

ZONING BOARD OF APPEALS

March 12, 2012

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 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
	Lenny Lim	-	Member
	Bill Flaherty	-	Member
	Robert Dee	-	Member
	Paula Clair	-	Member
	Amy Zamenick	-	Counsel

ABSENT:

Vincent Cestone - Okay we have one public hearing tonight on the agenda, Lausca. Is there anyone here to speak for the applicant? So before we look at any pictures what was the outcome with the Planning Board? Have you decided not to go to the Planning Board

Lawrence Paggi - We decided, what we wanted to do was to continue in front of you folks to continue to argue that the violation is inappropriate because it was actually acknowledged by the Planning Board in their meetings and the resolution and we have been in contact with the Town Engineer and it is our intention, hopefully after resolving this review with you folks, to submit for a revision to the Planning Board to modify that entrance but our proposal here. The reason why we are here tonight is to continue to state that the violation was inappropriate. That the speed bump as designed with the curbing was actually improved as was constructed on site.

Vincent Cestone - It is in the resolution?

Lawrence Paggi - It is absolutely in the resolution. I have a copy of it if you would like to see it.

Vincent Cestone - Yeah

Amy Zamenick - I have reviewed the resolution and it was a condition. I think there is some discrepancy as to what the actual Site Plan map as approved.

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Vincent Cestone - The issue here is that it is in the resolution but not the map

Lawrence Paggi - Well, the curb actually lies right along the property line. So you cannot actually see the curb underneath the property line but there is a note immediately adjacent to the property line that says the proposed speed bump is a 12 foot opening in curb. So while you can't see the curb underneath the property line, it is indicated with a note that there is a curb there and there is going to be an opening created in the curbing. I think if you have the opportunity, I have the meeting minutes too if you have the opportunity to take a look at the Planning Board meeting minutes. It clearly stated that the Town is agreeable to a compromise to provide a 12 foot wide access in front of the property to the adjacent property to the north with a speed bump, but with a speed bump and the rear will remain closed. Indicating that the curb will remain along the rear portion of the property.

Vincent Cestone - Do you have anything

Lawrence Paggi - Again I mean we are sympathetic to the situation that occurred out there. The owner's intention to take this back to the Planning Board and address the concerns that are out there, but again, we want to make the point here that this is absolutely an approved site plan and that the violation was inappropriate and there should be no other view of the project. I mean the applicant did what was approved and constructed it as approved and you know, an issue was subsequently identified and he has every intention to work with the Planning Board to bring some resolution to that.

Lenny Lim - Would there be any signage there for the speed bump?

Lawrence Paggi - What the Planning Board, they talk about signage. The Planning Board asked that it be stripped. That the curb be painted and that it be stripped. And that is what was done. The speed bump was stripped. So what the intention, what we are thinking about doing is extending this curbed island close to the property line and putting some plantings right along the side of it so it will be physically identified with some plantings that you know you are not going to drive through and on the back side, the same thing. Lining it up, it is going to be slightly wider, the curb opening will be slightly wider and it will line up with an existing island that already has plantings in it. So as you are approaching it from this direction you will see plantings on either side that will identify the limits of it.

Vincent Cestone - What is the purpose of the curb anyway? It seems like it is asking to be hit.

Lawrence Paggi - The curb is there to prevent, prior to the curb's existing traffic went through there at a high rate of speed. It was an issue. And not only at a high rate of speed but tractor trailer traffic also had tendency to move through this area and would create issues as far as parking and access. The concern as

we stated last meeting is that drivers either entering the adjacent site or entering Philipstown Square from the adjacent site would be traveling at a high rate of speed and cars backing up or pulling in would be subject the exposure of those fast moving vehicles.

Vincent Cestone - You would think that a speed bump from the building to the road would be an ideal way because you control the speed and you wouldn't have to worry about people hitting the curb.

Lawrence Paggi - You are losing me.

Vincent Cestone - You know instead of having a curb at all, from the building to the road the whole length would be one long speed bump. But that's not the issue here. I am just thinking out loud

Lawrence Paggi - Well, I mean

Vincent Cestone - Well that's a Planning Board issue

Lawrence Paggi - Yeah. I don't know that the owners would be objectionable to that, I think we can accomplish that and make it a little more attractive. If we have an island there that will, there will definitely be a spot there to put a sign too.

Robert Dee - We need something there.

Amy Zamenick - Just for clarification for the Board. I noticed that the note in the resolution says that the 12 foot wide un-gated interconnection with the speed bump with a 6 foot long slope transition section on each side. Do we have that 6 foot transition and is it noted on the map

Lawrence Paggi - Yes. It is actually detail, here is the detail right here.

Amy Zamenick - And that references back over to that

Lawrence Paggi - Absolutely

Amy Zamenick - Okay

Lawrence Paggi - It actually says to refer, in the note it says see detail sheet and general note #11. General #11 refers to the transition detail. This is the detail that it is referring to.

Amy Zamenick - Okay. And that is the slope

Lawrence Paggi - Yes

Amy Zamenick - Okay

Vincent Cestone - Any questions from the board?

Paula Clair - This is for Kevin. On what date did you issue the violation?

Kevin Donohue - Do you have a copy of my notice? It should be in with the application, we included it with the application. The first paragraph, Please take notice that in response to an auto accident, an inspection was performed on December 6, 2011. The west corner of the parking lot which revealed a concrete barrier along the north side of the property line not identified on any Planning Board approved site plan. This would be the Planning Board site plan, signature Andrew Merante. On that plan I will point out there is a curb spec on the entrance and a curb spec here, the divide and the curb is 6 inches

Paula Clair - Can you help us understand how the site plan map and the resolution differ?

Kevin Donohue - I wasn't present during the discussions. All I

Paula Clair - In terms of what he was showing us on the Planning Board stuff

Kevin Donohue - Okay. Going to my second paragraph Please be advised that the Zoning Law, Local Law #1-2011 which took effect on May 3, 2011, Section 175-68 requires all site improvements and landscaping be properly installed and continuously maintained. The site inspection revealed two violations. The concrete barrier along the north side does not appear on the March 24, 2010 Planning Board approved site plan, last approved, and is a hazard to traffic and circulation between adjacent lots not in compliance with the Zoning Law, Local Law #2-1968, in effect at the time of site plan was approved, specifically Section 175-39(C)(7) and number 2. Number 2 is not a question. So what, the law says that you cannot a traffic hazard within the circulation. The barrier, not a curb, a barrier which is 12 to 18 inches high, and has a transition from somewhere just in front of the building to just in front of the dumpster has a transition in land. It is actually like a retaining wall and my review of the site plan on your page 2 and 3 of the site plan shows traffic circulation for a fire truck and a tractor trailer. Both of them crossing the property line which has a grade transition right at the barrier. So the wheel would be dropping off so that actually you cannot circulate through there without the vehicle dropping off that barrier.

Vincent Cestone - But it is in the, isn't that the _____ that he is talking about?

Kevin Donohue - That's not the detail for there. That is the curb and sidewalk in front of the building

Vincent Cestone - Oh okay

Kevin Donohue - What I was pointing out is that there is no detail on that barrier because when we looked at the curb details, back to the ones you were pointing at, here we go, is again to pavement it is only 6 inches high. This barrier is much higher. And not seeing it, it actually gets into the undercarriages of the car. I observed several impacts and chips on this barrier.

Vincent Cestone - So what you are saying is that it is not that the curb itself, it is the height

Kevin Donohue - Yes. For the full length it doesn't act as a curb for the full length. It acts as a barrier and a small landscaping.

Robert Dee - But the opening is wide enough for trucks to get through

Kevin Donohue - Oh yes. The opening, there is no question on the opening. This, it's called the Asphalt Steep Bump detail. That's in place as is on the plan.

Robert Dee - Right

Paula Clair - So why would traffic go by the retaining wall instead

Kevin Donohue - As it was described to me, and I did take this path, from Joanne Brown who was involved in the accident. She told me how she entered the site through the traffic light and the gas station. So I entered the same way and there was a low sun, she said there was a little glare on the windshield and activities happening around her. But as you go towards the opening, you go to the rear of the car that you see and if you, and when you are in front of the gas station heading towards the, this area here where you see the rear of the car, you will run into that barrier. There is nothing above foot high to guide you into the opening

Vincent Cestone - So what you are saying is that it wasn't built to the plan

Kevin Donohue - No no. What I have discovered is that feature had been installed many years before and that the discussion with the planning board was to open that feature for that speed bump. But as I looked on previously approved plans, that barrier or wall doesn't appear on any plans. So it was designed to no specifications. And I point out on the plan that our curb height is 6 inches. And this is well over that.

Paula Clair - So what would be the remedy to make that a safe passage?

Kevin Donohue - There are a number of traffic calming devices that can be used. But again that is for the Planning Board. Here my office is reacting to an

auto accident, about first hand observations and looking at a feature that is damaging vehicles. That our traffic search relation and the way we move through parking lots is to veer vehicles around trees, signage. This barrier when you get within, certain cars that is, when you get in 20 – 30 feet of it, boy my mouth is dry, it disappears under the hood.

Vincent Cestone - In your opinion was it built to the Planning Board's specifications?

Kevin Donohue - I can't answer that because there is no specification I can find. It is not on the plans.

Robert Dee - So why did you issue a violation?

Kevin Donohue - Because it was a traffic hazard in violation with 175-39(c)(7) of Local Law #2-1968 which was former zoning.

Robert Dee - This is your findings

Kevin Donohue - Yes sir

Robert Dee - Not the Planning Board's

Kevin Donohue - No no

Robert Dee - I looked at it too. I stayed there and watched traffic go and forth.

Kevin Donohue - The key

Robert Dee - I understand what you are saying but just glad it wasn't a child standing there that she hit instead of a wall

Kevin Donohue - Right and so again it is just first hand observations, not finding any standard to what it was constructed under, not finding it on any Planning Board approved plan. And I did look on the gas station plan. I did not find it.

Robert Dee - I read the Planning Board thing and it looks like it says

Kevin Donohue - It was discussed. But it is a feature, not appearing on the site plan. However, the resolution adopts a plan. And that is the legal document. I can't enforce the resolution. The resolution is the vote of the Planning Board accepting the site plan with certain conditions and inferred certain discussions.

Robert Dee - Okay so if he changed it on his plan, that would be acceptable

Kevin Donohue - Oh yes of course. But, that has to go back to the Planning

Board.

Lawrence Paggi - If I might interject, this Planning Board process was not a short process. This was a subject of much discussion for the same reasons we are having tonight. Yes it was a barrier, it was intended to be a barrier because we felt that the traffic going through the site was dangerous. The Planning Board made I believe multiple visits to the site, so they were well aware of the construction of it. And our opinion is, it is part of the existing site Site Plan approval that was subsequently been granted and it is included in the resolution. That concrete structure, whether you want to call it a curb or a retaining wall whatever you would like to call it, is now a part of an approved Site Plan. That's the position that we, we left the Planning Board feeling that we had addressed all their concerns and we are walking away with feeling that everybody was on the same page.

Vincent Cestone - So why wouldn't you want to go to the Planning Board and have it clarified and have this all go away

Lawrence Paggi - Well we don't believe it needs to be clarified. We would like to see the violation go away and then we will go back and fix the issue as to why people are running into this barrier. If there is an issue, we are agreeable to going back to making that work. I mean the Planning Board is obviously going to hear your recommendations, if you decide to do anything you are going to tell them maybe you should think about a sign, you know visibility is an issue here. And we are prepared to address those issues. But we believe that a violation suggests that our client has done something wrong and that is not the case.

Vincent Cestone - I don't know if that is the case, but, that's your opinion

Robert Dee - How many accidents, have there been other accidents or just this one?

Kevin Donohue - I only had the one reported to me.

Robert Dee - One woman ran into the curb and

Kevin Donohue - Reported to the office

William Flaherty - What you are saying then you have essentially followed the dictates of the Planning Board where you opened that, I was just inquire about one provision by

Lawrence Paggi - The short answer is yes. The long answer is that it was a very much a mutual negotiation. We wanted to leave the whole thing closed. They wanted to leave it open. And we came to this resolution between us that this was how it was going to be constructed.

William Flaherty - I visited the site for the past three days. The wall itself, I consider it a wall, because at one end it is like 18 inches high on the north end and on the south end is smaller which is very very high for a curb. And I can readily see why an accident had taken place there. There is a big chunk of concrete which is knocked off the curb itself. I don't know what happened there perhaps the automobile that hit it knocked it off, I don't know.

Lawrence Paggi - Right

William Flaherty - But I would say it would constitute a hazard if, at nighttime you can't see that wall. If you went from the gas station to the deli and you were off about 3 or 4 feet, you will hit that curb. No question about it. And I would think that it would sustain quite a significant amount of damage to an automobile if it goes through that. In the time that I was there, I was probably only there about 15 minutes, I counted four cars going from the deli parking lot over to the gas station in 15 minutes. Now I assume that may be an off hour kind of thing when the traffic was maybe slower than it had been. It was about 5 or 6 o'clock in the evening. But I was surprised to see that many cars going through that opening there. I would really suggest to you that for safety purposes, if nothing else, that that curb be, the height of the curb be reduced significantly over what it is. That property was owned by one owner at one time and there was no curbing there. Curbing was just in there recently

Lawrence Paggi - Right

William Flaherty - But at one time cars used to come in and out of there from the gas station to the deli without any problem. I think that it does represent a safety hazard. I really do. I think if I were to go from the deli property over to the garage, I would probably have a hard time going through that 12 foot opening. Because there is a big chunk of cement there now. It is not obstructing the 12 foot opening, but it is there and it on top of existing curbing. Now unfortunately as Kevin said we don't have any specifications in our Code which specifically outline for us the height of a curb. I don't know if it is 4 inches, 6 inches, 10 inches

Lawrence Paggi - I think you may have a curb height in there. I think the issue is that it was a pre-existing structure and not necessarily a curb. It was basically a concrete barrier between the two properties. I have a question for you. Do you acknowledge that there was a safety issue from cars passing freely in between the two areas

William Flaherty - In between the two properties, I would say yes.

Lawrence Paggi - Okay. Because that was a significant concern when we were in the Planning Board.

William Flaherty - If one car was going south and the other car was going north through that same opening, there would be an accident.

Lawrence Paggi - And the bigger issue was actually folks trying to beat traffic and scoot out one way or the other and there was no traffic calming and people were moving through there at a pretty high rate of speed.

William Flaherty - That's right. I think that the purpose there is well intended but whether or not it is effective remains another question.

Lawrence Paggi - I think we are agreeing with you that it needs to be made more visible and at night as well as day time and it has to be an obvious opening and I think we are agreeable to making that happen.

Robert Dee - What was the planning board's objection to not having a complete wall for the whole thing

Lawrence Paggi - They wanted to have folks be able to travel between the two sites. They didn't want people to have to come out on to Route 9 and then back into the gas station.

Kevin Donohue - The zoning code requires intercommunication between sites for traffic circulation that's a requirement in the code.

Robert Dee - Every commercial piece of property in Cold Spring can get from one to the other, is that what you are trying to say?

Kevin Donohue - If you would like I can go downstairs and get it for you

Robert Dee - No but is it true?

Kevin Donohue - Yes it was implied that way. Right. Well when I say implied

(Everyone talking at once...cannot decipher)

Robert Dee - I mean there are sites in Philipstown where you can't get from one commercial site to the other.

Kevin Donohue - I will go down and get the older code and you can read the text

Robert Dee - I am just saying that there are sites where there are barriers up and you can't get from one site to the other.

Lawrence Paggi - I am not familiar with what is on the other side here as to

whether it is residential or commercial but there is no access

Robert Dee - What's on the other side

Kevin Donohue – residential

Amy Zamenick - Let me just ask for clarification. This is for clarification for the Board so if they do do a letter to the Planning Board that we understand. Here we are at note 11, general note 11 and it is describing the six foot slope

Lawrence Paggi - Right

Amy Zamenick - The height is showing 6 inches full height reveal. Can you explain that?

Lawrence Paggi - That is a typical curb detail where you go from basically flush with grade to the curb height within 6 inches. 6 inches is a general curb height reveal.

Amy Zamenick - So it would normally be 6 inches.

Lawrence Paggi - A curb would normally be 6 inch reveal, that is correct

Amy Zamenick – okay

Vincent Cestone - Any other questions from the Board? Any comments from the audience?

Robert Dee - This gentleman wanted to speak.

Mr. Scanga - I just want to summarize

Vincent Cestone - Sure, come on up

Mr. Scanga - We are well aware there is an issue. A hazard issue. And we are very willing to take care of it, we are going to do something about it. The question here is is this wall, are we in violation of this wall being there? Curb, wall, barrier. We are not in violation that the barrier is there. It is on the Planning Board, I mean it is on the property line, it is under that line, there is detail showing, it is in the resolution. We were asked to come here because of the violation. We have already been in touch with the Town Engineer and we are going back to the Planning Board to resolve how we are going to handle this issue. So we are not walking away from this by no means. We are very sympathetic to what has happened there. You can see from the progress we have made at this plaza we are not looking just walk away from this thing. We have a lot of money invested in there. So, again, the reason we are here is is to

determine whether we are in violation or not. The Planning Board is a separate issue and we are going to them and we have already been in touch with them and we are going to resolve this to make it look nice and safe. Is really what it comes down to.

Robert Dee - Thank you

Vincent Cestone - Any other comments from the audience? Just looking at Kevin's letter paragraph 1, it makes two statements here. It does not appear on the Planning Board Site Plan and the second statement is in violation of zoning law local law #2-1968 in the Section is cited. I see that as two separate things. Is it on the Site Plan, I think there has been a lot of testimony on both sides. Is it a violation of the zoning code? That I would have to say yes. I think that the only thing that we have, in my personal opinion, it is a violation of the zoning code and the only thing I have to decide in my mind is is it on the Site Plan. And based on the information that was presented I haven't made a decision, but I am leaning towards yeah, it's on the site plan but it is a violation

Lawrence Paggi - How can it be a violation if it is part of an approved site plan?

Vincent Cestone - Just because the Planning Board approved this doesn't mean it can't be in violation. You can have a site plan, you don't have a specification on here.

Lawrence Paggi - I think it is an interpretation on whether it is a traffic hazard or not because it is not intended to be in a traffic

Vincent Cestone - But you don't have a specification on your site plan to say that it is this high and this wide and

Lawrence Paggi - Because it was existing. It wasn't built.

Vincent Cestone - There is not a specification. So

Lawrence Paggi - I don't follow that

Vincent Cestone - Is it violating the code? In my opinion, yes. Is it on the approved site plan, my opinion, yes. So you do have a violation and it is on the plan. That's the way I am looking at it.

Amy Zamenick - Mr. Chairman, I know there is somebody in the audience

Robert Dee - If it is on the site plan and as far as the second one, that it is a traffic hazard. That's two different issues. One is on the site plan, so we kind of agree with that. As far as the traffic hazard, I don't know. I mean there is a 12 foot wide opening and you can get through back and forth, so I understand the

problem, but just _____ and your going back to the Planning Board _____.

Vincent Cestone - Yes ma'am? Introduce yourself please

Joanne Brown - My name is Joanne Brown. And I am the person who had the car accident. I would just like to explain what happened to me and in listening I would just like to make a comment. On January 3rd I was, thankfully my husband is here to help me with times and dates, on Saturday, December 3rd I was traveling south on Route 9 and I was planning on meeting my husband at the Philipstown Square. And it was Saturday about 11:30 and 9 was busy and I made the conscious decision when I got the gas station at Philipstown Square that it would be safer to turn left into the gas station at the light where the traffic is stopped rather than to continue further down and put on my left hand blinker and wait for the northbound traffic to clear up and the southern traffic to pass around me. And I turned into the gas station and I turned right to head towards the Philipstown Square. There is a rather large corridor between the end of the gas station and the Route 9 and I didn't see the barrier. And I ran right into it. And I totaled my new car. There was a law officer there within seconds and I couldn't believe he was there but he called the ambulance and when the ambulance came, there was an ambulance and an assistant, an EMT. And she came out and she said I knew exactly, we knew exactly what had happened and where you were because it happened before. Well I was in the hospital and I am fine. And that's not the problem. But, I didn't see it. Whether I am a good driver or a bad driver, I mean I have a good record. But I didn't see it. And had you been standing there eating a sandwich, I think I would have seen you. But I did not see it. Because of the sun, because of the shadow, or lack of shadow and I have gone back there several times to try and figure out why I didn't see it. And here are some of the reasons. When the sun is more towards the west, the shadow of the telephone pole comes across the road. And I think that is a possibility that's what happened. If I did see something, I don't know why I didn't see it. It may have been the shadow of a telephone pole, I am not sure. I wrote something down here. Oh, the other thing was, it was Saturday. And people who have visited the Philipstown Town Square they park next to that curb facing Route 9. So if you are coming down past the gas station, you are going south into the Philipstown Market, you see these cars there. But it was Saturday, I am trying to figure out how did I do this, the stores were closed and the cars weren't there. So again, I just didn't see that barrier. To me it looked totally open. Now I know

Vincent Cestone - Talk this way please

Joanne Brown - I am very sorry. I know some paint has been put down and it is defined on either side of the speed bump I guess that is what you have been referring to it, on either side. But it hasn't been continued all the way down to Route 9. All the way west. And that is where I had my accident. I have one other name of one other person who had an accident there if you want it. But

when I tell people what happened, they say oh I know so and so, I know so and so, it has happened several times. There was one car that was absolutely lodged right on top of it. He couldn't go forward and he couldn't go backward. It is just so dangerous. That's what I am worried about. And I am worried about this going back and forth and back and forth. I had my seatbelt on, and I wasn't hurt. But, and I wasn't speeding. I am an old lady I don't travel quickly. It is just a very unsafe situation. It has happened many times. I saw debris there after my accident because I go up and down Route 9 all the time and I am always checking to see the latest chip or the latest piece of fender or bumper or something that is there. And I am not interested in good guys or bad guys, I just before something really seriously happens, perhaps a child that is not in a restraining belt

Vincent Cestone - I think there is no question that _____ zoning board

Joanne Brown - I just feel that it is unsafe. Very unsafe and that's why I asked what can I do? What can I do about this? And I was told to speak to Kevin, so I went and spoke to Kevin about it.

William Flaherty - I think it is probably safe for us to conclude that the barrier itself represents a hazard, a safety hazard. I think everyone would agree to that.

Lawrence Paggi - I think that we are in agreement that it can be made better. It can be made safer.

William Flaherty - I think you can improve it. One of the things that you did comply with the Planning Board was the fact that you had a 12 foot opening there. It was required by the Planning Board that you do that

Lawrence Paggi - Correct

William Flaherty - And that is there. I quite frankly think that that 12 foot opening is inadequate.

Lawrence Paggi - If you do that then you are going to be driving into the backs of other cars though. That's our concern. If you start opening that too wide, you are going, I mean the backs of the cars that Mrs. Brown was saying that she would normally use as a guide, I mean they would become the obstructions in that. We are completely sympathetic to what she just mentioned. I mean that's why our intention is to try to rectify. But exactly what she described is what we are trying to prevent. We don't want people turning into the gas station to get to the Philipstown Square.

Robert Dee - Right

Lawrence Paggi - It would be discouraged if there was speed bump and they

have to travel slowly. It would be at a safe rate of speed

Vincent Cestone - Even the speed bump is not marked. You know how they paint on speed bumps they are painted white and they draw lines on it.

Lawrence Paggi - It is supposed to be stripped.

Mr. Scanga - It was but it has been 2 years.

Lawrence Paggi - It is supposed to be stripped.

William Flaherty - The speed bump in itself runs well with the rest of the lot, the blacktop. There is no stripes on it, there is no painting on it. There is nothing to indicate that there is in fact a speed bump

Lawrence Paggi - It probably worn off. It needs to be repainted. We are suggesting that more needs to be done.

William Flaherty - That's an understatement

Lawrence Paggi - And there should be a sign

Vincent Cestone - Going on to #2 on the letter. The landscaping is more to the west. We haven't talked about that. In the parking lot it has not been installed on the March 24, 2010, Planning Board approved site plan.

Robert Dee - Was there a violation for that

Lawrence Paggi - Are you aware of that?

Vincent Cestone - So are you going to correct that?

Mr. Scanga - The idea is to install that landscaped island. So there will be no more curb cut. There will be a landscaped island

Lawrence Paggi - That's this area here. Instead of having the landscape island close on their property, it will come to right to that existing barrier and this whole area will be planted.

Vincent Cestone - Okay so that part of the violation is not being challenged.

Lawrence Paggi - That's correct.

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

Amy Zamenick - You are not going to refer to the Planning Board? You are ready to close and make a decision?

Vincent Cestone - You think I should send it to the Planning Board

Amy Zamenick - That's your decision. I just want to make sure that you are sure of what you want to do. I am just making sure that you as the Board have decided. If you want to send it to the Planning Board, then adjourn the public hearing until they get a decision from the planning board, and then have it come back and then you can send a letter of recommendation. That may be more favorable to the board rather than make a decision now and find either way and they still have to go to the Planning Board and then you have no say as to whether they go to the Planning Board or not. If you adjourn, then they have to go and come back to see if their violation exists.

Vincent Cestone - So what is the Board's decision

Paula Clair - I think that, well, the second violation is not being challenged but the first violation looks like there was, the design was approved by the Planning Board maybe should be revised. So you know, I can understand on their part that they thought that they think they shouldn't be charged with a violation because they appear to be in line with what the planning board approved, but on the other hand you can't leave it because it is a hazard. So I think we should refer this to the Planning Board to have

Amy Zamenick - For clarification

Paula Clair – Yes

Vincent Cestone - Make a motion

Paula Clair - Okay I move that we refer this matter back to the Planning Board for clarification.

Vincent Cestone - I'll second that. All those in favor?

All Board Members - Aye

Vincent Cestone - Opposed?

(no reply)

Amy Zamenick - Now you just need to adjourn the public hearing

Vincent Cestone - And I make a motion that we adjourn the public hearing until

we hear back from the Planning Board. Do I have a second?

William Flaherty - I'll second

Vincent Cestone - All those in favor

All Board Members - Aye

Vincent Cestone - Opposed

(no reply)

Lenny Lim - I just want to say that you guys did a good job proving everything. You really did.

Lawrence Paggi - If I understand what just happened, we are basically just turning things around. We had intended to go back to the planning board, so we are going back to the Planning Board and humbly come to some kind of resolution as to how we are going to change it and then we come back to you?

Amy Zamenick - Yes that's exactly it. Is the board interested in sending a letter over to the Planning Board expressing their concerns and their referral. Do you authorize me to prepare that for them or

Vincent Cestone - Kim

Amy Zamenick - Do you do that?

Kim Shewmaker - I just usually send them a quick letter with a copy of the entire file

Amy Zamenick - I am used to working with different boards. This is great if you do it. And maybe

Kim Shewmaker - I thought I was getting out of it

Amy Zamenick - Either way if you want her to do it or I can do it

Vincent Cestone - I don't care as long as it gets done

Amy Zamenick - The things that should be mentioned are signs and new striping were the comments that I wrote down. Does the Board have any other comments that they would like to add besides the sign and new stripping.

Vincent Cestone - Clarification of the plan, what their intention was on this one.

Amy Zamenick - Right. Great.

Vincent Cestone - I am going to jump down to Lyons Realty Company. We need to get Ron Gainer's comments on this. So I am not going to put it on the agenda until next month. At our next meeting

Amy Zamenick - We will hopefully have it by then

Kim Shewmaker - So it won't get on to May then for a public hearing

Amy Zamenick - Yes

Lenny Lim - Kevin, how much was the fine?

Kevin Donohue - No, this is a notice of violation. Not an appearance ticket. What my orders do is they

Vincent Cestone - Either they fix it or they

Kevin Donohue - Go to the last paragraph. You are hereby ordered to correct this violation by removing the concrete barrier. Then it goes on to say failure

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

Kevin Donohue - ...And if you don't within 60 days, that's what the law states, then I can move forward with an information and summons.

Vincent Cestone - So since they are before us, it stops the clock

Kevin Donohue - It is a stay. Yes. That is a state law

William Flaherty - Kevin, when I was over there I noticed that the lighting over there at the parking lot leaves something to be desired.

Vincent Cestone - Going on the resolution for Mordhorst. We have a draft resolution. The resolution which is not a final resolution. Amy is going to finalize. I would like to make a motion to adopt it pending the final resolution. Do you want to read part of it into the minutes

Amy Zamenick - We can absolutely do that yes. I received the minute late last week and do to my own time restraints, it is in draft. I am going to go through the minutes one more time to make sure I didn't miss anything in the resolution. I would like the board to review it as well to see if there is anything missing from their comments. I tried to be as thorough as possible I went through all my notes from all the public hearings and made sure I included all the neighbors' names and everything like that. I will be emailing it to the board and then it will be in

final by the next meeting but we will be approved pending revision. So it is approved, but we will just affirm approval at the next meeting.

Lenny Lim - What is the motion for?

Amy Zamenick - To accept it in draft pending revision

Lenny Lim - Okay. I'll second.

Amy Zamenick - Okay. I never did a resolution for you guys do you want me to just read the introduction? Is that what you are interested in?

Vincent Cestone - Usually read down to the conditions.

Amy Zamenick - So we will read to the interpretations

Vincent Cestone - Right

Amy Zamenick - Okay. You don't read the heading

Vincent Cestone - No

Amy Zamenick - Just checking. Okay. The applicant, William Mordhorst is the owner of a parcel of property located at 8 Stone Ridge Road, Garrison, New York 10524 in the Town of Philipstown. The parcel is improved by a single family dwelling, and is within the R-80 Zoning District. A right-of-way exists over the applicant's property to several other properties. Among these properties is that of Mr. and Mrs. Dominic Giusti. Mr. and Mrs. Giusti own a parcel of property located at 18 Stone Ridge Road, Garrison, New York 10524, tax map section 72, block 2 and lot 3. Mr. and Mrs. Giusti's property is also located in the R-80 Zoning District. Mr. and Mrs. Giusti's property is improved by a large single family home and two garages measuring 23' x 112' and 24' x 48' respectively. Mr. and Mrs. Giusti sought and received a building permit for these two garages under the prior Zoning Ordinance, in March 2011. The applicant believes that these garages violate the applicable Zoning Ordinance and that the Building Permits were issued in error. Any issues regarding the use of the right-of-way over Mr. Mordhorst's property are not of issue in this appeal. The applicant, therefore, seeks an interpretation of the prior Zoning Ordinance Sections 175-4, 175-8, 175-11 and 175-25. The applicant also seeks an interpretation of the current Zoning Ordinance Section 175-27 which took effect on May 31, 2011. Further, the applicant appeals the issuance of Building Permits #10524 and #10523 issued for the two garages located on the Giusti's property. The applicant has submitted an appeal on July 13, 2011 and later clarified his request in the form of letters to the Code Enforcement Office from his representative, William J. Florence, Jr., dated September 29, 2011, November 10, 2011, and January 9, 2012. The Code Enforcement Officer, Kevin Donohue, responded to

these letters on November 14, 2011 and on February 6, 2012. Specifically, the applicant alleges that the building permits were issued in error and that the buildings are unlawful. His argument is based on the size, materials, and alleged use of the garages. The applicant has accordingly requested interpretations of the above listed Zoning Ordinance provisions and appealed the issuance of the above referenced building permits to this Board. At a public hearing of the Board on January 9, 2012 and continued on February 16, 2012, and upon all discussion and testimony that preceded it, site visits made by individual Board members, and a review of all submissions and proof submitted to the Board, Vincent Cestone made a motion, seconded by Paula Clair, as follows: Be it Resolved that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, determines and finds as follows: That the Zoning Board of Appeals hereby affirms the Town Code Enforcement Officer's interpretations of the prior zoning ordinance sections 175-4, 175-8, 175-11 and 175-25 and his interpretation of the current zoning ordinance section 175-27. Further the Zoning Board of Appeals finds that building permits #10524 and #10523 were not issued in error and that the structures located on Mr. and Mrs. Guisti's property located at 18 Stone Ridge Road, Garrison, New York 10524, tax map section 72, block 2 and lot 3 are not unlawful structures and do not violate the zoning ordinance of the Town of Philipstown. The Board therefore denies the appeal of William Mordhorst from the issuance of building permits #10524 and #10523 for the two garages located on tax map section 72, block 2 and lot 3. The affirmation of the interpretations and denial of the appeal of the issuance of building permits #10524 and #10523, for the reasons set forth herein, shall constitute the zoning board of appeals findings. And it goes on to the Interpretations, Findings and your denial of his appeal.

Vincent Cestone - So we have a motion and a second to accept this draft resolution until the final resolution is approved. All those in favor of accepting it

All Board Members - Aye

Vincent Cestone - Opposed

(no reply)

Kim Shewmaker - So I am to give the draft to Tina and let her know that this is in draft and the final will be at the next meeting

Vincent Cestone – Yes

Bill Flaherty - When is the next meeting

Vincent Cestone - April 9th. Is that not a problem Kim

Kim Shewmaker - Is it a problem for you Amy? It is the day after Easter if

anybody is traveling.

Vincent Cestone - Minutes of February 13th, any corrections or additions? I make a motion to accept the minutes as submitted. Do I have a second?

Bill Flaherty - Second

Vincent Cestone - All those in favor

All Board Members - Aye

Vincent Cestone - Opposed

(no reply)

Vincent Cestone - I make a motion to adjourn

Lenny Lim - Second

Vincent Cestone - All those in favor

All Board Members - aye

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

DATE APPROVED: 5/14/12

Respectfully submitted,



Kim Shewmaker
Secretary