

# ZONING BOARD OF APPEALS

April 28, 2008

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, April, 28, 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.

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

### ABSENT:

**Vincent Cestone** - Just as a point, we are not going to discuss County Line Equities tonight because the SEQR process at the Planning Board has not been completed and because of that we are limited under the law to talk about it. So instead of talking about it, what we will do is move it on to May 12<sup>th</sup>. The SEQR process should be completed by then and then we can actually talk about it. So that is off for tonight. Let's do the review for completeness of Hugh James Rossouw. Okay, we have the application and we have your C of O. He got a C of O. And, now we can put you on for, Kim can we put it on for May 12<sup>th</sup>?

**Kim Shewmaker** - No. The notice would have been due today at the paper.

**Vincent Cestone** - So we will do it on

**Kim Shewmaker** - The fourth Monday is the 26<sup>th</sup> and it is Memorial Day.

**Lenny Lim** - I would like to make a motion that we do the third Monday of the month instead of the fourth

**Adam Rodd** - The third Monday is a problem

**Vincent Cestone** - Why?

**Adam Rodd** - Because I am booked the third Monday. I can do the second and

**Vincent Cestone** - The fourth is Memorial Day

**Adam Rodd** - Do you want to do

**Vincent Cestone** - Can you have somebody else from your office come

**Adam Rodd** - Can you do it Tuesday

**Vincent Cestone** - I don't know what is on for Tuesday. We may not have this room for Tuesday. That's the issue. We have Mondays. Tuesdays I am not sure. Wednesdays I know is off the agenda.

**Adam Rodd** - Why don't we just do the second Monday in June

**Kim Shewmaker** - That would be the 9<sup>th</sup>

**Vincent Cestone** - Is that the Board's opinion?

**Hugh James Rossouw** - Please feel free to call me an idiot for not doing this when my wife served on this board.

**Vincent Cestone** - Okay June 9<sup>th</sup> we will have the public hearing.

**Hugh James Rossouw** - Okay. Can you give me a little note?

**Kim Shewmaker** - When I send out the public hearing notices, I will mail you one.

**Vincent Cestone** - Don't forget

**Hugh James Rossouw** - Thank you

**Vincent Cestone** - Okay. So the next item on the agenda, we are going to do both the Homola variance and special use at the same time. Someone here for the applicant? So were you able to get your septic approval from the County?

**Susan Homola** - As of April 2<sup>nd</sup> we received Board of Health approval. As of February 22<sup>nd</sup> we have the wetlands permit. As per your request on the height, the height is up-dated by Jeff and by Glennon Watson, our architect and engineer. My husband Andrew and reflecting that we are well within the height requirements. In addition we have taken into account the request by the Planning Commission to reduce the walking path from six feet to five feet. It is probably going to be even smaller than that but five feet was the request. We have also indicated that there is adequate parking space in the parking area and we have eliminated a patio that was, that was actually out here, it was on a plan that was submitted to you way back in January or February that had been

deleted since then anyway. So that was easy to do. We spoke with a number of our neighbors and have a letter signed by Liv and Bob Convertino, Jerry Edelstein, Chuck Roder who was nice enough to attend to show his support, and we took some photographs to hopefully answer your concerns about whether it would affect the neighbors, the neighborhood, so here are the photographs. This is looking north and this is in the winter time so you have your best view. Our house is right here so the structure would be here looking that way and that would be looking kind of at an angle north and then this is the west view so the building would be here looking this way. And there is a 50 foot right of way which is here and then there is a 70 acre parcel that is protected by the

**Glennon Watson** - Conservation easement

**Susan Homola** - Thank you. Conservation easement. And then this is looking east up the hill. Our house is here, the structure would be here, the garage. And that is looking up east. And then this, I tried to show a little bit of the house that would be kind of looking south. South is this way. And the letters that we would like to read into record

**Vincent Cestone** - You don't have to read them into the record

**Susan Homola** - I can just hand them to you. Okay great.

**Glennon Watson** - Mention the names of the people and if they are all positive with regard to granting the variance

**Susan Homola** - Yes. They are all positive. It is Liz and Bob Convertino

**Vincent Cestone** - Just tell us where they are in relation

**Susan Homola** - Okay on the survey, Chuck Roder lives right here. Jerry Edelstein is the house right here. The Convertino's are up there also. I think that was most everything that was raised up to this point.

**Vincent Cestone** - Okay

**Susan Homola** - So our hope is that with your approval we will be able to progress because we are sort of into

**Vincent Cestone** - The letters need to be part of the file. Any questions from the board?

**Lenny Lim** - What is the distance from the garage to the property line?

**Glennon Watson** - As proposed, it is on this detail. It is 17.9 feet or 17 feet 11 inches.

**Adam Rodd** - The minimum side yard setback is 30 feet. That's what is required.

**Robert Dee** - That's why you have a 30 foot mark on the plans inside the garage. On the blueprints we have you have a 30 foot line

**Glennon Watson** - Oh that is the required setback

**Adam Rodd** - Just so I am clear so the numbers are correct. The 17 feet is from what plan because my notes indicate that the proposed setback one edge of the garage was 16 feet 5 inches and the other edge of the garage was 19 feet 9 5/8 inches

**Glennon Watson** - We revised the plan and resubmitted new plans as a result of previous conversations with the zoning board. It is shown on the survey, it is the version that was last revised on February 15<sup>th</sup>. Maybe I've got that wrong

**Adam Rodd** - February 15<sup>th</sup>?

**Robert Dee** - We have March 1<sup>st</sup>

**Glennon Watson** - Let me take a look at what you have. No not that one. The last revision date that I have is February 15<sup>th</sup>. You don't have the survey. It is this map and it is February 15<sup>th</sup>, this revision. I've got the right dimensions.

**Robert Dee** - The breezeway is 12 feet wide. The breezed way between the garage and the house

**Glennon Watson** - Yes

**Jeff Wilkinson** - That is correct

**Robert Dee** - If you didn't have the breezeway you wouldn't need but a few inches for a variance. Right? Or am I wrong

**Susan Homola** - But we, a few reasons why we opted to have a breezeway.

**Robert Dee** - Okay

**Susan Homola** - The primary reason was that our bedrooms, the children's bedroom and our bedroom are right here and the concern that we have with a garage with a fume right next to it was something that wasn't desirable. The other thing as you enter the driveway the hope was to have, this was really a path through to the other side because with the garage, this is sort of a utility entrance sort of a pedestrian access to the back because we have a pool there.

So rather than having the kids and everybody walking around the structure, and all our utilities are all in the back side of the house. So this is the pass through is something that we use and it was important to us and then aesthetically Jeff in term of deciding on the dimensions of that, and I don't know anything about proportions which is why we rely on Jeff, is that the proportions maybe he can talk to that.

**Lenny Lim** - You have a back door in the garage

**Susan Homola** - This is our main entrance so we didn't want to have the kids go through the garage to get

**Lenny Lim** - Are you putting a back door in the garage

**Susan Homola** - There are two garage car doors there and then there is a door through to the house there to the breezeway. Is that your question?

**Robert Dee** - You see our concern is, I guess is, is that the breezeway is 12 feet. If you removed the breezeway, you really wouldn't need a variance. It would almost come to the 30 feet.

**Glennon Watson** - If you attach the garage to the house

**Robert Dee** - Yes

**Jeff Wilkinson** - That would make everything simple for me as well but there is, we had decided that this is very advantageous for a couple of reasons which is simply the idea of being able to have pedestrian access to the LP tank and one wouldn't have to go around the garage, it would make a lot of sense for, and for this architecturally this would become a very large mass. This helps break the mass down and we feel that it makes a much more attractive orientation frankly. If you butt the garage up you lose a lot of natural light on this side

**Susan Homola** - And as a parent, we wouldn't to have our children going through the garage to get into the house, that is really our mud room. This is our mud room area and this is where all the activity happens, all the hockey gear, everything

**Robert Dee** - But you have to understand that our job is to try and give the smallest variance possible. I am just saying this is a big 12 foot area that if you could do without it, you wouldn't need a variance, you wouldn't need to be here.

**Lenny Lim** - An accessory apartment and a garage

**Robert Dee** - So they are looking for two variances. One for the accessory apartment and one for the garage.

**Glennon Watson** - Excuse me. The apartment is a special use permit and it is very different than the variance

**Jeff Wilkinson** - That's an allowed use

**Robert Dee** - There are two items

**Glennon Watson** – absolutely

**Jeff Wilkinson** - Well architecturally we feel this is in the end more attractive and it makes logistical use in terms of how they would feel the property should be used. It is certainly possible to walk through the garage, use the garage door as access that way. We feel that this is reasonable thing given the nature of this setback and that the road

**Glennon Watson** - This area, this right of way that goes through there, there are some of the people who have rights but no body has used it. Everybody that has rights to it either their need to use ends here where the driveway peels off from the driveway up from Convertino.

**Susan Homola** - Here's the picture. This is where the right away wraps up to here and it comes up actually to the top of our hill and ends right here on our property line. So it was put in there is a paper right of way just like as ours was a long time ago I guess for whatever building

**Glennon Watson** - People that are on, I believe, and I would have to check to be absolutely certain, but I believe there are people up here that have rights to use that, at least one person, all of them have a different driveway. So this has improved. It is not real likely to be needed. And you have a 70 acre piece with a house that are several hundreds of feet away.

**Susan Homola** - You can't see it. This is the hill. It is somewhere, it is actually approached from the side of Papa John's.

**Glennon Watson** - It goes up from the driveway across from Papa John's. That's how you get to this piece of property. So the, in terms of its impact on the neighbor, it is barely, it is almost purely theoretical. This won't impact the neighbor. I raised the same issue. We had the same discussion, Susan and I had the same discussion about this, you know why don't just push it over and you won't need it. And she told me exactly the same thing as she told you. The children's room, dealing with the garage, she wants to have a mud room type of place, the more and more I get into this, the more and more I, you know I come from a mathematical background and if it fits, make it fit. Jeff comes from a design background and the more I hear about that as time goes on, more important those design decisions come. All of a sudden I used to plan a garden,

I had a landscape architect come in and plant a garden for me and all of a sudden people started noticing how nice a garden I had. They never ever said that before. Try as I might. So that is a reason and it is a reason to make the house better. And this is now going to be an extended family and they do need their space.

**Susan Homola** - Also it is easier access for my mom. Right now she is not in a wheelchair but if at some point she is, it just provides a more level and easier entrance rather than her either going through the garage or you know, if she is here coming the full distance here, she can just be wheeled right through here to her quarters

**Vincent Cestone** - 12 feet is like a patio.

**Glennon Watson** - I believe these are 6 foot tables.

**Vincent Cestone** - It's pretty wide

**Glennon Watson** - It is from Kim to me.

**Vincent Cestone** - It's more than a walkway is what I am saying

**Andrew Homola** - What about the Downey truck that backs up into the driveway. What's he gonna do? Go around the garage with the hoses? He can go through there. Fill up the tanks in the bank. It is for services. Weaver Gas truck. They would be going off the property to get service the utilities.

**Lenny Lim** - They come down my driveway and bring the hoses all around the house

**Susan Homola** - They can bring them around the house but

**Lenny Lim** - It is an alternative than to bring it through a breezeway

**Susan Homola** - Well one of the things that we thought about, I mean we tried many different alternatives, we tried slanting it, we tried putting it at a different angle and when we tried to simulate what it would be like to turn the angle and to drive in, whether it is 12 feet or I mean what are the alternatives in terms of dimensions

**Jeff Wilkinson** - I really think that maybe our plan is simply the nature of the what it does for the floor plan. I think that I can \_\_\_\_ the massings separating it so it just doesn't feel like a very large continuous structure. I think that is valid. And butting the garage up will have an affect on some these rooms especially the light and that was really, those issues were valid. From an architectural point of view reasonable to consider. So while there is no question that we couldn't do

that given the fact of the nature of what we are up against in terms of adjacent, the fact that that is really a paper road, right of way that hasn't been used, I think it is a reasonable request and there will be no adverse impact, the neighbors all support this major expenditure since it is a private road. It seems like a reasonable thing. We are still quite away from the actual property line.

**Susan Homola** - Actually there are not allowed any more houses on that road. There is only four or five houses, four houses that are allowed on the road. So nobody could build or use that even if they wanted to.

**Glennon Watson** - I agree with that but there are neighbors that have rights to use that and I believe over here, and they could choose to do that

**Susan Homola** - I don't think so

**Glennon Watson** - I don't want to mis-state it

**Susan Homola** - Jerry Edelstein owns this right of way just as we own this right of way down to Indian Brook Road. And it was designed as a paper right of way to allow this house to exist on this road. The houses that were allowed to use this right of way were the \_\_\_\_\_, the Edelsteins, the Roders. Edelsteins have a separate, he has the frontage. So it is the \_\_\_\_\_, the Roders, the Cavertinos and the Eltons. Those are the houses that are allowed to use that right of way. Nobody on this side and nobody on the Gary side or what was formerly Gary.

**Lenny Lim** - Does somebody down the future have a legal right to use that if they want to?

**Glennon Watson** - I am not absolutely certain. I am not sure, I do believe that, that's why I said it. I don't want to mis-state the record here. But this, this is not a right of way, this is a part of the lot. This is a right of way. There are a number of houses on this right of way are saturated. There can't be any more. I think that someone over here has the right to make that connection. I believe that. I am not, I can provide that or I can retract my statement but I don't want you to think it is absolutely impossible. That may not be the case. It would have to be an existing house, you couldn't get a new house. I think that when you look at your five tests, we don't have a self-created situation. They are dealing with a house that they bought. They are dealing with a problem they have and they are trying to correct it. We are talking about the impact on the neighbor, can, I think they have demonstrated that there is no impact on the neighbors. They've done everything they can to reduce any environmental impacts including reducing the size of the walk following the suggestions of the Planning Board and the wetlands consultant. They have engaged the services of an architect who designed a building, and you have testimony that shows that that building in its current capacity as proposed will have less impact on the neighborhood in the visual sense than it would if were to push the garage up against the house. And I

don't think there would be a way of accomplishing that proper scale that Mr. Wilkinson has talked about and he may want to address this further, if he pushed that bulk of that garage against the existing house, I think it defeats the design purpose and I think it would have a negative affect on the neighborhood in terms of its aesthetic presentation. You might, stealing your thunder here,

**Jeff Wilkinson** - It's all right. That's the essence

**Adam Rodd** - If I can just ask, just so I can understand one thing, on the numbers, you said it is going to be 17 feet from the side yard lot line and you referred to a survey of February 15<sup>th</sup>

**Glennon Watson** - Yes

**Adam Rodd** - If you can step, because I have a survey that is dated that, I just want to, see I got those numbers as the setback from the lot line

**Glennon Watson** - You don't have the most recent version. We changed this. I apologize. This is my office doing

**Adam Rodd** - I mean the numbers just aren't exact that's all

**Glennon Watson** - It is 17 feet, that was revised and somebody forgot to revise the date. I apologize. Completely my fault. But this is the most recent and I can tell because I have a code in here if you look on the edge

**Adam Rodd** - I just want to know what you are proposing. Apparently it's that now.

**Glennon Watson** - This map. Yes

**Adam Rodd** - Which is map that I think we will need a copy of

**Glennon Watson** - Absolutely

**Adam Rodd** - Because I don't have, I mean actually your, if it is 17 feet

**Glennon Watson** - It is 17 feet 11 inches

**Adam Rodd** - From both edges

**Glennon Watson** - No from the shorter one

**Adam Rodd** - The shorter one. And the longer one will be

**Glennon Watson** - 19 feet 9 5/8 inches

**Adam Rodd** - okay. I have that. I have the 19 feet 9 5/8

**Glennon Watson** - they must have corrected that

**Adam Rodd** - okay. So technically it is a little further back from the lot line by half a foot. Okay.

**Robert Dee** - I have a question. I understand the breezeway is very important to you. Which would be more important to you the breezeway or one car garage? Not a two car garage.

**Susan Homola** - Well

**Robert Dee** - If you cut down this garage in half and kept the breezeway I guess you would still come under, you wouldn't need a variance

**Glennon Watson** - Very close

**Susan Homola** - The reason why we opted for a two car garage, originally we were even looking at a three. We have three children one of whom is about to start driving, a mother that drives and the two of us that drive. And I wasn't planning on parking in the garage it was basically going to be my mother and either my husband, I am usually coming and going so I am always in and out. So that was a bare minimum but we are going to be, in addition my mom is moving out of a fairly large house and the top part was going to be for storage. So the top was as important as the bottom in terms of utility. And also from, those are the primary reasons why and also cost. I mean to give you a sense of time frame, we have been working since last April on the design trying to get this all going. We are trying to break ground if possible in May. The builders we have talked to are talking about hopefully finishing before winter so we can get my mom in before the winter. So that's kind of our time frame that we were looking at and the sequence of events. The garage was actually going to be the first thing that was built so that we can take everything out of our house to put it into the garage so they can do the work on the house. So it is actually critical to the construction and to the whole process and then once they finish, they are going to the apartment and the garage at the same time and then do the house. And once the house is done, am I saying too much

**Jeff Wilkinson** - Yes

**Susan Homola** - sorry

**Lenny Lim** - How big is the garage

**Susan Homola** - It is two car garage right now

**Lenny Lim - Two floors?**

**Susan Homola - It has storage, a loft up above**

**Lenny Lim - Are you going to put any water or anything up there**

**Susan Homola - No no no. It's just a shell. No heat, no water, no insulation, no nothing.**

**Jeff Wilkinson - To answer your question Mr. Dee. Architecturally I think this design would have to be completely reworked because a single car garage would look kind of just too, it wouldn't have the right impact. In terms of functionality, I don't think that would be worth the value of investing for just one car.**

**Robert Dee - But you have to understand our question.**

**Susan Homola - We have been working since April trying to park at an angle,**

**Jeff Wilkinson - Any other, part of the way I lay garages out, and I have worked on houses from the 1920's with the classic model A and you get a 9 foot wide garage and in today's cars you can't open the doors and use them. This is designed so that a person can come in and open the door and there is a wider span. Now, could I reduce what are called these legs, I could possibly reduce these by a foot that would reduce 3 ½. So that might buy us a little bit.**

**Susan Homola - Will it still be ADA?**

**Jeff Wilkinson - I am just saying that, I am trying to provide a decent width for parking in the garage and I think it is also more beneficial**

**Lenny Lim - What are the dimensions of the garage?**

**Jeff Wilkinson - 24 by 32 and we are also allowing for a stair, you know an access stair up which is a construction stair so that increases that**

**Robert Dee - you understand what we are dealing with**

**Jeff Wilkinson - absolutely**

**Bill Flaherty - you are using 9 foot doors**

**Jeff Wilkinson - yes**

**Bill Flaherty - They could be 8 foot**

**Jeff Wilkinson** - They could be 8 foot doors. I don't consider it an oversized garage but a healthy

**Bill Flaherty** - Did you consider putting this on an angle, turning the garage this way?

**Jeff Wilkinson** - We actually looked at several versions of angling, fanning it out

**Bill Flaherty** - Yeah swinging it

**Jeff Wilkinson** - What happened it would create a bigger drive and we actually thought that reducing this area in the front drive which seemed like it would be beneficial for paving area, the angle we would actually have to sweep and make it bigger. So it is whether you want more paved area

**Andrew Homola** - It is also a sharp turn coming around the side

**Susan Homola** - That's how we originally planned it

**Chuck Roder** - Mr. Chairman, may I speak

**Vincent Cestone** - You will have your turn

**Chuck Roder** - Thank you

**Vincent Cestone** - Any more questions from the board? Introduce yourself

**Chuck Roder** - Thank you. My name is Chuck Roder

**Vincent Cestone** - Come in front please

**Chuck Roder** - And I am Susan and Andy's neighbor. I live up here. I just wanted to give some more facts here. The two properties, the Homola property and the Edelstein property used to be Polhemus' sand pit, gravel pit. It was owned by Cathy Powers. When it was divided the Edelstein piece was given a paper right of way to Indian Brook Road. The piece that is now owned by Homola has this paper right of way as you can see, it swings by here and comes out to Indian Brook Road and the reason I know this is because Mildred \_\_\_\_\_ owned the pieces of property beyond that and I purchased from Mildred. And back then, maybe the 1984 law or 1982 law or something like that there were four private residences permitted on a right of way

**Glennon Watson** - That's as it is today

**Chuck Roder** - And mine, Bruce Elton and Bob Convertino and Krauder who owns this piece were the four people so designated on that right of way. This

right of way used to be extended over to Indian Brook in this manner so that the Polhemus trucks could go in one way and out the other. That's gone. It is not deeded to anyone. Susan and Andy's deed ends there. There is no possibility of anybody else using that right of way. Glen mentioned that there could have been a possibility, I am saying from my knowledge, and I did a lot of research on this, that is not a possibility. Another thing is that there are two properties here. There is a property here and there is a property here. The one property is owned by Bob and Liz Convertino. It has been granted and given to Hudson Highland Land Trust. There is an easement on it, a conservation easement which prohibits building, development and even road building. There is never going to be a neighbor there that could possibly be affected by what Susan and Andy want to do. This other piece of property, thank you Glen, is vertical acreage. It is sheer rock. Nothing is going to happen there. So in your considerations as you look at the, I assume the east side of the property and the variance in question, nobody is ever going to be affected by a variance if it is granted. That's all I wanted to say and thank you.

**Vincent Cestone** - Any one else wish to speak?

**Susan Homola** - The only thing I would say is that we would be affected by further delay and further revisions to our architectural plans. So if it is all reasonable, to accept it as it is that would be terrific. Because otherwise it continues to be a huge burden on us as we delay and as we spend more money on revisions. That's my plea for my mom and my family.

**Vincent Cestone** - I'd entertain a motion to close the public hearing.

**Bill Flaherty** - I so move

**Vincent Cestone** - I'll second. All in favor?

**All Board Members** – Aye

**Adam Rodd** - I would just add as an addendum just subject to getting us the correct map which we don't have. And that is dated February 15<sup>th</sup>

**Glennon Watson** - Well I will get, I will make sure it has a fresh revision date on it somehow just so that there is no confusion with the February 15<sup>th</sup> date. Maybe I will make it February 16<sup>th</sup>

**Vincent Cestone** - Do we want to have a straw poll? I would entertain a motion

**Bill Flaherty** - I'll so move

**Paula Clair** - And I'll second

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Vincent Cestone** - Bob?

**Robert Dee** - The gentleman convinced me. I'll vote for it.

**Lenny Lim** - I'm not going to vote in the straw poll

**Vincent Cestone** - Paula?

**Paula Clair** - I'll vote for it

**Bill Flaherty** - I vote for approval

**Adam Rodd** - This is on the, just so we are clear this the side yard variance and the special use permit. The special use permit is a separate vote? Okay

**Vincent Cestone** - As far as the special use permit, since there is a special use permit there are different procedures right?

**Adam Rodd** - Well there is a different standard in the code. It overlaps but to grant a special use permit you would need to find that the proposed improvement which is the accessory apartment would be harmonious with the neighborhood. That there would be adequate access to the proposed structure for police and fire. The street is capable of handling any increase traffic from the accessory apartment. That the improvement would not be a detriment to neighboring properties. That the structure would be landscaped and maintained. And that there would be no public health detriment.

**Vincent Cestone** - Do we have to say it that way or

**Adam Rodd** - I would perhaps defer to the applicant to speak to, with respect to whether that criteria are satisfied by this proposal

**Glennon Watson** - I believe they are and with regard to the architectural, I would just rely on the comments that were made by Mr. Wilkinson in terms of the design and we believe that the design will enhance the neighborhood from that point of view. We are talking about really one car that will be available to Mrs. Moss. The septic system has been approved so the public health issues have been addressed and we submitted the permit from the health department. Of course related to that were the wetlands permit that they insisted that we have before they would issue it even though the activity having to do with constructing septic system is not in the buffer area. It is outside the buffer area. Nonetheless we did that. We minimized the impact on the wetland by reducing the size of the

walk in front of the property and by eliminating the patio that was proposed for Mrs. Moss. You've had at least one neighbor speak and two others write in support of it. So there perception of the impact on the neighborhood certainly has to be considered positive. I am not sure I got to all that you read but

**Vincent Cestone** - Just one question. How big is the accessory apartment? How many square feet?

**Jeff Wilkinson** - 800 square feet. It is a little bit under but we are allowed an 800 square foot apartment.

**Vincent Cestone** - Okay. Any questions from the board?

**Robert Dee** - On your measurements, you have 11 something here

**Jeff Wilkinson** - That's really the measurement from the wall to the roof line.

**Robert Dee** - It looked like fuzzy math to me. I just wasn't sure

**Jeff Wilkinson** - That's internal to just the construction drawing. But it is basically showing that you have an 11 ½ foot dimension there before that.

**Vincent Cestone** - Any more questions from the board

**Adam Rodd** - Just unclear in terms of and this is something that would be incorporated in the resolution eventually if it is granted that the proposed configuration and layout of the accessory apartment would be as indicated on the plans that you submitted dated January 16<sup>th</sup>

**Jeff Wilkinson** - That is absolutely correct. We modified, we submitted a site plan redoing the impact of the front patio

**Adam Rodd** - Making it 5 feet

**Jeff Wilkinson** - Yes. The walks. So that would be the March 31<sup>st</sup>. And what you have is the absolute and that was approved by the board of health

**Vincent Cestone** - Anyone wish to speak on the accessory apartment? If not, I make a motion to close the public hearing

**Bill Flaherty** - I'll second

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Vincent Cestone** - I make a motion for a straw poll. Do I have a second?

**Bill Flaherty** - Second

**Vincent Cestone** - All in favor

**All Board Members** – aye

**Vincent Cestone** - Bob?

**Robert Dee** - I'm in favor of it

**Vincent Cestone** - Lenny?

**Lenny Lim** - I'm not voting in the straw poll

**Paula Clair** - I vote in favor

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - And so do I

**Glennon Watson** - Thank you very much

**Vincent Cestone** - That straw poll is unofficial until the resolutions are written and the attorney has the information he needs to write the resolution right

**Adam Rodd** - Yep

**Vincent Cestone** - On for May 12<sup>th</sup>

**Adam Rodd** - Assuming I can get the minutes at a reasonable time in advance I will do my best.

**Susan Homola** - Thank you

**Glennon Watson** - May I take 30 seconds on the special use permit application for Graymoor which had been referred to the planning board, may I submit to you part 2 and part 3 of the EAF? Assuming I get it in time for the next meeting so that we can begin that process and you intended to be lead agency on that I believe

**Adam Rodd** - We didn't make the motion yet. Is this for site plan and special use?

**Glennon Watson** - No there is not a site plan involved with a special use permit

in this Town. There is a review by the Planning Board, a mandatory review. In fact, the only agency involved is the zoning board

**Adam Rodd - Okay**

**Glennon Watson -** So there is little choice over who can be lead agency. I mentioned this briefly last month

**Adam Rodd - Okay**

**Glennon Watson -** I would like to get that going. We have some time on it but it is not a process the zoning board deals with very often so I would like to, and it is going to be a long EAF. It's not a short one. So I would like to submit that. The new engineer planner has changed the process that the planning board will follow. Typically I did part 1 and Tim Miller's office did part 2, I did part 3 and then the planning board debated. He said you are going to do part 1, 2 and 3, I am going to take it and rip it apart and then I will tell the planning board if it is okay. So I just assume, I think you mentioned last month that you are planning to enlist some aid from the Town Planner in this regard. So I just assume follow that process so I need to have you be lead agency first and second to submit to you a part 2 and 3 of the EAF so that ball can get rolling.

**Vincent Cestone -** Adam, do you have any issue with that

**Adam Rodd -** no. I don't think we have a choice.

**Glennon Watson -** Okay so we, so I don't understand how you would declare yourself lead agency if there is no other agency but

**Kim Shewmaker -** We did on March 24<sup>th</sup>. You declared yourself lead agency on March 24<sup>th</sup>.

**Glennon Watson -** Okay so that is done. And there was no one to send a notice to so I guess you are lead agency. Okay. Thank you very much.

**Vincent Cestone -** Next item on the agenda is a public hearing for Ribeiros Construction. Is there someone to speak?

**Rui Arraiano -** Yes. Good evening. My name is Rui Arraiano and I am one of the architects on this project. We are before you because we require two variances. One is for a minimum lot frontage and it is 80 feet required and we have an existing of 60 foot, 60.39 feet.

**(turning tape over...may have lost some dialogue)**

**Rui Arraiano -**...as you can see here, we have a 200 foot buffer that is what the

blue line is to the wetlands. The pink indicates the septic field requirements. And then we came up with the required setbacks for septic and clearances and that's where we placed the house. That line where I highlighted, in the back, that is where we will be allowed to build. That's the size house and that's really not feasible. So this is why we are before you and we pushed it back as we could

**Vincent Cestone** - how was the land acquired

**Rui Arraiano** - sorry

**Vincent Cestone** - how was the land acquired. Because I was under the opinion that that was a tax sale item.

**Rui Arraiano** - I am not sure. I can't answer that question.

**Lenny Lim** - Is there somebody here that can answer that

**Rui Arraiano** - Nobody, my client is not here. The client just approached us to design a building on the property. I don't know how he acquired the property

**Robert Dee** - It was purchased July 22, 2005. The same codes that are in affect today were in affect when he purchased.

**Rui Arraiano** - This is just a sheet, PD-1,

**Adam Rodd** - Can I get your name sir

**Rui Arraiano** - R-U-I A-R-R-A-I-A-N-O

**Vincent Cestone** - Do you need sides

**Rui Arraiano** - No sides we are okay.

**Adam Rodd** - It complies

**Rui Arraiano** - Yes

**Adam Rodd** - He needs a variance for front yard setback and lot frontage.

**Rui Arraiano** - I was told because I looked at the zoning chart and it says from the street line 30 so we were originally measuring from the curb back the 35 feet and there was no problem and then that's when we found out that it is supposed to be from the property line. But it is worded on the scheduled it says from street line.

**Vincent Cestone** - If you took the deck out and went back behind the deck.

**Rui Arraiano** - The deck is within, if you look on here, the deck is part of the clearances. We need 10 feet from the septic tank for the house but the deck is off to the side so it is within the 10 feet of the septic tank. This is an earlier design from the engineers. This is actually a photocopy but they have the 35 foot from the street and this might, but my blue line indicates my 100 foot buffer on our site plan and as you can see they come back as the required clearances for the septic system and that's why we set the house and again our assumption, our misunderstanding from the zoning, we were okay from the zoning chart originally taking it from the street. But it sits back, the property line from the street line sits back quite a bit.

**Robert Dee** - This is the property line

**Rui Arraiano** - Yes

**Bill Flaherty** - Is this house going to be built as a spec house?

**Rui Arraiano** - What do you mean

**Bill Flaherty** - For resale

**Rui Arraiano** - For resale, I don't know. Again, we were hired by the client to design a house. I don't know what their intentions are. I can't say either yes or no.

**Bill Flaherty** - I took a ride down to that area and what I saw was a lot of \_\_\_\_\_ and I was wondering as a result and particularly in light of the fact that we have a memo here from Norman Olson. Is Mr. Olson here?

**Audience Member** - No Mr. Norman Olson is not here. We are the neighbors and he wrote the letter on our behalf.

**Bill Flaherty** - Oh okay. Well anyway, he raised the question about the geology and preventive treatment systems and I was wondering if it would be advisable for us as the board to consider having this reviewed by the wetlands inspector

**Vincent Cestone** - Do you have an approved \_\_\_\_\_ from Putnam County

**Rui Arraiano** - Yes. We have also applied for a wetlands permit but it expired because this whole process took

**Bill Flaherty** - We don't have a wetlands permit, I couldn't find one in the file

**Rui Arraiano** - We just renewed it again. We applied for it again.

**Lenny Lim** - We should hold the meeting over until we get it

**Bill Flaherty** - I would feel much more comfortable myself with those documents in our file before we went any further with this issue. Some of these things in Mr. Olsen's letter are in fact true and I have some serious doubts about going forward with this without the necessary approvals.

**Rui Arraiano** - Like you said they purchased the property in 2005 and

**Robert Dee** - Well my thing was that the codes were the same. The codes did not change

**Rui Arraiano** - Oh okay.

**Vincent Cestone** - Well let's proceed with the public hearing because people are here and I will continue it on until the May 12<sup>th</sup> meeting. So what we need **(tape completely fuzzy...cannot hear any dialogue)** Any questions or comments from the audience?

**Adam Rodd** - Just in terms of scheduling. If we are going to ask the applicant to apply for and hopefully get a wetlands permit, getting that accomplished by May 12<sup>th</sup> might be a little optimistic. So just in terms of scheduling maybe we can put him on for June 9<sup>th</sup> to give him an opportunity to get all that stuff

**Rui Arraiano** - That's fine

**Adam Rodd** - I just have a feeling that's

**Vincent Cestone** - Introduce yourself

**Robert Tendy** - Hi my name is Robert Tendy and I have been retained to speak on behalf of the Thornton's. They are the neighbors on the adjoining piece of property at 67 Steuben. And I just wanted to voice their concerns and the concerns of many of their neighbors. First I'd like to hand to the board a petition containing approximately 140 signatures. This is the original petition we do have copies of people who are opposed to this project going forward. One of the things that I think is very important to consider here is the public health and safety. But not just the public health and safety of the present public but the public health and safety of the future public. And I think your concerns and questions regarding the possibility of a spec construction are well founded and I think it is a very good question. I also think your suggestion that the wetland inspector examine this property is also an excellent suggestion. I would like to add to that however and I think it might be a prudent decision on the part of this board to perhaps consider having the DEC or representative from the DEC review this application. There are potential significant impacts

**Vincent Cestone** - I don't know if that is really necessary but go ahead

**Robert Tendy** - Thank you. If you look at Mr. Olson's letter, and you look at the actual configuration, if you have been to the property, you know. There is quite a bit, quite a bit of rock here. The top soil is extremely shallow and it is the perfect example of the way things were done years ago when people were permitted to pretty much put up houses anywhere. And what is happening now with a lot of houses, our topography is very similar to this, is during rainy seasons in particular the septic's fail. The septic \_\_\_\_\_ is actually coming out of the system and it is running down the roads either into neighbor's wells, into other water bodies and in this case you have a water body arguably anywhere from 70 to 100 feet of where the septic system is going to be. If you look at the potential for flooding on a basis much more frequently than 100 years, then you would have to recognize that this is a very real environmental possibility. A real environmental concern for the neighbors and for anyone who has to rely on that body of water, I'm sorry, on Sprout Brook for any reasons. Will the septic system fail, am I an expert on it, no. But I think a board having the experience that you have will recognize that perhaps in 10, 20 or 30 years from now that is a very real possibility. And if you look at your own sheet, you very aptly say, very appropriately say that there is no other viable location for a house on this property. One of the things I would ask you to consider when you are reviewing this application is that as there really is no other viable location for a house on this property, there is really also no other viable location for a septic system on this property. And once it fails, then you've got a dead house. No body is going to be able to use it. So it is the kind of situation where I mentioned earlier looking at future generations or just maybe the same generation, in a relatively short period of time maybe a generation, perhaps less, perhaps more, you are probably going to have a failed septic system and you are going to have a piece of property that was built and sold to someone, and whoever that someone is is going to be stuck with it.

**Lenny Lim** - Are you an engineer

**Robert Tendy** - I am not an engineer no. Well I am an attorney and I practice in this field so I have a little bit of knowledge. Certainly not an engineer's. I couldn't do the math. Well I already mentioned the potential for discussing this with the DEC and I understand that is not necessary and it is certainly not required. I would refer you to your town's ground water report and planning resource. It is very instructive particularly in regard to this application. I would just like to read a few sections that I think have a real particular bearing almost on all fours to this type of application.

**Vincent Cestone** - Briefly please

**Robert Tendy** - Yes I will. Minimum lot size recommendations for areas where individual septic systems and individual wells were repeatedly used are between

1.6 and 3.0 acres. Now this is .38 acres. This is right on target. The vary topography in Philipstown isolates segments of the \_\_\_\_\_ into discrete subwater shed areas such as those around the Indian Brook, Philipse Brook, Arden Brook, Clove Creek, and Canopus Creek which is exactly what this is, Canopus Creek. In these separate water sheds water does not mix and cannot, ground water cannot mix and cannot be readily moved from one water shed to another allowing the possibility of local over use, or local contamination which cannot be relieved by or will not cross contaminate ground water and adjacent water sheds. Ground water quality degradation from septic systems is a form of ground water over use if waste constituent concentrations impair drinking water quality. In my opinion and again I am not an engineer, this type of topography it is not a matter of if, it is a matter of when. There is a whole host of applications that was documented that applies to this, on page 4 of the document says that this whole document was \_\_\_\_\_ as a result of the Town of Philipstown Planning initiatives and ground water concerns.

**Adam Rodd** - What is the title of that document and the date of it

**Robert Tandy** - The title of this document is dated June 2007 and it was done by the C\_\_\_\_\_ companies. It is the ground water report by the C\_\_\_\_\_ company for the Town of Philipstown ground water report and planning resources. You can get it on line and you can also get it right here. So for all these reasons I would ask you to very very very carefully scrutinize this project. I think this document is pretty much a forewarning and I think it really does apply to this project. And I think this project is very very ill advised and I would ask you to consider it carefully and not approve it. I believe Mr. Chairman that I gave you my card

**Vincent Cestone** - Yes you did. Just introduce yourself

**Ed Pollack** - My name is Ed Pollack and I live at 63 Steuben Road and I also border the proposed property. My only other concern which I am not sure if it is covered with that section regarding the wetlands is the expansion area that is required for the septic system. I understand that Putnam County requires a 100 percent expansion area. And the drawings that we've seen only show a 50 percent expansion area and I don't know if that directly impacts on the design of the septic system as is and if they would have to redesign it then with the 100 percent expansion area included.

**Vincent Cestone** - Putnam County handles the septic system approvals and they seem to time to time interpret their own laws.

**Ed Pollack** - Okay.

**Vincent Cestone** - You are absolutely right. 100 percent expansion

**Bill Flaherty** - Do you have a septic approval?

**Robert Dee** - Because it is not in the file. We don't have it.

**Rui Arraiano** - This is what I have.

**Lenny Lim** - The square foot of this house is going to 3400 square feet? That's a big house.

**Rui Arraiano** - Well that's including the basement

**Robert Dee** - 3 stories. Counting the basement as a story

**Rui Arraiano** - yeah

**Robert Dee** – okay. Are you going to make the basement livable space?

**Rui Arraiano** - They have a recreational room and a two-car garage is downstairs

**Robert Dee** - I am just trying to figure out how you get 3400 square feet on a lot that's like this. Was that septic approved?

**Rui Arraiano** - I mean if you take the footprint 40 x 30 that's 1200. And times 2 plus the basement.

**Vincent Cestone** - Can we have this for our record.

**Kim Shewmaker** - I'll make copies right now.

**Robert Dee** - It seems like a lot of house for a little lot.

**Audience Member** - Are you going to have to blast the foundation

**Vincent Cestone** - I can't hear you

**Audience Member** - Are you going to have to blast to put the foundation in. This gentleman here said the topsoil, the bedrock is kind of shallow. If you are putting in a 12 foot high foundation, how much blasting are you going to have to do

**Rui Arraiano** - As you can see from the elevations, we were going to try and build it into the site.

**Audience Member** - So you are not going to blast

**Rui Arraiano** - I'm sure there is going to be some blasting but we are trying to build it as much as possible into the topography of the site

**Audience Member** - And how close are the neighbors

**Vincent Cestone** - These houses are close together. They are an R-10 district. This shows there is a house within 20 feet of that.

**Audience Member** - That's our house

**Lenny Lim** - And how far is your house from the property line

**Yvonne Pollack** - 10 feet

**Robert Dee** - And the stream is right down here

**Rui Arraiano** - Yes

**Yvonne Pollack** - May I speak?

**Vincent Cestone** - While we are waiting for Kim, unless the residents want to speak additionally I am just going to continue this on. Your people should think hard about this because right now I am getting an impression from the board you are on thin ice. But you know, on June 9<sup>th</sup> you can come and make sure that somebody that can make decisions can be here. And unless there are any more questions, this is continued on to June 9<sup>th</sup>.

**Yvonne Pollack** - I would like to say something.

**Vincent Cestone** - Sure

**Yvonne Pollack** - My name is Yvonne Pollack and I live at 63 Steuben and just \_\_\_\_\_ about the lot. Originally that lot was owned by Jenny \_\_\_\_\_ which is there house and she owned their house and the lot. That lot was sold. She awarded the lot to her daughter and her daughter sold it to someone else, I think it was 2002 for \$40,000. And they did percolation tests and they failed. They in turn sold it to the Ribeiros and they are the ones that have it now. But that's where that goes. It has been sold twice now and it was, the reason I believe that they sold it from when they were there doing the percolation tests and they did not pass.

**Vincent Cestone** - I am very familiar with that. I live in Continental Village myself. I know exactly where it is. And all the water runs down into Sprout Brook and into \_\_\_\_\_ Lake

**Yvonne Pollack** - And we also have a lot of problems with our deck basically. When we had our storm September 16, 2001, and we had torrential rain, we had a river coming through our property which actually had a retaining wall made out

of railroad ties and it busted our back deck. So there is a problem with the water running through.

**Audience Member** - In order to have that septic system to work they have to add fill and raise their property levels above ours

**Vincent Cestone** - I am very familiar with that. The last storm that we had where Sprout Brook Road flooded across and

**Audience Member** - We had to basically take out a loan from the SBA we got the letter the other day that it is paid off for \$7,000 because we got sink holes that are approximately 5 feet just dropping in our front yard which adds to the type of topography there. It is cavernous underneath the water line. I have a sink hole waivers on my insurance for the house now and just channeling more water by raising the property on both sides

**Lenny Lim** - Where are you

**Audience Member** - 63 Steuben Road next door to his property

**Vincent Cestone** - This is continued on to June 9<sup>th</sup> unless there are any additional comments. So we will see you on June 9<sup>th</sup>

**Rui Arraiano** - Thank you

**Vincent Cestone** - Review of minutes of March 10<sup>th</sup>. Are there any additions or corrections? I have a motion to accept the minutes

**Bill Flaherty** - I so move

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Vincent Cestone** - Review of minutes of March 24<sup>th</sup>. Any corrections? I'll make a motion to accept as submitted. All in favor?

**All Board Members** - Aye

**Vincent Cestone** - Any old business? With that I will entertain a motion

**Lenny Lim** - Second

**Vincent Cestone** - All in favor

**All Board Members** – aye

**NOTE:** These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

**DATE APPROVED:** 6/9/08

Respectfully submitted,

Kim Shewmaker  
Secretary