

ZONING BOARD OF APPEALS

March 5, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 5, 2007, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

Vincent Cestone – Okay. What I want to do is I am going to take care of some business first. I am going to do the reviews for completeness. So these people don't have to hang around through the public hearing. Is Tyler Gagnon here?

Mike Carr - My name is Mike Carr. I am representing this application for Mr. Gagnon.

Vincent Cestone – This is just for completeness. So we will look at it and put you on for a public hearing.

Mike Carr - All right

Vincent Cestone – But we won't discuss it tonight

Mike Carr - Okay

Vincent Cestone – Adam do you have anything on it

Adam Rodd - No. I just wanted to make sure that my notes indicate that the application looked complete. There wasn't anything missing. I would want clarification on the feet and inches distances regarding the exact setbacks

Mike Carr - Okay. So you want that broken down to more accurate than just feet?

Adam Rodd - Well feet and inches

Vincent Cestone – What we are going to ask you to do is give us exactly how much you are asking for

Mike Carr - Okay

Vincent Cestone – Kim, can we get him on for the meeting on the

Kim Shewmaker - 26th?

Vincent Cestone – 26th

Kim Shewmaker - yes

Vincent Cestone – so you will be on for the 26th for public hearing

Mike Carr - okay thank you

Bill Flaherty - I have a question that I would like to ask Mr. Carr

Mike Carr - Yes

Bill Flaherty - I reviewed the blueprints, the drawings, and what is the overall height of the building?

Mike Carr - The overall height is going to be

Bill Flaherty - I didn't see them on the drawings

Mike Carr - 25 feet. It is on the

Vincent Cestone – We'll deal with this during the public hearing

Bill Flaherty - I couldn't see it on the drawings itself, the overall height

Mike Carr - I will definitely recheck that, I believe it is on there

Bill Flaherty - I would appreciate that very much if you would check that

Mike Carr - Okay. No problem

Vincent Cestone – So you are on

Mike Carr - Okay thank you

Vincent Cestone – Okay next review for completeness is Donald Henny. I didn't find anything

Adam Rodd - The only thing is I didn't find any documentation concerning certificates of occupancy or existing structures. At least I didn't see any in my application folder

Vincent Cestone – Is Mr. Henny here? Okay so we will send him a letter. I am going to tentatively put him on for a public hearing also on the 26th. If we don't get that stuff

Robert Dee - I would just like to note that the blueprints are like a Photostat copy and are scaled down, they are a little difficult for me to read.

Vincent Cestone – Do you have a better copy of these as part of the public record

Kim Shewmaker - I'll check

Vincent Cestone – When you ask for the COs ask if he has a better print that he could bring with him

Robert Dee - The prints are here for the building department but these are photocopies and scaled down

Vincent Cestone – So we must have the originals

Bill Flaherty - Is he going to raze the building and build a foundation and increase the height on the overall building. And I couldn't see again any dimensions of the overall height on the drawing that was submitted.

Vincent Cestone – We can ask him at the public hearing

Bill Flaherty - And I didn't see, why was the building permit denied?

Vincent Cestone – It was a nonconforming structure and any time you want to change a nonconforming structure you have to come to us

Bill Flaherty - Okay

Adam Rodd - My understanding was that they had an insufficient front yard setback

Vincent Cestone – Right. So he is not conforming

Adam Rodd - I think the requirement is he needs 50 feet and he was proposing 15 feet and so we will need to clarify what our understanding is which is that he is simply going up and further in.

Vincent Cestone – Okay. Let's do the review of minutes for January 29th. Do we have any additions, changes, corrections?

Bill Flaherty - I have none

Robert Dee - No

Vincent Cestone – 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 let's go to the public hearing. This is a continuation of a public hearing. Someone to speak for the applicant?

Robert Gaudio - Good evening Mr. Chairman and members of the board. Robert Gaudio on behalf of Mr. Weinpahl on the application. As you recall back in late January the developer asked the board for more time to submit a letter from its title counsel. We haven't seen that letter

Vincent Cestone – Neither have I. Time's over

Robert Gaudio - Yeah.

Vincent Cestone – You can talk when he is finished.

Robert Gaudio - So at this stage I think that we would be happy to respond to what the developer has to say but I have nothing left to offer after the last meeting at this stage.

Vincent Cestone – Okay. Just introduce yourself for the record

Kenneth Gould - Yes. Good evening Mr. Cestone. My name is Kenneth Gould, Marcus Gould and Sussman. And I am here on behalf of Mr. DeVido who is the owner of the corporation that has gotten building permits. I did submit through the Town's office a letter and I don't know whether you have it and also Glen Watson submitted a letter to you.

Vincent Cestone – I got Glen's letter.

Kenneth Gould - Do you have our letter as well? It was dated last Friday. Dated February 25th. I just wanted to make sure you got that. As indicated in both our letter and the letter from Mr. Watson, we concluded that the opinions given by Mr. Supple that you have dated in early January and the underlining documents that you relied upon is incorrect and that the easement that he referred to as being an easement given to the village back in the 1930's, Village of Cold Spring, is actually for a different piece of property. Mr. Watson will give you a demonstration of what those documents are and the basis for that. You have many of the actual documents before you but we, Mr. Watson will explain that in a second. It is our position that therefore since we have concluded that there is no easement, that that part of the application that is before you really ought not to be an impediment in any way to this building permit. As indicated in my letter of February 25th we have however had some discussions with the Village of Cold Spring about the access issue and have tentatively agreed with the Village that that in the event that this application, the building permits are issued and all that, that an easement would be appropriated and given to the Village for access to the dam. The Village has agreed to this in principle. We don't have the actual documents yet signed or anything like that. We are not anywhere near there but there is no dispute at all and in fact the Village was quite happy with the resolution that we proposed. So, from your point of view, it is our belief that that issue really ought not be before you. You should not be determining on behalf of anybody whether there is or there isn't an easement. But I will tell you that in the event that we resolve all the other issues, the Village will be quite satisfied and will not contest anything that is done by our applicant here.

Vincent Cestone – When do you think the easement will be in place

Kenneth Gould - It is virtually done. They just have to have it before the Town Board.

Vincent Cestone – Okay

Kenneth Gould - Within a week. Before I go on I would like to turn the floor over to Glen Watson our surveyor who is going to explain why there isn't an easement at this point.

Vincent Cestone – Glen keep it short

Glennon Watson - Okay.

Vincent Cestone – We got your letter, we don't need to rehash it.

Glennon Watson - Okay well, I will quickly do my slides. Essentially you have

an opinion letter from John Supple that states that a deed from _____ Dikeman to the West Point Foundry Liber 67 page 199 is the basis for an easement over the road, over the old road that passes through the DeVido property. And we disagree with that for a number of reasons. We did some research and we looked for deeds from _____ Dikeman and there was a companion deed in the Village's deed from the West Point Foundry there are six parcels described. Five of which have to do with the reservoirs on Foundry Pond Road. The sixth one actually refers to two earlier deeds that come from a Dikeman and Ferris. What we did was we searched the records many days seeing what Ferris owned and what Dikeman owned and what they could convey and what in fact they did convey and we concluded that that whole chain of title, two chains from Ferris to the village and from Dikeman to West Point Foundry to the Village covers land that is 8,000 feet away from the reservoirs. What you see here is the Philips tax map, I believe it is a 1763 subdivision of Putnam County done by the Philipse Family. There were three children Mary Philipse, Susanna Robertson and Philip Philipse. They divided the property into nine pieces. Three lots called water lot lines; three lots called the long lots; and I forget what they called the lots over to the east side. But the purpose of my discussion of this is to point out that we have three water lots and if you go into the Dikeman Deed, and the Ferris Deed, and read through it and you have quotes in the letters that I provided you, you will see that those deeds run right along the water lot line or the Morris lot line. And I think I made a point in my letter that Mary Philipse married Colonel Morris. And as it was in those days it became the husband's property. So the Morris lot line. The Morris lot line you can see today this is the current tax map, the Morris lot line you can see this red line which we drew on top of the tax map, it lays over some black lines that are on the tax maps today and in fact you can trace several of those deeds back and you will come up with monumentation or mention of the Morris lot line. That is substantially south of the Foundry Dam. What happens with the Morris' that own lot two, they were Tories. And at the end of the revolution, their lands were confiscated and they were distributed, remember I think it was 7th grade history that the lands were confiscated and the lands were distributed to the soldiers and sold off in various chunks and various parcels by people. By people, a commission called the Commission of Forfeiture and there were commissioners of forfeiture and in about 1883 a lawyer from Carmel named Conklin I believe drew a set of maps that show the various parcels that were conveyed out. Again he drew them along the water lot line because that was, I don't believe all of the Philipse were Tories. Now if you put that map on top of today's tax map, you can see several lines where the maps coincide. The 1880 map is not as precise in terms of its plotting but you can inspect several of these parcels and you can find things like Clove Creek coming down and going north. You can find several pieces that coincide with tax lots today. We took the three deeds that we found, Governor to Ferris, Mead to Dikeman, Vernel to Dikeman and we plotted them and they fit together as nicely as old chain and link deeds fit together. We searched around and this is an enlargement of the commissioner's map and we found Mead mentioned, Ferris mentioned and Governor mentioned and the same shapes. So we have taken those plottings and we plotted them on

the maps and we found that they are there. Now we again put the same plottings on the tax map and again we repeat certain lines. We repeat this line, we repeat the water lot line and we repeat these lines in here. All these lines are essentially the same shape. Again you have to keep in mind that we are not talking about the precise instruments that we use today when we are talking about the compass and chains that they used in the 1700's. Now if we turn the commissioner's maps on, we have that overlay on the tax maps and the commissioner's maps and again several areas of similarity and we have Jaycox Pond. Let me go back a couple. You see we referred the two deeds here. And if you read these two deeds, the first deed follows the yellow line exactly. The second deed, the later deed, follows the yellow line until it gets to this point and then it says bend around the West Point Foundry land and it leaves the old description and just by reference that simple term around the west point foundry land and goes around and then it comes back to the description. So we have a little piece that in between 1843 and 1847 the description changed and mentioned the west point foundry. So we have the west point foundry hooked into this equation at that point. Hill and Ferris again sold another piece to the west point foundry and I mentioned if you plotted the shape like that, and actually for that time it is a pretty good description, it misses by 74 links. Which is about $\frac{3}{4}$ of a chain or about 40 feet something like that. Which is good for that day in age. Now if we take that piece and we plot it right on Jaycox Pond, again you see a difference in the size slightly but you can see the basic shape from here to here. And we can see if we go back that Dikeman piece, the Dikeman piece gave rights to the highway. Mr. Supple is correct about that. It says you can go over my land to get to the highway. But based on this, it is pretty conclusive in my mind that they were talking about the highway being Jaycox Road. A couple of more historic notes, if you look this is the 1867 map and you will see Jaycox Pond right here and it is labeled Foundry Pond. And you also see the reservoirs up here, just one of them the lower reservoir incidentally and you will see it is also called Foundry Pond. So we had two of them at the time. It may have contributed something to the situation. The second point that Mr. Supple makes is that the agreement in 1897 was allowed the building of the second dam. And although it doesn't say it, I think he wants you to infer from his letter that that's how the lower pond got built. But if we go back and you carefully look at the documents, that you have copies of, you will see that the lower reservoir was there in 1867 and the upper reservoir wasn't. So the dam that they were allowed to build couldn't have been the upper dam, it had to be below the existing dam because it couldn't be the upper dam, the lower dam existed. What did not exist, when we searched around that agreement that he refers to is in 1897. We found two deeds in 1897 to the Village of Cold Spring. Actually 1896 and 1895. Actually two sets for this piece and they plot more or less like this and they mention Fishkill Road or maybe they mentioned the _____ branch of the turnpike but that's the same thing. If we take that and put that plotting over the tax maps we have virtually identical line through here surrounding the Fishkill Reservoir. The Fishkill Road Reservoir of the Village. And if we look in 1893 at the West Point plot we see that by 1893 we had both the upper and lower reservoirs up on

Foundry Pond Road. We had Jaycox Pond. But we did not have in 1893, we did not have the reservoir or the beginning of the formal water system that Cold Spring has. That's where the pipe is that they mentioned in the deed where the water is put into a pipe to feed the village. So Mr. Supple's point with regard to the permission to take the water and the permission to build the second dam, although it doesn't say it directly, he would have you infer that that has to do with the lower reservoir. What it really has to do with considering the time, considering the lack of the reservoir at the time is that second set of information is pointing to the Fishkill Road Reservoir of the Cold Spring water system. And that's about as fast as I can do it.

Vincent Cestone – Pretty fast.

Kenneth Gould - It is very complicated and it is frankly one of the reasons why we are so, we believe it is not within the jurisdiction of this board to try to determine issues like this. The fact is the Village itself is not stating any more that it has an easement and as I said we will as part of an arrangement that Mr. DeVido plans to reach with the village, they will give up whatever rights they might have had so there is no ambiguity and there will be a resolution of this issue to their satisfaction. So on that issue we think that there simply is nothing for you to talk about. We think it is not within your jurisdiction to get involved in it and the issue should not affect this building permit at all. Thank you very much and of course if you have any questions.

Adam Rodd - I have one question with respect to the easement that you intend to give to the village, that's going to be an easement going across or coming within the DeVido property correct?

Kenneth Gould - Yes. Along the upper the northern portion of it

Adam Rodd - Will that affect the net lot area of the DeVido properties?

Kenneth Gould - It will in a way and with a slight variation in the line it will still result in the appropriate amount of square footage within each of the four lots. And we've done the calculations on that.

Adam Rodd - Do you have the calculations

Kenneth Gould - We can certainly show you on the

Glennon Watson - This is a composite map showing the four parcels. The building permits that are being questioned have to do with these two parcels lot one and two on the subdivision maps that we prepared to file. The claim is or was that there was a right of way over the old road that leaves Foundry Dam Road and goes northwest and eventually gets to the dam. We can provide a ten foot wide, actually it is slightly wider than that but we are proposing a ten foot

wide right of way. What that would do, lot area lot 29 is 9726 square feet. The proposed easement is 800209 square feet and that area after that would be 8257 square feet. Required is 80000 square feet. The overage is 2517 feet. There is a couple of things that just bring to the next question, we are encumbering 10 feet of our frontage we have substantially more than 10 feet which is not encumbered and therefore counts. The adjustment that is required has to do with the square. The square fit on the lot but the square may not be encumbered by the right of way. In order to fix that we have to move this line back here about 10 feet, probably about 15 feet. I don't have that number with me. And there is two other very slight adjustments that can be made to make each of those lots conform. Make each of the lots have a square, make each of the lots have a required frontage. And as the square moved down, the square on each of the lots each of them has the required area, frontage and unencumbered square.

Bill Flaherty - Is this easement that you are granting to the Cold Spring Village, is that on the north side of that property?

Glennon Watson - Yes

Bill Flaherty - The yellow line

Glennon Watson - Yes

Bill Flaherty - It is going to be 10 feet wide?

Glennon Watson - Yes

Bill Flaherty - That lot

Glennon Watson - Yes that lot

Bill Flaherty - It will give the Village access to the upper dam

Glennon Watson - Yes. Upper dam. The lower dam is right along the road

Robert Dee - So your intention is to change the lot line again?

Glennon Watson - We would have to change the lot line again in order to make the lot conform

Robert Dee - Right. Would that be changing the lot line on the building permits that have already been issued?

Glennon Watson - Yes

Robert Dee - If the building permits have already been issued and then you

change the lot line, is the building permit still good?

Glennon Watson - Well we would have to go, in order to make a lot line adjustment there is a procedure outlined in the subdivision regulations for doing that. It would require us to essentially make this map, make the conveyances, submit revised surveys to the building department and the building department would then have to amend the building permit to whatever degree it felt it was necessary.

Robert Dee - So you are amending two building lots?

Glennon Watson - No actually there is no change to this lot.

Robert Dee - Okay

Glennon Watson - This lot doesn't change. This lot gains this area and loses this area and this.

Robert Dee - you have to amend the one, is that the lot the house is being built on at this time

Glennon Watson - That's correct. Yes

Robert Dee - Okay

Bill Flaherty - This looks like to me a whole bunch of separate subdivisions that you are now talking about. You changed the lines significantly

Glennon Watson - Well we can talk about, I wouldn't except the characterization of the word significantly if that's what I understood you to just say. I wouldn't agree with that being a significant _____. There is a process for lot line adjustment in the subdivision regulations that we would follow to do this.

Bill Flaherty - Does that require review by the Planning Board

Glennon Watson - No

Bill Flaherty - No?

Glennon Watson - It does not.

Bill Flaherty - What basis do you make statement

Glennon Watson - Definition of a subdivision and

Bill Flaherty - 112

