

ZONING BOARD OF APPEALS
January 13, 2020
MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a special monthly meeting on Monday, January 13, 2020, at the Claudio Marzollo Community Center, 107 Glenclyffe Drive, Garrison, New York.

PRESENT: Robert Dee - Chairman
Paula Clair - Member
Granite Frisenda - Member
Vincent Cestone - Member
Leonard Lim - Member
Adam Rodd - Attorney (Drake Loeb PLLC)

****PLEASE NOTE that these minutes were abstracted in summary from being present at the meeting and sound recording. If anyone should seek further clarification, please review the sound recording.**

Chairman Robert Dee opened the meeting at 7:30 P. M. with the Pledge of Allegiance.

MINUTES

CHAIRMAN ROBERT DEE: Let's see approval of the minutes are November 18th does anybody have any corrections or adjustments in the minutes?

LENNY LIM: No

VINCENT CESTONE: I'll make a motion to except the minutes

LENNY LIM: I'll second

CHAIRMAN ROBERT DEE: All In favor?

GRANITE FRISENDA: Aye

LENNY LIM: Aye

VINCENT CESTONE: Aye

CHAIRMAN ROBERT DEE: Aye

CHAIRMAN ROBERT DEE: Ok the minutes are excepted.

CHAIRMAN ROBERT DEE: Oh, I just want to say Tara's here tonight and that you know she's been elected town clerk. So, we are gonna be losing her as Secretary well we have Kelly MacIntyre here so unfortunately, she's probably going to be inducted by fire but I'm sure she'll survive so good luck to you Kelly.

MICHAEL KINSLEY, 8 FERRIS DRIVE, TM#90.12-1-10

CHAIRMAN ROBERT DEE: Alright first order of business is going to be 8 Ferris Drive Michael Kinsley yes mike come up sir you're gonna have to come over to the microphone here and tell us who you are okay.

MIKE KINSLEY: Hi Good evening I'm Mike Kinsley live at 8 Ferris Drive

CHAIRMAN ROBERT DEE: Ok, ah I see you are looking for approval to construct a new addition 18 x 35 to the rear of the house where apportion additional lands within a set back of the side yard as seen on a property survey. The existing house shows a 22.2, 22 feet 2 inches from the property line at the rear of the house therefore variance of 7 feet 10 inches will be needed for the proposed addition which is found under code town code 175 SR our zoning district. Now I looked at the plans it looks like you're just trying to square off the house pretty much whatever you're trying to do?

MICHAEL KINSLEY: That's correct yes

CHAIRMAN ROBERT DEE: Ok, ah you're going to put in a bigger kitchen?

MICHAEL KINSLEY: That's correct

CHAIRMAN ROBERT DEE: And a bigger

MICHAEL KINSLEY: Add one bedroom and a bigger kitchen

CHAIRMAN ROBERT DEE:(UNAUDIBLE)

CHAIRMAN ROBERT DEE: Okay, and you're in contact with the Health Department and all like that.

MICHEAL KINSLEY: I have been going, I have been dealing with the Building Department at the moment yes

CHAIRMAN ROBERT DEE: Okay, alright you probably gonna have to go to the Health Department for septic or something like that so

MICHAEL KINSLEY: Yup that's correct

CHAIRMAN ROBERT DEE: Alright, it looked like it you're already within that line you're already within that you know

MICHAEL KINSLEY: Yea the house already sits, the existing house sits with in the set backs

CHAIRMAN ROBERT DEE: At the same length correct?

MICHAEL KINSLEY: Correct

CHAIRMAN ROBERT DEE: Correct yes so, it's not really going any further you're just adding it to the back

MICHAEL KINSLEY: Adding it to the back, yes

CHAIRMAN ROBERT DEE: You're not going further into the side setback what I'm trying to say

MICHAEL KINSLEY: No no nope

CHAIRMAN ROBERT DEE: That's my question while I looked at everything you get. I reviewed everything and it looks like you have everything here.

(Paula Clair came in at 7:33 PM)

CHAIRMAN ROBERT DEE: Take your time Paula we're just going over review of completeness for the one on Ferris Road

ADAM RODD: Just so I'm clear looking at the survey that you have. The addition. Is that going to be is it shown on that survey where the additions going to be?

MICHAEL KINSLEY: No, that survey was done right

ADAM RODD: Before

MICHAEL KINSLEY: bought the house

ADAM RODD: So, it's in the bigger materials

MICHAEL KINSLEY: Yes, correct

ADAM RODD: Okay

CHAIRMAN ROBERT DEE: (Inaudible)

CHAIRMAN ROBERT DEE: You got everything

CHAIRMAN ROBERT DEE: I think that you have questions answered like we have it like a town worksheet. It's called a five factors question. Right, I see you have a supplemental work sheet. Is that your answers to those questions or?

MICHAEL KINSLEY: Yes, I typed them all yup

CHAIRMAN ROBERT DEE: Okay, did you get a supplemental worksheet for that at the town? did you ask that?

MICHAEL KINSLEY: Ah that's all filled out as well. That should be in there

CHAIRMAN ROBERT DEE: Oh, alright It is?

MICHAEL KINSLEY: Yes

CHAIRMAN ROBERT DEE: Okay, that's what I'm looking for

CHAIRMAN ROBERT DEE: (Inaudible)

CHAIRMAN ROBERT DEE: The neighbors Look at the calendar when's the next meeting February something? You have a calendar?

LENNY LIM: (Inaudible)

CHAIRMAN ROBERT DEE: I don't see that here (Inaudible) you can show me you come over here a second

MICHAEL KINSLEY: My original application I filled out the original application I got a phone call back from the Building Department (Inaudible) I had to add I had to fill out the supplemental which I did and I handed it in supplemental worksheet these are all answers typed up.

CHAIRMAN ROBERT DEE: Where did you get the questions from?

MICHAEL KINSLEY: From the packet that was given to me.

CHAIRMAN ROBERT DEE: oh, I see there is a sheet that we use.

MICHAEL KINSLEY: Yea, I usually fill out by hand I typed it up for you.

CHAIRMAN ROBERT DEE: Oh, okay oh okay oh that I understand what you did now okay

MICHAEL KINSLEY: I listed it all out for you.

CHAIRMAN ROBERT DEE: Oh, alright because you didn't have enough room in there is that what you were thinking some one of the things

MICHAEL KINSLEY: Yea

CHAIRMAN ROBERT DEE: Okay, great all right, that's fine. Anybody have any questions on this at this point and time? Anybody?

VINCENT CESTONE: No

GRANITE FRIENDA: No

CHAIRMAN ROBERT DEE: Paula?

PAULA CLAIR: No

CHAIRMAN ROBERT DEE: Alright, it's time to make a motion that the applicate be deemed complete

VINCENT CESTONE: Second

CHAIRMAN ROBERT DEE: All in favor

GRANITE FRIENDA: Aye

PAULA CLAIR: Aye

LENNY LIM: Aye

VINCENT CESTONE: Aye

CHAIRMAN ROBERT DEE: Aye

CHAIRMAN ROBERT DEE: I'm gonna set up for the next meeting I don't have my calendar with me so what is February the second week in February date?

KELLY MACINTYRE: 10TH

CHAIRMAN ROBERT DEE: Anybody can give it to me?

KELLY MACINTYRE: 10TH

CHAIRMAN ROBERT DEE: you said the 10th.

KELLY MACINTYRE: 10TH

CHAIRMAN ROBERT DEE: 10th okay? so, you'll be set for a public hearing February 10th

MICHAEL KINSLEY: Okay

CHAIRMAN ROBERT DEE: Say 7:30 same location here. What will happen is our secretary will send our notices to all your neighbors and everything else like that so this way if anybody has any concerns or questions, they'll be able to come to a public hearing and you know discuss their issues.

MICHAEL KINSLEY: Okay

CHAIRMAN ROBERT DEE: Okay

MICHAEL KINSLEY: Great

CHAIRMAN ROBERT DEE: All right thank you

MICHAEL KINSLEY: Thank you very much.

PAULA CLAIR: (Inaudible)

CHAIRMAN ROBERT DEE: We will get to it later on

PAULA CLAIR: Okay

Lake Surprise Revocable Trust, 60 Lake Surprise TM#27.-1-30

CHAIRMAN ROBERT DEE: Next one be accessory Lake Surprise 60 Lake Surprise

GRANITE FRISEANDA: I'm going to recuse myself from this one

CHAIRMAN ROBERT DEE: You're going to recue yourself? okay

CHAIRMAN ROBERT DEE: Okay, we completely agree last month there was a review of completion that was complete but you needed to submit the plans for the Accessory Apartment.

THOMAS PTACEK: Yes

CHAIRMAN ROBERT DEE: Okay, which you did

THOMAS PTACEK: Yes

CHAIRMAN ROBERT DEE: Okay, we have that and you submitted another survey?

THOMAS PTACEK: Yeah, just to show officially that we're gonna I had it's the corner of the building located where we wanted it

CHAIRMAN ROBERT DEE: Right

THOMAS PTACEK: To show you how its situated in the property

CHAIRMAN ROBERT DEE: Okay

THOMAS PTACEK: And where the other house that we're currently building is relative to it

CHAIRMAN ROBERT DEE: Right

THOMAS PTACEK: I thought it you know with the stamp on it makes it sort of

CHAIRMAN ROBERT DEE: You haven't changed locations or anything like that?

THOMAS PTACEK: No

CHAIRMAN ROBERT DEE: Okay, so it just an official

THOMAS PTACEK: Yeah

CHAIRMAN ROBERT DEE: Survey of what we discussed

THOMAS PTACEK: Since I had it, I thought

CHAIRMAN ROBERT DEE: What we discussed this

THOMAS PTACEK: Yes, it is

CHAIRMAN ROBERT DEE: Okay, my question to the attorney is that he is looking for a variance for the bigger garage you know over 1,050 also (Inaudible) apartment a special permit so I guess it'd have to be two because it's gonna be accessory apartment because he's putting an apartment over the garage.

ADAM RODD: Yeah but the variance is the size of the garage that being sought.

CHAIRMAN ROBERT DEE: Okay

ADAM RODD: its limited to the code says a thousand square feet

CHAIRMAN ROBERT DEE: Right

ADAM RODD: And the accessory garage is 1,973 square feet

CHAIRMAN ROBERT DEE: Yeah, not the apartment you said the apartment

ADAM RODD: That's inclusive of the

THOMAS PTACEK: The apartment is um

CHAIRMAN ROBERT DEE: So, he doesn't need an accessory apartment permit?

ADAM RODD: No, it's just an area variance for the size of the structure

CHAIRMAN ROBERT DEE: Okay, alright because I'm just trying to say I know I usually you would go with an accessory apartment I've just want to make sure we're doing you know he doesn't need it because it's gonna be one deal the main house you're building is gonna be occupied

THOMAS PTACEK: Yeah

CHAIRMAN ROBERT DEE: This house is going to be used for guests

THOMAS PTACEK: That's it maybe

CHAIRMAN ROBERT DEE: Could be rented also it's a possibility

THOMAS PTACEK: I'm not sure

CHAIRMAN ROBERT DEE: Everyone says that they are not going to do it

(Inaudible) Everyone speaking

THOMAS PTACEK: Yea I know why, course it is

CHAIRMAN ROBERT DEE: I trust everybody

THOMAS PTACEK: Right

CHAIRMAN ROBERT DEE: I'm just trying to say that sometimes somebody may want to rent it

THOMAS PTACEK: Possible

CHAIRMAN ROBERT DEE: It's a possible it's a possible it could be rented that is my question

ADAM RODD: Just so we are clear that's it's a permitted use. Accessory apartment is a permitted use by right in the RR zoning district

CHAIRMAN ROBERT DEE: Right but I'm saying (Inaudible) him also a special permit for the accessory apartment beside the garage is my question.

ADAM RODD: It's a use under in the RR it's a use permitted by right

CHAIRMAN ROBERT DEE: Right, by right

ADAM RODD: So, what we are approving is the size of the garage that contains an accessory apartment but that is allowed by right

CHAIRMAN ROBERT DEE: Okay, anybody have any questions on this?

PAULA CLAIR: No

LENNY LIM: No

VINCENT CESTONE: No

CHAIRMAN ROBERT DEE: No, any questions?

PAULA CLAIR: No

CHAIRMAN ROBERT DEE: Okay at this time I'd like to make a motion that the variance be approved

PAULA CLAIR: Second

VINCENT CESTONE: I make a motion to close the public hearing

CHAIRMAN ROBERT DEE: Oh, sorry you're right does anybody want to talk about this? my mistake. There's anybody else want to speak about this? no you're a lucky man no nobody's here to complain

THOMAS PTACEK: Had bigger fish to fry

CHAIRMAN ROBERT DEE: Okay

ADAM RODD: Just for the record can we just get your name

THOMAS PTACEK: Yes, my name is Thomas Ptacek

ADAM RODD: Okay

THOMAS PTACEK: Agent for the owner

ADAM RODD: Okay

CHAIRMAN ROBERT DEE: We got a motion to close the public hearing

VINCENT CESTONE: I'll make the motion

LENNY LIM: Second

CHAIRMAN ROBERT DEE: All in favor

PAULA CLAIR: Aye

VINCENT CESTONE: Aye

LENNY LIM: Aye

CHAIRMAN ROBERT DEE: Aye

CHAIRMAN ROBERT DEE: All right I'll make a motion now to approve the variance, can I get a second?

PAULA CLAIR: Second

VINCENT CESTONE: Second

CHAIRMAN ROBERT DEE: All in favor

PAULA CLAIR: Aye

LENNY LIM: Aye

VINCENT CESTONE: Aye

CHAIRMAN ROBERT DEE: Aye

CHAIRMAN ROBERT DEE: Okay

THOMAS PTACEK: Thank you

CHAIRMAN ROBERT DEE: Your all set. Thank you

CHAIRMAN ROBERT DEE: At this time, I'd like to make a motion to go into executive session to seek some confidential legal instruction from our attorney

VINCENT CESTONE: I'll make a motion

CHAIRMAN ROBERT DEE: Can I get a Second?

LENNY LIM: Second

CHAIRMAN ROBERT DEE: All in favor

PAULA CLAIR: Aye

LENNY LIM: Aye

VINCENT CESTONE: Aye

CHAIRMAN ROBERT DEE: Aye

CHAIRMAN ROBERT DEE: Okay, we're going to go into a special session. I want to get some legal advice first and then we will come back out

ADAM RODD: So, it's clear is a closed session to seek confidential legal advice from counsel

CHAIRMAN ROBERT DEE: Closed session for confidential (Inaudible)

WENT INTO CLOSED SESSION APPROXIMATELY 7:40 PM

RETURNED AT APPROXIMATELY 8:20PM

ADAM RODD: Bob we have to make a motion

CHAIRMAN ROBERT DEE: Make a motion that we go back into session.

VINCENT CESTONE: I'll second

CHAIRMAN ROBERT DEE: All in favor?

PAULA CLAIR: Aye

LENNY LIM: Aye

CHAIRMAN ROBERT DEE: Aye

CHAIRMAN ROBERT DEE: Ah there's a lot of legal questions and a lot of people have different questions and it was only fair that they get some answers but there again I apologize at the length of time, and I will give everybody a chance to talk tonight so nobody's going to be cut short. Okay, but I can tell you right now there's gonna be no decision tonight so on this on particular on 9D the one I'm talking about alright there won't be a decision. First is up is business of where is it Mr. Ventura Route 9D. We've had this in front of us for a while. What this is applicant is seeking an interpretation of town code. It's existing use on a premise that is pre-existing legally non-conforming use permitted pursuant to the code, as well as an appeal of April 23rd 2019 stop work order issued by the Code Enforcement Officer. The property approximately 9.52 Acres and situated a highway commercial what the thing was they're saying that the stop work order should be lifted and the rock crushing and soil processing is a pre-existing non-conforming use. I could say we had a number of meeting's as we started in June, I believe we started in June it was scheduled to be heard June, July the applicants attorneys asked to be postponed and we finally met in August and then there was September, October. In October we closed the public hearing and were gonna vote on November. Then the attorney asked for said he couldn't make November. Anyway now he says he can't make here he couldn't make the January meeting so at this point in time I think we've given him enough leeway and I'm gonna ask for a motion that we take the vote tonight the public hearing was closed and we decided last meeting to take a vote. Can I get a motion?

VINCENT CESTONE: I make that motion

CHAIRMAN ROBERT DEE: second

LENNY LIM: Second

CHAIRMAN ROBERT DEE: All in favor?

PAULA CLAIR: Aye

GRANITE FRIENDA: Aye

LENNY LIM: Aye

VINCENT CESTONE: Aye

CHAIRMAN ROBERT DEE: Aye

CHAIRMAN ROBERT DEE: All right now, in this matter the applicates Ricky and Mark Ventura have filed an appeal to this board from a stop-work order issued by the Town Code Enforcement Officer dated April 23rd, 2019. The property which is subject to the appeal is located at One Lane Gate Road within the town of Philipstown. The Town Code Enforcement Officers stop-work order indicated that based on a site inspection of the subject property it was observed that there was a processing of vegetation vegetative material, demolition and construction debris. Rock crushing, stockpiling of process material. The stop-work order was issued by the Code Enforcement Officer for two basic reasons. First, the ongoing operations described in a stop-work order were not shown on the Planning Board's site plan for the subject property dated October 2nd 1983. Second, the use of the property observed by the Code Enforcement Officer was not allowed in accordance with section 175 50B of the current Zoning Law states which states, in pertinent part that the processing of soil, dirt, gravel and rock including rock crushing is prohibited and also any district south of the intersection of East Mountain Road and route 9. In this case, I believe the record presented to the board established that the Code Enforcement Officer's stop-work order was correct now there is no valid basis for granting the Ventura's appeal. First, use of the subject's property is not shown on your October 2nd, 1993 site plan and this supports the issuance of a stop-work order since the ongoing use does not require a site plan approval. I wrote this down so I make sure that I don't make mistake. Second, although the Ventura's argued that their use of the properties pre-existing non-conforming use, I do not find the record supports this position. The board has carefully examined the record including a March 21st 2019 decision from the Supreme Court Appellate Term. That decision after trial found that the use of property did not constitute a pre-existing non-conforming use. Here the record shows that the Ventura's has first began to make use of the property for the rock-crushing and related operations in the early 1980's. The Zoning Law in effect was 1968 Zoning Law. The 1968 Zoning Law provided in pertinent part that any use not permitted in the law is prohibited. Here the Ventura's use of the property was not permitted under the law when it was commenced and therefore, I find it was not a legal non-conforming use. I also find that the record does not support that the Ventura's use of their property was accessory to any listed permitted uses such as building and contractors yard. Does anybody on the board wish to speak to this I have any comments? Remarks?

VINCENT CESTONE: Well after reading the Supreme Court Decision then going through the record which was extensive, I didn't find anything that was significantly different from what was denied in the Supreme Court decision so I feel that there's no reason to come up to with a different opinion.

CHAIRMAN ROBERT DEE: Anybody else

PAULA CLAIR: I agree with the chairman that the rock-crushing activity was never a legal activity under any of the zoning laws so, for that reason I would not be supporting this appeal.

CHAIRMAN ROBERT DEE: Okay, at this point I'd like to make a motion that the Ventura appeal April 23rd work order should be denied with a written decision to be filed memorizing the boards determination prepared by the board's council. Do I have a second?

PAULA CLAIR: I'll Second

GRANITE FRIENDA: I'll second it

CHAIRMAN ROBERT DEE: Who seconds it?

GRANITE FRIENDA: I'll second it

CHAIRMAN ROBERT DEE: You'll second it (Inaudible)

CHAIRMAN ROBERT DEE: Okay I can take a roll call vote Mr. Cestone

VINCENT CESTONE: I agree with what you're saying and I vote to deny

CHAIRMAN ROBERT DEE: Mr. Lim

LENNY LIM: I vote to deny

GRANITE FRIENDA: I vote to deny

PAULA CLAIR: And I vote to deny as well

CHAIRMAN ROBERT DEE: I do too, that's unanimous so the application is denied.

Jose Romeu, Trustee of the Jose Romeu 2011 Revocable Trust, 529 Route 9D

TM# 81.-1-17

CHAIRMAN ROBERT DEE: Next order of business is Dr Romeu revocable trust 529 Route 9D. Mr. Romeu made an appeal for interpretation of the code. I think what we should probably do because we have a lot of people here, I know a lot of people want to speak.

GRANITE FRIENDA: I'm gonna recuse myself from this

CHAIRMAN ROBERT DEE: Okay, gentleman is going to recuse himself because of personal reasons. Let's see, what I would like to do put a little order to it so maybe first be able to have Dr. Romeu speak then Mr. Rasic he wants to speak then Mr. Rasic's attorney then Mr. Romeu's attorney then we will go from there. Mr. Dr. Romeu first please, you're up to the microphone I know you sent something maybe you want to look to speak about the letter you sent.

SIDNEY BABCOCK: Thank you

CHAIRMAN ROBERT DEE: Go ahead

SIDNEY BABCOCK: Thank you for the opportunity to address the board this evening. I'm Sydney Babcock and here with my spouse Jose Romeu and our lawyer Luke Hilbert. The 525 Route 90 has been our home for the last 39 years, Carol and Joe Rist were our neighbors to next door at 529 for most of those years. There has been a single-story rectangular cottage which Joe built by himself and there in the early sixties and therefore pre-code. The living space was limited to the ground floor. When we purchased our home in 1981 it was with the full knowledge that their home was non-conforming by the code at that time. At one point Joe added an outdoor terrace and consulted with us to make sure that it was not impinging on the current available set back. They were wonderful neighbors they had our keys and indeed we shared the joys and sorrows of each other's lives over the years we looked out for each other. Sometime ago the house was sold, we were looking forward to meeting our new neighbors I went over introduce myself offer my help and gave them my contact information. We didn't hear from them again until the meeting here in November of last year. In early July in early July or thereabout of last year we heard demolition within the house next door soon thereafter there was external demolition. When the roof came off, we became concerned about the setbacks and potential scale of the project, whereupon on July 12th of last year we visited the Building Department in order to find out what was happening as we had not been notified of any new construction. We were asked to return the following Monday July 15th, we spent the weekend scrutinizing the zoning code specifically in regard to building expansions on a previously non-conforming home. On finally looking at the plans it struck us that the building plans did not follow the regulations specifically this regulation. General legislation of the Town of Philipstown New York part two article six under paragraph 175 23 general non-conforming use subsection B2 quote "a non-conforming use or structure may be enlarged by a maximum 25 percent of the floor area or impervious surface whichever is less by the grant of a special permit by the Zoning Board of Appeals" end of quote. As we understand it that means that even if a permit is obtained from the Zoning Board of Appeals the expansion cannot exceed the living area of the original footprint of the house by more than 25 percent. Furthermore, in other words to do anything an appeal must be first made to the Zoning Board of Appeals, that is how we understand it. The new additions are also approximately 16 feet from the property line. They also increase a living space or floor area by about 200 percent as we see it. When you consider the new living areas that is the second story, the new basement which according to the current plans is clearly added living space and a third story called an attic in this case actually an expansion of a living area as well, no permit by the Zoning Board of Appeals which is required by the regulation was issued none of this was brought to the ZBA for permission in accordance with the regulation nor were we or any other neighbors as far as we know notified of any building proposal at that point on July 15th. We were told by the Buildings Department there was no such regulation as I quoted above and would we please email the chapter and verse of the regulation we were quoting. We were then told that no Zoning Board of Appeals would deny a permit for this expansion we were also informed that the Buildings Department had wide latitude enforcement and interpretation of any codes and "tends to side with the Builder". We were not aware that this was an issue where sides were to be taken. Our email of July 15th of the Buildings Department with the appropriate section of the B2 code as requested remained

unanswered. Further emails followed on July 26th again asking for the Buildings Department advice on contacting the Zoning Board and the B2 regulation. No advice was forthcoming nor anything about the B2 regulation because of the Buildings Department non-responsiveness. We then directly emailed the chair of the ZBA and its members including our communication with the Buildings Department. Then a subsequent email from the Buildings Department came and again, it did not address the regulation I quoted above. After we were denied access to the file and plans further emails were sent to the ZBA in August, September and October in these communications and also in a phone conversation at mid-august we outlined our reasons to request an impartial arbiter to decide the issues raised by the failure of the Buildings Department the contractor owner or the architect to file for the required special B2 permit from the Zoning Board of Appeals. These are our concerns and in our layman's understanding form the basis of our petition.

One, the added new second floor of the current structures about 16 feet from the property line it also increases the living area and floor area by much more than the allowable 25% even if a permit had been requested and issued. A permit from the Zoning Board of Appeals has to this day not been requested much less issued. The new second floor increases the floor area by at least a hundred percent this has clearly delineated in the plans as we see it.

Two, the basement is no longer a basement it is heated it has four wide tall glazed doors opening to a large glazed screened porch. This does not appear to me the definition of an unfinished basement for storage and equipment. It is clear that much of this basement is not a basement rather it is added living space. Again, all of this is clearly shown in the plans at least to us. The large a glazed screen porch itself further adds to the floor area of the building.

Three, the new attic does not appear to be an attic with this tradition uses of storage heating and air handling. It is in fact lofted space is connected by individual steps of this corresponding bedroom below. There is no floor or ceiling separation between the bedrooms below in the lofted areas above. These portions of the Attic are in fact yet another living space area an added floor area again not following the B2 regulation I quoted above. Again, sorry to repeat this but all of this is clearly delineated in the plans.

Four, when you add up the areas of the newly created living spaces they far and away exceed by several orders of magnitude the allowed 25% expansion to the original floor area of a non-conforming structure.

Five, it bears emphasizing that a permit to allow 25% expansion was never requested of the CBA nor granted by the ZBA as mandated by the code.

Six, all of these added living areas are at approximately 16 feet from the property line again all if this is clear from the plans It might be argued that what has happened is a transformation of the previous non-compliant basement into a second story. This kind of transformation is not in the code sited. The code addresses floor area and impervious surface that is the footprint of the house. I asked how can you transpose a previous non- living space non-conforming space the Rist's basement and call it a conforming second-story. The current project with its full height glass doors opening onto the

terrace and heating is clearly intended as a living space at the very least by itself. This markedly expands the living space floor area well beyond the maximum allowed by the code that I've stated. The fact remains that the overall floor area increase for the entire project now again far exceeds the maximum 25% even if approved by the Zoning Board of Appeals. I must add that we made four visits to the Buildings Department in an attempt to find a solution to this issue and each time we were denied permission to file a petition to interpret this regulation. Those visits were the following, One July 12th

CHAIRMAN ROBERT DEE: Let me stop you for one second. What do you mean denied? I have to explain it a little bit. Who denied and who said what in denial?

SIDNEY BABCOCK: We were denied by the Buildings Code Enforcement Officer

CHAIRMAN ROBERT DEE: Mr. Wunner

SIDNEY BABCOCK: Mr. Wunner yes

CHAIRMAN ROBERT DEE: What did he say exactly to you, Denies it?

SIDNEY BABCOCK: Yes, he denied them yes

CHAIRMAN ROBERT DEE: Okay

SIDNEY BABCOCK: Denied giving us the papers and I also quoted earlier that he mentioned that he had great latitude to interpret these things and decide with the builder. All of that was said to us

CHAIRMAN ROBERT DEE: Okay

ADAM RODD: Just so were clear did you file an appeal?

SIDNEY BABCOCK: We did with the lawyer once we got a lawyer. That's coming

ADAM RODD: I mean did you hand an appeal from the building permit to Mr. Wunners? Is that what your testimony is?

SIDNEY BABCOCK: I don't think so

JOSE ROMEU: May I interrupt, I'm Jose Romeu

CHAIRMAN ROBERT DEE: I'm sorry

JOSE ROMEU: I'm Jose Romeu, I'm his spouse

CHAIRMAN ROBERT DEE: Now let's

JOSE ROMEU: No, but let me answer Mr. Mr. Rodd's question. We asked for the paper work for the petition to file an opinion with the ZBA four times by email and in person and the paperwork was not made available to us and that's why

CHAIRMAN ROBERT DEE: Who emails sent to?

JOSE ROMEU: The emails were sent to the Buildings Department Mr. Wunner

CHAIRMAN ROBERT DEE: Okay

JOSE ROMEU: And that at that point July 26 is when I appealed to you and I just in inform you that we were being denied this petition

CHAIRMAN ROBERT DEE: You sent me an email, I gave you my phone number

JOSE ROMEU: That's correct and we spoke

CHAIRMAN ROBERT DEE: Home phone number we spoke on the phone

JOSE ROMEU: We spoke on the phone

CHAIRMAN ROBERT DEE: And I told you what to do. I told you to go see Mr. Wunner

JOSE ROMEU: That's correct

JOSE ROMEU: That was July 29th that was, now August middle of August by that time and you said well why don't you go again. We had been there four times all four times

CHAIRMAN ROBERT DEE: I didn't know at that time you had been there four times. I'm talking about July 29th when you hadn't been there four time

JOSE ROMEU: By that time, we had been there three times

CHAIRMAN ROBERT DEE: Okay

VINCENT CESTONE: (Inaudible)

JOSE ROMEU: We went back August 12th now with a lawyer in order to obtain

VINCENT CESTONE: Can I ask a question?

JOSE ROMEU: The form to file the petition which was finally filed only when the lawyer Luke Hilpert became involved

CHAIRMAN ROBERT DEE: Okay, now I see you have something, wait Dr. Romeu oh I see you have something in your letter about the August 12th you had a meeting your lawyer had a meeting?

JOSE ROMEU: Yes, it was Sidney is going mention all this

CHAIRMAN ROBERT DEE: Sidney Okay mention this

CHAIRMAN ROBERT DEE: You have a question?

VINCENT CESTONE: Yeah, I just want to say those emails can you print them out

DR. ROMEU: Yes

SIDNEY BABCOCK: We have the whole file

VINCENT CESTONE: And bring them to us?

JOSE ROMEU: (Inaudible)

SIDNEY BABCOCK: We have anything you request

JOSE ROMEU: Let me just show you it's a big file since July

CHAIRMAN ROBERT DEE: I can see that. Why don't you, tell you what you're not gonna do that tonight because I said this is not going to be settled tonight, we can see that so why don't you just have all that prepared. Your attorney will tell you how to prepare all that and you'll get that to us before the next meeting, okay go-ahead sir

SIDNEY BABCOCK: Let me just finish then, I was about to tell you of those four visits to the Buildings Department. The first was July 12th shortly after we noticed the start of external demolition. July 15th when we were informed that such regulation that as B2 did not exist and that there was no reason to ask the ZBA for an opinion. Three, July 29 when we were again requested to see the plans, they were not made available to us and neither was the paperwork to petition the ZBA. We were then informed that the Buildings Department had retained counsel and would have nothing further to say about the matter and we were left with no option then but to hire a lawyer ourselves. So, then the fourth meaning August 12th. We then retained Luke Hilbert and Luke Hilbert, Jose Romeu and I scheduled an appointment with the Code Enforcement Officer. At the appointed time the CEO excluded us refused to meet with us and met behind closed doors with Luke. Again, petition forms for the appeal ZBA were denied to us in addition to all of this

CHAIRMAN ROBERT DEE: Who denied to meet with you?

SIDNEY BABCOCK: Ah Mr. Wunner

CHAIRMAN ROBERT DEE: Mr. Wunner okay

SIDNEY BABCOCK: Yes, in addition to all of this on July 28th we personally spoke with Nancy Montgomery, followed up emails on August 5th and also further call on August 7th with Richard Shea, emails on August 5th and a follow-up phone call on October 7th. Because of the non-responsiveness of the Buildings Department by August 12th, the Buildings Department in the town were made aware that we had been left with no recourse other than to go the legal route. In summary, thank you for your patience.

One, the building project does not have the required permit from the Zoning Board of Appeals. To ignore the ZBA requirement clearly stated in B2 of the code establishes an unwelcome and dangerous precedent for all future construction in our community.

Two, the new building is in essence a three and a half story building about sixteen feet from the property line.

Three, it devalues our property.

Four, imagine if this happened next door to you particularly as a result of not following the clear Zoning regulations. This is an issue that affects each and every property owner.

Five, the new owner's architects have sent around a blast email to community members in which they claim among other things that we are wasting the town's time and money. We disagree, this decision is essential in establishing that it is the Zoning Board of Appeals that makes these decisions and nobody else. According to the New York State Department the New York State Department of State Zoning Enforcement Guidelines I quote "the enforcement officer's power is limited to enforcement of the law

as it is written. The Enforcement Officer has no power to modify or waive the zoning regulation even if she he disagrees with the required legislation and further the legislative body is the only board that has the authority to make zoning amendments and this power cannot be delegated". This issue must be addressed in order to serve all of our mutual interests in protecting and encouraging thoughtful, fair to all parties impartial and judicious develop in our community. We deserve need and have lived by these zoning laws and they should be applicable to all. Thank you for your patience.

CHAIRMAN ROBERT DEE: One question (Inaudible) Mr. Romeu Mr. Romeu is he here?

JOSE ROMEU: Yes, I am

CHAIRMAN ROBERT DEE: come up to the microphone please if you would. When you emailed me and I gave you my phone home number

JOSE ROMEU: Um hum

CHAIRMAN ROBERT DEE: You called me, right?

JOSE ROMEU: No, you called me actually

CHAIRMAN ROBERT DEE: I called you

JOSE ROMEU: Yes

CHAIRMAN ROBERT DEE: And I told you exactly what to do to go to the town

JOSE ROMEU: Yes

CHAIRMAN ROBERT DEE: And he would show you the plans

JOSE ROMEU: Yes

CHAIRMAN ROBERT DEE: And if you had any questions

JOSE ROMEU: Yes, that is

CHAIRMAN ROBERT DEE: So, there is no

JOSE ROMEU: No question that

CHAIRMAN ROBERT DEE: No problem between you and I

JOSE ROMEU: No not at all. The fact is

CHAIRMAN ROBERT DEE: Okay

JOSE ROMEU: In fact

CHAIRMAN ROBERT DEE: I appreciate

CHAIRMAN ROBERT DEE: I tried to do has much as I could

JOSE ROMEU: Yes, yes you did absolutely. You gave me very good advice by that time we spoke I guess around August 15th

CHAIRMAN ROBERT DEE: Right

JOSE ROMEU: We hired our lawyer and I felt very uncomfortable going yet a fifth time to the Buildings Department to ask for this document and also to see a faithful copy of the plans

CHAIRMAN ROBERT DEE: Right

JOSE ROMEU: we had on all these occasions requested a faithful copy of the plans so we could look at it and see exactly what the extent of the expansion was

CHAIRMAN ROBERT DEE: Okay

JOSE ROMEU: Its only when Luke petitioned

CHAIRMAN ROBERT DEE: Your attorney

JOSE ROMEU: Its only then the petition went through

CHAIRMAN ROBERT DEE: Okay I see this petition August 12th and I see that Mr. Hilpert notarized it August 12th on that date is that correct?

LUKE HILPERT: Yes

CHAIRMAN ROBERT DEE: Okay, I thank you

SIDNEY BABCOCK: Thank you

CHAIRMAN ROBERT DEE: I guess probably Mr. Hilpert will be next because after that and then we'll hear Mr. Rasic.

LUKE HILPERT: Okay, thank you Luke Hilpert on behalf of the Jose Romeu Trust and I guess Mr. Babcock set forth. We're here asking for the zoning board to review specifically one Section 175 23 B as it relates to this application to the building permit that was submitted. We came before this board in November, our application was received and marked as ready we did have an ongoing Supreme Court matter at that time. That matter has since based on the fact that we're before this board has been withdrawn without prejudice and so we are here before the board, just I know that was a question last time and just so that's

CHAIRMAN ROBERT DEE: Let me ask you a question

LUKE HILPERT: Yes

CHAIRMAN ROBERT DEE: You had a meeting August 12th with the Building Inspector

LUKE HILPERT: That's correct

CHAINMAN ROBERT DEE: Okay and Mr. Romeu and Mr. Babcock were not allowed in. That what he is saying?

LUKE HILPERT: When we arrived

CHAIRMAN ROBERT DEE: Tell us about that

LUKE HILPERT: When we arrived at the Building Department I introduced myself and Greg said come on back we'll look at the file and we looked at the file. I reviewed it with him we talked about his reasoning and his rationale for issuing the permit and the fact that I basically, as the owners state, that their un-finishing the basement in the basement you know that space is being added on top. We had a conversation we went back out front and my client said okay let's go talk about this and Mr. Wunner said you know since I've met with your lawyer, and that's the meeting for today. Yeah, I'm not gonna meet with you any further

CHAIRMAN ROBERT DEE: Okay

LUKE HILPERT: So, I did meet with Mr. Wunner and we had a conversation

CHAIRMAN ROBERT DEE: Did you notify him at that time the appeal was gonna be issued?

LUKE HILPERT: We talked about the fact that we would be issuing an appeal um

CHAIRMAN ROBERT DEE: Okay

LUKE HILPERT: He said you know I understand you have clients that are anxious in this and you have to do what you're gonna do

CHAIRMAN ROBERT DEE: Okay thank you

LUKE HILPERT: What I think was the essence of our conversation

CHAIRMAN ROBERT DEE: Oh, alright I think Mr. Romeu, go ahead

JOSE ROMEU: We had made an appointment for the four of us to meet at two o'clock

CHAIRMAN ROBERT DEE: Correct

JOSE ROMEU: It was intended and made that way. When we arrived, he asked Luke in and said that he was simply not going to meet with us. After they emerged, he just refused to talk and refused to give me again, the paperwork or produce a faithful copy of the architectural plans

CHAIRMAN ROBERT DEE: Thank you

LUKE HILPERT: I would, as a result of that meeting, we did obtain the architectural plans

CHAIRMAN ROBERT DEE: Okay, thank you. Mr. Rasic, Mr. Rasic

LUKE HILPERT: If I could

CHAIRMAN ROBERT DEE: Oh, I'm sorry I didn't mean to cut you short go ahead

LUKE HILPERT: That's okay, I'm happy to answer your questions

CHAIRMAN ROBERT DEE: Go ahead

LUKE HILPERT: I just wanna state you know a few items. One, the crux of the owner's application here is that they are un-finishing this basement and I think as Mr. Babcock pointed out the plan's clearly show that this basement, there is a new wood-burning stove being added in the basement in the corner. There are these large sliding glass doors that are going to go out to additional patio, that is in there's going to be added impervious impermeable surface.

CHAIRMAN ROBERT DEE: This is the basement?

LUKE HILPERT: This is all out of the basement that patio appears that it'll be a screened in or a three-season room type (Inaudible) I can't tell directly from the plans but it is an additional impermeable surface. They are increasing the non-conformity in the side yard by adding the second floor. There's no doubt in my mind that they're doing that and they are increasing the floor plan because that basement is, as soon as this CO issued, things are going to be moved into the basement and it will be. That doesn't appear to be any other reason to have a wood burning fireplace down there. I don't know if the board has made a site visit but that maybe

CHAIRMAN ROBERT DEE: (In auditable)

LUKE HILPERT: If the board has made a site visit or if your inclined to do so

CHAIRMAN ROBERT DEE: No, we're gonna. First of all, last meeting we had nothing no building plans. We had nothing so were kinda working like a deer in headlights

LUKE HILPERT: Right

CHAIRMAN ROBERT DEE: I'd like to ask you if it's okay ask your client if the board can make a site visit before the next meeting?

LUKE HILPERT: My clients are the neighbors absolutely

CHAIRMAN ROBERT DEE: It's not far I want to look at his house and see

LUKE HILPERT: Yes

CHAIRMAN ROBERT DEE: He telling me he can't see a mountain or something like that.

LUKE HILPERT: Yes

CHAIRMAN ROBERT DEE: and see what it is, there is no objection there?

JOSE ROMEU: No objection

CHAIRMAN ROBERT DEE: No objection, thank you

LUKE HILPERT: I would also like to um I did receive correspondence from Mr. Smith that's also been submitted to the board and before that between now and the next meeting since the meeting is going to be held open, I will submit written

CHAIRMAN ROBERT DEE: Yes

LUKE HILPERT: A response to that which will include all their emails and all the things that the board is requesting

CHAIRMAN ROBERT DEE: Yeah, all the emails and any other thing you want to submit just try and get it to us or our secretary about like 10 days before the meeting or something like that so this way she can copy it and forward it to us because we get it like a week before usually something we have time to review it because a lot of things here tonight we got we can't take time to read.

LUKE HILPERT: Right

CHAIRMAN ROBERT DEE: Alright

PAULA CLAIR: Yeah, the appeal that we have says that the application date is April 12th

CHAIRMAN ROBERT DEE: August 12th

PAUL CLAIR: I'm sorry, August 12th and did you file this and did you file this on August 12th?

LUKE HILPERT: It was not filed on August 12th I believe my office had sent it in. We did receive correspondence in September that said we were on a September agenda that was, then we were then told it was not. I then spoke with Tara Percacciolo who acknowledged that she needed the application from us. I brought the application down and I think it was officially received on the 10th of October is I think the date that is on there.

PAULA CLAIR: So that's

ADAM RODD: So that's when you filed the appeal October 10th?

LUKE HILPERT: That's what it I have to double check

ADAM RODD: (Inaudible)

LUKE HILPERT: I have to double check the date it but it was

ADAM RODD: That's what the

LUKE HILPERT: Whatever whatever the it is stamped on top there

CHAIRMAN ROBERT DEE: (Inaudible)

PAULA CLAIR: (Inaudible)

ADAM RODD: Date stamped that's what we have from October 10th

LUKE HILPERT: That's correct.

PAULA CLAIR: So why does it say August 12th when

LUKE HILPERT: That's the date I met with them and I reviewed

CHAIRMAN ROBERT DEE: That's the date with Mr. Wunner

LUKE HILPERT: It with Mr Wunner we went back I prepared the paper work they came in and signed it

CHAIRMAN ROBERT DEE: And you told them you were gonna to file an appeal okay

LUKE HILPERT: Correct

CHAIRMAN ROBERT DEE: Okay, thank you

LUKE HILPERT: Um

CHAIRMAN ROBERT DEE: Okay go on

PAULA CLAIR: You told Greg Wunner you were going to file the appeal on August 12th?

LUKE HILPERT: I don't know if I said I'm filing it today, but we did have a conversation Greg and I had a conversation he said we we've had a working relationship for years and he said

PAULA CLAIR: Oh

LUKE HILPERT: And I said look you know were gonna have to do something here so they absolutely understand that and you know this isn't anything personal. This is, you know, so we had that conversation.

PAULA CLAIR: So, he knew on August 12th that an appeal was going to be filed?

LUKE HILPERT: I don't know what he knew on August 12th. I know that we had a conversation about the fact that my clients were against this project and based on my interpretation of the law was different then his interpretation of the law and that we would be taking action I don't

CHAIRMAN ROBERT DEE: But you informed that you would be taking action?

LUKE HILPERT: We had that conversation

CHAIRMAN ROBERT DEE: Okay

LUKE HILPERT: Yes

PAULA CLAIR: Okay

LUKE HILPERT: Um I lost my place, I would like to just point out there was a question at the last meeting about um staying the construction and I'm just like section 175-59L does talk about all proceedings should be stayed during the course of an appeal unless the Zoning Administrative Officer says there's peril to life or to property. This property certainly is enclosed it's been winterized. There is no, the windows are there I don't believe there's any immediate peril to property by work stopping between now and the time and decision is made and I think that the section 175 59 L would support that and so I'd ask the board to consider taking that action tonight since the meeting will be held open and to stay any further work. I don't believe that it would be based on the fact that everything is closed to the elements and conversations we had in court as to where the

property stands. I don't think there would be any additional or any damage to property or to life by doing so.

CHAIRMAN ROBERT DEE: So, you're asking for stop-work order, is that what you're asking for tonight?

LUKE HILPERT: I'm asking that just in accordance with 177 59L that the all proceeding ever everything to do with the property be stayed and know that they not able to continue. Yeah so essentially yes, I'm asking that work be stopped until there's a determination. My concern with anything here is ultimately if the board does decide that to hear this matter and decides that an application to the board should have been made the fact that the work continues just puts them further and further down the road and you know they should have noticed a while back that we were coming through this board and that we were seeking this remedy, but as we get further down the road and the property's more complete it certainly puts more of an onus on this board. So, I think that because of that stopping work where there's no real harm to um to the homeowners would be an appropriate remedy.

ADAM RODD: Isn't it true that um you on behalf of your clients did file in court or request for injunctive relief?

LUKE HILPERT: That's correct

ADAM RODD: And with respect to that proceeding you withdrew, is that correct?

LUKE HILPERT: That's correct, we did we withdrew because um in our application for injunctive relief we didn't know if this board would hear our would hear our application and once this board and at the last meeting said that they would hear our application. We went, we were in court the next day and I informed the judge of what had happened that this board was going to hear this and that we no longer lacked an administrative remedy. The fact that this board has agreed to hear this petition that we're here before it on a public hearing means that we have an administrative remedy at law, therefore the injunctive relief is not proper in the Supreme Court and that's why we withdrew the action.

PAULA CLAIR: Can I Can I just clarify something for myself what is the remedy that you seek?

LUKE HILPERT: That we seek today?

PAULA CLAIR: Yeah

LUKE HILPERT: Well, the remedy that we're seeking is an interpretation so we're asking this board to make a determination whether this building permit should have been issued by the building inspector without the board having without the Zoning Board having had to issue a special permit.

PAULA CLAIR: Okay

CHAIRMAN ROBERT DEE: And in the mean time you're asking for a stop-work order?

LUKE HILPERT: And in the meantime, I'm asking for a stop-work order

CHAIRMAN ROBERT DEE: Until that's settled

LUKE HILPERT: I'm asking for a stop work order and for the board to consider that again, because the continued construction is a significant damage to the neighbors and I think it's it does nothing to the homeowners but delay, thank you.

CHAIRMAN ROBERT DEE: Mr. Rasic

Tim Rasic: Hello my name is Tim Rasic im the owner of 529 9D. Thank you for the opportunity to speak. I'm going to just make a couple points and I'm gonna let my attorney speak more to the point. We bought the house, we did plans, um we got permits from both the Health Department in the Building Department we're adding a second story which stays within the existing footprint of the house. The second floor does not encroach into the required front yard setback the second floor does not increase the dimensional nonconformity of the existing house, so therefore I respectfully offer that the zoning variance a zoning variance is not required per town code 17 23 B1 and the building permit was issued correctly as of right. Furthermore, the appeal for the zoning interpretation was made well beyond the 60-day time limit permitted by the town code in Section 17 59 F1 so we respectfully offer that it should be dismissed. On a procedural basis, those are my points.

CHAIRMAN ROBERT DEE: Okay, my only question, last meeting I really didn't have any information like I said I had no building plans so so I took a liberty going on your website (Inaudible) and I saw it said garrison house.

TIM RASIC: Yes

CHAIRMAN ROBERT DEE: Is that this particular house?

TIM RASIC: Yes

CHAIRMAN ROBERT DEE: Is this a fair rendering of

TIM RASIC: Yes

CHAIRMAN ROBERT DEE: What?

TIM RASIC: You're welcome to come I'll take you through the house

CHAIRMAN ROBERT DEE: Okay, so you will have no problem for a site inspection?

TIM RASIC: No problem

CHAIRMAN ROBERT DEE: Because we'd want to probably do that to both homes so, we just want to make sure

TIM RASIC: Okay, no I have no problem nothing to hide

CHAIRMAN ROBERT DEE: Okay anything else?

TIM RASIC: No

CHAIRMAN ROBERT DEE: You sure?

TIM RASIC: Yup

CHAIRMAN ROBERT DEE: Okay Mr. Rasic's attorney Mr. Smith right?

FRANK J SMITH: Good evening Mr. chairman members of the board my name is Frank J Smith the third from the law office of William A. Schilling Jr. and we represent the respondent Hill and Valley Properties LLC. The premises in question is located at route 9 D or 529 route 9D garrison New York Tax Map number 81 - 1 – 17. Before reaching the merits of the interpretation that we're discussing this evening I contend that this appeal should be summarily dismissed due to untimeliness. In order to ascertain how the appeal is untimely we need to go through a brief timeline of action. First was that on November 15th, 2018 the building permit in question was issued. Second construction began at the premises on or about June 24th 2019. As Mr. Babcock has stated there was actual notice on July 12th 2019 that construction was taking place on the premises. The appeal

CHAIRMAN ROBERT DEE: How was that notice done? In July is it actual notice? I'm sorry

FRANK J SMITH: I'll get into it further but

CHAIRMAN ROBERT DEE: Oh okay

FRANK J SMITH: There are two dates of notice that are being contended by the appellant. First was in their article 78 proceeding which is a verified complaint which is sworn to under the penalty of perjury which states that notice was given on July 24th when the neighbors recognized that construction was going on. At the November 18th meeting and again here this evening Mr. Babcock said that they knew of the construction on July 12th when they first went to the Building Department and that will be relevant for reasons you'll see momentarily, and then lastly on October 16th, there was an article 78 filed which as Mr. Hilpert had stated has been withdrawn and discontinued. It's well-established in New York that a Code Enforcement Officers decision can be appealed within 60 days upon the filing of that decision. That's in New York State Town Law section 267- A 5 B and the Philipstown Zoning Code Section 175 - 59 F 1. New York State through case law has carved out an exception for a neighboring property owner who may not know of the issuance of a building permit. It's the situation that we have here. Mr. Ramue and Mr. Babcock would have no idea that my clients went to the Building Department and were issued a permit until they saw or knew that construction was taking place. In instances like that the courts have held strongly that the neighbor or the aggrieved party has 60 days upon actual or constructive notice of the project to bring the appeal. Again, that's why the July 12th date is very important. It's been admitted to on the record at two meetings now that the construction was discovered on July 12th and if you look at the October 10th filing of the appeal, you'll see that that's clearly outside of the 60-day requirement. If we use the July 12th date, a timely appeal should have been filed by September 10th, and even if the respondent concedes to the July 24th date that was in the verified article 78 proceeding that date that the appeal would had to have been filed by was September 22nd. Although the appeal is dated August 12th, it was not properly filed with the Building Department for the Zoning Board until October 10th, that's the date that the time stamp reads. In my

submission to this board on December 12th, of last year I provided you with a number of cases that speak to this proposition. Our municipal neighbor to the north the Village of Cold Spring dealt with a very very similar scenario just a few years back. That case was called Peehl vs Village of Cold Spring. It was decided by the Appellate Division Second Department that Court has procedural precedence value and is binding on us in this jurisdiction. In that case there was a building permit issued to replace a shed. The neighboring property owners did not appeal within 60 days of constructive or actual knowledge of the shed being replaced. The Village of Cold Spring Zoning Board dismissed the appeal due to untimeliness. That decision was appealed to the Supreme Court of Putnam County via article 78. That judge determined that the Zoning Board of Appeals was correct and that the appeal was untimely and that it was okay to be dismissed. That decision of the Supreme Court was then appealed to the Appellate Division. The Appellate Division once again affirmed the Supreme Court which affirmed the Zoning Board which said that the appeal was untimely since it was not within 60 days of actual or constructive notice of the work being done under the building permit. Although the petitioner contends that they could not appeal the determination Mr. Hilbert was engaged on or about August 12th. Similarly, if the Building Department was so unwilling to provide documents New York State does have a robust Freedom of Information Law which those documents could have been discovered though. For those reasons, prior to reaching the merits the appeal should be dismissed because it's been filed untimely. Secondly, if the board does reach the merits of the interpretation, we contend that the Building Inspector's interpretation was correct it's undisputed that 529 Route 9D is a non-conforming use. The non-conformity is in one side yard setback the code requires 30 feet for side yard setback on the southwest corner of the house it is 20.46 feet from the property line and in the southeast corner it's 16.2 feet from the property line. That represents dimensional non-conformities of 9.54 feet and 13.8 feet respectively. It's also important to note that the property fully complies with front yard setback. The code requires 60 feet and the premises is 193.9 feet from the front property line. The relevant code provision that's the subject of this appeal for interpretation is section 175 - 23 B this section governs the expansion or enlargement of a non-conforming use. This section states quote "non-conforming buildings or other structures shall not be enlarged extended or structure structurally altered except where the enlargement or extension does not increase the non-conformity". In this instance the non-conformity is one side yard setback. The work that was done under the permit did not reduce that side yard setback whatsoever. The footprint is exactly the same as the property was prior to the issuance of the permit. Section 175 23 B also states, that the height of a non-conforming principal building that encroaches into a required front yard setback area may not be increased within the setback area. Again, the premises fully complies with front yard setback and provides a 133.9 feet more than what the code requires. The Supreme Court of the United States along with Section 175 74 of the Zoning Code requires that the statute be read in its ordinary meaning and the code also states that any words in the Zoning Code should be given their customary meanings. In this case, the word "except" clearly creates an exception for expanding non-conforming uses. A non-conforming use may not be expanded or enlarged except where it does not increase the non-conformity. In this instance the work done under the permit doesn't touch the non-conformity. Yes, we do go up but we do not go closer to the property line.

Furthermore, the building inspector was correct that section 175 23 B2 of the code does not apply. This section allows for a 25% expansion of floor area in a non-conforming use by grant of a special permit by this board. In this instance the floor area was not increased. The finished basement utilizing 1192.34 four square feet was unfinished, there by that square footage was removed from a floor area calculation. Section 175 - 74 B the definition of floor area explicitly excludes unfinished basements in determining the total floor area. The newly constructed second floor utilizes 1192 .34 square feet that's the same exact amount that was taken from the basement and moved upstairs there was no increase in floor area whatsoever. There is one item that I would like to address that I did not prepare this evening that was brought up previously and it's that I believe that a work order or stop work order is completely inappropriate given the context of what we're dealing with here. We were last before this board on November 18th almost two months ago that was ample and adequate time to prepare any supporting documents to be sent to this board for your review. I was able to get you a presentation. Mr. Rasic was able to get you a narrative and along with the building plans that were included in his submission and we did all of this by December 12th, well in advance of the 10 days that you look for a submission.

CHAIRMAN ROBERT DEE: Wait wait one second, I we got the building plans September 12th?

FRANK J SMITH: they were included in Mr. Rasic's submission to the board and I have a copy of that letter here and that letter was dated November 23rd 2019

CHAIRMAN ROBERT DEE: November 23rd so your saying September 12th November 23rd I'm at a loss, I'm sorry

FRANK J SMITH: I apologize

CHAIRMAN ROBERT DEE: I never saw a building permit

FRANK J SMITH: In this in this letter there were photographs and there were surveys I stand I stand corrected

CHAIRMAN ROBERT DEE: Yes, alright I know you are an attorney I'm not the sharpest knife in the drawer but I know I didn't get the building plans

FRANK J SMITH: No, I misspoke I thought the plan

CHAIRMAN ROBERT DEE: Okay good

FRANK J SMITH: I thought the plans were included in that letter but the permit itself was included photographs and the survey

CHAIRMAN ROBERT DEE: Okay we got a survey, we got a survey

FRANK J SMITH: Correct

CHAIRMAN ROBERT DEE: We got it, here right?

FRANK J SMITH: And in the survey reflects the side yard setback as well as the front yard setback

CHAIRMAN ROBERT DEE: But there's no building plans here

FRANK J SMITH: You are correct sir

CHAIRMAN ROBERT DEE: Go ahead

FRANK J SMITH: Yep, I stand corrected thank you. Lastly, during this entire period of time there was an article 78 proceeding that was brought in appropriately prior to administrative relief before this board seeking an injunction again, that was discontinued because the judge was unwilling to rule on it because we were still pending here and the issue that the neighbors have in terms of the damage that they believe is being done by the construction. The majority of that construction has already taken place we've already gone up the second floor. If there was any damage in that it would be in existence today stopping work at this point I don't think it's appropriate given the fact that this is a lawful permit that was applied for and approved and this appeal is challenging it so for right now this permit is valid in full effect. The majority of work on the outside has been done and I think that a stop-work order would be entirely inappropriate in this scenario.

CHAIRMAN ROBERT DEE: Okay, that's the question ah can you get the board a copy of the original CO this house? when Mr. Rasic bought the home, he got a Co original CO

FRANK J SMITH: So long as it's on file with the Building Department I should be able to get that without a problem.

CHAIRMAN ROBERT DEE: The Building Department Inspector is here tonight I'll ask him if he can supply it

FRANK J SMITH: Okay

CHAIRMAN ROBERT DEE: Okay, I'd like to see the original CO to see what the square footage was of the house on the original CO

FRANK J SMITH: Okay

CHAIRMAN ROBERT DEE: Okay

FRANK J SMITH: Yup and I'll certainly request it and worse case scenario

CHAIRMAN ROBERT DEE: Your client has no problem with us going down and doing site inspection?

FRANK J SMITH: No, that would be

CHAIRMAN ROBERT DEE: That would be inside the house also

FRANK J SMITH: I'm sorry

CHAIRMAN ROBERT DEE: Inside the house also?

TIM RASIC: I'll take you everywhere

CHAIRMAN ROBERT DEE: Huh

TIM RASIC: I'll take you everywhere

CHAIRMAN ROBERT DEE: Okay good

FRANK J SMITH: Yeah, that absolutely fine, so thank you for your time and consideration. Thank you again if you have any further question's I'm available so is Mr. Rasic and we're more than willing to supply you guys with anything you're looking for.

CHAIRMAN ROBERT DEE: Thank you

FRANCK J SMITH: Thank you

CHAIRMAN ROBERT DEE: Mr. Wunner I guess Mr. Wunner here?

GREG WUNNER: Yes

CHAIRMAN ROBERT DEE: Yes, come up here and speak please, oh just one question I'm sorry it's just one more question from you

FRANK J SMITH: Of course

CHAIRMAN ROBERT DEE: I apologize

FRANK J SMITH: No not a problem

CHAIRMAN ROBERT DEE: On August 12th I see this thing is filed the application was filed August 12th is that right?

FRANK J SMITH: No

CHAIRMAN ROBERT DEE: No, I mean filed I mean it the date is August 12th.

FRANK J SMITH: Yes

CHAIRMAN ROBERT DEE: I wouldn't say it was filed. Correction, and Mr. Hilpert endorsed it and notarized and that and he had a meeting with Mr. Wunner and he told him he was going to start a proceeding. You don't consider that a filing?

FRANK J SMITH: Absolutely not

CHAIRMAN ROBERT DEE: Okay, you don't consider that a filing?

FRANK J SMITH: No, I don't think and I don't think the New York State would either.

CHAIRMAN ROBERT DEE: You don't consider that noticing the town?

FRANK J SMITH: I think that there's a very big difference between telling someone that you intend to do something and actually doing it. I think that it's unambiguous that State Law is clear, Town Code is clear, Case Law is clear. If you look at the Cold Spring case it stands on almost all fours but the proposition that we have here. I firmly believe and courts have ruled on this and a number of occasions particularly in the Appellate Division second Department which is binding on us in the Ninth Judicial District that if someone does not have knowledge of a building permit being issued because they're not a party to it but they're a neighbor or someone else who may be aggrieved they have 60 days and I think that after this evening it is absolutely clear that construction

was noticed by Mr. Babcock and Mr. Rameu on July 12th, so 60 days from July 12th, would be the period of time in which that application and appeal was due. I also think it's important that if we look at that August 12th, date when Mr. Hilbert was brought on board in this case that gave almost a month to prepare the application. So, there was a month of time where the applicants here had counsel and did not appeal to this board so my contention is that there was absolutely ample opportunity to comply with the 60 day requirement that is in fact law in New York State and it was not done, and I truly believe that that for that reason this appeal should be dismissed prior to hearing any issues on the merits themselves.

CHAIRMAN ROBERT DEE: Thank you

FRANK J SMITH: Thank you

CHAIRMAN ROBERT DEE: Mr. Wunner

GREG WUNNER: Good Evening

CHAIRMAN ROBERT DEE: Go ahead, I guess were asking you about the building permit. There saying ah Mr. Rameu complaint is that it's basically more the 25%. Let's start there

GREG WUNNER: At the square footage of the house would be the same at the beginning of the construction and the same at the end of the construction. There's no increase in floor area

CHAIRMAN ROBERT DEE: Okay, your saying unfinished space but the basement was finished correct?

GREG WUNNER: Yes

CHAIRMAN ROBERT DEE: Okay, then they unfinished it

GREG WUNNER: He demoed it, yes

CHAIRMAN ROBERT DEE: They took out the bathrooms and wiring

GREG WUNNER: Uh huh

CHAIRMAN ROBERT DEE: And sheet rock

GREG WUNNER: The stove that your making mention of is laying on its side down in the basement. I think he was hoping to repurpose that at some point of time.

CHAIRMAN ROBERT DEE: Alright

GREG WUNNER: But it's not physically installed, it's not there

CHAIRMAN ROBERT DEE: What's not there? I'm sorry

GREG WUNNER: The wood stove that he made mention of earlier

CHAIRMAN ROBERT DEE: Wood stove okay. I had a conversation a couple weeks ago and you told me that you thought that the owner may come back after he gets a CO and try and get 25% more

GREG WUNNER: Well we said that was a possibility and he'd be entitled to request that but, I didn't say he was planning on doing that I said

CHAIRMAN ROBERT DEE: Okay

GREG WUNNER: If he wanted to providing all this is clear and he moves into his house that's when he'd be subject to that 25% because that would be the point in time where he would be experiencing an increase.

CHAIRMAN ROBERT DEE: Okay, Mr. Romeu said that basically he talked about the appeal and you denied his appeal. You want to speak to that?

GREG WUNNER: I don't hand out those that is not my purview that's done by the clerk for this board. I don't do those, I've never touched one in my life and they're also available online.

CHAIRMAN ROBERT DEE: Okay, did you mention to Mr. Romeu that you denied his appeal did you say that?

GREG WUNNER: No, I did not

CHAIRMAN ROBERT DEE: Oh, okay alright I was just asking, you know

GREG WUNNER: He had asked me one time. He said it was a concern about did it comply with the code and I said it did, and I wasn't interested in arguing with him

CHAIRMAN ROBERT DEE: Okay, on the August 12th meeting with Mr. Hilpert

GREG WUNNER: Yes

CHAIRMAN ROBERT DEE: August 12th did he tell you what did he tell you about he was gonna file with the Town or anything.

GREG WUNNER: I don't recall that part um

CHAIRMAN ROBERT DEE: You don't recall that part?

GREG WUNNER: He came into collect some information we discussed my position versus their position.

CHAIRMAN ROBERT DEE: Okay

GREG WUNNER: He asked for a set of plans. I got them to him within a day or two and we just you know that was about it. There really wasn't any.

CHAIRMAN ROBERT DEE: Okay, you have the original CO?

GREG WUNNER: It would be in the building file I believe

CHAIRMAN ROBERT DEE: Okay, can you get can you have them supply that for the next meeting before that.

GREG WUNNER: I think it would be best if you were to. That's again handled my secretary Linda who you would be able to

CHAIRMAN ROBERT DEE: I'm sure you could tell your secretary, I'm asking you

GREG WUNNER: Absolutely I can, but I don't want he's kind of pointed out some um he's hinting to the fact that I'm denying him things, so I don't think I want to handle that file at this point. I think it would be more appropriate for you

CHAIRMAN ROBERT DEE: Your denying me you want me to tell her she's sitting here

ADAM RODD: Were not asking you to handle the file.

GREG WUNNER: How do you want me to get the file to you?

VINCENT CESTONE: Make sure the file gets to us.

GREG WUNNER: How do you want me to get the file to you? have linda make copies?

CHAIRMAN ROBERT DEE: I'm not going to tell you how to do your job. All I'm saying

ADAM RODD: we'll just request form the Building Department the original CO be supplied before the next public meeting.

GREG WUNNER: There you go

CHAIRMAN ROBERT DEE: Any questions? anybody have any questions?

LENNYLIM: No, not at this

PAULA CLAIR: Yeah, Mr. Babcock has indicated that he had asked you for plans and that you'd and he says you denied them the plans

GREG WUNNER: No, they have the plans we made them copies of the plans and they did use plans prior to them coming in

PAULA CLAIR: When did you make copies of the plans?

GREG WUNNER: Pardon me?

PAULA CLAIR: When did you make the copies of the plans?

GREG WUNNER: When they were requested by Luke Hilpert.

PAULA CLAIR: By his lawyer, but he said they

GREG WUNNER: They did view the they did view the file I believe they did view the file

JOSE ROMEU: We asked for faithful copies of the plans and they were denied. I was told on July 29th, that the plans were not there. I was told that I was not entitled to them that they had retained council.

GREG WUNNER: Not true

JOSE ROMEU: and that they would not discuss the matter any further.

PAULA DEE: Could you respond to that?

GREG WUNNER: What was the question?

PAULA CLAIR: He just said that on July 29th

JOSE ROMEU: On the 15th and on the 29th

PAULA CLAIR: That he asked

GREG WUNNER: You come in our office there's a set of requests on the wall you can go fill one out hand it to my secretary. I do not handle that so he could have just requested copies is what Luke Hilpert did, he requested copies we had them made and we delivered them to him within a day or two.

PAULA CLAIR: Couldn't you if he was requesting copies and you don't handle that could you not have asked him to request that of your secretary?

GREG WUNNER: I don't remember exactly what day that was because you're giving me a bunch date's I don't know what date that was.

PAULA CLAIR: He just said that he asked for plans on the 29th, and I think the 15th, of July.

GREG WUNNER: They came in to view the file and they got the file and they looked at the file.

PAULA CLAIR: They looked at the file, ok

CHAIRMAN ROBERT DEE: Ok so however it's gonna be done we're gonna be supplied with the CO original CO before the next meeting is that correct?

GREG WUNNER: That's fine

CHAIRMAN ROBERT DEE: Okay, thank you. Anyone one have questions?

VINCENT CESTONE: Yeah, so who originally refused uh the applicant access to the Zoning Board?

GREG WUNNER: Nobody did

VINCENT CESTONE: The secretary?

GREG WUNNER: Nobody did

VINCENT CESTONE: He has email's

GREG WUNNER: His email he did not ask to go in front of this board. I don't handle that. If he sent me an email saying that which I don't believe he did. I don't handle that

CHAIRMAN ROBERT DEE: Well they'll have all those emails

GREG WUNNER: The board your board is supposed to their appeals go to you about my actions so why would I handle that. I don't handle that.

PAULA CLAIR: Don't you don't you give them a copy of the appeal form when they ask?

GREG WUNNER: I don't handle that that's done by a clerk in our office.

PAULA CLAIR: Oh ok

GREG WUNNER: It's done by your clerk for your board not the Building Department Clerk.

PAULA CLAIR: Okay

CHAIRMAN ROBERT DEE: But our clerk works for the Building Department too

GREG WUNNER: No, they she's housed in then Building Department

CHAIRMAN ROBERT DEE: Wait she has nothing to do at the Building Department

GREG WUNNER: She may pick up the phone from time to time

PAULA CLAIR: Okay, but I mean it seems to me that certainty that clerk could have been instructed to give them an appeal form I mean they

GREG WUNNER: They did not ask for one.

PAULA CLAIR: Well

GREG WUNNER: And its available online and they spoke to the board from what I understand

PAULA CLAIR: Well what I think they were uh from what I heard they were expressing concern about the building that was going up and that you know and expressing that they were unhappy. That is, was going forward and one could infer that they would like to have any kind of information about how they could appeal it. It seems to me.

GREG WUNNER: I explained to them that it was in compliance with chapter 175. That was my obligation I explained it I explained it on more than one occasion with them

VINCENT CESTONE: That's not the point. The point is they listened to what you said they wanted to apply and someone in the Building Department told him that you weren't going to give him the application.

GREG WUNNER: That's truly not the case

VINCENT CESTONE: I hope your right

GREG WUNNER: I

CHAIRMAN ROBERT DEE: Thank you

GREG WUNNER: I know I'm right

LENNY LIM: We have he said she said

CHAIRMAN ROBERT DEE: Thank you

ADAM RODD: Just so the record's clear, we have an appeal that is stamped October 10th 2019 is that your understanding?

GREG WUNNER: That's my understanding and that's the day it came in yes

ADAM RODD: Do you have any knowledge of an appeal being filed with the Building Department before October 10th 2019?

GREG WUNNER: No

ADAM RODD: Did you ever refuse an appeal?

GREG WUNNER: No, I don't handle appeals and I wouldn't refuse them anyway. I have I have no skin in the game on this. I'd be happy I'm one of the helpful most helpful people you can imagine when you come in our department so that's why I take a little bit of exception what I'm hearing tonight.

CHAIRMAN ROBERT DEE: Well I'm sorry you feel that way.

GREG WUNNER: No but anybody that deals with our department knows we go out of our way to help

CHAIRMAN ROBERT DEE: (Inaudible) An appeal is before us so where gonna find out everything (Inaudible)

GREG WUNNER: That's fine

PAULA CLAIR: I think that's there's a question of ah whether um it's the untimely issue really applies here because it's clear the people who submitted the appeal expressed that they would maybe they didn't say they'd like to appeal it, but they certainly expressed dissatisfaction with the project and one could infer that they would want to appeal it. and they did so in early date, and within the 60 day time frame well within it.

GREG WUNNER: They had a they had that filled out they just didn't file it

PAULA CLAIR: Okay

CHAIRMAN ROBERT DEE: Dr. just so I understand that and it appears to be the case appears to be the case it wasn't filed until October 10th do you agree with that Mr. Hilpert?

LUKE HILPER: That appears to be

CHAIRMAN ROBERT DEE: That wasn't officially going into the town and stamped October 10th so we've

LUKE HILPERT: Yes

CHAIRMAN ROBERT DEE: So, we cleared that up okay. Just so you know for the boards point of view like I got an email from Dr. Romeu October 28th, he filed the appeal August 13th, so we can only work with what we have at this point in time.

GREG WUNNER: I don't know who he would have filed it with

CHAIRMAN ROBERT DEE: Right, okay thank you. I have anybody have a question?

VINCENT CESTONE: I just have a question for the applicant's attorney

CHAIRMAN ROBERT DEE: Okay

VINCENT CESTONE: Do you have any documentation that the application was submitted within the 60-day time frame?

LUKE HILPERT: I don't have anything here tonight as I stated yeah, I'd like to you know to address Mr. Smith's comments and I know he said

CHAIRMAN ROBERT DEE: Your done

GREG WUNNER: I'm done?

LUKE HILPERT: He did send me a copy of what he submitted but I was not in the office until last week. So, I'd like to submit my opposition and we'll clearly lay out our timeline and provide the emails and the information that you've requested.

VINCENT CESTONE: If you have documentation to show that you applied within 60 days, I'd like to see it.

LUKE HILPERT: Absolutely yes

CHAIRMAN ROBERT DEE: Are you going to apply for all emails in the town for Mr. Greg's emails Mr. Wunner's and so forth and our emails to do you plan on doing that?

LUKE HILPERT: No, you requested that Mr. Babcock and Mr. Romeu provide the emails and that what

CHAIRMAN ROBERT DEE: Just so we know

LUKE HILPERT: Yes

CHAIRMAN ROBERT DEE: Thank you. Ah I'll give you five minutes come on that's it because there are a lot of people here want to talk.

JOSE ROMEU: Ah 5 minutes, I just ah wanted to show you

CHAIRMAN ROBERT DEE: Sure

JOSE ROMEU: The amount of expansion

CHAIRMAN ROBERT DEE: Go ahead

JOSE ROMEU: I mean that is beyond the procedural issues of the dates of the appeal

CHAIRMAN ROBERT DEE: Well that's what we are going to see.

JOSE ROMEU: Yes, Sidney will you show that please. Ah this is the original structure the original Rist cottage. A single-story house with a basement. This is the western facade of the new project.

UNKNOWN: Looks great (Inaudible)

CHAIRMAN ROBERT DEE: Can you show the board please. They don't vote we vote show it to us. Your right but not for me go ahead.

JOSE ROMEU: I wanted to show you the so-called new basement. This is the porch that enters into the new living space has four large sliding doors it has four big rectangular columns it spans from my point of view approximately two-thirds of the width of the house it's a very large porch it's a heated basement not a basement

CHAIRMAN ROBERT DEE: Wait, how do you know it's a heated basement?

JOSE ROMEU: It is in the plans there's

CHAIRMAN ROBERT DEE: I'm sorry

JOSE ROMEU: There's a wooden stove in the plans

CHAIRMAN ROBERT DEE: It's in the plans

JOSE ROMEU: that much I remember

CHAIRMAN ROBERT DEE: Okay

JOSE ROMEU: It sits there on this part of the new living space

CHAIRMAN ROBERT DEE: Okay

JOSE ROMEU: I mean this is not a little entrance into a basement for storage or for equipment.

CHAIRMAN ROBERT DEE: Is there a screened porch there?

JOSE ROMEU: It is a screened porch let me show you now a lateral view

CHAIRMAN ROBERT DEE: The building permit say screened porch

JOSE ROMEU: I'm sorry

UNKNOWN (Inaudible)

JOSE ROMEU: This is the width of the porch is two thirds of the structure it is that big also

CHAIRMAN ROBERT DEE: Talk to

JOSE ROMEU: It is also this deep it is about half from a lay person's perspective half of the depth of the house. It is a very large porch it begs the question if, whether this is really entering into a basement is screen it is quite large and here's the

CHAIRMAN ROBERT DEE: Its screened though?

JOSE ROMEU: Well it appears to be screened its certainly greyer than the rest

CHAIRMAN ROBERT DEE: Right

JOSE ROMEU: I mean I'm not the architect

CHAIRMAN ROBERT DEE: Right

JOSE ROMEU: But here it is again you can see it greyer and has four large door glass doors it has three windows this basement has one facing the river and two facing south and here is the and the lateral view and again you can see the depth of the porch. Here's the logs for the I guess for the fireplace

CHAIRMAN ROBERT DEE: Okay

JOE ROMEU: I think when talking about setbacks and fences ah maybe I would like to quote Ben Franklin

CHAIRMAN ROBERT DEE: I'm sorry

JOSE ROMEU: I would like to quote Ben Franklin

CHAIRMAN ROBERT DEE: Oh sure

JOSE ROMEU: He said love thy neighbor but don't put your head down and then later on ah Robert Frost said good fences make good neighbors. I would add good zoning regulations makes good neighbors. Thank you

CHAIRMAN ROBERT DEE: Anybody else would like to speak to us in the audience?

FRANK J SMITH: I would

CHAIRMAN ROBERT DEE: No not you, you got your turn. Go ahead I'm not I mean to be nasty, I'm sure you'll get your turn again, somebody else yes. You're the contractor right?

TOM PTACEK: Yes

CHAIRMAN ROBERT DEE: Yeah, okay go ahead your contractor on this project?

TOM PTACEK: Yeah

CHAIRMAN ROBERT DEE: Okay your name please

TOM PTACEK: Tom Ptacek

CHAIRMAN ROBERT DEE: You are doing the Surprise Lake to one, right?

TOM PTACEK: Yup

CHAIRMAN ROBERT DEE: Okay

TOM PTACEK: I just want to say that there's a bunch of inaccuracies about what this is supposed to be what we're expecting to build there and it's not a finished basement it's gonna be left with a cement floor

CHAIRMAN ROBERT DEE: Is there any heat in it?

TOM PTACEK: No there's not. It's not a heated fire place, a wood stove is not a heater it's would be a and that's not even slated to go in that's in the plan but it's not part

CHAIRMAN ROBERT DEE: It's part of the plans but not slated to be

TOM PTACEK: Yeah, because a lot of times things get build into plans but don't get built

CHAIRMAN ROBER DEE: So, what you are saying that wood stove is not going in

TOM PTACEK: At this point we're not sure There's mostly of it but the thing is

CHAIRMAN ROBERT DEE: (Inaudible)

TOM PTACEK: The thing is you have to go down and it's not an automatic heated basement it's not it's got a concrete floor. It's got unfinished walls you know it's not its slater to be

CHAIRM ROBERT DEE: Is there a bathroom there?

TOM PTACEK: No there's no bathroom

VINCENT CESTONE: What's the purpose of the sliding doors then?

TOM PTACEK: There's mostly of it's of the what?

VINCENT CESTONE: Sliding doors what's the purpose? What's the ah equipment

TOM PTACEK: It's gonna be for, he has no garage in this property. There's no place to put a snowblower there's, no place to put a lawn mower, no place to put a lot of things that most people have so, the idea is that you wheel it around in a nice setting so what if you have natural light In your place where you put your equipment is that against

CHAIRMAN ROBERT DEE: Yeah, but you don't know you're saying this is going to be a storage shed?

TOM PTACEK: Its gonna multi-purpose because this place does not have a garage so you can use the basement in a utilitarian manner and it happens to have big sliding doors so you can wheel it in its not that's my understanding of how it's supposed to be used

CHAIRMAN ROBERT DEE: Say what then

TOM PTACEK: If its boiler and mechanical at the back side

CHAIRMAN ROBERT DEE: Right

TOM PTACEK: And there's a slop sink and things that are usually in a basement

CHAIRMAN ROBERT DEE: Okay

TOM PTACEK: And ah addressing the third-floor space that's not a real space either

CHAIRMAN ROBERT DEE: That's not a real space

TOM PTACEK: It's not

CHAIRMAN ROBERT DEE: So, the fireplace is not going

TOM PTACEK: It's not technically, it's not technically a room

CHAIRMAN ROBERT DEE: Not going in and its technically not a real space okay

TOM PTACEK: No, it's not ah useable space

CHAIRMAN ROBERT DEE: How do you how do you say not useable space what do you mean?

TOM PTACEK: It's not in a technical sense. There's a sizing for that is provided that constitutes a room and it has to have a certain amount of square footage above seven feet and this does not

CHAIRMAN ROBERT DEE: How high is it?

TOM PTACEK: It's goes like this so it starts from zero and

CHAIRMAN ROBERT DEE: Goes like this

TOM PTACEK: And the part that's over seven feet is about within less than what would constitute a room

CHAIRMAN ROBERT DEE: Goes like this doesn't help me

TOM PTACEK: Okay

CHAIRMAN ROBERT DEE: I'm asking you a question

TOM PTACEK: Okay it's a cathedral ceiling

CHAIRMAN ROBERT DEE: Right

TOM PTACEK: That you can view from below

CHAIRMAN ROBERT DEE: How high is it? Is my question

TOM PTACEK: It go

CHAIRMAN ROBERT DEE: You're the contractor

TOM PTACEK: Yeah it goes from zero to about eight to nine feet at the very edge

CHAIRMAN ROBERT DEE: Okay

TOM PTACEK: But the part that's over seven feet is less than the minimal amount to be considered a room its under three feet that has

CHAIRMAN ROBERT DEE: Okay

TOM PTACEK: A ceiling part of it

CHAIRMAN ROBERT DEE: So' can so can a person walk up there?

TOM PTACEK: Only on the very edge

CHAIRMAN ROBERT DEE: Only on the edge

TOM PTACK: It's not like, a space you can actually use and the board of health would not consider it a bedroom

CHAIRMAN ROBERT DEE: Well were not discussing the board of health were not discussing the board of health

TOM PTACK: Okay, okay fine or a potential bedroom

CHAIRMAN ROBERT DEE: Right

TOM PTACK: That's a definition of a room

CHAIRMAN ROBERT DEE: Right

TOM PTACEK: It doesn't fall within that definition

CHAIRMAN ROBERT DEE: Okay

TOM PTACEK: And also, the real reason why I got came up here is because if there is a stop -work order there will be damage done and he acts like he knows what that there won't be but there will be. I'm the guy who's building this thing and if it stopped now it's gonna flood in the basement because we don't have gutters on and we just took on a flood. There's a lot of things that are going to happen there's condensation that happens in the inside of the building it's going to take on a lot of damage you can't let a sitting a building sit without heat that's taking on that has moisture coming up and that doesn't have ventilation and the Sun heats it from the outside and there's a vapor drive coming in or going out. It would be bad to stop this project for technical reasons and it's not about because they have a gripe you also just stop somebody that has a legal building permit that's a bad precedent to set.

CHAIRMAN ROBERT DEE: They don't have a gripe, they have a concern okay

TOM PTACEK: Of a view being blocked I don't believe so. They have a row of trees that have always grown on their property that they could have cut go and look

CHAIRMAN ROBERT DEE: (Inaudible)

TOM PTACEK: There's no view being blocked

CHAIRMAN ROBERT DEE: One question I have to ask this fireplace (inaudible) wood stove

TOM PTACEK: Wood stove

CHAIRMAN ROBERT DEE: Is it going in or not?

TOM PTACEK: That's up to the owner but

CHAIRMAN ROBERT DEE: oh, so at this point in time you don't know it's sitting there?

TOM PTACEK: No

CHAIRMAN ROBERT DEE: It's not sitting there?

TOM PTACEK: No

CHAIRMAN ROBERT DEE: Okay

TOM PTACEK: No there is no wood stove purchased. We don't own it I don't own it. The old wood stove that was there and it was a finished-out basement that we demolished that used to be like a man cave type of basement that wood stove still there and that's ah not operable it's a rusty

CHAIRMAN ROBERT DEE: Okay, thank you

TOM PTACEK: Your welcome

CHAIRMAN ROBERT DEE: Anybody else? Okay

CHAIRMAN ROBERT DEE: No, you wait I got the attorney next then you but I want somebody else.

RACHELE EVANS: I just wanted to say that

CHAIRMAN ROBERT DEE: Your name please

RACHEL EVANS: My name is Rachel Evans

CHAIRMAN ROBERT DEE: Okay

RACHEL EVANS: I was just listening I want as I live at 522 Route 9D. I think it's a beautiful home. I've been watching homes go up and get built up and out in all different ways it's for the 10 years. I've been living there but what I most mostly want to say is that I was in a situation in my home in beacon on a street where we had a variance with what was going on land use. We had to get a land use lawyer it was not unusual to go to the Building Department and not get information. I finally learned it was like a civics lesson it is not it is not it's lawyer to lawyer you get you get there are channels you have to go through again it's just the way it is and so I just want to say it's not like it's some you know it doesn't sound like a dirty pot to keep the people from getting there from doing the things that had to be done that's all.

CHAIRMAN ROBERT DEE: Thank you

CHAIRMAN ROBERT DEE: Mr. Smith

FRANK J SMITH: Just ah just a couple of items, um first was whether verbal notice would be you asked sufficient for an appeal and I did want to direct you to section 175 - 59 F which states that an appeal before this board has to be written and submitted to the board that's number one. Number two, is I'd also like to say in doing land use in Real Estate Law work that's a majority of my practice. I can I can't go to a Building Department and just ask for a document and have it handed over it's customary in every Building Department that you go to where you fill out a Freedom of Information Act request in order to get those documents and then you take that request and you hand it to the clerk 99 times out of 100. When I go to a Building Department the Building Inspector isn't there he has a million other things to do he's out on site visits he's reviewing the plans and I regularly and customarily deal with a clerk or a secretary. So, I think that that's you know very important as well. I also like to state that even if we are to take that August 12th, date that would have still given 28 days to get the appeal in before the September 10th, deadline that would be required under the July 12th, notice if we went by the July 24th, notice that would kick the date. I believe September 22nd, that

would be over a month to prepare your appeal and given how the Town of Philipstown works your appeals. This is one of the first boards that I've been before where you have your first meeting where you go through an application and make sure that everything is complete and a lot of other municipalities that I go before you submit they give you your first date you go and you present so my point is that Mr. Hilbert was on board August 12th. I think the record reflects that he met with the Building Department on August 12th, the thing is dated August 12th. I have a hard time believing that that appeal was handwritten in the Building Department lobby and then handed and it wasn't time stamped. I have the feeling that it was brought back to an office and prepared and somehow something happened to where it wasn't filed on time. My point is that in preparing that document it does not take more than a month to be able to put the requisite information together to be able to timely appeal. If this board is going to consider listening to this appeal and reaching the merits you are setting an unfortunate precedent, you're setting a precedent that would absolutely disrupt the way that these situations have been handled for a number of years. if you know of the decision you have 60 days when you find out that something is being done under the decision you have 60 days in this instance whether it's 18 days or 22 days late or one day late it's all the same it's late and it's against the law so I did want to make that point I thank you again for your time.

CHAIRMAN ROBERT DEE: Let me ask you a question, before you sit down you hear something about you have to go to town and get you need a freedom of information act to see the building plans, we had someone come before us from you know for an appeal for a death or something whatever or something like that we tell them the building permits on file and you can go there and look at the plans you do not have to file a Freedom of (inaudible) am I doing it wrong?

FRANK J SMITH: well it may be the policy of this particular department I don't know but in a majority of the municipalities that I go to. What I do is I walk in on the board there is a number of items they have the drawing of how you build the joist on your deck you have a building permit then you have a freedom of information act request and by filling that out your able to obtain any of the files in the Building Department I could go in and ask to look at the file on your house.

CHAIRMAN ROBERT DEE: it could take a long time

FRANK J SMITH: Well, it shouldn't and then there would be appealed and then there would be and this is just to make the argument that if people think that a building inspector or an employee of the Building Department or even the clerk of the Zoning Board was telling people no you can't if you file. A Freedom of Information Act request and it's denied yes there is a time period in which that decision has to be made but that that can be appealed and I think and I don't know this for certain but I would think that the Appeals Officer would be. The Town Supervisor or the Town Clerk one or the other so once a Freedom of Information Act is filed it doesn't matter if it's the Building Department the Highway Department if it's any other department in the town of Philipstown it can be denied. It could be accepted and the papers can be provided or it can be denied and if it's denied it can be appealed so there are channels to get this information through the proper means simply asking is not enough and and again that

may be anecdotal from my experience but most municipalities I go to require a written Freedom of Information Act request or they would be handing out files with no idea who's looking at it what they are doing with it whether they have taken anything from it.

CHAIRMAN ROBERT DEE: You're not saying that the Code Enforcement Officer has denied appeal, are you?

FRANK J SMITH: No, what I'm saying is that it goes through an appeal process so if you're going to appeal to the Zoning Board there's an application which you guys provide.

CHAIRMAN ROBERT DEE: In this town

FRANK J SMITH: And Mr. Wunner said

CHAIRMAN ROBERT DEE: Philipstown

FRANK J SMITH: And Mr. Wunner also said its available on line

CHAIRMAN ROBERT DEE: In Philipstown let me tell you okay so I don't know about other municipalities. I only deal with our municipality how we deal in Philipstown when something comes before and have building plans or something we tell the person who is interested to go to town and get take a look at the building plans and they the Building Inspector was always compliant and chosen a plan we don't have Freedom of Information Act here. Just so you know when you next time you know you're dealing here you know what the story is

FRANK J SMITH: Of course, The Freedom of Information Law is binding on all of New York State and that is how you get documents that are filed with local governments.

CHAIRMAN ROBERT DEE: Thank you very much

FRANK J SMITH: Thank you

CHAIRMAN ROBERT DEE: Anybody else?

(Inaudible)

CHAIRMAN ROBERT DEE: I'm sorry, come up identify yourself please

STEVEN WALLACE: My name is Steven Wallace I live in Garrison Philips Brook Road 150 Philips Brook Road. I once had a piece of land on East Mountain Road and uh my neighbor's kind of ganged up on me. I had I got Wetlands Permits and everything I worked with a DEC I worked with CIC here CAC and they tried beating up beating me up trying to stop me from they trespassed my property. They made it very tried to make very difficult for me to build and my attitude was always you know if you wanted to have a park and they also tried be they were beating up on my neighbor Bob Jordan and he was behind me in the process so he really they really screwed him up but it cost him a lot of money to wait to not be able to build and my feeling is that if the neighbors wanted to me not to build then they should have bought the property and if they wanted to have a park and you know my feeling is that Tim Rasic's it's a really straight up guy he's an architect it's clear what I'm listening to and what I saw I saw an email through my wife

from the Rasic's look at this thing and I read it and the more I read it the more I got upset by it and I want us to say like if I was in Tim Rasic's shoes I'd be really upset about it and Lisa Rasic's and and I understand neighbors can have issues with what's going on but when you should when this Romeu picks up the pictures you see a one-story average Shack real or cabin and then you see a really nice house that's conforming and not conforming a knock forming situation and I just see like and also it's after 60 days so there are laws there rules and I see that the Rasic's are following the rules they were giving a permit from the Buildings Department and so if they go ahead they start construction then they get shut down it's costing the money they're going to state Supreme Court and I just see this like it's kind of an open-and-shut I know that's there's subjective things to it but I see this as a very clear decision and I I really feel for them I think they're great community members as well and because I I live in this community I know how much they give to our community but I just wanted to just say you know that I feel like they have the right to build this and that I think that they're doing a community making the community better for what they're gonna be building and that's what I want to say.

CHAIRMAN ROBERT DEE: Thank you. Alright anybody else would like to speak? Yes

JOSE ROMEU: One final thought

CHAIRMAN ROBERT DEE: One final thought, go ahead

JOSE ROMEU: We'll his claim is that this is a 13%

CHAIRMAN ROBERT DEE: Where not back to Ben Franklin again are you okay go ahead

JOSE ROMEU: 13% percent addition of living space

UNKNOWN PERSON: That's a nice-looking house

JOSE ROMEU: In the eyes of the beholder

CHAIRMAN ROBERT DEE: Okay come on

JOSE ROMEU: This is three stories of living spaces you cannot get any equipment through this green porch I certainly wouldn't it is claim that this is only a 13% volume expansion with a mathematical sleight of hand increase the denominator of the fraction decreases the numerator and come up with 13% this is from my point of view at least 200 percent plus the porch which is living space

CHAIRMAN ROBERT DEE: Okay, thank you. I say there's no one else make sure know nobody else last call. Okay we're gonna do here we're going to continue this public here until February 10th, but to get both attorneys a chance to put in any information they would like to put in and I could say try to get at least in ten days good in two weeks before something like that to our Town Clerk so we can have you know have the information to study both the owner of the properties have agreed to a site you know inspection the board sometimes we all can't get down there together or something like

that so they have your phone numbers it would be okay to call the owner would it be okay to call the owner?

JOSE ROMEU: Yes of course

TIM RASIC: Yes

CHAIRMAN ROBERT DEE: Okay, would it be okay to call you Mr. Romeu

JOSE ROMEU: Yes

CHAIRMAN ROBERT DEE: Okay, and somebody call you and come down a certain day and take a look and see what your concerns are okay. That's how I think we are going to proceed and this will give us time to review all the information and the building plans and we'll go from there, so this is adjourned until February 10th, 7:30 thank you.

CHAIRMAN ROBERT DEE: Can I get a motion to adjourn

LENNY LIM: I'll make that motion

CHAIRMAN ROBERT DEE: Second?

VINCENT CESTONE: Second

CHAIRMAN ROBERT DEE: All in favor?

PAULA CLAIR: Aye

LENNY LIM: Aye

VINCENT CESTONE: Aye

CHAIRMAN ROBERT DEE: Aye

(THE MEETING ADJOURNED AT 10:05 PM BY UNANIMOUS DECISION)

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment ,emendation and approval thereupon.

DATED APPROVED: _____

Respectfully submitted,

Kelly MacIntyre

Secretary

