

# ZONING BOARD OF APPEALS

July 18, 2005

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 6, 2005, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

**Vincent Cestone** – Are we taping here Tim?

**Tim Pagones** - Yep. We're taping

**Vincent Cestone** – Okay. We are going to do General Dynamics first. We have a couple of things that you, that we asked you for.

**Anthony Gioffre** - Yes. And thank you very much and for the record Anthony Gioffre. I am a member of the law firm of Cuddy & Feder. You will recall that there were a couple of items that you asked us for which including the information requested by this Board and your consultant with respect to the signal level threshold. You also asked us to send some written correspondence to Sprint's counsel with respect to the other \_\_\_\_\_ real estate on the tower whether or not they would be willing to address some issues with respect to branches, I sent copies of not only that correspondence but as well as the return correspondence that he forwarded on to Kansas City, since it is no longer being handled locally. And he is awaiting a response. And the last item was with respect to the noise issue and at the last meeting at the suggestion of our RF Engineers that a baffle system would further address any noise impacts from the air conditioning and my client has indicated that it would be \_\_\_\_\_ to include the baffle at any of its design. So we have no objection to including the baffle.

**Vincent Cestone** – Any questions from the board? Any questions from the audience? No generators or fuel supply, is that correct?

**Anthony Gioffre** - That is my understanding.

**Vincent Cestone** – With that I would entertain a motion to close the public hearing.

**Bill Flaherty** - I'll so move

**Vincent Cestone** – Oh one second

**Mike Kelly** - I didn't realize you were going to close the public hearing. Okay. With regards to the facility, could we put some limits on when they can come and install their equipment? Rather than 7:00 to 7:00 Monday through Sunday. How about 8:00 to 5:00 Monday through Friday. Because we get a little tired of them \_\_\_\_\_ all day Saturday and all day Sunday rather than during the week. Then maybe we can address screening. The last company Verizon put screening down along the drive. This time could we possibly put screening along the side of the property line rather than out along the road. Then maybe we can address the issue of how high this box is going to be inside the fence. Whether it is going to be sticking out over the top of the fence

**Vincent Cestone** – It is not going to be sticking over the fence. It is going to be the same as the Verizon.

**Mike Kelly** - Well the Verizon is a foot and a half over the top of the fence.

**Vincent Cestone** – Not over the 10 foot fence

**Mike Kelly** - Yes

**Vincent Cestone** – It is over the 10 foot fence?

**Mike Kelly** - Yes

**Vincent Cestone** – I am not sure

**Anthony Gioffre** - If I can address this, with all due respect I understand your concerns. I hate to make a comment like this but I hate treating something piecemeal backwards. It seems like every time we take a step forward a new issue is coming and I think there has got to be a point were the process has to end. All items have to be put on the agenda. With respect to our self, our shelter is a \_\_\_\_\_ shelter. It has been submitted and we indicated that we will increase the fencing, the height of the fencing around the shelter consistent with the fencing on site. The Planning Board as well as this Board looked into at length the additional landscaping which I believe has been addressed and to revisit that right now I think it is, it is an unbelievable landscaping plan. It is one of the most

vigorous landscaping plans that I have seen at any site anywhere. With all due respect I think we have addressed every concern from the Planning Board, from this Board, from comments from the neighbors which I believe is a matter of record to be closed where everybody is concerned. We ask that this Board take favorable action.

**Vincent Cestone** – Anyone have something to say on that?

**Joan Turner** - What's involved to meet his request? What expense or time or effort is involved in addressing some of the issues that Mr. Kelly raises?

**Anthony Gioffre** - This is the first time I am hearing some of these issues. With respect to the increase to the height of the fence, we said to this Board that we would increase the height of the fence consistent to what is on site

**Joan Turner** - Okay so that addresses one of his concerns

**Anthony Gioffre** - With respect to landscaping, the landscaping plan has been reviewed and it is consistent with all requests from everybody and the landscaping is around the perimeter of the compound and it is consistent. I respectfully submit

**Joan Turner** - Mike have you seen the landscaping plan that they submitted?

**Mike Kelly** - I don't want to see this trailer coming in and being 2 feet higher than Verizon's trailer that is in there now. How the trailer got in there without any of us knowing about it going in there. And it is up above the 10 foot high fence. I don't want to see another trailer go in there plus or minus 3 feet and go 3 feet higher than the 10 foot high fence.

**Anthony Gioffre** - Our shelter is 10'8. So the most it will be above the 10 foot fence is 8 inches

**Mike Kelly** - That's assuming the put it at the same height of the \_\_\_\_\_. Verizon went in there and put their trailer in and then oh my gosh we forgot the block. We have to put it 3 feet higher. So that is why their trailer is above the fence.

**Russ Bogie** - The fence is 10 feet all around the compound

**Mike Kelly** - Well you haven't looked at it very closely because it is 10 feet on one and then it goes up the grade with the property and it is 12 feet at the other end in comparison to the base of the tree. So that the trailer that is now 3 feet above the base of the tree is a foot and a half above the \_\_\_\_\_. I just don't want to see you come out with this trailer that is going to higher than what is there already.

**Vincent Cestone** – If we put a condition that it couldn't be higher than the Verizon trailer you wouldn't have a problem that would you?

**Anthony Gioffre** - I don't know what the height of the Verizon trailer is. I don't have Verizon's specifications on its shelter. But you can see what our is

**Vincent Cestone** – Yours is the same size. But if we put in something like a requirement that the top of it could not be higher than the Verizon's

**Anthony Gioffre** - With all due respect I can't accept that without knowing exactly what the measurement of Verizon's is

**Joan Turner** - Well go get the measurements. I mean have your technicians go get the measurements. It's not a big deal

**Anthony Gioffre** - It is a big deal with respect to time and

**Joan Turner** - It is a bigger deal for this gentleman that has to live there

**Anthony Gioffre** - Excuse me. I understand that. But with all due respect, if Verizon's shelter is 10 feet and our shelter is prefabricated and it can't be changed so I can't accept that as a condition. If the board would like to have a 10'8" fence, I have no problem.

**Mike Kelly** - You are not following the point I am trying to get here okay. I know how high your trailer is exactly the same height as the Verizon trailer. All we don't want to see is the top of the trailer to be above what is existing there already. That's all. Verizon went the maximum of their plus or minus 3 feet and went up to the 3 foot height and put their trailer where it is now. We don't want to see your trailer wind up being higher than their trailer.

**Tim Pagones** - Why doesn't the board put in a condition that the thing can't be 8 inches above the fence? They have to blast rock, they have to blast rock. If it is 10'8" then he knows it is going to be 8" above the fence. Can't be any higher than that. If they have to blast a rock out because there is a rock, too bad. That's a condition.

**Vincent Cestone** – I don't have a problem with that

**Joan Turner** - Me either

**Vincent Cestone** – It's either that or we go around in circles

**Tim Pagones** - I guess the other thing, you don't have a problem with limiting the work to Monday through Friday 8:00 to 5:00?

**Anthony Gioffre** - I don't understand what's

**Tim Pagonos** - For the installation of the cabinets

**Anthony Gioffre** - With the building code, we would abide by whatever the building code

**Mike Kelly** - All I can tell you is the last two electric crews did all the work Monday through Friday, they preferred working on Saturday and Sundays. Obviously they are independent contractors installing the antennas on top of the tree. And the worst thing to have to do is listen to a back up coming from a piece of equipment on a Sunday morning

**Vincent Cestone** – But it is for a short period of time though

**Mike Kelly** - They were up there for four weeks.

**Vincent Cestone** – Four weeks to put antennas up? Is that normal Russ?

**Russ Bogie** - I think that is a little excessive

**Mike Kelly** - Well I can't answer to what is normal or not normal but that is how long they were there

**Joan Turner** - Well it depends on how many jobs they are trying to get done if they are independent contractors they could be running several jobs

**Anthony Gioffre** - We have no objection, we would obviously have to abide by whatever the building code applies for in that case.

**Vincent Cestone** – Russ what is your feelings on how long something like that would take? An actual installation. Because four weeks seems like an awful long time

**Russ Bogie** - It is in terms of \_\_\_\_\_. It is no where near four weeks. But what he is probably saying is that they worked their four weeks straight 7 days a week

**Mike Kelly** - No I am not saying that. I said they were there every weekend for 4 weekends in a row. They did not want to work Monday through Friday.

**Russ Bogie** - Probably in terms of man hours, 3 or 4 days to put up the antenna and maybe another day to put the building in place.

**Vincent Cestone** – What if we tell them to do the installation Monday through Friday? You could be saving them some money.

**Anthony Gioffre** - I completely understand Mr. Kelly's concerns. I have no control over, this has not even been put out to bid yet. I would respectfully submit that it is consistent with what the building code provides for.

**Vincent Cestone** – I don't see it as being onerous making it a Monday through Friday installation and then you come here once a month to do your maintenance on your normal schedule.

**Anthony Gioffre** - I don't know how it can be treated any differently than any other applicant that applies for a building permit in this municipality. I can't tell you what time they can get someone in this area

**Russ Bogie** - A lot of the work that has been done recently is done. Landscaping, doing the berm, installation of the fence, that's all finished. So they don't have to do anything

**Vincent Cestone** – All they have to do is bring in the trailer

**Russ Bogie** - Move the fence aside to get the trailer inside and the work that needs to be done on the tower.

**Vincent Cestone** – Any more comments or questions from the audience?

**Mike Kelly** - Who's responsibility is it, who is going to do the additional screening that they were planning to put in

**Vincent Cestone** – You know, I went down there. They did a tremendous amount of landscaping

**Mike Kelly** - I am not

**Vincent Cestone** – I mean more landscaping than any other facility that we have seen. Even in Westchester. I went and looked at installations in Westchester. I mean there is a ton, there has got to be \$10,000 worth of trees there

**Mike Kelly** - I understand that. I am not complaining, I am commenting on the existing landscaping

**Anthony Gioffre** - Also, we have a limited lease area. We are just the co-locator at this, the Town encourages co-location, we are just co-locating on an existing site and we have a limited lease area in which we can do things. Mr. Kelly always has the option of putting in additional landscaping on his own property to mitigate any further concerns. This is where the Town wants us to go, we have been around this issue many times.

**Russ Bogie** - The landscaping plan that has been worked out between two other carriers and the planning board

**Vincent Cestone** – Right

**Russ Bogie** - And they went back and forth and submitted all kinds of proposals. We weren't involved with that but I am aware that that is what happened and the Planning Board's landscaping plan was approved and then your Board made conditions of Verizon's permit and AT&T's permit that the landscaping would have to be completed.

**Vincent Cestone** – Now in all fairness, I think we are about as far as we can go.

**Lenny Lim** - I make a motion to close the public hearing

**David Brower** - Can I make a comment first please

**Vincent Cestone** – Excuse me

**David Brower** - Can I make a comment before you close the public hearing

**Vincent Cestone** – Sure

**David Brower** - David Brower, Philipstown Town Board. With respect to the hours of operation, your board as well as the planning board have the right to set hours of operation. And seeing how this is in a residential area, this particular tower does affect Mr. Kelly on the weekends, I can't see why any reason in the world that a large company, these large companies have to work on the weekends. So if you want to set hours, I would say that is perfectly all right with you.

**Vincent Cestone** – Okay

**Anthony Gioffre** - I would like to clarify that. Operation versus construction

**David Brower** - All right construction. Not the hours of operation because it is a tower. But as far as doing the work, construction and everything on the weekends, I really can't see any reason why it has to be done.

**Bill Flaherty** - I agree with that. If we can put the stipulation in the resolution providing that the work not be performed before 7:00 am Monday through Friday nor to include any later than 5:00 pm during the same period of time. Since you mentioned that the contract has not yet been awarded, I would suggest that Verizon put those terms and conditions in their RFQ when they go out and bid the work. And the work will be performed in accordance with the times specified in the resolution. That's not unreasonable.

**Vincent Cestone** – Motion is on the floor to close the public hearing. Do I have a second?

**Joan Turner** - Second.

**Vincent Cestone** – All in favor?

**All Board Members** - Aye

**Vincent Cestone** – I will make a motion for a straw poll. Do I have a second?

**Joan Turner** - Second.

**Vincent Cestone** – All in favor?

**All Board Members** - Aye.

**Vincent Cestone** – Len?

**Lenny Lim** - I vote in favor with the conditions

**Vincent Cestone** – Joan?

**Joan Turner** - I concur

**Vincent Cestone** – Vic?

**Victor Carlson** - I'm recused

**Vincent Cestone** – Bill?

**Bill Flaherty** - I vote in favor

**Vincent Cestone** – And so will I

**Anthony Gioffre** - Thank you very much. Mr. Chairman I ask the indulgence of the board, I have two other matters on the agenda but I am just asking for an adjournment

**Tim Pagonis** - Number 8 and 12. American Tower. I guess they are both for new sites. So I think the applicant is going to be exploring some alternate sites

**Anthony Gioffre** - And as the chairman is aware, we met Friday on the site with Mr. Bogie and we are going to \_\_\_\_\_ information requested by Mr. Bogie and this board as well as addressing further comments and I am just asking for an



adjournment with no specific time and we are asking that the matter be put off for an indefinite period until the mandates **(cannot hear with all the shuffling paper)** ...because it may take some time to address those concerns. Thank you very much.

**Vincent Cestone** – Okay. I don't think, is Mr. Novrello here?

**Tim Pagones** - That matter I think back in June he was advised that his subdivision was potentially illegal and that he had to go back to the planning board. He wrote a letter asking that it be adjourned for 4 weeks. I think you put it on for tonight based on his letter, but I don't think he resolved the issues so I would suggest that you just adjourn it and send him a letter saying it is off the calendar until he requests to come back for a public hearing rather than schedule for another public hearing and adjourn again.

**Vincent Cestone** – Right. I agree. Okay we have no minutes to review tonight. They haven't been done.

**Joan Turner** - July 11<sup>th</sup>?

**Tim Pagones** - I have a copy.

**Joan Turner** - Me too

**Vincent Cestone** – Alright well. Do we have any amendments to the minutes?

**Bill Flaherty** - I have nothing to add

**Joan Turner** - I haven't even read them so I don't know

**Vincent Cestone** – Do you want to carry them over to September?

**Joan Turner** - Yeah

**Vincent Cestone** – We are going to carry them over to September. All right. Let's do the reviews for completeness so, I already put Lerch on for September 12<sup>th</sup>. That was the one

**Tim Pagones** - You just got the survey today

**Vincent Cestone** – Right

**Lenny Lim** - Where is that?

**Vincent Cestone** – He is not on the agenda today

**Joan Turner** - Where is he?

**Tim Pagones** - That was not on the agenda. He was here last week.

**Vincent Cestone** – Yes he was and the only thing missing was that he didn't have the measurements on the drawing of the stairs that he was talking about.

**Tim Pagones** - September 12<sup>th</sup>. You have Shelley next for placement.

**Vincent Cestone** – Okay the 12<sup>th</sup> again.

**Joan Turner** - And I want to talk, Tim, I want to direct your attention to what I feel is an incomplete set of plans.

**Tim Pagones** - For which one

**Joan Turner** - For Shelley.

**Tim Pagones** - Okay

**Joan Turner** - Let me just make sure I know what I am talking about. On the new set of plans I do not have elevations. I just have floor plans, measurements but no north, east, south, west elevations and I would prefer to have them. Oh sorry, hold my tongue, bite my lips, they are here. They are right in the back. Okay.

**Tim Pagones** - So we can put that on for the 12<sup>th</sup>

**Joan Turner** - And I want to give you with regard to, I have copies of the minutes from the wetlands committee on Shelley and I want all of you to have a copy

**Vincent Cestone** – We got them. Oh not minutes

**Tim Pagones** - You got the recommendation

**Joan Turner** - This is the minutes from that. I want that to go into the file. So this is September 12<sup>th</sup>?

**Tim Pagones** - That will be September 12<sup>th</sup>

**Vincent Cestone** – Okay Gates is on for completeness also but again they didn't have the measurements on their drawing

**Tim Pagones** - Right I believe they were here last week and you advised them that they were missing measurements. I don't have anything

**Vincent Cestone** – So they are on for completeness for September 12<sup>th</sup>

**Tim Pagones** - Okay

**Vincent Cestone** – And OmniPoint. You are going to co-locate on the Garrison Greenhouse tower also

**Representative** - Yes

**Vincent Cestone** – At what level?

**Representative** - At the center line height of 97 feet. Which is the second level down. Sprint will be the highest.

**Vincent Cestone** – And what type of shelter, do you use cabinets or shelters?

**Representative** - Omnipoint uses cabinets and the cabinets are 85" in height so it is just above 7 feet.

**Vincent Cestone** – Tim, does this have to go to Planning?

**Tim Pagones** - Sure. So you can refer it to Mr. Bogie and that company for anything that they need, you can send it to the Planning Board

**Vincent Cestone** – Okay

**Tim Pagones** - So it is complete as far as sending it out. We will send it out to the County to make sure everything is fine and that's it

**Vincent Cestone** – You have the Omnipoint application don't you?

**Russ Bogie** - No I don't. This is the first I am hearing about it tonight. I know they were planning it because it is shown on the original site plan elevation. But this is the first I am hearing about it.

**Representative** - I can make sure that Mr. Bogie gets a copy

**Vincent Cestone** – Thank you

**Tim Pagones** - So you can refer it to the Planning Board. They won't get to the Planning Board until September. Because they don't meet in August. So they will be back here hopefully October.

**Vincent Cestone** – We don't have to do any motions correct?

**Tim Pagones** - Nope. It's complete. It gets referred automatically

**Representative** - So we will go to the Planning Board

**Tim Pagones** - Kim will send everything to the Planning Board and you will get on the Planning Board agenda and then Mr. Bogie will hopefully have their report when you come back here in October

**Representative** - Okay

**Vincent Cestone** – And you have to be complete with our consultant Mr. Bogie

**Representative** - Okay. Are there any questions or concerns from this board that I should take back at this point

**Vincent Cestone** – Well the obvious, noise, antennas have to be surface mounted and the trees have to

**Representative** - I'm sorry, what do you mean by surface mounted?

**Vincent Cestone** – The antennas can't be outside the branches of the tree. They have to be inside the branches

**Representative** - Okay. Thanks very much

**Vincent Cestone** – You're welcome. Okay. So I guess the next thing we are going to do is the resolutions Tim. Which one do you want to do first?

**Tim Pagones** - Garrison Highlands.

**Vincent Cestone** – okay

RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #762; Applicant: Garrison Highlands, LLC.  
**Special Use Permit** for allowance of infrastructure improvements at the  
Highlands Country Club

Dated: July 18, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on May 16, 2005, to hear the appeal of Garrison Highlands, LLC for a special use permit to allow for infrastructure improvements at the Highlands Country Club. The property is located on 955 Route 9D, in the Town of Philipstown, Putnam County, New York.



At the public meeting of the Board on July 18, 2005, upon all the discussion that preceded it, including the public hearing, all prior public meetings, site visits undertaken by individual Board Members, and a review of all exhibits and 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:

THE APPEAL OF GARRISON HIGHLANDS LLC. (#762) FOR A SPECIAL USE PERMIT TO ALLOW IMPROVEMENTS TO THE INFRASTRUCTURE OF THE HIGHLANDS COUNTRY CLUB, IS HEREBY GRANTED WITH THE FOLLOWING CONDITIONS, BASED ON AN EVALUATION OF THE APPLICATION IN LIGHT OF THE STANDARDS AND CONDITIONS ENUMERATED IN THE PHILIPSTOWN CODE FOR THE ISSUANCE OF SPECIAL USE PERMITS AND FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE THE FINDINGS OF THIS ZONING BOARD OF APPEALS.

THE CONDITIONS<sup>1</sup> OF THE SPECIAL USE PERMIT:

The Board hereby finds that the following conditions are reasonable and imposed for the purpose of minimizing any adverse impacts on the neighborhood or community:

- A. The applicant shall operate the facilities and make the improvements according to the plans submitted and the statement of use .
- B. The applicant shall comply with any recommendations and modifications to the plans imposed by the Philipstown Planning Board and Wetlands Committee.

C.

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<sup>1</sup> Town Law 274-b (4) authorizes the Zoning Board to impose "reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit."

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Any other conditions?

**FINDINGS OF FACT:**

1. The Applicant, Garrison Highlands LLC. made an appeal (#762), dated November 16, 2004, to the Philipstown Zoning Board for a special use permit. The appeal was filed with various exhibits and the Board accepted additional materials and revised submissions at public meetings and during the public hearing process, all of which were reviewed by the Zoning Board and made available to the public. A composite list of the Exhibits considered by the Board in reaching a determination is attached as **Exhibit "A"**.
2. The subject property is located in a R-80 District in the Town of Philipstown, New York. According to the Zoning Law of the Town of Philipstown at Section 175-25, Paragraph 14 of Schedule A; Permitted Uses, golf, tennis, swimming or similar clubs are permitted in an R-80 District subject to the securing of a special use permit from the Zoning Board of Appeals.
3. The Board first reviewed the application materials for completeness on January 3, 2005. The Application was deemed complete and the Zoning Board referred the Application to the Planning Board in accordance with Philipstown Code §175-52 for their input and report prior to scheduling the public hearing.
4. Copies of the application materials were referred to Putnam County Planning Department in accordance with General Municipal Law §239-m. A copy of the Putnam County Planning Department response is attached as **Exhibit "B"**.
5. The action is subject to review pursuant to SEQR. The Zoning Board determined the project as Type One based on a review of the Long Form EAF as prepared by the Applicant.

**Tim Pagones** - I guess before we go on, there was a Part 3. You reviewed it but you have not adopted it. So you need to adopt the Part 3 before I can really continue

**Vincent Cestone** - Can we just do a motion on this one

**Tim Pagones** - Yeah you can do a motion because it was prepared by the applicant. You do the motion to adopt the Part 3 as your own. You need a motion for that.

**Vincent Cestone** - Okay. I make a motion to adopt Part 3 as our own. Do I have a second?

**Bill Flaherty** - I'll second.

**Vincent Cestone** - All in favor

**All Board Members** – Aye

**Tim Pagones** - Okay and you have already done a straw poll to grant it and there is a straw poll for a negative dec so I can finish it now.

The Zoning Board conducted a coordinated review. The Putnam County Planning Department and Putnam County Department of Health were the other involved agencies. The involved agencies had no objections to the Zoning Board acting as lead agency. The Zoning Board declared itself lead agency on June 20, 2005 and reviewed a draft Part 2 of the EAF which was prepared by the Applicants Consultant. Part 2 was adopted and several potential large impacts were identified. Therefore, a Part 3 was requested focusing on the areas identified as having potentially large impacts, namely Impacts on Land, Impacts on Water, Impacts on Aesthetic Resources and Impacts on Historic and Archaeological Resources.

6. The Planning Board report was received and reviewed. A copy of the Planning Board report is attached as **Exhibit "C"**.
7. A Public Hearing was convened and completed on June 20, 2005. A copy of the Public Hearing Notice is attached as **Exhibit "D"**. The Hearing was completed and closed on June 20, 2005.
8. The Zoning Board reviewed and adopted the Part 3 which was prepared by the Applicants' Consultant on July 18, 2005. The Board held a straw poll vote to grant a Negative Declaration and a straw poll vote to grant the Special Use Permit with conditions.

**FINDINGS AND CONCLUSIONS (IN ACCORDANCE WITH THE STANDARDS AND CONDITIONS ENUMERATED IN SECTION 175-53 OF THE CODE OF THE TOWN OF PHILIPSTOWN:**



The Zoning Board hereby finds that the Applicant has demonstrated compliance with the following standards and conditions:

- I. The location, type, character and size of the use and any buildings, structures or facilities in connection therewith will be harmonious with the character of the neighborhood, will not detract from the appearance and beauty of the neighborhood, will not hinder or discourage the appropriate and orderly development of the town and the neighborhood

*The site has been used for many years as a golf club with a pool, tennis courts and ancillary facilities. The proposed use will not be changed. The applicant is merely proposing to modify and update the existing facilities, parking and required infrastructures. Since there will be no change in the actual use, the neighborhood will not be affected by the proposed modifications.*

- II. The nature and location of the use and of any building or structure in connection therewith will be such that there will be adequate access to it for fire and police protection purposes.

*The proposed use involves improvements to the infrastructure. The applicant plans to move the adult and kiddie pool, construct a pool house, relocate the pro shop, construct new parking and several other improvements. The nature of the use and the location of the buildings will not interfere with access for fire and emergency apparatus. The emergency access will be will still be derived by the original access to the property.*

prospective traffic, that provision is made for entering and leaving the property in such a manner that no undue hazard to traffic or undue traffic congestion is created and that adequate off-street parking and loading facilities are provided.

*The Applicant has provided for 123 parking spaces, in accordance with the requirements of the Philipstown Code for the proposed use. The site currently holds approximately 100 spaces located hazardly, **should be haphazardly** over the property. The Applicant*

*is adding 23 spaces and designing the parking in such a manner and location as to provide for a much formal method better suited for its members and guests. The layout is adequate to carry prospective traffic for the proposed use. The entrance located at Route 9D is not being changed.*

- IV. The lot on which the use is to be established is of sufficient size and adequate dimension to permit conduct of the special use and provision of buildings, structures and facilities in a manner that will not be detrimental to the neighborhood or adjacent property.

*The proposed change in design will affect a small portion of the overall 41.83 acres. The Applicant is not proposing to change the golf course but merely the infrastructure of the club. Since there will not be an actual change in the use of the property there should be no effect to the neighborhood or adjacent properties.*

landscaped and maintained and will have adequate land area, yards and setback area so as to maintain the character of the neighborhood.

*The proposed modifications to the infrastructure buildings and parking will not effect the overall beauty of the golf course. The applicant has proposed to landscape the buildings and parking areas and will comply with any landscape plans submitted. Since the property will still be used as a golf course the character of the neighborhood will not be changed.*

- VI. The proposed use and the buildings, structures, facilities and site layout will not be detrimental to the public health safety and property values in the neighborhood.

*The proposed changes to the infrastructure and parking will not be detrimental to the public health safety and property values. The site layout will be done in such a manner so as to allow for a more orderly and efficient operation of the property. Additionally by updating the facilities, the value of the property should go up and increase the values of the neighborhood.*

**COMPLIANCE WITH STATE ENVIRONMENTAL QUALITY REVIEW ACT<sup>2</sup>:**

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Town Law §274-b (8) requires compliance with the State

The Zoning Board hereby adopts the Negative Declaration dated July 18, 2005 as its notice of determination of non-significance pursuant to Article 8 of the Environmental Conservation Law. A copy of the Negative Declaration is attached as **Exhibit "E"**.

And Kim will attach a neg dec as Exhibit E

**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 18th day of July, 2005, the results were as follows:

Vince Cestone, Chairman	Voting _____	the special use permit
Victor Carlson, Member	Voting _____	the special use permit
Leonard Lim, Member	Voting _____	the special use permit
Joan Turner, Member	Voting _____	the special use permit
Bill Flaherty, Member	Voting _____	the special use permit

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**ATTENTION APPLICANTS**

**FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS YOUR RESPONSIBILITY. A VARIANCE OR A SPECIAL USE PERMIT ISSUED BY THE ZONING BOARD OF APPEALS IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY, BOTH OF WHICH CAN ONLY BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE PHILIPSTOWN BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.**

**Vincent Cestone** - Motion to accept the resolution as amended?

**Bill Flaherty** - I'll so move

**Vincent Cestone** - I'll second. All in favor?

**All Board Members** – Aye

**Lenny Lim** - I'll vote in favor

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Environmental Quality Review Act and its implementing regulations.

**Joan Turner** - I'll vote in favor

**Victor Carlson** - I vote in favor

**Bill Flaherty** - In favor

**Vincent Cestone** - And so will I.

**Glennon Watson** - Thank you

**Vincent Cestone** - You're welcome. Next resolution Tim?

**James Shelley** - Hi I'm James Shelley

**Vincent Cestone** - Yes

**James Shelley** - I heard my name was

**Vincent Cestone** - You are on for the 12<sup>th</sup> of September for Public Hearing

**James Shelley** - Okay but nobody notified me of that

**Vincent Cestone** - I just said it tonight

**James Shelley** - But nobody told me. I was sitting in the back.

**Tim Pagones** - We called you

**Vincent Cestone** - I called you

**James Shelley** - Nobody called me up

**Vincent Cestone** - You don't have to be called up because this is not a public hearing

**James Shelley** - Okay. So why are we waiting until September 12<sup>th</sup>?

**Tim Pagones** - Because we don't meet in August and it has to be advertised

**James Shelley** - Now I understand that the public hearing can be possibly be waived

**Vincent Cestone** - No

**James Shelley** - Because we didn't have any objections at the first public

hearing and the opinions of my neighbors have not changed.

**Vincent Cestone** - No. Can't do that. By law

**James Shelley** - Well someone mentioned to me that they could possibly do that and that has happened so... because I left my kids at the camp ground in Hunter Mountain and I have to get right back there.

**Vincent Cestone** - You are all set for your public hearing for September 12<sup>th</sup>

**James Shelley** - Okay

**Tim Pagones** - Drive safe

**James Shelley** - I will

**Tom Monroe** - This is just to advise the board that Mr. Novrello on behalf of Mr. Tuana, I got a call from Mr. Novrello this afternoon and he explained that all these three parties involved are potentially coming to some kind of an agreement and they may change some of the \_\_\_\_\_. I am just relaying that to you.

**Tim Pagones** - Well we took it off the Hearing schedule and we figured when he is ready to come back he will notify us.

**Tom Monroe** - Okay

**Vincent Cestone** - No more than a year. After that

**Tim Pagones** - Yeah. Okay Hruska

RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #769; Applicant: Jack Hruska  
**Area Variance**

Date: July 18, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on June 20, 2005 to hear the appeal of Jack Hruska from the denial of a certificate of occupancy for an existing shed that was renovated having insufficient side setbacks. The property is located on 122 Jaycox Road, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on July 18th 2005, upon all the discussion that preceded it, including the public hearing, site visits undertaken by individual Board Members, and a review of Applicant's submissions, \_\_\_\_\_ made the following motion, seconded by \_\_\_\_\_:

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

THAT THE BALANCING OF EQUITIES WEIGHS IN FAVOR OF GRANTING THE APPEAL OF JACK HRUSKA FROM A DENIAL OF A CERTIFICATE OF OCCUPANCY BY THE BUILDING INSPECTOR FOR AN EXISTING SHED THAT WAS RENOVATED HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS<sup>3</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

CONDITIONS OF THE VARIANCE:

1. The 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 side yard for the renovated shed shall not be less than 17.4 ft. (a variance of 2.4 ft.).
3. The renovated shed shall not be further converted into living space and shall remain as an art studio.

**Tim Pagones** - I don't know if you want to keep "and shall remain as an art studio". I don't know if you want to put that condition in that it has to stay as an art studio. What if he just makes it some other kind of studio, I don't know. What's the boards' feeling?

**Lenny Lim** - Isn't that what he specifically asked for?

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<sup>3</sup> Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property."

**Tim Pagones** - Well that's what it was renovated into an art studio. But I mean it is a legal structure you are giving a variance. I don't know if he wants to make it, I don't know what else he can use it for. How about just as a studio. And get rid of art. So shall remain as a studio

**Bill Flaherty** - Why don't we just say living space.

**Tim Pagones** - Well we don't want it to turn into living space

**Bill Flaherty** - Well it is not living space. Your renovated shed shall not be further converted into living space it shall remain as an art studio.

**Lenny Lim** - Make sure that later down the line the studio doesn't turn into a one bedroom apartment something like that

**Bill Flaherty** - Okay.

**Tim Pagones** - Any other conditions?

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**FINDINGS OF FACT:**

1. The Applicant made this appeal (#769), dated May 9th 2005, to the Philipstown Zoning Board for an area variance based upon a denial of a certificate of occupancy by the Building Inspector for an existing shed that had a C/O and was converted into an artists studio with a permit and given a C/O 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 4.593 acre parcel on Jaycox 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 July 17, 2002. The structures at the property, appear on a map dated June 14, 2002, as prepared for Jack Z. Hruska 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 May 16, 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 June 20, 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 June 20th for the purpose of conducting the public hearing. Except for the Board Members and Stephen Smith who appeared on behalf of 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 seek a variance for an existing shed that had a C/O and was renovated legally to become an artists studio. The applicant received a C/O fro the renovation and it was not until the property was up for sale was it determined that the studio did not meet the side yard setback requirement. The requested variance will not adversely affect property values because the actual building



has been in place for many years. The original shed had a C/O and during the renovation of the shed into a studio the building was not moved. The structure does 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 fact that the renovated shed is in the exact location the original shed was in and the fact that it is on a foundation, the Applicant can not keep it in the present location 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 Applicant requests a variance of 2.6 ft. from a set back which should be 20 ft. 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 continued placement of a renovated 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 is not affected. Additionally, no increase in runoff or change in the drainage has been experienced. The physical conditions in the neighborhood are discussed, as noted in item 1, above. As noted above, the structure will have very little effect on the physical conditions in the neighborhood.

#### Self-created Hardship

5. The need for this variance is not self created<sup>4</sup>. The Applicant renovated the existing shed after making an application to the Building Department for permits. The applicant received a C/O after completion of the renovation. It was not until the property was up for sale was it determined that a variance was needed.

**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 18th day of July, 2005, 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 amended?

**Bill Flaherty** - I'll so move

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

**Vincent Cestone** - And I'll second. All in favor?

**All Board Members** - Aye

**Vincent Cestone** - Vic?

**Victor Carlson** - I vote in favor

**Bill Flaherty** - In favor

**Vincent Cestone** - Len?

**Lenny Lim** - In favor

**Vincent Cestone** - Joan?

**Joan Turner** - And I will too

**Vincent Cestone** - Me too.

**Tim Pagonis** - Okay Dorothea Lang. Ms. Lang here is a copy for you if you want.

**RE: DECISION AND FINDINGS OF THE  
PHILIPSTOWN ZONING BOARD OF APPEALS  
Appeal #767; Applicant: Dorothea M. Lang  
Area Variance**

**Date:** July 18, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on June 6th and June 20th 2005, to hear the appeal of Dorothea Lang from the denial of a building permit for two sets of steps to decks and a building permit to replace a tool shed that had been damaged by a tree having insufficient setbacks. The property is located on 36 Hudson River Lane, in the Town of Philipstown, Putnam County, New York.

At a public meeting of the Board on July 18th, 2005, 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 DOROTHEA LANG FOR THE SHED FROM A DENIAL OF A BUILDING PERMIT BY THE BUILDING INSPECTOR FOR THE SHED AND DENYING THE APPEAL IN REGARDS TO THE STEPS HAVING INSUFFICIENT SETBACKS, WITH THE FOLLOWING CONDITIONS<sup>5</sup>, FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE FINDINGS BASED ON THE FACTORS SET FORTH IN TOWN LAW 267-b.

CONDITIONS OF THE VARIANCE:

1. The structures granted conditional variances by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant's maps and plans. No further enlargement or reconfiguration of the structures is authorized without Zoning Board approval as needed.
2. The setback from the shed from the side yard shall not be less than 10.9 ft. (a variance of 19.1 ft.).
3. The shed shall not be further converted into living space. No heat or electric shall be added.
4. The steps to the decks shall be removed and constructed so as to run along the sides of the house. The steps in the rear of the house shall not extend any closer to the river than the deck.

**Vincent Cestone** - Can we change that?

**Joan Turner** - To the roof line

**Vincent Cestone** - Can we change that that the deck can't, the whole structure can't be any closer to the river than the overhang that

**Tim Pagonis** - That's where it is at now. Right now it is even and the steps

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<sup>5</sup> Town Law §267-b(4) specifically authorizes the Zoning Board of Appeals "to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property."

went further than the overhang.

**Vincent Cestone** - I just want to change the wording

**Joan Turner** - The language. More specific

**Tim Pagones** - Okay let's see. The steps and the deck in the rear of the house shall not extend any closer to the river than the existing overhang.

**Vincent Cestone** - Tom, you know how there is a second story that overhangs the deck? A vertical line is what we are saying. From the top of

**Tom Monroe** - I understand that one. I am more concerned with the southern deck on the side of the house

**Tim Pagones** - Let me do that too. The steps in the rear of the house shall not extend any closer to the river than the deck. The existing deck shall not extend any further than, or any closer to the river than the existing overhang above it

**Joan Turner** - Or shall remain flush

**Tim Pagones** - Or shall remain in line with the existing overhang.

**Bill Flaherty** - I want to add that the deck shall be removed along the side of the house within 30 days of this resolution.

**Tim Pagones** - Okay we can put that in as a following condition. All work must be done

**Bill Flaherty** - Within

**Tim Pagones** - Yeah. Then you have the steps on the side of the house shall be constructed in such a manner so as to run along the side of the house and in no way be any closer than the existing deck on the side property line. Any and all construction shall be completed within 30 days from the date the resolution is submitted or filed in Town Hall. She has 30 days from when we sign it in down stairs

**Dorothea Lang** - okay

**Tim Pagones** -

The steps on the side of the house shall be constructed in such a manner so as to run along side the house and in no way be any closer than the existing deck to the side yard property line.

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**FINDINGS OF FACT:**

1. The Applicant made this appeal (#767), dated December 14, 2004 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 shed that was previously destroyed by a tree, as well as denial of a building permit to modify plans that were the subject of a previous appeal, all 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 that

2. The property, a 23,775 sq. ft. parcel on Hudson River Lane, 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 setback of 30 feet from the side property lines.
3. The Applicant acquired title by a deed. The structures at the property, appear on a map dated November 25, 2003, last revised March 15, 2005, as prepared for Dorothea Lang 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 May 16, 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 June 6, 2005. The public hearing was properly noticed in accordance with statutory mandates. A copy of the public hearing notice is attached as **Schedule "B"**.

And Kim will attach that

7. The Board met on June 6th for the purpose of conducting the public hearing. Besides the Board Members and the Applicant, Horst and

Maria Bracke spoke at the public hearing. The public hearing was continued again on June 20, 2005 and after public comment, the hearing was closed. The Board engaged in further deliberations and a straw poll motion was entertained to grant the requested variance with certain conditions for the shed but deny the request to change the locations of the steps.

## FINDINGS AND CONCLUSIONS:

### Adverse Effects on the Neighborhood

1. The applicant seeks to rebuild an old shed used to store garden tools that was destroyed by a tree as well as modify steps to decks that were part of plans that were the subject of a previous appeal. The shed will be in the exact location that the original shed was in and be the same dimensions. The modified steps will be closer to the river and closer to the side property line. The requested variance for the shed will not adversely affect property values because the shed will be merely replacing the original one. Although the immediate neighbors to the applicant felt the shed would interfere with their view of the cove, the Board disagreed and felt that the structure would 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. Some 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. In regards to the steps, the Board felt that there was no valid reason to modify the plans and go closer to the river with the back steps and closer to the side yard set back with the side steps.

### Feasible Alternatives

2. Due to the configuration of most of the lots in the area and the zoning requirements, very few of the lot owners can comply with the code requirements in regards to setbacks. The Applicant wishes to merely replace an old existing shed that was destroyed by a tree with a new shed in the exact location. This can not be done without coming into conflict with the Philipstown Code. In regards to changing the locations of the steps for the two decks, the applicant was previously given variances to construct the decks and is now seeking an additional variance for the steps on the side

as well as coming closer to the river with the other steps. By changing the direction of the steps, the applicant can avoid any additional variance and avoid going any closer to the river which would impede on the views of her neighbors. In regards to the shed, given the fact that the applicant is placing the shed in the same location as the previous one, 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 19 ft. from the river side and 20.1 ft. from the railroad side from a set back which should be 30 ft. for the shed.

#### 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 shed to replace a previous shed is not an activity usually associated with such environmental concerns. No additional traffic was 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 structure will have very little effect on the physical conditions in the neighborhood. In regards to the steps, the placement of the steps closer to the river could effect the view of the river by the neighbors.

#### Self-created Hardship

5. The need for this variance is not self created<sup>6</sup>. The Applicant wishes to construct the shed in the same location as the prior shed. The applicant made an application to the Building Department for permits but due to the zoning requirements and the size of the lot a variance is needed. In regards to the steps, the need for the variance is self created. The applicant has already received variance for them from a previous appeal and has not provided any

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<sup>6</sup> **While self-created hardship is not alone a reason to deny an area variance, it is a factor to be considered.**



real reason why the location of the steps need to be changed.

**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 for the shed and denying the variances for the steps.

**Tim Pagones** - You have two roll call votes. One is for granting it for the shed and the other is for denying it for the steps.

**Joan Turner** - Tim, I have a question on adverse effects on the neighborhood. Go to point 1 findings and conclusions. The shed will be in the exact location as the original shed was in and the same dimensions. But do we have dimensions? Do we have exact dimensions on that?

**Tim Pagones** - I think they were in there somewhere. I don't have them off hand

**Joan Turner** - Do you think we should put them in?

**Tim Pagones** - Do you know the dimensions of the shed were Ms. Lang?

**Dorothea Lang** - Yes. 9 by 7

**Tim Pagones** - 9 by 7

**Joan Turner** - so we should we just put that in the resolution?

**Tim Pagones** - Okay.

**Joan Turner** - And then the next sentence the modified steps will be closer to the river and closer to the side property line. Could you just refresh my memory about that. What steps are we talking about

**Tim Pagones** - The rear steps

**Vincent Cestone** - On the rear deck going down

**Lenny Lim** - They are not supposed to be closer to the river

**Tim Pagones** - That's what I am saying. That's why we are saying we don't

want to get

**Lenny Lim** - The wording...the modified steps will be closer to the river

**Tim Pagones** - That's it. The modified steps will be closer to the river and closer to the side property line. The requested variance for the shed will not adversely affect property values

**Lenny Lim** - But the steps ain't coming closer to the river though

**Joan Turner** - On the side

**Tim Pagones** - No no the steps in the back will be closer to the river. It should say I guess the modified steps in the rear will be closer to the river

**Joan Turner** - In the rear on the side, the south side

**Tim Pagones** - The river. What is the river and then there is the south side

**Joan Turner** - Okay so we have the west side

**Tim Pagones** - The modified steps in the rear of the house will closer to the river

**Joan Turner** - So lets

**Lenny Lim** - No we are taking them back from the river

**Tim Pagones** - If you let it go

**Lenny Lim** - Oh okay

**Tim Pagones** - And then we are saying then the modified in the rear of the house would be closer to the river and the modified steps

**Joan Turner** - So you would say the western

**Tim Pagones** - Like I was getting all confused with that's why I was saying the river and the side of the house

**Joan Turner** - But I was confused too

**Tim Pagones** - Anything else?

**THE ROLL CALL VOTE:**

The question of the foregoing resolution calling for granting the requested variance with conditions for the shed was put to a vote on roll call on the 18th day of July, 2005, 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

The question of the foregoing resolution calling for denying the requested variance for the steps was put to a vote an roll call on the 18th day of July, 2005, the results were as follows:

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

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

**Lenny Lim** - Second

**Vincent Cestone** - All in favor?

**All Board Members** – aye

**Vincent Cestone** - Now roll call vote for the granting of the shed.

**Lenny Lim** - I vote in favor

**Vincent Cestone** - Joan?

**Joan Turner** - I vote in favor

**Victor Carlson** - I vote in favor

**Bill Flaherty** - Same

**Vincent Cestone** - Me too. Okay. And roll call vote for denying the stairs.

**Victor Carlson** - I vote for denial

**Vincent Cestone** - Bill?

**Bill Flaherty** - Same

**Lenny Lim** - I vote for denying

**Joan Turner** - Against. Denial.

**Vincent Cestone** - And so will I. I am going to take a short recess.

**(RECESS)**

**Vincent Cestone** - I am calling the meeting back to order.

**Tim Pagones** - Okay. Before we do that Interpretation one, Ms. Lang had a question in the resolution we put down that you can't put any electric in the shed

**Vincent Cestone** - Right

**Tim Pagones** - She is saying that there was electric in the original shed. The outlet is still there.

**Joan Turner** - It's a potting shed. It gets dark.

**Tim Pagones** - So we had put that it could not be converted into living space and you can't put heat and electric. I guess, if the applicant is clarifying that there was electric

**Joan Turner** - If you want to use a power tool

**Tim Pagones** - So if you want to

**Joan Turner** - I saw the outlet

**Vincent Cestone** - I have a shed and I don't have any electric

**Dorothea Lang** - The outlet is there, it is still there

**Tim Pagones** - So if you want to, you would just have to vote to amend the resolution that she can have electric, she still can't put heat in it and it still can't turn into living space

**Vincent Cestone** - What's the boards' feeling

**Joan Turner** - I think it was there. It's fine with me that there is an outlet there. If she wants to use it for a hair dryer

**Tim Pagones** - As she said even to put a light in there

**Bill Flaherty** - I think it's okay. I viewed that shed and I did see the electrical outlet.

**Tim Pagones** - Okay so it is amended that she can have electric and there is still no heat and it is not going to be converted into living space. Okay.

**Vincent Cestone** - Okay final item on the regular agenda is review of draft resolution. The resolution isn't complete

**Joan Turner** - You haven't started the resolution?

**Tim Pagones** - No. I was doing a jury trial. The jury was deliberating so I could not be here last week. I apologize. They convicted the guy. But I read the minutes but I knew there was some discussion about going into further detail so I did not start a resolution yet. So I want to make sure everything is done properly. So I think it is on for tonight for discussion, well it was on for review of draft resolution. But I had not, it is not done. It is in the initial stages. Because in reading the minutes you said you were going to discuss it further.

**Joan Turner** - I mean I think we can give you some, I mean I can give you some general highlights. I think it is very important for all of us to go through the minutes and pick out the points that are relevant to our thinking and to what our decision making process was. So and those for me were the building permit itself which was issued as a commercial, the fee was a commercial fee not for a residential fee. And those were in my memo to you and to everybody so I would like to see either this memo incorporated into the resolution or part of it. As a lawyer I think you might find it wordy or you might want to condense it. And I

think there was another memo from, didn't you have a memo too Vinnie?

**Vincent Cestone** - I don't have mine with me

**Lenny Lim** – But we would like to put that in also

**Joan Turner** - And certainly the part about the boards' responsibility, I mean it is charged with interpretation so that in researching this we found that since our Code is silent on that matter of accessory structure and garage that we looked outside to other neighboring areas for what their guidelines were. Chappaqua, Eastchester, Bedford were the ones that come to the top of my head. There was one out in Arizona. But locally, those were the ones. And just since the Code is silent on it we used the guidelines in our determination. And all of that is stated in the memo there.

**Vincent Cestone** - You have copies of those memos don't you Tim

**Tim Pagonis** - Yeah. I am sure I do somewhere. If not Kim will have them.

**Joan Turner** - Do you have copies of Vinnie's memo? You mean the memo to the Town Board. I think as I remember the words that Vinnie used to Bill and the Town Board were that this was an opportunity to close a gap that exists with current zoning code as it exists. And he was urging the Board to legislate new zoning code in this direction. Since we can't legislate. We can just interpret. We can only use guidelines in our analysis. That's my thinking.

**Vincent Cestone** - Any other board members have anything to say?

**Joan Turner** - And I think, I don't know how to word this, but we did consult with the Department of State and I have his name somewhere in my notes about what to do.

**Vincent Cestone** - You have until September 12<sup>th</sup> to get that information to him

**Joan Turner** – right

**Vincent Cestone** - Okay I am going to go into any old business. Joan

**Mr. Gagnon** - It's done for discussion

**Tom Monroe** - May I comment on this

**Vincent Cestone** - Excuse me

**Tom Monroe** - May I comment on this situation

**Vincent Cestone - Sure**

**Tom Monroe -** It seems to be that the commercial fee charge seems to be something that the board \_\_\_\_\_. That's totally incorrect. I am not charging the commercial fee.

**Lenny Lim -** What's the rates? Are there different rates?

**Tom Monroe -** The rate that I charged for the building permit was \$1,570

**Lenny Lim -** But there are two rates

**Tom Monroe -** I know there are two rates.

**Lenny Lim -** But I asked if there were two rates

**Tom Monroe -** Yes there are

**Lenny Lim -** Okay

**Tom Monroe -** It is \$35 per 100 square feet for a residential. And \$65 per 100 square feet for commercial. The rate was charged for the building was \$35 per square feet, residential. For a total of \$1,570. There was an error in what I charged. That error was that this building was an accessory building and should have been charged \$28 per 100 square feet. The commercial rate had I charged that, the building permit fee would have been \$2,917 and that is not what was charged.

**Joan Turner -** Tim can I look at your zoning book.

**Tim Pagonis -** What was the commercial Tom

**Tom Monroe -** \$65 per 100 square feet

**Tim Pagonis -** And the residential was

**Joan Turner -** I was doing it at \$28 a foot for residential. I think.

**Vincent Cestone -** Do you have anything else you wish to say Tom?

**Tom Monroe -** Just simply that that issue has come up numerous times in discussion and it is one of the things the board is apparently was using as a key factor that I charged a commercial rate therefore it is a commercial building. And I did not charge a commercial rate.

**Joan Turner -** On 62.3, maybe I am misreading the code Tom, it says

commercial under section 2 for \$65

**Tom Monroe** - Per hundred square feet

**Joan Turner** - Per hundred square feet. So if you do that by the square footage of your plan

**Tom Monroe** - Which is 4,488 square feet, which comes out to \$65 per hundred square feet \$2,917

**Joan Turner** - Yeah

**Tom Monroe** - And I charged him \$1,570

**Joan Turner** - So how did you do that?

**Tom Monroe** - Because I charged him \$35 per 100 square feet. The residential rate

**Joan Turner** - The residential is \$28

**Tom Monroe** - No it is not. A1A1 the capital states that \$35 per hundred square feet. The correct amount

**Joan Turner** - Wait a minute now. We are at 623

**Tom Monroe** - 623 A 1 residential A building permit residential 1

**Joan Turner** - but it is not habitable space. You are not living there. So the definition of habitable space is wrong. You've got a garage

**Tom Monroe** - that's what I kept saying. I charged him incorrectly. I charged him too much. He should have been charged \$28 per hundred square feet. For accessory building. Not commercial building. A voucher has been prepared to refund him \$314. He was not charged a commercial rate.

**Joan Turner** - Well it was charged ambiguously based on an error after the close of the public hearing you are saying you made a mistake and in the mean time this board has viewed it as a commercial structure based on the mistake that you made with the fee.

**Tom Monroe** - They should not even been viewed as a commercial structure because you came up with totally incorrect number.

**Joan Turner** - Square footage of the building is what? I just thought your math was bad



**Tom Monroe** - 4,488 square feet

**Joan Turner** - divided by 100

**Tom Monroe** - 44.88

**Joan Turner** - right

**Tom Monroe** - times 65

**Joan Turner** - you have to divide it by 100

**Tom Monroe** - and you should come up with

**Joan Turner** - \$2,860

**Tom Monroe** - no. \$2,917.20. 44.88 times 65

**Joan Turner** - I don't know how you want to handle that in your resolution. You could put it in that the building inspector said that he made a mistake on the thing and the board reviewed it as a commercial structure

**Tim Pagonos** - But I guess my concern now is part of your reasoning, I guess that should no longer be part of your reasoning. If the

**Joan Turner** - Well why? Why would that legally hold true if it was at the end of

**(Tape being turned over. May have lost some dialogue)**

**Joan Turner** -...I think it is a valid point if you say you made a mistake on it and this Board is viewing it as a commercial structure

**Tim Pagonos** - what I guess I am saying is, it was a mistake. Part of your reasoning that this was definitely a commercial structure was the rate

**Joan Turner** - right

**Tim Pagonos** - but that has been clarified. Whether it should have been clarified a long time ago or now

**Joan Turner** - but that is only one

**Tim Pagonos** - that's fine. But I am not going to include that in your reasoning. There are other reasons why this

**Joan Turner** - I think it is perfectly valid to put that in based on that fee that was neither commercial nor residential, habitable space or whatever the error was to sort of summarize what we have been talking about now if you want. If that is legal. And put that in. But that is just part of the architect's and then you have to go to the other point, the architectural design and size. Which also indicates, not just to me but to the rest of the board, that this is a commercial space.

**Mr. Gagnon** - What is wrong with the architectural designs of a Dutch colonial

**Joan Turner** - Nothing. The design is lovely

**Mr. Gagnon** - What is wrong with that?

**Joan Turner** - The design is absolutely lovely

**Tim Pagones** - I guess

**Vincent Cestone** - This is not a debate

**Joan Turner** - It is a great design

**Vincent Cestone** - This is not a debate. Enough said. We need to think about this a little more. On to old business

**Mr. Gagnon** - What happened to your little straw poll that you took last Monday? You were all ready to nullify my permit.

**Tim Pagones** - Well I guess I am going to start preparing the resolution

**Lenny Lim** - Do you want us to vote again?

**Mr. Gagnon** - What

**Lenny Lim** - Do you want us to vote again?

**Mr. Gagnon** - Go ahead vote. Please. Let's be done with this.

**Tim Pagones** - I am going to start preparing a resolution for the 12<sup>th</sup>

**Lenny Lim** - It's your house

**Vincent Cestone** - Stop. Stop. This is not a debate. Stop.

**Tim Pagones** - Based upon the minutes of last week and the minutes from this week. The memos I'll go over. I'm going to start preparing a resolution that your interpretation would be that this permit should be revoked because it is a

commercial structure.

**Lenny Lim** - The memos, it actually says accessory structure

**Tim Pagones** - Well I am going to incorporate all of that

**Joan Turner** - I think he is going to incorporate the entire

**Tim Pagones** - I am. But I am letting you know that I am going to start preparing the resolution that you will vote for, that this was a commercial structure and so the permit is revoked because commercial structures are not allowed in that area. I will incorporate all the memos, all the minutes, all the references

**Joan Turner** - I think you are also emphasizing the wrong facts. I mean the whole board is going on the fact that since this is not defined by the Code, accessory structure or garage

**Tim Pagones** - You're ruling, your decision is that is a commercial structure. Otherwise, he gets his permit. If it is not a commercial structure, it is a legal structure and his permit is valid.

**Joan Turner** - Right

**Tim Pagones** - So I mean, I might not be talking about the things you want me to but your ultimate decision will be that based upon all your research, all your discussions, you find that this is now going to be a commercial structure and that the permit should not have been, should be revoked because a commercial structure is not allowed in a residential area.

**Joan Turner** - Well that is the wording on the initial appeal on the interpretation

**Tim Pagones** - They are here for an interpretation, the applicants to revoke and nullify the permit issued for a commercial structure that permittee intends and has been told he is permitted to use for commercial purposes which is not permitted in an R-80 District. So your finding will be that this is really a commercial structure.

**Joan Turner** - Right

**Tim Pagones** - And therefore that permit should be revoked because a commercial structure is not allowed in that residential area. That is ultimately what the resolution will read. And how we get to that is through your research, through the guidelines, to the definitions of accessory structure, of garage, things of that nature, through the emptiness of the Code and how we brought in other things. That is how we are going to get to that. But ultimately your decision is that this is a commercial structure

**Joan Turner - Okay**

**Bill Flaherty -** Well I think a lot of facts presented to us at the time as we made our decision, pointed to the fact that it was assumed to be a commercial structure. First of all, the fee that was charged led us to believe that that was a key to a creation of a commercial structure

**Tim Pagones -** Okay but the fee is no longer an issue.

**Bill Flaherty -** Okay. But that had to play a factor in our decision

**Tim Pagones -** Okay true. But now that factor is no longer valid.

**Bill Flaherty -** Number 2, the design of the building itself were two bays which were rather, I think they were 10 feet high or something like that, whatever, would lead us to believe that they were going to be used for a commercial purposes having trucks parked there and eventually stored in that particular building. I think the neighbors had brought this to our attention more than anyone else the fact that the assumption was made to have the trucks parked in that area which is a residential zone and we went on the premise that that fact is going to be the case. I still feel that we are on good grounds here in the manner in which we presented this thing and the way we voted to nullify the permit. I think we are on solid ground. And I don't think any new evidence could be presented to us at this point in time is going to change that. Although I asked the parties to sit down and determine what could be worked out and mutually agreed to on the design

**Mr. Gagnon -** I have every right to build that structure as it sits.

**Vincent Cestone -** Bill the public hearing is closed

**Bill Flaherty -** You're right. I'm sorry.

**Vincent Cestone -** Yes Tom

**Tom Monroe -** I have one further question. The paragraph in the agenda, where does that wording come from?

**Vincent Cestone -** What paragraph?

**Tom Monroe -** The one that Tim just read.

**Vincent Cestone -** I am not sure

**Tim Pagones -** I think it is from the application. From the Appeal.

**Tom Monroe** - Well I don't think it comes directly from the appeal. Because it says permittee intends and has been told he is permitted for commercial purposes. That is absolutely one hundred percent incorrect and that was said by me in this room

**Tim Pagones** - Right. I think Kim takes the language from that appeal. I think they wrote that in the appeal just like an applicant says I'm here for a shed for a variance 5'

**Tom Monroe** - So Kim

**Tim Pagones** - That is directly from the appeal.

**Tom Monroe** - Okay.

**Tim Pagones** - Whether they wrote it down. No one is saying that is from you.

**Tom Monroe** - Okay.

**Vincent Cestone** - We are off that issue. Old business Joan?

**Joan Turner** - Yeah. Last Thursday there was a meeting with Ed Doyle and

**Vincent Cestone** - Coopers attorney and our attorney

**Tim Pagones** - Richard Goldsand

**Joan Turner** - Yeah. Goldsand was there. Bill Mazzuca. Myself with regard to the on going problem down below. Essentially what they did on the western, eastern side of the house. Here is the front, what they are doing is moving the foundation back four feet. They reduced the square footage a third. They have taken down the roof line to height to 31 reduced from a little over 40. Reduced the overall in math, roofline formation. There was a second rolled up set of plans, the original plans where they x'd out which was quite dramatic. Anyway they scaled it down very nicely. I thought it was a good job. A good compromise. Everyone there thought it was a good compromise. Ed, Rich, and they asked me to brief you on it to see how you felt about this compromise. And if you didn't feel any overall objections, major objections, then they would have a meeting with this man to present to the joint board, Town board

**Vincent Cestone** - So would we come to a regular town board meeting and sit

**Joan Turner** - I think so. And he would make the presentation to the Town Board. I think it is quite significant when you see where he knocks down, where he x's out the old and the new. What they have done. They've done a good job.

**Vincent Cestone** - What's the boards feeling? Do you want to have a joint meeting with the town board to go over this the Cooper residence

**David Brower** - You are going to have to have a meeting because they are all litigants. Everybody has to sign off on it.

**Vincent Cestone** - I know. I am just asking.

**David Brower** - I am just saying that we are all going to have to get together

**Joan Turner** - The only thing that I would like to see if at all possible, I don't know what happened at your town board meeting,

**David Brower** - We were only shown what you were shown

**Joan Turner** - I know but what was the general feeling there?

**David Brower** - Good compromise

**Joan Turner** - Good compromise, yeah. But if they do come with the presentation, they will have a fully rendered set of plans

**David Brower** - Yes

**Joan Turner** - Dimensions, elevations, everything so that we know

**David Brower** - As far as I know that's what's supposed to happen

**Vincent Cestone** - And including the garage

**David Brower** - Yeah the garage has been lowered too

**Joan Turner** - They lowered the roof

**David Brower** - No staircase to the roof

**Vincent Cestone** - With that, I am going to say to the board that we would love to do that. And with that I entertain a motion to close the meeting

**Joan Turner** - Okay

**Victor Carlson** - (cannot hear him)

**David Brower** - I will tell Bill that the board would like to have plans to review before the meeting

**Victor Carlson** - I don't want to be surprised

**David Brower** - I know

**Bill Flaherty** - Will this be a special meeting or a regular

**Vincent Cestone** - Probably a regular work session

**David Brower** - No this will be a special meeting

**Bill Flaherty** - I would like to attend that but I am going to be away for most of the month of August

**David Brower** - I am not sure exactly when the meeting will be. And knowing that the board does not meet in August, so I don't know when they'll set it up. I'll speak to Bill about it Wednesday night.

**Vincent Cestone** - Motion to adjourn

**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:** September 12, 2005

Respectfully submitted,

Kim Shewmaker  
Secretary