

ZONING BOARD OF APPEALS

July 23, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, July 23, 2007, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

somebody here to speak for Mr. Rossouw? No.

Kim Shewmaker - Now originally we had withdrawn this file and brought it back on the agenda at Tom's insistence and he is still not here.

Vincent Cestone - We will give him one swing and another swing in September if he doesn't show up we will give it back to Tom.

Robert Dee - This is about the fourth time I think. This is not,

Vincent Cestone - I know

Kim Shewmaker - We've had it on for a while

Robert Dee - what request did he have? I mean, can we vote his variance down?

Adam Rodd - Well you can just deem it withdrawn.

Kim Shewmaker - We did that already and Tom wrote back saying that he is waiting for the CO that is why he does not have any in the file. And the man still has not shown up.

Robert Dee - Never been here. It is at least four times. He has never shown once. It is a complete lack of interest

Bill Flaherty - It's been on since March. And that is an extremely long time

Kim Shewmaker - March 26th

Bill Flaherty - And I would suggest that we as a board withdraw the issue

Paula Clair - Did he officially ask for a variance?

Vincent Cestone - He had to ask

Robert Dee - He never responded to any of your letters

Kim Shewmaker - Not one

Vincent Cestone - Okay

Paula Clair - I wonder if he is out of the country of something

Kim Shewmaker - Well obviously Tom is talking to him, because Tom told me to put it back on the agenda

Vincent Cestone - All right

Adam Rodd - I think we can do what the Chairman suggested. We can put it on in September, we can write to him and advise that unless he appears and provides us with the information needed to obtain his variance, we will be deem his application withdrawn. If he wants to have it heard again, he will have re-apply

Bill Flaherty - I am sure, Kim has already written two or three letters to the applicant and

Kim Shewmaker - It is not that the file is incomplete. We just need him to show for the public hearing. The file is complete. There are no COs because that is what he is after. That was the only thing that was holding the file from being complete. We've had noticed the public hearing a few times and he just doesn't show.

Robert Dee - September is not going to change. He is not going to show in September either. So we might as well, if we can take any action, we might as well take it now.

Vincent Cestone - What are the consequences if we just tell him we are

considering his application withdrawn

Adam Rodd - He will have to reapply

Vincent Cestone - But there is no consequences to the Town is there?

Adam Rodd - I don't believe so. I think it is appropriate to take that action and it is really up to the board, he is not here tonight you can put it over until September. It is what the board chooses to do.

Vincent Cestone - Okay

Bill Flaherty - If he reapplies he is going to have to, he loses his application fee and have to reapply with an additional \$200

Vincent Cestone - That's correct

Kim Shewmaker - And now he will get hit with an escrow

Bill Flaherty - That's true

Vincent Cestone - I will make a motion to deem that this application is null and void and is withdrawn. All those in favor of my motion

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - All against?

(no board members responded)

Vincent Cestone - David Weinpahl application has been postponed until September.

(?) - Mr. Chairman

Vincent Cestone - yes

(?) - I'm _____. We weren't aware that it wasn't going to be heard tonight. So we came. And Bill Zutt also couldn't come tonight but he asked me to say that he sent a letter to you

Vincent Cestone - Yes I saw it

(?) - And it is going to go into the record

Vincent Cestone - Yes it will

(?) - Okay thank you.

Vincent Cestone - I am sorry that you weren't informed

(?) - That's all right

Vincent Cestone - Review of minutes of June 25th. Do we have any additions, corrections, deletions

Bill Flaherty - I have none

Vincent Cestone - 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 - Adam, can you please tell us what is going on with

Adam Rodd - Well right now there is a motion to, I think board members received to Orders from Judge O'Rourke, one of the orders indicated that the extent that the nonconforming structures have been removed, that the stop work order will be lifted. In another order of the same date the Judge indicated that because there were new regulations enacted by the Town requiring essentially that all subdivisions of property require approval from the planning board, he issued an Order saying that the applicant has to go to the planning board for subdivision approval. So we have two, what appears to be conflicting Decisions. One essentially says stop work order lifted go build, the other one says stop go to the planning board before you can build. And there is now a motion to reargue the order directing the applicant to go to the planning board. We are not a party to that order. But essentially Mr. DeVito now has to convince Judge O'Rourke to reverse himself.

Paula Clair - You know what, I didn't understand that Stephen _____ told Mr. Zutt that the planning board cannot respond to his correspondence, he doesn't believe they will be able to entertain an application for site plan. What does that

Adam Rodd - That's the planning board's determination and they voted on that. Zutt made a request to the planning board giving, surveying information,

engineering information from the applicant indicating the status of the property and what is there and had been removed. And the planning board determined based upon that submission that they didn't feel that site plan approval was necessary in that circumstance.

Paula Clair - Well what approval is necessary from the planning board

Adam Rodd - As we sit right now

Paula Clair - Yes

Adam Rodd - Subdivision approval

Paula Clair - Oh okay, so that is different than site plan approval

Adam Rodd - Yes it is. The criteria overlaps. A lot of things we consider in a site plan are many of the same things we consider in a subdivision.

Lenny Lim - I think what happened is we should have own because we were trying to get it back to the planning board

Paula Clair - Yeah

Lenny Lim - That's what we really wanted to do

Paula Clair - Right

Lenny Lim - And now they have to go to a subdivision? Okay

Vincent Cestone - Excuse me are you here for a public hearing?

Hugh James Rossouw - Yes. Rossouw

Vincent Cestone - Excuse me

Hugh James Rossouw - Rossouw

Vincent Cestone - Okay

Kim Shewmaker - You just made it.

Vincent Cestone - Do we have to do a motion to put it back on?

Adam Rodd - You might as well

Bill Flaherty - So moved

Vincent Cestone - I second. All in favor

All Board Members – aye

Vincent Cestone - You basically, before you showed up, you were first on the agenda and had suspended your application because had never seen you. We just put it back on

Hugh James Rossouw - Good

Vincent Cestone - Okay. So explain to us exactly what you are asking for. I have read your application but in your own words tell us what you are asking for

Hugh James Rossouw - _____ did the original survey and he was off. I have a shed in the backyard that is on a concrete base. And there is no room for the shed. I can't move it 15 feet away. It is in the corner and the neighbors have not complained. The one deck is 6 inches over the zoning line and the other deck on the right hand side as you face the house is perhaps a couple of feet over the line

Vincent Cestone - have you gotten, did you get building permits for these decks

Hugh James Rossouw - yes

Vincent Cestone - do you have them, is there copies submitted with your application

Hugh James Rossouw - no, whatever, Marianne requested what to submit. Whatever she asked me is there.

Vincent Cestone - And how did they issue, they issued you these building permits and how were they built incorrectly to be out of compliance? Didn't the building inspector have to come out and inspect before you were complete

Hugh James Rossouw - They were inspected yeah

Vincent Cestone - And when were you cited? You were just cited?

Hugh James Rossouw - Well, I never had _____ on the house. I built the house myself. Everything. Including the electric and plumbing, everything. And as a result I neglected the CO. So Tom Monroe is in the process of the CO. I will get a CO shortly.

Vincent Cestone - So you never got a CO so you never closed the building permits

Hugh James Rossouw – Right

Robert Dee - Have you ever applied for a building permit when you built the house

Hugh James Rossouw - Yeah. Everything is in order. All the inspections were done

Robert Dee - It's in here?

Hugh James Rossouw - I don't know. Whatever Marianne asked me for is there. All the inspections were done

Vincent Cestone - According to this you were denied an application for building permit

Robert Dee - To build the house?

Vincent Cestone - You see right here. According to this you were denied.

Hugh James Rossouw - No. Larry Belluscio has the permit. I have a building permit

Vincent Cestone - Then what is this saying to me

Hugh James Rossouw - I have no idea

Lenny Lim - These have all been denied.

Bill Flaherty - 2006 you were denied a building permit

Hugh James Rossouw - oh no that building permit was issued in 1983

Robert Dee - then where is it

Hugh James Rossouw - Larry Belluscio has it

Lenny Lim - Well we have to have it

Bill Flaherty - He is the engineer apparently.

Hugh James Rossouw - I have a lot of outside work. He has been going in for permit. But Marianne should have told me about that. Because every year I needed to go to ___ building permit. I paid to the tune of like \$1,600 to renew the building permit every year. That should have been done. That's not my fault.

Lenny Lim - You are the applicant sir

Hugh James Rossouw - I beg your pardon

Lenny Lim - You're the applicant.

Hugh James Rossouw - Well all right. How do we solve the problem then?

Vincent Cestone - Now we have to ask the building department what they are denying. What did they deny you? Here? You weren't cited by the town for violations

Hugh James Rossouw - Yeah because I am in the process of getting the CO for the house

Adam Rodd - As I understand it, and let me know if my information is not accurate, what he is applying for is you have two decks and a shed

Hugh James Rossouw - Right

Adam Rodd - Both of those decks and the shed are within the required setback and you are appealing from a denial for building permits to maintain the

Robert Dee - No they are not

Lenny Lim - Everything needs a variance

Adam Rodd - That's what I am talking about. The decks are within the setback

Lenny Lim - Okay

Adam Rodd - Just to backtrack for a second.

Lenny Lim - Okay

Adam Rodd - The code requires a setback for the side yard and the rear yard, and it is my understanding that it requires a 20 foot setback

Hugh James Rossouw - I thought it was 15

Adam Rodd - Well lets double check it. What zoning are you. Let's get to the bottom of this. You are in an R-20 zone. An R-20 requires a minimum setback for side or rear property line of 15 feet

Hugh James Rossouw - Right

Adam Rodd - Okay. So you have one deck that's 10 feet 9 inches from a side yard lot line. The other deck is just short of the 15 feet by what looks like 14 feet 4 inches from the rear property line. And then you have a metal shed and that is governed by

Hugh James Rossouw - But there is a concrete base there okay

Adam Rodd - I just want to get the setbacks. It is an accessory building and may extend within 5 feet of a property line and it looks like, how far back are you about a foot and a half

Hugh James Rossouw - That back property line is not so clear. I would say a couple of feet

Adam Rodd - Well we would need to verify that, how far the setback is so we know what variance we are entertaining.

Vincent Cestone - Well it seems clear here

Hugh James Rossouw - What governs it the concrete base of the metal shed

Lenny Lim - The shed itself

Hugh James Rossouw - Because if you people want I can put up a wooden shed. I mean it doesn't

Adam Rodd - Well the code talks to basically an unattached accessory building. So meaning it is not attached to your primary residence

Hugh James Rossouw - No

Adam Rodd - So whether it is on a base or not I think they are saying the set back requirements applies. I don't think there is a different standard depending if it is on a concrete base or not.

Hugh James Rossouw - The metal shed is moveable but the concrete base is not moveable

Adam Rodd - I think whether it is moveable or not you can't have it within a certain distance of your lot lines

Hugh James Rossouw - All right. So how do we solve Marianne then

Vincent Cestone - Well. First off, explain to me why this is before us. Did Tom Monroe cite you for violations or are you trying to sell the property.

Hugh James Rossouw - No I am not selling the property. I, this has been going on for a couple of years now. Because

Vincent Cestone - Going on with whom

Hugh James Rossouw - The electric inspector. Steve _____ did the original, did the final on it

Vincent Cestone - How, where you cited by the town for violations

Hugh James Rossouw - Yes

Vincent Cestone - Yes you were

Hugh James Rossouw - To get the CO.

Vincent Cestone - What does the electrical system have to do with what you are requesting

Hugh James Rossouw - Well this guy Scolari the new guy, he didn't want, Steve _____ did the final on it. Scolari doesn't want to honor it. He wants to come take my house apart and that's not happening. I'd rather take them to court

Vincent Cestone - Who wants to take your house apart

Hugh James Rossouw - Scolari

Vincent Cestone - And why does that matter to us

Hugh James Rossouw - And that's what governs the CO at the moment and Tom Monroe is going to take care of it

Vincent Cestone - It does not affect the CO

Hugh James Rossouw - Scolari, the electrical inspection, the underwriters

Vincent Cestone - The electrical inspection on the deck

Hugh James Rossouw - No no no.

Vincent Cestone - We don't need to talk about that because that is not relevant to us. Because we are not talking about your electrical inspections. We are talking about setbacks on your decks and your shed.

Hugh James Rossouw - Okay

Vincent Cestone - And where you cited by the town for setback on your shed and your decks

Hugh James Rossouw - Right

Vincent Cestone - Were you yes or no

Hugh James Rossouw - Yes

Vincent Cestone - Yes you were

Hugh James Rossouw – yes

Lenny Lim - I have a question. Did you get any permits before you starting building anything

Hugh James Rossouw - Yes absolutely

Lenny Lim - Are they in here

Robert Dee - All we have here is that you were denied

Lenny Lim - I see no permits, I see no COs

Hugh James Rossouw - Marianne, I asked Marianne what I must submit. She told me to submit those documents. I have every year I went to Marianne and I renewed the building permits

Robert Dee - The building permit, I understand that. Let me explain something to you. The building that is separate from what we are talking about. You got a building permit and you are trying to get a CO, we understand that. This is different. What we got here for is that you, according to this, we don't see the building permits for your decks for the two decks. Did you ever get a building permit for the two decks? Did you apply separately for the building permit for the two decks

Hugh James Rossouw - No. I applied for everything, the original building inspector gave me a permit to house as it is right there

Robert Dee - What year was that do you know

Hugh James Rossouw - 1983

Robert Dee - so you haven't had a CO since 1983

Hugh James Rossouw - No

Robert Dee - Okay. I understand. All we have here is that you were denied a building permit for the decks. This is what this says

Hugh James Rossouw - Only for the deck not for the house

Robert Dee - We don't know anything about the house

Hugh James Rossouw - Larry Belluscio has the permit

Robert Dee - Okay

Hugh James Rossouw - But I paid Marianne over the years close to \$1,600 to renew those building permit

Bill Flaherty - Well the issue here is relevant to the decks and the metal accessory building and that's all our discussion should be centered on with the issue at hand. Whether or not you got an electrical by the County is irrelevant. It doesn't mean anything to us. We have focus on the issue relevant to the denial of the CO on this. If you can get the documents to us. We have to grant you a variance on these three issues before us

Hugh James Rossouw - And that would solve a lot of problems

Paula Clair - When you applied for the building permit in 2006, was that after you were cited for having decks that were not on

Hugh James Rossouw - There is a building permit from 1982

Paula Clair - No but the denial, can I see that for a minute,

Hugh James Rossouw - I have no idea

Paula Clair - The denial for the decks, and the reason that it was denied was because of the setbacks for those decks and that is why he would apply for the variance

Vincent Cestone - That's correct. But we have no building permit

Paula Clair - For the whole building you mean

Vincent Cestone - No for the deck and the shed

Paula Clair - Right because he didn't have a building permit for the decks

apparently correct? You had a building permit for the building but not the decks right?

Hugh James Rossouw - I thought the building permit was for the house and the deck

Paula Clair - Oh okay

Hugh James Rossouw - I am pretty sure

Paula Clair - Then you would have to provide that to us. But from what I can read, and having some experience with this, is that probably Tom Monroe told you to make an application as part of the process for these decks that were not part of your original permit and that is why he denied it

Vincent Cestone - I think we need to ask Tom Monroe what this means

Paula Clair – okay

Vincent Cestone - I'll give Marianne a call.

Lenny Lim - I would like to see the building permits. I would like to see something

Hugh James Rossouw - I was pretty sure that those decks were included in the original plans

Paula Clair - Okay. But we are going to have to see the permit

Hugh James Rossouw - Do you want me to talk to Tom Monroe?

Vincent Cestone - I am going to talk to Tom Monroe

Hugh James Rossouw - Oh you are?

Vincent Cestone - Yes

Lenny Lim - But we still need the paperwork

Hugh James Rossouw - Right now, whatever paperwork you want let me know and I will get. But what was submitted here comes straight from Marianne. I asked questions, I don't want to waste you people's time, I really don't. Let me know what you require from me and I will be back with it

Vincent Cestone - Okay

Hugh James Rossouw - Because I need this resolved. It's a real pain in the neck. I was negligent about the CO thing.

Bill Flaherty - Our secretary has written several letters to you. Have you received these letters?

Hugh James Rossouw - I received one letter saying that

Bill Flaherty - They were similar in nature asking for information and you didn't provide this information to us.

Hugh James Rossouw - It just said that you wanted the CO

Bill Flaherty - Yeah

Hugh James Rossouw - But I didn't have a CO.

Robert Dee - This first started in March and we have had a number of meetings and you never appeared. Is there any particular reason why you never appeared?

Hugh James Rossouw - No no. This is, the first letter that I got to appear is tonight

Vincent Cestone - That's not true

Robert Dee - That's not correct

Hugh James Rossouw - I am 100 percent

Robert Dee - No no. We have been sending you letters since March

Bill Flaherty - April 15, May 18, March 30th

Hugh James Rossouw - Are you sure you are sending the letters to me

Kim Shewmaker - Yes I am

Hugh James Rossouw - I got a letter on the 23rd and I am here

Vincent Cestone - But we sent you three or four letters

Hugh James Rossouw - I got one letter that said you don't have a CO. That's the only letter I got.

Bill Flaherty - Here are the letters

Hugh James Rossouw - It is not to my benefit to ignore these meetings trust me

Bill Flaherty - You are absolutely right it is not to your benefit

Lenny Lim - What is the benefit for waiting 18 years for a CO either

Hugh James Rossouw - You don't have a CO on your house, you move in, and things, I started to think with Tom Monroe that I better get a CO and then with the delays that I had with the electrical people, then Tom Monroe

Vincent Cestone - That is not relevant to this thing. I am not concerned about that

Hugh James Rossouw - All right.

Bill Flaherty - So do you understand what we need in order to proceed with this issue?

Hugh James Rossouw - I'm sorry

Bill Flaherty - Do you now understand what we need in order to proceed

Hugh James Rossouw - I want your secretary to write me down what documents you want me to bring and I will bring them to the next meeting

Lenny Lim - Write him down a list of what he needs

Kim Shewmaker - So far I have an original permit showing for the house and the decks, I know that's what Paula wanted

Vincent Cestone - Say again

Kim Shewmaker - The original permit for the house and the decks

Vincent Cestone - Building permits

Kim Shewmaker - Yes

Paula Clair - Or if he doesn't have a permit for the decks or at least the original permit for the house

Kim Shewmaker - Okay. What else

Vincent Cestone - And if you have documentation to show that the decks were part of the original house

Hugh James Rossouw - I am pretty sure they are on the plans

Vincent Cestone - We can't go on pretty sure. We need evidence

Hugh James Rossouw - I will bring you the plans

Vincent Cestone - Okay

Adam Rodd - And tell Tom and I suspect and maybe I am wrong, this is just pure speculation, that the original building permit or CO assuming there was one, probably didn't include the decks and the shed and at some point subsequently it has been brought to someone's attention that you had decks and the shed and presumably you were told hey you need a building permit to maintain those on the property. You applied for a building permit, Tom Monroe denied the building permits for the decks and the shed because they did not meet the setback requirements and therefore you are here now. That's my guess.

Hugh James Rossouw - I am pretty sure, the shed is probably not on the original plans. But I can get you the plans to show that

Adam Rodd - We can clarify that with Tom so we have a better idea of why you are here

Bill Flaherty - Also I would suggest that you see Larry Belluscio to get a copy of the permits

Vincent Cestone - So Kim, can you, it doesn't have to be official, that's fine. And what is on for September 10th?

Hugh James Rossouw - Is that your next meeting?

Robert Dee - Yes we are off in August

Kim Shewmaker - Spica Risi, both of them; Carlucci; Cross; and Enea. You have five public hearings.

Vincent Cestone - How many do we have

Kim Shewmaker - Five. But Spica Risi is well considered one so it is four

Vincent Cestone - So let's put it on for the second meeting

Kim Shewmaker - The 24th?

Vincent Cestone - Yes

Hugh James Rossouw - The 24th of September

Vincent Cestone - Yes. Because we already have September 10th meeting filled. More than filled. We have five public hearings. If you had come to us in March when we initially wrote you the letter, you would be done by now. You would have. Now it is not our fault that you didn't respond to three letters that we sent to you

Hugh James Rossouw - I know that the letter that I got that said I don't have a CO

Vincent Cestone - Yes, but we sent you letters and we asked you for information, you never came. We would have told you. And you didn't respond to the letters, you didn't respond to reviews for completeness, you didn't call the Town and ask when am I on. We can only do so much.

Paula Clair - Were you away

Hugh James Rossouw - No. I am pretty sure that I only received a letter asking for the CO. I am pretty sure about that.

Vincent Cestone - Okay. So we are going to carry this over and I am going to talk to Tom Monroe. The things that we are asking you for, get them to the town as soon as you get them because if you bring them the night of the meeting, that's not good. We want, everyone on the board wants to be able to review them before the meeting. So we are not reviewing them the night of the meeting.

Hugh James Rossouw - So where do I submit them

Vincent Cestone - You can bring them to the Town Clerk

Hugh James Rossouw - Marianne

Vincent Cestone - You can give them to Marianne but I would suggest that you give them to Tina. Tina is the

Hugh James Rossouw - In front

Vincent Cestone - Yes. She is the Town Clerk.

Hugh James Rossouw - Tina

Lenny Lim - We don't have any distances on that shed.

Hugh James Rossouw - Hand them all to Tina

Kim Shewmaker - Yes and she will put it in my mailbox

Adam Rodd - The other thing we will need is I think the board prefers in terms of setbacks that you are proposing

Hugh James Rossouw – right

Adam Rodd - To give us the exact feet and inches of each setback

Hugh James Rossouw - From the property line

Adam Rodd - Correct. How many feet and inches the shed is from the side yard. How many feet and inches one of your decks is from the rear yard

Robert Dee - We have the decks, we don't have the shed

Hugh James Rossouw – okay

Hugh James Rossouw - I called up the attorney general years ago, I said listen I don't have a CO on my house.

Vincent Cestone - Okay you are on for the 24th. So get us this information. If you get it next week, give it to Tina. The quicker you get it to us the quicker it will go out to the rest of the board members so they can review it and we will be in a position that we can discuss it intelligently at the meeting and not delay you again

Hugh James Rossouw - Okay. I am sorry I am taking you people's time. I really am. The original survey that Romeo did was 2 foot 6 off on my property.

Robert Dee - He is dead right

Hugh James Rossouw - I know

Robert Dee - We can't dig him up

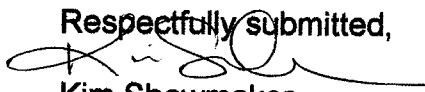
Bill Flaherty - I would like to make a motion to adjourn

Vincent Cestone - I'll second. 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: 9/10/07

Respectfully submitted,

Kim Shewmaker
Secretary