

# ZONING BOARD OF APPEALS

February 13, 2012

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, February 13, 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.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Bill Flaherty	-	Member
	Robert Dee	-	Member
	Paula Clair	-	Member
	Amy Zamenick	-	Counsel

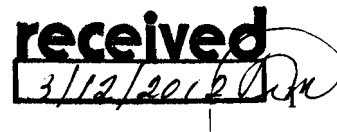
### ABSENT:

**Vincent Cestone** - I am going to take things a little bit out of order. I am not going to make Lausca them wait. So we are going to do a review for completeness on this new application and then go directly back into the public hearings. Can the applicant please come up.

**Representative of Paggi Engineering** - Hi, nice to see you again.

**Vincent Cestone** - So this is not a public hearing, I just want to ask you a quick question of what the issue is and if you can tell us

**Representative of Paggi Engineering** - Absolutely. Absolutely I can. The project was issued a site plan approval where the condition that access be maintained between a neighboring property to the north and the subject property. It was actually the subject of some debate for several months in the planning process because the applicant did not want to leave the property open because it was subject to tractor trailer traffic. It was eventually, in the mean time the curb was constructed along the entire northern property line. It was finally, a compromise was reached where it was agreed that a 12 foot wide opening would be constructed in the curb and that a speed bump would be installed to calm the traffic going through so it wouldn't come through at a high rate of speed. The concern was traffic coming through and people backing out and not seeing the traffic coming. And the secondary condition to that was that the existing curb would be tapered so it wasn't just an abrupt edge at the edge of the speed bump. Apparently there has been at least one incident where a vehicle has hit the curb and it was reported to the code enforcement officer. The code enforcement



officer did an inspection and reviewed the site plan and said there is no curb on the site plan and issued a violation to the owner saying that the curb has to be removed because it is not an approved curb. We take issue with that because it is actually, I was present at all the meetings and it is very clear that the project that is constructed as it was discussed with the Planning Board, and as it was agreed with the Planning Board and is clearly reflected in three places in the Resolution of Approval, in the meeting minutes and in the notes on this plan where it describes exactly what I just mentioned. The owner intends to either re-apply or continue application with the Planning Board to try and make this better to rectify the condition, apparently make it more noticeable, but we believe it is appropriate that the violation be removed because there really shouldn't be a violation here.

**Vincent Cestone** - Okay. Amy?

**Amy Zamenick** - Well because there is not necessarily a code as in the Town Code, it is a Site Plan violation, you have a choice. You can absolutely stay in front of the Zoning Board and contest your violation and ask for an interpretation. What the zoning board will be giving you is an interpretation of your site plan which was given to you by the Planning Board. So what you will get is what the zoning board thinks the Planning Board intended.

**Representative of Paggi Engineering** - Right

**Amy Zamenick** - Your other choice is to go back to the Planning Board and ask for a clarification for the sake of yourself and the Code Inspector so that maybe this violation can be resolved without going through this process. Or to amend your site plan for a further clarification or if you are saying that you are already going to go back and amend anyway, then that maybe the way to resolve it and that is something that you can take up.

**Representative of Paggi Engineering** - Can we, because I don't know the answer to that question right now, can we continue to pursue the zoning board's interpretation and then if it turns out that one of the other two alternatives is

**Vincent Cestone** - I will tell you what I will do. I will put, I believe it is complete

**Amy Zamenick** - I believe it is complete as well

**Vincent Cestone** - I will put it on for a public hearing on Monday, March 12<sup>th</sup> and if you make the decision to go to the Planning Board, let us know and we will pull this out

**Representative of Paggi Engineering** - Very good. Perfect. That's great. Thank you.

**Bill Flaherty** - Chairman I would just like to make one correction here. The type of appeal box is not checked on the application

**Amy Zamenick** - Okay

**Bill Flaherty** - I think it is quite apparent that it is for an interpretation but for the record, it should be checked

**Amy Zamenick** - Okay

**Representative of Paggi Engineering** - Thank you

**Vincent Cestone** - So make sure that you let the Town know if you decide to go with the Planning Board

**Representative of Paggi Engineering** - We absolutely will. We will figure out which is the best way to go. We've been in contact with the Town Engineer. I am sure he is going to be in contact with the Planning Board Chair to try and get this figured out.

**Vincent Cestone** - If you decide please email the Town or the Town Clerk, it doesn't have to be an official document, email the Town Clerk and they'll let us know.

**Representative of Paggi Engineering** - Very good. Thank you for your help

**Vincent Cestone** - You're welcome

**Representative of Paggi Engineering** - Have a good night

**Vincent Cestone** - You too.

**Amy Zamenick** - We don't have an appeal number

**Kim Shewmaker** - You know what, they only put it on the original. It is 877

**Amy Zamenick** - Okay. For the Board's clarification the appeal number for that is 877. For Lausca.

**Vincent Cestone** - Okay now we are going to continue, do I have to make a motion to re-open the public hearing?

**Amy Zamenick** - Yes

**Vincent Cestone** - Okay. I make a motion to re-open the public hearing for William Mordhorst Appeal 876. Do I have a second?

**Lenny Lim** - I'll second

**Vincent Cestone** - All those in favor

**All Board Members** – aye

**Vincent Cestone** - Opposed?

**Vincent Cestone** - Alrighty, does the applicant have anything further to add?

**William Florence** - I think the only thing that I would mention at this point is I read Mr. Donohue's findings to our request for interpretations and I think that the response is pleasing although what he said is completely correct it doesn't respond to the overall request \_\_\_\_\_ of 175. He'll say what part of it applies, what parts of it apply for application

**John Hirsh** - Can we see it?

**Vincent Cestone** - The letter

**John Hirsh** - Yes sir

**Kim Shewmaker** - I have extras. Here you go.

**John Hirsh** - Can I have a copy for the owner please. How long has it been out there?

**William Florence** - Only February 6<sup>th</sup>

**John Hirsh** - Two weeks

**William Florence** – Although a piece of the section doesn't use the language that I use, we are asking the board to take 175-4 and apply it everywhere. Because what 175 applies to the entire chapter. And so the only, I would say that although the words that I have used here, unlawful structure, do not appear. We don't disagree at all at that. But the plain meaning of what the context of what chapter 175 is is that section 4 applies to the entire chapter. And an unlawful structure is one that is not where we don't first have a building permit and an application for a CO before you. On the last one which is a different set of 1, 2 and 3 and they do build on each other. And number 4 is slightly different. In that we say that there, we talk about customary and incidental. And customary is the kind of use that would be there and incidental means incidental in relation to the construction or the site and in this case, the size and the scale of the structure is way, is not neither incidental nor is it, you can say that is customary that it is described as a garage, but its scale is way out of line with what a garage

is in the community. And the community I am referring to is the community that surrounds the area. Not something out on Route 9 up by a strip mall or some other place. I suggest to you that that's how we are trained to understand it and the reason we are doing it that way is because we \_\_\_\_\_. And in terms of that scale we think that it is way off. If you have any other questions, I would be happy to either debate or respond to questions you might have or other board members might have but aside from that I'll just sit down.

**Paula Clair** - Although it is larger than the average garage, when board members and viewed the property, the owner did have a number of cars parked in the building. So it would seem as if it were garaging these vehicles.

**William Florence** - I understand that, but the question gets to be how many vehicles should he be garaging really and that really is controlled by what is customary in the neighborhood. And that is basically where,

**Paula Clair** - But he has a number antique, older cars

**William Florence** - There is a way to get that even here in town. To have permission to do that. That hasn't been done.

**Vincent Cestone** - Any other questions from the Board on this?

**Robert Dee** - I have a question for Mr. Donohue. You have a letter dated January 9 from Mr. Florence. And in it is says the structures were allegedly built in 1985. When we support your Town records, we found that the Town discovered the structures in 1992. Do you know that to be true?

**Kevin Donohue** - No. It is not off my records

**Robert Dee** - I'm sorry

**Kevin Donohue** - That was not in my records.

**William Florence** - There are records in the department that allowed us to look at that and say those things.

**Robert Dee** - What records were those

**William Florence** - Tax Assessors

**Robert Dee** - So don't you see the same records

**William Florence** - yes.

**Kevin Donohue** - Again, I don't interpret the records. The Assessor when they

define the building as a commercial building per se. Kevin do you have any idea of what

**Kevin Donohue** - No. Because if we stick with Zoning, zoning is tailored locally to the community. The community needs as they describe commercial vehicles or residential vehicles. The building code in the State of New York, if it is not a one or two family dwelling, it is in the building code. So you have a residential code and then you have the building code. Any type of construction, you can build a home out of any type of construction, concrete, masonry or wood or steel. It doesn't define a construction method as a commercial or residential in the nature of materials or size.

**Bill Flaherty** - Thank you. The size of the building itself is about 2,686 square feet which is rather large. You don't have any commercial vehicles parked within the building itself which is fine. The only aspect of the building that we once believed that it may be possibly used for commercial building is the fact that there are 12 foot doors on that side. If those doors were changed, I don't think there would be any question in anyone's mind that the building itself would conform with perhaps the rest of the community in that respect.

**John Hirsh** - Like those Mr. Ed doors when I was a kid, those barn doors where you could swing it open and the horse would stick its nose out at the top and those kind of doors that you are looking at

**Bill Flaherty** - Yeah

**John Hirsh** - Okay. So we are on the same page

**Bill Flaherty** - Yeah

**John Hirsh** - Okay

**Bill Flaherty** - Exactly right. Like I said that is the only characteristic that made one believe that it was a commercial building. I just want to make that clear for the record.

**Paula Clair** - I wanted to ask the owner why did he build something with tall doors

**Dominick Giusti** - It is just one 12 foot door on the end because I was going to buy a boat and put it on a trailer and park it. You need a high door on the end

**Paula Clair** - Okay

**Robert Dee** - I have a question for our attorney. We are deciding on whether these building permits are issued, our interpretation of two building permits

**Amy Zamenick** - You are going to follow the same criteria that Kevin follows, the same four interpretations and then you are going to make that decision

**Robert Dee** - So there are five factors don't really come in to play

**Amy Zamenick** - Don't really come into play here

**Robert Dee** - Okay thank you.

**Vincent Cestone** - If there are no more comments, I make a motion that we go into closed session with our attorney to discuss the particulars of this case and do I have a second

**William Florence** - Do we leave

**Vincent Cestone** - Excuse me

**William Florence** - Do we leave

**Vincent Cestone** - No, we'll go downstairs. You stay here. I have a second. In favor?

**All Board Members** – Aye

**Vincent Cestone** - Opposed?

**(IN EXECUTIVE SESSION WITH COUNSEL)**

**Vincent Cestone** - Okay I make a motion to come out of closed session

**Bill Flaherty** - I'll second

**Vincent Cestone** - All those in favor

**All Board Members** – aye

**Vincent Cestone** - We discussed

**Amy Zamenick** - Motion to close the public hearing?

**Vincent Cestone** - Excuse me

**Amy Zamenick** - Motion to close the public hearing

**Vincent Cestone** - I just wanted to put this, we were told to do this

**Kim Shewmaker** - When we go into closed session, the Chairman has to bring it back into the minutes

**Amy Zamenick** - Oh yeah okay. It doesn't matter which order you do it in. Go ahead

**Vincent Cestone** - We discussed the facts of the case with our attorney and we got the legal guidance. With that I make a motion to close the public hearing

**Bill Flaherty** - I'll second

**Vincent Cestone** - All those in favor

**All Board Members** – Aye

**Vincent Cestone** - Opposed

**Vincent Cestone** - The way I am going to do this, I am going to read each of the four questions and ask a comment from the board and then we are going to vote on the application as a whole. Okay. Question 1, I pose the question of the board of appeals how can a structure be lawful, a structure within the provisions of the code, if the building permit was not issued prior to the construction of the building. Anybody wish to comment?

**Robert Dee** - This is the letter from January

**John Hirsh** - Thank you

**Paula Clair** - We have situations like this all the time when people build something and then they come to us for a variance. So, that is a very common practice. And once we issue a variance, then the building is then lawful.

**Vincent Cestone** - And the, an analogy to that is somebody builds an illegal deck which is very common around here, and when selling the property they need to make the structure legal so that they can sell the property so they apply for a variance, if it doesn't meet the code, we will approve or deny it and then we make the applicant go to the building department and make sure it is within Code and structurally sound before it is finally approved.

**Lenny Lim** - I think that's the job for the ZBA to make illegal structures legal basically.

**Bill Flaherty** - The fact of the matter is that there is nothing unlawful about the structure at all. It meets all the requirements of our building code. So we can't classify it as an illegal structure.



**Vincent Cestone** - Okay. I pose the question of the board of appeals, if the board finds the structures are unlawful as above then how can the officer Donohue issue a lawful building permit and an application for a Certificate. Again, that's the definition of, from my eyes, the definition of the zoning board and the code enforcement officer to do just that in the instances of structures even if they are built without a building permit, to make the structures legal. Anyone else wish to comment on that?

**Bill Flaherty** - Ideally our Code enforcement officer would issue a building permit prior to the time that the building was built. But in this particular case, that was not the case. In fact the building was built and then our code enforcement officer issued a building permit, which is common, quite common in our community as well as others. It is done all the time. So there is nothing illegal about that factor at all.

**Vincent Cestone** - Anyone else?

**Amy Zamenick** – You should mention that there are no known violations on the property

**Vincent Cestone** - Okay with relation to this property there have never cited for any violations so it is not in violation in bulk standard, setback requirements, height requirements, anything else like that. So that is one of the reasons why it hadn't come before the zoning board when Mr. Donohue first went through the files.

**Robert Dee** - Also I would like to add that we have people who come all the time that had a legal structure for 20 years and never been taxed, but this structure has been being taxed since 1992. So I am a little happy about that. At least we got some tax dollars.

**Bill Flaherty** - On the, we have a map here showing the structure itself and the dimensions are fine but however one vital dimension is not showing and that is the height. And the height should not exceed 40 feet. Now I took a scale and measured it and found that it is well within that parameter and it measured out about 28. Although the height should always be showing on maps and inevitably they don't show it and it comes up every single time. I don't know what we are going to do about it but we have some people here that have been working with the Town for 30 years and leave it out. It's really important.

**Vincent Cestone** - And question #3, I pose the question to the board if you find in response one above that the structures are not lawful and if you determine that the permits were unlawfully issued, then I ask the board to interpret how those two structures can be lawful non-conforming structures under the new zoning ordinance.

**Lenny Lim** - Isn't that point moot since we already discussed this \_\_\_\_\_

**Vincent Cestone** - That's how I see it and we wouldn't do it under the new zoning law because it was under the old law

**Lenny Lim** - That's right this is going back to the old law

**Vincent Cestone** - Anyone else wish to speak on that? Okay. Going on to 4. I pose to the board for interpretation, please determine how these structures or either of them could be structures customary and incidental to the site. When I refer to customary I refer to the issue of whether or not there are other structures like the structure on the site in the neighborhood. When I refer to incidental I refer to the size and scope of the structure in relation to resident's construction on the site in the R-80 zoning district. If the board finds that both or either of these structures are not customary or not incidental to the residence than the board should find that the building permits were or was issued unlawfully issued as I requested in two above.

**Lenny Lim** - I disagree with that one simply because I know the garage is big for what you would consider a normal garage. But when you look at the size of the house and the amount of acreage they have, it fits.

**Bill Flaherty** - Is it 6 acres

**Lenny Lim** - 8.6 acres

**Dominick Giusti** - Yeah, but we own another 11 behind it. 21 total

**Lenny Lim** - So it is 21 acres

**Bill Flaherty** - What is the square footage of your house approximately

**Dominick Giusti** - 6,000 I think

**Robert Dee** - So it is a big one.

**Lenny Lim** - And the garage is about one-third the size of the house

**Dominick Giusti** - Right

**Robert Dee** - The garage is not bigger than the house

**Lenny Lim** - no. The house is huge

**Paula Clair** - And in addition to that, none of the neighbors had a problem with it

**Vincent Cestone** - And the use is customary in my opinion. Buildings of that type are used as garages all the time all over the County. What is built of, steel, in my opinion is irrelevant because you can build with whatever you want, it is not defined in the code about what a structure has to be built with and in the old building code there isn't even a definition of what an accessory building is. And, I've been on the zoning board since 1995 and I've seen garages of this size at least one other time. Anybody else wish to speak on this?

**Robert Dee** - I would have a problem with it if the house was only 2,000 square feet with such a big garage but with a big house and so many acres I find it to be a customary use.

**Paula Clair** - Yeah it is being used as a garage for cars. It is customary

**Amy Zamenick** - And incidental

**Paula Clair** - And incidental too.

**Robert Dee** - As far as the big door, I \_\_\_\_\_ . A lot of people do that.

**Bill Flaherty** - I think the building itself is unique and there's nothing in the area that you can \_\_\_\_\_ entirely different. It blends itself with the other homes in the area. It is out of character and I said it before and I'll say it again, the type of building is unusual for a residential area, but nevertheless it is perfectly legal. It complies with all of our codes so therefore, it is okay.

**Amy Zamenick** - It complies with the setback and the bulk table requirements. There are no variations

**Robert Dee** - No variances being asked for

**Amy Zamenick** - No there was none necessary.

**Vincent Cestone** – So how do we proceed? I suggest that we make a motion to accept the Building Inspector's interpretation of the Code and based on the letter, his letter of February 6<sup>th</sup> and I will make that as a Motion. Do I have a second?

**Bill Flaherty** - I second

**Vincent Cestone** - All those, should I do a roll call vote

**Amy Zamenick** - Yeah, I would.

**Vincent Cestone** - Okay. Lenny?

**Lenny Lim** - I'm in favor

**Robert Dee** - After reading everything and determining everything going through the letters and all that, I feel that the building permits should be issued

**Bill Flaherty** - I vote in favor

**Paula Clair** - I vote in favor

**Vincent Cestone** - And so do I

**Amy Zamenick** - So that was in favor of the building inspector's interpretation?

**Vincent Cestone** - Yes

**Amy Zamenick** - Okay. So now you are going to decide on the two building permits that way you make it completely clear.

**Vincent Cestone** - Okay. Based on that, I make a motion to hold the building permits as issued by our Code Enforcement Officer in the Building Department. Do I have a second

**Bill Flaherty** - Second

**Vincent Cestone** - Okay. Lenny?

**Lenny Lim** - I'm in favor

**Robert Dee** - I'm in favor

**Bill Flaherty** - I vote in favor

**Paula Clair** - I'm in favor

**Vincent Cestone** - And so am I. Okay. That's it

**John Hirsh** - Thank you on behalf of Mr. and Mrs. Giusti.

**Vincent Cestone** - You're welcome

**Kim Shewmaker** - Resolution 3/12?

**Amy Zamenick** - Okay.

**Bill Flaherty** - We ready to adjourn

**Kim Shewmaker - No we have Minutes**

**Vincent Cestone - Are there any changes, up-dates or corrections to the January 9<sup>th</sup> minutes? I make a motion to accept the Minutes as submitted.**

**Bill Flaherty - I'll second**

**Vincent Cestone - All in favor**

**All Board Members – Aye**

**Vincent Cestone - Opposed?**

**Vincent Cestone - Any old business or new business?**

**Kim Shewmaker - New business. The Minutes. They have to be submitted to Town Hall now within 2 weeks and we don't meet until the 4<sup>th</sup> week. So obviously I have to submit in Draft form. Would you like to see them before they get submitted before they get submitted and put on the web in Draft form?**

**Vincent Cestone - I know**

**Kim Shewmaker - It's backwards**

**Vincent Cestone - It is going to be one of those things where we are going to be in a learning process with the new procedures.**

**Kim Shewmaker - It's just that it is going to be on the website prior to your even voting it in and adopting it. And then it will have to be put in as Final. It's just going to be downloaded twice.**

**Vincent Cestone - If you want to send it to me electronically**

**Kim Shewmaker - Okay**

**John Hirsh - I thank the board for time**

**Vincent Cestone - You're welcome**

**Vincent Cestone - I make a motion to adjourn.**

**Lenny Lim - Second**

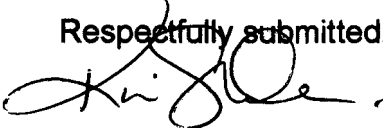
**Vincent Cestone - All in favor**

**All Board Members – Aye**

**Vincent Cestone - Opposed?**

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

**DATE APPROVED:** 3/12/12

Respectfully submitted,  
  
Kim Shewmaker  
Secretary