

# ZONING BOARD OF APPEALS

June 5, 2006

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 5, 2006, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

**Vincent Cestone** - First item we are going to deal with tonight is Ronald and Marie Palmer. I understand there was something missing from your application and you need it put on. It was the house I believe. Right?

**Tim Pagones** - We inadvertently did not include the house. We did the deck, the pool, the shed but the house wasn't included

**Vincent Cestone** - Okay

**Tim Pagones** - And when speaking with Mr. Monroe he said we didn't give the variance for the house.

**Vincent Cestone** - Okay. So what was the issue on the house

**Ronald Palmer** - It is an addition on the house 30 plus years ago and it was even before we were married

**Marie Palmer** - My ex-husband and myself and he never got a permit for it. Mr. Monroe said that it would have to be approved by you before he comes down to inspect it

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

**Joan Turner** - Yeah, so where are you looking for the variance and what is the extent of the variance?

**Tim Pagones** - It is 19 feet off

**Joan Turner** - It is this corner right here?

**Marie Palmer** - The back of the house

**Ronald Palmer** - The whole back of the house pretty much

**Joan Turner** - Where you have this screened in porch

**Marie Palmer** - Right and it continues to the end of the house

**Joan Turner** - So you are talking about here to this corner. So 19, so you need 20

**Tim Pagones** - 30

**Joan Turner** - 30 feet set back

**Marie Palmer** - But when it was put on it was only 10 but the permit wasn't gotten and now we have to go by 30 now

**Joan Turner** - Oh. I see what you are talking about. Before they changed the zoning it was only 10 that you needed. But you didn't have a building permit so now you are stuck with what the current Zoning

**Marie Palmer** - Right

**Joan Turner** - So you need an 11 foot variance. We were down there, we looked at all of this. I don't have a problem with it.

**Vincent Cestone** - Any more questions? Any questions from the audience? I'll make a motion to close the public hearing.

**Lenny Lim** - I'll second

**Vincent Cestone** - All in favor?

**All board members** - Aye

**Vincent Cestone** - I'll make a motion for a straw poll, do I have a second?

**Joan Turner** - Second

**Vincent Cestone** - All in favor

**All board members - aye**

**Vincent Cestone - Len?**

**Lenny Lim - Now we are voting just for the house**

**Tim Pagones - Yep**

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

**Bill Flaherty - I vote to approve**

**Vincent Cestone - Joan?**

**Joan Turner - I'll vote in favor**

**Vincent Cestone - And so will I**

**Marie Palmer - I have a question on the denial for the variance for the shed. When we were denied we were told that the reason why we were denied was because we had the house on the market and that**

**Vincent Cestone - That's not the reason**

**Marie Palmer - That's what we were told**

**Lenny Lim - We didn't tell you that**

**Tim Pagones - It can be moved**

**Marie Palmer - No it can't be**

**Ronald Palmer - It can't be moved because I had somebody come down and he said it would be a major project to move it. I would have to get a rigger and then I have another issue with the septic fields back there**

**Joan Turner - We voted on that**

**Lenny Lim - We voted on that and you didn't bring that up about the septic fields**

**Joan Turner - They have to take it down. They are two feet away from the, we went over this**

**Marie Palmer - It's a shame**

**Tim Pagones** – Okay. 2 weeks

**Ronald Palmer** - Can I ask you a question? If my neighbor doesn't have a problem with this, what is the issue here?

**Vincent Cestone** - The public hearing has been closed, we are not going back in to open it. The decision has been made. I'm sorry. And that's it.

**Joan Turner** - Can I give him the reason because I think it is really important for you to understand. This variance runs with the land. It is in perpetuity. For eternity. You sell the property, the next person that comes in to buy your property decides oh I have a variance and I am going to put a second story on that

**Marie Palmer** - This is what you told me last time

**Joan Turner** - But you don't know what the next owner is going to do

**Marie Palmer** - But I was told that on the variance, in the paragraph of every variance that you cannot

**Joan Turner** - Let me just tell you of another story for a variance that we gave for a barn. A garage to be expanded to a second floor storage. You know what is happening to that? They are running a business out of it.

**Marie Palmer** - It is right down the road from me

**Joan Turner** - They have heating and plumbing, and they are 2 feet from the property line too. Second story. It is unfair to your neighbor

**Marie Palmer** - But my neighbor doesn't care

**Ronald Palmer** - He said he would even come up here

**Joan Turner** - He doesn't know the next neighbor. You don't understand what's going to happen 20 years from now, 10 years from now

**Marie Palmer** - I was told they can't add on to it. I was told once you get a variance for one specific item they can't change it, they can't alter it, they cannot add on to it, they cannot do anything to it. They would have to come up and ask for another variance

**Joan Turner** - They don't

**Marie Palmer** - Well that's what I was told

**Joan Turner** - I know you were told that. But our experience is more

**Marie Palmer** - My attorney told me this

**Joan Turner** - I know but your attorney doesn't sit on this board and listen to all the enlargements that go on illegally

**Marie Palmer** - That's a shame

**Joan Turner** - In violation of the code. And I am really sorry.

**Ronald Palmer** - So am I

**Vincent Cestone** - Next item on the agenda is Open Space Institute.

**Tim Pagonis** - Are you going to meet the 19<sup>th</sup>

**Vincent Cestone** - Unless you know something different

**Kim Shewmaker** - Well you've been doing meetings just once a month

**Vincent Cestone** - Open Space

**Glennon Watson** - Good evening I'm Glennon Watson from Badey & Watson Surveying and Engineering. We represent the applicant Open Space Conservancy, Open Space Institute. We have made application to you for a special use permit to conduct an office use for a charitable institution and an educational institution within this small building that is located on the Ardenia property which is the Highlands Country Club on the southwest corner of Route 9D and Lower Station Road. The property is about 43 acres. It is owned by Ardenia Corporation which is owned by Open Space Institute. Most of the property is taken up with the Garrison Golf Club which we have talked to you before about for which you issued a special use permit. This particular, what you see here before you is a plan to access two buildings one of which the northerly building is the Garrison water district, water treatment plant and that is not really part of the application but it is in such close proximity that we included it on the plan. The second building is a Gristmill which is one of the oldest gristmills around. We provided you with some information with that. Concerning that the Open Space Institute bought the property. They spent a lot of money rebuilding the gristmill, replacing the worn out parts and refurbishing it and restoring it. It contains many working parts from the original gristmill so part of the program they have is to bring in small groups of perhaps as many as 20 but generally less than that students, other groups to come to the site and see a program on how gristmills operated here. How it was powered by water. How the different functions of the mill worked to produce flour and such. Additionally they would like to have their office space in there for Mr. \_\_\_\_\_ who has been with you

before. He is the land steward. His job for Open Space Institute is to monitor among other things, is to monitor the easements that Open Space Institute holds on various parcels in this area and he goes around and monitors that, he monitors me periodically too but I don't think that is part of this office's ordeal. Anyway, there is a small office in there that they would like to operate to that reason. They occasionally, they may have a \_\_\_\_\_ from time to time. They occasionally may have a meeting of 4 to 5 people. The actual site plan involves very little disturbance. The driveway is existing up to a single parking space, well actually there are two parking spaces. There is a parking space right here which is generally used by the water treatment operator who visits the site daily. There is another parking space over here which is used by Open Space Institute. We intend to create approximately a total of 8 spaces including the 2 existing spaces. We've limited our disturbance really to this area. This road exists. The building obviously exists. Everything else exists. The only other significant improvement is that on the planning board's recommendation we added a guard rail along the edge of this travel way so that it would be safer for people to enter into the property and drive up. There is a fairly steep drop off to the west and this guard rail is specified to protect the drivers from going off the road. There is not very much in the way of any improvements other than those of the parking area, the lighting is residential in nature. Just a simple porch light type coming off the building. It is in a wooded environment. We've tried to minimize the amount of disturbance so that, again there is not very much in the way of landscaping. There is a completed lawn. The septic system has been, the septic system is a holding tank which is pumped out periodically we estimate about 4 times a year. This is what the health department wants, this is unusual approval but because of the particular circumstances there wasn't enough land available, area available in which to put a standard septic system and the closed holding tank was deemed a better solution because of the proximity to the creek and not wanting any of the leeching to find its way into the creek water. So that is in place. There is a well in place. The Town has a couple of wells for the Garrison water district, those are all on the plans. It is really a very simple plan. We have a pull up area for buses to drop children off. It is a fairly short walk up here. The bus will go down to the Garrison the Highlands Country Club and will be allowed to park in there on the site in their maintenance area. Also if it were the Garrison school it could go back to the school. There is some talk with the Fish Library to accommodate parking towards I would suggest an hour, a tour of perhaps an hour or so. And there is enough room up here to turn a truck around, a delivery truck around, oil truck around. If handicap access is needed, a van can make it up here and turn around. And that's all measured out. So we are seeking your special use permit. I believe you have a positive recommendation from the planning board. I believe you have a positive recommendation with regard to the Wetlands Permit because the parking spaces are within fairly close proximity to the creek. With that I would be pleased to try to answer any questions.

**Joan Turner** - We don't have a copy, at least I don't, of the planning board's recommendations. Tim, do you have one?

**Tim Pagonis** - I did not bring my planning board file.

**Joan Turner** - Does anyone on this board have, but we would like a copy of the

**Glennon Watson** - Let me make sure I'm giving you the positive one. I think this is it

**Joan Turner** - Kim do you want to make copies for us. Thank you

**Vincent Cestone** - Food preparation for the business?

**Glennon Watson** - No food preparation. There is kind of like a coffee mess kind of area in the building. Small refrigerator for the office staff. No food preparation.

**Bill Flaherty** - (cannot hear)

**OSI Land Steward** - I would think, you know it is not a long tour kind of thing. I would imagine that the tour groups would be in and out in a half hour, 45 minutes. So I would imagine that they wouldn't have lunch at the site especially if they come locally.

**Bill Flaherty** - And the number of children would be restricted to 20 per tour

**OSI Land Steward** - Yes

**Glennon Watson** - That's a maximum we don't expect generally it would be that big

**Bill Flaherty** - And how many tours a day would be conducted

**OSI Land Steward** - If we have one tour a week, it is going to be 5

**Bill Flaherty** - Won't this be available to all the neighboring school districts

**OSI Land Steward** - By appointment only basis, yes.

**Bill Flaherty** - But you only anticipate one tour a week of 20 children

**OSI Land Steward** - That is roughly the use that we projected, yes. It is a small building. The mill works are there. But it is not going to be a destination that everybody is going to beat down the door for

**Bill Flaherty** - But when you said that the septic, it's not a septic system per se

**Glennon Watson** - It is not a system. It is a holding tank

**Bill Flaherty** - Holding tank. Was this reviewed by the Putnam County Health Department

**OSI Land Steward** - Yes it was

**Bill Flaherty** - Do you have, I have not seen a documentation in the letter that I have

**OSI Land Steward** - It was engineered in, with the Putnam County Health Department and we, the Putnam County Health Department doesn't usually do holding tanks but in this case the area is all rock and there is not much area next to the stream. So we were faced with a lot of difficult choices. What was there was just a \_\_\_\_\_, so if we wanted to do it we would have to pump it all the way up the hill and disturb the golf course or send it down across the stream and or do the holding tank.

**Bill Flaherty** - Well what did Putnam County Health Department say to you about that

**OSI Land Steward** - They approved it

**Bill Flaherty** - They approved it. Do you have a letter to that affect?

**OSI Land Steward** - Yeah. Here is the construction permit. I can give this to you to make a copy. And also the engineer plans are here as well. And here is the Putnam County Department of Health signature.

**Bill Flaherty** - I would like copies made of this for our file

**Tim Pagonos** - You can always put a condition that they have to receive it and they would have to give it to Mr. Monroe. Unless you want Kim to go back downstairs again right now to make copies

**OSI Land Steward** - We can produce copies of all this

**Vincent Cestone** - Thank you very much

**Lenny Lim** - Is this going to be open for public tours also or just school kids

**Glennon Watson** - It might be other than students. It could be if the historical society had a class they were running or an after school kind of thing, they might make an arrangement to have that. It could be, but it is not going to be advertised and it is not going to be something where people would just come. It is not going to be typically open



**Lenny Lim - Okay**

**Bill Flaherty - Is there enough room that a bus could turn around in it**

**Glennon Watson - Not a regular size school bus but a van could easily turn around**

**Bill Flaherty - Would this be a van or a school bus that would**

**Glennon Watson - If it were a school bus, it would come down and drop the children off in this area.**

**Bill Flaherty - And where would they park**

**Glennon Watson - They could park in one of, if it were Garrison they could just go back to the school. There has been some discussion with parking at the library and we know that we can park in the golf course in their maintenance area.**

**Joan Turner - Glen I have a question to you about the site in general. Is this particular site carved off from the rest of the Highlands Country Club and Golf Course**

**Glennon Watson - No. There is no property line. I don't believe there is even a lease line**

**OSI Land Steward - No there is not**

**Joan Turner - So this Special Use permit then is for only one segment of the property**

**Glennon Watson - Yes**

**Joan Turner - Under the guidelines for special use permits, weren't you supposed to have the entire site, I was looking through the code to find out that regulation**

**Glennon Watson - I believe we submitted a copy of the survey for the entire site**

**Joan Turner - Of the entire site**

**Glennon Watson - I believe we did**

**Joan Turner - Because what puzzles me is your access roads. That Lower Station Road is a curvy road. Cars speed down it going to the train as you well know. So I am a little concerned about this traffic access and how, would it not**

be, what are the difficulties of having the access to it come in from the driveway to the main club house and golf course

**Glennon Watson** - It would be virtually impossible

**Joan Turner** - Because I don't have the whole site here, it is hard for me to locate it on your site plan

**Glennon Watson** - This survey was part of the package

**Joan Turner** - Yeah I got it

**Glennon Watson** - The main entry is here. And the clubhouse is here. Between the clubhouse and the main entry you have the third, fourth, fifth hole, you have this lake, you have a wetlands to cross, you have the dam, and if those weren't there you could certainly build a road

**Joan Turner** - No I'm not talking about a road. I am talking about parking in that main parking lot for the club and then walking over to it. It's impossible or you want to keep it separate

**Glennon Watson** - We do want to keep the function separate. It just would be very difficult and we don't anticipate that there will be tours during commuter type hours. Not that people don't go too fast other times. But the planning board did go down there. They did look at that specifically that turn off area to see if there was enough room to \_\_\_\_\_.

**(Papers shuffling by microphone...cannot hear)**

**Glennon Watson** - well there is actually a residence on the golf course here, it maybe 500 feet this way. There is a residence right down here, I am going to guess it is another 500 feet but that is strictly a guess.

**Bill Flaherty** - They wouldn't be affected then by the leech field or the holding tank

**Glennon Watson** - Well the leech field is not a leech field in the, it is the opposite of that that was the whole purpose so that it wouldn't pollute the stream. The holding tank, I can't imagine, if the honey dipper was there and the winds were exactly right and all sorts of things, there is very little odor

**OSI Land Steward** - You also can't see the residences. If you are standing at the mill, you can't see the closest residence

**Joan Turner** - Could I see that Board of Health copy certificate that you have.

**OSI Land Steward** - Here is the construction permit and this is the DOH signature on the engineer plans

**Bill Flaherty** - What is the grade level (cannot hear)

**OSI Land Steward** - We haven't put it out there to the districts that it is available. We have been waiting to get the permit. But you know it will be open essentially whoever wants to come and visit it by appointment only. There are a couple of reasons for that. One is is that I don't \_\_\_\_\_. I will be there full time but I also go to the City to the OSI office in the city. And we don't want to create a constant flow of people coming there. So my guess is that there will be an initial buzz of interest in the property and then it will taper off. If we have a group come in there more than one a week I think that will be a lot. So we are really looking at a small use

**Bill Flaherty** - Will the groups be first, second, third, fourth graders, those kind of students or will it be open to high school students

**OSI Land Steward** - It will be open for anybody that is interested.

**Bill Flaherty** - But won't you make sure the letter is out to the various school districts that the grist mill is available for tours with certain restrictions

**OSI Land Steward** - The only restrictions that are going to be is the number

**Bill Flaherty** - But any age limit

**OSI Land Steward** - I think so yeah

**Glennon Watson** - My guess is that this would be attractive to some elementary grades and perhaps the year that they study local history. It is not an awful lot that is going to be attractive in my opinion to high schoolers because there is not enough for them to see. And then there might be a group of people who just, who are adults or college students that may come as part of a research thing.

**Vincent Cestone** - This sewage treatment facility. Is this already in place

**OSI Land Steward** - Yes

**Vincent Cestone** - When was it completed? Approximately. It doesn't have to be exact

**OSI Land Steward** - Approximately 2004. What happened was we finished the building. And due to a communication mix up between the architect and the contractor and OSI, installing the septic system for the waste water treatment system was in a black hole for a while. So that the building was completed we

also finished the system.

**Vincent Cestone** - So your septic tank was installed in 2004

**OSI Land Steward** - Yes

**Joan Turner** - What made you then, what prompted you then to come before us

**OSI Land Steward** - We realized we needed a permit in order to have the office and run tours down there

**Vincent Cestone** - Any more questions from the board? Any comments from the audience? Ma'am please introduce yourself

**Michael Gage** - My name is Michael Gage. I live in that closest residence on Lower Station Road with my husband William \_\_\_\_\_ and my question is involves the extra parking. The way Lower Station Road goes there is a sharp right right in front of our driveway and then there is a sharp left. So that in itself is a dangerous turn but as I understand the bus \_\_\_\_\_. **(papers shuffling on the microphone...cannot hear)**

**Glennon Watson** - ...right in the vicinity of the treatment plant and the grist mill.

**Michael Gage** - And the guard rail that you would put in because our water system, a reservoir which is part of the Lower Garrison Landing water system is to the top of, no it is closer to Lower Station Road, but our boundary line is right at the brook there. So if any debris, rocks or anything came down, it would \_\_\_\_\_ our water system. So I would assume you know about that and take the steps to \_\_\_\_\_.

**Glennon Watson** - The guard rail is to keep the cars from going over the bank. So that is specifically, installing the guard rail is posts. The plan actually show 10 by 10 but they will be 8 by 8 with a wood plank bolted. 8 by 8 posts set about every 5 feet. A wood plank bolted to the, \_\_\_\_\_. It is simply the idea is to keep the road safe. If debris were to get over there, I mean it is a maintenance problem but it is not a big problem physically if you decided to step over the guard rail that would certainly be easy to do.

**Vincent Cestone** - Glen what is the grade of this road going down to the grist mill?

**Glennon Watson** - The grade here

**Vincent Cestone** - No. Coming down from Lower Station Road that

**Glennon Watson** - I have to look to tell you the truth.

**Vincent Cestone** - Is it steep, that's what I am looking for

**Glennon Watson** - I would certainly guess it would be in the 8 to 10 percent range. It's not terribly steep but it's got a definite slope. It is an uphill walk from Lower Station Road. There is a definite slope, it is not a level walk

**Vincent Cestone** - And as far as road maintenance, I am concerned about the winter plowing

**Joan Turner** - Salting

**Vincent Cestone** - Salting especially

**Glennon Watson** - I don't think

**OSI Land Steward** - We don't salt it

**Vincent Cestone** - If we put a condition in the resolution saying that you can't salt it

**OSI Land Steward** - Sure. No problem

**Vincent Cestone** - Any other questions from the audience?

**Joan Turner** - Well not from the audience, the easement now, you are coming in Lower Station Road, that easement, no that other smaller road between the two buildings. Between the two brown buildings

**Glennon Watson** - This

**Joan Turner** - Yes. What is that and where does it go? It is unclear on your site plan.

**Glennon Watson** - I've got to read the survey to tell you the truth

**OSI Land Steward** - That road that goes between the two buildings connects one hole of golf to another hole

**Glennon Watson** - But Ardenia Corporation was originally 80 acres roughly. 40 of it was deeded to the state and I believe the state has the right to access their property through this road.

**OSI Land Steward** - The state owns the first portion of the road coming from Lower Station Road. So we actually have an access easement

**Vincent Cestone - Ma'am**

**Michael Gage -** If you are just having tours, do you really need 8 parking places. I mean that is a lot of cars, a lot of idling especially if there is a bus dropping off and picking up and

**Glennon Watson -** That's not, I'm sorry I didn't mean to interrupt. That's not for the tours per se. We need to keep this one space free and available for the water treatment person who comes everyday. On a typical day the Land Steward will be there and perhaps one other person. On rare occasions and I venture to guess is one time a month, staffers and potential easement donors will come to the site and discuss the program and perhaps go off and take a look at the easement. And if there is some local business that OSI has to take care of, it can take care of it with a small group of people they might come and do that. But in the calculations comes the based on the square footage of the building and that is to fulfill the requirement of the code.

**Michael Gage -** So it would be carved out of the east side of the road there

**Glennon Watson -** Yes. These two spaces are accomplished very easily

**Michael Gage -** I walk there all the time

**Glennon Watson -** I'm sure. And that is actually on the service road. These will be put back into the hill. And that is where the major amount of disturbance is. And that is about 40 by 20. About 800 square feet. Maybe a little bit more than that.

**Vincent Cestone -** Any more comments from the audience?

**Joan Turner -** Staff meetings? About how many do you expect over the course of a year?

**OSI Land Steward -** You know, if we have a meeting that requires 6 people more than 1 a week, that is a lot. My guess is probably twice a month. And these would be, and if we have a meeting locally with landowners or with other organizations, but the extra spaces are really for if we have a meeting. It is a small building. We can't fit more than

**Joan Turner -** I know

**OSI Land Steward -** I don't live locally so chances are if we have one meeting at night in a year that would be a lot, or two. So there really won't be any non-work day hours.

**Michael Gage -** You can see out the building to our house during the winter.

You are not planning to pave that

**OSI Land Steward** - No. And we have one small exterior light right by the door. But that won't be left on at night.

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

**Byron Stitson** - Byron Stitson. I live in the neighborhood. I drove past there two or three times a week. I think that it is wonderful that it is being opened up to the public but I would like to share a concern that I think I have heard echoed from other people. That is a very dangerous spot down at the bottom where buses will be pulling up. And that road is quite steep to walk up. I guess my question is, is there some way and if this thing is used once a week, I think it would be a plus to the neighborhood but things change and if this thing was being used several times a day I think it would be a big detriment to the neighborhood and I think there would be significant safety issues and I am concerned about what happens to all our water supply because they also have offices down at the Garrison Landing. If this tank suddenly breaks, is there some way that we can limit the usage of it for tours? In other words could it be stipulated that there be tours just once a week? Is there something like that that could be acceptable for everybody so this will not turn into something that is going to have two tours a day all around the year? I mean, I tend to agree with you, I don't think it after the initial rush I don't think there is going to be a lot of people going there. But one never knows and you never know how this structure could evolve. It could become a museum, featuring something else and then all of a sudden I am afraid that the flood gates have opened up

**Joan Turner** - How do you feel about limiting tours?

**OSI Land Steward** - I think I could agree to limit tours to one bus oriented tour a day. I think that would be more than enough. I think the concern is if you are having a lot of school buses come up that road, if you have a van a van can come up and turn around there is no discharging of passengers down at Lower Station Road. If you have a bus then you will have to drop people off at Lower Station Road. So I, the building is very small. It doesn't have handicap access to the second floor, the third floor is essentially off limits to the public because the stairs are very steep and the fire department will not allow us to have people on the third floor

**Joan Turner** - It is not the building that is the concern, it is the drop off

**OSI Land Steward** - So I think that a reasonable limit would be a limit on the school bus drop off at Lower Station Road. I am not sure there is a real need for smaller vehicle tours to the building because those can pull all the way in and turn around.

**Bill Flaherty** - But surely we can put those provisions in the draft resolution limiting the number of tours to say one a day but from a practical standpoint, who is going to enforce it? How are we going to monitor it?

**Glennon Watson** - That's a perennial question around Philipstown without going into the philosophy of that you have a statement of use in the packet that you require that speaks to those specifically and if you want that statement of use modified to reflect, and you should have it modified to reflect any conditions, we would be happy to do that. That is your tool.

**Joan Turner** - In addition to the change in the statement of use we can also put the conditions on the granting of the special use permit too

**Glennon Watson** - Absolutely

**Joan Turner** - And the only thing that I can think of that would make me feel more comfortable is when you are discharging a school bus for example that there were some sort of signage either on both sides of it so people would slow down

**Glennon Watson** - But school buses also have the lights

**Joan Turner** - Yeah I know. People come zipping around that curve

**Glennon Watson** - I think honestly you get more of a view of this in terms of distance than has been characterized here

**Vincent Cestone** - I would like to see part of the resolution that buses will be instructed not to park there just to drop off.

**Glennon Watson** - The Planning Board made the same comment and we have no objection to that

**Vincent Cestone** - Any more comments from the board? Any more comments from the audience? With that I would entertain a motion to close the public hearing

**Bill Flaherty** - I so move

**Vincent Cestone** - Do I have a second

**Lenny Lim** - I'll second

**Vincent Cestone** - All in favor

**All Board Members** – aye



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

**Bill Flaherty** - I'll second

**Vincent Cestone** - All in favor

**All Board members** - Aye

**Vincent Cestone** - Len?

**Lenny Lim** - I vote in favor

**Bill Flaherty** - I vote in favor

**Joan Turner** - I do too

**Vincent Cestone** - And so do I

**Joan Turner** - And we can talk about the conditions when we read the resolution

**Vincent Cestone** – yeah. Next item on the agenda is MHCP Realty. A continuation of a public hearing.

**(shuffling papers by microphone...cannot hear)**

**Vincent Cestone** - ...this is from the center line of Route 9.

**Glennon Watson** - Yes. There is a double setback requirement from Route 9. One is from the edge of Route 9 which we meet. And the other is from the centerline of Route 9 which is supposed to be 100 feet. We are asking for a variance to allow us to be as close as 75.6 feet from the center which will put us 50 feet from the edge of the road. The edge of the road being legal. That was the question of, we had spoken about alternates turning the building, which in our view as we explained would expose more of the parking area to view from Route 9 and would also precludes the possibility of interconnection between the two pieces of property which are independent but Mr. Giachinta who owns MHCP Realty has an interest in this other piece. And a lot of the truck traffic that we anticipate will require connection between these two pieces of property. By putting the building \_\_\_\_\_ towards Route 9 we give a full face front view to Route 9. We have provided an opportunity for landscaping. We have just about enough maneuverability which is effective by this additional setback from the residential district boundaries and we can make the connection between the two facilities thus limiting the number of trips on to Route 9. That was the crux of it. I believe that you had not heard from the planning board. I don't know whether you got those, but I did make copies of their minutes and if you would

**Joan Turner** - I went on line and read them too

**Glennon Watson** - And if you look on page 21 you will see there was a positive recommendation with regard to this alternative that we are proposing. We believe this gives us the best opportunity to take advantage of the property. I know I am repeating myself but hide the operation from public view and an opportunity to put in landscaping and I think if you look at the mature landscaping that \_\_\_\_\_ that Mr. Giachinta did a number of years ago, you will see that it is effective and it is good looking. And if you see the more recent one down at the Auto Body shop that he built a couple of years ago, you will see that is a little more formal view with some professional help and that works. And in here we are taking the same approach, professional lay out of the landscaping to compliment the building, present a good face to Route 9 to hide the activities. And I don't have an awful lot more to add.

**Vincent Cestone** - Just a question, if we deny you, as a hypothetical, what would you do?

**Glennon Watson** - What would we do? I don't rightly know. We know the building can't be any smaller as a practical matter. We would probably have to look for another piece of property

**Mr. Giachinta** - No. I could cut the blueprint down a tiny bit, not a lot. I'd turn it sideways and the garage doors would face the north side. And you wouldn't have any kind finish on the shorter side. It wouldn't be very attractive. To be honest with you, I have spent a lot of time and a lot of money to come here to do it this way so I can do it right. I basically could have set it up that way originally, turn it

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

**Vincent Cestone** - any more questions from the board?

**Bill Flaherty** - Yeah I have a question. In going through the minutes of the last meeting, I noticed Mr. Watson you indicated that the property was approximately  $\frac{3}{4}$  of an acre or a little more. And later on further in the conversation you state that you further thought that property was 1.1 acre

**Glennon Watson** - I think I may have corrected myself yes

**Bill Flaherty** - I think it is more rightfully so because the zoning there. Furthermore you indicated also that there were no parking of vehicles anywhere outside that facility. The parking lot would not be used as an overnight parking lot for any vehicle.

**Glennon Watson** - There are employees during the day

**Bill Flaherty** - During the day

**Glennon Watson** - Yeah but the trucks and stuff will be kept inside

**Bill Flaherty** - During the day, weekends there will be no evidence of any trucks. There will be no evidence of any vehicles whatsoever parked in that parking lot.

**Glennon Watson** - Right

**Bill Flaherty** - Now I noticed, I went down to your facility down in Garrison today and I noticed that you have 7 vehicles parked in that facility unlicensed. You've got storage there too. There is a boat there. There is structures, steel structures that are rather large which are also stored there. And a multitude of other things. What do you propose, you are contemplating on selling that property. What do you propose to do with all the vehicles that you have in your facility in Garrison? What are you going to do with them?

**Mr. Giachinta** - Which vehicles?

**Bill Flaherty** - Which vehicle? The vehicles you have presently parked in the Garrison facility

**Mr. Giachinta** - Some of the cars belong to the employees

**Bill Flaherty** - Yeah I know that. I think there were 2 or 3 that were licensed there. But there were 7 or 8 without licenses

**Mr. Giachinta** - I lease a certain area there to a towing company. So he brings them in and they sit for a short period of time and then he takes them out. They don't even belong to me. They will be gone. I can have them gone tomorrow.

**Bill Flaherty** - Well they are not going to be transported up to the facility up here

**Mr. Giachinta** - We don't have the room there. No.

**Bill Flaherty** - And there is not going to be any outside vehicles parked there overnight or on weekends?

**Mr. Giachinta** - I can't. You know what. I can't say yes and I can't no.

**Bill Flaherty** - Well I will tell you right now

**Mr. Giachinta** - Because what happens is sometimes my drivers take the trucks home at night because they may be on the other side of the river where one of

them lives. So if he is over there, instead of him bringing the truck back he may take the truck home and his car might get left out at night

**Bill Flaherty** - Well I tell you right now, if this were the resolution, if we approved the resolution that would be one of the terms, the conditions, which I would vote for and against this particular variance because Route 9 today Joey as you probably know, it is a used car lot on Route 9 which essentially they are nothing more than glorified junk yards. The Classy Chassy is right across the street from there. I mean there is all kinds of automobiles. There are tanker trucks parked there. You've got one down at your property in Garrison right now.

**Mr. Giachinta** - That is my cement trailer.

**Bill Flaherty** - Well it happens to be down there every day that I've been down there

**Mr. Giachinta** - It goes out at night. My trucks are out 24 hours a day. He goes out at night.

**Bill Flaherty** - Because I would object to those kinds of vehicles

**Mr. Giachinta** - And that's why I can't agree to that because I can't, I just can't put myself in that position. I can't agree that there won't be anything parked outside there at night.

**Glennon Watson** - Let's make sure we are talking about the same thing. The trucks that are part of the business will be parked inside

**Mr. Giachinta** - Yes

**Glennon Watson** - Occasionally personal vehicles might be left outside in these parking spaces

**Mr. Giachinta** - Yes

**Glennon Watson** - And that might be a pick up truck or something like that but that is what this area is for and that is why it is densely screened. As far as the big trucks that are supposed to be inside, they will be kept inside

**Mr. Giachinta** - Sometimes things happen and one might get left out, a forklift or a loader might get left out there. I can't

**Joan Turner** - The restriction is onerous. I think that is what he is saying. They are running a business and there is an occasional time when you've got to leave it out. So how do you strike the balance between what his business needs are and what Bill is talking about

**Mr. Giachinta** - You are talking about enforcement, I can say yes to that and it may not happen.

**Joan Turner** - But realistically

**Mr. Giachinta** - I'm trying to be honest

**Bill Flaherty** - Well I understand that and you know enforcement here is another thing. But one of the provisions I would want to put in a draft resolution would be to restrict that kind of thing and have our Code officer visit your facility on an on-going basis to determine that you are in compliance with the provisions of the resolution. Now down in Garrison you said you lease, you have unlicensed vehicles some of them are rusted out, they're wrecks to say the very least. I mean they are not very attractive

**Mr. Giachinta** - Come back in two days and they will be gone

**Bill Flaherty** - I was down there twice, this afternoon and

**Mr. Giachinta** - Can you see them from the highway

**Bill Flaherty** - No but you can

**Mr. Giachinta** - You can't see them from the highway but you have to enter into my property to see

**Bill Flaherty** - You can see them from Old West Point Road

**Joan Turner** - But Bill would it really be offensive to you if occasionally one of his trucks was left out overnight

**Bill Flaherty** - No I have no problem with that but I would not want it to be a permanent fixture on that property. What we have for example on Route 9 on the west side as you from Dutchess County to Putnam County, there is a graveyard of all old trucks there. You can't see them in the summertime but you can sure see them in the winter time. And there is 8 or 9 of them right now all of which are, I don't think are serviceable or even operational. But I don't think the intent of the planning board when they gave their, that particular facility their approval to have those vehicles parked there permanently day in and day out year in and year out ever since the approval was given.

**Joan Turner** - I understand that but you are talking about an enforcement issue with another company and this gentleman is here before us with the possibility that he may have a pick up truck or a car from his drivers staying overnight because the truck is on the other side of the River and occasionally maybe one

of his, and I think that is part of normal business operations

**Bill Flaherty** - Well I agree with that

**Joan Turner** - And so I think we should somehow come to an understanding to allow him to do business

**Bill Flaherty** - If there is an unlicensed vehicle is parked in that facility

**Joan Turner** - I agree with you

**Tim Pagones** - We can put a condition in that no unlicensed or unregistered vehicle will be allowed on the property and he is going to do all that is possible

**Mr. Giachinta** - I don't have a problem with that

**Joan Turner** - That is normal business

**Tim Pagones** - I mean realistically if the guy is going to take a truck overnight there is no reason why he can't park his vehicle in the bay

**Bill Flaherty** - But 7 or 8 unlicensed vehicles

**Tim Pagones** - No unlicensed vehicles will be

**Bill Flaherty** - On Joey's property down in Garrison right now

**Joan Turner** - That is a separate tow truck issue

**Tim Pagones** - No unregistered vehicles or uninsured or untagged vehicles are on the property for storage. And use every method possible to ensure that

**Joan Turner** - Just say in the resolution normal business use with blah blah blah

**Mr. Giachinta** - I don't have a problem with that

**Bill Flaherty** - Another question I have is, I tried to determine how many variances we have given on Route 9 all within the 100 foot setback. I couldn't find anything on that.

**Joan Turner** - We don't even want to go down that road Bill.

**(Board members talking among themselves)**

**Bill Flaherty** - It's not a common thing. I couldn't find anything and I was wondering if anybody else would remember what variances have been given on

Route 9

**Vincent Cestone** - Plus you have all the pre-existing ones that are right on Route 9

**Bill Flaherty** - That's correct

**Joan Turner** - And then we have the nonconforming that are being built and expanded which don't even come before us. So do you want the illegal ones or the legal ones Bill?

**Glennon Watson** - And I think you really need to keep in mind when you look at \_\_\_\_\_, that necessarily had to also involve a setback variance from the side of Route 9. Just had to. Because certainly there isn't a 50 foot setback from the property line to Route 9 on that site. Here we are maintaining the 50 from the property line and then there is a little bit more green in front of that but, there is a significant difference.

**Vincent Cestone** - Any more questions from the board? Any comments from the audience on this? I'll make a motion to close the public hearing. Do I have a second?

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

**Joan Turner** - second

**Vincent Cestone** - All in favor

**All Board Members** – aye

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

**Bill Flaherty** - I'll second

**Vincent Cestone** - All in favor

**All board members** - Aye

**Vincent Cestone** - Len?

**Lenny Lim** - I am voting in favor, he has done a good job on all his other properties up there, screening them and making them look a lot better. I vote in favor.

**Joan Turner** - I'll vote in favor also

**Vincent Cestone - Bill?**

**Bill Flaherty - I vote to deny**

**Vincent Cestone - And I vote in favor**

**Tim Pagones – June 19<sup>th</sup>**

**Vincent Cestone - Review of minutes of May 15<sup>th</sup>. Any additions or corrections?**

**Joan Turner - No**

**Vincent Cestone - I make a motion to accept the minutes as submitted. Do I have a second**

**Joan Turner - So moved**

**Vincent Cestone - All in favor**

**All Board Members – aye**

**Vincent Cestone - Okay review for completeness. Robert Dee II.**

**Tim Pagones - What have you got? You got the survey?**

**Robert Dee - New plans with the changes you guys requested at the last meeting. The second floor addition, the pre-existing nonconforming.**

**Vincent Cestone - We are not doing a public hearing right now we are just making sure you have everything here. Tim you had some issues**

**Tim Pagones - I had no dimensions on the plans and the proposed was not shown on the survey**

**Robert Dee - The survey is there,**

**Tim Pagones - Complete**

**Joan Turner - Wait a minute. What is this for? What applicant**

**Tim Pagones – Dee**

**Joan Turner - Before it is complete, let us just look at the provision of the code they are looking relief from. Do we have section 175.82 as a nonconforming dwelling? On provisions of the zoning code involved you are also asking relief from all of the nonconforming sections of the code**



**Robert Dee** - I don't understand your question

**Joan Turner** - Here is our code book. You have a nonconforming house

**Robert Dee** - A pre-existing nonconforming

**Joan Turner** - So then under the code 175.82 are provisions of the code that you need to ask relief from because you cannot enlarge a nonconforming

**Robert Dee** - We are not enlarging

**Joan Turner** - You are not putting a second story on

**Robert Dee** - Directly on top

**Joan Turner** - That's not called enlarging

**Tim Pagones** - You are enlarging. You are not making it wider

**Joan Turner** - On the same footprint, but you are still enlarging. So in order for your application to be complete, you need to say that you need relief from 175.82

**Robert Dee** - We didn't say that in the

**Tim Pagones** - No. In #3 just write it in

**Joan Turner** - Who helped you with your application

**Robert Dee** - No one. I did it myself

**Joan Turner** - Doesn't the building inspector help you

**Robert Dee** - I talked to him. I didn't really get much guidance from him

**Vincent Cestone** - We will make the modification here so that it is complete

**Joan Turner** - I just wanted to know if you did it by yourself, it is not a critique

**Robert Dee** - He handed me the application

**Joan Turner** - It would be helpful if he did

**Tim Pagones** - Okay you can't get it in for the 19<sup>th</sup>

**Vincent Cestone** - I was talking,

**Tim Pagones** - I am not here July 3<sup>rd</sup>

**Vincent Cestone** - What I was thinking of doing since July 3<sup>rd</sup> is just before the July 4<sup>th</sup> holiday, what if we changed the meeting we have from the 19<sup>th</sup> to the 26<sup>th</sup> and then jump to the 10<sup>th</sup> of July. Does that make sense?

**Tim Pagones** - I guess I would not suggest that because what do we have for the 19<sup>th</sup> already?

**Kim Shewmaker** - We have 3 resolutions

**Tim Pagones** - That is the only thing we have scheduled?

**Kim Shewmaker** - That's it

**Vincent Cestone** - Does that make sense to the board? Instead of having a meeting on the 19<sup>th</sup> of June have it on the 26<sup>th</sup> of June so that we can get all these things in for public hearing and then skip the meeting on July 3<sup>rd</sup> right before the July 4<sup>th</sup> holiday and then have it on the 10<sup>th</sup>

**Joan Turner** - Because I will be away for the 21<sup>st</sup> one

**Tim Pagones** - Now we will have your hearing now June 26<sup>th</sup>

**Robert Dee** - Okay thank you very much

**Vincent Cestone** - Okay. Harnett.

**Tim Pagones** - Harnett. Did we get a new survey and Deed?

**Kim Shewmaker** - No

**Tim Pagones** - Can you write them a letter and let them know. So Harnett is still incomplete.

**Vincent Cestone** - Okay. Sussmeier.

**Tim Pagones** - Sussmeier. I've received it and

**Vincent Cestone** - I received it too

**Tim Pagones** - So that, he sent the survey. That's complete. I spoke to him today and I told him that he didn't have to come here that we can now refer it to the planning board.

**Vincent Cestone** - Okay. I'll make a motion to refer Sussmeier 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** - Carlucci.

**Tim Pagones** - Did we get a new survey

**Kim Shewmaker** - No

**Tim Pagones** - So it is still incomplete.

**Vincent Cestone** - Is anyone for Carlucci here?

**Tim Pagones** - So we have to send him a letter because he needs a survey. The deck was hand drawn on the survey.

**Vincent Cestone** - Okay. Joseph Ressa. Hi how are you doing. We are just reviewing for completeness and we will give you a date for a public hearing

**Tim Pagones** - I have that the application is complete.

**Vincent Cestone** - Okay. We are going to have a public hearing on June 26<sup>th</sup> for you. That's when you have to present what the issues are and that's when we will ask you a whole bunch of questions like we did tonight at the other public hearings. June 26<sup>th</sup> you have to be here

**Joseph Ressa** - June 26<sup>th</sup>

**Tim Pagones** - Take care

**Joan Turner** - When is he on for

**Lenny Lim** - June 26<sup>th</sup>

**Vincent Cestone** - Williams

**Tim Pagones** - Morton Williams. I spoke to, first of all, I guess for the record they are, is Ms. Parks here

**Ms. Parks** - Yes

**Tim Pagones** - I represented Ms. Parks. Not criminally. So I just want to put that on the record. If the board has a problem she is here for the applicant. She was a client. Her husband and her were a client of mine when they built that house and I represented them purchasing it. So I did a good job for them and I will do a good for you. So I just want to disclose that and if you have a problem with me handling her file, or this file that she is a representative

**Vincent Cestone** - I think we should say off with his head. What do you think?

**Tim Pagones** - There is no conflict of interest. She is the representative for them and I am just disclosing it

**Joan Turner** - There's nothing. Thank you for your disclosure

**Tim Pagones** - I just wanted to put that on the record. Okay so I reviewed it. The application is complete. You can set it down for a hearing

**Vincent Cestone** - The 26<sup>th</sup>

**Tim Pagones** - June 26<sup>th</sup>

**Vincent Cestone** - And now we have 3 resolutions

**Tim Pagones** - American Tower. That is the last one for completeness. It is complete. We can ship it to the Planning Board.

**Kim Shewmaker** - But I need more copies for the Planning Board. I only had 2 extra copies. So you will have to send them to Ann. I am going to leave the file downstairs for her with the letter. But you will have to send Ann Gallagher, how many copies?

**Tim Pagones** - 13

**Kim Shewmaker** - so I need 11 more

**Mr. Gaudioso** - I will check with Ann

**Kim Shewmaker** - So the letter will be down there tonight with the 2 extra copies I had

**Vincent Cestone** - And the only thing that is missing is that we had asked that you consider using a distributed antenna system that is going to have to be presented when you come back for a public hearing

**Mr. Gaudioso** - I understand that

**Tim Pagones** - So right now it goes to the planning board

**Vincent Cestone** - I'm just warning him

**Mr. Gaudio** - I appreciate it

**Vincent Cestone** - With that I make a motion to refer American Tower application to the planning board. Do I have a second?

**Lenny Lim** - I'll second

**Mr. Gaudio** - Just want to make sure that it is all three

**Vincent Cestone** - Yes. All in favor

**All board members** – aye

**Tim Pagones** - Now what all three

**Mr. Gaudio** - For some reason, I think I know the reason. There are three applications. The other one had 3 listed

**Tim Pagones** - This one only had one. So there are three for this then

**Mr. Gaudio** - Same thing. American Tower, Cingular and Omnipoint

**Vincent Cestone** - What we are going to do is break them up into 3 different numbers

**Mr. Gaudio** - That's fine

**Tim Pagones** - And you are representing all three

**Mr. Gaudio** - I am representing American Tower and Omnipoint. John \_\_\_\_\_ is representing

**Vincent Cestone** - You will need separate application numbers because we treat them separately. Just like we did the last time Kim

**Kim Shewmaker** - I know, but if they paid the fee I think downstairs would have given them a number already.

**Vincent Cestone** - Excuse me

**Kim Shewmaker** - If the fee had been paid for each individually, I think Marianne

would have assigned them a number. I don't know if the individual fees had been paid for the individual carriers

**Vincent Cestone** - We can do that. If you want I can give the building department a call and ask them to break it up

**Mr. Gaudio** - Do you need any additional applications or anything

**Vincent Cestone** - You've already been referred to the planning board, but when the planning board gets it it will be one package, but when it comes back to us there will be three separate ones. We don't like to have these clustered together like that.

**Mr. Gaudio** - Thank you very much

**Tim Pagon** - So I guess Mr. Gaudio when we get the numbers, when you write correspondence put which ever ones you got. If you got two or three out of this one, put the numbers appeals numbers on it so at least I know what's going on

**Vincent Cestone** - Mr. Gaudio, three application fees have been paid to the Town

**Kim Shewmaker** - That's what I am getting at

**Vincent Cestone** - I'll check with the building department

**Tim Pagon** - All right. Evelyn Woods here

**Joan Turner** - Who is Evelyn Woods?

**Tim Pagon** - Evelyn Woods speed reading

**Joan Turner** - Yeah yeah yeah. I got it. I got it.

**Tim Pagon** - Is anyone here? Mr. Noviello?

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #\_761; Applicant: Matthew A. Noviello for Joseph Tuana  
Area Variance**

Date: June 5, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on

November 7, 2005, February 13 and April 17<sup>th</sup>, 2006 to hear the appeal of Matthew A. Noviello on behalf of Joseph Tuana from the denial of a building permit for an existing structure having insufficient setbacks. The property is located on 996 old Albany Post Road in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 5<sup>th</sup>, 2006, upon all the discussion that preceded it, including the public hearings, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

**THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF GRANTING THE APPEAL OF MATTHEW A. NOVIELLO ON BEHALF OF JOSEPH TUANA FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR AN EXISTING STRUCTURE HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS<sup>1</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.**

**CONDITIONS OF THE VARIANCE:**

1. The structure granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structure is authorized without Zoning Board approval as needed.
2. The setback from the side yard for the structure shall not be less than 19.8 ft. (a variance of 10.2 ft.).
3. The structure shall not be further converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal, plastic or asphalt shingles.

---

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

Any other conditions?

4.

---

---

---

---

5.

---

---

---

---

FINDINGS OF FACT:

1. The Applicant made this appeal (#761), dated December 13, 2004, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for an existing structure having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

Kim will attach that

2. The property, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the from side or rear property lines.
3. The Applicant acquired title by a deed. The structures at the property, appear on a map dated January 17,2003, last revised November 8, 2004, as prepared for Joseph A. Tuana by Matthew A. Noviello, P.C. in Carmel N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on January 3,2005 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the application complete and a properly noticed public hearing was scheduled for April 4<sup>th</sup>, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.



5. The Board met on April 4<sup>th</sup>, for the purpose of conducting the public hearing. The hearing was adjourned several times in order to clarify questions the Board had in regards to the subdivision. The applicant even appeared before the Philipstown Planning Board and was sent back to the Zoning Board for the variance. At the last public hearing, except for the Board Members and the Applicant, no members of the public attended the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

## FINDINGS AND CONCLUSIONS:

### Adverse Effects on the Neighborhood

1. All the structures on the property have been in the same location for many years. The applicant had the property subdivided by deed and an issue arose as to the legality of it. The applicant is currently before the Town Planning Board but no matter what happens with the subdivision the applicant still needs a variance for the structure. The structure has been in existence for some time so therefore the requested variance will not adversely affect property values and it will not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structure will not be obtrusive. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

### Feasible Alternatives

2. Due to the fact that the structure is already in existence, the Applicant can not keep it without coming into conflict with the Philipstown Code. Given the amount of intrusion into the setback and the fact that it has been in existence for some time, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

### Extent of Variance

3. The Applicant requests a variance of 10.2 ft. from a set back which

should be 30ft.

Effects on Physical/Environmental Conditions

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

Self-created Hardship

- 5. The need for this variance is not self created<sup>2</sup>. Application was made to the Building Department for permits.

THE BALANCING TEST:

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

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 5<sup>th</sup> day of June, 2006, the results were as follows:

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

---

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

## ATTENTION APPLICANTS

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

**Kim Shewmaker** – I have a question. Sorry. #4 under Findings and Facts, 2005 or 2006?

**Tim Pagones** - 2005. It goes way back

**Kim Shewmaker** – Okay. Thank you.

**Vincent Cestone** - I will make a motion to accept the resolution as read

**Joan Turner** - So moved

**Vincent Cestone** - All in favor?

**All board members** - Aye

**Vincent Cestone** - Straw poll

**Tim Pagones** - Wait

**Lenny Lim** - It's not a straw, it's a regular vote

**Tim Pagones** - Vote not straw poll

**Vincent Cestone** - This is a regular vote. Did I say straw poll

**Joan Turner** - Yes you did

**Vincent Cestone** – sorry

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

**Joan Turner** - I'll concur

**Vincent Cestone** – Bill?

**Bill Flaherty - I vote to approve**

**Vincent Cestone – And so do I**

**Tim Pagonis -**

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #775; Applicant: Janine & Matthew Mastrantone  
Area Variance**

**Date: June 5, 2006**

The Philipstown Zoning Board of Appeals conducted a Public Hearing on October 17<sup>th</sup>, November 7<sup>th</sup>, 2005 and January 23<sup>rd</sup>, February 27<sup>th</sup>, and March 6<sup>th</sup>, 2006 to hear the appeal of Janine & Matthew Mastrantone from the denial of a building permit for construction of an addition to a pre-existing nonconforming structure having insufficient setbacks. The property is located on 1862 Route 9, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 5<sup>th</sup>, 2006, upon all the discussion that preceded it, including the public hearings, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

**THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF DENYING THE APPEAL OF JANINE & MATTHEW MASTRANTONE AN AREA VARIANCE TO CONSTRUCT AN ADDITION TO THE PRE-EXISTING NONCONFORMING STRUCTURE WITH INSUFFICIENT SETBACKS, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.**

**FINDINGS OF FACT:**

1. The Applicant made this appeal (#775), dated July 14, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of an addition to a pre-existing nonconforming house. The basis of the

denial was insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach that

2. The property is located on 1862 Route 9, Garrison in a R-80 District in the Town of Philipstown. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the side yard and 40 ft. from any other street line.
3. The Applicant acquired title deed. The structures and proposed improvements at the property, appear on a site plan dated June 2005, last revised December 2005, as prepared for Matthew & Janine M. Mastrantone by LRL Designs in Garrison N.Y.
4. The Board initially reviewed the Application materials at its regular meeting on September 12, 2005 and again on September 19<sup>th</sup>. The Application was deemed complete and a public hearing was scheduled for October 17<sup>th</sup>, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
7. The Board met on October 17<sup>th</sup>, for the purpose of conducting the public hearing. During the public hearing it was brought out that the applicant currently had violations pending in regards to the property. William Morthorst, Christopher Simone and Alicia Tuttle, all neighbors of the applicant expressed concerns about the proposal and the fact that the applicant had a history of violations that had yet to be resolved. The public hearing was duly conducted and adjourned several times in order for the applicant to provide additional information concerning remedying the violations as well as encroachments on the neighbors yards and alternative designs to the design that would not require variances. Following the close of the hearings, the Board engaged in further public deliberations and a straw poll motion was entertained to deny the requested variance.

#### FINDINGS AND CONCLUSIONS:

##### Adverse Effects on the Neighborhood

1. The requested variance is for construction of a proposed addition to the pre-existing nonconforming structure that had already received a

variance to have a previous addition built. The proposed addition is contains overall dimensions of 19' x 54 ft. The proposed location of this structure is within the 30 ft. setback from the side yard as well as about 10 ft. within the setback from other roads. The required setback is 40 ft. The Board finds that the structure would be obtrusive in the proposed location because it would need a variance on both sides. Additionally, the original house was built in such a location the it is extremely close to the property line and in fact encroaches on some of the neighbors property. The "neighborhood" consists of other single family homes but none of the structures are in as close proximity to the side yard or road as the proposed house is. The proposed addition would also almost double the size of the current structure and would appear out of place in such a setting. A variance which would allow a rental property to be so close to both setbacks has the potential to also set a dangerous precedent<sup>3</sup> and the cumulative impacts from such a variance may cause far reaching problems within the community resulting in a proliferation of additions being built within more than one setback.

Some members of the public spoke at the hearings. Opinions of neighboring property owners, whether supportive or in opposition, are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

#### Feasible Alternatives

2. Various alternatives were discussed at the hearing including buying property from one of the neighbors or designing the building in such a manner as to eliminate the need for one or both of variances. The property can accommodate some type of addition without coming into conflict with the Code, thus eliminating the need for the variance. The Applicant has the option of constructing the proposed addition in a less obtrusive way. Additionally, since the property is for rental purposes, the applicant can even keep it as is.

#### Extent of Variance

3. The required setback is 30 ft. from the side yard setback and 40 ft. from the other road setback. The requested variance from the road is 10 ft. and a variance is needed for the side yard also.

---

<sup>3</sup> A Zoning Board may be ordered by the courts to issue variances and/or permits based on precedent. See, Knight v. Amelkin, 68 NY2d 975 (1986).

Effects on Physical/Environmental Conditions

4. The proposed variance has the potential to adversely impact the property by over burdening it. The property consists of a rental home and has already received a prior variance. Any addition should be built so as to fit the land. Additionally before any addition is done, the applicant should clear up any violations and encroachments that are on the neighbors property. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have a detrimental effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is self created<sup>4</sup>. The Applicant proposes to construct an addition to a pre-existing nonconforming structure that is used for rental purposes.

THE BALANCING TEST:

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

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for denial of the requested variance was put to a vote on roll call of the Board on the 5<sup>th</sup> day of June, 2006, the results were as follows:

Vince Cestone, Chairman	Voting __ denial of the variance
Victor Carlson, Member	Voting __ denial of the variance
Leonard Lim, Member	Voting __ denial of the variance
Joan Turner, Member	Voting __ denial of the variance
Bill Flaherty, Member	Voting __ denial of the variance

---

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

**ATTENTION APPLICANT(S)**

**FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS YOUR RESPONSIBILITY. ALL NECESSARY APPROVALS AND PERMITS MUST BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.**

**Joan Turner** - I just have one change. The third page, go down 12 lines and the 11<sup>th</sup> line "The proposed addition would also almost double the size of the current structure" and I would like to cross out "and would appear out of place in such a setting" and add "and further increase the nonconforming status of the house".

**Tim Pagones** - Okay

**Lenny Lim** – good

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

**Joan Turner** - Second

**Vincent Cestone** - All in favor

**All board members** - Aye

**Lenny Lim** - I vote to deny

**Joan Turner** - I vote to deny

**Bill Flaherty** - I vote to deny

**Vincent Cestone** - And so will I

**Tim Pagones** - Omnipoint.

**David Brower** - Which one was that that you just denied

**Tim Pagones** - That was Mastrantone

**Tim Pagones** - All right

RE: **DECISION AND FINDINGS OF THE PHILIPSTOWN ZONING BOARD OF APPEALS**  
Appeal #772; Applicant: Omnipoint Communications Inc.



**Special Use Permit** for co-location of 6 panel antennas and communication equipment on an existing structure

Dated: June 5, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on November 7<sup>th</sup>, 2005, January 23<sup>rd</sup>, February 13<sup>th</sup> and March 20<sup>th</sup>, 2006, to hear the appeal of Omnipoint Communications Inc. for a special use permit to allow for co-location of 6 panel antennas and communication equipment on an existing "stealth" tree monopole. The property is located on 1924 Route 9, Garrison, in the Town of Philipstown, Putnam County, New York.

At the public meeting of the Board on June 5<sup>th</sup>, 2006, upon all the discussion that preceded it, including the public hearing, all prior public meetings, site visits undertaken by individual Board Members, and a review of all exhibits and submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

THE APPEAL OF OMNIPOINT COMMUNICATIONS INC., (#772) FOR A SPECIAL USE PERMIT TO CO-LOCATE SIX PANEL ANTENNAS ON AN EXISTING STRUCTURE (TREE MONOPOLE) AND RELATED BASE EQUIPMENT IS HEREBY GRANTED WITH THE FOLLOWING CONDITIONS, BASED ON AN EVALUATION OF THE APPLICATION IN LIGHT OF THE STANDARDS AND CONDITIONS ENUMERATED IN THE PHILIPSTOWN CODE FOR THE ISSUANCE OF SPECIAL USE PERMITS AND FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE THE FINDINGS OF THIS ZONING BOARD OF APPEALS.

THE CONDITIONS<sup>5</sup> OF THE SPECIAL USE PERMIT:

\_\_\_\_\_

5

Town Law 274-b (4) authorizes the Zoning Board to impose "reasonable conditions and restrictions as are directly related to and incidental to the proposed special use

The Board hereby finds that the following conditions are reasonable and imposed for the purpose of minimizing any adverse impacts on the neighborhood or community:

- A. The structures on the subject premises granted conditional special use permit by this decision shall not be further enlarged except in accordance with all applicable provisions of the Philipstown Code and shall remain in the configuration as shown on the Applicants' maps and plans. No further enlargement or reconfiguration of the structures is authorized without the required approvals.
- B. The equipment buildings shall be used only for the purposes enumerated in the application materials and shall not be converted to any other use without compliance with applicable provisions of local, regional and/or state laws.
- C. The applicant must immediately remove the antennas and/or equipment building upon obsolescence and/or discontinuance of use and applicant must thereafter reclaim the site or portion thereof and return it to its original natural state.
- D. The applicant shall perform an emission test as well as a complete safety inspection of the communications tower yearly. The safety inspection shall consist of, but not be limited to the items enumerated in section 175-49.10(F)(5) of the Town of Philipstown Code. Said results shall be given to the building Inspector within thirty (30) days of the test being completed.
- E. The applicant shall post a bond sufficient to provide for the removal or repair of the antennas and building with the Building Department pursuant to section 175.49(t) of the Town of Philipstown Code. Said amount should not be less than \$25,000.

detailed in the set of plans provided to the Philipstown Planning Board or provide the screening contained in the letter March 28<sup>th</sup>, 2006 . (**Exhibit "A"** )The proposed screening shall be installed either on the applicants property

---

permit."

or on Michael Kellys' property. Additionally all screening shall be installed before any C/O is issued unless due to the time of year preventing planting.

**Tim Pagones** - Just to explain what that is is the plans to the planning board is where all the trees are going on the property

**Joan Turner** - The site plan

**Tim Pagones** - The site plan. If for some reason the property owner didn't allow them to put the trees towards the fence line or the property line, there was a letter dated March 28<sup>th</sup> to Mr. Kelly saying we are going to put 50 trees here and do this and it was over \$8,000. But whichever they do all screening shall be installed before any CO is issued unless do to the time of year preventing the planting.

**Vincent Cestone** - Let me check, I would like to change that. We have until November to plant trees

**Tim Pagones** - I don't know. I am not an arborist.

**Vincent Cestone** - So before the CO, take out "unless...", and if there is an issue they can come and ask for an extension.

**Tim Pagones** - So just take out "unless due to the time of year preventing planting."

**Vincent Cestone** - Yes

**Joan Turner** - I don't think you want to plant during the summer though.

**Vincent Cestone** - They have until November

**Joan Turner** - So they have fall planting. Well that's up to them. But I hope they wouldn't plant in the summer and have them all die because they are not being watered.

**Vincent Cestone** - Exactly

**Tim Pagones** - Well they have to maintain them also. They have to install and maintain.

**Bill Flaherty** - I would like to make a note that it might be appropriate that with prior, with Mr. Kelly's approval that such planting be planted on his property.

**Tim Pagones** - Well he has already seen the letter. He had to sign off on it

**Bill Flaherty** - Oh he signed off on the letter? Do we have a copy

**Tim Pagones** - I have a copy

**Bill Flaherty** - You have a copy. Because the way this is written it is a unilateral thing.

**Vincent Cestone** - But he does mention contained in the letter of March 28<sup>th</sup>.

**Tim Pagones** - Willowridge Inc. It was signed by Mr. Kelly. I don't have one signed. You received the letter and you agree to its contents?

**Mike Kelly** - Yes.

**Vincent Cestone** - Just for the record Mr. Kelly agreed that it was signed.

**Tim Pagones** – okay

- G. The applicant shall pay any and all fees incurred by the Town to the Town's consultant in regards to reviewing this application. Said payment shall be upon receipt of any and all invoices. All payments shall be made before any permits are issued.

**Vincent Cestone** - Mr. Gaudioso, you can get those fees either from Kim or you can get it from Mr. Bogie

**Tim Pagones** –

- H. The Applicant shall install the antennas within the existing branches and shall supply sufficient camouflage to maintain the integrity of the tree. The applicant shall repair or replace any "branches" that fall or become damaged in regards to the antennae installed by them.

- I. The Applicant shall install a noise abatement (baffle) system for the proposed equipment units. Additionally, no generator or fuel shall be installed for the system.

- J. The Applicant shall install the system Monday - Friday and between the hours of 9 A.M.- 5 P.M.

**FINDINGS OF FACT:**

1. The Applicant, Omnipoint Communications Inc., made an appeal (#772) to the Philipstown Zoning Board for a special use permit. The appeal was filed with various exhibits and the Board accepted additional materials and revised submissions at public meetings and during the public hearing process, all of which were reviewed by the Zoning Board and made available to the public. A composite list of the Exhibits considered by the Board in reaching a determination is attached as **Exhibit "B"**.
2. The subject property is located in an R-80 District in the Town of Philipstown, New York. According to the Zoning Law of the Town of Philipstown at Section 175-49.10, Paragraph B(4); Permit Regulations, co-location of communication equipment on an approved communication tower is permitted in an R-80 District subject to the securing of a special use permit from the Zoning Board of Appeals.
3. The Board first reviewed the application materials for completeness on July 18<sup>th</sup>, 2005. The Application was deemed complete and the Zoning Board referred the Application to the Planning Board in accordance with Philipstown Code §175-52 for their input and report prior to scheduling the public hearing.
4. Copies of the application materials were referred to Putnam County Planning Department in accordance with General Municipal Law §239-m. A copy of the Putnam County Planning Department response is attached as **Exhibit "C"**.
5. The action is subject to review pursuant to SEQR. The Zoning Board determined the project as unlisted based on a review of the Long Form EAF as prepared by the Applicant. The Zoning Board conducted an uncoordinated review. The Zoning Board declared itself lead agency and reviewed a draft Part 2 of the EAF which was prepared by the applicant. Part 2 was adopted and no potential large impacts were identified. Therefore, no Part 3 was required.
6. The Planning Board report was received and reviewed. A copy of the Planning Board report is attached as **Exhibit "D"**.
7. A Public Hearing was held and completed on November 7<sup>th</sup>, 2005, January 23<sup>rd</sup>, February 13<sup>th</sup> and March 20<sup>th</sup>, 2006. A copy of the Public Hearing Notices are attached as **Exhibit "E"**. The Zoning Board conducted a straw poll vote concerning a Negative Declaration and a straw poll vote concerning the Special Use

Permit. The straw poll vote was unanimous in giving a Negative Declaration and granting the Special Use Permit.

**FINDINGS AND CONCLUSIONS (IN ACCORDANCE WITH THE STANDARDS AND CONDITIONS ENUMERATED IN SECTION 175-53 OF THE CODE OF THE TOWN OF PHILIPSTOWN:**

The Zoning Board hereby finds that the Applicant has demonstrated compliance with the following standards and conditions:

- I. The location, type, character and size of the use and any buildings, structures or facilities in connection therewith will be harmonious with the character of the neighborhood, will not detract from the appearance and beauty of the neighborhood, will not hinder or discourage the appropriate and orderly development of the town and the neighborhood

The site already consists of an existing "stealth" tree monopole with panel antennas and supporting utility building. The proposed use is to add an additional six panel antennas to the pole at a height of 97 feet as well as a 200 square foot prefabricated equipment shelter within the new enclosure area. The six panel antennas will be placed within the existing "branches" of the existing monopole so as to make them less visible. There was no evidence in the record from which the Zoning Board could determine that the proposed use would either hinder or discourage the appropriate and orderly development of the town or neighborhood.

- II. The nature and location of the use and of any building or structure in connection therewith will be such that there will be adequate access to it for fire and police protection purposes.

The proposed use involves merely adding six panel antennas and small utility shelter to the existing facility. Access for the proposed use will be derived via the existing driveways and pathways on the property which are used by the existing carriers. The nature of the use and the location of the buildings will not interfere with access for fire and emergency apparatus. A chain link fence will surround the leasehold area, secured by a locked gate. This fence will not be an obstacle to emergency service personnel in the event of an emergency requiring access.

- III. The streets serving the proposed use are adequate to carry prospective traffic, that provision is made for entering and leaving the property in such a manner that no undue hazard to traffic or

undue traffic congestion is created and that adequate off-street parking and loading facilities are provided.

The Applicant has proposed to use the existing two parking spaces that are currently at the site. These spaces are in accordance with the requirements of the Philipstown Code for the proposed use. Visits to the site will be infrequent consisting of approximately one visit per month. Therefore, the existing driveways and pathways are adequate to carry prospective traffic for the proposed use.

and adequate dimension to permit conduct of the special use and provision of buildings, structures and facilities in a manner that will not be detrimental to the neighborhood or adjacent property.

The proposed change in use will affect approximately 200 square feet of the 120,225 sq. ft. parcel. There is an existing camouflaged monopole tower which already contains panel antennas and therefore, there should be no further impact to the neighborhood.

- V. The buildings, structures, facilities and site layout will be suitably landscaped and maintained and will have adequate land area, yards and setback area so as to maintain the character of the neighborhood.

The applicant proposes to co-locate on the existing "stealth" tree monopole at a height of 97 feet and build a 200 square foot equipment shelter. The applicant will comply with all the required setback requirements and height requirements. There is already natural screening consisting of both deciduous and evergreen trees and additional plantings and screening have been installed. Additionally the applicant has agreed to provide even more screening around the facility as well as screening on the property line in order to attempt to block the view from the neighbors property.

- VI. The proposed use and the buildings, structures, facilities and site layout will not be detrimental to the public health, safety and property values in the neighborhood.

The proposed use and the buildings, structures, facilities and site layout will not be detrimental to the public health, safety and property values in the neighborhood. The applicant provided a report by Pinnacle Telecom Group, dated June 22, 2005. The

report concluded that there would be no health danger to the public by adding the additional 6 antennae and structure.

**COMPLIANCE WITH STATE ENVIRONMENTAL QUALITY REVIEW ACT<sup>6</sup>.**

2006 AS ITS NOTICE OF DETERMINATION OF NON-SIGNIFICANCE PURSUANT TO ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW. A COPY OF THE NEGATIVE DECLARATION IS ATTACHED AS **EXHIBIT "F"**.

**THE ROLL CALL VOTE:**

THE QUESTION OF THE FOREGOING RESOLUTION CALLING FOR GRANTING THE REQUESTED SPECIAL USE PERMIT WITH CONDITIONS WAS PUT TO A VOTE ON ROLL CALL ON THE 5<sup>TH</sup>, DAY OF JUNE, 2006, THE RESULTS WERE AS FOLLOWS:

VINCENT CESTONE, CHAIRMAN	VOTING _____	THE SPECIAL USE PERMIT
VICTOR CARLSON, MEMBER	VOTING _____	THE SPECIAL USE PERMIT
LEONARD LIM, MEMBER	VOTING _____	THE SPECIAL USE PERMIT
JOAN TURNER, MEMBER	VOTING _____	THE SPECIAL USE PERMIT
BILL FLAHERTY, MEMBER	VOTING _____	THE SPECIAL USE PERMIT

---

**ATTENTION APPLICANTS**

**FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS YOUR RESPONSIBILITY. THE GRANTING OF A SPECIAL USE PERMIT BY THE ZONING BOARD OF APPEALS IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY, BOTH OF WHICH CAN ONLY BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE PHILIPSTOWN BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.**

**Vincent Cestone** - I'll make a motion to accept the resolution as amended. Do I

---

6

Town Law § 274-b (8) requires compliance with the State Environmental Quality Review Act and its implementing regulations.



have a second?

**Lenny Lim** - I'll second

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Vincent Cestone** - Len?

**Lenny Lim** - Do we have to vote for the neg dec first?

**Tim Pagones** - You are voting for a neg dec and to grant. Your resolution contains it

**Lenny Lim** - Oh okay. I'll vote in favor

**Vincent Cestone** - Joan?

**Joan Turner** - I vote in favor

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - And so will I

**Mr. Gaudio** - Thank you very much

**Vincent Cestone** - You're welcome. Did you get your computer fixed?

**Tim Pagones** - I am using the one from the Court.

**Kim Shewmaker** - I am changing the tape before you start.

**(Changing tape)**

**Tim Pagones** – all right.

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #787; Applicant: Adam & Diana Hird  
Area Variance**

Date: June 5, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on March 20, 2006 to hear the appeal of Adam & Diana Hird from the denial of a building permit for tearing down an existing house and rebuilding a new house on the same existing foundation having insufficient setbacks. The property is located on 63 Horton Road, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 5<sup>th</sup>, 2006, upon all the discussion that preceded it, including the public hearings, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF GRANTING THE APPEAL OF ADAM & DIANA HIRD FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR CONSTRUCTION OF A HOUSE ON THE EXISTING FOUNDATION HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS<sup>7</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

CONDITIONS OF THE VARIANCE:

1. The structure granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.
2. The setback from the side yard shall not be less than 12.9 ft. for the eve and 14.1 ft. for the foundation. The setback for the rear yard shall not be less than 19.1 ft. for the eve (a variance of 7.1 ft., 5.9 ft. and .9 ft. respectively).

I've covered it all

---

<sup>7</sup> Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property."

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

**Tim Pagones** - Any other conditions?

**Joan Turner** - The parking area. That is opposite. The parking area shall not be further, shall not be enlarged or built up further. But that's not what I want to say though, as to what is on his plan. He has a very specific, so how shall we word this? The parking area shall not be enlarged or leveled

**Tim Pagones** - The parking area should be built in conformance with what is shown on the plans supplied by the applicant.

**Joan Turner** - Conformed to building plans

**Tim Pagones** - Yeah

4.

---

---

---

---

5.

---

---

---

---

**FINDINGS OF FACT:**

1. The Applicant made this appeal (#787), to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of house on the existing foundation which is pre-existing, non-conforming having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach that

2. The property, a 31,473 sq. ft. parcel on Horton Road, is located in a R-40 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-40 District requires a setback of 20 feet from the side or rear property lines.
3. The Applicant acquired title by a deed dated May 16, 2005. The structures at the property, appear on a map dated April 25, 2005, last revised March 6, 2006, as prepared for Adam & Diana Hird by Badey & Watson Surveying & Engineering, P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on January 9<sup>th</sup>, 2006 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The application was deemed incomplete and reviewed again on January 23<sup>rd</sup>. Additional materials were received and reviewed. The Board determined the Application complete. A properly noticed public hearing was scheduled for February 27<sup>th</sup>. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach that

5. The Board met on February 27<sup>th</sup> and continued the hearing on March 20<sup>th</sup>. Except for the Board Members and the Applicant, no members of the public attended the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

## FINDINGS AND CONCLUSIONS:

### Adverse Effects on the Neighborhood

1. The applicants propose to tear down the existing house and build another house on the same pre-existing foundation. The applicants are not changing the foundation and not coming any closer to the setbacks than the original house was. The requested variance will not adversely affect property values because the new house will be of greater value than the old house and since it will not be any closer to the setback the structure will not interfere with the enjoyment of the neighboring dwellings. Given the local

topography and buffering, as well as the proximity of other structures in the neighborhood, the structure will not be obtrusive. No members of the public attended the hearing. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

#### Feasible Alternatives

2. Due to the fact that the applicants are proposing to build on the pre-existing nonconforming foundation nothing can be done without coming into conflict with the Philipstown Code. The fact that the new house will not be any closer than the existing house makes denial of the variance more of a hardship to the Applicant than benefit to the neighborhood or Town.

#### Extent of Variance

3. The Applicants request a variance of 5.9ft.for the house and 7.1 ft. for the eve on the side and .9 ft. setback for the eve for the rear from a set back which should be 20 ft.

#### Effects on Physical/Environmental Conditions

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

#### Self-created Hardship

5. The need for this variance is not self created<sup>8</sup>. The Applicant

---

<sup>8</sup> **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**

wishes to construct the house on the pre-existing nonconforming foundation. The applicants applied to the Building Department for permits.

**THE BALANCING TEST:**

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

**THE ROLL CALL VOTE:**

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 6<sup>th</sup> day of June, 2006, the results were as follows:

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

**ATTENTION APPLICANTS**

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

**Lenny Lim** - Hold on hold on a second. I thought he was going to add a second story to the, not tear it down and build two stories

**Tim Pagonos** - No he is going to tear the whole thing down. The only thing he is saving is the foundation.

**Vincent Cestone** - Motion to accept the resolution

**Joan Turner** - So moved

**Vincent Cestone** - All in favor?

**All Board Members** - Aye

**Vincent Cestone** - Roll call. Len?

**Lenny Lim** - I vote in favor

**Vincent Cestone** - Joan?

**Joan Turner** - I'll vote in favor

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - And so will I

**Tim Pagones** -

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #793; Applicant: Jack & Alice Gish  
Area Variance**

Date: June 5, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on March 20, 2006 to hear the appeal of Jack & Alice Gish from the denial of a building permit for construction of dormers to the second story of the existing house having insufficient side setbacks. The property is located on 4 Hudson River Lane in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on June 5<sup>th</sup>, 2006, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

**THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF**

GRANTING THE APPEAL OF JACK & ALICE GISH FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR CONSTRUCTION OF DORMERS TO THE SECOND STORY OF AN EXISTING HOUSE HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS<sup>9</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267

CONDITIONS OF THE VARIANCE:

1. The structure granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structure is authorized without Zoning Board approval as needed.
  
2. The setback from the side yards for the structure shall not be less than the existing setbacks which are 7.6ft. On the S.W. side and 7.7ft. On the S.E. side of the property and 25.5 ft. on the N.W. side and 21.9 ft.on the N.E. side (a variance of 22.4 ft., 22.3 ft., 4.5 ft. and 8.1 ft. respectively).

Closed everything in. Any other conditions?

3.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5.  
\_\_\_\_\_

<sup>9</sup> Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property."



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FINDINGS OF FACT:

1. The Applicant made this appeal (#793), dated February 7<sup>th</sup> 2006, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of dormers to the pre-existing, non-conforming structure having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.

And Kim will attach that

2. The property, a 23,775 sq. ft. parcel on Hudson Lane, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a setback of 30 feet from the side or rear property lines.
3. The Applicant acquired title by a deed dated November 8, 2005. The structures at the property, appear on a map dated September 6, 2005, as prepared for Larabee Albertson by Badey & Watson Surveying & Engineering, P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on February 27, 2006 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for March 20, 2006. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach that

5. The Board met on March 20<sup>th</sup> for the purpose of conducting the public hearing. Besides the Board Members, the Applicant and Peter Johantgen, the applicants' representative, Zshawn Sullivan and Jim Oakley, spoke at the public hearing. The public hearing was duly conducted and closed. The Board engaged in further

deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

## FINDINGS AND CONCLUSIONS:

### Adverse Effects on the Neighborhood

1. The applicant is proposing to merely add dormers to the pre-existing nonconforming structure. The requested variance will not adversely affect property values because there will not be any change to the existing setbacks. The structure does not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structure will not be obtrusive. Additionally the changes to the house will all be on the road side of the property so no river views of any of the neighbors will be affected. Some neighbors spoke at the public hearing in favor of the proposal. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

### Feasible Alternatives

2. Due to the zoning and the fact that the house is pre-existing nonconforming, the Applicant can not do anything without coming into conflict with the Philipstown Code. Given the amount of intrusion into the setback and the fact the applicant is not coming any closer to the side setback, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

### Extent of Variance

3. The Applicants request a variance of 22.4 ft. for the S.W., 22.3 ft. for the S.E., 4.5 ft. for the N.W. and 8.1 ft. for the N.E. from a set back which should be 30 ft.

### Effects on Physical/Environmental Conditions

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

Self-created Hardship

5. The need for this variance is not self created<sup>10</sup>. The Applicant wishes to construct dormers to the pre-existing nonconforming structure and had made application to the Building Department for permits. Due to the zoning requirements and the size of the lots, very few of the lots in the area are able to conform with the zoning requirements.

THE BALANCING TEST:

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

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 5<sup>th</sup> day of June, 2006, the results were as follows:

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

---

<sup>10</sup> **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**

**ATTENTION APPLICANTS**

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

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

**Bill Flaherty** - I'll second.

**Vincent Cestone** - All in favor?

**All Board Members** – aye

**Vincent Cestone** - Bill?

**Bill Flaherty** - I vote to approve

**Vincent Cestone** - Len?

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

**Joan Turner** - I'll vote in favor

**Vincent Cestone** - And so will I. Any old business

**Joan Turner** - Yep

**Vincent Cestone** - Motion to adjourn

**Joan Turner** - No wait I have old business.

**Vincent Cestone** - Thinking ahead

**Joan Turner** - I asked Kim at one point a couple of months ago to write to Tom Monroe to ask him to investigate this Ladies Who Launch on Nelson Lane. 26 Nelson Lane. We gave them a variance on the garage to enlarge it and put a second story up for storage. It was close to the property line, right on the property line. They put the second story up. They are now running a business

out of that barn and I would like a motion from this board because it is in violation of the conditions of the variance that we granted to request the zoning officer to investigate the red barn and refer, and report back to the zoning board. I think the matter should also be referred to the planning board since they are running a business and it does not comply with permitted uses number 2 a, b and c. Which has to do with home occupation and I would like a formal letter to go to Tom Monroe and I would like to put that motion out to you all and ask if you would vote on it.

**Lenny Lim** - I'll second

**Joan Turner** - Okay

**Vincent Cestone** - All in favor?

**All Board Members** - Aye

**Joan Turner** - So the motion stands

**Tim Pagones** - I will write a letter

**Joan Turner** - You will write a letter to them. The neighbors have complained to me twice. They don't want to do it. They are neighbors, they don't want to get into a war with them. I went over and checked it out last Wednesday night. You can see that their next round of meetings are June 7, 14, 21 and 28<sup>th</sup>. I guess they are seminars.

**Tim Pagones** - Why don't you give me that so I can include that

**Joan Turner** - You take that. My notes are there.

**Bill Flaherty** - Where is that?

**Joan Turner** - Nelson Lane. Right behind the Texaco station

**Bill Flaherty** - I know where that is

**Joan Turner** - They fenced the entire area in

**Bill Flaherty** - That is not zoned for business

**Joan Turner** - No

**Tim Pagones** - Well even if it was, that's not what they were approved for.

**Joan Turner** - They are running a business out of that red barn which they

wanted for storage

**Lenny Lim** - They originally came in, they had that chicken coop they converted and they wanted a little bit more storage because the roof line was low, and we said okay build a second story and have some space to store stuff.

**Bill Flaherty** - I move to adjourn

**Lenny Lim** - Second

**Vincent Cestone** - All in favor

**All Board Members** - aye

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

**DATE APPROVED:** 6/26/06

Respectfully submitted,

Kim Shewmaker  
Secretary