

ZONING BOARD OF APPEALS

March 10, 2008

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 10, 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.

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

ABSENT:

for County Line Equities variance request.

Glennon Watson - I have nothing new to add. I did submit additional data on the map from last month.

Vincent Cestone - Yes

Glennon Watson - There were some questions with regard to that. I hope I made it clear. And other than that I have nothing to add at this time but I would appreciate the opportunity to respond to comments

Vincent Cestone - Since there are five variance requests, I am just going to be the devil's advocate and go one by one for the sake of what happens if we don't approve that variance. Like number one, say we didn't grant the first variance. What would happen?

Glennon Watson - Number one we would probably put the sign on the building where it would be less visible and noticeable. It wouldn't be as prominent as those signs should be. That's the price sign.

Vincent Cestone - Pricing signs. And variance 2 would be the distance from Route 9. I am just going to go down each of them and ask, so I understand what the consequences

Glennon Watson - 2, 3 and 4 really are all the same variance. It has to do with the canopy. Obviously the canopy is there and we would have to take that down. We would have to consider a fire suppression system with a series of pipes that went over the top of the pumps. We certainly would first look at a smaller canopy however we have looked at that and we think it would be much less affective and wouldn't do the job that it was intended to do. At least it wouldn't do it as fully and completely as we hoped it would do.

Joe Giachinta - I would just like to add to that

Vincent Cestone - I am sorry. Could you speak up

Joe Giachinta - I would just like to add to that a little. As far as the canopy goes we did look at cutting down its size but we have to met a certain requirement for the fire suppression and that's why it is the size that it is, we have to cover a certain square feet. One of the other reasons is, and I know it has been said at the planning board, as far as the canopy goes it is a convenience so people don't get wet. That's only a minor part of that. The fire suppression is the first. The secondary is the environmental issues. If it is raining out and God forbid there is a spill, someone spills gas when they are filling up their car when it is raining, it is going to get washed away.

Vincent Cestone - It is going to get washed away anyway eventually

Joe Giachinta - Well not under a canopy.

Glennon Watson - More time to react to it

Joe Giachinta - Right much more time to react to it. We can get out there right away and take care of it then. It is confined to a smaller area, the area of the spill instead of being spread out. And the other thing is the safety issue. We live in the northeast. You see the conditions we have in the winter months. If someone is out there pumping gas it is snowing and icy. You don't want a car coming in and sliding in and sliding into another car and hitting the gas pump. That's the other part of the issue. That's another reason why this

Glennon Watson - And the pump island gives us a much better ability to raise the lights up into the canopy so that the glare is reduced or eliminated to the property line. And there is no side glare whatsoever because there is a Mannford type roof and the lighting units are set up in like high hats in your kitchen. So the light, there is much more control in the lights.

Robert Dee - The fire suppression system could be installed without the canopy correct?

Glennon Watson - Yes that is correct

Robert Dee - Okay. How much lighting is in there? How many lights are in that canopy? And what power are they

Glennon Watson - Approximately 22 lights and they are, I think they are 75 to 100 watts each. I am not sure.

Robert Dee - Okay

Vincent Cestone - In the file, the variance was ground lot variance, it is hard to understand what the consequences are. If we said you can't go over 65 percent, you would obviously have to pull something out. But looking at the pictures it is hard to envision what the consequences of that would be.

Glennon Watson - We would have to reduce the coverage. Just as it happens the green on here is about 20 percent

Vincent Cestone - It is hard to envision what 20 percent of lot coverage is

Glennon Watson - 20 percent of lot coverage is roughly the green area. It is roughly the sum of the building and canopy. I'm sorry, excuse me, it is roughly the building. The building is roughly 20 percent of the site.

Vincent Cestone - If that wasn't granted, approximately the size of the building would have to be cleared. Okay. I see.

Glennon Watson - And what we would probably elect to do is eliminate out here and we do have four spaces that are beyond what is mandated by the law. And that was because in talking with Town Officials there was a request that some space be set aside so people who go on to the Appalachian Trail which crosses right there, have some access to it. And so part of our request is really trying to accommodate a public use here. Mainly those four spaces for hikers who will have access to the Trail at that point.

Joe Giachinta - That was also a concern of the neighbors. As you go down there you see cars lined up all along there. I am very familiar with the area. So we decided well okay, we'll put four spots out here and it will be marked with a sign.

Vincent Cestone - Because one of my concerns is zero setback on Route 9 and 403. You know, I think of some of the big vehicles and trucks and they back into a parking space and it will be overhanging into either Route 9 or 403 and into the shoulder. You know how people are. I am concerned about having an accident.

Glennon Watson - Well there is, this side from the travel lane you have a curb, a

concrete island and then some property that belongs to the State. By scale this is between 11 and 12 feet from the curb, the white line and then the curb, the island, and then the next curb and the island, so from the curb to the sign it about 11 feet.

Vincent Cestone - People parking on the 403 side because, they back in to 403 and they would be hanging into 403. Somebody can come around the corner and clip them as they come around the corner.

Glennon Watson - Well we certainly would take any recommendation with regard to No Parking signs. Obviously we would have to have the State's permission to put those up there too. But we would certainly take any No Parking signs. There is not a lot of room, I guess I can turn that around and I'll say denying those parking spaces, I mean they are not always used by the Appalachian Trail will only increase that possibility not decrease it.

Vincent Cestone - I am not saying deny the parking spaces, I am just trying to eliminate as much as I can and the possibility of somebody getting clipped within your property

Joe Giachinta - Oh within our property

Vincent Cestone - Yeah. Say someone backs in the 403 side and it overhangs

Joe Giachinta - Over here

Vincent Cestone - Yeah

Joe Giachinta - Well there is no parking spots here.

Glennon Watson - There are no parking spots and there is a curb

Vincent Cestone - But you know how people are

Glennon Watson - They would have to rise up onto an island and go over the island and back out the other side

Joe Giachinta - The elevation

Vincent Cestone - How tall is the curb

Joe Giachinta - They are 8 inch curbs but the elevation, this curb from the outside curb is in that area is approximately two feet. The road is actually 2 feet higher than my parking lot.

Vincent Cestone - Any other questions from the board?

Robert Dee - Can that canopy be reduced and still be effective if we reduced it to be within the Code so that it wouldn't need a variance? Is that possible?

Glennon Watson - Well it can't be reduced to the point where it wouldn't need a variance. If you look more closely at that map you will see a triangle that the point of it is about in the middle of the proposed building and then goes to the north and it ends at the end of the parking

Robert Dee - Right

Glennon Watson - Legal is within that triangle and only within that triangle. So I think it pretty clear that a canopy cannot be accommodated within the required setbacks.

Vincent Cestone - If we said to you that you had to decrease the size of the canopy, how would you do that? Because basically the canopy's total size is physically bigger than the structure. Say we said to you that the canopy couldn't be any bigger in length and width of the size of the building. Is that something that would be do-able?

Joe Giachinta - A couple of things might be uncovered _____ serious issues, for the amount of reduction to be perfectly honest with you, _____. I don't think you would even notice it with the amount of reduction on that canopy to match that building.

Vincent Cestone - So what you are saying is no. Any comments from the board?

Bill Flaherty - I would like to make a comment. This is the largest single gas station in our Town. (**Papers ruffling near microphone...cannot hear dialogue**) The only other station that we have in our area is up in Fishkill, the Hess station at the intersection of Route 9 and 84. That is a big pump station. All stations further up north and I think the Mobile station on the west side of 9 is five pumps. But this is a rather large structure. Going into the study that was made regarding the traffic. This is a Class C station. They classified it as a Class C.

Glennon Watson - C was the level of service. And that had to do with how the intersection operates.

Bill Flaherty - But they concluded too that there would be no appreciable problems if that were to be reduced from a 6 pump to a 4 pump.

Glennon Watson - I don't think, I respectfully disagree. I don't think that's what it said.

Bill Flaherty - But the conclusion was if it were reduced from 6 pumps to 4 pumps you would need a variance on a canopy unless you reposition those pumps from where they are now.

Glennon Watson - You would still need a variance. What I meant to say prior is that I disagree with your dialogue up to your conclusion. I don't think that Dr. _____ conclusion was that 4 pumps would be no different.

Bill Flaherty - The only difference he stated in that report was the waiting time would be greater. Assuming that you are going to have

Glennon Watson - And thus the possibility of

Bill Flaherty - But probably a percentage of that time is going to be low. The structure in itself is too large for the plot. Unfortunately this all happened without the necessity of a variance and also a building permit. And you had also gotten notification from the building inspector to stop the structure. Apparently to stop the construction was not the case in fact

Joe Giachinta - The building inspector called me on the telephone. To this day there is not a stop work order posted on that site. To this date I have not received that.

Bill Flaherty - What was the basis for your going ahead and constructing a gas station with 6 pumps.

Joe Giachinta - We had studies done

Bill Flaherty - Can I see the study? Shell Oil company

Joe Giachinta – Yes. We are also looking, we all know what is happening on Route 9, we all saw what happened in the last 10 years. So as far as from the Planning aspect, number 1, if I thought I could get away with 4 pumps, I would have done 4 pumps because it is considerably less money. The reason I did 6 pumps is from the Planning aspect and a safety aspect also, we have 4 pumps we had the possibility of cars stacking up out on Route 9 and we all know what the traffic is like and we are trying to make this as safe as possible. And that is the other reason we have a passing lane in the middle. We all know what happens at convenience stores. People park their cars and go inside, that's what they do. If they get gas and then they are going to go inside, then we have cars stacked up. We are trying to get everybody off the road as easily as possible and as safely as possible. It all goes back to safety. Don't forget, I am going to be exposed. I try to do things as safely as possible.

Bill Flaherty - I understand that and I commend you for that.

(I cannot hear the conversation)

Bill Flaherty - well my concern is I still feel that the lot itself _____ the amount of the structures. I have to ask you _____. I would conclude that I would not approve of a 6 pump gas station.

Vincent Cestone - Any more comments from the board? Any comments from the audience? Stand up please

Thomas Whyatt - My name is Thomas Whyatt. I am a Garrison Cold Spring resident for 37 years. I am an attorney with the law firm of Oxman, Tulis, Kirkpatrick, Whyatt & Geiger and I represent the Philipstown Citizens Alliance an unincorporated association of residents and community and I represent many individuals who live within close proximity to this site. I have listened to your board rattle with how to respond to a site which has already been developed. And try to figure out the best solution in the context of a site that has already been developed. But I would respectfully ask you to look at what would happen here had this site development had been conducted properly. In the beginning the applicants requested permission for renovation of an existing building on the site. They had the right to renovate and use the site as it was, 4 pump site, whatever the usage was, the buildings on the site, they would not have needed variances because they were pre-existing conditions. Clearly it was their intention from the beginning to completely redevelop the site. To put a new building in place of the smaller existing building, to add a significant amount of pavement to the site, to increase the number of pumps, to put the canopy over the back. In the process they moved the entire working operation of this gas station right up against the Kelley's property next door. I respectfully submit that had this been approached properly from the beginning with a builder who intended to entirely redevelop the site, they would have gone to the Planning Board for site plan approval. Had variances been required, the variance request would have come to you without all these design considerations and it would have been designed with the Planning Board review and there would be their comments on the appropriate variance. And I respectfully submit the building would have been put back towards the Kelley's site so as to provide a buffer between the Kelley's property and the operating gasoline station. I respectfully submit that development would have been kept away from the wetland and stream area in the back. And I respectfully submit that parking with the significant area in front of the building, parking could have been handled with significantly less need to put parking close to the highways. Now I don't know this, we don't know what the site would be like if the Planning Board had been given the opportunity to work with the applicant for a better design. Now they will object and they have the right to, but none the less there was no Planning Board input in the design from the beginning and I see very serious flaws in what was done as a result of that. We have an applicant who began with an application to renovate a building instead they replaced it with a much larger building and then

move ahead to complete the rest of this development, to pave, to put in the islands, to put the canopy over the top all the while getting tickets, stop work orders and I consider that to be a very significant issue before your board. A continuing effort by the applicant to ignore or defy the development process this Town has put in place. And I believe that the community detriment from that issue alone outweighs any benefit to the applicant that could come from being allowed to do all this without the permits and then come before this board and ask for it to be legitimized. I respectfully submit that the appropriate step, at this point your board is to deny the variances rather than get into design issues. Deny the variances. This puts it back with the Town, with the applicant to take such steps as they deem appropriate at that time. Thank you very much.

Joe Giachinta – Can I just address one issue

Vincent Cestone - Sure

Joe Giachinta – I received a building permit to renovate this building right here. It's three sides are still there. This building was cut right there. That building, this building right here is smaller than what was there. Just so that you know, I wanted to point that out.

Vincent Cestone - I am aware of that. Anyone else wish to speak on this?

Liisa McCloy Kelley - My name is Liisa McCloy Kelley and I live at 22 Route 403 in Garrison. I went through what you guys know a lot of the files related to this project and I put together some images for you just to be able to see how this project started out in 1951 before the zoning laws existed. You can see from that what percentage of it was building and you can see that there was a simple house with a couple of pumps out front and a small framed garage in the back. There is also a survey from 1980 showing where curb cuts were put in place and where the stream was then routed underground when the one story building had been added to the front of the site and the garage in the back had been extended to almost twice its size. You can also note from this particular survey that the amount of space between that back building and the lot line increased by over 15 feet. So where at some point there was a corner of this lot that was _____ and there was also _____ in the back. You can see in the next picture when in 2000 a survey that the previous owner of this property was starting to use and plans were before the Planning Board around the time of 2000, and the same surveys that were used for the building permit for the renovation or the demolition of the barn. At the time, and I would say my drawing of this to show you the graph, probably over extends it a little bit. So I included an aerial view so that you can see exactly what was paved and was grass at that point in time. The plan now as we all know is significantly more paving. And if you look at the current plan over the satellite image of what was there before you can see the difference. I also included a photograph of when the station was operational. And you can see what it looked like when there were pumps in 1999. And what it looked like

when it closed in 2000. And what it looks like now. As you all know as a neighbor I am upset by the fact that this is an extensive development next door. But I am also very concerned about this as a member of the Garrison community and about what this means for development on Route 9 because as the applicant has said we see what is happening along Route 9 and I would hope that we are working as a Town to make sure that we don't _____ that traffic development. I would argue the point that has been made that the reduction to the number pumps would create a huge amount of traffic on the road backed up. I don't know about you, but I never actually sat on a road waiting to get into a gas station. If I saw one that was too busy, I move on to the next one. This gas station is within 6 miles of the one at the traffic circle at Route 9 and it is not much closer than to the one up the road from it. So it is not like there is anyone who is so desperate for gas that they are going to sit there and wait for those pumps to become available. The other thing that I would note for you is just that when I was here the last time Mr. Flaherty asked me some questions about my purchasing of the property and whether I knew that there was a gas station there before and whether I knew there was a possibility of it being a gas station again. And I pointed out to you that I really didn't think that this kind of thing was possible but something would be built before it was approved and it was enlarged and that it would be such a huge structure. I would also point out to you that, if you want to talk about buyer beware, the applicant knew when he bought it, he knew when he purchased this property that that gas station had been shut down. He knew when he purchased the property that this had been before site plan approval and needed the same variances when a site plan was before the Planning Board in 2000. Tim Miller's Associates in his files here, has recommendations saying that these same variances were needed back at that point in time. So I can't think that there wasn't some knowledge that this process needed to be gone through and that it was avoided. And I hope that you take that into consideration. Thank you.

Vincent Cestone - Some one else wish to speak on this?

Suzie Gilbert - Thank you. My name is Suzie Gilbert. I live on 403 in Garrison. But I am just reading a letter from another Garrison resident Robert Rhodes. He lives at 801 Route 9D. Dear Chairman Cestone and Members: I have been in practice as an architect with expertise in site planning, design, and related environmental issues for more than forty years and hold professional licenses in Connecticut, Pennsylvania, New Jersey, Vermont and New York. As a long time resident of our community, a veteran member of the Philipstown Comprehensive Plan Special Board, a Board Member of the Hudson Highlands Land Trust, The Desmond Fish Library, and the Philipstown Depot Theatre, I respectfully submit my view regarding Appeal 825, relative to the gas station. As you may know, during the formation of the Comprehensive Plan, it became crystal clear that protection of the rural nature of Philipstown was the single most important issue for our community. The Public Hearings, write-in opinions and numerous letters to our local newspaper overwhelmingly supported this view. Accordingly, one of

the first issues addressed by the Board was to map areas that had the potential of changing community character. As one of the gateways to Philipstown, the gas station site was often discussed. While the Board was acutely aware that a sustainable community has to support commercial as well as residential interests, it was hoped that this site would be developed as a visitor center, an ideal partnership for both. Nevertheless, I do not question the gas station's right to exist, only how it exists. In my expert opinion the commercial design of this facility is out of character and will have a detrimental impact on the community, and particularly the neighborhood. The adjacent properties include woods, pasture land and residences. The large canopy over the service area of this gas station, while appropriate for the New Jersey Turnpike, is completely inappropriate for this rural site. The structure is way out of scale to the surroundings and night time light pollution from the canopy will unfairly impact the neighbors. Had this canopy been submitted for approval, as required by law, there is no doubt that it would have been rejected outright. Precedence would have supported this decision. In view of the above, I trust that the Zoning Board of Appeals will reject the variance application for the canopy. Thank you for your consideration. Yours truly, Robert Rhodes

Vincent Cestone - Anyone else wish to speak?

Cathy DiSalvo - I just have a question. I guess I'm a little confused. I am not very good at just being told that something percentage over, lot size, or building size. I kind of need to visualize it. So am I wrong in the, lets just start with the structure coverage. Am I wrong in assuming that or thinking that, that the total lot coverage of what used to be there and what exists now, if you take the whole structure size all of it and the percentage over, is that about 400 square feet total coverage over what the original lot coverage was or what you are here asking for a variance on?

Glennon Watson - It is a net increase of 400 square feet

Cathy DiSalvo - Okay. So the 400 feet, being visual again, is it fair to say that if I took a pencil and outlined the entire structure not just focusing on the canopy, if I just took a pencil and outlined the entire building canopy and structure coverage, is that about 400 square feet?

Vincent Cestone - I asked that question earlier. It is the orange structure is about 400 square feet

Glennon Watson - The orange here

Vincent Cestone - I'm talking about the orange on the bottom

Glennon Watson - I think to get to the question, the orange on this previous condition is 400 square feet less than the yellow and orange on this. The

difference is roughly that in terms of coverage is roughly that yellow square on this map

Cathy DiSalvo - So if I took that yellow square and stretched it out over entire structure site, is it about a pencil line around the whole structure? The thickness of a pencil line.

Glennon Watson - It would be, I would have to measure that to tell you the truth. But it wouldn't be very much.

Cathy DiSalvo - It wouldn't be very much

Glennon Watson - No

Cathy DiSalvo - So the next question I have then is the total lot coverage. Is maybe 800 square feet over or 600 square feet over? So if you took that pencil line and went around the whole lot coverage is that about how much over in total?

Glennon Watson - You have to distinguish

Cathy DiSalvo - If I am correct, the variance is being sought on both. Is that correct?

Vincent Cestone - No.

Glennon Watson - There is the lot coverage which means buildings and there is total lot coverage which means buildings

Cathy DiSalvo - Parking, pavement

Glennon Watson - Now that is actually increasing by more. So the total lot coverage that, I'm sorry I should have said total down coverage is about in increase of about 2,000 square feet which would be 5 times, 5 of those blocks.

Cathy DiSalvo - Again if you stretched those blocks out on the whole lot coverage, it is not a very area

Glennon Watson - In and of itself, it is not terribly big. I can't, I wish I could just say yes you are absolutely right but it

Cathy DiSalvo - I am just trying to visualize a little bit because there seems to be a lot of talk on the canopy itself and that is not really where the variance is being sought, am I right? It is on the total structure

Vincent Cestone - There is two variances

Cathy DiSalvo - Yeah but not just for the canopy

Vincent Cestone - One for total lot coverage and variances from Route 9 and Route 403.

Cathy DiSalvo - And the setback that is being sought aren't they grandfathered from the previous structure?

Vincent Cestone - If it was in the original configuration, I would say yes. But since it is not in the original configuration that's debatable. Am I right Adam?

Adam Rodd - It is not grandfathered. It is a new structure.

Cathy DiSalvo - All of this is a new structure

Adam Rodd - Well yes about the canopy

Cathy DiSalvo - No I'm talking, there seems to be a lot of focus on the canopy. I'm talking about the whole project. Is the variance being sought on just the canopy?

Adam Rodd - No

Cathy DiSalvo - No. That's what I am asking. So you have setbacks in the whole picture

Adam Rodd - I am not sure what you are asking. They require a variance for setbacks because they don't comply with the setbacks. They are also requiring variances for lot coverage because the project doesn't comply with that either.

Cathy DiSalvo - That I understood. I am just trying to understand it, the size, how much was being constructed because so there seems to be so much focus on the size of the canopy and

Vincent Cestone - That's generally the main issue

Cathy DiSalvo - That's generally the main issue. I guess my point is when I think about it visually and how much _____ there really are in percent when you are talking about the zoning code and what the variances are being sought on, I would imagine and I don't know all of the variances that have been granted by this board since that is your job to grant or not grant

Vincent Cestone - Not on this property

Cathy DiSalvo - Not on this property I mean overall in the Town of Philipstown,

you've granted larger variances than this.

Vincent Cestone - But each lot is an individual

Cathy DiSalvo - I understand that

Vincent Cestone - And it is one of those things where we are mandated to issue the smallest variance possible

Cathy DiSalvo - I am just giving my opinion, and in my opinion this is a pretty small variance when you look at the total picture versus just focusing on one small piece of the property.

Vincent Cestone - And you are next. Please introduce yourself.

Barbara Feldt - I'm sorry I have a cold. My name is Barbara Feldt and I live at 12 Cross Timbers Road. I am a resident and member of Philipstown Citizen Alliance. _____ January 28th concerning the impacts to the environment and Randall Creek and the watershed and the threatening the amphibians and the reptiles and the obvious ignoring of known needed permits and regulations. There is no permit to work on or near the stream. Although there was a pre-application made to the DEC after the work was already completed. I did call today to follow up. The Conservation Officer stated that the DEC is continuing to follow up. The owners may or may not be facing criminal charges. So no facts can be disclosed at this time. What is so wrong here is that the stream was just yet another permit that was needed to be worked out before any work had been done. The facts are that our laws were ignored, they are continuing to be ignored and more concrete work was done and there is a propane tank there now. They are both threats to animal and to our laws and to our principles and that it should be concluded that all requested variances be denied. A PS, the building is 2,400 square feet and the canopy is 3,920 square feet. Thank you very much.

Vincent Cestone - Someone else?

Joe Giachinta – Can I just address two of those issues?

Vincent Cestone - Sure

Joe Giachinta – I just want to straighten that out. We received a wetlands permit.

Barbara Feldt - No you didn't

Joe Giachinta – From the Town to work on the property. The DEC and my engineer, not this engineer, we hired another engineer, contacted the DEC. We

do not need a permit for tanks in the ground. We need permits, as I said before, to put the petroleum into the tanks. Which we are not even close to doing that yet. That's why we made a pre-application. Yes, we started the process. Just to get the process started. That's all.

Vincent Cestone - Someone else wish to speak? I get the impression you would like to speak again

Thomas Whyatt - I would like to make one brief response. Back to the new building here for a second, Mr. Giachinta pointed out that three of the four sides are the same as the original building but if you look at the two buildings and you see that this is purportedly a renovation of this. You will see that there is a very significant difference. This is much larger building, a much taller building. It is not, the footprint may be the same but it's not a renovation. The Code, the Zoning Code is very clear on what can be done with existing non-conforming buildings and it prohibits that it shall not be enlarged, extended or structurally altered. In other words the right to have this building is the right to have this building not to enlarge, alter and structurally alter it into this building. So keeping to the same footprint is not renovation. What they have done here is to enlarge, extend and structurally alter a pre-existing nonconforming building and that violates the code. And that is my concern with this effort from the very beginning. Thank you.

Lenny Lim - I didn't notice this before but did anyone know that there were 7 pumps there before? I didn't realize that. I just saw it in your picture that there are 7 pumps.

Liisa McCloy Kelley - There are 7 pumps because at that time gas was served one kind out of one pump, and another kind out of another. There was unleaded, and premium and leaded.

Lenny Lim - There are still 7 pumps

Liisa McCloy Kelley - But it was never meant to have that many cars parked there simultaneously. They were one right next to each other

Lenny Lim - I am just putting it on the record that there were 7 pumps in the photograph.

Vincent Cestone - Anyone else wish to speak and then I'll let you speak. Sir?

Ralph Fleming - I get the feeling from some people that there is a vindictive type of approach here because of the lack of previous permissions. The fact is they are here now and they are presenting what they would like to do. They are doing it in a safe manner and that's what you are looking for. I hope that this isn't a vindictive situation for the board that you are going to act in a safe and proper

manner.

Vincent Cestone - This board can only act on what the law is. There is no vindictiveness there. The law is very very clear

Ralph Fleming - That's all I hope for

Adam Rodd - Can we get your name for the record

Ralph Fleming - Ralph Fleming

Vincent Cestone - Okay. Glenn?

Glennon Watson - Two points with regard to Mr. Whyatt's comments. First of all, twice he made, three times he made the mistake of telling you the building was larger. Well it's not. Taller. That's not what he said. He said larger. And second of all, I would ask that you have your attorney read that entire paragraph with regard to what can be done to non-conforming buildings. And I think you will find, I think, I don't know absolutely, but I think you will find it says you may not do any of those things except in a manner where you reduce the non-conforming. Now so I think you should ask your attorney to read that for you because it is very convenient to add a period and forget the rest of the paragraph.

Thomas Whyatt - May I read the language

Vincent Cestone - You made the comment, he made his _____. Anyone else wish to speak here? Any more comments from the board? Since SEQR hasn't been completed with the Planning Board, we cannot give any votes tonight, until SEQR is completed. But I am going to make a motion to close the public hearing. Do I have a second?

Bill Flaherty - I'll so move

Paula Clair - Second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - So the public hearing is now closed. As soon as the Planning Board acts, we can have discussion and then make a vote. Comment?

Audience Member - No I have a question. The SEQR has not been completed by the Planning Board so you can't vote. But why would the SEQR be completed if the variance, wouldn't the SEQR change if the variances are not given or are given? Wouldn't that affect the SEQR process?

Vincent Cestone - I don't think so. Right?

Adam Rodd - Well no board can take any action until SEQR determination is made. That's the first step

Audience Member - Am I confused that the SEQR determination being, completing the SEQR requirements and having that approved, and going through that process. Am I wrong there?

Adam Rodd - I am not sure, I am to be honest with you, I am not sure of exactly what you are asking but all I can tell you is that the Planning Board is lead agency on this project, they have not completed SEQR nor made a SEQR determination. And in the absence of making a SEQR determination, this board cannot legally act on the requested variances.

Audience Member - I guess that is where I am confused because I thought, my understanding is

Adam Rodd - I am just telling you what the rule is. I can't help you if you are confused about the rule or not. But that is the rule.

Audience Member - I am not confused about the rule. I understand completely what you just told me. I've been through the process. My understanding, unless I am missing something, on the SEQR process and approval of it, of making a SEQR determination, is based on the plan that you are submitting. Now if you are submitting a plan that, do you want me to stop?

Vincent Cestone - The Planning Board is lead agency

Audience Member - Unless I am missing the pieces, they can't continue with the Planning Board until the variances are permitted or not permitted. Is that correct?

Vincent Cestone - The Planning Board can act on SEQR.

Audience Member - So the SEQR is independent of what whether or not the plan changes

Vincent Cestone - They can modify their SEQR.

Adam Rodd - My understanding is and I can confirm with Glenn is from the Zoning Board, planning on what the Zoning Board does if they were to grant certain variances for example, then the applicant would then return to the Planning Board for site plan approval.

Audience Member - So SEQR is independent of any approvals whether the plan changes or not

Adam Rodd - It is hard to answer when you say independent, there are obviously some relationship between the two. All I am telling you is that this board is not going to be acting on the request of these variances tonight because SEQR has not been completed.

Audience Member - I know you are saying it in a bunch of different ways but they are in some way they are linked. The site plan itself, the plan itself is linked to SEQR process because that's what you keep answering your SEQR questions on is what plan you have correct?

Vincent Cestone - What's your point?

Audience Member - Well my point is how can you complete the SEQR process (turning tape over. May have lost some dialogue)

Glennon Watson - ...The circumstances between the SEQR determination and the final site plan approval change. They can reopen SEQR.

Adam Rodd - Exactly.

Vincent Cestone - With that this public hearing is closed. If you want to take it outside, but we still have a meeting to do.

Joe Giachinta – I would just like to speak to the board briefly. I purchased this property. I bought this piece of property as the gateway to Philipstown. This isn't my first project in Town. I have been in front of the Planning Board numerous times. I have been in front of the Zoning Board numerous times.

Vincent Cestone - You were actually part of the Planning Board at one time

Joe Giachinta – Yes I was. And I have lived here all my life. My father, my grandfather, my whole family. I mean I run a business here. My whole family runs businesses here. I purchased the property. We all seen what it looked like. I mean these are actually fairly good photos from the front. We don't have any photos from the rear to see how bad it looked back there. I mean here's what it was. I mean this is what they are calling the gateway to Philipstown so maybe it was an error in my judgment obviously I guess it was, but I decided to build something like this.

Vincent Cestone - In all honestly you've been in this Town this long and you've been

Joe Giachinta – I know. I've heard it. I know. I just like to address the board.

Now Mrs. Kelley or the Kelley's they, I can see how they are upset with this project but maybe they made an error in judgment too. They bought a home in a commercial district. I mean it is sandwiched between Route 9 and 403

Vincent Cestone - They are not here before the board for variances are they

Joe Giachinta – No they are not

Vincent Cestone - And they are entitled to their comments. Now

Joe Giachinta – I didn't say anything about the, I am trying to address everything that they've brought up. We are doing it at the Planning Board and we are doing it here. We are trying to address everything to get this mitigated. I don't know what direction to take here. I really don't. I just assume that this is better looking than this. And also now that we find out that there are 7 pumps, there were 7, I have 6 so I cut that down by one.

Vincent Cestone - The public hearing is now closed. No more discussion.

Lenny Lim - Kim, please note in the minutes that I did not agree to close the public hearing

Vincent Cestone - Next item on the agenda is review of minutes of February 25th

Kim Shewmaker - Vinny can we hold up one minute because I am not going to be able to hear the tape with all the commotion

Vincent Cestone - Take it outside please

Kim Shewmaker - I'm going to get you a gavel. I will find one.

Vincent Cestone - People people please take it outside. Review of minutes of February 25th are there any corrections or changes? I'll make a motion to accept the minutes as submitted. Do I have a second?

Bill Flaherty - Second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Okay next item on the agenda is Nancy Carlucci. Adam you're on.

Adam Rodd - The resolution of Carlucci reads in pertinent part as follows: The

Philipstown Zoning Board of Appeals conducted public hearings on June 25, 2007, July 9, 2007, September 10, 2007, October 1, 2007, October 22, 2007, November 26, 2007, January 28, 2008, and February 25, 2008, to hear the appeal of the applicant, Nancy Carlucci from the denial of her request for a Certificate of Occupancy for her property located at 27 Valley Lane, Garrison, New York. The applicant's request for a Certificate of Occupancy was denied because the applicant maintains an in-ground pool which encroaches upon the minimum 15' foot rear yard and side yard setbacks required pursuant to Section 175-32, Schedule B, Item 7 of the Zoning Ordinance. At a public meeting of the Board on February 25, 2008, and upon all discussion and testimony that preceded it, site visits made by individual Board members, and a review of all submissions and proof submitted to this Board, Vincent Cestone made a motion, seconded by Bill Flaherty, as follows: Be it Resolved that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, determines and finds: That the balancing of equities weighs in favor of granting the appeal of Nancy Carlucci from the denial of her request for a certificate of occupancy to maintain an existing in-ground pool located at 27 Valley Lane in Garrison, New York. The grant of the subject appeal is conditioned on compliance with the board's directive that the subject in-ground pool be reconstructed and reconfigured in accordance with the plan for same as depicted in the map labeled "Alternate C" of the February 14, 2008, survey map entitled "Alternate Pool Configurations" as prepared by Badey & Watson surveying and engineering PC as shown, the proposed reconstructed and reconfigured in-ground pool shall be setback from the rear yard lot line by a distance of 11' feet, 4" inches, and the right side yard lot line by a distance of 14' feet, 7" inches. The grant of the subject area variance, with the following conditions for the reasons set forth herein, shall constitute findings based on the factors set forth in Town Law 267-B. Conditions of the Variance. 1) The reconstructed and reconfigured in-ground pool shall be set back from the rear yard lot line by a distance of 11' feet, 4" inches. 2) The reconstructed and reconfigured in-ground pool shall be set back from the right side yard lot line by a distance of 14' feet, 7" inches. 3) The reconstructed and reconfigured in-ground pool shall be built as shown in "Alternate C" of the survey map entitled "Alternate Pool Configurations" dated February 14, 2008, from Badey & Watson Surveying and Engineering PC 4) The reconstructed and reconfigured pool shall be screened from view with fencing, not less than 4' feet in height, as depicted on "Alternate C" of the survey map entitled "Alternate Pool Configurations" prepared by Badey & Watson Surveying and Engineering PC dated February 14, 2008. 5) The variance granted by this Resolution shall not be further enlarged or extended except in accordance with all provisions of the Philipstown Code, and shall remain in the configuration as shown as "Alternate C" on the survey map entitled "Alternate Pool Configurations" prepared by Badey & Watson Surveying and Engineering PC dated February 14, 2008. No enlargement, reconfiguration or extension of the proposed reconstructed and reconfigured in-ground pool is authorized without Zoning Board approval.

Vincent Cestone - Any changes or additions? I will make a motion to accept the resolution as read. All in favor?

All Board Members - Aye

Vincent Cestone - Straw poll vote? Paula?

Paula Clair - Yes

Vincent Cestone - Bill?

Bill Flaherty - I agree

Vincent Cestone - Lenny?

Lenny Lim - I vote in favor

Vincent Cestone - Bob?

Robert Dee - In favor

Vincent Cestone - And so am I. Any old business or new business?

Kim Shewmaker - The three letters that I wrote to applicants for the old appeals. Can we withdraw them?

Vincent Cestone - Yes

Kim Shewmaker - Anthony Carlucci, Roark Dunn and ESP. I will withdraw them all

Vincent Cestone - Okay

Kim Shewmaker - Okay

Bill Flaherty - Did you hear from any of those?

Kim Shewmaker - no

Vincent Cestone - Okay. I'll make a motion. Mike?

Mike Gibbons - Did I hear ESP. Can you elaborate on that please?

Vincent Cestone - We haven't heard from them

Kim Shewmaker - They were sent back to the Planning Board to tweak.

Mike Gibbons - This is what I brought up at the Planning Board two months ago. Unfortunately I sent a couple of different letters to ESP but

Kim Shewmaker - They are still in violation

Mike Gibbons - In violation thank you

Kim Shewmaker - So I guess once we withdraw it Tom will have to act on it. He has a copy of this letter. And when I withdraw it, the file then goes on his desk

Mike Gibbons - Could you please send a copy to the Planning Board so that we know what's going on

Kim Shewmaker – sure. Absolutely

Mike Gibbons - Thank you very much.

Audience member - He came before us, we told him what to do, he left and he never came back.

Vincent Cestone - I'm sorry I can't hear you

Audience member - He came to us, we looked at the plans, we told him a few things to do and he never came back

Kim Shewmaker - Unfortunately that was February 2nd 2004

Audience member - His lawyer apparently became pregnant

Kim Shewmaker - Janet

Audience member - And then once having the baby never reappeared in front of us

Another audience member - Can I just ask what the violation is

Vincent Cestone - It is the amount of product, how close it is to the property lines, access in and out of the property. It was a couple of things. I am doing this from memory

Audience member - They did purchase the land behind them so that they can do the 10% allotment line and take care of the bulk storage problem. I mean they were very close to having it all resolved. And then they just walked away from it

Vincent Cestone - I know. I know. They were pushing their snow into the neighbor's property and a whole bunch of stuff like that. You know by us canceling this, Tom Monroe gets notified that we cancelled it and now he can take legal action. That's the next step since they are not going to you or coming to us, next step is legal action.

Mike Gibbons - Right. That's great. Thank you

Vincent Cestone - You're welcome. I 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: 4/28/08

Respectfully submitted,

Kim Shewmaker
Secretary