

**ZONING BOARD OF APPEALS  
Town Of Philipstown  
238 Main Street Cold Spring NY 10516**

**MEETING AGENDA**

**April 14,2014**

**7:30 p.m.**

**1.) Approval of Resolution**

Will and Grace Vogel  
406 Rt. 9D Garrison, NY

TM# 81.-1-62

Appeal # 885

**2.) New / Old Business**

TOWN OF PHILIPSTOWN ZONING BOARD OF APPEALS  
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In re application of:

WILL & GABRIELLE VOGEL

RESOLUTION

for an Area Variance from Section 175-11B of the Town’s Zoning Code for side yard setbacks to permit enclosure of an existing screened porch for a kitchen expansion.

Appeal No. 885  
Tax Map Parcel: 81.-1-62

Interior Alteration Application

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The applicants, Will and Gabrielle Vogel, are the owners of a parcel of property located at 406 Route 9D, Garrison, New York, 10524, in the Town of Philipstown. The parcel is located within the Rural Residential (“RR”) Zoning District. The applicants originally submitted a building permit application to the Town of Philipstown Code Enforcement Office, requesting to renovate the second floor kitchen of the existing residence, including the demolition and construction of the existing second floor roof, dormer and gable ends, and the demolition of an existing side screened porch to be replaced with a new construction for the dining area. The applicants’ renovations to the existing side porch encroach 3.7 feet into the setbacks.

On July 21, 1997, the Town of Philipstown Zoning Board of Appeals granted an area variance in the appeal of the former owner, Eleanor Polhemus, Appeal #585, for the subject parcel, which included four (4) conditions. According to the Decision and Findings in Appeal #585, “CONDITIONS TO THE VARIANCE”, conditions 3 & 4 of the area variance provide:

- “3. The enclosed porch shall not be further enclosed, screened, heated, covered or converted into living space, with either permanent or removable

building materials, including but not limited to wood, canvas, metal, plastic, or asphalt shingles.

4. The porch is not to be ehatod\*<sup>1</sup> nor supplied with electirical\*<sup>2</sup> current.”

According to the Town of Philipstown Town Code, Schedule “B”, which was in effect in 1997, in the R-80 District a setback of 30 feet was required from the side or rear property lines. Only July 21, 1997, the Zoning Board of Appeals granted an area variance for the side yard for the enclosed porch, which shall not be less than 26.3 feet from the side yard, requiring a variance of 3.7 feet.

Therefore, in a letter dated December 13, 2013, the Town of Philipstown Code Enforcement Officer Kevin Donohue, issued a letter denying the building permit application for non-compliance with Town of Philipstown Code §175-11B, further citing the conditions found in Appeal #585.

The applicants, therefore, have appealed the Code Enforcement Officer’s denial, and now seek an area variance from the Zoning Board of Appeals seeking to remove conditions 3 & 4 imposed by Appeal #585, dated July 21, 1997, in order to replace the existing screened porch with new construction for the dining area that will be located within the footprint of the existing structure.

On January 28, 2014, the applicants submitted a Zoning Board of Appeals application. On February 10, 2014, the Zoning Board of Appeals reviewed the application for completeness, and called for a public hearing. The applicant submitted a fully executed short form Environmental Assessment Form (“EAF”) pursuant to the New York State Environmental Quality Review Act (“SEQRA”). The application and related materials were submitted to the Putnam County Department of Planning, Development

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<sup>1</sup> Spelling error in original Appeal #585 Decision and Findings.

<sup>2</sup> Spelling error in original Appeal #585 Decision and Findings.

and Public Transportation (“PCDP”) for its review pursuant to the requirements of the General Municipal Law § 239-m, and PCDP responded approving the referral as submitted. At a public hearing of the Zoning Board of Appeals on March 10, 2014, and upon all discussion and testimony that preceded it, the public hearing was closed.

At a public meeting of the Board on March 10, 2014, and upon all discussion and testimony that preceded it, and a review of all submissions and proof submitted to the Board, \_\_\_\_\_ made a motion, seconded by \_\_\_\_\_, as follows:

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, determines and finds:

FINDINGS OF FACT

1. The applicants submitted their request, Appeal #885, to the Town of Philipstown Zoning Board, based upon the Town of Philipstown Code Enforcement Officer’s denial letter, dated December 13, 2013, denying the applicants’ building permit application to replace the existing screened porch with new construction for the dining area that will be located within the footprint of the existing structure, located at 406 Route 9D, Garrison, New York, 10524 in the Town of Philipstown
2. The applicants’ property is located Rural Residential (“RR”) Zoning District in the Town of Philipstown, formerly the R-80 Zoning District, and is identified on the Town of Philipstown Tax Map as Section 81., Block 1, Lot 62.
3. Town of Philipstown Town Code, Schedule “B”, which was in effect in 1997 at the time of Appeal #585, requires a setback of 30 feet from the side or rear property lines in the R-80 District.
4. The applicants’ proposed renovation to the existing 6’ X 16’ screened porch on the side of the existing residence, is located 26.3 feet from the side yard setback.

5. The Zoning Board of Appeals granted an area variance for the side yard setback for the existing enclosed porch in Appeal #585, which shall not be less than 26.3 feet from the side yard setback, requiring a variance of 3.7 feet.

6. The Board reviewed the application and accompanying materials prior to its regular meeting on February 10, 2014, in order to determine the sufficiency of the application and as a prerequisite to scheduling the public hearing on the instant appeal. The Board determined that the application was complete. A public hearing was scheduled for March 10, 2014, upon proper public notice thereof being given in accordance with statutory mandates and requirements.

7. The Zoning Board of Appeals conducted a site visit on March 5, 2014.

8. The Board met on March 10, 2014, for the purpose of conducting the public hearing.

9. The Putnam County Department of Planning, Development and Public Transportation reviewed the applicants' proposal pursuant to the requirements of the General Municipal Law § 239-m, and on March February 27, 2014, approved the referral as submitted.

10. This is a Type II Action under the State Environmental Quality Review Act (SEQRA).

10. At the public hearing the Board heard from the applicant, Mr. Will Vogel, and reviewed all submissions from the applicant. In a letter dated, March 6, 2014, adjacent property owners Bates & Beverly Cutten, indicated that there "should be no problem..." with the proposed side porch. No members of the public spoke in opposition to the application. The Board closed the public hearing on March 10, 2014. Thereupon the Board engaged in further deliberations.

## FINDINGS AND CONCLUSIONS

I. WHETHER AN UNDESIRABLE CHANGE WILL BE PRODUCED IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES WILL BE CREATED BY THE GRANTING OF THE VARIANCE?

Based upon the materials and testimony presented to the Board, as well as the Board's familiarity with the subject property, the Board finds that the grant of the area variance sought in this application will not result in an undesirable change to the character of the neighborhood and will not be a detriment to nearby properties.

The Board identified that the variance would only permit the further enclosure of the existing screened porch, using wood siding and windows, keeping with the character of the existing residence and the neighborhood. Further, the existing setbacks approved in Appeal #585 will not be changed by the proposed renovations. The Board concludes that granting of the area variance for the side yard for the enclosed porch, and removing "CONDITIONS TO THE VARIANCE", conditions 3 & 4 of Appeal #585, will not result in an undesirable change to the character of the neighborhood or be a detriment to nearby properties.

II. WHETHER THE BENEFITS SOUGHT BY THE APPLICANTS CAN BE ACHIEVED BY SOME METHOD FEASIBLE FOR THE APPLICANTS TO PURSUE, OTHER THAN AN AREA VARIANCE?

The Board finds that the variance could not be achieved by some other feasible method. If the variance is not granted, the applicants would not be able to expand the living space and proposed kitchen addition. The applicants' proposal is made in an attempt to limit impacts to adjoining and neighboring properties to the north, by renovating the existing screened porch that has fallen into disrepair within the footprint of the existing structure. Accordingly, the Board finds that an area variance for the side yard

setback approved in Appeal #585, and removing “CONDITIONS TO THE VARIANCE”, conditions 3 & 4 could not be achieved by some other feasible method.

### III. WHETHER THE REQUESTED AREA VARIANCES ARE SUBSTANTIAL?

Town of Philipstown Town Code, Schedule “B”, which was in effect in 1997, in the R-80 District, requires a setback of 30 feet from the side or rear property lines. The Town of Philipstown Zoning Board of Appeals previously granted an area variance for the side yard setback on July 21, 1997, in Appeal #585. While the applicant proposes to renovate the existing screened porch, by enclosing it and making it into a living space using wood siding and windows, which requires a variance of 3.7 feet, the requested renovations will be located in the existing footprint. The Board, therefore, removed “CONDITIONS TO THE VARIANCE” conditions 3 & 4, of Appeal #585, and maintained conditions 1 & 2, which provide:

“1. The structure granted conditional variance by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant’s maps and plans. No further enlargement or reconfiguration of the structures is authorized without Building Department and/or Zoning Board approval as needed.

2. The setback from the side yard for the enclosed porch shall not be less than 26.3 ft. (a variance of 3.7 ft.)”

The Board finds that the area variance sought is not substantial because the proposed enclosed porch will be located within the footprint of the existing screen porch, approved by Appeal #585.

### IV. WHETHER THE PROPOSED VARIANCE WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD?

The proposed enclosure of the existing screened porch will not alter the footprint of the existing structure. The proposed enclosure will not require paving of additional

1. The structure granted conditional variance by this decision shall not be further enlarged except in accordance with all provisions of the Philipstown Code and shall remain in the configuration as shown on Applicant’s maps and plans. No further enlargement or reconfiguration of the structures is authorized without Building Department and/or Zoning Board approval as needed.
2. The setback from the side yard for the enclosed porch shall not be less than 26.3 ft. (a variance of 3.7 ft.).

ROLL CALL VOTE

The question of the foregoing decision calling for approval of the requested variance was put to a roll call vote on the 10<sup>th</sup> day of March, 2014, and the results were as follows:

Robert Dee, Chairman	-	Voting Aye
Leonard Lim, Member	-	Voting Aye
Bill Flaherty, Member	-	Voting Aye
Paula Clair, Member	-	Voting Aye
Vincent Cestone, Member	-	Voting No

Dated: Philipstown, New York  
April 14, 2014

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ROBERT DEE, Chairman – Town of Philipstown  
Zoning Board of Appeals

Filed in the Town Clerk’s Office this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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TOWN CLERK

**RESOLUTION #-2014**

The following Resolution was presented by Councilman Leonard, seconded by Councilman Merandy and unanimously carried:

**RESOLVED**, the Town Board hereby changes the meeting schedule for the Zoning Board of Appeals from the second and fourth Monday's of every month to the second Monday only, effective immediately.

**CERTIFICATION**

I, **Theresa Crawley**, the duly qualified and acting Deputy Town Clerk of the Town of Philipstown, Putnam County, New York, do hereby certify that attached hereto is a true and correct copy of an extract from the minutes of a Monthly Meeting of the Town Board of the Town of Philipstown, held on April 3, 2014, and that the Resolution set forth herein is a true and correct copy of the Resolution of the Town Board of said Town adopted at said meeting.

**I FURTHER CERTIFY** that pursuant to section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the said Town, this 4th day of April, 2014.

  
\_\_\_\_\_  
Theresa Crawley  
Deputy Town Clerk

(seal)

A true copy of this Resolution was filed in the Office of the Town Clerk on April 4, 2014.

  
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Theresa Crawley  
Deputy Town Clerk