

# ZONING BOARD OF APPEALS

March 24, 2008

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 24, 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.

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

### ABSENT:

**Vincent Cestone** - I am going to do the review for completeness of the Franciscan Friars of the Atonement first. I think it is complete. Adam, have you had a chance to look at it?

**Adam Rodd** - Yeah it seems to be in order.

**Vincent Cestone** - All right. So April 28<sup>th</sup>

**Glennon Watson** - Well actually we need two things tonight from you. One of which is not my usual public hearing. It is a special use permit so you have mandatory referral to the Planning Board before you can have a public hearing

**Vincent Cestone** - Oh okay

**Glennon Watson** - I ask that you make that referral. And you are the only agency whose approval we need. So I would ask that you declare your intention to be lead agency and at some point you are going to have to face

**Vincent Cestone** - Adam you better be careful, you are going to lose your job.

**Adam Rodd** - This referral to the planning board is for a report?

**Glennon Watson** - Yes. A special use permit requires that

**Adam Rodd** - All right

**Glennon Watson** - And at some point if you can set up,

**Vincent Cestone** - That would be in May then

**Glennon Watson** - That's fine but you need to look at the EAF and you may want to bring in the Town Planner Engineer to assist you with the EAF because I know you don't do them all that often

**Vincent Cestone** - What I will do, I am very close with Ande Merante and I'll ask him

**Glennon Watson** - Okay fine. Then we will get back some time in May to get that up so that I can do Part 3 of the EAF

**Vincent Cestone** - Okay. I'll make a motion to refer this to the Planning Board. Do I have a second

**Bill Flaherty** - I'll second

**Vincent Cestone** - All in favor

**All Board Members** – Aye

**Vincent Cestone** - I'll make a motion to declare ourselves Lead Agency. Do we have a second

**Bill Flaherty** - I'll second

**Vincent Cestone** - All in favor

**All Board Members** – aye

**Glennon Watson** - Thank you very much

**Vincent Cestone** - We have two of the same person from the same property. So I am going to take Homola. We are going to take you next and do both at the same time. So if someone would come up and discuss this with us and explain what your are proposing and what the issues are.

**Susan Homola** - This is my first time so hopefully we will cover the bases. We live in Garrison. I was born and raised in Garrison. And we are now, we've been here 16 years as a family, my husband, myself and our three children. My mom also lives in Garrison and she is now going to come live with us. So we are trying to, we are applying for a Special Use permit to add an accessory

apartment to our home and I understand we are limited to 800 square feet on that. And then also we are doing some revisions to our house as well at the same time. And we are also applying for a variance which is to, as you enter our property to put a garage so that my mother can get from her car in the garage sheltered through to the house to her apartment. And the variance is regarding the garage, our house was originally built right on the property line. There is a setback which is a 30 foot setback and then a 50 foot paper right of way and then there are 70 acres beyond that. And we are asking for a variance into the setback

**Jeff Wilkinson** - Woodland Drive is in front here. This is the existing house footprint. The proposed accessory apartment is here to the south and this was the best location for that and the septic fields are out here. This is the existing the drive and this is where the proposed garage.

**Vincent Cestone** - So the accessory apartment you want, you are placing in the current garage? Is that

**Jeff Wilkinson** - The current garage, the original garage was, this is a raised ranch \_\_\_\_\_ set up (cannot decipher what is being said)

**Vincent Cestone** - So you are adding on the accessory apartment also

**Jeff Wilkinson** - No no (the tape is skipping)... the original house is here. So we are adding a story and basically putting bedrooms on the second floor and this is the proposed garage. This wing here encompasses the addition of the accessory apartment

**Vincent Cestone** - And that doesn't need variances

**Jeff Wilkinson** - That does not need variances. That is here for the special use permit. That doesn't require any setback

**Lenny Lim** - Why are you using a breezeway between the garage and the house? Why aren't you attaching the garage?

**Susan Homola** - For a couple of reasons. One is the access to the back, we have our pool and our garden and a lot of traffic goes through that way. So rather than having people go through around the backside which would have been actually closer to the hill, there is a hill there, it is just not a safe and easy route and that's where do most of our, that's where most of our pedestrian traffic I guess you would call it. And the other reason was that we have bedrooms, we have children's bedrooms and master bedroom here so if we have the car here, my husband leaves early in the morning, we've got fumes and we just want to make sure that we had some air and light because the windows if you look on the other drawing

**Jeff Wilkinson** - It would knock out of the natural light to certain bedrooms

**Lenny Lim** - If you didn't have that breezeway, would you need a variance

**Jeff Wilkinson** - If we didn't have the breezeway, we wouldn't have to go for the area variance that is true. But it is something that they feel strong about and we've discussed this and it is really \_\_\_\_\_. This piece here is set up to create a courtyard. They didn't want the garage attached for multiple reasons. One is that it really doesn't allow the natural light to the bedrooms and also the way the house is used, they would like to be able to get service stuff through here and not have to go around the garage when it is easier to go through it.

**Susan Homola** - All the utility, the oil tank, the air conditioner, everything is behind the house here so that would mean that they would have to, let's find a picture

**Jeff Wilkinson** - But to answer your question, the grading comes down here like that and it would be, it is much simpler for direct access for propane, oil tanks to go through there rather than, you really won't be able to drive around there on that side.

**Susan Homola** - And our well head is right here so that makes it difficult

**Robert Dee** - If you didn't have that you wouldn't need a variance, is that what he said?

**Jeff Wilkinson** - Well basically yes. I mean to answer your question, if I moved the garage yes. But we talked about the need for the breezeway and that was established that that was a true need.

**Susan Homola** - It is also here coming out of the house so it would force your kids and mud room entrance to go through the garage to get to the outside if it were attached. And we were hoping to keep them away from the workshop and the cars and all of that. It was trying to protect, I mean they are active. They are always outside playing hockey or soccer or something.

**Jeff Wilkinson** - I think we should make it clear that the 30 feet is from, the lot, do you want to go over that

**Susan Homola** - Okay. Our property line is here and then there is a 50 foot right of way and then there is some 70 acres steep slope and a lot of rocks over that way. So our property line is right here. So even in this drawing and I think this drawing is it doesn't have it on this drawing but it does on the one in your packet, it shows the points of what the measurements are but the, so the idea was my mom or we would come in, but my mom in particular because we are trying

everything, the elevator and trying to plan for wheelchair accessibility but basically what she would do is she would come in here and then she would be able to come here protected into the house and then to her apartment there and then, we just felt more comfortable having the cars and equipment away from

**Jeff Wilkinson** - Well we also looked at turning the garage this way but it doesn't really make

**Susan Homola** - The turning ratio was hard

**Jeff Wilkinson** - And it created a much greater need, the turning radius was much better. So that point was discussed. This was the most practical.

**Susan Homola** - We marked it on the driveway and tried; and we have three children one of which is 16 and is starting to drive. And we are trying go from the older to the younger point of view.

**Adam Rodd** - Where is the closest house to the edge of your property line where the setback is proposed going

**Susan Homola** - Do we have a bigger survey picture?

**Jeff Wilkinson** - Not with this set

**Susan Homola** - Oh you have one here. This is probably the best way to look at it. The only house that is visible that can see us is Jerry Edelstein and he is right next to us

**Andrew Homola** - No he is on the other side of the property

**Susan Homola** - The other side, so he has

**Adam Rodd** - I am talking about from the garage okay looking toward your property line. Because the setback is on a particular side of your house that you need the variance for

**Susan Homola** - This is the 70 acres, you can't see the house but it is way up on the hill approach from Papa John's entrance

**Andrew Homola** - It is completely uninhabited

**Jeff Wilkinson** - Well we are actually backed up into deeded land

**Susan Homola** - He works in the city so I've been working with Jeff

**Jeff Wilkinson** - This house over here is about what 500 feet or 1000 feet. It is

quite a ways away

**Andrew Homola** - There is no house that they can see

**Lenny Lim** - From your garage you cannot see another house from what direction

**Susan Homola** - From the setback side you can't see a house

**Jeff Wilkinson** - There is one other house that is over here but you wouldn't see it from this point. And then diagonally up on that road there is a house

**Susan Homola** - Up the hill on Woodland Drive he is about, you can't really see. And then the Elton's are even higher up and then the Coventino's are even higher up and then coming down towards Indian Brook Road you have what was the Fadden's old house that burnt. But that you can kind of see through the woods but they are over away from the setback and then further there are two new homes that were just put in, Mike Carr's and I forget the other people's name. But it is really that 50 foot right of way and then the 70 acres

**Lenny Lim** - Where does that right of way go to

**Susan Homola** - I'm sorry

**Lenny Lim** - Where does that 50 foot right of way go

**Susan Homola** - It doesn't. Originally when they put in this subdivision it was a gravel pit that Polhemus had worked and there were two properties that were put here and they had two paper right of ways. I guess at the time to do whatever they needed to do to get the houses on and I think at the time they only allowed four houses on the road. So our paper right of way actually hugs Jerry Edelstein's property up here. So our property goes up like this and then it has a paper right of way that goes down to Indian Brook.

**Robert Dee** - You have a flag lot

**Susan Homola** - Right. And Jerry Edelstein's right of way, his property is over here and his right of way goes like this and ends at the base of our driveway and then circles up here. And we talked about doing a swap because he said you just use my right of way and I'll use yours because for whatever reasons for privacy or whatever. And we had talked about doing a

**Andrew Homola** - Lot line

**Susan Homola** - Lot line revision but our right of way, first of all it would take more time and it is smaller than his right of way so we weren't able to swap

**Jeff Wilkinson** - Basically serves no purpose other than it was there but it is not an active right of way.

**Susan Homola** - There is grass and trees and

**Jeff Wilkinson** - So I think that in terms of impact I think you see visible one house and it is quite a ways away I can only guess but I think, the one diagonally, it is quite a ways away, guessing it is 2,000 feet away

**Robert Dee** - You make reference to a new septic field

**Jeff Wilkinson** - Well because we are at, we are going to the Board of Health and we've been approved for 5 bedroom. This was the existing 3 bedroom. So this is all in the works in terms of redoing this. This entire side, we actually looked at building the garage on this side, but here again because of the wet lands

**Susan Homola** - Water cross buffer

**Jeff Wilkinson** - Water cross buffer there, it's not a designated wetland but it involved putting a bridge over that, and it required more than

**Robert Dee** - I guess what I am trying to say is you realize that you need a permit from the board of health

**Jeff Wilkinson** - Oh yes, we are actively

**Robert Dee** - Before we can grant this

**Jeff Wilkinson** - We are actually involved with Badey & Watson and we've been approved from Putnam County

**Robert Dee** - We couldn't even grant it until we saw that. That's in the law.

**Jeff Wilkinson** - We are in the process, we actually have it filed

**Robert Dee** - We couldn't make a decision

**Jeff Wilkinson** - I understand. Tonight we are looking for a straw vote or a sense of where you're at

**Susan Homola** - Let me give you a little run down of what we've done relative to the board of health. We met with Badey & Watson many moons ago, well before any of these applications were submitted and got that whole process. They dug all the holes and did all the septic testing, the drainage testing. We submitted it

for the bacteria test so we talked to the wetlands permit people, so we've tried to get everything in motion. Joe Peravoti (?) I went out to visit him and talked to him about the plans and I said what to you think? We talked back and forth about what we need to do. They treat the kitchen in my Mom's apartment like a bedroom. That's was where part of the problem came from. So even those it is one person, they treat the bedroom and the kitchen as two and so Joe had the application and we talked with him about a month ago and said Joe how are you doing? We've got, when we first met with you, we really would like to know where we stand. I'm busy, I'm busy, I'm busy. I checked with him again. He is out of town and he will be back on Wednesday. I spoke with Glen and asked him how do you think we stand? I left a message for Neil again. So we have been hot on their trail for a good two months now so we are not, and we have a water cross buffer and we wanted to make sure they were doing everything up front. He came down and he had two other people come down with him. They gave us a document and we submitted it to the town. So he is okay. He gave me a verbal. And said as long as, I'm not sure what the process is, but I handed in the paperwork that as long as everyone else is okay, because he said he don't see any problem with the disruption. So that's were we stand. We've got a bunch of holes in our field waiting for the piece of paper from Joe Peravoti to get the process rolling

**Vincent Cestone** - So we can't even rule on that until the board of health gives you an approval and we see it here

**Susan Homola** - And that's fine. And hopefully that will be forthcoming.

**Jeff Wilkinson** - We are well under way with that

**Vincent Cestone** - Tomorrow it could be, it could be months from tomorrow

**Susan Homola** - And we can only do, we are trying to get my Mom in as soon as we can. So we are hoping that Peravoti gets this to you because everyday counts. She is living by herself. We are trying to get this moving along

**Vincent Cestone** - Are you aware of the planning board letter of February 25<sup>th</sup>?

**Jeff Wilkinson** - This is regarding the

**Vincent Cestone** - Their recommendations

**Susan Homola** - no

**Jeff Wilkinson** - I haven't seen a copy

**Vincent Cestone** - You haven't seen this letter



**Jeff Wilkinson - No**

**Vincent Cestone -** It basically says there is two areas that they want us to address. The amount of work permitted within the buffer area should be minimized necessary to accomplish access to the proposed apartment. Therefore, the proposed stone patio area in the front of the dwelling along the new sidewalk should be eliminated as it is not necessary for access. The side walk is only 5 feet in width.

**Jeff Wilkinson -** Okay so the area, we had shown a \_\_\_\_\_ this is a proposed terrace, so these are things that can be remediated

**Vincent Cestone -** Then the second thing is the applicant should be required to illustrate \_\_\_\_\_ the ZBA should confirm that the new spaces required for the apartment can be placed within the existing gravel driveway area and not impede access \_\_\_\_\_ **(tape is malfunctioning)** Those are the two areas. This board will probably require you to meet the Planning Board recommendations. Are you prepared to do that?

**Jeff Wilkinson -** Yes. The parking requirements would be fairly simple I believe

**Vincent Cestone –** Okay. Because that would be a condition to anything that we would approve

**Lenny Lim -** Well I think we are waiting for the permit anyway so we can't proceed without the permit

**Vincent Cestone -** But we can rule on the garage

**Lenny Lim -** But I would also like to know, on these plans I don't have any distances or heights.

**Jeff Wilkinson -** Okay. That's fine

**Lenny Lim -** I want all the numbers down right

**Jeff Wilkinson –** okay. I can give you that information

**Vincent Cestone -** What I plan on doing is since you can't really do anything until the board of health chimes in, we will put you on for our next meeting which is April 28<sup>th</sup> and hopefully you will have your board of health approval by then and we can proceed on everything. But if we have the heights and the measurements that Mr. Lim is requiring, we can at least rule on the garage

**Jeff Wilkinson -** That's fine. I have done prior review with the Building Inspector in terms of zoning issues, but that's fine, I can easily get that information

**Vincent Cestone** - Any more questions or comments from the board? Any comments from the audience? If not, I am going to continue this to April 28<sup>th</sup> and at that time at least with your measurements we can rule on the garage

**Jeff Wilkinson** - Thank you

**Susan Homola** – Thank you

**Vincent Cestone** - You're welcome

**Vincent Cestone** - Last item on the agenda is a public hearing for Ribeiros Construction. Is anybody here for the applicant? They didn't show up is what we are seeing.

**Audience Member** - This should be an easy fight for us

**Audience Member** - This is the same response we got from our certified letters. Wow.

**Vincent Cestone** - So we really can't, since they are not here we are going to send them a letter that they missed this and they are on for April 28<sup>th</sup> and if they don't show then, we will notify them a second time. And if they don't respond after that, we cancel their application.

**Audience Member** - Okay.

**Vincent Cestone** - I can't even take testimony from you since the applicant is not here.

**Audience Member** - Well

**Vincent Cestone** - I am sorry. You can submit stuff and we can put it in the file

**Robert Dee** - I really feel bad because it looks like you did a lot of work

**Vincent Cestone** - If there is something that you wish to submit, you can do that

**Audience Member** - I live at 67 Steuben, next to the applicant, I just want to check that you guys had received copies of a letter from Norman Olsen

**Kim Shewmaker** - It doesn't sound familiar to me at all

**Audience Member** - We made copies. He mailed the signed one.

**Vincent Cestone** - When did he mail it?

**Audience Member** - He mailed it either on Thursday or Friday

**Vincent Cestone** - It may be downstairs in our mail box

**Kim Shewmaker** - No. It is not there. It might come in tomorrow's mail. There is no mail down in our box

**Vincent Cestone** - We'll take what you have so that we can review it before April 28<sup>th</sup>.

**Adam Rodd** - How many copies do you have?

**Audience Member** - 5

**Adam Rodd** - why don't you give 1 to Kim and she'll make copies.

**Vincent Cestone** - I can't take testimony. You can submit evidence but we can't take testimony because the applicant isn't here to rebut.

**Audience Member** - What other evidence would you like us to submit?

**Vincent Cestone** - Well whatever you have and you are more than welcome to come on April 28<sup>th</sup> and at that time

**Adam Rodd** - Whatever evidence you deem appropriate. We can't tell you what to submit or what not to submit. Whatever you deem appropriate

**Audience Member** - This is a picture of the lineup of all our houses. They are all in a line. Like every house is pretty much in the same setback and they are applying to be 10 feet back so it actually if you look, this little shed right here in the middle, that is going to be pretty much were the back half of their house is. So it is going to stick way out from all the rest of the houses.

**Audience Member** - We also have pictures of the recent storms with the stream that the brook that flows in the back of the house as well as the standing water puddles that are left afterwards

**Vincent Cestone** - Would it be to your advantage to present this at the time of the public hearing. Because they are going to make arguments that this is not an issue but of course you will have your opportunity to rebut but I don't want to take all your evidence so that you don't have something during the public hearing. It's up to you. Whatever you want to do.

**Audience Member** - Okay

**Lenny Lim** - Just make sure you have 6 copies

**Audience Member** - 6 copies

**Kim Shewmaker** - 7 copies

**Vincent Cestone** - I will put that in my file

**Audience Member** - Okay

**Vincent Cestone** - Well thank you for coming. I'm sorry they are not here.

**Audience Member** - Well that's one strike.

**Vincent Cestone** - April 28<sup>th</sup>.

**Audience Member** - Thank you very much

**Audience Member** - One question. We actually got the whole town to sign a petition

**Robert Dee** - The whole town?

**Audience Member** - We have 75 signatures from all the residents around us that they are opposed to it also.

**Lenny Lim** - Get some more.

**Audience Member** - We got this on Saturday

**Vincent Cestone** - Bring that during the public hearing

**Audience Member** – Okay

**Audience Member** - I have a question and it is not related to that area but maybe you can answer my question because I've called and have not gotten a direct answer. A neighbor's undeveloped lot there are large trees overhanging my house. I have had damage to my property and falling branches on my deck and put a hole right through a wooden table, what are our options as far as either cutting the branches that overhang or

**Vincent Cestone** - Anything that hangs over your property you can cut. Anything that hangs over your property you can cut off. Generally, I happened to know this because it happened to my mother-in-law. You send a registered letter to the land owner and say that I am putting you officially on notice that this situation is there because that gives you legal recourse

**Audience Member** - Been done. Never got a reply

**Vincent Cestone** - As long as you got a receipt that they were notified, if something should have happened God forbid you have legal recourse against them. It is not an act of God anymore, it becomes

**Audience Member** - Just to reiterate, I have the right that I can have those branches taken down

**Vincent Cestone** - Anything that over hangs your property, you can just cut off

**Audience Member** - Very good thank you

**Vincent Cestone** - With that what do you think about putting County Line for Discussion on the 28<sup>th</sup>? Do you think it's too early

**Adam Rodd** - Isn't it on for the 10<sup>th</sup> already?

**Kim Shewmaker** - We didn't put it on anywhere

**Adam Rodd** - We didn't schedule it

**Kim Shewmaker** - We are waiting for SEQR to be determined then we were going to put it on for discussion

**Adam Rodd** - Okay. So we didn't pick a date yet

**Kim Shewmaker** - No

**Adam Rodd** - Okay that's fine with me

**Vincent Cestone** - We will do it all on the 28<sup>th</sup>.

**Bill Flaherty** - Well this guy is going to be heard at the Planning Board on the 27<sup>th</sup> I think for a public hearing.

**Vincent Cestone** - They have to do their SEQR. We can't do that until SEQR is complete

**Bill Flaherty** - I understand that. But it is my understanding that the Planning Board is going to review this matter at the next meeting

**Vincent Cestone** - Right. I talked with Ande and he did say that

**Adam Rodd** - So there are no applications that are coming in

**Kim Shewmaker** - No that's it. This is the smallest agenda we've ever had

**Adam Rodd** - No one has any money

**Kim Shewmaker** - That's the truth

**Bill Flaherty** - I know Joe and regardless of what we do, what happens here, it is going to end up in the Courts.

**Vincent Cestone** - Tell me about it. I make a motion to close the meeting

**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