

# ZONING BOARD OF APPEALS

January 26, 2009

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 26, 2009, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

**PRESENT:** Vincent Cestone - Chairman  
Bill Flaherty - Member  
Robert Dee - Member  
Paula Clair - Member  
Adam Rodd - Counsel

**ABSENT:** Lenny Lim - Member

**Vincent Cestone** – Is Mr. Garramone here tonight? You are first on the hit parade tonight.

**Robert Garramone** - Lucky me.

**Vincent Cestone** – I guess you got our letter.

**Robert Garramone** - I apologize. I was in Florida.

**Vincent Cestone** – Oh, you should have told us we would have post-poned you.

**Robert Garramone** - The letters arrived, but my son of course didn't tell us

**Vincent Cestone** – You know, you just call the Town Clerk and they would have put something in our mail box.

**Kim Shewmaker** - She did and I just called him and was sitting up here, and I was like okay see you upstairs.

**Vincent Cestone** – Okay so explain to us how you got here. I know that you are here about your pool

**Robert Garramone** - Yes

**Vincent Cestone** – But, what happened? Were you cited by the

**Robert Garramone** - No my wife I think called because we were planning on moving to Florida and sell the house. And my wife called because of the decking needed a CO.

**Vincent Cestone** – You are within the setbacks. You wouldn't have to be here if you didn't have a violation.

**Robert Garramone** - Oh

**Vincent Cestone** – You see you have to be 30 feet from the property line

**Robert Garramone** - Right and we are only 18

**Vincent Cestone** – Yeah so, that means you are asking for a 12 foot variance

**Robert Garramone** - Yes

**Vincent Cestone** – Can you, how long has the pool been here?

**Robert Garramone** - Approximately 5 years

**Vincent Cestone** – And the deck? The same amount of time?

**Robert Garramone** - Yes

**Vincent Cestone** – On both sides, how close is your closest neighbor?

**Robert Garramone** - This house is probably another 40 feet away.

**Vincent Cestone** – If this deck was cut right here, would you be outside of the, would you have the 30 feet without the deck? Do you know?

**Robert Garramone** - I would need another 10 foot

**Vincent Cestone** – And I see there is a masonry wall here, does the ground drop off and all that sort of stuff

**Robert Garramone** - From here it goes up

**Vincent Cestone** – Oh okay

**Robert Garramone** - The grade goes up, levels off, and then goes up again

**Vincent Cestone** – And this wall defines where the land goes up

**Robert Garramone** - Yes. It is basically holding back, it is like a retaining wall

**Vincent Cestone** – So when you built this, there was really no other place unless you wanted to put it in your front yard

**Robert Garramone** - What we had to do is get a machine in there and take some of the mountain away in order to put the pool there and then we also needed this retaining wall to hold back

**Vincent Cestone** – Yeah, so it won't go into your house

**Robert Garramone** – yeah

**Vincent Cestone** – And what kind of structure is this? Is this like a framed wood

**Robert Garramone** - Pressure treated wood

**Vincent Cestone** – Could it be like pivoted 180 degrees and put the deck on this side like that?

**Robert Garramone** - I guess anything is possible

**Vincent Cestone** – Well I mean, is it reasonable?

**Robert Garramone** - It's pretty much cemented into the

**Vincent Cestone** – You have cement in the ground

**Robert Garramone** - I have cement and rods that, because you know that it is all rock underneath there. So I had to drill into the rock and put supporting rods to hold the cement footings for the deck. It wouldn't be easily moved but

**Vincent Cestone** – So you are selling this property, is that what the deal is

**Robert Garramone** - That would be nice.

**Vincent Cestone** – Because you can't sell it until we are finished here

**Robert Garramone** - Yeah well that's one thing but then in this economic situation, I am in a little bit of trouble there

**Vincent Cestone** – Yeah yeah

**Robert Garramone** - Because I am retiring in June

**Vincent Cestone** – And you are out of here

**Robert Garramone** - Well be bought a business down in Florida and we are building a house in Florida

**Vincent Cestone** – That's nice. Also scary

**Robert Garramone** - We didn't anticipate the economic environment we are in right now

**Vincent Cestone** – Well you never know. By spring it might get better. Let's hope

**Robert Garramone** - Yeah. Well my wife is in real estate and she says we'll just price it way down.

**Vincent Cestone** – Any questions from the Board?

**Bill Flaherty** - I have a question. The deck could be removed to bring it into compliance

**Robert Garramone** - Yes

**Bill Flaherty** - With the Zoning. That's a given. You built this deck without a building permit

**Robert Garramone** - I didn't realize I needed it since it wasn't attached to the house.

**Bill Flaherty** - It's not attached to the house

**Robert Garramone** - No sir. The house is quite a bit away from the house

**Bill Flaherty** - Oh I'm sorry. You are right. You are absolutely right. But you had a lot of room here. I mean you had a lot of wiggling room here to build this pool

**Robert Garramone** - Well

**Vincent Cestone** – We were just saying it goes up like that

**Bill Flaherty** - The terrain is such that it wouldn't be practical for you to

**Robert Garramone** - The mountain that was, I had a guy come in to dig out the mountain was steeper in this area here than this area here. So, that's where he said I could position the pool. There was no deck of course when I first put it there.

**Bill Flaherty** - Okay. But the fact of the matter is you could have built this pool in some different places

**Vincent Cestone** – The pool is not the issue. It's the deck.

**Bill Flaherty** - The deck. I'm sorry

**Robert Garramone** - Yeah I probably could have, as the gentleman said, put the deck on the other side

**Bill Flaherty** - Exactly. All of which if you do that would require a great deal of additional work on your part. Removing the deck and repositioning over here. So that would be rather expensive I would think

**Robert Garramone** - Most definitely. I would probably just remove it. And hopefully be able to sell without the deck

**Vincent Cestone** – I am sure your wife has told you that pool's don't necessarily add to the value of the house

**Robert Garramone** - As a matter of fact yes she has. She says if it is not approved here, maybe we will just have to take the whole thing down.

**Bill Flaherty** - It's an above ground pool

**Robert Garramone** - Yes

**Bill Flaherty** - I would agree with Vinny our Chairman that it doesn't necessarily add to the resale value of a home

**Robert Garramone** - No

**Bill Flaherty** - Some people like pools. Other people don't.

**Robert Garramone** - It looks nice in the summer. I've enjoyed it. But it doesn't give us any value I guess

**Bill Flaherty** - But your neighbors agree with the location of it

**Robert Garramone** - Yes. The neighbor on this side, if I need I could get a letter from him

**Bill Flaherty** - No problem

**Robert Garramone** - No problem whatsoever

**Adam Rodd** - Is that Hernandez?

**Bill Flaherty** - Yes. That's correct sir

**Adam Rodd** - Okay. Do you know how far in terms of distance your existing pool is from your side yard lot line? In other words, if you remove the deck and you tell us specifically how many feet the edge of your pool would be from your side yard lot line

**Robert Garramone** - I am going to guess that it is going to be somewhere about 28 to 30 feet.

**Adam Rodd** - But you are guessing

**Robert Garramone** - I am guessing sir yes

**Robert Dee** - Well when you built this it seems like you did a lot of excavation

**Robert Garramone** - Well I had to because of the mountain to level out a piece of property that would accommodate

**Robert Dee** - So you had people come in and excavate

**Robert Garramone** - Yes sir

**Robert Dee** - And you had somebody put in the steel rods, and somebody pour concrete

**Robert Garramone** - No, I did that.

**Robert Dee** - Did the excavator ever tell you that you needed a permit

**Robert Garramone** - No sir.

**Robert Dee** - Okay

**Robert Garramone** - What is the permit

**Robert Dee** - Well anytime you build anything you need a permit.

**Robert Garramone** - Just to excavate for the pool?

**Robert Dee** - No for the pool

**Vincent Cestone** - You need a permit for the pool

**Robert Dee** - You just can't build

**Vincent Cestone** – Philipstown now you need a permit for everything. Any more questions from the Board?

**Bill Flaherty** - Well at one time we did not require building permits for above ground pools because they were considered to be removable. I know I had one years and years and years ago and I used to put it up every summer and take it down every winter. I was younger then I didn't mind doing it. But at any rate the pool was not accessible at that time. There are rules that changed today. But it is there and there is nothing we can really do about it.

**Vincent Cestone** – Okay. Any more questions from the board? Any comments from the audience on this? I make a motion to close the public hearing.

**Bill Flaherty** - I second

**Vincent Cestone** – All in favor

**All Board Members** – aye

**Vincent Cestone** – Do we want to do a straw poll

**Bill Flaherty** - Yeah I think it would be appropriate

**Vincent Cestone** – Okay. Motion and a second Paula and Bill. Okay. Bill?

**Bill Flaherty** - I move to approve

**Paula Clair** - I would vote to approve also

**Robert Dee** - I would vote against it

**Vincent Cestone** – And so would I. Right now we have a tie which means it does not pass. Because there is one member who is not here tonight. He would be the tie breaker. My suggestion is that you ask us not to vote on this until we have a full board. Because then you would get all five votes and it won't be a tie. And who knows, Lenny might be in a position that he would approve. He may vote against you. But you have a better shot.

**Robert Garramone** - Sure. Can I ask for that

**Vincent Cestone** – Sure. So right now we did a straw poll and that is not binding. When we have an actual vote, we will do it when we have a full five members.

**Robert Garramone** - Do I have to be here.

**Vincent Cestone** – You don't have to be here. Our next meeting, we haven't scheduled yet.

**Kim Shewmaker** - The second Monday is February 9<sup>th</sup>, the fourth Monday is February 23<sup>rd</sup>.

**Vincent Cestone** – You know I am not sure, it is how we proceed tonight. What I am going to do is I am going to notify the Clerk when our next meeting is so they can tell you. And that would allow you to do is call the next day to see if it passed or failed.

**Robert Garramone** - Okay. Or I can show up for the meeting

**Vincent Cestone** – Or you can show up for the meeting. And the meetings are always posted on Philipstown.com. And you can always call the Town Hall and ask them the status or the building department.

**Adam Rodd** - That's what you want to do correct? So, I think what you should probably do, procedurally, just re-open the Hearing pending the further date the applicant wishes. In other words you just closed the public hearing.

**Robert Garramone** - Right

**Adam Rodd** - And you invited him back for another date to present to the board members

**Vincent Cestone** – No not present. Just to wait until we have a full board to vote.

**Adam Rodd** - If it is closed and Lenny has any questions, with the hearing closed, the hearing is closed. In other words he wouldn't have the right to present testimony because this hearing is closed.

**Vincent Cestone** – I see your point. So it would have to be a unanimous vote to re-open the public hearing correct?

**Adam Rodd** - Well yeah. I am not sure if it has to be unanimous but I don't think that would be a problem for the board.

**Vincent Cestone** – We tried to give you the benefit of the entire process so you don't, so the public hearing is still open. Which means that we are going to at our next meeting, you do need to be here.

**Robert Garramone - Okay**

**Vincent Cestone –** And it is either going to be the second Monday of February or the fourth Monday. And I am not sure which one. But it will be, you can call Town Hall and they can tell you exactly when.

**Robert Garramone - Sure**

**Vincent Cestone –** Okay. I am just telling you this so you don't have to hang around for the rest of the meeting.

**Robert Garramone -** Thank you very much for your time

**Vincent Cestone –** You're welcome. Okay we are going to do the continuation of Ribeiros Construction. Someone come up and talk for the applicant please.

**Craig Bumgarner -** Hello how are you this evening. We have our full compliment here with us tonight. You may recall that when we were here before the board on January 12 there were some questions mainly with regard to the house plan and I do have a representative from the architect's office here tonight. Just some other things I would like to make the board aware of before we get into that. We did get our Wetlands Permit and that was a pre-requisite for submitting to the Board of Health for our Board of Health approval. It is my understanding that Cronin Engineering has submitted for the permit ten days ago so we are still just awaiting word from the Health Department on that. As we were wrapping up last time we were here, there were some comments from the board about the newest plan and one of them was that they would like to see the building below 1500 square feet. We revised the plan and right now it shows the house coming in at about 1492. And one of the other comments was if we can get another foot and set back. And with this latest version, the latest plan, we are coming in about a foot and a half off, more off the setback area. So we were able to take those comments and incorporate them into the plans. And as I said, if you have any questions, the architect is here today.

**Paula Clair -** I have a question. Number 1, what was the size of the footprint of the original house

**Architect -** The original house was 32x40

**Paula Clair -** And now it is

**Architect -** Now it is 25 ½ by 38

**Paula Clair -** Okay. These areas that are not designated as rooms

**Architect -** If you look at the elevations, these are under the main roof so this

basically, if you can see that dashed line, that's where the ceiling goes from 8 foot down to zero. So that, that is basically underneath

**Vincent Cestone** – So you have a pitch like this

**Architect** - Yes

**(Tape is all static...white noise...no dialogue)**

*From my notes:*

**Ribeiros Construction** – *The public hearing was closed. No straw poll was taken. The Board members would like to review before voting. Appeal placed on agenda for February 23<sup>rd</sup> for VOTE. No public discussion...just the final vote.*

**Minutes** – *were accepted as submitted*

**O'Reilly** – *The draft resolution was read into the minutes at a previous meeting. The vote passed 3 to 1. Vinny voting against*

**LaForgia** – *Placed on the agenda for a Public Hearing on February 23<sup>rd</sup>*

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

DATE APPROVED: 2/23/09

Respectfully submitted,

Kim Shewmaker  
Secretary