

ZONING BOARD OF APPEALS

March 2nd 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, 107Glenclyffe Drive, Garrison, New York.

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

ABSENT: Lenny Lim - Member

****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: Okay, first order of business is to approve the minutes from January 13th. Anyone have any changes or correctios?

Paula Clair: I have a few minor changes that I will give to our Secretary, but otherwise it is fine.

Chairman Robert Dee: Okay

Vincent Cestone: I'll make a motion to except the minutes

Chairman Robert Dee: Second?

Granite Frisenda: Aye

Chairman Robert Dee: All in favor?

Granite Frisenda: Aye

Paula Clair: Aye

Vincent Cestone: Aye

Chairman Robert Dee: Aye

Chairman Robert Dee: Minutes for February 10th. anyone has any changes or corrections?

Paul Clair: Same thing

Chairman Robert Dee: Okay, can I get a motion?

Vincent Cestone: I'll make that motion

Chairman Robert Dee: Second?

Granite Frisenda: I'll second it

Chairman Robert Dee: All in favor?

Granite Frisenda: Aye

Paula Clair: Aye

Vincent Cestone: Aye

Chairman Robert Dee: Aye

Chairman Robert Dee: First order of business is Alex Campbell, 4 Cliffside Court. I guess Mr. Watson you are handling that.

Alex Campbell, 4 Cliffside Court, Garrison New York

TM#82.20-2-23

(Appellant seeks relief from requirement to provide a front yard setback of 50 feet from the centerline of the traveled-way in front of the subject property. The partially constructed residential structure has a setback of 37.2 (37'-2-1/2") feet from the centerline of the existing traveled way and 36.2 feet from the centerline of the right away. Appellant therefore seeks a variance of 12.8 feet. I understand that the house

has already been built, or in the process of being built and then found out that they are too close to the street.

Glenn Watson: Yes, that is exactly right

Chairman Robert Dee: Okay

Glenn Watson: Glenn Watson from Badey & Watson with Alex Campbell the applicant. As the public notice stated we are seeking relief for the front yard setback. We have submitted an application at the end of it with reasons stating our belief that he should be granted the relief he needs. I am going to be very blunt and very frank; he was the victim in my opinion of just shoddy contracting work who is trying to cut corners and didn't do what needed to be done. We have had a situation with the septic system which is not part of this thing. We had to completely remove the fill and put the fill back in because it was not to specification. Well, I'll let Mr. Campbell tell you a couple of the other horror stories. The other one that I know of is, that some of the wall's when this thing was put up and covered over before proper inspections were made. Even though he was told according to what he has told me, he was told that the inspection had been made. The building went up without it being laid out properly and I don't know if you, you can't respect a setback line without staking the line and it wasn't discovered as stated in the papers that we put forth. It wasn't discovered until afterward, in fact well it wasn't discovered until after we surveyed it and laid it. We didn't lay it out with us that's putting the stakes in to show you where to put the house. We didn't do that; nobody did that except that the contractor decided to do that himself and consequently made assumption's that he shouldn't do and put it in the wrong place. So, we are trying to redeem everything we can out of this thing about the building is virtually done the septic system has been repaired, really undone and redone and if you go down there today, you'll see a tremendous improvement in the site. So, we are seeking relief so he doesn't have to tear this place down. It is just that simple.

Chairman Robert Dee: I did a site inspection, I looked at it and I guess it is mostly the carport that would be in the variance within the house.

Glenn Watson: The carport, it's the carport that is encroaching into the front setback

Chairman Robert Dee: Correct

Glenn Watson: Unfortunately, the carport if you took a close look, I don't know if you did or not but it is weird, the electricity comes into the front of the carport.

Chairman Robert Dee: Right, I saw that

Glenn Watson: Stuff like that going on there. The repositioning not a little more of our tale of woe's here. The repositioning caused the driveway not to work right, it's been one repair that this man has had to suffer after another. You did receive a letter from his attorney with regard to the legal aspects of those reason's and her reasoning that we have met the burden. The reason's that I have put forth in the application are a little less legalese and a little more towards understanding this man's position. He's the owner you know, there's a lot of talk about the owner's responsibility, even if his builder makes a mistake it's the owner responsibility and I guess that's the general tenor of that fifth

non-dispositive reason but, he did go out and he did hire a licensed contractor, he wasn't doing this with his buddies on the weekend and that kind of stuff. He has already paid a significant financial toll on this to remedy it and he's facing another fight with his contractor. So, we are hoping that the board will see some leniency in this thing and grant the variance. I understand there are two letters from neighbor's who are in support of that application

Chairman Robert Dee: yes

Glenn Watson: I don't know if there are more here or not.

Chairman Robert Dee: Right

Unknown: Yes, we are here

Chairman Robert Dee: Okay, Okay thank you. Wait a second

Glenn Watson: So, I don't have an awful lot, we're faced with a situation that our only real option otherwise would be to tear this thing down and move it back because the carport is essential to this building. There's no foundation it's on a slab so there's no place for storage.

Chairman Robert Dee: I understand, I did a site inspection trying to see what you're talking about.

Glenn Watson: That's my whole story

Chairman Robert Dee: Okay, anybody else here that would like to speak about it? I saw some hand's raised. No? You have to come up here. Okay, sure come up you don't have to be afraid; we're not going to bite you. First, give us your name come to the microphone.

Elizabeth Coulombe: Elizabeth Coulombe, I'm at 88 upland Dr. which is the road Cliffside come's off of. So, just from some of the people I've talked to, I can't speak to everybody there are several other houses but, our general feeling is that cliffside is a dead-end street that goes to the top of a mountain. There's no reason that it would ever need to be widened so, having a large variance on either side that wouldn't, we can't foresee that come to play at any time and it's not a high-traffic road there are very limited number of houses on it. Upland drive is no longer a through road, there's very little reason there'd be extra traffic going by his house that would be in danger of going into it or troubled by it being to close to the road. So, as neighbor's we don't really see any problem.

Chairman Robert Dee: I take it you are in favor of it?

Elizabeth Coulombe: Yes

Chairman Robert Dee: Okay, thank you very much. Anybody else that would like speak? No, Okay. At this point and time, I would like to go over the five factors with you Mr. Campbell.

Alex Campbell: Yes

Chairman Robert Dee: Okay, nobody else would like to speak on it. First question, Applicant seeks relief from required to divide a front yard setback of 50 feet from the centerline traveled way. Denial of the permit, it's a little small wording here I don't know who did it but I can't read it.

Glenn Watson: It's one of those form filler's that get's smaller as you use up the space.

Chairman Robert Dee: Right, give me a rough idea. Can you see it?

Glenn Watson: Except for the house

Chairman Robert Dee: Let's see if I can read it? Wait he has better eyes then me.

Vincent Cestone: I can read it but, not very well

Glenn Watson: Except for the house on the parcel immediately across cliffside court, which is approximately 100 feet from the applicant structure there are no other houses that will have any significant view of the property.

Chairman Robert Dee: Okay, I got that. Right, the second one is, what impacts would the variance have on the character of the neighborhood? Well this is a little bigger writing so I can read it. We're similar variances granted to other properties, neighborhood? The houses would appear closer to the road than the zoning envisions. However, because the land is on a private road in an area of Continental Village where there has historically been less dense development, the house would be space relatively far apart and smaller setback would be somewhat less noticeable. Second question is, if you didn't get the variance how else could you build what you want or accomplish your goal? I'll try that again; we are back to small letter's again. Okay, this is no feasible way for the applicant to accomplish the goal of building a structure as designed. While it would be possible to tear the entire structure down, the house and the carport and moved it 12.8 feet further back from the roadway and doing so first would be impossible for the appellant. What code do you seek to vary? Section 175 11 B required front yard setback. How large of a variance do you seek? 12.8 feet or 12.91/2 inches, which one were you looking for? You answered the question he has 12.8 feet or 12.9 1/2 feet

Glenn Watson: 91/2 inches, there equivalent

Chairman Robert Dee: There equivalent, you got it. Okay, it just confused me with two number's there.

Glenn Watson: Well, I work in decimal feet and I convert stuff for you guys

Chairman Robert Dee: Okay, before what impact or effect will the variance have on a current fiscal and environmental conditions of the area? Because this structure is already in place granting a variance will not have any direct impact or effect on the current physical environmental conditions of neighborhood. Number five, is the variance requested as a result of self-created hardship? The variance is not a result of self-created hardship. The applicant did all that can be expected of a property owner lacking the knowledge of the Zoning Building process. He engaged surveyor's and engineers to guide them through the approval permitting process. He hired an experienced Putnam

County licensed contract manager to build the project according to the approved plan. He authorized the survey and engineering work necessary throughout the project. Unfortunately, the construction manager failed to request a stake out work and would have avoided the problem. I could see that; nobody here spoke against it. Only one neighbor spoke in favor of it. I looked at the site and I don't see any issues with it as far as being in there and any reason not to grant the variance. Are there any comments or anybody on the board? Anybody else like to speak to this? No, Okay, at this point and time I would like to make a motion to close the public hearing. I'm Sorry, can you come up here. Okay, you're name? Maria (In auditable) I'm also a neighbor on upland drive and my husband is here and two other neighbors'

Chairman Robert Dee: Okay

Maria: We are all in favor of the variance.

Chairman Robert Dee: All in favor?

Maria: Yeah, all of us here in favor

Chairman Robert Dee: Can't go wrong with that. Okay, thank you

Vincent Cestone: It's on the table I'll second

Chairman Robert Dee: All in favor?

Granite Frisenda: Aye

Paula Clair: Aye

Vincent Cestone: Aye

Chairman Robert Dee: Aye, public hearing is closed. Can I get a motion on the variance?

Vincent Cestone: I move to approve

Chairman Robert Dee: Got a second?

Granite Frisenda: I'll second

Chairman Robert Dee: Okay, second. All in favor?

Granite Frisenda: Aye

Paula Clair: Aye

Vincent Cestone: Aye

Chairman Robert Dee: Aye, it's anonymous, it approved

Glenn Watson: Thank you

Chairman Robert Dee: Next thing on the agenda is Jared Della Valle, 117 Round Hill Drive. Applicant seeking variance to structure garage larger than a thousand square feet.

Roland Heitmann: Yes, I'm Roland Heitmann here on behalf of Jarred Della Valle

Chairman Robert Dee: Are you the contractor?

Roland Heitmann: I am the contractor

Chairman Robert Dee: Okay. go ahead

Roland Heitmann: So, we've applied for a variance for the 1,000 square foot size limit. We proposed a structure of I think 16x12 square feet and try to make it very inconspicuous. It is kind of buried into the hillside and we even presented a representation

Chairman Robert Dee: Right, you did

Roland Heitmann: of that too show how inconspicuous it is

Chairman Robert Dee: This photo here

Roland Heitmann: Yup, exactly

Chairman Robert Dee: This is what it is going to look like

Roland Heitmann: Yup, it's kind of hidden in the hillside, it's really not seen by any of the neighbors and I know Jared reached out to all of his consecutive neighbors and presented it and I'm sure they were sent out from here from a public hearing standpoint as well. So, certainly no objections and positive feedback otherwise so

Chairman Robert Dee: Okay, I did a site inspection and that's a beautiful house that's for sure

Roland Heitmann: Yeah, thank you

Chairman Robert Dee: Very nice

Roland Heitmann: We built it too

Chairman Robert Dee: The garage look's like it will go with the house

Roland Heitmann: It was staked, I think Badey & Watson did it

Chairman Robert Dee: Yes, Badey & Watson. That's a good thing to stake it before you build it.

Roland Heitmann: Yeah, exactly from what we have seen on the last one. So, you could see where it was then

Chairman Robert Dee: Right, Okay so anyone in the audience like to speak to this appeal? Make note to it secretary that there is no one here to speak to it. Okay, at this

time I would like to go over the five factors. We use these questions to try to determine the validity of the variance.

Roland Heitmann: I have my copy here

Chairman Robert Dee: That's okay, I have your answers here

Roland Heitmann: Yup

Chairman Robert Dee: What possible detriment would the variance have on nearby properties? Virtually none, only structure you can see is my house. I also own the neighboring lot which is the only one you could see from the garage. Okay, I did a site survey and I agree with that. 1B) What impact would the variance have on the character of the neighborhood? Virtually none, the garage is buried into the hillside to minimize visibility. I agree with that. 2) If you didn't get the variance how else could you build what you want to accomplish your goal? We could build two structures under 1000 square feet to get the same usable space, but that isn't what we want to do. Well two structures would only make it more obvious than one structure underground. I would have to agree with that. What is the code you seek to vary? Garage is under 1000 square feet, that's the section I don't have, but you will have it. Attorney section for the 1000 square feet garage?

Adam Rodd: It's 175-10D5

Chairman Robert Dee: Okay

Adam Rodd: Attached or detached garage structures can't exceed 1000 square feet

Chairman Robert Dee: Okay, good. What impact or effect will the variance have on the current physical and environmental conditions in the area? A small area around the structure. We want to minimize disturbance. There may be rock hammering likely to properly set the garage. No paving of driveway and no drainage patterns will be affected. No emissions or extra traffic. Just used to store cars at my residence. There are only a few homes up there, I think there is only three or four homes up there.

Roland Heitmann: There is three homes on the entire road.

Chairman Robert Dee: That's a private road too

Roland Heitmann: Yes, it is

Chairman Robert Dee: Number five, is a variance requested as a result of a self-created hardship? No, It's not a self-created hardship. It is just because you want to build one garage instead of two.

Roland Heitmann: Exactly

Chairman Robert Dee: Right, anybody have any questions?

Vincent Cestone: Yeah, I have a couple of questions.

Chairman Robert Dee: Sure

Vincent Cestone: The other lot you were talking about, what are you're plans for that? Do you have plans to build on there?

Roland Heitmann: There's no plan so, again I'm representing the owner. He bought it for kinda a family you know he has children in the teen's and he is envisioning a family compound of sorts over the next 15, 20 years. No current plans to do any development on the next lot.

Vincent Cestone: Will the garage have plumbing and heating in it?

Roland Heitmann: It will have heating but no plumbing, no active plumbing

Chairman Robert Dee: Anybody have any other questions?

Vincent Cestone: Why would you have the heating in the garage?

Roland Heitmann: Why would you?

Vincent Cestone: Why are you putting heating in the garage?

Roland Heitmann: Because he likes to collect car's and the cars, he It's my understanding from him I'm not a car collector myself, but he would like to keep it in an environment of like 55 degrees, and a certain humidity level for maintenance of the cars.

Chairman Robert Dee: It's a beautiful house, beautiful area. There aren't many homes there so, I really don't see a great effect on the neighborhood.

Roland Heitmann: Okay

Chairman Robert Dee: Anybody have anymore questions? Can I get a motion?

Vincent Cestone: I'll make a motion to close the public hearing

Chairman Robert Dee: Second?

Granite Frisenda: Second

Chairman Robert Dee: All in favor?

Granite Frisenda: Aye

Paula Clair: Aye

Vincent Cestone: Aye

Chairman Robert Dee: Aye. I make a motion for the variance?

Vincent Cestone: I'll vote to approve

Granite Frisenda: I'll second

Chairman Robert Dee; Approve?

Granite Frisenda: Approve

Chairman Robert Dee: I approve

Roland Heitmann: Okay, thank you very much, I appreciate it.

Chairman Robert Dee: Your welcome. Next order of business is Ginin 21 Ferris Drive. You here? You want to come up to the microphone Mr. Ginin?

Louis Ginin, 21 Ferris Drive, Garrison, New York

TM#90.8-1-31

Chairman Robert Dee: you are?

John Turnquist: John Turnquist JT2 Architects

Chairman Robert Dee: Okay

John Turnquist: I have a couple of things I'd like to show you in reference to the project.

Chairman Robert Dee: Well, let me go through some things first. Let me explain to you, I see that your building permit was denied under section 175 23B that's a non-conforming structure.

John Turnquist: Yes

Chairman Robert Dee: Okay, you understand why it was denied to you?

John Turnquist: We do

Chairman Robert Dee: Okay, what happens is this is an application hearing. What I mean by that is, we get to see if we have all the information that we need in order to go to a public hearing. If we get all the information, we need the board will vote on that and approve the application and then we'll set a public hearing. Now what happens at that point and time is the neighbors are notified by mail, an advertisement is put in the newspaper of a public hearing. So, anybody the neighbors or anybody in the town who has any interest or any concerns will be able to come to the meeting and voice their concerns. This way you don't start building and somebody has concerns and we've got a bigger problem there.

John Turnquist: Sure

Chairman Robert Dee: You understand?

John Turnquist: Yes

Chairman Robert Dee: So, you understand. You want to put a second story on it

John Turnquist: We do

Chairman Robert Dee: Okay, let me tell you what you need because you don't have everything here. So, you are not going to be, do you have a piece of paper? Write down what you need.

John Turnquist: I do

Chairman Robert Dee: Here I will give you a piece of paper

John Turnquist: yup

Chairman Robert Dee: You have a piece of paper? Because you need a number of things.

John Turnquist: Okay, (In auditable)

Chairman Robert Dee: You could save that for the public hearing, because this way everybody will have a chance to look it. Here is a piece of paper, got a pen? Okay great. You are going to need a current survey; you don't have a survey here. Okay, that current survey is gonna have to be stamped by a surveyor and it's gonna have to show where the existing structure is. The reason for that is we're gonna have to know what the sideline is, the front yard setback, so on and so forth. You're under what comes out as pre-existing, non-conforming and your looking to increase more than 25%. So, you're going to have to come before the board, you may need a variance soon and so forth. There is no way for use to determine that until we see a survey.

John Turnquist: we did get it

Chairman Robert Dee: Okay, so you need to do that. 2) you are going to need architectural plans

Adam Rodd: I'm sorry to interrupt

Chairman Robert Dee: Go ahead

Adam Rodd: Was the survey submitted with the application?

John Turnquist: When we submitted for the building permit, we did survey I believe.

Chairman Robert Dee: there is no survey here

John Turnquist: I'll make you another copy Yeah. No problem

Chairman Robert Dee: Okay, that's great. It has to be a stamped survey

John Turnquist: No problem

Chairman Robert Dee: Okay, we don't have it

John Turnquist: We have a new one

Chairman Robert Dee: The only thing I have here from the building department, I guess he sent you a denial and he also sent you an application to file an appeal.

John Turnquist: yes

Chairman Robert Dee: Okay, well here this is it, this is what I'm talking about

John Turnquist: Okay

Chairman Robert Dee: I have nothing

John Turnquist: Okay, so we are going to have that and the architectural plans there going to have to be stamped.

John Turnquist: Yes

Chairman Robert Dee: Okay, there not stamped

John Turnquist: Okay

Chairman Robert Dee: The ones I have here are not stamped. They have to be stamped and you gonna have to show me the front of the house, side of the house, and the rear of the house. The reason for that is, have to know the height, vision in the front, vision in the back. This way when your neighbors come if they come at all, they will be able to see what you are planning to do. Your planning to make 100 percent increase on your building.

John Turnquist: that's correct

Chairman Robert Dee: Correct so, you know I'm not saying it's a problem, I'm just trying to say is it's only fair your neighbors get a chance to see that. You understand that?

John Turnquist: Yup

Chairman Robert Dee: Okay, you are gonna need a work sheet, what I mean by a work sheet is, first you need the original CO okay, there's no CO in here.

John Turnquist: Yeah, I don't if there is a CO for that

Louis Ginin: No CO

John Turnquist: No CO

Paula Clair: (In auditable)

Chairman Robert Dee: Try and get a CO from the building department. I now sometimes it happens and then they'll take a look at and give you a CO for the current structure. They will go by an old building permit or something like that. I'm not sure if there is an old building permit or not but, that's something you have to check.

John Turnquist: Alright

Chairman Robert Dee: You're gonna need a copy of the deed okay, and you're gonna need it's called a worksheet for the five factors that you heard me talking about tonight. You get that from the Building Department also.

Vincetn Cestone: it's on the web-site

Chairman Robert Dee: I'm sorry

Vincent Cestone: it's on the web-site

Chairman Robert Dee: it's on the web-site also, you can get it from there, okay. So, then you are gonna need names and address of your surrounding neighbors. Now,

when we get to that point our secretary will be able to help with that. She can help you get that but, if you know any of your neighbor's names and address that would help her.

Paula Clair: They do have the five factors

Chairman Robert Dee: Five factors are here? Hold on, wait a minute. Oh, we do have the five factors so you can cross that off the things you need. You don't need the worksheet. The rest you need.

John Turnquist: Okay

Chairman Robert Dee: Okay, so we can't mark this complete tonight so, next meeting is April 13th Monday, April 13th 7:30 here, and bring that all with you okay

Vincent Cestone: they have to get it to us before hand

Paul Clair: Yeah, send it to our secretary

John Turnquist: we have all the information so yes; I will provide it for you

Vincent Cestone: Bring it to the town so the secretary can get it to use so, we can look at it so it's not submitted that night

Chairman Robert Dee: Alright, try and get to our secretary before the night of the meeting

John Turnquist: sure

Chairman Robert Dee: Okay, because she sends out a package to use with everything for the meeting, like a week before or something like that you know. So, if you can get it to her as soon as possible okay, she's also in the Building Department okay.

John Turnquist: No problem

Chairman Robert Dee: And give it to her and she in turn mails a packet to us and we have a week to look at it before the meeting

John Turnquist: Okay

Chairman Robert Dee: Okay, we don't just want to open it all the night of the meeting. Thank you for telling me

John Turnquist: Okay

Chairman Robert Dee: You understand what I am saying

John Turnquist: Sure

Chairman Robert Dee: Okay, so that's about it, and that meeting if you have everything, we will be able to vote on it that it is complete and then we will set up the next month's meeting for your public hearing.

John Turnquist: okay

Chairman Robert Dee: Any other questions gentleman?

John Turnquist: no

Chairman Robert Dee: Okay, go ahead that's it

John Turnquist: Not really any questions but

Chairman Robert Dee: I don't have to look at it, save it for next time

John Turnquist: Is it feasible? I just

Chairman Robert Dee: You want to tell me go ahead, I'll give you two minutes

John Turnquist: What we are doing is adding on to the existing building and I just wanted to know what the feasibility of that was

Chairman Robert Dee: Right, and your gonna put a second story on

John Turnquist: We're gonna put a second story on

Chairman Robert Dee: Okay, I got it

John Turnquist: No change in bedroom count no change in occupancy just a better functioning layout of the building

Chairman Robert Dee: Sounds like a plan to me. Bring all the necessary material to us and we'll take a look at it

John Turnquist: Alright, very good. We do have it thank you

Chairman Robert Dee: Thank you. Next is continuation of public hearing on Jose Romeu on a revocable trust on 529 Route 9D.

**Jose Romeu. Trustee of the Jose Romeu, 2011 Revocable Trust, 529 Route 9D
TM#81.-1-17**

Chairman Robert Dee: This is the third public hearing since the last

Granite Frisenda: I'm going to recuse myself

Chairman Robert Dee: Yeah that's right, you have to recuse yourself.

Granite Frisenda: I'm going to recuse myself

Chairman Robert Dee: Because he is working on the house so, since the last public hearing last month I received several communications. One was a letter from Joan Turner, is she hear? Joan Turner? Yeah okay. She used to be on the board for years, she would like to make a statement regarding interpretation of the building permit issued on Route 9D. We will get to that in a few minutes okay.

Second thing is, I received an e-mail from Frank Smith I guess that is your attorney? Oh yeah there you are I'm sorry. Your e-mail says we got that today unfortunately late in the afternoon alright, you said if you could kindly confirm receipt by phone or e-mail we

would greatly appreciate it. Well, I can tell you now it was late in the afternoon and it is like 13 or 14 pages so, I'm not gonna be able to read it, but I do have it.

Next communication is from Dr. Romeu we got an e-mail from you and you said that you preparing for tonight's meeting you have a following regulation 176 23 which says, immediately below B2 regulation here is a C regulation second sentence, prohibits the flipping of a pre-existing basement which is non-conforming whether finished or not. We maintain this is unfinished and shown in municipal official documents. Assessor tax file and realtor listing okay.

Next one received is an e-mail from Paula Andors is she here? Paula Andros? no okay. I'll read it, Dear members of the Philipstown Board of Zoning Board of Appeals, I was dismayed to read the negative comments in both local papers directed towards your work. I have attended several meetings and watched other meetings on YouTube. You truly serve our community. At the November meeting you agreed unanimously that the 529 Route 9D permit should not have been issued, yet you allow both sides to prepare and present at the January meeting. You respectively heard all sides and invite anyone to add thoughts. When these presentations still did not provide a clear understanding of the situation, you determined a site visit was merited. This you did perform with an appropriate follow up. You are doing fine work; I am sorry that there are those who don't see this. As a resident of Philipstown, I am concerned that the Route 9D plans do not come before the board before the permit was issued. My neighbors in Garrison are building a pool. They submitted plans and invited all the neighbors to review them. The board reviewed the plans and issued the permit, the process was done legally. How did it happen that a building went up without this process? Is this happening in other locations? What purpose does Zoning rules serve that the town ignores them? The Route 9D issue has caused stress and expense to both parties. It's a sad situation, and I fear it may result in expenses to taxpayers as well. I know you will use fairness and wise interpretation of the law in this case, but I simply wish that It had never gone this far. You most likely feel the same. Thank you again for your hard work Paul Andros of Garrison. Could not have said it better.

Next one is a letter received from, last Thursday the 27th. The Town Attorney Steve Gaba. In order for me to read this an e-mail stated that this is a privileged communication and cannot be made public unless the ZBA Board votes as a body to waive the privilege and provide copies to third parties. So,

Vincent Cestone: I'll make that motion; I think the people deserve the right to hear it

Chairman Robert Dee: Can I get a second?

Paula Clair: Second

Chairman Robert Dee: All in favor?

Granite Frisenda: Aye

Paula Clair: Aye

Vincent Cestone: Aye

Chairman Robert Dee: Aye, unanimous. That gives me permission now to read the letter.

Dear Chairman Mr. Dee and Board Members I am writing to you as the Town Attorney for the Town of Philipstown. The above-referenced appeal has come to the attention of the Town Board and I have been asked to write to you in regard to it. The Town Board does not ordinarily provide any input on appeals and, in fact, the Town Board has no interest in the substantive issues in this appeal. But an issue has arisen in regard to the jurisdiction of the ZBA to hear and decide the appeal which may have far reaching effects on other zoning appeals in the Town, and the Town Board wishes to make certain you are aware of the applicable law.

The ZBA is chiefly an appellate board. In regard to appeals, its jurisdiction to hear and decide a matter is subject to an appeal being timely taken to the ZBA. If an appeal is not timely taken, the ZBA lacks jurisdiction and cannot hear and decide the matter.

Under Town of Philipstown Code 175-59 a property owner who is aggrieved by the decision of the Building Inspector must appeal to the ZBA within sixty (60) days of the Building Inspector's determination. If the aggrieved property owner fails to timely appeal, the Building Inspector's decision stands. The ZBA must reject the application of a property owner to appeal from a Building Inspector's decision which is submitted more than 60 days after the decision was rendered because the ZBA lacks jurisdiction over the appeal due to the lack of a timely appeal.

Under New York State law, the time limit for a neighboring property owner to appeal from a Building Inspector's decision is measured slightly differently. Recognizing that a neighboring owner generally will not be aware that a building permit was issued until work begins under it, New York's courts established a rule under which a neighboring property owner's time to appeal to the ZBA from the grant of a building permit is 60 days from the date on which the work was visible on the property or the neighboring owner actually found out that the building permit was issued, whichever is shorter. He goes on and gives me a couple of different cases. In the above-referenced matter, the Town's Building Inspector issued a building permit to the property owner on November 11, 2018. The neighboring owner Jose Romeu filed an appeal from the building permit to the ZBA on October 10, 2019, some Eleven months later, The ZBA has jurisdiction to hear the appeal only if Romeu Trust's appeal was filed within 60 days after construction began.

It is my understanding that construction under the building permit began in July of 2019, which would mean that the 60-day appeal period expired in September. Further, in court papers served on the Town, the Romeu Trust acknowledged that it knew that construction was ongoing as of July 24, 2019. Since Romeu Trust failed to appeal within 60 days after construction began, its appeal is untimely and the ZBA lacks jurisdiction to hear it. I have heard that there was some suggestion that the Romeu Trust actually submitted its appeal earlier than October 10, 2019. If this is true, it would be relevant only if the appeal was submitted within the 60-day time limit before September 24th, yours was filed October 10th I believe. Further, such a claim would need to be supported by credible testimony from the person who delivered the appeal to the Town. If no such proof is submitted to the ZBA, the appeal must be dismissed.

I have also heard that there has been some suggestion that the Romeu Trust requested to see the building permit and the Building Department did not promptly provide a copy or information to them. This, too, even if true, is irrelevant. A party who wishes to view municipal records is required to file a FOIL request with Town Clerk, whereupon he or she will be provided with them; a party who directly approaches the Building Department cannot complain that his or her informal request was not honored.

Perhaps equally important, I note that Romeu Trust's appeal to the ZBA was prepared and dated on an application dated August 12, 2019, over a month before the deadline for filing with the Town. Thus, even if the Building Department's alleged failure to provide information somewhat delayed Romeu Trust from reviewing the building permit (which, again, they have no legal complaint over), it seems clear that Romeu Trust had the information necessary for their appeal long before the filing deadline passed. Therefore, the suggestion that Building Department did not promptly provide information to the Romeu Trust does not provide any basis for finding the appeal to be timely.

I'm sure that you can appreciate the need for the ZBA, like all other municipal boards and bodies, to comply with the law in regard to limitations on its jurisdiction. I'm going to give you a copy of that Mr. Romeu since you are the applicant or your attorney. I will give you a minute to look over it.

Jose Romeu: May I address

Chairman Robert Dee: Just a second, I have some questions for you, then I will let you address it. I just have a couple of things on the letter, I understand the letter itself, you have the letter in front of you Mr. Rodd? I'll give you a copy. I just want to address some issues to it. In paragraph three, it says under Town of Philipstown Code 175 59 a property owner who is aggrieved by the decision of the Building Inspector must appeal to the ZBA within 60 days of the Building Inspectors determination. Now it says here the Building Inspector made a determination, can you tell me what that determination is and when the Building Inspector made that determination? That's paragraph three.

Adam Rodd: This is when the permit is issued. You have 60 days from

Chairman Robert Dee: November

Adam Rodd: From the date of the permit under the code to file an appeal.

Chairman Robert Dee: Okay, then I guess the board again how would the owner know that they were aggrieved, or how would a person know they were aggrieved if

Vincent Cestone: When the clock started

Chairman Robert Dee: They were not notified

Adam Rodd: That's addressed in the, again this is a letter from the Town Attorney. It's addressed in the next paragraph the common law rule is that if an owner has actual or constructive notice of a permit such as seeing construction the 60 day period would be told from the time that they knew or saw that there was construction.

Chairman Robert Dee: Okay, paragraph

Adam Rodd: And the gloss of that by constructive notice that means when someone could have observed it. In other words, if a neighbor is in Europe for three years but construction has started as long as it was visible the 60-day clock runs from when it was visible not gee, I only saw it when I saw it.

Chairman Robert Dee: Okay, page two, if you would go to page two paragraph eight. It says a grieved property owner had visible signs of construction in July when he was advised to file a FOIL request from the Town Clerk. I guess the question here is that it says it is necessary to file a FOIL with the Town Clerk. I called the Town Clerks Office today and she said the procedure for that is that you file the FOIL with them and they forward it to the Build Department Mr. Wunner, then he would approve or deny it and then he would supply Building plans or whatever the person asked for from that file. So, I guess my question is, Mr. Romeu how many trips four trips how many trips did you make to the Building Department?

Jose Romeu: four trips

Chairman Robert Dee: At any point in time did anyone advise you that you were suppose to go to the Town Clerk to file a FOIL?

Jose Romeu: No, not at all

Chairman Robert Dee: Okay, all right I just I'll give you a chance I'm just trying to get it straight in my head okay. The last paragraph that says, Would the ZBA be notified of the Inspectors determination? What I'm trying to do is avoid this from ever happening again. Because this has been a great expense to all parties involved here and a great deal of time and effort from everybody including the board. So, I'd like this to never ever have this happen again. So, how do we do that? I guess what I mean by that is like Mr. Romeu didn't know that there was a true violation, didn't know there was an issue. The only way he would know that would be viewing the building plans so, if he didn't, when he looked at the building plans then he realized that it was bigger in his opinion, bigger than 25% that was one of his concerns. So, I guess what I'm trying to say is, how do we stop this from happening next week the same thing? You have any suggestions?

Adam Rodd: Again, I think the letter, if you have questions about the letter or you want to consider the letter longer, again they have an appeal to this permit and they've made arguments as to why it was incorrectly issued. The parties that have constructed the building take the position that it was not, the permit was not incorrectly issued it was correctly issued and with respect to the timeliness issue the letter from the Town Attorney which I've read just sets forth the law that governs how the board is to address those issues.

Chairman Robert Dee: Okay, In the paragraph it says the applicant has to file a FOIL with the Town Clerk. So, I went, I did get copies of what we send out to neighbors, residents surrounding on appeals like you know, anyone when we have an appeal and we send the letters to the neighbor. Here's a copy for you, if you just want to take a look at it please. Basically, what it says, first we send a legal notice it's gonna be a hearing so on and so forth, then page two it says a notice is hereby given to be a public hearing. Last paragraph it says, at said hearing all persons have the right to be heard. Copies of

the application, Plat Map and other related materials may be seen in the office of the Building Department 2 Cedar Street Cold Spring. Now as far as the years I have been on and Mr. Cestone you've been on the board a lot longer than I have. I've always told people that the files are accessible to them at the Building Department. I never told them they had to file a FOIL request with the Town Clerk. So

Vincent Cestone: I never did

Chairman Robert Dee: Did you ever?

Vincent Cestone: I never told them, they would just walk in and they would ask for it and they would be handed to them

Chairman Robert Dee: How many years have you been on the board?

Vincent Cestone: 25 years

Chairman Robert Dee: 25 years, so what I'm trying to say is that I think we should correct this so, maybe if our clerk would work with you so we could, because we are putting a legal notice in the newspaper and were telling them to go to the Building Department so, if I got that I would look at it and say well, I'll go to the Building Department and get copies and then go to the Building Department and be told no you can't do that. Go to the Town Clerk first and file a FOIL request. I think it's kinda misinformation. So, I think we should correct that do you agree?

Adam Rodd: Well, we're here trying to decide this particular appeal

Chairman Robert Dee: well I'm asking you, talk to our secretary on this, to change this

Adam Rodd: To change

Chairman Robert Dee: To make it correct, legally correct

Adam Rodd: Okay, but that we're talking about this appeal and the timeliness and the merits of this appeal

Chairman Robert Dee: I understand that, and I'm trying to do

Adam Rodd: I'm just saying as counsel for the board on this appeal in terms of you're asking a question about implementing changes in policies

Chairman Robert Dee: Not changes, I'm trying to correct it, the misinformation that were given to the residents that's all I'm asking. Well, we can do that another time. Could you put that on for next meeting? That we discuss that. This has to be corrected because we're giving people false information okay? Thank you. Now at this time Mr. Romeu I guess you can speak because the boards hands are tied. The Town Board has made a decision to ask the Town Attorney to file, send a letter to use that we can't continue hearing this or make a decision. So, do you want to talk about it?

Luke Hilpert: Can I speak first

Chairman Robert Dee: Sure

Luke Hilpert: Good Evening, Luke Hilpert on behalf of Jose Romeu Trust. I don't think that as the Town Board said this is an advisory letter and they cannot bind your hand here. They have asked the attorney to provide you with his interpretation of the law but, I don't believe as you just said that they can bind your hands in this instance. I'd like to speak on a couple of things relevant to this and if you want to hear more later, we can go back to that but, at the Building Department there is a folder on the wall for FOIL forms. If you go in you ask there, they have the forms there they process them there and they'll give you the file there. Now that procedure may have changed for years as Mr. Cestone said you could go in and ask for it and they've been requesting the forms more and more recently

Chairman Robert Dee: Yeah, but the letter said that they had to go to the Town first

Luke Hilpert: I understand, I'm just saying it's not, that may be the procedure that they have on the books but, the way it has been done and the way it is done is there is a little plastic thing on the wall that has the forms in there that you can receive forms, hand them in there and they'll generally requisition the file if it is during a certain time period. So, we are here talking about the timing again. Really, this is this permit was issued but it wasn't clear what the basis for the permit was when the construction began. There was construction going on we didn't know why the construction was going on. We didn't have a proper interpretation of it. It wasn't until we continued to contend that it wasn't until we received the plan that we understood what the Building Inspectors interpretation was. It was at that meeting when I met with Mr. Wunner that he provided us with his interpretation of why that building permit was issued and that was that August 12th meeting 12th 14th meeting whatever that date is. It was his understanding was that you could unfinish a basement and we can talk later whether that was finished or not. You can unfinish the basement in that space would be flipped and added to the addition on the second floor

Chairman Robert Dee: I'm gonna have to stop you

Luke Hilpert: Sure

Chairman Robert Dee: At this point and time okay, because I'm reading this letter, and like I said it is from the Town Attorney

Luke Hilpert: I understand

Chairman Robert Dee: You know, and Town Board asked him to write this letter to us okay

Luke Hilpert: Yes

Chairman Robert Dee: And the last paragraph says I'm sure you could appreciate the need for the ZBA like all other municipal boards and bodies to comply with the law in regards to limitations and jurisdiction. But basically, they're telling us, the Town Board that we don't have any jurisdiction to here this so, I don't want to break the law, it's the last thing I want to do. Okay, so at this point I'm not, I think, its up to the board. Do you have any comments? I don't think we could even hear this.

Vincent Cestone: I think we have to render a decision that they were untimely, and let the courts sort it out

Chairman Robert Dee: But it says we can't make a decision here. It says, I'll read it to you gain.

Adam Rodd: well just to

Chairman Robert Dee: Wait a minute, let's go by the letter I received from the Town Board Attorney. He says we lack jurisdiction, could not hear or decide the matter. I'm not going to violate the letter of the attorneys.

Adam Rodd: Just if I could interject Mr. Dee, There is an appeal from the building permit. The board, there are two issues, number one, the issue of timeliness based upon the criteria set forth in the letter. The board if it finds that the appeal was not made timely in accordance with the law the board would need to make that determination.

Chairman Robert Dee: What if it doesn't determine that?

Adam Rodd: Say what?

Chairman Robert Dee: What if it doesn't have that finding? What if it doesn't agree? If it finds differently?

Adam Rodd: if the board finds that it was timely? If the board decides that it was timely it can then consider the merits of the application.

Chairman Robert Dee: Okay, I understand

Adam Rodd: there are two issues, number one was there a timely appeal, you have correspondence from the Town Attorney and there have been arguments on both sides. If the board decides that it's not timely it needs not to go any further, and however if it does find that it's timely it would need to address the merits of the appeal.

Chairman Robert Dee: well, like I said the letter from the Town Attorney he says he is writing to us from the Town Board asked him to write to us. So, in here it says we lack jurisdiction could not hear and decide the matter. I'm going with that.

Adam Rodd: I'm saying that would be the determination for the board to vote on. In another words are an appeal there has to be a decision on the appeal. The appeal could be decided, I'm not telling you how to decide it. The appeal could be decided if the board so chooses to say we find based upon our understanding of the law that the appeal does not comply with the timeliness aspect of an appeal

Chairman Robert Dee: right, right

Adam Rodd: And that would resolve the appeal.

Chairman Robert Dee: Right here is says we lack the jurisdiction to hear or decide.

Joan Turner: Yeah

Chairman Robert Dee: So, I'm gonna go along with what it is saying

Adam Rodd: I'm just saying that has to be in the context of a decision. In another words the board can decide and should decide if it so finds that the appeal in not timely. That it doesn't have jurisdiction and denied the appeal

Chairman Robert Dee: it doesn't say that in here.

Paula Clair: It says we should dismiss it. Not that we should find that it was untimely

Chairman Robert Dee: Correct

Joan Turner: Mr. Dee can I just make one

Chairman Robert Dee: I'll give you one minute that's it, I'm not gonna hear all kinds of people. I'll hear you and then I'll hear the attorney and then that's it.

Joan Turner: Basically, what I'm here to say is based on the video I saw last night was to talk about the untimeliness of this appeal and the accessibility to the file. Now when I happened to be at the Building Department for another meeting with Richard Shea and Nancy Montgomery on the Garrison Hamlet Association issue that we had there. I was there when the applicants were addressing the Building Inspector to get access to the files. He was uncooperative, I was waiting right now and you know how small that office is so I can obviously see that he did not cooperate but I went on to my meeting. I called Jose later and said what happened he said he was denied he was denied an application for an interpretation. So, as to the timeliness I think my witness to that meeting is heavy in this case it has weight. Now as to accessibility of the file I also want to say that it's not an isolated case. I have been to that Building Department twice to get files on eight alfalfa Lane and was denied access once. Mr. Goldsmith who is a neighbor of eight alfalfa Lane went there was told that the files were at the Health Department. We were told when I went there with another woman barber (in audible) by name that he was examining the files they were open and, on his desk, and he could not show them at that point. Those are the so to underline your point miss Clair that we were not we're denied accessibility and as to forming a FOIL report it is my experience on the Zoning Board as long as yours has been that you went into the Building Department you've filed your name and what file you wanted to see, that was what you did. This undermining of the appellate function of the ZBA by the Town Attorney is absolutely outrageous. You do not need to dismiss this case. You may go ahead and hear it, thank you.

Chairman Robert Dee: Thank you. I said I would give Mr. Smith a chance to talk. Mr Smith

Frank J Smith: Good Evening Mr. Chairman, members of the board. Frank J. Smith the third. Attorney from the Law Offices of William A Shilling Jr. on behalf of interested party respondent Hill and Valley Properties LLC. I am pleased to hear the opinion of the Town Attorney this evening

Chairman Robert Dee: This is the Town Board

Frank J Smith: The memorandum advisory opinion of the Town Attorney

Chairman Robert Dee: Correct

Frank J Smith: The relief that we have requested from our initial submission to this board is for the board to dismiss due to untimeliness. I would like to just reiterate that this evening and that is the relief that we are seeking. This board can dismiss the appeal due to untimeliness and that would be the decision being rendered and that is the decision that I respectfully request this board make this evening. I thank you for your consideration.

Chairman Robert Dee: thank you. Mr. Hilpert

Luke Hilpert: Yes, I would, If the board is going to, as Mr. Rodd said you are going to render an opinion, I'm sorry your gonna vote whether to dismiss this or not

Chairman Robert Dee: Were not gonna vote we have an order

Luke Hilpert: Well, it says if you have to vote I would just ask that on behalf of the applicant I would be entitled to respond to that letter and give me time

Chairman Robert Dee: In (auditable)

Luke Hilpert: He has specific cases in there that he's cited

Chairman Robert Dee: Okay, right

Luke Hilpert: and I would like to

Chairman Robert Dee: Okay

Luke Hilpert: If this board is open to voting on it then I think we should be given that opportunity to

Chairman Robert Dee: Right, well

Luke Hilpert: Respond there

Chairman Robert Dee: First of all

Luke Hilpert: Request that

Chairman Robert Dee: Unfortunately, not unfortunately Mr. Lim is not here tonight because his daughter in-law went to the hospital to have a baby. So, that's good news anyway. That's one good point so, we couldn't decide that anyway but, the way I read the letter, I'm not a lawyer I'm just a regular guy okay. So, I have to go by the lawyer, he is the lawyer for the Town okay. The Town Board who we serve at the pleasure of the Town Board. Even though this is voluntary they could get rid of us anytime they want. He is telling us that we lack jurisdiction we can not hear or decide the matter so, I don't see how I could possibly hear it or decide it.

Vincent Cestone: unless he could prove that

Chairman Robert Dee: And he said in his last sentence, I'm sure they appreciate the need for the ZBA like all other municipal boards and bodies to comply with the law with regards to the limitations and jurisdictions. I have no intensions of breaking the law.

Luke Hilpert: No, no of course. I think what I was trying to point out that Mr. Rodd had said that you will be, even though you said you can't vote on this, you will have to vote whether to dismiss it or not and I would just like the opportunity to be able to respond to this letter in order to address the cases he has. You know my previous letter I did bring up some cases that stated in that waiting is something that is

Chairman Robert Dee: Understand

Luke Hilpert: Was done when all the information so, I would just like the opportunity to be able to do that

Chairman Robert Dee; right

Luke Hilpert: Before the board takes that action.

Chairman Robert Dee: I'm in a conundrum at this point okay, to be honest with this letter okay, of course I want to follow what the Town Board advises you know for the attorney so, what do I do? you know, I don't know what to do I'll be honest with you at this point in time. The board has to decide this, like I said the third, fourth person is not here tonight. So, I guess the only thing to do is hold this over to next month which I really don't want to do because I know how much time and expenses everybody has put into this. But I don't see how three members of the board here could just all of a sudden decide on this. If we can't decide on it

Luke Hilpert: Understood

Chairman Robert Dee: I mean I'm speaking to the letter; the letter says you cannot hear or decide.

Luke Hilpert: Right, Well I think you do need to decide as she pointed out you have the appellant function

Vincent Cestone: We could decide but it would have to be unanimous

Chairman Robert Dee; decide on what?

Vincent Cestone: Decide to dismiss because we have a quorum

Chairman Robert Dee: Oh, I see decide to dismiss unanimous Okay. All right

Vincent Cestone: But I'm interested to see, if you can prove that you were timely, I would be willing to hear it personally

Luke Hilpert: Right, but I think

Vincent Cestone: But you would have to have it nailed

Luke Hilpert: Right, I understand

Vincent Cestone: Because your opposition is in the right based on what was said

Luke Hilpert: I absolutely understand with what that letter says and what Mr. Gaba is stating. But I would like to be given the opportunity to provide a rebuttal to that. It is certainly, he is the Town Attorney and he is to advise the town but it is certainly his

interpretation of the law and if there is a different interpretation that is available, I would like to be able to provide that.

Chairman Robert Dee: okay

Chairman Robert Dee: One second Mrs. Turner. Mr. Smith then Mrs. Turner and then that is it.

Frank J Smith: Respectfully Mr. Chairman, I have yet to see the letter from the Town Attorney

Chairman Robert Dee: I'll share one

Frank J Smith: Would you mind stating for the record the case, just the case names that he cited?

Chairman Robert Dee: I'll give you a copy of the letter. I have an extra one. You're the attorney involved in it.

Adam Rodd: I have a copy

Chairman Robert Dee: You have a copy to give him?

Vincent Cestone: Here

Chairman Robert Dee: Here is a copy for you. We're not trying to hide anything here okay, I'm just going by the letter I have and I have to deal with it.

Frank J Smith: And the reason why I wanted to ask Mr. Chairman is that this memo sites Clark vs Town of Sand Lake Zoning Board of appeals.

Chairman Robert Dee: Which I know nothing about

Frank J Smith: Respectfully Mr. Chairman that case was provided to you in my submission in December of last year. So, with all do respect I think the time to address the matters of law that I have raised for the past however many months has come and passed. I've submitted all these cases to you all for your review. It took place in December of last year after we were here the first time in November. So, I have not been presented a contrary canon of law a case anything that would dispel the requirement of the 60 day filing of the appeal. So, I would respectfully ask that this board close the public hearing and render a decision, thank you.

Chairman Robert Dee: Miss. Turner

Joan Turner: Yes, on another matter

Chairman Robert Dee: Come up to the microphone please.

Joan Turner: The Garrison Hamlet Association was dealing with 1122 which is the gas station on Route 9D and in my notes and my presentation at that meeting. I would like to read you something that I presented to the Planning Board which is relevant tonight and as to having a witness to the inability to get a timely appeal filed because you don't have access to things. I think I as a credible witness that should better wait in your

decision but, to reinforce what the Zoning Board of Appeals has and I will read this. The Court of Appeals has upheld that a Zoning Board of Appeal performs a quasi-judicial function when it renders an interpretation of a zoning provision and as such act according to its own precedence. In numerous cases the court has reinforced the principle that a board of appeals is the sole interpreter of the ordinance not the town attorney. You are the appellate body in the code not the town not the Planning Board you are the appellate the one that makes the judicial, you act as a quasi-judicial body and therefore do not dismiss this case based on Mr. Gaba's interpretation of the law.

Chairman Robert Dee: Thank you. Mr. Romeu, Doctor Romeu I'm sorry

Jose Romeu: You know there's been a lot of legal talk and I am talking as a citizen and just a physician but, I certainly did not have constructive knowledge of what was going on until August the 12th. From August the 12th to October the 10th. If I want to get technical about it, it is 58 days. I was denied a faithful copy of the plans how could I make an appeal and I was denied the paperwork for making an appeal four times. I believe the fifth time in front of my lawyer I asked the Inspector a list of questions that I can give to you, he refused to answer any of them. How could I file something if I don't get the information or the paperwork to file. If I don't have the plans to look at and even if I looked at them, I mean they're hieroglyph to me. It has to be looked at very carefully to see exactly what is going on. From August 12th to October 10th is within sixty days.

10336Chairman Robert Dee: Right, it is my understanding, One question Mr. Romeu. I just want to ask you one question. I'm trying to get this all straight in my head. When you originally went to the Building Department your thought was you weren't sure if there was anything wrong? You just wanted to see the plans to see if it was more than 25%? Am I saying it correctly?

Jose Romeu: Well, I just wanted to know what was going on

Chairman Robert Dee: right

Jose Romeu: Because you know, there's a big construction

Chairman Robert Dee: Right

Jose Romeu: And by the way you know, this is not an extension or an expansion

Chairman Robert Dee: Right

Jose Romeu: When you calculate the area the living space of the new structure, the old structure was 1196 square feet. Now, this adds up to 3499 plus an impermeable porch of at least 500 square feet. We're talking about 4000. The old cottage had 1196

Chairman Robert Dee: Okay

Jose Romeu: It is, this is not an expansion this is a completely new house. What's left of the old house the foundations. It is a three-story structure plus a living porch, heated basement, finished basement

Chairman Robert Dee; Right

Jose Romeu: This was a finished basement, there was a finished basement that was unfinished flipped upstairs not as a basement as living area but the total area is over three times nearly four times the original living space.

Chairman Robert Dee: Well there is two sections here you know were looking at okay, the first one is the timeliness okay, 60 days thing okay., and the second would be it is over 25% and so forth

Jose Romeu: Right, and the other

Chairman Robert Dee: It's two completely

Jose Romeu: Yes

Chairman Robert Dee: Two different, combined but I'm trying to say

Jose Romeu: Yes

Chairman Robert Dee: Each separate, So, your point is, what you're trying to say is that you wouldn't be able to know anything until you saw

Jose Romeu: That's correct

Chairman Robert Dee: The plans and you didn't get to see the building plans until August 12th

Jose Romeu: Because they denied us

Chairman Robert Dee: Well

Jose Romeu: Four times to file a petition

Chairman Robert De: Right

Jose Romeu: In fact, there's multiple emails to the Inspector

Chairman Robert Dee: We have them

Jose Romeu: And you have all of that

Chairman Robert Dee; We have all of them

Jose Romeu: And I was begging you know, please let's bring why don't we get a third party objective

Chairman Robert Dee: Right

Jose Romeu: Group to look at this and see who's right, and the other one last point, I can't see that the building permit was legally granted. The regulation specifically says B 2, you must you must I mean there's no equivocation about this you must if you're going to expand a non-conforming structure you must ask for a permit of the board that was not done.

Chairman Robert Dee: Okay, thank you

Vincent Cestone: Mr. Dee

Chairman Robert Dee: Sure

Vincent Cestone: Mr. Smith, your project is not being delayed? You've not stopped working or anything like that? Okay. I don't see a problem giving Mr. Romeu's attorney s chance to prove that he was timely

Chairman Robert Dee: Okay

Vincent Cestone: Other than we're gonna lose time

Chairman Robert Dee; Right, what you are saying it's not stopping

Vincent Cestone: we're not stopping them from finishing the structure

Chairman Robert Dee: Okay, but your opinion now is that we continue this until next month?

Vincent Cestone: Yeah

Chairman Robert Dee: Miss. Clair

Paula Clair: I agree, I think we should look at the outstanding issues

Chairman Robert Dee: Alright

Paula Clair: And make a decision

Chairman Robert Dee: I was looking, sure

Frank J Smith: Mr. Chairman

Chairman Robert Dee: One at a time, relax calm down. Everybody will get a chance to talk

Joan Turner: I just want to say I'm sorry I guess it is my Zoning experience

Chairman Robert Dee: This is here, and everybody can speak

Joan Turner: Coming to the floor, but also provided for all of us when I was on the Zoning Board. New York State Department of State on zoning, it's clear with the case law about the appellate responsibilities of the Zoning Board of Appeals. You can refer to that in your deliberations before next month to see that you do have the right and perhaps in some ways you might ask Mr. Gaba to refer to it also since I think his interpretation is notwithstanding is in contrast or contrary to the New York State Department of State case laws. They have manuals

Chairman Robert Dee: right

Joan Turner: On all of this so, I just wanted to make that suggestion that you could seek outside advice other than the Town Attorneys thank you again for your patients.

Chairman Robert Dee: Who's outside advice would I seek

Joan Turner: I'm saying outside New York State Department of State has a huge thing, another outside attorney that might know, ask

Chairman Robert Dee: I'm not gonna ask an outside attorney, okay but thank you for, but you understand my predicament here

Joan Turner: Oh, absolutely, I mean you're between a rock and a hard place. In fact the Zoning Board is always between a rock and a hard place. It's one of the most difficult functions to carry out. Anyway just

Chairman Robert Dee: Thank you

Joan Turner: Wanted to point out

Chairman Robert Dee: Thank you very much. I appreciate you're input. I'm gonna give you the last shot.

Frank J Smith: Respectfully Mr. Chairman I disagree that you're between a rock and a hard place. The law is clear, the law is absolutely unequivocally clear and there have been no facts presented to this date that would change the law. What is being asked of you this evening is to disregard the long-standing case law on this particular subject of which you and this board has been provided with for months on end. There is absolutely nothing here this evening that has changed from when we first came here in November of last year. You were being asked to disregard the law and I think that's highly inappropriate the case law is very very clear it's a 60-day requirement upon actual notice and I would just like to state again we can move the goal posts here again this evening and kick the can another month but we can go back and we can go on YouTube and we can watch all of our previous appearances here and we can see on the record the applicant stating that they knew construction took place on July 12th 2019. That is the date in which the 60-day timeline should be based off of and as I've mentioned in previous presentations that even if the interested party respondent were to concede the later July date it still would have been untimely. So, I'm asking you this evening to respect the law to close the public hearing if you'd like to wait for the next meeting to render a decision. I'm sure you could seek the advice of counsel to do so but I believe the public hearing should be closed because the Town Attorney has advised this board has no jurisdiction to hear anything further. The opportunity has come and gone, we met her in November there was no meeting in December we met in January we were here in February and we're here again in March and there is nothing that has changed to weigh in the contrary to the position that I have advanced on behalf of the interested party respondent and I respectfully request that the public hearing be closed thank you.

Chairman Robert Dee: Thank you. Anybody else? Yes sir

Jose Romeu: There are two lawyers for the town on November 18th Mr. Rodd advised the board not to take a vote because we were petitioning the court. By the way we petitioned the court back in August because we were getting absolutely no cooperation from the Building Department no ability to petition anything. So, we asked the court to intervene. November 18th you were stopped from taking a vote because there was a court hearing the following day. In court the lawyer who I believe Mr. Rodd is your partner in court, is he? the lawyer in the court is your partner?

Adam Rodd: I'm not sure which attorney appeared in court on that day

Jose Romeu: Well he is your partner?

Adam Rodd: I'm not a witness, what's your point?

Jose Romeu: Okay, so I won't ask you any questions. But Mr. Gaba is your partner?

Adam Rodd: yes, Mr. Gaba is my partner

Jose Romeu: So, here we are ping-ponged from the ZBA to the court. The following day we go to court and the lawyer presumably of the same law office says oh no you can't do that because that belongs in the ZBA. That is the reason for delays and now today we have Mr. Gaba with a last-minute letter saying that actually you cannot do any of this. We have three lawyers for the town actually (In audible) our efforts I think that is wrong and causing all of these delays from November 19th January 10th February 10th and today. The three lawyers essentially have prevented this case from going forward. November 18th you were ready to vote and Mr. Rodd prevented you from voting saying oh no no you have to wait for the court. We go to court and then the lawyer there presuming he won't answer, his partner says no no no no you have to go back to the ZBA. Now knowing that there was a delay till January and now in March we hear the same thing. I think you have heard opinions that this is a lawyer's opinion interpretation of what you should do

Chairman Robert Dee: You understand the position the board is in

Jose Romeu: No, I understand your point. No, I understand your dilemma

Chairman Robert Dee: Now the Town Board has asked the attorney to write us this letter okay, in this letter it says here that we cannot hear or decide the matter

Jose Romeu: I realize that

Chairman Robert Dee: otherwise we are breaking the law. So, it puts me in a spot. I know he is saying he is not in a spot

Jose Romeu: No, I don't think they are the final word

Chairman Robert Dee: Right

Jose Romeu: In terms of your

Chairman Robert Dee: That's probably what we are going to have to seek next month. We might have to seek that

Jose Romeu: In terms of the law.

Chairman Robert Dee: We may have to seek that

Jose Romeu: It may be that you know an uninterested third party. This is an interested third party, second party they're defending the town from possible repercussions of this case. I want you to take that into consideration.

Chairman Robert Dee: thank you very much. I guess we have to choices here, Two choices to make a decision. We can't, I'm not going to make a decision, so, I'm not going to make a decision. Says here I can't make a decision.

Adam Rodd: (In auditable)

Chairman Robert Dee: Do you want, go ahead

Adam Rodd: Just to be clear, the board needs to act on the appeal. It's your call you don't have to vote tonight because Mr. Lim is not here. You could decide to vote tonight, the attorney for the appellant asked for the opportunity to reply to the Town Attorneys letter so

Vincent Cestone: Mr. Rodd can we make a condition that at the next meeting only the two attorneys can present the information related to the timeliness or is that not allowed?

Adam Rodd: You certainly could, you can close the public hearing with the exception of receipt of additional correspondence from the appellants counsel giving the attorneys for the respondent the opportunity to reply and that's it.

Chairman Robert Dee: I would rather not do that, because I would rather leave it open because Miss. Turner tonight who's served on the board for years, has made some statements as she was there during the Dr. Romeu asking for the you know information and so forth. I think it is important that we hear her also. So, I'll and leave it open

Vincent Cestone: I'm okay with that

Chairman Robert Dee: You're okay with that

Chairman Robert Dee: So, at this point in time, I guess the board's decision is to continue

Vincent Cestone: To continue until next month

Chairman Robert Dee: Continue until next month. So, this will be a continuation until next month April 13th. I don't like it anymore than anybody else does thank you. Make a motion to adjourn?

Vincent Cestone: Second

Chairman Robert Dee: All in favor?

Paula Clair: Aye

Vincent Cestone: Aye

Chairman Robert Dee: Aye

(THE MEETING ADJOURNED AT 8:50 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

