

ZONING BOARD OF APPEALS

July 28, 2008

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, July 28, 2008, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

Micaud. If you could come up and present your case.

Charles Micaud - Sure sure

Vincent Cestone - And tell us what you

Charles Micaud - First of all I am here to get a variance to move a swimming pool that came out of the ground a year ago April due to that heavy water we had and it was called hydrostatic pressure

Vincent Cestone - It pushed it up and out

Charles Micaud - Yeah it came right out. I warned the pool maintenance man that we had a leak and he didn't address it. The pool never properly, the valves were never opened, and hence we had a pool 6 feet above ground right now. And we have been waiting for quite a while to kind of address this. Meanwhile one of the big problems, one of the problems was we get ground water in every year from the hillside because it is a hill and as you know up in Nelsonville up there, there is a lot of ground water that has gone into various neighbors' basements and all that. We have even allowed the Mayor to take a look at the property and put some drainage in the lower part of our property. So this was part of the reason the pool came out of the ground. I have a letter, your attorney had asked for this letter from the engineering firm, which addresses the drainage issue and the fact that moving it would be of help. This was not part of the

original package.

Kim Shewmaker - Can I have one for the Town file?

Charles Micaud - Yes. Sure.

Kim Shewmaker - Thank you

Vincent Cestone - So in essence what you are saying since the pool is out of the ground you are using it as an opportunity to deal with your drainage and you want to move the pool somewhere else

Charles Micaud - Well we have to rebuild the pool. It is a mess right now. It is just a cesspool of mosquitoes. Prior to removing it we have to go through the whole legal thing to see if the due diligence of who is responsible and this and that. When we do get it out of the ground we want to move it a slight amount which is, you will see visible on the plans that we have given you there, which is about 12 feet to the west. The pool is 15 feet wide and it infringes upon Mrs. Healy's property line setback slightly. But it gives us a much flatter area to deal with the drainage issue and it's a better set up for everybody in mind.

Vincent Cestone - So how much are we talking about?

Charles Micaud - I think the actual distance is about, the pool is 15 foot wide now, we are overlapping, I think 12 feet is the distance that we are moving. The exact distance on the survey is 15 feet away from the property line

Vincent Cestone - Okay and what is it there?

Lenny Lim - Which property line

Charles Micaud - That property line is part of the Hudson Highlands Land Trust. It is basically a field and a fence. There is obviously the setbacks we are respecting all that and that's why we are here.

Vincent Cestone - So basically what you are looking for is 5 feet

Charles Micaud - Yep

Vincent Cestone - And putting it up there you are eliminating your problem with hydrostatic pressure

Charles Micaud - Well that's never completely eliminated but we can put in a much better curtain drain and even a double curtain drain in to avoid the water getting in. Because right now the hill comes like this, I don't know if anybody had a chance to look at the site, the hill comes right down, there is a short little patio

and then the pool. And the water would come right off that hillside over the patio right into the pool. That was just a big mess every year we had to clean it out but it also didn't allow much area for the water to go into a curtain drain. This time around we plan on putting a curtain drain on one end of the patio and the other end of the patio and then diverting the water off into our lower field where it would go into the local drainage fields.

Vincent Cestone - Where is that drainage again

Charles Micaud - The drainage, let me show you. It is not clearly marked on the thing, but right now on either side of the road we have drains going transversely underneath the road. We have three of those. Philipstown Mayor came in and asked me to put extra piping and rock in this lower area of the field because a lot of these houses here were getting, because a few years back we had tons of water, were getting their basements flooded. I happily let them do that work in that corner of the field. So all the water goes into this field. It is pitched perfectly down and that's where the water goes into the City system and it is diverted down into the River that is down below. I am not sure exactly where it goes but I would assume it goes to that area.

Vincent Cestone - And it has enough capacity so it doesn't overrun this road

Charles Micaud - No no. Because, well it never has in the past. And there are certainly no more, this water has always come down and always found itself down to this area at some point. This water has no other place to go except to this lower part right here.

Vincent Cestone - So what you are doing is you are running under the road and then there is like a culvert that the water runs

Charles Micaud - Yeah. There are large large 12 inch pipes, several of them off the road. If it doesn't go this way and into the field on the upper part, it would go down the road a little bit into this one or a little bit down into this one. And in all the years I've been here, especially with the improvement to the drainage here, I have never, I think maybe early on 12 years ago there was a little bit of flooding over the bottom part of my driveway. But when they improved that drainage along there, I haven't seen anything. Including the storm that we had that caused this problem. And that was 13 inches of rain water in 3 days. That was the big nor'easter we had in April.

Robert Dee - That cut off Old Albany Post Road too

Charles Micaud - It cut off just about everything

Vincent Cestone - Any questions from the board?

Bill Flaherty - Yeah I have some questions. I noticed on the _____ you just gave to us, the old pool had been drained without opening the pressure relief valves. Now if the pressure relief valves were opened would that have eliminated the condition

Charles Micaud - This was something that I wasn't aware of as a new owner. But this was something that the pool maintenance people were aware of and he had sent, he was out of the country and he had sent his guy that works with him to come take a look. Neither of them thought that it was a grave enough issue to pull the plugs. Had I even known about the need for it, there is a special tool that you need to release them, their issue was oh it would be dangerous to go into the pool they could slip and fall, and at time of the year there actually was no ice or anything. I had called the pool maintenance gentleman back in February. We had three phone calls describing the problem. That there was a leak in the pool and the water leaked out of the pool. I only noticed it when the cover collapsed into the pool due to heavy snowfall. I never noticed any drainage of the pool at all. What happened during the course of the winter because there is a lining on the pool, it would drain and then it would freeze, and it would drain and then it would freeze. What happened was the main valve was compromised, it was frozen and cracked. So it was a very slow leak that you wouldn't really notice

Bill Flaherty - So had you opened the valve it is conceivable that the pool

Charles Micaud - Had I known. And had I known that it was empty. Two factors.

Bill Flaherty - So this is a self-created situation in as much as you failed to open the valve

Charles Micaud - No. Well first of all I didn't know about the valve. It was something that the pool company knew about and these days it was a self-spring loaded valve in the pools. When I had the pool no one even mentioned that those things were there. And I have a maintenance contract with the pool company. And when I noticed that there was no water in the pool and called him and asked him to come take a look at the problem and what do we do, and he didn't tell me to take the valves out and he didn't tell me to fill the pool. If I filled the pool, it would have all just come out and it would have been a waste of water and there would have been more water leaking out.

Bill Flaherty - I noticed also at the last meeting our attorney asked you to provide us with a new survey

Charles Micaud - Oh no no the survey is accurate and this is the new survey. It is actually 3.412 acres and that's what you have in your hand

Bill Flaherty - Okay. In the minutes you said that we purchased a portion of the

land so you might have seen an older survey of the property. I will make sure that the newest one is with you.

Charles Micaud - Well that's what this is. I verified when I looked at it. Mrs. Healy was kind enough when I purchased the property to add on a little bit of this orchard right there so I was able to buy the property. So possibly in your records you had an older survey that was pulled out of the files downstairs that didn't include that so it might have had a lesser volume.

Adam Rodd - I know your survey says 3.412 acres which is fine. It was just a discrepancy between that number and what was on the application. That's fine. Another thing just to clarify, the pool that is going to be relocated and replaced is that going to be 15 by 50 or 16 by 50?

Charles Micaud - We were thinking about making it one foot wider because kind of for a safety issue more than anything in that if you jump in sideways it was a little narrow

Adam Rodd – okay

Charles Micaud - You know there is blue stone copping around the edges and kids are in the pool and they are having chicken fights or something, the width is safer.

Adam Rodd - Okay

Lenny Lim - Did the old pool need a variance?

Charles Micaud - No. But then I never realized this ground water

Lenny Lim - So in other words to replace it you actually are moving it into

Charles Micaud - Into this area yes by two feet. I guess if we moved it a few less feet we might not be here

Lenny Lim - Exactly

Charles Micaud - But the problem arises, the problem is still there that every year ground water, there is no way to avoid the ground water, would flood the pool and we had horrible mud in it and this way we will be able to have adequate drainage on the terrace to avoid the ground water

Lenny Lim - Could you have moved it further away that hill

Charles Micaud - Not without a variance

Lenny Lim - You have 3 acres. There is no place else on the property for a pool

Charles Micaud - No. Flat areas if you will notice, next to the green house is the septic system which is the most logical area to put it. The hillside down here it is just kind of very far from the house and not really conducive to it. And further more the ability to fence it in safely and keep it a nice fenced in area that had some privacy and safety.

Lenny Lim - But if the old pool site didn't need a variance, why don't just replace it on the old pool site

Charles Micaud - Why don't I replace it on the old pool site? Because the ground water issue.

Adam Rodd - I think maybe it was, the pool was placed before zoning. Because just looking at the survey map, I mean you are just really moving the pool a few feet. And in the R-80 district the side yard setback requirement is 30 feet and the front yard setback is 40. So just by moving, I think even the old pool didn't comply with zoning.

(Everyone talking among themselves)

Robert Dee - It is more than 5 feet the variance

Vincent Cestone - It is 15 feet

Robert Dee - On your application for the building permit you put down relocation of existing in-ground pool. But this is actually going to be a new pool correct?

Charles Micaud - Yes

Robert Dee - Okay so you are not relocating the old pool, you are putting in a new pool. Now this in the diagram the new pool has a big spa area

Charles Micaud - Well that is something that we put in there in case we want to. We are not going to put that in right away. And if you notice on the drawing, that area doesn't extend any closer to the fence line. We've kept it within the fence line and the pool approaches the rest of our property, our existing property. So the pool actually goes to the north a little bit. Do you want me to

Robert Dee - Yeah

Charles Micaud - If there was a spa, the spa would be right at the very end

Robert Dee - That is your plan. If we okay it, you can put a spa. That's all I am trying to say. So you added that on to your plan

Charles Micaud - Yeah

Robert Dee - Okay. That's all I asked

Vincent Cestone - How close is this to your neighbor's house?

Charles Micaud - Libby's house

Vincent Cestone - Yeah

Charles Micaud - Maybe 200 yards

Libby Healy - My house is up the hill

Charles Micaud - And the lower neighbors are probably a good 100 yards down the hill

Libby Healy - I have a conservation easement. It is now used as a horse pasture. And what Mr. Micaud wants is to have it 15 feet closer to the border. And this is no problem for me. I would be very happy to have him have the pool there. It doesn't influence, have any influence on my property whatsoever. It is not a location where a house would be built at any time.

Charles Micaud - And furthermore I might add is there is no visible change to anybody in the area. They would not even see it because it is up high. Just the horses can see it.

Lenny Lim - I have a question. You want 15 feet from the side of the pool and 15 feet from the back. I don't quite understand. This is the pool right

Charles Micaud - This is the old pool there

Lenny Lim - So you need 15 feet this way

Charles Micaud - Yeah

Lenny Lim - And how about this way

Charles Micaud - No feet because it is basically the same line

Lenny Lim - No it's not

Charles Micaud - The variance line comes a little closer here

Lenny Lim - No it doesn't. Is this your property line

Charles Micaud - Yes. So I guess it would be on these two lines here

Lenny Lim - Yeah but your application says only one. It looks like he needs the back also

Adam Rodd - What you are talking about what is considered the front yard set. He is proposing 15 feet setback from what is considered the front property line and 15 feet to be setback from the side yard property line.

Lenny Lim - So it is the front.

Adam Rodd - 15 and 15

Lenny Lim - that's what I am getting at. There are two.

Robert Dee - So there are two variances

Adam Rodd - Yeah two setbacks

Robert Dee - Does that say that anywhere in the application?

Adam Rodd - If you look at the building application that was written up, it says 15 feet from front and then from right it says 15 feet

Robert Dee – okay

Adam Rodd - So it is 15 and 15

Charles Micaud - Frankly it all confused me a little bit, but when the landscape architect came and he said that if we use a circular grid and then like draw a circle from the corner of Mrs. Healy's and we post a post, and I left those posts there. And then I had Glen Watson come and do the survey and I don't know much about this stuff, and it ended up all falling into place that we could possibly achieve a variance within the restrictions given here.

Paula Clair - So the 15 feet variance from the front, we've been talking about the side, the 15' variance from the front will anybody be affected by that?

Charles Micaud - The front of the house is down the hill, they don't even see us. There are tall grasses and it is on a plateau there. They don't even see it even in the winter time they wouldn't see it. And then the side is a barn.

Vincent Cestone - I don't see any fencing on this

Charles Micaud - Oh there is fencing all around. It is not on the survey but it is

definitely there. I think it is 6 feet high on most sides because the horses like to lean over and eat our tall grass. It might be 8 feet there. And then the fence that is existing right now will probably be demolished in the process of redoing this whole thing and I am not sure it is within the Code but I will check

Vincent Cestone - Because there is a maximum height. Do we want to talk about screening? Or is that not an issue. What do you think about on the two sides that you are encroaching on the setback screening it with shrubbery and things of that sort.

Charles Micaud - We have actually begun that process years ago. On the downhill side where the front lot is we have tall wild grasses growing. That's why we had to put the higher fence up so the horses couldn't eat it them down. And on the left side near the barn we have bamboo growing which is very high and we anticipate putting a bamboo fence behind that.

Vincent Cestone - is the grass tall

Charles Micaud - oh yes very tall and it grows like that

Robert Dee - what is very tall? How many feet

Charles Micaud - 6 feet high

Vincent Cestone - Any more questions from the board?

Lenny Lim - No but I do disagree with you that this is a self created hardship

Vincent Cestone - It is a self created hardship because you are increasing the nonconformity. If you put it back in the same spot, it is not a self created hardship. But since you are moving it, it is a self created hardship

Charles Micaud - It wasn't clear. No we don't want to get annual ground water issue adding to this every year and possibly adding to another problem.

Vincent Cestone - Any more comments from the board? Any more comments from the audience? I will make a motion to close the public hearing. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - I will 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

Paula Clair - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - Len?

Lenny Lim - I vote in favor

Vincent Cestone - Bob?

Robert Dee - I am in favor as long as it includes the fencing to Code around the pool

Charles Micaud - Absolutely

Vincent Cestone - And I'll vote in favor. But this is a straw poll this is not an official vote. Our attorney has to write up the resolution and at our next meeting we vote on it officially. The downside is we don't have our next meeting until September. But what do you think Adam with talking to Tom and tell him what happened tonight so he can get started? Because I don't think the board is going to change it's position on this

Adam Rodd - I can call Tom and let him know that the Board had a straw poll vote and it was unanimous to grant the two variances. But the actual resolution will not be adopted until September and hopefully Tom will not have a problem with it.

Vincent Cestone - See in order for it not to carry three of us would have to change our votes. Because it would have to be 3 to 2 against and I don't think the odds are that great that that is going to change.

Charles Micaud - Okay good. We are sort of sitting on it waiting to decide what to do. One is this decision and one is another decision

Vincent Cestone - Okay

Adam Rodd - The other option is, are you looking for the permit

Charles Micaud - Yes we definitely want a permit

Adam Rodd - Okay. What you can do instead of making it a straw poll if you are all absolutely certain which is fine, you can simply just vote on it and once the minutes are generated, you can just file the minutes and that has the same affect as a resolution.

Vincent Cestone - But what about conditions and things of that sort

Adam Rodd - You can also add in conditions

Vincent Cestone - I rather just stick with the tried and true

Charles Micaud - Conditions meaning the fence

Vincent Cestone - Things that get written into the law that the building department will be looking for when you complete your structure

Charles Micaud - Okay

Vincent Cestone - But you know, the building department is generally agreeable

Charles Micaud - Okay. thank you very much

Bill Flaherty - Do you have a specific time table to get started

Charles Micaud - No we are waiting to see what happens with the insurance companies. It is a long process because they have to determine _____ and we can't take it out of the ground until everyone looks at it. It's a yearlong process so far. We hope to get it out this spring but that is not going to be the case. We hope to get it out this fall. That would be great if we can get it out in the fall

Vincent Cestone - You are all set

Charles Micaud - Thank you very much for you time

Vincent Cestone - And you don't have to be here for the resolution unless you want to

Charles Micaud - Okay. Which would be September what?

Kim Shewmaker - 8th

Vincent Cestone - Okay review of minutes of July 14th. Any additions or corrections?

Adam Rodd - There is just one correction. I think I misspoke on page 7. I refer in my comments to a 20 foot setback on Rossouw and it is 15 feet. There is just one section that I misspoke.

Vincent Cestone - Any other corrections? I make a motion to accept the minutes as amended. Do I have a second

Bill Flaherty - Second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Okay you're on.

Adam Rodd - Okay reading from the Resolution on Rossouw up to findings of fact. The Philipstown Zoning Board of Appeals conducted a public hearing on July 14, 2008 to hear the appeal of the applicant, Hugh James Rossouw, from the denial of his request for a building permit in order to maintain two decks, as well as a metal shed, on his property located at 374 Sprout Brook Road in Garrison, New York 10524. The applicant's request for a building permit to maintain the subject decks and metal shed was denied because the decks and the metal shed encroach upon the required 15 foot set back set forth in section 175-32, Schedule B, Item 7 of the Zoning Ordinance. In this regard, the wooden deck located on the south side of the subject parcel (referred to herein as "Deck 1") is set back from the side yard lot line by a distance of 10.9 feet; the wooden deck located on the north side of the subject parcel (referred to herein as "Deck 2") is set back 14.4 feet from the rear lot line; and a metal shed, located on the back north corner of the subject parcel, is set back 1.5 feet from the rear yard lot line, and 2.75 feet from the left side yard lot line. At a public meeting of the Board on July 14, 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: (A) Deck 1 and Deck 2. That the balancing of equities weighs in favor of granting the appeal of Hugh James Rossouw from the denial of his request for a building permit to maintain Deck 1 and Deck 2 in their existing locations on the subject property located at 374 Sprout Brook Road, Garrison, New York 10524 despite the decks' insufficient side yard and rear yard set backs. (B) Metal Shed. That the balancing of equities weighs in favor of denying the appeal of Hugh James Rossouw from the denial of his request to maintain an existing metal shed on the subject property located at 374 Sprout Brook Road, Garrison, New York 10524 based upon its insufficient side yard and rear yard set backs. The grant of the subject area variances, for Deck 1 and Deck 2, with the following conditions, for the reasons set forth herein, shall constitute findings based on the factors set

forth in Town law 267-B. Conditions of Variance. 1) Deck 1 and Deck 2 shall remain in their existing locations as configured on the survey map prepared by H. Stanley Johnson & Company Land Surveyors, PC dated October 13, 2005. 2) Deck 1 shall remain set back from the right side yard lot line by a distance of 10.9 feet. 3) Deck 2 shall remain set back from the rear yard lot line by a distance of 14.4 feet. 4) The applicant shall undertake to use his best efforts to clean and upgrade his existing lot so as to mitigate any impacts which could result from the grant of the variances sought herein. 5) No enlargement, reconfiguration or extension of the existing decks, for which the above referenced variances have been granted, is authorized without Zoning Board approval.

Vincent Cestone - Okay do we have any changes? If not, I will make a motion to accept the resolution as read.

Adam Rodd - I would go to the roll call vote

Vincent Cestone - I am going to do that after we accepted the resolution. Right?

Adam Rodd - Okay that's fine.

Vincent Cestone - And Bill seconded. All in favor?

All Board Members – aye

Vincent Cestone - Roll call vote on the resolution. I will vote in favor. Lenny?

Lenny Lim - Do we have to vote each resolution separately

Adam Rodd - Well I broke it down because we are granting the variances for the deck 1 and deck 2 and denying the variance for the shed

Vincent Cestone - So you want us to deal with it individually

Adam Rodd - Actually if you just kind of go to the back of the resolution

Vincent Cestone - Okay

Adam Rodd - I can read it and, they are both raised in the affirmative

Vincent Cestone - Okay

Adam Rodd - Okay. The roll call vote first is for Deck 1 and Deck 2. The question of the foregoing resolution calling for granting the requested variances, to maintain Deck 1 and Deck 2 in their existing location on the applicant's parcel was put to a roll call vote on the 28th day of July, 2008, and the results were as

follows:

Vincent Cestone - Okay. Roll call vote on the decks. I'll vote in favor of the decks. Lenny?

Lenny Lim - I vote in favor

Vincent Cestone - Bob?

Robert Dee - I vote in favor

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor

Paula Clair - I vote in favor

Vincent Cestone - And so do I.

Adam Rodd - And part B. The question of the foregoing resolution calling for granting the requested variance to maintain an existing metal shed in its existing location on the applicant's parcel was put to a roll call vote on the 28th day of July, 2008, and the results were as follows:

Vincent Cestone - So in this instance a negative vote would be denying the shed. Is that correct?

Adam Rodd - Right

Vincent Cestone - Okay. On the shed. Lenny?

Lenny Lim - I vote against it

Robert Dee - No

Bill Flaherty - I vote to deny

Paula Clair - I would deny

Vincent Cestone - And so do I. Any old business? If not, I would entertain a motion to

Lenny Lim - Second

Vincent Cestone - All in favor

All Board Members - Aye

Lenny Lim - Have a great summer.

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

DATE APPROVED: 9/8/08

Respectfully submitted,

Kim Shewmaker
Secretary