

# ZONING BOARD OF APPEALS

February 7, 2005

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, February 7, 2005, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 8:00 p.m.

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

### ABSENT:

for Nextel Communication. We were waiting for a letter which we have gotten. I have read the letter and I think the board members have read the letter. I think that is pretty sufficient. It meets the needs. Are there any additional questions from the board?

**Bill Flaherty** - Well as much as I was absent from last month's meetings, I have reviewed the paper work submitted by Nextel. And I have several questions that I would like to ask if I may. Safety issue. I have read somewhere and I haven't come across that thoroughly yet. But I noticed that this tower was inspected by a professional engineering firm in January February 2002 time frame. And at that time it was found to be structurally sound. Furthermore, in March of 2003 a single inspection was also made by a \_\_\_\_\_ company. And as a result of this visual inspection, it was again found to be perfectly sound. Since several years have passed, are these inspections made on an on-going basis? Or periodic? Or yearly? I am concerned about that. And I am also concerned, I have a question relative to the additional 9 panel antennas that are being constructed on the tower. In as much as weight factor. You are taking three away and putting nine on. When that increased weight of the tower further make it somewhat hazardous perhaps to the health and well being of the people. Also I would ask if you whether or not you have made conversions of these towers in other communities similar to the ones that you are proposing here for us this evening.

**Robert Gaudio** - Well let me just give you a little bit of history about this

application to bring you up to date. This conversion was actually done some time ago and we got a building permit and a certificate of occupancy for it. Subsequently, the building department said hey this is something which really ought to have gone, we shouldn't have just given you the green light as we did. This ought to have gone through a wireless process and that's what brings us here tonight. So the antennas are up there. And they are safely up there. And the inspections that you have read all include the weight of those antennas which by the way are just a few pounds a piece. I don't know about other municipalities but I do know that the omni directional whip antennas are things that are, they are a little bit a thing of the past. As the network matures and it's technology grows, it has shifted over to these panel antennas. We removed the three whip antennas and installed the panels. And the Town's wireless telecommunication consultant who is an engineer reviewed all the materials and said he was satisfied. He even submitted correspondence to that effect.

**Tim Pagones** - And also, I am sorry, as a condition to your resolution we always require them to perform a safety analysis yearly. And that includes the whole thing so, they have to submit a report.

**Bill Flaherty** - Okay

**Vincent Cestone** - Any additional questions? Any comments from the audience? I will make a motion to close the public hearing. Do I have a second?

**Bill Flaherty** - Second.

**Vincent Cestone** - All in favor?

**All Board Members** - Aye

**Vincent Cestone** - I 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

**Vincent Cestone** - Lenny?

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

**Vincent Cestone** - Joan?

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

**Victor Carlson** - I'll vote in favor

**Bill Flaherty** - I vote in favor.

**Vincent Cestone** - So do I.

**Robert Gaudio** - Just one more house keeping thing.

**Vincent Cestone** - Sure.

**Robert Gaudio** - The letter from the Town's consultant recommends approval subject to a couple of conditions, all of which are quite reasonable actually. Which we will consent to. The only thing is there is a \$25,000 removal bond recommended and we just urge the board when the resolution is drafted to consider perhaps a more reasonable amount because I think that is an amount that is more consistent with removal of the entire tower. This is nine panel antennas of only a few pounds a piece. And it is usually very easy to get a qualified and appropriately insured professional in there for just a small fraction of the amount that is in there. So I just want to urge the board to consider please reducing it to an amount that is more consistent with actually the magnitude of what is up there.

**Vincent Cestone** - What are you suggesting?

**Robert Gaudio** - I think \$5,000

**Vincent Cestone** - I don't think that is sufficient because you can't get anybody to do anything for \$5,000

**Tim Pagones** - I don't remember if we put a specific amount or if we put down an amount agreed to by the building inspector or determined by the building inspector. I will have to look at the old resolutions. I am not sure if we specifically put an amount but I will check.

**Vincent Cestone** - We will check with the building inspector and we will make an appropriate amount.

**Robert Gaudio** - Okay.

**Vincent Cestone** - And you are aware of the fact that bills that were incurred by the Town for this application will be conditioned?

**Bill Flaherty** - Yes

**Tim Pagones** - March 7<sup>th</sup> for the Resolution.

**Robert Gaudio** - Okay.

**Vincent Cestone** - Tim, as far as when we do the resolution, make sure that the amount is in there so that he knows that he has to write a check.

**Tim Pagon**es – Okay

**Vincent Cestone** - Next item on the agenda is Tom and Heather Campbell Appeal #752.

**Gabe Levinson** - Hello

**Vincent Cestone** - Refresh us on what the issues are and where we stand.

**Gabe Levinson** - I did a couple of presentations and the board was, a couple on holiday. We have a small house that we are adding an addition on the back and making that rear part of the house one story up, almost a story, ¾ story up.

**Vincent Cestone** - Right

**Gabe Levinson** - The same amount of bedrooms as we have right now. We are just increasing the, adding a bathroom, increasing the living space for the family. And the whole project was drawn in such a way to not aggravate the existing setback line.

**Vincent Cestone** - And the reason why we kept the meeting open was because

**Gabe Levinson** - There were only 3 people on board that night and it was suggested that the whole board should be here. It would be better

**Vincent Cestone** - It would be better, less dangerous

**Gabe Levinson** - Less dangerous. We weren't sure we had 3 votes that night.

**Vincent Cestone** - Does the board, do the board members have any questions?

**Lenny Lim** - Do you have any questions Joan?

**Joan Turner** - I went down to look at it this morning and the front of the house basically stays the same

**Gabe Levinson** - Stays the same

**Joan Turner** - Exactly.

**Gabe Levinson** - We are not doing any work on the front

**Joan Turner** - Right so you are coming out toward your neighbor somewhat

**Gabe Levinson** - In the rear yes

**Joan Turner** - Yeah in the rear

**Gabe Levinson** - But not more so than the existing house. We have stepped the addition the back. We just created a line which was the setback line

**Joan Turner** - And the extent of the variance that you are asking for is what?

**Gabe Levinson** - Right now it is not conforming

**Joan Turner** - Yeah I know

**Gabe Levinson** - So we have about, the other side is not really an issue. We are basically asking to conform the existing building to what is existing. And we are obviously we are adding an addition

**Joan Turner** - So the extent of the variance that you are asking for in terms of setback is what, 6 feet

**Gabe Levinson** - 6 feet

**Vincent Cestone** - and that is because of the existing building

**Joan Turner** - Yeah, it is already out there. I remember now. I don't have any more questions.

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

**Joan Turner** - I think it is a reasonable application

**Vincent Cestone** - I think so. Any comments from the audience? Can I have a motion to close the public hearing?

**Joan Turner** - I'll move.

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

**All Board Members** - Aye.

**Vincent Cestone** - Can I have a motion for a straw poll?

**Joan Turner** - So moved.

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

**All Board Members** - Aye.

**Vincent Cestone** - Vic?

**Victor Carlson** - I'll vote in favor

**Bill Flaherty** - I vote in favor

**Vincent Cestone** - Len?

**Lenny Lim** - I vote in favor

**Joan Turner** - And I concur

**Vincent Cestone** - So do I. That's it

**Tim Pagones** - March 7<sup>th</sup>

**Gabe Levinson** - Do I have to be here?

**Tim Pagones** - If you want to.

**Gabe Levinson** - You still sign off on the drawings right?

**Vincent Cestone** - Yes. Exactly. Same as always. So you bring the drawings in and I'll sign on them and then you can bring them to the building department

**Gabe Levinson** - Thank you

**Vincent Cestone** - Next item on the agenda is John and Lani Leuthner Appeal #757. Tell us what you are here for and what you are asking for

**Lani Leuthner** - We

**Tim Pagones** - You have to speak nice and loud so the machine can pick you up

**Lani Leuthner** - Okay. We put a shed on our property and we weren't aware that we needed a permit to do that and we don't have the proper footage off the property line

**Vincent Cestone** - And how big is the shed?

**Lani Leuthner** - I

**Vincent Cestone** - It's this shed right here?

**Lani Leuthner** - I have a pie shaped property that is about an acre. And the property near the house is all septic and fields

**Joan Turner** - Is this shed on a foundation?

**Lani Leuthner** - No it is not

**Joan Turner** - We were down there

**Lani Leuthner** - This is all septic fields

**Joan Turner** - Why couldn't you if you put the shed there, why couldn't you move the shed further back from the side setback so that you wouldn't need a variance at all? There is an option that you have where you don't need to come before this board.

**Lani Leuthner** - I was under, can I see. I didn't think that any, if I moved it here, back, I would still not be in compliance. If I brought it in the middle I thought I would still not be in compliance

**Joan Turner** - I think so

**Lani Leuthner** - Well nobody told me that

**Joan Turner** - You are unnecessarily here because I think if you just picked your shed up and moved it about 10 feet, you wouldn't need anything from this board. You don't need to be here.

**Lani Leuthner** - Ah

**Joan Turner** - I really, you were misinformed. Somebody should have just said to you why can't you move it backward

**Lani Leuthner** - Nobody said that

**Joan Turner** - Because I went down there today and said what is the issue? You have room to slide it back unless you were using this other property for some other reason. I didn't walk back here but you really have an option. So this board does not need to give you a variance in the fact that you can pick up and put it back. And we would prefer not to.

**Lenny Lim** - We know you don't want to cover your septic system but there is room here that you can move it away. It is not on a permanent foundation

**Lani Leuthner** - No it's not

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

**Elaine Crowley** - I do.

**Vincent Cestone** - I'll call you once the board is finished.

**Victor Carlson** - What is the distance that the shed should be from the property line?

**Tim Pagonos** - 20 feet. From the side or rear in an R-40, 20 feet.

**Bill Flaherty** - Was this shed placed by a professional organization

**Lani Leuthner** - Yes

**Bill Flaherty** - Locally? Local company?

**Lani Leuthner** - Actually up the line from the Dutchess County Fair

**Bill Flaherty** - Well then whoever placed the shed for you didn't, wasn't aware of our zoning codes. **(Can't hear him)**

**Lani Leuthner** - The property goes down a hill to where the doors open. I don't know how much space there is, you were there, did you see? The doors open up so you can drive in. You know to bring your equipment in.

**Joan Turner** - You might have to level a space to do it but it would be a minimal thing to do. You might still need a building permit just to have the shed there, I'm not sure about that. Tim do you know?

**Tim Pagonos** - Well it depends. What is the dimensions?

**Joan Turner** - It's about 12 by 16 if that. 12 by 14 maybe

**Vincent Cestone** - It would fit without being in violation. Any more comments from the board? When the board is finished I have you

**Elaine Crowley** - It pertains to this

**Vincent Cestone** - Any more comments from the board? No? Comments from the audience?

**Elaine Crowley** - Yes



**Vincent Cestone - Introduce yourself**

**Elaine Crowley -** I am Elaine Crowley. I am live directly across from this, across the road. Their property is triangular or wedge shaped. The widest part of the property is where their house is. The narrow part of the property is, faces directly across from my front gate, my front door and my patio where I entertain guests. Is it unsightly? Yes. But it is one part of a larger problem. The building was erected for storage because the Leuthners are in violation of the zoning laws. Those properties on zoned residential and they have started a commercial landscaping and tree trimming business. In front of this building are dump trucks, tractors, wood chipping equipment that runs constantly during the day, chain saws, Hispanics doing work there. The zoning is residential and it is one of the few neighborhoods in Garrison and your neighbor's property values are being lowered, their peace of mind being disruptive and this is a violation of the zoning laws.

**Vincent Cestone -** Well that is not what she is here for. I suggest you to go to the code enforcement officer and make your case.

**Elaine Crowley -** Who is that?

**Vincent Cestone -** Excuse me?

**Elaine Crowley -** Who is that?

**Vincent Cestone -** Tom Monroe

**Elaine Crowley -** I did talk to Tom Monroe.

**Vincent Cestone -** He is the code enforcer

**Elaine Crowley -** Tom Monroe said he would take care of it and that is what I thought this meeting was about.

**Tim Pagones -** She is here because she is in violation of the setback requirements

**Elaine Crowley -** She is also in violation

**Tim Pagones -** But that's another issue that Mr. Monroe has to cite them for and she could go to court for that. Right now she is here trying to legalize the placement of her shed. And I think the Zoning Board has basically said you know what, it is not on a foundation so you can move it to make it in conformance with the zoning code

**Elaine Crowley** - And where do I complain about a commercial enterprise being run on a residential property?

**Joan Turner** - In writing to the Zoning Enforcement Officer who is Tom Monroe. In writing. And if you have documentation, photographs, whatever, submit them

**Vincent Cestone** - Any other comments from the audience? Motion to close?

**Joan Turner** - So moved

**Lenny Lim** - Second

**Vincent Cestone** - All in favor?

**All Board Members** - Aye

**Vincent Cestone** - Do we wish to take a straw poll? I'll make that motion. Do I have a second?

**Lenny Lim** - I'll second.

**Joan Turner** - Yeah but what are we voting on? We are going to deny the variance because she is going to move the shed

**Lenny Lim** - But we still have to deny it

**Joan Turner** - Oh that's right

**Vincent Cestone** - So what the straw poll is for, the request was to grant a variance for the shed. We are voting on whether to grant the variance for the shed. All right? For straw poll.

**Lenny Lim** - I'll vote to deny the variance

**Vincent Cestone** - And Joan?

**Joan Turner** - I am going to vote to deny

**Vincent Cestone** - Vic?

**Victor Carlson** - I'll vote to deny

**Bill Flaherty** - I deny

**Vincent Cestone** - Okay and so do I. Sorry. But you can move your shed and bring it into compliance.

**Lani Leuthner** - Okay.

**Lenny Lim** - That's all you've got to do.

**Lani Leuthner** - And then

**Vincent Cestone** - And then you are all clear. Once you move it in to bring it in 20 feet on both sides, you are clear.

**Victor Carlson** - It might be a good idea to have a surveyor mark out

**Vincent Cestone** - Just to make sure

**Victor Carlson** - Where it is going to be and have them flag it

**Vincent Cestone** - Just so that you don't have any issues with your neighbors

**Lani Leuthner** - Okay

**Tim Pagonis** - By law the zoning board has to give the smallest variance required and here you can move the shed and not need a variance. That is why they voting that way

**Lani Leuthner** - Oh I understand. Thanks a lot

**Vincent Cestone** - Take care. Next item on the agenda is and excuse me if I butcher the name John Peilmeier, Irene O'Garden and Karen Southard. Was I close?

**Tom Whyatt** - Good evening my name is Tom Whyatt and I am getting over a cold so I apologize for my voice but that means I will have to be short and I am sure you will appreciate that. The three appellates here are here and I see Mr. Gagnon who is the applicant whose permit we are challenging is also here. I want to begin by saying I know that you frequently find neighbors pitted against each other in this forum but I want to say on behalf of my clients that there is no personal animosity that they feel towards Mr. Gagnon and they are appreciative of his efforts to resolve these problems with his own business. None the less we are appealing to you under your authority to determine, to reverse the determination of the building inspector under Town Law. And you have the ability to make the decision that you believe that the building inspector should have made at the time he found \_\_\_\_\_. We believe he should have denied the permit and I would like to talk you through that issue briefly. As far as my package, there is an elevation of the garage which was approved by the permit and if you look at it you will see it is a very large garage

**Lenny Lim** - Five cars?

**Tom Whyatt** - Well 3 car, 2 truck garage I think is the accurate characterization on the garage that he applied for. The owner and the applicant owns the glass shop just up Route 9

**Joan Turner** - Is that Cold Spring Mirror and Glass?

**Tom Whyatt** - Right. And when he applied for this it was his intention to use the 2 large bays to park the trucks that he uses for his glass shop. That is a commercial use and it is not allowed in a residential area. The neighbors all live along the road that would be used for this driveway. The glass trucks are very large relatively cumbersome and they would present a noise and safety hazard as well as being a commercial use in a zone where it is not allowed. Now my understanding is that there was some discussion between Mr. Gagnon and Mr. Monroe about some restrictions as to when he would be able to park the trucks there but none the less this is an application to build a commercial structure and use it for commercial purposes. We believe that the zoning does not allow that and the permit should not have been granted.

**Tim Pagones** - So I guess right now this is just a big garage.

**Vincent Cestone** - Have they started building anything?

**Tom Whyatt** - No no it hasn't started yet.

**Bill Flaherty** - There is nothing there

**Tim Pagones** - Well I mean it is going to be a big garage. And I think why these neighbors are here is because they are afraid he is going to use it for his commercial trucks.

**Joan Turner** - Well he stated he was.

**Tim Pagones** - That's them saying that

**Joan Turner** - I know

**Tim Pagones** - I mean unless the person who got the permit

**Joan Turner** - I think one of the ways to determine that is that in the building department there is an application for building permit and on that you file your plan and you state what you are going to be doing. And it would be helpful to this board to have a copy of that application.

**Tim Pagones** - Well I think it would also be helpful to have Mr. Monroe here to

find out what discussions, I had spoken to Mr. Monroe way back when and

**Joan Turner** - Well good luck with that one

**Tim Pagones** - And I think he was told that this is going to be for personal use. Occasionally for special occasions he might store his commercial vehicle there. But not for any extended purposes.

**Joan Turner** - Let me ask you this Tom, on that intersection of Fox Hollow Road and Route 9

**Tom Whyatt** - Fox Glove Road

**Joan Turner** - There, when you face it from Frazier Road you come up and you face that, up on the hill there is a white house, who lives there?

**John Pielmeier** - This is the property this is on,

**Irene O'Garden** - Right off Route 9

**Joan Turner** - Right off Route 9, you go up there is a driveway

**Karen Southard** - That's the property. There are two residences there. One is occupied and one is not. The barn is occupied with tenants and the white original farm building is unoccupied and then there is a hole to the left of it where the

**Joan Turner** - To the left

**Karen Southard** - Yes to the left of the white

**Joan Turner** - So it is not on the right side the empty field that is on the right side of the road

**Karen Southard** - No

**Joan Turner** - Oh, that's where I thought you were going to put it. You mean you go up that driveway to the white house and it is back

**Karen Southard** - It is behind the white house to the left

**John Pielmeier** - There is a big pile of building material right in that

**Joan Turner** - Well I didn't drive up the driveway, I just faced it because you said at the corner, I just want to make sure of the location. And that is a residence now? That house? People are living there?

**John Pielmeier** - The red barn is a residence

**Joan Turner** - Right

**John Pielmeier** - The house I believe is not

**Joan Turner** - Okay

**Victor Carlson** - What is it's location?

**Karen Southard** - Right on Route 9, the corner of Route 9 and Fox Glove Lane. And there are two properties on that 2 acre

**Vincent Cestone** - Question, is there a house, a living house where someone would live on the same property or it is just this garage that they are proposing

**Karen Southard** - No no no. There is a living house. There is a barn conversion with a family in it.

**Vincent Cestone** - Okay

**Karen Southard** - As I said tenants

**Vincent Cestone** - Who are tenants okay

**Karen Southard** - And there is an unoccupied old 1860's farm house that is in need of repair

**Joan Turner** - And this building would be in addition to the other, the barn and the house

**Karen Southard** - Yes

**Joan Turner** - On 2 acres of land

**Karen Southard** - 4800 square foot garage storage warehouse in addition to 2 houses that are you know that combined are not nearly as large as the size of this thing he is building

**Joan Turner** - the Cold Spring Mirror and Glass which is up the road has excavated that property right next to them. Do you know where I am talking about? They sought have taken that whole hill down or half that hill down. Why isn't, and of course you don't know, it is curious to me that why won't they be building something

**Vincent Cestone** - stop. They have plans for that property that doesn't include this

**Lenny Lim** - what is the exact zoning?

**Joan Turner** - It is R-80

**Tom Whyatt** - I guess I would like to slightly disagree that this is not just simply a big garage. This is a big garage that is clearly is designed for commercial use truck use in this end and owned by a person who, I guess

**Tim Pagones** - My concern is, if he never stores commercial vehicles that is a legal building. Correct?

**Tom Whyatt** - I think I just understood you to say that Mr. Monroe had agreed he could store his

**Tim Pagones** - I don't know,

**Tom Whyatt** - Isn't that what he told you?

**Tim Pagones** - It was a long time ago, but you are saying that the applicant

**Tom Whyatt** - Mr. Gagnon

**Tim Pagones** - Mr. Gagnon, you are telling us what Mr. Gagnon told Mr. Monroe

**Tom Whyatt** - I am saying what Mr. Monroe told us

**Tim Pagones** - Okay. So I think it is important to get Mr. Monroe here because right now if Mr. Gagnon never stores a commercial vehicle in there, that is a legal building. Correct?

**Joan Turner** - Well you don't know that yet. You've got two acres of land,

**Tom Whyatt** - If he was going to build a hot asphalt plant, you don't have to allow him to build it and then wait for him to use it before we give him a ticket. This is designed to be a commercial building, two big commercial doors for trucks and it is purported to be used for that purpose. So it is not simply a big garage. It is a commercial garage and designed for that purpose.

**Tim Pagones** - And I think it is important to get Mr. Monroe

**Joan Turner** - You need a statement either in person or a letter from Mr. Monroe stating what the applicant said to him when he came. We also need the application itself to see what the application says.

**Vincent Cestone** - I think next meeting we should request that Mr. Monroe be here prepared to answer questions about this structure.

**Victor Carlson** - Vinnie, I have another thing. I don't know how this got through but we have no instructions as how to get to this piece of property.

**Joan Turner** - Yeah,

**Tom Whyatt** - It was on the application

**Joan Turner** - It says on the corner of Frazier Road and Route 9 which if you don't know where Frazier Road is

**Tom Whyatt** - Fox Glove Road right across from Frazier Road. I spelled it out on the application. My handwriting may not be legible or not

**Joan Turner** - It could have been more specific, you could have been more precise with the directions

**Tom Whyatt** - Well

**Joan Turner** - I had to drive by twice before I found it. The sections of the code that you are asking to be interpreted have to do with what? What are those sections if you don't mind reading them to me. I can't find my book.

**Tom Whyatt** - They are the sections referring to permitted uses in the R-80 district.

**Joan Turner** - That's in the back under

**Tom Whyatt** - I don't have it in front of me

**Joan Turner** - And you ask for 175.11

**Tom Whyatt** - There is a section in the code referring the table in the back and the table in the back has the permitted uses

**Joan Turner** - Okay I've got one of them anyway

**Tim Pagonos** - 175.25 what is allowed permitted uses, what is allowed in the district

**Tom Whyatt** - this is not a use that is allowed in fact it is commercial off street parking is prohibited



**Joan Turner** - Excuse me just a minute Tom

**Tom Whyatt** - Sure

**Joan Turner** - Yeah this is the building permit he issued but there is an application that is attached to it, it might have more information

**Vincent Cestone** - I think we need Tom here to explain this to us

**Joan Turner** - But also it is a 2-story accessory building. An accessory building to the tenants and the owners of the property itself. I mean, are they going to be using this building? If it is an accessory building to someone who is living there, that makes it a reasonable use of the property. But if it is not going to be used by the people that are living there, then it is a horse of a different color.

**Tom Whyatt** - Well it may be partly for their use and partly for the glass company use.

**Joan Turner** - Do the Gagnon's live there?

**Tom Whyatt** - No they don't

**Karen Southard** - There are tenants in the converted barn

**Joan Turner** - But they are not the Gagnons at all

**Karen Southard** - They do not reside at

**Joan Turner** - The Gagnons own the property obviously

**Tom Whyatt** - Yes. They own it but they don't live there

**Vincent Cestone** - Is there anybody in the audience that wishes to talk on this?  
Yes sir

**Tyler Gagnon** - Hi.

**Vincent Cestone** - Introduce yourself

**Tyler Gagnon** - Tyler Gagnon. Owner of the Fox Glove property. The Building Permit, discussed it in great detail with Tom Monroe before I even considered having the plans built. Just a note on the record, I am a professional race car driver. I own several race cars. I also need RV parking and boat parking. This is going to be my giant toy box. It was discussed in great detail with Tom. Tom said listen you can't use this for any type of commercial application. I said I

know. He said it is going to look to the neighbors like you are going to park the trucks up there. I said no I am not Tom because I like the trucks out in front of the shop for the advertising. They are big bill boards for me. I am going to put a boat in one bay, an RV in the other bay and I have 3 other sports cars to go in the other three bays. Tom specifically told me if he caught me up there with any of my commercial vehicles he was personally going to cut off my neck and do terrible things to me. He said it was a legal usage. He said I can't give you a speeding ticket just because you own a Porsche. I said I realize that. So I spent a lot of money on these building plans after I was very clear with Tom that I was going to use this for personal usage. Tom okayed the plans and I paid the \$1,500 building permit fee to build the barn. Now right now we sold the property. So, this is kind of a null and void thing because I have no intention on using it for anything. I am in contract right now with some buyers.

**Bill Flaherty** - So it is your intention not to develop the property as it exists today?

**Tyler Gagnon** - I was going to but we decided we were going to have too many confrontations with the neighbors. The problem is every vehicle that I drive during the day is a glass truck. So if I just want to go up there to grab something, they are going to assume that I am parking or doing some kind of commercial activity up there. I tried to notify the neighbors to explain to them that no that is not what the usage is for. You can't make an assumption just because I own a glass shop that I am going to use it for commercial use. I have owned the property since 2002 and if I had any intention on using it for commercial use I would have had stuff up there a long time ago. It has never been the case. I restored the barn. The intent on restoring the barn is so when my grandmother passes away, my handicap aunt had a place to stay. We were going to build a big addition onto the old house and eventually me and my wife were considering moving up there full time. And she told me that if I am going to build a garage, make sure it is big enough because we only had enough money to build it once. That was the end of it.

**Vincent Cestone** - So what you are saying

**Bill Flaherty** - Well in as much as you are selling the property, do you have a buyer for the property now?

**Tyler Gagnon** - Yes I do

**Bill Flaherty** - And are you in contract

**Tyler Gagnon** - We are working on that right now. We have an accepted offer

**Bill Flaherty** - Well then this just becomes academic at this point in time. My judgment at any rate is in as much as you are going to sell the property, it is not

going to be developed as what you have the building permit for. So why don't you withdraw your building permit?

**Tyler Gagnon** - Because I don't know what the intention of the new buyers are

**Bill Flaherty** - When would you know that

**Tyler Gagnon** - Don't know. We have a hard time getting a hold of their real estate. Bob McCaffrey is the one selling the property for us. We contact them through their real estate agent who is slow to get back to us. Right now my lawyer is obviously speaking to their lawyer.

**Bill Flaherty** - I don't know. At this point in time we should hold this whole thing in abeyance until

**Joan Turner** - He could also be

**Bill Flaherty** - Until he can clarify whether or not he is going to own the property or sell the property. Whatever. Because it doesn't make sense to me that we would go further with this issue in light of these new facts that have been presented to us this evening.

**Joan Turner** - But you don't know the intent of the new buyer either. That's another thing. They could be buying the property with

**Bill Flaherty** - But it is an R-80 zoning. The intent of the new buyer should be to be to develop the property as a residential piece of property not commercial. I think in the long run probably Mr. Monroe had to know that this was an issue in as much as the documentation he knew that you were going to store commercial trucks there

**Tim Pagones** - He just said he wasn't

**(everyone talking at once)**

**Tyler Gagnon** - this is the only way anybody could have made an assumption. I said if I do go on vacation, which I do periodically, would it be alright to put the trucks in there. And he said not really because then it would look like it is commercial intent. So I said fine. That was the end of any discussion with trucks being anywhere near that. And plus, if I have a boat and an RV in there, how am I going to fit a truck in there?

**Vincent Cestone** - Now are you, I am pretty sure of this but I am not positive, that when you sell the land the building permit becomes revoked

**Tyler Gagnon** - I would have to talk to my lawyer about that

**Tim Pagones** - I guess why not, if he is telling you he is not going to store any commercial vehicles have him put a note on the plans that no commercial vehicles will be stored and unfortunately it comes down to an enforcement issue.

**Victor Carlson** - I have one question. Is there any building on this piece of property now?

**Tyler Gagnon** - Right now there is nothing there. We cleared the property where the garage is supposed to be, we staked it, we probably got between the plans, building permit and the excavating work I probably have about \$10,000 into it right now.

**Joan Turner** - Vic, there is a barn and a house. The barn is rented now that has been converted and rented and a house that is on the two acres now.

**Victor Carlson** - But this

**Joan Turner** - But this has not been built

**Victor Carlson** - Good okay

**Bill Flaherty** - Is it your intention not to build?

**Tyler Gagnon** - I am selling

**Bill Flaherty** - You are selling. You are absolutely sure about that

**Tyler Gagnon** - Oh I am 100 percent. I have qualified buyers. Ready to go to contract. My wife refuses to ever live up there. She thinks we are never going to get along with the neighbors so. She doesn't want to put any more money into the property.

**Victor Carlson** - All right. Then these plans should be null and void.

**Tom Whyatt** - That would be my request that the board

**Tyler Gagnon** - When I first put the property up for sale, okay, Bob McCaffrey informed the people that it had approval for a garage. I have no, I don't know the intentions of the new buyers. Okay. And if this becomes null and void, this could possibly jeopardize the sale of the property. Because I have no idea if they intend on completing the project.

**Vincent Cestone** - They have a right to build just by owning the land.

**Victor Carlson** - In other words, these plans should be null and void. The new

buyer can come in

**Vincent Cestone** - Because the plans will change

**Tyler Gagnon** - But the building permit still exists

**Vincent Cestone** - They would have to apply for a new building permit if they changed the plans anyway because this is in your name

**Tyler Gagnon** - Well the plans are in my name but don't they transfer over

**Joan Turner** - No

**Vincent Cestone** - Once a new owner gets it, they have to apply under their name. Because you never built anything so it is irrelevant. I want to confirm that with Tom Monroe and

**Tyler Gagnon** - Talk it over with Tom because I have a relatively, I think \$10,000 investment in something I never built which caused me so much aggravation it has forced me to sell the property. And like I said if the new owners are under the assumption that they can build this exact same garage and you folks are telling me that you can take it away from me, I am not understanding this

**Vincent Cestone** - The only way it can be taken away is, from us, is if it is in violation of the zoning codes.

**Tyler Gagnon** - And it is not in violation

**Joan Turner** - They are asking for an interpretation. It is totally different than a violation of any zoning codes. We need to look at the parts of the code that they are asking an interpretation of

**Vincent Cestone** - First I want to ask Tom the questions

**Joan Turner** - But as our homework we need to review the sections of the code that are being asked to be interpreted and aside from this that these mega garages are increasingly a problem for this board as you all know because they turn into living space where they say that it is storage, they become apartments, and we have had that happen now in two cases that we know of

**Vincent Cestone** - At least

**Joan Turner** - So it is an issue for us to look into anyway in terms of on small parcels of land huge garages like this. Are they legal

**Tim Pagones** - Yes.

**Tyler Gagnon** - Am I correct in saying that Tom was very clear. He said this is a conforming structure right now. Black and white I have every right to build this garage

**Vincent Cestone** - It is conforming if it is not commercial use

**Tyler Gagnon** - Exactly and that was well stated

**Tim Pagones** - Do you have any objection putting on this plan that it won't be used for commercial use at least by you. Whether you sell and someone wants to break the law

**Tyler Gagnon** - I have no problems with that whatsoever

**Tim Pagones** - I mean unfortunately, like I said, it comes down to an enforcement issue

**Lenny Lim** - How many square feet is above this, storage space above the garage

**Tyler Gagnon** - It is actually, the footage does not set up, if you look at the plans it is not structural for upstairs. Like the guy who engineered it, the architect, you are not really going to be able to put anything up there. There is a floor but it doesn't have the proper support and stuff. The intent was really never to do much with the upstairs. The most I might do with it at the time was move some of the stuff from my basement in the house that I presently occupy and put it up there so the rats stop eating everything. Christmas is getting kind of ugly.

**Vincent Cestone** - Okay. With that unless we have any more questions, I want to continue this so I can talk with Tom and we can do our research and make a decision

**Victor Carlson** - We don't have our lawyer here, he should advise us on this

**Tim Pagones** - Well I mean, you can have Mr. Monroe here, but I guess what I am saying is that the basis of their interpretation is if this is used for a commercial storage of the vehicles that is in violation of the code for residential use

**Vincent Cestone** - I also want to know if the property is sold does the permit become null and void

**Tim Pagones** - But I just think, it's an enforcement issue. What you have is Mr. Gagnon saying I will put a note on these plans saying there will be no storage of commercial vehicles. Now you know he can put that on the plans and then build it and then two months later start putting his trucks there. And then it is an

enforcement issue.

**Victor Carlson** - And then we also have how many families can be in this barn

**Tim Pagones** - I am sure

**Victor Carlson** - I mean by our zoning it can only be one

**Tim Pagones** - Mr. Whyatt is very good at what he does. I am sure we would have had a lot of other things in this interpretation besides the storage of commercial vehicles. I think it is a conforming structure but for the fact that the neighbors and there was a big concern, and I understand their concern when you look at those two big bays and this gentleman owns a commercial business, there is a concern.

**Vincent Cestone** - With that I am going to continue to the 21<sup>st</sup>

**Bill Flaherty** - What you have to do then is to modify the two bays that are

**Tim Pagones** - But why?

**Bill Flaherty** - Designated for commercial use

**Tim Pagones** - He is entitled to build whatever he wants as long as it conforms to the code. What if he said he wants to store giraffes there. If he doesn't put giraffes there, this conforms. But for the fact that the issue here is if he stores commercial vehicles that violates the code. If he builds an ugly house or one huge garage that he can put 5 tanker trucks in there, it is ugly. Is it a good neighbor, no. But does it violate the code, no. Unless he stores 5 tanker trucks or whatever in there.

**Bill Flaherty** - My point is that we modify the two bays to a comfortable, lower height

**Tim Pagones** - But he is saying he has an RV and a big boat.

**Bill Flaherty** - Exactly, I understand that

**Tim Pagones** - So why should he have to modify his plans. He is saying he is putting an RV, he is not putting commercial vehicles in there. He is going to put a note on this plan saying there won't be storage of any commercial vehicles, and if he does unfortunately the neighbors are going to be out of luck, Mr. Monroe is going to have to cite him and

**Bill Flaherty** - Enforcement

**Tim Pagones** - That's what it comes down to. Unfortunately, at the Planning Board we give a lot of site plan approvals where there is no outside storage and you know what six months down the road there is outside storage. And it comes down to Mr. Monroe has to cite them.

**Lenny Lim** - If we hold the case open for a month or two, it might be sold. It might go away. Why don't we hold it open?

**Vincent Cestone** - Right. Let's hold it open. I want to talk to Tom Monroe.

**Tim Pagones** - Do you agree to hold it open? Do you want to hold it open?

**Tom Whyatt** - I think your board should fully inform yourselves and make a decision at the appropriate time. No objection to holding it open.

**David Brower** - David Brower, Town Board liaison for the board, it might be a question to begin with the use of the property is in question right now. I mean here you have from what I am hearing if I am correct, an owner of a property that is not living on the property so you have an empty home and you also have a building that has been renovated and is being rented out. Now the question is that legal to begin with?

**Joan Turner** - Is your renovation legal?

**Tyler Gagnon** - Oh that's 100 percent legal

**David Brower** - I don't mean the building, I mean the use of it as a rental

**Joan Turner** - As a residence?

**Tyler Gagnon** - That is the primary residence. The other house is considered derelict

**Victor Carlson** - I have a question. How many acres do you have

**Tyler Gagnon** - 2.02

**Victor Carlson** - you don't have the 10 acres?

**Tyler Gagnon** - No

**Vincent Cestone** - Okay with that I am going to hold it open until March 7<sup>th</sup> that will give me plenty of time to talk with Tom Monroe and find out what is going on. We will continue then.

**Tom Whyatt** - Thank you very much



**Vincent Cestone** - Next item on the agenda is Tim and Mary Donovan. A blast from the past. How are you doing Tim? So tell us what the issue is

**(Turning tape over. May have lost some dialogue)**

**Tim Donovan** - In my application, I mentioned this at the last meeting, I put down that FEMA visited the house in 1994 and it was 1996.

**Joan Turner** - I remember that.

**Tim Donovan** - In January we had a very large storm and the snow melted and the rain came and it washed out much of the side of my house and also a large slot of our driveway. The gentlemen from FEMA came and he said that you had block foundation but what you really needed to have was poured if you wanted to keep this wall from accepting that much water. It is a continual water problem and so at that time when I redid the driveway and the side of the house, we dug up the backyard and put in new pipes and at that time I broke the rules and what I did was I poured, my feeling was that I had to put in cement. Much like he suggested. Poured foundation. We left it there for a little while and water kept building up in it and I built the addition. And that addition encroaches on my next door neighbor's property. I would like to say that this addition is an uncontested request for a variance. I am positive it is not uncontested. There has not been much in my life with respect to that property line that has been uncontested over the course of the past two years. The room does exist. It is a small dining room. But still it is in violation. We went and did it, we built it.

**Lenny Lim** - Without permits

**Tim Donovan** - Yes that is correct. I am in the process of getting a variance if I can with respect to the property line on the west side and but I might add that that particular room and the construction of it, particularly the foundation was done correctly. Actually I believe it probably saved the house because there is just too much water. I could show you pictures from the storm from Ivan. The water cascaded down the steps that we built in 1996. So it is basically you know, these are from Ivan, this is basically it. These are the pictures of our driveway that FEMA saw. So I took matters into my own hands and I throw myself on the mercy of the zoning board of appeals if that is the correct expression. And I need to have a variance considered.

**Vincent Cestone** - Who lives on either side of you?

**Tim Donovan** - The Conboys live on the northeast and the Schuylers live on the west of us.

**Vincent Cestone** - Are they here?

**Kathy Schuyler** - I am. My name is Kathy Schuyler and I live to the left and the property line is being contested because it is the Donovans who have been doing the contesting. However, my concern is not objecting to the variance. My concern is what was submitted to the zoning board in terms of a plan. This addition has not gone through the process with the inspector coming out to make sure that the constructed properly without the benefit of a permit. All I am asking for is as built plans be submitted so that I would be assured that it is safe and that the electric was done properly. That's my concern

**Vincent Cestone** - Generally what we do with a situation like this is we require the applicant to go have the building department inspect the structure to make sure that it is built to code. So that would probably be a condition of this variance. The other thing, do you have any, are you in support of the structure as it is if it is inspected by the building department

**Joan Turner** - Wait, before we even answer that question, I would like to talk to Tim and then I am going to come back to you in a minute. After this flood and the damage that you did, you decided to take matters into your own hands and build and addition with the proper support

**Tim Donovan** - Yes

**Joan Turner** - Where is that addition on this survey

**Tim Donovan** - It is actually right here. Here is the actual main structure of the house. There are steps here

**Joan Turner** - I was there, I tried to find your house this morning

**Tim Donovan** - There is a for sale sign on it

**Joan Turner** - I've been there before, but there is no number. 362 you cannot find. The number is missing

**Tim Donovan** - The plows did such good work this work

**Joan Turner** - Anyway, I remembered, but I could not figure out, I thought there was a little brown house right next to you

**Tim Donovan** - That is the Schuylers

**Joan Turner** - Right there. You were before this board a few years ago for a variance

**Kathy Schuyler** - 10

**Joan Turner** - 10 years

**Kathy Schuyler** - yes

**Joan Turner** - oh my God.

**Tim Donovan** - We supported that

**Kathy Schuyler** - It was for a trellis

**Joan Turner** - I remembered that house and going there. So your addition is back here

**Tim Donovan** - It comes to here. Where as the main house actually within I think 6 feet 2 inches from the property line. This addition comes to here. There is the well cover, the little square. And it comes right up to the edge of the well cover

**Joan Turner** - So how is it you are encroaching on

**Tim Donovan** - It is not 20 feet from the property line

**Joan Turner** - So you just don't have the proper side setback

**Tim Donovan** - Right. That's all

**Joan Turner** - Is it a non-conforming house before that is why you are 6 feet from back here

**Tim Donovan** - Yes

**Joan Turner** - It is non-conforming

**Tim Donovan** - Pre-existing nonconforming

**Joan Turner** - So your addition is in the back and you are requesting a

**Tim Donovan** - It might be an 18 inch variance

**Joan Turner** - So basically if we grant the variance you need to have the building inspector certify that it is structurally sound

**Tim Donovan** - Fire underwriters, the electrical underwriter come by

**Joan Turner** - Right

**Tim Donovan** - To do that. We have already taken steps to do that

**Vincent Cestone** - When was your original house built?

**Tim Donovan** - Ask my wife Mary Catherine

**Joan Turner** - Hi Catherine

**Mary Catherine Donovan** - I think it was 1956

**Tim Donovan** - 1955 or 1956

**Vincent Cestone** - before zoning

**Tim Donovan** - It is pre-existing nonconforming

**Joan Turner** - All right so you need to amend for the record Tim. You need to put in the relief is not just the side setback but also 175.82

**Tim Pagones** - Prior non-conforming

**Joan Turner** - Enlarging a non-conforming. So you are asking relief from that also

**Tim Donovan** - All right

**Joan Turner** - So mark your records accordingly. And we should all mark our appeals

**Tim Donovan** - What number was that

**Tim Pagones** - 175.82

**Joan Turner** - 175.82 which is the enlargement of nonconforming structure. So you are asking relief from that and then the side setback. But basically, now to come back to you, if those, if we granted that variance and we had this as a condition and it was met and you saw a copy of the approval from the building department, would that be alright with you?

**Kathy Schuyler** - I not, I really don't have a lot of confidence in Mr. Monroe. It took him a year to find the addition. So, I would have preferred if an engineer certified the addition or an architect. If that is your decision, I do have 30 days to file an Article 78

**Joan Turner** - Right.

**Tim Pagones** - Well did you have plans when you built it?

**Tim Donovan** - Yes I had drawings when I built it and we have plans now that submitted that are part of the package by an engineer

**Bill Flaherty** - You said your property is for sale now?

**Tim Donovan** - Yes.

**Bill Flaherty** - Well, if you have a buyer for your home, when you get a buyer for your home, one of the things a buyer does is have the home inspected by a professional

**Tim Donovan** - Absolutely. It is good to have a title search and the whole nine yards

**Bill Flaherty** - You are in violation because you don't have a CO for any of the work that you have done

**Tim Donovan** - For that particular work yes

**Bill Flaherty** - Exactly. So that would be a big problem in selling your property. Obviously, you are here so that you can get

**Joan Turner** - The CO so he can sell it

**Bill Flaherty** - So it will be easier for you to sell the property

**Tim Donovan** - Exactly

**Joan Turner** - But I don't think it is too much to ask for Mr. Donovan to get an engineer to approve the building, outside of the building inspector. I don't think that is too much of a request.

**Vincent Cestone** - I am not sure. Because an engineer does not have the authority of law behind him. While the building inspector does. And whatever the engineer says, for every engineer that Mr. Donovan hires there is somebody that can hire three more engineers that will be on the opposite side. Don't interrupt please.

**Kathy Schuyler** - Sorry

**Vincent Cestone** - So the point of the matter that I am arguing is that what is the point of hiring an engineer unless the zoning board hires an engineer and the zoning board does not have a budget to do that.

**Joan Turner** - Exactly. If Tom Monroe qualifies to inspect the building and say that these plans are adequate, that the electrical work is adequate

**Vincent Cestone** - That is the fire underwriters

**Joan Turner** - David, do you know

**Bill Flaherty** - Not exactly, the electrical has to be inspected by the County

**David Brower** - The electric has to be underwritten by the County so that is a separate issue.

**Joan Turner** - So that needs to be done

**David Brower** - But as far as the plumbing and the building, Tom has

**Joan Turner** - Tom has the knowledge and authority, so you need an electrical certification and you need Tom Monroe to stamp it okay and that is what you need to do as a condition of my granting this variance. And not wait until you sell the house and have their engineer do it after the fact. I would like to see it done before.

**Tim Donovan** - I have contacted a certified electrician who also has access to bring it to the Electrical Underwriters, who is licensed with the County and can certify the electrical

**Joan Turner** - And then if Tom Monroe does it, then you have met the conditions that I would impose on my vote.

**Tim Donovan** - If I can get that, again, I have asked Mr. Monroe about this and he said I cannot look at your building permit until I have some type of variance. I believe that is what he had said. Now if it is a conditional variance, that is fine by me. And I am just hopeful it will be fine by Tom.

**Tim Pagonis** - Well, if the board grants a variance, there will be conditions that it has to meet with all the State and Local building codes, the fire underwriter has to approve it and I know people who have had to knock walls down so the electrical inspector can go see the wires. And if he has to knock a wall down so that someone can look at the wires, he has to do that. So they are not just going to walk by and say okay sorry the addition is up, I'll just trust you that it is working.

**Joan Turner** - After we vote on a straw poll tonight and you come up with resolution

**Tim Pagones - Yes**

**Joan Turner -** How much time has elapsed. Could you get this done in a month let's say so that before we have a final vote on this resolution it is taken care of

**Tim Donovan -** I would like to get it done within 2 weeks. I believe I can get the fire electrical

**Joan Turner -** And Tom Monroe to get out and approve your plans

**Tim Donovan -** I don't know what his schedule is

**Vincent Cestone -** Tom won't go out and approve it until we vote

**Joan Turner -** So let's just say the straw poll is a yes and we are saying that we are voting that way but we want to see the results of the electrical to make sure that it is done

**Vincent Cestone -** Sure

**Joan Turner -** Because you know that our conditions are ignored very often

**Tim Pagones -** I mean

**Tim Donovan -** I am also trying to sell the house

**Tim Pagones -** If you took a straw poll vote, I will have the resolution hopefully March 7<sup>th</sup>. But I can call Mr. Monroe and say look we took a straw poll vote and it was to grant it. As a condition, we want to see the Fire Underwriters approval, the electrical approval.

**Joan Turner -** Right

**Tim Pagones -** We would like to see it. So when you go out and look at this stuff and make sure it is arranged that we have when we take our final vote on March 7<sup>th</sup>, we have that in front of us. So even though it is a condition, it is already done.

**Joan Turner -** I am comfortable with that.

**Vincent Cestone -** That I can live with

**Bill Flaherty -** Shouldn't it be incumbent upon Mr. Donovan to make these arrangements to

**Tim Pagones -** Yes, he is going to do it. But you don't want Mr. Donovan calling

Mr. Monroe tomorrow he is going to say nice, nice talking to you and until I hear from Mr. Pagonos or someone from the board, I am not doing anything

**Bill Flaherty** - But he can do that on his own.

**Tim Pagonos** - Well I don't know if Mr. Monroe will go out though

**Bill Flaherty** - Exactly. He can call the County Inspectors tomorrow

**Tim Pagonos** - And he has made arrangements

**Tim Donovan** - I have spoken with them about all of this

**Bill Flaherty** - Did they make arrangements to come out and look at it?

**Tim Donovan** - I am hoping this week

**Bill Flaherty** - I am not sure about this, but I am not sure if they would come over to look at it without going through Tom Monroe first. To issue a building permit. Once a building permit is in place and the rest of things fall in place, consequently to

**Tim Donovan** - That could be the case but I willing to go forward and try the method that counsel suggested

**Victor Carlson** - How much of this building was built before 1957

**Tim Donovan** - Most of it. You know something, that would be very difficult for me to actually say. I am not sure. Because it was pre-existing nonconforming and I know that there is a CO. When Mr. Tomann was the building inspector there were issues with the house. I am not exactly certain. I don't know how to answer your question because I am not sure

**Victor Carlson** - The reason I am asking this question, all this area we are going to have to give you a variance for

**Tim Donovan** - This actually was part of the main house, this has a CO

**Victor Carlson** - This is my question

**Tim Donovan** - Oh

**Victor Carlson** - How much of this house

**Tim Donovan** - Has a CO



**Victor Carlson** - Otherwise we will have to give you a variance for any other part of it

**Tim Donovan** - The only part that did not have a CO was this particular dining room that we put in. Everything else has a CO. Has a current CO. That's what we bought. The property gets flooded from here and the water actually was sitting up against because there is a pocket right here, to keep that \_\_\_\_\_ we poured this foundation which was planned to do it the right way but I didn't have the time and I didn't think it, so the point is there was a pocket right here. We put the foundation in here and pushed the water to the side. This was all part of the original house, this room is the only one I am asking a variance on. This actually sits 6 feet 2 inches from the property line and this sits 18 feet 6 inches I think from the property line. So it is basically and 18 inch variance I think. So the variance is actually on this area right here. The plans were attached in the folder that I submitted. All the measurements are in there. It's an engineer drawing.

**Vincent Cestone** - Any more comments from the audience? Any more comments from the board?

**Tim Pagones** - I guess just one question, on your plans it is signed. Mr. Randell I believe signed it. Can you get one that is stamped by him?

**Tim Donovan** - The original is stamped

**Tim Pagones** - The one we have is signed

**Tim Donovan** - I have the stamped

**Tim Pagones** - I think one of the concerns from the neighbor is that nothing is stamped. I realize that this is probably his signature but if he can stamp it

**Tim Donovan** - Is that his stamp right there?

**Tim Pagones** - Yep there is a stamped seal on it. Okay. Can you just show your neighbor? So she can see. It is a raised seal. So he certified those.

**Kathy Schuyler** - Because the information that I received from Town from Mr. Donovan's file is not a seal

**Kim Shewmaker** - It's a copy and the seal didn't show up on the copy

**Tim Pagones** - You can't see the raised seal on it

**Kathy Schuyler** - My husband did speak to Mr. Randall and at the time Mr. Randall hadn't sealed

**Tim Pagones** - So now there is

**Kathy Schuyler** - So that is the information that I

**Vincent Cestone** - Okay. I'd entertain a motion to close the public hearing

I am in the process of selling my house so I will do everything in my power to make sure that this goes quickly and smoothly (can't hear him)

**Bill Flaherty** - You are in contract?

**Tim Donovan** - No actually no we are not in contract. We are in contract purchasing. We are moving to a smaller house.

**Vincent Cestone** - Okay there is a motion on the floor to close the public hearing

**Joan Turner** - So move

**Vincent Cestone** - I moved

**Joan Turner** - So I second

**Vincent Cestone** - That's what I was looking for. All in favor?

**All Board Members** – Aye

**Vincent Cestone** - Do we wish to take a straw poll? Can I have a motion for that?

**Joan Turner** - I'll move for a straw poll

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

**All Board Members** – Aye

**Vincent Cestone** - Vic?

**Victor Carlson** - I vote against it

**Vincent Cestone** - Bill?

**Bill Flaherty** - Against it

**Vincent Cestone** - Joan?

**Joan Turner** - Against the variance?

**Vincent Cestone** - That's how I am reading it. You are saying against granting the variance?

**Bill Flaherty** - Yes

**Victor Carlson** - Yes

**Vincent Cestone** - Okay

**Joan Turner** - I am voting for it with the conditions that we stipulated

**Tim Pagones** - The electrical inspection and

**Joan Turner** - Tom Monroe right. If those conditions are met, then I am voting in favor

**Tim Pagones** - Okay

**Vincent Cestone** - Len?

**Lenny Lim** - I am voting against simply because everything you did was totally illegal. Pre-existing nonconforming. It sounds like you even knew from the beginning that you should have got a permit or something and you did nothing

**Tim Donovan** - Actually I had a daughter who was quite sick and we put her in a special school at the time. I wasn't really focused on the permit process. I had other things that were going on. I don't know really what I should do at this point.

**Lenny Lim** - My vote is no

**Tim Donovan** - Okay

**Vincent Cestone** - And I would vote for. But what that means is the vote is against 3 to 2. So with that, the only option is to tear it off or to sue us.

**Tim Donovan** - Okay

**Tim Pagones** - I will have a resolution for the 7<sup>th</sup>.

**Vincent Cestone** - I am sorry.

**Tim Donovan** - Thank you

**Lenny Lim** - This is only a straw poll right

**Tim Pagones** - Straw poll

**Vincent Cestone** - A review of minutes of January 24<sup>th</sup>

**Tim Pagones** - No minutes yet

**Kim Shewmaker** - They were still printing as I was leaving. So no minutes yet.

**Vincent Cestone** - That's a straw poll. That is not a binding vote. Tim is going to write up a resolution for denial. When we would take our official vote. It could change by then.

**Tim Pagones** - What I would suggest actually, I would need stuff for the denial. So do you want to put it on for the 7<sup>th</sup> for discussion. So we will put it on for discussion. What has happened is the public hearing has been closed. Which means there is no input from the public or from you unless they ask you something. They are going to discuss it further. They took a straw poll vote which is a non-binding vote. The law allows them 62 days to do the resolution. Once they do the final resolution, the final vote, 5 days to file it downstairs. So they have 67 days. So what we are going to do now is they are going to discuss it further so that I have more information for the resolution. They might change their mind, I don't know. But right now there is a straw poll 3 to 2 against so I am going to start working on a resolution denying it. But on the 7<sup>th</sup> they'll talk some more.

**Vincent Cestone** - My suggestion is, we will discuss it on March 7<sup>th</sup> and I suggest that you come because, you won't be able to talk unless we ask you questions but if we wanted to ask you questions it would behoove you to be here

**Tim Donovan** - Okay. Just to address this gentleman. I can assure you that I certainly did not think through the actions that I took. There was no pre-meditated motive to deceive. Basically I was faced with a house and water and if you actually would care to take a look

**Lenny Lim** - Sir, we all lived here during that bad winter, that was a horrible winter. We all had plenty of damage to everything. But somehow it is a pre-existing nonconforming I mean you even knew before I even looked up pre-existing nonconforming. Somehow you had to know that to enlarge it, to do anything to it you had to go into the Town to get a permit for something.

**Tim Donovan** - The pre-existing nonconforming, I've been dealing with this particular house for the last year and a half so I knew that language recently. I am not in the building business. At all. I'm not even good with a hammer. I understand what you are saying, but no, I am actually not in the building business.

**Lenny Lim** - But I am not going to vote to make it legal.

**Tim Donovan** - I understand but I just wanted to assure you that there was no

**Lenny Lim** - I am sure, like you said there were other things on your mind, we are all parents we all have things going on. But this to me is just too illegal

**Mary Catherine Donovan** - Can I say something

**Vincent Cestone** - Absolutely

**Mary Catherine Donovan** - My name is Mary

**Lenny Lim** - The public hearing is closed

**Vincent Cestone** – And I am saying that she can

**Tim Pagonis** - Okay

**Mary Catherine Donovan** - I understand all of what you are saying. For us to tear this down would be such a tremendous financial hardship on us. We would not be able to go through with our lives, we are trying to get away from the current problem. We just had a daughter that went through lymphoma and we are still paying thousands of dollars to Memorial Sloan Kettering. If we have to pull this room down, we are not going to be able to get out of this situation and resolve it and go to a smaller house. This is a life altering decision. It is a little decision on your part. We were wrong. Okay. We are taking all the steps and money trying to right the wrong. For us, for you to tell us to pull the room down, would be a life altering thing for us. We would have to move out of town, we wouldn't be able to afford to live here, we wouldn't be able to afford to move into the house we are trying to get into, trying to get out of the current problem we are living with for the last few years

**Kathy Schuyler** - Why are you looking at me

**Tim Donovan** - Cath, please

**Mary Catherine Donovan** - It is a life altering little decision you are making on your part, but for us it would be very life changing and I don't think it is fair. We have been very good citizens

**Tim Donovan** - Thank you very much

**Mary Catherine Donovan** - We have given a lot to this town and this is not

**Tim Donovan** - Honey, I appreciate

**Mary Catherine Donovan** - It's not right

**Tim Donovan** - Cath

**Mary Catherine Donovan** - We make one small wrong

**Tim Donovan** - Honey

**Vincent Cestone** - Review of minutes

**Tim Pagonos** - No minutes. They are printing

**Vincent Cestone** - Okay review for completeness. Laurie Brown and Mark

**Tim Pagonos** - We are waiting on a survey with setbacks which I don't believe we received. So it is still incomplete

**Vincent Cestone** - Okay. Copeland. Review for completeness

**Tim Pagonos** - I, Kim mailed out my package and I don't have a package. So I haven't reviewed it. It is probably in Jersey somewhere.

**Joan Turner** - Why don't we just have minute. On the one that came up before on the garage.

**Vincent Cestone** - Can we talk about that after we do this

**Joan Turner** - I'm sorry, I just thought we had a minute

**Tim Pagonos** - I haven't reviewed it. He can tell you what he has. I don't know if you had a chance to look at the file

**Vincent Cestone** - No I haven't had a chance

? - I work for Mr. Copeland actually. Is it okay if we use a chair as an easel

**Vincent Cestone** - This is not a public hearing

? - Okay

**Vincent Cestone** - We are reviewing for completeness

**Lenny Lim** - Just to see if the application is complete. That's all we want to know

**Tim Pagones** - So what I would suggest is put it on for the 21<sup>st</sup>. I won't be here but I will hopefully get my package before then and then I can let you know if I think it is complete or not. It is a special use permit. It is not just a small little deck. So I don't want to be in the position where I, if you looked at it and you feel it is complete, I'll take your call

**Lenny Lim** - Let's wait till you check it

**Tim Pagones** - I just want to make sure we have everything and on the 21<sup>st</sup> I'll let Kim know and if it is complete we can refer it to the Planning Board

**Victor Carlson** - This is a Special Use Permit so we are going to have to turn it over

**Tim Pagones** - Yes to the Planning Board. But like I said it is just not a little variance here, I want to be able to look at it. I don't want to rush through it right now. So hopefully my packet comes before the end of the week and before the 21<sup>st</sup> I'll let you know. But I would put it on for completeness for the 21<sup>st</sup>. Unless you have reviewed it and you feel it is complete Doctor

**Joan Turner** - Me?

**Vincent Cestone** - Our attorney hasn't had a chance to review your application yet

**Tim Pagones** - I haven't received it

**Vincent Cestone** - So we can't make a decision on whether to refer it to the planning board so he assures us that on the 21<sup>st</sup> he will have that done and remind me on the 21<sup>st</sup> and I'll take you first so you don't have to sit through an entire meeting again.

? - Okay that would be great. February 21<sup>st</sup>

**Vincent Cestone** - Yes February 21<sup>st</sup>

**Joan Turner** - I have one question that I want to alert you to and that is the septic system up there

? - We have calculations for that

**Joan Turner** - That would be a major concern that I would have on this plan

? - They went ahead and put in a

**Joan Turner** - Plant, I know. There have been some problems with that plant, but I just want to alert you to my concerns about that

? - Okay

**Vincent Cestone** - Just remind me on the 21<sup>st</sup> what I said tonight and I will take you first so you don't have to wait till the end. And you don't have to bring your drawings because it is just completeness. We are going, if it is complete, we are going to refer you to the Planning Board. And at the Planning Board you will make your presentation.

? - Thank you

**Vincent Cestone** - Okay. Old business. Joan?

**Joan Turner** - I am sorry, when I saw Jimmy Copeland going out I thought we had a break and I just wanted to mention on the interpretation that just came up now, a quick look at permitted uses and just, you are the lawyer and you are our liaison and we all need to put our heads together for this, is that under permitted uses number 45 and number 46, where it says commercial off-street parking facilities that is one thing as what is permitted and what is not and off-street parking facilities when not located on the same lot with the use to which they are accessory.

**Tim Pagones** - Right

**Joan Turner** - So that is something we need to look at as interpreting something and then on 46 which accessory use is customary with an incidental to any aforesaid permitted uses. If you look "a" the accessory use shall be located on the same lot with the permitted use to which it is accessory.

**Tim Pagones** - But that's if he stores his commercial trucks there.

**Joan Turner** - He doesn't live there. It is not accessory to him

**Tim Pagones** - It is a garage. It is a garage. And what is happening is the neighbors are saying there are some big bay doors there and he is going to put his trucks there. But he is telling you I am not putting my commercial trucks there. Okay. If he does, Tom Monroe has to cite him. It comes down to enforcement. If he said, he might have kidded around with his neighbors and it might look like a brothel. If it is a legal structure, the neighbors can't come here and say I think he is going to have a brothel. Until he has a brothel, we can't do anything. Like I said he might sit here and lie to you and say I am putting my RV and boat there and after he gets his permit and it is up there, put his commercial trucks there. And Tom Monroe has to go up there and cite him.



**Joan Turner** - All right. Remember the other one Smelley or Shelley

**Tim Pagonos** - Shelley

**Joan Turner** - Where he wanted to put this huge garage in to store his boat etc

**Tim Pagonos** - Shelley needed a variance

**Joan Turner** - He needed a variance right

**Tim Pagonos** - And we said you know what

**Joan Turner** - No we said go to the wetland first and then come back

**Tim Pagonos** - But we also said you can move it and you know what I am sorry that you would have to back it all the way up

**Joan Turner** - Was he back? Was he here last week?

**Tim Pagonos** - No he never came back

**Joan Turner** - But here is an illustration with this man that he's got this garage, does it make, does it have that square that is necessary for the house? The house has to have a certain 200 foot square, does the garage meet the same criteria? Or does it fall under bulk standards for a lot?

**Tim Pagonos** - I think that garage is completely legal and Mr. Whyatt is very good at what he does. And believe me if there was another section of the code that he could have asked for, he would have. The only reason the neighbors are there is because they are afraid that he is going to use that garage to store commercial vehicles. Storing commercial vehicles is not allowed in a residential district. So you know, they are doing it out of fear and it might be justified but until he stores commercial vehicles, it is a legal garage.

**Joan Turner** - Okay but in general if you have a facility that big does it not have to meet the same criteria as the house in terms of the square or are you into bulk standards on a given size lot

**Tim Pagonos** - Bulk standards. I have to assume rightly or wrongly that they comply with everything and he should have gotten a permit and you know what, if he complies with everything and it is the ugliest structure in the world, he has the right to do it. And, like I said, he might put his trucks there but until he does

**David Brower** - Did he give you a drawing

**Tim Pagonos** - Yes

**David Brower** - Does it show two septic systems?

**Joan Turner** - No

**Lenny Lim** - They didn't show us a property drawing, you're right

**David Brower** - You should have two septic systems because that was

**Joan Turner** - On this last one here

**David Brower** - On the one you are talking about

**Joan Turner** - The one on Continental Village?

**David Brower** - No no.

**Tim Pagones** - Gagnon

**Vincent Cestone** - He is not applying for it

**David Brower** - Did he give you a set of plans?

**Joan Turner** - No we don't have a survey, we just have a set of plans of the building. Just for building. No survey

**David Brower** - You need a survey of the property, you need it to show that it has two septic systems because, they got cute, originally they had the house, they redid the barn and everything and now he is saying the barn is the primary residence and the house is derelict.

**Joan Turner** - Right

**David Brower** - But there are still two septic systems. There has to be. So he has to show the septic systems so that the barn is not sitting on it. Right?

**Joan Turner** - I would imagine. But that is what I said by full disclosure. We needed this, before we can deal with this we should have all the information.

**Tim Pagones** - You are over stepping, they are here for an interpretation.

**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:** \_\_\_\_\_

Respectfully submitted,

Kim Shewmaker  
Secretary