

ZONING BOARD OF APPEALS

October 5, 2009

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, October 5, 2009, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

PRESENT: Vincent Cestone - Chairman
Lenny Lim - Member
Bill Flaherty - Member
Robert Dee - Member
Paula Clair - Member
Adam Rodd - Counsel

ABSENT: Kim Shewmaker - Secretary

Vincent Cestone - Okay let's get right into this. Lets start off with Garrison Contracting. Did the board members review the plans?

Robert Dee - Yes

Vincent Cestone - Any questions or comments? If not, does anybody wish to speak on this? Sir, introduce yourself.

Robert Freeman - My name is Robert Freeman. I live on _____. I am grateful to have a chance to look at the plans and did. In addition to my concern that this is an inappropriate expansion of the nonconforming use _____ thanks to the plans I was able to notice that the property is proposed to be improved within 35 feet of a residential zone on the north side of the property. And I think that is a violation of the setback requirements that the zoning board also requires. **(Cannot hear the speaker)**

Vincent Cestone - Anyone else wish to speak?

Bob Hilpert - Bob Hilpert on the residential property to the north. I guess that would be a side yard setback. I think it shows that it was within 5 feet of my property and I think the zoning requires that it be 35. Also for coverage, I think you are only allowed 25 percent coverage. If you look at the amount of parking spaces, I think it could be considered retail sales area, it covers about 75 percent of the lot. I think he would need an area variance.

Vincent Cestone - Right

Bob Hilpert - That's in addition to the non-conforming and the setback of the wetlands.

Vincent Cestone - Someone else wish to speak? Sir?

Shawn Kemp - Good evening my name is Shawn Kemp. I am an attorney with the law firm McCabe and Mack in Poughkeepsie, New York. I am here on behalf of William Everett Jr. of _____ Road, Mr. Stephen Holly of Diamond Hill Road, last week I was only here on behalf of Mr. Holly but I am here on behalf of two individuals tonight. I had an opportunity to review the plans as well and I also had an opportunity to review past minutes of the various zoning board meetings. And I think that the facts are pretty straight forward here and that when you look at the benefit of the applicant and you weight that against the detriment that would be costing the _____ safety and welfare of the community as a result of this variance being granted, it is clear that the variance should in fact be not granted. Reviewing the minutes from previous meetings it is clear that this would create a undesirable change in the area having cars parked on _____ of Route 9. And as pointed out last time at the last meeting, I think that this is a substantial variance and there really is no justification for such a substantial variance nor is there any excuse for such a variance. Also looking at the minutes and attending last week's meeting, it is clear that there is a creek and there is an environmental concern that has to be taken into consideration and that the granting of this variance very well could threaten the developing of the creek and the surrounding environmental areas. And finally as I pointed out last week, this is in fact a self created hardship and when you take all these factors into consideration I think it is clear that there is no _____ on the evidence in the record for the board to deny this request for a variance. And based on the foregoing, Mr. Holly and Mr. Everett respectfully request that the board exercise discretion and deny the application for the variance. Thank you.

Vincent Cestone - Anyone else wish to speak on this? Does the applicant wish to say anything?

Applicant's Attorney - Yes. First of all with respect to the side yard variance on the setback, I believe we set forth in the site plan the setback variance we are seeking on that. There is even a setback on the side yard as well as the back and the centerline and the edge of Route 9. With respect to the environmental issues, again the State Department of Environmental Controls has issued _____ that there is no jurisdiction. **(Cannot hear Speaker)** This is not a self created hardship. This property has been operating as a business continuously for over 50 years. People may have stated their opinion that the business itself, the building was shut down for a period of time. That may or may not be true. I don't know I was not here. However, the parking on that site has been continuous for

over 50 years and it predates the ordinances of the Town on this regard. So even if the business itself had been shut down, the parking had been continuous and it is therefore grandfathered. With respect to the self created hardship this, there is nothing self created about that. If this variance, as a matter of fact if this variance is not granted and the Town persists in its action to fight with my client out of this and that is exactly what is going to happen. He will be put out of business. There will be no use of the property whatsoever. Notwithstanding the fact that he purchased it after it was being continuously used for over 40 years. I don't believe that the parking is necessarily considered a retail area under the statutes. I believe that my client is fully compliant with all the other aspects of the zoning regulations. With respect to the comment that it is an undesirable _____ I want to point out the over 20 examples of commercial property up and down Route 9 which have parking not only close, within the setback areas but are closer to Route 9 than my client is proposing. As a matter of fact the Stadium Restaurant directly across the street has precisely the exact same issues that were raised here and yet they are allowed to operate. It is not undesirable in the context of all the properties up and down Route 9 including the one directly across the street from my client.

Vincent Cestone - Any more comments from the audience?

Audience member - While counsel acknowledged that maybe the business was abandoned and I believe _____

Applicant's attorney - I didn't acknowledge anything

Vincent Cestone - Please

Audience member - I think he acknowledged that if even the business were abandoned the parking hadn't been abandoned. This is not an application for parking. This is an application for business. Whether or not somebody parked there is irrelevant.

Vincent Cestone - Anyone else wish to speak?

Audience member - I can't speak to whether or not the State's Department of Conservation _____ is on the stream. I just heard the Board _____ consideration of that stream. It is an environmental factor. And whether or not the State takes a position on it does not mean that it is evidence that it cannot be taken into consideration when you are making your determination.

Vincent Cestone - Anyone else wish to speak?

Marla Rubin - Sir I believe, again I've been to the records on this case

Robert Dee - Can you identify yourself please

Marla Rubin - I was here last week, Marla Rubin, and I am an attorney for Mr. Jones. We had submitted into the record statements from the Department of Environmental Conservation saying that they are not concerned at all with any impact to the creek or the wetlands or the buffer areas from a State point of view. We did submit it and if you don't have it, _____

Vincent Cestone - Anyone else wish to speak? Any more comments from the Board?

Bill Flaherty - I would like to make a motion to go into Executive Session.

Adam Rodd - Closed Session if you would like to. But I would suggest because we have a very long agenda tonight. That if there is time when we get through everything that we have to get through

Robert Dee - Before we do that, I would like to at least go through the five factors. This is important. This is a man's business. I think we should

Vincent Cestone - We would have to close the public hearing

Robert Dee - To go through the five factors?

Adam Rodd - Yeah. At this juncture I think it is appropriate for the board if you want more information, to ask for it from the applicant. If you want to clarify anything, this is your opportunity. If you are satisfied with the information that you have, I would propose making a motion to close the public hearing and then we will get on with the rest of the agenda. And where we are, because we have several hearings to get through tonight, then perhaps either you could decide whether you want to vote on this tonight or look at the minutes and vote on it next week.

Vincent Cestone - We have 62 days so there are no time constraints.

Adam Rodd - If you would want to confer with counsel, the appropriate motion is to make a motion to go into closed session to discuss legal issues.

Vincent Cestone - Is that what you want to do

Bill Flaherty - Yes. I would like to do that

Vincent Cestone - Do we have a second

Lenny Lim - I'll second

Vincent Cestone - All those in favor

All Board members – aye

Vincent Cestone - Against? Okay. Then we will go into closed session. We will go downstairs. You can stay here. And we will be back in a few minutes.

(BOARD MEMBERS IN CLOSED SESSION)

Vincent Cestone - I make a motion to come out of Closed Session. Do I have a second

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board members - Aye

Vincent Cestone – opposed. Okay. A motion to close the public hearing?

Bill Flaherty - I'll second.

Vincent Cestone - All those in favor

All Board members - Aye

Vincent Cestone - We are not going to decide this tonight. We are going to think about this and at our next meeting that's when we will vote. The next meeting is October 26th. Next item on the agenda is Jules Bass. Is Mr. Bass here? Hi

Applicant's representative - I'm not Mr. Bass.

Vincent Cestone - If I remember correctly this was a carport and it was right on top of the road

Applicant's representative - Not on the road but the side yard property line.

Vincent Cestone - And have you made any changes

Applicant's representative - Well we wanted to, we were hoping to discuss this. We can't find a good alternate change. One of the _____ moving it off the property line but not by an enormous amount of footage. We were wondering if the property that was next to it, that part of it is a long extension of the neighbor's property, it is all wetlands, and basically it is never going to be a buildable.

Vincent Cestone - Never say never

Applicant's representative - It is very unlikely because the river cuts in even closer at that point. So it is sort of like a long tendon of the neighbor's property. This is not a garage

Vincent Cestone - It's a carport. When you grant a setback of that it goes with the property. And once it is granted there is no reason you couldn't change it.

Lenny Lim - The future owner could do it. It runs with the property the variance.

Applicant's representative - Right

Vincent Cestone - So that's what the issue is. It's not that it is a carport. It's that it runs with the property forever.

Lenny Lim - Do you have anything, a drawing or anything of your trying to move it a little bit, what did you do?

Applicant's representative - We discussed it with Mr. Bass. We didn't see a potentially good location. **(Cannot hear Speaker)** We would like to put it in front of the garage, this way he could use the driveway turn off. That's where we are hoping to put it. That's where it is paved at this point and the car is already parked there.

Vincent Cestone - Right. So the owner is not willing to

Applicant's representative - He doesn't have a, we don't have a, every other spot on his property is nonconforming. There is so much land but in this particular small corner there is no, where we can park it near the house. If we moved it forward, is there a particular amount of feet that would be in an acceptable range?

Vincent Cestone - We try not to dictate this to you. But this is very unacceptable.

Applicant's representative - Okay

Vincent Cestone - It would have to be quite a bit. I am not going to say 6 feet or 4 feet, 3 feet, I am not going to say anything like that. This is unacceptable to the board members

Lenny Lim - You are right on the line

Vincent Cestone - Yeah.

Lenny Lim - There are alternatives. I mean you could turn it, maybe put it up this side of the house, there are places you could do this. You can more move it some more though, I mean what are you 3 inches, 6 inches off

Vincent Cestone - And if you want to, I am willing to keep this open if you want to talk to the owner

Lenny Lim - There are alternative places to put that garage. Carport.

(Cannot hear dialogue)

Vincent Cestone - If you wish to talk some more, I am willing to continue this meeting

Applicant's representative - Okay

Vincent Cestone - And if not, we can close and vote. It's up to you

(cannot hear)

Applicant's representative - I will go back to him one more time (cannot hear conversation)

Vincent Cestone - So we will continue it on to our next meeting. And if he decides that he does not want to change, recommend to him that he cancel his application

Applicant's representative - Don't leave it open

Vincent Cestone - We would close it after three times. But, the point I am trying to make is if you withdrew it, it is not on your record

Applicant's representative - Okay. Thank you for your time

Vincent Cestone - You're welcome

Adam Rodd - That will also be on for the 26th

Vincent Cestone - Yes. Okay. Next item on the agenda is Timmer. Is Mr. Timmer here? I'll hold that until the end and we can call him again. Rome? Hi there.

Karen Parks - Hi my name is Karen Parks and I represent the home owners who are applying for a variance on their 40' foot setback. **(Speaking too low to determine what is being said)** And I dropped off an up-dated survey.

Vincent Cestone - I don't know. It's probably downstairs. The zoning board secretary is not here. I'll go look

Karen Parks - I have these for you

Vincent Cestone - Okay. What's changed?

Karen Parks - Nothing has changed but the previous survey was _____ and you had brought up last time that it indicated that there was a carport which that survey was probably from 1999 and that carport was actually _____. But that illustrated on the survey. And the actual dimension to the new proposed addition is also indicated on the current survey.

Vincent Cestone - I believe we need one. There are probably several downstairs.

Lenny Lim - How much is he asking for

Karen Parks - The actual requested variance is 2.1' feet

Lenny Lim - Just that little corner down there right

Vincent Cestone - It is this little corner down here where it attaches to the house

Lenny Lim - That's what you want

Karen Parks - We have no options because the entire existing house is

Vincent Cestone - In the setbacks

Adam Rodd - So basically the code requires that you be 40' feet from the front yard setback and you are 38

Karen Parks - 37.9 feet

Adam Rodd - I just need one copy

Vincent Cestone - Any questions from the board

Robert Dee - No

Vincent Cestone - Any comments from the audience? I make a motion to close this public hearing. Do I have a second

Lenny Lim - Second

Vincent Cestone - All in favor

All Board members - Aye

Vincent Cestone - Against? Does anyone not wish to vote on this? Okay. Bill?

Bill Flaherty - I vote to approve

Paula Clair - I vote to approve

Lenny Lim - I vote to approve

Robert Dee - I vote to approve

Vincent Cestone - And so will I. The next item is Billy Williams. You were supposed to get a couple of letters for us. Thank you. Just for the record two letters were submitted and these are your neighbors that are attached

Billy Williams - The adjoining neighbors

Vincent Cestone - Okay. I am reading them and I will paraphrase that both these people have no objection to the application and I will give these to Adam so that you have them

Adam Rodd - Great.

Lenny Lim - The shed is on the back of the garage

Vincent Cestone - Any more questions from the board? Any comments from the audience? I will make a motion to close the public hearing. Do I have a second

Bill Flaherty - Second

Vincent Cestone - All in favor

All Board members - Aye

Vincent Cestone - Opposed? Okay. Vote? Bob?

Robert Dee - I vote to approve it

Vincent Cestone - Lenny?

Lenny Lim - I vote to approve it

Paula Clair - I vote to approve it

Bill Flaherty - So do I

Vincent Cestone - And so do I. You're all set.

Billy Williams - Thank you very much

Vincent Cestone - We have to have a resolution and we have 62 days to create the resolution. But it normally doesn't take that long. But we have to read the resolution into the record and then it is filed downstairs in the building department. As far as what you need to do, you can tell the people that the variance has been granted but they may ask to wait for the resolution. And you can get a copy of the resolution once it has been approved by us. And I am not sure when that's going to be, no more than 62 days probably a lot less

Billy Williams - Thank you

Vincent Cestone - Okay Mr. Mercado. Hi how are you doing? Finally get to talk to you.

Milton Mercado - (Cannot hear applicant)

Vincent Cestone - Okay

Milton Mercado - I picked up these copies about half hour ago so I am not sure what it looks like

Vincent Cestone - Okay on these plans could you just show me the issue that you are applying for

Milton Mercado - (cannot hear the applicant) ...the elevation...

Vincent Cestone - I am familiar. I live on Aqueduct Road

Milton Mercado - Yeah goes (cannot hear). I don't have access to the side of my house to get to the back to ride my motorcycles in the back of the house.
(Cannot hear applicant)

Vincent Cestone - You are not in that parking area

Milton Mercado - No.

Vincent Cestone - You have a driveway that is like this

Milton Mercado - It is 10 from the property line and 20 feet from the street line.

And on top of my driveway over to the left there is a little _____ that's where I put the shed. And that's where I have my motorcycles now.

Lenny Lim - That's this shed right here in the front

Milton Mercado - Yes sir

Lenny Lim - Okay

Milton Mercado - So that is one variance I am applying for as well as I would like to add a second addition to the existing structure which is already nonconforming.

Vincent Cestone - It is already a two story house

Milton Mercado - On the far side. What I would like to do is extend that second story over on the single story side.

Vincent Cestone - And again, it is the front yard setback that is the issue

Milton Mercado - Yes sir. The side setbacks are in line. It's the front yard and it is pre-existing

Lenny Lim - So it is a pre-existing nonconforming. Are you enlarging the footprint of the building

Milton Mercado - No sir. It is going to sit right on top of the existing building

Lenny Lim - What is this sunroom addition

Milton Mercado - Oh I am sorry, as well as on the back side of the first floor I wanted to add a sunroom. It will be a three season room

Adam Rodd - As I see it you don't need an area variance for the sunroom

Milton Mercado - Right. It meets the front and side setbacks

Vincent Cestone - So that is not the issue. It is just the 2nd story addition and the shed

Milton Mercado - Yes sir

Robert Dee - That's two bedrooms

Milton Mercado - I am converting one bedroom that is on the first floor to a family room.

Vincent Cestone - Any more questions from the board?

Lenny Lim - I got one question, isn't that sunroom on the back, is that enlarging the pre-existing

Adam Rodd - It enlarges the footprint but he doesn't have a problem with the rear yard setback for the sunroom. The issue is the addition is within the footprint but

Lenny Lim - I thought that any pre-existing nonconforming has to ask for a variance to enlarge the footprint.

Adam Rodd - There is nothing nonconforming about the sunroom.

Lenny Lim - But it is a pre-existing nonconforming building that he is enlarging

Adam Rodd - Well there is no _____ which has an insufficient front yard set back is going higher

Lenny Lim - I have no problem with the increase going higher on the footprint. But he is enlarging the footprint by putting that sunroom in the back

Adam Rodd - Enlarging the footprint of the house but he is not affecting any nonconformity because there is no rear yard issue

Robert Dee - Is the sunroom going to be heated

Milton Mercado - No. It is a three season room and that issue was raised by the Department of Health

Robert Dee - Yeah I could see that would be an issue because you could use it for another bedroom

Lenny Lim - That's what I'm thinking about

Robert Dee - But he's addressed it

Vincent Cestone - Any more questions

Bill Flaherty - Since you got the variance for the original structure and you are not enlarging the footprint at all, why do we necessarily have to grant you a variance for a second floor

Vincent Cestone - Because it is in the setback. As soon as he changes it

Bill Flaherty - I realize that

Vincent Cestone - As soon as he changes it, he has to come before us

Adam Rodd - The theory is right now he has a structure that is, I don't know how high it is, but for example he has a structure that's 15 feet high and within the setbacks. By adding a second story addition, he is now making that structure that is within the setback for example 35 feet. So it is more volume within the setback. That's why he needs a variance. That would be considered an expansion of a nonconforming because you are increasing the size of the structure within the setback

Robert Dee - So the variance is for that and for the shed

Milton Mercado - Yes sir

Adam Rodd - Just to make a record. Is there a reason why the shed could not be relocated on some other area of the property that wouldn't be in violation of the ordinance?

Milton Mercado - The main reason sir is I showed you the topographical map. An increase in elevation from the street line just to my driveway alone is about 15 feet. And from the street line to the back property is about 25 feet. Right across here, **(cannot hear)**

Adam Rodd - So it is very steep

Milton Mercado - And on the right side I kind of have like a planter but I can't go up this side, and I have a rock wall.

Vincent Cestone - And the septic system is in the front yard

Milton Mercado - And yes, my septic system sits in the front and I can't really build or drive over the septic system

Vincent Cestone - Most of those houses the septic systems are in the front yard

Milton Mercado - Yes sir. And the neighbor's property, they were pretty accommodating for the last few years but

Vincent Cestone - Any more questions

Bill Flaherty - Has anyone objected in your area for building a shed in front of your house

Milton Mercado - No sir not at all. **(Cannot hear conversation)**

Bill Flaherty - Because most sheds that I am aware of are either in the back of the house as opposed to the front of the house. I don't know how aesthetically it looks and I would think

Milton Mercado - I planned on _____.

(Cannot hear conversation)

Vincent Cestone - Any more comments from the board? Anyone in the audience wish to speak on this? I will make a motion to close the public hearing.

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board members - Aye

Vincent Cestone - Opposed? Do we wish to close it? Does anybody not wish to close it? Lenny?

Lenny Lim - I can vote

Vincent Cestone - Okay so we are going to vote. Lenny do you want to be first

Lenny Lim - No I want to be last

Vincent Cestone - Bob

Robert Dee - I vote to approve

Bill Flaherty - Could we take this in two different votes, one for the shed and then the addition

Vincent Cestone - sure.

Adam Rodd - It's not all or nothing.

Vincent Cestone - The shed. We are voting on the shed

Bill Flaherty - I vote to deny

Vincent Cestone - Bob? The shed

Robert Dee - I voted to approve

(END of tape. Turning tape over...may have lost some dialogue)

There is nothing recorded on Side 2 of the tape...lost the remainder of the meeting

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

DATE APPROVED: October 26, 2009

Respectfully submitted,

Kim Shewmaker
Secretary