

ZONING BOARD OF APPEALS

NOVEMBER 12, 2012

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, November 12, 2012, 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
Robert Dee - Member
Bill Flaherty - Member
Lenny Lim - Member
Paula Clair - Member
Dominic Cordisco - ZBA Council

ABSENT: Tina Andress- Landolfi - Secretary

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The Pledge of Allegiance was said.

Vincent Cestone- The first item on the agenda is the continuation of Lausca Public Hearing. Does the applicant have anything additional to say? Speak in the mic please.

Larry Paggi- My Name is Larry Paggi, and I represent Lausca LLC. I would just like to give a quick statement adding review of the minutes from the last meeting. I would just like to state that it appears that there was a lot of confusing conversation at the last meeting, and I would just like to clarify and reiterate. Kevin's notice of violation claimed that there was no curb indicated on the approved site plan. We take exception to that. Could it have been clarified? Yes, but there are many items on that site plan that we pointed out to this board, that demonstrated that there was a curb in place that was part of the approved site plan. The fact that there was a speed bump being installed, and there were details for curb tapers. We are in a disagreement the the curb was actually not shown. Perhaps not clarified, but was shown. This Board asked us to go back to the Planning Board to verify that the barrier was in fact part of the site plan. It was clearly shown in the resolution of site plan approval. We asked the Planning Board to pass an additional resolution to demonstrate, for your benefit, was in fact part of the original site plan approval. They did that, and I believe you have that for your records. We are requesting that this board determine that the violation was issued in error, because it was in fact part of the site plan approval. That is very simply the matter that we have before you. Everything else that was done beyond that to get modifications approved, was done in good faith and in recognition that we could make the situation better, and the applicant did so. That is it. Thank you.

Vincent Cestone- Any questions from the board? Any questions from the audience?

Robert Cinque- I appreciate Mr. Paggi's comments.

Vincent Cestone- You need to state your name please.

Robert Cinque- Sorry. Robert Cinque attorney for the Town Code Enforcement Officer. I appreciate the comments that there may have been some confusion. Clearly there was. I think most of the confusion stems from the fact that the drawings Mr. Donohue was relying on when he wrote the violation. I think we went into some detail at the last meeting. Those drawings did not really show the curb, and I think we have certain difference of opinion there. Based on that we stick by our position as we stated earlier that when Mr. Donohue wrote that violation, there was in fact a violation not only of a condition that was not indicated on that site plan that was approved at that time, but also a hazardous condition. Again, we have been through this and I don't want to reargue what we have already argued, but our position remains because of those two situations. One the site plan not really showing the as built conditions, and two the fact that there was in fact a hazardous condition. For those reasons we think that the violation was properly issued, and should be upheld.

Vincent Cestone- Thank you. Any more comments or questions?

Paula Clair- I just want to say that I understand the view points of both parties. I think that progress has been made with this issue which ever way we vote, because it seems there was a hazardous condition that has been ameliorated, and that is a good thing. I guess as a board member on the Zoning Board we have to pay attention to what is told to us by the Planning Board and what was originally intended. Maybe it was not on the drawing, but they have made it clear that is what the intention was. However, I think that in the end this was a good thing that came up, because it corrected a situation that was really hazardous.

Vincent Cestone- Anymore Comments?

William Flaherty- I think that we are to the point on this where we are spending an awful lot of time on this issue and it seems to me to be pretty cut and clear. The Planning Board reviewed this issue, determined that there was no reason for the violation, as I understand it. Provisions have been made to the site plan, which we have here. There are going to be changes made to the curb. The curb is going to be more widened then it is today, landscaping is going to be done on the site which I think is a good idea. The applicant has agreed to incorporate all these changes for safety purposes. That is a very widely traveled area. I spent about fifteen to twenty minutes over the weekend watching the traffic go by (inaudible)

That gas station has the lowest prices around here, and as a result there are always many many cars waiting for gas. That itself is a problem, but that has nothing to do with this issue. This issue in my judgement should be resolved and litigated, and I think it is going to be in a way that is going to be an improvement. That is what this is all about. Are we improving that particular site to reduce anymore accidents (inaudible) It is really not a safety issue anymore. I think that we have pretty much established that we have done everything possible to reduce the possibility of future accidents from occurring in that area. I would like to say that we get on to business here, and the Chair close the Public Hearing, and we take a vote and get on with the issue.

Vincent Cestone- OK. Anymore comments from the Board or the audience? With that I make a motion to close the Public Hearing. Do I have second?

William Flaherty- I will second.

Vincent Cestone- All those in favor?

ALL MEMBERS WERE IN FAVOR.

Vincent Cestone- Carried. Ok now I make a motion to rule in favor of the applicant in this instance. Do I have a second?

William Flaherty- I will second.

Vincent Cestone- All those in favor?

All Board members were in favor.

Vincent Cestone- Now we will do a roll call vote.

Linny Lim- By ruling in favor of the applicant are we ruling in favor of the Planning Board?

Vincent Cestone- Yes. Linny?

Linny Lim- I vote in favor of the Planning Board.

Robert Dee- I vote in favor.

William Flaherty- I vote in favor.

Paula Clair- I vote in favor.

Vincent Cestone- So do I. Sometimes it is not a matter of being right, sometimes it is a matter of doing the right thing. It is obvious from my perspective that as soon as the Planning Board said that this was part of the original application, that's what it was. I looked at the original plan and there was a mention of the curb detail. It was not clear on the plan, but it seems to me that would be a phone call, not a violation. With that, that ends this issue.

Larry Paggi- Thanks very much for your time and your patience.

Vincent Cestone- Your welcome, sorry it took so long. Next item on the agenda is a pre application discussion with Mr. Gleick to talk about a wind turbine. This is not a full presentation. What we want to understand, you said there were things in our code that did not apply to a residence, and me knowing the code I'm not sure what you had in mind, so if you could elaborate on that I would appreciate it.

Doug Passeri- I'm Doug Passeri with Hudson Valley Wind and Energy. We feel that it would fall under a minor and not a major.

Robert Dee- Please start explaining what you want to do.

Doug Passeri- Ok. We want to put up a residential size wind turbine on Mr. Gleick's property.

William Flaherty- I am not sure that proper protocol has been followed in this issue. In accordance to our code 175-66. I'm gonna read verbatim. Before filing an application a preliminary conference with the Zoning Administrator Officer and a Planning Board member designated by the Planning Board Chair is required to discuss the nature of the proposed use and to classify the nature of the proposed use and to classify it as a major or minor project. Has that been done in this case?

Vincent Cestone- Sounds clear to me.

Dominic Cordisco- Im not sure whether or not the Planning Board met with the applicant. Im not familiar with that. I do know from reading the minutes of last months meeting that Mr. Donohue had said that he has already reviewed preliminarily as the Zoning Administrative Officer that it was his determination that it was a major application.

William Flaherty- His determination, not with a Planning Board member (inaudible)

Dominic Cordisco- I cant answer that question, because I don't know one way or another.

William Flaherty- There was no mention of that by Mr. Donohue when he was here at the last meeting.

Dominic Cordisco-Correct. I will say that the code as written in connection with making that initial determination does obviously refer to the Planning Board. However, This kind of application for a wind energy conversion system, a wind turbine requires a special use permit from this Board.

William Flaherty- That is correct.

Dominic Cordisco- It was because of that confusion in the code that I recommended they come here to tonights meeting as a preliminary discussion, because it seems to me, having Planning Board members make initial determinations on an application they may not even see at all, because it may only requires Zoning Board approval. I thought that if the applicant came tonight, they could make their presentation to the board, and get some initial feedback. Then they can make a decision on whether they will even want to file an application, and what that application should include.

Paula Clair- The only thing that they don't comply with is the height variation Right?

Dominic Cordisco- It is a 100 foot variance.

Paula Clair- Right. If we granted a waiver of that, I don't know if we are in our rights to do that, but if we are (inaudible)

Vincent Cestone- Not without a Public Hearing.

Dominic Cordisco- They have not applied yet.

Paula Clair- Ok, so then they would be in compliance with the code right?

Dominic Cordisco- They would still need a special permit from the board.

Paula Clair- From the Planning Board as well?

Dominic Cordisco- No permit from the Planning Board. A permit from this Board.

(inaudible)

Robert Dee- Code Enforcement has determined it a major project.

Dominic Cordisco- He has.

Robert Dee- So they would have to file under those (inaudible) Is that what you are arguing? You want it to be a minor project? The Code Enforcement Officer has already said it is a major project.

Doug Passeri- Yes, just based on one thing, because of the height.

Robert Dee- But that is his determination.

Doug Passeri- Right, but if you look at everything under a major and you just eliminated the height, we comply with everything.

Robert Dee- I understand that. What I am trying to say is he has determined that. So don't you have to go before him with an application and have him turn you down, then come here? Am I wrong?

Dominic Cordisco- You are right.

Robert Dee- We are going backwards on this.

Doug Passeri- I don't know. I am just following the guidelines. I thought that was done.

Robert Dee- Im not the Chairman, but I would suggest you file with the building department first.

Doug Passeri- I thought that was already done. We have a rejection letter.

Robert Dee- We don't have it.

Dominic Cordisco- But you have not applied to the Zoning Board yet.

Doug Passeri- No, because there is confusion. We don't know if it is a minor or a major. There is a lot of confusion. We are learning also. We have a denial letter also.

Dominic Cordisco- To be honest I don't think that there should be any confusion, because the Building Inspector has determined this a major application.

William Flaherty- I agree that it would probably be classified a major project.

Dominic Cordisco- It has to be 50 feet or less.

William Flaherty- My concern is the (inaudible) meeting by our Code Enforcement officer and the Planning Board representative, and we have no evidence to that effect that this was done. My concern is that, if this should ever go to an article 78. Are we looking at saying the proper procedure has not been followed for this, and therefor you better do it over again.

Dominic Cordisco- I understand the concern, but I think that would be a more legitimate issue to be mindful of if the Building Inspectors decision went the other way. If he had said that this is a minor application, where it is clearly a major application, then someone could certainly attack it. Now lets just play it out. Lets just assume it goes all the way through the application process and at the end of the day you render a decision that someone is unhappy with, and they file an article 78. If they were to go back and one of their bases would be to challenge the process, and say, well

you did not meet with two planning Board members when you first came in. I don't think that would be a reversible error. I don't think that would be successful for anybody to claim that, because the decision that was made by Mr. Donohue whether it included Planning Board members or not, was that it was a major application. That is going to require the heightened level of review by this board.

Lenny Lim- I agree with Bill here, we have to follow the procedures.

Paula Clair- It seems to me that the reason that the applicant would need to meet with the Planning Board, would be to determine if it is a major or a minor application. It has already been determined that it is a major. That has been satisfied.

Dominic Cordisco- I think at this point do you want to send the applicant back to have a meeting with Mr. Donohue and two Planning Board members? That is an option.

Paula Clair- I know.

Vincent Cestone- I think it makes it (inaudible) I think that we should go under the premiss that it is a major application, and when we refer you to the Planning Board, you can ask them, and if they change, they can over rule Mr. Donohue, and if they rule it as a minor, then we will go under that premiss for the site plan. I think that is the most logical way of doing this, so it does not delay the process and cost you time and money.

Doug Passeri- So we put an application in to the Planning Board?

Vincent Cestone- You put an application in for a special use permit with us, then we refer you to the Planning Board for site plan approval.

Dominic Cordisco- This Board would grant special use permit. The Planning Board would grant site plan approval.

Doug Passeri- I think we did that already.

Vincent Cestone- You have been to the Planning Board?

Doug Passeri- The application has been submitted to the Zoning Board.

That has been submitted already.

Vincent Cestone - Usually you can't get to the Planning Board unless we refer you there. That is a completely different board that meets at a different time of the month. They meet on Thursday I think. If you have not been here on a Thursday with a different group of people, then you have not met with the planning board. They wait till we refer you to them. Unless you have been to that board?

Doug Passeri- No we have not. We were here a month ago just to go over that one thing, and we feel that if it is going to be a major, then the customer is not going to go through with the project anymore, because it is a totally different ball of wax all together.

Robert Dee- Well, that is the customer's decision.

Vincent Cestone- The thing about that, let's take residential wind turbine out all together. If this was a cellular tower, a commercial entity, and we have several of those in Philipstown which are smaller than this proposed wind turbine. That would be considered a major application. Taking the wind turbine out of it totally, just from the height alone. My personal opinion, it would be a major application. There is no reason why you could not contact the Planning Board and ask them directly. You know, we have Old Business and New Business and allow people to speak, they have the same thing and you can ask the same question of them. I don't want to tell you definitely without a doubt it is going to be a major application. My suggestion is you ask the Planning Board. They are easy people to talk to and they will tell you exactly where it is, and then you can go for information, then you can make the application if they say it is a minor, I am ok with that.

Doug Passeri- Great. So you are going to refer the application to them, then we get notified in the mail with a date?

Vincent Cestone- I am going to try and save you money. For you to do an application, you would have to file an application and pay for that. I think you have to put up a bond for a certain amount of money, and the application fee is not refundable, but the bond is. I suggest that you ask to be placed on the agenda like you did with us and ask them directly. You just say that the Zoning Board said that it would be prudent to go talk to them

about this. I will talk to Mike, he is the chairman, and give him a heads up to expect you. He will give the straight dope on whether it is a major or a minor and then you can do it from knowledge. If he says it is a minor, then you go down to the Building Department down here and fill out the application, then we will put you on the agenda, and we will go from there.

Doug Passeri- Would there still need to be a variance for the height then at that point?

Vincent Cestone- A special use permit, and a variance for height. I think that is the quickest and cheapest way to do it.

Doug Passeri- Ok.

Vincent Cestone- I don't want to spend the applicants money, unless we have to.

Doug Passeri- Well at least now we know what direction to go in, because it was unclear before this, so now we know.

Vincent Cestone- The Chairman of the Planning Board is Mike. I will give him a call and tell him to expect you at the next meeting, and ask to be placed on the agenda to ask this question. You can ask the question, and they will give you the straight answer. I think that is the safest and smartest thing to do.

Doug Passeri- Ok.

Vincent Cestone- Anything else that you would like to talk about?

James Gleick- Can I say a word?

Vincent Cestone- Sure

Robert Dee- Just a suggestion when you go to the Planning Board. Inform them that you have already spoken to the Code Enforcement Officer, and he declared it a major application. That should save you a lot of time.

Doug Passeri- Yes.

James Gleick- I am James Gleick. I am the property owner, I don't want to waste anymore of your time. I don't understand what has happened here and hopefully Doug will explain it to me when we leave. I just wanted to say that I hope that it is the feeling of this body that this is a worthwhile thing for a homeowner in the area to be doing. You have seen the pictures of it. I cant understand why the bureaucracy exist and the various procedures, but I hope it is clear to everybody hear that this is a project to which I don't believe any local resident or neighbor or anyone else can possibly object.

Robert Dee- You don't know that yet (inaudible) Believe me you will find out. There are a lot of people that could object. (inaudible) they say birds get killed by it. There a lot of people that come out of the wood work.

James Gleick- Ok. That is why I am asking. I just hope it is clear to everybody that it is not visible, that no one can see it from anywhere or hear it.

Robert Dee- There are other considerations than that.

Vincent Cestone- Just from my experience, I have been on the Zoning Board since the early nineties. People in Philipstown have this aversion to height for some reason. I cant put my finger on it, but when they propose things like cell towers this room will fill up. There will be fifty people in here, arguing a point. Why? I could not tell you. They all want their cell phones, but they don't want a cell phone tower.

James Gleick- This wont be visible. Whatever the height is there is no visible location which is not on our property, from which anyone will be able to see it.

Vincent Cestone- That is a valid point, and that is something that when there is a Public Hearing relating to that, it has to be eminently clear. Made clear, because people will, and I may be totally wrong, but they will come to voice their negative opinion about it for whatever reason.

James Gleick- Is this the first? Has there never been a wind turbine approved in Philipstown?

Vincent Cestone- You are number one.

James Gleick- Ok. I have a feeling. I mean Doug knows better than I do. I have a feeling clearly there is a black and white height limit written in the code, but I don't think that there is any such thing as a 40 foot wind turbine. I have a feeling that in the long run the Town is either going to like wind turbine or not like wind turbines. I cant imagine that they are not going to like them, but if they like them, I imagine that the process is going to have to be streamlined somehow in the long run. If there is anything that is in your power to make the process easier for us, all I can say is that we would appreciate it.

Robert Dee- Is that the minimum height you can make that?

Doug Passeri- That is the maximum height.

Robert Dee- Is there a minimum height?

Doug Passeri- Based on his elevation would be anywhere from 100 to 140 feet. Those two towers right there. The one on the left is a 120 and the one on the right is a 140.

Robert Dee- So you are showing the maximum not the minimum?

Doug Passeri- For his location you would need the 140.

Vincent Cestone- Why are you using a guide lattice? Instead of an axial turbine you are using the ones with the blades. (inaudible)

Doug Passeri- Because this is the brand we sell. It is called _____ Wind Power, and they are probably the number one selling small residential wind turbine in the United States, made in America.

Robert Dee- It is not just the height. There are a lot of birds down there. There are people that watch the hawks and everything like that, so they might have an opposition to it, and certainly we want to give them their chance.

Doug Passeri- Typically speaking, all the questions that you would normally have are for commercial wind turbines. Commercial wind turbines have blades that are bigger than that tower.

Robert Dee- This does not have blades?

Doug Passeri- No, It does, but the blades are 11 (inaudible) These blades are 11 feet, but the blades on a commercial turbine are anywhere from 90 to 110 feet. The blades alone. These blades are 11 feet, so there is a big difference.

Robert Dee- If a bird flew through this blade would it get killed?

Doug Passeri- If a bird flew into anything it would get killed.

Robert Dee- You answered my question.

Paula Clair- It would seem to me, and I am just saying this from my own opinion rather than official (inaudible) It would seem to me that you might want to talk at the Town Board meeting and introduce the concept that you want to have a wind turbine on your property, and you wanted to inquire about the towns position on this, and if it would be receptive to this technology.

Vincent Cestone- The Town can change the code, we cant. We have the power to interpret the code, but not to make new law.

Doug Passeri- We did send a letter to the Town Supervisor.

Paula Clair- You might want to go to a Town Board meeting and voice appropriately.

Robert Dee- Has he answered you yet?

Doug Passeri- No he has not.

Paula Clair- Well he is busy. These things are televised and personally I would love to see the Town have wind turbines as long as it does not interfere with peoples other rights. I don't know what the feeling of the remainder of the Town is on this. I don't think it would hurt to introduce it at a Town Board meeting to get a feel for the, you know what the sentiment is on this.

Doug Passeri- The state guidelines that we have to go by are very strict on setbacks, heights. All these different guidelines we have to go by. That is basically how we position our turbine to go on his property, and where it is on his property and the height that we go with to accommodate the customer and the electrical use in his house. We basically go by certain guidelines, which is tower height plus 10 percent plus the blades, so it is about 100 feet all the way around , and he clearly has that all the way around his property. He is a perfect applicant for a residential turbine.

Vincent Cestone- You may be the first of many. I tell you with Sandy it would have been nice. I guess you feather the blades so they don't get caught in high winds.

Doug Passeri- They actually do auto _____. When it reaches a peak speed they actually start to come out of prevailing wind.

William Flaherty- The problem that I have here is that we don't have a specific code covering wind turbines. I think this is the first time that such an issue has become before the Zoning Board that I am aware of. I think what could be done, and what should be done is have a specific code devoted entirely to turbines. (inaudible) that is up to the Town Board, and perhaps six months from now, maybe, we can have a code specifically written for the purpose of these turbines. I think that is important, because I think (inaudible) the additional opportunities for people to take advantage of clean energy, which I am a proponent. You may be able to set the stage for future development in this area. You got 40 acres which is great for this turbine. Most people don't have that kind of acreage, but they could be put on one acre. That could be very doable. As energy cost increases and more people become more inline with the environment, we will probably have several more opportunities to hear people on issues such as this, which I think is important, and is a step in the right direction, if our Town Board goes ahead and adopts a code specifically tailored to this kind of energy.

Doug Passeri- If I could use an example. I know that Towns are different, and they all run differently. About for or five months ago we were up in Albany in the city of _____. There Zoning was very similar to yours, almost to the tee. What they had the ability to do was to waive most of it , because it was a residential turbine. That is what they did. They streamlined the whole process and we put the wind turbine up this past Wednesday.

Vincent Cestone- Their Zoning Board was able to waive parts of the code?

We are generally not allowed to.

Doug Passeri- The Planning Board handled that.

Greta Passeri (inaudible)

Vincent Cestone- It currently does not address that.

Dominic Cordisco- The only reference in the code in connection with wind turbine is section 175-10 in listing allowable uses does say that wind turbines that produce electricity for onsite use can be an accessory use, but it does go on to say that if the turbine exceeds height limits, then it would be considered to be a major application. What you are talking about here and what you are hinting about is, do you want to suggest to the Town Board that they consider an amendment to their code that would establish some different standards for residential turbines that might make it easier and quicker to go through the process. Wind turbines could be wind turbine farm, definitely you have a hillside filled with wind turbines that also meets this definition. You covered by that broad brush, because that is the only brush there is.

Paula Clair- I also just wanted to say, that in my opinion this is an environmentally friendly town, and that factors in your favor.

Vincent Cestone- Any other questions you would like to ask us?

Doug Passeri- I think I am good.

Vincent Cestone- I will make a call to the Planning Board Chairman this week, and tell him to expect to hear from you, and hopefully he can clarify things for you.

Doug Passeri- We are hoping that maybe we can go Thursday.

Vincent Cestone- Say again, I am sorry.

Doug Passeri- I want to ask them if we can come down on Thursday, maybe we can put it down as old business or something to speed up the process just a little bit.

Paula Clair- When is the next Town Board meeting?

Vincent Cestone- Every Wednesday.

Paula Clair- Every Wednesday?

Inaudible

Paula Clair- An issue like this would have to be brought up at a regular Town Board meeting I assume, Right?

Dominic Cordisco- Every Town Board meeting has an opportunity for general public comment, so you could go to that meeting, and as part of the open session you could get up and say. You might want to give the Town Supervisor a heads up that you are coming, so he knows what you are about to speak about, so you don't hit him cold.

Doug Passeri- Still follow through with the planning?

Dominic Cordisco- Correct. I think that your best bet is to go for both. I don't know if the rest of received it with a packet of materials. It has a partially completed application, so you did start some working connection with that. It does have some background material, but to be clear it does not have the level of detail that you would need for a major application.

Doug Passeri- We are aware of that.

Vincent Cestone- Thank you for coming, and hope that makes it clear.

Doug Passeri- It does. Thank you.

Vincent Cestone- I am going to waive the minutes tonight since Tina is not here. There are some corrections. If there is not any old or new business I will make a motion to end the meeting.

Linny Lim - Second

Vincent Cestone- All those in favor?

ALL MEMBERS WERE IN FAVOR.

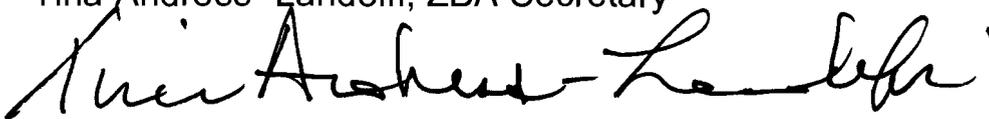
Vincent Cestone- Our next meeting will be January 14th.

MEETING WAS CLOSED

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

DATE APPROVED: 2/11/13 _____

Respectfully Yours,
Tina Andress- Landolfi, ZBA Secretary

A handwritten signature in black ink, appearing to read "Tina Andress-Landolfi". The signature is written in a cursive style and is positioned below the typed name of the ZBA Secretary.