

ZONING BOARD OF APPEALS

January 28, 2008

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January, 28, 2008, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

going to take the easy things first so that people that don't have to be here for the public hearings can leave. First thing I am going to do is review of the minutes of November 26th. Are there any corrections? I will make a motion to accept the minutes as submitted. Do I have a second.

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - Aye.

Vincent Cestone - Okay review for completeness Andrew and Susan Homola. Do you have any comments on that?

Adam Rodd - Yeah, the materials that they have submitted appear to be complete. Because this is an application for a Special Use Permit, the Code requires that before we can even schedule this matter for a public hearing we do need to send the application over to the Planning Board for a report. So we can take care of that.

Vincent Cestone - Okay. I concur that it is complete. Do I have to do a motion to send it to the Planning Board?

Adam Rodd - Not necessary to do a motion. I mean if the Code requires that, then we will take care of it.

Vincent Cestone - Okay then it is referred to the Planning Board. Is there anybody here for this?

Susan Homola - Yes

Vincent Cestone - You've been sent to the planning board because they have to review on that so there is no need for you to stay. Okay?

Susan Homola - Thank you

Vincent Cestone - Okay. Next item on the agenda is Nancy Carlucci continuation of a public hearing. Hi. How are you doing? Happy New Year

Mr. Carlucci - Nancy cannot be here tonight. She has bronchitis. I was also hoping that the additional drawings that we discussed at the last hearing, but when I went to pick up what the Engineer did have, all the drawings that I knew were going to be required we don't have. But I would like to submit at this point a document and a brief dialogue and possibly to request a continuation until we have all the drawings. This is an updated as built survey

Vincent Cestone - This is an as built. Not the proposed change

Mr. Carlucci - Well, it is not necessarily the whole, but just to give you a better idea this drawing will actually give you a sense of what we are looking to do at this point. If you can see along the back property line there is a dimension 11.4 feet between the pool and the back property line. There is a 15 foot setback required. So we would be asking for a 3 foot 8 inches along the rear setback. The right setback if you can see there are a number of different dimensions from the inside of the closest point of the pool to the property line is 17. Obviously, what we had originally requested was an 8 foot setback which we discussed _____ to the board two possible different scenarios for that right setback. First of which would be a 5 ½ foot right side yard setback. You can see the dimension 9 ½ feet from the inside of the portion of the pool which would be a 5 ½ foot setback. The second proposal that we would submit as a request and we are hoping that you would consider the 5 1/2, is actually a 3 inch setback. Which we would rather not have because that requires an extensive amount of work and additional remedial work other than what we would require for the 5 ½ foot right side yard setback.

Vincent Cestone - So I thought we had agreed on a frame work and that's what we were waiting for.

Mr. Carlucci - Yes. And essentially what we are waiting for from the Engineer

which I thought was going to be ready, is actually two separate sets of drawings showing what one proposal would be with a 5 ½ foot variance and the other which would essentially be required is a 5 inch variance.

Vincent Cestone - Okay so what would you like to do? Do you want to continue this on to the next

Mr. Carlucci - I think we would need a continuance so that you have in front of you actually what the construction plan would be under both scenarios

Vincent Cestone – okay. Does anybody on the board wish to speak on this?

Lenny Lim - Not until I see the plans

Vincent Cestone - Anybody in the audience want to speak on this? I don't have my book with me Kim. When is our next meeting

Kim Shewmaker - Are we doing the 1st and the 3rd weeks of February?

Vincent Cestone - Yes

Adam Rodd - The 2nd and 4th.

Kim Shewmaker - Right. That would be the 11th and the 25th.

Lenny Lim - Can we try and get these before the meeting

Mr. Carlucci - I thought I was picking them up tonight.

Vincent Cestone - Which would you prefer the 11th or the 25th?

Mr. Carlucci - The 25th so we are sure to have everything

Vincent Cestone - Okay. You are on for the 25th

Mr. Carlucci - Thank you very much

Vincent Cestone - You're welcome. Next item on the agenda is Arthur Lehman and Mary Gherty. Hi. I believe we were waiting for new submissions from you. Is that correct?

Sam Slawinski - Yes. We took the suggestion of the board to rotate the garage so that we didn't increase the existing nonconformity. We have the garage located now at, the front yard setback is now 12 foot 3 which is the same existing non-conforming, on the small detail it shows it in a little more detail

Lenny Lim - Oh okay

Sam Slawinski - It was no small _____ to do that. I mean it seems like a small thing to just to get it back. But because of the grade of the property (**too many papers shuffling...cannot hear dialogue**) ... cut back into that location.

Vincent Cestone - So now the total nonconformity has not changed

Sam Slawinski - It has not been increased at all. In addition to that I made a detail here because of the concern of the board of the size of the building. And I made a detail showing some realistic vehicle sizes inside the garage so that you can see that this thing is not some huge monstrosity.

Lenny Lim - Are you measuring the 12.3 from the corner of the building or the bottom of the steps on your house?

Sam Slawinski - The existing non-conformity is 12.3 from the bottom of the step

Lenny Lim - So he is bringing the garage up to where the steps are not the house.

Sam Slawinski - The existing setback for the house is 12 foot 3 and there is a variance in place for that, we discussed that already. That variance was granted when the house reconstructed

Arthur Lehman - In 1997

Robert Dee - How far do the steps come out from the house?

Sam Slawinski - The steps off the deck are what we are talking about?

Lenny Lim - Yes.

Bill Flaherty - How does this align with the house that is there now?

Sam Slawinski - It is on this detail here. Actually if you look at that it is not the steps. If you look at where the arrow is on that, it is a little hard to see because of the scale, but it goes to the edge of the deck.

Robert Dee - I can see it now.

(Everyone talking at once)

Bill Flaherty - what is the maximum height of the building to the peak of the roof?

Sam Slawinski - 25 foot 9 to the ridge.

Vincent Cestone - Any questions from the board?

Sam Slawinski - I took the blue print and showed the clearances around if there were cars parked in the garage and the spaces that were left there

Robert Dee - Did you decrease the size of this building any from the last time.

Sam Slawinski - We did not. We rotated it on the front corner in order to not increase the non-conforming

Robert Dee - okay

Sam Slawinski - And that is why I did the detail floor plan so I could show you that this thing is not some monstrous size when you look at the floor plan with some vehicles parked in there

Bill Flaherty - Looking at the property you don't have too many options here.

Sam Slawinski - That's the thing

Bill Flaherty - You have to move a mountain essentially

Sam Slawinski - When we first sited this to try and come up with the best location as far as the excavating went we ended up with the corner of the garage right on the property line. And we did some more discussions with Glen Watson, the surveyor, and Charlie Polhemus, our excavator, and we determined that we could move it back to a certain point and we brought that in and presented it and you asked us to move it back some more. So, there is really not much else we can do with this

Bill Flaherty - How many hundreds of yard are you going to pull out of here

Sam Slawinski - In the original location it was approximately 1100 yards of material to be moved. In the new location we are increasing that by at least 30 percent. It will probably be more in the 1500 yards.

Bill Flaherty - And your intention is to use that fill to fill

Sam Slawinski - Exactly. Mr. Lehman has other property, he has a substantial amount of property right there and that fill can be disbursed on the property

Bill Flaherty - You have about 25 acres and you don't have too many alternatives to place this garage.

Sam Slawinski - We started this process in May. So we put a lot of leg work into it. We discussed the soil maps in the area to see what was going to happen with the excavating. So we put a lot of leg work into this already.

Lenny Lim - Jog my memory. When we did the variance, we let you build the decks too on that one

Arthur Lehman - There was a deck on there already

Lenny Lim - And we let you go out as far as the old deck

Arthur Lehman - Yes. As long as we didn't increase the size.

Vincent Cestone - Where is the nearest house in relation to your property. I don't see anything on this

Arthur Lehman - There is a house to the west

Lenny Lim - And that is about the only thing you see

Sam Slawinski - From there you won't even be able to see the garage because it is on the other side of Mr. Lehman's residence. And we supplied the board with depositions from several neighbors on the road saying that they have reviewed the plans and they looked at the site and they have no objections.

Vincent Cestone - And we have documents for that?

Sam Slawinski - Yes.

Vincent Cestone - Okay. Any more comments from the board? Any comments from the audience on this? Do you want to close the public hearing?

Bill Flaherty - I move that we close the public hearing

Paula Clair - Second

Vincent Cestone - All in favor?

All Board Members - Aye

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

Lenny Lim - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Paula?

Paula Clair - Yes

Bill Flaherty - I approve

Vincent Cestone - Lenny?

Lenny Lim - I approve

Vincent Cestone - Bob?

Robert Dee - I favor. I approve

Vincent Cestone - And so do I. That's a straw poll. That is not official. That is just instruction to the attorney. What we will want before send it down to the building department, we want a full set of building plans.

Lenny Lim - What year was that variance

Arthur Lehman - 1996 or 1997. We finished the house in 1997 so we must have gotten it in 1996.

Vincent Cestone - So we will need the building plans and that will be as soon as Adam has a chance to write up the resolution. But generally what I do is I will sign the building plans that go down to the building department so that they know that we looked at them.

Sam Slawinski - Okay very good. So about how long will that process take

Vincent Cestone - Depends on how quickly Adam can

Adam Rodd- Well we are going to need the minutes, so to play it safe I would probably, since we are doing Carlucci on 25th, put it on for resolution on the 25th too.

Vincent Cestone - Okay

Sam Slawinski - Do we need to come back for that?

Vincent Cestone - Excuse me?

Sam Slawinski - On the 25th, do we need to come back for that?

Vincent Cestone - No you don't.

Sam Slawinski - So the next thing I can do is hound Tom Monroe for

Vincent Cestone - Well as soon as he gets our approval, then you can hound him

Sam Slawinski - Very good.

Arthur Lehman - Thank you very much

Vincent Cestone - Next item on the agenda is County Line Equities LLC. Someone to speak for the applicant? Hi. Introduce yourself please.

Kenneth Gunshor - My name is Kenneth Gunshor. I am an attorney from Mount Kisco, New York. I am here on behalf of the applicant. Mr. Glenn Watson, whom I am sure the board is familiar with, will make a presentation on behalf of the applicant and has already submitted an application on behalf of the application. I judge we have an audience tonight as well on this application. Mr. Watson

Glennon Watson - Thank you. All of you are familiar I am sure with the gas station site at the corner, at the intersection I should say of Route 403 and Route 9 in Garrison. Originally the building was, it has been a gas station there since at least 1952. Five years before any kind of zoning in the town. And over the years that property line has been in this configuration since 1952 or earlier. With the exception of some property that was taken by the State at the south end so they can rebuild the intersection. So in the last several years the property has been decreased in size with immanent domain proceedings. The applicant County Line Equities bought the property and applied for a building permit to rebuild the garage. In doing so they substantially removed, they removed a substantial amount of the building, reduced it to the size of the building approximately as it was when it was first built. Also the long barn like structure, shed type structure that was in the back that was also removed. They made several improvements under the building permit and frankly they started a canopy here and they are presently under a stop work order from the Town and made an application for site plan approval that is in the middle of the public hearing process. The public hearing has been continued. At the same time we made the application to this board for variances from some of the setback requirements. We are seeking area variances in four areas. We are first seeking a variance to reduce the setback requirement from the setbacks. We are required to have 50 feet from Route 403 and we are required to have a combination of either 100 feet from the center line of Route 9 or 50 feet from the side of Route 9, the property line of Route 9. Neither of which we can make. It happens that the center line is back further. On the application seeks to vary that requirement to 21 feet and 19 feet respectively. 21 feet on the Route 9 side and 19 feet on the Route 403 side.

Lenny Lim - Excuse me Glenn, what are you using the street line or the property line on those measurements?

Glennon Watson - In this case we are speaking of the property line of the street. The street line and the property line are the same thing. We are not using the center line that we spoke about before. Again, because of the size of the property we are seeking to reduce the setback of the parking. We have some parking that has been in existence, 35 years since I've been here and I think probably well long before that, to service this station. The gas station pumps were originally in the front of the building. We are intending to put the gas station pumps in the back thus the need for the canopy. And we are trying to bring the parking into conformity with the requirements. I believe we have one extra but the planning board discussion is they are looking for another handicap spot. So what we will do to get that is to mark one of the spaces as the unloading space so you lose the space and that will sort of take care of itself. We make our setbacks in the back of the property with the parking but we don't make it up here in the front. It is such a confined spot that we need to put it right up against the property line.

Vincent Cestone - So those parking spots behind the canopy are not in violation of the setback requirements

Glennon Watson - I correct myself. They are. They are too close.

Vincent Cestone - Okay

Glennon Watson - Thirdly, we are required to put up a sign posting the price of the gasoline. We may have one sign within 10 feet of the property line. It is the only practical place for us to put it without being an eyesore is along the Route 9 side at the side of the building we are seeking to put that right against the property line instead of 10 feet back. And finally we are seeking to cover 85 ½ percent of the building, of the lot rather when only 65 percent is allowed. In that regard there are things to be said about things like that. If you look at this property without any of the fancy colors, I have colored in the red triangle of what is available to us without being in nonconformance with the setback requirements. That is 3200 square feet. We simply, it simply can't be done. It is just that simple.

Vincent Cestone - Glen do you have, this is something that I would like to see, you may already have it is what the code requirements are, I am thinking of a grid you know like a spreadsheet; what the code requirements are, what the original structures where, how much they were in violation of the setbacks and the delta, the change.

Glennon Watson - I don't have that. I do have that grid in terms of what is required here and what is proposed. I have that here on the plan. I do not have

what the original buildings were but I can get that information.

Vincent Cestone - Because I would like to see that

Glennon Watson - Okay

Vincent Cestone - Because that is a nonconforming structure that was originally there

Glennon Watson - Yes

Vincent Cestone - That would

Glennon Watson - All of the buildings, there were two buildings; the gas station was nonconforming and it is nonconforming today but it was much bigger. It had extensions out the back, it had a second story on the building. There were apartments in there. There were other garages in there. There was other repair shops in there. And what County Line Equities did was to reduce the size of that building to the footprint that was there in 1952 essentially. We do have that information and we can provide it

Vincent Cestone - I would like to see it

Glennon Watson - Okay. The second building was parallel to the back line not very far from it, I don't know the distance

Vincent Cestone - 10 feet

Glennon Watson - And so that would have been nonconforming for that reason. The net of the old buildings, we did figure that out, the net of the old buildings and we will provide that exactly was a 200 foot delta, square foot delta in coverage. If you consider the canopy a building and the remaining part of the original structure buildings, there was a 200 foot delta. I will tell you this, knowing that I may have to correct myself, but I believe it is a decrease. I may have to correct myself on that. We will provide you with that information. We know that there is concern about visibility of the structure, we proposed a significant screen along the rear line to protect the neighbor. This is literally what you see today, this is standard arbor _____ being planted; and this is how arbor _____ grow. This is actually the arbor _____ hedge that is in front of _____ Riverview Industries, if you want to see what arbor _____ will do in a 10 or 12 year period and it will thicken into something that and you can see it down on Stone Street where I live where the backyards of people's houses are virtually invisible. So we are proposing that in our site plan. Some of the concerns that were expressed at the Planning Board meeting the first night of the public hearing was that the canopy would be terribly visible and terribly out of scale and it is a big canopy. It has to cover six pump islands. I will speak about the pump islands in

a moment. This is a picture with somebody standing just off on the shoulder at the stop line in the northbound lane and looking at the building. The white strip you see here is the canopy sticking out. This picture is taken if you come around and turn on to Route 403 but stand on the little triangular island out there and look towards the building, not in the traffic lane but this is the canopy sticking out. Coming south, this is coming south on Route 9 approaching the traffic light. If you look close you can see the red light, and this is the canopy. I am sure that someone else will point out to you that if you go and stand yourself exactly opposite the entrance and look straight at the canopy you see the whole thing. And the same is true on the other side. The canopy is necessary for several reasons. It is the best way to protect the customers so that when they are pumping gas that they are not getting rained on, they are not getting snowed on. It houses the fire suppression systems. Now you may hear that there are other fire suppression systems and that is true, they are available. This is clearly the preferred way. In fact it has card readers. Again there are ways to do that without the canopy but again the canopy is the better way. It provides the light, the lights are set up in the canopy so that they are not shining out on people, out on to the street. They are downward directed lights that are contained within the canopy so that they are least objectionable as possible. What is probably the most important thing about the canopy is that if there is a spill during a storm, or if gas leaks out or some kind of accident, that canopy keeps the rain water away. It keeps it from washing off of the pad so that it gives some people some time to come and clean it up. So the canopy is really a necessary element to this being a successful operation. This being a good operation. A clean operation. The canopy covers pumps, and a delivery system that is filled with checks and balances and if you need to speak to that I will ask Mr. Giachinta to speak to that since he is much more converse in that than I.

Bill Flaherty - Well on the subject of the canopy Glenn

Glennon Watson - Yes

Bill Flaherty - I want to point out that that is not a requirement by law. By local law or by state law that a canopy be required over a pump. It is an elective. And there are other means of suppressing fire

Glennon Watson - I think I just said that

Bill Flaherty - Okay but it is really, what I am saying is that it is not a legal requirement per se

Glennon Watson - Right. But it does have distinct advantages of for both the customer and to the environment in that it does protect in the possibility of spills. It provides them time so that clean up can be handled particularly in a rain storm

Bill Flaherty - Is the size of the canopy determined by the number of pumps you

have?

Glennon Watson - That's correct. There are 6 pumps, 12 nozzles. We have engaged the traffic engineer and one part of his report came in today which basically has to do with the level of service whether or not this gas station as proposed will change the level of services. Essentially the efficiency with which the intersection works. In 2011, his 3 year projection is that regardless of whether or not the gas station goes in, this intersection is going to operate at a level of service "C" which is, I think is the lowest acceptable level. But that is going to happen regardless of what is going, in the eventuality of this site. We need to put the gas pumps in the back simply because of the congestion and the very small area that we have available in the front. Mr. Giachinta has met with the State, our engineers have met with the State, they clearly do not want the extra intersection to be as close to the intersection of the highways as it would have to be to keep the pumps where they were. We were talking about this a little earlier, someone northbound wanting to continue northbound will come up, turn in and come back out to the light and have a light at the intersection. Someone southbound will turn in and continue out and have a light at the intersection. Someone traveling on 403 will come in and go out. Someone traveling up 403 will come up, go in, and then turn to continue on 403. So the flow works much better. The points of possible collision here are spread out and get it away from this intersection. That was clearly what was communicated to us from the DOT. The engineer, the traffic engineer verbally indicated to me that he agrees with that assessment. He also, I also talked to him about the possibility of four pumps. Mr. Giachinta pointed out to the Planning Board and I will repeat it, that the four pumps will cause a back up of traffic in heavy service times. Six pumps will increase the number of people that will come in. But it will also increase the efficiency by which they get through the pump isles. And the traffic engineer and John Collins engineers said that the gain of efficiency by the extra two pumps is clearly beneficial to moving people through and because of the restricted space, removing the possibility of traffic being backed into the street. That being said, the canopy being, as you said, perhaps elective, but there is no way to accomplish, to clearly accomplish the goals of protecting from spills and protecting people while they are pumping gas. Those other options at least the ones that I know about, don't do that

Vincent Cestone - Glenn, explain something to me. This was a nonconforming structure before you even started. Was there a building permit

Glennon Watson - Yes there was

Vincent Cestone - How was a building permit issued? You can't issue a building permit when it is a nonconforming structure. You have to come before us.

Glennon Watson - No that is not true. The building permit can be issued for

repair and reconstruction of a nonconforming structure provided, provided that that repair or reconstruction does not increase the nonconformity.

Vincent Cestone - Obviously you have. How did you move the pumps, it's a major change

Glennon Watson - The pumps were gone. And that's what really caused the stop work order. The building permit was issued for the building and that was fine. To be perfectly frank, when Mr. Giachinta started working on the canopy is when it got stopped because he went beyond the scope of the building permit.

Lenny Lim - The permit was for the building and not the pumps

Glennon Watson - The permit was to reconstruct the building.

Robert Dee - Not the canopy.

Glennon Watson - The last issue here, one last point to make. We are, we took a look at the other gas stations and we took a look at the way this site was designed. If this were a one acre lot, we would be allowed to cover 65% of that 40,000 square feet if I did my math correctly, that's 26,000 feet. We are proposing to cover about 23,000 feet. It is an increase above the 65% of our lot but it is a fairly conservative and it is less than we would be allowed if we had a full size lot. We didn't create that situation. The situation was created when Zoning

Vincent Cestone - That's why I need to see what was there before

Glennon Watson - Yes. And we will be happy to supply that. But the zoning, the implementation of zoning and those requirements is what makes these variances necessary. As far as the, we submit that everything we are doing and planning here is an improvement. And if you get a chance to watch the planning board meeting, the minutes, one of the people got up and told a little story about what this place was like when he was a kid

Vincent Cestone - I've seen it

Glennon Watson - And it only got worse. And he is a kid my age. So

Vincent Cestone - But you know as well as I do that the zoning board's responsibility is to issue the smallest possible variance.

Glennon Watson - Yes I do know that

Vincent Cestone - It is not about the improvements. It is about the variance.

Glennon Watson - Right and I believe that we are trying to bring ourselves into conformity with the law to the greatest degree, to the greatest extent possible. It is not possible to bring us into conformity without variances. If we reduce the coverage, which is less than would be allowable under the normal size lot, normal shaped lot, if we reduce that coverage we are going to be asking you, we are going to have to come back and ask you for parking variances. If we reduce the sign variance and to be perfectly frank we can accomplish the sign without the variance. We put the sign right here, 10 feet back and we can make it. But in my view it will be a stain on that backdrop that has been created there with the sign "Welcome to Philipstown" which I think is an addition to that intersection. If we don't get the variance for the canopy, we will be compromising the customer's comfort and safety, we will be compromising the protection that we can provide for spills that might occur during the rain storms. So there are reasons for all of these things. It is certainly a balancing game and I totally respect that you have to do that. We believe that we have balanced it as well as can be expected and we believe that this is a modest venture in terms of its absolute size and necessary to the site because of its shape and its position.

Paula Clair - I want to ask a question. You had said that the building permit was for the building. The original building

Glennon Watson - That's correct

Paula Clair - Were gas pumps included in that building permit as well?

Glennon Watson - I don't believe so. No.

Lenny Lim - Glenn, is this going to be open 24/7?

Glennon Watson - No.

Joseph Giachinta - 5 am to 11 pm

Lenny Lim - okay so after 11 the lights will be lowered or whatever

Joseph Giachinta - yes

Lenny Lim - okay

Vincent Cestone - Any more questions from the board?

Robert Dee - Yes. The canopy was installed without a permit? Without a variance correct?

Kenneth Gunshor - Without a variance

Robert Dee - It was built without a variance.

Kenneth Gunshor - It was built simultaneously

Robert Dee - So you built it and then you are coming for the variance

Kenneth Gunshor - We built it

Robert Dee - I am just asking

Kenneth Gunshor – yes

Robert Dee - Okay thank you

Vincent Cestone - Any other questions from the board? Do you have anything else you wish to present because if not, I am going to let the audience speak.

Kenneth Gunshor - Well perhaps let the audience speak and we can respond

Vincent Cestone - Okay. In that case I am going to let the audience speak on this first and you'll get your chance to rebut later on. Anyone in the audience wish to speak? Introduce yourself please.

Thomas Whyatt - My name is Thomas Whyatt and I live at 848 Old Albany Post Road. I have been a Philipstown resident since 1970. I know that doesn't put me high on the list of Philipstown but I was in my 20's when I moved here with a cute girlfriend. I own my own home now and I have raised two children here, and one grandchild so it seems like quite a while. I have driven up and down Route 9 for a long time. I commute pass this gas station every day. But I am not here just as a local resident. I am an attorney that specializes in Environmental Law, Land Use Law and I have many clients here with me. I am with the law firm of Oxman, Tulis, Kirkpatrick, Whyatt and Geiger in White Plains. I represent people who live in Philipstown, some close to the site of this project, some not so close but all have a lot of concerns over what is proposed here. They formed an unincorporated association called the Philipstown Citizens Alliance and many of the members of the Alliance are here to speak tonight. The Alliance has other issues before it but this is the primary focus at this point. Being an attorney I have brought with me a brief and I would like to bring some copies so that I can hand them around if that is okay while I talk

Vincent Cestone - Okay. So in the title of this being a brief, could you make it brief and not go through the whole thing?

Thomas Whyatt - What I would like to do is just summarize a few points. Much of this is a legal argument citing cases and so forth and I won't put you through that part of it because I know you are familiar with the law under which you

operate

Vincent Cestone - Right

Thomas Whyatt - I would like to begin by responding to a couple of points to what Mr. Watson made that are not necessarily covered in the brief. One of them is his claim that this simply cannot be done without a variance, that's wrong. This a, this was a gas station for many years. It was gas station when zoning went into affect. The lot is a nonconforming lot at this point. But the buildings and the use on the lot could be permitted by building permit as they have been without variances required. So the reason that the applicant is here for a variance is not because he wants to put a gas station on this lot. There has been one. He wants to put a much bigger gas station on this lot and that is why he needs the variance. There is no requirement in Philipstown Law that he build within this spot. He can get a building permit to rebuild the existing building and presume the pumps can be put where they were and the other buildings can be put where they were

Vincent Cestone - We were aware of that

Thomas Whyatt - All without variances

Vincent Cestone - Right

Thomas Whyatt - Our second point is the concept that this canopy is something that you can see barely from a few different areas, I am sure you have been around that site quite often. The result of the canopy and the new structure is an extremely prominent industrial truck stop size and style structure on this property. It is not simply an expansion of an existing modest gas station that had been there in the past. It is highly visible. This particular spot was identified during the comprehensive plan process. The corner, the intersection of Route 403 and Route 9 is an area that should be established as the gateway to Philipstown. This is a unique property in the comprehensive plan point of view because so much traffic comes into Philipstown right past here and if you look at the neighborhood around it, the community around it, it is beautiful. It is scenic. It is an historic farm area on one side and woods on the other. The Appalachian Trail goes through it. State park lands behind it.

Vincent Cestone - So what is your issue with the structure

Thomas Whyatt - The issue with the structure is that it is not in keeping with the community in the immediate neighborhood

Vincent Cestone - Okay. What areas would you wish the applicant would change

Thomas Whyatt - Let me point out, what has happened right now is that what had been a small pump area up front and much larger buffer because of the minimum activity back here between this lot and the residential area behind is essentially reversed now. And instead of this building being a buffer between the gas pumps, the traffic, the smells, the noise and so forth, and a lot more distance, now it has all been placed right against the property line

(Turning tape over...may have lost some dialogue)

Thomas Whyatt - ... somewhere in here, I can't quite see it on this lot. But if you fill 86% of the dry land here you have very little left because of that stream. So it is almost all paved area. There can be a substantial reduction in the intensity of the development, the paving, the number of pumps, the area that has to be paved to provide the parking and so forth, so as to greatly reduce the environmental impact, the impact on the immediate neighbors and the visual impact. We haven't come up with our own plan but I would say what was there before is what people would have expected and what would have historically been part of the environment. What is being proposed now, if it were to be what was allowed without variances would be much more consistent with that approach. I have a number of people who are going to be speaking and I don't want to essentially summarize what they are going to say, I will let them say it. But we have a series of points, environmental impact, visual impact, the consistency of this proposal with the community and the relationship of what is before you now with the goals of the full comprehensive planning process which as I said focused on the gateway property which called for improving design along Route 9, which called for reducing scale of commercial development to a residential scale. It called for enforcing the town regulations. Now I have a series of dates in the brief but it is clear that step by step once the applicant had begun constructing with their building permit they very quickly moved well beyond the building permit and constructed to the south and north of what was covered by the building permit. They began getting tickets I think in September, violations and stop work orders for about 3 months. Week after week they continued building essentially until it was completed. In fact I think even after the last ticket they were still filling in the hole over the tanks and still paving it over. So I am going to ask you Board to consider in the process of reviewing this, your role in the enforcement of the town's regulations. People who build, who build knowingly, who build when they are getting tickets and stop work orders, should be held accountable. They should be held responsible. They should not give them a leg up on the application process. Thank you very much.

Vincent Cestone - Anyone else wish to speak on this? Introduce yourself please

Liisa McCloy-Kelley - My name is Liisa McCloy-Kelley and I live at 22 Route 403 and I am the closest neighbor to this property. My husband has

Vincent Cestone - I am sorry. Can you speak up please

Liisa McCloy-Kelley - Sure. I just wanted to share with the zoning board tonight my concerns, my husband's concerns about the property that is being developed here at the gas station. When we bought our house in 2005, we were really impressed with Philipstown and being in an area that had development really under control. That it worked hard on the development process in this town to prevent this town from becoming what has happened to so many of neighboring towns. There isn't strip development here. There isn't large big box development here and that is one of the reasons that we chose to live here. We were looking for a simpler lifestyle and something that was closer to nature and we were thrilled with the house that we bought and the wetlands that are on our property and the stream that courses through our property and trying to make sure that we took a stewardship role in maintaining this thing. In the last year and a half we have really been dismayed to see how our views have changed. Where we once looked out of our windows and saw a barn that for all intent purposes for us completely shielded us from any of the traffic at the corner. We now see straight through the tank area, the canopy, through the doors and windows of the building straight to the intersection. This area is now lit by two street lights that are on 24 hours a day. So we have no, there is a dark sky yes in the vicinity of our house, but I can always see that light. I can always see that property. And it is completely changed, the way that we see out of our house.

Vincent Cestone - So you own that property directly behind the

Liisa McCloy-Kelley - Yes I do

Vincent Cestone - And how long have you lived there

Liisa McCloy-Kelley - We have lived there for 2 years

Vincent Cestone - And you were aware that this was a commercial property?

Liisa McCloy-Kelley - When we bought the house our attorney and the real estate agent said to us there was a gas station there, it was closed down because there was a spill, the Town has very stringent regulations now, it is unlikely that that kind of use would ever be approved on this property again. We trusted that that was true

Vincent Cestone - Well she didn't tell you the truth

Liisa McCloy-Kelley - That said, until this development started we didn't realize very often we were living between two commercial properties. Our neighbor to the north, Dr. Gergely runs a business out of a house. He keeps all of his parking on the other side of his building. We very rarely are even aware of the number of patients who come and go from that property. Yes there is a sign that

is light and there is a little bit of lightness over his parking area but it is really very different than looking south and imagining what is going to happen when you look south at the point when this is open. We also had a lot of concerns since this started about the wetlands that are on our property. The Annsville Stream that courses through the center of our property, goes across the corner of the County Line Equities property, it courses down Route 9 and through the intersection of 403 and crosses out on the other side. There are things that can be put into place to hopefully protect the runoff. But the runoff is now being moved, I can see, to more to the back of the property and closer to where the stream itself goes directly under the road into a culvert. It worries me because we our well is 60 feet from our property line. It is less than 100 feet from where people will be putting gas into their cars. And close to where their septic system is and we are concerned that it is just going to be a problem for our drinking water. The applicant's environmental consultant says that when the property was examined in 2006 that the watercourse buffer in the northeastern corner extends on to the property. A wooden fence has been installed along the property line which serves as an effective barrier to the watercourse channel from commercial uses of the property. The buffer on the property had previously been converted to parking and storage areas from former commercial uses. I think that at the time the site plan that is being used now was perhaps unclear to the inspector who was there. Because surely the former use was for storage of cars and a barn with some antiques in the back of that property were a better buffer for the wetlands that I have and for the stream than having the propane tanks, the air fumes, the fuel in the cars right there next to the stream, within 30 feet of that stream. We are also concerned because our property floods. Three or four times a year the stream floods above its bank, there is standing water in the back, the whole southern end of our property. In the packet that I have given you there are photographs of what it looks like when that water is standing right there by the fence. It is right next to where their parking will be. That water stands for days at a time until it is absorbed back into the stream because the water table at that point in our property is very low. It is about 2 ½ feet under the ground. More than a year ago December 30th of 2006 we were worried about the work that was being done at this property and about the fact that the building had been built. And we hadn't seen anything in the paper about it and the approval process, so we wrote to the town and the zoning board and the planning board to find out what kind of process there was and we were told that all work to date had been in compliance with town law and that site plan approval for this property would be required prior to any new construction at this site including the installation of fuel tanks. The fuel tanks had just been delivered when we wrote that letter. Since we received that letter a year ago we watched as the tanks were placed in the ground, brought back out of the ground, another hole dug, moved further to the west, tanks put back in the ground, the structure for the canopy arrived, the canopy starts to be built, the canopy is finished being built, the site has been paved, the hole has been filled in, that has been paved over, all of this has happened without site plan approval, without the variance that was needed, and with very little information available to the public. This entire

construction has happened without the approvals that were needed. Despite the fact that we were on the phone to the building inspector, and the building inspector was out there issuing stop work orders, 15 weeks in a row. When I checked on the building permit information that had been filed with the building inspector I found that the building permit application covered the demolition of accessory buildings and the renovation of a 1,289 square foot building. It didn't include a site plan, wetlands review, anything from the department of health, a fire marshal review or the vast majority of information that is usually included with a building permit application. The building permit and the demolition permit that were issued were for demolition of barn and rear of main building and renovation of the remaining building at 1,289 square feet plus or minus. I guess that renovation probably doesn't mean ripping down the building to its front wall, half of its front wall, its 2 front corner supports and rebuilding an entirely new building from there. But that's what happened. That's exactly what happened. I watched the whole thing happen and everybody who drove past there from Town watched it happen. And twice during the last year there has been correspondence from the Garrison Fire Department to the building inspector with concerns that this construction happened without adequate building plans filed, that there are notations to residential building code rather than commercial code and that the fire department has concerns about the way the construction handled and what that means for the safety of the building. Also during the last year we have had a lot of concerns about the septic system. The applicant indicates in planning board application that they will use the existing septic system. But if you look at the site plans that were filed first with the building permits and then with the planning board application, that septic system is vague on both of those. It is in two different places. And in both of those places it is within 100 feet of the well that they plan to use for their water. There has been nothing brought before the department of health. And it is unclear how that existing septic system how long it has been there, whether it is really possible to use that, in fact as I look through the Town's files regarding the previous owner of this property I found a letter to the planning board where that it indicated that they were looking in a previous plan approval process at replacing that septic system. And that the septic system they had in fact found would need to have the entire site raised four feet to put in new septic because of the water table and that there would have to be an investigation into a sewage water management system that would discharge into the stream. This site is a troubled property. It has been a troubled property. For decades it was a gas station, it was a stripper, it was an auto repair site, it was a convenient store, it was a junk yard for old cars, there was a house there that this site had been built up around, there were apartments that were used at some point. When I moved into the house, there were most definitely were people squatting there. From the public records it looks like the previous owner was trying to get a site plan approved to improve the site. One in 2000, when in October of 2000 there was a spill with the existing old tanks that were there. And the tanks were pulled and the site had to be cleaned up. Apparently it has not operated as a gas station since that time. And I think that everybody would admit that it has been an eyesore and it certainly needs someone to take it on to clean

it up. It is a nonconforming site. It has been a nonconforming site since zoning laws were enacted. And over the years there may have been creeping nonconforming in the way that the site was developed. It is at a busy intersection of two major highways which makes it on one hand an ideal spot for a business, and yet it is a small site. An undersized lot that could cause a lot of safety issues with traffic. Certainly we've seen more accidents that I care to count at that intersection without any entrance or exits to that site. And it puts the board at distinct disadvantage because the applicant has on one hand chosen to take on this difficult site and to work on developing something that I admit looks better than what was there, but they have also chosen to do it a way where they have not followed any of the laws that we have put forth in the community about the kind of development that we want. So my concerns, and my husband's concerns is more about the impact on our property that we are certainly concerned about that. And it is more than just the way the building was built or the environmental impact, we are concerned that if you grant these variances and you allow this project to complete as it is, it sets an amazing precedent for development in Philipstown. If we allow this to happen and we grant these variances, there are so many other B-2 zoned properties, including my own, that are currently used as residential properties that some people could look at and say you know what I want to build a little business and well you know I can work up to the edges of my site, I can pave the whole thing. And having started this precedent of saying go ahead, build first ask for permission later, use every inch of it, don't worry about the fact that you are sitting on top of an aquifer that feeds into the Hudson. You start a precedent of saying that that would be allowed all along Route 9. You look at the zoning map and how all of these B-2 properties spread up Route 9 along that side and you can see that this could start a wave of development. So that said, I just would like to note that at the Town Board meeting in April 2000, Bill Mazzuca said Philipstown is at a crossroads which will determine the character of our community and our future quality of life. One path leads to over-development and radical change. The other preserves and protects the community we have all chosen to call home. I think we are at the same crossroads with this project. I think that if you allow these residents these variances, it starts a very dangerous precedent. And I ask you to stand by the zoning code and deny the variances. I know that the applicant has stated in the variance application that without the variances the site is not viable for the proposed use or any other use. And there would be no negative impact on the character of the neighborhood. I think those statements are untrue. I think there are lots of potentials for this property to be developed without the extensive variances. Maybe a smaller variances, maybe another kind of use. The possible environmental impact when you are in the process of weighing the checks and balances of looking at this, the possible environmental impact to the water shed, the actual impact on not just the visual impact of this site but that the fact that a large oversized Shell gas station and a big convenient store do not say small town gas station the way that was there previously. The comprehensive plan would ask you to look at this as the entrance to Philipstown. And I hope that we can find a way to do that. Thank you.

Vincent Cestone - Someone else wish to speak? Introduce yourself

Suzie Gilbert - My name is Suzie Gilbert. I live 241 Route 403. I wish I was as good a speaker as Liisa but I am going to end up reading this. I would like to speak briefly about the comprehensive plan and this application. Philipstown has just completed the long, costly and labor intensive process of creating and adopting its comprehensive plan. It states residents deepest concern was to retain the town's character and authenticity while managing future growth. Authenticity is defined as a small town feeling and small scale traditional forms of development. It lists among its goals to improve the visual qualities of Route 9. The continued Philipstown is a unique place characterized by great natural beauty, historic places and a sense of small town community. This uniqueness is fragile. Development should be done in a manner that is sensitive to the town's special rural and historic qualities. It also states Philipstown's existing businesses provide a range of products, services and employment and play a major role in shaping our special small town character. Which in turn is one of Philipstown's most positive features. New commercial development should be consistent with the town's aesthetic and qualitative goals while maintaining Philipstown's strong economy. There are other small gas stations within Philipstown and all fit neatly into the parameters of the comprehensive plan. A fourth small gas station and convenient store would do the same. However this is not what has been, I would say proposed, but there was really no proposal. A 12 pump station with a 50 foot by 70 foot canopy and a 2,400 square foot store is nearly completed. If this monster project is allowed to stand, then what is the point of all the work that went into the comprehensive plan? And why doesn't everyone who wants to build something huge in Philipstown just go right ahead and ignore our laws and build what they want. Ignore stop work orders and deal with the laws and variances when it is all finished. The comprehensive plan speaks specifically of this site stating that it is the gateway to Philipstown. Should this project remain the way it is right now the first thing one will see when entering Philipstown from the south is a dangerous intersection, an enormous super highway sized gas station, and a very large convenient store plastered with ads for beer and cigarettes. I live on Route 403. I moved here 18 years ago. I love this place because living here is like stepping back in time to a small town that is unaffected by endless subdivisions and big box retail stores and gas stations the size of the ones on the Jersey Turnpike. Much has been made of the fact that this developer is a member of our community. The fact is that the developer is not a single person. It is a corporation with four members and only one lives here. Up until now I have truly believed that all the time, money and effort that the people who live here put into the comprehensive plan was well spent and that it would actually protect us from plans like this. I still want to believe that our laws mean something and a corporation just can't ignore our laws, build first, and ask questions later. Thank you.

Vincent Cestone - Someone else wish to speak? Sir introduce yourself

Clarence Bartow - Thank you for permitting me to share my views on this issue

Vincent Cestone - Introduce yourself for the record

Clarence Bartow - Excuse me

Vincent Cestone - Your name for the record

Clarence Bartow - I am. That's my next line. My name is Clarence Bartow and I live at 31 Evarts Hill in Garrison about ½ mile south of the intersection of 403 and Route 9. My family and I have lived in Philipstown for over 16 years and greatly enjoy the character of the community from the great legion of community volunteers to the country feel of the town. I applaud the acceptance of the comprehensive plan and what its implementation will do to ensure that Philipstown retains its wonderful character. Regarding the variance application, it appears that County Line Equities applied for the substantial required variances after they built out the site. As this seems to run counter to the policy of submitting applications prior to construction, I can only assume that the applicant thinks that they are more likely to get the requested variances after the site construction is mostly complete. It is clear that they have put themselves at risk by their own actions in this regard. If they had applied for variances prior to construction, they would had to build a facility in keeping with the codes and site size and other requirements of the town. In addition, the granting of variances ex post facto would establish a very dangerous precedent regarding any future development in Philipstown. A developer would have an incentive to build first, apply for variances later. This could encourage zoning and planning violations and have a significantly negative impact on our town's future. Thank you.

Vincent Cestone - Okay. Someone else wish

Brian McConnehey - Yeah. Good evening. My name is Brian McConnehey and I am a resident of Philipstown. I am reading a letter from Michael Finnegan who cannot be here this evening and asked if I would do so. The ground covered in this, and I will save us all some time and kind of bullet point because this ground has been covered before. But I will do the beginning and the end. I am writing in opposition to the variance sought by County Line Equities and respectfully request that the variances be denied because the benefit to the applicant of these variances is so greatly outweighed by the damage to the neighborhood and the community. This kind of over development will be prohibited by the many code changes to be enacted in furtherance of the comprehensive plan, and ground water protection plan. Moreover, an extensive environmental review process would need to precede any decision to grant the variances, a time consuming and costly review that is not merited at this time. I will paraphrase. The committee and task forces and countless volunteers plus paid consultants have contributed to this plan and this project seems to fly in the

face of all the work that they've done. This is no ordinary building site. What happened here will help decide the future of Philipstown. Approval of the oversized gas station on an undersized lot atop an important aquifer could affect the drinking water supply of many residents. This could result from storm water runoff, ineffective SSDS discharges to Annsville Creek and adjacent wetlands, and God forbid, a failed petroleum storage tank in the future. Thirdly if this application is approved, will chart a course that will essentially change the character of the neighborhood. It is inconsistent with existing character in this area which is residential not commercial. And in conclusion, the proposal use is too intensive and poses too many significant environmental risks for the community. If approved it will set a dangerous precedent for other overly intensive uses along Route 9 as the gateway to Philipstown. It would establish a strip convenience retail use which the town advisors have suggested is suboptimal from a planning and economic development perspective. And finally, it would locate hazardous substances atop an important drinking water supply and adjacent to important wetlands and streams. Very truly yours Michael Finnegan and I will give you copies of this.

Vincent Cestone - Okay. Make sure the secretary gets a copy please

Brian McConnehey - Yes

Vincent Cestone - Anyone else wish to speak? Introduce yourself

Barbara Feldt - My husband will hand out copies. Also this is short. I will also read. My name is Barbara Feldt and I live at 12 Cross Timbers Road in Garrison. I am here as a resident and member of the Philipstown Citizen Alliance to express concern that New York State and Town of Philipstown statutes and permits that protect wildlife and safeguard our environment and wildlife habitat have not been secured. As shown on the map on the back of what I handed out is from the DEC website of the New York State Department of Environmental Conservation. "All proposed projects in this area such as this project is in or near the areas shown where rare animals, rare plants and significant natural communities which will require further consultation and that the site is within rare or high quality ecological areas and the quality of the surrounding landscape associated with sensitive rare animals and plants". Annsville Creek which is the northeast corner and I will be glad to point it out on the site map, would you like me to.

Vincent Cestone - I have been in this town for over 20 years

Robert Dee - Show me. Point it out for us. Not everybody is as old as him.

Barbara Feldt - It comes down here, there is wetlands here, and of course there is wetlands here and the habitat I am talking about it comes underneath, it comes from here, and it is all open through here. Then there is this cemented old paved

over area over here. It is within a couple of feet of the pumps. It is all right here open. Then it travels basically all along the side here and then cuts over. It is an open flowing vibrant stream. Annsville Stream is a fresh water stream that enters there and runs under and it goes down to the Hudson River actuary. Both this stream which does flood a couple times a year and the extensive fresh water wetlands that it connects from the north and then also connects to the south of the property are habitats to rare animals that have been surveyed by the DEC and documented by wildlife scientists. The State regulated wetlands map shows that the gas station is clearly within 100 feet of beneficial wetlands but these wetlands are not New York State regulated since they have not yet been mapped. Only wetlands that are over 12 acre lots and the New York City watershed have been mapped. There are no state regulated wetlands on this site. But the Annsville Creek and the Annsville watershed are on this site. All streams are classified by the State of New York and this was marked as a Class C stream. As such, any work in or on the edge is not legal without a permit. Stream crossing permits have not been filed or been issued for this site. Neither have outflow or storm water discharging permits. Although the DEC's highest concern is for the rarest animals such as the Northern Fence Lizard, the Spotted Turtle and sensitive rare reptiles, there is also worry about impact to both uncommon and the common turtles, toads, reptiles, frogs, birds, mammals and plants. An on the ground survey must be conducted and mapping updated since disturbance occurred without mandated stream permits. Due to the proximity of the Hudson Highland State Park, the State environmental review SEQR will also document rare plants on the ridge and there will be further investigation due to archeological issues. The Executive Director of Hudsonia, we don't have this journal it is up in Fishkill, it is not down here. Erik Kiviat wrote "Conservation ecology works to maintain viable populations by understanding ecological relationships and reducing immediate and long term threats". To conclude, since the DEC is guided by home rule principle and the Town of Philipstown has adopted the comprehensive plan, I respectfully submit to you that the sake of reducing both threats to both animals and to our principles, that the requested variances all be denied. Thank you very much.

Vincent Cestone - Someone else wish to speak?

Ellen Feld - My name is Ellen Feld. I live on Route 9D in Garrison and have lived there for 25 years. I know that all of us have noticed the increase in traffic on 9D, 9 and various other roads. But I have particularly noticed it there and I travel past there several times a day usually, the cross roads of 403 and 9D have the minor traffic that has the comes through 403 on to 9D and from 9D on to 403 has increased tremendously. In earlier times I remember that there was only a flashing red light at that intersection has resulted into increase of traffic there had to be a regular green and red traffic light installed there and that, in times of rush hour morning and afternoon rush hours, there is a constant stream of cars going all the way across the intersection and into 403 and from 403 and most of the, it is just amazing how many drivers use 403 as a connector between Route 9 and

Route 9D. As a result of all that extra traffic that we have now, when I can conceive of the traffic that is going to be increased by the building of this gas station, cars going in and out of the gas station on to 9, on to Route 9, on to Route 403, it just takes my breath away. The possibility of accidents, I know we have had accidents there, but the possibility of increased accidents and the possibility of emergency vehicles will not be able to reach their needed spot in time because of all the congestion is really very frightening. There is a second area of concern and that has to do with site itself. As I understand it there plans to be 7 parking spots on the north edge of that property. In front of that there are all these pumps. The people who drive in to park and want to go to the store, have to walk through a maze of pumps, people pumping, people coming in and out with their cars, people coming in and out of the parking spots. It just seems to me that this is a very dangerous situation. I just think that people walking from the parking spots into the back to have access to the store will be in great danger by being hit by a cars coming in and out of all these spaces. So I think there should be a whole new plan of this site. It is just accidents waiting to happen. Thank you.

Vincent Cestone - Someone else wish to speak?

Polly Bartow - I am Polly Bartow and I live at 31 Evarts Hill and my family has lived in Garrison for about 80 years. So I know the gas station site really well. I used to by gas there when I drove a BW when I was about 19. It has been an eyesore but it, I agree with everything that people have been saying. The proposed site is too big. It is dangerous. Every morning Monday through Friday I drive from Evarts Hill to the train station. And every morning I pray that I get through there without getting hit. People drive like maniacs at 6:30 in the morning. I have seen people ignore the traffic light. And to put a gas station in there with 12 pumps and a convenient store so that people can get coffee and so on it is just too big, it is too dangerous. And I really think you guys need to think about that. It is the wrong place on that site. A smaller gas station maybe but not the size of this. It is scary enough already. Thank you.

Vincent Cestone - Anyone else wish to speak? You can talk from there

Ann Schulz - My name is Ann Schulz. I live in Lake Valhalla. And we are going to be faced with developing, big development at one time when Mr. _____ started. My concern is, and I agree with everyone that has been talking, but my concern is the arrogance of anyone coming into our Town and building something and doing something without permission. Without a permit. Without what they were supposed to do. And then come to us, because you are us, and ask us for a variance and say okay we are going to reward you. Even though you did something that you should not have done. And it has happened before. It has happened now. And hopefully we get this company into planning so that it won't happen again. But I don't like the idea of rewarding someone with a variance when they have done something that they should not have done without

permits and without going through the proper procedures. And I think that is a slap in the face to every resident of Philipstown. And I think we should think of each other. It has happened too many times. We established this comprehensive plan. We should have codes and rules that should be obeyed and then enforced. I was asked not too long ago at a town meeting when someone did something wrong, they put up something they should not have done, and the town board asked me what we should do about it. I said make them take it down. It was put up illegally and put up without the permits they should have had. Make them take it down. Maybe that would solve our problem. No one would ever do it again. But I don't think things should be rewarded to someone when they have done something they should not have done or in the wrong way. That is not fair to any of us. Thank you.

Vincent Cestone - Any one else wish to speak? Sir?

Daniel Donnelly - My name is Daniel Donnelly and I am an attorney and I hope no one shoots me. When we commenced the proceedings this evening the first thing we did was we pledged allegiance to the flag and at the end of the pledge of allegiance we say with liberty and justice for all. And justice means complying with the law. Just as this lady had articulated. And I need not add to what she had said. But it is incumbent upon us to ensure that there be justice. And this venture is an aberration of justice. And it should be denied.

Vincent Cestone - Someone else? Sir?

Walter Daniels - My name is Walter Daniels. I am the supervisor of the section of the Appalachian Trail and I am a representative of the Natural Park Service and the US Government in this issue. Obviously the Annsville Stream goes under the parking lot and into _____ land on the west side of Route 9 and so that impacts that. It doesn't appear that there has been adequate studies of what the impacts of that would be. There was also an issue of notification. I think I believe adjoining land owners, and in this case the United States Government, was supposed to be notified for these types of things. And I only found out about this this morning from an email from Barbara Feldt not from the applicants.

Vincent Cestone - It is published on our website.

Walter Daniels - That is not sufficient notification.

Kim Shewmaker - I mailed out those public hearing notices and there were quite a few to the US Government.

Lenny Lim - You sent it to them?

Kim Shewmaker - Excuse me?

Lenny Lim - You sent them out to them?

Kim Shewmaker - Yes sir

Walter Daniels - Where to?

Kim Shewmaker - Let me get the file and I can show you the addresses

Walter Daniels – okay because the US Government is a very large operation and it can easily go to places that take weeks to get to me.

Vincent Cestone - So continue

Walter Daniels - I think this should be at the minimum held at abeyance until all the permits are in proper processes are done. And we'll see where go from there

Vincent Cestone - Okay. Anyone else wish to speak? Mr. Giachinta, you were issued a stop work order?

Joseph Giachinta - Yes

Vincent Cestone - And you continued working?

Kenneth Gunshor - For a short period of time. Work has been ceased there. Assumptions have been made to this board as well as the planning board

Vincent Cestone - When was the stop work order issued?

Kenneth Gunshor - The first one I think was August or September and they stopped in October

Vincent Cestone - But back in August the canopy and all the tanks were not in. How did they get put in

Kenneth Gunshor - The tanks, we don't need permits for the tanks.

Vincent Cestone - You are within the setbacks for the tanks?

Joseph Giachinta - Mr. Chairman, I went to the building department and asked if I needed a building permit to install the tanks, and he said no jurisdiction

Vincent Cestone - Okay but how did the canopy get built? The canopy was not up in August.

Joseph Giachinta - I am talking about the tanks

Vincent Cestone - Okay. But how did the canopy get built if the stop work order was issued

Kenneth Gunshor - It wasn't issued at the time

Vincent Cestone - You just said it was issued in August

Kenneth Gunshor - I said September August. I don't have the exact date

Joseph Giachinta - I actually never received one. Basically I had a call from Tom Monroe to stop.

Vincent Cestone - Okay

Joseph Giachinta - I never saw a stop work order at the site. I was never mailed one.

Vincent Cestone - He never mailed one at your structure

Joseph Giachinta - Not that I saw

Vincent Cestone - Okay. So the town never issued a stop work order to you. It was never officially delivered to you. We'll have to ask Mr. Monroe about that

Robert Dee - I have a copy of the building permit. It says demolition of accessory buildings, renovation of the building 1289 square feet. I understand that. What concerns me is the canopy. I mean you certainly have enough attorneys, I don't consider ignorance, I consider it arrogance. For my own time here in the town I can tell you, that I recently built a home here in the town several years ago and I came here before the board for variance. They denied me the variance. And I went back and I went back and I had the house reconstructed to fit the confinements and they were right. So what concerns me is the building of that canopy without a permit knowing that you needed a permit. That bothers me. That's my only comment.

Vincent Cestone - Any other comments from the board?

Bill Flaherty - I would just like to say that many of the issues that you raised here this evening are valid in many respects but you understand that this is the zoning board and our jurisdiction and responsibility is only in relation to the variances that are required on this particular project. This is still under review as I understand it by the Planning Board. Is that correct Ande?

Ande Merante - We are waiting for results from you folks

Bill Flaherty - And you are waiting for the results of us. Well I guess we were

waiting for the results from you guys.

Ande Merante - No

Robert Dee - They can't do the site plan until we vote on the variances

(Changing the tape...may have lost some dialogue)

Kenneth Gunshor - ...with the respect to the issuance of certain variances. Once that jurisdiction and the issuance of these variances are granted, then the planning board can take on the issues that many of the people in this room discussed. As far as I know this is an area variance. This is essentially a gas station. Many of the people have spoken about that being a gas station historically 1951. We want to make it into another gas station. I believe the jurisdiction of this board is possibly limited to either granting the variances as Glenn has outlined or maybe narrowing them down or denying them in Code. And then saying to Mr. Giachinta you have suffered whether it be arrogance, you suffered _____ because you are going to have to take this canopy down. But nevertheless he can still put in his gas pumps because gas pumps are not considered structures. The tanks in the grounds are not considered structures. As far as the planning of the traffic coming through and the store, they have been issued a building permit. So what I would suggest gentlemen is consider as your balancing the five statutory standards, what the people have said and what the process is both with the planning board and their authority and your authority.

Vincent Cestone - We thank you for that but you didn't have to lecture us. We know our authority

Kenneth Gunshor - I'm sorry. I also didn't give you a brief.

Vincent Cestone - Anyone else wish to speak? With that we are going to continue this on to the next meeting. I would like that spreadsheet that we talked about before the next meeting.

Ann Schulz - Can I ask you a question

Vincent Cestone - Sure

Ann Schulz - You are asking Mr. Watson for this, what was before

Vincent Cestone - Yes

Ann Schulz - Why don't you ask our own people like our planning board or our building

Vincent Cestone - Oh believe me I will. I am just asking Mr. Watson to put it

together in a nice format for us to look at. I will know what it is before we even start. What I am asking for from Mr. Watson is what the law is that they are citing, what the setback requirement is, and in one column what was there before and what the violation was there with the original structures and what the violations is with the new structure so I have a good picture of what has changed over time.

Ann Schulz - And will you have original variances

Vincent Cestone - There were no variances because this was built before Zoning. So there would be no variances

Ann Schulz - Well the reason I am asking is because I was in a situation where the original was supposed to be filed and it wasn't filed. And when I followed up on it our own people said they were doing it right. They were building on what they were supposed to be building on and the weren't. So I don't know how I can explain it any other way because I don't want to use any names but they were supposed to be doing on their original footprint and I have a copy of their original footprint but they built it on this other footprint and I was told by our own people they were building it correctly it was the original footprint. And it wasn't the original footprint. So in other words, I can't do anything about it because the code was not enforced and that's why I say there is no sense having all these codes and rules and everything and have someone come in and do something when they shouldn't have and then put us in this situation.

Vincent Cestone - It is very common in the zoning world where someone, it is much easier to build something and ask for forgiveness then to ask for the rules. That is very common

Ann Schulz - But that shouldn't be so

Vincent Cestone - I agree with you

Ann Schulz - I think I've been to the zoning board four times and these people were told this is what you are supposed to do and they didn't do it so

Vincent Cestone - And that is what we are going to address once I know what was there before, what the law states so that this board can do more informed decision based on what the law is as opposed to the emotions involved

Ann Schulz - And what do you do when someone doesn't, do you forgive them or fine them a little bit

Vincent Cestone - It depends on the situation so I really can't comment on that. There have been, we don't issue fines. The Town can issue fines. But this board doesn't have any authority to issue a fine. We can make a

recommendation to the town. They would have to do that. It is based on each individual circumstance. With that, yes sir, and then we are going to continue this

Daniel Donnelly - I just have one question. Do I understand that every person that spoke today in opposition to this goes home and tomorrow digs holes in their property, sinks six gasoline tanks with pumps, that the Town has no jurisdiction over that?

Vincent Cestone - I don't know if that's what they said. Maybe that's what you heard. But believe me we will know what the law is before we convene the next time

Daniel Donnelly - I greatly appreciate that. Thank you

Vincent Cestone - With that we are continued on to February 11th.

(Everyone talking at once as audience is leaving)

Vincent Cestone – People, people we are not adjourned. Please keep it down or take it outside I would appreciate it.

Lenny Lim - People think when there case is over, it's over

Vincent Cestone - I don't know, did everybody get this letter from Tina? It is saying that there is a requirement for training. People, we are having a meeting. Can you take it outside please. I am not sure what this letter means. It says that every board member has to have 4 hours of training.

Ande Merante - Can I address you on that

Vincent Cestone - Sure

Ande Merante - The planning board is sort of taking the lead on this. And Josephine Dougherty and I are working on that. The State passed a law in January of last year. All board members, zoning, planning, require a minimum of 4 hours in issues to be determined by the municipality. And there are a great many of doing it, you can do it with sitting with your attorney and discussing to going over issues of zoning law. I think anything he feels the board needs to be brought up on. There are also courses being offered by the State on-line. There are meetings being held. Bill went to one 2 years ago in Hyde Park. Several of us on the Planning Board went this past year. And since none of us complied with it in 2007, we are allowed to make up to catch up this year and get 8 hours in. But the law says we must require training. The only penalty is if you don't fulfill that you may not be reappointed.

Vincent Cestone - Gee

Ande Merante - So we are working on it and then present it to all the boards.
The villages are also required to comply with this law

Vincent Cestone – okay. So we will wait to hear from you.

Lenny Lim - Is it possible to have a class up here

Ande Merante - Possible. We will come up with some courses

Vincent Cestone - Any new business? Any old business? I'll make a motion to adjourn

Lenny Lim - Second

Vincent Cestone - All in favor

All board members - aye

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

DATE APPROVED: 2/25/08

Respectfully submitted,

Kim Shewmaker
Secretary