

ZONING BOARD OF APPEALS

January 8, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 8, 2007, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

some business that we have here first so that these people don't have to sit through the entire public hearing. Jules Bass review for completeness to see if we can place it on the agenda. Have any of the members had a chance to review? I have reviewed it. I think it is complete. Is Mr. Bass here somewhere? Okay. It is complete and place it on, will we make the 22nd?

Kim Shewmaker - No

Vincent Cestone - So the first meeting in February.

Kim Shewmaker - February 5th

Vincent Cestone - February 5th okay. Review of minutes of November 20th. Any additions, corrections or deletions?

Lenny Lim - I have none

Vincent Cestone - I will make a motion

Bill Flaherty - I have just a very minor correction to make on the very first page and I want to correct one word. To read nonjudgmental rather than judgmental. Other than that I have no further

Kim Shewmaker - Who was speaking

Bill Flaherty - I am

Vincent Cestone - Okay. I will make a motion to accept the minutes as

Bill Flaherty - Second

Vincent Cestone - All those in favor of accepting the minutes say aye

All Board Members - Aye

Vincent Cestone - Opposed? Okay. Next item on the agenda I want to handle is the Bump resolution. Mr. Rodd if you would read the resolution into the minutes, we would appreciate it.

Adam Rodd - Mr. Chairman you want me to read the entire resolution?

Vincent Cestone - That's what we have done previously. Normally do we have to do that?

Adam Rodd - I don't think so. I think the resolution really needs just to be made available to anyone who wants to see it. I think it would be sufficient to read the decision as opposed to going through my recitation of the procedural history and the factors, but whatever the board prefers on that

Vincent Cestone - What's the boards' pleasure? The whole resolution or just the decision and conditions?

Bill Flaherty - Well I think we can abbreviate it by just going over the decision as opposed to reading the entire document in itself. It is rather time consuming and somewhat redundant. That's my opinion maybe other people

Lenny Lim - There is no legal reason to read the whole thing, I think we can encapsulate it

Vincent Cestone - Okay. Just the decision and the conditions

Adam Rodd - Sure. Decision on, the Decision part of the Decision of Findings and Fact on Bump reads as follows. Area variances are granted, pursuant to Section 267-(b)3, in order to permit the applicants to renovate and enlarge their existing home located at 10 Hudson River Lane for purposes of constructing a two-story single family dwelling, with insufficient side yard setbacks. In connection with the grant of this variance, the Board hereby imposes the following conditions: (a) the proposed new structure shall not exceed 35' feet in height; (b) the existing side yard set backs shall be maintained and not enlarged,

with a 7' foot set back from the north side of the dwelling, a 4' foot 9" inch set back from the north side of the chimney, and a 5' foot 3" inch set back from the south side of the dwelling; (c) the gross square footage of the proposed dwelling shall not exceed 2693' feet; (d) the proposed porches, on the east and west sides of the subject dwelling, shall be neither enclosed or heated; (e) no further modifications, enlargement, or reconfiguration of the proposed renovated dwelling, beyond that which has been granted herein, is authorized without Zoning Board approval.

Vincent Cestone - Can I just make a change to (a) in saying not to exceed a maximum height of 35' feet

Adam Rodd - Fine

Vincent Cestone - Okay. I will make a motion to accept the resolution as read. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members - Aye.

Vincent Cestone - Okay now we are going to do a straw poll vote. Lenny?

Lenny Lim - I'll vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - I will vote in favor. Bob?

Robert Dee - I don't have the information on it, so being the first meeting, I will have to abstain.

Vincent Cestone - Paula?

Paula Clair - I will have to defer to you as well. I guess I will vote in favor.

Vincent Cestone - Very good. The motion carries. All right now we move on to the public hearing of David Weinpahl. Is there someone to speak for the applicant?

Robert Gaudio - Hi.

Vincent Cestone - Tell us what you are here for. I am sure you have things prepared.

Robert Gaudio - I have a ton of things

Lenny Lim - I'm sure

Robert Gaudio - I ask for the Boards' patience to go through it. It is somewhat of a long story but I think if I explain it in order, I think it will make it a lot easier for both myself and the board members. I am Robert Gaudio from the law firm of Snyder and Snyder

Vincent Cestone - As long as you don't become voluminous

Robert Gaudio - I will not. I promise. I am from the law firm of Snyder and Snyder. I am here representing David Weinpahl who lives at 88 Foundry Pond Road and he is _____ by his neighbors who are in the audience this evening. We are challenging essentially the issuance of two building permits by the building inspector. And in conjunction with that an entire subdivision "as of right" process that went on before the issuance of these building permits. We did outline our position to the building inspector and I am not sure what the board has in the file or does not have in the file. I know there are some new board members. But essentially

Vincent Cestone - Can I just interrupt for one second I have to say something to Mr. Bump.

Robert Gaudio - Sure

Vincent Cestone - You have to bring in your building plans for us to stamp and sign

Jacob Bump - Okay

Vincent Cestone - I didn't say that. I'm sorry.

Jacob Bump - Okay

Vincent Cestone - Sorry

Robert Gaudio - Thank you. This outlines essentially the six points of why we are challenging the issuance of the building permits. And just briefly on those six points, first we believe that there are these existing non-conforming structures on the property that were recently moved and that were required under the code site plan approval. I will talk a little bit about that later. Also that the building permit application didn't show the slopes. The Class 2 and Class 3 slopes. And in fact one of the building permits is now being amended for impact on those slopes. Number 3 is that one of the lots has an old road. And this is going to become

very important later. And because of the existence of this old road, the square footage of that old road is taken out of the lot acreage calculation and therefore that lot is substandard. It is below the required 80,000 square feet. Fifth, there is also we believe a right of way that is not shown on the plans but that in fact does exist and again when I show you the maps, I'll explain it, on lots one and two which again I will show some maps

Vincent Cestone - Is that the right of way that the Village of Cold Spring uses?

Robert Gaudio - This is the right of way that the Village of Cold Spring has used and which we also believe is being set up to access a lot in the back, lot number 29. And I will show you that on the maps so it will become clear. And because of that, that triggered we believe subdivision approval under your own regulations as a provision that if you create a new right of way, it requires subdivision approval. And because of that right of way, also it comes out of the lot acreage again and those two lots we believe are also non-conforming. And finally, the storm water pollution prevention plan was not properly enacted, not properly putting in place and not properly or procedurally effectuated. So with that let me take a step back. Originally, there were three lots that the developer bought. And these three lots go back to a map from 1939 and I have a copy of that map here and what I have done is I have highlighted the three lots. And these three lots are part of a larger subdivision and these three lots are known and shown in _____. First there is the big lot. And that is known as the Club. See it labeled there as the club grounds? Highlighted in yellow.

Lenny Lim - Right

Robert Gaudio - And there is lot 29 and then there is lot 32. The developer bought these three lots. And if you notice in purple there is the outskirts which are known as the old road. The old road goes up to what is known as the upper dam. The Village of Cold Spring has two reservoirs, they have an upper dam and a lower dam and they use this old road and they have going back almost 100 years to get to the dam and to maintain it.

Vincent Cestone - Okay

Robert Gaudio - And as you look on the map in the bottom right hand corner it says that the club grounds are designated by the heavy black lines. And if you look at this map, the heavy black lines exclude this old road. So the developer bought these three lots and then he filed for a four lot subdivision with the Planning Board. This I apologize for, I only have one copy. They made an application to the Planning Board for a four lot subdivision and what he did was he took the outline there and he changed around the lots and proposed these four lots. What you have here to just to draw everyone in, this is the old road that was shown. As you see now the outline is on the outside of the old road. Okay? And then there is one lot here in the front, there is a lot in the back here, and he

proposed a common driveway to get to the lot back here. There is a lot over here and a lot over here, in an odd shape in order to meet all the bulk requirements. And just to get everyone a feel for the topography, I don't know if you've been out to the site, but there is a flat open field here. And this property was used as a camp ground and they have all these little outbuildings, these clubhouses around the camp grounds. And what he proposed to do was to divide this into a four lot subdivision. Take three lots and go to four lots. Well the CAC reviewed the application and they opposed it. They opposed it for a number of grounds. And this is all with the Planning Board. They opposed the number of lots, they said there should be three lots not four lots. They opposed it because of the tree removal and they opposed it because of the drainage issues that were going to be created. And the erosion control measures based on the drainage. It is a very steep winding road just to give you a background. It is a very small community, there are houses that are set back and well dispersed in this area and it is a very nice little portion of the town and that is why I think the residents care so much about it. And the CAC cared about it. Well the Town Planner also looked at it and the Town Planner also noted this old road. And he specifically indicated in his memo to the Planning Board how this old road was shown on the plan and he also indicated that the lots behind this old road would be land locked if it was no longer there. And that becomes very important to the Village of Cold Spring as we will get to. So the Planning Board had a number of issues and they held the matter over and they asked for a couple of things. One of which they asked for was a drainage report. And this was the developer's drainage report that he had submitted. Because again as you see on this map, this original subdivision map here, all of the shaded areas are the slopes, the sloped area. It is a very sloped property and drainage was a big issue. And the drainage report, and I highlighted some of the pertinent sections, but the drainage reports says because Foundry Pond Road has neither defined gutters or any drainage structures _____ there are existing drainage issues especially to the southwest. So they can see that there were drainage issues before this property was even developed. And what they proposed as part of the plan was a dry well and a pond, a retention pond. And they conceded in this report that I just handed to you that the pond wouldn't correct the quality of the water only the volume and the speed of which it would come off the property. So there were more drainage issues that were raised and the Planning Board was _____. So what happened next? The Planning Board asked the developer to go back and try some different plans and try some different layouts and the community objected to a number of lots and the developer withdrew the application. Everyone thought that this went away. But it didn't. What the developer did instead is he embarked on a multi-stage subdivision. Which he claims is permitted under the Zoning Code. And the Zoning Code has a number of exemptions from what requires a subdivision and what does not require a subdivision. One of which is changing lot lines is exempt. So what he did on the first sheet is he took the three lots and he transferred the ownerships of the lots and he redrew the lot lines. Now on the first page he redrew the lot lines to have two bigger lots in the back and to make the front lot, the club grounds, smaller.

And most importantly if you look along the top, he reallocated the old road to the back lot.

Lenny Lim - Ah

Robert Gaudio - Okay? Now according to the developer that is permitted under the code because it was a mere lot line change. So what he did was he made three bigger lots. And he took it a step further. If you flip the page, he took the club grounds which is now smaller under his first subdivision and subdivided it into two lots. Lots one and two. Again claiming that if a two lot subdivision in a residential zone on a town road which is permitted under the code as of right, that's the developer's argument. So now he went without going to the Planning Board and he ended up with four lots, which is what this map shows. It is very similar to this map if you look at it. You have one big lot over here which is lot 32, the one big lot in the back which is lot 29, and you have lots one and two. What you don't have is you don't have access to the flat area, lot 29. According to his map that is what he has eliminated and what he has done is that he has got access to this back road over the old old road and he has his lot frontage by going back here. That's how he does that now. Does anyone have any questions on this? It all makes sense? Well the Village of Cold Spring didn't agree. And they wrote a number of letters. And they have been writing letters for a couple of years. And this is, the latest letter I had until this evening and it makes it very clear and again I highlighted portions. And what they claim is they have access to the old road to get to the dam. And they talk about how they have accessed it over the years and they have gone up there with a cement truck and how that is very important for them to maintain the dam. What happened over the years is that this old road as you can see on the developer's map is very steep up in this portion. So what they did, with permission from the camp, is they came across the middle where it is flat and then picked up the old road from here and went up the rest of the way.

Lenny Lim - How did they do that again?

Robert Gaudio - They came across basically where the developer had proposed this common driveway to get to lot 29, they came across here and then picked up the old road and went upwards where it is a little bit flatter. Down here it is very steep to get to the road.

Vincent Cestone - I can see by the lines.

Robert Gaudio - The coloring is the different slopes under the town code. Greater than 25%, greater than 15%. It is my understanding the Village of Cold Spring, they just handed it to me, just obtained an opinion letter. That in fact their old road access dates back to the 1800's and that they still own the old road. Not that they own the old road. I miss-spoke. That they have access to the old road. And it really doesn't make a difference whether they only have access or whether

they have something more than that. Because the way the code reads if there is a right of way over a piece of property it comes out of the 80,000 square feet. So the developer had to show his plan with the property boundary going to the other side of the old road. The code changed during this process and it required the developer to submit a plat, and actual plat. And this is what he submitted for the plats one and two, which is essentially that second page that I handed out. This is just a little bit more detailed. And what you see here are lots one and two which is the old club grounds

Vincent Cestone - Right

Robert Gaudio - And here is the line down the middle. What I highlighted in orange are the septic fields. Okay? And here is the road down the middle. And if you remember, last time he had lot 29 with an access drive right down across the flat part down to Foundry Pond Road, which made good sense, which is what the Planning Board asked him to do. Now they are not showing that. But curiously they cattycornered the septic field and this spot right through here is exactly 20 feet wide just as it was with the common driveway. And curiously there is no septic field there and as we all know you can't drive across a septic field. So why did they do that? Well it is our opinion that they did it because they know when they come to build lot 29 in the back, they don't want to go down the old road because it was very steep and because it has a terrible site line to Foundry Pond Road. They want to have a right of way across lot 1 and 2 just as they had proposed when they went to the Planning Board. But if they showed that as a right of way, that requires subdivision approval, when you show a new right of way. So we think they need subdivision approval for two reasons. Number one, they just annexed the old road and they didn't have right to and the Village of Cold Spring agrees with us. And because there is this implied right of way here which when you look at the map and you know the history and you know the water department used to come across here and you know the developer proposed coming across there to get to lot 29, and because when you look at the map the septic field is cattycornered and there is a 20 foot wide strip right there, it all adds up to a right of way. Any questions on that? Here are the code sections that we believe need enforcing and just one other point here, they add a note number 7 that says the existing buildings, remember these are those existing cottages which are non-conforming structures, says they will be removed, or moved or altered. They never agreed to remove them from the property. What they have actually done is they moved a number of them and put them in the area of the old road right on the property line which would not meet the setbacks. The zoning code thought of this, the zoning code has a section that talks about non-conforming structures and what it says is that sure you can go ahead and move those, you can alter them, you can amend them, and you deal with this all the time where you have people come in, but it says that it requires a planning board public hearing. Well they moved these accessory structures and they didn't go to the planning board for a public hearing. And yet building permits were issued. So we think the first issue here is that those

