

ZONING BOARD OF APPEALS

May 2, 2005

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, May 2, 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.

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

ABSENT:

Vincent Cestone - I am going to take this a little out of order. I am going to do the reviews for completeness first so that we can get this done. Ms. Dorothea Lang.

Tim Pagonis - I just got my packet tonight.

Vincent Cestone - Okay

Tim Pagonis - So I have not looked at it. There are actually two appeals, I looked real quick. One is for a shed and one I believe she changed her plans to add a deck.

Victor Carlson - Two decks

Tim Pagonis - Two decks. So I mean

Victor Carlson - There is no dimensions on the decks.

Tim Pagonis - So I would like to take the time to look at it and put it on for the 16th.

Vincent Cestone - Okay

Tim Pagonis - I guess I know they are both under the same 767 but there are

actually two appeals

Vincent Cestone - Okay. So we won't do that tonight

Tim Pagones - So we will put it on for the 16th. Ms. Lang, if you can have someone put the dimensions of the decks on the survey so we know what sizes you are talking about. I don't think it is on the plans

Dorothea Lang - It is not on the survey. I know that but Mr. Glen Watson gave me the dimensions.

Tim Pagones - Can you just put them on? He will put them on the plans. So it will be back on for the 16th for completeness. He will finish it up. That good looking gentleman right there.

Dorothea Lang - So the 16th

Tim Pagones - So on the 16th we should be set to go on the 16th

Dorothea Lang - Okay

Tim Pagones - Okay

Dorothea Lang – thank you

Vincent Cestone - First item on the public hearings is Laurie Brown and Mark Mazzye. Is someone here for the applicant?

Laurie Brown - Yes. Laurie.

Vincent Cestone - Okay. Is this a continuation?

Tim Pagones - No. This is that unimposing deck right?

Vincent Cestone - Okay. If you could explain what you are applying for? What you are requesting? Explain what you are looking for and why you are before us.

Laurie Brown - Well the deck has been there before we bought the house which was in 1999. When we, we actually sold the house and that's when we were putting it on the market that's when we found out that there was no C of O for the deck.

Vincent Cestone - Okay

Laurie Brown - And

Vincent Cestone - So you weren't cited by the town for this?

Laurie Brown - No

Vincent Cestone - And when you initially bought the house, they didn't catch it on your title search?

Laurie Brown - No. It was our first house and no one caught it and there had been another issue with the house with a C of O that needed to be done by the previous owners before the sale could go through. There is a concrete patio and then the deck kind of goes off, very natural and it looks like it was there when the house was built.

Vincent Cestone - Okay

Laurie Brown - And then it drops down. It kind of walks right off the patio. The people thought it was because the patio was part of deck on the survey.

Vincent Cestone - So it was caught by the other person's title search? Is that what happened?

Laurie Brown - Yes

Victor Carlson - Could you show us where the deck is?

(Everyone talking among themselves)

Lenny Lim – Did you say right after your deck the land drops off away from you

Laurie Brown - Yeah

Lenny Lim – Very steep

Joan Turner - Like a ravine?

Laurie Brown - Yes

Lenny Lim – And when did you purchase the house?

Laurie Brown - In 1999

Joan Turner - So the deck was there when they purchased the house originally. It did not come up in a title search at that time. It only came up now

Laurie Brown - Right

Tim Pagonis - Can you just talk about the neighborhood. What's around

Laurie Brown - It is very woodsy. There is over an acre of property and the next door neighbors have I think 15 acres and on the other side, they have a couple of acres. Going down Winston Lane, you can't even really see the deck it is just trees all over. It is not really visible from the road. The drop from the deck to the street is all trees. It has not been manicured

Vincent Cestone - This is dropping down to the little stream that's there

Laurie Brown - Yeah, well there's the road there and then there is a retaining wall down near the road. It's pretty. You just stand there and there is all trees. It kind of blends in.

Vincent Cestone - Any questions from the board?

Bill Flaherty - How great a variance are you asking for?

Laurie Brown - Well this is 22 (can't hear her)...but it also not just straight out to the road. I don't think anyone can see it. I don't think the neighbors can see it. In the winter maybe.

Joan Turner - So it is a variance of 17' 4"

Laurie Brown - Yes

Vincent Cestone - Any other questions from the board?

Bill Flaherty - What hardship would this impose on you if you were to move that deck?

Laurie Brown - Well we, we did sell the house and we left money in escrow if they have to tear it down.

Lenny Lim - When I did the site visit, I was there when the trees were down. Any other houses are really pretty far away also. It is really hard to see this.

Bill Flaherty - The new buyers like the deck

Laurie Brown - Yeah. They do.

Bill Flaherty - Was it instrumental in selling the house?

Laurie Brown - That is why they said they wanted to buy it.

Vincent Cestone - Well how big is this deck?

Laurie Brown - It's not that big. From here to about here.

Vincent Cestone - Any more questions from the board? Any comments from the audience? Motion to close the public hearing

Victor Carlson - I motion

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

All Board Members - Aye

Vincent Cestone - Do I have a motion to do a straw poll?

Joan Turner - So moved.

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

All Board Members - Aye.

Vincent Cestone - Lenny?

Lenny Lim – I'll vote in favor

Vincent Cestone - Joan?

Joan Turner - I'll concur

Vincent Cestone - Bill?

Bill Flaherty - I agree

Victor Carlson - I vote in favor

Vincent Cestone - And so do I. This is a straw poll. It is not official. But this is direction for the attorney to write a resolution.

Tim Pagonis - May 16th.

Vincent Cestone - We have 62 days to read the resolution but more than likely it will be done next time

Tim Pagonis - May 16th.

Laurie Brown - Thank you so much

Vincent Cestone - You're welcome.

Tim Pagones - You don't have to be here. We will send a copy downstairs and make sure Mr. Monroe has your address and he will send you a copy

Laurie Brown - Okay

Vincent Cestone - Okay. Next item on the agenda is Guy Morris and Pamela Lippee. Anyone here to speak for the applicant?

Glennon Watson - Glennon Watson from Badey & Watson. Guy Morris and Pamela Lippee, the applicants, own approximately 14 acres on which are located two houses and a garage, a second garage with a studio guest quarters above it. They have applied to the Philipstown Planning Board to subdivide that property. All these buildings existed when they purchased the property about 6 years ago. They divided, they seek to subdivide that property. The planning board may not subdivide that property because, I think this is the first time that they _____ this issue, the lots cannot be configured in such a way as to provide the 6,000 square feet of buildable area on each of the lots. Therefore they are not eligible for subdivision. All of the other geometric requirements, setbacks, area, all the stuff that you have been dealing with for years, are there. But this relatively new section of the law that requires 6,000 square feet of buildable area cannot be met. So we have been referred to you. The planning board has put this application in abeyance. There is a letter from the planning board recommending proof of granting the variance. The 14 acres will be divided into approximately 9 acres and 5 acres. The subdivision will, basically it cuts off a 5 acre parcel with the smaller house and there is an existing well, there is an existing septic, existing house, existing garage. Setbacks are, all the setbacks are there. The other 9, 9 1/2 acre parcel actually has existing house, existing septic, existing well, it has a pool and a small pool house and it has the garage with the studio above it. Again, all of the other requirements are met. The factors that you consider, there is, will it have detriment to the, will there be a detriment of a neighboring property? Nothing here will cause a physical change in the site so we say in our paperwork to you that really because of that there will be no physical change and therefore no detriment. Again, there will be no changes in the light, there will be no changes in the character of the neighborhood again because there will be no change. You will notice that we left the driveway open crossing the property line. And that was at the request of the planning board so that emergency vehicles could make a loop if they had to. They asked us not to close that off. So that is an issue for them but I just wanted to mention it. The applicant has no other way of achieving his goal which is to subdivide the property. We seek relief from Section 175.30(a)(4). The amount of the variance is in our estimation approximately 3,000 square feet. We need 6,000 square feet of buildable area. That means 6,000 square feet that is neither within the front, side setbacks, it is not on any steep slopes, it is not in a wet land, and it is not in a buffer. This property is wet to the west and it is steep to the east and we just can't

accumulate that much land in one block. We come close where the houses are but we can't do it. Again, it all comes down to the fact that there is no physical impact here. The purpose of the zoning law is to obviously to provide the buildable spot for someone to locate a house on. This 6,000 square feet incidentally is in addition to what you need for a septic system. The purpose of that law is to _____ that there is a buildable house site on the lot. In this case, the question we feel is mute because the buildings are already there. It does have the unique situation, we do have a nonconforming situation that was the situation when the Lippes moved in and they did not cause it, but subdividing will actually bring the property more into conformity because we will have corrected the fact that there is more than one principle structure on the lot and the subdivision will correct that. It could have been corrected in time. It could have been corrected prior to the change in the zoning law which required the 6,000 square feet of buildable areas. So we are seeking your variance in that regard.

Joan Turner - How many lots are they ultimately going to divide this, it is just these 3 lots on this 14 acres or are there going to be other lots developed here?

Glennon Watson - It is only going to be 2 lots on the 14 acres. This studio that I mentioned over the garage is actually a guest quarters and has a limited CO. I would have to, to do any further subdivisions since I can't get the 6,000 square feet I need to do 2 lots, I can't get the 6,000 square feet to do a third lot so any further subdivision is not possible. Because we can't meet the zoning requirements.

Vincent Cestone - What is the purpose of the subdivision? What is the ultimate goal is what I am asking

Glennon Watson - They do not want to own this, they are going to sell this one piece. They are going to sell the cottage and the garage. So doing the subdivision is to make it available for sale. That's it.

Victor Carlson - 2,000 square feet

Glennon Watson - pardon me

Victor Carlson - 1-acre zoning there

Glennon Watson - this is 3 acre zoning. I'm sorry. The zoning district goes through there. It is partly 3 acre zoning and partly 1 acre zoning.

Victor Carlson - Right. Which part is 3 acre zoning?

Glennon Watson - Let me see if I have that on the map. I am going to say the western quarter is zoned R-40. The houses are in an R-120 zone, what we call a 3 acre zoning. So the houses, so the requirement that we have to meet is the 3

acre requirement because there are houses on there.

Victor Carlson - That lower house is going to be in a 1 acre zone?

Glennon Watson - No. The lower house is in the 3 acre zoning. I will trace my finger across the zoning district line. It is a line parallel to the road. It is right here.

Victor Carlson - Okay and this is 14 acres all together?

Glennon Watson - That's correct

Joan Turner - And you are looking for 2 lots? Is that what I understood?

Glennon Watson - Yes a 9 and a 5

Joan Turner - A 9 and a 5

Glennon Watson - Right

Victor Carlson - Is there any way they can divide it so they have the 3 acres for each house?

Glennon Watson - Each house has 3 acres. It is only the 6,000 square feet of flat land

Victor Carlson - Could you use that bottom piece there, it's one acre

Glennon Watson - What I was saying was that the western corner of the property is in a one acre zone. Parcel A, the larger parcel, has 9 acres. It has some one acre and it has some three acre but the buildings are in the 3 acre zone. Parcel B has 5 acres. Some of it is in the one acre zone and some of it is in the 3 acre zone.

Victor Carlson - But what I am saying you cannot use any of the one acre zone in a 3 acre zone.

Vincent Cestone - I am not sure what you mean

Victor Carlson - You can't use any of the one acre for the three acre

Glennon Watson - Right. Right. To be honest I would have to check my calculations on that. I understand what you are saying

Victor Carlson - Because I've got a piece of property like that

Glennon Watson - I understand what you are saying. To be honest I would have to check whether I have it or not but I can accomplish that by making this lot slightly bigger. But if there is a deficit and I am not sure there is, I can make the 120,000 in the 120,000 square foot zone. It is not an issue

Victor Carlson - Then that one house, do you see what I am saying?

Glennon Watson - No I don't see. I'm sorry. I don't understand

Victor Carlson - You can't use any part of the 3 acres in the 1 acre zone. If you have a 3 acre zoning you can't use any part of that to make up a 1 acre zone.

Glennon Watson - I don't have that problem.

Victor Carlson - That's my question.

Glennon Watson - I have a 5 acre lot. I don't have that problem.

Vincent Cestone - Now do both lots have the same problem with the 6,000 square feet

Glennon Watson - No. It is only one of the lots. It is Lot A that doesn't have it. Lot B does have it.

Lenny Lim - Lot A is how big?

Glennon Watson - Lot A is 9.5 acres

Joan Turner - And in that 9.5 acres they do not have 6,000 square feet of buildable land

Glennon Watson - That's correct

Joan Turner - So then you have all these topographical features of streams, hills

Glennon Watson - Steep slopes, wetlands and setbacks

Bill Flaherty - Therefore there would be no additional buildings allowed on that property

Glennon Watson - It is not possible. The only possibility is coming back for a variance. But that's not anticipated at all here.

Victor Carlson - If we stipulated that we... **(too many papers moving around by the microphone...cannot hear)**

Glennon Watson - ...they can't be divided because I can't (**cannot hear with the papers**). Now the only reason I am here is because I can't divide it to make a legal lot. I am asking for a variance to accommodate a division into two parcels and if you give me the variance on the shortage from the 6,000 square feet, that's only 6,500 that's a small area. If you give me that variance, I will be able to subdivide it into two. It is impossible to subdivide again because I can't make that 6,000 square feet again.

Victor Carlson - I don't know if you people know what the land is like up there. It's rocky, rough and you run off into it might be a little moist and then you run up to wetlands, not wetlands, mountains. And it is real steep and I would like to see if we can keep that in just two lots. Two building parcels.

Joan Turner - With no further subdivision you mean

Glennon Watson - It's a non-issue

Victor Carlson - Otherwise it is going to be thrown into Open Space and

Glennon Watson - It is a non-issue. First of all I can't subdivide it again. Because I can't make another lot because I don't have another 6,000 square feet to make the zoning requirements. So I can't subdivide it again. I can't subdivide off a piece of property for Open Space there is no contemplation of that. I can't do that without coming back to the Zoning Board and you can specify that in your resolution if you want but I don't see any problems. It is not probable.

Victor Carlson - They can always change the zoning but if we stipulate it is only 2 pieces of property in it and they can't be divided any further.

Tim Pagones - I'll put a condition in that they can't subdivide it further

Tom Whyatt - Can I just say something? My name is Tom Whyatt

Vincent Cestone - No. Let him finish his presentation first

Glennon Watson - Mr. Whyatt is the attorney

Tom Whyatt - I am the attorney for Mr. Morris. This began because I was retained to sell off one of the lots. He would have no objection to a condition of your variance that the lot could not be further subdivided.

Tim Pagones - Glenn do you know how much of a variance you need?

Glennon Watson - Yes. 3,000 square feet

Tim Pagones - Okay. And that is for Lot A

Glennon Watson - That is for Lot A

Tim Pagones - Okay

Vincent Cestone - Any more questions from the board? Any comments from the audience? Motion to close the public hearing

Bill Flaherty - So moved

Joan Turner - So moved

Vincent Cestone - And a second. All in favor?

All Board Members – aye

Vincent Cestone - Do we wish to discuss this later or do you want to do a straw poll?

Joan Turner - Straw poll is fine

Victor Carlson - I think we should discuss how we are going to do this.

Tim Pagones - A 3,000 variance

Victor Carlson - Are we going to decide it in a way that it can't be divided any more?

Glennon Watson - We just agreed to a condition

Victor Carlson - I want to put that in as a stipulation

Glennon Watson - Right

Tim Pagones - It will be in the resolution

Glennon Watson - We just agreed to it

Tim Pagones - We will, if the board will grant him a 3,000 square foot variance for a buildable lot area, we will put a condition that neither Lot A nor Lot B could be further subdivided in the future. And he is telling you that he can't do it, but we will put that condition in anyway.

Victor Carlson - Yes

Vincent Cestone - So do we wish to take a straw poll or do we wish to discuss

this?

Joan Turner - It's okay with me

Vincent Cestone - I would need a motion if we want to take a straw poll

Bill Flaherty - I so move

Victor Carlson - I'll second

Vincent Cestone - All in favor?

All Board Members – Aye

Vincent Cestone - Okay. Bill?

Bill Flaherty - I approve

Victor Carlson - I approve

Vincent Cestone - Len?

Lenny Lim - I approve as long as the caveat is in there that he can't rebuild on anything

Vincent Cestone - Joan?

Joan Turner - I will vote in favor

Vincent Cestone - And I would vote against

Victor Carlson - You're voting against?

Vincent Cestone - I'm being disagreeable.

Tim Pagones - May 16th

Glennon Watson - Thank you

Tim Pagones - Take care

Vincent Cestone - Next item on the agenda is Sharon Acocella.

Tim Pagones - Ed McCormick is here.

Ed McCormick - Good evening. Sharon Acocella. It took me years to

pronounce it.

Vincent Cestone - So explain why you are here and what you are asking for.

Ed McCormick - Well interesting enough Sharon's father worked for the Town and he lived in this house since the 1950's. Over time, we originally thought the steps was built in the 1950's the late 1950's. There were applications for a back porch back in 1995 to make everything legal. The title company told us that everything met all setback requirements and then when we went into contract on the house we came to find out that there was _____ on the sideline. So we came here tonight asking for a variance of some 15'. The property is located right across from the Clubhouse in Continental Village overlooking the lake. The neighbor on the left side is Mr. Eckhart. He again has been there since the 1950's. I only can tell you this because I grew up in the area so I used to visit and swim in that neighborhood. The other side of the lot is the parking lot for the bathers' cars. They leave their cars as they go down to the lake. So as it exists this deck we think has been here all these years only did we find out recently that we didn't meet the requirements. We looked at the COs. And the COs prior don't actually name this deck. They name the back porch. And that was back in 1995 when they went for a refinance they got those COs taken care of. The hardship that we face right now is that we have a buyer. The owner has moved out of the house and have taken her things out. The buyer is homeless. They are in a hotel right now. We also have a unique situation that the bank didn't want to wait for their mortgage payments since we were ready to close so we are in foreclosure proceedings. So all in all we've got everyone pushing towards the center and we come to you for a variance of 15' on that side deck.

Lenny Lim - Hold on hold on. I think it is going to be less because your steps come out to only 2' away. What would the variance be from the steps

Tim Pagonos - I would give them both. I mean I will mention the steps and the deck.

Ed McCormick - I relied a little on Tommy Monroe, we looked at everything and again it is in that neighborhood at least

Vincent Cestone - It would have to be the steps or the steps are illegal

Lenny Lim - Exactly

Joan Turner - This building permit and certificate of occupancy for rebuilding the deck and steps and that is the deck that we are talking about?

Ed McCormick - No the certificate of occupancy that you have in front of you is for the back porch I am pretty sure

Joan Turner - It says rebuilding porch and steps. Okay

Victor Carlson - Which one are we talking about

Tim Pagones - The big one by the patio

Lenny Lim - But the other deck is only 7 feet away also

Ed McCormick - That has a CO I think

Joan Turner - Yes it does

Ed McCormick - A previous one in 1995

Joan Turner - Right

Lenny Lim - So that one is for this side deck. When was this new deck built

Ed McCormick - This deck was built in the 1950's. At least that is what Ms. Acocella recalls. It has been in existence.

Victor Carlson - Are we talking about the same thing?

Ed McCormick - We've got a deck on the side, this deck here

Lenny Lim - here is a side one and then there is the back one

Ed McCormick - The side one is what we are here for tonight. The back deck is over here and I am talking about the side deck over here.

Victor Carlson - There is this little wooden deck on the side

Ed McCormick - You are right and the stairs are what is too close to the side line. We have even offered to take the deck down and the new buyers are going to cancel the deal. We've offered to pay them and let them go through the process and they still want that deck

Victor Carlson - Lenny the one that says wood deck

Lenny Lim - I know which one, the back one. I understand which deck.

Vincent Cestone - When was the deck built?

Tim Pagones - In the 1950's

Ed McCormick - In the 1950's we anticipate

Lenny Lim - In other words both decks were built in the 1950's

Ed McCormick - That's correct. I can't vouch for that only that's what I have been told by my client

Lenny Lim - The CO only says one deck. I don't quite understand where that second

Ed McCormick - This deck was here, I can only vouch for the deck that we are here for in the rear of the property and that is the one that dates back to the early 1950's, actually late 1950's early 1960's.

Bill Flaherty - We have a certificate of occupancy dated September 26, 1995 for a deck which consists of 4 by 8

Ed McCormick - And that is the small deck on the side

Bill Flaherty - Okay. Is that in compliance? That doesn't appear to me to be in compliance with the setback

Tim Pagones - That one is pre-existing also. But for whatever reason, they have a building permit and CO because they rebuilt that one. Now they are in the process of selling and someone says well you've got that nice CO for the one deck where's the CO for the other deck?

Bill Flaherty - But is that deck, it is still not in compliance

Tim Pagones - That was built in the 1950's before zoning. That one is grandfathered in. The applicant's attorney is trying to say that the one in the back should have been grandfathered in but they never got a permit or CO for that one. And now they are stuck

Ed McCormick - In fact Goldsand at one point, the title company, examined it and read the survey and gave us a clean bill of health, again I wasn't representing them, but I looked at the title report and it said that it met all requirements. And Thomas Monroe didn't think it met all requirements so that is why I came up here to make sure that meet the requirements and get a variance

Victor Carlson - That deck was on in 1957, it is legal

Vincent Cestone - But there is no proof to it though

Ed McCormick - We didn't get the affidavits from the neighbors

Victor Carlson - I thought you were there

Ed McCormick - I was, in my younger years. I think Mr. Eckhart who is in his 90's could have been one of the affiants but we didn't get all those things. Sharon did go around and talk to all of the neighbors but she fell short of getting that.

Victor Carlson - So how much of a variance are you looking for?

Joan Turner - It's an R-10 so

Ed McCormick - We have a 20 foot setback requirement so we are looking for approximately 15

Tim Pagones - 14.9 for the deck and for the stairs 18.5

Lenny Lim - This is one of those long narrow lots, what is it 72 wide. How wide is it?

Tim Pagones - 72

Lenny Lim - okay

Tim Pagones - 18,000 long. I don't know how long.

Lenny Lim - 72 wide by 350 long

Victor Carlson - do we have the dimensions for this wood deck. I see no dimensions

Lenny Lim - Good thinking. Good thinking Vic. There is no dimensions

Victor Carlson - Well one is 4 by 8. I think that is the one on the side.

Lenny Lim - No there is no measurements. You are right. 19.2 by 15.

Bill Flaherty - It is rather academic at point

Victor Carlson - Any time we give a variance we want to make sure what we are giving so if they add to it, it gets caught.

Bill Flaherty - Well one of the provisions is that they not add to it

Victor Carlson - Right but if we don't have the dimensions, how would we know. It keeps everybody honest

Bill Flaherty - Well Tim has the dimensions.

Tim Pagonos - Yep, the deck will stay that size.

Bill Flaherty - All right

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

Victor Carlson - 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?

Victor Carlson - Second

Vincent Cestone - All in favor

All Board Members – Aye

Vincent Cestone - Lenny?

Lenny Lim - I'll vote in favor

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor

Victor Carlson - I vote in favor

Vincent Cestone - And so do I.

Tim Pagonos - May 16th

Ed McCormick - Thank you very much

Vincent Cestone - Review of minutes of April 4th

Joan Turner - Well I didn't even get a chance to read them. Do you want to put it off until next week?

Vincent Cestone - Yeah, we'll put it off until next week. Okay. Leuthner resolution

Tim Pagones - Okay

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #757; Applicant: John & Lani Leuthner
Area Variance**

Date: May 2, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on February 7, 2005 to hear the appeal of John & Lani Leuthner from the denial of a building permit for continued placement of a wooden shed having insufficient setbacks from the side property lines. The property is located on 188 Old West Point Road in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on May 2, 2005, upon all the discussion that preceded it, including the public hearings, site visits undertaken by individual Board Members, and a review of Applicant's submissions, _____ made the following motion, seconded by _____:

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

THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF DENYING THE APPEAL OF JOHN & LANI LEUTHNER FOR AN AREA VARIANCE TO ALLOW CONTINUED PLACEMENT OF A WOODEN SHED WITH INSUFFICIENT SETBACKS FROM THE SIDE PROPERTY LINES, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

FINDINGS OF FACT:

1. The Applicant made this appeal (#757), to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for an existing wooden shed. The basis of the denial was insufficient setbacks from the side property line. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach that.

2. The property is located on 188 Old West Point Road in a R-40 District in the Town of Philipstown. According to Schedule B of the Philipstown Zoning Code, the R-40 District requires a setback of 20 feet from the side property line.
3. The Applicant acquired title by a deed dated August 10 1994. The structures and proposed improvements at the property, appear on a survey map dated August 4, 2004, as prepared for John B. & Lani Lombardi Leuthner by Badey & Watson Surveying & Engineering P.C.in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular meeting on January 3, 2005. The Application was determined to be complete and a public hearing was scheduled for February 7, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach the public hearing notice as Schedule B

7. The Board met on February 7th for the purpose of conducting the public hearing. Besides the Members of the Board and the Applicants, no members of the public spoke at the public hearing. The public hearing was duly conducted and closed. Following the close of the hearing, the Board engaged in further public deliberations and a motion was entertained to deny the requested variance.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The requested variance is to allow for the continued placement of a wooden shed within the required side setback. The proposed location of this structure is 3.5 ft. from the side property line. The required setback is 20 feet. The design of the structure is an old wooden shed that is used for the storage of the applicants lawn mower equipment.
The Board finds that the structure would be obtrusive in the proposed location because of the fact that it is so close to the side property line and the applicant has many other places on the

property to move the shed to. Additionally, granting a variance which would allow a shed to remain so close to the side property line in this neighborhood has the potential to adversely affect property values and set a dangerous precedent¹ and the cumulative impacts from such a variance may cause far reaching problems within the community resulting in a proliferation of sheds being placed next to property lines.

No members of the public spoke at the hearing. Opinions of neighboring property owners, whether supportive or in opposition, are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

Feasible Alternatives

2. Various alternatives were discussed at the hearing including taking the shed down or moving it to conform with the side setback requirements. The shed is not on a foundation so moving it should not be that difficult. The property can accommodate the shed without coming into conflict with the Code, thus eliminating the need for the variance.

Extent of Variance

3. The required setback is 20 ft. The requested variance from 16.5 ft. The requested variance is quite substantial.

Effects on Physical/Environmental Conditions

4. The proposed variance has the potential to adversely impact the neighborhood based on the location of the shed to the property line. Cumulative impacts may also result due to the other neighbors attempting to place their sheds within the required setbacks. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structures will have a detrimental effect on the physical conditions in the neighborhood.

Self-created Hardship

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

5. The need for this variance is self created². The Applicant can move the shed to several other locations on the property and then be in compliance with the Zoning Code.

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 denying the area variance.

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for denial of the requested variance was put to a vote on roll call of the Board on the 2nd day of May, 2005, the results were as follows:

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

ATTENTION APPLICANT(S)

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

Vincent Cestone - Motion to accept the resolution as read?

Bill Flaherty - I'll second

Lenny Lim - I'll also move

Vincent Cestone - All in favor?

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

All Board Members - Aye

Vincent Cestone - Len?

Lenny Lim - I'll vote for denial

Vincent Cestone - Joan?

Joan Turner - I vote to deny it

Vincent Cestone - Vic?

Victor Carlson - I vote for denial

Vincent Cestone - Bill?

Bill Flaherty - I deny it

Vincent Cestone - And so do I.

Tim Pagones - Who do you want next?

Vincent Cestone - Pick one

Tim Pagones - DeVito

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #763; Applicant: Renee Devito
Area Variance**

Date: May 2, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on April 4, 2005 to hear the appeal of Renee Devito from the denial of a building permit/certificate of occupancy for a screened in porch having insufficient front setbacks. The property is located on 3 Winston Lane, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on May 2, 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 RENEE DEVITO FROM A DENIAL OF A BUILDING PERMIT/CERTIFICATE OF OCCUPANCY BY THE BUILDING INSPECTOR FOR A SCREENED IN PORCH 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:

1. The structure granted conditional variance 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 further enlargement or reconfiguration of the structures is authorized without Building Department and/or Zoning Board approval as needed.
2. The setback from the street line for the screened porch shall not be less than 7.5 ft. (a variance of 32.5 ft.).
3. The screened porch shall not be further converted into living space, with either permanent or removable building materials and no heat shall be installed to make it a year round porch.

Any other conditions?

Vincent Cestone - Going back to point 1, without Building Department and/or Zoning board approval

Tim Pagones - Okay what do you want to amend that to

Vincent Cestone - I want it to go back to what we had agreed upon

Tim Pagones - You've got that language somewhere right?

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."

Kim Shewmaker - Tom's language

Tim Pagones - Which language? Do you want the language that Mr. Monroe, the two clauses or should, let's see...no further enlargement or reconfiguration of the structures that would require or effect any of the granted variance shall be done without zoning board approval. Any other aspect must require zoning board or building department approval as needed. So if it affects anything to the variance, they've got to come back here. They can't make any changes. If it is just any other changes, they can go to either the building department and/or zoning board approval. She is not making any changes.

Vincent Cestone - No changes

Tim Pagones - Okay so no changes made without zoning board approval as needed. We'll just take without the building department out.

Lenny Lim - Right

Tim Pagones - Okay so building department is out

4.

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#763), dated December 30, 2004 to the Philipstown Zoning Board for an area variance based upon a denial of a building permit/certificate of occupancy by the Building Inspector for an existing screened porch 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 will attach the Schedule A which is a list of the exhibits

2. The property on Winston Lane, is located in a R-40 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-40 District requires a setback of 40 feet from the street line.
3. The Applicant acquired title by a deed dated July 31, 1975. The structures at the property, appear on a map dated July 6, 1973, as prepared for Henry & Gilda Block by Alexander Bunny in Katonah N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on January 24, 2005 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for February 21, 2005 but due to bad weather was rescheduled for April 4, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach the public hearing as Schedule B

7. The Board met on April 4th 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 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 Applicant requests a variance for a screened porch that has been in existence for over 30 years. When the applicant purchased the house in 1975 the porch was there. The only thing that the applicant did was to screen in the porch. The requested variance will not adversely affect property values because it has been in

existence for so long. The structure does 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 structure is not 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 fact that the porch is there, the Applicant can not keep it without coming into conflict with the Philipstown Code. The only alternative would be to tear the porch down. Given the amount of the intrusion into the setback and the fact that the porch was there for over 30 years, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicant requests a variance of 32.5 ft. from a set back which should be 40 ft.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The continued placement of a screened porch is not an activity usually associated with such environmental concerns. No additional traffic is generated. Air quality is not disturbed. Water quality or quantity is not affected. Additionally, no increase in runoff or change in the drainage has been 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 not self created⁴. The Applicant

⁴ **While self-created hardship is not alone a reason to**

purchased the house in 1975 with the porch in place. The only thing the applicant did was to screen in the porch. The applicant was even issued a C/O for the porch and it was not until refinancing was it determined that the porch did not meet the setback requirements.

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.

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 2nd day of May, 2005, the results were as follows:

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

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 corrected

Bill Flaherty - I'll second.

Vincent Cestone - All in favor

deny an area variance, it is a factor to be considered.

All Board Members - Aye

Vincent Cestone - A motion for a straw poll. Do I have a second

Lenny Lim - Second

Vincent Cestone - All in favor

Tim Pagonis - For a vote

Vincent Cestone - Vote. Right. Len?

Lenny Lim - I vote in favor

Joan Turner - I do too

Victor Carlson - I'll vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I. Okay. Clair.

Tim Pagonis - And lastly, Paula Clair

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #755; Applicant: Paula Clair
Area Variance**

Date: May 2, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on April 4, 2005 to hear the appeal of Paula Clair from the denial of a building permit for an existing wood deck having insufficient side setbacks. The property is located on 162 Gallows Hill Road, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on May 2nd, 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 PAULA CLAIR FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR AN EXISTING WOOD DECK HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS⁵, 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:

1. The structure granted conditional variance 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 further enlargement or reconfiguration of the structures is authorized without Building Department and/or Zoning Board approval as needed.

Take out building department

2. The setback from the side property line for the deck shall not be less than 3.0 ft. (a variance of 12 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.

Tim Pagones - Any other conditions?

Vincent Cestone - Take out the thing about the building department

Tim Pagones - I already did that.

4.

⁵ 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."

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#755), dated October 15, 2004, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for an existing 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"**.

2. The property, a 18,028 sq. ft. parcel on Gallows Hill Road, is located in a R-20 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-20 District requires a setback of 15 feet from the side or rear property lines.

structures at the property, appear on a map dated September 3, 2004, as prepared for Paula Clair by Matthew A. Noviello, P.C. in Carmel N.Y.

monthly meeting on November 1, 2004 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The application was deemed incomplete and reviewed again November 15th, January 3rd and January 24, 2005 at which time it was deemed complete. A properly noticed public hearing was scheduled for February 21, 2005 but due to weather was adjourned until April 4, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach that as Schedule B

7. The Board met on April 4th 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 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 applicant purchased the house in 1979 and the porch was in its present location. It was not until the applicant was in the process of refinancing the property was it determined that the deck was in violation of the side setback. The requested variance will not adversely affect property values because the fact that it has been in existence for so long. Additionally, the property next door is vacant land and to the rear is heavily wooded so the deck is not visible. The structure does 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 structure 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 fact that the deck is already in place the applicant can not keep it without coming into conflict with the Philipstown Code. Also due to the topography of the property the deck can not be placed anywhere else. Given the amount of 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 Applicant requests a variance of 12 ft. from a set back which should be 15 ft.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The continued placement of a deck that has been in existence for at least 25 years is not an activity usually associated with such environmental concerns. No additional traffic is generated. Air quality is not disturbed. Water quality or quantity is not affected. Additionally, no increase in runoff or change in the drainage has been 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 not self created⁶. The Applicant purchased the house with the deck in its current location almost 25 years ago. It was not until the applicant refinanced that it was determined that the deck was in violation.

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.

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 2nd day of May, 2005, the results were as follows:

Vince Cestone, Chairman	Voting <u>for/against</u> granting the variance
Victor Carlson, Member	Voting _____ granting the variance
Leonard Lim, Member	Voting _____ granting the variance

⁶ **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**

Joan Turner, Member
Bill Flaherty, Member

Voting _____ granting the variance
Voting _____ granting the variance

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

Victor Carlson - I'll so move

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

All Board Members - Aye

Vincent Cestone - Len?

Lenny Lim - I'll vote in favor

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Vincent Cestone - Vic?

Victor Carlson - I'll vote in favor

Bill Flaherty - In favor

Vincent Cestone - And so will I. Albanese and Spina's resolutions are not tonight?

Tim Pagones - Right. They will be on for the 16th.

Vincent Cestone - Okay.

Tim Pagones - And Lang will be on for the 16th for completeness.

Vincent Cestone - As far as old business is concerned. I wanted to, well, I wanted to plug a hole in our code that we, and I am going to send a letter to the Town Board asking to change the code. But in the mean time, I want to proposed something to the board where we adopt a definition of a accessory building and an a private garage. Can we do that? Is it against the law?

Tim Pagones - You go with your code

Vincent Cestone - Well the thing is the code doesn't address it. So it is open to interpretation

Tim Pagones - You interpret your code

Joan Turner - That's right and the language in the code. And there is case law on the language.

Tim Pagones - Okay and that's why we adjourned that one so I can look at all the things that you provided right?

Joan Turner - So I think according to my understanding of what we are empowered to do, we can interpret the language where it is vague and I propose that we move ahead with that.

Vincent Cestone - Okay. How does the board feel?

Bill Flaherty - I'm in agreement

Victor Carlson - I agree

Bill Flaherty - And I commend Joan for doing such a thorough job of this particular issue. It's a very thorny one and it is something I think that is going to benefit this town in the long run, the future, when a similar situation such as this arise.

Vincent Cestone - Okay. You have a copy of the definition

Tim Pagones - I have a copy of the memo

Joan Turner - And there should be some attached, a proposed definition of accessory building and garage under there and

Victor Carlson - I only have this one sheet

Joan Turner - Oh no, I sent it to you by mail

Victor Carlson - Oh by mail.

Joan Turner - Now this other one that I gave you today is just a correction

Vincent Cestone - I am going to read the proposed definition that we are going to work by until the Town makes the law a little bit clearer.

Joan Turner - I'll read this to you. It says under the municipal planning

Tim Pagonos - That's what you gave me right?

Joan Turner - And right here it says functions of the zoning board of appeals. It interprets the meaning of the ordinance where the language is unclear. So I think we are within our

Tim Pagonos - Right. But you are adopting new language.

Joan Turner - Where the language is unclear we are clarifying it

Tim Pagonos - Okay but what I am saying is you can,

Vincent Cestone - We are proposing a guideline as opposed to adopting new language. Something we that we all can work from until the town proceeds. Of course this is not law until the Town adopts it. The proposed definition for an accessory building. An accessory building and/or use, any building or structure and/or use where it is customary and subordinate to the purpose of the principal building or the principal use located in the same lot and parcel. An accessory structure is devoted to or intended to be devoted to the use which is incidental to and subordinate to customary use in connection with the location of the same lot with the principal building structure or use. 2) Accessory building or structure or related uses include but are not limited to residential attached private garages or carports, storage sheds, gazebos, decks, attached or detached covered or uncovered, swimming pools, hot tubs, tennis courts, similar private recreational facilities, private greenhouse or fences or walls. Then for a private garage an accessory building or part of a main building used mainly for the storage of motor vehicles belonging to residents, employees or visitors or the premises as an accessory use and which is not open to the general public.

Tim Pagonos - Should it be visitors of the premises or or?

Lenny Lim - Or visitors or the premises

Tim Pagonos - Should it be visitors of the premises?

Lenny Lim - No or visitors or the premises

Joan Turner - Where are we? It is visitors to the premises. I think it is a typo.

Sorry about that.

Vincent Cestone - That's okay. So how does the board feel to that? Do we feel that that would be a good working definition until the Town can act?

Bill Flaherty - Well I think it would be in absence of the thing we have currently available to us in the town code. It's just not there. And this is at least something we can use in the future until maybe we get something more definitive than this. But I am going to ask if we had any, if we are asking for any input from our town attorney Ed Doyle.

Joan Turner - I sent him a copy of this memo and some material today. Just this morning though. I'm sorry that I didn't do it sooner but I was

Tim Pagones - I guess right now with this definition how is Mr. Gagnon's building illegal? He is a visitor to the premises.

Vincent Cestone - You are missing the point. This has nothing to do

Tim Pagones - I realize that but

Vincent Cestone - It just highlighted the fact that we didn't have a definition

Tim Pagones - This is now the code, this is now the definition you are going that you are going to use. What I guess I am suggesting is we should wait until we get input back from Mr. Doyle, who is the town attorney, and let us review. I mean this might be a great idea but it might need some fine tuning. So what I guess I am suggesting is instead of even adopting this tonight or saying this is what we are going to go by our standard, let's fine tune it. So that you are not saying this was a loop hole that we tried to use, this was a loop hole to the definition we tried to use to close the other loop hole. Let's make it nice and tight. Let's get some assistance from Mr. Doyle and we can make this crystal clear and air tight.

Joan Turner - Well nothing is ever really crystal clear or air tight in any language however, I really feel that the board is empowered by the State Law to interpret the language of the code where it is unclear. That is our duty. Not Mr. Doyle's and with all due respect to you and to Ed Doyle, we have that power. They may legislate and overturn what we adopt tonight. That's the town board's privilege. And they can legislate. We cannot.

Tim Pagones - You are legislating

Joan Turner - We are not.

Tim Pagones - If you are adopting

Joan Turner - We are adopting language that is not clear in the code

Tim Pagonos - You are creating a revision to your code

Joan Turner - We are creating a language

Tim Pagonos - You are, you have not become a legislator. You are now changing the code which is the town board's jurisdiction.

Joan Turner - I don't see it that way. We are clarifying language in the code

Tim Pagonos - And how are you doing that?

Joan Turner - By proposing a definition for a garage

Tim Pagonos - But you are now going to use this definition. So you are now modifying the code to include this

Joan Turner - I think that is a symantic argument. I don't follow the logic of it.

Tim Pagonos - I guess I believe that you are overstepping your jurisdiction. You are now modifying the code to use this definition whether this is a great definition or not,

Joan Turner - No it is a general one

Tim Pagonos - But you have, you have the power to interpret the code. To interpret the definition there.

Joan Turner - The language. It is unclear

Tim Pagonos - But now your are saying okay there is no, there is not the necessary language for an accessory building or garage and we are going to use this. You are now changing the code

Joan Turner - Yeah but if you had the word garage in your code and it is not clear what that means, particularly to the building code enforcement officer, than it is our prerogative to define what a garage means. And we do it by, and we've done it with careful research, careful consideration of the codes of other municipalities, by the dictionary, by the Anderson's zoning laws, we've done it with due diligence. We are not acting in a capricious way

Tim Pagonos - I agree in that if you are working on an appeal, and you say you know what my interpretation of a garage this is what it should be, fine. But here what you are saying is the definition of garage or accessory building is no good

and I am proposing to use this. That's how

Vincent Cestone - The definition of a garage or accessory building is non-existent. So we are putting something to work from in there.

Tim Pagones - I guess before you adopt anything I think you should speak to Mr. Doyle and

Joan Turner - I would like to adopt it and go ahead. If we have exceeded our jurisdiction as Mr. Pagones seems to think we have, the Town can simply legislate that we have.

Tim Pagones - Okay

Dave Brower - I suggest you use that as a guideline.

Vincent Cestone - Well that's what I am saying.

Dave Brower - Don't adopt anything and send that on to the town board as a possibility of the town board creating that legislation

Vincent Cestone - Right. That's what this is all about, is creating a guideline not adopting

Dave Brower - Just say you are using it as a guideline. Not everybody on the board has to agree with it. Just using it as a guideline as each case comes before you, this is my opinion. As each case comes before you, you can refer to that as a guideline or you can refer the six others from different towns and say these are what these other towns do until we get specific legislation this is how each board member feels how you are dealing with that specific case.

Vincent Cestone - Yeah. I agree with you and I just polled the board members to make sure that they were in agreement with using the use of a guideline

Dave Brower - Well yeah, but I am just saying just keep in mind it is only a guideline. It is not legislation

Vincent Cestone - That's right

Dave Brower - You would have to take it, until the board does specific legislation in the zoning, it can only be used as a guideline

Vincent Cestone - Right. Absolutely.

Dave Brower - Then the interpretation is up to you guys.

Bill Flaherty - Well don't you think it might be appropriate for us to get input from our town attorney prior

Vincent Cestone - We also have another case with a very large garage coming up and we need something we can use as guideline for that case. The one where they are proposing this huge garage that is bigger than the actual house. And I was just thinking we would have a guideline until the town acts. Because who knows how long it will take for the town to get this on to the agenda and work with it. I am afraid we are going to miss that opportunity to nail this down before that next guy comes before us. And when the town comes in with their definition, then we throw this off to the side.

Bill Flaherty - Then I have to ask the question, because as you know I am in favor of adopting some action here, but how enforceable will this be in as much as it is only a guideline?

Tim Pagones - It's not

Bill Flaherty - That we can use. In the event that we did have come up before us in the future, how could we go about enforcing this on an applicant with a humongous garage. I don't know. I can't answer that question

Vincent Cestone - As far as enforcing it, this is unenforceable. But it can be used as a guideline for us in our deliberations

Bill Flaherty - How effective will that be though I guess is another question I have. The applicant really wouldn't have the necessary _____

Victor Carlson - They are asking us for an interpretation

Bill Flaherty - I understand that

Joan Turner - In the mean time you have the building code inspector that is giving permits for garages that really don't fit the kind of criteria that we've used as guidelines.

Bill Flaherty - There is no definition

Joan Turner - Well that's the conundrum

Bill Flaherty - He is issuing these permits perhaps erroneously and illegally. But they are being issued. Do we have the authority to nullify these kinds of permits that were issued by our building inspector sometime down the road?

Vincent Cestone - I wasn't even thinking of that point. I was thinking on a new application if someone was coming before us

Joan Turner - You can't do this retroactively if that is what you are suggesting.

Vincent Cestone - But I'm thinking on new applications where variances are involved

Joan Turner - Or where they are not involved. Where you don't need a variance. I mean the only reason this is coming to our attention is because the neighbors have asked for an interpretation. So we have the opportunity before us to adopt a set of guidelines and to interpret the language actually.

Lenny Lim - Do you feel that this is a starting point, at least we have a starting point to where to go

Bill Flaherty - As I said yes. No question in my mind about that. It is a good beginning yes. I agree with that. And I agree whole heartily that we have to obviously do something so that we can avoid future situations like this again. It is imperative that we do that. I don't know where the authority to do it I guess is what I am saying, can we legislate this

Joan Turner - It is not legislation. We cannot legislate Bill. We can only interpret. Where the language is unclear we can interpret that language

Bill Flaherty - And then

Joan Turner - That is our mandate. That is our power and that is the only time you are going to get it in spite of what anyone else says. The courts will uphold that it is our decision to interpret that. There is case law that upholds zoning boards for doing interpretations.

Bill Flaherty - Well in this particular case we are interpreting something, the language, doesn't exist in our code at this point in time

Joan Turner - The word garage exists in our code. It is not defined in our code.

Bill Flaherty - Exactly

Joan Turner - We have lists of definitions and garage and accessory structure are not defined. So we are asked to interpret the language of 175.25 which is garage. So you are saying this interpretation comes before us we are asked to make an interpretation. But we have no definition. So it becomes our obligation, I think, our duty to present a set of guidelines in which it is defined. Now the town board may not like that definition and then it is their prerogative to legislate and say we are going to legislate what accessory structure means, what garage means

Bill Flaherty - I hope that we are

Joan Turner - but that goes to that level

Bill Flaherty - that we are not usurping the authority of the town board

Joan Turner - we are not. I think if you do research you will find we are not usurping. We are not legislating. It is crystal clear what we are doing. It is an interpretation of language where the zoning board has no definition. The zoning code has no definition.

Vincent Cestone - Okay.

Lenny Lim - Should I make a motion that we adopt this as a

Vincent Cestone - Guideline

Lenny Lim - As a guideline?

Vincent Cestone - I don't know if we have to go that far. Do we have to?

Tim Pagones - You should adopt it. If you are going to use it as a guideline

Lenny Lim - I'll make the motion that we adopt this as a guideline

Vincent Cestone - Okay

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members – Aye

Vincent Cestone - All right. Another thing on old business. Sprint tower.

Victor Carlson - We're not voting?

Vincent Cestone - We already did

Victor Carlson - I'd like

Vincent Cestone - What do you want, a roll call?

Victor Carlson - Yeah

Vincent Cestone - Okay. Bill?

Bill Flaherty - I approve

Victor Carlson - I approve

Vincent Cestone - I approve

Lenny Lim - I approve

Joan Turner - I vote in favor

Vincent Cestone - The sprint tower at Travis Corner Road, at the Garrison Greenhouse. That tower is falling apart

Tim Pagones - I'm trying to find somebody who

Vincent Cestone - What about Jud Siebert?

Tim Pagones - Well the problem is I don't know if, which one was he with?

Vincent Cestone - He was the one that sued us on

Tim Pagones - Keane and Beane, I don't know if they still represent them. What happens is it is billable hour, so Keane and Beane might not represent Sprint any more for that tower or really in Dutchess County or Putnam County so they say we are not involved. So I mean I will give him a call and maybe as a favor he will give the name of someone to speak to. But he is not going to sit there and spend 20 hours trying to really assist you unless that is still a client.

Vincent Cestone - Because the thing is falling apart. Branches are falling off. And they put the structure up above the fence again. It is Sprint's tower, they've go to be ultimately responsible for this

Tim Pagones - I mean that is something I will speak to Mr. Monroe and if it is falling apart then you know what, it is not built right. And he should be able to cite them for that

Vincent Cestone - That's exactly it. He should cite it and

Tim Pagones - And they are supposed to provide a yearly structural safety engineering report. I would like to see that report and if that report says everything is fine how do you explain why you are losing whole branches.

Vincent Cestone - Right

Tim Pagones - Something is not right. I'll give Mr. Monroe a call in the morning

and find out and maybe he'll just cite them

Vincent Cestone - I'll call tomorrow morning also

Tim Pagones - Just cite them that's all

Vincent Cestone - Okay. And finally that garage, Mr. Gagnon's garage. Do we want to talk about this now? Or do we want to wait until next week? Because I read the minutes on it. I feel like I am up to speed. I don't know if there is anything more that could be said

Joan Turner - I did all my research. I've come to my conclusion.

Tim Pagones - Well I would say not to discuss it tonight. It is not on the agenda. The applicants have the right to be here, Mr. Gagnon has the right to be here

Lenny Lim - Isn't it old business?

Tim Pagones - Well, you know what, you scheduled it for the meeting for further discussion. So

Lenny Lim - But the public hearing is closed. We can't discuss it as old business?

Tim Pagones - You can, but I guess what I am saying is you closed the public hearing, you adjourned it to the 16th for further discussion. It just looks bad. All of a sudden let's discuss it tonight when no one is here. The applicants aren't here, the owner is not here. And he is going to sit there and let's say you discuss it further and the next thing you tell me to do a resolution for the 16th to deny it and take away the permit and he is going to sit here and say I have a right to hear what has been said against me. What if you said something totally wrong? What if you had a question for me? I wasn't there. I just think, I am not saying that you have to do a lot of discussion on the 16th. You might be all decided what you want to do, but it just looks bad. You know you adjourned it for a certain date and now no one is here

Joan Turner - We adjourned to the 16th?

Tim Pagones - It was adjourned to the 16th

Joan Turner - So let it go until then

Tim Pagones - Better safe than sorry. Why give someone an extra, if you are going to get sued by someone why give them another thing to bring up.

Vincent Cestone - With that I would entertain a motion to close

Joan Turner - Wait a minute. I just want to ask Tim something

Vincent Cestone – Okay

Joan Turner - You as your duties are to assist us in our duties.

Tim Pagones - My job as a _____ attorney is to make sure you don't violate the law

Joan Turner - And to assist us in our, when we get appeals to assist us

Tim Pagones - As much as I can

Joan Turner - In this particular case, every time we try to do something I have never seen you so insistent upon, of negating the efforts on this board to try to do a job that will enhance our code. Not detract from it. But enhance what our code stands for which is really to have controlled develop, to have to support the property values in our town and not to have a code enforcement official who consistently interprets the code to whatever his whims are

Tim Pagones - Well

Joan Turner - We can go through the file time after time after time. And we get a house that's a shed, then a house that's an accessory building. That's just one glaring example of this appeal. I just don't understand why you don't come up to us and say here is the law, case law on interpretation. This is what so and so has done. Here is the case law on it. So that you are supportive of the efforts of this board. I just don't get it and I just want to be straight out with you and straight

Tim Pagones - I guess

Joan Turner - Because I am really frustrated

Tim Pagones - I guess Ms. Turner, to speak straight out sometimes you don't hear what you want to hear and that gets you upset.

Joan Turner - No

Tim Pagones - I am here to tell you what is the code, what's the law. Sometimes you don't want to hear it. You have told me in the past you know what you are nothing but my advisor, I will do what I think is right for the town. Whether it is against the law or not. I am not hear

Joan Turner - We never said that

Tim Pagones - Oh yes you have and I will go back and I will find the minutes. I have been told that I am nothing but an advisor I will do what is right and what I think has to be done. So I am not here to just rubber stamp everything you do. If that is the case, you don't need me. Then you know what, do what you want to do and then if you get sued then you hire an attorney to come in. I am here to try and make sure you follow the code, you obey the law of the land, you don't usurp anybody else's powers, go above your powers, and if I say something you disagree with, I am sorry. But you know I am not a yes man. I am not going to sit here and say do whatever you want. So I mean, I am here to do my job and

Joan Turner - Of course, I don't expect that. I am just saying that in a term like this, I don't, I just don't understand.

Tim Pagones - Okay

Lenny Lim - Tim, I would have to agree with Joan. You seem to have fought us on this one a little bit.

Tim Pagones - I am

Lenny Lim - From this side of the table

Tim Pagones - I can understand that. I have spoken with the chairman about that.

Vincent Cestone - And with that I will entertain

Joan Turner - I mean no hard feelings. I just want

Tim Pagones - No you people do a wonderful job. You guys have been sued many times and you've won them all. And you know why you've won them all? Because you have done a good job. You take a hard look at everything. You know there is a lot of letters from Mr. Doyle thanking Mr. Goldsand for his hard work. I told the Planning Board the other night the reason they win is because the board does their job. If you guys didn't do your job, Mr. Goldsand could be the greatest guy and the greatest attorney and you would still lose. You make the attorney's job easy. So you know

Bill Flaherty - I would like to move to adjourn

Lenny Lim - Second

Mr. Kelly - Do you have a minute that I can

Vincent Cestone - Sure

Victor Carlson - Tell us about the tower

Mr. Kelly - This is regarding that cell tower. I would just like to request the board not to take any additional applications from any companies with anything to do with co-locating down at that tower until the problems are resolved with AT&T and Verizon. There are several issues there where they violated the plans and you have a new application coming up from Nextel next week and these issues are still not resolved. I would also ask you to write a letter to the building inspector requesting that he not issue any new temporary COs to Verizon or AT&T to turn on their equipment until these problems are resolved. Verizon has moved its trailer. They have changed the height of the trailer and another thing the board probably doesn't know has a generator inside that trailer with fuel storage. There is no provisions there to prevent a fuel leak that has the possibility because of the way the property is laid out, of contaminating my well. That's an issue that hasn't been addressed. AT&T has their antennas outside the canopy not inside the canopy. I mean these are stuff that has to be addressed before the next applicant comes up and wants to stick another trailer with more air conditioning units and another generator up on that property without any other issues being addressed first. Something has to be done to stop this. They are coming at this piece meal by piece meal, there is no comprehensive plan for how this place is going to be developed. And it is getting out of hand. I mean there was a time when we could look at this piece of property and sit there and say okay I have the ability to sell my house in the summer time because the trees are going to block some of the view. Now with Verizon up there with their air conditioning units, which are going to be running all summer long, I don't have that opportunity any more. And if you want to know how much noise it makes, take a ride up to Gray Rock where they've got their trailers, go up there on an 80 degree day and stand there and listen to how much noise all that equipment makes. And that is what they are planning to do down here. I am only 150 feet away from the place and now my property line is only 100 feet away from it because of the new location. I don't think you should be addressing another company's application until the problems are resolved with the companies that are there now.

Vincent Cestone - I agree. What's the board's feelings on suspending Nextel's application until this is resolved.

Lenny Lim - I agree also

Vincent Cestone - Tim, can you tell Nextel they are off the agenda until this gets resolved? Or do you want me to do it? I'll do it.

Tim Pagones - I'll give them a call

Vincent Cestone - I already wrote that letter that you mentioned and I am going

to send it to Tom Monroe and the Town Board tomorrow by email. Because I agree with you 100 percent.

Mr. Kelly - I mean someone is overstepping their bounds.

Vincent Cestone - With that, motion to adjourn. Do I have a second?

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: May 16, 2005

Respectfully submitted,

Kim Shewmaker
Secretary