

ZONING BOARD OF APPEALS

February 13, 2006

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, February 13, 2006, 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
	Joan Turner	-	Member
	Tim Pagones	-	Counsel
ABSENT:	Victor Carlson	-	Member
	Bill Flaherty	-	Member

Tim Pagones – Okay Mr. Chairman, I guess for the record #2 is adjourned

Vincent Cestone – and the reason for that is because they haven't completed their submission. What they did submit was on Friday at 5:00 pm and not giving the consulting team or the board any chance to even review it

Tim Pagones – I guess for the record I spoke to Mr. Gaudioso and he didn't care either way. I spoke to him Friday and he said he would overnight it, we will email it. So he did, he was aware the report was not sent to Mr. Comi and that we probably would not have a report so he had no objection even though we don't have a letter for the record he had no objection to us adjourning it. So when do you want to put it back on for?

Vincent Cestone – Well. And that is the question. I would like to say that we can put him on for the 27th but if they don't get us a completed package by the 21st which is the day after President's Day, nobody will be able to review it again.

Tim Pagones – So why don't you put him on for either the first or third Monday of March

Vincent Cestone – Okay

Tim Pagones – You are meeting the 6th and

Vincent Cestone – The 20th.

Tim Pagones – And the 20th

Vincent Cestone – Let's put them on for the 20th and if they get done earlier

Tim Pagones – Well you would have to put it in the paper

Vincent Cestone – Okay. We'll do it the 20th

Tim Pagones – Okay March 20th for continuation of Public Hearing. Okay a couple of other things. #4 is going to be adjourned until the 27th; #5 for the 27th; and #9 for the 27th. Those are three resolutions. We are going to get the minutes for January 23rd today. So we can get them. Then #10, #11, and #12 I got a letter from Anthony Gioffre from Cuddy & Feder, they are asking if those three things could be adjourned. They are working on, the letter respectfully submitted on behalf of American Tower blah blah blah, Omnipoint and Cingular they are requesting, they are in the process of responding to the Town's independent consultant request for additional information. So when do you want to put them back on for?

Vincent Cestone – We can review them for completeness the first Monday

Tim Pagones – March 6th

Vincent Cestone – March 6th. That will give them a chance because I talked with Mr. Comi today and he said that their packet was incomplete.

Tim Pagones – I will give that, the letter to Kim. Then I guess if you want to do the other housekeeping ones. #13 Santoro I reviewed it. It is complete. I just don't know when you want to put it on for a public hearing

Vincent Cestone – We can't do it for the 27th because there is not enough time

Tim Pagones – Right. Unless you want to wait for Kim because I don't know what is on for March 6th. Do you have the schedule? There is nothing on

Vincent Cestone – Nothing.

Tim Pagones – I know we have one thing for the 20th. So you want to put this on for March 6th

Vincent Cestone – Yes

Tim Pagones – March 6th and it seems like a simple one. Then the other one for

completeness is Darby. And that is complete also and should be relatively simple. Do you want to put that on for March 6th

Vincent Cestone – Yes

Tim Pagones – Okay.

Vincent Cestone – So we are almost done, do you want to go home?

Tim Pagones – You just gotta do, yeah, it should be a quick one.

Vincent Cestone – Okay. Alrighty. What are you looking at

Joan Turner - Noviello

Vincent Cestone – Oh okay. Next thing on the agenda is Noviello. We are going to do a public hearing. Is there someone to speak for the applicant? Bring us up to date

Tim Pagones – We do have a quorum

Matthew Noviello - Wonderful. As you may recall quite a while ago, I think it was September or November, somewhere around there, you asked us to submit the subdivision plot to the Planning Department before I finished the review of the zoning application. This whole issue arose because the prior owner had subdivided by Deed. By doing so created a need for a variance for an ancillary building. Which at times has been called a shed or a studio, and I think at your request I changed the name on my plan to a framed studio. And it needs a side setback from, actually the prior owner did it, I have a big map here if it is easier to look at that. And we are over here. This is the main dwelling for this lot 50.1 and this is the framed studio and it is too close to the side line.

Lenny Lim - I have a question for you. Is this the lot itself here? This square here?

Matthew Noviello - No. This is the lot. The dark line here.

Lenny Lim - The dark line

Matthew Noviello - With bearings on it

Lenny Lim - Okay

Matthew Noviello - This is meant to be 200 by 200 rectangle that the town requires

Lenny Lim - But it throws me off when we get down to there it goes this way instead of

staying like

Matthew Noviello - Correct because it meets the road frontage. This lot goes up here to give the 25 foot road frontage that is required and back down like this.

Lenny Lim - Okay

Vincent Cestone - Where is Mann's

Matthew Noviello - Property line? Oh, his building?

Vincent Cestone - Yeah

Matthew Noviello - A couple of hundred feet that way. It is not even close. This is a couple of hundred feet of woods.

Joan Turner - And where is the property line and this is on the same lot this house too?

Matthew Noviello - No

Joan Turner - It's a separate

Matthew Noviello - Here is the property line between them. Let me have the highlighter, I'll highlight it for you.

Lenny Lim - What's with the Planning Board

Tim Pagones - Their meeting is Thursday

Joan Turner - Is this before them on Thursday?

Tim Pagones - Not yet

Joan Turner - Well then why are we here? We wanted a referral from them

Lenny Lim - That's what I thought. I thought we were waiting for the planning board to look at it.

Tim Pagones - Well he is here for a variance. I mean I think from reading the minutes you wanted him to go to the planning board to make sure that there were no more changes. The applicant had said you know this line is the outer line it is never going to change. If anything it will be the interior line. No matter what this house needs a variance

Joan Turner - No there was a question as to the legality of the subdivision that's why it was going to be before the planning board

Tim Pagones - I was hoping Mr. Monroe would be here because I think originally it was subdivided and then it wasn't subdivided

Matthew Noviello - No.

Tim Pagones - There was a whole bunch of correspondence and I was hoping Mr. Monroe to explain

Lenny Lim - I thought like Joan that they had to tell us if this is a legal subdivision

Joan Turner - It's not even a Tom Monroe issue, it's a planning board issue and that's what this board has been saying regularly. But it needs to go before the planning board

Tim Pagones - Well even, I mean certainly the structure needs a variance whether it is subdivided or not. So that is what he is saying. Whether I ever get a subdivision or not, I need a variance for this structure. Now I know from reading the minutes one of the questions you had was how did we go from a shed to a barn to a studio. Where there any permits? Where there any COs or anything like that? But I know all along the applicant is saying no matter what even if we don't go for the subdivision, we need a variance for this structure

Matthew Noviello - Correct. It is on an outside line of a subdivision that we are applying for. The 3 lots that we are applying for are this lot, this lot and this lot. That's the subdivision.

Lenny Lim - But shouldn't we still make sure that it is a legal subdivision?

Tim Pagones - Assuming it is not going to be subdivided.

Lenny Lim - He just said there are three lots

Tim Pagones - They would like to get three lots. But I guess assuming they never go, assume the planning board says you know what you can't make this a subdivision. That structure needs a variance

Matthew Noviello - It still needs that same variance

Tim Pagones - So by granting a variance for this structure, does nothing to make it easier for them to get a subdivision. It just says now this structure was built whenever it was built, it didn't comply with the setback requirements, it needs a variance.

Joan Turner - Okay. Based on just taking it from that point of view only, when I remember when we went to a site visit on this, there was a bathroom in it, am I correct? So it has heating, plumbing, bath, it is a dwelling. It is a dwelling

Matthew Noviello - I don't think it is a dwelling

Joan Turner - It is a dwelling and if you look under the definition of dwelling, it constitutes a dwelling.

Matthew Noviello - Okay

Joan Turner - And for that very reason based on the very simple fact that part of our code is that there is one dwelling per one lot and based on that I am inclined to vote no on the variance.

Matthew Noviello - I don't think that, I think your code allows some sort of an ancillary building that people can stay in, doesn't it? A lot of houses have guest cottages.

Joan Turner - They are all illegal based on my understanding of the code. It says in permitted uses number 1, a single detached dwelling for one family and not more than such dwelling per lot. Now I have looked through this code repeatedly to find out where it says that there can be a guest house put up. I never found anything in the code and I would really, unless you have David or Tom, I have never seen anything in our code that allows a guest house to be, unless you have, unless you subdivide

Matthew Noviello - I hear you but I am shocked at that because I have seen more in this town than any place

Joan Turner - Most because you have a building inspector who doesn't read the code

Matthew Noviello - I thought I saw it in the code once

Joan Turner - If you find it in the code, I will eat pages of the code. I want to because I really want to digest it. If you find it, because I have gone through this code book over and over again and I can't find it.

Matthew Noviello - I'd be happy to look again

And they are given out left and right building permits for guest houses

Matthew Noviello - Yes yes. When I lived in Garrison the house across the street had one

Joan Turner - Sure that's right

Matthew Noviello - And they had

Joan Turner - I know exactly who you are talking about.

Matthew Noviello - And they are all over the place

Joan Turner - But I am going to adhere to the code which is my understanding of it so I would vote no on this variance. Just for that reason.

Matthew Noviello - Can I look at your code book while we're here

Joan Turner – sure. You know our code, so

Tim Pagones - I do remember seeing something about ancillary buildings. I don't know what.

Joan Turner – An accessory building is a garage

Matthew Noviello - But I've seen them with bedrooms all over the place

Joan Turner – I know it.

Lenny Lim - They are all illegal. These two sheds here the tin shed and the framed shed are still there?

Matthew Noviello - Yeah

Lenny Lim - Then you have 3.

Joan Turner – These are storage sheds, they're fine. As long as they don't have plumbing, electricity and heating and constitutes a dwelling with a bathroom, you're fine.

Lenny Lim - Because when I went on my site visit it looks like a _____

Tim Pagones - Well, do you have any permits and COs for all the, I mean they have asked you to look and see if there were any permits or anything to make the plumbing, the heating

Matthew Noviello - Actually I think they asked, they were going to go directly to Tom Monroe and get any of that information. They did not want me to get it. They wanted me to submit to the Planning Board if I remember right

Joan Turner – Let me just illuminate our code for you. There is no definition in our

code of an accessory structure other than for garage and we went through this with another case which was withdrawn actually because the building was sold. You remember Gagnon. Okay? And we have no definition for an accessory structure, therefore, the building inspector makes his own definition up.

Matthew Noviello - Wouldn't you go to the state code then?

Joan Turner – The town code would rule us

Matthew Noviello - No if the town code doesn't define so then you go to the state code

Joan Turner – If you find it there

Matthew Noviello - It is in the state code

Joan Turner – Is it adopted by us because we

Matthew Noviello - The town adopted the same code and then they further limited it with the town code

Vincent Cestone - Is that true Tim

Tim Pagones - Yeah

Joan Turner – Well I would like to see it

David Brower - Whether or not, I mean even if it is there you still have to have the paperwork and everything for a septic system. If you are going to have plumbing. You have to show where the septic system is and it has to be board of health approved

Joan Turner – Good point

Matthew Noviello - I do know where the septic system is and I do have board of health approval

David Brower - For that building

Matthew Noviello - For that system. The system _____

David Brower - Is that a separate system from the original home?

Matthew Noviello - No. They are both in the same system. It has two tanks and one set of fields.

David Brower - How is that legal?

Matthew Noviello - They approved anything. I was shocked to see it.

David Brower - That's a new one. Unbelievable

Matthew Noviello - You can't make this stuff up

David Brower - We are trying to straighten this whole thing out when we are going through the new codes and everything

Matthew Noviello - I agree with that but on the other hand when somebody does something that is legal

Lenny Lim - How big is this lot

Matthew Noviello - 2 acres. The town requires 200 by 200 rectangle, I tried to put that around the house and then center each lot as much as I could around the house so you get plenty of space around the house

Vincent Cestone - Well one way or another we are going to be in a catch 22 with the planning board. Because I am not prepared to vote yes on this until I hear what the planning board has to say.

Tim Pagones - Are you on Thursday's agenda, do you know?

Matthew Noviello - I don't think so. I haven't heard

Joan Turner - Could you research that about state law superceding town law or the town doesn't adopt the zoning law do they the state necessarily provides the guidelines or are we mandated to follow state law?

Tim Pagones - Okay

Matthew Noviello - Well you are mandated to follow state law but you can further restrict it. You can't contradict it. Like if the state says you can't have a building within 5 feet of another building, you can't say well we'll allow 3 feet.

Joan Turner - Right

Matthew Noviello - Because that would be violating

Joan Turner - State law. But we can further

Matthew Noviello - The state constitution and _____ in the US constitution requires the state to follow federal law and the local municipalities to follow both state and federal.

Joan Turner - Right but then you can further restrict the parameters of the state law and narrow it down if you want and that's

Matthew Noviello - What your zoning code does

Joan Turner - Right with two dwellings on a lot or one dwelling on a lot. But find it. If you can find it

Matthew Noviello - Where did you find one dwelling? Let me start with that.

Joan Turner - Permitted uses

Tim Pagones - I know the planning board meets Thursday, I don't have their agenda. I have to see if my package is downstairs. If it is not this meeting then it would be March 16th.

Vincent Cestone - I am going to suggest that we continue this on

Joan Turner - Maybe Matt will find this section of the code that

Matthew Noviello - Give me a couple of minutes

Joan Turner - Or even postpone it to next time

Tim Pagones - Well I think one thing that we have to do is go through the record and see if there are any permits for this building

Joan Turner - That's a good point. Go look them up in the conversion

Tim Pagones - I thought in the minutes that we asked the applicant

Joan Turner - If you look back historically you see it is a shed and then the shed went to office

Matthew Noviello - It was a studio apparently originally. When I was surveying it, I didn't know what it was. I called it a shed. But apparently when it was originally built it was some sort of video editing studio or something

Lenny Lim - Then how come we got plans for stalls and everything else

Joan Turner - That was when they planned to make it a horse barn

Matthew Noviello - I never heard of that

Joan Turner - But originally before that the people who were the PETA people owned it and they ran an office out of it.

Matthew Noviello - I have no knowledge of anything other than what I call it a framed shed.

Joan Turner - They had an office

Lenny Lim - Well there is _____ room, here is the hay storage, here is stall 1 and stall 2

Joan Turner - But that is just plans

Lenny Lim - I am just saying that someone put it down as a barn

Matthew Noviello - Okay. What year is that?

Vincent Cestone - What is the date on the stamp?

Joan Turner - 1995

Lenny Lim - April 3, 1995

Matthew Noviello - Wow. That's not too long ago. I think the building is older than that isn't it?

Joan Turner - Yeah because I knew who was there before this owner. My local knowledge

Tim Pagones - So what do you want to do?

Joan Turner - Well I will give Matthew the benefit of the doubt if he wants to research this and come back to the board you can keep the hearing open

Tim Pagones - What date? And I think the board at least most of the board wants him to go to the planning board before they do anything.

Vincent Cestone - Right

Tim Pagones - So I doubt he is on for this Thursday. So the earliest he would be on the planning board would be the 15th

Matthew Noviello - Let me if I can just revisit the planning board issue, the idea of going to the planning board does what?

Joan Turner - Doesn't do anything for me.

Matthew Noviello - Okay

Joan Turner - Because it is irrelevant as far as I am concerned

Vincent Cestone - What it does for me is that if they have any issues I would like to incorporate it into our resolution

Matthew Noviello - If they think I need another variance or anything

Vincent Cestone - Yes

David Brower - Can I ask a question? It was made out of compliance because of something that was done with the subdivision right?

Matthew Noviello - No. The prior owner divided the lot when he sold it to Tuana. That's when it came out of compliance

David Brower - That's what I am saying. But that had to do with the subdivision

Matthew Noviello - No no. That was a prior subdivision. Then Tuana tried to divide it into 3 lots and that's when he found out that after we got the approval to do it we found out that that approval was not valid.

David Brower - Okay

Matthew Noviello - So we were asked to come before the Planning board and show them how we wanted to divide the lots. But if we don't divide the lot then we end up with two dwellings, 2 regular dwellings that people live in, on one lot. So to me it makes sense to divide

David Brower - And wasn't the back lot created. Was that in the first subdivision?

Matthew Noviello - Let me show you the drawings so you can see

David Brower - I thought the original subdivision was all done with Hustis

Matthew Noviello - This is Paul's lot. This is the 3 lots that we've talked about

(David Brower and Matthew Noviello talking over map)

Tim Pagones - When do you want to put him on? The 20th?

Vincent Cestone - April 3rd.

Matthew Noviello - So we were talking about the planning board and you said that there may be some other issues that the planning board may bring up that may need a variance

Vincent Cestone - A variance or they may want to incorporate into a resolution

Matthew Noviello - Okay

Vincent Cestone - And in addition to that I think you should go and do the research for building permits and approvals and septic tank approvals and all that sort of stuff

Matthew Noviello - Okay

Vincent Cestone - Be prepared to present that to us

Matthew Noviello - Okay

Vincent Cestone - So I am going to continue it on, he is on with the planning board on the 15th?

Tim Pagones - No he is not on this month

Vincent Cestone - No no next month

Tim Pagones - Would be March 16th

Matthew Noviello - Do we know if I am on then?

Tim Pagones - No. You have to put your stuff in 2 weeks before that.

Matthew Noviello - It is already in

Tim Pagones - Okay. I'll talk to Ann Gallagher but I don't believe you are on for this Thursday

Matthew Noviello - Okay

Tim Pagonos - So that means you would be on for March 16th

Matthew Noviello - Okay

Tim Pagonos - So they are looking to put you on for April 3rd

Vincent Cestone - And the reason for that is if you are on with the Planning Board for March 16th that will give them a chance to do their notes and get them to us. Instead of bringing you in and then saying we haven't gotten anything from the planning board, we can proceed from there

Matthew Noviello - Okay

Joan Turner - You might even ask Tom Monroe maybe he's got this information about state law

Matthew Noviello - I will because like you said they are all over town and if he knows something we don't know, we might as well find out

Tim Pagonos - It's only against the law if they get caught

Matthew Noviello - No no no they did it with full knowledge

Joan Turner - Look up the building permit and see if it is on the building permit.

Matthew Noviello - It wasn't Tom that did that one. It was the prior building inspector and that I wouldn't be surprised if he was playing fast and loose.

Joan Turner - I don't say anything about that. I just think things get done and then they get done after the certificate of occupancy inspection and the next thing you know

Matthew Noviello - No no no. this was specifically a 4 bedroom house and they took me through a tour of the house and I said there is only 3 bedrooms. Yeah, the other one is out in the barn.

Joan Turner - I don't get it

Matthew Noviello - I said how do you do that? And they said oh it's legal in Philipstown. I never heard of that. Just like subdivision by Deed. I never heard of it until Whyatt told me about it with Sullivan's property. I said you've got to be kidding. He said no you can subdivide by Deed in Philipstown under certain conditions.

Joan Turner - I don't think anymore

Tim Pagones - Ah that's Greek to me

Matthew Noviello - And then he turned around and opposed it when we did it here

Tim Pagones - Good night.

Vincent Cestone - Muscariello.

Tim Pagones - Why don't we do Wheaton-Zelnik since Patty Smith is sitting back here

Vincent Cestone - Knock yourself out.

Tim Pagones - All right

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #784; Applicant: Mart Ann Wheaton-Zelnik
Area Variance**

Date: February 13, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on November 21, 2005 to hear the appeal of Mary Ann Wheaton-Zelnik for a variance of section 175-30-B-4 of the Philipstown Town Code requiring a 60 ft. dimension for a building square. The property is located on 1524 Route 9D in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on February 13, 2006, 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 MARY ANN WHEATON-ZELNIK FOR A
VARIANCE OF THE 60 FT. DIMENSION REQUIREMENT OF SECTION**

175-30-B-4, WITH THE FOLLOWING CONDITIONS¹, 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 variance shall be conditioned upon subdivision approval by the Philipstown Planning Board.
2. The dimension requirement of 60 ft. shall be reduced to not less than 53 ft. for only one of the directions.

3.

4.

Any other conditions?

FINDINGS OF FACT:

1. The Applicant made this appeal (#784), dated September 25, 2005, to the Philipstown Zoning Board for an area variance based upon a referral from the Philipstown Planning Board in regards to a subdivision application. 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"**.

¹ 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 property, a 4.485 acre parcel on 1524 Route 9D, is located in a R-80 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-80 District requires a minimum buildable area of 6000 contiguous square ft. having a minimum dimension of 60 feet in any direction measured on a horizontal plane (section 85-A-1).
3. The Applicant acquired title by a deed dated July 17, 2000. The structures at the property, appear on a map dated March 1, 2004, as prepared for Mary Ann Zelnik by Badey & Watson Surveying & Engineering P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at its regular monthly meeting on October 3, 2005 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for November 21, 2006. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
7. The Board met on November 21st 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 applicant purchased the property in 2000. The property was originally 2 lots but for apparent tax reasons, the prior owner combined the two lots back into one lot. The applicant now wishes to subdivide the property into two lots and meets all the code requirements needed except the 60 ft. dimension requirement. The lot that does not meet the 60 ft. dimension is the lot that is already developed. The requested variance will not adversely affect property values because the lot receiving the variance is already improved. The second lot of the subdivision would meet all the requirements of the Philipstown Code. 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 property can not be subdivided unless both lots meet all the requirements of the Town Code, the Applicant can not subdivide the property unless a variance is granted. Given the relatively minor reduction into the dimension requirement, denial of the variance would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicant requests a variance of 7 ft. (to a dimension of 53 ft.) from a dimension which should be at least 60 ft. The reduction to the required dimension is minimal.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The reduction of a dimensional requirement on a lot that is already improved in order to subdivide the property into two lots 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 should be experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the dimension reduction to a lot that is already improved in order to split the entire parcel into two lots will have very little effect on the physical conditions in the neighborhood.

Self-created Hardship

5. The need for this variance is not self created². The property was originally

² **While self-created hardship is not alone a reason to deny an**

two lots but was combined by the prior owner for tax purposes.

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.

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 13th day of February, 2006, the results were as follows:

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

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.

Tim Pagones - And take in mind there are three of you. So it needs to be unanimous otherwise it does not carry.

area variance, it is a factor to be considered.

Vincent Cestone - You beat me to it. I'll make a motion to accept the resolution as read. Do I have a second?

Lenny Lim - I'll second

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - Roll call vote. I'll vote in favor. Lenny?

Lenny Lim - I'll vote in favor.

Joan Turner - And I'll vote in favor

Tim Pagones - Okay. It passed.

Patty Smith - Thank you

Vincent Cestone - Muscariello

Tim Pagones - Muscariello.

RE: **DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS**
Appeal #782; Applicant: Paul D. Muscariello
Area Variance

Date: February 13, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on November 21, 2005 to hear the appeal of Paul D. Muscariello from the denial of a building permit for construction of a storage shed having insufficient setbacks. The property is located on 312 Sprout Brook Road, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on February 13, 2006, 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 PAUL D. MUSCARIELLO FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR CONSTRUCTION OF A STORAGE SHED HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS³, 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 structure granted conditional variance 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.
- 2. The setback from the street line for the shed shall not be less than 20 ft. (a variance of 20 ft.).
- 3. The shed shall not be further converted into living space, with either permanent or removable building materials, including but not limited to wood, canvas, metal or plastic.
- 4. _____

- 5. _____

³ 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."

Any other conditions?

FINDINGS OF FACT:

1. The Applicant made this appeal (#762), dated September 14, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of a storage shed 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 is located in a R-20 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-20 District requires a setback of 40 feet from the street line.
3. The Applicant acquired title by a deed dated November 30, 1998.
4. The Board initially reviewed the Application materials at its regular monthly meeting on October 3, 2005 in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. A properly noticed public hearing was scheduled for November 21, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
7. The Board met on November 21st, 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 requested variance will not adversely affect property values because the other homes in the area have similar sheds. The structure will 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 structure 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 location of the applicants septic fields and the topography of the property, the Applicant can not place the shed in any other location. Since this is the only logical spot for the shed it can not be placed there 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 Applicant requests a variance of 20 ft. from a set back which should be 40 ft.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The construction of a storage shed is not an activity usually associated with such environmental concerns. No additional traffic is generated. Air quality is not disturbed. Water quality or quantity will not be affected. Additionally, no increase in runoff or change in the drainage should be 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 self created⁴. The Applicant wishes to

⁴ **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**

construct the shed and has made application to the Building Department for a permit. The Applicant is aware of the need for a variance and appealed to the ZBA in order to try to obtain one.

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.

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 13th day of February, 2006, the results were as follows:

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

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.

Tim Pagones - And you still only have three people.

Vincent Cestone - Okay. I'll make a motion to accept the resolution as read

Joan Turner - Second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Roll call vote. I'll vote in favor. Lenny?

Lenny Lim - I'll vote in favor

Joan Turner - And I'll vote in favor

Vincent Cestone - Okay. Next. Caragine.

Tim Pagones – Last is Caragine.

**RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #785; Applicant: Joseph & Ruth Caragine
Area Variance**

Date: February 13, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on November 21, 2005 to hear the appeal of Joseph & Ruth Caragine from the denial of a building permit for construction of a second story addition to the pre-existing non-conforming structure having insufficient setbacks. The property is located on 3 Brant terrace in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on February 13, 2006, based 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 JOSEPH & RUTH CARAGINE FROM A
DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR
CONSTRUCTION OF A SECOND STORY ADDITION TO THE PRE-
EXISTING NON-CONFORMING STRUCTURE HAVING INSUFFICIENT**

SETBACKS, WITH THE FOLLOWING CONDITIONS⁵, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

FINDINGS OF FACT:

1. The Applicant made this appeal (#785), to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for construction of a second story addition to the pre-existing, non-conforming house⁶ 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 9000 sq. ft. parcel on Brant Terrace, is located in a R-10 District in the Town of Philipstown, New York. According to Schedule B of the Philipstown Zoning Code, the R-10 District requires a setback of 10 feet from side or rear property lines.
3. The structures at the property, appear on a map dated December 15, 2004, as prepared for Joseph & Ruth Caragine by Badey & Watson, Surveying & Engineering, P.C. in Cold Spring N.Y.
4. The Board initially reviewed the Application materials at a regular monthly meeting in order to determine sufficiency as a pre-requisite to scheduling a public hearing on the appeal. The Board determined the Application complete. A properly noticed public hearing was scheduled for November 21, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.
7. The Board met on November 21st for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, no members of

⁵ 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."

⁶ Philipstown Code §175-82 prohibits the enlargement, extension or alteration of any nonconforming structure except where the enlargement is itself conforming or the result of the change is to eliminate the nonconformity.

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.

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 Building Department and/or Zoning Board approval as needed.
2. The setback from the side yard for the proposed addition shall not be less than 9.5 ft. (a variance of .5ft.).

3.

4.

5.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The applicants propose to add a second story addition to part of the existing non-conforming house. The addition will stay on the existing footprint and not come any closer to the side setback the original house. The requested variance will not adversely affect property values because the addition should actually increase values. The structure will 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 structure will not be [are not] 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 the existing house is within the set back and the applicants are building on the same footprint, the Applicant can not build the structure without coming into conflict with the Philipstown Code. Given the relatively minor 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 .5ft from a set back which should be 10ft. The reduction to the required setback is minimal.

Effects on Physical/Environmental Conditions

4. The proposed variance would not have an adverse impact on the more traditional "environmental" conditions in the neighborhood. The construction of a construction of a second story addition to part of an existing house is not an activity usually associated with such environmental concerns. No additional traffic will be generated. Air quality is not disturbed. Water quality or quantity will not be affected. Additionally, no increase in runoff or change in the drainage should be 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 self created⁷. The Applicant wishes to construct the addition on the existing footprint which is already within the required setback. The Applicant made inquiry and/or sought a building permit and was notified of the need for a variance.

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.

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 13th day of February, 2006, the results were as follows:

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

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.

⁷ While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.

Vincent Cestone - I'll make a motion to accept the resolution as read. Do I have a second

Lenny Lim - Second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Roll call vote. I'll vote in favor

Lenny Lim - And I will also vote in favor

Joan Turner - And I will concur

Vincent Cestone - Any old business or new business? With that I will entertain a motion to close the meeting

Lenny Lim - I'll second

Joan Turner - No let's sit and chat for a while

Tim Pagonis - You go ahead. I'm going home

Vincent Cestone - All in favor

All Board Members - aye

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

DATE APPROVED: March 6, 2006

Respectfully submitted,

Kim Shewmaker
Secretary