

ZONING BOARD OF APPEALS

May 14, 2007

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, May 14, 2007, 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:

hearing. Is Mr. Benjamin here

John Benjamin - Yes

Vincent Cestone - If you would just come up and explain to us what you are doing and what the issues are

John Benjamin - Okay. I think I gave you a complete packet. I brought these along just to make it a little more visible. I don't know if you want to look at all these. But the yellow part here, this is the first floor, we want to add on to the kitchen 5 ½ by 10 feet. The second floor will give us another 5 foot width on the second floor.

Vincent Cestone - Okay. So then the yellow area is what

John Benjamin - We are adding. Yes. It is a very very old house and it has low ceilings especially on the second floor and we want to take the whole second floor off, raise the roof almost a foot and a half and pull it out on the side 5 ½ feet and by doing that we are creating between 1 ½ and 2 feet too close to our neighbors side.

Lenny Lim - When was your house built?

John Benjamin - In about 1830

Lenny Lim - Oh pre-existing nonconforming

John Benjamin - And it was adjoining my mother's property. So over the years we did a boundary adjustment under Mr. Watson's advice to make sure we had our setbacks and when we went to look at the plans the other day, we realized that lo and behold, it was just a land swap with my mother at the time, we miscalculated, not we but I use the collective we, and _____. What has happened in the interim is my mother has passed away and the property has passed on to another family. I spoke with them and gave them a copy of all the plans. You guys sent them a notice. I don't think I see them here, I don't think there is any objection from them.

Vincent Cestone - So how many feet are you asking for?

John Benjamin - A foot and a half

Vincent Cestone - Okay

Lenny Lim - Yeah but he is also going higher

John Benjamin - Well just, if you look at this here, I can show you on this. It is 5 ½ feet wider and going up here. This is the existing here.

Lenny Lim - How much higher is the roof line going also?

John Benjamin - About a foot and a half

Lenny Lim - No. I need not an about, do you have an exact measurement

John Benjamin - A foot and a half

Vincent Cestone - Because we need exact

John Benjamin - These are to scale. We are well within the building height

Lenny Lim - Yeah but you are pre-existing nonconforming

Vincent Cestone - As soon as your property becomes nonconforming, it doesn't matter. Everything becomes an issue. And the board has to approve everything. Now that your house, if we approve you, any changes you make in the future you would have to come back again

John Benjamin - I understand

Lenny Lim - Vinnie, here is my problem. He is raising everything but I have no dimensions.

John Benjamin - Well the scale is on the drawing

Lenny Lim - Where is the height

John Benjamin - You have another copy that looks like this. It is all ¼ inch to a foot.

Lenny Lim - This is my package

John Benjamin - I gave you guys more

Lenny Lim - It doesn't show

John Benjamin - I gave you another set of drawings

Lenny Lim - I don't have a set of drawings with a height measurements, do you have heights on any of these drawings

Vincent Cestone - No

Lenny Lim - No. So there is no measurements

Vincent Cestone - Do you have a set of architectural drawings?

John Benjamin - These are them. I am sure

Vincent Cestone - I mean building plans

John Benjamin - No. We haven't gotten them. These are preliminary plans for your approval from the architect. I know I gave you a set of stamped plans

Adam Rodd - Just so the record is clear with your addition

John Benjamin - Yes sir

Adam Rodd - Are you increasing the height, the overall height of the structure

John Benjamin - Yes by about maybe 2 feet

Lenny Lim - We need dimensions. He has already mentioned two heights.

John Benjamin - Well I'll say 2 feet

Lenny Lim - Sir, it has to be exact

Vincent Cestone - You say that and it gets put in the resolution. You won't be able to go more than two feet higher than you are today. So it can't be two feet one inch.

John Benjamin - Does anybody have a scale on them?

Vincent Cestone - No

John Benjamin - Let's say 2 feet then

Vincent Cestone – what I am going to suggest we do is we can continue working with the public hearing today and we will keep it open and at the next meeting you give us exact measurements of height and width of that structure. And we'll put this puppy to bed

John Benjamin - Just once again, I have

Vincent Cestone - We need exact measurements

John Benjamin - We can't scale off of these

Lenny Lim – no

John Benjamin - What am I doing?

Vincent Cestone - Wait just wait. Hold on. Is there any questions from the board?

Lenny Lim - Until we get measurements and heights, another Cooper

Vincent Cestone - That's correct. Bob, do you have anything

Robert Dee - No. I would say you would have to have the measurements just so we know.

Lenny Lim - So we can make some kind of determination on this

John Benjamin - Architecturals approved by the

Vincent Cestone - Yeah but that is footprint.

John Benjamin - Here is the elevation

Vincent Cestone - Does it have a height on it?

John Benjamin - No

Lenny Lim - See there is no measurements

John Benjamin - Okay. Where am I at here

Bill Flaherty - I would just like to say you know that this is a continuation with applicants who come before the board. They come to us with incomplete measurements and particularly height. Height maximums is 40 feet in the area. I don't know what the actual height of that building would be without the addition but I think Badey & Watson with the number of years experience they have coming in here continuously when they neglect to put the height measurement on these drawings. I think we should advise Tom Monroe to speak to him

Vincent Cestone - I have already done it a couple of times

Bill Flaherty - Pardon

Vincent Cestone - I have already done it a couple of times

Bill Flaherty - You have

Vincent Cestone - Yeah

Bill Flaherty - Okay. And it is to no avail

Vincent Cestone - No

Bill Flaherty - Okay

Vincent Cestone - Which means that citizens like Mr. Benjamin here make more than one trip to the zoning board. Because I don't think the board, and I am speaking for myself, but I don't think the board is opposed to what you are proposing it is just that we, in previous resolutions have had issues that have resulted in lawsuits. Not meaning that it would be with yours but we want to make sure, in cases like ours, cross the t's and dot the l's.

Lenny Lim - Do we just need the height measurement? What else do you want?

Vincent Cestone - Do we have a good measurement

Lenny Lim - No. we don't have width, anything.

John Benjamin - We were requested I know by your lawyer to give dimensions on the setbacks in inches

Vincent Cestone - Yes that we do have

John Benjamin - That has never been done in the history of surveying. It has always been done in tenths of foot. So every time I turn around I get a different set of requests

Vincent Cestone - If this is an issue

John Benjamin - No, I'm glad to do it

Vincent Cestone - So are there any comments from the audience on this? If you get us measurements we will put you on our next meeting, let's see now. The 28th

Kim Shewmaker - That's Memorial Day

Vincent Cestone - Do we want to meet the 21st which is next Monday?

Adam Rodd - The 21st I can't do

Vincent Cestone - Or, June 4th. Is that an issue for anybody? We will meet on June 4th for this.

John Benjamin - So on June 4th I have to have the measurements for you.

Vincent Cestone - Any other questions

Lenny Lim - Exactly where are you building on my map here? This little blue spot, that is the addition and then you are going up

John Benjamin - Yes that is 5 foot by 10 foot. Yes sir.

Lenny Lim - Okay

Adam Rodd - So it is going to be 10 feet wide and 5 feet in depth

John Benjamin - Yep. All the dimensions are on there

Vincent Cestone - And you have already, and you are not going any closer to the setback than the current house is at its closest point

Lenny Lim - Even the chimney is closer

Vincent Cestone - But I don't understand why this is before us

Lenny Lim - Pre-existing nonconforming

John Benjamin - That measurement is to the chimney I believe. 28 feet

Adam Rodd - They are extending the bulk of the building within the setback

Lenny Lim - Exactly

Vincent Cestone - Okay

Adam Rodd - And if you were to describe in terms of north south east west, how would you, the side yard that you are encroaching on with the addition, would that be considered

John Benjamin - The north

Adam Rodd - The north side

John Benjamin – yes. When we only extended our kitchen 3 ½ feet _____

Lenny Lim - So you are building up on the north side

John Benjamin - Yes sir

Lenny Lim - Okay

Vincent Cestone - Our regular meeting is June 11th. Do we want to just do this on June 11th because we have a couple of reviews for completeness. Maybe we can get those in on the same night. Does that make sense?

Adam Rodd - The second Monday in June

Vincent Cestone - Yes

Kim Shewmaker - We can get the notices for a June 4th meeting because we have 3 weeks until that meeting. I can get public hearing notices in this Friday to the PCNR if they are being heard on June 4th.

Vincent Cestone - So it doesn't really matter either way

Kim Shewmaker - Either way. Whatever you want to do

Vincent Cestone - So lets just leave it on the 4th. Since we can get everybody noticed, anybody we have for completeness

Adam Rodd - So the 4th

Vincent Cestone - Yes the 4th of June

John Benjamin - So this will be back in the newspaper again

Vincent Cestone - Yes

Kim Shewmaker - No

John Benjamin - Yes? No?

Kim Shewmaker - It's a continuation of a public hearing, it does not have to be noticed again.

John Benjamin – okay. Okay guys. Thank you very much.

Vincent Cestone - You're welcome. Okay. Review of minutes of April 9th. Are there any additions or corrections? I will make a motion to accept the minutes as submitted. Do I have a second

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members - Aye

Vincent Cestone – Okay. Before we do the draft resolution, lets do the reviews for completeness so that anybody that is here waiting for this can, they don't have to sit through the resolution. Okay, Hugh James Rossouw. I see that you sent letters.

Lenny Lim - They haven't replied

Kim Shewmaker - They've been on since March 26th for completeness.

Vincent Cestone - Since when

Kim Shewmaker - March 26th

Vincent Cestone - Okay.

Kim Shewmaker - I'll send him another letter.

Vincent Cestone - Anthony Spica and Peter Risi

Kim Shewmaker - I think they are in the hallway

Adam Rodd - On Rossouw since its been at least two meetings, if we are going to write again maybe add in the letter that in the event of your failure to provide the materials requested, the board may deem your application withdrawn.

Kim Shewmaker - Okay. Do you want me to put a due date on it

Adam Rodd - By the next meeting

Kim Shewmaker - Okay

Adam Rodd - by June 4th

Kim Shewmaker - okay

Vincent Cestone - So Adam, do you have anything on Appeal 815 when you reviewed it?

Adam Rodd - It looks to be generally in order. However, I would tell the board that the applicant should be advised during their presentation that they should be prepared to offer proof by way of testimony or affidavit that the proposed road access would provide safe and sufficient access for emergency personnel

Vincent Cestone - Okay. Are Anthony Spica and Peter Risi here?

Anthony Spica - yes

Vincent Cestone - Did you hear what our attorney said

Anthony Spica - Yes

Vincent Cestone - Because the fire department has to provide testimony that they can get to the structure with their fire equipment. And we are going to need that

Anthony Spica - We plan on bringing documentation from the fire department and the ambulance corp to the hearing

Vincent Cestone - Okay. It would have to be an official document signed by those entities

Anthony Spica - Okay.

William Zutt - I understand Mr. Chairman. I will be representing these two gentlemen and I have asked Mr. Rodd earlier today and he gave me that counsel advice. We will seek out the documents.

Vincent Cestone - Okay and this is a private road. Do you know how many structures are already on that road

William Zutt - Well actually it is a long road that extends from Winston Lane on the west over to Old Albany Post Road. I'll get you a count of the number that are accessed from the Old Albany Post Road side. I don't know the total. I'll get you the number

Vincent Cestone - Yeah, for the public hearing that would be useful information

William Zutt - We will have that in fact I will bring in a tax map marked up with the developed plots

Vincent Cestone - Okay

Robert Dee - Would it be possible to, it is impossible to drive up there at this point in time, but for us to take a look at it, would it be possible to mark it maybe put a sign on the lot or something like that. This way when we walk up we at least know where they are

William Zutt - Absolutely

Robert Dee - Thank you

William Zutt - Sure

Vincent Cestone - June 4th

William Zutt - June 4th

Vincent Cestone - The second appeal for the same people Adam, same thing?

Adam Rodd - Same thing

Vincent Cestone - Is June 4th not good

Neighbor - We are neighbors and we came to this meeting and we thought we might

Vincent Cestone - No this is just review for completeness. It has to be noticed in the newspaper legally before we can actually physically discuss this

Neighbor - Oh

Vincent Cestone - That's under law. So June 4th is when the residents have a

chance to speak

Neighbor - Okay

Vincent Cestone - So June 4th

Bill Flaherty - I have a question regarding New York State Town Law 280-1(3). I am not familiar at all with that aspect of the law. And I would like to have some documentation to the what specifically that does cover.

Adam Rodd - I don't have a copy of the statute with me but I will certainly bring it or I can send it to you before the next meeting. It basically has to do with the lot that is accessed by a non-public road. One of the issues before the board is whether this road can provide safe and adequate access for emergency personnel such as police, fire, ambulance as a precondition to allowing someone to develop on it.

Vincent Cestone - Okay so both

Bill Flaherty - Well the other issue this was reviewed by the planning board, and I want to know why it was rejected and I would like documentation to that affect. I would like to know further about what had specifically transpired between the planning board and the applicant

Vincent Cestone - I can ask Ande if we can get the minutes electronically

Bill Flaherty - Ande is present here this evening

William Zutt - I could shed some light on this Mr. Flaherty because I represented these gentlemen at the Planning Board. The roadway that they were proposing has a maximum grade that exceeds the Town's 14% specification and as a result the Planning Board who is the initial approving body was unable to approve the access to that grade and so the procedure from that point on is an appeal to the zoning board of appeals which is what brings us here.

Vincent Cestone - Okay

Lenny Lim - But I think Bill's right. We should get the minutes from the Planning Board

Vincent Cestone - Ande do you think, the Planning Board minutes are they up on the website

Ande Merante - They are posted on the website. The Town's site

Vincent Cestone - Okay. So if you go to philipstown.com, you can't go

Adam Rodd - I think this was before the planning board in March

Vincent Cestone - Okay. Next item on the agenda is a resolution for Donald Henny.

Kim Shewmaker - Can I get a copy

Vincent Cestone - Would you like a copy

Adam Rodd - I brought lots for everyone

Kim Shewmaker - Thank you

Vincent Cestone - Okay, you're on

Adam Rodd - Well basically I will just read the resolution part with the conditions?

Vincent Cestone - Yes

Adam Rodd - That's okay?

Vincent Cestone - Yes

Adam Rodd - This was a request for an area variance to construct an addition to the existing house that has insufficient front yard setback and the applicant represented that he wasn't encroaching any further into the front yard setback, he was simply building up. So, that is kind of the overview and our resolution indicates "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 Donald Henny from the denial of his request for a building permit to construct a second story addition on to his existing single family home located at 554 Route 9D in Garrison despite the home's existing encroachment upon the required 40 foot front yard set back. 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. Conditions of the Variance. 1) To the extent that the existing single-family residence located on the applicant's property is set back from the front property line by a distance of 12 feet 2 inches, the proposed second story addition shall not create any further encroachment upon the currently existing front yard set back; 2) The maximum height of the proposed renovated structure shall not exceed 28 feet"

Vincent Cestone - I am going to put at its highest point. Because the building department takes the average. And that's only because if you say maximum 28

feet, it could be 30 feet but the average would be 28 feet. I don't know why they do that but that's what they do.

Lenny Lim - They do an average?

Vincent Cestone - Remember Tom clarified that when we were discussing Cooper

Lenny Lim - You know there is so much crap going on with Cooper

Adam Rodd - and the final condition "3) The variance granted by this Resolution shall not be further enlarged or extended except in accordance with all provisions of the Philipstown Code, and shall remain in the configuration as shown on the plans for construction submitted to this Board. No further enlargement, reconfiguration or extension of the proposed renovated structure is authorized without Zoning Board approval."

Vincent Cestone - Any additions to this? Any additional conditions?

Lenny Lim - No

Robert Dee - No

Vincent Cestone - I'll make a motion to accept the Resolution as amended. Do I have a second?

Robert Dee - I'll second

Vincent Cestone - All in favor?

All Board Members – aye

Vincent Cestone - Roll call vote. Len?

Lenny Lim - I'll vote in favor

Vincent Cestone - Bob?

Robert Dee - I vote in favor

Vincent Cestone - Paula

Paula Clair - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I. I am still not sure where I am supposed to sign this. I don't see a signature spot

Adam Rodd - I am not sure if there should be a signature, as long as it is in the minutes and the votes are recorded and entered, it is sufficient

Kim Shewmaker - There is no signature line on the blue back? Usually there is. When I worked in a law office we usually included a signature line on the blue back. Okay. Just curious.

Vincent Cestone - Okay. Old business. A couple of things. Let's not forget we have a meeting with the town board here, you don't have to come. Neither do you Adam. On June 2nd to discuss Cooper

David Brower - June 2nd or June 6th?

Vincent Cestone - June 6th. You're right.

David Brower - When you said June 4th that booked up my week.

Robert Dee - What time?

Vincent Cestone - 7 pm

David Brower - Right 7 o'clock

Vincent Cestone - And on another note. I would like to make a motion to appoint Bob Dee as the deputy chairperson and he would be running the meetings when I am not here. Do I have a second for that?

Lenny Lim - I'll second

Vincent Cestone - All in favor

All Board Members – aye

Robert Dee - That was quick. I wish I could win the lottery that quick

Vincent Cestone - And one final thing. T-Mobile is close to an agreement with the Town to build a cellular tower in the Lane Gate facility. What they are proposing is a monopole built at the top, not on the dump itself, but at the top of the property

David Brower - No

Vincent Cestone - No?

David Brower - The bottom

Vincent Cestone - The bottom on top of the dump?

David Brower - No

Kim Shewmaker - At the very very bottom

David Brower - Between Route 9 and where the dump comes down there is an area in there

Vincent Cestone - Oh

David Brower - It is going to be 199 feet tall so they don't need lights on it

Lenny Lim - How tall is it

David Brower - 199 feet so it doesn't need lights

Robert Dee - 200 feet it needs lights?

David Brower - We have a meeting scheduled at the dump

Vincent Cestone - Right

David Brower - Russ called me and he was trying to set it up but Roger is on vacation this week. So it will probably be sometime next week

Vincent Cestone – okay. And this will be the first time a cell tower would be built in Philipstown where the Town actually gets money out of. It will be on Town property

David Brower - We are getting a lot of flak from the people up there too

Vincent Cestone - Because the, what I am going to do is I am going to write a letter to everyone and email it to everyone except Lenny, saying the things that the Zoning Board would want to see as part of this. Because one of the things that T-Mobile, who would be the applicant, is asking for, under the agreement I don't know if they are going to get it, that the Town itself would approve and wouldn't have to go before Zoning for site plan. That's what they are asking for, I don't know if that is the way it is going to be, but that's what they proposed.

Lenny Lim - Has any tower been put in the town without us looking at it?

Vincent Cestone - No

Lenny Lim - I didn't think so

David Brower - I just read the proposal myself today

Vincent Cestone - So with that I will make a motion to adjourn

Lenny Lim - I've got one other thing that I want to bring up

Vincent Cestone - Sure

Lenny Lim - On this pre-existing nonconforming, we almost never let them build out. We let them build up but very seldom do we let them build out

Vincent Cestone - This is sort of a little bit different because it is already out. He is just squaring it.

Lenny Lim - Yeah but I am worrying about once we set a precedent about doing certain things, that's what I am worried about

Adam Rodd - Well, I am just saying on the issue of precedent setting I think the courts treat, as we should treat, every application on its own merits. Based on its own unique factors. You know a 5 foot setback might be horrendous and unacceptable in one situation but with different topography, different screenage

Lenny Lim - I understand what you are saying

Adam Rodd - I wouldn't worry per se about if we, the whole precedent issue. I mean that really comes into play when you have virtually the identical application under identical circumstances, which is unusual you know because properties are different.

Lenny Lim - I am a little worried because years ago we gave somebody a two car garage in Continental Village and we've seen other people from Continental Village come in for two car garages now.

Adam Rodd - Well again, I would judge one individually and I never accept the argument that well you did it once you have to do it again. There is even case law that says that look to the extent that the Zoning Board mistakenly granted certain relief doesn't mean that we have to perpetuate the same mistake because we did it once on the basis that its precedent

Lenny Lim - Right. Because we did turn down the other garages that wanted two car garages and that's exactly what Joan came out and said that we made a big mistake on this one.

Vincent Cestone - And the other thing, this new application that we are going to be hearing at our next meeting with Upland Drive. I am going to check the code because I believe there is something in the code that on a private road you are limited to the number of structures that can be built on a private road

Lenny Lim - Absolutely

Vincent Cestone - And I am not exactly sure what the number is, no? It's been changed?

Bill Flaherty - There must be at least 10 homes on that road

David Brower - They are all pre-existing lots. The planning board just went through that with Crest Road up in the Highlands. The original thing was supposed to be 8 homes on an original right of way and everything, but the lawyers have talked about it and basically you can't stop it

Lenny Lim - Even though

David Brower - You have to make them make the improvements on the road and everything else. But the big issue on Upland is going to be drainage. I am sure Bob knows all about drainage

Robert Dee - Tell me about it

David Brower - Where do they think this water is going to go after they start building up there

Robert Dee - 2 days I couldn't get out of my house

David Brower - that's going to be a big mitigating factor that has to be dealt with. Right now that last storm caused over \$900,000 worth of damage throughout the Town on roads. And a lot of it came off of private property on to the roads. That's one of the things, so it is not just an issue of the grade either. Read the planning board minutes

Lenny Lim - Isn't on the books though that not more than 8 houses on a private road

David Brower - It still is. It is still on the books. But what happened

Robert Dee - You can't defend it

David Brower - You are taking the use of someone else's property. It is just like we used to, it is very convoluted

Vincent Cestone - With that if there is nothing else, I will make 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: June 4, 2007

Respectfully submitted,

Kim Shewmaker
Secretary