

ZONING BOARD OF APPEALS

November 7, 2005

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, November 7, 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.

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

ABSENT:

tonight. They asked that it be postponed. They have been rescheduled for the first meeting in January. Which I think is the 2nd.

Kim Shewmaker - There are 5 Mondays in January.

Vincent Cestone – What's that?

Kim Shewmaker - If we do it the 2nd, the next meeting would be on Martin Luther King day on the 16th unless you want to have the meetings on the 9th and 23rd

Tim Pagones - Right now, your first Monday is January 2nd. The third Monday of the month is Martin Luther King day. So I guess what Kim is asking is do you want to meet the second and fourth Mondays since there are five Mondays

Kim Shewmaker - Thank you

Tim Pagones - You're welcome. I just said it a little louder than you that's all.

Vincent Cestone – Okay January 2nd

Tim Pagones - And 23rd. The first and fourth Monday

Vincent Cestone – So you are saying

Tim Pagones - Well you can still meet the first Monday which is January 2nd. Just don't drink too much. But the third Monday of the month is Martin Luther King day which is a Federal Holiday so may be you want to

Vincent Cestone – Okay the 2nd and 23rd.

Tim Pagones - January 2nd and January 23rd. So we will put Mr. Wallis on for January 2nd.

Vincent Cestone – So I am going to take this a little bit out of order. I am going to take Mastrantone first because this is a continuation of a public hearing and Mr. Monroe has not shown up. So I just wanted to talk to Mr. Mastrantone

Matthew Mastrantone - Good evening

Vincent Cestone – Hi how are you doing

Matthew Mastrantone – Good. Larry has been helping me on this project and there was a lot of questions you had last time about square footage and that. So we revised the plan.

Vincent Cestone – So walk us through what these plans show. What's changed?

Larry Belluscio - Okay. As you know this is an existing non-conforming lot in an R-80 zone. What has changed from what was proposed, well the same thing is proposed we just came up with some square footages and the amount setback variance required. The property also encroaches in the northerly adjoining property. And Matt proposes to remove part of the existing building to remove the encroachment on to that property. And also remove a deck, this new deck, swimming pool complex and expand the present one-story framed dwelling approximately 1216 square feet.

Vincent Cestone – So once the parts that are encroaching are removed, how much setback will it be on the property?

Larry Belluscio - Well, on the existing it will be just on the property line itself. On the proposed, it will be 20 feet off the same property line. So the new addition would require a 10 foot variance.

Vincent Cestone – Okay. And why can't the structure be built so that it doesn't need that 10 feet? Because our code says we are required to give the smallest amount of variance possible.

Larry Belluscio - Where he proposes to put the addition, you are starting right

on the existing line of the existing house. And in order to meet the setback requirement on the other property line, that is the only configuration we can come up with.

Vincent Cestone – So you are saying, I am not sure what you are saying, you're saying that you can't, we are talking about this section right here, around here

Larry Belluscio - If you look on the other, this triangle here and this triangle here is where we encroach onto the setback requirement. And this is the existing house and in order to get the two parts together, that's what we need.

Vincent Cestone – So what you are doing is just extending this little jog here? This jog here is the original house

Larry Belluscio - This is the original house right here,

Vincent Cestone – This is the existing and this jog you are just filling in the space and coming out a little. Is that what you are doing?

Joan Turner - This is the whole thing as proposed?

Matthew Mastrantone – That's right

Joan Turner - Where are you coming in on this? Are you still needing

Matthew Mastrantone – We are removing a portion of the original building. You see where it is attached here?

Joan Turner - Now my question to you is I was down to view your property, why can't you just cut it right across here in a straight line here so that you don't really need much of a variance here? In other words, cut this clean across here like that. Because essentially what you are doing is rebuilding the house. Make your lines flush. Right over here where the hatch part comes. Cut that right off.

Matthew Mastrantone – Well that is the only part of the house that is worth anything. That's where there is a new kitchen there.

Joan Turner - So you were thinking about saving that part of the house and doing all your reconstruction and remodeling forward where you would not disturb that part of the house.

Matthew Mastrantone – Yeah. That's the only room in the house that really has anything of value. And the part in the front where that little triangle encroaches, there would be parking underneath the front of the house there.

Joan Turner - So you would come in here and park your car like that

Matthew Mastrantone – right

Joan Turner - So making this flush with the area that you are going to cut back anyway, you don't want to do because that is your kitchen

Matthew Mastrantone – That's a new kitchen. That's the only part of the house, the most valuable part of the house actually.

Lenny Lim - The proposed addition is all behind the original house

Matthew Mastrantone – That's right. South of the original house.

Joan Turner - Well when you drive up the driveway it is actually going to come into it, it's in the front.

Lenny Lim - But he kept it 30 in the back. We have 25 on one corner and 20 on the other corner?

Larry Belluscio - That's correct

Joan Turner - So you are looking to maintain your stone foundation and cellar that is there in this part that we are talking about and making it flush

Matthew Mastrantone – Right and as well as the kitchen there

Victor Carlson - Well this comes right to the property line

Larry Belluscio - It crosses the property line actually in a couple of spots. It is one foot off the property line here

Victor Carlson - But that one corner there will continue to touch that property line

Larry Belluscio - It is one foot

Lenny Lim - It looks like one inch

Vincent Cestone - Is it one foot or one-tenth of a foot?

Larry Belluscio - It looks like one-tenth of a foot, you're right. At any rate it's on this side of the line.

Vincent Cestone - Any more questions from the board?

Joan Turner - You know I am really stuck on the idea that considering the

massive amount of renovation that you are going to be doing you can take that cabinetry and appliances out of your kitchen and shift that whole thing over and you would really bring the house more into conformity than it is now. This is a major, I mean you are rebuilding the house practically.

Vincent Cestone - Exactly, what are you doing? Are you going to tear it down to the foundation and rebuild it or are you just going to add on to the side?

Matthew Mastrantone – I am just going to attach something to the side.

Vincent Cestone - Are you going to gut the interior of the original house?

Matthew Mastrantone – Yeah. Maybe one partition wall

Lenny Lim - How old is this house?

Matthew Mastrantone – 50 years old

Lenny Lim - so at one point you are over the property line and the other point you are about 2 inches on this side of the property line

Joan Turner - the difficulty with giving you a variance, you have a one story framed dwelling there now which is non-conforming. Then you are going to pull part of it away from the boundary line, the property line. Now if you sell this house for example somebody wants to put a second story on, the variance runs with the land. It is in perpetuity. So therefore you increase the nonconforming in future generations. So for me that is a problem. I think if you are going through the problem and expense of rebuilding this building, then I think you should really come back and make it flush so that your nonconformity, your variance for 20 feet, then if somebody after you sell the property wants to put a second story on they are not on the property line.

Larry Belluscio - I think there is limiting factor here and that is the septic system and I don't think there is very much room on their property to expand the septic system and I don't think the board of health undertakes standards that really allow it to be more than a two bedroom house. Now they add on somehow, it would not be affecting the town. It is going to be a very modest building any way you look at it.

Joan Turner - But you know there are always raised septic fields, lots of people do a lot of things with the new technology today

Larry Belluscio - I don't really think you have the room to do it on this particular lot

Tim Pagones - Can you build an addition that does not require a variance?

Larry Belluscio - No

Tim Pagones - You can if you shrink it down

Lenny Lim - Sure he could

Tim Pagones - I mean you can build this proposed addition without a variance. I guess the problem the board is having is by law they have to give you the smallest variance you want. Well you could build a 5,000 square foot, I am just using numbers, addition and say I want to build a 5,000 square foot and I need a set back variance or I can build a 500, and I am just using numbers, square foot addition, not get what I want, but I don't need a variance. So the board is asking I think is there a way to build an addition on this house that you don't need a variance?

Joan Turner - But they would need, if they flushed out where they are going to pull the house back, then they would be 20 feet away and they would need a less variance than leaving that part there.

Matthew Mastrantone - Well what we are proposing now would require a 10 foot variance

Joan Turner - Yes. You still remain on the property line in that one corner

Lenny Lim - You are right on the line

Joan Turner - You are one inch away from your property line

Tim Pagones - Well I don't know how you have them move the house back. The concern I think that the board should have is that there proposed addition is going to be 25 feet off

Lenny Lim - 20 on the other corner

Vincent Cestone - you were cited by the building inspector for other things

Matthew Mastrantone - For the addition that is encroaching, which has a variance from the 1970's

Joan Turner - What addition that is encroaching?

Matthew Mastrantone - The part where once it is cut back will be

Joan Turner - Right. Right.

Lenny Lim - Somebody gave him a variance to go within an inch of the line?

Matthew Mastrantone - The variance and CO was in the packet that we originally submitted. Whether it was built incorrectly or, I mean I never got a survey when I bought the property until I had it surveyed to put a fence up on the other side

Joan Turner - For a one room addition

Tim Pagonis - What is 20 feet from the property line? Where?

Joan Turner - The new drawing

Lenny Lim - Which part is over the line?

Matthew Mastrantone - Right here

Victor Carlson - If we went with Joan's suggestion that would eliminate that piece that goes to the line or right on the line

Joan Turner - Right on the line

Victor Carlson - Anything that close, when we have anything that close to the property line, how can you paint your house or do anything with a ladder without encroaching. What if your neighbor puts a fence up along his property line, which he can do, how do you get around and paint that side of the house?

Larry Belluscio - I understand your concern

Bill Flaherty - That portion that we are talking about specifically the old existing dwelling, that has been on there for what 50 years would you say

Matthew Mastrantone - Since the 1970's. The front part is 50 years old and the back part is since the 1970's

Bill Flaherty - The original dwelling was built long before we had zoning. We discussed that at length at the last meeting

Joan Turner - The original building yes

Bill Flaherty - The original building exactly

Joan Turner - It pre-dates zoning right

Bill Flaherty - And that addition that goes over which goes over the neighbor's line there by maybe a couple of inches has been there since the 1970's and they

got a variance at the time for that the property owners at that time. Now I agree that if he were to eliminate that, a very costly one on your part to do that, in order to bring it in and conform with the existing zoning laws

Joan Turner - And you have a slopping hill, that part quite precipitously there so you have a topographical feature so stay with the existing foundation and that would be your aim based on the topography, based on the excessive cost of putting another new stone foundation in

Matthew Mastrantone - Oh absolutely. To move the foundation as well

Joan Turner - I mean in 1976 the zoning board had no problem granting you, or the previous owner, that variance

Matthew Mastrantone - There are actually words of encouragement about

Joan Turner - I know I saw them. I read them. I actually put them into the record last time.

Bill Flaherty - Well if we do that it may very well cause a problem with the _____ construction itself. And also architecturally

Matthew Mastrantone - Well it is going to change the plans

Bill Flaherty - Obviously it will change the plans

Matthew Mastrantone - And what it is, if you see the size of it and what the addition is proposed at, what we are going to use it for is a 2 bedroom handicap home with handicap accessibilities.

Joan Turner - Could we make a condition, if we grant this variance with these plans as presented to us, now we are just granting a variance we don't have plans for a house or anything. Do we need them?

Tim Pagones - You might want to see the plans

Joan Turner - For the house before

Tim Pagones - Right for the height, right now you have, this could be a potential Cooper.

Joan Turner - Yeah

Tim Pagones - Here is my proposed addition, well you know you don't have any height

Joan Turner - We don't have any plans

Tim Pagones - You don't have any plans. But he doesn't, I'm not saying he is going to do it, but it has happened before.

Bill Flaherty - Well in that matter wouldn't the building department make that decision as to whether or not he exceeded the height requirements

Tim Pagones - Well no. He could build it 40 feet

Matthew Mastrantone - This is not a million dollar neighborhood and it is just what it is. It is going to be a rental property handicap accessible

(Cannot hear the conversation)

Tim Pagones - Well I guess my concern is legally you have to give the smallest variance possible. I don't know, does he want to build a smaller structure? Can he build something without requesting a variance? I don't know. It is not his primary house. It is a rental house. So your position has been build the house to fit the lot. So I don't know. Maybe he needs to come back and demonstrate I can't build an addition that will not require a variance.

Joan Turner - The other, if this board decides to grant him the variance he is looking for, we can put the conditions on it that a second story doesn't go on, those can be conditions

Tim Pagones - Sure. But it doesn't stop anyone else from, anyone else can come back and say we have a condition but you know what I would like to change it. You can always come back.

Vincent Cestone - I think I need to see the plans. Do you have a set of plans, a set of working plans?

Larry Belluscio - I am not preparing plans, he is having the house designed.

Vincent Cestone - Because I would hate to see you spend a lot of money getting plans set up if we are going to change them. I was hoping that you had something already

Matthew Mastrantone - We can do a preliminary floor plan and elevation without doing the complete set of plans

Vincent Cestone - Because we don't want you to incur the cost if we can avoid it

Victor Carlson - I kind of like Joan's idea leveling off this back here and have a straight line across.

Tim Pagones - I guess the code requires you are not supposed to increase a prior nonconforming structure unless you bring it more into conformity

Vincent Cestone - That's actually bringing it more

Tim Pagones - Well he is bringing it but then he is unconfirming because he needs a variance.

Joan Turner - He is bringing part of it in

Lenny Lim - As of right now he is really not bringing it into conformity. I mean he is still down to 2 inches. I think he can build a smaller addition. That's how I feel. He is not making it, the nonconformity is not making it any better. He is just making it larger

Joan Turner - Well part of it he is reducing some of the nonconformity by pulling it off the property line. You are saying that he can do more by

Lenny Lim - I would like to see a smaller addition. We don't have to give him a variance.

Joan Turner - Well he is going to need a variance anyway because there is no place to go

Larry Belluscio - There is very little property to build in once you take the setbacks into consideration.

Victor Carlson - On the new addition here, he is right at the

Lenny Lim - I want him to bring it from the front, see where the front is where it is 20 and 25 foot

Joan Turner - The northerly

Lenny Lim - He can bring that back. He doesn't have 10 feet

Joan Turner - Right here

Lenny Lim - Exactly

Tim Pagones - He might come back and say you know what, if I build it without a variance now I have a 5 by 5 room. I don't know. I guess you have to demonstrate to the board that it really be unreasonable

Larry Belluscio - I could see where we could possibly eliminate in the front

portion there but you still going to need to be adjacent to the other building and that's going to require, there is no way we can get around that. Talking about the parking to the east

Vincent Cestone - What part are you talking about?

Lenny Lim - You are touching the whole length of the building

Larry Belluscio - This portion in here. This triangle portion in here. If we built within the setback limits here, we wind up with something like this, this trapezoidal type of building

Lenny Lim - How about a rectangle

Vincent Cestone - What he is saying is he has to

Larry Belluscio - Somehow we have to be able to join the two buildings together

Vincent Cestone - What he is saying is

Lenny Lim - The whole line is touching the building

Vincent Cestone - No no what he is saying is, you see this line here? If he builds it within this thing right here, he is only going to touch on that corner.

Lenny Lim - I am saying that he comes straight across like this. Making it a rectangle

Larry Belluscio - That's fine in the front. But we still need a variance

Lenny Lim - The variance is on this corner

Joan Turner - No the variance is on the whole length. The variance is on the whole northern line. They need a 10 foot variance

Lenny Lim - For the addition

Joan Turner - For here

Lenny Lim - Joan, that is not the addition, this is the addition. So what I am saying is build, take this off of here and build it straight across

Larry Belluscio - And you would allow this to be here.

Lenny Lim - How far is this from here to here

Joan Turner - Oh I see what you are talking about. In other words this they already have a variance for that, you are saying just come straight out here

Lenny Lim - Exactly

Larry Belluscio - From here to here is 22 feet. So now you are still required a variance for this back portion of the proposed addition

Lenny Lim - Yeah but I am cutting off two other portions here

Larry Belluscio - Alright. Can we give up the front? Yes that's possible

Lenny Lim - Can you build a smaller addition?

Larry Belluscio - By removing the front portion, yes. But not in the back here.

Lenny Lim - I am not saying the back. But if you do that at least you are coming back a little bit more

Larry Belluscio - True

Lenny Lim - Then you only need this one corner because the rest is in the 30 foot setback

(everyone talking among themselves)

Tim Pagones - I just think the board is supposed to give you the smallest variance possible. If there is a way that you can do that

Lenny Lim - Come back and see what you can do with it, if you are inclined to

Vincent Cestone - Yeah. See if it works for you. We will see you at the next meeting. And if it works for you,

Matthew Mastrantone - We will have to draw floor plans and elevations

Vincent Cestone - We know that you are not going to do that, but we have been burnt before

Tim Pagones - When do you want them?

Vincent Cestone - The 21st. How many do we have on the 21st?

Kim Shewmaker - This will be six.

Vincent Cestone - You are not building until spring anyway. So we will see you

in January

Tim Pagones - January 2nd

Matthew Mastrantone - All right. We'll be here. Thank you

Vincent Cestone - Next item on the agenda is Matthew Noviello on behalf of Joseph Tuana.

Matthew Noviello - Since we last met two things have happened. One, the neighbor at lot 49 has agreed that she does not oppose to what we are doing including the subdivision and the variances and the other thing that happened is we are preparing a subdivision plat, we have to prepare the plat in order to bring the subdivision before the planning board. Neither of those are directly relevant but they are indirectly relevant to this application. As you may recall, we are here for a variance on an ancillary building sometimes called a shed and sometimes called a barn. It is a framed building. It is currently 19 feet from the property line which means it needs a variance.

Lenny Lim - What are you calling it now?

Matthew Noviello - I called it a shed originally but people tell me that it is not a shed but more like a barn.

Lenny Lim - No that's living space.

Matthew Noviello - Tell me what you want me to call it and I will call it.

Joan Turner - Well I think he is calling, the owner is calling it a studio. But it has a bathroom, running water, so it fits the definition of a dwelling.

Lenny Lim - That's what I thought when we did the site visit. There's water, there's heat, there's everything.

Joan Turner - You know what, you don't happen to have any building permits and certificates of occupancy for this conversion from when it truly was a shed and then the former owners, before this owner, converted it into an office

Matthew Noviello - I don't have any of that but I know the owner, Mr. Tuana, has been working with Tom Monroe on whatever he is doing. I am not directly involved with that. I know the two of them have been talking.

Joan Turner - I don't have any paperwork on that.

Tim Pagones - Is the subdivision going to change the setbacks

Matthew Noviello - Not at all

Tim Pagones - Is it the other side

Matthew Noviello - Originally, there were several lots. The subdivision includes this lot, this lot and this lot and this is the property line that has no affect on it. And the lot lines don't change

Tim Pagones - I just don't want you to go into the planning board and have the property line

Matthew Noviello - The lines haven't changed. This is the structure we are talking about. That is the setback we are concerned about. On the south line.

Tim Pagones - So whether this gets subdivided or not this is still in violation

Matthew Noviello - Exactly

Joan Turner - But it is in violation because of the easement here. That's what I understand the owner to say

Matthew Noviello - No.

Joan Turner - Prior to this easement over here

Matthew Noviello - That is not an easement. That's a property line.

Joan Turner - A restricted easement?

Matthew Noviello - No. This was a proposed restricted easement over here. And that is no longer in existence. It never was in existence. It was proposed and they didn't sign it. So the subdivision plats, all these easements were removed from the subdivision properties. They never signed anything.

Lenny Lim - All easements, growth easements, restricted easements

Matthew Noviello - Yeah. They never signed them. This is what the subdivision plat is going to look like except change the name of that building. So there is no easements at all. This is Sorenson's property, the subdivision is going to be this lot, this lot, and this lot.

Joan Turner - And how do you get on to this lot?

Matthew Noviello - His property goes right on to the street

Joan Turner - So there will be a driveway coming here

Matthew Noviello - Yes. Every lot has 20 feet along the street or more. And every lot is centered around the dwelling on it, the main dwelling

Lenny Lim - Every lot you said has 20 feet on the street?

Matthew Noviello - Yes. At least 20 feet along Old Albany Post Road

Joan Turner - So is this your property line here? And that is your barn here?

Matthew Noviello - This is the barn here

Lenny Lim - He has a flag here and a flag there

Matthew Noviello - Right

Joan Turner - So this is the property line or no? Oh this is the property line

Matthew Noviello - yes

Vincent Cestone - And this is going to be going to the planning board?

Matthew Noviello - Correct. I have reviewed it with Tom Monroe and I understand, and I left a couple of copies with him and I understand he reviewed it with Ed Doyle in like a pre-fabrication meeting. And they said it is fine so I have to fill out the application and we are going to submit it as soon as I get the application done.

Vincent Cestone - Wouldn't it make sense for us to wait until the planning board

Matthew Noviello - My point on that is it has no affect. This is a side line and it is not going to change. This lot is not included in the subdivision.

Vincent Cestone - Actually it can change substantially if you should come back with recommendations to us

Matthew Noviello - This variance we are asking for is on the outside line of the subdivision. It is not on an internal line of the subdivision. This lot is not part of the subdivision.

Lenny Lim - But this has two dwellings on it this one lot, this 50.1

Matthew Noviello - Yes

Joan Turner - And this is another dwelling because it's got all the required criteria, I know you are calling it a studio

Matthew Noviello – But that is the second one he is talking about

Joan Turner - The other one over here. There is one here and then there is one here.

Matthew Noviello – This is on a different lot

Vincent Cestone - Explain to me why this is not in conformity. Was this built before the lot was changed

Joan Turner - The shed was here before there was a subdivision. When the subdivision came in to affect this no longer met the side, regardless of what you say Matt I think that's what really happened.

Matthew Noviello – Okay let me answer that. There was a subdivision by deed of one lot into four lots. Okay. With some lot line adjustments.

Vincent Cestone - And you gave

Matthew Noviello – Let me finish

Vincent Cestone - Okay

Matthew Noviello – The Town, the Code Enforcement Officer, originally ruled that it was proper and then the Town said that it was not proper. What was proper is you can divide one lot into two lots. Now that two lots would have been the Houston lot and the three lots that are owned by Tuana and or he and or his wife. So these lots are owned by him or him and his wife. So now Tuana is going to come back and ask for planning board approval of the three lots that he and his wife own.

Vincent Cestone - Okay

Matthew Noviello – And that still leaves this lot which is owned by him or his wife, it is a separate legal lot.

Vincent Cestone - All right

Matthew Noviello – So this line where we are asking for the subdivision from is not going to be part of the subdivision, I'm sorry a variance

Vincent Cestone - What I am asking is how did this get out of conformity?

Matthew Noviello – It got out of conformity when the subdivision by deed, the legal subdivision by deed was done. The subdivision by deed that everyone

thinks that is still legal.

Joan Turner - But Tim Miller doesn't. But Tim Miller wrote a memo saying, and I've given you all a copy of this from the planning board saying that it does meet the requirements for a subdivision on two

Matthew Noviello – What he said was he can't divide it into four but you can divide it into two

Joan Turner - Well that's not what he says here but anyway

Matthew Noviello – That's what it is

Joan Turner - You have a dwelling here, Tuana

Matthew Noviello – But three of them are controlled by one family. The Town asked Tuana to merge his three lots back together. He said he can't do that because they are separate entities with separate mortgages. Then they said okay, come back and subdivide those three. And he said okay I'll do that.

Lenny Lim - The Town said this?

Matthew Noviello – Yes

Joan Turner - The Town Board is saying this?

Matthew Noviello – I believe it was either Tom Monroe or Ed Doyle

Joan Turner - Yeah, but they're not the planning board or the zoning board

Matthew Noviello – Maybe it was the planning board

Joan Turner - So they are inappropriate in their response to you regardless that Ed Doyle is the attorney. It is not in their purview to make that decision

Tim Pagones - When are you before the planning board

Matthew Noviello – As soon as I get finished with the application

Tim Pagones - Okay

Matthew Noviello – They had a pre-meeting, they looked at the map, they said the map was fine, they told me to continue filling out the application which we are trying to do

Tim Pagones - So you won't get on

Matthew Noviello – Probably not. We won't have the application in probably until the end of this week.

Tim Pagones - Okay. They don't meet in December. Just so you know

Matthew Noviello – Okay

Tim Pagones - I guess one question we have if for building permits and COs, how this got converted to a studio.

Joan Turner - Originally yeah, that was one. And then

Matthew Noviello – I think it was originally built as a studio

Joan Turner - No it was a shed

Matthew Noviello – I called it a shed. It was originally built, it is my understanding that it was originally built by the guy that lived in this house and he was doing video, some kind of video work

Joan Turner - He ran an office out of it

Matthew Noviello – Editing

Joan Turner - He is one of the animal activists. Animal right activists. The question that I wanted to ask you is somewhere I read and I don't know if you remember off the top of your head either, that you cannot grant a variance if there is a question about the legality of the subdivision.

Tim Pagones - Well if there is a violation I would suggest you don't grant it. I mean I think Mr. Monroe was, I had spoken to him a while ago, I tried calling him and he was hoping to be here but he is not here. I think the board has some questions for him as to what is going on. I mean I would suggest you keep, if you are not, I guess I would suggest keeping the public hearing open and let's see if there are any permits for this structure any COs, how it did get converted to a studio, whether it was built for a studio, I agree with the applicant in that whether it is subdivided or not, it does not seem as if this lot line is going to change. In other words, if he gets a subdivision or not, this building is still a non-conforming and still needs a variance, but I think the board has some questions

Vincent Cestone - Tim, pending on what the planning board does, additional variances may be required in other areas

Tim Pagones - Well, then he has to come back

Vincent Cestone - Well

Tim Pagones - I mean I am not saying close the hearing. I am saying adjourn it and get some more information and have the applicant see if there is the building permit or CO and how it became a studio. We can get Mr. Monroe here to answer any questions and in the mean time he can finish his application, get before the planning board and see. I mean I don't know, is there a possibility that they can change that property line? I don't know how if there is. But you can always change a property line.

Joan Turner - I mean Tom Monroe and Ed Doyle are deciding planning board and zoning board procedures, maybe we should address the question to them.

Tim Pagones - I don't think they are the deciding

Joan Turner - I mean come on

Tim Pagones - I think they are recommending that it go before the planning board

Matthew Noviello – Yes they did

Joan Turner - But after this, here is the code

Vincent Cestone - We should wait until after they go before the planning board. Because I think

Tim Pagones - I mean any violation is stayed as long as he is before the board. He is before the zoning board so should there be a violation with Mr. Monroe it is stayed because he made his application to the zoning board. He is also making an application to the planning board. It is not like we are building anything, it is there so there is no harm in keeping it open. There would be no harm in keeping it open while he is before the planning board. Just to make sure if they change anything, should this line change, and now instead of a 19 ft variance he needs an 18 ft variance or 20, that doesn't harm anybody.

Matthew Noviello – The line won't change because the neighboring property needs the 20 foot access. They can't get more space if they wanted to that's the problem

Tim Pagones - Well I guess lets find out, lets see if there are any permits or COs for that studio, because obviously it is a dwelling it is not just a barn. And lets get Mr. Monroe here to see whatever guidance he can give. And in the meantime the applicant can finish his application to the planning board. He will be in front of them in January because they meet next Thursday and they don't meet in December.

Vincent Cestone - So we are going to continue this. Is there anyone who wishes to speak on this matter? Let's continue it until

Tim Pagones - I would put it on for January 3rd, give us time

Vincent Cestone - But the planning board won't have met

Tim Pagones - The planning board won't meet until the 20th. So do you want to put it on the 24th? Hold on, I'm in the wrong year

Vincent Cestone - I don't want to see you come in just for us to say well we are going to continue it until the planning board is done. My suggestion is we

Tim Pagones - Why don't we put him on for February 6th

Vincent Cestone - Why don't we do that. By then you should have plans before the planning board

Matthew Noviello – I understand your concerns. I hope you can appreciate that we are trying to do it

Vincent Cestone - And I am not trying to extend this longer than we have to. But I don't want to see you come back 17 times for no good reason

Matthew Noviello – I appreciate that

Tim Pagones - And certainly if you get a resolution from the planning board right away or if everyone agrees,

Victor Carlson - It seems that a couple of months ago we had this come up before the board and we talked it over and I think we told them that we would give them a variance on this building, does anyone have any recollection of this?

Tim Pagones - I think he appeared once and we said there were issues and we got a letter asking that it be adjourned for four weeks and we got some other letters and we finally wrote them a letter stating that when you are ready to come back, write us a letter. And they asked to come back. So I think their meeting with Tom Monroe and Mr. Doyle and maybe Mr. Miller, but they are doing whatever they have to do to rectify any potential problems. So like the Chairman said, rather than have them come back in January and we are going to wait for the Planning Board, we will put them on for February 6th and if by some way he resolves it before that, he can ask the board to come back early.

Vincent Cestone - Yeah. If they come back and say that we're going to grant you this but you need these variances before we grant this for you

Matthew Noviello – So your two issues are that the planning board may require further variances and what is the status of the building permit, COs, etc

Vincent Cestone - Exactly

Tim Pagones - How did we get to a living space yeah

Matthew Noviello – Thank you

Tim Pagones - Take care

Vincent Cestone - Next item on the agenda is OmniPoint Communications. Hi how are you doing? I understand we have outstanding issues.

Rob Giodioso - Outstanding issues

Vincent Cestone - Yes with response to Comi Communications. Because I talked to them at 5:00 today and they said they have received nothing from you.

Rob Giodioso - We have responded back in September 2005. We included a copy of the FCC license, resource evaluation, and getting that response to the statement that they wanted OmniPoint to make which we can't quite frankly we can't make that statement.

Vincent Cestone - Which statement is that?

Rob Giodioso - Well we had stated that the signal level would provide certain in building coverage closer to the site and they said that they wanted us to state that the signal level would provide certain in building coverage. And that's what we are down to

Vincent Cestone - And I don't think that is unreasonable. We've gotten that from everyone who has ever come before us. And you're no different.

Rob Giodioso - I know OmniPoint has been approved in the past and has not provided that

Vincent Cestone - OmniPoint, I think this is the first OmniPoint installation in this town.

Rob Giodioso - No I don't believe that is correct. But the bottom line is that we provided the statement about the signal level and what it is going to provide. They want us to make a statement that quite frankly is irrelevant to this case and it prejudices OmniPoint in other applications and OmniPoint is unwilling to make that statement for that reason.

Vincent Cestone - Do you have something in writing from OmniPoint specifically saying that? Not on your letterhead, something from OmniPoint?

Rob Giodioso - Well I am the OmniPoint representative and we did note that in the September 23rd filing and I can tell you that that is OmniPoint's position.

Vincent Cestone - Well this board's position is that you have to supply that to us and I don't think that is unreasonable.

Rob Giodioso - If the board wanted to make it a condition of approval that would be something that we would consider, but to ask OmniPoint to make a statement that OmniPoint doesn't agree with for instance if you ask an engineer that a certain size pipe would provide a certain amount of water in it and the engineer disagreed on his engineering basis without that and it didn't change the size of the pipe that was going into the subdivision lets say

Vincent Cestone - So you are asking us to approve something on something that somebody is prejudice against us or could be prejudice against us, who put something in writing, not saying that they did, without any independent verification

Rob Giodioso - No that's not what I said. There is no argument over the signal that we are providing. There is no argument of the amount of the signal level or anything like that. Mr. Comi is saying that our statement that our signal level is going to provide in building coverage closer to the site, he wants us to erase the words closer to the site. You can explain to me why that is relevant to this application

Vincent Cestone - And that is not, I talked to him at 5:00 and that is not what he said

Rob Giodioso – that's not what his memo says

Lenny Lim - Why don't we have them both here together

Rob Giodioso - His memo is very clear. It says, the RF engineers affidavit **(turning tape over, may have lost some dialogue)** ...more is needed for reliable in vehicle coverage when in fact a much lower signal level of 95 would be adequate. Although the affidavit states that neg 84 edm signal also provides certain in building coverage closer to the site, this statement is also inaccurate. Again closer to the site, neg 85 will provide certain in building coverage closer to the site. The applicant must state that the system is being designed to provide neg 95 dbm for reliable in vehicle coverage or neg 85 dbm for certain in building coverage. So again it is the same statement except that we are saying that it is closer to the site. And again how that is relevant to this application is beyond

me. There is no issue.

Vincent Cestone - Have you talked to him directly or has it been all by mail

Rob Giodioso - We have had this debate with Mr. Comi on numerous sites. We have between a half dozen and a dozen applications where this has come up and we have tried every single way to resolve this and it is impossible and OmniPoint's position is they will not provide the statement that Mr. Comi is requesting.

Vincent Cestone - Mr. Comi has said he has not heard from you since July and he has sent you three letters, I have copies of those letters

Rob Giodioso - He sent us three letters? I have one letter from Mr. Comi July 27th

Vincent Cestone - I have three letters. I don't have them with me but I have three letters asking you for more information

Rob Giodioso - I have to tell you that I think Mr. Comi is confused then because there are other applications from my understanding from American Tower Corp that are unrelated to this application. This is the application for 1924 Route 9

Vincent Cestone - I know exactly what application

Rob Giodioso - Co-location

Vincent Cestone - That's the name he said

Lenny Lim - Why don't we have them all meet here

Tim Pagones - I guess how do you, if they made it a condition of the approval, what has changed?

Rob Giodioso - We are not going to make a statement that from an engineering standpoint we believe is incorrect.

Tim Pagones - Okay. But I guess you told the board that if you want to make that a condition of approval

Rob Giodioso - If the board makes it a condition of approval that this application is for neg 84 coverage for in building coverage we might not agree but if it is a condition of approval and if I am right and it is irrelevant, I could care less

Tim Pagones - Well I guess I don't understand if you are going to send a letter as a condition on approval,

Rob Giodioso - Well we are not going to make that statement. Under no circumstances whether it is a condition of approval or here tonight or sometime in the future are we going to make an engineering statement that OmniPoint's engineers do not agree with

Tim Pagones - But you just said you, I guess if the board made that a condition of approval, you said you would agree to that

Rob Giodioso - No no. Maybe you misunderstood. When Mr. Comi has done other municipalities is he said the board makes it a condition of approval that this issue is the way he says it is and that there is no precedent for future applications and that is the boards' holding. It doesn't require OmniPoint to agree with it or disagree. We agree to disagree.

Tim Pagones - Well if the board said that right now

Rob Giodioso - And approved the application

Tim Pagones - Well

Rob Giodioso - That would be fine

Tim Pagones - Okay

Vincent Cestone - I am not going to, I don't know about the other board members, but I'm not making any decision on this until Mr. Comi comes here and the two of you fight this out in front of us

Tim Pagones - I don't know about fighting it out but I have a concern in that you have three letters from Mr. Comi, the applicant is saying I've got one letter from Mr. Comi. So at the very least let's find out if there is a mistake, if they are not getting letters from Mr. Comi then you know what, a lot of this time and a lot of the problem is not their fault. But I think we do need to get Mr. Comi or Mr. Bogey here

Rob Giodioso - We would like the opportunity to cross examine his qualifications as well if that is going to be the requirement.

Vincent Cestone - Well, does anyone wish to speak on this? My suggestion is that you give Mr. Comi a call directly and speak to him about this because I get the impression that you haven't talked. You just send letters back and forth

Rob Giodioso - We've sent one letter and we've received his one letter and we are at a logger head. This is an issue that is irrelevant to this application

Vincent Cestone - It is amazing what talking on the phone can do

Rob Giodioso - Chairman, I have to tell you, we have tried for the better part of a year. This issue is now come to a head in a half dozen to a dozen applications.

Vincent Cestone - It's funny. They always seem to have problems with your law firm. It's amazing they don't seem to have a problem with the other law firms that are always here. It always seems to come to fruition.

Rob Giodioso - For the record I have to state that I

Vincent Cestone - I am tired of your law firm wasting this board's time on stupidity like this.

Rob Giodioso - Chairman, I take great umbrage with that statement. I think that is uncalled for. If you would like to hear from our engineer from the company I have them here this evening, you can hear from him directly

Vincent Cestone - I would rather not

Rob Giodioso - On his position

Vincent Cestone - I'd rather not

Rob Giodioso - But for you to disparage my law firm in that way I think is out of line. We have tried to settle this issue, if the board feels that it wants to deny the application on that basis

Vincent Cestone - We don't want to deny it. We think this is not an issue, we just want the t's crossed and the l's dotted. In the last application that came through from your law firm the same issue for a different carrier. And for some reason that attorney, or maybe it was that carrier, told the attorney to just fill it out and sign it

Rob Giodioso - That's not true

Lenny Lim - Can we just have Comi here and have your engineer meet our engineer

Vincent Cestone - Yeah I want you to do it before the next meeting. You talk with Comi and maybe when the public hearing continues will be at some sort of agreement

Rob Giodioso - We will certainly try but I, we put the statement in writing I don't know what more we can add

Vincent Cestone - If you talk, you may clear up some issues that are not issues. That's what I am saying. Letters tend to be very business-like, but talk with them

Rob Giodioso - We've been down this path before chairman on numerous applications. This is an issue that he is raising here that has no relevance to this application whatsoever.

Lenny Lim - But he is not here to defend himself

Vincent Cestone - We will continue this on for the first meeting in February

Rob Giodioso - Chairman is there anyway we can move that up in light of the

Vincent Cestone - Let me check my schedule and check Mr. Comi's availability and then we will get back with you. I'm not sure what the date is

Tim Pagones - Well the first would be February 6th. Well I guess

Vincent Cestone - We may be able to move it up to January 23rd

Tim Pagones - I would suggest that you set it for a January date and if the, it is always easier to move it back because what happens now is you don't have to renote anything. It is a public hearing, at the public hearing you are saying that you are going to adjourn it to this date. We don't have to put anything in the paper. So it is always easier to say you know what on January 2nd or January 23rd the issue hasn't been resolved we are going to continue the public hearing as opposed to saying tonight lets put it on for February 6th and we resolved it lets put it on for January. Now you have to send everything to the paper

Vincent Cestone - Okay January 23rd

Tim Pagones – okay

Rob Giodioso - The only issue is the signal level issue?

Vincent Cestone - I believe so but I wouldn't swear to that

Tim Pagones – Do you want to have anyone present anything tonight? At least get that done. Is there anything you need to have your engineer say

Rob Giodioso - Well we put it in writing already

Tim Pagones – Well I'm just saying you've got a bunch of guys here

Vincent Cestone - There was also the issue of screening which I think was resolved with Comi's group.

Rob Giodioso - I think with all due respect, you are confusing this with another application

Vincent Cestone - No I'm not

Rob Giodioso - And another law firm

Vincent Cestone - You want to co-locate on the Garrison Greenhouse site

Rob Giodioso - That's right

Vincent Cestone - This one

Tim Pagones – And you were going to screen it with trees

Vincent Cestone - Anyone wish to speak on this? January 23rd. Next item on the agenda is Dorothy and Robert Dee and I am going to have to recuse myself on this because I know Mr. Dee personally and Mr. Carlson is going to be the Chairman in this issue.

Patty Smith - I am Patty Smith. I am the engineer for the applicant and I believe you have a set of plans. The property is located in Continental Village and the lots are approximately 80 foot wide and it is shown on the location map. It shows all the lots are 80 feet wide in that area. And this was an R-40 zone and the setbacks were 20 feet and this lot is vacant and all the other lots

Lenny Lim - So this building has not been built yet

Patty Smith - Correct. And when the former owner excavated for the foundation and the location that was excavated used the setback from the stream and the property narrows down with the road to 67 feet. And it is very very steep back there. In the back. There is a stream in the front. And there are existing houses, now what we are trying to do is to put a house. Now the owner Robert and Dorothy Dee, Robert Dee Sr, has lot 51 and the adjoining lot is owned by Robert Dee Jr and he is here tonight and he wrote a letter to the board saying that he had no objection to the variance. We are trying to make the house 30 feet wide. It is really narrow. It's a 20 foot wide house. So we maintain the 30 feet on this side and because it is set back further than the adjoining houses in it's very heavily wooded on here I have some photographs of the site. Have you been to the site?

Joan Turner - I haven't been there

Patty Smith - There, these will, this is coming in off the road, upside down I'm having a little trouble. I had sent some other pictures with the application. This is

looking down the driveway towards the road. So you can see it is pretty heavily wooded. My reason for requesting and thinking was something that you could consider is the other houses in the neighborhood are 20 feet back approximately from the property line because that was the zoning. Prior to it be up graded to an R-80 and therefore its not really changing the character of the neighborhood. And because the lots are heavily wooded, the people in this lot are not looking into the windows of this house and they are screened. And the Dees are planning to build this as a retirement house so they really don't want to go multi-story. So we are trying to keep it all on one level and when the architect did the plans for a 20 foot wide house it looked a little bit wider than a trailer.

Victor Carlson - This house isn't built yet

Lenny Lim - No

Victor Carlson - This is just plans

Patty Smith - Yes. And the zoning was 20 feet. The zoning was R-40 and the setbacks, the setback requirements when the subdivision was approved was 20 feet

Joan Turner - When did they change that in 2000?

Patty Smith - Yes they did

Joan Turner - And made it an R-80 district in 2000

Patty Smith - Yes yes. If the lot wasn't configured like this it wouldn't have been a problem but having an 80 foot wide lot and then having 30 foot setbacks on each side is a hardship

Lenny Lim - I don't think it's a hardship. Why would you call it a hardship?

Patty Smith - Well just to build a narrow house. I mean certainly people do take and put houses sideways on lots and have very narrow houses but we are asking that you consider a variance to build a 30 foot wide house.

Bill Flaherty - On your original plan I went through it earlier today and I noticed that where the 20

Patty Smith - The R-80 did that.

(Cannot hear with all the shuffling of papers)

Bill Flaherty - ...and that is not agreeable to the owners of the property, the folks that are building the house.

Patty Smith - They would like to have a 30 foot wide house

Joan Turner - You know I don't remember the zoning changes. I was on the board in 2000 and I don't remember that change

Tim Pagones - don't remember anything in 2000 being changed

Lenny Lim - I don't either and I was on the board

Patty Smith - It was. I went back and got the zoning maps out because I just couldn't believe they did this down there but they did.

Bill Flaherty - We haven't had any zoning changes in years

Patty Smith - Well this is, most of the houses here are already built. There are very few vacant lots down here. So they might not have felt that it affected it going to 30 foot setbacks. And some of the lots here are easier configurations but when you take these really narrow ones and it was just a blanket change to 80. But I did look at the other surrounding houses that are there and that is in my first application and the neighborhood was built with a 20 foot setback all the adjoining lots.

Joan Turner - Patty, find the lot on the zoning map. This was in 1987. So this map was 1987 which was the latest one that I got from Town Hall

Patty Smith - Here, this is 2000. They have that there but this is confusing

Joan Turner - So where are we located here? And you are absolutely sure that you are located in that R-80

Patty Smith - I know, I argued too because I couldn't believe it. Let me see.

Joan Turner - But didn't, but wasn't it your understanding that the Dee's had purchased this lot for their retirement home

Patty Smith - Yes

Joan Turner - When it was 20 foot setbacks so they planned this house before the zoning change

Patty Smith - No they didn't. But

Lenny Lim - When was the lot bought?

Patty Smith - It was bought when it was an R-80

Lenny Lim - It was bought as an R-80 with the restrictions.

Patty Smith - I understand that, but even my first house I didn't understand the implications of the zoning law. You look at the houses around it and

Lenny Lim - That's not my question. My question was they bought the house when it was an R-80 zone

Patty Smith - Correct

Lenny Lim - And that's when they bought it

Patty Smith - Yes

Lenny Lim - Okay thank you

Joan Turner - But you're right. If you checked it out there is no sense going over it now. You've done it

Patty Smith - There is no, it is down on the bottom of this. I think it is right here. Right in this area. They just changed it to R-80 without looking at the configuration of the lots. And initially I was told to come for a zoning amendment before the town board and then Mr. Doyle said that it did, even though it was a zoning change, it did require that it come before your board.

Bill Flaherty - In going through the file earlier today I noticed that this encroaches on a stream.

Patty Smith - Well it is far enough back

Bill Flaherty - But I was wondering whether or not the wetlands advisory committee should be advised of the fact that this does encroach on wetlands and it might be necessary for them to review the application

Patty Smith - The road is in

Bill Flaherty - I understand the road is in

Patty Smith - And the pipe is there and it really doesn't encroach on the wetlands. The wetlands is way down here. The stream is here. And it is more than 200 feet

Bill Flaherty - But you would have to go through the wetlands in order to get in

Patty Smith - The drive way is already constructed. There are several houses

on the road that have driveways

Bill Flaherty – Finishing up drainage on that road to alleviate any flooding problems

Patty Smith - There is, the road is an existing road and I drove, I brought a large excavator in to do the test holes for the septic. There is I believe a 22 foot long pipe along the stream and there is no evidence of erosion, we would stabilize the area and we would get a wetlands permit when we were fixing the driveway, you know bringing it up to code. I've been before the wetlands. When you go before wetlands they require that you put in the erosion and _____ so that you don't have any problems _____ stream. But we are not entering the wetland. We would only be protecting it during the time we would be upgrading the driveway.

Bill Flaherty - And you said you had it tested, perk testing

Patty Smith - Yes

Bill Flaherty - And it was accepted by Putnam County Health Department

Patty Smith - Yes

Bill Flaherty - Do we have any documentation

Patty Smith - This is an existing subdivision. I mean I am still in the process with Putnam County

Bill Flaherty - But we don't have anything from them

Patty Smith - You do have it because it is an existing approved subdivision signed by Putnam County Department of Health and when, so they are obligated to give a permit. It has already been approved

Bill Flaherty - You don't have for this yet

Patty Smith - I need to give them house plans and I can't get them what I am building yet until I get a decision

Victor Carlson - Any other questions?

Joan Turner - I want to go down and do a site visit which I just didn't get a chance to do today with all my planning. But I want to make a site visit first of all

Lenny Lim - Anybody in the audience?

Victor Carlson - Anybody in the audience would like to say anything?

Bob Petera - Hi I'm Bob Petera I live up the street there. I guess my concerns are really just the septic. How the septic is going to fit in such a narrow property given that this lot has not been built on in so many years since all those houses were put in in the early or late, mid 80's. I know the zoning has changed and all that. I guess I am worried about the septic and then the setbacks from the stand point of where the septic is going to be in relation to all the wells. I am not sure where the house is going to be. I just don't have a lot of information about what's going on there.

Patty Smith - What lot are you?

Bob Petera - I'm number 9. The properties were subdivided a long time ago.

Patty Smith - Let's see. Okay. So you would be 53

Bob Petera - This one right here

Patty Smith - You called the health department about where your well was in relation to the septic

Bob Petera - Right he couldn't find my well which I found very funny because

Patty Smith - Right your well turned out to be further away then I showed it. I showed it from an as built drawing by a surveyor. So we are more than 200 feet from your well, the proposed septic

Bob Petera - And how is the septic fields, were are we here? Is this the house or the septic fields

Patty Smith - That's the house

Bob Petera - Where would the septic fields be

Patty Smith - The septic fields were supposed to be here

Bob Petera - On this lot here

Patty Smith - Yes. We were going to

Bob Petera - That's a different lot

Patty Smith - I understand and that is in the process with the health department. We did test holes here and test holes here. There is a well right here which prevents us from putting it right here on the lot and the town allows 10 percent transfer of property between adjoining property owners without doing a

subdivision and so I tested this area and _____ the health department

Joan Turner - So your septic is going on to the adjoining lot

Patty Smith - And the son is going to transfer a portion of the property for the septic

Joan Turner - In transferring a portion of the property does it make the son's property non-conforming

Patty Smith - No. He has enough property. And if you have ever walked over to this lot, this area is all excavated by the previous owner. He already cut it.

Victor Carlson - This board has a sort of rule that we try to follow and that is to try to get the house to fit the lot. And we try to hold to that.

Lenny Lim - I go along with Vic. I would not vote for this because it has to fit the lot. The house hasn't been built, he bought the lot when it was an R-80 zoning, fit the house to the lot.

Tim Pagones - Well a 20 foot house would fit right?

Joan Turner - Yes, well we did that already

Tim Pagones - Well I guess my concern would be they demonstrated they can build a 20 foot house. Is it the prettiest looking house? I don't know. Is it what they prefer? Probably not

Joan Turner - But we did this already in that area

Lenny Lim - To fit the house to the lot

Joan Turner - A couple of years ago, they actually positioned it sideways

Lenny Lim - right same thing

Tim Pagones - I think Ms. Turner would like to do a site visit

Joan Turner - I would like to do a site visit anyway

Bill Flaherty - And I would too and I would also like to see a documentation from the County Health Department relative to the perk tests that have been done on the property and the approval for a two bedroom house on that property.

Patty Smith - I am in the process of doing that. I can't get a two bedroom house without a variance.

Tim Pagonos - When do you want them back?

Joan Turner - Can we fit it in the next time

Tim Pagonos - We have 6 public hearings

Joan Turner - It would have to be January 2nd

Tim Pagonos - Well you have 6 public hearings on at your next meeting which is the 21st. So do you want to put this on or do you want to wait until January 2nd.

Victor Carlson - January 2nd.

Robert Dee - Excuse me, I'm Robert Dee the owner, my wife Dorothy, my son and my daughter in law. We bought the property and we want to build a house to be a retirement home. We went out and looked for the best thing we could find to make sure everything is legal with the septic. And I understand your concern, I hope that we addressed it. We went out and hired Hudson Design for an architect and took him out to the property and we said we want the house to fit the land. We don't want to take any trees down. The driveway is already in. The pipe over the stream is already in. People have been driving over it, trucks have been driving over it with construction and stuff like that. We went to have the house designed. And I can hear and I understand your saying make the house fit the land. Okay. And if that's what the feeling is and everything else like that, we will withdraw our application and we'll go with the 20 foot.

Lenny Lim - I don't think you'll have the votes to pass no matter what happens.

Robert Dee - So we can withdraw the application now

Lenny Lim - Do you want to have a straw poll to find out exactly what our feelings are or

Robert Dee - Sure.

Lenny Lim - I'll make a motion that we have a straw poll

Victor Carlson - Okay

Lenny Lim - I need a second

Bill Flaherty - I'll second.

Lenny Lim - All in favor

All Board Members – aye

Joan Turner - Well I don't want to vote. I really don't want to make a decision now until I go down and really look at that. I don't think it's fair for me to just

Dorothy Dee - I very much appreciate that but three months from now, January or February, we still won't have a set of plans

Robert Dee - We'll have the health department permit

Dorothy Dee - We can't do anything

Robert Dee - I want to retire next year because I

Joan Turner - You just want to go on with it

Dorothy Dee - If it has to be 20 foot, we'll just make it as pretty as we can

Robert Dee - And I appreciate all the work that Patty has done. But we don't want to get tied up. We just want to build a house that goes with the area and become of the environment up here and be a contributing citizen to your community.

Dorothy Dee - Thank you very much

Lenny Lim - I guess you can still take a straw poll just way he knows what votes he has and what he doesn't

Tim Pagones - It seems that Mr. Lim would be voting against it. He would vote for a 20 foot house.

Bill Flaherty - I would be inclined to go for a 30 foot house to be perfectly honest with you. A 20 foot house is fine but

Joan Turner - My initial inclination is to go with our precedent setting decision that we made several years ago and the same type of long and narrow lot. However, I would give you the benefit of the doubt by a site visit and look at what you have done but I would be influenced by that so I would go with Vic and Lenny and vote against it.

Tim Pagones - So you are going to withdraw your application then

Robert Dee - Yes

Tim Pagones - Okay. If you can just write us a letter or have your representative write us a letter saying you are officially withdrawing

Robert Dee - Now this is not going to stop me right? I can build my 20 foot house

Tim Pagones - Oh yeah

Joan Turner - As of right

(Everyone talking at once)

Dorothy Dee - I appreciate your time thank you

Robert Dee - Thank you

Tim Pagones - Would the Chairman like to come back or did he leave?

Vincent Cestone - Let's do the review for completeness

Tim Pagones - Anyone here for Diane and John Uhle? It is complete. But the only thing is, I guess it is complete but it is not complete. They talk about the only thing they need a variance for is that deck but if you look at their plans they are also building, there is a proposed canopy. Which will be in the setback. So they need to include that in their application.

Vincent Cestone - Okay

Tim Pagones - So I guess they can amend it. I would set it down for a public hearing in January. If you look it says proposed canopy and that's going to be 8 feet 4 inches from the setback. So you can set it down for a public hearing we would just have to include the variance for the canopy.

Vincent Cestone - First meeting in January and that gives us three right

Tim Pagones - January 2nd. Public Hearing January 2nd.

Vincent Cestone - Okay review of minutes for October 3rd. Do we have any additions or corrections?

Joan Turner - Oh no, I read them. They look good to me.

Vincent Cestone - Motion to accept the minutes as submitted

Lenny Lim - So moved

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Minutes of October 17th. Any additions or corrections?

Bill Flaherty - I have none

Joan Turner - I have none either

Vincent Cestone - Motion to accept as submitted

Bill Flaherty - I so move

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

All Board Members – aye

Vincent Cestone - Okay. It's all yours Tim

Tim Pagones - All right you've got Larabee Albertson

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #778; Applicant: Larabee Albertson
Area Variance**

The Philipstown Zoning Board of Appeals conducted a Public Hearing on October 3, 2005 to hear the appeal of Larabee Albertson from the denial of a building permit for a metal roof over the front porch and deck off the North side of the house having insufficient setbacks. The property is located on 4 Hudson River Lane in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on November 7, 2005, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, _____ made the following motion, seconded by _____:

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

**THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF
GRANTING THE APPEAL OF LARABEE ALBERTSON FROM A
DENIAL OF A BUILDING PERMIT BY THE BUILDING**

INSPECTOR FOR A METAL ROOF OVER THE FRONT PORCH AND DECK OFF THE NORTH SIDE OF THE HOUSE HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS¹, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

CONDITIONS OF THE VARIANCE:

1. The structures granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.
2. The setback from the left side porch cover shall not be less than 16.1 ft. (a variance of 13.9 ft.). The setback for the right side deck structure shall not be less than 21.9 ft. (a variance of 8.1 ft.).
3. The porch and deck shall not be further enclosed, screened, covered or converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal, plastic or asphalt shingles.
4.

5.

FINDINGS OF FACT:

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

1. The Applicant made this appeal (#778), dated September 12, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for a porch cover and deck structure having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach Schedule A. No one says it any more.

2. The property, a 23,775 sq. ft. parcel on Hudson river Lane, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the side property lines.
3. The Applicant acquired title by a deed dated January 18, 1974. The structures at the property, appear on a map dated September 6, 2005, last revised September 12, 2005, as prepared for Larabee Albertson by Badey & Watson Surveying & Engineering P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on September 12, 2005 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for October 3, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach that

5. The Board met on October 3, 2005 for the purpose of conducting the public hearing. Besides the Board Members, the Applicant, Glennon Watson the applicants' representative, Zshawn Sullivan spoke at the public attended the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The metal roof over the front porch and the deck have been in existence for over twenty years and therefore the requested variances will not adversely affect property values. The structures do not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structures will be not obtrusive. Zshawn Sullivan, (a neighbor), spoke at the public hearing in favor of the application. Ms. Sullivan informed the Board that the roof and deck have been in place as long as she had lived there, at least since 1979. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

Feasible Alternatives

2. Due to the fact that the roof and deck are already up, the Applicant can not keep them without coming into conflict with the Philipstown Code. The area is zoned R-80 but few if any of the properties can comply with the zoning requirements due to the size of the properties. Given the amount of the intrusion into the setback, denial of the variances would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicant requests a variance of 13.9 ft. for the porch cover and a variance of 8.1 ft. for the deck structure from set backs which should be 30 ft.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The continued placement of a porch roof and deck which have been in existence for over 20 years is not an activity usually associated with such environmental concerns. No additional traffic is generated. Air quality is not disturbed. Water quality or quantity is not affected. Additionally, no increase in runoff or change in the drainage has been experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted

above, the structure will have very little effect on the physical conditions in the neighborhood.

8

Self-created Hardship

- 5. The need for this variance is self created². The Applicant constructed the roof to the porch without application to the Building Department for permits while the deck was present when the property was purchased.

THE BALANCING TEST:

Based upon the above findings, and taking into consideration the benefit to the Applicant if the variance was granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community, the Board finds that the balance weighs in favor of granting the variance with conditions.

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 7th day of November, 2005, the results were as follows:

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

ATTENTION APPLICANTS

FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS ENTIRELY YOUR RESPONSIBILITY. A VARIANCE IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY. ALL NECESSARY PERMITS MUST BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF

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

THE BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.

Vincent Cestone - Motion to accept the resolution as read

Bill Flaherty - I'll so move

Vincent Cestone - I'll second. All in favor

All Board Members – aye

Vincent Cestone - Vote. Len?

Lenny Lim - I vote in favor

Joan Turner - I vote in favor

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I.

Tim Pagonis - okay

RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #776; Applicant: Frank Diaz
Area Variance

Date: November 7, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on October 3, 2005 to hear the appeal of Frank Diaz from the denial of a building permit for construction of a two story 8 x 24 addition onto the existing house having insufficient front setbacks. The property is located on 1 Old Albany Post Road, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on November 7, 2005, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, _____ made the following motion, seconded by _____:

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

THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF GRANTING THE APPEAL OF FRANK DIAZ FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR CONSTRUCTION OF AN 8 X 24 TWO STORY ADDITION TO THE PRE-EXISTING NON-CONFORMING HOUSE HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS³, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

CONDITIONS OF THE VARIANCE:

1. The structure granted conditional variance by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures which would require an increase in the variance is authorized without Zoning Board approval as needed.
2. The setback from the street line for the proposed addition shall not be less than 15.7 ft. on the southerly corner and 16.2 ft. on the northerly corner of the proposed addition (a variance of 24.3 ft. & 23.8 ft. respectively).

Any other conditions?

3.

4.

³ Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property."

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#776), dated August 3, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of a two story addition to the pre-existing, non-conforming house⁴ having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach the list of the exhibits as Schedule A

2. The property, a 10,215 sq. ft. parcel on Old Albany Post Road, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 40 feet from the street line.
3. The Applicant acquired title by a deed dated August 7, 2001. The structures at the property, appear on a map dated February 8, 2005, as prepared for Francisco J. Diaz by Badey & Watson, Surveying & Engineering P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on September 12, 2005 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for October 3, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
7. The Board met on October 3, 2005 for the purpose of conducting

⁴ Philipstown Code §175-82 prohibits the enlargement, extension or alteration of any nonconforming structure except where the enlargement is itself conforming or the result of the change is to eliminate the nonconformity.

the public hearing. Except for the Board Members, the Applicant and Chuck Barone, the applicants' builder, no members of the public spoke at the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The applicant proposes to add a two story addition to the pre-existing non-conforming house in order to accommodate extra needed living space for his family. The requested variance will not adversely affect property values because the current house is so small and the new proposed one will be more in line with the surrounding homes. The structure does not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structure will not be obtrusive. No members of the public spoke at the hearing. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

Feasible Alternatives

2. Due to the location of the rock ledge, well and septic locations and a brook in the back yard, the Applicant does not have any other locations to build an addition without coming into conflict with the Philipstown Code. Additionally the applicant is building the addition in line with the existing house. Given the amount of the intrusion into the setback, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicant requests a variance of 23.8 ft. on the Northerly corner and 24.3 ft. on the Southerly corner of the proposed addition from a set back which should be 40 ft.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The construction of a two story addition onto a pre-existing nonconforming house is not an activity usually associated with such environmental concerns. No additional traffic will be generated. Air quality is not disturbed. Water quality or quantity was not affected. Additionally, no increase in runoff or change in the drainage should be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is not self created⁵. The Applicant wishes to construct the addition on a pre-existing nonconforming house. The Applicant has made inquiry and sought a building permit.

THE BALANCING TEST:

Based upon the above findings, and taking into consideration the benefit to the Applicant if the variance was granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community, the Board finds that the balance weighs in favor of granting the variance with conditions.

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 7th day of November, 2005, the results were as follows:

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

⁵ **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**

Joan Turner, Member
Bill Flaherty, Member

Voting _____ granting the variance
Voting _____ granting the variance

ATTENTION APPLICANTS

FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS ENTIRELY YOUR RESPONSIBILITY. A VARIANCE IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY. ALL NECESSARY PERMITS MUST BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.

Vincent Cestone - Motion to accept the resolution as read

Lenny Lim - So moved

Victor Carlson - I'll second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Len?

Lenny Lim - I voted against

Vincent Cestone - Joan?

Joan Turner - I vote in favor

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - So do I

Tim Pagones - 4 to 1 carries. And the last one is Mary Ann Langella (inserting new tape)

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #777; Applicant: Mary Ann Langella
Area Variance**

Date: November 7, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on October 3, 2005 to hear the appeal of Mary Ann Langella from the denial of a building permit for two existing wood sheds having insufficient side setbacks. The property is located on 408 Sprout Brook Road in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on November 7, 2005, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, _____ made the following motion, seconded by _____:

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

THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF GRANTING THE APPEAL OF MARY ANN LANGELLA FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR ONLY ONE OF THE TWO EXISTING SHEDS HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS⁶, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

CONDITIONS OF THE VARIANCE:

1. The structure granted conditional variance by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.
2. The setback from the side yard for the one remaining shed shall not be less than 19.4 ft. (a variance of 10.4 ft.).

It should be 10.6 feet not 10.4

⁶ Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property."

3. The wood shed shall not be further converted into living space, with either permanent or removable building materials.

Any other conditions?

4.

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#777) dated July 17, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for 2 existing wood sheds having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach that

2. The property, a 32,339 sq. ft. parcel on Sprout Brook Road, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the side or rear property lines.
3. The Applicant acquired title by a deed dated February 19, 1979. The structures at the property, appear on a map dated July 14, 1988, last revised May 12, 2005, as prepared for Raymond J. & Mary A. Langella by Bunney Associates in Brewster, N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on September 12, 2005 in order to determine

sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for October 3, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

7. The Board met on October 3, 2005 for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, no members of the public spoke at the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance for one of the sheds with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The remaining shed has been in its current location for over 10 years and therefore the requested variance will not adversely affect property values. The structure does not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structure will not be obtrusive. No members of the public spoke at the hearing. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

Feasible Alternatives

2. Due to the terrain of the property and location of the applicants well and pool the number of alternative locations is limited. The Applicant can at least remove one of the existing sheds thereby reducing the number of variances needed and the amount of encroachment into the setback area. Given the amount of intrusion into the setback for the remaining shed, denial of the variance for both sheds would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicant requests a variance of 10.6 ft. from a set back which should be 30 ft.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The continued placement of one out of two existing sheds is not an activity usually associated with such environmental concerns. No additional traffic is generated. Air quality is not disturbed. Water quality or quantity is not affected. Additionally, no increase in runoff or change in the drainage will be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is self created⁷. The Applicant placed at least one of the sheds in their location after a fire had occurred at their house in order to store materials. The applicant contacted the Building Department about the sheds but no permit or C/O was ever applied for or obtained. If the Applicant had made inquiry and/or sought a building permit, the Applicant would have been notified of the need for a variance.

THE BALANCING TEST:

Based upon the above findings, and taking into consideration the benefit to the Applicant if the variance was granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community, the Board finds that the balance weighs in favor of granting the variance with conditions.

THE ROLL CALL VOTE:

⁷ **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 7th day of November, 2005, the results were as follows:

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

ATTENTION APPLICANTS

FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS ENTIRELY YOUR RESPONSIBILITY. A VARIANCE IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY. ALL NECESSARY PERMITS MUST BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.

Vincent Cestone – Motion to accept the Resolution as read?

Joan Turner - So moved

Vincent Cestone – Can I have a second please

Victor Carlson - I'll second.

Vincent Cestone – All in favor?

All Board Members - Aye

Vincent Cestone – Len?

Lenny Lim - I'll vote in favor

Vincent Cestone – Joan?

Joan Turner - vote in favor

Bill Flaherty - In favor

Vincent Cestone – Vic?

Victor Carlson - In favor

Vincent Cestone – And so do I. Do you wish to speak to us or are you just here to watch?

Audience Member - I am just here to watch

Vincent Cestone – Okay. Do you need to say something to us?

Joseph Caragine - I have put an application in for a variance and I was told to be here tonight to see if it was all complete

Lenny Lim - Your name

Joseph Caragine - Caragine

Tim Pagonos - I don' have it on the agenda

Vincent Cestone – It wasn't in the packet that you sent out

Lenny Lim - I didn't see it either

Kim Shewmaker - Wait. Caragine. You were on the last agenda. You are scheduled for a public hearing on the 21st

Tim Pagonos - Okay. So you are on for a public hearing for the 21st. They found it complete last time without you here.

Vincent Cestone – You have to be here the next time, the 21st to present your case

Joseph Caragine - Thanks a lot

Vincent Cestone – Old business. The Coopers. The Town Board wants to sit down with the Zoning Board to discuss these plans and discuss Cooper in general. Bill asked me to come to the meeting tonight and see what is good for us. We are not meeting in December or we can go to a Town work session if you want or

Tim Pagonos - I would suggest you meet with the Town Board at a work session as opposed to putting it off until December. This thing has been around. It is in litigation so you don't want the Judge to sit there and say you know what the Zoning Board is just dilly dallying. Granted the applicant took months to do this.

Lenny Lim - Every Wednesday is their work session

Vincent Cestone – Every Wednesday. So if there isn't any major contrast, I'll talk to Bill tomorrow and then

Tim Pagonos - Why don't you get a list of two or three different dates

Joan Turner - I can't do it on the 16th. That's all I can tell you which is a week from Wednesday. On the 16th I am not available.

Vincent Cestone – How about the Wednesday after our next meeting, the 23rd?

Joan Turner - That's fine with me

Lenny Lim - Is that the day before Thanksgiving

Vincent Cestone – Yeah

Bill Flaherty - Will somebody notify us then of that

Vincent Cestone – What I will do is I will talk to Bill and say when we can meet that week and I'll say either the 23rd at their work session or the Tuesday the 22nd. And as soon as I confirm

Bill Flaherty - And Tina will let us know

Vincent Cestone – Oh no, I will give you a call

Bill Flaherty - Okay good

Joan Turner - So I guess what would be good for us is to go over the old plans and make our comments.

Vincent Cestone - But if you look at this

Joan Turner - Motion to adjourn?

Lenny Lim - Second

Joan Turner - 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