because our Town does not have a definition. So we had to go outside the Town Code to

find out what a definition of a private garage is. So I went to the New York Zoning Law and Practice, language of zoning. If you want a copy, I can give you a copy but it actually says 3. That's what they call a private garage. Then I went and looked at the building permit itself. The building permit is for 67 by 34 foot building and I looked at the amount he paid, the fee was \$1,570 sir?

**Mr. Gagnon** - Somewhere up there

**Lenny Lim** - Okay. That's a fee for a commercial building. We have two types of fees. One for a private building and one for a commercial building. And the residential is for each 100 square feet is \$28 for the commercial

**Joan Turner** - \$65 for the commercial, \$28 for the residential

**Lenny Lim** - I believe it is \$65. That comes out to, okay at \$28 it comes out to \$637.84. If we use the commercial rate, it comes out to a little over \$1,481.00. This application he paid \$1,570. That's a commercial rate. That is not a private rate for a private garage.

**Bill Flaherty** - Well why would he pay a commercial rate for a building that is going to be constructed in an area which is residential and has no relevance

**Lenny Lim** - That's what I don't understand. Why would he pay a commercial rate

**Joan Turner** - On the face of it, just looking at the design of the building, the architectural rendering of the building and the building \_\_\_\_\_, those are two indisputable facts that this is not a residential garage or accessory building. It is a commercial just based on the facts of that alone. However, Bill go on, you want to say something

**Bill Flaherty** - No go ahead Joan

**Joan Turner** - I just think that is just factual evidence right there that when you are paying a commercial fee for a building permit, that's what you've got. I think, a lot of back tracking went on after this interpretation, this appeal was filed and so we don't know exactly what the facts are or the intention but certainly the board can look at this as hard evidence of, as just hard evidence. A commercial fee was paid for a building permit and the building design, architectural drawings, are those of a commercial building. That's one point for us to consider. I want to address the research that I did on what I think is going on, forgetting the commercial aspects of whether it is going to be a commercial use or not, what I went to look for was a definition in our code for garage or accessory building. And we have none. So it is not defined. So I went on line and I got, and I sent you in my packet of material to follow my line of reasoning I developed, did some research, came up with a number of other townships Bedford and Eastchester,

their definitions of garage and how they are applied. So I brought, I typed up a page and a half kind of summary that I would like to read and put it in to the record for us to consider. And Tim, I have given you a package of my research material also. Because I think is just not, we can't evaluate this appeal, my thinking is this, we can't evaluate this appeal on just what it is going to be used for. I think the appeal really speaks to and the building permits speaks to, the building permit was issued for a garage, a two-story accessory building (garage with storage above) so the applicants are asking for nullification of that building permit. And since we don't have definitions of accessory building or garage I thought it was incumbent upon this board to interpret then what those terms mean. So, I will read slowly. The Zoning Board of Appeals, the board, is asked to give an interpretation in the matter of Appeal #758 in which applicants Pielmeier, O'Garden and Southard seek clarification on the issue of a building permit for a private garage. Relevant to this discussion is the role and duties of the building inspector. The municipal planning primer, the packet that I sent you, has provided some guidelines for us to consider what are the duties of the building inspector. Significantly, the building inspector and enforcement officer in carrying out his duties does not have discretionary authority. It is his duty to follow the letter of the zoning ordinance. Whenever there is doubt about the meaning of the provisions in the ordinance, the Building Inspector should deny the permit or in the case of \_\_\_\_\_ cite the owner for a violation. If the owner or another interested party feels the officer's action to be incorrect, he may appeal the decision to the board for its interpretations. And that's what the applicants did. One of the board's functions is to interpret the meaning of the zoning ordinance where the language is unclear or ambiguous. And you can see that is on page 24 in the number one of citations. From other readings that I have done I have also learned that where the zoning code is silent, that is when there is no mention in the ordinance on a particular subject it is taken to mean that it is prohibited. Another point to keep in mind is that we must be guided by the spirit and intent of the zoning code. In an effort to seek guidance outside of the Philipstown code for which the terms under discussion in this appeal, that is garage and accessory buildings, are not found, I went on line and copied some other townships' relevant codes. In the discussion copy marked number 2 for example, the definition for residential accessory buildings or structures is helpful. The most salient points for the board to consider are as follows: 1) an accessory building and or use is subordinate and I underline subordinate to the principle building or use located on the same lot or parcel. Residential accessory buildings or structures and related uses include but are not limited to detached private garage or carport, storage shed, gazebo, decks, etc. 3) Building accessory is defined in title six of the New York Code rule, see discussion paper number 3 page 16, as a building subordinate to and either attached to or detached from the principle building on a lot. The use of which is incidental and customarily associated with that of the principal building. Customarily associated, that's an important phrase there. Further on page 23 a private garage is used mainly for the storage of motor vehicles belonging to residents, employees or visitors of the residence as an accessory use. The garage shall

provide space for one private passenger, that doesn't apply to us. That's just what Eastchester or Bedford does. In the Bedford, New York, Code Zoning ordinance marked number 4, accessory building is defined as a building subordinate to the principle building on the lot and used for purposes customarily incidental of that said principal building. That is on page 4. And a private garage is defined as an accessory building or part of the main building used only for the storage of motor vehicles as an accessory use. So these are both guidelines I think we can safely conclude that what is a permitted use according to Schedule A number 46 in the Philipstown Zoning Code is a private garage. Since this term is not defined in our zoning code we are responsible for the interpretation of garage and/or accessory building. What is noteworthy here for the board's discussion is the notion of customary usage and subordinate to the primary building or use of the property. Also in the definition of private garage that Roberts New York Zoning and Practice number 5, it seems to incorporate these concepts that I mentioned above. So, I think, what I want to say about that is the direction of my thinking and research has led me to is that we should define accessory building and garage according to those concepts that we've had that other people do. In addition to that, I called a Mr. Harry Willis up at the Department of State in the attorney general's office with, that has to do with zoning. And he said that New York State itself does not have a zoning book like Anderson does on New York law with definitions and practices. He said try the dictionary. And that was his advice to me to try the dictionary. And so I told him what I was doing and he said what I was doing was in the correct procedure and format to go ahead and look at what other courts were doing. But they did not per se have a definition of garage. He stopped my conversation with him, he went on line to look, the only thing that he found was in the fire building codes about garages and that had to do with ventilation and stuff like that, electrical and making sure safety. But no definition of a garage. So we have some material from other townships that have defined that definition and we have that, the law of the state is that we do interpret the code. Which brings me to the third point of my address, the letter, the memo that we got from Tom Monroe dated April 11<sup>th</sup> which I received this morning, in which Tom is defining accessory building and a garage. And, I think Mr. Monroe has exceeded his authority there. He cannot, he must take the code at face value. So he cannot decide what an accessory building is. That is for this board to determine. And so with all due respect for him, neither the second house on the property is an accessory building structure in accordance to his interpretation or is this garage an accessory. So anyway, what we have in this memo is Mr. Monroe's interpretation but I think we can safely and legally discount it since it is not his pervue to do that, it's ours. And I open it to your suggestions and maybe we should consider at some point Tim putting our heads together and drafting a definition of accessory structure and garage.

**Tim Pagones** - would be for the Town Board

**Joan Turner** - No. It is for us to do



**Tim Pagones - The Town Board**

**Joan Turner -** If they want to change the legislation, that is up to them. But if there is an ambiguous term from my understanding, is that we define it.

**Tim Pagones -** When the, the Town Board if there is an ambiguous term or has to rewrite the Code, the Town Board is the one that does it. Certainly you can put your input

**Joan Turner -** No that is not my understanding of the case law and I am willing to go on the record that this board has the authority by law to define garage and accessory building.

**Tim Pagones - Okay**

**Joan Turner -** And I think that is something that all of us should sit down and do. And then if the Town Board does not accept that, then that Town Board can legislate new laws and change it and make it what they want. But they have to go into a legislative process

**Tim Pagones -** I guess what I am saying is there is nothing in the code about a garage. So you can come up with a definition but you can't put it in the code.

**Joan Turner -** But it is already in the code under section 46 in permitted uses, garage. But it is not defined nor is accessory structure defined. So we need to have a meeting and we can do this either tonight or some other time or maybe you all want to think about it and, but I am totally prepared to go ahead for us to draft an interpretation of garage and accessory building.

**Victor Carlson -** I think that should be done but I don't think it should be done tonight. I think we should think about it. And we should put it in and give it to the Town Board and see if they will put it in our book.

**Joan Turner -** But it is an interpretation and then have them adopt, if they want to legislate a different law for accessory garage but then the Town Board gets together and drafts new legislation. But interpretation sits with this board.

**Bill Flaherty -** But in as much as, in lieu of the fact that we don't have the proper guidelines in the code to define the accessory building or garage then we would revert back to New York State law as Lenny just said

**Joan Turner -** Well it is not state law. It is

**Lenny Lim –** actually it is the practices over the years that it has been interpreted and from what all the interpretations are a private garage, there are

two definitions here. One of them actually says no more than 3 vehicles. I mean there was no place else to find, I mean we all went looking for what a private garage is

**Tim Pagones** - I guess are you saying if there are any 4-car garages in Philipstown that they are illegal?

**Joan Turner** - Well no, I'm not saying

**Tim Pagones** - They are not garages?

**Lenny Lim** - We are not saying that. We were just trying to find a definition for private garage

**Tim Pagones** - Okay

**Lenny Lim** - And the definition for private garage, the best ones I can come up with is no more than 3 vehicles. There is a number they put in there.

**Joan Turner** - But we don't have to be bound by that number

**Lenny Lim** - The Town can put in any number they want when they make it

**Joan Turner** - But I think what we need to be bound to

**Tim Pagones** - But here, but you are using that in your decision, that if it is more than 3 bays

**Joan Turner** - No

**Tim Pagones** – But you just said we don't have to be bound by it. Either you do or you don't. You can't use it for a sword and a shield. In other words if you are saying a garage is only for 3 cars or 3 bays

**Joan Turner** - I don't think we, in my opinion we should not limit it to that.

**Tim Pagones** - Okay

**Joan Turner** - We should just limit it to the things that is its customary use associated with the primary use of the lot whether it is commercial or residential. And it is subordinate to the primary use

**Tim Pagones** - I agree with you

**Joan Turner** - That is the two basic guidelines we use

**Tim Pagones** - But you can't say it is a commercial building because there is more than 3 garage bays.

**Lenny Lim** - I was just trying to come up with a definition of private garage

**Tim Pagones** - Okay

**Lenny Lim** - And then garage which is accessory to the buildings or existing on the same lot. They have another definition

**Tim Pagones** - I guess I don't know if your strongest argument is to say if there are more than 4 garage bays

**Joan Turner** - No it is not

**Lenny Lim** - No it is part of the argument

**Joan Turner** - I wouldn't even put a number on it. I mean I really won't

**Lenny Lim** - I'm just reading from what I have here

**Joan Turner** - But they have three different definitions

**Victor Carlson** - Also this is in a residential district.

**Joan Turner** - I think that when you go through this material that I put together for you, you can just see how other people have, other townships have defined accessory building, have defined garage and then it becomes incumbent upon us to take that and make a composite definition of what we think it should be for Philipstown. But I think we ought to more homework maybe just go through each draft our own composite picture and bring it here and go over it. And maybe abstract out of that a definition.

**Bill Flaherty** - Well I think we have a lot of work to do in relationship to coming up with a specific definition of accessory building and garages

**Joan Turner** - I do too

**Bill Flaherty** - No question about this. And I think we have to really look into this and study it and see if it is something viable for all parties concerned. Now one of the things that Tom Monroe obviously has issues with this permit in accordance with this letter that we have here of April 11<sup>th</sup>. It appears, apparently he issued this permit in good faith and in accordance with what he interpreted our zoning laws to date in terms of a two story accessory building garage with storage above. And he is saying that he issued this permit in accordance with the applicants desire to have this garage built on the property that he owns. But

he also made it very clear that this is not commercial property and obviously it cannot be used for commercial purposes whatsoever. And I don't know what the applicant's intention is here and I have asked Mr. Gagnon here in the past what his intentions were. Is he going to use this as a business entity and if he is, it is illegal and he cannot do that. Or if it is just going to be storage of cars and he says he has a boat I guess and that is what it is going to be used for. At any rate, when it comes to the \_\_\_\_\_ I think it is going to be very difficult and a thorny situation for us to resolve under the current nebulous laws and zoning laws that we have and we really have to define these.

**Joan Turner** - But the intent of whether or not it is going to be commercial or not, the only evidence we have as to what is, not intention because we can't deal with intention, is the fact that a commercial fee for building permit was paid and that the design of this particular structure is of a commercial structure. And those are just hard evidence. There is no intention. Those are hard facts. So we need to also keep that in the back of our minds about this.

**Tim Pagones** - As far as ambiguities, if there is an ambiguity of the code, it's your problem. It's used against you.

**Victor Carlson** - But we can change it

**Tim Pagones** - Yeah but right now you can't. If there, can you change it down the road? Sure

**Victor Carlson** - Yes

**Tim Pagones** - But right now you are bound by what your code reads. You can't just sit there and say well I'm going to change the code and I want it to read this until it is changed. I am just saying that if there is an ambiguity, it

**Joan Turner** - There is no definition for garage. There is no definition for accessory building. Therefore, in order to nullify a building permit that is granted for an accessory building and garage, we as a board are having questions. We don't consider this a garage.

**Tim Pagones** - That's fine

**Joan Turner** - And also the people, the applicants who bring the interpretation say this is not a customary usage for a garage. They are saying we want an interpretation. Obviously, they are questioning the nature of the word accessory building and garage.

**Tim Pagones** - I don't think they are disputing it's a garage. I think they are disputing that it is going to be used for residential or commercial purposes.

**Bill Flaherty** - And I agree with you and I think the reason for this is the assumption being made that there are two bays which could accommodate commercial vehicles

**Tim Pagones** - Could

**Bill Flaherty** - Right

**Tim Pagones** - Okay

**Bill Flaherty** - And I indicated some time ago, some meetings ago that if the applicant would reduce the size of those bays it may make a difference in terms of the manner of which the residents who are disputing this thing to change their minds and not have it accommodate commercial vehicles. But the bottom line still is that we have to work on a more definitive law

**Joan Turner** - A more definitive definition

**Bill Flaherty** - Absolutely

**Joan Turner** - Of garage. But the key concept here is subordinate to the primary use

**Bill Flaherty** - Exactly

**Joan Turner** - This particular building is not for other buildings which are virtually warehouses or whatever, it is not subordinate to the principle use and it is not the customary usage that intended to the residential use of that. In some of these definitions that I have in this package of material it is for the use of the people, the garage or an accessory use, is for the people that live there. I mean that is also incorporated in some definitions.

**Victor Carlson** - Finished Joan?

**Joan Turner** - No go ahead, you go

**Victor Carlson** - Now we have to remember this is just an appeal to us for an interpretation. And we don't want to get side tracked. This is the only one thing we have is this appeal here. We don't have to care about the whole thing. We want to go just on this appeal. Every appeal we have to take as an appeal and judge it that way. We can't go around changing this and that and everything

**Tim Pagones** - I agree with you

**Victor Carlson** - So everyone that comes through the zoning board of appeals, we have to give our interpretation on it.

**Tim Pagones** - But I have to draw a resolution. Right my job is to represent the board and

**Victor Carlson** - Just remember that.

**Tim Pagones** - If you guys are doing something way out of line, I have to let you know because someone might get sued. I am just saying I need things to put in the resolution. Okay now I would like some time to look and see what you gave me and I am just getting it tonight.

**Joan Turner** - And I think you can help us. I think that if you were really sincere about your desire to work with us we should have a meeting in which we use your expertise to help us define garage and accessory usage. Also, it might be helpful for us to show us case law in which the boards are upheld or not for their interpretation of ambiguous

**Tim Pagones** - I think

**Joan Turner** - From what I understand from all of these zoning books that I've read, and I've given you one Bill, it is clear that we are mandated that this board has the power, the legal power

**Tim Pagones** - The only way you can get overturned is if your decision is arbitrary and capricious

**Joan Turner** - But it certainly isn't considering the number, the hours spent in research and discussion this is not a capricious decision

**Tim Pagones** - I am not saying it is. It could still be legally wrong that's another way you can be overturned. So what I am saying is, I guess Mr. Whyatt I have a question, the first thing is our 62 days runs up I think May 8<sup>th</sup>.

**Mr. Whyatt** - I have no objection to an extension

**Tim Pagones** - Okay. That's the first thing we've had. The applicants who are the neighbors are agreeing your time frame to do a decision is 62 days from the close of the public hearing and I think we closed the public hearing April 4<sup>th</sup>. So what I would like to do is look at this material. Why don't you put it back on for either the first Monday or the third Monday in May. We can discuss it. I mean I will not have a resolution at that time. I just want to look over everything and do some more research and go from there. But the applicants are agreeing to extend your time. So I don't know what we have on, we have a lot on for May 2<sup>nd</sup>. Right now you have 2 or 3 public hearings, 5 resolutions

**Victor Carlson** - Well this meeting is closed. So it is just between us

**Joan Turner** - The other thing I would like to make sure gets into the record is the misdirection of a fax that was sent to me by Mr. Whyatt which I never got. The first evidence I read is this morning when I got it in my package and, so Kim you will put that in with the record too. Because of some sort of miscommunication that this would have been made. I have asked Mr. Whyatt to give me, my particular package for the appeal was incomplete at the March 17<sup>th</sup> meeting and in the minutes you will notice that I asked him for information. He was complying. But it got to somebody else and so

**Tim Pagones** - I think it went to the owner, Mr. Gagnon.

**Joan Turner** - No it went to another woman and that woman had sent it to him

**Tim Pagones** - But also the owner got a copy and he was just concerned

**Joan Turner** - He got a copy from that woman

**Tim Pagones** - Okay. Whoever. He was just concerned

**Joan Turner** - I don't think there is anything more to discuss about it.

**Tim Pagones** - No I explained to him that you could certainly ask either side questions and they can answer it and it must have been a mix up

**Joan Turner** - Right

**Tim Pagones** - So I guess you have to decide what day you want to put it back on for the 2<sup>nd</sup> or the 16<sup>th</sup> for further discussion

**Joan Turner** - What do we have on the 2<sup>nd</sup>

**Kim Shewmaker** - 3 public hearings and 5 resolutions

**Lenny Lim** - a lot

**Joan Turner** - maybe we should put it on for the 16<sup>th</sup> and that would give us time to write up, compile our thoughts and notes and come back

**Victor Carlson** - Because anything we give to the town board will have nothing to do with this one

**Joan Turner** - What are you talking about

**Victor Carlson** - By the time it gets through the town board it is going to be months. By the time we give it to them for them to put in our book

**Joan Turner** - Well that is up to them. What we do is an interpretation. That stands in and of itself.

**Victor Carlson** - This one here

**Joan Turner** - Yes

**Victor Carlson** - Right. This is the only one we should be thinking about today

**Joan Turner** - That interpretation then goes for, and that really holds until that is changed by legislation

**Victor Carlson** - Yes. Right

**Joan Turner** – okay

**Tim Pagones** - So let's put it on for the 16<sup>th</sup> for further discussion and then we can

**Mr. Gagnon** - I have a question for the board if I may address you guys

**Victor Carlson** - Sure go right ahead

**Mr. Gagnon** - Is there any particular reason that this is being prolonged seeing that I do conform with all the building codes to date? I have explained on numerous occasions that I said that I would even sign something that this is strictly for residential use. And the other thing I would like to bring to the board's attention is if you look at Maple Lawns, if you go down the road just a little bit on the right there is a 5 car garage being used for a residential use. It is brand new and it seems no one questioned it. I need to understand why the board is trying so hard to revoke my permit

**Victor Carlson** - But that isn't a residential district. That's a business district. If you put your building up by your glass place, there would be no problem if you had the space

**Tim Pagones** - The first thing, we are not holding him up.

**Victor Carlson** - Yes we are

**Tim Pagones** - There is no stop work order. He can start building that thing if he wants. There has been no stop work order. He takes the chance of when you do your interpretation of having to tear the thing down.

**Joan Turner** - Again I have to really object to that statement.



**Tim Pagones** - There is no stop work order

**Joan Turner** - No there isn't but once, well there could be, but once there is an appeal before this board

**Tim Pagones** - I don't know if it stays it

**Joan Turner** - I think under New York State, what is that Town law we have. We went through this once before a number of years ago

**Tim Pagones** - We went through it with Cooper

**Joan Turner** - Not only that but we also went through it with somebody else I can't remember who where that if there is an appeal before this board that a stop work order is automatic

**Tim Pagones** - For a violation. It stays a violation. In other words if you are in court on a violation and you appeal

**Joan Turner** - That's not, I'll go back and check the section of the town law

**Mr. Gagnon** - The next question I have for you guys, if you look at my plans and I did spend a lot of money on the architect, it is done in a Dutch fashion. Okay? It has \_\_\_\_\_, it has break boards on the gables and it is done in a \_\_\_\_\_. The whole design of the structure is to compliment the Dutch Colonial that is on the property as it exists. I even have a \_\_\_\_\_ eave. I offset two of the bays and stepped the building back to make it more attractive and not as you keep interpreting it as a commercial business or building. Because that is not my intent. The intent is to have the structure compliment the rest of the property. Because what do I have to gain by building a barn that looks completely different than the rest of the property. It would depreciate all the value of the property. So when I go to build my addition on to my old house, which will once again be done like the Bird and the Bottle, like the double story Dutch Colonial with Georgian accents it would be a nice compliment back and forth. Why would I go through this expense if I was going to use this as a commercial structure? There is a lot of details in this plan. You know right from the get go I was talking to Tom about this and he says yes. I told him all of my intentions residential use, the whole nine yards and I told him I was going to build myself a big toy box. He said fine just make sure you get good plans, the whole thing, he walked me through the whole process. We had no problems this is why I am going forward with this. Okay. I always wanted a garage for myself. I've had many of my cars already gotten ruined from trees falling on them, things getting deteriorated from being left out, my race car got chewed up by rats the other year ruining the interior, I've got no where to store any of my personal toys. I am losing thousands and thousands of dollars because I've got no where to put my stuff. Now I do have

an RV that happens to be up at Lake \_\_\_\_\_, stuff at my father-in-law's overhang, which I would like to bring back down here. On top of that I've got a boat at Lake Mahopac which I would like to stick in the other bay. Besides that the other two bays are for my 350Z, my Z28 and my car trailer. Okay. I think my intents are pretty cut and dry. This is for residential use. I can't help the fact that I've got a lot of toys that need a lot of space. I mean it is that simple. The other thing too is like my wife told me, I only have enough money to build this once. If I don't get it right the first time, then I am stuck with just more crap sitting around on the outside. That is not my intent and I have said time and time again, I will sign any piece of paper swearing I am going to use this for residential use only. I have nothing to gain by using this for commercial use. If I wanted to use this for commercial use, I've owned this property since 2002. I would have had commercial stuff up there.

**Joan Turner** - If this

**Victor Carlson** - Wait. Let him finish

**Joan Turner** - Sorry

**Bill Flaherty** - Well the plans that I looked at I think it is a very attractive building. I will commend you on that. I liked the structure. It is an attractive building. But that is not the question really at this point in time. It is whether or not, what are you going to use this building for. And I think this is the whole crux of it is the fact that you got a permit from our building inspector in accordance with your building application and your intention to build this garage. Probably you could have left it alone with the building garage from the fact that some of the neighbors later on found out that this was not in accordance with the zoning laws and therefore they brought it to our attention and now it is up to us to somehow litigate this so that all parties are happy with the outcome and the results of this. It is not an easy thing to do I'll tell you right now. It is very complex very detailed and in light of the fact that we don't have very specific and definitive laws for us to use as a guideline I think it is incumbent upon us to really look at this matter and come up with the necessary verbiage to try and put it in our code so that any time there is a misunderstanding or dispute we'll forever take ourselves and won't be before this board.

**Victor Carlson** - Joan?

**Bill Flaherty** - This is a very difficult situation

**Joan Turner** - Much of what Bill said

**Victor Carlson** - Wait. Are you finished?

**Bill Flaherty** - Yes

**Victor Carlson** - Go ahead Joan

**Joan Turner** - Much of what Bill has said I agree with and to depersonalize it. It has nothing to do with you or your building. It has to do with people who have challenged the building inspector's definitions. His interpretation of the code. So they are saying this is not a standard ordinary usage of a building. It is not subordinate to the primary use on building and it is not consistent with ordinary residential use. So they are challenging. This would never even come to us if they hadn't challenged it. You could have built a place twice as big and it would never come to us. They are challenging Tom Monroe's definition. Then it comes to us in our laps. What do we do with it. And we have to use our best judgment. Even though it hurts you, it is not personal. It is not personal at all. And as Bill said, it is a lovely design but that is not the issue. The issue is here, does it correspond to the customary usage of a garage or accessory building. And that is what this board has been asked to do. And not the commercial use. It has nothing to do with whether you are going to use it for commercial or not. That's if it gets built, is up to Tom Monroe in enforcement. We need to look at the accessory, we don't have a definition for accessory structure. We don't have a definition for garage. It is up to this board to put a definition on that.

**Victor Carlson** - You see that is another thing. One of the first questions I asked is how much ground you have. If you had 10 acres there would be no question.

**Mr. Gagnon** - Well I've got 2.2 which is

**Joan Turner** - Just to throw out another side issue, on use, density on a lot. There are three things in zoning that are important. The use, whether it is residential or commercial; the density, according to your code it is one house per lot. You have two houses on the lot. When I mentioned that to Tom Monroe, he said no it is a shed. Now he is talking that it is an accessory building. Tom Monroe is interpreting the code according to his view. But he can't do that. He can only administer the code as it is written. So if I question him about two houses, he is saying no it is not, now in his new memo to us it is an accessory building. That means he is interpreting. He has no right to do that. So these people are questioning his interpretation of the code and they are dumping it on us to come up with an answer.

**Mr. Gagnon** - I understand that. But you guys do have to understand is, we are dealing with 200 to 300 year old structures up there. The property has 2 existing, well actually three if you want to be precise, the shed, the original house was probably built around 1780 and then you got the Victorian Barn roughly about 1870. Okay. I converted the barn into the primary house. Taking away the right to use the main house anymore. Okay? That's why Tom said it is legal for me to make that accessory building. In theory I don't have any use for the house. When I do do the addition on the old house, I am going to take the barn and use

that now as the accessory building and then the house will become the primary house. Okay. Everything I've been doing to date, I've been following very carefully with Tom. Tom has been approached carefully by me the whole time. Because this is a lot, once again, this is a lot of money for me. I am not Joe Rockefeller

**Joan Turner** - I know I know I know. And I understand that

**Mr. Gagnon** - I have thousands of dollars invested in this already. Just in landscaping. I know people don't understand this but when you bring in excavators and you start doing site work and stuff and you are paying a Union Operator, you are renting chippers, prepping and you are ready for foundation

**(turning tape over may have lost dialogue)**

**Joan Turner** - ...you worked with Tom however, other people have come in and said we are challenging this interpretation of Tom Monroe's and you are caught in the middle.

**Mr. Gagnon** - Well what I need to understand too is, it is a private road. Okay? The Pielmeiers, the only time they see me is when they drive up the road and they are so far in the back, I can't see their house so they can't see mine. The other neighbors, I don't really even know who they are to be honest with you. I don't even know where they are in relation to my property. I mean like I said the only neighbor that has any visible contact with me is not part of this. They have a contemporary house on to the left of me. So first of all, I am having a problem with that. Why are they challenging something that has no visual impact on their homes, it is set way far away from house. I mean there has got to be at least a tenth of a mile between my house and their house. So why are they challenging first off, second off, yeah, I don't want to build something and then somebody is going to turn around and find some legalized loophole because they don't like the way my barn looks and yea, just like you said, somebody is going to try and force me not to use this structure. That's a big impact on me personally. You know? And what I really need to make sure is you know, who is defending my best interest here? Now the town attorney seems to mention on numerous times when we've come here, that I am in accordance with the law, I have done everything like I am supposed to and this should be a done issue and I don't understand why it keeps getting dragged out and dragged out and dragged out. And you keep rediscussing. Because really you should be going after the next guy, like you said there are flaws. From what you guys keep telling me. So you should fix whatever your problem is but it shouldn't be held against me personally. Because it seems to me that you are trying to figure out a way to string me along so you can make some type of amendment so then you can stop me from building my structure.

**Joan Turner** - No not at all. This is an interpretation.

**Tim Pagones** - So I mean the problem is you know what, it is not personal but it is personal because it is you.

**Mr. Gagnon** - Well it's gonna hurt. You have to understand something. This is a huge investment of my time. Once again the intent was not to build an eyesore, use it for commercial vehicle. When this was first brought to the board, the first thing out of everybody's mouth was oh he's got two commercial trucks. We know he is using it for commercial use

**Joan Turner** - I just want to read it. Take it out of your particular situation and as we look at all of Philipstown. There are all kinds of garages, accessory structures that are way out of line. This is not just pertaining to you, when we are asked to interpret we have to look at the whole broad picture. So that when building permits, when people like you come up and ask for a garage or an accessory structure, they are going to have a definition of what it means. So it is defined. So you don't get caught in a situation like this. So it is not just applicable to you, but it is going to apply to other people who come in and an interpretation does that until the law is changed.

**Mr. Gagnon** - But why can't you guys just close on this particular case

**Victor Carlson** - We are closed already

**Mr. Gagnon** - It is?

**Victor Carlson** - We are just being nice and letting everybody have a talk before we, that's what we told you last time. We've heard everything and now we want to make sure we hear everybody

**Mr. Gagnon** - My fear is I'm going to miss a meeting and I am not going to be able to represent myself and then something is gonna happen and I'm not going to find out about it until somebody tells me my permit has been revoked or something.

**Tim Pagones** - Well right now it is on for May 16<sup>th</sup> for further discussion.

**Joan Turner** - And that is to draft a definition.

**Mr. Gagnon** - My next question is to the town attorney

**Lenny Lim** - No more questions at this time

**Mr. Gagnon** - I'm sorry

**Tim Pagones** - Don't vote tonight.

**Joan Turner** - I think it is a mistake. I think we should really discuss it.

**Lenny Lim** - So there are one or two more issues.

**Bill Flaherty** - Let me ask you, have you begun construction? I see

**Mr. Gagnon** - I am ready. Everything is ready to go. All I have to do is bring my digger over there.

**Bill Flaherty** - I've been there

**Mr. Gagnon** - If I want to put the foundation in, it will take me less than 5 days to get most of that structure up. And I could but once again, you guys are scaring the heck out of me. You are making it seem like you can turn around and somebody says something to the extent of we can make you condemn it. You know this is where I've got to understand that I am on solid ground and I am not investing a ton of material into this structure and somebody is going to turn around and tell me I can't use it or you guys are going to just tie me up and tie me up and tie me up making the building completely useless to me anyway. You can understand why I would see that as a personal attack.

**Bill Flaherty** - Do you want to say anything Mr. Whyatt?

**Mr. Whyatt** - Well my understanding is that the town law provides that the filing of this appeal stays all proceedings under the action, appeal process and I would read that as suggesting that the \_\_\_\_\_ stay on the building permit. A no stop work order has been issued but there is nothing directing the building department to issue a stop work order. But it would be my opinion at this point that Mr. Gagnon should not be building and building. And to the extent that he would begin it and his permit would be nullified, he would be in violation and would have to remove whatever he has done. On the other hand, I think Mr. Flaherty had suggested that there could be some compromise in the building that is built. And I think that was a couple of meetings ago that you raised that possibility. My clients are not closed to attempting to working out an acceptable solution and if the applicant, Mr. Gagnon was interested in that, that might be able to be reached before your board has had the opportunity to make a final decision on this. I don't think Mr. Gagnon is in a position of being held up until you reach your decision if he were willing to make some changes that would comply with the concerns of the neighbors. Thank you.

**Bill Flaherty** - Well I am very gratified to hear that and I think as I said in maybe two meetings ago that there has to be some dialogue between the parties and I don't think there is from what I can see here. There is no discussions between you and the applicants here relative to coming up with some compromising plans that might be agreeable to all, you yourself and them, so you can go ahead and

go forward with your plans to build a garage. But you apparently are not willing at all.

**Mr. Gagnon** - I have a lot of money invested in this

**(Everyone talking at once)**

**Joan Turner** - But Bill, even if that were to work out personally between them, it still doesn't resolve our responsibility to define this

**Bill Flaherty** - That's correct. But at least it would move this matter out of this and try to come up with some sort of

**Tim Pagones** - Okay on for the 16<sup>th</sup>

**Victor Carlson** - We will review this on May 16<sup>th</sup> and see if we can come up with some conclusion. Okay lets go on to the next

**Tim Pagones** - Leuthner is here. Leuthner you had taken a straw poll to deny it. Then they came back with some more information saying you know we didn't realize what was going on, we can't do this, we can't move it, would you reconsider it. It was then on for April 4<sup>th</sup>. It should have been a discussion because we never really discussed whether you people went back to look at it. But the agenda had for a resolution. Now I didn't have a resolution April 4<sup>th</sup> and I looked at the minutes and I realized you know we never really discussed it but I know some people went back again. So right now you have taken a straw poll vote to deny it. You haven't done anything else to grant it. The applicant has agreed to waive your 62 days. I think they did that back in March. So I don't know. I don't have a resolution. The last time we were possibly, you were thinking about granting it. And I believe the Leuthners are here.

**Joan Turner** - I don't remember. We were going to grant it? There was discussion about it.

**Tim Pagones** - Well there was discussion and then you went to look at it.

**Joan Turner** - So we did. I went down and took another look at the property and circled it on all sides. So I did that. Did you

**Lenny Lim** - I also did it

**Victor Carlson** - What is your opinion Joan?

**Joan Turner** - I feel that I am going to still vote to deny it because I think the shed can be moved. There is enough room there.

**Lenny Lim** - I also feel the same way. After the second time, there is plenty of room to move that shed.

**Bill Flaherty** - Well I agree. There is a lot of land here that the shed can be moved so that it will be in accordance with the setbacks that are required by our zoning laws. No question.

**Tim Pagones** - Okay. So I will have it May 2<sup>nd</sup>.

**Victor Carlson** - May 2<sup>nd</sup> okay

**Tim Pagones** - And the last thing is General Dynamics you just have to set that down for a public hearing. Why don't you put it on for May 16<sup>th</sup>

**Victor Carlson** - May 16<sup>th</sup>. There is someone who wants to speak?

**Mike Kelly** - I just have a quick question. I just want to make sure that Nextel has given you the correct list of adjacent property owners so we don't get left out again.

**Lenny Lim** - Exactly.

**Tim Pagones** - She will have to pull the file and check. But we will make sure you get a notice.

**Mrs. Kelly** - Is that your personal guarantee?

**Tim Pagones** - I'll call you the night before if you want.

**Mrs. Kelly** - Good

**Tim Pagones** - Read the paper

**Mrs. Kelly** - Does that mean that the lawyer for the town has no obligation to personally notify

**Tim Pagones** - People so many feet from where it is supposed to be. I don't know how you got left out. Typically the applicant does

**Mrs. Kelly** - Excuse me. What I asked you to give me your word for a personal obligation to notify us. You said read the paper. I don't appreciate that comment.

**Mike Kelly** - The last time when Verizon came before this board, you (cannot hear him)...we were never notified. We were left off. Okay.



**Tim Pagones** - I don't get the list. The secretary does.

**Mike Kelly** - Okay but it is the Board's responsibility to verify the

**Tim Pagones** - That's why the law also requires, can I finish now

**Mike Kelly** - Okay finish

**Tim Pagones** - That's why the law also requires the town board, all the boards, to post it in the paper so that should there be an error or something like that, it is in the paper. It is public

**Mike Kelly** - Okay let me ask you a question like this. You had 5 meetings with AT&T okay, only one letter of notification. There was one notification in the paper. There was 7 meetings

**Tim Pagones** - When a public hearing is continued, there are no notifications. The people are at the hearing, the board announces at the public hearing when the next one is. The does not have to be another notification

**Mrs. Kelly** - Is there a way that we can

**Tim Pagones** - Well I think the boards have as a courtesy notified people, they don't want to be in the habit of, the Jones want to get notified and I have to notify them, the Smiths need to get notified, so that is why we ask the applicant to prepare a list, I think it is 500 feet either way, I don't know how you were left off of it. You were at the original ones and I remember you mentioned the limbs in the back yard from the pine tree, I think there were so many going on you were inadvertently left out.

**Mike Kelly** - I mean this is a serious issue

**Tim Pagones** - I understand that. I am not disputing that.

**Mike Kelly** - It is a failure on the part of somebody to notify adjacent property owners becomes a very serious issue.

**Tim Pagones** - We will make sure you are notified.

**Mike Kelly** - What about verizon? Aren't they supposed to be here tonight?

**Tim Pagones** - No it is for placement of a hearing.

**Mike Kelly** - Let me give you this. This is pictures of what they are putting up there already. Okay. The plans that they submitted to the board said that the base of their box was going to be at the same level as the cement that the tree is

mounted to. The box is now 2 ½ feet above the 10 foot high stockade fence. That changes the screening, that changes the noise, that changes everything. I would put a stop work order on them

**Tim Pagones** - Well if they are not in compliance they should be cited. Mr. Monroe should go out and cite them

**Mike Kelly** - I don't think Mr. Monroe has ever been out there

**Lenny Lim** - Go and issue a complaint yourself and see what he does

**Joan Turner** - Oh my God. Pathetic

**Mike Kelly** - That's what happens when you get left out of a hearing.

**Joan Turner** - Isn't it the applicants obligation to draw up the list

**Tim Pagones** - Right

**Joan Turner** - So it doesn't sit well when they leave these people out

**Lenny Lim** - No it doesn't

**Mrs. Kelly** - We were very hopeful the first time. So it made us wonder why we (cannot hear her)

**Bill Flaherty** - Can we direct our building inspector to go down there and inspect this site

**Tim Pagones** - Sure

**Joan Turner** - I don't know

**Tim Pagones** - Well you can ask him. The neighbors have brought a concern, please go out and look at it. And certainly if they are in violation, they had a

**Mike Kelly** - I will call him in the morning.

**Bill Flaherty** - This is deplorable

**(Cannot hear an audience member talking)**

**Lenny Lim** - this is kind of strange that they were never notified on anything that went on over there

**Joan Turner** - how can they get a certificate of occupancy on something that

doesn't comply with the

**(Too many people talking....cannot make out conversation)**

**Tim Pagones - Make a motion to adjourn?**

**Victor Carlson - Motion to adjourn?**

**Lenny Lim - Second.**

**Victor Carlson - 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: May 16, 2005**

Respectfully submitted,

Kim Shewmaker  
Secretary