

ZONING BOARD OF APPEALS

June 25, 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:

Anthony Carlucci - Good evening members of the board my name is Anthony Carlucci. I am

Vincent Cestone - Come on up. You don't have to be too formal. Come on up.

Anthony Carlucci - I am here as a representative for Nancy Carlucci, she is not only my client but she is my grandmother. I am here, we are here tonight, me in particular as one of her 28 grandchildren and the father of 14 of her great-grandchildren requesting a variance for an existing in-ground swimming pool on her property. About 18 years ago, during the year that my grandfather died, my grandmother decided it would be a nice thing to put in an in-ground swimming pool to try and keep the family close and together. She has been a resident of the Town of Philipstown for 38 years and she thought that this would be something to keep the family close, to keep the family together. So she came to the building department, she hired a contractor, they came and filled out an application for a permit, they laid out the swimming pool, they made sure that the swimming pool would fit where she would be able to get a certificate of occupancy. And they hired a contractor who at the time was a family friend. They dug the pool, they put the pool in, and I believe the inspector was there a couple of times making sure that everything was okay. The pool went in, they came out for their inspection and lo and behold the pool was dug and put in the wrong spot.

Vincent Cestone - Okay

Anthony Carlucci - The important thing is that the swimming pool would have fit. It was not moved for any other reason, it wasn't made larger for any other reason with the thought that well what are they going to do with an in-ground swimming pool, they can't tell us to move it, they can't tell us to cover it in or fill it in. It was a mistake that was made.

Vincent Cestone - You have documentation to that? You know that you applied for building permit and it was okay and then they came out and it was in the wrong spot?

Anthony Carlucci - I don't have a copy of the application for the permit. I believe that is in the building department file. If you look at the measurements for the pool itself, the biggest issue that they had or they are having today is the right setback which is, we are looking for an 8' foot variance. The pool itself is 40 feet long. The property is 75 feet long. So if the pool were put in the proper spot there would have been 17 ½ feet on either side of the pool to the existing property lines. Now what is interesting is on the right side where they need the 8 foot setback, it is actually the house that I grew up in. It is my mother and father's house. They actually were there, and they still live there to this day, when my grandmother had an issue and they came out and said you can't get the variance, we are not going to give it to you, when she came the first time; my father was actually trying to handle things for her to try and get a variance. All these years later she didn't realize that she didn't have a certificate of occupancy. In February of this year she received a summons, it was actually a summons that was issued from the Town Court summoning my grandfather, who God rest his soul passed away all those years ago, we came out and spoke to the building inspector Tom Monroe and he said all these years, there is no certificate of occupancy for the pool. So I said what can we try and do to rectify this situation? We came in to Court probably in March, that was our court appearance date, spoke to the Building Inspector and the Judge and we said we want to try and make things right. We are going to reapply for this variance which is why we are here tonight. The swimming pool like I said there hasn't been a complaint made against the swimming pool in 18 years. My understanding, I was very young at the time, the first time that they came in for the variance, there was a complaint by someone who lived in the neighborhood many years ago. It wasn't an adjoining property owner. Just someone who just had a grudge. Actually the pool, the lot that my parents are on was a piece of property that they had owned many years ago and at the time wasn't able to build on it, they sold it to my grandparents. Years later the zoning laws changed and there is a house there now. And we feel that they held a grudge. I don't think you know, I am an attorney, I know that ignorance is a mistake and sometimes doesn't play a big role here, but like I said, if the pool were dug right and my father had probably done what he should have done when they were digging the pool, and watched

them put this pool in, he probably should have been there at the time to say hey you have to move this thing 8 feet over

Vincent Cestone - The contractor is responsible for that and you would have recourse

Anthony Carlucci - Well unfortunately, like I said earlier, he was a family friend. When the first variance was denied, you know we tried to find him to say hey look we went before the zoning board and they told us that we needed to move the pool and he was gone. It was a one time thing for him I think. And there was no recourse there. So it is at the point where my father told my grandmother look I'll take care of it don't worry about, and now we are here all these years later and she gets a summons

Vincent Cestone - And Lot 10 is your family

Anthony Carlucci - Excuse me?

Vincent Cestone - Lot 10 here?

Anthony Carlucci - Lot 10 is actually the house that my mother and father live in now.

Vincent Cestone - And this is a wood deck? Because that's a violation too.

Lenny Lim - So is the shed

Vincent Cestone - And so is the shed

Anthony Carlucci - My understanding is is that there is a certificate of occupancy for the shed

Lenny Lim - Let's hope so. What about the deck

Anthony Carlucci - The deck I don't know about.

Lenny Lim - I have questions about this

Vincent Cestone - Go ahead

Lenny Lim - You said the ZBA ruled in 7/21/95 appeal 553, what was the ruling on that one? What did that board, it says rear setback 3.8; right side 8 foot, what was that for the house or the pool?

Anthony Carlucci - That is for the pool

Lenny Lim - So they gave you part of the setback?

Anthony Carlucci - No no no. There was none. That is what is actually needed

Lenny Lim - Okay

Anthony Carlucci - That's what is needed now. The back of the pool encroaches within the 15 foot limit by 3 feet 8 inches and it encroaches on the right side by 8 feet.

Lenny Lim - When did the previous zba, it says the previous zba turned down your request for a variance

Anthony Carlucci - 1985

Lenny Lim - I was on the board. I don't remember this one.

Robert Dee - It says 1995

Adam Rodd - Just so I am clear on numbers, your, there is a rear setback on the rear yard of 3 feet 8 inches

Anthony Carlucci - Well the R-20 district requires it is a 15 foot setback. What we would need is 3 feet 8 inches in order, that is how much it encroaches within that 15 foot setback. 3 feet 8 inches. So it is 11 feet 4 inches, the rear most portion of the deck is at 11 feet 4 inches

Adam Rodd - From the rear yard lot line

Anthony Carlucci - Correct

Adam Rodd - Okay. And how about from the right side yard

Anthony Carlucci - Over here it is at 7 feet. The right most portion of the pool is 7 from the property line.

Adam Rodd - From the right side yard lot line

Anthony Carlucci - correct. So the requirements are 15 feet from each of those lot lines. You are proposing 11 feet 4 inches and 7 feet

Vincent Cestone - That's the way the plan reads

Anthony Carlucci - Correct.

Vincent Cestone - So these people here, who are these people

Anthony Carlucci - These people here actually

Vincent Cestone - They are on Sprout Brook Road

Anthony Carlucci - They are on Sprout Brook Road correct

Vincent Cestone - And this person here

Anthony Carlucci - That is Tony and Rita White. They've lived there about 20 years

Vincent Cestone - It must be nice now that Valley Lane is paved

Anthony Carlucci - There is good and bad. The good is that it is actually a paved road and it gets plowed and things like that. The bad is that the cars tend to whip around now.

Nancy Carlucci - When it was a dirt road it was safer for the children

Vincent Cestone - That's probably true because you couldn't go that fast. Any questions from the board?

Bill Flaherty - Were you ever issued a building permit for that pool?

Anthony Carlucci - Yes.

Bill Flaherty - I didn't see it.

Lenny Lim - The one I have is for the addition. I don't have a CO for the pool

Anthony Carlucci - There is no CO for the pool. There was a request for a CO

Lenny Lim - right but I don't see a CO for the pool.

Anthony Carlucci - No and they wouldn't give us one for the pool because of the, what is interesting is there is a CO as you said for the addition which sits on that same right side line which actually is up to I think a foot or a foot and a half of the property line

Lenny Lim - I was on the board at that time. So you asked for the pool and the house at the same time

Anthony Carlucci - No the house I think

Lenny Lim - We gave the variance

Anthony Carlucci - Was later, yes, correct. I think

Lenny Lim – And the pool we turned down

Anthony Carlucci - Yeah

Lenny Lim – I would like to see the file on 553 and read actually why we turned down the pool. If the zba originally turned it down, I want to know why. I really don't remember this one.

Vincent Cestone - You want to see the resolution

Lenny Lim – Yeah I want to see the resolution and find out why it was turned down

Vincent Cestone - Any questions from

Bill Flaherty - Do we have a map of the original placement of the pool? This is not

Anthony Carlucci - That is the actual as built condition of the pool itself and that was the same map that was used in conjunction with the initial application to get a building permit, it was just recently updated as a requirement for this application

Bill Flaherty - But then if you got a building permit issued to you,

Anthony Carlucci - No I am sorry, it was, we needed to get this separate the different dimensions on this map to show the different setback lines after the initial building permit was issued

Bill Flaherty - Oh I see

Anthony Carlucci - Because when they came out to do the inspection, they said well you need a 15 foot setback on the right, you need a 15 foot setback on the back, you are within 8 feet of the right and you are within 3 feet

Vincent Cestone - The only reason why they would put it in that way is if they made a mistake or if there is ledge. If they ran into stone

Anthony Carlucci - Like I said

Lenny Lim – Nobody knows why he did it that way

Anthony Carlucci - No

Lenny Lim – Is there any outcroppings? Any stone?

Vincent Cestone - Valley Lane is not like that

Lenny Lim – I am trying to figure,

Anthony Carlucci - Like I said, he wasn't a very experienced contractor. Did he just go out there? Was it marked off and staked off correctly? I don't know.

Bill Flaherty - The building permit was issued based on the dimensions that are on this map, 1995,

Anthony Carlucci - The building permit is a map that was utilized, they had submitted a map showing 15 and 15

Bill Flaherty - But not this map

Anthony Carlucci - No not this map

Bill Flaherty - Do we have a copy of that map

Vincent Cestone - That would probably be in the, what is it 555

Lenny Lim – 553

Vincent Cestone - it would probably be in 553

Lenny Lim – I would like to look at that. I want to know why we said no years ago.

Anthony Carlucci - I wasn't here

Lenny Lim – I was and I don't remember it

Vincent Cestone - The mind is the second thing to go after the knees

Lenny Lim – Oh no, the hearing is first, then the mind

Adam Rodd - Just so I am clear, Ms. Carlucci's house is on lot 10? Or lot 9?

Anthony Carlucci - This is lot 9. This is Nancy Carlucci's lot.

Adam Rodd - And lot 10 is someone else

Anthony Carlucci - It is Susan Carlucci. That's my mother and father's lot

Adam Rodd - Is there screenage on the side yard

Anthony Carlucci - Yes there is a fence all the way around.

Adam Rodd - So here is a stockade fence

Anthony Carlucci - There is a fence that runs, there is a stockade fence that runs from here all the way across. There is a fence that actually runs from here all the way around on my mother and father's property and there is a fence that runs here all the way to here and closes in the pool.

Adam Rodd - What I was interested in is what type of screenage is there where you have the insufficient right side yard setback? Is there any type of screenage between the pool and the right side yard lot line

Anthony Carlucci - There is no screenage here

Adam Rodd - Is there screenage

Anthony Carlucci - Yes. Actually that is a 6 foot stockade fence on the rear of the property

Adam Rodd - Any trees or bushes or anything

Anthony Carlucci - There are I believe there is 2, there is a tree here, a tree here and some shrubs over here

Adam Rodd - Okay. So you have a fence, trees and shrubs on the rear

Anthony Carlucci - The trees and shrubs are on Lot 4's property

Adam Rodd - But they are there

Anthony Carlucci - Yes

Bill Flaherty - I would like to see a map in which it very clearly shows what is in the bounds of the property lines

Vincent Cestone - That's probably in 553's. So Lenny wants to see it, so what I want to do is continue this so that we can look at 553

Bill Flaherty - I would feel more comfortable

Anthony Carlucci - And I guess you are looking for that map to show that when the pool was set at its 40 foot length that at both sides there was sufficient room

to comply with the zoning laws

Bill Flaherty - Exactly

Anthony Carlucci - Okay. I should have brought that with me tonight and I don't have it.

Vincent Cestone - It is probably in the file

Anthony Carlucci - And if it is not in there, like I said, I am sure I can get it out of somebody

Bill Flaherty - So then you will have to get a new survey to show the placement of the pool

Vincent Cestone - Well that's what this is

Anthony Carlucci - This is the existing. This is current

Vincent Cestone - This is the as built.

Anthony Carlucci - He is probably looking for the blue print that went with the application. The proposed location of the pool.

Vincent Cestone - You have an idea of what we are looking for

Anthony Carlucci - Yes. I understand

Vincent Cestone - Does anyone in the audience wish to speak on this? If not, my suggestion is if you have the time, go down to the building department and we are going to get a copy of 553. But if you have any documentation to show that it was done in error

Anthony Carlucci - To show you that

Vincent Cestone - That we went to do this correctly and the builder did it the wrong way

Anthony Carlucci - Okay. I understand.

Vincent Cestone - That's a very important

Lenny Lim - To see the original blueprint saying okay this is where you want it

Vincent Cestone - What I am going to do is I am going to continue this on to July 9th which is our next meeting. Hopefully we can put this to bed then

Anthony Carlucci - 7:30?

Vincent Cestone - Yes same time and you will be first because the other public hearing that night which will probably go on for a long time

Lenny Lim – What do we have

Vincent Cestone - Spica

Anthony Carlucci - Thank you very much

Vincent Cestone - You're welcome. Okay. Review of Minutes of June 4th. Do we have any corrections? With that I'll make a motion

Bill Flaherty - I have one very minor correction. John Benjamin seconds a motion. John Benjamin is not authorized to do that

Kim Shewmaker - My cut and paste job didn't go so well. What page is that on?

Bill Flaherty - Page 2

Kim Shewmaker - And that was early in the game too

Bill Flaherty - Bill Flaherty should be the one who seconded

Kim Shewmaker - Thank you

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

Bill Flaherty - I'll second

Vincent Cestone - All in favor?

All Board Members – aye

Vincent Cestone - Okay now we have a draft resolution that was sent down to all of you. The only thing that I would maybe change and I already told Adam and Kim is that the maximum height of the building is 25 feet 10 inches and we know how the building inspector is so we had it changed so the maximum height of the building at its highest point is 25 feet 10 inches. For those who are not aware, the way they figure the height is usually by taking an average height which means you could have the peak much higher than the part you are agreeing to so that's why I say the maximum height of the building so they can't, so the building inspector can't make 26, 27, 28

Robert Dee - Why do we do the average height?

Lenny Lim – Is there a reason why we do the average height and not the highest point?

Vincent Cestone - I could never figure that one out

Ande Merante - We are going to talk about that at the zoning appeals committee. I just told Gary and Bill gave me a letter, the zoning advisory committee is in the process right now of redoing the entire code. Anything that you guys might want that you've seen since you've been on the board, send me a memo or just send me an email and we will try and get it incorporated because Joe Russell is redoing it right now. And these are things, and I could never understand that either.

Vincent Cestone - I'll send you an email

Ande Merante - So if these questions or suggestions and we will see what we can get incorporated in the new code

Vincent Cestone - Okay. There are a couple of them. Like the definition of an accessory building and the definition of a garage

Ande Merante - Just tell us.

Vincent Cestone - Because there are certain things that we get beat up on

Ande Merante - You've been here long enough Vinnie, think about it and let me know

Vincent Cestone - Okay I'll send it to you by email. I will make a motion to accept the resolution as amended. Do I have a second?

Lenny Lim – 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 - In favor

Vincent Cestone - Paula?

Paula Clair - I vote in favor too

Bill Flaherty - In favor

Vincent Cestone - And so will I. Okay review for completeness David Weinpahl. This is in addition to the one that was ruled on a while back. And they are asking for additional interpretations of the law on the same property that we moved on previously. Adam does it look complete to you?

Adam Rodd - Well, I have a number of issues and quite frankly am confused by exactly what they're appealing from that I think we will need to be flushed out. I think at this juncture we can have the hearing but as I said before it is very unclear to me as to what they are appealing from and whether this board actually have jurisdiction on some of the matters that they are presenting. It is something we can flush out at the public hearing.

Ande Merante - You know they came before the planning board last week. They came to the planning board. And Adam's co-counsel, our attorney, submitted a draft letter in regard to this whole thing back and forth. So if you guys want copies of this information, I can get it to you and whenever the minutes come out, you can have it. It may help you I don't know if Adam will think it is helpful or not but, it gets curiouser and curiouser.

Vincent Cestone - I think it would be helpful you know just to know what they are saying and what your thinking is. Because it is good to coordinate this kind of thing between the two boards

Ande Merante - Because they will be bouncing back and forth these guys

Vincent Cestone – okay

Lenny Lim – This is the one we already sent back to the planning board

Vincent Cestone - This is, after we sent them to the planning board, I am not exactly sure what they are thinking is but if you read their letters, their letters are like, they want the planning board to jump on this right of way and the planning board is waiting to see what the outcome of the Article 78 is before they make a decision

Lenny Lim – So they dumped it back in our laps

Vincent Cestone - It is still waiting to go to the planning board, but this is in

addition to what we already ruled on. Instead of doing this all at the same time.

Bill Flaherty - No decision has been made on the Article 78

Adam Rodd - No. It is not even, it will be fully returnable in 2 days.

Paula Clair - Is this an appeal to the planning board or to the zoning board

Vincent Cestone - It is to the zoning board

Paula Clair - But they are in front of the planning board

Adam Rodd - One of the issues is what is it they are appealing from. We are an appellate board. You appeal determinations from the building inspector. We are not appellate to the planning board. The last event that occurred was the building inspector refused to vacate the stop work order that was issued. That was his last pronouncement. So I am at a loss to understand what they are appealing from because the building inspector didn't lift the stop work order. He says he is keeping it in place. And then there was an Article 78 brought against the building inspector and us because of that. So I am at a loss to understand what the adverse determination is that they are identifying.

Vincent Cestone - So the outcome of this maybe and it depends what we do at the public hearing, that we can't hear it because they are not appealing from anything

Adam Rodd - You can only appeal from an adverse determination. And there is no adverse determination vis a vis Weinpahl. Because the building inspector said I am issuing a stop work order on these two lots and I am not lifting it. That is not adverse to Mr. Weinpahl.

Vincent Cestone - Right. Right. So I am going to put them on for the 4th Monday in July which is the 23rd., The last meeting before we go on our summer break and we will see what we do

Kim Shewmaker - Public hearing

Vincent Cestone – yes. And Adam I would ask you to do a little homework and give us a little guidance on what we should do on this. Because what you are saying makes a lot of sense but we'll see what Weinpahl presents. If you feel that you need to talk to us, we can have you talk to us

Adam Rodd - Okay.

Vincent Cestone - As far as old business is concerned. Rossouw. We've been waiting to put them on the agenda for C of Os and he has no COs. So maybe we

should put them on for a public hearing to talk about it.

Lenny Lim – What was that one

Vincent Cestone - Kim

Kim Shewmaker - The property is on Sprout Brook. This is the one where we kept writing letters because we

Lenny Lim – And he never responded

Kim Shewmaker - Right

Robert Dee - Have you passed by that house?

Vincent Cestone - Excuse me

Robert Dee - Have you passed by that house?

Vincent Cestone - No

Robert Dee - I can see why he doesn't have a CO. He has maybe 2 or 3 different decks and sheds and everything. That whole property looks illegal and I would like to know why there is no CO

Bill Flaherty - You want to bring him in and take a look at the whole thing

Robert Dee - Yes

Vincent Cestone - We can call him in for the 4th meeting of the month and if he shows up great. If he doesn't show up

Lenny Lim – He has never responded to anything we have sent him

Vincent Cestone - He might not even come to the public hearing. If he doesn't come to the public hearing then we can ask the building inspector to cite him and he will have to appear in court. This is to his benefit to come to this. If it goes to court, the court is going to order him to do it. One final thing on old business, our attorney has recommended that when we do a review of an application that we use the five rules of an application. And the perfect example of what the five things are are the five issues that are cited within the Benjamin variance request. Whether it is an undesirable change, whether it is a benefit, there are five different issues and I think Lenny is digging for

Lenny Lim – We had it

Vincent Cestone - But I am sure Bob and Paula and Bill don't have it.

Lenny Lim – At one time we used to carry it to every meeting. Okay.

Adam Rodd - You can talk about this after the meeting

Vincent Cestone - okay. With that I make a motion to close the meeting. Do I have a second?

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: 7/23/07

Respectfully submitted,



Kim Shewmaker
Secretary