

ZONING BOARD OF APPEALS

June 6, 2005

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 6, 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
	Joan Turner	-	Member
	Victor Carlson	-	Member
	Bill Flaherty	-	Member
	Tim Pagones	-	Counsel
ABSENT:	Lenny Lim	-	Member

Vincent Cestone - For those interested General Dynamics Nextel and Matthew Noviello are off for tonight. So we are going to go directly to Dorothea Lang Appeal #767.

Tim Pagones - Well just for the record though Dynamics might be on for the 20th if we get everything. Noviello has asked to come back in July. Which day in July do you want to put in on.

Kim Shewmaker - The first Monday in July is the 4th of July. What days are you meeting in July?

Vincent Cestone - We are going to put them on the last meeting in July that we meet. We obviously we are not going to have a meeting on the 4th of July.

Kim Shewmaker - Right. So you have the 11th which is the second Monday, the 18th is the third Monday and 25th is the last Monday of the month.

Vincent Cestone - Let's do it the 11th and the 18th because the 25th I'm on vacation.

Tim Pagones - So the 25th for Noviello

Kim Shewmaker - No the 18th

Tim Pagones - 18th.

Bill Flaherty - On July 18th?

Tim Pagones - July 18th for Noviello.

Vincent Cestone - Okay Ms. Lang do you want to tell us what you are doing. You said you wanted to replace a rotten shed?

Dorothea Lang - It's a shed that I had that collapsed when a big tree fell on it. And I waited for the house bungalow to be repaired and took that wood to repair the new shed.

Vincent Cestone - So what you are proposing is that the shed

Dorothea Lang - Approved

Vincent Cestone - Replaced exactly the same in place where it is

Dorothea Lang - Exactly

Vincent Cestone - Okay. And about these decks that you are talking about. Tell me a little bit about them if you would. I am not sure by looking at these drawings what you are

Dorothea Lang - Do you have the plans of May 5?

Vincent Cestone - Is this is

Dorothea Lang - No. There is a newer one

Vincent Cestone - It is out in my car then.

Dorothea Lang - I'll let you look at mine. You remember you asked me to get

Vincent Cestone – yes I did. But I brought the wrong one. So looking at these decks you're asking for this deck and that deck?

Dorothea Lang - No. This is just an entrance

Vincent Cestone - Okay. So you are looking for this and this?

Dorothea Lang - When I had the house rebuilt and I didn't put that in the original plans. I just thought it was automatic you couldn't

Vincent Cestone - Not in your neighborhood.

Dorothea Lang - So this is what, this is directly under the

Vincent Cestone - Sliding door

Dorothea Lang - The sliding door and the deck upstairs and then the steps and then this one is exactly under the roof upstairs and then the three steps.

Vincent Cestone - So there are two doors here

Dorothea Lang - This is a _____ door

Vincent Cestone - Okay and there is a door here

Dorothea Lang - A sliding door right

Joan Turner - So what is the variance for? Wasn't the variance for the shed.

Vincent Cestone - The shed and

Tim Pagones - There are two applications. One is for a shed which was supposedly damaged by a tree. And she is looking to replace that shed with the same exact dimension shed. And then she also, she has an application looking for variances for the I guess steps and

Dorothea Lang - Outside the sliding doors

Tim Pagones - So those steps

Dorothea Lang - I thought it is less confusing not to put it all in one sentence.

Joan Turner - When we went down a few years ago to look at that before you got your approval, the variances from the board, where was the shed? I don't remember it.

Dorothea Lang - The shed was crushed. It was under the bushes, under the evergreens. There was a lot of growth

Joan Turner - There was nothing there virtually then, it was flat. So there wasn't really a shed

Dorothea Lang - No it wasn't standing anymore. From the one picture it was broken completely in a big storm in the early 1990's

Joan Turner - In the early 1990's. So now 15 years later you want to replace the shed

Dorothea Lang - Well I wanted to replace it immediately but then I thought it would be nice to use the old wood from the house, which is really kind of groove, tongue and groove, and it would make it a little more cute rather than just putting another ugly shed up. For pretty purposes I waited until the old bungalow had to be torn apart.

Joan Turner - So this, when you face your house, this is to the left. Is this where that shed was?

Dorothea Lang - This is the exact same space and you have the old survey also. This is right here and this is the entrance

Joan Turner - That's what I meant. So you come in and it is to the left

Dorothea Lang – yes. It's hard to see with all the evergreens standing there. It cannot be seen from the railroad.

Joan Turner - You also changed architects didn't you? Didn't Chip Place do your original drawings?

Dorothea Lang - No he was my lawyer.

Joan Turner - What were the plans? Didn't he submit plans

Dorothea Lang - Those were, everything else passed with the zoning board and that was with Chip Place

Joan Turner - Yeah, but did you change architects after that

Dorothea Lang - We took a local architect because Chip was going to the City

Joan Turner - I understand that

Dorothea Lang - And so we had to take someone else and we took a local architect

Joan Turner - And did they alter the plans

Dorothea Lang - No

Joan Turner - Or did they use the same drawings as Chip

Dorothea Lang - Same everything

Vincent Cestone - How long has the shed been down?

Dorothea Lang - A few years

Joan Turner - Since the 1990's she said

Dorothea Lang - I can't remember exactly the storm, but it crushed with the big, have you seen the picture

Vincent Cestone - Yes I've seen it

Dorothea Lang - And I was, it was early 1990's when I was trying to rebuilt the house anyway and I thought I would wait just, I wanted to save some of that memories of the old bungalow and the foundation was still there. It was a cinderblock foundation for the old shed and he put it exactly on the same thing and you have an old 1972 survey and you have Badey & Watson's. You saw this picture right?

Vincent Cestone - Yes

Dorothea Lang - And we just had stuff growing. All kinds of weeds growing over it so it protected the remains of the base of the cinderblock.

Vincent Cestone - So this is the shed that you are talking about right here

Dorothea Lang - Yes that's it

Vincent Cestone - Okay

Dorothea Lang - You have the whole set, I gave to you

Vincent Cestone - Yes, I have it right here

Bill Flaherty - I visited the property a couple of weeks ago and it looks like a work in progress doesn't it? It is not a complete shed

Dorothea Lang - No because I had to stop

Bill Flaherty - You were stopped? A stop work order was issued?

Dorothea Lang - Yes

Bill Flaherty - There is nothing but construction debris stored in the shed itself

Dorothea Lang - Right

Bill Flaherty - What are you ultimately going to use the shed for?

Dorothea Lang - Well we always used to use the shed for our lawn mower, fishing equipment and all kinds of lawn equipment and a few paddles for the water, water things

Bill Flaherty - You have no other alternative method of storing these things on your property other than building a new shed?

Dorothea Lang - Well it is essentially, we used one of our neighbors hole under the steps where we put the lawn mower until the shed was built. It will be a cute little place and an emotional thing that I liked, because I replaced it with the old wood

Bill Flaherty - It is an attractive little shed. It's small

Dorothea Lang - I designed it that way. It is small. Very small. Smaller than the average shed

Bill Flaherty - When I was there, I questioned what in the world is she going to put in this little shed.

Dorothea Lang - Well a lawn mower

Bill Flaherty - Could probably have some other alternate means of storing than what would go in that shed

Dorothea Lang - You would be surprised when we had water sports, all kinds of boards and things like that, fishing equipment in there

Bill Flaherty - Because everyone in that area has a shed of one kind or another

Dorothea Lang - Exactly

Bill Flaherty - And I don't think any of those sheds are in compliance with our Zoning

Vincent Cestone - Nothing does down there

Bill Flaherty - That I am aware of. It is impossible actually. I would say, I don't know, I walked the property and if there are any clearances back in front of your property

Dorothea Lang - On the river side

Bill Flaherty - Yes

Dorothea Lang - Theoretically I could do that

Bill Flaherty - You could build a shed

Dorothea Lang - Because I have 30 feet. My property is bigger than others

Bill Flaherty - Exactly

Dorothea Lang - So I could put it right smack in the middle. But I didn't think that would be nice for the area

Bill Flaherty - You mean aesthetically

Dorothea Lang - I think where I put it is ideal. I mean besides, I wanted to put it where it was.

Bill Flaherty - Well the shed is not permanently affixed to the foundation. There is a foundation there

Dorothea Lang - Yes

Bill Flaherty - Is it actually attached to the cement slab

Dorothea Lang - I don't know. The builder built it.

Bill Flaherty - I looked at it very carefully and I did see any bolts or anything of that nature in the cement slab.

Dorothea Lang - I could move it right in the middle of the front. I have 30 feet from each side. I have 75 feet. But I didn't think that would meet your approval either.

Bill Flaherty - Well if it is in compliance with our zoning laws you wouldn't need our approval. Maybe you can put it in the front of the house somehow

Dorothea Lang - No I don't think that would be nice

Bill Flaherty - I don't think that would be aesthetically pleasing to the eye to do that

Dorothea Lang - It is behind a whole growth of Christmas trees and it is not visible from the railroad and it is essentially at the end of the road. Whoever comes there is either supposed to be there because they're visiting us or they are not supposed to be there in the first place. It is the last house on the road

Bill Flaherty - Yes

Dorothea Lang - So I would like you to approve it for and you will notice that I had intentions to put, plant flowers and things around it

Bill Flaherty - You have, the next piece of property next to yours is owned by _____. They don't object to that

Dorothea Lang - No. They've seen it before and they I have communicated with their office and I have written them, faxed them, and they to this day have no objection

Bill Flaherty - They have no objections. Do you have a letter

Dorothea Lang - No. But I have a letter that I sent to them twice and I told the secretary that if there is no response I would accept that as

Bill Flaherty - Affirmative

Dorothea Lang - And if you want the secretary's name, you can certainly have that.

Bill Flaherty - I suppose when you finish the shed, it is going to be an attractive little

Dorothea Lang - I tried to make everything

Bill Flaherty - Like a little dollhouse of some sort. You are on the road to making it

Dorothea Lang - I tried to make things very attractive but it is taking so long with the building and it is getting me frustrated

Joan Turner - What I would like to do about the steps is to go back to our original file leaving the tool shed aside and going over to the

Dorothea Lang - There were no steps anywhere

Joan Turner - I would like to go back to the original minutes and file and reread them before I make my decision tonight

Dorothea Lang - You know they are essentially, it's a little deck and the steps. You can't really have, the height is about like this. You can't have the door open and immediately you have to have a platform

Joan Turner - I understand that. I thought, in my memory is faulty, so I can't exactly say

Vincent Cestone - What she is asking is that she wants to reread the resolution

Joan Turner - Because I thought there was a question whether it was you or somebody else, I am not sure, about not having the steps going down facing the river but to go down on the side. So there would be no further encroachment toward the river. I don't know if we discussed that or not

Dorothea Lang - I don't remember that at all but as you know, this is the three steps is absolutely minimum. There is a picture.

Joan Turner - Vic do you have your old file

Victor Carlson - I voted against it

Joan Turner - But you keep that file on Dorothea Lang

Victor Carlson - I have it

Dorothea Lang - I have a file that I can give to you and it is on file in the office downstairs

Joan Turner - I would like to consider it. I don't want to do a hasty review of it. But you also had the drawings from Chip Place. The drawings that are downstairs are not Chip Place's drawings. So we approved Chip's drawings and I would like to look at those and then go down and take a look at the house and compare it with what is going on. I would feel more comfortable doing that than making a decision tonight. Because I don't remember some of things that you are asking for.

Dorothea Lang - I never realized that you need steps in the plans

Vincent Cestone - Oh absolutely

Dorothea Lang - This is the first time I built a house

Vincent Cestone - We had a house right up to the setback and it can't get steps, Mr. Monroe sends them here for a variance to get steps

Dorothea Lang - Next time I build a house I will know better. Maybe that will be in heaven but not here

Vincent Cestone - Buy a house and let somebody else do it.

Joan Turner - I know it sounds nit picky but it is just better for us to dot our i's and cross the t's in view of the circumstances on Hudson River Lane

Dorothea Lang - That's fine

Tim Pagones - Can you bring the steps to the side as opposed to the front?

Dorothea Lang - Actually I have designed it both ways. I designed it but the architect

Tim Pagones - On your application you talk about eventually building a ramp

Dorothea Lang - Right

Tim Pagones - Where is the ramp going to go

Dorothea Lang - Well, probably along the house if it has to be. My brothers are all senior citizens. John is a senior citizen. We don't know what the situation is, we are trying to have everything done so that we can hold on to the house as long as we can and I have had compliments on that concept to plan ahead and I hope that you understand that is a possibility. And if you want me to come back for a ramp later, that is fine with me too.

Tim Pagones - Well if you went closer out you would have to. I guess the concern with the board is and it is not your fault you hired professionals. And the professionals prepared plans and the board spent a lengthy amount of time on the plans and now the plans have changed

Dorothea Lang - I am adding

Tim Pagones - You are adding to your plans

Dorothea Lang - But that is why I am coming before you

Victor Carlson - But you have no objection to putting the stairs instead of running towards the river, to the side

Dorothea Lang - Well sir, I actually had it designed both ways.

Vincent Cestone - So the answer would be yes

Dorothea Lang - Well, there is a disadvantage. If you put no steps at all, I have to put a _____ there and that is not very happy for me. I would rather have the steps so you can see it, whoever sits in a wheelchair or a chair

Vincent Cestone - So what you are saying is no that you wouldn't put them to the side. I am looking for black and white not gray. I am asking you for black and white. Which way would you want it. If we told you to put them off to the side would you accept it off to the side? Because the other option is that the

board might vote against you and then you get nothing.

Dorothea Lang - Where am I supposed to put them if I have nothing? You have to have steps going out. There is a door there.

Vincent Cestone - Then you reapply and you come back with something that we would approve. That's what happens

Dorothea Lang - What would you suggest I do

Vincent Cestone - Well we just made a suggestion

Tim Pagones - Well I guess that if the board does not grant your steps, then you would have to put up a fence because that is a deck. That is not a platform. I believe it is more than 18 inches above the ground right

Dorothea Lang - Well we can fill it with more ground. That's also a possibility. That's technically a possibility

Vincent Cestone - I don't think you could fill it.

Joan Turner - You could. But I wouldn't suggest it

Vincent Cestone - Let me ask Mr. Monroe a question. Tom, what is the issue, what is specifically your issue with this. Please elaborate

Tom Monroe - Well the issue is that the deck on the south side of the house is I believe that the house itself sits like 30.7 feet from the property line. So obviously if it extends any more than .7 feet beyond the house she does not have a 30 foot side setback.

Vincent Cestone - Okay

Tom Monroe - The one on the rear to the left side of the house is if you measure from the north property line 30 feet in about I am only guessing here, 3 feet of that deck encroaches in the side setback. But it also, the other issue is that the plans that were signed by the chair, both of those doors show steps to grade. That's what it shows.

Vincent Cestone - Okay

Tom Monroe - My interpretation of steps to grade means you open the door and there are steps there. And that is against code, you can't do that. There has to be a minimum of a 3 foot platform. But both of those are obviously more than 3 feet

Vincent Cestone - Okay

Dorothea Lang - Sir, our plans are to be exactly _____ and this is exactly under the upstairs deck and the steps so it is not sitting any more

Vincent Cestone - Well according to the pictures, the stairs extend past the

Dorothea Lang - The stairs, but not the platform

Vincent Cestone - That's right.

Bill Flaherty - Unless you move those stairs and turn it on the side, the west side and it won't extend beyond

Victor Carlson - Now you are saying it is for a handicap person. You are going to have to have a rail. If you turn it on the side, you can't have the rail. Like I have at my house. I have a wrought iron railing and the stairs going down on this side which is the way and you will really see

Dorothea Lang - I want to point out that there

Vincent Cestone - We are talking about you. We are not talking about your neighbor

Dorothea Lang - Okay. But there is plenty of

Vincent Cestone - I don't want to hear about this. We are talking about you

Dorothea Lang - Okay but this is right on the

Vincent Cestone - But the stairs aren't. Okay? Would you like to say something? You look like you wanted to say something.

Dorothea Lang - I would accept anything that you suggest however, you should know that I would prefer not to have a railing that obstructs the view for whoever is sitting down

Vincent Cestone - Okay. Any more questions from the board

Joan Turner - I was going to go down today but got rained out this afternoon. So I never got down there so I apologize for that because it is really important for me to see what I am doing. So I would like to defer this to the next meeting that

Vincent Cestone - I don't have a problem with that

Joan Turner - I just want to go and look at the old plans that we approved

Vincent Cestone - Right

Joan Turner - Last time and compare them to what is done now and then we can come back

Vincent Cestone - We will do these decks and the shed at the same time

Dorothea Lang - Do you feel that if I had not had this little bit just cut it right off

Vincent Cestone - No no the issue is we granted one thing and now you are back before us trying to change it

Dorothea Lang - But steps to grade does not mean

Joan Turner - Remember the old house? You were going to come out and take that enclosed porch and we were going to take it out to here and now we, I just want to see how far we went beyond that 8 foot line. I remember Vic and I going out and walking and being very conscientious about just how far you were going to extend towards the river and I would like to go back and now that the house is built to re-examine that.

Vincent Cestone - Any comments from the audience?

Horst Bracke - I don't know where it is appropriate to start. Finding things out or whether it would be better to let Mrs. Lang

Vincent Cestone - Stick to what we are discussing. We are only talking about the decks and the shed

Horst Bracke - Yes. The decks and the sheds we are talking about correct?

Vincent Cestone - Yes

Horst Bracke - Well do you want me to talk, I'll talk

Vincent Cestone - That's why I am asking for comments from the audience

Horst Bracke - I am the next door neighbor and I am looking at a different view than you. The reason is very simple. Mrs. Lang proposed a certain grade and I _____ her about it and now it turns out to be quite different. So let me point out a few things and then you can _____. Item number one, it was always, the reason Mrs. Lang got the biggest house and

Vincent Cestone - I am not talking about the house. I am talking about the deck and the shed. If you are not going to talk about the deck and the shed, I am not

going to let you speak

Horst Bracke - Okay.

Vincent Cestone - Talk about the deck and the shed

Horst Bracke - But there is a reason why otherwise I can't bring out the points

Vincent Cestone - We are not going to rehash old news

Horst Bracke - Yeah but it was insisted that we are getting to that point where Mrs. Lang proposed that she has to bring all her stuff upstairs so her bedroom, kitchen everything is on the first floor

Vincent Cestone - What does this have to do with the deck and the shed

Horst Bracke - The second thing is now she has downstairs

Vincent Cestone - If you are not going to talk about the deck and the shed, I am not going to let you talk

Horst Bracke - Okay

Vincent Cestone - So get to your point

Horst Bracke - Okay the point is very simple, the change if you have storage space only but it was supposed to be, it was only

Vincent Cestone - So you are talking about the shed?

Horst Bracke - No we are talking now about the patio. The patio itself is not necessary if you keep only files. Now if you say yes of course it provides me sunshine so on then fine, she can have her patio. I also want to point out that there was never a door shown. Now all of a sudden there is a door. So that makes the downstairs a separate unit. Now if I don't think that is right, then we are supposed to be _____ that the files and everything else now all of a sudden changed. That's what I am trying to point out. I also would like to point out to you that in regard to that shed, you limited one of our neighbors to a 13 foot garage. Now Mrs. Lang has, if she uses 13 feet

Vincent Cestone - You are getting off the point, that has nothing to do with the shed or the decks. I am not going to rehash old news here

Horst Bracke - But you are just talking about the shed. If you don't let me point out to you where that shed could be because she has room enough to go

Vincent Cestone - Let me ask you a question. Do you have a shed? Do you have a shed?

Horst Bracke - I have to be honest. This is a panoramic view to me. I have to be quite honest. Ms. Lang increased her size tremendously and you said no absolutely _____ but now she added the shed to it and now I have a panoramic view from her house nothing else. And I think that is wrong. And if you don't mind

Joan Turner - Does the shed interfere

Horst Bracke - Definitely

Joan Turner - With your view

Horst Bracke - Yeah it does.

Mrs. Bracke - This picture is from out my kitchen window

Horst Bracke - And I know you are saying that we have no right and there is, don't hush it over, but that is where we are standing. There was one proposal one way and now it is all hushed up. And that is wrong. This does not have to be done afterwards, it is yes or no. She proposed for that so then lets stick with that. Because I am guaranteeing you all of you would never have agreed to that with Ms. Lang if she said to you oh I want to have an apartment down there. Or something like that. Because that's what it now looks like. And I am sure that you would have looked at it differently. But right now all of it is hush up and don't say anything. So fine with me too. You're perfectly willing to do that.

Vincent Cestone - Any more comments?

Bill Flaherty - Are you telling us that that shed interferes with your view of the river

Mrs. Bracke - We can't look at the cove.

Horst Bracke - I am proposing one thing, that house is tremendously big. Oversized. Bigger than any other house. Except of course Cooper. But I hope this will be straightened out. So now that means that she has much more than usually there. There is absolutely no reason to put a shed on top of it.

Bill Flaherty - What you are saying is that the house that Mrs. Lang has is sufficient enough or large enough to accommodate whatever storage needs

Horst Bracke - I am not allowed to talk

Bill Flaherty - I am assuming

(arguing...cannot make out conversation)

Mrs. Bracke - come to my kitchen and you can look out and see

Horst Bracke - my point is very simple. Mrs. Lang proposed to you, all of you, that she needed that extra room for files and folders and that is what she should stick by. That means that she has the whole downstairs to put down whatever she wants. So that is all storage that she can use. I don't think it is necessary to add more. I honestly don't. Unless of course it is used for something else. The storage room now has picture windows

Vincent Cestone - enough. Enough. You made your point. Is there anyone else who wishes to speak on this? With that

Dorothea Lang - May I say something?

Vincent Cestone - Sure

Dorothea Lang - If you talk about looking right north or south, I have to look at parked cars every day of the year looking north. I would rather have a shed there. And I have pictures of it. They are always 100 percent of the time there is a car parked or a truck parked or a van parked right in front where my view is obstructed if I am really looking, thinking do I have a right to look north because that is their property. And I am not complaining.

Tim Pagones - I guess, can you put your shed somewhere else in compliance with the code?

Dorothea Lang - Yes. I can put it in the front lawn. But they will see it too. It will obstruct their view of the river

Tim Pagones - You can put something there, do it.

Victor Carlson - No

Tim Pagones - Why can't she? If it complies with the zoning

Vincent Cestone - If she can put it somewhere where

Tim Pagones - There are 30 foot setbacks

Joan Turner - Your shed is on the opposite side of the property as I remember

Dorothea Lang - Opposite right. But if you are looking, talking about looking

north and south, they are talking about looking south, if that shed isn't there, the only thing they see is weeds.

Vincent Cestone - Okay we are going to continue this

Tim Pagones - This picture, the miracle of science, what is all of this? Is this her house?

Horst Bracke - Yes

Tim Pagones - Okay. That is the siding of the house

Vincent Cestone - Continued on for the 20th

Joan Turner - June 20th

Vincent Cestone - Right

Tim Pagones - So I guess the board can come down and stand in your kitchen, you don't have a problem?

Horst Bracke - Sure

Tim Pagones - So I guess Mrs. Lang you don't have a problem with the board walking on the property right?

Dorothea Lang - No

Tim Pagones - And I think the Bracke's are agreeing.

Vincent Cestone - Will continue this on the 20th. Tom do you remember what the original appeal number was for the Lang house?

Dorothea Lang - It's in the plans.

Vincent Cestone - I thought you might know off the top of your head. I took a shot.

Tim Pagones - 653

Tom Monroe - out of the 700 or so

Tim Pagones - 653

Vincent Cestone - Sir, are you hear to talk with us or are you here for a resolution?

Audience Member - Resolution.

Vincent Cestone - Okay. We are going to get to that shortly. Review of minutes of May 16th. Are there any additions or deletions or corrections?

Joan Turner - From the last time? You left out one word "for" on page 15. But that was it.

Vincent Cestone - Motion to accept the minutes as corrected

Bill Flaherty - I so move

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

All Board Members – aye

Vincent Cestone - Okay first resolution Spina

Tim Pagones - Who are you for

Audience Member – Morris

Vincent Cestone - We will do that one first.

Tim Pagones - And you are

Audience Member - I am Peter _____ of Badey and Watson

Tim Pagones -

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #765; Applicant: Guy Morris & Pamela Lippee
Area Variance**

Date: June 6, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on May 2nd, 2005 to hear the appeal of Guy Morris & Pamela Lippee from the denial of a subdivision for having less than 6000 square feet of buildable area as required by section 175-30(A) of the Philipstown Code. The property is located on 6-8 High Road, Cold Spring, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 6th, 2005, upon all the discussion that

preceded it, including the public hearing, 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 GUY MORRIS & PAMELA LIPPEE FROM A DENIAL OF A SUBDIVISION DUE TO NOT HAVING THE MINIMUM 6000 SQUARE FEET OF BUILDING AREA AS REQUIRED BY SECTION 175-30(A) OF THE TOWN CODE, WITH THE FOLLOWING CONDITIONS¹, 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 property granted conditional variance by this decision shall not be further subdivided 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 Planning Board and/or Zoning Board approval as needed.
2. The varaince shall be conditioned upon subdivision approval by the Town of Philipstown Planning Board.

So they are going to go back to the Planning Board. If they don't get their subdivision, then this is moot.

3.

4.

¹ 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."

FINDINGS OF FACT:

1. The Applicant made this appeal (#765), dated February 22, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a subdivision due to non-compliance with section 175-30(A) of the Town Code requiring a minimum of 6000 sq. ft. of building area for each lot. The Applicants applied to the Planning Board in order to subdivide the existing property into 2 lots. The property is approximately 14 acres and the subdivision would consist of a 9 acre lot and a 5 acre lot. Lot A of the subdivision does not contain 6000 sq. ft of contiguous land which complies with the requirements of 175-30 (A). 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, a 14.407 acre parcel on High Road, is located in a R-40 & R-120 District in the Town of Philipstown, New York. According to 175-30(A) of the Philipstown Zoning Code, any new lot intended for use or used for a dwelling shall contain a minimum buildable area of at least 6,000 contiguous sq. ft. having a minimum dimension of 60 ft. in any direction on a horizontal plane.
3. The Applicant acquired title by a deed dated June 20, 1999. The structures at the property, appear on a map dated May 6th, 1999, as prepared for Guy Morris & Pamela Lippee by Badey & Watson Surveying & Engineering, P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on April 4, 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 May 2, 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

7. The Board met on May 2nd, for the purpose of conducting the public hearing. Except for the Board Members and the Applicants' representative, 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 straw poll motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The applicants purchased the property in 1999 with all the buildings in place. At the time of the purchase there was no requirement that all lots have the required 6,000 sq. ft. of buildable area. The applicants applied to the Philipstown Planning Board for subdivision approval and were advised of the need for a variance of section 175-30(A). The requested variance will not adversely affect property values because the only change to the property will be on paper, in that the 14 +/- acre parcel will be split into a 9 +/- acre parcel and a 5 +/- acre parcel. All of the buildings are present and the applicants are not proposing to change any of them. Additionally all the buildings comply with the set back requirements. The structures do 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 and the fact that there is no change to any of the structures, only the splitting of the property, there will be no impact to the neighborhood. No members of the public spoke at the hearing for or against the appeal. 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 code requires the 6,000 sq. ft. of building area for all new lots, the Applicant can not subdivide the property without coming into conflict with the Philipstown Code. Given the fact that there will be no change to any of the structures or intrusion into the setbacks, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicants request a variance of 3,000 sq. ft. from a requirement of 6,000 sq.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 applicant is seeking a variance of the required buildable area in order to subdivide the lot into two lots. There will be no new construction of any buildings. The creating of a subdivision 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 should be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the variance will have no effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is self created². The Applicant wishes to obtain a variance of the required minimum buildable area for new lots in order to subdivide the existing parcel. The Applicant had applied to the Town Planning Board for subdivision approval and was advised of the need for the variance.

THE BALANCING TEST:

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

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 6th day of June, 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 - I will make a motion to accept the resolution as read. Do I have a second.

Victor Carlson - I'll second.

Vincent Cestone - And a roll call vote. Joan?

Joan Turner - Yes I will vote in favor

Vincent Cestone - Vic?

Bill Flaherty - I vote in favor

Vincent Cestone - And so will I. Now we will do Spina

Tim Pagones -

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #753; Applicant: John Spina
Area Variance**

Date: June 6, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on January 3, 24 and April 4, 2005 to hear the appeal of John Spina from the denial of a building permit for construction of an addition having insufficient setbacks. The property is located on 60 Ridge Road, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 6, 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 JOHN SPINA FROM A DENIAL OF
A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR
CONSTRUCTION OF AN ADDITION TO THE EXISTING HOUSE
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

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."

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 Zoning Board approval as needed.

2. The setback from the side yard for the addition shall not be less than 12.8 ft. on the westerly side and 17.3 ft. on the easterly side (a variance of 17.2 ft. and 12.7 ft. respectively).

Any other conditions?

3.

4.

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#753), dated October 12, 2004, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for removal of a portion of the house and construction of an addition in its place 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 a list of exhibits

2. The property, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the side or rear property lines.
3. The Applicant acquired title in July 2003. The structures at the property, appear on a map dated April 2002, last revised September 20, 2004, as prepared for John & Gayle Spina by Badey & Watson Surveying & Engineering P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on 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 on November 15, 2004 at which time it was determined to be complete. A properly noticed public hearing was scheduled for January 3, 2005 and continued on January 24 and April 4, 2005. The public hearings were properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
7. The Board met for the purposes of conducting the public hearings. Besides 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 straw poll motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The Applicant is proposing to tear down part of the existing structure that had received a variance before and is not structurally sound and replace it a little bigger room. The requested variance will not adversely affect property values because the applicant is merely replacing what is there and only coming closer to the side setback a little bit. 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. On one side of the applicant is vacant land which is unbuildable and the other side is Green Space land. 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 part of the house that is going to be tore down and replaced has already obtained a variance, any changes to it will also require a variance. The only alternative is to do nothing to the structure at all. Given the amount of the intrusion into the setback and the fact that the property has already received a variance, 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 17.2 ft. on the Westerly side and 12.7 ft. on the Easterly side from a set back which should be 30 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 removal of part of a house and construction to replace it with a little larger addition 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 should be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is self created. The Applicant wishes to

tear down a part of the house and construct a larger room in its place. The applicant has applied to the Building Department for permits and is aware of the need for a variance.

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 16th 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 - I will make a motion to accept the resolution as corrected.
Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members - Aye.

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Vincent Cestone - Vic?

Victor Carlson - I'll vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so will I. Okay. Albanese.

Tim Pagones -

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #754; Applicant: Maryann Albanese
Area Variance**

Date: June 6, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on April 4, 2005 to hear the appeal of Maryann Albanese from the denial of a certificate of occupancy for existing sheds having insufficient side setbacks. The property is located on 24 Hudson River Lane, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 6, 2005, upon all the discussion that preceded it, including the public hearing, 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 MARYANN ALBANESE FROM A
DENIAL OF A CERTIFICATE OF OCCUPANCY BY THE
BUILDING INSPECTOR FOR EXISTING SHEDS HAVING
INSUFFICIENT SETBACKS, WITH THE FOLLOWING**

CONDITIONS⁴, 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 structure is authorized without Zoning Board approval as needed.
2. The setback from the side yard for the shed shall not be less than 0.2 ft. for the shed on the track side and 0.3 ft. for the shed on the river side (a variance of 29.8 ft. and 29.7 ft respectively).
3. The shed shall not be further converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal, plastic or asphalt shingles.
4. The applicant shall remove the two other sheds that exist along the side property line.

So she is getting rid of two and she's got one.

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#754), dated October 12, 2004, to the Philipstown Zoning Board for an area variance based upon a

⁴ 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."

denial of a certificate of occupancy by the Building Inspector for three sheds 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 a list of them as Schedule A

2. The property, a 15,850 sq. ft. parcel on Hudson Lane, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback 30 feet from side or rear property lines.
3. The Applicant acquired title by a deed dated October 16, 1969. The structures at the property, appear on a map dated November 24, 2003, as prepared for Mary Ann Albanese by Badey & Watson Surveying & Engineering P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on 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 adjourned until November 15, 2004, January 3, and again January 24 2005 for completeness. Additional materials were received and reviewed and The Board determined the Application complete. A properly noticed public hearing was held on 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"**.
7. The Board met on April 4th for the purpose of conducting the public hearing. Except for the Board Members, the Applicant and Charles Doyle, who represented 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 straw poll motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The applicant is looking to get variances for three sheds that have been on her property for many years. After some review, the

applicant agreed to remove two of the three sheds. The requested variance for the remaining shed will not adversely affect property values because the fact that it has been in existence for so long and is used to store some of the applicants tools and other items. 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 and the fact that other properties have similar sheds, 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. The applicant has agreed to remove the two smaller sheds that were used to store wood. The remaining shed can not remain without coming into conflict with the Philipstown Code. This is due to the fact that the whole area is zoned R-80 and that due to the size of the lots almost every structure on all the lots are in violation of the code. Given this fact, 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 29.7 ft. and 29.8 ft. from a set back which should be 30 ft. The reduction to the required setback is substantial however, due to the zoning and the configuration of the lots almost every structure requires a variance.

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 shed 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 will be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical

conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is not self created. The Applicant wishes to keep one out of three sheds on her property that have been there for a long time. Due to the size of the lots and the zoning requirements, very few, if any structures can remain on the lots with out being in violation of the 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 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 16th 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 - I'll make a motion to accept the resolution as read. Do I have a second?

Joan Turner - Second

Bill Flaherty - I would just before we vote on it, I would just like to ask a question relative to the removal of the two sheds. Would it be appropriate for us to put a time limit as to when that should be accomplished?

Joan Turner - Good point

Bill Flaherty - Say 30 days

Tim Pagonos - Put removal within 30 days after the filing of the resolution

would like the 30 day time limit

Tim Pagonos - So that is condition 4. We will just have the applicant shall remove the two other sheds that exist along the side property line within 30 days of filing of the final resolution.

Bill Flaherty - And the building inspector would have to make an appropriate inspection to determine whether or not the sheds are gone

Tim Pagonos - You are more than just a pretty face. So as amended

Vincent Cestone - As amended

Joan Turner - I will vote in favor as amended

Vincent Cestone - What is the issue with this Vic?

Victor Carlson - (cannot hear him)

Vincent Cestone - the concern is at the end of the, Attention Applicant, that you have to have the building department approval

Tim Pagonos - In the body of it it just says zoning board approval

Vincent Cestone - Right. That's what I said. Over here

Tim Pagonos - That is basically a caveat don't do anything on your property. As far as the resolution and the sheds, it is just you.

Vincent Cestone - There is nothing that says zoning board

Kim Shewmaker - Number one

Tim Pagones - Number one

Kim Shewmaker - The last line in number one

Vincent Cestone - okay

Tim Pagones - It's all you. Well I look at that last thing as just a caveat that basically

Victor Carlson - Yeah but that's what gets us into trouble

Tim Pagones - Well further compliance with the Philipstown Zoning Code remains your entire responsibility...all necessary permits must be secured through the Philipstown Building Department. So before you give them a variance, before they can build anything, they do have to get a permit. They can't make any changes to it.

Vincent Cestone - Oh I see what you are saying. Okay we are giving them the approval but you then have to go to the Building Department

Tim Pagones - Right. We are giving them a variance for a shed, you got your variance it doesn't mean you can just go build it. You still have to go downstairs and pay your building permit fee, that's what that caveat is.

Vincent Cestone - That makes sense

Victor Carlson - As long as they follow it

Vincent Cestone - Okay a motion was made to accept the resolution as amended and you seconded. All in favor?

All Board Members - Aye

Vincent Cestone - Joan?

Joan Turner - I voted in favor as amended

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I. Okay Brown and Mazzye

Tim Pagones -

RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #756; Applicant: Laurie Brown & Mark Mazzye
Area Variance

The Philipstown Zoning Board of Appeals conducted a Public Hearing on May 2nd, 2005 to hear the appeal of Laurie Brown & Mark Mazzye from the denial of a certificate of occupancy for an existing deck having insufficient front setbacks. The property is located on 25 Winston Lane, Garrison, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 6th, 2005, upon all the discussion that preceded it, including the public hearing, 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 LAURIE BROWN & MARK MAZZYE FROM A DENIAL OF A CERTIFICATE OF OCCUPANCY 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 Zoning Board approval as needed.

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."

2. The setback from the street line the deck shall not be less than 22.6 ft. (a variance of 17.4 ft.).
3. The wood deck shall not be further enclosed, screened, covered or converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal, plastic or asphalt shingles.
4. No lighting shall be installed on the deck.

Anything else? There are no lights and I think they said they didn't intend to put any lights.

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#756), dated November 2, 2004, to the Philipstown Zoning Board for an area variance based upon a denial of a certificate of occupancy by the Building Inspector for an existing wood deck having insufficient front 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 that

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 in 1999. The structures at the property, appear on a map dated October 7, 2004, as prepared for Laurie Brown & Mark Mazzye by Kulhanek & Plan, Land Surveyors, P.C. in Pound Ridge N.Y.

4. The Board initially reviewed the Application materials at its regular monthly meeting on November 15, 2004 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The application had been filed with a survey which did not indicate the setback for the structure involved in this appeal. The Board requested a professionally executed map clearly indicating setback and the current configuration of all structures on the premises, especially the deck. The Appeal was adjourned until January 3, January 24, February 7, March 7 and April 4, 2005 at which time the Board determined the Application complete. A properly noticed public hearing was scheduled for May 2nd 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

7. The Board met on May 2nd for the purpose of conducting the public hearing. Except for the Board Members and the Applicants, 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 straw poll motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The applicants seek a variance for an existing deck that was built before they purchased the home in 1999. At the time of the purchase no violations were found. Upon the current sale however, it was determined that the deck did not have the required front setback. The requested variance will not adversely affect property values because the deck has been in existence since at least 1999 and is not visible from the road or to the neighbors. Both of the neighbors on either side have large parcels of land and can not see the deck. 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 built, the Applicant can not keep it in the current location without coming into conflict with the Philipstown Code. Given the amount of intrusion into the setback and the fact that the deck is not even visible from the road or by the neighbors, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicants request a variance of 17.4 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 wood deck 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 will be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is not self created⁶. The Applicant purchased the property with the deck in its current location. At the time the applicants purchased the property there were no violations found. The applicants are selling the property and have been advised of the setback violation and are now trying to correct the error and obtain the needed variance.

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

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 6th day of June, 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 - I'll make the motion to accept the resolution as corrected. Do I have a second?

Bill Flaherty - Second

Vincent Cestone - All in favor?

All Board Members – Aye

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Vincent Cestone - Vic?

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I. Okay Acocella.

Tim Pagones – Well the next thing on the agenda would be Pielmeier, O’Garden and Southard. We got a letter from the applicants’ attorney that they are in negotiation with Mr. Gagnon and they are asking to be put on for the 20th

Vincent Cestone - Didn’t they cancel?

Tim Pagones - No there was a letter saying that, I got a letter tonight it says Dearest Chairman Cestone and members of the board. After your board’s May 16th meeting my clients and Mr. Gagnon met briefly and agreed in concept to a modification of Mr. Gagnon’s garage to a smaller 3 bay residential garage with an overhang in the back under which to park his recreational vehicle. Mr. Gagnon recognizes that a resolution this way will result in a cancellation of the existing permit and thus will render my clients’ appeal moot. In light of this conceptual agreement between the parties, Mr. Gagnon has consented to my asking your board to adjourn the hearing of my clients appeal until June 20th. It had been set for June 6th last night. This will give the parties time to implement their conceptual agreement. I thank you for your careful consideration your board has given to this matter over the many months. Signed by Mr. Whyatt and cc’d to the applicants, Tom Monroe and Mr. and Mrs. Gagnon. So right now I think they are hoping to finalize everything and

Vincent Cestone - And they don’t want to cancel it until

Tim Pagones - June 20th for further discussion

Victor Carlson - What appeal was that

Tim Pagones - Pielmeier, O’Garden and Southard. The interpretation for the garage

Kim Shewmaker - Number 8

Victor Carlson – okay

Tim Pagones - So hopefully on the 20th they have resolved it. And we will get a letter if not before that to withdraw it.

Vincent Cestone - I'm hoping

Tim Pagones - And last is Sharon

Vincent Cestone - Acocella

Tim Pagones -

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #766; Applicant: Sharon Acocella
Area Variance**

The Philipstown Zoning Board of Appeals conducted a Public Hearing on May 2nd, 2005 to hear the appeal of Sharon Acocella from the denial of a certificate of occupancy for an existing wood deck and stairs having insufficient side setbacks. The property is located on 58 Highland Drive, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 6, 2005, upon all the discussion that preceded it, including the public hearing, 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 SHARON ACOCELLA FROM A DENIAL OF A CERTIFICATE OF OCCUPANCY BY THE BUILDING INSPECTOR FOR AN EXISTING WOOD DECK AND STAIRS HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS⁷, 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:

⁷ 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."

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 Zoning Board approval as needed.

And what we did is we gave her a variance for the steps and the deck

2. The setback from the side yard for the deck shall not be less than 5.1 ft. and the setback for the steps shall not be less than 1.5 ft. (a variance of 14.9 and 18.5 ft. respectively).
3. The wood 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 and shall remain in the same dimensions of 19.2 x 15.

So she can't change the dimensions. Any other conditions?

4.

FINDINGS OF FACT:

1. The Applicant made this appeal (#766), dated March 28, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a certificate of occupancy by the Building Inspector for an existing deck and stairs 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"**.

Which Kim will attach

2. The property, a 20,934 sq. ft. parcel on Highland Drive, is located in a R-10 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-10 District

requires a setback of 20 feet from the front side or rear property lines.

structures at the property, appear on a map dated March 23, 2005, as prepared for Sharon Acocella by Dennis Walden, Land Surveyor in Beacon, N.Y.

4. The Board initially reviewed the Application materials at its regular monthly meeting on April 4th, 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 May 2, 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 May 2nd for the purpose of conducting the public hearing. Except for the Board Members and the Applicants' representative, 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 straw poll motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The deck and stairs have been in existence since around 1950s. The applicant is in the process of selling the house and it was determined by the Building Inspector that the deck and stairs did not meet the setback requirements. The requested variance will not adversely affect property values because the deck and stairs have been in place for so long and the property next to the deck is used for parking for people who want to swim in the lake. 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 for or against the appeal. 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 and stairs are already in place and have been for some 50 years, the Applicant can not keep them without coming into conflict with the Philipstown Code. Given these facts, 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 14.9 ft. for the deck and 18.5 ft. for the stairs from a set back which should be 20 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 and stairs 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 will be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is not self created. The Applicant purchased the property with the structures in place. The applicant was informed of the need for a variance and applied to the ZBA in order to obtain one.

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 6th day of June, 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 - Can I have a motion to accept it as corrected?

Bill Flaherty - I so move

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

All Board Members - Aye

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Vincent Cestone - Vic?

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I. Any old business? If not, motion to adjourn

Bill Flaherty - I'll so move

Vincent Cestone - And I'll second

Joan Turner - I want to stay

Vincent Cestone - Wait a second. Yes Mr. Kelly?

Mike Kelly - Mike Kelly. 1960 Route 9, Garrison. This is in regard to the Verizon installation at the tower at 1924. It was brought to my attention over the last couple weeks that they have 225 gallons of diesel fuel for one of the generators stored in the trailer.

Vincent Cestone - I checked that. There is no generator and there is no diesel fuel. Unless something has changed in the last two weeks.

Mike Kelly - There is a generator and there is diesel fuel inside that trailer. They were up there running it.

Joan Turner - Oh my God

Mike Kelly - Well my concern is leakage. I mean if that tank leaks, it is going to go right into the ground, over the rock ledge and drain into my property

Vincent Cestone - We didn't approve a diesel generator. We didn't approve any generator

Tim Pagones - No. There should be no generator up there

Vincent Cestone - Are you absolutely sure because I had told Tom that there was a generator and diesel fuel and he had said that he went up there and he did not find it

Mike Kelly - The generator and diesel fuel are there

Joan Turner - Inside the trailer?

Mike Kelly - Inside the trailer

Vincent Cestone - And where does the smoke exit the structure? Do you see a stack?

Mike Kelly - There is a stack. There is an air intake. It is one third of the trailer on the south side of the trailer. There are two doors. The diesel fuel and the generator is in the trailer. It's going to cycle once a week for a half hour to 45 minutes and our concern is if the diesel fuel leaks it is going to contaminate the

