

# ZONING BOARD OF APPEALS

October 17, 2005

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, October 17, 2005, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

### ABSENT:

**Vincent Cestone** - Friedman-Kien has been postponed at the request of the applicant. We are going to go to the next

**Tim Pagones** - When do you want to put them on for? They are asking for November 21<sup>st</sup>

**Vincent Cestone** - That's fine

**Tim Pagones** - Okay so that will be November 21<sup>st</sup> for a public hearing.

**Vincent Cestone** - We are going to go on to Mastrantone Appeal #775. Come on up and introduce yourself and explain why you are here

**Matthew Mastrantone** - What I am here for this evening is to validate a pre-existing C of O that was never really validated before because there was never a survey submitted with it.

**Vincent Cestone** - So what happened? The Code Enforcement officer cited you, is that what happened?

**Matthew Mastrantone** - Yes. There is two parts. One is to put an addition on on the south side and there is a small triangle that is in the setback. I believe it is 8 feet at its widest point.

**Vincent Cestone** - Which angle are we talking about? Show me on the drawing

**Matthew Mastrantone** - That's not the drawing. There is one other drawing.

**Lenny Lim** - For the addition you need

**Matthew Mastrantone** - Yeah

**Lenny Lim** - I don't see it

**Matthew Mastrantone** - The proposed addition would go here and the area that would be in the setback area

**Vincent Cestone** - It must be here

**Matthew Mastrantone** - Yeah. It is that little triangle right there near the north side

**Vincent Cestone** - Okay

**Matthew Mastrantone** - And we would do we are proposing to remove this other part that does go over the property line there by I think it is 1 foot 1 inch. I bought the house without a survey in 1992

**Vincent Cestone** - Okay

**Matthew Mastrantone** - And when we decided to go ahead and add on to it, we had a survey done and then we realized that the existing house was over the line encroaching. And then when I approached Tom Monroe then that's when they figured out that the addition that had previously allowed was over the line.

**Joan Turner** - So this is your proposed addition as is

**Matthew Mastrantone** - Right

**Lenny Lim** - So in other words you want to move it back over the line, this here he wants to move back over his property line

**Matthew Mastrantone** - Right

**Lenny Lim** - So it would come back 2 feet

**Matthew Mastrantone** - 3 feet I think

**Lenny Lim** - it says 2 feet

**Matthew Mastrantone** - okay. So then that's what it is. It is further in the front.

**Lenny Lim** - So you want to bring this back 2 feet and then you want to build just to the back of it

**Matthew Mastrantone** - Yeah. The south side

**Lenny Lim** - Right

**Matthew Mastrantone** - And that little part in the front that has the lines across of it is in the setback there, with the small lines

**Lenny Lim** - What is it 30 feet and you need 25

**Matthew Mastrantone** – right. And just the other one, according to the building department to make, legitimize it, which we do have a variance. There is a copy of the variance and Mr. Carlson was actually on the board back then. It was in 1976 or 1973 or something

**Vincent Cestone** - You've been on the board since there was a board right?

**Victor Carlson** - No.

**Matthew Mastrantone** - Which I guess, I know municipalities make you submit a survey after the work is complete before they give you the CO. But it was CO'd in any event.

**Lenny Lim** - This is how it is now and this is how you are going to make it

**Matthew Mastrantone** – right

**Lenny Lim** - Okay. So you are over the line here slightly so you have to bring that back. That would go without saying. And then your addition

**Matthew Mastrantone** – That little triangle on the front. It is like 5 feet to nothing or 8 feet to nothing would be in the 30 foot setback

**Vincent Cestone** - In the existing house, what is on the front of the house? Is it bedrooms? So the front of the house

**Matthew Mastrantone** – This would be the kitchen and the dining area and the bedrooms are in the back.

**Vincent Cestone** - So the issue is that deck on the front?

**Matthew Mastrantone** – Actually the deck would be coming off there with this

plan. The deck is on there without any type of CO either. It was on the house when we bought it. But it is not an issue, what is the issue is cutting back the house where it encroaches on the northern neighbor's property and expanding on this side here to

**Joan Turner** - Where you don't have any setback problems

**Matthew Mastrantone** – Well there is in the front because it is on an angle there. There is a very small like triangle there.

**Vincent Cestone** - So just to clarify my mind, the part that you are cutting off on your house on the existing house

**Matthew Mastrantone** – Is right here on the back corner

**Vincent Cestone** - And what room is that that you are cutting off?

**Matthew Mastrantone** – It is part of the bathroom and we would be expanding it on this side.

**Victor Carlson** - Which piece are you cutting off

**Matthew Mastrantone** – This piece on the back of the house right here

**Joan Turner** - How did you happen to build over the property line? Just a building error on the part of the

**Matthew Mastrantone** – I didn't build that at all. That was built in 1976

**Victor Carlson** - What happened Joan, that was built before zoning and at that time these were all little summer houses and surveyors went and put it up and we had quite a few of these at this time. So that's why everything is over this way so anything else you had to build had to be conforming.

**Matthew Mastrantone** – I never had a survey when I bought it. It was a survey on file at the building department and that survey was prior to

**Lenny Lim** - Vic let me get this in my mind straight. When he was granted the first variance, I guess the prior owner was granted the variance,

**Victor Carlson** - The building was up before zoning. And our zoning said that anything that was there was grandfathered in. And so as you can see most of these are over the property line. We had no control over it.

**Lenny Lim** - But it was stated that they had to bring it in as much as to conformity as they could

**Victor Carlson** - Anything that they added on had to be in conformity

**Lenny Lim** - So anything that they added on had to be conformity

**Joan Turner** - To bring it closer to conformity

**Victor Carlson** - It had to be conforming unless they had to have a variance

**Joan Turner** - This has got a variance for one of them

**Tim Pagones** - I think there was a real small structure. He applied for a 12 by 15 addition to bring it up to a bigger size 700 sq feet because it didn't meet the code. Now this is what is there. So somehow you've got a big deck, you have a one story dwelling, you have a framed shed, so I think the applicant has been cited for possibly the shed and I don't know what else. The addition without the permits or being a lot bigger. So he is looking to rectify a couple of things and he is looking to put a bigger addition on which is going to need a 5 foot variance.

**Lenny Lim** - Did you put the shed and staircase in or where they there when you bought it?

**Matthew Mastrantone** – The shed was down by the side of the house we moved it up. We moved it out of the parking area.

**Lenny Lim** - And you put the staircase in

**Matthew Mastrantone** – yeah

**Joan Turner** - With regard to the shed Tim, and this goes to the point that you brought up about accessory structures if they are less than 15 feet high and 200 square feet can be 5 foot from the property line. What was the section of the code, I am trying to quote that right now because that may resolve the shed. If it is 5 feet from the property line, the shed is not in violation. So I've got to get that section of the code

**Victor Carlson** - I gave you the number

**Joan Turner** - I know but I don't have the right book. It's 179, but it is the violation that he wants to clear up

**Tim Pagones** - Well I guess, Mr. Monroe is saying that the 5 by 7 shed was replaced by a larger shed with no building permit. That is what his violations are for.

**Lenny Lim** - So he replace the shed with a bigger shed and moved it closer

**Matthew Mastrantone** – No. It is the same shed that was there. It was on the side of the house

**Tim Pagones** - I am just reading what the note of the violation states

**Joan Turner** - But what is the distance here, I can't read it, is it 6.4

**Tim Pagones** - It looks like 6.4

**Joan Turner** - Okay so if that is the case, according to our own code, that is not in violation. So that citation, the violation citation, should be null and void.

**Tim Pagones** - I have to look at that section

**Joan Turner** - That's what I am trying to find and I can't, it's under standards. It is number H under whatever the code is. I can't remember. So that kind of resolves that issue of the shed. It states clearly in the code. So we just need to go back and cite that and he is not in violation. Now we only have to deal with the non-conforming expansion.

**Tim Pagones** - Well, he has been cited for additions. I don't know what additions Mr. Monroe is saying you put on or were put on

**Joan Turner** - I only have one copy of a violation

**Tim Pagones** - This is all I have

**Joan Turner** - So where are the other.

**Tim Pagones** - Well it reads additions no building permit, 5 by 7 shed replaced by larger shed no building permit

**Joan Turner** - Right

**Tim Pagones** - So there seems to be a double violation here. I don't know what Mr. Monroe is saying additions. If he is alleging you put the deck on or that you whoever, built, it seems like it was 12 by 15 addition, I don't know if that is a lot bigger than a

**Joan Turner** - So we need more specifics about what addition

**Tim Pagones** - Yeah

**Joan Turner** - Because he has a variance for a 12 by 15 addition

**Tim Pagones** - Right. And I don't know, I can't tell what was the existing, I mean this is from 2002, I don't know what was existing and what was put up in 1976

**Joan Turner** - And you are saying the wood deck was there when you bought the house

**Matthew Mastrantone** – Actually I brought some pictures. Because like I said we never had a survey. We had a little girl then and she is right there now.

**Tim Pagones** - Still a little girl. Will always be your little girl right?

**Joan Turner** - 175.32 H

**Vincent Cestone** - this is just showing that the deck was there when you moved in right

**Matthew Mastrantone** – right. I bought it with the deck.

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

**Bill Flaherty** - I noticed on one of your drawings here that you have an in-ground pool

**Matthew Mastrantone** – Not any more

**Bill Flaherty** - It has been eliminated

**Matthew Mastrantone** – Yeah

**Bill Flaherty** - You filled it in? I know you never had a CO for it

**Matthew Mastrantone** – We, it actually started out as a tomato garden and turned out to a pool, but it is gone now. This I did build and I moved the shed. I didn't realize you couldn't move the shed

**Bill Flaherty** - The wooden deck you say was on the house at the time of purchase

**Matthew Mastrantone** – yeah absolutely

**Bill Flaherty** - So you never received a variance for the deck

**Matthew Mastrantone** – Never approached the building department for any type of addition or anything. I just started getting violations this summer after I had the survey done and we get a couple a week now. I resolved what I could and I was told by Mr. Monroe I couldn't tear down the back to that

**Lenny Lim** - Is it an R-40 district

**Joan Turner** - Then I am wrong. Because it is an R-10 or R-20 it says

**Lenny Lim** - So the shed doesn't belong. It is an R-40 district

**Joan Turner** - So he is okay

**Tim Pagones** - R-80 isn't it

**Kim Shewmaker** - That's what I have

**Joan Turner** - So this number H does not apply

**Lenny Lim** - So the shed is too close then

**Tim Pagones** – yeah

**Joan Turner** - So he needs a variance for it

**Vincent Cestone** - I am going to ask the audience if there are any comments. Anybody wish to speak on this from the audience? Introduce yourself please?

**Bill Mordhorst** - I have a request. My name is Bill Mordhorst and my farm is immediately south of his property.

**Vincent Cestone** - And how is that in relationship to the house

**Bill Mordhorst** - We are immediately south of the property.

**Vincent Cestone** - I am looking at the survey here. Are you the person that he is over the property line or on the other side

**Bill Mordhorst** - I believe that is the north side.

**Vincent Cestone** - Okay

**Bill Mordhorst** - My only request is I went to Town Hall twice, once in September and once on Friday to look at the application and it was not to be found. So my only request is to have more time to look at the application before the public hearing is closed

**Vincent Cestone** - The public hearing is going. It has been there for weeks. Do you mean the people downstairs couldn't find it to pull it out?

**Bill Mordhorst** - Could not find it anywhere

**Kim Shewmaker** - He called me Saturday to tell me he couldn't find it

**Tim Pagones** - How do you spell your last name sir

**Bill Mordhorst** - Mordhorst

**Tim Pagones** - How do you spell it

**Bill Mordhorst** - M-O-R-D-H-O-R-S-T

**Tim Pagones** - Thank you

**Joan Turner** - We need more time, we need to know from Tom Monroe what additions he is talking about that he is in violation.

**Tim Pagones** - I thought Tom was going to be here. I know he was going to try and be here tonight.

**Victor Carlson** - Which side of Stone Ridge Road are you?

**Bill Mordhorst** - I own Stone Ridge Road

**Victor Carlson** - Is it a road

**Bill Mordhorst** - Yes

**Vincent Cestone** - It is a private road.

**Victor Carlson** - Do you have a survey of the property

**Bill Mordhorst** - My property or his property

**Victor Carlson** - Both

**Bill Mordhorst** - I don't have it with me

**Tim Pagones** - I think he is just asking to see what he is proposing. He is not alleging any kind of you know being over his property. He just doesn't know exactly what the applicant is proposing and he tried to look at the Town Hall record and they couldn't find the file. So he just wants to satisfy his peace of mind, and I think he is just asking that the hearing be kept open so he can look at the file. I think Kim has found it.

**Vincent Cestone** - Okay

**Tim Pagones** - Is there any reason why you can't build that 5 feet back so you don't need a variance? I mean by law the board is supposed to give the smallest variance required. And it has always been build your house to fit the land.

**Matthew Mastrantone** – The variance I think is actually less than 50 square feet

**Tim Pagones** - Well but you need a 5 foot variance. If you have a 30 foot setback, why can't you just cut that back 5 feet so you don't need a variance? If it is all proposed.

**Matthew Mastrantone** – I think it has to do with the front of the house connecting to this part of the house here

**Tim Pagones** - Right at that corner is 25 feet. If it comes back, I don't know. That is something to consider

**Lenny Lim** - How many square feet is the addition going to be? Living space

**Matthew Mastrantone** – 300 square feet

**Lenny Lim** - 2 floors or one

**Matthew Mastrantone** – one floor. It is all one floor

**Lenny Lim** - It looks bigger than 300 square feet

**Tim Pagones** - That's the problem it is a small thing to start and it looks like a huge addition

**Matthew Mastrantone** – It is a small house. I think we are still less than a 1000 square feet. 900 and change

**Lenny Lim** - I am looking at a 54 by 19 on one side and 29 on the other. That comes to a lot more than 1000 square feet.

**Bill Flaherty** - What is this addition going to be used for? A bedroom

**Matthew Mastrantone** – It is a 2 bedroom house.

**Bill Flaherty** - It will remain a 2 bedroom

**Matthew Mastrantone** – Yes. It is just going to be floor space. Just one large living room area and it will make up for some of the space that we are going to lose from the other side. It won't, the existing septic won't handle anything more than a 2 bedroom house

**Bill Flaherty** - Because that would be a problem.

**Matthew Mastrantone** – It is a highway house. We don't live there. We moved there when we originally moved to Garrison. We moved out of there in 1998 into a new house and we have used it as a rental up until recently and we want to make it into a handicap accessible 2 bedroom rental home. Trying to retain it until one of our children comes of age or change our mind about living in Garrison, which hopefully won't be ever.

**Victor Carlson** - Can I say something? At the time we are talking now there were a bunch of these little summer cottages people had and this was one of them and they just put them up and our zoning said he had to try to build them up to 750 square feet. That was the minimum. And that's what we have tried to do with these. We are just talking about a 1000 here. So we've got a little bit over it. Just bring it up to our code.

**Joan Turner** - I think what is really interesting is that the previous board when they granted the variance, their findings. Just take a look at them. It really makes a lot of sense in to what we are doing now. It is all the properties as Vic said on the easterly side of US 9 were non-conforming. The proposed addition will bring the structure more into conformity with the living area requirement of the law. With the proposed addition it will increase the value of subject property and will thereby enhance neighboring property values and it is a strong recommendation of the board that the applicant make every possible attempt to increase the size of proposed addition to meet the 720 square feet. And it is therefore resolved that they grant this variance to do the first addition and that was dated, and I think those are still valid points. That was 1974

**Vincent Cestone** - Tim, if the variance from the original from 1974 grants a certain setback, does he even need a variance for the addition

**Tim Pagones** - Sure. He is putting an addition on. And we always say you can't bring the rest of the house up remember? When we grant a variance for a front porch, we always that doesn't mean that you can bring the rest of the house up to that front porch level. So I guess the concern here is he is building a proposed addition. Can he build an addition on that house without needing an additional variance.

**Victor Carlson** - Our law states that a pre-existing non-conforming can only be added to if it makes it conform

**Tim Pagones** - Right. Without getting a variance

**Victor Carlson** - Without a variance. But by law, if he can put the addition on legally then he is fine.

**Tim Pagones** - But right now he needs a variance

**Joan Turner** - But with this new addition he brings it more into conformity by removing it from that property line where he is impinging upon the neighboring property. So he is bringing it more into conformity isn't he?

**Tim Pagones** - Well I guess that is between the neighbor and him. If the neighbor wants him to remove the property that is over, I mean there are other ways besides building an addition. He can buy land from the neighbor. I don't know if the neighbor would do that. They can do a lot line realignment

**Matthew Mastrantone** – We discussed all of that. You have to go to the planning board which they are happy with as long as I paid for it. And then once you actually do that you remove so much from my property and return to that property and you have a separate tax deed for that property.

**Tim Pagones** - He is increasing the size. What happens if he just went straight back and over? Why is that jog there?

**Lenny Lim** - I see what you are saying

**Tim Pagones** - I mean there are ways of adding to the size of the property, I mean that is up to the applicant. There are ways of doing it. This is the plan he has. It might flow very nicely with the house, I don't know the area. There are alternatives here. That is all I am saying. I think the main concern is also that we don't even know what he is cited for besides that shed I don't know what additions Mr. Monroe is saying he put up or he did

**Vincent Cestone** - So we need Tom

**Tim Pagones** - I spoke to him earlier in the week, or last week, and he said he was going to try and be here.

**Vincent Cestone** - He needs to be here to explain that. And that gentleman in the back wants some time to look at it and I am going to propose that we hold it over until our next meeting and do it first thing on the agenda. Is there anybody else who wishes to speak on this?

**Joan Turner** - So November 7<sup>th</sup>

**Vincent Cestone** - November 7<sup>th</sup>. We will finish you up on November 7<sup>th</sup> when the building inspector is here.

**Matthew Mastrantone** – Okay. You know I am not going to be started this year

**Vincent Cestone** - It is already at the point where it is going to be hard to get somebody to put a shovel in the ground

**Matthew Mastrantone** – Whatever it takes to, you know, taking out the staircase, the shed, the deck, whatever it takes to make my little non-conforming property conforming and just get it straightened out.

**Lenny Lim** - You just said you are willing to take out all the other

**Matthew Mastrantone** – Absolutely

**Lenny Lim** - As long as you just get your addition

**Matthew Mastrantone** – Absolutely. I have no problem with that. I mean this is a property that I want to keep. It is a viable property and I want to keep it for my family. I have 4 children. I love it here in Philipstown and we just want to bring it to the best for a rental because it is a highway house, and a handicap rental, 2 bedrooms. Which works for an aide to stay and for a handicap person. Since we are cutting back one side and having to redo the bathroom, make it handicap accessible and coming in the side with the new entrance way and open floor plan. That's it.

**Vincent Cestone** - You are on for November 7<sup>th</sup> and the building inspector will be here.

**Matthew Mastrantone** – Good

**Tim Pagones** - Take care

**Vincent Cestone** - Next item on the agenda, did we have a chance to review the minutes

**Joan Turner** - No I didn't have a chance

**Vincent Cestone** - We will continue those off to the next meeting. Reviews for completeness. Let's do Lerch. No that's the resolution

**Tim Pagones** - Anyone here for Hudson Design? That's complete it was sent to the Planning Board. We have a letter from the Planning Board. So we just have to set it down for a public hearing. The earliest if we can get it in the paper would be the 21<sup>st</sup>

**Vincent Cestone** - Right

**Tim Pagones** - So November 21<sup>st</sup> for public hearing.

**Vincent Cestone** - And Caragine

**Tim Pagones** - Anyone here for the applicant? Caragine? Did they leave? Are they here? I just got the file tonight and looked it over briefly. The only thing missing is the deed.

**Vincent Cestone** - That's the only thing that I saw.

**Tim Pagones** - So I think you can set it for the public hearing and just we will make the request to get a copy of the deed before the hearing is closed. But I think he supplied some plans tonight. It looked good to go.

**Vincent Cestone** - Okay the 21<sup>st</sup> also. Okay draft resolution for Lerch?

**Tim Pagones** - Before we do Lerch, Mr. Muscariello was here. I forget the last time he was here, what was the last time he was here do you know?

**Mr. Muscariello** - I was here on the 3<sup>rd</sup>

**Tim Pagones** - Okay October 3<sup>rd</sup> and he was told we needed the setbacks for the shed. He has now provided a survey which shows the drawn shed and the setbacks so

**Vincent Cestone** - That was the only thing that was missing?

**Tim Pagones** - That was the only thing that was missing

**Lenny Lim** – So he is complete

**Tim Pagones** - We are going to have a busy month. We have like 5 or 6 already for the 7<sup>th</sup>. 21<sup>st</sup>?

**Vincent Cestone** - Then that would give us 5 for the 21<sup>st</sup> also. You are going to miss your football games

**Tim Pagones** - Yeah I know

**Kim Shewmaker** - TIVO

**Vincent Cestone** - Yeah, what the heck. We will finish it for the month. Let's not put any resolutions on for that.

**Mr. Muscariello** - Same time?

**Tim Pagones** – Yes. Okay. Now you have Lerch.

RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #770; Applicant: Jeffrey & Nancy Lerch  
**Area Variance**

Date: October 17, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on September 12, 2005 to hear the appeal of Jeffrey & Nancy Lerch from the denial of a certificate of occupancy for an existing house and porch having insufficient front setbacks. The property is located on 49 Perks Blvd. in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on October 17, 2005, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

**THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF GRANTING THE APPEAL OF JEFFREY & NANCY LERCH FROM A DENIAL OF A CERTIFICATE OF OCCUPANCY BY THE BUILDING INSPECTOR FOR AN EXISTING HOUSE AND FRONT PORCH HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS<sup>1</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.**

**CONDITIONS OF THE VARIANCE:**

1. The structures granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.

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

2. The setback from the street line for the front porch shall not be less than 31.5 ft. (a variance of 8.5 ft.). The setback for the house shall not be less than 36.0 ft. ( a variance of 4.0 ft.)

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

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**FINDINGS OF FACT:**

1. The Applicant made this appeal (#770), dated June 17, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a certificate of occupancy by the Building Inspector for an existing front porch and house having insufficient setbacks. Applicants' exhibits, including those filed with the Appeal or offered at the public hearing were reviewed by the Zoning Board. A composite list of the Exhibits is attached as **Schedule "A"**.
2. The property, a 1.02 acre parcel on Perks Boulevard, is located in a R-40 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-40 District requires a setback of 30 feet from the street line.
3. The Applicant acquired title by a deed. The structures at the property, appear on a map dated April 28, 1981, last revised July 15, 2005, as prepared for Jeffrey & Nancy Lerch by Peter R. Hustis L.L.S. in Beacon N.Y.

4. The Board initially reviewed the Application materials at its regular monthly meeting in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The application had been filed with a survey which did not indicate the setback for the existing porch. The Board requested a professionally executed map clearly indicating setbacks and the current configuration of all structures on the premises, especially the front porch. Additional materials were received and reviewed and a revised survey showing the setback for the front porch was supplied to the Board at which time the Application was deemed complete. A properly noticed public hearing was scheduled for September 12, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach that as Schedule B.

7. The Board met on September 12th for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, no members of the public spoke at the hearing. The public hearing was duly conducted and closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions.

#### FINDINGS AND CONCLUSIONS:

##### Adverse Effects on the Neighborhood

1. The applicants purchased the property in 1981 with the house and deck in their present locations. The only thing that the applicants did was to rebuild the deck in the same location and add a roof to it. The requested variances will not adversely affect property values because the house and deck have been in existence since around 1961 when the structures were built. The structures do not interfere with the enjoyment of the neighboring dwellings. Given the local topography and buffering, as well as the proximity of other structures in the neighborhood, the structures will not be obtrusive. No members of the public spoke at the hearing. Opinions of neighboring property owners, whether supportive or in opposition, are welcomed but are not dispositive of the question of whether the neighborhood will be adversely affected. As always, the Board made an independent judgment of the impact of the requested variance on the neighborhood.

##### Feasible Alternatives

2. Due to the fact that the porch and house are already present and can not be moved, the Applicants can not keep them without coming into conflict with the Philipstown Code. Given the amount of intrusion into the setback, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

#### Extent of Variance

3. The Applicants request a variance of 8.5 ft. for the front porch and 4.0 ft. for the house from a set back which should be 40.0 ft.

#### Effects on Physical/Environmental Conditions

4. The proposed variances would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The continued placement of a front porch and house that have been in existence for over 40 years is not an activity usually associated with such environmental concerns. No additional traffic is generated. Air quality is not disturbed. Water quality or quantity is not affected. Additionally, no increase in runoff or change in the drainage has been experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

#### Self-created Hardship

5. The need for this variance is not self created<sup>2</sup>. The Applicants purchased the property in 1981 with all the structures in their present location. Additionally the road was paved and widened after the structures were built around 1968 which might have created the need for the setback variances. The applicants wish to keep the structures in their location and applied for a building permit and are now seeking variances.

#### THE BALANCING TEST:

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

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

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for granting the requested variance with conditions was put to a vote on roll call on the 17th day of October, 2005, the results were as follows:

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

ATTENTION APPLICANTS

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

**Vincent Cestone** - Can I have a motion to accept the resolution as read?

**Bill Flaherty** - I so move

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

**Joan Turner** - Second

**Vincent Cestone** - All in favor?

**All Board Members** - Aye

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

**Lenny Lim** - I vote in favor

**Vincent Cestone** - Joan?

**Joan Turner** - I vote in favor

**Victor Carlson** - I vote in favor

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - And so do I. Okay. Old business. The only thing that is old business that I have is that with the Cooper. If you are not aware of it, the drawings that they submitted were basically enlarged copies of the drawings that they gave to us that night. They weren't really any drawings

**Joan Turner** - Oh this is Cooper

**Vincent Cestone** - This is Cooper. So the Town basically rejected them and sent them back and told them to try again.

**Joan Turner** - And look at this. I just want to point out. You see this 4 foot here, is that where the 4 foot, remember when they said they were going to take 4 foot off

**Lenny Lim** - The front not the river side

**Joan Turner** - Yeah, I understand that. But is this the 4 feet they are taking off or the foundation? This is an overhang. This is not a foundation

**Vincent Cestone** - That's what we need the drawings for

**David Brower** - The town is very upset with them because they did not send copies to the zoning board.

**Lenny Lim** - I can't believe we didn't get a copy of this

**David Brower** - And that was mentioned in the letter that Bill sent out to them

**Vincent Cestone** - It is just more of the same. They finished trying to snow us and now they are going to try and snow you

**David Brower** - Well they are not going to divide and conquer the two boards believe me.

**Joan Turner** - So they sent drawings back that essentially enlargements of these

**David Brower** - Blown up copies of those that's all

**Vincent Cestone** - Okay unless there is something more

**Lenny Lim** - Second

**Vincent Cestone - Motion to adjourn**

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

**DATE APPROVED:** November 7 2005

Respectfully submitted,

Kim Shewmaker  
Secretary