

# ZONING BOARD OF APPEALS

February 27, 2006

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 6, 2006, 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.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Bill Flaherty	-	Member
	Tim Pagones	-	Counsel
<b>ABSENT:</b>	Joan Turner	-	Member
	Victor Carlson	-	Member

**Vincent Cestone** - Okay we are going to do a continuation of a public hearing for Mastrantone. Refresh our memories. There should only be a little bit remaining

**Matthew Mastrantone** - Yeah, you guys wanted to see the rest of the plans, completed drawings. This package contains our completed drawing with the other elevations. There is a landscape plan in there and there is also a construction narrative

**Vincent Cestone** - Okay

**(talking among themselves as plans are being passed out)**

**Vincent Cestone** - just orient us. This is the front of the house and the corner

**Matthew Mastrantone** - that's the north side

**Vincent Cestone** - okay. And this dotted line is the other part that is being taken off also

**Matthew Mastrantone** - the closest point of the house would be 24" inside the line.

**Vincent Cestone** - Okay.

**Lenny Lim** - Actually you are moving back right

**Matthew Mastrantone** – yeah. Moving back the entire side. That's the landscape drawing.

**Bill Flaherty** - Well that's (cannot hear him)... (papers/maps shuffling near microphone)

**Matthew Mastrantone** - The original house has been there since forever. So not only does the part of the addition encroach but the house \_\_\_\_\_

**Bill Flaherty** - I see that now

**Matthew Mastrantone** - It makes more sense for everything down the road. You can get around there and clean your window or paint your trim and stay on your own property. Those were pasted on by the designer. The engineer \_\_\_\_\_

**Lenny Lim** - I just saw dash lines indicate removal of existing structure to comply with building department variance. So this is the line

**Matthew Mastrantone** - The property line

**Lenny Lim** - And he is moving back, all these dotted lines are the ones you are moving back

**Matthew Mastrantone** - Right

**Lenny Lim** - The only thing is think Joan might want to

**Vincent Cestone** - Oh I agree. This stone wall, how high is this going to be here?

**Matthew Mastrantone** - That's a retaining wall for the grade in the driveway because it goes up. It would be on the elevation for the house plans

**Bill Flaherty** - Now what is your overall height of the house now. You are going to raze it aren't you?

**Matthew Mastrantone** - The actual height of the house now

**Bill Flaherty** - We don't know what the height is

**Matthew Mastrantone** - No. Well it's probably on the plans

**Lenny Lim** - It's got to be somewhere on the plans

**Bill Flaherty** - Sometimes they put it on and sometimes they don't. And most times they don't.

**Matthew Mastrantone** - They didn't put it on

**Vincent Cestone** - Not to the top of the ridge

**Bill Flaherty** - You have height limitations and in this particular case I think it's a maximum 40 feet

**Matthew Mastrantone** - Well when you initially spoke to me about the roof and the drawing and I think you were concerned about it being a very steep roof that could be space added into it, so it's a shallow ridge

**Bill Flaherty** - Unless you put a dormer on and you're not. Previously, my concern was the overall house and appearance of the property

**Matthew Mastrantone** - Which the landscape plan that you asked for

**Bill Flaherty** - What kind of shrubbery are you planning on planting

**Matthew Mastrantone** - Azaleas, chrysanthemums, forsythias, rose of Shannon, about 14 Colorado Spruce which will be used as screening between the neighbors property and you can see all of those

**Bill Flaherty** - I like this. You are being very specific.

**Matthew Mastrantone** - Absolutely

**Bill Flaherty** - Our building inspector can go down and identify the planting. Have you consulted someone involved with the landscaping

**Matthew Mastrantone** - **(cannot hear his answer)** In the construction narrative it talks about removing the fence and a tree line there and landscaped boulders, forsythias, some shrubs. On the other side between Ridge Road and my house is this fence that exists now like this and it is going to be cut down **(cannot hear)**. ...there is a road that goes up the side

**Bill Flaherty** - the private road

**Matthew Mastrantone** - it's a private road

**Bill Flaherty** - So there is a home back there. I didn't go back there

**Lenny Lim** - Hey Bill, I can't find the height on this

**Bill Flaherty** - I couldn't find it either

**Vincent Cestone** - But I need the total height at the highest point on the drawing. Usually that's like automatic.

**Lenny Lim** - I don't get it. You've got it

**Vincent Cestone** - You've got everything except the

**Bill Flaherty** - You've got everything else you could want on the drawing, but that is one of the things that I couldn't find

**Vincent Cestone** - If you do the two measurements you do it from the top of the foundation to the ridge and from the lowest point so we know how far it sits at the foundation and from the ground. Do you know what I mean

**Lenny Lim** - Yeah. From ground level and from the foundation

**Vincent Cestone** - Right

**Lenny Lim** - But you know it slopes down

**Vincent Cestone** - Yeah. That's why you need it off the top of the foundation. Does that make sense to you? Did you hear what I said

**Matthew Mastrantone** - Right

**Vincent Cestone** - From the top of the foundation to the top of the peak one measurement and from the lowest point where the foundation is sticking up

**Lenny Lim** - It says elevation but there is no measurement

**Vincent Cestone** - You know you have the elevation but you don't have the measurements. If we even had it somewhere else we could sort of determine it but

**Lenny Lim** - I can't believe it's not on these plans

**Vincent Cestone** - Anyone in the audience wish to speak on this? Stand up and state your name please

**Alicia Tuttle** - Alicia Tuttle. I'm the owner of the property to the north.

**Vincent Cestone** - Where would that be in reference to the house itself?

**Alicia Tuttle** - I'll show you

**Vincent Cestone** - Can you say your name again please

**Alicia Tuttle** - Alicia Tuttle.

**Vincent Cestone** - Oh you're here and

**Alicia Tuttle** - I'm here and that's his house

**Vincent Cestone** - That's the house that crosses over into your property

**Alicia Tuttle** - Yes. Am I allowed to see those plans

**Vincent Cestone** - Oh absolutely

**Alicia Tuttle** - Okay. I have a lot of problems with him getting variances right now. I know my brother has spoken to you previously

**Vincent Cestone** - Actually what is happening here on your side of the property he is actually pulling away from your property

**Alicia Tuttle** - Does that mean you are going to remove the stone wall that you put on my property to make your property bigger

**Matthew Mastrantone** - It says on the construction narrative that with your permission I will remove it yes.

**Alicia Tuttle** - If you look very carefully at all that, everything is, once you come off the line everything starts coming into my property

**Lenny Lim** - How did that happen the stone wall on your property

**Alicia Tuttle** - Mr. Mastrantone

**Matthew Mastrantone** - It was to retain the swell from coming down prior to having a survey.

**Alicia Tuttle** - Without my permission I might say

**Lenny Lim** - How long ago did you find out that this happened

**Alicia Tuttle** - This happened just before I had this survey done

**Matthew Mastrantone** - 8 years ago

**Alicia Tuttle** - no

**Matthew Mastrantone** - 9 years ago

**Alicia Tuttle** - no it wasn't that long ago

**Matthew Mastrantone** - I've lived there 7 years

**Alicia Tuttle** - Matt you know that you built that afterwards

**Vincent Cestone** - Ma'am please

**Alicia Tuttle** - He's come on my property a number of times. I had no idea what was going on over there and one day I wandered over and there is this wall. He cut down a tree on my property

**Vincent Cestone** - If you look at the narrative that he has, you can see that most everything is going to be taken care of and if you look at the drawing, you can see that he is pulling the house at its closest point 2 feet from

**Alicia Tuttle** - Because I mean the whole house is on my property

**Vincent Cestone** - Not the whole house just a few pieces of it

**Alicia Tuttle** - Well the whole side of it

**Vincent Cestone** - This corner

**Alicia Tuttle** - And this shows the property line

**Vincent Cestone** - Right the wall and these corners, let me show you

**Alicia Tuttle** - This is the wall that he built. This is the original house right here. This is the original

**Vincent Cestone** - Right. And this is your property line

**Alicia Tuttle** - This is the original house. This corner of the house was on the property line. That was grandfathered in.

**Vincent Cestone** - No no. You never grandfather being on your property

**Alicia Tuttle** - Well.

**Vincent Cestone** - You were just being nice

**Alicia Tuttle** - I don't know. It was my parents, I was 11 years old okay. And all of this was built afterwards.

**Vincent Cestone** - But if you get the plans, let me show you. So that you understand what

**Lenny Lim** - What was the original over the line

**Alicia Tuttle** - This is the original house right here. This corner was on the property line

**Lenny Lim** - Right on it. So in other words

**Alicia Tuttle** - He did not build all of this no. Somebody built to this point and beyond that is what my brother told me he built. I was gone from the area for a long time. My husband was in the military. So I was stationed away from here and a lot of this happened when I was gone.

**Lenny Lim** - And he built additions to the house then? You put an addition on this house?

**Matthew Mastrantone** - No

**Vincent Cestone** - See the property line here ma'am right here. This is your property line. This is the existing structure, the dotted line. This is where he is coming to. We wouldn't give him anything on your property line.

**Alicia Tuttle** - Now how far into the back

**Vincent Cestone** - At the closest point right here, it is 2 feet. Over here it's 6 feet

**Alicia Tuttle** - And you are saying also that that wall is coming down under the deck

**Matthew Mastrantone** - Yes absolutely. It's in the construction narrative. I haven't had a chance to ask for your permission to take it down

**Vincent Cestone** - And if you are giving permission, we will put it in the resolution that the wall will come down.

**Alicia Tuttle** - Well I'm talking about the one under the deck as well. Because that goes over the property line too

**Vincent Cestone** - Anything that goes over the property line we will have him take down. So do you see

**Lenny Lim** - Do you agree with that?

**Matthew Mastrantone** - absolutely

**Lenny Lim** - I just want to make sure

**Alicia Tuttle** - Can I keep these?

**Lenny Lim** - Not these. You can get one from him.

**Vincent Cestone** - This will be in

**Tim Pagones** - There is a copy in the file. So you can make a copy of it downstairs

**Alicia Tuttle** - Okay

**Bill Flaherty** - And you can get a copy of the narrative.

**Vincent Cestone** - What we do if this board decides to approve this, I will stamp this and sign it approved and this will have to be the plan he takes to the building inspector. Because, not that Mr. Mastrantone would do this, but we have had people who have gotten things approved here and gone to the building department with different plans.

**Alicia Tuttle** - I've notice that happened even with \_\_\_\_\_

**Vincent Cestone** - So what we do is we stamp them and sign them so that it can go to the building department with the zoning board's approval on it so there is no question

**Alicia Tuttle** - And how big is this house going to be

**Vincent Cestone** - The total square footage

**Alicia Tuttle** - Yes

**Lenny Lim** - Do you know it

**Matthew Mastrantone** – I have no idea

**Lenny Lim** - You know what, get that information next time too

**Vincent Cestone** - Do you have any additional questions?

**Alicia Tuttle** - Well I am like I said, I am concerned about all this. This \_\_\_\_\_ when Matt and I had talked the last time, he talked about just shaving three feet off the back of the house for starters.

**Vincent Cestone** - Well that's before. And this board is, we don't like to give any variances this close if the house is pre-existing

**Alicia Tuttle** - Right I realize that and I know that

**Vincent Cestone** - But we cannot approve anything that is over the property line anyway because you own that property.

**Lenny Lim** - (I can't hear him)

**Alicia Tuttle** - no. It was originally the back of the house it was going to be shaved 3 foot. Which would have only cut off like, I got the impression that Matt was going to cut 3 feet off here so that only the back corner was only sitting on the property instead

**Vincent Cestone** - that's initially when Mr. Mastrantone came here and he asked for that. We didn't, we in discussion determined that we wanted it further away from the property line. Because you are a nice person and you can let him go out there and wash his side of the house but it was right on the property line and someone can put a fence right there and you can't maintain the outside of the house. And you can always go down into the, there is a file specifically for this. You can look at all of this, it will all be in the file. And you can go down and make copies of the file.

**Alicia Tuttle** - As far as him, obviously you are not going to give him any variances until the north side of the house is settled.

**Vincent Cestone** - He won't, this section, this is what he is agreeing to.

**Alicia Tuttle** - Right

**Vincent Cestone** - The Code Enforcement Officer, the building inspector will ensure that this actually comes to be or he won't even get a C of O. They won't even give him permission to build.

**Matthew Mastrantone** – actually it is staked out by the surveyor

**Vincent Cestone** - Excuse me

**Matthew Mastrantone** – It was staked out by the surveyor

**Vincent Cestone** - And the final CO is contingent on him meeting all the conditions of the zoning board appeal and any requirements of the building code

**Alicia Tuttle** - Has any of this, the minutes on the internet

**Vincent Cestone** - When was

**Alicia Tuttle** - The last one that is up there is

**Vincent Cestone** - I don't remember the last time we met

**Alicia Tuttle** - October 17<sup>th</sup>. No you were here last month. I couldn't anything

**Kim Shewmaker** - The minutes we are approving tonight are January 23<sup>rd</sup> and February 13<sup>th</sup> so I don't know why they are not on the website. I'll send them to her again

**Alicia Tuttle** - They are definitely not on because I've been looking for the information

**Vincent Cestone** - Do you know off the top of your head

**Tim Pagonis** - If they are not on the web, there is always a copy downstairs

**Alicia Tuttle** - The only thing I picked up downstairs was the agenda for today

**Tim Pagonis** - We have to approve January 23<sup>rd</sup>'s minutes and February 13<sup>th</sup>'s so all the other minutes from any other meeting has been approved and should either be a copy downstairs or eventually someone puts them on the web.

**Kim Shewmaker** - I will scan them to Tina again so she can put them on the website tomorrow

**Alicia Tuttle** - Okay

**Matthew Mastrantone** – I would be glad to get you a copy of everything I have

**Alicia Tuttle** - Okay Matt

**Vincent Cestone** - Sir? Just introduce yourself again please

**William Mordhorst** - I asked to see the November minutes and Tina said she hasn't received them

**Kim Shewmaker** - Okay. They will be there tomorrow. I will take them and rescan them to send them to her.

**William Mordhorst** - Did you get the letter I sent you?

**Vincent Cestone** - I just got it today and I just read it.

**William Mordhorst** - Okay. I just want to reiterate again that my request last week was that there should be no further violations on this property

**Vincent Cestone** - That would be part of, that is what we normally put in a resolution that there will be no further changes without zoning board approval.

**William Mordhorst** - Okay and no further variances. He gets a variance for 5 feet and that is the extent of it?

**Vincent Cestone** - That's the way it is, that doesn't preclude him from at a future date asking for an additional variance but you as a neighbor would be notified again and the conditions of the resolution would be available to this board who maybe made up of

different people for review and we go back and we read these things. If there is a condition like that, we generally stick by it.

**Tim Pagones** - We can't stop anybody from applying for a variance. If they grant him a variance it would be for so many feet. He has to build it to that variance. He can't go any closer. But if he wants to put another addition or someone else wants to change the house and try for a variance, they have that right.

**William Mordhorst** - And it is absolutely not possible to say that this is the last variance

**Tim Pagones** - It is against the law to really say he can't go for a variance.

**William Mordhorst** - Okay

**Tim Pagones** - So he can try and certainly, you know if he sells it and someone wants to tear it down and build a bigger house, they will go for a variance. But if he is granted a variance it will be for X amount of feet. He can't get any closer to that. So if for some reason he got a 5 foot variance and it really 4 ½ feet, he is in violation and they will make him tear it down. But you can't sit there and say sorry you can't decide your legal right for a variance to come back before the board.

**William Mordhorst** - It is just that there is a history of a number of violations. Some of them are still outstanding and I am very concerned. And I do remember the last time and, I am uncomfortable doing this, speaking this way, but I am just concerned about like a tomato patch that turns into an above ground pool

**Vincent Cestone** - And we are too

**William Mordhorst** - That I would just like to see that specified by we noticed this happened and we are not going to \_\_\_\_\_.

**Tim Pagones** - The only thing I can say is that is a violation. Even if they put a condition in that he can never go for a variance, if he wants to violate the code he violates the code and it is up to the neighbors or Mr. Monroe to say you know what you are in violation

**William Mordhorst** - There is still a violation on my land that is still outstanding and it hasn't been resolved

**Tim Pagones** - Is that the drainage or the wall?

**William Mordhorst** - The drainage

**Tim Pagones** - I am assuming he is in court for that. I don't know. I would have to speak to Mr. Monroe. If there is a violation, he should be in court. And then what happens is if he is in court and he applies for a zoning board or planning board, it stays

the proceedings. The violation is still there. But the Judge waits to see what happens with zoning or planning. But I will speak to Mr. Monroe to find out what's up with the violation.

**Lenny Lim** - Can you remind us up here what the drainage problem is you are having

**William Mordhorst** - There was, when he enlarged the deck there was a lot of work done underneath the house when he enlarged the deck and enclosed the deck and then there was a pipe that was run from somewhere up on the land down and it crosses on to my land and drains water

**Lenny Lim** - The pipe actually crosses your property line

**William Mordhorst** - Yes. And I had asked for it to be inspected because I couldn't tell without going on his land because it came from underneath his house if it was the septic or if it was from the wetlands further up. And I asked to be shown the inlet so I could know what was being drained on my land. And I still haven't heard anything

**Vincent Cestone** - Is, on this survey, which property is yours?

**William Mordhorst** - I don't think that mine shows on that. Let me show you. This is my land

**Vincent Cestone** - So actually you are on the other side

**William Mordhorst** - Right. This is my road. He covered over the stream and put a pipe in and the pipe goes on my land. But that is a pre-existing stream so I have no problem with that. But then there was another pipe that was laid from somewhere up here that runs all the way down this way and crosses into my land. I have no idea what it is. I don't know if it is septic, if it is the wetlands that is up here, I don't know

**Lenny Lim** - It is draining across your land

**William Mordhorst** - Right. This runs all that way.

**Bill Flaherty** - Could you speak to that

**Matthew Mastrantone** - Yeah. We dug up on my side of the property where there is two small pipe running underneath the fence underneath the wall. And we have dug down deeper than where they come out the wall on the other side.

**Bill Flaherty** - And you found

**Matthew Mastrantone** - No pipes

**Bill Flaherty** - No pipes

**Matthew Mastrantone – No**

**William Mordhorst - There are pipes**

**Matthew Mastrantone – On his side**

**Vincent Cestone - Who put those pipes on his side of the road?**

**Matthew Mastrantone – They don't come through the wall on to my side. The road was widened then, there was one piece of pipe coming from \_\_\_\_\_ and that comes through (I can't hear him)**

**Tim Pagones - Well I guess, I know you are concerned but that is whole separate issue. But what you can certainly do in the resolution is put down a condition**

**Lenny Lim - If he is enlarging the house there will be more runoff**

**Tim Pagones - Well you can put in as a condition that all violations have to resolved before the permits are issued. Now I am not saying, well I guess by saying that they have to be resolved that could mean that there is a trial and he is found not to be in violation or he is not guilty of it. Either way there is a resolution to it.**

**William Mordhorst - Okay. This was \_\_\_\_\_ by me**

**Lenny Lim - This is your side**

**William Mordhorst - This is my side. This is his stone wall.**

**Lenny Lim - That's his wall so this is on your property**

**William Mordhorst - This was an open stream until that wall was put in. Okay? And you can see here that there is an open stream over here and it is closed in with this pipe and then it is open here. Okay? This I don't have, I wish he hadn't put it on my land, but it is the existing water and I can't complain about that because I know where it comes from. But this pipe down here comes from up here somewhere**

**Lenny Lim - There are two pipes**

**William Mordhorst - Right. And at one point he told Mr. Emerick that it's from New York State land. I don't know how that is New York State land. He told me that the person before him, Mr. Mastrantone told me that the person before him put it in. I watched it go in okay? And he has been there longer than I am. So there is a discomfort here with what is being said**

**Lenny Lim - You actually saw him install this pipe**

**William Mordhorst** - I didn't see physically a human being install it but what I saw, I saw the hole being dug and the pipe, the next time I went by there was the pipe and then it was covered up and then finally there was that. And I complained okay? The inspector had been out and I spoke to Bill Mazzuca and then when I come home and find that he has covered it up with rocks. That's the response, that's the response to having about this. This happened in August. It wasn't pointed out okay. It wasn't apologizing, it was covering it up with rocks. The water continued to flow out. Okay. You know

**Matthew Mastrantone** – This will be resolved with the building department.

**Vincent Cestone** - Explain to me what that pipe is. What is that pipe that this gentleman is referring to

**Matthew Mastrantone** – We own part of the stone work there. There is debris that is in there. That's all it is. I dug on my side of the fence down deeper than what the pipe runs through the wall at that point and it doesn't even come out the wall on my side.

**William Mordhorst** - There is water flowing out

**Matthew Mastrantone** – And as soon as I can have Tom Monroe come and look at it, then we can put an end to it

**Bill Flaherty** - Is the water from that pipe doing any damage to your property

**William Mordhorst** - I don't know what it is. I haven't had it tested.

**Bill Flaherty** - I don't mean that. From a drainage point of view is it degrading or undermining your property in any way because of the excess

**William Mordhorst** - Someone else's drainage on my land, yes it is undermining and degrading my property

**Bill Flaherty** - And you home, your house however is how many feet from Mr. Mastrantone, that's a private road, is there in any way impede your ability to traverse that road at any time in the winter

**William Mordhorst** - No. Well it flooded a couple of times because of the excess water but it is not that bad

**Bill Flaherty** - It hasn't been that bad that you couldn't get to your property as a result of that

**William Mordhorst** - There is a repeated use of my land to work on his fence okay? Including impromptu scaffolding, litter

**Vincent Cestone** - On your side of the property

**William Mordhorst** - Yes. And this has been going on for years. And I didn't say anything about it okay until just recently

**Vincent Cestone** - And what has Mr. Monroe said about this? Because he is the code enforcement officer

**William Mordhorst** - I don't understand why. There is a letter in there from Mr. Mazzuca to Mr. Mastrantone about this in what I have sent you. Okay. Mr. Monroe has not said much.

**Bill Flaherty** - What happens to be the remedy at this point in time? Remove the pipe?

**William Mordhorst** - What remedies? A physical remedy

**Bill Flaherty** - Yeah

**William Mordhorst** - And emotional remedy, a neighborly apology. All the above. So you know what I am getting at. Now this would not have been addressed okay, like the pool would not have been filled in if there weren't a variance application.

**Vincent Cestone** - Not necessarily. A variance application to modify the land. Say again, I am not quite understanding this

**William Mordhorst** - This is speculation. But the pool was just recently filled in and I am thinking the pool was filled in only in anticipation of having a variance application

**Vincent Cestone** - Oh okay I see what you are saying.

**William Mordhorst** - So what I am saying is there is a lot of stuff going on there that would not have been addressed and that is why I am saying can you make it part of the resolution.

**Vincent Cestone** - What Bill was asking is what would the remedy be that you are looking for

**William Mordhorst** - I would like to have the pipe removed. I want to see the inlet. It is not a piece of something that just filled there because water has been draining out of it for years. I want to see where it is coming from. I want to promise that there will be no more use of my land to work on his fence or anything else

**Lenny Lim** - Something is starting to trouble me. He has the pipe on your land and he has put the wall on your land

**William Mordhorst - Yes**

**Lenny Lim - Okay.** Two different neighbors, two different directions, one has the stone wall built on her property and one has a pipe mysteriously showing up on his. Okay

**William Mordhorst -** In addition to, this is the fence that he has put up and this is my land. These supports, someone had to go on my land to put them one. This has been going on for years. Scaffolding in this picture because guys have been sitting on my land painting it

**Lenny Lim -** Of course they can't be on your land

**William Mordhorst -** This is my land

**Vincent Cestone -** You have every right to take them down

**William Mordhorst -** Well until recently okay I said this is a neighbor I don't have, I don't want to make a fuss but it has been going on, it's been going on, it's been going on and

**Lenny Lim -** Is this picture correct? Are those supports on his side of the property?

**Matthew Mastrantone --** No they are not

**William Mordhorst -** Well now they have been taken down

**Lenny Lim -** okay

**William Mordhorst -** But at times they have been nailed to my trees. It is just a history and a pattern of you know disrespect.

**Vincent Cestone -** I see what you are saying

**William Mordhorst -** And all the workers. This is just the evidence that they left. Then there are all the workers that have been up and down on my road. Taking rocks out, moving plants, taking plants out so they can put the stone wall in.

**Bill Flaherty -** All those issues can't be resolved here. We are looking at the variance that is before us

**William Mordhorst -** I just want you to be aware, you can make any decision you want. But I just want you to know as this woman said, two different neighbors, two different encroachments what is going on.

**Vincent Cestone -** I see what you are saying

**Bill Flaherty** - Well you have every right under the law to protect your property and you can take whatever legal action you deem necessary to ensure that you, you have rights that belong to you. And you can go ahead and sue if you deem it necessary

**Vincent Cestone** - He shouldn't even have to do that. He should be able to go to the Town

**William Mordhorst** - As a neighbor I don't want to make a big thing about it. But what can I do? And it seems that, I've spoken to the guys who were working there and I said I don't want you to get in trouble with your boss okay just do me a favor and stop working on my land or take the rocks, I mean they dig up rocks and just them on the road. I said when you leave tonight I want this rocks moved. Okay. So yes I do have remedies. I didn't want to make a thing of this. All I am saying is now that there is an application pending can you make it conditional on, and possibly even say you know we will look at this in a year, we will look at this at another time and see if there have been any subsequent problems.

**Bill Flaherty** - Have you spoke to Mr. Mastrantone

**William Mordhorst** - Yes

**Bill Flaherty** - You have

**William Mordhorst** - Yes

**Bill Flaherty** - And what was his reaction

**William Mordhorst** - We had a difficult conversation at one time and we each apologized to each other for the way we handled the matter and I don't want to go back. I think we tried to work it out. And, but again the violation is still outstanding. I guess that is why I am here again is because it is still not resolved.

**Vincent Cestone** - Thank you very much for the information. I promise you that it will definitely be weighed in our decisions and we will do the best to address your issues

**William Mordhorst** - Can I ask you to read what I faxed you

**Vincent Cestone** - Out loud

**William Mordhorst** - No. carefully at your leisure

**Vincent Cestone** - Yes I will

**William Mordhorst** - Okay thank you

**Vincent Cestone** - Anyone else wishes

**Lenny Lim** - Is there a copy for everyone?

**Tim Pagones** - everyone got it

**Vincent Cestone** - Does anyone else wish to speak on this? With that we are going to continue this on to the 6<sup>th</sup> of March and we want the elevations and there was something else that you said

**Tim Pagones** - The square footage

**Vincent Cestone** - And the square footage. Is the 6<sup>th</sup> too soon

**Matthew Mastrantone** – No problem

**Vincent Cestone** - Okay very good

**Matthew Mastrantone** – Thank you

**Vincent Cestone** - Next item on the agenda is Adam and Diana Hird. I've read your application and I understand what you are proposing but if you can just clarify this.

**Adam Hird** - Sure. I am Adam Hird. I am the owner of 63 Horton Road and basically what I would like to do is enlarge the house by building it and lifting the ridge up so I can move the bedrooms upstairs and have more living space on the first floor.

**Vincent Cestone** - So what you are proposing is that you keep the house in its current configuration and just go up another floor basically

**Adam Hird** - Right. But part of it is I am actually going to take the house down to the foundation. The existing state of the house, it is simpler to just rebuild the exterior walls. But I am staying within the existing footprint. And then there is also the roof overhang.

**Lenny Lim** - Well the measurements from the corner of the house or from the edge of the roof?

**Adam Hird** - The measurements are from the corner of the house

**Lenny Lim** - We usually get them from the edge. Because if we give you the variance, it has to be to the exact inches

**Tim Pagones** - How far is the overhang

**Adam Hird** - The overhang is 10 inches

**Tim Pagones** - Alright so what they need is just someone to shoot a measurement from

the overhang to the property line. Not the corner of the house. They have the measurement from the corner of the house but they want to

**Adam Hird** - So I have to get it resurveyed?

**Vincent Cestone** - No you can just ask the, you don't have it resurveyed. You have the engineer who did your survey just put the 10 inches of the overhang on your current drawing. They don't have to come out to reshoot.

**Adam Hird** - Okay

**Vincent Cestone** - Because that is very expensive

**Tim Pagonis** - This way you don't build a two foot overhang. You know what I am saying? For some reason you have two feet of overhang closer to the property line

**Vincent Cestone** - What he means if it is in the drawing and we approve it, that's what you get

**Adam Hird** - Okay. So just to go over the site. This is Horton Road. This is my house. And here is the sort of a gorge here and a creek runs through it. And that is really the scenic view. Here is a picture of the gorge and look at his photo here, you can see my neighbor's house. He is sort of positioned so he can see past my house and into the gorge. And this is the corner that is at 14.1 feet and that is the only corner that is over the setback because of the way the property line runs on an angle here.

**Vincent Cestone** - When was this house originally built? Do you know?

**Adam Hird** - The prior owner bought it in 1947.

**Vincent Cestone** - That was prior to zoning then

**Adam Hird** - Right and I don't know exactly when

**Vincent Cestone** - Zoning started in 1957

**Adam Hird** - But there wasn't anything on file when it was actually built

**Vincent Cestone** - Okay

**Adam Hird** - The house was actually enlarged at one point and the house is only 700 square feet now. So originally it was very tiny. So this is my neighbor's house and this is the view he has of the gorge and really keeping the house here within the existing footprint really minimizes any adverse affects to my neighbor and also reduces any impact of a \_\_\_\_\_ and beneficial to myself and my neighbors.

**Vincent Cestone** - What would the maximum height of the house at its ridge be? Do you have engineering drawings?

**Adam Hird** - I think right now the only elevation that, actually when you get to the setback elevation the house, this is a good photo because when you stand at grade in the back of the house, you are looking down at the roof. And this is just standing here. So the only, there is only this one elevation that comes all the way down to grade and the ridge here is still under 40 feet

**Vincent Cestone** - And this is only going to be two stories. There is going to be no living space in the basement. Is that correct?

**Adam Hird** - Yes. The basement is actually just a crawl space and a garage. It is not suitable for living. And the way that I designed it trying to keep it down so the second floor is really, it is also the attic story, I mean there is a small attic above here but you know the eaves have stayed where they are for the first story.

**Vincent Cestone** - Nothing has elevations.

**Bill Flaherty** - I think there are other issues here for a variance. This is an R-40

**Adam Hird** - Right

**Bill Flaherty** - You show dimensions here in the back of 18.2 inches. Is that a retaining wall. Is that correct?

**Adam Hird** - Those are existing retaining walls

**Bill Flaherty** - And that is 18.2 inches from the back of the adjoining property.

**Adam Hird** - Right

**Bill Flaherty** - The zoning requires 20 feet.

**Adam Hird** - I am not doing any work on the retaining walls though

**Bill Flaherty** - The fact of the matter is it is not conforming to our Zoning

**Adam Hird** - Okay

**Bill Flaherty** - You have to get a variance. And there is another area here you show a block retaining wall which is 16.4 inches from the neighbor. That's a permanent retaining wall

**Adam Hird** - Well I am not planning on removing it.

**Bill Flaherty** - I understand that but nevertheless that portion of that wall is not in not conforming with the current zoning laws

**Adam Hird** – okay

**Vincent Cestone** - I don't know if that is true Bill

**Bill Flaherty** - No. But that is a permanent wall

**Vincent Cestone** - Yeah but it depends on how high it is. If the wall is really high, then what you are saying can be true but if it is

**Lenny Lim** - Where is this retaining wall

**Adam Hird** – Well this curved retaining wall

**Lenny Lim** - No no on the back, that is the wall right there

**Adam Hird** – This is the wall and it would be this corner that is 18 feet from my adjacent

**Bill Flaherty** - The back of your property

**Adam Hird** – right

**Bill Flaherty** - Well the addition that you are putting on will bring the structure more in compliance with our current zoning laws. You are doubling the living space

**Adam Hird** – Right

**Bill Flaherty** - You only have 700 square feet as it exists today

**Adam Hird** – Right. So getting back to the height of the retaining wall.

**Vincent Cestone** - If the retaining wall is over a certain height, it can be argued that it should have a variance. Generally we don't do that

**Adam Hird** – Okay

**Tim Pagones** - Plus it has been there a long time right

**Adam Hird** – Yeah

**Vincent Cestone** - And if it is there going back before zoning, it is grandfathered in

**Tim Pagones** - You're good

**Adam Hird** – As far as I know, the house couldn't have been built without it. I mean this retaining wall is a retaining wall in the loosest term of definition, it is stacked block and stone and it is in the process of falling over.

**Vincent Cestone** - As they do

**Bill Flaherty** - Is it an eyesore

**Adam Hird** – Well you can't really see in there. It's too heavily wooded. I mean long term I will probably do something with it but it is not in my immediate plans. I mean my neighbor definitely cannot see it because my neighbor is all the way up here

**Vincent Cestone** - Okay so, what I see deficient in this application is in your drawings you don't have the total height of the house. You have representations of the house but you don't have an actual....

**(Turning tape over, may have lost some dialogue)**

**Vincent Cestone** - ...once you have a house in violation, all that stuff comes before us and we can make conditions on it. But we want to make sure that when we approve something like this and you bring it down to the Building Department, all this stuff has to be spec out exactly as it is going to be so that the building inspector says okay we have a good set of building plans and he knows it is going to be on the foundation, the overhang is going to be 10 inches as we discussed and the maximum height at the peak of the roof will be X so he knows all this stuff and he will check them to make sure that it is being built according to the plans that you submitted. As I said to Mr. Mastrantone way back when was that this board has been, and I don't actually think you will do this I don't think you would, has had two sets of plans. One set submitted to us and another set submitted to the building department. So what we do is we approve it exactly as you propose it is going to be built and if you decide that you don't want to build it that way, then you have to come back and ask for a change. So you have to be sure that this is going to be the way that you want to build it. We are not concerned about the interior, that's the building department's responsibility. We are concerned about the exterior envelope and if you say your neighbor came and was complaining about something whatever it is and we would come to an agreement that you are going to do something to mitigate that, that would have to be in the plans so that the building department would know to check for that. So that is the reason behind this.

**Tim Pagones** - They just want to lock you in. If you are saying you are going to build a roof that is 32 feet high, you don't build one that 39 ½ because you can go 40 feet. So they want to know what you are going to be building. Inside do what you want but the outside, how high is it really going to be because that is what they want to lock you in at.

**Adam Hird** - Okay.

**Tim Pagones** - Elevations and what else did you want?

**Lenny Lim** - just the measurement from the eave out to the property line and we need the height of what your building is going to be

**Adam Hird** - Right

**Vincent Cestone** - Does anybody wish to speak on this?

**Peter Johanson** - I think it is a wonderful idea

**Vincent Cestone** - How long do you think it will take you to get the changes, the additions that we requested done? We meet again

**Adam Hird** - It will take me no time at all to do the elevations. I would have to talk to Badey and Watson about when they can revise the survey.

**Vincent Cestone** - So

**Tim Pagonis** - Well I guess you have two options. You can keep the public hearing open

**Vincent Cestone** - Which is what I would do

**Tim Pagonis** - All right. We meet the 6<sup>th</sup> and the 20<sup>th</sup>

**Vincent Cestone** - When would you be planning to start construction

**Adam Hird** - We want to start in April

**Vincent Cestone** - Okay

**Tim Pagonis** - Why don't you put it on for March 20<sup>th</sup> because what will happen is if you get the information, they can probably review it and close the public hearing and then you would have the resolution April 3<sup>rd</sup>

**Vincent Cestone** - And we would do is if we are going to approve it, Mr. Pagonis will talk to the building inspector and say approval is imminent and he won't be sitting there waiting until the paperwork gets down to him.

**Adam Hird** - Okay

**Vincent Cestone** - So that would give you the ability to get started in a relatively short order.

**Lenny Lim** - We need exact measurements for everything

**Vincent Cestone** - It is better to have more measurements than not enough. So we don't have to postpone it again because I would rather not

**Adam Hird** - So I should just bring the drawings to the next hearing

**Tim Pagones** - Yes, bring them on the 20<sup>th</sup>.

**Lenny Lim** - Bring the dimensions, the heights, all the drawings you have

**Bill Flaherty** - Now this issue about height has to be addressed with Badey and Watson somewhere along the line. Almost inevitably drawings come in to us which are incomplete. Now this is the second time this evening that this very same exact problem has presented itself

**Tim Pagones** - Well I guess you just have to remember the more they finalize the plans the more expensive it gets for the applicant. So the applicant usually wants to hold off until they

**Adam Hird** - This is just the survey. I did the plans

**Tim Pagones** - Okay. But they can just shoot the eaves real quick but sometimes they are not sure what they need

**Bill Flaherty** - But I mean it is no additional or really no additional money required to put a dimension on an overall height of a house

**Tim Pagones** - Hopefully Mr. Watson is listening to you and Mr. Hird has asked him if he can change the plans and no additional money to be paid

**Bill Flaherty** - Mr. Watson has come in here several times and he has been told about this and inevitably these drawings continue to come to us without all the dimensions shown. And it is a time consuming waste of time to have this gentleman come in before us and not have all the information because he doesn't know what is required of him. So that is unfortunate and that's the way it is. But we have to do what we have to do. And this has been a big problem. And come in here with one drawing and walk out of here with another set and go down to the building inspector and then all of a sudden we have a problem. So we really want to make sure you have all the dimensions.

**Adam Hird** - So you just need the height of the building (**Cannot hear him due to ruffling papers**)

**Tim Pagones** - See you the 20<sup>th</sup>. I saw you get out of your car and go to the door and everything was locked.

**Adam Hird** - Thank you

**Lenny Lim** - You are the architect right

**Adam Hird** - Right

**Vincent Cestone** - This is a no brainer for you

**Adam Hird** - I mean I can have the elevation by the 6<sup>th</sup> easily. The only thing I was saying was I don't want to speak for Badey and Watson if they have to revise their survey.

**Vincent Cestone** - Are you a PE

**Adam Hird** - I'm a licensed architect

**Vincent Cestone** - Can he modify the survey

**Tim Pagones** - You can't modify someone else's survey. You could get in trouble for that

**Vincent Cestone** - Oh okay I wasn't sure.

**Tim Pagones** - Stepping on toes

**Peter Johanson** - If he owns the survey and wants to

**Tim Pagones** - I don't want to say yes and I don't want to say no.

**Adam Hird** - If I can get the survey can I come here on the 6<sup>th</sup>

**Tim Pagones** - You can put him on for the 6<sup>th</sup>

**Vincent Cestone** - Yeah we can do you on the 6<sup>th</sup>. This is not a

**Tim Pagones** - So if you get it the 6<sup>th</sup> great. If not, we will put it back on the 20<sup>th</sup>

**Adam Hird** - Okay.

**Vincent Cestone** - Did you want to speak on this?

**William Mordhorst** - It is a beautiful plan. I have no problem with it. I have an information question that came out of this last discussion, when you approve things you approve plans as they are or does the building inspector approve

**Vincent Cestone** - We approve the plans. If there is something that has to be done because of code, if the chimney has to be higher or whatever, then the building department approves that

**William Mordhorst** - Okay so you are not the final say. The building inspector, the building department concentrate on what is according to code and what is approved

**Vincent Cestone** - Exactly

**William Mordhorst** - Okay

**Lenny Lim** - I don't know about approved

**Vincent Cestone** - But for example like you remember the one where the chimney was not tall enough

**Lenny Lim** - That I understand. But he can't have them say 3 feet in or 4 feet out

**Vincent Cestone** - No he can't change, he can't change the layout of the building. He can just do things that the building has to do to meet the building code. You can't have a 20 inch front door, he will make them put on a 32 or 36 front door. That sort of stuff.

**William Mordhorst** - What if the height of the building turns out to be higher than it appears and it gets past you. Does the building inspector have the right to say what a second, I think this is higher than it should be and then call it back

**Vincent Cestone** - Yes. That is what he will do.

**William Mordhorst** - Okay. So you are not approving plans you are approving

**Tim Pagones** - The envelope

**Vincent Cestone** - We are not approving the inside.

**Adam Hird** - So how many sets should I bring?

**Tim Pagones** - 7

**Adam Hird** - 7 sets

**Tim Pagones** - 5 board members, me, and the file

**Vincent Cestone** - we are going to skip minutes

**Tim Pagones** - all right. Number 4, is anyone here for Gish?

**Peter Johanson** - Yes

**Tim Pagones** - Why don't we do Mr. Gish?

**Vincent Cestone** – Okay

**Peter Johanson** - This is for review for completeness

**Tim Pagones** - Yes. I guess my only question is this 18 inches that is going to extend above the existing ridge line of the roof. Where is that? Is it coming closer?

**Peter Johanson** - No. It is directly on top

**Tim Pagones** - Okay. So there is no change, it is just going up. Okay. You really can't show proposed on a survey because it is right above it

**Peter Johanson** - Right. It is on the other, the plans

**Tim Pagones** - Yes it is on this one.

**(can't hear...many papers shuffling)**

**Tim Pagones** - do the neighbors like you?

**Vincent Cestone** – They like to argue about everything.

**Peter Johanson** - I am representing him tonight. I have a letter

**Tim Pagones** - Good. Could we have your name then sir

**Peter Johanson** - Peter Johanson

**Tim Pagones** - Okay

**Lenny Lim** - You got in trouble for saying that last time

**Tim Pagones** - No I said it was the Hatfields and McCoys

**Lenny Lim** - Then she writes a letter in the paper

**Tim Pagones** - Truth is your natural defense though. All right. Same thing, you don't have your height dimensions. They want to see how high this thing is gonna be. And they want to lock you in also especially since this area there have been problems

**Peter Johanson** - The only thing, most of it is existing and I will mark that on here and the only thing that is sticking higher is this

**Tim Pagones** - That's what I thought. And nothing is coming wider

**Peter Johanson - No**

**Tim Pagones - You are just adding dormers**

**Peter Johanson - Right**

**Tim Pagones - And are you getting rid of the garage**

**Peter Johanson - We are taking the garage door away**

**Tim Pagones - Okay. So is it staying a garage and it is going to have those beautiful windows**

**Peter Johanson - No. it is going to be laundry and storage.**

**Tim Pagones - Okay. And I guess somewhere they have asked what the total square footage is going to be**

**Vincent Cestone - Be prepared for that because I guarantee the night that you have your public hearing, it won't be as                      But we have everything though so we just have to put it on**

**Tim Pagones - Set it for a public hearing. Do you want to put it on for the 20<sup>th</sup>? Actually it has to be the 20<sup>th</sup> because you will never get it in the paper by next week**

**Vincent Cestone - We have Walter Hoving house and Omnipoint on. But Omnipoint hasn't done anything. I'm all set to cancel them for March. I will give them the time but if they don't submit something before a week before like our guidelines are, I'm going to knock them off**

**Tim Pagones - Well I know they emailed everything to, I got a copy of everything they sent to Comi. He sent a big package. So I don't know if he mailed it here or not. You didn't get anything?**

**Vincent Cestone - I will give them a call**

**Tim Pagones - So whatever the Board's prerogative is. You can have a big fight night**

**Vincent Cestone - Are you ready to rumble**

**Tim Pagones - I mean that is the earliest they can get on**

**Peter Johanson - This could be the warm up round**

**Tim Pagones - I don't know. He is not coming any closer to the river. He is not changing the footprint. He is adding dormers. And he is certainly not blocking Cooper's**

view.

**Vincent Cestone** - And he hasn't been there long enough to alienate his neighbors. Yeah, let's do it for the 20<sup>th</sup>

**Bill Flaherty** - And he is improving the overall structure.

**Tim Pagonos** - March 20<sup>th</sup> for public hearing

**Vincent Cestone** - So when you, the day of your hearing make sure that you have all of your elevations, know exactly what your square footage is because all that is going to be discussed and I don't want to have

**Tim Pagonos** - Try and get it to the Town Hall a week before

**Kim Shewmaker** - Because the neighbors are all going to want to see it before they get here for the public hearing

**Tim Pagonos** - If it is not there, the neighbors have a right, they can say I just looked at it and I didn't review it, let's continue it.

**Peter Johanson** - Okay

**Tim Pagonos** - Take the rest of the night off

**Vincent Cestone** - Okay. Tim you're on

**Tim Pagonos** - Friedman-Kien is on for next time. I have to finish that up. I spoke to the applicant. He was happy he didn't have to schlep over here. So that is on for March 6<sup>th</sup>. Then we have, we can do Wallis. Anyone here for the applicant? Okay.

RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #780; Applicant: Kerry Wallis  
Area Variance

Date: February 23, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on January to hear the appeal of Kerry Wallis from the denial of a building permit for construction of a wood deck around the existing above ground pool having insufficient front setbacks. The property is located on 9 Mountain Drive in the Town of Philipstown, Putnam County, New York.

It should be side setbacks not front setbacks

At a public meeting of the Board on February 23, 2006, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF GRANTING THE APPEAL OF KERRY WALLIS FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR CONSTRUCTION OF A WOOD DECK AROUND AN EXISTING ABOVE GROUND POOL HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS<sup>1</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

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

CONDITIONS OF THE VARIANCE:

- 1. The structure granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.
- 2. The setback from the side yard for the wood deck shall not be less than 10.5 ft. on the Westerly side and 10.1 ft. on the Easterly side (a variance of 19.5\_ ft. & 19.9 ft. respectively).
- 3. The wood deck shall not be further enclosed, screened, covered or converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal, plastic or asphalt shingles.

Any other conditions?

- 4. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 5. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

FINDINGS OF FACT:

- 1. The Applicant made this appeal (#780), dated August 31, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of a wood deck around the existing above ground pool having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.
- 2. The property, a 41,206 sq. ft. parcel on Mountain Drive, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule

B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the side or rear property lines.

3. The Applicant acquired title by a deed dated March 28, 2002. The structures at the property, appear on a map dated June 25, 2004, last revised August 29, 2005, as prepared for Kerry Wallis by Badey & Watson Surveying & Engineering, P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on September 12, 2005 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
7. The Board met on January 23, 2006 for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, no members of the public spoke at the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

## FINDINGS AND CONCLUSIONS:

### Adverse Effects on the Neighborhood

1. The applicant wishes to construct a wood deck around the existing above ground pool. The location of the pool is away from any of the neighbors and the road. The addition of the deck to the pool will also make pool look more attractive and therefore actually increase the value of the home. The structure does not interfere with the enjoyment of the neighboring dwellings. The nearest house to the applicant is about 40 feet from the pool but down hill from the applicant. The pool is not visible to the neighbors since the property is screened with trees and bushes. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structure will not be obtrusive. No members of the public spoke at the hearing. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment

of the impact of the requested variance on the neighborhood.

#### Feasible Alternatives

2. Due to the topography of the property, the dimensions of the property, the location of the applicants well, septic and leech fields and the fact the pool is already in place; the Applicant can not construct the deck without coming into conflict with the Philipstown Code. Given the amount of the intrusion into the setback, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

#### Extent of Variance

3. The Applicant requests a variance of 19.5 ft. & 19.9 ft. from a set back which should be 30 ft.

#### Effects on Physical/Environmental Conditions

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

#### Self-created Hardship

5. The need for this variance is self created<sup>2</sup>.

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

THE BALANCING TEST:

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

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 23rd day of February, 2006, the results were as follows:

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

ATTENTION APPLICANTS

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

**Tim Pagones** - I just want to remind you that there is only three of you so it has to be unanimous.

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

**Bill Flaherty** - Second.

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Vincent Cestone** - Roll call vote. Bill?

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - Len?

**Lenny Lim** - I'll vote in favor

**Vincent Cestone** - And so will I.

**Tim Pagones** - Okay Next on is Uhle. Anyone here for Diane and

**Kim Shewmaker** - No one is here

**Tim Pagones** - okay

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #786; Applicant: Diane & John Uhle  
Area Variance**

**Date:** February 27, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on January 23, 2006 to hear the appeal of Diane & John Uhle from the denial of a building permit for construction of a wood deck to the existing house having insufficient front setbacks. The property is located on 8 Ryder Court, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on February 27, 2006, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

**THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF  
GRANTING THE APPEAL OF DIANE & JOHN UHLE FROM A  
DENIAL OF A BUILDING PERMIT BY THE BUILDING  
INSPECTOR FOR CONSTRUCTION OF A WOOD DECK TO THE  
EXISTING HOUSE HAVING INSUFFICIENT SETBACKS, WITH**

**THE FOLLOWING CONDITIONS<sup>3</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.**

**CONDITIONS OF THE VARIANCE:**

1. The structure granted conditional variance by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.
2. The setback from the street line for the wood deck shall not be less than 18 ft. (a variance of 22 ft.).

**Tim Pagones** - Now I had a question. If you look at the plans, one of them, one had 18 feet and another one had 18.3.

**Vincent Cestone** - What the size of the deck

**Tim Pagones** - No if you look at the, it looks like this corner here has 18 feet

**Vincent Cestone** - Okay

**Tim Pagones** - Then if you look here, it looks that corner is 18.3 and I don't know if that is the same corner

**Vincent Cestone** - It looks to be the same corner

**Tim Pagones** - Yeah that says proposed deck and that says proposed deck but it doesn't show, that's where the steps would be

**Lenny Lim** - I don't know. You're right. If there are two different numbers we have to get them corrected

**Vincent Cestone** - Or we give them the smaller number

**Tim Pagones** - Well we are talking 3 inches. I would give them the 18 so it is a 22 foot variance

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

Vincent Cestone - Yes.

Tim Pagones - So they are going to have a 22 foot variance

3. The wood deck shall not be further enclosed, screened, covered or converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal, plastic or asphalt shingles.

4.

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FINDINGS OF FACT:

1. The Applicant made this appeal (#786), dated October 28, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of a wood deck onto the existing house having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.
2. The property, a 1.069 acre parcel on 8 Ryder Court, is located in a R-40 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-40 District requires a setback of 40 feet from the street line.
3. The Applicant acquired title by a deed dated March 29, 1991. The structures at the property, appear on a map dated August 17, 2005, as prepared for John W. & Diane Lynn Uhle by Badey & Watson Surveying & Engineering, P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on November 7, 2005 in order to determine

sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for January 23, 2006. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

7. The Board met on January 23, 2006 for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, no members of the public spoke at the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

## FINDINGS AND CONCLUSIONS:

### Adverse Effects on the Neighborhood

1. The area consists of single family homes, many of which have decks attached to the houses and therefore the requested variance will not adversely affect property values. The structure will not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structure will not be obtrusive. No members of the public spoke at the hearing but the applicant did supply a letter of support for the contiguous neighbors Charles & Annette Nagy. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

### Feasible Alternatives

2. Due to the location of the house, the Applicant can not build the deck onto the structure without coming into conflict with the Philipstown Code. Given the amount of intrusion into the setback, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

### Extent of Variance

3. The Applicants request a variance of 22 ft. from a set back which

should be 40 ft.

Effects on Physical/Environmental Conditions

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

Self-created Hardship

5. The need for this variance is not self created<sup>4</sup>. The Applicant wishes to construct the wood deck onto the existing house. The applicants made application to the Building Department for permits and applied for the necessary variance.

THE BALANCING TEST:

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

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 23rd day of February, 2006, the results were as follows:

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

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<sup>4</sup> **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**

**ATTENTION APPLICANTS**

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

**Vincent Cestone** - I'll make a motion to accept the resolution as read. Do I have a second?

**Bill Flaherty** - Second.

**Vincent Cestone** - All in favor?

**All board members** - Aye

**Vincent Cestone** - Len?

**Lenny Lim** - I'll vote for

**Vincent Cestone** - Bill?

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - And so do I. Any old business?

**Tim Pagones** - Minutes?

**Vincent Cestone** - We'll wait on the minutes until Joan gets back. With that I will entertain a motion

**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: 3/20/06

Respectfully submitted,

Kim Shewmaker  
Secretary