

ZONING BOARD OF APPEALS

April 17, 2006

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, April 17, 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
Bill Flaherty - Member
Joan Turner - Member
Tim Pagones - Counsel

ABSENT: Victor Carlson - Member

Vincent Cestone - Okay. If anyone is here for the Walter Hoving Home, it has been withdrawn. I am going to do the reviews for completeness first.

Tim Pagones - Numbers 11, 12 and 13

Vincent Cestone - Okay. Harnett

Tim Pagones - Harnett. Is anyone here for Harnett? I guess I have, first of all there is no Deed, and the survey it looks like someone drew in the shed. So unless Kim has a real survey, I would say it is incomplete.

Vincent Cestone - Okay. MHCP Realty

Tim Pagones - That one is, is anyone here for MHCP Realty? I reviewed it. It is complete.

Vincent Cestone - Okay. May 15th

Tim Pagones - You're done. May 15th for a public hearing.

Vincent Cestone - Okay Sussmeier.

Tim Pagones - One second. Anyone here for Sussmeier? Well I guess I you look at the application, they didn't put down what they are looking to reduce the square to. But then if you read their worksheet, and I don't know if the board

feels that is enough, if you read the worksheet number 3 it starts talking about one-half of 86.7 40.4 for 1751 square feet which is 2.8 percent of the total area of a 250 foot square. So

Joan Turner - Yeah but they are looking for a lot line adjustment but it is really for

Tim Pagones - Well what happens is because they are doing the lot line adjustment they are reducing the square on one. So you need two 250 square and they haven't said well one of them is now going to be 225 but if you look on number 3, it has all these different.

Joan Turner - Do we need more clarification

Tim Pagones - Well, it has the square footage. What is 250 times 250?

Vincent Cestone - We shouldn't be doing this. They should be doing this

Tim Pagones - All right

Vincent Cestone - If we make, if we do the math and we make the mistake then we are wrong.

Tim Pagones - So I guess they are incomplete and they just have to put down what is the actual reduction to the square on the application.

Vincent Cestone - Okay. I am going to go into the public hearings now. I am going to take Ronald and Maria Palmer first. Come on up. Can you just tell us why you are here and what the issue is. I have read your application. So just tell us what the issue is.

Ronald Palmer - Okay. We need a variance for a shed and _____

Vincent Cestone - And how were these violations found

Ronald Palmer - _____

(Too many papers shuffling in front of the microphone. Cannot hear conversation)

Ronald Palmer - actually the shed was a replacement for an existing shed that was there. It was a metal shed on that location at one point and the only thing that I did is put a permanent one there and increased the size. I was not aware of

Vincent Cestone - the requirement

Ronald Palmer - the requirement.

Vincent Cestone - Is it on a foundation or

Ronald Palmer - Yes

Joan Turner - It is on poured concrete

Ronald Palmer - Yes. It is on poured concrete

Joan Turner - So does it just rest on the concrete

Ronald Palmer - No

Ronald Palmer - Yes

Maria Palmer - And from the pool

Vincent Cestone - We are talking about this shed right here?

Maria Palmer - Yeah

Vincent Cestone - Right here. This one right here

Maria Palmer - Yes

Lenny Lim - And you also put down the addition. What do you mean by addition?

Maria Palmer - We had a screened in porch or like a Florida room okay? It wasn't insulated, it was bare on a concrete slab also. But we took it and closed it in and put sliding glass windows on it

Lenny Lim - Insulation and heat?

Maria Palmer - Yes

(Sirens going off...cannot hear conversation)

Lenny Lim - did you get a permit for any of these? You didn't get it for the shed, the pool, or the addition

Maria Palmer - the pool was there

Joan Turner - did you get the building permit

Maria Palmer - we couldn't find the building permit but he said _____

(Still sirens)

Joan Turner -...this is your application and this is when you are granted. But it is granted with, before hand when come for a building permit. You have to come into Town Hall, they give you a building permit, you submit your plans for a pool, what you wanted to do

Maria Palmer - okay but when we went downstairs and we spoke to Mr. Monroe and we told him that, I asked him if it would be on file. He said he had to put it in anyway because it was given in error. And I said but, I didn't know it was given in error we went there and we got the permit, we got the certificate of occupancy, it was granted to us. But he said that whoever gave it to us was wrong to give it to us.

Joan Turner - Were they wrong because there was no building permit and you came back later

Maria Palmer - No, we were wrong because of where we put it. But I said to him, we told him where we had it and we had an inspector from here come down and look at the pool and look at the deck and they approved it. It was all inspected by the town.

Lenny Lim - The problem I am having is with the addition. I don't see any distance

Vincent Cestone - There is no addition. There is no violation as far as Zoning

Maria Palmer - Now the addition is part of the house, it was always part of the house.

Joan Turner - But they had no building permit for it.

Lenny Lim - Was it enclosed originally? Was it screened?

Maria Palmer - It was partially screened and partially closed.

Lenny Lim - Then you fully enclosed it

Maria Palmer - Right. And put heat in

Ronald Palmer - We have a propane heater in there

Maria Palmer - Right

Vincent Cestone - That's not in violation of the setbacks. That is a violation with the Building Department. It is not a violation with us. Am I correct with that Tim

Tim Pagones - I believe so

Lenny Lim - In their application it says pool and addition. That's why I was asking. You put it on your application

Maria Palmer - We didn't. We were helped.

Lenny Lim - I saw it on the application. I don't know who put it there but it is on your application that is why I was asking about the addition.

Joan Turner - But in other words in granting this appeal, are you asking for granting of an approval of the addition that was put on without a building permit?

Maria Palmer - No.

Joan Turner - Is that why it was included

Maria Palmer - No because I asked him if he could come down and look at it and give us the permit for it and he said he would. But he said he would put everything on here that needed to be taken care of. Why I don't know. But he said, he has to come down and he has to look at it to see if it can be approved for permit. But this was just supposed to be for the two variances. One for the pool and one for the shed.

Lenny Lim - I am troubled by the word addition added on to that application. And now you are saying that the building inspector wants to come down to

Ronald Palmer - What happened is that addition, and that was before we were married, it was on there for some 30 plus years.

Lenny Lim - But you enclosed it

Vincent Cestone - That means it is not a violation on zoning.

Lenny Lim - I am just trying to figure out who put it on the application

Vincent Cestone - Probably Tom told them to do that

Lenny Lim - Okay

Vincent Cestone - And that's what they did

Lenny Lim - There must have been a reason

Joan Turner - Let me just return to the wood shed, what you call an accessory building in your appeal I think. Originally when you bought the property it was a smaller metal shed

Ronald Palmer - That's correct

Joan Turner - Smaller

Ronald Palmer - Correct

Joan Turner - And you enlarged it at the same spot

Ronald Palmer - Right

Joan Turner - Okay. This is a problem that we have I think, if we grant a variance for this shed, this variance runs with the land permanently in perpetuity. And another buyer coming in can decide that this accessory building is going to be enlarged and you've got a variance for it all ready. And so he can put another story on it if he gets permission because he's got a variance for it being 2 feet away from the property line or he can enlarge it in length or width. And for that reason I cannot grant a variance for that because of the fact that there is a possibility of enlargement and the variance runs with the land and you are only 2 feet away. I don't have a problem with this I think it was an error, a mix up and this is perfectly fine. But since you have an alternative as to where you can put that shed even though I understand it is an inconvenience and an expense for you, you could put it down here.

Ronald Palmer - That would have to be torn down completely.

Tim Pagonos - What is the size of the shed

Lenny Lim - Did the first metal shed have a foundation? A concrete foundation?

Maria Palmer - No it was on dirt

Lenny Lim - Okay. So you replaced it with a concrete foundation

Joan Turner - A larger building

Maria Palmer - I have a drawing of the shed. This gentleman asked for measurements.

Lenny Lim - It is 14 by 16

Bill Flaherty - Is there electric in

Ronald Palmer – no

Bill Flaherty - But it is on a permanent foundation

Ronald Palmer – Right

Bill Flaherty - So therefore it would be difficult to move that shed

Ronald Palmer – You would have to demolish it

Bill Flaherty - And you said you were in the process of selling the house

Ronald Palmer – That's correct

Bill Flaherty - How would that affect your resale

Ronald Palmer – I don't know

Maria Palmer - Because you wouldn't really have any other place to store anything

Ronald Palmer – Lawn equipment and so on

Bill Flaherty - How is the property in back of your house

Maria Palmer - Flat

Lenny Lim - So you have alternatives

Joan Turner - He has alternatives to place it

Bill Flaherty - You have additional locations to put that shed

Joan Turner - It is going to cost you some money yeah, but it is really, it is too much of a variance to grant because of the fact that you don't know what is going to happen in the future between this neighbor and that neighbor and you just can't put buildings that close to a property line. I would get a carpenter down there. I mean they can take the bolts out of the concrete and lift it up, I imagine and put it on skids. It is feasible without destroying the building and you have an alternative place on your property to do it. I am willing to go along with your pool variance. I am unwilling to go along with the wood shed.

Vincent Cestone - Any comments from the audience on this? Any more comments from the board? I will entertain a motion

Joan Turner - Motion to close the public hearing

Vincent Cestone - Yes

Joan Turner - I so move

Vincent Cestone - Do I have a second

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board members – aye

Vincent Cestone - I think we need to discuss this a little bit. I tend to agree with Joan and we would have to coach the resolution in those words that it is only basically for the pool. And I don't know what Lenny or Bill's opinion is on this

Bill Flaherty - Well I think the pool is fine. I had some _____ about the amount of variance required is very very significant and the law only allows us to give the minimum variances. So that falls on the fact that there may not be any alternatives for you. But you said that you could move it and you have property enough to do so and if you sell, it may be inconvenient to you but it might be the appropriate thing to do.

Ronald Palmer - It is not bothering my neighbor. Why is it a big issue?

Vincent Cestone - Because it is precedent to the neighborhood. And your neighbors could say you have it, it has happened

Lenny Lim - And it runs with the land forever like Joan said. The next person who buys it can put a two story

Joan Turner - The next person who buys his house could say you know, I need a second story there because you know I need storage. And there you have a second story going right up on a property line which is unfair

Ronald Palmer - I understand. I understand that, but that person before he does that has to get approval to do that.

Lenny Lim - No, he has a variance already.

Joan Turner - He already has a variance.

Lenny Lim - All he needs is the building permit.

Tim Pagones - Let me, what is your time frame on your sale?

Ronald Palmer - It is on the market

Tim Pagones - Do you have a buyer?

Maria Palmer - No not yet.

Tim Pagones - I was just going to suggest if you had a buyer and you were in contract holding money aside so you can go forward with the sale but the urgency, I realize you want to sell it as is but right now you are not in contract and there is no urgency I don't know if the board wants to discuss it, do you want to take a straw poll vote tonight, do you want to discuss it on the 15th further? I mean it is up to you

Vincent Cestone - What is the boards' pleasure on this

Lenny Lim - Sounds like everybody has an idea what they are going to vote anyway

Vincent Cestone - Okay, we would have to coach the straw poll. The straw poll would be to grant a variance on the pool but not on the shed

Tim Pagones - It is the pool and the deck on the pool

Vincent Cestone - Right

Tim Pagones - So you are voting for the pool and the deck and to deny the variance for the accessory building based on alternative, realizing that there might be some expense but there are alternatives and they can get someone to unbolt it and move in

Lenny Lim - Also remember they replaced a smaller one with a bigger one

Vincent Cestone - Right

Maria Palmer - Can I just ask you one question

Vincent Cestone - Sure

Maria Palmer - Because you said you are giving us two variances, but technically the way I feel because I got a permit and I got an approval to put that pool there, I shouldn't even have to be asking for a variance for that.

Vincent Cestone - But it was issued, if you look at the law, the law, if there is an error made, they can pull the certificate of occupancy. I know it is unfair. But that's, you are not the only one that this has happened to. This has happened a lot. Tom Monroe is systematically going through all of the properties and he has come back to us with a whole bunch of these. And generally what this board does, unless it is a gross violation like right on the neighbor's property, we generally make it good. And that's what we are going to do.

Maria Palmer - Okay

Vincent Cestone - So there is a motion for a straw poll on the floor. Bill?

Bill Flaherty - I vote to deny the shed and approve the pool and pool deck

Vincent Cestone - Len?

Lenny Lim - I concur

Vincent Cestone - Joan?

Joan Turner - Yes and I concur

Vincent Cestone - And I do too. So what that means, this is only a straw poll. Now the attorney will write up the resolution and then we will take an official vote. Probably around May 15th. Now you don't have to be here for that. Okay continuation of a public hearing for Matthew A. Noviello. Hi how are you doing?

Matthew Noviello - Good

Tim Pagonis - I guess just for the record he was here, you said you know what go to the Planning Board. The Planning Board cannot do the subdivision until any variances or any violations are granted but what the applicant has explained to the board before was even if he is denied his subdivision, that subdivision is not affecting any line that this building is next to so whether he gets a subdivision or not, they need a variance. So that is what he is here for. So to bring you up to speed

Joan Turner - It is really surprising that you say whether or not you get the subdivision approval or not this does not affect the variance because when I spoke to, when I went out there and I think David you were with me, and he said that the reason and correct me if my memory is wrong, the reason for the necessity for the variance was the fact of that lot line being changed.\

David Brower - Yeah, originally there was a right of way next to the

Joan Turner - Before then he didn't need a variance but because of that right of way going

Matthew Noviello - There is no right of way. Let me just review. There are no right of ways on the subdivision. There is a flag lot because the prior owner subdivided, not Tuana, before Tuana. And that is maybe what he was thinking.

Joan Turner - Maybe, so there was a lot line change

Matthew Noviello - There was no lot line change. There was a subdivision by Deed that the prior owner did with the approval with the Town Code Enforcement Officer. And we went through this and we got it in writing that everything was fine and somehow we all missed the variance on this accessory building. Our main focus was to divide the existing houses onto separate lots and try to center them on the lots.

Joan Turner - So you are before the planning board now?

Matthew Noviello - They need the zoning board to act first.

Joan Turner - They need us to act first?

Tim Pagones - There is basically a violation. The house is in violation

Joan Turner - The shed

Tim Pagones - Whatever it is. Whatever that building is. So the Town Code says that the planning board should not be doing any kind of subdivisions when there is a violation on the property. Whether or not this variance will affect that subdivision or not. there is a violation. Just like if there was a violation in the property like in front of the Judge, they are not supposed to be doing that.

Joan Turner - So there is a violation on the existing accessory building

Tim Pagones - Yeah. They need a variance

Joan Turner - But I am loathe to give a variance on this without a subdivision approval. I mean I have spoken my mind on that three times and it is like a hot potato, it gets bounced back and forth between this board and the planning board. And I think the planning board needs to act and if they act, then this board knows how to follow suit

Tim Pagones - Well I guess, the variance, if he never goes back to the planning board according to the applicant, they still need the variance. So if he withdraws his subdivision request, he still needs a variance. The variance, according to the applicant, is not going to be conditioned on do I get my subdivision or not. So

that is what he is saying. I can withdraw my planning board subdivision request tomorrow but they still need a variance.

Joan Turner - I mean we can argue that the existing subdivision is an illegal subdivision

Tim Pagones - Well right now it is one big lot. Whether it was done by Deed or whatever,

Joan Turner - What I am saying is that there is already a subdivision by Deed and we are saying that that is an illegal subdivision

Matthew Noviello - No no no no no. There are two subdivisions by Deed. First the prior owner subdivided the flag lot that we were talking about. That is done. Then Tuana subdivided with approval from the Town and that is what we are before the Planning Board for. Tuana's three lot subdivision. That 3-lot subdivision does not affect this variance. The properties that Tuana has control over are two houses and a vacant lot to the northeast do not affect this variance. That's the point.

Vincent Cestone - It seems cut and dry to me.

Bill Flaherty - What is the normal protocol on a matter such as this? Is it that it is the planning board first. In my judgment it is anyway. I was under the impression that the planning board would make the decision on this and approve that as it exists and it would come to us for the approval of the _____

Matthew Noviello - I can tell you, I have been an engineer for over 30 years. I have never been to one town yet that would have the planning board approve anything that needed a variance before the zoning board grants the variance.

Tim Pagones - But also, I guess if he got his subdivision and it was going to change the variance, then we would sit there and say you know what do your subdivision so we know exactly and they will hold off and then you would get your variance. But what the applicant is saying is that that subdivision is no way going to change the line. Whether I need 5 feet today, if I get my subdivision I need 5 feet in a month. So here there is no reason to wait for the planning board to do anything.

Matthew Noviello - It might be helpful to review it on the full size copy. It might clarify things. Lot 50.1 has the studio that needs the variance for the side line. Tuana also owns Lot 50.2 and 50.3. That was the subdivision that we did by Deed that Tuana did that the Town later said was not legal. That is why we are going before the planning board to divide these three lots again. There is a house on this one that has been there for I don't know how many years long time. There is an old house on this one. This one is vacant. So we are before

the planning board to divide these three lots. This is the lot that Houston cut out of the property before selling it to Tuana with the approval of the Town and everybody agrees that that is a legal division. This lot and this. Okay. The problem is Tuana doesn't own this strip and that is where we have the problem.

Lenny Lim - So he has two sheds, two buildings

Matthew Noviello - And these have been reviewed by the building department and they are all fine. They are little storage sheds. The problem is this building doesn't have a basement.

Lenny Lim - This is the lot line, the red line

Matthew Noviello - Red line is 50.1

Bill Flaherty - And this subdivision was made by Deed

Matthew Noviello - Yes with the approval of the Town, which they later rescinded. It was approved and then we divided the properties, mortgaged the properties, then they came back and said hey that wasn't legal

Vincent Cestone - Who told you that

Matthew Noviello - Who told us which

Vincent Cestone - That is wasn't legal

Matthew Noviello - I believe it was Tom Monroe. So we are trying to come before the various boards to get this all straightened out and do it properly. But we have been here doing this for over a year

Bill Flaherty - But what I think what the Town has done not too long ago was make that kind of subdivision illegal by Deed and not approved at all until it comes before the zoning board. So this needs to be eliminated or minimized in the future.

Vincent Cestone - Any more comments from the board?

Joan Turner - You know, granting a variance on this building, we did a tour outside and inside when we were there. It is tantamount to saying that this is an enforcement issue. You are just throwing it open. There is a space for a bathroom whether it is in there or not, there is heat and electricity and it is, and you know as well as I do that the temptation to turn that into another building, not just an office or studio, is overwhelming. It happens all the time. So it becomes, we grant it and then who is going to go around to check if there is a toilet in there or not. We have an issue right down on Nelson Lane again with the business

that is being run out of there.

Matthew Noviello - Joan, I think you know when that building was built. To your knowledge, has it ever been used as a residence?

Joan Turner - Never as a residence. It was an office.

Matthew Noviello - Okay

Joan Turner - It was an office before. The PETA people

Matthew Noviello - Okay. You know that building before any of us

Joan Turner - Yeah but it has been renovated since then. It has been totally renovated. It is a really neat little thing.

Tim Pagones - I guess I would just caution the board not to grant something because someone is not doing their job. If you grant a variance, well either the neighbor or Mr. Monroe needs to check there to make sure it is never used. I mean the planning board

Vincent Cestone - Sounds great Tim

Tim Pagones - Whether or not that ever happens I don't know but to sit there and say I am not going to give someone a variance because someone might not do their job, you know. I mean the Planning Board give site plans all the time, approval, and it is totally different than what they approve.

Bill Flaherty - And that is in an R-40 zone?

Matthew Noviello - R-80. They all meet or exceed the codes, there are no other variances needed. They have the squares, the road frontage, all the other setbacks. We thought we had everything complying somehow we missed this accessory building

Joan Turner - Well it was there

Vincent Cestone - So they need 10 feet 2 inches

Joan Turner - He needs 10 feet

Matthew Noviello - Side yard should be 30 feet

Vincent Cestone - It is 19 feet 8 inches

Matthew Noviello - Point 8

Lenny Lim - That's the problem. Remember I brought that up, it should be done in inches

Matthew Noviello - Engineers like decimals

Tim Pagones - 10.2 feet. How long has that building been there

Joan Turner - it has been there as a wood shed, then it was converted into an office

Tim Pagones - The thing here is forget about the subdivision. Forget that they are even in front of the planning board for a subdivision. Do you want to give them a variance of 10.2 for that building. They need that. It has been there

Joan Turner - And you put the conditions on it

Tim Pagones - Right. You can put the conditions that it can never be converted to living, a house

Matthew Noviello - That would be fine

Tim Pagones - What is in there now? Heat and electric? Is there a bathroom?

Joan Turner - Well Tom went out and said there was no bathroom

Tim Pagones - So there is not going to be any indoor bathroom

Joan Turner - So zoning will go out there with their binoculars and check it out

Vincent Cestone - I entertain a motion to close the public hearing

Bill Flaherty - I so move

Vincent Cestone - And I'll second. 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 - Bill?

Bill Flaherty - I vote for approval of the subdivision

Joan Turner - Of the subdivision?

Bill Flaherty - Not the subdivision.

Lenny Lim - I will too with conditions

Joan Turner - Me too

Vincent Cestone - And so will I

Tim Pagones - May 15th for a resolution

Matthew Noviello - I have to wait a whole month

Tim Pagones - They are not going to meet the first Monday

Matthew Noviello - Okay thank you. I don't have to be here right?

Tim Pagones - No

Matthew Noviello - Have a nice night

Joan Turner - Good night Matt

Vincent Cestone - Review of minutes for March 20th. Any changes or corrections? If not, I will make the motion to accept the minutes.

Bill Flaherty - I'll second.

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - Lets talk about Mastrantone.

Tim Pagones - No one is even here for that, do you want to do the cell tower one and get them out?

Vincent Cestone - Well what discussion do you want to have on it?

Tim Pagones - Well I don't know. You put them on for discussion. So do you want to take a straw poll to grant it? The cellular tower one. Right now the only

thing you've done is close the public hearing for the cellular tower

Vincent Cestone - Okay

Tim Pagones - So I mean, I don't know which way you want to write it. So I guess you should take a straw poll and get Mr. Gaudioso out. I'm sure he

Vincent Cestone - He's got billable hours

Joan Turner - He'd rather be home

Vincent Cestone - I'll make a motion for a straw poll. Do I have a second

Lenny Lim - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Bill Flaherty - I vote in favor

Vincent Cestone - Len?

Lenny Lim - I vote in favor

Joan Turner - Me too

Vincent Cestone - Me also

Mr. Gaudioso - I guess the usual conditions

Vincent Cestone - Yes plus anything else that we think of

Mr. Gaudioso - You are not meeting on the 1st

Tim Pagones - They are going to meet on the 15th. The third Monday of the month. And the resolution will be May 15th

Mr. Gaudioso - Okay. Thank you very much

Tim Pagones - Take care

Vincent Cestone - Mastrantone. What can we say about Mastrantone

Joan Turner - He has outstanding violations that need to be addressed. So I think he just has to clean them up and get a clean bill of health from Tom Monroe

Lenny Lim - If you look at his application, he needs a variance on the other side of the building too he is going so far

Vincent Cestone - Right

Lenny Lim - He only asked for one side

Vincent Cestone - Right

Lenny Lim - Because he is going towards the road, we found out that he needs another variance on that side

Joan Turner - Oh. This was when I was away

Lenny Lim - Yes

Joan Turner - Oh oh my gosh

Lenny Lim - In other words this building does not fit in the lot period the way he is building it

Vincent Cestone – right. He still has to go out and clean up all the violations

Joan Turner - And then come back with the revised

Vincent Cestone – Once he gets all that straightened out, I would reconsider. But my

Joan Turner - But also a revised appeal because he is asking for another variance. It is the same appeal but he has to add the fact that there are more variances then he originally requested

Vincent Cestone – right

Lenny Lim - This is pre-existing nonconforming that he already enlarged I heard

Vincent Cestone – Yeah. Then he puts a wall on his neighbor's property and the house is partially on the neighbor's property.

Lenny Lim - How he built the house over the line

Vincent Cestone – I don't know

Bill Flaherty - We still have some open violations on this property. I haven't seen any memorandums from our Building Inspector saying that they have been

improved.

Lenny Lim - Most of those we can't deal with, we can only deal with his variances

Vincent Cestone – Yeah

Lenny Lim - I mean we've closed this public hearing. I would like to take a vote and see if we give it to him.

Bill Flaherty - But you know I stopped by there the other day and he has cleaned up the property quite a bit considering what it was like back in December when I first visited it

Joan Turner - When we first went there

Bill Flaherty - He has done some work on the property. Aesthetically it is much more pleasing to the eye for a rental property

Vincent Cestone – That's correct

Bill Flaherty - And he is going to make it handicap accessible which is good. He is cooperating with us. When we asked for a landscaping plan he came up with that for us.

(all talking at once, cannot hear conversation)

Joan Turner - Is this Stone Ridge a right of way or is it a road? Does he need the 40 foot

Lenny Lim - Yes, it is a road. We went through that at the last meeting.

Joan Turner - So he does need that.

Lenny Lim - My problem is he is enlarging a pre-existing nonconforming twice. I could not vote for this in any shape or form

Bill Flaherty - Well he has torn down some of the outdoor things he had there

Lenny Lim - Yeah but that is not

Bill Flaherty - I understand that

Lenny Lim - But his addition is going to actually come further into the setback on the other side

Joan Turner - So what he needs to do is just come back with a modified plan that he doesn't

Vincent Cestone - I wouldn't even want to look at it until he straightens it out

Joan Turner - So as it stands now he is dead in the water?

Lenny Lim - I would definitely vote against it

Vincent Cestone - Until he brings it totally into conformity, I don't even want to talk about it

Lenny Lim - We closed the public hearing we only have so many days to take a vote

Vincent Cestone - Right. We have to vote on this

Bill Flaherty - How many more days do we have?

Tim Pagonis - We have 62 days from when we closed the public hearing.

Bill Flaherty - Well we still have 32 days then

Vincent Cestone - He has to have a resolution on the 15th

Bill Flaherty - Okay

Joan Turner - What about if he came back and cleaned up his violations and made the other part of his addition smaller

Lenny Lim - Joan, you are expecting someone who is encroached on both sides of the property line, I understand what you are saying but so far he hasn't done anything right. I mean he encroached on one neighbor's side this way, the other neighbor this way, and now you are saying if he comes back and give us, I don't think he is going to give us anything

Joan Turner - I mean like this. If he came back and instead of putting this out, put it back

Vincent Cestone - He can reapply

Ande Merante - I have a question on this issue. If you folks decide not to approve, at what point do they become violations that get cited and bring him into court on these things?

Vincent Cestone - He is already at that point.

Ande Merante - He is in court now

Vincent Cestone - Yeah

Ande Merante - Then how can you discuss it at all?

Tim Pagones - What happens is the court proceeding is held in abeyance while he is in front of the zoning or planning board

Joan Turner - So it is not a stay here

Tim Pagones - Right. It is stayed in the court and we've had that with the planning board where the guy says I'm before the planning board and in two years he's done nothing. So we write a letter back saying the guy has done nothing. But his violations are stayed pending his application at the zoning board and if he is denied, then he has to go back to the court and say well I've been denied but I still have to take care of these violations. And I would just like to point out that you've always had a policy of you know what build something to fit the land.

Lenny Lim - This doesn't fit

Tim Pagones - And this is also rental property. It is not like it is his house

Bill Flaherty - Does it make a difference whether it is a rental or a house occupied by the owner

Tim Pagones - I think it can make a difference to the board. It is purely for profit. It is speculation. They denied someone once who had a construction company and was buying a lot and they wanted to build a 4 bedroom 3,000 square foot house, and the board said make it fit the land and you are buying it for speculation and build a smaller house.

Bill Flaherty - He is improving the property himself at this point in time

Vincent Cestone - That's not our problem

Bill Flaherty - He is increasing the market value of the house

Vincent Cestone - That is not what we are mandated

Bill Flaherty - Oh I understand that

Lenny Lim - Good argument. Wrong Court

Vincent Cestone - With that I will entertain a motion for a straw poll

Lenny Lim – I'll second.

Vincent Cestone - Then I'll make the motion. All in favor?

All Board Members - Aye

Vincent Cestone - This time I'll go this way. Len?

Lenny Lim – I am voting against this

Vincent Cestone - Joan?

Joan Turner - I am voting against it

Bill Flaherty - I vote to deny it

Vincent Cestone - And so do I.

Tim Pagones - May 15th.

Vincent Cestone - Adam and Diana Hird we don't have a resolution tonight.

Tim Pagones - Right. There is no resolution for Hird and for Gish. And I called them both to let them know.

Vincent Cestone - Okay. Then you are on.

Tim Pagones - The first one is Santoro.

RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #791; Applicant: Alburn Elvin & Janet Santoro
Area Variance

Date: April 17, 2006

The Philipstown Zoning Board of Appeals conducted a Public Hearing on March 6th & March 20, 2006 to hear the appeal of Alburn Elvin & Janet Santoro from the denial of a building permit for a wood frame accessory building having insufficient front setbacks. The property is located on 27 Knollwood Lane in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on April 20, 2006, upon all the discussion that preceded it, including the public hearings, 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 ALBURN ELVIN & JANET SANTORO FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR A WOOD FRAME ACCESSORY BUILDING HAVING INSUFFICIENT SETBACKS, 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 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 accessory building shall not be less than 10.3 ft. (a variance of 29.7 ft.).
3. The accessory building(shed), shall not be further converted into living space, including but not limited to installation of heat or water.

Tim Pagonos - Now I don't remember, were they looking to put electric in there for a light switch?

Bill Flaherty - No

Tim Pagonos - Okay so then you can also put down that they cannot have electricity installed.

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."

4.

FINDINGS OF FACT:

1. The Applicant made this appeal (#791), dated November 5, 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for a wood frame accessory building 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"**.

And Kim will attach the list as Schedule A

2. The property, a 1.102 acre parcel on Knollwood Lane, 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 40 feet from the street line.
3. The Applicant acquired title by a deed dated June 21, 2004. The structures at the property, appear on a map dated September 26, 2005, as prepared for the applicants 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 February 13, 2006 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 March 6, 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 March 6th, 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 Board adjourned the hearing until March 20th, in order to conduct a site visit. On March 20th, 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 wish to place a 8 x 10 ft. wood frame accessory building on their property in order to store items. The requested variance will not adversely affect property values because the shed will be located high up from the road and not be visible. 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 topography of the property and the location of the applicants well and septic, the Applicants can not place the shed in any other feasible location so as to avoid 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 29.7 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 placement of a pre-fabricated 8 x 10 wood frame accessory building is not an activity usually associated with such environmental concerns. No additional traffic was generated. Air quality is not disturbed. Water quality or quantity should 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 created². The Applicant wishes to place the constructed shed in a location that would require a variance. The applicants applied to the Building Department for permits have been 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 17th day of April, 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

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

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

Joan Turner - With the inclusion of the no electricity

Vincent Cestone - Right

Lenny Lim - I'll second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor

Vincent Cestone - Len?

Lenny Lim - I vote in favor

Joan Turner - Me too

Vincent Cestone - And me too

Tim Pagones - And one absentee.

(Turned tape over)

Tim Pagones - Ready?

Kim Shewmaker - Yep

Tim Pagones - The next one is Jo Ann Darby

RE: DECISION AND FINDINGS OF THE
PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #792; Applicant: Jo Ann Darby
Area Variance

Date: April 17, 2006

The PHILIPSTOWN Zoning Board of Appeals conducted a Public Hearing on March 6th and March 20, 2006 to hear the appeal of Jo Ann Darby from the denial of a building permit for an existing shed (well house) and gazebo having insufficient side and rear setbacks. The property is located on 3 Ridge Road in the Town of PHILIPSTOWN, Putnam County, New York.

At a public meeting of the Board on April 17, 2006, upon all the discussion that preceded it, including the public hearings, 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 JO ANN DARBY FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR AN EXISTING SHED(WELL HOUSE AND GAZEBO 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 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

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."

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 rear yard for the shed shall not be less than 14.7 ft. and from the side yard not less than 12.0 ft. (a variance of 5.3 ft. and 8.0 ft. respectively). The setback for the gazebo from the side yard shall not be less than 4.4 ft. on the overhang (a variance of 15.6 ft.)
3. The shed and gazebo 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.

Tim Pagones - Any other conditions?

Vincent Cestone - No electricity or water.

Tim Pagones - Okay. So add no electricity or water to it also.

4.

5.

FINDINGS OF FACT:

1. The Applicant made this appeal (#792), dated January 31 2006, to the Philipstown Zoning Board for an area variance based upon a denial of a building permit by the Building Inspector for an existing shed (well house) and gazebo 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"**.

Tim Pagones - And Kim will attach that

2. The property, a 1.852 acre parcel on Ridgewood Road, 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 20 feet from the side or rear property lines.
3. The Applicant acquired title by a deed dated March 27 1980. The structures at the property, appear on a map dated December 23, 2005, as prepared for Jo Ann Darby by Badey & Watson Surveying & Engineering, P.C. in Cold Spring N.Y.

Vincent Cestone - Excuse me. On Item 2 it Ridge Road not Ridgewood Road

Tim Pagones - Okay Ridge Road, I'm sorry. See now, Ridgewood is on the

Vincent Cestone - Then the one on the front is wrong. One of them is wrong

Tim Pagones - Let me see what the appeal says. Ridgewood. So the first one should be Ridgewood Road

Joan Turner - Good spot. Alert.

Tim Pagones -

4. The Board initially reviewed the Application materials at its regular monthly meeting on February 13, 2006 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 March 3, 2006. 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

7. The Board met on March 6th and March 20th for the purpose of conducting the public hearing. Except for the Board Members and the Applicant, only William Lauch a neighbor of the applicant 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 variances with certain conditions.

FINDINGS AND CONCLUSIONS:

Adverse Effects on the Neighborhood

1. The applicant is seeking a variance for an existing shed (well house) and an existing gazebo. The requested variances will not adversely affect property values because the shed has been in existence for over 40 years and the gazebo for about 20 years. 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. William Lauch, the applicants immediate neighbor told the Board that the shed and gazebo have no visual impact on him and he had no objection to the appeal. 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 structures are already in place, the Applicant can not keep them in their current locations without coming into conflict with the Philipstown Code. Given the amount of intrusions into the setback, denial of the variances would cause more hardship to the Applicant than benefit to the neighborhood or Town.

Extent of Variance

3. The Applicant requests a variance of 5.3 ft for the rear setback for the shed, 8.0 ft. for the side setback for the shed and 15.6 ft for the side setback for the overhang of the gazebo, from a set back which should be 20 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 shed and gazebo that have been in place for 20 -40 years are not activities 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 will be

experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structures 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.

THE BALANCING TEST:

Based upon the above findings, and taking into consideration the benefit to the Applicant if the variances were 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 variances 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 17th day of April, 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.

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

Bill Flaherty - I so move

Joan Turner - Second

Vincent Cestone - And Joan seconded. All in favor?

All Board Members – Aye

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor

Vincent Cestone - Len?

Lenny Lim - I vote in favor

Joan Turner - I'll vote in favor

Vincent Cestone - And so will I. One thing for old business. I was wondering if the board would be interested in having a

Joan Turner - Cook out?

Vincent Cestone - Dick Comi from our consulting firm come in and do a presentation on new technology for cell towers

Joan Turner - Sure yeah

Vincent Cestone - They have this technology where they have one set of equipment sheds for each carrier in one location and they have multiple cell sites on telephone polls like right along 9D or right along 9 using that one set of equipment sheds

Lenny Lim - So we can put this equipment shed anywhere up and down Route 9 and 9D. Is that possible?

Vincent Cestone - Right. You put it anywhere along Route 9 or 9D and then you use the telephone polls for the cell sites along the way

Lenny Lim - Would this help us take some of the towers down

Bill Flaherty - Will this eliminate the towers

Vincent Cestone - Yes

Bill Flaherty - It will eliminate the towers. I want to hear that.

Lenny Lim - I sure do

Tim Pagones - I would suggest that you have something joint with the Town Board and maybe even the Planning Board

Vincent Cestone - That's what I was going to do

Tim Pagones - As opposed to just your board

Vincent Cestone - So I am going to have, I am going to give Dick Comi a call and then I will ask Dottie if she can set up a meeting. Any other old business?
Motion to adjourn

Joan Turner - This gentleman has been waiting for something

Vincent Cestone - Is there anything,

Audience Member - I was just here for Gish but I hear there is no resolution

Vincent Cestone - I am sorry about that

Tim Pagones - I had spoken to Mr. _____ and I left him a message saying that it would be on for the next meeting May 15th.

Joan Turner - But you know we are good entertainment. It's better than a lot of tv.

Vincent Cestone - I will make a motion to adjourn. Do I have a second

Lenny Lim - Second

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: 5/15/06

Respectfully submitted,

Kim Shewmaker
Secretary