

ZONING BOARD OF APPEALS

September 10, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, September 10, 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.

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

ABSENT:

Vincent Cestone - For those of you that are here for Anthony Spica and Peter Risi our attorney has informed us that they have withdrawn their application and they have been removed from the agenda for tonight. I am going to do the reviews for completeness first so that those people don't have to sit through all the public hearings and is someone for Lindert here? You don't have to present anything tonight. We are just doing a review for completeness and we will tell you when you are on the agenda for a public hearing. Adam, did you have anything on this?

Adam Rodd - No. It looks like we have the survey. You might want to have the applicant just briefly just give us a thumbnail sketch of what it is that he is proposing and this way if there is something specific that you think you may want to see, you might as well tell him now.

Vincent Cestone - Yeah, save you a little time. In a hundred words or less

Thomas Lindert - There is a plotting map in the packet that will explain the whole thing.

Vincent Cestone - This?

Thomas Lindert - No.

Vincent Cestone - Just quickly tell us exactly what you are doing

Thomas Lindert - The garage addition here and porch addition here. There is a 40 foot setback. This is where I am at

Vincent Cestone - Okay. I don't think we need anything additional unless the board members think they need something additional for the public hearing.

Robert Dee - 2 bedrooms too right

Thomas Lindert - excuse me

Robert Dee - you are putting bedrooms there too

Thomas Lindert - one bedroom in the back

Vincent Cestone - On the 24th what do we have?

Kim Shewmaker - We can't get a public hearing notice in by then.

Vincent Cestone - Oh okay. We are going to have to schedule you for the first meeting in October which is the 8th

Kim Shewmaker - Which is Columbus Day

Vincent Cestone - Excuse me

Kim Shewmaker - That's Columbus Day. You have five Mondays in October.

Vincent Cestone - I guess we will do the 1st and the 4th

Adam Rodd - The 3rd one is the only problem for me

Vincent Cestone - Okay so you are scheduled for October 1st for a public hearing and then you can present what you are proposing and then the board will ask you a bunch of questions. But you are on for October 1st

Thomas Lindert - Thank you.

Vincent Cestone - You're welcome. Okay a continuation of a public hearing for Nancy Carlucci. So, there were some issues that were brought up and I will let Lenny take the lead on this because he has done some research on that. I drove by the property just this evening.

Mr. Carlucci - Before we begin, just so I am clear as far as where we are. I don't believe Mr. Chairman you were here the last time

Vincent Cestone - I was. I remember

Mr. Carlucci - I must have been mistaken. Because the issue came up as far as whether the board can actually even rehear this application because of the initial application having been denied and there was discussion with the board's attorney about whether or not the board could hear it and he pointed out that under the Town Law Section 267-b there is allowed to be a rehearing provided that there is a showing of changed circumstances and that there is an unanimous vote of the board to actually rehear it based on those changed circumstances. And then my understanding was once that vote was taken, if in fact it was allowed to be reheard, then the review would be made on the application. My understanding is that there is a two step process essentially the second one we don't get to unless we get over the hurdle of the initial issue. And a couple of things if I may point out quickly as far as changed circumstances, the Town, the Board's attorney pointed out a change in the law from the last time it was ruled on the initial application. The court of appeals in the State of New York came out in 1995 after the decision in this particular case basically changing the factors for the board to consider in granting a variance. And in fact the board said, the court of appeals set out a five factor balancing test in a case cited Matter of Sassel vs. Osgood in 1986 NY 2nd 374

Vincent Cestone - I am aware of it

Mr. Carlucci - Infact I believe the town actually changed its application for variance in 1995 in accordance with the holdings that the court of appeals founded in New York State for that particular standard. In additional to the legal change from that statute there is substantial physical changes that were made since the time of the initial application that was denied I believe in 1992. If you recall the main objection to granting a variance initially was a complaint by one of the neighbors over a water problem in the area. Since that time there have been two substantial projects, construction projects undertaken by the Town of Philipstown to alleviate the drainage conditions that many of the residents on Valley Lane had. The first was the complete redoing of the drainage system on Sprout Brook Road which diverted a large portion of water off of Aqueduct Road and ran drainage down Sprout Brook Road. Within the last three or four years Valley Lane was actually completely paved and made a public road. As part of that public improvement project a drainage system was put in on Valley Lane further diverting water that was running off the mountain, falling down through the property owner's property along Valley Lane and actually provided a drainage system for that water runoff which substantially reduced the flow of surface water on the property. The third project that was undertaken actually was within the last year and a half or so there was a construction project at 13 Valley Lane. There was actually a house built on that property whereby the property owners were required to put in a substantial drainage system again to alleviate and divert some of the water that was flowing over the property, the properties along Valley Lane runoff from Aqueduct Road. So I think that those factors warrant a reconsideration and a rehearing of this application.

Lenny Lim - Did we take a vote on reopening the hearing

Mr. Carlucci - There was, Mr. Lim, it was actually held in abeyance. You had said at that point that you wanted to take a look at some things

Lenny Lim - Did we take a vote

Mr. Carlucci - It was tabled.

Lenny Lim - We didn't vote to reopen this yet

Mr. Carlucci - No

Bill Flaherty - I had made a motion to reopen it if you remember but I never got a second on the motion

Paula Clair - We said to leave it to this meeting to decide whether to vote

Robert Dee - Does this vote have to be unanimous?

Adam Rodd - Yes

Mr. Carlucci - On the rehearing I believe under the Town Law

Vincent Cestone – okay

Mr. Carlucci - And again my understanding is based on changed circumstances with the law

Vincent Cestone - Would someone like to make the motion to

Bill Flaherty - I will so move

Vincent Cestone - Do I have second

Paula Clair - Second

Vincent Cestone - All those in favor

Some board members – aye

Vincent Cestone - All those against

Robert Dee - I'm against

Lenny Lim - I'm against

Mr. Carlucci - For the record can I ask for a clarification with respect to the reasons on the denial of the rehearing based on what we believe are changed circumstances that would warrant a rehearing

Adam Rodd - I would recommend to the board at this juncture is to understand that the chairman will make a motion during this meeting to go into closed session to confer with counsel to discuss legal issues. I would suggest that at this juncture rather than rule at this point, I recommend to the chairman that you make a motion to go into closed session and I would do that after we hear the other matters and we can discuss and then I would recommend at that point that we take the vote that is necessary.

Vincent Cestone - So in an instance like this do we basically hold it to the end after the closed session and make a decision at that point

Adam Rodd - I would do that yes

Vincent Cestone - Okay. So if we can ask you to have a seat

Mr. Carlucci - Sure. Thank you.

Vincent Cestone - And the next item on the agenda is James D. Cross.

James Cross -- yes

Vincent Cestone - So if you could just explain to us what the issue is and what you are looking for

James Cross -- Glen is going to clarify. But we recently bought this property at 93 Lower Station Road. The primary change we would like a variance for is there is sort of a small studio that was built on top of the main floor

Vincent Cestone - Where is that on the map

Glennon Watson - Give me a couple of minutes and let me explain. Glennon Watson, Badey and Watson. The property at Lower Station Road is an existing house and if you look at the survey you will see that the house has two dark areas outlined and at the bottom of the map there is a circle where we have enlarged it to show you what we are seeking to do. I am going to lead you a little bit, we made some adjustments in our plan so we can reduce the requested variance tonight. Essentially there is a house, an existing house and the application before you is to remove a small second story which sits on top of the roof and replace that with a second story that takes up the whole roof, the entire roof. And in fact the application asks to extend the building about 3 feet to the

south. During the intervening time Mr. Cross and their architects have decided that they can do without that expansion beyond the line of the building so tonight we would like to withdraw that part of the request for a variance and we simple want to extend the building upward from the front side walls of the building rather than extend it to the south. I can show you here on the map, in fact, why don't I give you this and I think it will help you see it a little bit better. I prepared these, these are the revised map and if you turn I believe it is the last page, I have taken, you can see the two circles on the survey. The one on the left is as it was originally submitted to you. And colored red is a proposed extension of the second story to the south and beyond the wall of the house.

Lenny Lim - Glen,

Glennon Watson - Yes

Lenny Lim - Is this a pre-existing nonconforming

Glennon Watson - Yes. It is a pre-existing nonconforming. It is a very old house. Do you know when it was built?

James Cross – The original part was built in 1860 and then additions were made I think in either the 1920's or the 1930's

Lenny Lim - Okay. So you don't intend to enlarge the footprint now

Glennon Watson - That's correct. The way the application came in, we did.

Lenny Lim - You were going to enlarge it

Glennon Watson - Yes we were going to enlarge the footprint. And if you look here, this red portion was the enlarged footprint and we extended it to the left and you can see we pulled that back so that we are going to take the same footprint. Now what that does, the architects have told me and I believe them, the building that is there now has an addition here that doesn't occupy the entire roof. And actually you have that in there too in the pages before. It doesn't take the entire roof and it has this little fence, balcony fence around the edge of the roof. I am told by the architects that this is an inappropriate design for this particular building and that it was not well designed. Obviously, that is a subjective opinion. But operating under that theory you can see right here we have drawn this red line on the large one, it is not on your small map, but this is the corner of the existing building and we simply want to take the building, move it up and put a peak on it so that we get full advantage of the roof area and can have a real master bedroom basically in that area. We are not seeking to build any closer to the road. We do seek, there is a second part of this variance, which in the back of the building there is a proposed deck. Which even though it is behind the building it is too close to the front yard setback. So we are seeking a variance

and this particular front setback has to be measured from the middle of the road and you will see that in the application. Because the road is less than 50 feet wide and there is an extra variance required. So it fits in between, there is a garage on the property as you can see in the photograph. And it is again, give a more consistent picture of the house.

Robert Dee - The addition is not going to go any higher than the existing roof, is that correct

Glennon Watson - That is correct. You can see that right here. It is going to match the roof height of the other part of the building.

Adam Rodd - Just so I am clear. You are not proposing any increase in the reduction of the existing insufficient front yard setback?

Glennon Watson - That's correct

Adam Rodd - In fact it is just going to be more bulk.

Glennon Watson - We are putting more bulk over the same footprint.

Adam Rodd - Okay. Is there a rear yard setback issue

Glennon Watson - No. The building is all here. The backyard is plenty. I mean hundreds of feet.

Adam Rodd - Okay. I believe there is a proposed deck in the rear.

Glennon Watson - It is in the back of the house

Lenny Lim - But it affects the front yard setback

Glennon Watson - It is putting, the deck is putting more in the front setback area.

James Cross – So the setback would go something like here or something. So technically it would be within the 40 foot set back

Glennon Watson - We want to put a stairway up and a landing to get up into this porch, this existing porch area

Adam Rodd - So the deck is how far back, what is the proposed front yard setback for the deck?

Glennon Watson - 30 feet 4 ½ inches at its closest. That is shown at this point right here.

Lenny Lim - You are building this proposed deck on top of that concrete platform you have

Glennon Watson – over

Vincent Cestone - Any more questions from the board? Anyone in the audience wish to speak on this? I entertain a motion to close the public hearing.

Bill Flaherty - I'll so move

Vincent Cestone - I'll second. All in favor

All Board Members – aye

Vincent Cestone - I would like to 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

Lenny Lim - Vinny is this going to be for both of them? For the deck and the house

Vincent Cestone - Yes

Lenny Lim - Okay

Vincent Cestone - Straw poll. Bob?

Robert Dee - I'm in favor of it.

Vincent Cestone - Lenny?

Lenny Lim - I have no problem with it.

Vincent Cestone - Paula

Paula Clair - I approve

Bill Flaherty - I'm in favor

Vincent Cestone - And so am I

Glennon Watson - Thank you. Would it be the next meeting for a resolution

Vincent Cestone - That would be up to Adam

Adam Rodd - Either the next one or the one in October.

Vincent Cestone - Next item on the agenda is Denise Enea. Hi how are you doing?

Mr. Enea - Good. How are you?

Vincent Cestone - So you changed this

Mr. Enea - Yes. (cannot hear applicant...too many papers shuffling by the microphone). ...the original 3 car garage...

Lenny Lim - You know, hold on. It was 37 and you moved it down to 27

Vincent Cestone - So just explain exactly what you are proposing to do on your house.

Mr. Enea - We are currently there 24 feet 2 inches wide and I want to add 5 feet with the garage. I am also going to increase.... ...and with the original proposal it is also going up in height. The original motivation of this is to get the higher roof line to go with the older style house that I have. The garage was built in the 1960's and the house was built in 1860.

Vincent Cestone - Is the garage heated

Mr. Enea - No

Vincent Cestone - No water

Mr. Enea - There is water in there for a garden hose right now. I will probably keep water in the garage for that reason. And if I want to wash cars or something like that

Vincent Cestone - Sure. And if there is electricity currently in the garage

Mr. Enea - Yes

Vincent Cestone - And are you proposing to keep the electricity on the second story

Mr. Enea - Well it won't really be a second story. It is going to have a tall ceiling

in the garage and it would be more like a loft

Vincent Cestone - At it's highest point the loft is

Mr. Enea - The approximate height, of the overall structure do you mean?

Vincent Cestone - The area above the garage bays to the roof

Mr. Enea - The garage ceiling

Vincent Cestone - Yes

Mr. Enea - _____ at center

Vincent Cestone – okay. And you maximum height is 19 feet

Mr. Enea - Yes. As you can see the way the roof pitches, it is only tall in the very center and the roof pitches away.

Vincent Cestone - Any questions from the board

Robert Dee - You are going to get rid of that carport?

Mr. Enea - Yes

Robert Dee - Okay

Mr. Enea - Carport is coming down and now extends out from the garage

Robert Dee - It actually extends out further than this is going to be

Mr. Enea - Oh yes

Vincent Cestone - So what you are actually doing is reducing the nonconformity

Robert Dee - Yes he is

Lenny Lim - You are keeping the breezeway, you are extending

Mr. Enea - The breezeway between the house and the garage is going to stay. It was originally suggested that if I wanted a third bay that maybe I should close that up but for security reasons and everything else we decided to leave that open and just slightly enhance the size of the garage

Lenny Lim - Okay your carport was almost 27 feet long. How much are you reducing it?

Mr. Enea - The carport we are reducing that by 10 feet.

Adam Rodd - What is your existing project right now.

Mr. Enea - As it exists right now

Adam Rodd - Yeah

Mr. Enea - We were R-40 and we got changed to R-80. Right now we are at 27 feet 5 inches I believe. So the garage as it stands is nonconforming

Adam Rodd - But right now from the side yard setback you have a 27 foot 5 inch setback right

Mr. Enea - Yes

Adam Rodd - And with your proposed construction renovation what is the setback

Mr. Enea - It will be 22 feet

Adam Rodd - So right now it is 27 feet 5 inches

Mr. Enea - Right now we have 27 feet 5 inches from the property line to the corner of the existing garage

Adam Rodd - Right. And with your proposed construction, what will your setback

Mr. Enea - 22 foot 5

Adam Rodd - okay

Mr. Enea - it will be a 7 ½ foot variance that we are asking for

Robert Dee - And the carport is coming down

Bill Flaherty - What was that variance with the setbacks

Adam Rodd - 22 feet 5 inches is proposed. The existing setback is 27 feet 5 inches. So you are building out an additional 5 feet

Mr. Enea - right. And we are taking down the carport that is 15 feet and we are expanding the garage by 5 feet.

Vincent Cestone - Along your property line by the garage, is that wooded

Mr. Enea - Yes

Vincent Cestone - And if I remember correctly, they are mature trees

Mr. Enea - Where

Vincent Cestone - Along the side of your property where your garage, where your carport is now

Robert Dee - They are mature trees. They have been there a long time.

Mr. Enea - In other words once you get to the tree line, which is, what I don't understand is where the tree line is not where my property is. My property ends about 10 or 15 feet before the tree line. So the tree line is approximately 40 to 45 feet from where my garage is right now. Because those trees are mainly saplings and as you get deeper into that area another 30 or 40 feet, you are getting into the bigger and more mature trees

Vincent Cestone - So looking at your house on the left side you have basically vacant land

Mr. Enea - Yes. There is 80 acres of vacant land.

Vincent Cestone - Okay. I have no questions. Anything from the board? Anything from the audience? Anybody want to speak on this? I will make a motion to close the public hearing. Do I have a second?

Robert Dee - 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 - Bob?

Robert Dee - I'm in favor of it

Vincent Cestone - Len?

Lenny Lim - I have no problem with it

Vincent Cestone - Paula?

Paula Clair - I approve

Bill Flaherty - I vote to approve

Vincent Cestone - And so do I. Okay. This is a straw poll so this is not an official vote. As soon as our attorney gets the resolution, then it will be official.

Mr. Enea - Any idea

Adam Rodd - I hope to do it either the next meeting or the first Monday in October.

Mr. Enea - And how do I find out when that resolution is done.

Adam Rodd - You can call the building department. And once it is entered it is forwarded to the building department so shortly after the next meeting which is the 4th Monday in September or the 1st Monday in October

Mr. Enea - Okay. Thank you very much

Vincent Cestone - Review of Minutes of July 9th. Any additions or corrections?

Bill Flaherty - I have a correction to make on page 12. Change "now" to "how". Other than that I have no further changes

Paula Clair - There were some typos but even though there were typos you get the gist of what was said

Vincent Cestone - Wrong hole

Kim Shewmaker - What?

Vincent Cestone - It should have been h-o-l-e and you had w-h-o-l-e. I make a motion to accept the minutes of July 9th as corrected. Do I have a second?

Bill Flaherty - I'll second.

Vincent Cestone - All in favor

All board members – aye

Vincent Cestone - Minutes of July 23rd. Any corrections or changes? If not, I'll make a motion to accept the minutes as submitted. Do I have a second?

Bill Flaherty - Second

Vincent Cestone - All in favor

All board members – aye

Vincent Cestone - I make a motion to go into closed session to discuss legal issues with our attorney. Do I have a second?

Lenny Lim - I'll second.

Vincent Cestone - All in favor

All board members – aye

(IN CLOSED EXECUTIVE SESSION)

Vincent Cestone - I make a motion to come out of closed session. Do I have a second

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All board members – aye

Vincent Cestone - Okay. Let's get back to where we were and the issue here is to reopen the public hearing for Mrs. Carlucci. A motion has been made and seconded. This has to be an unanimous vote and I'll do it by roll call. Bill?

Bill Flaherty - I vote for

Vincent Cestone - Paula

Paula Clair - Yes

Vincent Cestone - Lenny? This is to reopen the public hearing

Lenny Lim - I'll vote to reopen it

Robert Dee - I vote to reopen it

Vincent Cestone - And so will I. The public hearing is now open. Now you talked about the conditions of why we should reopen it. Now I am going to ask you what are you offering in exchange for us reopening the public hearing. Like reducing the size of the pool, removing the apron, things of that sort. What are you proposing?

Mr. Carlucci - Well, if there were a possibility of having to reduce the size of the actual pool itself, believe me that would have been done a long time ago.

Vincent Cestone - It's an option

Mr. Carlucci - Actually it isn't.

Vincent Cestone - Explain to me why

Mr. Carlucci - Because the structure itself is a concrete and steel structure and we had actually had pool companies come out to determine the feasibility of whether they could actually, for instance the rear setback which we need approximately 3 feet or something like that. 3 feet 8 inches. To possibly put up a wall, form it and bring in back fill to remove that condition. And do the same thing on the right side setback. Just economically it is not feasible. The cost to do that are even greater than the cost to actually redo the pool itself.

Lenny Lim - The right rear is where it goes into the neighbor's

Mr. Carlucci - No. The right setback is the side that requires 8 feet. There is a 15 foot difference

Lenny Lim - 7

Mr. Carlucci - 7 feet sorry.

Lenny Lim - There is only 7 feet

Mr. Carlucci - That is the side, I believe you were there, that is the side with the steps and the railings are

Lenny Lim - Right

Mr. Carlucci - Do you mean 8 feet from the edge of the top of the step to the property line? There is only 7 feet there. From the top of the step, from the inside edge of the step to the property line

Robert Dee - The water line

Mr. Carlucci - Yes.

Adam Rodd - Just so we are clear. Where do you get the 8 feet from. Where do you say that the requirement is 8 feet

Mr. Carlucci - It is a 15 foot setback

Adam Rodd - Right

Mr. Carlucci - The distance between the pool as it exists now and the property line is 7 feet. So we are encroaching

Vincent Cestone - Actually, it might be from the apron

Mr. Carlucci - I don't believe that is correct. We have had discussions with the building inspector and the building inspector had told us that it is from the edge of the pool

Vincent Cestone - I am not sure of that

Robert Dee - The apron goes right up to the property line

Lenny Lim – right

Mr. Carlucci - You mean the concrete walkway as it currently exists now

Robert Dee - Yes

Mr. Carlucci - That actually goes up to maybe within a foot of the property line. Maybe a foot and a half.

Lenny Lim - I tend to disagree. I was there and I thought they touched. The concrete touches the bricks

Mr. Carlucci - The concrete touches the deck but the deck encroaches on the property line. The deck belongs to the adjoining property owners. The deck actually is encroaching over into Mrs. Carlucci's property by approximately a foot, foot and a half. They do touch.

Lenny Lim - Well I went by the line coming off the shed.

Mr. Carlucci - The shed

Lenny Lim - The shed on the back property. And I went by this line

Mr. Carlucci - Right. There is a shed on the back line that is approximately 7

feet

Lenny Lim - When Bill and I, it is not 7 feet, it is only a couple of inches off the back line

Mr. Carlucci - That's not true

Lenny Lim - This shed isn't it a few inches off this property line?

Mr. Carlucci - This shed here is about a foot

Lenny Lim - Less. I couldn't measure 4 inches off it

Mr. Carlucci - What was your mark

Lenny Lim - The fence

Mr. Carlucci - What fence

Lenny Lim - There is a little wooden fence right in front

Mr. Carlucci - That's not the property line. The fence is over the property line. This fence right here, this stockade fence, that fence is not the property line. The stockade fence is onto Mrs. Carlucci's property as is the wood deck that is here that encroaches onto Mrs. Carlucci's property line.

Robert Dee - So everybody is encroaching onto everybody else here

Mr. Carlucci - It's family

Robert Dee - It's family but what happens if that person sells?

Mr. Carlucci - If that person sells

Robert Dee - And the next person has to put up that

Mr. Carlucci - Well you can't sell it in its current existing form. You would never be able to sell it. It would have to be corrected.

Lenny Lim - It would be sold if we give you the variance though wouldn't it

Mr. Carlucci - Excuse me

Lenny Lim - Would it be sellable if we give you the variance?

Mr. Carlucci - Would the

Lenny Lim - What you are saying is it can't be sold now

Mr. Carlucci - What can't be sold now

Lenny Lim - This house here

Mr. Carlucci - The one with, this house as it exists now

Robert Dee – right

Mr. Carlucci - This neighboring house? It could be sold

Robert Dee - Oh okay. My question is if they sell the house and I move in, I am looking at a pool that's 6 inches, concrete or whatever, a foot on my property line

Mr. Carlucci - No

Robert Dee - No?

Mr. Carlucci - The concrete is not on that property

Robert Dee - How far is the concrete from the property line

Mr. Carlucci - It is about a foot and a half to two feet

Robert Dee - And how can that be if it is only 7 feet from here to here

Mr. Carlucci - It is 7 feet from the inside edge of the pool

Robert Dee - Where the water is

Mr. Carlucci - From the water is

Robert Dee - Okay

Mr. Carlucci - To the property line

Robert Dee - Okay so I look out my window

Mr. Carlucci - The concrete itself is not 7 feet wide

Robert Dee - Okay. So I look out my window, the water is 7 feet from the end of my property correct?

Mr. Carlucci - Yes.

Robert Dee - That would be a hardship for somebody buying the house?

Mr. Carlucci - Well I don't necessarily think it's a hardship because if you are looking out the same, if the pool was within the setback you are looking at another 8 feet. It is still right there.

Robert Dee - But you don't even have a fence up

Mr. Carlucci - There is no fence at the front portion of the pool, correct.

Vincent Cestone - The law now says

Mr. Carlucci - Absolutely, you have to have a four foot fence there and as a condition and obviously there are issues regardless of whether we need the variance or not with the fencing requirements that are there, I submit to you to the extent that the variance is given, you would have a fence in within a week and a half and you can come out and inspect it.

Vincent Cestone - So you are proposing no changes to the pool layout as it stands

Mr. Carlucci - No not necessarily, again, I think we need to be clear as far as what the pool is considered. My understanding is that the pool itself where we are measuring the setbacks are from the inside edge not including the concrete apron. To the extent that that in fact is not the case and I don't believe it is, I believe it is from the inside of the pool out. But if I am wrong, then I certainly and we are counting the 3 foot wide _____ along the sides except for either on both ends along the both long side is 3 feet from the inside edge of the pool to the edge of the concrete apron. I would have no problem entertaining the board's proposals and suggestions with respect to shrinking that concrete apron. Absolutely, one hundred percent.

Vincent Cestone - What if we proposed that we give you the back

Mr. Carlucci - Along the back property line

Vincent Cestone - Variance but not the one on the side

Mr. Carlucci - If the question is, if we're looking at a condition where the board is considering the fact that the concrete apron starts at a certain point and goes there, it's possible that the concrete apron itself could be eliminated or modified. I don't know what the feasibility would be and I can check as far as

Vincent Cestone - Do you want us to continue this so that you can

Mr. Carlucci - I would, I would just like a little bit of clarification to see so that, like I said, if there's from the top step where the concrete apron goes there is probably about 4 ½ or 5, maybe 5 ½ feet of concrete on that kind of goes in a shape like this. If we are talking about that that's a portion of the property that you believe needs to be removed so as not to need an 8 foot variance but maybe need a 2 foot variance,

Vincent Cestone - The issue here is, now this neighbor hasn't complained. But this house is going to eventually be sold, bought, whatever, and this is an extreme variance request. This is not a little variance request. This is like right up to the property line or within inches of the property line.

Mr. Carlucci - I guess my question for clarification, it's a right up to the property line request for a variance if we are talking about that concrete apron.

Vincent Cestone - I am talking about the whole pool

Mr. Carlucci - Well the pool from the step

Vincent Cestone - Well I am proposing is this, is that so that this is no longer

Mr. Carlucci - But that might actually be more than a 15 foot setback

Vincent Cestone - Well I don't want to do a 15 foot setback. I want to be at 15 foot setback and I drew a line on the pool.

Mr. Carlucci - I understand. You want to be

Vincent Cestone - I want to keep this setback because this homeowner, whoever this may be, right now they are not complaining but this in perpetuity

Mr. Carlucci - But we also have a setback here. And if you want to talk about up against the property line

Vincent Cestone - That's different. That's pre-existing nonconforming. This was an error on the point of the builder. It has never been corrected. It has been 17 years. It already has an application for a variance denied. I am trying to work with you.

Mr. Carlucci - I am.

Vincent Cestone - So this is what

Mr. Carlucci - I understand

Vincent Cestone - Personally I would be acceptable to this. I am willing to

forego this because I don't think that is excessive. I think this is very excessive.

Mr. Carlucci - Let me ask you a question just so I can find out, because I do think I will need an opportunity to look into this. If we were at 15 feet here from lets say to get to that 15 foot point are we talking about that as the point where the inside steps would be or is that

Lenny Lim - The water

Vincent Cestone - Where the water starts

Mr. Carlucci - I understand what you are saying

Lenny Lim - This way you eliminate one variance. We just have to give you the back one

Mr. Carlucci - All right. I would like to take you up on your request to kind of look into the feasibility

Vincent Cestone - And the other conditions we would say is that you would have to screen this side

Mr. Carlucci - Absolutely

Lenny Lim - With a fence

Mr. Carlucci – absolutely

Vincent Cestone - You would need to put the fence in and the reason for the fence around the pool is to protect yourself now that the laws have changed, somebody gets hurt in there, it is a liability

Lenny Lim - In other words we will let him keep the side if we goes 15 to the front

Vincent Cestone - Exactly

Lenny Lim - Okay

Mr. Carlucci - And like I said I just need an opportunity

Vincent Cestone - You need an opportunity to see how feasible it is. My guess is that this is not going to be cheap but it is not going to be excessive. You know? And that will allow you to keep the pool with the property. It may not be in the original configuration. Because the other option is that you leave it the way it is and you take your chances with the board and if we rule against you, then

you don't have it at all

Mr. Carlucci - I understand.

Lenny Lim - That's the shallow end. I don't think it will affect the diving area

Mr. Carlucci - You are correct

Bill Flaherty - Well what I would like you to do is come in the next time and show us specifically on a map what changes you propose to bring this more in conformity with the zoning. In my judgment I quite frankly believe that the concrete **(can't hear too many people talking)**

Mr. Carlucci - I almost equate it to a sidewalk. If you are putting in a sidewalk on your property, I don't think you need any type of permit or variance for that

Vincent Cestone - A sidewalk that's true. But this is a pool apron. The argument could be made for a wood deck at ground level. It is the same thing.

Mr. Carlucci - I will, I understand what the board is saying, I understand what we need to do

Vincent Cestone - Does anybody in the audience wish to speak on this? With that I am, since there is no urgency to this

Mr. Carlucci - No none

Vincent Cestone - Well that's what I am saying. There is no pending sale or anything

Mr. Carlucci - No

Vincent Cestone - I am going to continue on to the first meeting in October which is October 1st.

Mr. Carlucci - Okay. Thank you

Adam Rodd - And if you need more time,

Mr. Carlucci - Who would I contact if we needed more time

Vincent Cestone - You contact the town clerk and she will contact the zoning board

Mr. Carlucci - Thank you very much

Vincent Cestone - Okay. On old business we have two pieces of old business. One piece that is not on the agenda which I would like to address first. We have a request from Kirsten Rost to continue, she has the house down at Hudson River Lane, and she is asking us to grant her one additional year to do the construction. This is her second request so if we grant this, it will be a total of three years. My suggestion is that we grant it this time under the condition that you can't come back again and ask for another extension. And I would like to hear what the board has to say on this and we can make a motion to continue it or not to approve it, it is up the board members. Kirsten Rost is trying to sell the property, little history, she never built the house

Lenny Lim - She's the one we

Vincent Cestone - Kirsten Rost is the one that Bracke is right next to.

Lenny Lim - She built her house

Kim Shewmaker - You are thinking of Lang at the end

Lenny Lim - Lang is the end one, oh the other side, okay

Vincent Cestone - She got the approval, now she is trying to sell the property without doing the structure. And I told her point blank even if you sell the property, they have to build it to the plans. They can't come back and ask for changes. It has to be built to plans

Lenny Lim - Exactly

Vincent Cestone - So she is asking for another year extension. What is the board's pleasure on this? We can deny it and then it becomes null and void. Or we can approve it for a year or 6 months or 2 years whatever you want to do

Adam Rodd - Do we know when the original decision was

Vincent Cestone - 3 years ago around this time

Adam Rodd - Was it 3 years ago

Vincent Cestone - Yes

Adam Rodd - It's expired. The way the code is written is you have to basically start building within 2 years. And if you don't the decision that was rendered is null and void. But there is a proviso that on written request the applicant after a public hearing can grant extensions of the two year limitation for periods of not more than 1 year.

Lenny Lim - So she had the 2 years, she had the 1 year extension already

Vincent Cestone - Right

Lenny Lim - So she wants another one to make it 4 years

Adam Rodd - Do we know when that expired

Vincent Cestone - It expired like in June, something like that. And she sent in a request for an extension

Adam Rodd - June of 2006.

Vincent Cestone - She put a request in 2007

Adam Rodd - June of 2007

Vincent Cestone - Yes. She has been given an extension once before.

Adam Rodd - My recommendation if it is okay with the board, and I can even advise you at the next meeting, is I would be very, I would like to get the exact date of the original decision. Exactly. And this way we will know exactly where her request fits in whether the board is even empowered to enter an extension.

(Turning Tape over...may have lost some dialogue)

Side two of tape is lost...nothing but static. The machine did not record correctly.

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

DATE APPROVED: 10/22/07

Respectfully submitted,


Kim Shewmaker
Secretary