

ZONING BOARD OF APPEALS

October 22, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, October 22, 2007, 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
Bill Flaherty - Member
Robert Dee - Member
Paula Clair - Member
Adam Rodd - Counsel

ABSENT: Lenny Lim - Member

Vincent Cestone – Okay. First item on the agenda is a continuation of a public hearing for Hugh Rossouw. Is Mr. Rossouw here? Well we will put him off until the end. Next item on the agenda is Nancy Carlucci.

Nancy Carlucci - Would anybody mind if I sit

Vincent Cestone – Of course, have a seat. Go right ahead. Not a problem

Nancy Carlucci - Thank you

Mr. Carlucci - How are you

Vincent Cestone – Good good how are you doing?

Mr. Carlucci - Okay. Last time we were here we were talking about the granting of the rear variance 3 foot 8 inch. The issue was the side setback. We contacted a number of different companies and we were able to get proposals from them to do some remedial work. The issue now becomes the cost. We have a situation where we have proposal from a company to take out the stairs that are currently in place where they are which would give us, which would shorten the pool lengthwise by approximately 4 feet or so. Which would have us requesting a side variance not of 8 feet but of 4 feet 6 inches. The proposal from the company to do that to simply take the stairs out, to put in a panel that would be approximately 3 and ½ feet in length, back fill that, and put the concrete down. The proposal we got from them to do that, and reline the pool because of course you have to take the whole liner out,

Vincent Cestone – It is not all concrete?

Mr. Carlucci - No. The liner itself is a plastic liner. So we have a proposal for them to do that. With respect to going a full 15 feet where we wouldn't be requesting any rear or side setback is almost \$10,000 more. Because it not only involves taking the stairs out but it also involves the insertion of a panel that is now approximately 11 or 12 feet long but the problem becomes the connections of those metal panels to the sides. Where if we pull the stairs out and put the panels in it is an easier connection and shorter area to back fill. That's where we are and we don't want to lose the granting by the board of the proposal last week for the rear setback which goes the entire length of the pool which would make it impossible to do. So we are hopeful that the board would consider the 4 foot 6 inch request for a right set back. But again we don't want to jeopardize losing the rear which would require us to bring it all the way with no variance on the right side, it is just like I said \$10,000 more for the contractor to do it where there would be no variance.

Vincent Cestone – We you can lift the pool up and move the dirt

Mr. Carlucci - I wish. I wish. I wish we could do it.

Vincent Cestone – As a condition, you wouldn't have a problem with putting the required fence around the pool

Mr. Carlucci - No. As I said the last time, I understand that the State has instituted a number of other guidelines other than the fence. The fencing that is around the pool, the majority of it would have to be changed to meet the new restrictions

Vincent Cestone – Right. Because it is retro-active

Mr. Carlucci - Absolutely. The locking devices and things like that on gates, we will be putting a fence across the one side of the pool where there currently is no fence that would also have a locking device in compliance with the new guidelines that have been mandated by the State. Absolutely. And again, I assume that any inspection by the Town Building Inspector would not only be for the setbacks and things like that but also with respect to any other requirements that the State has imposed, the Town has imposed as far as fencing, gating and things like that.

Vincent Cestone – Do you have examples of what

Mr. Carlucci - I have a crude drawing that I put together that I can illustrate to you but certainly depending on what happens when the considered the 4 foot setback we would then have the company that was going to do the work have a

set of actually plans with their engineer drawings that they are going to need to actually do the work. But I can basically

Bill Flaherty - I would like to add if I may

Mr. Carlucci - Sure

Bill Flaherty - At the last meeting I asked you to come in with a detailed sketch of the changes that we proposed to you at the last meeting. And I still want that but I want, I would like to have it quite frankly done by a professional rather than sketches by yourself

Mr. Carlucci - Absolutely. And that is part

Bill Flaherty - Where we are going with this and the variances that you are adding at each and every aspect of the pool, now the rear of the pool is a question. So what is the variance that you need on the rear of the pool?

Mr. Carlucci - The rear pool that we are requesting is 3 foot 8 inch setback

Bill Flaherty - And I realize that would cause a significant hardship financial and otherwise on you to do that. But I want to see a professional sketch before I go ahead and consider the matter one way or the other

Vincent Cestone – Bill, what we can do is, we can do it in concept and not approve it until we get the drawings

Bill Flaherty - Well that's what I would want

Vincent Cestone – Oh I agree.

Mr. Carlucci - And I think, and I have no problem with that. As far as the sketch goes, the biggest question as far as giving the go ahead that we had to commission the company

Vincent Cestone – Yeah it would be several hundred dollars to do that I would assume

Mr. Carlucci - Yep. Is essentially we would have the rear set back showing the 3 foot 8 inch variance and then the concept with respect to the right setback possibly being that 4 foot 6 inch variance on the side.

Vincent Cestone – Any questions from the board

Bill Flaherty - I have to ask you has this pool been on the assessment roll in the Town of Philipstown?

Mr. Carlucci - I believe it has

Bill Flaherty - Because we have a complete assessment and it says 17 years the pool has been in and I think there has been an assessment of the entire Town back about 15 years ago

Vincent Cestone – Well I called up Anne Nichter and asked if it was on the assessment roll

Bill Flaherty - And we do have it. I assume that you do because you have had a valid permit to go ahead with the pool at that time so therefore it would be on the assessment roll. Do you have any idea what the taxes are just on the pool itself?

Mr. Carlucci - Just on the pool? I don't know whether it says

Vincent Cestone – The ones with the plastic liner are not too bad. It is the ones with the full concrete that are pretty steep

Mr. Carlucci - Well what happens is, this one there is concrete underneath. It's like a _____ bottom of the pool and the sides are metal panels and then the plastic liner

Vincent Cestone – I've seen a lot of them

Mr. Carlucci - It's like a tracking system on the side where they kind of snap in

Vincent Cestone – It is considered a temporary structure to a degree

Bill Flaherty - An alternate to granting you a variance would be for you to have the pool filled in. Have you explored that at all?

Mr. Carlucci - I have not

Bill Flaherty - You want the pool irrespective of any kind of conditions, terms and conditions that we

Mr. Carlucci - Yes

Bill Flaherty - You really want this pool?

Mr. Carlucci - Yes

Vincent Cestone – Any other questions from the board? Any comments from the audience on this? 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

Adam Rodd – Are we going to have him bring in a more detailed plan?

Vincent Cestone – Right. We are not going to vote on an actual resolution until we get those plans

Adam Rodd – I would recommend just to leave it open so it can be received on the record and we can consider it. I would not close it if he is going to bring it in.

Vincent Cestone – Okay. But we can do a straw poll so he that

Robert Dee - I am going to run into trouble with a straw poll with me because I am not even going to vote on anything until I see it, I want to see the fence too. I want to see it all on paper. I am not just going to say he is going to put up a fence, I would like to see how he's going to do it

Vincent Cestone – Well instead of doing a straw poll why don't we just, what are you feelings on this?

Robert Dee - I would like to see it first. My feelings are it has been there for 17 years illegally, so I am not leaning, I am not saying one way or the other, I want to see the proposal first before I make any kind of decision

Vincent Cestone – Okay. Paula what are your feelings?

Paula Clair - Well I would consider giving the variance if the configuration is satisfactory

Vincent Cestone – And I would also give the variance if the conditions are met and the drawings are such

Bill Flaherty - Well I think we should keep the issue open

Vincent Cestone – We are going to keep it open

Bill Flaherty - And not take a straw poll until we get all the facts so we can make a more intelligent decision as to what direction, I want to particularly because quite frankly this is the fourth or fifth hearing we have had on this issue and I have been wrestling with it for a very long time. In fact, it is the most, not complex necessarily but compassionate decision that this board has to make in relation to all the problems that would be associated with the pool itself irregardless of which way you went. I want to have all the facts before I make a

final decision on this issue.

Mr. Carlucci - I think we will need more than just the next 2 week cycle.

Vincent Cestone – Well I was planning on only having one meeting in November and it would be the 26th.

Mr. Carlucci - That would be okay

Vincent Cestone – We will put you on for the 26th

Mr. Carlucci - Okay

Vincent Cestone – And if you can get the drawings quicker, bring them to town hall and they will mail it out to all the board members

Mr. Carlucci - That's great. Okay. Thank you

Nancy Carlucci - Thank you very much for all your trouble

Vincent Cestone – Next item on the agenda is Mary Dawn Inc. They are looking for an extension. So tell us the details why it wasn't completed in the 2 years

Alan Steiner - I am Alan Steiner and I am here as a friend because of the difficulty of English not being her first language. The fire took place on September 6, 2005. It took some time to get the insurance issue resolved and we weren't able to do that until April 14th. When we did get that money in, we immediately contacted Stephen Carlson to clear the site and begin to prepare it for rebuilding. We received a building permit on September 5th and we had board of health approval because the septic system there was originally sufficient for the restaurant that was there and more than adequate for any use that the new building would require. Two builders have been working on the project, Ron _____ and _____ Miller and it was determined that the most effective and efficient way to proceed with the building was to try and do as much green construction as possible. And that would relate to the heating, the windows, the insulation and possibly radiant floors. But to do that you need to work with LYSERTA and a consultant Lyserta designates. So over the past many months that's what we have been doing. Dealing with them. They have all the plans, there is complete construction plans have been prepared and it is in their hands. I have been dealing with Mike Goldrich who is the executive vice president for business and professional banking of Hudson Valley Bank. They do LYSERTA loans. He has been quite receptive to the situation but until we knew how much of the project was going to qualify as green, as energy smart and green building, we couldn't complete the loan application and go ahead with the full mortgage approval. So that was the delay dealing with LYSERTA over these many

months.

Vincent Cestone – So how far along are you? Do have shovels in the ground or not even at that point yet?

Alan Steiner - Well we have done some covering, I would have to say we really haven't begun any real construction yet

Vincent Cestone – And when do you expect to start? Spring time?

Alan Steiner - Well we are still hopeful if the weather would hold out, and if we get the mortgage approval and we could at least put the foundation and get the framing done. If not, it is going to have to wait until Spring.

Vincent Cestone – Because extensions are generally just one year

Alan Steiner - Right

Vincent Cestone – So next year at this time you would be back

Alan Steiner - And that's what we are asking for. Just the one year

Vincent Cestone – And I would prefer that you weren't back

Alan Steiner - Of course

Vincent Cestone – But I know how LYSERTA is because I had deal with them myself. Any questions from the board?

Adam Rodd – Just to be clear, you are asking for, the applicant is asking for an extension of time to complete the work

Alan Steiner - That is correct

Adam Rodd – So is the applicant representing that the work can be completed by October 31, 2008

Alan Steiner - Yes

Adam Rodd – Okay

Vincent Cestone – Anyone in the audience

Bill Flaherty - Supposing we were to deny the extension? What would the consequences of that be?

Alan Steiner - She would have to reapply

Bill Flaherty - And an additional fee would be required

Alan Steiner - Right

Bill Flaherty - Well I know, I live out there and I have been to your establishment. So I know you have been through an awful lot over the past year and a half or so. I am anxiously waiting to see something go up on that land. I know you have cleaned it up quite well. It looks like a park setting. I have no problem with extending. I am anxiously waiting for the shovel to hit the ground

Alan Steiner - So are we

Vincent Cestone – Any comments from the audience on this? With that I will make a motion to close the public hearing.

Bill Flaherty - I'll second

Vincent Cestone – All in favor

All Board Members - Aye

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

Bill Flaherty - I'll second

Vincent Cestone – All in favor

All Board Members - Aye

Robert Dee - I vote in favor of the extension

Paula Clair - Yes

Bill Flaherty - I vote for the extension

Vincent Cestone – And so do I

Alan Steiner - Thank you very much

Vincent Cestone – You're welcome

Adam Rodd – So we are extending it to the end of October 31, 2008, for the applicant to complete construction

Vincent Cestone – Right

Alan Steiner - Thank you all

Vincent Cestone – Next item on the agenda is Kirsten Rost. Is someone here to speak for Kirsten Rost?

Mr. Rost - yes. Good evening Board members. I am Kirsten's son. Just a minor correction. Her name is Kerstin.

Kim Shewmaker - My error. Sorry

Mr. Rost - My mother lives in Florida and is currently gravely ill. She has asked for extensions before and, as you know, and she also wrote a letter in July. I don't know if the Board read this letter or not

Vincent Cestone – We do have a copy

Mr. Rost - The reason she needs the extension is very basic. She actually asked me to keep her health and condition confidential from the public however

Vincent Cestone – It doesn't have any bearing on this anyway

Mr. Rost - Well that's what I am thinking. So, what she needs to do is sell this property. And with the variance, we have the architect's plan that has already been approved by the board. I know this has been approved twice and we have it with a realtor here in the community so we can sell this property. Now

Vincent Cestone – How long has it been on the market

Mr. Rost - Well that's been the issue. It has been on the market for a year and a half. I've gotten involved myself for the last six months and told her listen, when you sell a property, I am in real estate myself in New York City, it is all about pricing. You can't sell something without the right price. The market is market. So. And unfortunately the situation calls, that the bills are mounting and it's becoming an _____ and it is going to become an issue for my wife and myself. And I'd rather not see that happen.

Vincent Cestone – But she has had over 3 years. She hasn't even put a shovel in the ground. And from what you are saying is that she doesn't have any intention of putting a shovel in the ground and that the plan is to sell with the approvals without even doing any construction. Is that correct?

Mr. Rost - Well she has had, let me just look in my file here if I may, she had some work done regarding the septic system and at that point she wanted to start building the house. She was getting a loan and so forth and we were

actually getting a loan ourselves. And as soon as we were ready to go and as you say stick a shovel in the ground, she became ill. So everything became halted, stopped and she ended up in Mayo Clinic in Florida. We moved her down there and yes, you are right, we are not exactly working on it now. We are maintaining it as much as we can under current standards so it is not decrepit.

Vincent Cestone – What would be the consequences if an extension was not renewed?

Mr. Rost - Consequences?

Vincent Cestone – Yes consequences. Some sort of financial consequences.

Mr. Rost - That would affect the selling of the house itself.

Vincent Cestone – Are you telling the people who are looking at the land that they have to build what was approved and nothing different

Mr. Rost - Oh no. Of course not. But we have an architect's plan. We have blueprints from a well known German designer, an architect from Berlin. Everything is drawn out and designed. I did a website on it. It, marketability for this proves much more valuable then selling it as here is the land, go before the board yourself and seek your own variance.

Robert Dee - That is done a lot. The land is sold. It wouldn't be the first piece of land to be sold in this Town under those conditions

Mr. Rost - I understand that. We are talking hundreds of thousands of dollars in medical bills and I am trying to sell this for as much as possible so we can retain that and not incur debt on to myself and my wife.

Bill Flaherty - If I understand you correctly you are going to sell this property with a blueprint already and an architectural drawing all ready to go? We granted a variance on his property

Vincent Cestone – Right. And it expired

Bill Flaherty - And it expired. And is this the last piece of property coming through that

Vincent Cestone – It is right next to Horst Bracke

Bill Flaherty - Is that all the way down?

Vincent Cestone – Looking at the left side

Bill Flaherty - Well that's a premium piece of property.

Mr. Rost - It is premium. No question about it.

Bill Flaherty - It would be very appealing to a prospective buyer

Mr. Rost - Absolutely and that's the other reason

Bill Flaherty - Have you had any offers on the

Mr. Rost - As a matter of fact we had an offer recently and then the variance expired and the people backed out

Bill Flaherty - Was that the reason the people backed out

Mr. Rost - Well they might be flaky about it too who knows. I frankly, I think it would be best sold with the plan in effect. It is designed for waterfront on the Hudson. It has a boat dock

Bill Flaherty - Well that is not a condition of sale

Mr. Rost - Okay. Well the piece of land is a long track and then you end up with a short piece of water front. So frankly it doesn't look all that attractive on its own.

Bill Flaherty - But it has Hudson river views

Mr. Rost - Absolutely.

Bill Flaherty - Had you considered lowering the offering price in an effort to sell it more expeditiously?

Mr. Rost - Of course

Bill Flaherty - You have

Mr. Rost - Yes. And the last offer was with the lower price

Bill Flaherty - And in a year and a half you had

Mr. Rost - It has been on the market for a year and a half

Bill Flaherty - And you've had how many offers

Mr. Rost - We've had two offers. One was way too low. I asked the board to please extend her, if you may, for six months. I will sell this property. I am

actively involved in this now myself.

Bill Flaherty - Well isn't our normal policy to grant a one year extension?

Vincent Cestone – Well we've already done it twice.

Bill Flaherty - We've done it twice

Vincent Cestone – Yeah. We can also set a condition saying that this will be the last time.

Mr. Rost - That would be fine with us. Absolutely. Like I said, I just got involved with this. And I hope you understand the conditions here.

Vincent Cestone – Anybody wish to speak on this from the audience? Any more questions from the Board?

Robert Dee - What concerns me is when you asked him the question are you telling people when they look at the property that this is the house that has to be built on the property your answer was no

Mr. Rost - I'm sorry

Robert Dee - When the question was asked to you when you get prospective buyers do you tell them that pretty much this is the house that has to be built on the property, your answer was no

Mr. Rost - Well currently it is a cottage for tear down. Unless they want to keep the cottage and rebuild a cottage but then they would have to come before you.

Robert Dee - Right I am saying that besides it can only be so many square feet, so big is what I am trying to say. That's what they got the variance on.

Mr. Rost - And I have also written a letter for you citing that they would have to sign off on the exact specifications that you required. Your requirement was less than 2,000 square feet. I think it is 1,984 square feet. I would ask the buyer, they would have to sign off on the exact height, the length of property, square foot

Vincent Cestone – You don't understand. They have to build that house

Mr. Rost - Yes sure

Vincent Cestone – They have to build that house

Mr. Rost - Of course

Vincent Cestone – Because those are the plans that have been approved

Mr. Rost - Right yes

Vincent Cestone – So the house sat, we originally approved, that is the one that has to be built. And if anything changes, if they change the windows, they have to come before us. Even if they wanted to add a deck on, they have to come before the zoning board. So these people would have to understand that this, see these plans, you have to build this house.

Mr. Rost - Right. And it is a very sellable plan. It has everything in mind for a view of Bear Mountain, the River and so forth. So I don't see any reason why it wouldn't sell. If they want to paint it green instead of yellow

Vincent Cestone – That's up to them. I am sure they would get a lot of phone calls. You know how that land, the people are down there. They will be watching and if that house is not built specifically to that specification

Mr. Rost - You go a foot above

Vincent Cestone – That's right. I'm sure your mother told you.

Mr. Rost - I have heard plenty of stories.

Bill Flaherty - Have a building permit been issued

Mr. Rost - That I don't know

Bill Flaherty - I haven't seen it in the file

Vincent Cestone – First you would have to have demolition come in. If she doesn't have a demolition permit, she didn't have a building permit.

Robert Dee - Okay

Vincent Cestone – So if there is no demolition permit, then you don't have a building permit

Mr. Rost - What she wrote is after this approval I prepared for building process; contract contractors, get bids. She worked on research, general contractors, engineering and septic tank from Badey and Watson and then she said that within 8 months of final approval of variance she developed health problems.

Vincent Cestone – Sorry to hear that. Any more questions from the board?

Adam Rodd – I would suggest just tracking the language of the statute in question it speaks to one year extensions

Vincent Cestone – Right

Adam Rodd – And that is for completion of construction. The statute talks about two years from the decision to complete the building. So what I would recommend as a practical matter if the board decides to grant an extension, since we are entering the winter months, we are now looking at a time to complete the construction. So I think realistically

Vincent Cestone – It would be this time next year

Adam Rodd – It would probably be a year

Mr. Rost - So the extension of variance would start at what point if it were granted?

Adam Rodd – It would be year from this month. October 2008

Vincent Cestone – Right

Bill Flaherty - But you would have two years to complete

Vincent Cestone – No. The variance expires. If it is not completed, the variance expires. The building permit is different.

Bill Flaherty - I understand that. But if the building permit were issued in the interim between now and the time that you sold the property in say January,

Mr. Rost - Winter time is the worst time to sell first of all. Spring time would be when we would sell it and I'll sell it

Bill Flaherty - But if you sold it in February, you would have two years to complete

Vincent Cestone – The variance would expire before the building permit. But that's not relevant because there is no building permit

Mr. Rost - So starting the variance this winter to me doesn't make sense either. I'd say start it in the spring.

Vincent Cestone – Well that's when you would have to, actually you really could put a foundation in now but you would have to do it right now. Okay. I'll make a motion to close the public hearing

Bill Flaherty - I'll second

Vincent Cestone – All in favor

All Board Members - Aye

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

Bill Flaherty - I'll second. I vote in favor.

Paula Clair - I vote in favor

Robert Dee - no

Vincent Cestone – I would vote in favor on the condition that this is the last one

Mr. Rost - And when would this start?

Vincent Cestone – I don't think the board has any issue with it having it go to a year from this month. So you would have to be complete by next October.

Mr. Rost - Complete by next October 2008. And if I may, why are you not in favor

Robert Dee - Well because I think you've had 3 years to do something about it. At least 2 years in trying to sell the property. It is going to be difficult to sell the property if someone has to build that house and that house only. Your intentions are not to build the house, your intentions are to sell the property.

Mr. Rost - True

Robert Dee - So that's why

Mr. Rost - Okay. I understand

Adam Rodd – I will have the resolution the 26th of November

Mr. Rost - And Mr. Rodd do I contact you or how does this work

Adam Rodd – I will have a written resolution that the board will vote on next month which in some substance will grant a one year final extension until October 2008 for completion of construction.

Mr. Rost - Okay. Thank you

Vincent Cestone – Review of minutes of September 10th. Do I have any

corrections? Motion to accept the minutes as submitted

Bill Flaherty - I'll so move

Vincent Cestone – I'll second. All in favor

All Board Members - Aye

Vincent Cestone – Minutes of September 24th. Any corrections? I make a motion to accept them as submitted. All in favor?

All Board Members - Aye

Vincent Cestone – Minutes of October 1st. Any corrections? I'll make a motion to accept them as submitted. All in favor?

All Board Members – Aye

Vincent Cestone – Even though no one walked in I am going to call Hugh Rossouw one last time. Since he is not here, this is the third time that he hasn't come for a public hearing. I make a motion to deem the application withdrawn. Do I have a second?

Bill Flaherty - I'll second.

Vincent Cestone – All those in favor

All Board Members – aye

Vincent Cestone – Okay. You're on Adam.

Adam Rodd – I think we are just here to approve draft resolutions

Vincent Cestone – That's correct

Kim Shewmaker - And one completeness

Adam Rodd – Oh, let's do the one review for completeness. I don't know if anyone is here for that

Samuel Slawinski - Yes

Adam Rodd – Oh okay. This is Arthur Lehman and Mary Gherty correct?

Samuel Slawinski - Yes.

Adam Rodd – Well I reviewed the file materials, we can have who ever is here on behalf of the applicants to give a quick overview of what they are going to do so the board can see if they require any additional information before the public hearing

Vincent Cestone – This is not the public hearing, this is quick

Samuel Slawinski - Okay. My name is Samuel Slawinski from Excalibur Enterprises and this is Mr. Lehman

Arthur Lehman - Hi

Samuel Slawinski - We've done some extensive research up there and had a bunch of local contractors and professionals to look at the site before we came up with this plan. Initially I asked Tom Monroe to come up and look at it to give us an idea and what we are looking for as far as a variance goes what we would need to request. Tom suggested that we get a complete survey and then I spoke with Glen Watson. We had an engineer up there. The site is extremely steep. East Mountain Road North. It is on the west side of East Mountain Road North

Arthur Lehman - North side

Samuel Slawinski - North side.

Vincent Cestone – So I can see the topo lines on this.

Samuel Slawinski - It is very steep

Vincent Cestone – So the issue here is that you are proposing a garage in this location instead of outside, within the setbacks

Samuel Slawinski - Within the setbacks

Vincent Cestone – Because of the

Samuel Slawinski - Steepness and it would require a huge amount of excavation and a lot of environmental issues would come up if we had to push this thing back and keep the 40 foot setback. If you are familiar with East Mountain Road North

Vincent Cestone – Yeah

Samuel Slawinski - There is not a single house on that road that meets that 40 foot front yard setback. We have letters from the adjoining neighbors that have also requested front yard setback variances for their garages

Vincent Cestone – okay

Samuel Slawinski - And as I said we were up there with engineers and with Charlie Polhemus excavators to determine what we could do. We made some adjustments to the size of the building and into the orientation, or initial spot had us right on the property line. And we made some adjustments to the design of the building and the orientation in order to push us back and get at least some separation.

Vincent Cestone – We will deal with that during the public hearing.

Samuel Slawinski - Okay

Adam Rodd – I do have one question. The setbacks, my notes that I took and I think it was from the application materials indicated that you proposed a, there is 40 feet required and I had, I wrote down and maybe I am wrong about this, but I wrote down 34 feet 2 inches

Samuel Slawinski - That is correct. We are proposing to put the building 6 feet off the property line so the variance request is for the 34 feet and we added 2 inches for adjustments to the survey, if there is a mistake in the survey or something like that. That was something that was suggested by Glen Watson.

Vincent Cestone – I will put you on for public hearing on November 26th. That is when you have to present this. It is because we have to notice this

Bill Flaherty - I have one quick question, in going through the file I noticed that you were previously getting a variance for the original structure

Arthur Lehman - In 1997

Bill Flaherty - Do you have a copy of that? Of the original variance

Vincent Cestone – It is probably downstairs

Bill Flaherty - Is the variance similar to what you are asking for here?

Samuel Slawinski - It is not quite as much. The house was an existing house on the structure that there was a renovation done to and the house, the position of the house didn't meet the current zoning requirements. So a variance was requested in order to get a building permit to do the construction and renovation on the house. So we had a variance for the house.

Arthur Lehman - We built the house on the original footprint in 1997

Bill Flaherty - In 1997

Arthur Lehman - It was 200 years old or 250 years old

Bill Flaherty - There are very few houses up there as you said that needed variances (inaudible)

Samuel Slawinski - The newer houses up past the right of way obviously they were constructed during the current zoning requirements. But all the existing homes, there is nothing there that is 40 feet back. The road is just too steep, the mountain there.

Vincent Cestone – Okay on the 26th we will deal with this

Samuel Slawinski - Thanks. Thank you very much

Vincent Cestone – Okay Adam. I guess Cross is first

Adam Rodd – Okay. I think I emailed everyone a copy of the Cross resolution. Did you want me to read into the record up to

Vincent Cestone – Like we have done previously front page and the conditions.

Adam Rodd – okay

Kim Shewmaker - You have the originals to sign off on?

Vincent Cestone – Yes

Kim Shewmaker - Okay. Just wanted to make sure

Adam Rodd – The Philipstown Zoning Board of Appeals conducted a public hearing, I am reading from James D. Cross,

Vincent Cestone – Okay

Adam Rodd – On September 10, 2007, to hear the appeal of the applicant James D. Cross from the denial of his request for a building permit to construct a second story addition as well as a rear deck on the applicant's existing one and half story framed dwelling located at 93 Lower Station Road in Garrison. The subject building permit was denied because the proposed second story addition as well as the rear deck encroached upon the required 40 foot front yard setback. At a public meeting of the board on September 10, 2007 and upon all discussion and testimony that proceeded it, site visits made by individual board members, and review of all submissions and proofs submitted to this board, Vincent Cestone made a motion seconded by Bill Flaherty as follows: Be it resolved that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New

York, determines and finds that the balancing of equities weighs in favor of granting the appeal of James D. Cross from the denial of his request for a building permit to construct a second story addition as well as a rear deck on to his one and half story framed dwelling located at 93 Lower Station Road in Garrison despite the fact that the proposed second story addition will at its northern end will be set back from the street line by a distance of 12 feet 3 ¾ inches and that its southern end be set back from the street line by a distance of 16 feet 3 ¾ inches and despite the fact that the proposed rear deck shall be set back from the street line by a distance of 30 feet 4 ¾ inches. The granting of the subject area variances with the following conditions for the reasons set forth herein shall constitute findings based on the factors set forth in Town Law Section 267-b. (1) the proposed second story addition shall not encroach further into the pre-existing nonconforming front yard setback and shall maintain a setback from the street line from the additions northern end 12 feet 3 ¾ inches and a setback from the street line from the proposed addition southern end of 16 feet 3 ¾ inches. (2) the proposed rear deck as constructed shall be set back at least 30 feet 4 ¾ inches from the street line. (3) the subject's second story addition and deck shall be constructed in accordance with the plans and drawings of Emery Colbert LP dated September 10, 2007. (4) the proposed second story addition will not be higher than the roof of the existing structure on the subject property. (5) the variance granted by this resolution shall not be enlarged or extended except in accordance with all provisions of the Philipstown Code and shall remain in the exterior configuration as shown on the plans for construction submitted to this board. No further enlargement, reconfiguration or extension to the proposed addition is authorized without Zoning Board approval.

Vincent Cestone – Any additional conditions? The only thing that I would want to add on this Adam is that the deck can't be enclosed, heated or plumbed

Adam Rodd – Or

Vincent Cestone – Plumbing or heated. Because we have seen decks turn into bathrooms and living areas. So if we can put in number 6 that the decks can't be further enclosed, heated or have running water.

Adam Rodd – I added number 6, the proposed rear deck shall not be enclosed, heated or have running water.

Vincent Cestone – Fine

Kim Shewmaker - Does spicket count as running water?

Vincent Cestone – Excuse me

Kim Shewmaker - A spicket on the back deck for a hose count as running water?

Vincent Cestone – I was having trouble hearing you

Kim Shewmaker - A spicket. I have a spicket on my back deck for a hose

(end of tape...turning over tape...may have lost some dialogue)

Vincent Cestone – what's the board's feeling? Then that's fine. Roll call

Robert Dee - I'm in favor

Bill Flaherty - I'm in favor

Paula Clair - Yes

Vincent Cestone – And so do I. Next on the agenda is Denise Enea.

Adam Rodd – Okay. Resolution on Enea. The Philipstown Zoning Board of Appeals conducted a public hearing on September 10th, 2007 to hear the appeal of the applicant, Denise Enea from the denial of the request for a building permit to reconstruct a two-car garage _____ 6 inches where the zoning ordinance requires a minimum side set back _____

Kim Shewmaker - The tape machine is acting weird.

Adam Rodd – At a public meeting of the board on September 10th, 2007, and upon all discussion and testimony that proceeded it, site visits made by individual board members and review of all submissions and proofs submitted to this board, Vincent Cestone made a motion seconded by Bill Flaherty as follows: Be it resolved that the zoning board of appeals of the Town of Philipstown, Putnam County, New York, determines and finds that the balancing of equities weighs in favor of granting the appeal of Denise Enea from the denial of her request for a building permit to reconstruct a two-car garage on the property located at 394 Sprout Brook Road in Garrison. Despite a resulting 21 foot 6 inch side yard setback. The granting the subject area variance with the following conditions for the reasons set forth herein shall constitute findings based on the factors set forth in Town Law Section 267-b (1) the reconstructed two-car garage shall be built in conformity with the document entitled Elevations/Plot Plan dated July 17, 2006 by John Lantini Architect. (2) the proposed reconstructed garage shall be set back from the left side yard lot line as in the plans presented to this board by a distance of 21 feet 6 inches. (3) the variance granted by this resolution shall not be further enlarged or extended except in accordance of all provisions of the Philipstown Code and shall remain in the configuration as shown on the plans for construction submitted to this board. No further enlargement, reconfiguration or extension of the proposed addition is authorized without zoning board approval.

Vincent Cestone – Okay. Any additions to the conditions? The only thing, the standard one that we just add about not heating garages because then garages turn in to living space again. Just like we did previously.

Bill Flaherty - Well he said he wouldn't do that.

Vincent Cestone – Yeah

Bill Flaherty - I think it does have water

Adam Rodd – One suggestion might be is that the garage may not be used for living space. Or for occupancy or living space.

Vincent Cestone – Okay. I am acceptable to that.

Robert Dee - Because he probably has electric in there and all that.

Vincent Cestone – He probably has a hose in the garage.

Robert Dee - Sure

Adam Rodd – The 4th condition is the subject garage shall not be used for any occupancy, for any residential occupancy purposes. Or for purposes of residential occupancy.

Vincent Cestone – I will make a motion to accept the resolution as amended. All in favor?

All Board Members - Aye

Vincent Cestone – Paula?

Paula Clair - Yes

Bill Flaherty - I'm in favor

Robert Dee - I vote in favor

Vincent Cestone – And so do I. Okay finally Lindert.

Adam Rodd – The resolution on Lindert reads as follows: The Philipstown Zoning Board of Appeals conducted a public hearing on October 1, 2007, to hear the appeal of the applicants, Thomas and Deborah Lindert, from the denial of their request for a building permit to construct a front porch and addition to the applicants' existing single family dwelling located at 27 Perks n Sons Court in Cold Spring. The subject building permit was denied because the proposed front

porch will encroach upon the required 40 foot side yard setback by a distance of 3 feet 5 inches and the proposed addition will encroach upon the required 40 foot front yard setback by a distance of 4 feet 6 inches. At a public meeting of the board on October 1, 2007, and upon all discussion and testimony that proceeded it, site visits made by individual board members and review of all submissions and proofs submitted to this board, Vincent Cestone made a motion seconded by Bill Flaherty as follows: Be it resolved that the zoning board of appeals of the Town of Philipstown, Putnam County, determines and finds that the balancing of equities weighs in favor of granting the appeal of Thomas and Deborah Lindert from the denial of his request for a building permit to construct a front porch and an addition located at 27 Perks n Sons Court in Cold Spring despite resulting encroachments upon the required 40 foot front yard setback. The granting of the subject area variances with the following conditions for the reasons set forth herein shall constitute findings based upon the factors set forth in Town Law Section 267-b. Conditions of the variance (1) the proposed front porch shall be set back at least 36 feet 7 inches from the proposed front yard lot line (2) the proposed front porch shall not be either enclosed or screened

Vincent Cestone – Can we also add heated there. Just put, enclosed

Adam Rodd – I would, a suggestion is to use shall not be used for any, the condition I had for the last one. My proposal would be the subject front porch shall not be used for any purposes of residential occupancy

Vincent Cestone – Fine

Bill Flaherty - It is a pretty small front porch

Vincent Cestone – But you know the close it in and take the wall down and increase the living area.

Bill Flaherty - You never know

Adam Rodd – So condition 2 would be modified to the proposed front porch shall not be either enclosed or screened or used for purposes of residential occupancy. (3) the proposed addition shall be set back at least 35 feet 6 inches from the front yard lot line (4) the variance granted by this resolution shall not be enlarged or extended accept in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on the plans for construction submitted to this board. No further enlargement, reconfiguration, or extension of proposed porch and addition is authorized without zoning board approval.

Vincent Cestone – Okay. I'll make a motion to accept the resolution as amended.

Bill Flaherty - I'll second

Vincent Cestone – All in favor

All Board Members - Aye

Robert Dee - Yes

Bill Flaherty - Yes

Paula Clair - I'm in favor

Vincent Cestone – And so am I. It's unanimous. On old business. I received a letter dated October 5, 2007, from Mr. David Weinpahl and he formally withdrew application 819 and he is subsequently requesting the original application 810 on the same matter that he reopened. Isn't 810 the one that we just said we were not going to re-open?

Adam Rodd – And we denied it. Doesn't the letter reference that?

Vincent Cestone – I'm sorry.

Adam Rodd – Subsequently I requested my original appeal 810 on the same matter be re-opened which it was not. So I think he is referring to the fact that we voted not to. Now he is saying please contact Tom Monroe to verify the application fee and escrow can be returned.

Vincent Cestone – He wants us to give Tom Monroe permission to give his money back?

Adam Rodd – I'll talk to Tom about that

Vincent Cestone – Did we get any engineering involved in that? No

Robert Dee - No

Vincent Cestone – All right.

Adam Rodd – So. I am not sure. I'll talk to Tom

Vincent Cestone – Okay.

Kim Shewmaker - I think he pretty much wanted 810 re-opened and didn't know how to go about doing it so he opened up a new appeal 819 thinking that would open up 810. Since we denied 810, he wants his money back from 819.

Vincent Cestone – Oh.

Kim Shewmaker - But you can verify that.

Vincent Cestone – Do you want to say something to the board?

Mr. Giachinta - No

Vincent Cestone – You are just visiting

Mr. Giachinta - Just visiting. Actually I wasn't sure if I was on the agenda for tonight

Kim Shewmaker - You're the application that I just got today?

Mr. Giachinta - Maybe

Vincent Cestone – Okay if there is no more business, I will make a motion to close the meeting. Do I have a second

Bill Flaherty - Second

Vincent Cestone – All in favor

All board members - aye

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

DATE APPROVED: 11 | 26 | 07

Respectfully submitted,

Kim Shewmaker
Secretary