

# ZONING BOARD OF APPEALS

June 9, 2008

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 9, 2008, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

### ABSENT:

**Vincent Cestone** - The applicant, Ribeiros Construction, did not ask for a specific date in July. He just stated that the public hearing be moved to July. So we will put it on for July 14<sup>th</sup>. Can we please stand for the Pledge of Allegiance. I don't see Rossouw here. Is anyone here to speak for Rossouw? We will continue it on

**Kim Shewmaker** - What date

**Vincent Cestone** - Well see later on in the meeting if he shows up. Review of Minutes of April 28<sup>th</sup>. Are there any changes or corrections? No? I'll make a motion to accept the minutes as submitted

**Lenny Lim** - Second

**Vincent Cestone** - All in favor

**All Board Members** – aye

**Vincent Cestone** - Is Lawrence and Jacqueline Gisser here? No. Let's do Homola

**Adam Rodd** - Resolution

**Vincent Cestone** - Yes

**Adam Rodd** – okay. I'll just read up until Conditions of the Variance. The Homola resolution is as follows: The Philipstown Zoning Board of Appeals conducted public hearings on March 24, 2008, and April 28, 2008, to hear the appeal of the applicants, Andrew and Susan Homola, from the denial of their request for building permits in order to construct an accessory apartment, as well as a two-car garage, on the existing single family residential property located at 24 Woodland Drive, Garrison, New York. The applicants' request for a building permit to construct an accessory apartment was denied because the placement of an accessory apartment on a residential lot which is accessed by a private right of way requires the issuance of a special use permit in accordance with Section 175-25, Schedule A of the Zoning Ordinance. Further, the applicants' request for a building permit to construct a two-car garage was denied because of the proposed placement of the subject garage will encroach upon the minimum thirty (30') foot side yard setback required pursuant to Section 175-32, Schedule B, Item 7 of the Zoning Ordinance. At a public meeting of the Board on April 28, 2008, and upon all discussion and testimony that preceded it, site visits made by individual Board members, and a review of all submissions and proof submitted to this Board, Vincent Cestone made a motion, seconded by Bill Flaherty, as follows: Be it Resolved, that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, determines and finds: That the balancing of equities weighs in favor of granting the appeal of Andrew and Susan Homola from the denial of their request for a building permit to construct an accessory apartment on their existing single family residence located at 24 Woodland Drive in Garrison, New York, and to issue a special use permit authorizing said construction. Further, that the balancing of equities weighs in favor of granting the appeal of Andrew and Susan Homola from the denial of their request for a building permit to construct a two-car garage, as shown on the survey map of Badey and Watson Surveying and Engineering, PC, last revised on February 15, 2008, despite the proposed insufficient side yard setback. The grant of the Special Use Permit and the area variance, with the following conditions, for the reasons set forth herein, shall constitute findings based on the factors set forth in Town Law Section 267-B. Now I will read the conditions of the variance. 1) The proposed accessory apartment shall be constructed and configured in accordance with the survey map prepared by Badey & Watson Surveying and Engineering, PC, last revised on February 15, 2008. 2) The proposed two-car garage shall be constructed and configured in accordance with the survey map prepared by Badey & Watson Surveying and Engineering, PC, last revised on February 15, 2008. 3) The proposed two-car garage shall be set back, from the side yard lot line, by distances of 17 feet 11 inches and 19 feet 9 5/8 inches as shown on the survey map of Badey and Watson Surveying and Engineering, PC, last revised on February 15, 2008. 4) Site development shall be implemented in accordance with Site Plan submitted by Jeff Wilkinson, RA, last revised on March 31, 2008. Said site plan complies with the conditions of the development set forth in the February 25, 2008, report submitted by the Town of Philipstown Planning Board. 5) The variances granted by this Resolution shall

not be further enlarged or extended except in accordance with all provisions of the Philipstown Code, and shall remain in the configuration as shown on the survey map of Badey and Watson Surveying and Engineering, PC, last revised on February 15, 2008. 6) No enlargement, reconfiguration or extension of the subject accessory apartment or two-car garage is authorized without Zoning Board approval.

**Vincent Cestone** - Okay can I have a motion to accept the resolution as read

**Paula Clair** - So moved

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

**Lenny Lim** - Second

**Vincent Cestone** - All in favor

**All Board Members** – aye

**Vincent Cestone** - On the accessory apartment, and this is only for the accessory apartment. We are going to do this in two parts. Those in favor of granting the accessory apartment

**Lenny Lim** - I vote yes

**Robert Dee** - I vote for it

**Paula Clair** - Yes

**Vincent Cestone** - And so will I. Now on the issue of the area variance for the garage. I am going to vote no. The reason for that is that this is a substantial variance and it is totally a self created hardship. And while I agree that there is a need for a garage, it doesn't have to remain in that configuration. And generally, and a guide line for us, we make the house fit the land not the land fit the house. And that's the reason I am opposed to this. Lenny?

**Lenny Lim** - I am voting no also for the same reasons you mentioned Vinny but also because the \_\_\_\_\_ sought by the applicant can be achieved by some other method.

**Vincent Cestone** - Paula

**Paula Clair** - Well I am going to vote yes. I am voting on the basis that there is no detriment to any neighbors.

**Vincent Cestone** - Bob?

**Robert Dee** - I visited the site and I don't see that there is any neighbors affect. So I am going to vote yes.

**Vincent Cestone** - Okay since it is a tie, the motion doesn't carry.

**Adam Rodd** - The motion didn't carry. So the area variance for the two-car garage did not pass but the accessory apartment did.

**Vincent Cestone** - Okay

**Vincent Cestone** - I will make a motion to go into closed session to discuss with our attorney possible legal matters. Do I have a motion?

**Lenny Lim** - I vote for closed session

**Vincent Cestone** - All those in favor

**All Board Members** – Aye

**(Tape recorder was turned off since the Board was going into Closed Session. Susan Homola asked a question of the board...)**

**Adam Rodd** - ...you can. It is really up to the board. You could make a motion now to, I am not sure if that is Bill Flaherty coming up the stairs now,

**Vincent Cestone** - we will talk about it downstairs. When we come back we will have a decision on whether we will, because Bill may actually show up tonight. If he does, I don't have a problem with a re-vote.

**Susan Homola** - Thank you

**Vincent Cestone** - But it will be up to all the board members not just me.

**Susan Homola** - We appreciate that. Thank you

**Closed Session**

**Vincent Cestone** - Motion to come out of closed session. Do I have a second.

**Paula Clair** - Second

**Vincent Cestone** - All in favor

**All Board Members** – aye

**Vincent Cestone** - On the issue of re-voting the area variance for Homola it has to be a unanimous vote. I vote in favor of re-voting. Lenny?

**Lenny Lim** - I vote in favor

**Vincent Cestone** - Bob?

**Robert Dee** - I vote in favor of re-voting

**Vincent Cestone** - Paula?

**Paula Clair** - I vote in favor

**Vincent Cestone** - On the issue of the area variance for Homola, on the granting of it. I continue with my vote against. Bob?

**Robert Dee** - I vote for.

**Lenny Lim** - I vote against

**Paula Clair** - I vote for

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - There you go.

**Kim Shewmaker** - Vinny, you have to sign the resolution

**Vincent Cestone** - Is Rossouw here? He was for a public hearing

**Kim Shewmaker** - And he was notified. I made a copy of the envelope and everything this time before I mailed it

**Vincent Cestone** - Send him a registered letter for the first meeting in July and tell him if he doesn't show up we are going to cancel his application

**Kim Shewmaker** - Again

**Adam Rodd** - Deem it withdrawn

**Vincent Cestone** - Is there anyone here for Gisser? It is a review for completeness and I am really not sure what they are asking for. Do you know what they are asking for?

**Adam Rodd** - Well there are definitely a bunch of unanswered questions and I think it is important that they be here to discuss what they are proposing, what

they need and how they got here. So I would suggest that we also put them on for the first meeting in July for review for completeness.

**Bill Flaherty** - Well I reviewed that application and it is not notarized for one thing.

**Vincent Cestone** - And there is not a denial of anything.

**Bill Flaherty** - And in addition to that I looked at the map that accompanied the application and I don't really know where to begin with the map. I don't know where it begins and where it ends. There are no lines describing the house and the various additions that have been done to the house over time. I would suggest that we require them to get us a complete survey of the property.

**Vincent Cestone** - I am not even sure that this is supposed to be before us. They haven't been denied anything.

**Bill Flaherty** - In the application they have four different variances that they require.

**Vincent Cestone** - But if you read the whole thing, it discusses something that was previously approved and all of a sudden it is disapproved. He has a C of O. So what are we approving? What I think, I think there might be an error here. So they need to come and explain why this is before us. Does everybody agree

**Robert Dee** - Yes

**Adam Rodd** - So they are on for the first meeting in July.

**Vincent Cestone** - Okay on to discussion of County Line Equities. I am going to through each, this is a straw poll. None of this is binding. Each of the four variances and then I am going to ask each of the members to discuss their feelings on the issues and discuss the five factors as related to zoning. First one is ground cover variance which is 175.39(s) total ground coverage and other structures, outside the storage areas, approved paved totaling 65 percent in a B-2 District. Applicant proposed ground coverage of 86 percent. Does anybody want to be the first to talk about this?

**Adam Rodd** - I would recommend that you just go through the five factors for each

**Vincent Cestone** - Okay let's start with is this a self-created hardship? I don't think there is any doubt that this is

**Robert Dee** - I agree with that

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

**Vincent Cestone** - Is the requested area variance substantial? I think it is substantial change. What do the rest of the board members feel

**Bill Flaherty** - Well in fact that there are buildings and parking lots is taking what 86 percent of the land mass, I think that's excessive. I would think that is excessive in my judgment.

**Vincent Cestone** - Anyone else wish to speak on this?

**Lenny Lim** - Lot coverage?

**Vincent Cestone** - Yes lot coverage

**Lenny Lim** - It has always been a gas station

**Paula Clair** - Yes it is substantial but it is a gas station so I don't have a problem with it. I don't think there needs to be a lot of grassy areas in a gas station.

**Vincent Cestone** - Next item whether the benefit sought by the applicant can be achieved in other methods. I'm not sure if this is doable in another way. If we deny this area variance how would they, what would they do? I'm not sure. Anyone wish to speak on that?

**Lenny Lim** - I think when Glen showed us the map, you're right there is no other way to do it.

**Vincent Cestone** - Bill? Paula?

**Bill Flaherty** - I have a problem with it but I tell you I don't know what other alternative action can be taken to mitigate the problem that exists other than to tear it down and start over again, which would be inappropriate to go in that direction, that drastic measure. I don't think he had much of a choice at this point in time to change things.

**Paula Clair** - I don't have a problem with it

**Robert Dee** - I have no problem

**Vincent Cestone** - Whether an undesirable change will be produced in the character of the neighborhood or detriment to the nearby properties will be created in granting of this variance. This was already a gas station. Was it a, will it be a detriment? I don't think so. Anybody else wish to speak on that?

**Lenny Lim** - I agree with you Vinny it is just one gas station to another. I don't

see a detriment.

**Paula Clair** - It is a large improvement over what was there before.

**Bill Flaherty** - I have no problem with it.

**Vincent Cestone** - Okay. Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions of the neighborhood? The old gas station was dumping oil into the aqua fir and this one has remediated a lot of this. Going forward I don't think I'm qualified to say whether the water will be affected. I don't think the coverage is going to have much of a difference I don't know what everybody else feels

**Bill Flaherty** - Well I think the only way you can really determine this is to have the applicant himself describe what he has done to mitigate these problems that existed at this gas station. What corrective actions has he taken to ensure that there will be no further oil spills and things of that nature. And I think he has done that.

**Vincent Cestone** - Anyone else wish to speak

**Paula Clair** - I can't speak to the oil spills. I will agree with Bill's assessment in that respect. But I did go by the gas station and the closest house is quite a distance. You know between the gas station and the house and I don't see that that is going to have an adverse affect in my opinion.

**Vincent Cestone** - Gentlemen? Lenny?

**Lenny Lim** - I agree with Paula

**Vincent Cestone** - With that, as far as the area variance let's do a straw poll on the area variance.

**Adam Rodd** - You covered ground coverage

**Vincent Cestone** - That's what I meant to say, ground coverage

**Adam Rodd** - okay

**Vincent Cestone** - I would vote in favor of granting that variance. Lenny?

**Lenny Lim** - I would also

**Vincent Cestone** - Bob?

**Robert Dee** - There are four variances. This is the first of four?

**Vincent Cestone** - This is the ground coverage

**Robert Dee** - Okay. I am for it

**Paula Clair** - Yes I am for it

**Bill Flaherty** - Yes I am for it

**Vincent Cestone** – next variance which is 175.77(a)(4) is a non-residential district which one side may extend to within 10 feet of the street center line and may not exceed a height of 4 feet. Proposed sign has no setback from the street line and will be 6 feet in height. Going through the five factors. Again this is a self-created hardship. I don't think we need to discuss that. Now whether an undesirable change be produced in the character of the neighborhood and detriment to nearby properties with this. I would say yes. I think that this sign would be a substantial change to the character of the neighborhood and that signage could be achieved in a different way. So what are the board members feelings on the undesirable change of the neighborhood?

**Lenny Lim** - I agree with you because both signs at gas stations are not right on the road. This one is, I mean what is it 0 feet

**Vincent Cestone** - 0 feet. Right on the Route 9 line

**Robert Dee** - I think it is too close to Route 9 to grant it in my opinion

**Vincent Cestone** - Paula?

**Paula Clair** - I think it is too close as well

**Bill Flaherty** - Well I think there are options available to the applicant and he can mitigate this without any significant problem

**Vincent Cestone** - Which goes to the next factor whether the benefits sought by the applicant can be achieved in some other feasible way. Now I feel there are plenty of places to put the sign. It doesn't have to be right on Route 9. Paula what are your feelings?

**Paula Clair** - I agree with you

**Bill Flaherty** - I agree

**Lenny Lim** - I also agree too

**Vincent Cestone** - And whether the requested area variance is substantial. We

are going from 10 feet to 0. I think that is 100 percent variance.

**Lenny Lim** - That is substantial

**Robert Dee** - And the sign is higher

**Vincent Cestone** - Does everyone agree that it is substantial

**Paula Clair** – yeah

**Vincent Cestone** - And the final is whether the proposed variance will have an adverse affect and impact on the physical environmental conditions of the neighborhood. Again, I would have to say yes. The fact that the signage is right on Route 9 it is going to be a substantial change. Does anyone wish to speak on this?

**Lenny Lim** - I worry about it physically being right on the road.

**Robert Dee** - I think it will change the neighborhood. No sign to a sign. The building, he did a nice job on the building but I think sticking a sign out there

**Lenny Lim** - There are alternatives

**Robert Dee** – right

**Vincent Cestone** - Straw poll on the variance for the sign. I would vote against the variance for the sign. Paula?

**Paula Clair** - I vote no also

**Bill Flaherty** - I vote against

**Lenny Lim** - I vote no

**Robert Dee** - I vote against the sign

**Vincent Cestone** - All right. The third one. Off street parking setback. 175-39(e)(3) no off street parking shall extend within 40 feet of the street line of US 9 or within 100 feet of the centerline of Route 9. The applicant proposes no setback off the street parking on Route 9 and 36 feet from the center line of Route 9. Now again it is a self-created hardship. Will the, whether an undesirable change will be produced in the character in the neighborhood and a detriment to the nearby properties will be created by the granting of this variance. Again 0 is substantial. I think 0 has a lot to do with the character and the look of the land and the property around that. And with the number of parking spaces right on Route 9 I think it would create an undesirable change. Bill?

**Bill Flaherty** - I feel that it will create an undesirable change.

**Vincent Cestone** - Paula

**Paula Clair** - Yeah. I think it is not a good idea to have parking right on Route 9

**Lenny Lim** - I will agree with that

**Robert Dee** - Just the fact is there going to be enough places to park is my concern.

**Vincent Cestone** - Okay. Now the second factor. Can the benefit sought by the applicant be achieved with some other method? Or can the applicant pursue other than an area variance? There are other options. An area variance of this size. Anyone wish to speak on that?

**Lenny Lim** - Well the parking spaces can be turned to face the store. It doesn't have to be right up against the curb. There are options.

**Vincent Cestone** - The third factor is request of the variance, is it substantial? I think 100 percent is substantial. I don't think any of you would disagree with me. Going on to the next, requirement 175.32 attachment 4, schedule B, item 6, setback is required street line of US 9 and 100 feet setback is required from the center line of US 9 for roads other than US 9 the setback from the street. This is for the canopy and the proposed canopy will be setback from US 9 by 21 feet where 50 feet is required and the setback from the center line of US 9 is 57 feet when 100 feet is required. The canopy will be setback from the street line of Route 403 by 19 feet where it should be 50 feet. Okay. Again this is a self-created hardship. I don't think you'll disagree with me. Now the first factor is whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created in granting of this variance. I won't take the first one on this one. Does anybody wish to speak on that?

**Robert Dee** - Which one is that?

**Lenny Lim** - Undesirable change in the neighborhood

**Robert Dee** - Well there aren't that many homes in the neighborhood. Honestly, there is only one home. I don't there would be an undesirable change. My concern is Route 9 because that's where everybody travels along and that's what they are looking at. I don't see an issue with that but I see an issue with the Route 9 side being that close.

**Vincent Cestone** - I tend to agree with you. I don't have as much of a problem

on the 403 side as opposed to the Route 9 side. And I think, I personally think it would change the character of the neighborhood substantially.

**Lenny Lim - Vinny** I disagree on that because I think it is going from a gas station to a gas station. It is not changing the character.

**Bill Flaherty** - I have no problem with granting the variance (inaudible)

**Paula Clair** - I don't see it being a problem. (inaudible)

**Vincent Cestone** - And other (inaudible) ...applicant to pursue. You know the canopy is just something to cover the area to keep the rain off people's heads. I don't think the benefit can be achieved in other ways. You don't have to have that huge canopy you can have a smaller canopy. Or no canopy and just little islands that cover where the gas pumps are

**Bill Flaherty** - Well it also acts as a fire deterrent in an event of an emergency as well.

**Vincent Cestone** - I have seen gas stations that have fire suppressions without canopies

**Bill Flaherty** - My concern with that is the fact that the canopy is there and what if we were to reduce the size of that canopy, how would that affect the applicant in terms of an overall financial? It is significant I think. To reduce the size of that canopy. I feel it is not a big issue with me per se and I would not want to impose that kind of financial hardship on the applicant by changing it.

**Robert Dee** - No one said he should build it. He built it without a permit too. I really can't be too concerned with his financial hardship

**Vincent Cestone** - My thinking is that if the applicant had come before us before he began construction, then we may have imposed conditions and negotiated a different layout or different setbacks. And the Planning Board would have variances already in hand before construction began. So my thinking is that since the applicant built it without a permit it is not our fault. That's how I am making my decision because I am thinking about it as if the applicant came before me, what would I do if construction hadn't started. That's how I am basing my decisions.

**Bill Flaherty** - Well I agree with you. I think certainly think this situation is self created in every respect. Now we would have probably taken an entirely different tack towards our decision making process in the event that the issue came before the construction had taken place. I am certain that I would have had a different view point about it as well. But under the circumstances I feel that our hands to a degree are tied here in some of these issues. Unfortunately, very

unfortunately, that this thing was presented to us prior to the time construction had taken place. I would have had an entirely different attitude towards many of these issues if that were the case

**Vincent Cestone** - Next item on the five points is whether the requested area variances are substantial. Are they substantial?

**Robert Dee** - They are more than 50 percent

**Vincent Cestone** - I would say that they are substantial

**Lenny Lim** - Yes

**Vincent Cestone** - And will the proposed variance have an adverse impact the on the physical and environmental conditions of the neighborhood? Lenny brought up the fact that it was a gas station but the gas station was basically 4 pumps. I mean 4 cars maximum. This is 12 cars maximum. So it is a substantial, in my opinion, a substantial impact on the neighborhood. Does anyone wish to talk on that?

**Paula Clair** - I don't see that it is an adverse impact on the area. I think that as long as the environmental conditions are maintained, that there are no leakage of the gas and measures have been taken to make sure that is the case, I don't see it, he has two pumps less, you know if he had 4 pumps it would serve 8 cars. Now he has 6 pumps and he is going to serve 12 pumps. I don't think that that is a huge change.

**Vincent Cestone** - The number of cars

**Paula Clair** - No. It is 4 pumps serving 8 cars

**Vincent Cestone** - In the old one it was 4 pumps doing a maximum of 4 cars

**Paula Clair** - I thought it was 4 pumps serving 8 cars

**Joe Giachinta** - The Chairman is incorrect. The photograph that was introduced showing 7 pumps

**Paula Clair** - Okay. So now he has 6 pumps

**Joe Giachinta** - There were actually double pumps

**Paula Clair** - They were double pumps?

**Joe Giachinta** - If you look at the photo with a magnifying glass you will see it.

**Paula Clair** - Oh okay.

**Vincent Cestone** - Yeah but it was still 7 pumps, one hose

**Joe Giachinta** - No there were two hoses

**Vincent Cestone** - Yeah but one was premium and the other was all the other grades

**Joe Giachinta** - It was still the same amount of nozzles

**Vincent Cestone** - I won't argue the point

**Paula Clair** - I guess I would say even if he has more pumps than the old gas station, I think, I don't think it is going to be a huge impact on the neighborhood as long as he manages the environmental factors.

**Vincent Cestone** - Okay. Straw poll on the canopy variances. Adam? Do we deal with the 403 side and the Route 9 side separately or together?

**Adam Rodd** - I think the canopy has impacts on both just by what's presented. So when you are dealing with the canopy setbacks you're dealing with the canopy as how it affects 9 and 403.

**Vincent Cestone** - So we can't separate it and say 403

**Adam Rodd** - I mean you can offer comments about how you feel the canopy affects one road as opposed to the other but the canopy as proposed on the plan is the canopy and that is what they are seeking variances for

**Vincent Cestone** - Okay

**Adam Rodd** - So I would just go through the five factors as you had and if you deem it appropriate do a straw poll on the canopy

**Vincent Cestone** - Okay. Straw poll on the canopy

**Bill Flaherty** - I vote to approve

**Vincent Cestone** - Paula?

**Paula Clair** - I approve

**Lenny Lim** - I vote to approve

**Robert Dee** - I vote against it

**Vincent Cestone** - I vote against it

**Adam Rodd** - I am not sure, and correct me if I am wrong, if we did a straw poll on the off street parking

**Vincent Cestone** - No we didn't

**Adam Rodd** - I would

**Vincent Cestone** - I think you're right. We missed it. On the off street parking. Straw poll. Bill?

**Bill Flaherty** - I vote to approve

**Paula Clair** - I vote no

**Vincent Cestone** - I vote no

**Lenny Lim** - I vote no also

**Robert Dee** - I vote against it

**Vincent Cestone** - So that covers all of them. Is that correct?

**Lenny Lim** - What was the vote on the canopy

**Vincent Cestone** - 3 to 2. Okay with that, any old business? If not, I would entertain a motion. I will make a motion to close the meeting. Do I have a second

**Bill Flaherty** - I'll 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:** 7/14/08

Respectfully submitted,  
Kim Shewmaker  
Secretary