

ZONING BOARD OF APPEALS

November 21, 2005

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, November 21, 2005, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

Vincent Cestone - First item on the agenda is Mary Ann Wheaton-Zelnik. Is there someone to speak for the applicant?

Patty Smith - Hello. I'm Patty Smith and I am the engineer for the applicant.

Vincent Cestone - If you can explain what you are doing and what you are here for

Patty Smith - There is a requirement to have an area, I've applied to the Planning Board first and was told I want a subdivision and in order to make it right for a lot we have to have 6,000 square feet that is a buildable area less than 15 foot _____ and I have here, oh, and it requires a minimum of 60 foot dimensions and we, there are two lots and one has a house on it and the house lot which is developed and landscaped has a dimension of 53 and I get the 65 and the 68. But I don't have 60 by 60 in it but I am only, one corner goes down to 53 and then I exceed by 8 feet in the other corner.

Vincent Cestone - So the issue here is total size or setback?

Joan Turner - 60 feet flat area is what the variance is for

Patty Smith - 60 feet in the 6,000 square foot required area

Vincent Cestone - okay

Patty Smith - I am short 5, 7 feet in the corner

Joan Turner - By how much Patty?

Patty Smith - 7

Lenny Lim - could you move the easel out it's too close in front of us

Patty Smith - The planning board did a preliminary review and they sent you a letter that they reviewed it and they recommended it to your board and they recommended it be approved. The property was two lots about 10 years ago and then it became one by the previous owner and the present owner would like to make it two lots.

Bill Flaherty - What do you propose to put on this lot?

Patty Smith - The lot that needs the variance is already developed. It has its own driveway and patio. This is the house and here is the pool, the patio, the retaining wall here and the driveway is in. The reason it is configured like that because there is a really nice flat area at the bottom for the septic. And the septic for this lot is here and the expansion is here

Joan Turner - Patty you were standing right in the way so if you just wouldn't mind going over that last point

Patty Smith - The house is here, the pool, there is a patio, there is a retaining wall above and below the patio, the driveway is here, the septic is here and there is room for expansion here and this lot has, meets the criteria and I had to reconfigure the bottom of the proposed lot to accommodate a flat area for the septic.

Joan Turner - Now does part of that septic expansion area go into the other lot

Patty Smith - No. This is the lot

Joan Turner - So that black line you have there goes up into the driveway of the lot that needs the variance to the left. That's not part of you septic expansion

Patty Smith - No. No. I'm sorry. I didn't explain what that line is. Those dark black lines are where we did field tops.

Joan Turner - I see. I've got it.

Bill Flaherty - The rear lot that is very steep isn't it?

Patty Smith - These are both very steep but no development is planned in the steep areas.

Bill Flaherty - Well they couldn't be developed could they?

Patty Smith - No. no. It is going to be two lots but this area that is nice and flat and this area is already developed and, this shows that the driveway is 14 percent and then 11 up to this point and then it is _____ and 14 percent. Getting to her garage exceeds 14 percent but it is an existing garage on the north end of the house.

Bill Flaherty - Does the other property have a road access

Patty Smith - This place where I have it proposed was looked out by the New York State DOT and we actually measured it in the field and it was 600 parts looking north and 560 looking south. And the criteria that we were doing it to and it met was for the higher speed limit. But they've lowered it so the, it would even be less.

Bill Flaherty - This other piece of property does not have another access, another driveway. They intend to use the same driveway

Patty Smith - The planning board is talking to me about the driveway. But I do have a place for it if it is going to be on that lot. But that is something the planning board wanted to discuss. But they weren't able to do any further discussions until the issue of the minimum dimension within the 6,000 square feet was resolved.

Victor Carlson - This board _____ give permission for a driveway

Tim Pagonis - Well I mean I think what happens is depending on the site line distance a lot of times the planning board wants to limit the amount of curb cuts. So here if you have the chance possibly to have a shared access, that might be better planning. What happened was, they took an initial view of the plans and said okay before we go any further we think it is a good idea, we think we would approve it, but you've got to get this from the zoning board. So certainly if you do grant the variance it would be conditional on getting the subdivision approval. But I would say do not, maybe you want to put in the plans that it is conditioned if possible due to, but I don't know, I am not a planner, I don't know what the site distance is, I don't know if it is better to have one access or two roads, or driveways going in. I would say leave that to the planning board.

Joan Turner - Yeah, that's a planning board decision I would think

Victor Carlson - I don't feel right about that. Because they should each have their own access

Vincent Cestone - Right now they do if you look at this

Victor Carlson - But they are talking about using both driveways

Vincent Cestone - You are going to use both driveways not one driveway for both

Patty Smith - This is the property line for the _____ between the lots. So this would be the driveway, for lot 2 would be separate. The driveway for lot one would remain. The reason it is configured this way is I had to show how it was right now. And the previous owner had considered doing this development and extended the driveway into the other lot. But they are not going to share it at this point. They both have their separate access.

Victor Carlson - I think by right they are supposed to have access

Tim Pagones - You can but I think, I guess I would say that is a planning board issue. They are here for a variance on that 60 feet. Now whether it is better planning to have a common driveway, I don't know. And I guess I would say that the zoning board should defer to the planning board when it comes to the lay out of the actual subdivision, where the road should be, whether there should be a common driveway or separate driveways.

Victor Carlson - I would like to see another driveway. I think by law they are required to have access

Joan Turner - Patty while they are looking at the driveway issue, you were saying that the maximum that you deviate from the requirement, the standard requirement is 7 feet. You have 53 feet and you are shy 7 feet.

Tim Pagones - I guess I would not recommend putting a limitation on the planning board.

Victor Carlson - This is not the planning board, this is the zoning board

Tim Pagones - I guess what I am saying is I don't know if it is good, the planning board which deals with subdivisions all the time might say you know what, it's better planning to have one access off of this road. Because unless you want her to go into what is the site line distance, what is all the things that the planning board. I guess that's in the purview of the planning board. If you want to put a condition, I will put whatever you want. I just think you should just grant the variance that she is looking for, if you want, and then tell the planning board we think, I'll put a recommendation, that we recommend that there be separate access. But I don't think you like when the planning board puts conditions on what the zoning board should grant. So here she is looking for a variance for the

7 feet

Vincent Cestone - Any more questions from the board?

Bill Flaherty - I just have one. On the proposed new subdivision, what _____

Patty Smith - Another house.

Bill Flaherty - A separate dwelling

Patty Smith - Yes

Bill Flaherty - Not a guest house

Patty Smith - No. It's going to be a separate lot

Bill Flaherty - It's going to be an entirely separate lot

Patty Smith - Yes. And I did test holes for the health department. I have checked the surrounding roads for septic. I have well locations.

Bill Flaherty - A separate family dwelling

Patty Smith - Yes.

Vincent Cestone - Any more questions? Any comments from the audience?
Can I have a motion to close the public hearing

Joan Turner - So moved

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

All Board Members - Aye

Vincent Cestone - I'll make a motion for a straw poll do I have a second?

Joan Turner - Second.

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - Lenny?

Lenny Lim - I vote in favor

Vincent Cestone - Vic?

Victor Carlson - I vote in favor providing that the other property have its own separate driveway

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor

Vincent Cestone - Joan?

Joan Turner - I vote in favor

Vincent Cestone - And so do I

Tim Pagones - January 2nd for resolution

Patty Smith - Thank you very much

Tim Pagones - Take the rest of the night off

Vincent Cestone - Okay. I am going to jump down to Paul D. Muscariello. Is there someone here to speak for the applicant? Come on up. Did I pronounce you name correct?

Paul Muscariello - Yes

Vincent Cestone - So you here about a shed. And the shed hasn't been built yet

Paul Muscariello - No

Vincent Cestone - And you are asking for a side setback and a front setback variances

Paul Muscariello - Just the front setback. I meet the side setback according to the code.

Vincent Cestone - Okay. And why can't you meet the front setback?

Paul Muscariello - The proposed area which is this area right here. This is where it is going to go. The proposed area right here. And right here is where this tree is, I didn't want to remove this tree, and the septic fields come right down in this area. So this was the only area that I could actually level off because the entire property is down hill and the house is set so far back that I can't, then it continues uphill again in this neighboring property. So this was the

best area that I could use without, with preserving the trees on the property, septic fields and an area that I actually had within the retaining wall here to make a level surface

Vincent Cestone - It's 10 by 12 and how tall is it going to be?

Paul Muscariello - I have the specs on it.

Joan Turner - I was there today to look at your property and as you come up your driveway you go right back to this steep hill that comes back and you have done some excavation there. That's not where you are going to put the shed?

Paul Muscariello - No no no. It is in the front where you saw the little short driveway.

Joan Turner - Oh right right. Okay.

Victor Carlson - Now is this shed going to be on a slab?

Paul Muscariello - No it is free standing. It sits on

Vincent Cestone - Blocks or something

Paul Muscariello - Blocks yes

Joan Turner - And you are saying because of the steep incline on that hill that runs down from your house to the road that is the best place that you can get it?

Paul Muscariello - Yes

Joan Turner - In other words if you wanted to back it up a little bit so that you did not need a variance you would have to excavate

Paul Muscariello - I would go into the septic

Joan Turner - You go into the septic

Paul Muscariello - yeah

Victor Carlson - How close to the property line is this going to be? The side setback?

Vincent Cestone - He meets the side setbacks. It is the front set back

Paul Muscariello - Right. 20 feet. I need 40 feet according to the code.

Joan Turner - Why wouldn't you put it back against, near the house where you had done that excavation? Just out of curiosity I wondered

Paul Muscariello – First of all, I have to put a retaining wall there and the second I need more parking for my kids

Joan Turner - Oh

Paul Muscariello – And it is difficult when people come up, if you see the stone wall that I built, it is very, most people don't even want to navigate coming up the driveway because they keep hitting the wall.

Joan Turner - So the size of the variance that you are asking for is how many feet

Paul Muscariello – 20

(everyone talking at once)

Paul Muscariello – a house just 6 houses up and this guy just installed this shed right here. You can see a corner of the car right here. I am just down the street. And this was only put in about 3 weeks ago and he is actually closer than I am proposing to put it.

Vincent Cestone - He hasn't gotten caught yet.

Paul Muscariello – Yeah. But this is what I am saying. You try and go through the right channels and do everything the right way and I was so aggravated when I saw that I photographed it. It would look something like that if you, and I planned on planting so it would be, yeah is about 6, and he is actually closer than I am.

Joan Turner - Are you in an R-20 zone

Paul Muscariello – I think it is R-20 yeah

Joan Turner - So your setback from the side is 5 feet right

Paul Muscariello – Yeah

Joan Turner - Okay and you need a 20 foot variance from the street line

Paul Muscariello – No from the pin. From the pin to the street is another 30 feet. And that particular one I selected because it was all made out of hardwoods and I thought it would go nicely with all the stone work I did and the whole landscaping

Vincent Cestone - And your fields and your expansion area are in the front of the house

Paul Muscariello – Everything is in the front of the house yeah, going down hill

Vincent Cestone - You have well or town water here

Paul Muscariello – Town water

Vincent Cestone - Okay

Paul Muscariello – And that comes up the left side

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

Joan Turner - So moved.

Vincent Cestone - Can I have a second?

Lenny Lim - Second

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - I'll make a motion for a straw poll

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members – aye

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - Joan?

Joan Turner - Yes, I'll vote in favor

Vincent Cestone - Len?

Lenny Lim - I'll vote in favor

Vincent Cestone - And so will I

Tim Pagones - January 6th

Kim Shewmaker - January 6th? Do you mean January 2nd?

Tim Pagones - January 2nd for resolution

Vincent Cestone - We just took a straw poll. The straw poll is a nonbinding vote. That is just to give the attorney instructions on how to write the resolution. So on January 2nd we will have a resolution which will be read into the record and then we will vote officially on it.

Paul Muscariello – Okay. And do I receive a letter or anything?

Tim Pagones - January 2nd, the first Monday.

Vincent Cestone - It will be sent down

Paul Muscariello – So I can't do anything until then

Tim Pagones - I will speak to Mr. Monroe and let him know what happened

Paul Muscariello – Okay.

Tim Pagones - Legally you can't do anything until you get your variance

Paul Muscariello – Okay because the guy gave me a date of December 6th again, I've postponed it. So I have to still wait

Tim Pagones - Yeah

Vincent Cestone - Next item we are going to do is Joseph and Ruth Caragine. Is there someone here to speak for the applicant? Hi.

Joe Caragine - Joe Caragine. What we are looking to do is we are on a one floor ranch right now with a crawl space underneath. We are looking to put a second story addition on it. The first variance that is required is the one corner that exists 7 feet from the property line.

Vincent Cestone - And show me on the drawing what you are talking about here

Joe Caragine - This corner here is already 7 feet from the property line

Vincent Cestone - And that is the first floor

Joe Caragine - Yes. And that's the first floor.

Vincent Cestone - Right. That is the existing structure. And when was this house built?

Joe Caragine - 1940

Joan Turner - prior to Zoning

Vincent Cestone - that's pre-existing non-conforming

Joe Caragine - there was a variance already given for that

Vincent Cestone - then you just are going up from that right in the same footprint

Joe Caragine - Right

Vincent Cestone - That's not an issue

Joe Caragine - Oh okay. I was told it was.

Vincent Cestone - When you are in violation, everything is an issue. So you have to come to us every time you do something

Joe Caragine - All right. The other one is on this side. We are going to put in a one-car garage on this side and the original survey had said that we were 11 feet from the property line. Now when I got it resurveyed, it became 9.5 feet. I don't know why I lost a 1.5 from the property somehow. So now this proposed garage is going to sit 9.5 feet from the property line

Vincent Cestone - And what's the, are you an R-20

Joe Caragine - R-10

Vincent Cestone - And you need 10 feet

Joe Caragine - Yeah

Vincent Cestone - So you are half a foot off

Joe Caragine - Yes

Vincent Cestone - Okay

Joe Caragine - And it is already a very narrow garage it's only 7 foot. Just enough to get a car in and out.

Joan Turner - Is it going to be a full 2-floor second store

Joe Caragine - Yes

Joan Turner - So you will come all the way up

Joe Caragine - Yes. This is a deck in the back

Joan Turner - I was there today. I saw it

Joe Caragine - This is all the existing here and we are going to go directly up from that and then over in this direction

Joan Turner - You already have your variance for this rear corner, the north corner.

Joe Caragine - Yes

Joan Turner - Was there is a condition on the variance that there saying that you could not expand upwards

Joe Caragine – no

Joan Turner - So you've got that approval. So you are going up where this shaded area

Joe Caragine – That's not going up. That's just going to be the deck

Joan Turner - That's going to stay the deck

Joe Caragine – Right

Joan Turner - So you are coming up here

Joe Caragine – Right on this line here

Joan Turner - And what are you doing here

Joe Caragine – This is a front porch here

Joan Turner - That's going to stay the front porch

Joe Caragine – That's going to stay and it is going be closed in and the door is

going to be on this side facing this way and that is going to be a porch over here

Joan Turner - And over here is where you are coming out and up

Joe Caragine – Right

Joan Turner - Where this covered

Joe Caragine – It's not there anymore

Joan Turner - You took the vinyl down but your framework is still there. So your garage will be there

Joe Caragine – yeah

Joan Turner - So your garage will be there

Joe Caragine – Right

Joan Turner - And what you are saying basically is that you are 6 inches shy. You need a 6 inch variance

Joe Caragine – Yes right. When me and the architect did the plans, I said do it so I don't need a variance. So he designed it 11 feet and for some reason when they surveyed it again, it is now 9.5

Joan Turner - It is sought of in terms of the neighborhood what is going on in the neighborhood

Joe Caragine – It is the smallest house in the neighborhood

Joan Turner - Yeah. And there are no alternatives for this.

Vincent Cestone - Your neighbor on that side, how close is he?

Joe Caragine – He is probably another 20 feet from the property line

Vincent Cestone - Okay. So he is not right on top of this

Joe Caragine – No.

Vincent Cestone - And what's along the property line? A fence?

Joe Caragine – There is a fence from about here back.

Joan Turner - And trees

Joe Caragine – And then there are trees

Joan Turner - Completely blocked

Joe Caragine – You can't see across

Joan Turner - It is very well screened

Vincent Cestone - Any more questions from the board?

Bill Flaherty - Are there going to be any additional bathrooms

Joe Caragine – We are going to make a bathroom upstairs

Bill Flaherty - And you have one currently downstairs

Joe Caragine – Right. We are going to make that a half bathroom. Just a toilet and sink

Victor Carlson - Has it been approved by the County?

Joe Caragine – We are not adding additional bedrooms

Vincent Cestone - I guess you are moving the bedrooms from downstairs upstairs

Joe Caragine – And then the downstairs is going to become dining room, living room

Bill Flaherty - And you are going to have a half bathroom downstairs

Joe Caragine – Yeah. We are going to make the full bath a half bath

Victor Carlson - I have another thing, on this original dwelling, is it on a slab

Joe Caragine – No. It is on a concrete foundation. There is a crawl space underneath.

Joan Turner - Do you have building plans that you submitted with this?

Joe Caragine – Yes

Joan Turner - That's what I thought. Oh here they are. So these are the plans that need to be approved. The total height of your

Joe Caragine – fits within what it is supposed to. I know that.

Joan Turner - Let me look at the specs.

Vincent Cestone - So I guess this is your maximum height here from ground level

Joe Caragine – Yes

Vincent Cestone - 27.7 feet on the hill side. On the downhill side it doesn't say but that's okay.

Joan Turner - Once we approve that variance, these are the plans that you are to build to

Joe Caragine – right

Vincent Cestone - Any more questions from the board? Any comments from the audience? I 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 - Motion for the straw poll please?

Victor Carlson - I'll move for the straw poll

Vincent Cestone - Do I have a second? I'll second. All in favor?

All Board Members – Aye

Victor Carlson - I'll vote in favor

Bill Flaherty - I vote in favor

Lenny Lim - I'll vote in favor

Joan Turner - And I concur

Vincent Cestone - So do I.

Tim Pagones - January 7th. January 2nd

Vincent Cestone - Do you want to have a meeting in the middle of the week?

Tim Pagonis - No.

Vincent Cestone - Kim, I'll have to sign these plans on the 2nd. Going up from the bottom, James M. Copeland for Hudson Design.

Justin Kacur - My name is Justin Kacur. My last name is K-A-C-U-R. I work for Hudson Design and we are the architects for the Walter Hoving Home. I would just like to talk about the Walter Hoving Home right off the bat. I will give you a brief description of what they do and what they have been doing since 1967. They have been operating as a safe base treatment center for ladies with life controlling problems such as drug addiction and alcoholism. There on approximately 23 acres in Garrison. And they have one home in Garrison since 1967 and another one they started in Pasadena, California in 1985. Each home serves approximately 60 women. The current population there is 66 which is 6 staff members and 60 women. The proposed population on doing these two projects would 190 ladies and 10 staff. Walter Hoving Home is a nondenominational and work with Churches of all faiths locally and around the world. The Home is geared towards rebuilding broken lives in an atmosphere of warmth, trust, support and love. The program consists of 12 months of learning center followed by 4 months of skill training and finding a job while still living in a home. The ladies in the program are very much involved with all activities of the home including cooking, office maintenance and learning center and all work together as a team. And the benefits and advantages of the Walter Hoving Home gives not only to Garrison but to society are innumerable. Getting to the architecture, we were focusing on the original context that existed on the site of the main house which is here and incorporating architectural elements and materials such as stone, stucco, wood trim detailing and slate roofing. All of as you can see on these two architectural renderings. The first project being the dining hall addition to the main house and this stand alone of two building each with two units for counselor housing. Each of the staff or counselor housing units is 1340 square feet each and they will basically house a married couple or singles in each of those. There is a main floor plan that you have here, which consists of a bedroom, bath, closet, living room/dining room, kitchen and stairs that go up to a sleeping loft for a guest. And downstairs to an unfinished basement/garage for parking with garage doors on it as you can see in elevations here. That's the plan, the roof plan and then the elevations are here. And again trying and keeping with looking at these elevations and this drawing keeping with the existing architecture which you see in these photographs of some of the buildings that we are looking at, the main house in general and there is a cottage on Avery which we are also looking at for inspiration. That's basically the staff housing. The dining hall the first floor would have kitchen, an office, a storage pantry, stairs, an elevator, a lobby and an main dining room which would seat 144 persons. The ground level, basement level, is a smaller footprint. We have two apartments, storage, laundry room, prayer room and

mechanical spaces. The two apartments would be for a lady who is in the program and they actually get days off, 3 days at a time where they can stay in one of the apartments or could be for a visiting pastor or a friend of a staff member. I have square footages of those projects as well. In general we went from here to the planning board and a sought of consolidated version of what we provided in response to the planning board, the town planner, the town engineer and the fire department have been calculations and engineering for water and sewer capacities, supply and demand, and volume. Drainage, draining, before and after photo simulations, sprinklers and all infrastructure, site and engineering details, construction access, garbage dumpsters and ingress and egress after the fire department reviewed it too. We needed another means of egress out of the main dining hall. And we provided a planting plan which you see here. Which I will let Jaime explain a little bit, species that have been incorporated into the planting plan and anything additional. Thank you.

Joan Turner - Excuse me. The height of the building that you were talking about

Justin Kacur - The height of this one is from the rear, the maximum height from the rear is to the ridge 38 feet and the dining hall is 36. We were told the maximum was 40.

Joan Turner - You don't have as far as I know, we don't have any architectural drawings with height on it that I know of.

Justin Kacur - We have submitted packages a while back in which, there were dimensions that were requested of us

Joan Turner - I thought so but I am not sure, I mean we've got these sketches, maybe these? We've got floor plans.

Victor Carlson - (Cannot hear him)

Justin Kacur - This is an addition to the main house, the main house is over here. This is just a partial step. So what you see on this is the addition only. **(Everyone talking at once)** This is the main dining hall, this is the walkway around, the kitchen back here and the loading area here. Off the driveway on the eastern side of the site. If you were to come in to the driveway off of Snake Hill Road, and proceed up the driveway, we would be off to the left on the plateau. And you have the grading here. These are the two, this is the driveway here and what you see if the sketch rendering here is just this portion right here and this is the existing main house.

Vincent Cestone - You said that you were before the planning board, did they come back with a recommendation because I don't remember seeing it.

Justin Kacur - They had written a letter, George Cleantis, October 6th

Joan Turner - Did we get a copy of that?

Tim Pagones - I remember seeing one

Joan Turner - You have never seen one

Tim Pagones - No. I remember seeing it

Vincent Cestone - Sometimes things get lost

Joan Turner - I don't think we had a copy of it

Tim Pagones - Here it is

Joan Turner - Oh okay, but there is no set notes on recommendations

Justin Kacur - And we had a final one that came from Tim Miller Associates too

Joan Turner - That's the one I am looking for

Lenny Lim - I don't see any dimensions

Joan Turner - Well we don't have a full set of architectural drawings, we have sketches

Justin Kacur - Well we actually have CAD drawings of the plans and the elevations and we can easily provide those dimensions off the computer in a matter of seconds. But just scaling it off at a ¼ inch and they are to scale, the CAD elevations are accurate and they underneath the height restriction.

Vincent Cestone - Okay because this board likes to see the actual

Joan Turner - The actual building plans. I think we've learned the hard way that we grant variances on actual plans

Vincent Cestone - And I sign them

Justin Kacur - You are talking about construction documents

Joan Turner - Show him the drawing that we just did for the last applicant

Tim Pagones - I think more of the outside dimensions, the height dimensions. They don't, I don't think they want to have, I don't think they have ever taken a ruler to the plans and measured

Justin Kacur – okay

Tim Pagones - So that it is something that is going to show that it is going be

Justin Kacur – We would feel that that would be, if we were going into construction documents to go to an extensive level of plans and not get approval that would be kind of

Lenny Lim - But there are no measurements, no dimensions, no heights, no anything here. Just drawings

Vincent Cestone - Right

Justin Kacur – It is very simple the CAD drawings

Tim Pagones - So we know the size of the building

Justin Kacur – In a day we can get that all to you

Vincent Cestone - Okay

Tim Pagones - It will be 37 feet high so they can refer to that plan that shows that

Justin Kacur – Okay, that’s not a problem

Lenny Lim - We are not going by these drawings

Vincent Cestone - No we are not going by drawings. We’ve been burnt on that before.

Justin Kacur – Okay. So is there any process, I mean what do we

Vincent Cestone - We would have to continue the public hearing and then we would have to come back. Because this is a public meeting and everybody has to have the opportunity to talk. In fact, once the board finishes here the audience has the ability to comment and then the next time they also have the ability to comment also.

Joan Turner - I would like either you or Jaime to talk a little bit more about the board of health and the septic system that is there and if you are going to upgrade the system. I will tell you what I know from going through the file downstairs, that the last time you were before us for a special use permit you had an upgrade of the septic sewage system and the maximum capacity that I remember reading was for 100 people. You were topped off at 100. Now you are topping off your population for this project at 100. Well what happens when

you have gatherings of friends and relatives coming for graduations or other events. How are you going to accommodate that overflow?

Jaime Copeland -The system has a margin, they have few events that last a few days. Graduation, but the engineer looking at have not found any problems for that increase or load. It is not a constant addition to the population. They are not people who come and stay. They are people who come for an event and then leave.

Joan Turner - Right. I understand that but when they are there for that event and you are already at your max according to what this board of health permit said, what happens then to that over usage? Of your septic system

Jaime Copeland -The engineer did not believe it was a problem. They gave us the referral to come here on that basis

Tim Pagonis - I believe when they were at the planning board, the drainage calculations, the septic calculations were all sent to BIBO Associates

Jaime Copeland -BIBO reviewed our documents, they had several requests of us and then we consulted with Badey & Watson for engineering calculations and they calculated everything from grading to drainage to catch basins, percolators, the sewage treatment plant, to the water capacity and everything checked out fine.

Joan Turner - Did that information then get filtered back to the board of health? For their approval?

Jaime Copeland - No not yet. But we did get all the calculations, we have all the calculations documented from Badey & Watson for everything on site, the well capacity, the flow rate and everything associated with the sewage treatment plant and it wasn't based primarily on the population but the usage of water and how much that system could accommodate.

Joan Turner - Because I know they were involved the last time that you were before us. I mean that was part of the whole special use permit. So I am, I think their documentation is in the file about that. That was a big question at least to the planning board.

Jaime Copeland - I think the reason they got involved was that was one of the primary reasons why they came in 1992 was for a waste treatment plant

Joan Turner - Yes. So this would not trigger their involvement

Jaime Copeland - BIBO saw our capacity, saw the uses on the weekend and felt that this was

Joan Turner - The engineers and your consultants, but not the board of health. Am I correct?

Jaime Copeland - It would have been premature for the board of health involvement at this point.

Joan Turner - But I don't know if it is premature for this board not to get involved with it. I mean it is a significant issue

Vincent Cestone - We can make it a condition though

Joan Turner - And I think that would be a condition maybe for consideration

Tim Pagonos - Well certainly in the resolution you put a condition that it is subject to board of health approval in any increase of capacity or usage

Joan Turner - Right I mean the concern that I have Jaime as you know is that you've got the expansion above the hill by the Garrison Golf Course also going into Phillips Brook and this would be another overflow into Phillips Brook. So I think the board really needs to exercise due diligence on this. But we can put it in as a condition

Jaime Copeland - Sure. We are not depending upon _____

Justin Kacur - We have also proposed that the existing granite reservoir that's covered, and at that location actually expanding the water capacity there. It now holds 20,000 gallons and has a lid on it but it is failing and we actually wanted to increase the water capacity and add covered tanks at that location to increase the water for domestic use and for fire fighting purposes.

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

Dorothy Gilman - I am Dorothy Gilman. I live at 31 Avery Road. I welcome that the board is looking for specs that have size and dimensions on it. Can I approach the Board

Vincent Cestone - Sure

Dorothy Gilman - I live in this area (**turning tape over...may have lost some dialogue**) ...there is no drainage coming down this road. The town has not provided it and _____. So that water seeps across that lot. Actually quite near the treatment plant. In the winter the water saturates the under layer of the road and spills out of this roadway on to Avery Road. The water continues down here and it is mostly seeping into my property because I am the lowest lot on that

side of the road and I am part of the original Walter Hoving Home property. The Halama's lot seems to be at road level, the cottage and the Tudor House that belong to the Walter Hoving Home seems to be road level. I am lower. If you continue down Philips Brook there is a shallow _____ and takes the waste water down into brook. However with these two driveways often times the water over spills the catch basin and over spills the relief system and into the other driveway. I am at the bottom of the hill and any construction that goes on up here, is going to affect the topography, the landscape, the water. I have a hard time envisioning how this is going to _____. Because the original house is here and this is somewhat enlarged in my opinion. It will be adjacent to the driveway coming down into Avery Road. And I, have you seen the plateau over by the brook?

Justin Kacur - Yes

Dorothy Gilman - Isn't the brook under the jurisdiction of DET?

Justin Kacur - We are more than 100 feet away from that water course

Dorothy Gilman - It is my recollection in the past you always had to have a permit (cannot hear her)

Vincent Cestone - Anybody else wish to speak

Dorothy Gilman - I have one other question

Vincent Cestone - Go ahead

Dorothy Gilman - There was an increase in capacity for 50 woman to live at the home but I don't hear of any change in the dormitory. Are you still going to use the dormitories down on the road side?

Applicant Representative - What we are going to do is with the new staff housing we will be moving some of our staff that is currently living in apartments in the dormitory to the new staff housing. Their rooms will be converted to make space for additional rooms. Right now we have the capacity for 60 woman and we want to go to 90. And eliminating those rooms that the staff currently lives in will enable us to have that capacity. The dining room has to be enlarged to fit that many woman.

Dorothy Gilman - With the current capacity and the increased capacity I could appreciate some screening along the lower level where the _____ lodge. (I cannot hear her)

Vincent Cestone - Anyone else wish to speak on this?

Jaime Copeland - She mentioned screening. There is a planting plan that calls for plantings along Avery Road. The hedge that was planted earlier down lower, we are picking up blueberry bushes that will probably be in front of your house, it's a row. We are also replacing some of the sugar maples that died over the years. We are going to replace the section that died out by the treatment plant. So the planting plan was another request by the planning board.

Dorothy Gilman - In addition to what is already there

Jaime Copeland - Yes

Vincent Cestone - Do you have an example of it that you can show us?

Jaime Copeland - The planting plan

Vincent Cestone - Yes

Jaime Copeland - This is of the upper planting plan. There is, we were using both species that deer don't eat. But also the idea behind blueberries is evergreen shrub. We also have mountain laurel and rhododendrons and we are moving, there are a couple of ornamental maples that are actually small enough. The idea was to fill in buildings, the maples may take a few years to become of a size of the mature trees that are out there but eventually the idea with the planting plan is that they would grow in and I really couldn't tell _____.

Lenny Lim - Do you have a planting plan?

Jaime Copeland - This is the planting plan. There are two parts to it. There is one up by the building and there is one down by the road.

Lenny Lim - But I don't see anything by the road, you are just sort of pointing your finger saying this is going to go here and this is going to go there.

Jaime Copeland - We will give you that plan that we gave the planning board

Vincent Cestone - When you come back why don't bring that with you. Introduce yourself.

Dan Halama - I'm Dan Halama. We live across from the Walter Hoving Home. We've been neighbors for quite a while. One of the things I would like to see is the existing property, the existing building and it's size compared to the new facilities because

Mrs. Halama ? - It looks monstrous. And it looks like it is going to destroy our neighborhood too. Did you ever look at the feel of our neighborhood? It is very rural and very nice. And we have lived there for 24 years and now there is going

to be 30 extra women plus 10 extra staff. I mean

Dan Halama - It's a 50 percent increase in the residents

Mrs. Halama ? - Plus we live across the street from that very wet area that Dottie was describing and I am very concerned about it. In 1992 there was a terrible smell that all the neighbors complained about and the source was the sewage treatment plant. Also disguising those homes, your plantings, the deer love rhododendrons. That is not going to work.

Vincent Cestone - Anyone else wish to speak on this? Sir?

Eric Jacoby - Eric Jacoby, Avery Road. I am not sure if this is the appropriate forum as far as regarding traffic. Is the increase in people, staff there, increased number of deliveries, and autos, I am not sure if I see on the plan if there is any plan for increased parking to accommodate the graduations and things like that.

Vincent Cestone - Does anyone else, the neighbors wish to speak on this before I give it back to the applicant? Go right ahead

Jaime Copeland - Parking. The planning board did have questions about parking particularly when they have the graduation ceremonies and extra people coming. We have a parking plan which shows to their satisfaction that there is ample room. There are fields that are not a part _____ and this, to accommodate those cars we are using something which is called grass pave. It is a mat and the grass grows through and it can take vehicular traffic but it does not look like asphalt. Basically it just holds the soil together that _____ you don't get ruts, you don't get the tires sinking into the grass

Eric Jacoby - Where is the location of that?

Jaime Copeland - Along, these are areas along Avery Road. This is Avery Road, this is the ground off of Avery Road. There is one row here and then two rows here. Now these are infrequent parking. This is for graduation ceremonies or when they have reunions, these are events that may happen once a year.

Eric Jacoby - Would any of that require _____

Jaime Copeland - No as a matter of fact the planting plan has taken this parking into account so the new trees that are added will be working around it. This is the row of evergreens that is being replaced. There is a section of it that has died. But the planting plan works around it.

Dorothy Gilman - This parking is in the field _____ my house is here. I am going to enjoy having 10 cars parked _____. I don't care if the trees are 20 feet high.

Jaime Copeland - This is not a permanent parking.

Dorothy Gilman - It's 4th of July, it's Labor Day, it's graduation. This is my home. I've been here 35 years. If I wanted to live in the Village, I would have come to the Village.

Bill Flaherty - Dottie have you ever voiced your concerns about the excess water runoff to the management of the Walter Hoving Home

Dorothy Gilman - I did when the treatment plant was approved, _____ there was a 12 inch pipe discharging water into the field. There is also now what looks to be a septic pipe right below the _____ and the engineer at the time said that I had not been observed. The discharge pipe for the treatment plant goes under the first roadway and goes into an artificial wetland which hugs on the backside of the current planting on Avery Road and goes down to the brook. Now there was a dog that went into that water several years ago and came with infected paws so I have another concern now about the magnitude of this project and in the past what currently goes down to the treatment plant and whether it will be _____. **(I cannot hear her)**

Bill Flaherty - I don't think the wetlands committee has reviewed this

Dorothy Gilman - It is not on wetlands. It is a wet lot.

Bill Flaherty - So it wouldn't require

Dorothy Gilman - No. It's not a designated wetland. Just land that has chronic water flowing into it. And it doesn't have the proper drainage at this point. I don't even know who's responsibility it even is. I don't know whether, I don't want it to be mine and my basement

Bill Flaherty - Well would this issue be the responsibility of the planning board?

Vincent Cestone - I am sure the planning board would do a drainage plan, but we can make it a condition

Tim Pagonis - I believe they submitted a drainage plans which went to BIBO right?

Jaime Copeland - Yes

Tim Pagonis - I will have to make sure that you have copies, I guess you don't have the complete copy of the planning board file

Joan Turner - No we don't

Tim Pagones - Which has all the letters back and forth from BIBO, you don't even have the letter I guess from Tim Miller

Joan Turner - No we don't

Tim Pagones - Which has his comments saying they have addressed this and this. But I believe the Planning Board has reviewed it, BIBO reviewed it, the calculations for the drainage, the calculations for the waste water treatment facilities, so I just will have to make sure you have copies of all that.

Vincent Cestone - And I will email George Cleantis and ask him

Tim Pagones - Okay

Vincent Cestone - Any more comments?

Joan Turner - I just as a side. I don't think this is relevant. But the funding for the project is coming from where?

Applicant Representative - The funding will come from private donations. That's where we get all our money, private donations, churches (**cannot hear her**) ... so we will raise it. It will be a 6 million dollar project. And we will have to raise all that privately.

Joan Turner - You don't have the funding in house now

Applicant Representative - No we don't. We have to go through this process before we raise the money

Dan Halama - I am curious as to the amount of square footage that the dining facility, kitchen facility. What is the square footage of that compared to the existing home. Because from looking at the renderings

Joan Turner - That's a question we are interested in too

Vincent Cestone - We are interested in that because these plans don't show any of that. We are interested in looking at a full site plan, sizes of the structures now, what you are adding, dimensions for what is being added

Justin Kacur - Is not any of the planning board file come

Joan Turner - No.

Tim Pagones - It seems that they are going to continue this hearing. Why don't we give the applicant a list of things

Vincent Cestone - Oh we will

Joan Turner - I wondered if as a board we could meet with either one of you and have a site visit where you would explain exactly what you propose and look at some of the issues that have been addressed and concerns of the residents and you can do that for us

Justin Kacur - That would be fine

Joan Turner - Or we can do it individually or we can go as a board

Tim Pagones - Well if you go as a board, it is a public meeting. So if you want to do 3 or more you have to put a notice in the paper. If you want to do it individually that's more of a hassle for the applicant and for the representative

Vincent Cestone - We can go 2 at a time

Justin Kacur - We are right up the road and I am at the office all the time. So if anybody wants to meet with me, I'll walk them through with the drawings and show you what we have done thus far including the engineering that has been done which includes drainage, BIBO reviewed the whole package and gave us their comments on what they saw and then we had engineering calculated and worked out with Badey & Watson who know the site very well, they did the last survey on it and they gave us all their numbers and calculations on our drawing.

Joan Turner - Give me some background on BIBO. Are they an independent engineering firm?

Tim Pagones - BIBO is the County's

Justin Kacur - We gave the packages to BIBO and they reviewed everything and came back with their comments. We went over the comments with Badey & Watson and they calculated everything for us.

Joan Turner - So those are the records that we need

Justin Kacur - Part of the reason BIBO was used was to keep it ongoing. They are a firm down in Westchester. They have been hired independently to do this. And they are very extensive. We can show you the _____ that they required of us. They were concerned about every gallon of water that came off the roof

Tim Pagones - They were in front of the planning board for a while and a lot of special use permit like the cellular towers are there one time. They were there for months. I think the last time, I am trying to think when the applicant was here, but I will have to get you copies

Joan Turner - I think it would be helpful just to have that file downstairs so anyone that is concerned it is open to them and they can come and look at these reports

Tim Pagones - Well I am sure the planning board files are there, but people don't realize that there are two files.

Joan Turner - Right

Tim Pagones - There is a whole separate file for the planning board and they are looking at the zoning board file and there are no correspondence from BIBO and everything like that.

Joan Turner - If we can consolidate them that would be helpful.

Lenny Lim - I have a question. How big is the dining hall right now? How many people?

Justin Kacur - The existing

Lenny Lim - Right now

Justin Kacur - About 75 right now it can serve. It is in the main residence right now. There is an existing kitchen and dining area in the main house but it is just not big enough. One of the reasons it is not adequate is they dine as a family. Currently the house there has a dining room, parlor, sitting room and they are kind of scattered in those three rooms and it is not an ideal place to have an atmosphere of home and family. So this will allow them to have a dining hall. Those rooms will then be available as classrooms, rec rooms and small meeting rooms.

Joan Turner - In your statement of use you say that the total building square footage will be approximately 9,000 square feet. Is that with the dining hall addition. So the addition and the existing house will be 9,000 square feet? Or is the addition? It is in your statement of use, a nature and extent of dining hall addition.

Justin Kacur - The total footprint is currently 7,500 square feet

Joan Turner - So then we have a difference here. I have the total building square footage will be approximately 9,000 square feet

Justin Kacur - That's the total building

Joan Turner - With the addition and the building. Do you follow what I am

saying?

Justin Kacur - I am not sure what you are looking at

Joan Turner - You are building an addition on to an existing building. So that total building when it is finished with the addition will measure 9,000 square feet

Justin Kacur - Yes

Joan Turner - And then, this is to address some of the concerns you had about size, and then the staff housing you had each residence will be 1340 feet times 4. That's about 5,400 hundred square feet.

Justin Kacur - 5360 of habitable space. That does not include the unfinished garages

Joan Turner - so your bulk may be 6000

Justin Kacur - yes

Joan Turner - so that's roughly what you are looking at in terms. And these files are downstairs for you to look at so when you come back to the next hearing you should address further concerns that you have

Vincent Cestone - One last question and then I am going to continue this public hearing. Go ahead.

Eric Jacoby - This is regarding assuming that the construction is approved and it goes forward, will there be a construction entrance not on Avery Road since _____ Road is more of a public road, it has more traffic. So as to not have the construction vehicles coming in off of Avery Road with a 6 million dollar project, that's a big project which will require a lot of staff and a lot of vehicles. I would have some concerns about

Vincent Cestone - Okay. With that I will just take your question since you've been raising your hand.

Dan Halama - I am just trying to get an idea of the size of this facility, the additional facility compared to the existing home and how bad it is going to impact Avery Road and as a neighborhood

Vincent Cestone - Right and that's what we are going to try and do too because we don't have a good picture how big this is going to be either

Dan Halama - What was this whole addition when the school built the additional

Justin Kacur - We have plans here if

Dan Halama - Not in terms of square footage but in terms of magnitude in dollars that I recall that was a 12 million dollar project

Vincent Cestone - But you have to realize that this is drainage, plantings, septic system, water. It is not just the structure. What we'll do, we need a lot more information for our next meeting. I don't have my calendar

Tim Pagones - Well January 2nd and January 23rd

Vincent Cestone - Well what do we have on?

Tim Pagones - What do we have on the 2nd?

Kim Shewmaker - You have 3 public hearings and 3 resolutions

Tim Pagones - On the 2nd?

Kim Shewmaker - Yes on the 2nd. On the 23rd we just have OmniPoint Public Hearing

Vincent Cestone - Let's do it on the 23rd. We are going to continue on to the 23rd of January.

Tim Pagones - Now what information do you want? I know you want to see some heights on their plans

Joan Turner - We would like to see the bulk outline

Tim Pagones - The dimensions on the bulk, the building

Joan Turner - We want to see the BIBO engineering report

Tim Pagones - We will get all that. I just want to know what you need for them to prepare? The full planting plan right?

Vincent Cestone - The drainage plan, what you are going to do with the water. How are you going to handle the traffic because I'm fuzzy about how the traffic is impacting the neighborhood, if there is going to be an addition. I don't know if there is a lot of in and out. There may or may not, think about it. And anything else from the board?

Justin Kacur - There is not a lot of traffic and the food deliveries are all during the week, one a week.

Vincent Cestone - Think about it and make sure you're right

Joan Turner - We'll just need your phone number and we'll just call and go in 2s and 3s

Vincent Cestone - We will go no more than 2 at a time

Justin Kacur - Okay

Vincent Cestone - Because otherwise we have to advertise it in the paper and

Justin Kacur - Do you want the phone number now

Joan Turner - Yes

Justin Kacur - 424-4810

Joan Turner - and your name again

Justin Kacur - my name Justin Kacur

Joan Turner - thank you

Justin Kacur - Here are some business cards for the Walter Hoving Home.
Thank you

Vincent Cestone - Next item on the agenda is

Audience member - Did the Zoning Board ask for a artist rendering of what the facility will look like with the main house and that rendering as well. I think it is the aesthetics

Joan Turner - Jaime do you have this

Justin Kacur - A rendering with the house on it

Audience member - What it is going to look like when everything is complete

(everyone talking at once)

Vincent Cestone - and just bring your planning board files with you.

Justin Kacur - Sure

Vincent Cestone - Next item on the agenda is Alvin Friedman-Kien.

John Hirsch - Chairman and the board I am John Hirsch. I have the privilege of representing Dr. Kien and with me tonight is Ms. Tortorella who is counsel to Dr. Kien and Mr. Watson who is Dr. Kien's engineer. I had asked that this be on the agenda this evening for an interpretation as to whether or not Mr. Monroe was incorrect or correct in not reinstating Dr. Kien's building permit. Back in 2004 his septic permit had been suspended. Two conditions were imposed upon him by the code enforcement officer one of which was to have an up to date septic plan which was accomplished expeditiously and the second was for the applicant to revisit the planning board. We took a look at the file and that was for site access on Cloud Bank Road, we took a look at the file and determined that back in 1982 the site access had been reaffirmed by the planning board and there are minutes in the file and for you would indicate that his access is usable without any _____ as to time. Based upon that finding in the Planning Board that a legal issue arose I asked the Dr. to come to your board and ask your Board to determine if Mr. Monroe is incorrect and if once the septic permit had been reinstated by the County Board of Health that the applicant is entitled to the reissuance of this building permit. The legal issue Mr. Pagones is familiar with it and Ms. Tortorella is co-counsel and she will explain to you in much more detail why that site access is in perpetuity and usable today. And obviously if you have technical questions, the engineer is behind me and he has the site plan and everything else that we are going to need. Thank you.

Geraldine Tortorella - Good evening. For the record my name is Geraldine Tortorella and I am a partner in the law firm of Hakman Tortorella and _____ and we are zoning counsel for Dr. Friedman-Kien along with Mr. Hirsch. I had submitted to your board and you may have seen it or you may have not seen it yet, a letter with a series of exhibits that were attached that probably arrived this morning to Town Hall. I don't expect that you have had an opportunity to review that and I will review that material now but I wanted to submit the information that we had collected from historical records from the Town to you in that sort of fashion so that you could review it and go back to it. Before I go into the legal reasons why we believe the access approved that was originally issued in 1970 is still in full force and effect, I wanted to give you the context of the application, the context of the property and historically the permits and approvals that had been granted for the property. All of which really bear on the continuity on the access approval and our interpretation. What you have in front of you is a composite map that Badey and Watson prepared for us which provides you information about Cloud Bank Road and the _____. In this location right here where I am pointing on the left side of the map is Route 9D. Old Manitou Road which is a Town Road comes off of 9D and Cloud Bank Road is a winding road that comes off of Manitou Road and goes up to the top and ends with these properties up at the top of the hill. Dr. Friedman-Kien's property is right here on Cloud Bank Road and as you will see there are a series of parcels that go beyond Dr. Friedman-Kien's property that the map indicates have been approved for various structures. What Badey and Watson have done here is after reviewing building department records for building permits and certificate of

occupancies they have shown on the various lots on Cloud Bank Road and surrounding marked in red the property that have been approved with principle residences so you can get a feeling for how developed the road parcel is. This property was originally owned by Jean _____ and it was part of another parcel that abutted it. And in 1970 she contracted to sell it to a Ms. Diller who applied to the planning board for approval of access as our first act. That approval was granted in 1970 and we provided you with a copy of the actual approval from the planning board, that's exhibit A to our submission that you have. And it is a resolution of approval indicating that at the time of the approval in 1970 there were actually 9 buildings or permits for the erection of 9 buildings that had been issued in connection with Cloud Bank Road. So I am trying to give you the sense of what the status of what the improvements were in 1970 when that access approval was originally granted. That contract was never consummated and Ms. _____ continued to own it. She sold it to Dr. Friedman-Kien in 1978 and we provided you with a copy of his Deed to his property and part of that conveyance included a permanent right of access and utility easement over Cloud Bank Road. Cloud Bank Road is a private road. It is subject to the open development area general regulations in your code which means building permits can be issued for houses on that private road even though the road has not been dedicated by the town. In 1982 Dr. Friedman-Kien applied for a building permit from the building department and he was advised at that time that prior to having a building permit he would have to get approval of the access from the planning board. So he returned back to the planning board. And we provided you with Exhibit B the minutes from the planning board meeting in 1982 where the board considered the request. And the outcome of the meeting was that the board determined that the original access approval from 1970 was still in full force and effect and usable, being termed in the approval because neither the approval nor the development open development area regulations have any time limitations for approvals that are issued on private roads. Subsequent to that a building permit was issued to Dr. Friedman-Kien. In the late 1980's he proceeded to start the construction of a foundation for a garage on the property which for reasons unrelated to his relationship with the town or the status of his approvals was never completed. That building permit has continued to be extended since the time it had originally been approved and prior to the _____ by the code administrator in 2004, it has actually been extended through 2006 and we have provided you as one of the exhibits the original building permit and all the extensions that have been granted. So up until our issue arose in 2004 the building permit had been renewed and revalidated and in existence through 2006. In 2003, the later part of 2003, a prior engineer working on the project had obtained approval, a septic permit in essence, for the construction of a septic system on the property. And when Dr. Friedman-Kien's contractor started to get prepared to do that construction work and look at the plans, he identified some elements of that design that would require further discussion with the Health Department. In once instance there was an area of substantial fill that was going to be required for the construction of the septic system and a very substantial retaining wall. Both of which the contractor thought he should consult with the

health department further. So he and Dr. Kien did talk to the health department. The health department agreed with the contractor and Dr. Friedman-Kien that an alternate design should be investigated that would eliminate the need for such extreme measures to construct the septic system. And as a technicality the health department had issued a stop work order for the septic permit that it had previously issued in 2003. It also communicated to the code administrator advising the administrator that the septic permit had been suspended and asked that the building permit for additional construction on the site could occur, also be issued a stop work order. And that did occur. In May of 2004 the code administrator issued a stop work order to Dr. Friedman-Kien citing that the violation the issuance of the stop work order by the health department. And that is also an exhibit in submission that we provided you. It is exhibit I if you wanted to look at it. And the reason that is important is because the stop work order states that no further construction can occur on the site until the violation cited in the stop work order was corrected. Dr. Friedman-Kien retained inside engineering for which Mr. Watson is an employee. And they proceeded to do additional work in order to get an updated or renewed septic permit. Additional topographical information that was required. Deep hole tests where required, percolation tests for the septic design. And as Mr. Hirsch indicated that new septic permit was eventually reissued. However, before the new septic permit was issued, the building, the code administrator sent a letter to Dr. Friedman-Kien advising him that he was going, he was revoking the building permit and that in order to reinstate the building permit there were two requirements or prerequisites that had to be met. The first was to obtain a new septic permit and approval from the health department, which we have obtained and supplied you a copy of. And, the second was to get access approval. Believing that the access approval process was a relatively simple one and not really understanding that there may have been an approval already in existence, Dr. Friedman-Kien did make application to the planning board and that's when Mr. Hirsch became involved and did the review of the file and realized that the approval was actually in effect dating back to 1970. Now in our view, both of the prerequisites for reinstatement of the building permit have been met as I just described to you. If you look at the original approval back in 1970 as reaffirmed in 1982, there is no limitation, no time limitation imposed on the approval. We researched the local regulations carefully and we find that there is no time limitations that is imposed on the approval. In contrast to other types of permits that are issued.

Vincent Cestone - Have you reviewed case law on this?

Geraldine Tortorella - I have. Actually we cite case law in our letter of submission indicating that in the absence of an ordinance provision which authorizes the imposition of a time limitation, the types of permits and approvals that we are talking about are basically perpetual at this time.

John Hirsch - _____ the record itself contains this town's planning boards

statements back in 1982, his permit, his access permit was usable in perpetuity. So not only does counsel rely on cases, court cases, we have in record this town's own planning board's minutes with respect to this precise issue. Which is why I feel the applicant should be in front of this board.

Vincent Cestone - Just out of curiosity wouldn't it be quicker for you to go back before the planning board and get this done?

John Hirsch - It's not a question of quick. It's a question of what does the law require of the applicant. And if you look at Tom's letter from 2004, he says A, get something from Carmel and B, go to the planning board for access approval. Once it is determined that access approval is there and the Putnam County Board of Health approves the septic design, the test has been met. There is no reason for the applicant to jump through any more hoops. It doesn't have to go before any more boards, he doesn't have to spend any more money to do what he already has. That's why I believe that under the statute the ZBA has the authority and the jurisdiction to review the determination of the code enforcement officer. If the applicant has point A and point B, and Tom's wrong, it is up to this board to take a look at it and say you know what, this applicant has Points A and B.

Geraldine Tortorella - Well what's important though in referring back to 1982 reaffirmation by the planning board that at that point in time and you will see it in the minutes, the planning board members actually question the wisdom of having a time limitation on this type of approval. It was originally granted in 1970 and nothing happened from that time forward. And the conclusion that was reached was that while it may be nice we know that there is no such time limitation in our ordinance and therefore we can't read one into it and this approval continues in full force and effect. From 1982 to today there still has been no amendment to the general regulation dealing with the open development area that would impose that kind of limitation. So as much as the case law that we cited, I agree with Mr. Hirsch that the determination was made in 1982 and no change in the legal status of the regulation since that time.

Vincent Cestone - How come you have not built since 1982? That's not clear to me.

Geraldine Tortorella - There are a number of different reasons. There were different plans for the site originally. Dr. Friedman-Kien had originally intended to construct a home for his parents to retire there and that wasn't possible because of health consideration for his parents. Dr. Friedman-Kien is a resident of the town. He owns a home in the town and has been an active supporter of various _____. He is not an outsider.

Vincent Cestone - But it has been over 20 years.

Geraldine Tortorella - That's true

Joan Turner - There is no time limit

Geraldine Tortorella - _____ and permits are not intended to force people to take action within a certain period of time unless

Vincent Cestone - I am just trying to understand why something hasn't been done in 20 years. Saying that a lot of things have changed, I am trying to understand it has been over 20 years

John Hirsch - Your records before you contain building permits that this gentleman got and kept up with the town from the he bought the property up until today's date and in fact as counsel said the building permit presently in effect is good until next year 2006. So he has complied completely with each and every regulation

Vincent Cestone - Well I guess you are not going to answer the question

John Hirsch - He has a house on Manitou at this point. Down at 9D. It is not a question about not answering the question, he didn't build it. His parents were going to live there, they are not here anymore so he didn't build.

Joan Turner - But that is not the issue before us. The issue before us is really does he have access and does he have a right to a building permit. And the access is undeniable. It is in perpetuity. He has access. The only question I have about this is the, in my reading of the code the building permit should be revoked, unless I didn't see it in the record, a full scale building, set of building plans. I mean one of the requirements for a single family residence is to have a set of plans

John Hirsch - There are plans in Mr. Monroe's office

Joan Turner - I didn't see them when I went down to that file. So you do have

John Hirsch - Yes

Joan Turner - Okay. I could have just over looked them. You went with a building, a house plan, architectural renderings, etc, and you got a building permit for that house

John Hirsch - A building permit for

Joan Turner - Then that's good

John Hirsch - Tom is not saying there is no plans there. Tom

Joan Turner - I went to the file and I didn't see them. So I could have overlooked them

John Hirsch - You can't issue a permit without

Joan Turner - Exactly. So you have the plans

John Hirsch - The plans are there

Geraldine Tortorella - I can't tell you why the building permit was revoked. I can't make sense of that because a stop work order was issued in response to the health department's issuance of the stop work order. I can make a connection between those actions, I can't explain to you why the building permit was revoked and why this additional prerequisite was added to the list of things to do. But, because there wasn't any change in circumstances with respect to the access approval. We even provided you with information that we took a look, not only did we take a look at what happened in 1970 and 1982 but we looked at what is actually occurring at this point in time on that road. In 1970 when the permit was issued, I made reference to the 9 buildings or permits for building had been issued, in 1982 a similar reference was made in the discussion so we still have 9 as a kind of base line number of structures. In this situation we are talking about what would be at worst the 10th structure, principle structure that would be constructed on Cloud Bank Road. So we are not even talking about a significant difference in the level of use of this road dating back to the 1970s here.

John Hirsch - Really, that is not the issue before this board this evening with respect to this application. It is a very narrow legal issue with respect to the code enforcement officer and the review of the determination he made. And as Ms. Turner said, once we prove to you with the town planning board's own minutes, that this access is in perpetuity and usable. And once the Putnam County health department approves the septic, and reverses or revokes its stop work order, I think it is mandatory that the board direct the code enforcement officer to reinstate the building permit.

Vincent Cestone - Any more questions from the board? Any comments from the audience? Introduce yourself please.

Margaret O'Sullivan - Margaret O'Sullivan. I live on Old Manitou Road just below this property. In actual fact there are 8 residences (**changing tape...may have lost some dialogue**) ... Dr. Friedman-Kien had his permit well 20 years, over 20 years, and nothing has been built. Two or three years ago, maybe four years ago there was quite a few trees cut and they were burned and they were left burning, the logs were left burning and in fact we had to call the fire department to come and put the fire out. But that was once incident that

happened. In late 2004 the trees were clear cut on the steep slope owned by Mr. Kien. After which I believe his building permit was revoked. The trees have created now quite a water runoff onto Old Manitou Road because the water flows down because there is nothing to hold the water, nothing to stop the water. And it is washing out Old Manitou Road. Some of the drainage that has been done I believe on the property, I am not a drainage expert I don't know, but the water runoff has changed and as you know when you have severe rain on these hills, the water has to go somewhere and it finds the easiest course. And it is coming right down the mountain and washing the Town road. So the Town is now upset at the residents on Old Manitou Road. So, I am sorry Cloud Bank Road. So it is a problem. In 1985 there were two pieces of property that OSI wanted to build on and they were denied. It would have brought the I believe the amount of houses up to 12 on that road. So they were denied I believe by you. And I just have a problem with another house on Cloud Bank. He might be entitled to access but I just have to see how it works out.

Pat O'Sullivan - I'm Pat O'Sullivan. I live on 28 Old Manitou Road. It was mentioned right from the beginning that about 9 structures or 9 dwellings on it. I always knew, or I thought I knew anyway until tonight, that prior to the, on a private road that there were 8 dwellings permitted. And now it is 9 that is prior to the new code coming out which is 4 being on a private road. And I think maybe an accommodation was made and this, I am just saying that we had a 9th one on which was originally Dr. Kien's approved and there was a 10th one that was just approved or just approved now because somebody at the top of the hill showed that there was a residence, a converted barn, in the 1930's prior to that. So Dr. Kien was really 9, we'll just say with his permit which was in violation of the number 8 law, and now it was compounded by another CO being given to the barn at the top which makes it number 10. As my wife said, in 1985 approximately, it was 30 acres of land off the Cloud Bank Road situation that OSI picked up and came before the planning board for a 2 lot subdivision. And it was denied because of the road access. Not the access but because the number of units that would be on that road. And so we go from 8 to 10, I mean if I came before the board on something else and wanted right now to apply for a fifth lot on a four lot road, or I should say a private road now that has four lots, more than likely I wouldn't be granted it. But here we are going back and we are just compounding a violation that I feel is a violation of the old statutes.

Vincent Cestone - Tim, do you know off the top of your head, is it 8 or 10

Tim Pagones - Well I think any right of way before like 1968 you could have 8 and anything afterwards you can have 4

Joan Turner - In 1987 the law was changed

David Brower - 1980

Joan Turner - 1980

David Brower - the book says 1980. Any right of way existing before 1980 you are allowed 8 houses.

Pat O'Sullivan - But we are over the limit even with the 9th

Joan Turner - But in 1970 this open space development was granted for 9. The Planning Board gave them access and that is in this planning board and that they have access to it.

Pat O'Sullivan - So in other words the rule that was there that says only 8 houses on a private road really doesn't mean anything

John Hirsch - That's not what she said

Pat O'Sullivan - No no no I am just saying it gave access to a 9th property

Joan Turner - Prior to 1970 the planning board within the law gave them access. After 1980 as David said the law was changed for this new ruling. So if you came before the board after 1980 you would be held to that. Prior to that it was a different law. So their law since there is no time limit on that law, that stipulation, they have the right to access to that development and the right to a building permit

Vincent Cestone - They have a right to an access

Joan Turner - And to a building permit. That's what the scope of an open development thing is

Vincent Cestone - But that's not what is before us

Joan Turner - But it is, it is an interpretation of the

Vincent Cestone - Right of way

Joan Turner - Of access and building permit. And if you look at open development the law in open development, it says the scope is the granting of a building permit and

Tim Pagones - I think the whole gist of the applicant saying you know what we got access and a building permit in 1970

Joan Turner - 112.53

Tim Pagones - and we never lost it

Joan Turner - and they had a building permit and whatever, and that goes from 1970 and then the law has changed so but what is before this board is the interpretation of the law in 1970 with this building permit which he has a legitimate right to. And a legitimate right to access

Pat O'Sullivan - maybe I just don't understand what you're saying about open development. Because if the law said 8 dwellings on a private road prior to 1970

David Brower - no prior to 1980. Before 1980 there was no open development areas. In 1980 they created an open development area which said from now on if you create a right of way you are allowed to put four houses on that right of way. Any right of way pre-existing 1980 you were allowed to have 8 homes

Joan Turner - If you haven't had access already

David Brower - Right. In other words, if you had a right of way before 1980 right and you had 10 lots on that right of way, right. So before 1980 8 lots were developed. Now 2 more people come after 1980 and they want to use their lots. They have to go before the planning board to either be allowed to or be denied access to that right of way. Now in this case Mr. Friedman-Kien was given access to his lot in 1970. In 1982 he went for a building permit and they said to him well we now have this law, you can't have more than 8 homes on a right of way existing before 1980. So he went to the planning board. The planning board looked back and they said look in 1970 he was given access. And the planning board said in our opinion at that time in 1982 that his access was legit and they reaffirmed his access to that lot. And in the mean time between 1982 and now Mr. Friedman-Kien has kept up his building permits. So technically he is grandfathered in. You can argue this out in court and say whether or not this board has the right to deny it saying because nothing was done for 23 years or as the lawyers here are telling you look it is our opinion that it is in perpetuity. It was issued before the law became in effect and it was reaffirmed after the law was in effect by your own planning board.

John Hirsch - That's it in a nut shell

David Brower - That's what they've said. So this board either agrees with it or they can say look we don't agree with it and we will all end up in Supreme Court.

Pat O'Sullivan - David are you going to take over Tim's job as the attorney for the board?

David Brower - but I can read and I can understand it though because I have been to all the meetings.

Vincent Cestone - Yes ma'am

Margaret O'Sullivan - I understand that. I just wish Dr. Friedman-Kien would build his house and stop making a mess up there. Cutting down trees, burning up this, doing that, changing the water course, just build your house. Get it done and be done with it. Because it is such an aggravation every other year something goes on and there is nothing up there to this day.

Tim Pagones - I think the big issue here is the town board needs to enact a law or people need to ask the town board to enact a law that says you've got a building permit for x amount of years.

Margaret O'Sullivan - Do it

Tim Pagones - But people need to tell the town board that

Margaret O'Sullivan - Right. You are absolutely right.

Tim Pagones - When you get a site plan approval, you've got so much time to do it. If it is subdivision, you've got so much time to do it. And you have a building permit right

Margaret O'Sullivan - You are absolutely right

Tim Pagones - Now so that's what needs to happen

Vincent Cestone - So you should go to the next town board meeting and bring this up. Any more comments from the public?

Tim Pagones - My only concern is we just got 46 pages. They might,

John Hirsch - It is the same thing I had when I put it in back in July

Tim Pagones - So I just got a fax today. I know the gist of it. Well you are not going to build now in the middle of winter

John Hirsch - No

Geraldine Tortorella - I just wanted you to have it in an organized fashion what I was reviewing with you tonight.

Vincent Cestone - January 23rd and hopefully we can close this

Geraldine Tortorella - Thank you

John Hirsch - 1-23-06

Tim Pagones - yes

John Hirsch - thank you sir

Vincent Cestone - Review of minutes of November 7th

Kim Shewmaker - There are none yet

Vincent Cestone - Any addition or corrections?

Tim Pagones - When we get them, we'll look at them

Vincent Cestone - Any corrections to the minutes of November 7th?

Joan Turner - You didn't get them

Vincent Cestone - Old business? Who is going to be able to make the meeting at the town tomorrow night

Lenny Lim - I'll be there

Vincent Cestone - Motion to adjourn. 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: January 9, 2006

Respectfully submitted,

Kim Shewmaker
Secretary