

ZONING BOARD OF APPEALS

October 16, 2006

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, October 16, 2006, 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
Bill Flaherty	-	Member
Joan Turner	-	Member
Tim Pagones	-	Counsel

ABSENT:

Vincent Cestone - Sussmeier is off

Tim Pagones - Sussmeier wrote a letter. He is asking to be on for the 6th. He was here last time and he didn't know if he would have anyone to cover for him. And I told him we would put it on for tonight in he found someone fine, if not we would adjourn it to the 6th. So he is asking to be on for November 6th. And just so know, for your knowledge #8 and #9 will also be on for the 6th. They are two resolutions.

Vincent Cestone - Okay. So if anyone is here for Sussmeier, that is not on for tonight.

Tim Pagones - And right now you only have Bump and this on for the 6th.

Vincent Cestone - I just wanted to put it on there so I had it.

Tim Pagones - And Cottrell

Vincent Cestone - Okay. I am going to take things out of order. First item on the agenda is Michael and Karen Enea.

Michael Enea - I believe the only thing that we had was a set of plans with the garage that was discussed. And I have 7 copies. The only change that you wanted me to make was to bring it down to 14 feet.

Vincent Cestone - Right. Any questions from any of the board members? Any comments from the audience on this? I will make a motion to close the public hearing. Do I have a second?

Bill Flaherty - 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

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Bill?

Vincent Cestone - Len?

Lenny Lim - Just one question. How big is that overhang coming off the edge here. See where you have the 14 foot line

Michael Enea - I don't know exactly. I would have to scale it out. I would imagine it would match the overhang at the rest of the house. What to you guess that overhang is Dad?

Mr. Enea - What's that?

Michael Enea - Of my house on the side

Mr. Enea - 14"

Vincent Cestone - put in the resolution that the overhang is no more than 14"

Tim Pagones - okay

Lenny Lim - I'll vote in favor

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Vincent Cestone - And so will I

Joan Turner - On granting the variance there will be the usual conditions about the attic space

Tim Pagones - Right. I will try and have a resolution for the 6th. More likely the 20th.

Michael Enea - Do I need to be here

Tim Pagones - No.

Vincent Cestone - You really don't have to be here. You can call Town Hall, the Building Inspector and he will have it.

Michael Enea - Okay. Just ask Tom

Tim Pagones - Yes

Michael Enea – great

Vincent Cestone - Okay next item on the agenda is Roark Dunn appeal #774. Is anybody here? Is there anybody here for Mr. Dunn

Tim Pagones - Hold him off and see if he shows up

Vincent Cestone - Okay. Gregory Edward Harnett

Gregory Edward Harnett - Here

Vincent Cestone - Come on up. Okay please explain why you are here and were you cited for the shed

Gregory Edward Harnett - Yes the shed is in violation. I inherited the property 15 years ago by my father. And who past away about 10 years ago.

Vincent Cestone - Okay

Gregory Edward Harnett - So he never applied for a building permit

Vincent Cestone - Or a variance

Gregory Edward Harnett - Yes

Vincent Cestone - When was the shed built

Gregory Edward Harnett - About 15 years ago

Vincent Cestone - I see it is on block

Gregory Edward Harnett - Yes

Vincent Cestone - And what are the dimensions of it roughly

Gregory Edward Harnett - It is about 16 by 10.

Lenny Lim - Do you have the exact dimensions?

Bill Flaherty - 16.29 by 12

Lenny Lim – okay

Vincent Cestone - And explain the topography of the land. Is your land relatively flat?

Gregory Edward Harnett - It has a slight grade downwards towards Buena Vista Street.

Vincent Cestone - Very steep, not too steep

Gregory Edward Harnett - Not too steep

Vincent Cestone - And this is an R-40 district

Lenny Lim - I imagine this is the shed

Vincent Cestone - Yeah. And how close is it to the property line

Gregory Edward Harnett - There was an updated map.

Joan Turner - It just seems to me that looking at a shed like this that, built like that on moveable supports could be moved to another section of your property and you wouldn't need a variance.

Gregory Edward Harnett - The issue that I have with that is right in front of the shed is the septic field. It would take, it is right underneath the telephone wires as well so I don't know how that would be done. Whether or not it would be dragged across the yard.

Joan Turner - But on your survey there looks like there is enough land over down this way to do it towards this pole here.

Gregory Edward Harnett - If we cut down trees that are not ours probably

Joan Turner - Well you can't do that obviously.

Gregory Edward Harnett - That property is owned by Graymoor.

Tim Pagones - He needs 20 feet

Joan Turner - Yeah

Lenny Lim - Your property line is from here to here right? Because here is the shed.

Gregory Edward Harnett - That is the shed yes

Lenny Lim - This is the property line

Gregory Edward Harnett - Yes

Lenny Lim - Okay. How big is the property

Gregory Edward Harnett - The property is about 6/10's of an acre

Lenny Lim - Exactly where is your septic system here? Show me

Gregory Edward Harnett - The septic system is out from here and has about 3 lines that come out to almost right up to the shed

Joan Turner - What alternative sites to you have on your property that you could use

Gregory Edward Harnett - It seems to me that 20 feet from this side as well would basically have to put it back here

Lenny Lim - Why what's there

Gregory Edward Harnett - I didn't think there was any room over there to put it. It is within 20 feet of the septic system

Lenny Lim - It's got to be a lot closer than this

Joan Turner - Do you know what that ruling is that you are not supposed plant trees on top of your septic system or dig foundations

Tim Pagones - I don't know if you can place a moveable shed on top of it. I

don't know

Joan Turner - You don't know

Tim Pagones - I don't know what the rule is as far as what can go on top of septic

Vincent Cestone - All I know is that the set back requirements from the septic system are waived on sheds. It can be right up to the septic system. It just cannot be on top of it

Lenny Lim - But if he is saying his septic is going this way, he has plenty of room on the

Joan Turner - Whatever. But I think the dimensions of the shed which are

Lenny Lim - Kind of big

Gregory Edward Harnett - It is a huge structure. It is solid. It is made out of 2x4. Honestly I don't see how that can be moved with the power lines over it without crushing the septic system

Lenny Lim - Did your father ever get permits or anything to build it? Or did he just went and built it?

Gregory Edward Harnett - Honestly I don't think he did. He was the type of person that probably won't

Lenny Lim - I just wanted to make sure

Vincent Cestone - Any questions

Bill Flaherty - The only thing I have is what hardship would this create in the event that you had to move this shed?

Gregory Edward Harnett - Mainly financial hardship. It would take a lot to move it and I am sending my wife to grad school. Unfortunately it is going to be a little while before she gets out and we are kind of paying for her school and she is doing internships

Tim Pagones - What's in it? What's in the shed?

Gregory Edward Harnett - Tractor, mower, lots of small equipment, snow blower

Bill Flaherty - Do you have any alternatives where you can store that other than

the shed

Gregory Edward Harnett - At the moment I don't think there is any place big enough to store all of the stuff inside the shed

Bill Flaherty - Could it be stored inside your garage

Gregory Edward Harnett - The garage has some items in it already. It's a work space

Bill Flaherty - And storage

Gregory Edward Harnett - Yes

Joan Turner - Do you have the overall volume of the shed, but the square footage of the floor area is 204.5 feet. So it is 16.5 by 12

Bill Flaherty - Pretty big shed

Gregory Edward Harnett - He built it by hand. The only thing that he ordered were the trestles

Vincent Cestone - Any more questions

Gregory Edward Harnett - I don't know why he didn't get a building permit

Lenny Lim - There are other alternative sites. He could put it here if he had to

Bill Flaherty - If he got the building permit, he would have had to get a variance at the time that he built it

Joan Turner - That's right and it wouldn't be before us if he had done it

Lenny Lim - Right

Vincent Cestone - Any more questions from the board? Any comments from the audience on this? Do I have a motion to close the public hearing?

Bill Flaherty - I'll so move

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

All Board Members – aye

Vincent Cestone - Do I have a motion for a straw poll?

Lenny Lim - I'll make the motion

Joan Turner - I'll second it

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Joan?

Joan Turner - For a straw poll

Vincent Cestone - Yes

Joan Turner - So what do you want now? Oh, to vote

Vincent Cestone - Yeah

Joan Turner - I am going to vote to deny

Vincent Cestone - Len?

Lenny Lim - I also feel that he has alternatives on his property to move his shed. I'll deny. It is on cinderblock so it is not like it is on a permanent foundation

Bill Flaherty - I vote to deny

Vincent Cestone - So do I

Gregory Edward Harnett - Now my question is how long do I have? Will I have three or four months to do this or am I going to get weekly notices?

Tim Pagones - Well the first thing we have to do is I have to do a resolution. They have 62 days to actually vote on it to do the resolution. Then we have 5 days to get it down and then Mr. Monroe, how quickly he wants to cite you. So it is not going to happen tomorrow. The earliest I would say the resolution is going to be is the 6th, but probably not. So it is either the 6th or the 20th.

Gregory Edward Harnett - And I am going to court on this on the 26th

Tim Pagones - They just want to know what's happening. You got sited. Your violation is stayed while you are before us

Vincent Cestone - In our resolution can we give him a period of time to move the shed

Tim Pagones - I would leave that up to Mr. Monroe. That's is up to him with the enforcement. You denied the variance. If he wants to give him time to do it, it is up to Mr. Monroe.

Bill Flaherty - But you have two alternatives. You can move the shed or destroy it.

Gregory Edward Harnett - If it were not under any of the power lines, it would have been done already

Tim Pagones - You might want to call Central Hudson to see what it would cost to lift up the lines, it might be feasible that you can move it

Gregory Edward Harnett - Okay

Tim Pagones - So we will put it on for the 6th for decision. But it probably won't be done and then we will kick it over to the 20th

Vincent Cestone - Lets do his resolution in January. I am sure the applicant won't complain

Lenny Lim - It will give him time

Gregory Edward Harnett - That would be perfect

Tim Pagones - Okay

Gregory Edward Harnett - I would appreciate that so much

Vincent Cestone - If the applicant doesn't have a problem with going over 62 days, this board does not have a problem with going over 62 days

Lenny Lim - He has to okay it though for going over 62 days

Tim Pagones - Well let's put it on for the 20th. If the resolution is not done,

Vincent Cestone - That is our last meeting until next year. We don't have meetings in December

Lenny Lim - He has to give us an okay for going over the 62 days

Gregory Edward Harnett - I am perfectly fine with that

Tim Pagones - Lets put it on for the 20th for resolution

Vincent Cestone - Okay

Tim Pagones - And then on the 20th, you need to be here and if the resolution is not done, you have to grant the board an extension of time. It will probably go past the 62 days.

Gregory Edward Harnett - The 20th of this month

Tim Pagones - Yes November 20th

Gregory Edward Harnett - Thank you very much

Vincent Cestone - I'm sorry

Tim Pagones - Take care

Vincent Cestone - Okay. Next item on the agenda is Jack and Alice Gish who are looking to amend a resolution.

Jack Gish - Hi

Vincent Cestone - Tell us exactly what you want to amend

Jack Gish - Oh. I had given some documents in support of this

Vincent Cestone - This is for the record

Jack Gish - What I want to do is on the part of the house that faces the Hudson River I want to change a dormer to a window and I want to extend a roof out over the deck over the master bedroom.

Vincent Cestone - So you want to just place this window into the dormer

Jack Gish - No I am getting rid of the dormer that was originally drawn. In this picture here. And instead of a dormer I want to put a full window here. And then on this section over here, I want to bring out a roof over the deck. Over here. That provides protection from the elements. And it would be contiguous with the front elevation

Lenny Lim - I don't know about this. And we okayed this and now he wants to extend the roof

Alice Gish - We gave you pictures the last time showing you the changes

Vincent Cestone - Well as far as the window, that is the only real change that you are making

Joan Turner - Well it is putting the roof over the deck

Vincent Cestone - On that one section. Other than the roof

Alice Gish - Yes

Joan Turner - But on the west facing side toward the river you are changing a window and you are putting a roof over a deck

Alice Gish - We are just extending

Joan Turner - Extending

Jack Gish - yes

Alice Gish - And the window on the river side matches the window on the train track side. We didn't realize in the drawings that we could have maximized the view. Now that we realize that we would like to do that.

Bill Flaherty - You don't show any dimensions on the window. How large a window

Lenny Lim - The changing the window doesn't bother me. The changing the roof line

Jack Gish - That's what I want to do and it is exactly the same space as this window here. So this is the front of the house and I am carrying the same window to the back of the house. So instead of having this dormer here, we are putting a window in over here of that dimension.

(everyone speaking at once...cannot pick up conversation)

Bill Flaherty - now how far along are you on this project

Jack Gish - we have everything on except for the roof and the windows. We are waiting for ZBA approval.

Bill Flaherty - Do you think it is about 50 60 percent finished? I was down there looking at the building.

Jack Gish - The siding is in. We are waiting for the windows. Because the windows are in the warehouse. So we are full speed ahead

Vincent Cestone - Any comments from the board?

Joan Turner - The only problem I have with this overhang on the roof here, the

window I don't have a problem with at all, I find that this has potential for a future owner to enclose this. We don't

Jack Gish - We won't

Joan Turner - I know you won't do it but we are talking about down the line. Once you grant this people have a tendency to do things and there is not much enforcement in Philipstown. So, therefore, this could be enclosed. Also, in terms of your neighbors view, I don't know how this would impede that western perspective, you know that up river or down river perspective.

Jack Gish - That's a good question. This is of course on the second floor and I don't think it would, the only person going north, there is another structure to our right north that blocks everything.

Joan Turner - So you are saying that this wouldn't impede anyone's view whatsoever

Jack Gish – no. In fact, we have no view right now going up north the river

Joan Turner - In other than just protection from the elements as you say, what would be the detriment to you to not be granted a variance for that extension

Jack Gish - Good question. Aesthetically I think it is very important to the balance of the house on the river view side. To be able to sit outside off the master bedroom and have an overhang that only comes out 7 feet over an existing deck which comes out 10 feet. It would be a nice place to be able to lounge and look at the river.

Vincent Cestone - What about a canvas canopy? Those crank out canopies

Tim Pagones - An awning

Lenny Lim - He has alternatives to this

Jack Gish - Oh definitely there are alternatives to this. I think this would look the best aesthetically however.

Alice Gish - It doesn't cover the whole deck so the chance of enclosing it is not existing

Joan Turner - That's not directed at you

Alice Gish - I understand

Joan Turner - It is directed at future owners

Jack Gish - If you feel that you need to pull it in a little bit and 7 feet is too extensive, I can make it even shorter as to remove that alternative completely if you wanted to bring it in 5 feet that would be fine. It is just a place for a couple of lounge chairs.

Bill Flaherty - I think Joan raises a very good point in as much as this were granted as such future owners may very well want to enclose that some time in the future. And I would think that if we did give you a variance here that one provision that I would want in that variance would be to prohibit that open porch to be enclosed any time in the future

Jack Gish - Absolutely. Perfect

Alice Gish - That is fine with us. That's not our intention and if that secures it for the future that is fine with us

Bill Flaherty - What we are talking about is the future

Jack Gish - Right

Alice Gish - Yeah if it secures it for the future, that is fine with us. Absolutely

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

Zshawn Sullivan - Zshawn Sullivan. 8 Hudson River Lane. I would think the little overhang, it doesn't come out as far as the front of the house. It is just like the Gish's said it is just for, it gives it a little bit more balance. I mean they asked for a very minimal square footage to renovate the house. I don't have a problem with it.

Vincent Cestone - Any more comments from the audience? I will make a motion to close the public hearing. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - I will make a motion for a straw poll do I have a second

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Bill?

Bill Flaherty - I vote to approve

Vincent Cestone - Joan?

Joan Turner - I am going to vote to approve too

Lenny Lim - I am fine with the window but I don't think the extension of the roof.

Vincent Cestone - And that's me too. I'll vote for the window but not the extension on the roof

Tim Pagones - You've got a window and you have a nullity on the roof line.

Joan Turner - Do you want to cast your deciding vote

Tim Pagones - I vote that the town gets another member on the board soon so, what's happened is they approved your window. Everyone is unanimous on that. It is 2 – 2 for your overhang. Which is really a no vote because there is no majority.

Alice Gish - Even if we have that stipulation that it will never be allowed to be enclosed?

Bill Flaherty - That is the reason I am voting yes on this issue because that would have to be included in the resolution

Tim Pagones - So your options are there are supposed to be five members on the board. You can wait until they get a fifth member which I have no idea when that will be. Or you can just say right now you will take your window instead of holding up everything. I have no idea when the town board or if anybody has even applied for the position. So everything is kind of in limbo.

David Brower - We have a couple of applications but we still have to do interviews

Vincent Cestone - So it could be months

Alice Gish - We are new to the town. We want to be good citizens to the town. We want to be good residents of the town. So whatever you direct us to do, that's why we stopped and we've waited all this time. The construction crew has moved on to somewhere else. We wanted to wait for your decision based on

what is best and what the town feels that we should do.

Joan Turner - Can they revisit this when there is a full board?

Tim Pagones - That's what I am saying. I guess I don't know logistically can you finish your house and then down the road come back for another variance to put your extension on the roof

Alice Gish - No

Tim Pagones - So if you want to go forward today, then you've got your window but you don't have your extension to put an awning up and finish your house

Jack Gish - Is there a way that we can put any other parameters on the development of this roof coming out that would

Tim Pagones - I think they would have put the standard condition that you cannot further enclose it, screen it, or anything. You can't make it living space. You have two who are willing to go forward with it and two who don't want to go forward it. So that is a no vote. You have your window and you have a no vote on your overhang. Do you want to wait until the Town Board finishes their interviews, have someone come on and then you have fifth person, it is going to be 3 -2 one way or do you want to come back in November and have them mull it over and vote again. It is a straw poll vote, they have not taken a final vote. So if you want, I guess I would suggest why don't you come back in November and maybe now we will be like the Supreme Court and one of these guys will talk about it with the other guys and talk about it more. Maybe they will change their vote.

Jack Gish - Let's do it

Tim Pagones - So you want to put it on for the 6th for Discussion you can do that if the applicant would like that

Vincent Cestone - Do you want to discuss it

Lenny Lim - We'll go back again and look at it

Tim Pagones - All right. They will discuss it further on November 6th

Jack Gish - Is there any other further documentation that I could present, another picture of what I plan to do

Tim Pagones - The public hearing is closed. So now it is just discussion with them.

Jack Gish - I can at this stage tell my builder to go ahead with the window.

Tim Pagones - Well legally you can't because they haven't done a resolution. So what I am saying to you is if you want to tell your builder, if you wanted to go home tonight and say okay I got my window, I would have a resolution either November 6th or November 20th and I would let Mr. Monroe know that you know what the overhang is a dead issue, you've got a window. If you want to hold everything open, for them to see if one of them will move on the overhang you can do that. So November 6th you will know. I don't see anyone denying the window so you know you've got a window. If you want to wait until November 6th to see if anyone changed their mind on the overhang then fine

Jack Gish - So I don't need any more documentation

Tim Pagones - No. There is no submissions of anything now.

Jack Gish - Thank you

Vincent Cestone - Did Mr. Dunn come in. With that he is carried over

Tim Pagones - Well do you want to put him on for a date certain or do you want to take him off until you hear from him? If you adjourn it tonight you don't have to renote it. If you just take him off and say we don't know where Mr. Dunn is then you would have to wait, if you don't set a date tonight then you have to renote it. So if you want to put him on for the 6th. Right now you would have Cottrell which is complete, Bump and Sussmeier. So would you like to put him on for a public hearing on the 6th?

Vincent Cestone - Yeah

Tim Pagones - So Roark Dunn is on for a public hearing for the 6th? Anyone here for that that will be adjourned until November 6th.

Vincent Cestone - Okay Minutes of September 18th, are there any corrections or deletions?

Joan Turner - I gave a few

Vincent Cestone - I make a motion to accept the minutes as corrected. Do I have a second

Bill Flaherty - Second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - We don't have minutes for October 2nd

Kim Shewmaker - No

Vincent Cestone - Okay, Tim you are on

Tim Pagones - Cottrell, she supplied, I guess we are going out of order, #10 Cottrell supplied a survey with the proposed deck drawn in so that one is officially complete and you can put it on for November 6th for your hearing. Next you have Tyjan Corporation #800

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #800; Applicant: Tyjan Corporation
Area Variance**

Date: October 16, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on September 18th, 2006 to hear the appeal of Tyjan Corporation from the denial of a site plan by the Philipstown Planning Board for construction of a Commercial Storage structure and Garage having insufficient setbacks from the centerline of Route 9. The property is located on 2506 Route 9, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on October 16th, 2006, 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 TYJAN CORPORATION FROM A DENIAL OF A SITE PLAN BY THE PHILIPSTOWN PLANNING BOARD FOR CONSTRUCTION OF A COMMERCIAL STORAGE STRUCTURE AND GARAGE HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS¹, FOR THE

¹ Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly

**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 structures granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.
2. The setback from the centerline of Route 9 for the building shall not be less than 82 ft. (a variance of 18 ft.).
3. The top floor of the building shall only be used for cold storage. No heat or bathroom will be installed.
4. The variance is further conditioned on site plan approval by the Philipstown Planning Board.

5.

Tim Pagones - Any other conditions?

Bill Flaherty - We didn't make any special provisions for parking in that

Tim Pagones - No. Because they will deal with that in the Planning Board when they do a site plan

Bill Flaherty - Okay

Tim Pagones -

FINDINGS OF FACT:

related to and incidental to the proposed use of the property."

1. The Applicant made this appeal (#800), dated May 4th, 2006 and amended September 18th, 2006, to the Philipstown Zoning Board for an area variance based upon a denial of a site plan by the Philipstown Planning Board for construction of commercial storage structure and garage 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 that

2. The property, a 1.695 acre parcel on Route 9, is located in a B-1 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the B-1 District requires a setback of 100 feet from the centerline of Route 9.
3. The Applicant acquired title by a deed dated June 28th, 1996. The structures at the property, appear on a site plan printed May 4th, 2006, as prepared for Tyjan Corporation 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 May 15th, 2006 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 June 5th, but was adjourned at the request of the applicant until September 18th, 2006. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
5. The Board met on September 18th, for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, no members of the public attended 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 construct a storage building to place the materials used in his business which is located next to the proposed site. The requested variance will not adversely affect property values because the new building will be used in such a

manner as to actually clean up the location and make it look better. The structure will 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 attended 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 provided two alternatives to the Board showing how the building could be built without coming into conflict with the Philipstown Code. Both the Zoning board and Planning Board felt that the alternative requiring a variance was the plan that made the most sense and would require the least amount of disturbance into the steep slopes behind the property. Given the relatively minor intrusion into the setback, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicant requests a variance of 18ft. from a set back which should be 100 ft. The reduction to the required setback is minimal.

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 construction of a commercial storage structure and garage in a B-1 district is not an activity usually associated with such environmental concerns. No additional traffic will be generated. Air quality will not be disturbed. Water quality or quantity should not be 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 created². The Applicant wishes to construct the building and made a site plan application to the Planning Board and was notified of the need for the varaince.**

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 October, 2006, the results were as follows:

Vince Cestone, Chairman	Voting <u>for/against</u> 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 - Okay. I'll make a motion to accept the resolution as read.

Joan Turner - I'll second

Vincent Cestone - All in favor

All Board Members – aye

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

Vincent Cestone - Okay voting. Len?

Lenny Lim - I'll vote for

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I

Tim Pagones - Okay he's done

Vincent Cestone - Next item on the agenda is discussion of the Denise Enea appeal #806. Actually this is between the board

Mr. Enea - Oh

Tim Pagones - If they have any questions, they'll ask you

Mr. Enea - Okay. When you are done I can show you a few things

Tim Pagones - They are not supposed to entertain any new information

Vincent Cestone - Because the public hearing is closed

Mr. Enea – okay

Vincent Cestone - Does any of the board members wish to discuss this?

Lenny Lim - Well what's your take on it Vinnie?

Vincent Cestone - Well my feeling on it

Tim Pagones - This is a 2-car garage that wants to convert to a 3

Lenny Lim - And wants to keep the breezeway

Vincent Cestone – Right

Joan Turner - My suggestion was to move the breezeway, eliminate the breezeway and move this thing over

Lenny Lim - Right. I would give him that

Joan Turner - So if you eliminate that, he said he couldn't have access to get to the backyard.

Lenny Lim – Right. So he wants to keep the breezeway and he wants to come this way to make it a 3 car garage

(talking among themselves too low to decipher)

Vincent Cestone - well I guess we should do a straw poll

Tim Pagones - well if you want to, you can have a discussion with the applicant and just say here is what we are looking to do, do you want to change it?

Lenny Lim - I don't know if I want to go that way right now Tim. Because he has had alternatives

Tim Pagones - No no no I think the alternative is, I think the board feels you know what you want a three car garage, get rid of your breezeway. And if you get rid of your breezeway

Lenny Lim - That might not do it either

Tim Pagones - I don't know that's what I am saying. But he might get something by getting rid of the breezeway because he only needs a 2 foot variance as opposed to an 18 foot variance or something like that. I don't know what the board wants to entertain. I mean certainly there are alternatives. I think the breezeway is an illegal structure, I don't know if he has a permit for that. I think the board is within their prerogative and definitely there is enough stuff to deny it. But I guess rather than sit there and deny him and have him reapply because all of a sudden now he realizes the handwriting is on the wall, he may want to amend it and save \$200 for a variance. I don't know.

Lenny Lim - Like you said the breezeway is built illegally right? No permits he just went in and built it. I will not vote for a three car garage on this one. No way.

Vincent Cestone - With that I will make a motion for a straw poll

Lenny Lim - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Len?

Lenny Lim - I vote against it

Vincent Cestone - Joan?

Joan Turner - I vote against it. To deny it

Bill Flaherty - Deny

Vincent Cestone - And so will I. Sorry.

Tim Pagones - Okay. But you have to give me some stuff to put in the resolution.

Joan Turner - The issues the board has discussed is the density issue, a precedent setting nature of it, the fact that it increase the density on the property

Vincent Cestone - It is a life style need as opposed to

Joan Turner - It is a life style issue which we felt really bends the zoning code to suit the life style of the individuals that apply. Not just in this case but in other cases

Tim Pagones – right

Joan Turner - And until our zoning code encompasses the more modern life styles of people than we are inadvertently eroding the code by granting this particular type of variance

Tim Pagones - I don't have a problem with you doing it I just need to put something in there as to why we are doing it

Joan Turner - You can also add if you would really like to get into it, regrets immensely enormously the granting of a three car garage to a neighbor there which was precedent setting or could become precedent setting and we don't want that to happen again. That the board realizes its error in judgment

Vincent Cestone - There is a slight difference there

Tim Pagones - Well each one is treated individually but we know there is precedent setting but he has alternatives

Joan Turner - I think in the other one, well that's history

Vincent Cestone - Okay.

Joan Turner - And if they don't like it, they can always go get a building permit

anyway

Vincent Cestone - Old business

Tim Pagonis - I will try to have this on for the 6th. I doubt I will have it for the 6th. Resolution for November 6th

Vincent Cestone - far as old business is concerned we got a, the planning board is asking for a meeting to discuss the DAS cellular technology. I talked with George Cleantis last week and I offered him our consultants to come in and do a presentation and provide any information. And they are in the midst of battle with the cellular carriers on even getting them to submit plans with the DAS system

Lenny Lim - Isn't Comi having a hard time getting information from them

Vincent Cestone - Yes. With the usual person

Lenny Lim - Okay

Vincent Cestone - And still the argument with the neg 84 with that one carrier

Lenny Lim - That refuses to, okay

(Turning tape over, may have lost some dialogue)

Bill Flaherty - Joan Turner - I want to ask David about when you, did you find out anything more about the Shelley building permit that was issued

David Brower - He issued a permit and supposedly he doesn't need the variance now.

Joan Turner - Was the building plan changed? Or was it the same building plan that he brought

Vincent Cestone - He probably put it within the setbacks. Remember we told him that he could build it within the setbacks without coming to us

Lenny Lim - Yeah but has anybody seen the

Joan Turner - Has anyone gone down and checked the building plans that were submitted to this board as against what he built

David Brower - Yeah I went down there but I didn't have your plans. He issued the permits. Unless someone goes down and checks the footage themselves which I don't think we have a legal right to do to go on anyone's property other than the building inspector. He's saying it is within the 30 foot boundary so. He's

got the plans so. When he is finished he will have an as built with the finished footage on the plan for the CO. I will look at it some more

Joan Turner - So the Town Board even though you appoint Tom Monroe and he is answerable to the Town Board

David Brower - No he is not answerable to the Town Board.

Joan Turner - He is answerable to nobody?

David Brower - He is answerable to New York State. We can't tell him to issue a stop work order. We can't force him to do anything like that. That is up to him. That is within his prevue. The only thing is if you have a problem with a building inspector or somebody you can have him audited in one way or another or bring charges against him if you think he is doing anything illegal or anything like that. But as far as, he has his own set of laws and rules that he lives by and he is allowed to make certain determinations on his own

Joan Turner - So for example if you took the building plans that were submitted and showed them to this board and we said this is the building plans that we were not going to grant a variance on and then took them down there as a board member, and looked at what he is building or has built, and said this is the same building and where does he get the room to do this, then I mean, would that be the grounds for

David Brower - Well he went down and did the inspection when they put the footings in. So the footings are within the 30 feet away from

Tim Pagones - The only way he was before you was for a setback variance

Vincent Cestone - Right

Tim Pagones - A lot of times you start questioning why do you need, I know Gagnon was one of them, why do you need a huge door here? You have three of them, you are putting the boat, do you really need that? But he was there for a variance. So there was nothing illegal about the actual design of the building. And I think you had said you know what move it forward and you don't need a variance.

Vincent Cestone - Right

Tim Pagones - There is no reason why you can't back it up, the building was legal, it was the location.

David Brower - The only thing I can tell you is that the ZAC, the Zoning Advisory Committee is working on things

Joan Turner - On the nature of accessory structures

David Brower - Right and we are going to have to get stronger definitions of what we want for a garage, what we want for an accessory building and size of accessory building. Once it goes beyond a limit, then you have to go to the zoning board for approval or special permit or whatever. But that is what we have to work on because right now there are too many gray areas

Tim Pagones - There are a lot of loop holes. And you hire certain people in the town and they know the code and they find the loop holes

David Brower - We just went through a similar thing with the planning board. Mike will tell you. There was a subdivision, a ODA subdivision before the planning board they were going to build four lots. There was no way they were going to get the four lots from the planning board, it was going to be three lots. So they went back into the code and everything, they did some lot line changes and then they did a two lot subdivision, now they have their four lots. Without going before the planning board for an ODA.

Lenny Lim - So Tom Monroe gave it to them

Tim Pagones - Right now the building permits have been issued and the guy is within the code. But there is the loop hole. And I think we have to packet tonight for interpretation as to his decision to issue the permits

David Brower - Well the thing, the decision that involves an old right of way on the property which the Village of Cold Spring has been using for years to get to the reservoir so there is some issues with that as to whether or not that was legally taken over by the owner or not.

Tim Pagones - You can't take an easement.

David Brower - Well it was an easement supposedly. I don't know if it was a written easement in the Deed for Cold Spring to use or not but that is what the lawyers have to look at. But that's what has to be looked at.

Vincent Cestone - Another thing on 403 and Route 9 that gas station that they are rebuilding.

Tim Pagones - They were before the planning board years ago and they almost had a lets just see, what do you think about this plan. I remember it

David Brower - I was on the planning board

Tim Pagones - Years ago. They wanted to put plantings up, this is the first thing

into Philipstown and they never came back. And the other day I drove by and I saw a lot of construction there.

Vincent Cestone - I called Tom and he said well he is not touching, he is just rebuilding the structure in place. Which reminds me of remember at that deli right next to the golf course where he was building in place and he made him come before the zoning board to get it approved. It seems like preferential treatment to me.

Joan Turner -Well the issue again with the gas station going up, it was abandoned for over two years. The nonconforming status of that is null and void. It needs to come before the planning board and that's it. That's the law. So for him to be building a gas station without coming before, then we need, then we just have subjective Zoning

Vincent Cestone - What Tom said to me was he was just getting the property into a state that he can lease it and the leasors will be coming before the planning board and the zoning board

Lenny Lim - Oh please.

Tim Pagonos - Anything else? Anything on Cooper? I haven't heard anything.

Vincent Cestone - Well I responded that the presentation Cooper, and I basically said and I sent it via email

David Brower - It might be in tonight's mail

Vincent Cestone - I sent it to Tina and asked her to give it to, a copy to each of the board members. Basically what they did, instead of taking the four feet off the back like they did, they took the four feet off the front. But the total volume of the structure is still 3,000 square feet. They are playing the game with the vaulted ceilings so that it doesn't

Lenny Lim - Who?

Vincent Cestone - Cooper

Lenny Lim - No. We all agreed Town Board, Zoning Board everybody on 2,500 square feet. That was the agreement.

Vincent Cestone - Right they do have 2,500 square feet but they do that by creating a vaulted space within the structure and take off the second floor space

Joan Turner - It is still bulk

Vincent Cestone - And the other thing, again, we don't have, the garage is conspicuously missing.

Lenny Lim - In fact didn't it get bigger the last time

Vincent Cestone - Yeah. So I said in my letter that the zoning board's opinion is that this is still playing games. I didn't put it that way and that if they wanted to become serious, they need to come back with a complete set of plans of a structure that is 2,500 square feet in volume and

Lenny Lim - Keep the garage the same size too

Vincent Cestone - And don't play games with us anymore

Joan Turner - Kim, I want to give you this

Kim Shewmaker - I don't understand

Vincent Cestone - Anything else?

Joan Turner - I just want to make a, I am tendering my resignation as of tonight and I want you to accept this letter and I want to say goodbye and thank you. And it has been really wonderful. We had some good laughs and some problems. But my time has come. So I would like to give this to you

Vincent Cestone - This is a shot in the dark

Lenny Lim - I feel like I just got a 2 by 4 in the forehead

Joan Turner - But you know it is just time

Bill Flaherty - Joan I am shocked and dismayed

Joan Turner - Well so am I actually

Tim Pagones - It has been an honor working for you

Joan Turner - Well it is my pleasure. I've learned a lot and I've really been fortunate to be here so long but it is time for new blood.

Vincent Cestone - And with that I am tendering my resignation.

Tim Pagones - Well let me just say this right now. Everything has to be unanimous. Because you are the majority of the board. Because there are three of you, every single decision all three of you have to agree now.

Lenny Lim - It has to unanimous or nobody gets, oh no

Tim Pagones - There is a no action. Because this is your majority. You need majority of the board. The board's five people whether there is four on or three. So the vote always has to be three to nothing.

Vincent Cestone - Okay, I am not accepting this.

Tim Pagones - Do you want to close the meeting. Make a motion to close

Lenny Lim - I second.

Tim Pagones - The meeting is closed.

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

DATE APPROVED: 11/6/06

Respectfully submitted,

Kim Shewmaker
Secretary