

ZONING BOARD OF APPEALS

September 12, 2005

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, September 12, 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.

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

ABSENT:

Vincent Cestone – We are waiting for our attorney. He will be here at any moment. In the mean time, let's do the review of minutes. Minute of July 11th. Do we have any additions, corrections or deletions

Joan Turner - Nothing that I saw.

Vincent Cestone – I'll make a motion to accept the July 11th minutes as submitted

Lenny Lim - I'll second

Vincent Cestone – All in favor

All Board Members - Aye

Vincent Cestone – July 18th minutes. Do we have any corrections?

Bill Flaherty - I have no corrections.

Vincent Cestone – I'll make a motion to accept the minutes as submitted

Lenny Lim - I'll second

Vincent Cestone – All in favor

All Board Members - aye

Vincent Cestone – All righty. What I am going to do is go into the public hearing for Jeffrey and Nancy Lerch. A variance for a pre-existing condition. Is there someone here to speak for the applicant? Come on up. Did I announce your name right?

Nancy Lerch - Lerch. As in you rang.

Vincent Cestone – Okay. Tell us exactly what the issue is.

Nancy Lerch - The issue is we bought our house in 1981 and it had a porch and it was, we haven't moved it at all, what we did was put a roof on top of that porch. And when we were in the process of selling the house we realized that there was a variance, that it didn't meet the variance of 40 feet. The variance was 31. I think we need one for the house and the porch. 36 feet for the house and 31 for the porch.

Vincent Cestone – How old is this house? Do you know how old the house is?

Nancy Lerch - I think it was built in 1946

Vincent Cestone – 1946

Lenny Lim - There is a permit in here for 1960 or 1961.

Joan Turner - The building permit was issue in 1961 and the CO was 1962 a year later. And you've never done anything to the house since you've owned it? You never added on anything?

Nancy Lerch - We didn't make it any, we changed the porch. The porch was falling down.

Joan Turner - So you just replaced it

Nancy Lerch - And we did put a roof on top of it

Lenny Lim - Did you enclose it any more than a roof?

Nancy Lerch – No

Vincent Cestone – Did you get a building permit for that?

Nancy Lerch - That's why were here. When we went down to the building department they said we had to come here to make sure that we needed a

variance.

Joan Turner - So this is your recent building permit here

Nancy Lerch - Yes

Joan Turner - That was issued on the 17th of June

Nancy Lerch - Right

Lenny Lim - Did you enclose in that porch any more

Nancy Lerch - No. Just a roof and railing.

Joan Turner - So essentially you stayed within the existing footprint

Nancy Lerch - Exactly. We didn't change the cement walk or anything.

Bill Flaherty - There are two issues here. The house is not in compliance so you need two variances

Nancy Lerch - Right

Vincent Cestone - Is it pre-zoning

Bill Flaherty - This house was built in 1961

Joan Turner - Zoning was 1957

(Every one talking among themselves)

Bill Flaherty - well maybe on when they put the road it because it was a dirt road at the time they built the house

Joan Turner - so after the house was built, they widened the road?

Bill Flaherty - Yes. I think that is what happened really

Joan Turner - I think that is an important fact to put in the record in granting her the, they widened the road so you had an infringement upon your property. And that is actually a good point for Tim to put into the resolution too.

Lenny Lim - She went through all the permits and got everything she needed to do

Nancy Lerch - I got a surveyor to come back out and resurvey it. We didn't

change it at all I mean this is the original survey and that is the porch that was there.

Lenny Lim - I know but the problem is I see a measurement from the house but not the porch.

Nancy Lerch - Jeffrey brought a new one last time

Kim Shewmaker – Jeff brought them to the last meeting. You all have one.

Nancy Lerch - You have them? Somebody better have them.

Kim Shewmaker – We have them.

Lenny Lim - Yep. 31.5

Victor Carlson - Is this a new survey that just came in tonight

Nancy Lerch - No. About a month ago

Joan Turner - So you need a variance of 8.5 feet and 4 feet from the corner edge of the house

Lenny Lim - Well you said years ago they widened that road. It was a dirt road?

Bill Flaherty - I believe in 1961 and 1962 that was a dirt road.

Lenny Lim - Okay

Bill Flaherty - In fact, I know it is

Joan Turner - And now it is paved?

Bill Flaherty – yes. I think it was paved in 1968

Victor Carlson - How do you know

Bill Flaherty - I live there

Joan Turner - Yeah, you should know your own road

Lenny Lim - I wondered why he knew exact dates. Okay.

Vincent Cestone - Any more questions from the board? Any comments from the audience on this matter? Can I have motion to close the public hearing?

Joan Turner - So moved.

Bill Flaherty - I'll second.

Vincent Cestone - All in favor?

All Board Members – aye

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

Victor Carlson - I have a few questions. How many variances are you seeking?

Nancy Lerch - The porch and the house

Victor Carlson - The house too. You need 4 foot for the house. And you don't mind if we put in a stipulation that this porch will not be built in, I mean enclosed

Joan Turner - Expanded upon or anything else

Nancy Lerch - No

Joan Turner - Because the variance runs with the property. So when you sell it, somebody else, be very specific in the resolution and put conditions on it.

Victor Carlson - So we want to stipulate that

Nancy Lerch - No problem

Vincent Cestone - Okay. All right. I made a motion for a straw poll, do I have a second?

Bill Flaherty - Second.

Vincent Cestone - All in favor?

All Board Members - Aye

Lenny Lim - I'll vote in favor

Vincent Cestone - Joan?

Joan Turner - I vote in favor with the condition that we fill in on the resolution that in that area of 31 feet that nothing can be enclosed

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor

Victor Carlson - I vote in favor

Vincent Cestone - And so do I

Nancy Lerch – thanks

Tim Pagones - October 3rd

Bill Flaherty - When are we meeting?

Vincent Cestone - We are meeting again next week. Tim, when we talked you said you had

Tim Pagones - Just some housekeeping. Number 4 is on for draft resolution that will be adjourned until next week. So you will have that the 19th. Number 5 was on for resolution. We got a letter in the packet, that has been withdrawn by the applicant. So the issue is moot. You don't have to make a decision on it. Number 6 and Number 7, that was adjourned a while ago and it is not supposed to be back here until we get a letter from the applicant. They were reviewing different alternative sites and getting a lot of things to Mr. Comi.

Vincent Cestone - I spoke to Mr. Comi saying that it is not ready for us.

Tim Pagones - So I spoke to the attorney and he just asked that they be adjourned until they write a letter to come back.

Vincent Cestone - Okay

Tim Pagones - So like I said Number 4 is on for next week. Number 5 is withdrawn. Six and Seven are adjourned until the applicant requests and then the rest you can go over now or after the other public hearing.

Vincent Cestone - Why don't we do the reviews for completeness and get them over with.

Tim Pagones – okay.

Vincent Cestone - Dunn

Tim Pagones – I don't have a survey. I just have a copy of a site plan.

Vincent Cestone - Is someone here for Mr. Dunn?

Tim Pagones – That's all I got. So without the survey I would say it is

incomplete. It is just a photo copy of, so that would be number 8 and that is incomplete. Diaz, I don't have any dimensions on the plans

Joan Turner - Yeah that's my comment that it is incomplete.

Vincent Cestone - Are you here for Mr. Diaz?

Frank Diaz - Yes

Kim Shewmaker - Oh these are from you? I'm sorry, I couldn't find a name on them. Sorry.

Vincent Cestone - We are not holding the public hearing tonight. We are just getting to put you on the agenda. So you can't present any

Frank Diaz - Okay

Tim Pagones - The last page has some dimensions. 24 feet out, 8 foot jog. They are on there they are just very small. So I can say with that you can at least schedule

Vincent Cestone - October 3

Frank Diaz - Excuse me

Vincent Cestone - You are on for October 3 for a public hearing and until then, you are done

Frank Diaz - Thanks

Vincent Cestone - Langella for completeness also

Tim Pagones - I have it as complete

Joan Turner - Wait a minute. I have a comment here. There is a first page of a building permit application and CO missing. Just bear with me while I find it. Here

Tim Pagones - I have both sides

Joan Turner - That's my only comment on that

Vincent Cestone - You okay Joan

Joan Turner - Yes

Tim Pagones - So it is complete.

Vincent Cestone - Langella is on for October 3rd. Albertson.

Tim Pagones - Is Mr. Watson here

Vincent Cestone - Yes. He is right behind you

Tim Pagones - Okay. Albertson. He had supplied, originally I had some concerns about the application, it didn't match, the numbers on the plan but he faxed me another copy all typed up nice and neat. So it is complete

Vincent Cestone - So that will be the first on October 3rd because we are going to have to have it downstairs because Mr. Albertson

Tim Pagones - Okay

Glennon Watson - Thank you very much

Tim Pagones - October 3rd downstairs

Vincent Cestone - So Glen, when Mr. Albertson comes just bring him into the supervisor's office, not in the supervisor's office the clerk's office and we will do it in there.

Glennon Watson - In the clerk's office. Okay very good. Thank you

Vincent Cestone - Okay, Friedman-Kien

Tim Pagones - I think Mr. Hirsch is here

Mr. Hirsch - Good evening.

Vincent Cestone - This is just for completeness

Tim Pagones - It is for an interpretation and they have everything they need. It is complete for a public hearing

Vincent Cestone - Okay. The 17th of October

Mr. Hirsch - Thank you very much

Tim Pagones - Take the rest of the night off

Joan Turner - Just on a side, the section of the code that you are asking for an interpretation is very narrow. I mean it is just about the revoking of the building

permit

Tim Pagones - Well what happened was he had a permit for access. There was one way back when

Joan Turner - That is not part of the record, it is not in our record

Tim Pagones - It is in the minutes

Joan Turner - I know I read the minutes

Tim Pagones - And what has happened is the permit was pulled, they've appeared before the planning board for access

Joan Turner - I guess my question is was that building permit renewed every year?

Mr. Hirsch - Yes

Joan Turner - From the time Dr. Friedman-Kien

Mr. Hirsch - Yes

Tim Pagones - That may be one of the reasons Mr. Monroe pulled it because he thought maybe it wasn't. There position is is that the permit has been valid all along.

Mr. Hirsch - It is a narrow issue

Joan Turner - It is a very narrow issue

Mr. Hirsch - Once the health department determined the septic plan, it was reapproved. Should the building permit be not issued immediately. That was all that was lacking was a valid health department permit. When that was straightened out I thought it was incumbent on the building inspector to unvoke or reissue the building permit based upon the 1982 Planning Board minutes that it indicated that site access was usable and permissible. So it is a narrow issue.

Joan Turner - Thank you

Mr. Hirsch - Thank you

Victor Carlson - Has there been any more building on that property since 1982

Mr. Hirsch - There is a foundation subsequent to that that was when they started yes. Yes they had started to build.

Victor Carlson - There hasn't been any more subdivisions since then?

Mr. Hirsch - Subdivisions there? Not to my knowledge. It is a question of access off the private road. It is not a subdivision issue. It is access. And he had it. And the Planning Board indicated it was _____, there was a problem with his Health Department permit. He had a building permit. The Health Department permit was suspended, it was then re-issued by the Health Department. Mr. Monroe didn't want to give him back his building permit without sending him to the Planning Board but we think that the minutes show that he had the Planning Board approval and that was valid. It's a legal issue

Tim Pagones - It will all come out in the hearing

Mr. Hirsch - Thanks.

Vincent Cestone - Okay, Wallis

Tim Pagones - I have it down as complete.

Joan Turner - What name?

Tim Pagones – Wallis

Kerry Wallis - I would like to request the 17th

Vincent Cestone - That's where I was going to put you.

Joan Turner - Building permit for the pool. You had a building permit?

Kerry Wallis - Yes

Joan Turner - I don't have one. Do you have one in your file? In your copies Tim?

Tim Pagones – Yes I have a C of O for the oval above ground pool

Joan Turner - I don't have a building permit

Tim Pagones – I guess I figured if he got a CO they should have been a

Joan Turner - But I would be curious to see, well, I know one would assume but you can never make sure of assumptions

Tim Pagones – This is true doctor

Joan Turner - So I would like to see a building permit for the pool

Tim Pagones – Okay

Joan Turner - Do you have the building permit for the pool with you?

Kerry Wallis - No I haven't

Joan Turner - You've got your certificate of occupancy but the front cover should be your building permit too

Kerry Wallis - I have the building permit, this is what I have. I don't think I have the building permit with me

Tim Pagones – I mean the letter reads the building permit having been issued for the here and described project all required inspections having been completed or required documentation had been shed and the project having been found complete and in compliance with all applicable code rules and laws.

Joan Turner - Yeah but I still believe the building permit should be part of the record

Tim Pagones – Okay

Joan Turner - You can just pick one up from Tom Monroe and just fax it

Kerry Wallis - The 17th

Tim Pagones – Yeah the 17th for Public Hearing

Joan Turner - That's great thanks

Vincent Cestone – Cottrell

Tim Pagones – Cottrell I don't see a survey. Is anyone here for Cottrell? I don't see any survey with a proposed

Joan Turner - Architectural drawings? Building Drawings

Tim Pagones – Building permits, a bunch of permits but no survey. There is a Plan A and a Plan B, there is pictures, but there is no survey

Joan Turner - So it is not complete

Tim Pagones – It is incomplete.

Vincent Cestone – Okay back to the Public Hearings. Public Hearing for James Shelley Appeal #737. Good evening. Tell us exactly what you are here for and what you are requesting and what the issues are.

James Shelley - I am requesting a variance. I am looking for 12'. I have 130 foot in the back and the issue is I am using the garage to park a boat and to make the swing with a boat, it is difficult to make the swing. The garage will basically be closer to the center of the property and I won't have to _____ and I would need 12' **(cannot hear applicant with all the ruffling of papers)**

Vincent Cestone – So this structure that you are proposing which is right here

James Shelley - This is the rear of the property

Vincent Cestone – You have the setback from here

James Shelley - Yes I do. I have 30 feet from the rear, that is not an issue.

Vincent Cestone – And you are requesting it on this side

James Shelley - Yes on the south side and it is about 200 feet from the road, so it really doesn't

Lenny Lim - This is more than 30'

James Shelley - It is 20 plus 10. He shows the slope, that's the bank. So this would be 30 feet. This will not be an issue _____.

Lenny Lim - In other words it is 20 straight

James Shelley - No it is 20 plus 10 is 30. They broke it down. 20 and 10. See that? And that is the line for the 20 and that is the line for the 10 so 30 feet from the rear.

Vincent Cestone – Why do they do that?

James Shelley - I think maybe it is the slope issue. This is a topographical map so they are showing that there is a little bit of a slope.

Vincent Cestone – This is the first time I've seen this in the 7 years I've been doing this

James Shelley - My architect is very thorough

Tim Pagonis - Just for the record, he went to the wetlands, they reviewed it and they issued a report.

Joan Turner - The wetlands review we got that permit

James Shelley - Yes, I received that wetlands permit

Joan Turner - You have alternatives on your property if I remember you can do this on the front of your property. You don't need a variance

James Shelley - In the front of the house?

Joan Turner - Yeah. Or on the side where you wouldn't need or require a variance. So alternatives do exist on your property without a variance by positioning it differently or making a smaller building.

James Shelley - You want to see my garage in front of my house?

Joan Turner - I don't want to see it, I am just trying to tell you the alternatives, what you do with your garage is your business not mine. But I am telling you about the alternatives that exist. Accessory uses may include off street parking spaces and private garages. So it says nothing about storage for boats. So you could conceivably build a smaller garage and not be before this board at all. So that is one alternative that you have you also have the alternative of putting it in a different place on your property.

Tim Pagonos - I think way back when there was, we had asked him if you move this, could you just back up and I think he had said you know what I can just back way up but it is very difficult

James Shelley - I have a very long driveway

Tim Pagonos - So like you said there are alternatives but he is looking for a position where he can pull in and go around

Joan Turner - And it could be done even easier if it were done in the front or along side here like that, to reposition it

James Shelley - Well this is my driveway to get to the house, so it can't be on this side of the yard. And if it is over here, it will be in the middle of the front yard

Joan Turner - I am really reluctant to give variances for storages of other than what exists in our code parking spaces and private garages so I think really what I am saying is you might be able to reduce the size and not even need, you can even put it back here, but without the size. The variance runs with the land. So you have this enormous structure back there, this storage can be put to any other use in the future after you sell the property for example.

Tim Pagones - You see by law the board is required to give the smallest variance

Joan Turner - The smallest the most minimal variance

James Shelley - I understand

Tim Pagones - So what Mrs. Turner is saying is can you move it over, can you move it forward

Joan Turner - Can you make it smaller

Tim Pagones - Yeah can you make smaller, what are the other options if you are looking for a variance as opposed to a 20' variance, could you slide it over so they can give you if anything a 10' variance.

Joan Turner - The other concern I have Tim is that there is in these plans somewhere a septic system

Lenny Lim - That's our major concern

Joan Turner - I thought that was illegal to have an accessory building with a private, another septic system

Tim Pagones - I would have to check on that

Joan Turner - I think the Board of Health wrote a letter to the building inspector saying that you couldn't do that

James Shelley - I am just waiting for Ms. Turner to finish

Joan Turner - And, just one more thing, and reading through, so that's another question why do you need a septic system if it is just a garage. And the other thing, what is a trolley crane? That is something you also have

James Shelley - That's something to lift the lawn mower up to store it in the above garage. There is going to be an attic storage so if I need to lift something heavy up there like you don't use your lawn mower, lawn tractor in the winter and then like the kids go-carts or something just to get it upstairs. It is basically you just pull something up and bring it into the top of the garage like the old barns

Joan Turner - And your access to the upstairs attic is how? From stairs

James Shelley - Stairs from the inside

Joan Turner - And you also have an outside door

James Shelley - Well that's where the stuff would be pulled in from.

Joan Turner - Those are my comments on this

Lenny Lim - I'm ready about the septic

James Shelley - Regarding the septic, I am not doing the septic. That, I wanted to have a toilet in there and I was told that it is not going to be worth my time or my money or my effort to do that. And I find that very reasonable, so it is not going to be. So I am not going to do a septic, I am not going to have a toilet. I'll just go to the house.

Lenny Lim - You are looking for a three car garage for two cars and a boat?

James Shelley - Well I have 2 cars now and I have 3 daughters that are going to be driving, they are going to be driving in another five years

Lenny Lim - We all have kids that are driving

Joan Turner - We were also given pictures of the equipment that you keep in the backyard are you planning to store that in your garage

James Shelley - No. The equipment is specifically for the construction project. I am going through an addition on the house right now which is almost complete and that is what the backhoe is for. I dug the foundation myself to save some money

Joan Turner - When I was down there, and I have been there several times, you had some really old derelict car there and some, and it didn't look like it was functioning

James Shelley - They've been removed

Joan Turner - They've been removed

James Shelley - I was planning on restoring that in the future but

Joan Turner - Is that how you got your wetlands permit by removing some of the things that were there

James Shelley - That might have helped. Mr. _____ gave me some things to look for and I took care of them. The palates are _____ pavers and I am using those for a patio that I am building right now and I have some stone left over from stone walls and you know

Lenny Lim - When did you put the fence up? When I was there there was no fence

James Shelley - The fence was there when you were there.

Lenny Lim - I don't remember the fence.

James Shelley - The fence has been in for over two years. Before your first visit

Lenny Lim - There is going to be no septic

James Shelley - No septic

Joan Turner - I just want to reiterate a point, I think for

Lenny Lim - Because if it is 30 by 46 that's almost 1400 square feet for the first floor. He'll have two floors on there. That's a big garage

Vincent Cestone - Tell us about the lay of the land. Is this sloping down, the property, does it slope down towards the water?

James Shelley - From the back of the house, which is here, it's just about level with just enough pitch for drainage. And from down here it steps down and again it is level. At the end of this bank where I have this _____ fence that Mr. _____ asked me to put up. It slopes down. So I am well above any wetlands or any flood zones or anything. It's fairly level property in the back.

Joan Turner - The square footage of the building?

Lenny Lim - Who just asked you to put a fence up?

James Shelley - Mr. _____, the wetlands advisor

Lenny Lim - When did he ask you

James Shelley - It was required for the wetlands permit

Joan Turner - The point that I wanted to underline again for all of us to consider is number 46(b) which says accessory uses may include off street parking spaces and private garages. And this exceeds that part of the code in my opinion. And that's my comments on this.

Vincent Cestone - Does anyone have anything to say? Anyone in the audience wish to speak on this?

Matt Mastrantone - My name is Matt Mastrantone

Vincent Cestone - Yes

Matt Mastrantone - From the wetlands committee. And I am here to say that we never reviewed this. We

Lenny Lim - I'm sorry, can you get a little closer please

Matt Mastrantone - We never reviewed this, the committee. The site visit, we called the building department and said there are a number of junk cars here, bodies off the trucks, a forklift, a backhoe, there was material deposited in the wetland area, no silt fence, Mr. Shelley had done some of this stuff prior to the meeting, at the meeting and left it up to the inspector to check the building department and do another site visit and whether there were any code violations or not and Mr. _____ took it upon himself to issue the wetlands permit. It also comes under chapter 90 of the flood plane which is something Tom Monroe covers. It is a low lying area. If you had a storm like Hurricane Floyd you would have 2 feet of water in there. Where you here for Hurricane Floyd?

James Shelley - I don't remember

Matt Mastrantone - My brother had the house next door. They were flooded. That's all I have to say.

Joan Turner - So the person who issued the wetlands after these derelict cars and stuff were moved, went to Tom Monroe and Tom said there were no violations. Was Tom saying there were no violations there?

Matt Mastrantone - This is just what David told me.

Joan Turner - In your opinion, the wetlands had been intruded upon when you did a site visit?

Matt Mastrantone - He had 70 yards of fill in there

Joan Turner - 70 yards of fill in the wetland

Matt Mastrantone - yeah. With no silt fence. It was put up after I called the building department. And some of the other, there were other fill in there that had grass growing in it. There was junked trucks, forklifts, junked backhoe, 2 truck bodies, tons of building material, I mean he is doing an addition on his house. It looks like stuff he has been saving for years. He also told me at the meeting that he rents space from his company Jimmy Steel at Row Hook Road and I know he used to be there and I stopped by and I see the pool guy who rents it now and he said he is a professional fireman now and does his business part time out of his home.

James Shelley - Is that what he told you?

Matt Mastrantone - Yeah

James Shelley - Really?

Matt Mastrantone - Go down and check it out.

James Shelley - Yeah. I will give him my landlord's number. I am still renting it. I can show you cancelled rent checks as of this month that I am still renting. So Mr. Mastrantone has a lot to say and he is

Matt Mastrantone - I'm in this business too

James Shelley - Can I talk now? Can I say something? Can you be quiet for a minute?

Matt Mastrantone - I'm not flying under the radar doing business out of my house

James Shelley - And neither am I and Mr. Mastrantone has the time line a little confused. When I came for my wetlands permit, Mr. Krutzel told me what I needed to do. And I started putting up the silt fence to keep the silt out of the wetlands. And I had the silt fence half way completed and Mr. Mastrantone did a visit to my property. And he called Dave Krutzel and he said I don't know what he is doing, this is this and this is that, Mr. Krutzel called me and I said Mr. Krutzel I spoke to you last week and I told you that I was working on it and I was half way done with the fence and he said yes you did say that. And I said this weekend I finished the fence and it would have been the weekend that Matt came to my house. So there has been no fill deposited in the wetlands and that has been stated from Dave Krutzel the wetlands advisor. So, Mr. Mastrantone has a lot to say and he is very confused

Vincent Cestone - Why don't you let him finish and then you can talk

James Shelley - Now Mr. Krutzel said at the wetlands meeting that I had fulfilled any requirements that he asked me and it made him happy and I have a valid wetlands permit.

Vincent Cestone - Sir?

Matt Mastrantone - Okay first of all you don't need a silt fence until you begin construction which you don't begin until you get a wetlands variance. And that comes out and gets inspected before you begin any construction. You don't put it up after you put all the fill in there. Is that correct?

James Shelley - That's partially right.

Lenny Lim - You put the fill in before the fence?

James Shelley - No no no

Lenny Lim - When did the fill go in?

James Shelley - The fill did not go in the wetlands okay. It is in the 100 foot buffer zone. Which is not the wetlands. The fill came from the addition of my house when I dug the foundation, I dug out the fill and I piled the fill in the back. It was about 20 feet from the wetlands. Now I had the pile of dirt. I didn't truck it away because when you finish the foundation you need the back fill. You need to have a certain amount of dirt. So I am not going to truck it away and then have to buy it and truck it in. So Mr. Krutzel says you are not supposed to have a pile of dirt in the 100 foot buffer zone. I said fine. He said move the pile of dirt, put up the fence and that is all I require. I moved the pile of dirt. I told him I was keeping a little bit of dirt to finish around the foundation which I am doing now and now the pile of dirt, yes it was high. It was not in the wetlands and Mr. Krutzel will tell you that and now the pile of dirt is down to here because I took away all the excess dirt that I am not going to need for my own.

Joan Turner - Now you remember that we were down there for site visits

James Shelley - Yes

Joan Turner - And when we were there you hadn't even started the addition on your house or anything. After we left your site visit, we went to your neighbor to the south of you and we walked his property line and back to the wetlands back there and this property line if you recall Lenny slopes down like this to the water, to the wetland. Your property has an abrupt embankment like this. Instead of naturally sloping down like your neighbor's did, it was abruptly embanked so that somehow something had been done to that that it was no longer a natural slope down to the. So you have done something there.

James Shelley - If you follow the property to the next lot, it is even more abrupt and more steep. It goes from Mrs. Richards which is flowing like this and then mine starts to bank up and Matt's brother's old house same way. It just continues up like this and then when it gets to the Langella's who was supposed to be here tonight, it gets even higher. That's the lay of the land.

Joan Turner - Well those are not my issues. My issues are really of the size of your accessory structure and the fact that according to our code which I am going to stick to, it is more than a private garage. So I will rest my case on that.

Vincent Cestone - I don't know about you but I want to pay a visit again

Joan Turner - You want to do what?

Vincent Cestone - I want to visit again

Lenny Lim - I agree with Joan. We've walked on both sides of the property, it looked like something was done. I can't prove it, I don't know happened, but it looked like something was done. Like something was brought in there. That's why we both went to the right and went to the left and said hold on, this just doesn't look like the rest of the property.

Joan Turner - But the issue is now he has a valid wetlands so it supercedes what we're thinking. So now we are really forced to consider this garage, this building. What do you think of this building? What's the potential for its use? Are there alternatives? There are alternatives. So we are now really focused down on his plans because he has his wetlands. What happened is history.

Lenny Lim - This isn't quite the same but I it is an accessory building. If you look at it, I mean, you are going to have two floors?

James Shelley - Yes storage above

Lenny Lim - Same footprints, the second floor as the first

James Shelley - Yes. It will be less square footage upstairs because it has a _____ roof and you lose a little bit.

Lenny Lim - So you are talking 26 or 28 hundred square feet. That's an awful big accessory building for a garage. It is almost commercial like in its size. I have a problem also with the accessory building being this large.

Victor Carlson - Does this board have a right to give a variance? I thought this board could only give a variance to the owner of the property.

Joan Turner - He is the owner

Victor Carlson - I thought you said you were a tenant

Lenny Lim - At another place where he stores his equipment

Joan Turner - Just remember what we've always said about properties, we build to suit the property. That was your claim many many times. You build to suit the property. Build the building to suit the property.

Victor Carlson - As long as he owns it

Joan Turner - Yeah

Vincent Cestone - Well what I want to do is not close the public and take a straw poll and I want to take another site visit

Tim Pagonos - I guess I would suggest, the board has some concerns of the size of the building and the building location. They are going to take another site visit or at least some of the members do. I think you can feel how they are going to vote. Do you want to come back with maybe a potential alternative site, move it over, reduce the size a little bit, that's up to you. I would say that if you are going to change any plans make sure that the new plans show, don't have any septic stuff on it. Because what happens is the board always says they are going to give you a variance and you are going to build it according to your plans.

Joan Turner - Right

Tim Pagonos - If the plans show a septic and a bathroom

James Shelley - I understand

Joan Turner - But if he reduces the size of the building, he doesn't need to come before us for a variance

Vincent Cestone – exactly

Tim Pagonos - Well he might reduce it and still want to keep it on that side because I think part of it being there is being able to turn it around as opposed to backing straight back in his driveway.

Joan Turner - I mean is this board authorized to give variances for boats. Is that equivalent, am I misunderstanding our code? Tell me if I am wrong.

Tim Pagonos - He has the right to come up with an alternatives to turn it around. You are giving a variance for the structure.

Joan Turner - Okay

Victor Carlson - If he changes the structure he would have to come back here

Tim Pagonos - Well he would have to. They want to go back and look at it, I think you can get the tenor of some of the board members, I would think that if it stays this way there is a good chance you are going to be denied. So do you want to change your plans? If you do change your plans, certainly take the septic out and the bathroom out, come back. What I would suggest is putting it on for October 17th, you can do your site visits and give you some time to change

your plans. You don't have to change your plans. If you want to say this is it. So I would suggest not taking a straw poll. I think he can tell how some of you feel. Put it on for October 17th that gives us some time. If you do want to change your plans, let the board know if you want more time.

Vincent Cestone – Is there any one else who wishes to speak on this? With that, I am going to continue it

Tim Pagones - Either the 3rd or the 17th

Vincent Cestone – It's your choice. What do you prefer?

James Shelley - The 3rd will be fine

Vincent Cestone – That's okay?

James Shelley - Yeah

Tim Pagones - October 3rd

Vincent Cestone – Any old business that we wish to discuss?

Joan Turner - Just a question on the one that was removed on the interpretation on Pielmeier

Tim Pagones - Yes

Joan Turner - So the property has been sold

Tim Pagones - The property has been sold

Joan Turner - The building permit is null and void. It does not continue on to the new owner or anything like that

Tim Pagones - No

Joan Turner - So that is the end of that

Tim Pagones - Right. You had a letter from Mr. Whyatt saying adjourn it and then you got another letter saying you know what it has sold so our issue is now moot

Lenny Lim - Now didn't we get a letter another time that said it was in contract and he stood right here and almost yelled at us

Tim Pagones - Well I guess it sold. There is a letter from the applicant saying

withdraw our appeal. You had another file, Gates.

Vincent Cestone - Which was pulled.

Tim Pagones - I saw the letter. I don't know, it was a letter from Tina downstairs

Matthew Mastrantone - Did you skip over mine? Number 9

Tim Pagones - We skipped over that. That I thought was going on a different night.

Vincent Cestone - This is postponed Tim at the request of the town

Matthew Mastrantone - There was a miscommunication of notification to the neighbors and things. That's what I was told

Vincent Cestone - But does the town still want to have it temporarily withdrawn, I mean postponed?

David Brower - I don't know, you would have to speak to

(Turning tape over. May have lost some dialogue)

David Brower - ...like I said, I just found out on Thursday.

Matthew Mastrantone - There are two parts to this. One part is for a variance for expansion and the other part is to recertify the variance that is already on file that I have a standing violation on all of a sudden

David Brower - Like I said, they just asked me, I called you and asked

Tim Pagones - When do you want to put it on for? Next week?

Vincent Cestone - Yeah next week

Tim Pagones - Okay. For completeness

Vincent Cestone - Sorry about the miscommunication. I called our attorney and asked him that

Matthew Mastrantone - You know I have to tell you, I checked with the office here at 1:00 this afternoon and it was still on

Vincent Cestone - Tim, have you looked at his application?

Tim Pagones - No I have not because I knew it was going to be adjourned.

Joan Turner - The other thing I wanted to ask you about Tim was the Old Albany Post Road subdivision where now we get this letter from this legal firm

Tim Pagones – For Tuana

Joan Turner - Yes

Tim Pagones – I read it briefly. It was really addressed to Mr. Monroe so I would think that either Mr. Monroe or Mr. Doyle will get back to the attorney as to why and what justification. But I mean for all intents purposes it has been adjourned by the applicant until they ask to come back

Joan Turner - But Mr. Monroe again has exceeded his authority by interpreting. So again we are getting another sticky wicket as they say in England or Australia.

David Brower - What happened to #11 Langella?

Tim Pagones – That was complete

Kim Shewmaker - Public hearing for October 3rd

Vincent Cestone - I'd entertain a 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: October 3, 2005

Respectfully submitted,

Kim Shewmaker
Secretary