

ZONING BOARD OF APPEALS

July 13, 2009

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, July 13, 2009, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

Vincent Cestone - Okay. If anyone is here for Kerstin Rost/Roland Pidala, that has been postponed because of an error in the advertising of the Public Hearing. It is going to be at our next meeting which will be the 27th. So that is not going to be heard tonight. First item on the agenda is Garrison Contracting. I see that the applicant is here. We were expecting a whole bunch of information from you. I haven't seen anything. Do you have something to give us tonight?

David Torrey - Yes. Good evening. My name is David Torrey. I am here representing Mr. Jones. And we do have some of the items that you requested. I will pass up some copies of the Work Order that you asked for. Sorry, I only made four copies. I apologize. We have

Kim Shewmaker - Anything else that needs to be copied since I am going down to make these copies?

David Torrey - Yeah. Here

Kim Shewmaker - I'll do it all at once

David Torrey - These two and that

Kim Shewmaker - I'll be right back

David Torrey - I'll pass up two letters from the State Department of

Environmental Conservation. And also one copy, I am sorry, a few copies of the Zoning change for Mr. Jones' property.

Vincent Cestone - Zoning change? Oh the B-2

David Torrey - Yes acknowledging that his property is B-2. And this, although you didn't ask for it, Mr. Jones put together a copulation of setbacks of various properties, commercial properties along Route 9. Of properties that currently have variances on Route 9. We also have one set of photographs of the properties that are on that list.

Vincent Cestone - You don't put on here if they were variances granted or are they grandfathered in.

David Torrey - We know of a number of them that have, that were granted. There may be some that were grandfathered in. I am not sure.

Vincent Cestone - Like saying it is grandfathered in because it is pre-existing nonconforming and they decreased their nonconformity when they made the Stadium from the Bavarian Inn. That's the only one that I know of for sure. I've been on the Board for eleven years and most of these I don't even recognize as being before me at any time. But that doesn't mean anything

David Torrey - We are just giving you some information

Vincent Cestone - Okay. Okay, Wetlands' Permit? Do you have a wetlands' permit

David Torrey - We do not have a wetlands permit as I believe Mr. Rodd indicated that we were looking for input from wetlands and we have not received anything from Mr. Klotzle

Vincent Cestone - From the wetlands inspector

David Torrey - Nope nothing. We have heard nothing from him for six months on this issue.

Adam Rodd - If I can make a copy of that, then I can provide it to you, by counsel we did recently receive a letter from Mr. Klotzle which we will provide to you.

David Torrey - It seems to be his _____ as to provide documents on the eve of hearings

Vincent Cestone - I will ask the Town Clerk to push him a little bit. Yeah this one, that was decrease in non-conformity.

Adam Rodd - Do we have, just for the record and looking at my notes, do we have a copy of the site plan that was asked for at the last appearance?

David Torrey - We brought the site plan which is there.

Adam Rodd - I think that the Board asked for the site plan that is actually going to show the lay out of the proposed spaces

David Torrey - We have this here. This is the area that we are asking for the variance for. Everything else is pretty much existing as is. This is currently a small knoll which we would like to grade and level which will actually improve the site lines on the roadway and will improve drainage and run off from this area on to the roadway when we grade it and install a gravel area for these parking spaces.

Kevin Jones - This is actually a new site plan. They don't have copies of this one.

David Torrey - We will have to run some copies for you. This is the only one that we have right now

Vincent Cestone - Okay. The other thing, you are only asking for a variance for the front on Route 9 but there is also, you need a 100 foot variance from the wetlands. Because that is a State designated wetlands behind the property. So it has to be 100 feet from the wetlands. I know you can't meet that. So what I am saying is you are really asking for two variances.

David Torrey - Well we never received any input from the wetlands inspector from the Town so that's been our dilemma all along.

Vincent Cestone - Okay

David Torrey - We haven't heard from him since January on this matter.

Paula Clair - Can I ask a question

Vincent Cestone - Sure

Paula Clair - What, you are asking for a variance for the knoll and I know you have cars parked on the property now. How far from the road are the cars parked now?

David Torrey - These, the cars that are parked here have been part of an existing retail operation that has been continuous and on-going for more than 50 years. This is has been grandfathered in a long time ago.

Paula Clair - So those cars, from what I see are almost on the road.

David Torrey - Actually they are not. The road line is here, I am sorry that is the center of the road, the road line is here, which is on the outside of these concrete islands

Paula Clair - How far are they from the road line

David Torrey - Which spots

Paula Clair - These, the spots where you have cars parked and I counted over 13 cars parked there today

David Torrey - These cars, this parking has been in existence for over 50 years

Paula Clair - How far are they

David Torrey - I don't the exact dimensions

Vincent Cestone - But, you know since there is a change in use, everything is on the table

David Torrey - This is not a change of use

Vincent Cestone - Yes it is

David Torrey - It's been a retail outlet of, it's been a commercial retail outlet for over 50 years. It was furniture, it was wicker baskets and now it is cars. It is just different items for sale, but it is the same use.

Vincent Cestone - Well that is debatable but I am not going to argue the point

Lenny Lim - Wasn't that abandoned for over a year

Vincent Cestone - Yes

Lenny Lim - There was no commercial business there at all

Vincent Cestone - Yes

David Torrey - We are not aware of it ever being abandoned at any point in time in the 50 years.

Paula Clair - Well it wasn't in operation for quite some time.

Vincent Cestone - After a year of non-use, it's abandoned. I am not saying that's the point but

Kevin Jones - We were only referred by the Planning Board for a variance for the parking lot up here

Vincent Cestone - Okay but you still need a variance from the wetlands still

David Torrey - Okay

Vincent Cestone - You are going to be changing the contours of the land. That affects directly the wetlands

David Torrey - I am not sure of the dimensions from the wetlands from, just a moment. Again, we were not referred here for wetlands. We were referred here for this issue.

Vincent Cestone - If we grant the setback you would still be in violation and be cited for setbacks from the wetlands. So what would be the point of granting one and not the other?

David Torrey - Okay.

Vincent Cestone - Do you see what I am saying

David Torrey - If you are telling us that what we need to do is we need to deal with wetlands, then wetlands needs to deal with us

Vincent Cestone - That's correct.

David Torrey - As well

Lenny Lim - You guys have a problem with getting the wetlands inspector to go up

David Torrey - He won't respond to letters,

Kevin Jones - We've been waiting for a response from the wetlands inspector since March

David Torrey - I mean your own attorney wrote a letter to him asking more than a month ago asking him to weigh in on this issue and he hasn't responded. Until, at least I understand, he has responded now. Again, on the eve of a hearing and we have not had the benefit of seeing it.

Kevin Jones - He hasn't responded to engineers, he hasn't responded to

anybody since March

Vincent Cestone - Well I will talk to the Town Board people to press him. Because we need that. We can't make a decision without his

Adam Rodd - We have a copy which I will share with the applicant of Mr. Klotzle's letter dated June 25, 2009. So I will provide that to the applicant if the Board wants to hear on it, it might be appropriate to do so from Mr. Klotzle himself to provide testimony to the board.

Lenny Lim - Good idea

David Torrey - Could I ask why if a letter was penned on June 25, 2009, that we weren't, that we haven't received a copy of it?

Vincent Cestone - I couldn't tell you

David Torrey - We've been requesting it for four or five months now

Kevin Jones - And it is holding us up

Vincent Cestone - I couldn't tell you. It's not the first time and it probably won't be the last time. Who was it addressed to

Adam Rodd - To Philipstown ZBA attention Adam Rodd and I can tell you that it was faxed to me. I think it was faxed on July 7th.

David Torrey - And back dated to June 25th? We are more than happy to address whatever concerns are raised, but we have been having difficulty getting the Town to raise their concerns on this issue.

Vincent Cestone - I would think that it would be prudent to have the wetlands inspector come to the next meeting.

Adam Rodd - Plus we haven't received that plan. Now is that an engineer's plan in terms of

David Torrey - Yes

Adam Rodd - In terms of the parking spaces, does it show the size and dimensions of the spaces and is it certified by engineer indicating where in terms of the spaces itself. I mean I see the magic marker notations

David Torrey - Our engineer made this plan

Adam Rodd - Obviously we will need a copy of that. I think that would be

appropriate to give to Mr. Klotzle as well so we have as much information as possible.

David Torrey - That would be fine. And if we can even get information prior to the meeting so we can come to the meeting prepared to answer the questions that would be even better.

Paula Clair - Can I ask a question? What are those green dots?

David Torrey - Those are trees.

Paula Clair - Okay

Bill Flaherty - Well I tell you from my perspective I think that it is absolutely imperative that we get input from the CAC as well as the inspector for the wetlands. I am not prepared to take any action until I see that document before me. That is I think key to this issue. To determine just how far your property is from the wetlands and whether or not it is going to have a devastating affect on the wetlands as a result of having a used car lot there. Having used cars there you are going to have leakage from oil and coolant and those kinds of things. That would have an adverse affect on the wetlands on that property.

David Torrey - Well if you look at the Appalachian Market you have, which was just recently put in and I believe was subject to a variance or at least I don't know how

Vincent Cestone - On their site plan they have a water remediation process in place

David Torrey - Okay but I mean, their activities are far more potentially polluting than ours. Ours are just simply display

Vincent Cestone - There was already a gas station in there. This was a continuation of the use. And there was actually improvements on the property

Lenny Lim - We put some safety features in there

David Torrey - Okay. That's fine.

Vincent Cestone - Any more questions from the board?

Robert Dee - I have just one question. Looking at the diagram you've got like five or six spaces next to the building. Is that what that is?

David Torrey - That is existing customer parking. Those have been parking spaces for again 50 years

Robert Dee - So in this diagram you don't show all the cars that park there now? There are about 30 cars parked right

David Torrey - No sir.

Robert Dee - No?

Kevin Jones - Maybe 13

Robert Dee - I didn't really count them. So you have 13 parked. But they are not shown here

Kevin Jones - We have it on one of the other maps here

David Torrey - What they are proposing to do is to take all the cars that are interspersed here and put them here to make this more orderly, more aesthetically pleasing. All of the cars would be put here on this knoll that would be graded and put here

Robert Dee - I understand

David Torrey - And then all the cars that interspersed here right now would be over here.

Robert Dee - All the cars that you have parked there now, are they legal? Or did they all need variances?

David Torrey - I am not sure I understand the question

Robert Dee - Well you have 13 cars parked there now. They are parked right against the curb line pretty much. They are all illegal right or am I wrong?

Kevin Jones - No.

Robert Dee - Well how are they legal?

Kevin Jones - Because they are parking on an existing parking lot. We are only here for a variance for

Robert Dee - That's not my question. I know what you are here for. My question that I am trying to ask is all the cars that you have parked there now, you are going to move over there, and you are never ever going to park a car there again?

Kevin Jones - There are going to be two display vehicles right here

Robert Dee - Two display vehicles. But you are not going to park 13 or 14 cars there

Kevin Jones - No. We are trying to get this done properly. Two display vehicles here, you have 5 spots here for employees and customers and that's it.

Robert Dee - And all those cars

David Torrey - Exactly. And we would have been here far sooner if we had not spent two years with the Town arguing over whether the site was

Robert Dee - Well we have nothing to do with that

David Torrey - I am not suggesting that you do. I am simply explaining why we weren't here a lot sooner and getting everything taken care of

Robert Dee - Well that is not our concern why you weren't here sooner. We are talking about what we are here now and let's talk about what's here. Let's not go back. What I am trying to say, okay you are going to move all the cars over there. Who is going to police this? The Town? What I mean to say is, if we grant this variance and we drive along and there is 10 cars parked along there where you say you are not going to park them, do we have to send the Building Inspector up

Kevin Jones - Well whatever the site plan is approved for, if the site plan is approved for 23 cars, then there won't be more than 23 cars on the lot.

David Torrey - It would be no different than enforcing any regulations on any variance that you have ever granted.

Robert Dee - You have to understand my concern because I drive by there all the time and the cars are parked there now.

David Torrey - We are trying to solve that problem

Robert Dee - Okay.

Adam Rodd - What is the setback of those two cars from the street line

Kevin Jones - Approximately 14 feet

Bill Flaherty - From the street line

Kevin Jones - Oh, from the street line or the curb

Adam Rodd - From the street line

Kevin Jones - From the street line 14 feet

Adam Rodd - And how about from the center line

Adam Rodd - Okay. I am saying that we would need to have on the plan, that's why I asked, the specific setback for each parking area that is designated on the plan we would need to know because you are asking for an area variance with respect to parking as per the plan. So we would need to know what it is that we are asked to approve. And the reason why I ask that, the initial application was asking for a setback from the street line of 20.9 feet and from the center line of 41.7 feet. So as per that plan, you are actually asking for a greater variances

David Torrey - It hasn't changed

Adam Rodd - Well it is smaller than what I described because I just asked you how far it was from the street line

David Torrey - The variances that you quoted the 41.7 and the 20.9 are I believe are relating to this area here.

Adam Rodd - Is that denominated on the plans

David Torrey - Yes

Robert Dee - What about the other two

David Torrey - Down here is where it is noted.

Adam Rodd - I think it would need to be plotted on the site plan.

David Torrey - I actually believe that these lots, these spaces right here are virtually indistinguishable from these

Lenny Lim - But we don't know that

David Torrey - I understand your point. You would like another notation of what the setbacks for these

Adam Rodd - Well we need it just so we are clear because it would have to be a plan that is certified by an engineer or a surveyor specifically providing on the plan his certification as to how far those spots are from both the street line and the center line because that is the variance you are asking for.

David Torrey - Okay

Adam Rodd - I am just saying it is a little confusing because on the notice here again you just indicated for example those two spots were closer to the street line and the center line than the application indicated

Kevin Jones - I know we are basically holding the line all the way down so I made a mistake that it should have been 41

David Torrey - We'll have to get the engineer to note that

Lenny Lim - And this will be the maximum amount of cars you will have on the property at any one time

Kevin Jones - Yes

Paula Clair - 25

Kevin Jones – 23

David Torrey - 23 if you are including customer parking. It is 23 including customer parking.

Robert Dee - What about the other two in front? Are they included in the 23

David Torrey - Yes

Robert Dee - The two display cars

David Torrey - Yes

Robert Dee - Have the engineer put the space, the width of those spaces. It looks like a tic-tac-toe board right now

David Torrey - Okay. You need the dimensions of the cells. I understand. I am not arguing with you.

Bill Flaherty - Well will you have that document ready for us at the next meeting

David Torrey - Yes we will

Vincent Cestone - The 27th of this month

David Torrey - Of this month?

Vincent Cestone - Yes because we don't meet in August.

Adam Rodd - Will you be able to get that done

David Torrey - Yes

Vincent Cestone - Because if you can't, we will put you on the first meeting back from the summer break. We don't meet in August and our first meeting is the second Monday in September.

Kim Shewmaker - The 14th

Bill Flaherty - I notice that you are continuing to operate this used car lot without the variances. I was just wondering how appropriate that was in so much as you haven't received the variances

David Torrey - That was a matter that was brought before Judge O'Rourke. And Judge O'Rourke issued an order which you have a copy of,

Bill Flaherty - I have a copy of that

Kevin Jones - So the next meeting is when sir?

Vincent Cestone - 27th

Kevin Jones - July 27th

Vincent Cestone – yes. And we are going to contact the Wetlands

David Torrey - Is he going to be present? Can we count on it?

Vincent Cestone - We can't order him. But we can ask him. I'll talk to the Town Clerk.

David Torrey - We have gotten no where. Can we get a copy of the June 25th

Adam Rodd - Do you have a card

David Torrey - Unfortunately I left my card in my car, so I will give you my information

Adam Rodd - If you could just scribble down your fax, I'll get it to you

Vincent Cestone - Does anyone in the audience wish to speak on this? Sir

Robert Freeman - My name is Robert Freeman and I own the property

immediately across Diamond Hill Road from this property. I don't know if these things really do speak for themselves but I have five copies of the Deed for Mr. Jones from the Helwigs who used to operate Wicker My Love. The Deed is dated November 20, 1999. And I will give these to you. I have five copies of a letter from the Helwigs who I tracked down in Myrtle Beach, South Carolina, stating that they closed Wicker My Love in December of 1996, which is 2 years and 11 months prior to the conveyance to Mr. Jones. So for 2 years and 11 months there was no business on that property. And as I mentioned the last time I was here, I believe that the stream is covered by the jurisdiction of the Army Corp of Engineers and if there is any work that is done in the stream or in the wetlands, that also needs to be coordinated with the Army Corp. I have confirmed that with the Army Corp but of course it depends on what is being done.

Vincent Cestone - Correct

Robert Freeman - Just something else that needs to be taken care of.

Adam Rodd - Mr. Freeman what is your address again for the record

Robert Freeman - 19 Whippoorwill Pond Road

Adam Rodd - and how long have you resided at that address

Robert Freeman - 11 years. Since 1998

Adam Rodd - Are you a witness to the operation of that piece of property

Robert Freeman - I pass it personally every day

Adam Rodd - In your observation was it in continuous operation since you've lived there

Robert Freeman - This operation

Adam Rodd - Yes

Robert Freeman - No. We got there in 1998. Wicker My Love was closed.

Adam Rodd - So there was no on-going operation

Robert Freeman - There was no on-going operation there. At some point later on, I am guessing close to when the property was acquired, a fireplace insert coal operation started there and then construction equipment began to be stored there, which is still there by the way in addition to the cars. And then the car operation started. The whole point is to try and get this thing done properly and

not improperly. Thank you.

Vincent Cestone - One second, I'll call you next. You wanted to rebut?

David Torrey - Yes I did. That property it has been our position all along that that property is zoned a B-2. From its inception we have a non-conforming use letter, a certificate of occupancy stating it is a B-2 and it has been that way for as long as its been in existence. The recent change in the law is simply to correct the records of the Town with respect to it being B-2 because when they did the whole map, somehow or other the line moved for my client's property, the only property in Town which I believe that happened, it moved.

Vincent Cestone - There have been several

David Torrey - Well we aren't aware of any other than the one that involved my client and it has been our position all along that it has been B-2

Vincent Cestone - I think the point that is trying to be made is that the use of the business has been abandoned. That's what I believe the neighbor is trying to say

David Torrey - Okay. Is it the neighbor or the person in South Carolina who isn't here that is saying it? I wasn't clear on that.

Vincent Cestone - I think the neighbor did the research but the person in South Carolina who did the sale, did you see this

David Torrey - No I have not seen that if you could show it to me

Vincent Cestone - This is from the former owner. And that will be in the record

David Torrey - Okay. Again, can we be provided copies of some of these documents

Vincent Cestone - It will be in the record.

David Torrey - Thank you

Vincent Cestone - Sir

Bob Hilpert - Hi I'm Bob Hilpert. I am a contiguous land owner.

Adam Rodd - Your address sir

Bob Hilpert - 2 Peacock in Garrison. Off of Diamond Hill Road. It is the farm that runs along Route 9. He asked if he was witness the whole time it was

closed. I was there the whole time it was closed. It was closed about 3 years. Could have been a little longer. I can't know the exact date to tell you it went out of business because I just know they stopped operating. And I think there is probably some legal closing date. And of course the Deed will tell you the rest of it. But it was closed for more than 3 years. No operation. Zero. None. No Wicker, no cars, no coal, zero. I think also, the gentleman Mr. Flaherty just asked about what kind of operation was going on there now and they paint a picture like there was 13 cars. That may actually be true but there are also SUVs, and pick up trucks, and tractor trailers. If you count everything, if there are 13 vehicles there, I'll throw in my _____.

Kevin Jones - If there is a tractor trailer there you can throw in anything you want.

Bob Hilpert - It was there yesterday

Kevin Jones - Not today

Vincent Cestone - No arguing. Address your comments to the board.

Bob Hilpert - But there are trucks there all the time, trailers, dump trucks, all sorts of vehicles in and out of the property. How many are technically there tonight, I don't know if there are 13, but how many were there yesterday? There was more. How many will there be tomorrow? I don't know. And I think an on-going operation is problematic as it is. They don't have a variance. They don't have permission. They don't have permission to park cars on the road there. And I think when you read that you will find that out. But they operate none the less. I think that somebody should _____ and I think when you look into this and you see the problems that you have the setback from the stream and the setback from the road, there is nothing that you can do with this property. That's why nobody wanted it. It was on the market for a long time. Nobody wanted it. It sold for a song. Because you couldn't do anything with it. Unless you just do something with it and ask people to fix your problems later. And turn your little inexpensive piece of property into something valuable.

Vincent Cestone - Anyone else? Mr. Jones?

Kevin Jones - Yes as far as the record goes, as far as what Mr. Hilpert said about tractor trailers

Vincent Cestone - Please address the board

Kevin Jones - Okay. That's not true. Mr. Hilpert has been my neighbor for as long as I have been there close to 10 years. Mr. Hilpert I am pretty sure is making a mistake about how long the Helwigs have been gone. I am not going to worry about that now. But I would just like to clean up some of the allegations

that Mr. Hilpert is saying about tractor trailers and construction equipment and this and that. The only thing that is going on there today is a used car business and coal sales. And that is what is going on.

Vincent Cestone - Any one else wish to speak? Any more from the Board? With that we will carry you on to July 27th and I will contact the Town Clerk and ask for the wetlands inspector to be present. I can't promise that he will attend, but I will definitely make the call to ask him to attend. I can't order him to attend. Yes sir?

Robert Freeman - If the applicant is not going to be here on the 27th, would it be possible that if we call a couple of days in advance to check, maybe if you could give him a date to call by. Like last time we showed up and the applicant wasn't here.

Vincent Cestone - The applicant is required to be here. If he has an extenuating circumstance, I will be more than glad to let the Town Clerk know so that you don't make the trip for nothing. But if the applicant or someone else doesn't show up, I have no control over that. But if we do receive notification, I will let the Town Clerk know and you can ask them.

Robert Freeman - Okay. So if they aren't going to show maybe you can tell them to call in advance.

Vincent Cestone - I would say call the Town Clerk the day of and I am sure Mr. Jones will be here, but if for some reason he has an extenuating circumstance, I will make sure to let the Town Clerk know so that you don't make the trip for nothing.

Robert Freeman - Because the last time

Vincent Cestone - I know. I wasn't aware of it the last time. But Mr. Jones is not the only one that does that, it happens a lot

Robert Freeman - I understand

Vincent Cestone - Next item on the agenda is a continuation of a public hearing for Jams A. LaBarbera. We had asked you for certain information.

James LaBarbera - Yes. I believe you asked for a document for the EPA rating for the stove and I also have a brochure from the manufacturer. And I also printed out a copy of the EPA sticker.

Vincent Cestone - Were we looking for anything else on this? I am going to ask the standard question that we always ask. If we deny you this variance, what is the consequences for you? Could you place is somewhere else on your property

outside the setback

James LaBarbera - Outside the setback would be about 200 feet away which would make the stove inefficient. I am trying to subsidize the oil.

Paula Clair - How large _____

James LaBarbera - 12 ½ acres

Robert Dee - if we deny this you can still heat your home?

James LaBarbera - I do with oil. I'm just trying find alternate means to buying oil

Robert Dee - I understand

Vincent Cestone - Just for your information, today I received two letters from neighbors. And, I don't know how close they are to you

James LaBarbera - Which ones

Vincent Cestone - David Lang and Diane Uhle. One is located 28 Hollow Road. Not even close. And this is Rider Court.

James LaBarbera - What are they saying

Robert Dee - That it causes smoke

James LaBarbera - They are saying that the actual stove emits particles than rotting wood

Lenny Lim - No they are just saying the smoke

Vincent Cestone - They are both basically saying the same thing. This is one is voluminous. I won't read it because we will be here until midnight. But basically they are saying smoke and wood burn law section 172-8 in no event may any variance be given with respect to setback, stack height or lot lines. Adam, in 172-8 it doesn't say no variance can be granted

Adam Rodd - The applicant is here because 172-6(c) requires that wood fire furnaces be setback not less than 75 feet from the nearest lot line and at least 300 feet from the nearest neighbor. Here the application indicates that he is approximately 800 feet from the nearest neighbor but he is proposing to put the furnace 15 feet from the lot line.

James LaBarbera - My next door neighbor is Fahnstock. That's the State park.

Lenny Lim - I just go the law today (I cannot hear)

Vincent Cestone - We just got the new local law that was handed to us today and we haven't had a chance to read it.

James LaBarbera - Oh. Did that come out recently

Vincent Cestone - let me see. It is not in direct response to you.

James LaBarbera - That's funny

Vincent Cestone - It's been out a while but we just got it. It had to go through public hearings and stuff. It was drafted 2/20/09. The law was drafted on 2/20/09 and amended 6/18/09. So what I am going to say is that we are going to continue to our next meeting July 27th so we have an opportunity to review the law. Unless something unforeseen happens, we can then put this baby to rest.

James LaBarbera - Okay

Vincent Cestone - Let me just ask. Is there anyone in the audience that wishes to speak on this? Yes?

Diane Uhle - I am Diane Uhle.

Vincent Cestone - Hi

Diane Uhle - I don't have any ill will against you Mr. LaBarbera but my reason for writing the letter was not against him having his stove. He can have his stove. I am concerned about a precedent being set by the board of possibly granting variances every time someone wants a wood stove rather a wood burning furnace that don't have the required setbacks. And we end up with like the person I live next to for 6 months and it was horrible. I don't know if you've heard what we went through last year. My neighbors and I couldn't live in the house any more. It was the worst experience. Smoke all day long because he was using it to heat his water in the summer and heat his house in the winter. It got in through your doors, your closed windows, our clothes smelled, our furniture smelled, I was at the doctor's office three times with chronic infections and I had bronchial attacks. My neighbors above me who are probably 300 or 400 feet from him, were being affected. And it something that we never want to go through again. So we are just concerned that you follow the laws that was written. As somebody that has gone through this, you have no idea how it affects your life. And we had to leave our home all the time whenever he was burning. I don't want to live like that again. And that's all we are concerned about. It wasn't that Mr. LaBarbera wants a stove. If he can meet the required setback, that's fine. We are just concerned about variances.

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

Bill Flaherty - Do you currently use a wood burning stove

Diane Uhle - No

Bill Flaherty - You don't. But then who are you referring to then who has a wood burning stove

Diane Uhle - It's not a wood burning stove. It is a wood burning furnace.

Bill Flaherty - Wood burning furnace

Diane Uhle - Right. And they are also known as outdoor wood blowers and the way that they work is, the problem with them is the combustion is not, it is very inefficient as they stand now. They don't burn hot like a fireplace or a wood stove. And frequently people will burn unseasoned wood, they will burn garbage in them just to keep the heat going and it smolders. So it just a constant belching of smoke through the stack instead of burning hot. This was enveloping houses in the neighborhood. So it is a completely different thing that you shouldn't be confused with each other. A wood stove and a wood burning furnace are two entirely different things.

Bill Flaherty - Well the new ordinance on this issue, you must burn certain kinds of wood. No garbage is allowed to be burned

Diane Uhle - Right

James LaBarbera - And there are certain times also

Bill Flaherty - It is a relatively new technology that is being used quite extensively in many many towns. And I think as your letter pointed out rightfully so, that some townships have fought hard the use of these kinds of stoves because of the pollution factor that develops. I raise the question at the last meeting that this is the most efficient

James LaBarbera - This is the most efficient stove on the market by far

Bill Flaherty - We have several where I live and one is not too far from where I live and I don't even know it is there to be perfectly honest with you. It was just installed prior to the time that the new ordinance was put into effect. And I must say that I have not had any problems with odors of any kind whatsoever. Yes, there was smoke from time to time but the person who owns it, is very particular about the wood that they burn.

James LaBarbera - If you burn garbage, it doesn't run

Bill Flaherty - That's the key. And this new ordinance that we have prevents you from doing that. You say that this is the most efficient

James LaBarbera - It is by far

Bill Flaherty - And you gave me the documentation

James LaBarbera - I also have the EPA rating on it as well

Bill Flaherty - They are a contentious issue no matter where you are

James LaBarbera - I can understand her plea as well because

Bill Flaherty - As they become more popular as the price of oil goes up

(TURNING TAPE OVER...may have lost some dialogue)

Vincent Cestone - we will review the law and hopefully we can put this to rest

James LaBarbera - thank you very much

Vincent Cestone - Review of Minutes and then we are going to do the reviews for completeness. Are there any additions, corrections, modifications for the June 8th minutes?

Bill Flaherty - I had none.

Vincent Cestone - If there is no corrections, 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 - Let's do the reviews for completeness. And your name is

Dean Anderson - Dean Anderson

Vincent Cestone - We'll do you first so you can go

Adam Rodd - Let me just pull that out. Okay this is an application an accessory apartment and under the zoning regulations, and I confirmed with Glen Watson

who I understand is working with the applicant on this, that under the Code, we need to, this is actually a special use permit. So all we need to do at this juncture is to refer this matter to the Planning Board for a report. Once they report, it comes back to us for a public hearing.

Vincent Cestone - Are you aware of what that means

Dean Anderson - Not totally.

Vincent Cestone - It goes to the Planning Board and they review your property and they send us a report if there are any issues, parking, things of that sort, and then we act on those

Dean Anderson - Okay

Vincent Cestone - So we can do that this evening correct

Adam Rodd - Yes

Vincent Cestone - I make a motion to refer Mr. Anderson to the Planning Board. Do I have a second?

Bill Flaherty - I'll second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - So you are referred

Dean Anderson - Okay thank you very much. And the Planning Board meeting is

Glennon Watson - I believe you have a 239 referral as well

Kim Shewmaker - Yes. I already sent that out

Adam Rodd - It was sent out July 5

Glennon Watson - Okay

Vincent Cestone - When is the planning meeting

Audience member - July 23

Vincent Cestone - You are all set to go

Dean Anderson - Thank you

Vincent Cestone - Next review for completeness is Lynn and James Duffy. Is the applicant here?

Adam Rodd - The applicant is not here?

Vincent Cestone - Mr. or Mrs. Duffy here? No

Adam Rodd - Okay. Basically this is an application for a setback variance. The applicant owns property at 18 Mill Road, they want to remove an existing sunroom and add an addition that will be two stories. It is in the R-40 zoning district. The minimum setback from the street line is 40 feet. They are proposing 35 feet. So it is a 5 foot variance.

Lenny Lim - They are increasing the footprint and going up?

Adam Rodd - I am not sure what the existing footprint is. But it is an addition. It needs 40 feet and it is 35 feet. So it is a 5 foot variance.

Robert Dee - Can we ask that this be put over until the applicant can be here so they can explain this

Vincent Cestone - Generally

Adam Rodd - Well I actually in relation to that I did confirm with the building department that apparently a 239 referral will be required for this application because they are within 500 feet of Route 9. So technically you can't even act on it until the 30 days have passed from the date that you send the referral. So this might be something that if you have some additional questions that maybe you can put it on for another review for completeness on the 27th. But I think the public hearing, because you are not meeting in August, it will probably be the first one in September.

Kim Shewmaker - It wouldn't be until September anyway because the deadline for the paper was at noon today

Vincent Cestone - Okay.

Adam Rodd - If you want some more details

Robert Dee - I would like the applicant to be here because there a couple of things I want to go through. If you apply for a variance, the least you can do is show up.

Bill Flaherty - Well I have several questions after reviewing the application

Vincent Cestone - We will do that with the applicant here

Bill Flaherty - Okay

Adam Rodd - So that is on for an additional review for completeness July 27

Bill Flaherty - The application to me is incomplete

Vincent Cestone - Why would you say that

Bill Flaherty - Because some questions are not answered. For an example, on the application the applicant failed to answer question 2, the grounds on which the variance should be granted. That's left blank. And also on the factor sheet, paragraph 2, if you don't get the variance, what else could you build there, etc., etc. That's also left blank. Minor things. But nevertheless their answers to the questions that are on the form that should be completed by the applicant.

Adam Rodd - It is reasonable to ask them to come in for an additional review for completeness to ask them to address these things so we have it all in place when they come in for the public hearing

Bill Flaherty – okay

Vincent Cestone - Next review for completeness is Jules Bass. Is the applicant here? There really is no presentation, legally we are not to talk about it unless it is posted. But Adam

Adam Rodd - As I understand it, this is an application to put in a car port. My understanding is that it is 14 by 20. The zoning code requires a front yard setback of 40 feet. And a side yard setback of 30 feet with the proposed construction of the car port the applicant is proposing a front yard setback of 20 feet 9 inches and a side yard setback of 6 inches. So it is front and side yard setback request.

Paula Clair - I don't see the Deed

James Hartford - I believe it was submitted.

Adam Rodd - We do have a copy of the 2009 final assessment roll indicating that Jules Bass does own that property.

Robert Dee - Just one thing, in question number 4 of the applicant's worksheet for the zoning it says that the structure will be 16 feet 9 inches into the 100 foot wetland setback.

James Hartford - Right

Robert Dee - Do we have to have a wetlands

James Hartford - Yeah

Vincent Cestone - Same issue as Mr. Jones. You need a wetlands permit

James Hartford - Yes

Adam Rodd - Have you applied for a wetlands permit

James Hartford - Yes

Adam Rodd – okay

Vincent Cestone - Okay we can't advertise it before the 27th. Our next meeting after July 27th is September 14th

James Hartford - Okay

Vincent Cestone - So we will put you on for that

James Hartford - Okay great. Thank you very much.

Vincent Cestone - If you get the permit, bring the permit to the Town so we can get it ahead of time

James Hartford – yep

Vincent Cestone - Next review for completeness is Theodore and Ellen Timmer.

Adam Rodd - Okay, this is as I understand it, it is a proposed construction of a deck. What I wasn't clear about was this is in an R-40 district. I believe a 20 foot rear yard setback

Theodore Timmer - Yeah

Adam Rodd - Is required and I am not sure what setback you are proposing on this

Theodore Timmer - It looks like it would be 5 feet. The whole house is well in the setback. And there is, my wife bought the house before we were married and there is an 18 foot strip of land behind the house which we are actually trying to buy right now. It is owned by Mr. Raju. And there is nothing that can be done on

that because it, he owns the strip behind everybody's house. And it goes through the wetlands further and I just talked to him this year, we are all in, we all want to buy that land from you because all our houses are all into the setback.

Adam Rodd - Just so I am clear. This is a new deck

Theodore Timmer - Yes

Adam Rodd - Is it replacing an old deck

Theodore Timmer - There was an, the main house most likely had a porch on the back. An 8 by 20 porch and I am rebuilding that now with a permit as it was. And on the back of it, it had a door out the back and a 50 inch wide deck that was falling off the house when we bought it. So now

Adam Rodd - Is there a change in the setbacks from whatever was there before compared to what you are doing now

Theodore Timmer - We are actually coming back from that

Adam Rodd - Okay

Theodore Timmer - The old deck was probably 2 feet off the line

Vincent Cestone - If you can get proof of that

Theodore Timmer - I have the old survey

Vincent Cestone - Bring proof of that for the public hearing

Adam Rodd - So in other words you are going to be further away

Theodore Timmer - Yes we are coming back.

Adam Rodd - I would suggest for the, if you want to put it on, that we would need something indicating specifically the variance that you are looking for. How far it is going to be because that is what we are going to have to approve. Whether it is a plan or a survey

Theodore Timmer - We had it surveyed

Adam Rodd - I think a survey indicating the deck with the specific setbacks because I don't see that in the application. I saw a survey. But what the board is looking for is a survey depicting the deck and how far that deck is going to be setback from the lot line

Theodore Timmer - The new deck

Vincent Cestone - Yes. It has to have the new deck on it

Theodore Timmer - Okay

Vincent Cestone - And there is a reason for that

Theodore Timmer - I understand

Bill Flaherty - I would like to make a statement that my review of the application revealed that there is no supplemental worksheet as required by law actually. And those are the five factors that we take into consideration when we make a decision. Maybe you never got a copy of that, I don't know.

Theodore Timmer - My wife filled out all the paperwork last Friday in a dash just to be able to get here

Bill Flaherty - I couldn't find it in my packet. So I would suggest that you do look that up and fill it out and bring it with you for the next meeting because it will help the process for you

Vincent Cestone - So you are on for September 14th which is our next meeting after July 27th, which we can't get you advertised for. We have to advertise in the paper that there is going to be a public hearing so the residents have an opportunity to see it.

Theodore Timmer - Okay.

Vincent Cestone - So you are all set. Okay. Let's go through the resolutions. The first one is Therapeutic Equestrian Center. First we have to, we have a negative declaration in my hands and if you want to see it, you can see it. But, unless, if it is okay with everyone else, I will make a motion to adopt the negative declaration and do I have a second

Lenny Lim - Second

Vincent Cestone - All those in favor

All Board Members - Aye

Vincent Cestone - Opposed? Okay. The negative declaration has been approved. And what else do we have to do?

Adam Rodd - The resolution granting the special use permit

Vincent Cestone - Since this is a special use permit, generally we don't read these into the record like we have done previously. So this is a roll call vote on adopting the special use permit.

Glennon Watson - Excuse me. May I just take a second on this. We are having, I just want to point out to the board that we are having a little bit of a building code issue with regard to fire protection between the stables and the office area. We may have to reduce the size of the building shown on the plans by about 500 square feet. Reduction. It wouldn't see it. We would just like that noted in your minutes.

Vincent Cestone - So what you are saying that if the fire issue is required, you are going to decrease the size of the structure

Glennon Watson - As the building gets bigger, the fire separation gets bigger. And in order to avoid the conflict by reducing the size of the stable building by 2 stalls, by 500 square feet, we can avoid a big issue with the fire protection.

Vincent Cestone - Other than cutting that off, you are not changing the height, you are not changing the width

Glennon Watson - Nothing else. Just taking off two stalls. We just wanted to point that out for the record so that, we would appreciate that being noted in the record

Vincent Cestone - You are in Planning now

Glennon Watson - No we are finished with Planning. This is the end

Vincent Cestone - Okay

Bill Flaherty - Will we have to have revised drawings showing this

Glennon Watson - Well we have to satisfy some engineering criteria and we will revise the drawings, and that is one of your conditions that we satisfy your engineers' criteria so it is really a very minor modification when you consider the entire size of this building.

Bill Flaherty - So you will provide us with those

Glennon Watson - Oh yeah. We certainly will. We have to do that in order to get the Building Permit.

Bill Flaherty - Okay

Vincent Cestone - If you provide us with those drawings, I am sure this Board

would have no problem accepting the change. But, are you definitely going to be doing that? Do you think

Leslie Heanue - It is looking that way. And in terms of cost effectiveness and safety

Vincent Cestone - And time. Would it be done by, would you be done redrawing it by the 27th of this month? Or is that too soon?

Glennon Watson - I don't know the answer to that question but I think that if we could, it is really almost, it is mischaracterization to say it is a field change because it is moving the side of the building but it is making it smaller on each end by a very small amount. Frankly the building plans, you would have to take a scale out to be able to tell the difference.

Vincent Cestone - But you know how the building department

Glennon Watson - Oh the building department will have it. We can't go to the building department for building permit so if we can just leave it as one of the issues that we satisfy, one of the conditions I believe is to satisfy the engineering details. And that would require revisions to the plan. And we propose to make that revision at that time

Vincent Cestone - So what are you saying? You don't want to bring the plans to the board to be approved

Glennon Watson - I will be happy to bring them back and show them to you and go over them. I don't think it is necessary to delay it because it is a small revision

Vincent Cestone - If you bring it to us by the 27th, we will do it right then and there for you.

Lenny Lim - I am not happy voting without everything in front of me

Vincent Cestone - So, what I am saying is, it doesn't have to be an interior design plan but if you can bring the plans to us, on the 27th we have no problem addressing it right then and there for you. Is that doable for you

Leslie Heanue - I think one of the big questions is if that actually has to happen. What we were trying to do is save time and money and time. If it does have to happen, then we will take the two stalls off. But if it doesn't have to happen, then we won't. So it all depends on meeting with FJ Spinelli and the new building inspector and reviewing the fire codes to see exactly what is the most cost effective and safest way in addressing it. And if they do say well that section will have to be reduced, the time spent to go back to the zoning board because they have already approved that larger footprint. So that is kind of where the big

question

Vincent Cestone - But,

Adam Rodd - I think, and I'll throw this out as an option, I believe we can adopt the negative declaration and the grant of the special use permit as presented to us tonight. It sounds like there is a possibility that your plans might not even be amended. If that is the case, we are done tonight. The thing that you are proposing sounds so minor that we can do this very quickly as an amendment to the grant of the special use permit and from what you are telling me I can't imagine that it is going to be affect subsequently what we've approved. So that might be the prudent way to do it. They might not do it. So lets just approve what they presented

Lenny Lim - I am not comfortable voting without the revised plans. It's that simple

Leslie Heanue - But we are not revising them

Lenny Lim - You might do it, you might not do it

Vincent Cestone - We are going to vote on the current plans and if they revise the plans

Adam Rodd - They have to come back

Vincent Cestone - Then they have to come back and they have to modify

Lenny Lim - But they are not sure what plans they are going to use anyway it sounds

Paula Clair - Well they are going to use the current plans unless there is a safety issue

Leslie Heanue - That is the building department. If they say these plans don't work, then we have to come back

Glennon Watson - We will be happy to come back here if we have to change the plans. It is an issue that came up very recently and we are trying to move this to the building permit. If we can avoid that

Vincent Cestone - Like Adam said, we can very quickly amend this. I can't speak for the other members but it is so minor I don't think it will be an issue. So we will adopt the special use permit tonight and if it does change and you know it by the 27th, come in and we will amend it. And we will get it done for you

Lenny Lim - I have a question, legally if he gets a special use permit does he have to change? If he gets a special use permit,

Vincent Cestone - What we approve tonight

Lenny Lim - Right. That goes with the land period. He doesn't have to change it or amend it. Right? Once he gets it

Adam Rodd - Well the engineer is approving a particular set of plans and he is going to have to inspect it. In the approval here there is also a provision that there be monies in escrow so the engineer can make sure the storm water issues have been resolved to his satisfaction. So the applicant is not at liberty to just go and build something different than what was approved because they got one special use permit. They got a specific special use permit pursuant to a specific plan. What they are proposing if they go through with it sounds like a minor amendment to the overall plan that they presented, which we can deal with by way of an amendment.

Vincent Cestone - Okay. This will be a roll call vote. This is for the approval of the special use permit as written. Bill?

Bill Flaherty - I vote in favor

Paula Clair - I vote in favor

Lenny Lim - I vote in favor

Robert Dee - I vote in favor

Vincent Cestone - And so do I.

Glennon Watson - Thank you very much

Vincent Cestone - You're welcome

Adam Rodd - Did you sign it

Vincent Cestone - Yes

Adam Rodd - And the neg dec too.

Vincent Cestone - Here you go. The next resolution is Lausca

Adam Rodd - Okay. Just reading the resolution of Lausca up through and including conditions. The Philipstown Zoning Board of Appeals conducted public hearings on May 18, 2009 and June 8, 2009, to hear the appeal of the applicant,

Lausca, LLC, from the denial of its request to place a directory sign 34' feet from the street line of US Route 9, and 55.7' feet from the center line of US Route 9. The applicant's property is located at 3166 Route 9 in the Town of Philipstown. The applicant's proposal to construct and place a directory sign on its property does not strictly conform with the requirements of Section 175-32, Schedule B, Item 6(a) of the Zoning Ordinance which requires, in the B-2 Zoning District, a minimum setback from the street line of US Route 9 of 50' feet, and a minimum setback from the center line of US Route 9 of 100' feet. Because the proposed location of the subject directory sign does not conform with the setback requirements set forth in the Zoning Ordinance, the applicant seeks an area variance from this Board. At public meetings of the Board on May 18, 2009 and June 8, 2009, 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 this Board, Vincent Cestone made a motion, seconded by Bill Flaherty, as follows: BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, determines and finds: That the balancing of equities weighs in favor of granting the appeal of Lausca, LLC from the denial of its request to place a directory sign on its property located at 3166 Route 9 in the Town of Philipstown, despite an insufficient setback from the street line of US Route 9 of 34' feet and an insufficient set back from the center line of US Route 9 of 55.7' feet. The grant of the subject area variance, with the following conditions, for the reasons set forth herein, shall constitute findings based on the factors set forth in Town Law 267-B. Conditions of the Variance. 1. The subject directory sign to be placed on the applicant's property located at 3166 Route 9 shall be set back at a distance not less than 34' feet from the street line of US Route 9, and at a distance of not less than 55.7' feet from the center line of US Route 9. 2. The subject sign shall be placed in accordance with the site plan submitted to the Board by the applicant, which was prepared by W.E. James Associates, Engineering, Surveying & Planning, dated August 1, 2008, last revised February 13, 2009. 3. No enlargement, reconfiguration or extension of the subject sign, for which the above-referenced variance has been granted, is authorized without Zoning Board approval.

Vincent Cestone - With that, there is no old business. I make a motion to adjourn

Lenny Lim - I second

Vincent Cestone - All in favor

Kim Shewmaker - Did we vote?

Adam Rodd - Normally we vote on it after I read the resolution.

Lenny Lim - That's what I thought.

Vincent Cestone - But we did vote at the last meeting

Kim Shewmaker - Did we review minutes when I was out of the room?

Vincent Cestone - Yes

Kim Shewmaker - They are okay? Okay. I am leaving Wednesday directly after work for North Carolina. So you will not get minutes by the next meeting. There is no way I can type them while driving. I am going down to visit my daughter.

Vincent Cestone - Why not? (laughter)

Kim Shewmaker - I'll dictate them back to you so you can type them yourself. (laughter) So unfortunately, there will be no packets. But I will type the agenda and get that out to all of you.

Vincent Cestone - Okay. Motion to adjourned has been seconded. All 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: 9/14/09

Respectfully submitted,

Kim Shewmaker
Secretary