

ZONING BOARD OF APPEALS

February 25, 2008

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January, 28, 2008, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

PRESENT:	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Bill Flaherty	-	Member
	Robert Dee	-	Member
	Paula Clair	-	Member
	Adam Rodd	-	Counsel

ABSENT:

Mr. Carlucci - Good evening.

Vincent Cestone - So tell us what this is all about. I just got your letter now.

Mr. Carlucci - Okay. The first thing that I wanted to point out is that there are two drawings. One is the as built condition of the property now as the pool stands. The second contains three alternates. The first one in the letter that I sent you asked you to disregard alternate "A". It was an error in putting it on there. Essentially alternate "A" was just simply the engineer's misunderstanding that we were just going to be proposing a new fence along the property line. So essentially ignore alternate "A". Alternate "B" provides for a rear set back of 3 feet 8 inches along the back property line. Essentially that runs the length of the pool from low end, shallow end to deeper end. What it also provides is the elimination of approximately 2 ½ feet of the pool basically putting in a plate at that point, which essentially is to take the steps out of the pool, put a plate in, back fill that and repave in that area.

Vincent Cestone - This is not a concrete block pool. It is basically a pool liner and

Mr. Carlucci - No it is metal. It is a metal pool. The inside of the pool is consisting of metal on the sides with a concrete bottom

Vincent Cestone - Okay

Mr. Carlucci - So taking the steps out, installing a plate at that point, metal tie backs, concrete, back fill in that area, essentially eliminating as I said 2 ½ feet of the pool. Requesting under that particular alternate a 5 ½ foot right side setback. With a new fence in conformance with the current New York State requirements for fencing in pools.

Vincent Cestone - You said 5 ½ feet but it says 9 ½ feet.

Mr. Carlucci - Well it is 9 ½ feet from the inside edge of the pool to the property line. The requirements is a 15 foot setback so essentially we would need 5 ½ foot variance

Vincent Cestone - Oh okay

Mr. Carlucci - That is the 9 ½ feet.

Adam Rodd - So on the side yard setback you are proposing 9 ½ feet

Mr. Carlucci - No it's a 5 ½ foot variance. The 9 ½

Adam Rodd - I know, I am just saying it is going to be set back how far from the side yard property line

Mr. Carlucci - 9 ½ feet

Adam Rodd - okay. And on the rear yard

Mr. Carlucci - the rear yard it is 11.4 feet. And if you look at this drawing here you see the 11.4 feet which would require the 3 feet 8 inch rear set back variance.

Adam Rodd - Okay. Just so we are clear. When you say 9.5 that .5 is that inches or

Mr. Carlucci - My understanding is that .5 is a half a foot. My understanding is the 9.5 is the 9 ½ feet. The .5 being a half a foot.

Adam Rodd - Okay

Robert Dee - The 11.4 that is not to the concrete deck, that's to the inside liner of the pool

Mr. Carlucci - Correct. Where the water starts essentially. And alternate "C", and again we were trying to have a situation where we actually get some type of variance, the alternate "C" which is approximately \$12,000 to \$15,000 more and I

will explain that in a minute, essentially is a request for the same rear setback the 3 feet 8 inches across the back. The right side setback essentially requires a 5 inch variance and essentially what it is if you remember the configuration of the pool at that end it kind of comes to a point and then comes in like that and the reason we couldn't go to the exact 15 is because at that notch is where they told us that they would have to put that steel plate in to go across the pool to essentially make that the right side of the pool. So they put a plate in at that junction across the pool, concrete at the bottom, ties back and back fill in that entire area essentially and repave on top. Essentially looking for a 5 inch right side setback, again with the fencing around the pool in those areas where it doesn't conform to what the Code requires which is a 4 foot fence across the side of the pool and along the right side to cut off the pool from that property owner's property

Lenny Lim - Absolutely. There is no fence there at all right now

Mr. Carlucci - And the proposals have both the proposed 4 foot high fence on the drawings. Both in alternate "B" and alternate "C"

Robert Dee - You have to back fill, are you going to cover the top of that backfill with concrete to match the deck?

Mr. Carlucci - No I think it would probably be concrete to match the walkway that goes around the pool. And again because of the additional fill required, because of the additional work required for the length of that plate

Vincent Cestone - What are you talking about total width of the pool

Mr. Carlucci - I believe

Vincent Cestone - It doesn't have to be exact, just ball park

Mr. Carlucci - I believe the width of the pool is probably 18 feet maybe

Vincent Cestone - Oh, it's pretty wide

Robert Dee - It is a good size pool

Vincent Cestone - I am talking about where the plate would be

Mr. Carlucci - I think it is about 18 feet from end to the other.

Vincent Cestone - You know there is another option instead of spending money on the plate. My neighbor, I just happened to be talking to my neighbor and he has an in-ground pool, what he did is, and his not really a whole pool. What they did was they basically cut a hole and put a liner in to the hole and that might be a

cheaper option

Mr. Carlucci - I don't know whether it would support because of the volume of the water that is going to be in the pool. It is not only the length but the depth. That's a lot of water, pressure to be held up simply by a vinyl liner

Vincent Cestone - His is a pretty large pool.

Mr. Carlucci - I mean we essentially went to those companies and said look this is what we are faced with in the event we need to do this. We need to try and make this as economical as possible. And from what I understand it is the load on that side by the water that requires essentially the same type of metal that goes around the entire length of the pool. And it gets filled and concrete

Vincent Cestone - Any other questions

Bill Flaherty - What are your cost options here on "A", "B" and "C"

Mr. Carlucci - Well "A" again is essentially off the table. We don't want the board, essentially "A" is just saying please give us what we already requested in the past and was denied. We are not looking at that again. The cost, approximate cost for alternate "B", take the steps out, to put the smaller plate in, to back fill and to concrete I believe is about \$4,000 or \$5,000. And essentially Option "C" to put that bigger plate in and back fill, put the concrete in, put the decking on is approximately \$12,000 to \$15,000.

Bill Flaherty - (Cannot hear what is being said)... The variance you need for alternate C

Mr. Carlucci - More than the pool cost 17 years ago but not more than a new pool

Robert Dee - What would the cost be of getting rid of the pool all together

Mr. Carlucci - I never got a proposal on that at this point. I know it's a lot of back fill.

Robert Dee - We've been dealing with this for 17 years

Mr. Carlucci - Well again essentially as set forth if you read the letter, it was an issue for the first four years. I know there were issues. And then things kind of went silent after that. As I mentioned in my letter, as far as my grandmother was concerned she was told inappropriately by my father don't worry everything is taken care of and then essentially 13 years later a summons came from the Town Court

Lenny Lim - I just think that alternate "C" actually meets all the requirements that we wouldn't go after the side setbacks, I mean the rear setbacks. And now he only needs a variance of a few inches. Isn't one of the things we have to do is give the smallest variance possible. I think alternate "C" is _____ except maybe the height of the fence. What do you think?

Mr. Carlucci - As far as the fence goes, whatever Code is. From what I understand it is 4. But whatever the Code is, if it is not 4, it will be whatever the Code is.

Vincent Cestone - Tom, not to put you on the spot,

Tom Monroe - But

Vincent Cestone - Fence around the pool

Tom Monroe - 4 feet

Lenny Lim - minimum

Tom Monroe - minimum

Adam Rodd - What type of fencing are you proposing?

Mr. Carlucci - Whatever is in compliance with code. I mean we haven't gotten to the point where we went and got pricing for the fence. Regardless of what needs to be done with the dimensions of the pool, that fence has to go up. Whether it is a vinyl or a stockade fence like what already exists on a portion of the pool,

Vincent Cestone - Any more questions from the board? Anyone in the audience wish to speak? Do you want to close and have a discussion or do you want to have a discussion and then close? It is up to the board? Anyone have a preference?

Bill Flaherty - Well which of these proposals are we going to agree on

Vincent Cestone - Well that's what I want to discuss. I want as many of us to be in agreement as possible so we have majority

Mr. Carlucci - And again my request is to consider alternate "B" but to the extent that the board doesn't agree, we don't want to lose the pool

Bill Flaherty - I would go along with absolute minimum. And I think it is alternate "C"

Lenny Lim - You are correct on that Bill.

Vincent Cestone - Do you have anything Bob

Robert Dee - Well seeing this has been going on for 17 years, I would go with C. I wouldn't go anything less than that. I realize the expense involved but again

Paula Clair - I am undecided.

Vincent Cestone - Well with that unless anybody else has something to add, I will make a motion to close the public hearing. Do I have a second

Bill Flaherty - I'll second

Vincent Cestone - All those in favor?

All Board Members – aye

Vincent Cestone - Do we want to do a straw poll or do you want to wait? I make a motion for a straw poll do I have second

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone - Len?

Lenny Lim - I vote for Plan C

Vincent Cestone - Bob?

Robert Dee - I would go with C because it is the least variance.

Vincent Cestone - Bill?

Bill Flaherty - I vote in favor of Alternate plan C

Vincent Cestone - Paula? You can abstain if you'd like.

Paula Clair - Yeah okay. Well, yeah I'll go with C. But I would consider Alternate B if that was reasonable in terms of protecting any future owners in the houses adjacent. But if that were not sufficient, then I guess will confer with some of the people who have been on the board longer than me and I will go along with C

Vincent Cestone - I will be agreeable to either B or C but I will go with C. So with that, the attorney now has instructions on how we would vote and he can write the resolution.

Bill Flaherty - In the resolution, can we put a time limit on this project

Adam Rodd - What do you mean

Bill Flaherty - Work to be completed by such and such date

Adam Rodd - I will double check the code but I am pretty sure that the Code provides that, I think Tom can speak to this, I think it is one year from the grant of the permit that they have to do construction otherwise the variance lapses and they, and it is gone. And if they want it, they have to reapply

Bill Flaherty - Can we make that more specific in the write up that we have

Adam Rodd - Well it is in the code. I mean technically you can do it on every single resolution, it is one year by code that they have to build or else the variance is gone

Bill Flaherty - The reason I am a little bit squeamish about this is because that this issue has been on the table now for at least 8 months and 17 years.

Vincent Cestone - What happens if in a year it is not done it is null and void and the Code Enforcer will go after them

Tom Monroe - We won't wait 17 years this time Bill

Bill Flaherty - I hope not

Vincent Cestone - So hopefully next meeting or the meeting after

Mr. Carlucci - Do I come to that

Vincent Cestone - You don't have to

Mr. Carlucci - Okay

Vincent Cestone - You can call downstairs to the clerk's office and they can tell you what the outcome was or you are more than welcome to come if you want

Mr. Carlucci - Okay. Thank you everyone. You know just to double check, and I know Tom is familiar with Badey and Watson's drawings but as somebody had mentioned, I think it was you Adam, who had talked about whether that 9, oh never mind. It is basically 5 inches. I take it back, because I was referring to the

other alternate. Okay. Thank you.

Vincent Cestone - Review of minutes of January 28th. Do we have any corrections

Paula Clair - On page 2 the quote from Joe Giachinta, I think there was a little bit of a typo there. It says it was actually the neighbor, I think there should be a period there.

Kim Shewmaker - Okay

Vincent Cestone - Any other corrections? Okay, I'll make a motion to accept the minutes. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Minutes of February 11th, any corrections on those?

Paula Clair - Oh I'm sorry, that correction was for February 11th not January 28th.

Vincent Cestone - I'll make a motion to accept the minutes of February 11th

Bill Flaherty - Second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - Okay. I'm going to go to reviews for completeness. Ribeiros Construction. Is there anybody here for that? Adam did you have a chance to look at it?

Adam Rodd - Yep. The application appears to be complete. They are asking for two variances. They want to construct a single family dwelling on what I understand a currently vacant lot. They lack the required 80 feet of road frontage and they are proposing a street line setback of looks like 11 ½ feet where 35 is required.

Lenny Lim - Front and side setbacks

Adam Rodd - Well frontage, street frontage and street setback.

Vincent Cestone - Let's put it on for

Robert Dee - I just have one question on the application

Vincent Cestone - Sure

Robert Dee - On the questions that the board, the factors to be considered by the board, number 5 says the variance requested as a result of self created hardship. It says was there a need for the variance when you purchased the property and he answered no. But the deed here is dated July 2005 that is put in here when he purchased the property. In 2005 and today the zoning code is the same. So I think no is not the correct answer to that question. So I would hold back the application with the answer to the question

Adam Rodd - Well, it is not a basis to, when you say hold back the application, he can still, this is just a review for completeness. He can certainly address it. There is no reason not to have a public hearing on it. You can't deny him a public hearing

Robert Dee - I just wouldn't consider it complete since it has the wrong answer to the question. That's why I say it is not complete

Adam Rodd - Well, I think, I would imagine and I don't know if Tom can speak to this, I think his position is going to be I didn't create the lot in that size.

Robert Dee - Well that's not what it says. The question is

Adam Rodd - I think that is probably, I am guessing, I can't read his mind and what I am saying is it is not a reason not to have a hearing. On lots of applications when they fill out the five factors, I am sure there are going to be instances where you disagree with all the reasons they give. Or you may agree with some of the reasons. Or give and take between the two. But all I am suggesting is that you can still have the public hearing and you don't have to agree with his responses.

Robert Dee - I don't consider it complete.

Vincent Cestone - The 24th is the day after Easter. No one is going anywhere are they?

Adam Rodd - I think we are meeting the 10th.

Vincent Cestone - Right

Adam Rodd - So you want to have two meetings in March

Vincent Cestone - Yes

Adam Rodd - Okay

Vincent Cestone - Because I think with County Lines we can put that to rest at the next meeting.

Adam Rodd - On the 10th

Vincent Cestone - And if we have to go a little bit longer on that public hearing it might be well worth it

Adam Rodd - Fine

Vincent Cestone - Now next

Ande Merante - I just want to ask about Ribeiros Construction. Is that the one at the very end of Skylar Lane right next to the brook

Vincent Cestone - I think so

Tom Monroe - No

Adam Rodd - This is 55 Steuben Road

Tom Monroe - That is 93 Steuben

Ande Merante - Oh okay

Vincent Cestone - Next on the agenda is Andrew and Susan Homola review for completeness.

Adam Rodd - As you know on this application, there is also on this property that is, we also referred the matter to the Planning Board for a report. So I would suggest on this one, which I believe is a proposed construction of a garage with an insufficient side yard setback that we put both the application for an accessory apartment, which is what we referred to the Planning Board and the application for the garage on on the same date. I think it would be a lot easier. So perhaps the 24th.

Kim Shewmaker - We didn't get anything back from the Planning Board yet though. Did you get a response back?

Vincent Cestone - I have information from Planning that we should have their recommendation before the next meeting

Kim Shewmaker - Okay.

Vincent Cestone - Okay that will be on for the 24th. Can I help you?

Susan Homola - No that was me

Vincent Cestone - That was you. You are on for a public hearing on the 24th

Susan Homola - Okay

Vincent Cestone - You are all set

Susan Homola - Thank you

Vincent Cestone - Okay for old business I was thinking that it might be appropriate to discuss County Line Equities a little bit. We've gotten a lot of information and a lot of opinions from the people who live around there. What is the board's feeling? Are we ready to talk about it or would you rather wait?

Adam Rodd - It is not an agenda item. My recommendation is that they are on for the 10th of March, it appears and it is up to the board as to whether or not you want more information or not as of the 10th, if you don't, then at that time it might be appropriate to close it. I can tell you that from what I know from the Planning Board, on the 10th I don't think the Board is going to be in a position where it can vote on that date as to whether to grant or deny because SEQR will not be completed by the Planning Board I think prior to the 10th. And until the Planning Board finishes SEQR, the board cannot act on it. So what I am saying is that we can possibly close this on the 10th if you think it is appropriate but the actual decision will have to come afterwards.

Vincent Cestone - Okay. Are we in violation of anything if we talk about it tonight?

Adam Rodd - I don't recommend that we do because it is not an agenda item.

Vincent Cestone - Can we discuss it under old business? Tell me what you think

Adam Rodd - You can go into a closed session if you have legal concerns that you want to discuss with counsel. That's fine. But in terms of public deliberations because it is not an agenda item and no one is here to discuss it, it is not noticed, I don't recommend that you do that.

Vincent Cestone - Okay. In that case, I would withdraw that and our final item on the agenda is Arthur Lehman and Mary Gherty resolution.

Adam Rodd - Okay. The Lehman Gherty reads in pertinent part as follows: The Philipstown Zoning Board of Appeals conducted a public hearing on November 26, 2007 and January 28, 2008 to hear the appeal of the applicants Arthur Lehman and Mary Gherty from the denial of their request to construct a 46 foot by 34 foot garage on their property located at 155 East Mountain Road North, Cold Spring, New York. The subject building permit was denied because the applicants' proposed garage encroached upon the required 40 foot setback from the street line as required pursuant to Section 175-32, Schedule B, item (6)(b). At a public meeting of the board on January 28, 2008, and upon all discussion and testimony that preceded it, site visits made by individual Board members and a review of all submissions and proof submitted to this Board, Vincent Cestone made a motion seconded by Lenny Lim as follows: Be it Resolved that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, determines and finds that the balancing of equities weighs in favor of granting the appeal of Arthur Lehman and Mary Gherty from the denial of their request for a building permit to construct a 46 foot by 34 foot garage located at 155 East Mountain Road North, Cold Spring, New York, despite the fact that the proposed garage shall be setback from the street line by a distance of 12 feet 3 inches whereas Section 175-32, Schedule B, Item (6)(b) requires a minimum setback of 40 feet. The granting of the subject area variance, with the following conditions, for the reasons set forth herein, shall constitute findings based on the factors set forth in Town Law 267-b. (1) the proposed 46 foot by 34 foot garage shall maintain a setback from the street line of 12 feet 3 inches (2) the proposed 46 foot by 34 foot garage shall not exceed a height of 25 feet 9 inches (3) the proposed 46 foot by 34 foot garage shall be constructed in accordance with the building plans presented to this Board which said plans include the following documents prepared by KM Studio: (a) floor plans and roof plan dated June 6, 2007 (b) building elevations dated June 25, 2007, and (c) building section dated June 25, 2007. (4) the subject 46 foot by 34 foot garage shall not be used for residential dwelling purposes (5) the variance granted by this Resolution shall not be further enlarged or extended except in accordance with all provisions with the Philipstown Code, and shall remain in the configuration as shown on the plans for reconstruction submitted by this Board. No further enlargement, reconfiguration or extension of the proposed 46 foot by 34 foot garage is authorized without Zoning Board approval.

Vincent Cestone - Any additional conditions? Anyone? If not, I will make a motion to accept the resolution as read. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - aye

Vincent Cestone - Roll call vote. Paula?

Paula Clair - Yes I approve

Vincent Cestone - Bill

Bill Flaherty - I vote in favor

Vincent Cestone - Len?

Lenny Lim - I vote in favor

Robert Dee - I vote in favor

Vincent Cestone - So do I. With that unless there is any old or new business I will 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: 3/10/08

Respectfully submitted,

Kim Shewmaker
Secretary