

## **ZONING BOARD OF APPEALS**

**July 26, 2010**

### **MINUTES**

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, July 26, 2010, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Bill Flaherty	-	Member
	Robert Dee	-	Member
	Adam Rodd	-	Counsel

<b>ABSENT:</b>	Paula Clair	-	Member
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**Vincent Cestone** - Adam, why don't we do the resolution first and get that out of the way and maybe Paula will show up

**Adam Rodd** - Okay. Okay on Neumann, reading the resolution through conditions. It reads as follows, the Philipstown Zoning Board of Appeals conducted a public hearing on July 12, 2010, to hear the request of the applicant, Rodman P. Neumann, to place a second story addition over an existing detached garage on his property located at 12 Manitou Road, Garrison, New York 10524. The applicant's property is located in the R-80 Zoning District, and the existing detached garage is setback 21.7' feet from a private right-of-way. A certificate of occupancy for the existing garage was apparently issued in error because, in the R-80 Zoning District, Section 175-32, Schedule B, Item 6(b) of the Zoning Ordinance requires a minimum street line setback of 40' feet. In any event, because the location of the applicant's existing garage does not strictly conform to the current setback requirements, the applicant's request for a building permit to construct a second story addition was denied. The applicant has filed an appeal from the denial of his request for a building permit, and now seeks an area variance from this Board. At a public meeting of the Board on July 12, 2010, 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 Rodman P. Neumann from the denial of his request for a building permit to construct a second story addition



on the existing detached garage located at 12 Manitou Road, Garrison, New York, despite an insufficient street line set back of 21.7' 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 existing detached garage which is located on the western side of the applicant's property located at 12 Manitou Road, Garrison, New York, shall remain set back at a distance of not less than 21.7' feet from the street line. 2) No enlargement, reconfiguration or extension of the subject garage and rear patio, for which the above referenced variance has been granted, is authorized without prior Zoning Board approval. 3) The second story addition is to be used as a work space and may not be used as residential living space (ie, a bedroom or apartment).

**Vincent Cestone** - I make a motion to accept it as read.

**Bill Flaherty** - Second

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Vincent Cestone** - I have to do a roll call vote on this right

**Adam Rodd** - Yep

**Bill Flaherty** - I vote in favor

**Lenny Lim** - I vote in favor

**Robert Dee** - I vote to approve

**Vincent Cestone** - And so do I

**Vincent Cestone** - We don't have minutes to approve. Do we have any old or new business? Then lets go on to the continuation of the public hearing. Just a note, because of the amount of information that has been submitted today, that we received today, I am not going to close the public hearing tonight so that the public has a chance to review it before we make any movement on this. So with that, Ms. Reeves, do you own this property out right now. Do you have clear title of this property?

**AnneMarie Reeve** - I am not sure

**Glennon Watson** - No she does not. She is in contract to purchase this two acre parcel.

**Vincent Cestone** - Then how is she applying for a variance for a piece of property she does not own?

**Glennon Watson** - You will find that in the paperwork that appropriate permissions from the owner have been filed.

**Vincent Cestone** - Do you live in 703

**AnneMarie Reeve** - That's our home. But right now I am not staying there

**Vincent Cestone** - But do you live there

**AnneMarie Reeve** - Not at this moment

**Vincent Cestone** - Bob, do you have any questions

**AnneMarie Reeve** - Excuse me, can I say one thing

**Vincent Cestone** - Sure

**AnneMarie Reeve** - The property in question is not 703. 703 is our home.

**Vincent Cestone** - But you said in the documents that that was were you were living. That that was the residence you stayed at. I was just confirming the facts. Bob, Lenny

**Robert Dee** - Question, who did this application? Did you do it Mr. Watson?

**Glennon Watson** - I did

**Robert Dee** - Okay. The last one, when we go over the factors and all that, the last factor we were arguing about self created hardship and your answer to that was it could be reasonably argued that the need is self created. Ms. Reeves could have chosen to sell less land at 720 Indian Brook Road but she negotiated the purchase a larger track that contained the 6000 square feet of building area and required driveway route to it, however her need to sell the land in order to able to undertake the restoration and rehabilitation as planned, leaved these \_\_\_\_\_ to speculation. Are you saying that she needs the money from the sale of the property to restore the house?

**Glennon Watson** - I think one of the reasons as I understand it from Ms. Reeves, and she can speak for herself to that matter, is that she was unable to undertake that project, that project prior to the sale of the land. And she intended to keep a parcel out of the property when she sold it but could not do that because she needed a subdivision approval and the contract was such that it had to be closed without sub-division approval so it would have been illegal for

her to pull back the land.

**Robert Dee** - Okay. So the property has already been sold.

**Glennon Watson** - The property was sold. She doesn't own it. There is a residual element,

**Robert Dee** - She has an option to purchase

**Glennon Watson** - Right. It survived the contract. That's right

**Robert Dee** - If this were denied she just wouldn't purchase the property and that would be the end of it correct? If she were denied this then

**Glennon Watson** - That's right.

**Robert Dee** - The person who owns the 259 acres would own the whole thing right

**Glennon Watson** - That's correct

**Robert Dee** - okay. So it is a self created hardship

**Glennon Watson** - And that's what I said in my

**Robert Dee** - I was just trying to understand about the money. It looked to me like she needed the money to restore the whole house but that

**Glennon Watson** - Our point was, our point regarding the 6,000 square foot buildable area is that frankly it is a moot point because we have a building where we want the building to be. You can't create the 6,000 square foot area around it. The law doesn't require that and I am not suggesting that the court law requires one to build in the 6,000 square foot, but when you consider the topography that is surrounding the parcel it wouldn't have grown to 2 ½ acres, it would have grown to 10 or 12 acres in my opinion. I never calculated that out. Because of extreme steep slopes to the west of the property and to the wetland also to the west of the property, you can't go across those things to get to that buildable area. So it just would have made a reasonable couple of acres piece of property that was reasonable for that scale of house grow to well over 10 acres which she doesn't want or need and again, the 6,000 square foot

**Robert Dee** - I understand that doesn't serve a purpose. I understand she doesn't want or need. I understand that. My question I guess is if she sold 259 acres, how many acres would she have had to keep in order for you not to be here

**Glennon Watson** - My estimate is what I said before. About 10 acres

**Robert Dee** - So if she sold 249 acres and kept the other 10, she would have been okay

**Glennon Watson** - Yes, you could probably

**Robert Dee** - Something like that

**Glennon Watson** - Yes. Something like that

**Robert Dee** - Okay thanks

**Vincent Cestone** - Len, any questions

**Lenny Lim** - No

**Bill Flaherty** - I have several questions. I would like to ask Ms. Reeves what was the original house used for? And what is the historical significance to this structure? Mr. Kent stated that it was used by a farm hand at one time. Is that correct?

**AnneMarie Reeve** - It was my great aunt's house and that was used as a guest cottage and afterwards it was used as somebody took care of her property around and somebody resided in there.

**Bill Flaherty** - It was used as a caretaker's home

**AnneMarie Reeve** - Yes

**Bill Flaherty** - Okay. That is a very small structure. 400 square feet.

**AnneMarie Reeve** - I think it is over 500

**Glennon Watson** - About 550

**Bill Flaherty** - But anyway, I was down there yesterday and walked the property, you probably saw my car, at any rate, I did walk the property and I saw the dilapidated condition of a couple of different structures on that property. Any I don't know, is your intention to reconstruct that house from the material that you have?

**AnneMarie Reeve** - That was my plans but it is not doable, maybe some lumber has to be used, but it was my plan to reconstruct it pretty much the way it is

**Bill Flaherty** - Did you have a constructional engineer come look at that structure

at all to see whether or not if any of that structure is usable

**AnneMarie Reeve** - A friend of mine is going to do all the work

**Vincent Cestone** - I'm no engineer but that looks like bring in the dumpsters and take it away.

**Glennon Watson** - There is certainly a lot of stuff that has to go away. No question about it. I am not a structural engineer either but I've seen some restorations

**Bill Flaherty** - What will the reconstructed house be used for

**AnneMarie Reeve** - I may live in it part of the time or rent it out. I may use it for myself or company occasionally or I may rent it out

**Bill Flaherty** - It is a pretty small home to use for family I would assume. And it is approximately 550 square feet which doesn't conform with the current zoning laws which require 720 minimum square feet for a home, a house. That's another factor that you have to take into consideration and if you were to enlarge the house to the appropriate square foot that we have under zoning, how would that affect the

**Glennon Watson** - If I could have a couple of minutes to go through this stuff, I could point out some of those things and I can point out what we looked at at planning

**Bill Flaherty** - I still have other questions too

**Glennon Watson** - Whatever you please. We have made an allowance for that. This is exactly the print that you looked at a couple of weeks ago. I don't need to tell you much about that

**Adam Rodd** - Is that the parcel in question

**Glennon Watson** - This is the parcel right here.

**Adam Rodd** - And the structure is at the end of the driveway

**Glennon Watson** - This is the structure. At the very end of the meeting you suggested that maybe we could build a septic system which is towards the rear of the area that we reserved for as opposed, normally we would split it the other way. In the last week we have gone out and located the trees that were of such concern last week and we plotted them on the map. We have finished the percolation tests that we hadn't intended to do until we were further along in the process and we walked the site and came up with what we think is the worst

case scenario. And that is this. Where we would put the primary system further away from the property line and the secondary system near the property line that is of such concern. That would require building a retaining wall within the 100 foot boundary of the wetlands we believe. We haven't flagged the wetlands but it is pretty obvious that it will. It does not require, and I repeat, it does not require us to put in the septic system in the wetlands buffer. It requires us to put in some fill and there is a minimum amount of space that is required. So we do need a wetlands permit. What you are seeing here is a driveway which we put to the north side of the house and you see there is a lighter brown color here, that's the addition that would be required to bring it up to 700 square foot of floor area on one floor. The other option would be to add a floor or a partial floor to get up to the 720 square feet of floor area that is required. You see clearing over here to a well site. You see clearing here to the septic area and that would be the trench for the waste line. What you see here requires removing one tree within 20 feet of the property line. About 7 trees, and I didn't count them within 25 or 30 feet of the property line. What we are hoping we will be able to bring to fruition is the \_\_\_\_\_, that's this. Which would be a situation where we, and we have done this a couple of times, we had the health department to waive the placement of fill for the secondary system. That is a replacement and it is a reserved area to make sure that if you do have a septic failure, it is a place to put a replacement system. If we get that waiver, we would not put in that secondary system and it would it reduce the area that we would have to cut and it would remove any disturbance further away from the property line. We, against the northern boundary there is no reason to cut any trees within about 35 feet, I think. There are two trees very close to the house which should come down just to protect the house. They are not very big trees. So that is what we did. It was also suggested that there was plenty of dirt up here to the north of what we proposed and this is the slope analysis and simply put we are within 100 feet of the wetlands or we are, this is Class 2 steep slopes, so we are well beyond what we can use. This area in here we looked at that and that doesn't work. It is noticed, you may have noticed that there was a split in the system here and that was to avoid some rock that was mentioned last week. So we have looked at those problems. We recognize that we need a wetlands permit but again that is a permit and that is a process that we are willing to go through. With that I sort of,

**Bill Flaherty** - Well that was one of the questions I had about the perk tests. When do you expect the results on that

**Glennon Watson** - We have the results

**Bill Flaherty** - Oh you have.

**Glennon Watson** - This is my partner John Delano, he is a professional engineer.

**John Delano** - Good evening. My Name is John Delano and I am an Engineer

at the firm of Badey and Watson. I have been practicing up here with Glen and Badey and Watson for in excess of 24 years and have been dealing on a regular basis and evaluating sites for septic systems and obtaining Board of Health Approvals. We recently conducted a percolation test in both these areas in what we are considering for the primary area and for the expansion area and we have a stabilized soil percolation rate of 8 to 10 minutes per inch. The systems will be \_\_\_\_\_ 330 lineal feet to support a three bedroom house, which is the minimum design that the Health Department takes. As Glen as mentioned, we avoided this area here because of the obvious lot conditions. General \_\_\_\_\_ of soil is 3 ½ feet so we have to bring in 3 ½ feet of fill. That's the reason why the area is becoming so large. Had we had deeper soils, we would actually be working in a much smaller area retained within the clearing areas.

**Bill Flaherty** - How many feet of

**John Delano** - To accommodate a three bedroom residence, which is the minimum the health department will accept, you need 333 lineal feet of field. There is going to be a \_\_\_\_\_ system from the house down here to the \_\_\_\_\_

**Vincent Cestone** - 3 bedroom house, do you have an example of what the house is that you are proposing

**John Delano** - No. We have no potential plans

**Robert Dee** - Now it is expanding and it is going to be 3 bedrooms

**John Delano** - That is the minimum design that the Health Department will accept.

**Robert Dee** - I just don't understand. You mean you can't, let me ask you this question, can you get a septic approval for a 2 bedroom, to build a 2 bedroom home?

**John Delano** - The only instances where the Health Department will approve a 2 bedroom septic is on previously improved, previously Board of Health Approved subdivision lots. This property does not have a previous Board of Health Approval on it. This lot that we are proposing obviously has not been previously approved by the Health Department. The minimum design they will therefore take is for a 3 bedroom septic system. They will not accept a design for a two bedroom septic system

**Robert Dee** – okay. And for a 3 bedroom septic system how many feet of fields are you going to have to cut away trees

**John Delano** - The fields will all fit in this small box here in the center of the cleared area. That is 333 lineal feet of fields spaced from 6 foot on center. But



the area that is needed to be cleared to place all the fill because of the shallow depth of the soil, they want 7 feet of native soil and we propose 3 ½ and we will bring in the other 3 ½. The fill must then extend beyond the system a certain distance and slope down at a gradual rate. So when you get into a system where you need depths of fill in the area 3 ½ feet, the planned area that you need grows tremendously. If we had a small modest 3 bedroom home with a good percolation rate, you would probably need less than 5 or around 5,000 square feet. When you translate that to a system that needs about 3 ½ feet of fill, that number goes up to something in excess of 10,000 square feet.

**Robert Dee** - So you say the area that needs to be cleared is 10,000 square feet

**John Delano** - For the purposes of bringing the fill in and providing the separation distances from the actual tiled fields to the perimeters of the fill and from the slope of the grade

**Robert Dee** - Okay

**Bill Flaherty** - Next question I have is that Mr. Kent in his documentation offered to meet with Ms. Reeves and to see if an alternate plan could be worked out. Have there been any \_\_\_\_\_ between the parties at all?

**Steven Kent** - No I didn't communicate with Ms. Reeves about it because I felt that this was adversarial. I communicated with Mr. Buck who owns the land. He said that he was sympathetic but he felt his hands were tied because he was a signatory to the application. He regretted the consequences for me and wasn't aware of them going into it. And he recommended that I press my case with the Zoning Board of Appeals.

**Bill Flaherty** - I would take it from that offer that you would consider building a house on that property if certain additional criteria that you may have that you can work out between the parties to find a new location for the house.

**Steven Kent** - Yes and no. I told Richard Shea and I told Chris Buck that there were certain circumstances under which I would cease to fight it. But I wouldn't be happy about it. They would include redrawing the subdivision boundaries. There was an original optional lot that meet the wetlands and they rejected that. But you could do a flag lot and go north. There is first category on steep slope land, a lot of it to the north. Getting off my west border entirely and then have covenants about keeping the existing structure in the footprint and within the square footage. And then I would accept it but I got no response on this. I also offered to buy the property and unify it with my septic system so no septic would be necessary and give Ms. Reeves and her guests full use of it for life. But that wasn't addressed either.

**Bill Flaherty** - So is it safe to conclude that there is no compromise between the

parties at this point in time

**Steven Kent** - I don't know. There was some back \_\_\_\_\_ discussion that maybe these things would be proposed and discussed. But as of today there is no news about any of that and no body has responded to those proposals yet. I will continue to fight it if it continues to \_\_\_\_\_ my north and west border because I feel that is a big detriment to my property.

**Bill Flaherty** - I would like to see an architectural drawing showing the type of house to be built. And a survey of the property showing the exact location of the house as well as the variances required.

**Glennon Watson** - Well that was submitted with the application, the terms of the survey was submitted with the application and the amounts of the variances were specified in the application

**Bill Flaherty** - But we have no architectural drawings

**Glennon Watson** - There are no architectural drawings. They were not submitted.

**Bill Flaherty** - I don't think we ever granted a variance without an architectural drawing. Have we?

**Vincent Cestone** - I would like to see an architectural drawing

**Robert Dee** - Now that we are talking about 720 square feet, that changes the whole building's footprint

**Vincent Cestone** - That's right

**Robert Dee** - Even if you use the same footprint, you have to go up a second story to get it to 720 square feet. That changes the whole thing.

**Lenny Lim** - You said you were going to build a second story or an extension

**Glennon Watson** - What I said was, that what we showed on this plan where we maximized the disturbance

**Lenny Lim** - Right

**Glennon Watson** - Was an extension out the back. And you can tell by the different shades of brown here. How much we would have to add to the building to get a footprint of 720 square feet. The law requires a floor area of 720 square feet so it is theoretically possible to put a second floor on this and achieve, and put it into conformity without changing the footprint. That's not been discussed.

**Robert Dee** - I thought that one of the things that we discussed from our last meeting was to stay on the original footprint

**Vincent Cestone** - But now we are talking about a second story building

**Robert Dee** - But it will be the same footprint but it will be two stories high

**Glennon Watson** - I would think that a two story, a second story addition would be more objectionable frankly because it would sit higher out of the ground. And what happens with this ground is it goes along fairly level until it gets to the property line and then it begins to slope downward toward the Kent house. If you were to put a second story on, in my view, and it is just my view, that would raise the roof. It would put another wall at a higher elevation and a more visible elevation. I would think that coming out the back, a portion of that, certainly you would have a longer building to look at but it would be lower and it would be less obtrusive. It would be partly blocked by the stone wall and so I would, whether or not we have to get, bring it to Code is another question. I think we probably do, but assuming that we do, I would think that this should be a less objectionable solution to the opposition.

**Robert Dee** - I think you have to understand from our point that there are still a lot of questions here.

**Glennon Watson** - I will be happy to try and answer them.

**Robert Dee** - I mean we started out with a 400 square foot, we were talking about that at the last meeting. Now we are up to 720.

**Glennon Watson** - It is 24 by 24. Roughly 24 by 24

**Steven Kent** - 22 by 22

**Robert Dee** - Somewhere, in other words you have to come and conform and add to that

**Glennon Watson** - Yes. We need to go up or go back.

**Robert Dee** - But the picture shown here with the septic seems the clearing is a lot bigger from

**Glennon Watson** - It is bigger

**Robert Dee** - Last week. I am just trying to make sure we are all on the same page.

**Glennon Watson** - It is bigger

**Robert Dee** - That's all I have

**Bill Flaherty** - The only comment I have is that this is a very picturesque area. There is no question about it. It's very pretty. A very nice place. But Ms. Reeves you are in violation of zoning law in as much as you have two unlicensed automobiles on your property.

**AnnMarie Reeve** - I have what

**Bill Flaherty** - Unlicensed automobiles. You have no licenses on those automobiles that you have on your property.

**Glennon Watson** - We'll see. That's a different piece of property. It's across the road.

**Bill Flaherty** - It is in front of her house

**Glennon Watson** - No. There is no. You are incorrect. There are no cars there. There are no cars on her property. On this piece of property. There are two cars on the white farmhouse down the road, but that is not this piece of property. It is on the other side of Indian Brook Road. You drive from Putnam Valley down the road and you go up here, that house is across the road. It is on the other side. We'll tend to it

**Bill Flaherty** - I think it should be tended to.

**Robert Dee** - What he is speaking to I think that in the application Ms. Reeves says she resides there.

**Glennon Watson** - That may be a mis-statement on my part.

**Robert Dee** - But that's what it says. I'm just trying to get it clear. Whether she resides there or not.

**AnnMarie Reeve** - At the moment no

**Robert Dee** - At the moment no. Okay. Because I was looking at the same thing, I saw the abandoned car and open windows and I was trying to figure out how someone resided there.

**Bill Flaherty** - That's all I have

**Vincent Cestone** - Any more comments from the board? Any comments from the audience? You and then you. Please introduce yourself.

**Andrew Willingham** - My name is Andy Willingham with David Klauser (?) and Associates. Mr. Kent asked us to take a look at the site because he has some concerns mostly with the septic. He didn't think, he saw some rock, he knew his soils weren't good and he wanted to get an opinion as to whether another engineer thought that a septic could get approved or should get installed. So we went out to the site. We also took a look at the Putnam County Health Department regulations. We also spoke to someone at the Putnam County Health Department. We went to the site, we were a bit surprised to see how much rock was out there.

**Vincent Cestone** - Glen, do you have Putnam County Board of Health Approval

**Glennon Watson** - No. We do not.

**Bill Flaherty** - But that is in process

**Glennon Watson** - We have not made an application. It is normally done once the subdivision is approved.

**Andrew Willingham** - In the Putnam County Health Department code is obviously you can't put a septic on top of rock and have a minimum of 3 ½ feet of soil. But we found at the site, he mentioned a bedrock outcropping in the center here, but what we found was rock, several layers of rock outcropping. At least 4 to 5 ridges coming down here. Certainly in this area here there is absolutely bedrock outcropping and we basically determined that we don't think you can get an approval out there. You have a rock outcropping and one 20 foot away with a little bit of soil in between and maybe you get 3 ½ feet in the middle. I just, as an engineer, I wouldn't want to try and design that and I think all the rock outcroppings need to be shown on the plan to really see what works out there. I think there is a lot more than what is shown, I mean the surveyor could have missed it or

**Vincent Cestone** - That's really not our venue. That is Putnam County's

**Andrew Willingham** - Right. I understand that it's, we don't believe that this is a buildable lot. So I mean really we are talking all this discussion about a lot, and giving a variance on it and it \_\_\_\_\_ can't be approved then it's not a buildable lot. And there is plenty of other issues with the septic in here that we discussed. Slopes are too steep. It says they got an 8 to 10 minute perc which is surprising because it's clay out there. Any way I encourage you to go through my letter and just

**Vincent Cestone** - Did you submit this letter

**Andrew Willingham** - Yes I did.

**Vincent Cestone** - Okay. Sir, introduce yourself

**Fred Osborne** - My name is Fred Osborne. I live in Garrison. I am a Commissioner on the New York State Taconic State Parks Commission so I am very concerned about anything that happens near our State Park and this is of course is surrounded by Fahnestock Park. I just would, kind of as an over view to you all to ask for particularly careful examination of all the possible variances, adjustments, give aways, give backs, in something that is so close to the Park. On a road that is used for access to the Park for visual impact as well as all this other stuff about the mechanics of the septic. So I just want to represent the people of the State of New York in that sense and ask you to be particularly vigilant on this project.

**Robert Dee** - Are you speaking as an official from the State of New York is that what you are saying?

**Fred Osborne** - I am not.

**Robert Dee** - Oh, you are speaking

**Fred Osborne** - I am speaking as a person from Garrison and I have this volunteer job that makes me concerned with the State of parks. I better not say

**Robert Dee** - When you said you were with New York, I wanted to make sure

**Robert Hilpert** - I am Bob Hilpert and I am an attorney and I represent Steve Kent. I really didn't plan on speaking tonight but I think you cut Mr. Willingham a little short when he was making the point about the rock outcroppings because right now we are showing an area that looks like it is 10,000 out of 80,000. As I am looking at the cleared area it actually looks like more but assuming it is only 10. If the outcroppings are there that he says, then that area is only going to get bigger. It is not going to be 10. It is going to be 20 or 30. So I think that it is important for you to know that. I think it is important for you to know that now when you are considering the application.

**Vincent Cestone** - Oh I agree.

**Robert Hilpert** - Okay.

**Vincent Cestone** - Sir?

**James Bacon** - My name is Jim Bacon and I am an Environmental Lawyer for about 20 years and I have met Mr. Kent and work with Mr. Hilpert and I would like to make a comment on this. I did get a letter in shortly before 4 o'clock and I don't

**Robert Dee** - We just got it now

**James Bacon** - Okay. And a couple of points. Where we are most concerned about really from an Environmental standpoint is are the impacts potentially to Mr. Kent's well. His drinking water supply, if that gets impacted, that is a severe detriment to his property and there are some Environmental factors that need to be taken into account. I think #1 and #4 deal with impact of the environment out of the five factors and Mr. Hilpert did an excellent job, I think, in looking at all the factors. But specifically 1 and 4 they deal with Environmental impacts, adverse impact and detriment to neighboring properties. And as Mr. Willingham letter says, if the septic goes near that line, any ground water can go through and seep up into Mr. Kent's property and the grading goes right down to his well. So if that is impacted then he has a severe impact to his property. I think some of the issues that were brought up tonight we haven't really had a chance to see the different changes that they are proposing

**Vincent Cestone** - That is why I am not closing the public hearing

**James Bacon** - We appreciate that very much. I think that it is very important for the board to get a good engineering sense of this to be able to come to a decision on the environmental impact to really get a map that shows those outcroppings and where that septic may or may not go. As Bob said, the area may be expanded to accommodate the septic and that is something that the board really needs to have that information to make a good decision. And also I think a big concern is that we had thought that it was a 400 square foot house, 22 by 22, the interior you know you need a little area for walls and if they are going to expand it to 720 feet then that's a significant increase for that size. You are taking a non-conforming situation and you're exasperating that non-conformance with the size of the house and that is a big concern to us. And I think for precedent of this board and the past cases that it has seen, 51 percent variance becomes something that the board should really think long and hard about.

**Vincent Cestone** - We have given 100 percent variances in some cases. So that in itself is not a determining factor. It is a consideration.

**James Bacon** - Okay. Well along with that I guess that's why I am talking about the Environmental Impact as well. And so we are glad that you are going to hold the public hearing open and hope to see the new maps before the next visit here. Will the board hold the public comment or would it be for just written comment?

**Vincent Cestone** - I am leaving the public hearing open so you can make comments.

**James Bacon** - Thank you very much

**Vincent Cestone** - When I close the public hearing, you can't make comment. You had a comment?

**John Delano** – Yes. Just a couple of quick points. During the Health Department approval process, every site. Every site is visited by the Health Department to inspect the test holes or the test holes will have to be re-excavated for inspection and logging by the Health Department. One of the typical comments is to show the ledge. The ledge eventually will have to be located, shown. So we will know during the permit application process as Glen mentioned previously, our dealing with the Health Department, since this is a subdivision application, it is normally done after preliminary approval is granted by the Planning Board, which is done after the SEQR loop is closed. The Health Department is resistant to taking lead agency status on any subdivision process. That is how come we have not approached the Health Department. In speaking with Glen we can maybe change things around but we would have to get a Board of Health approval on 300 acres instead of 2 plus acres. And deal with them in that regard. If there is rock in the middle of any of these areas that, that by the way is 10,000 plus, 10,000 plus so it is 20,000 which makes more sense when you look at the coloring. There could perhaps be a piece of rock that is objectionable in the middle of this area to the Health Department. That puts this project, it blows it out of the water. It is not like I can move it further this way because the slopes are too steep. Outside of most these lightly shaded areas the slopes are too steep in order to obtain a Board of Health Approval. As for the well, the proposed septic system is out of any expansion area or out of the direct line of drainage to the neighbor's well. The neighbor's well will be afforded the exact same level of protection as is every other tax payers well in Putnam County.

**Bill Flaherty** - May I ask you when do you intend to present this to the Board of Health

**John Delano** – This is something I have to discuss with Mr. Watson and the applicant. Like I said normally we would go through the Planning Board, in this particular instance, we are with the Zoning Board. We would finish with the Zoning Board and go back to the Planning Board, have SEQR loop closed, okay. And then get preliminary approval and then make application for subdivision approval to the Health Department. And then they would look at the newly created lot.

**Bill Flaherty** - Because obviously this is a pretty important factor

**John Delano** – Then maybe you need to discuss the retiming of the issue and instead of approaching the Health Department for a 2 lot subdivision, they would have to be approached for a single permit on a large tract of land.

**Bill Flaherty** - Well that's your choice



**John Delano** – Well if we can't get passed this board, we are prevented from moving on passed this board without getting that permit, you've taken the choice away

**Robert Dee** - So if we deny the variance, you are not, there is no sense in your going to the County

**John Delano** – That's correct

**Glennon Watson** - I'm, Mr. Bacon, I am curious as to, he said to you that making the building larger to make it conforming exacerbates the shortage of the building box. The 6,000 square foot, the shortage of the 6,000 square foot building area. Now that extensions stays within the building area that we have, and I think that you deserve an explanation as to how extending the building exacerbates the problem that we are trying to overcome by seeking the variance. The link is a very tough link for me to make. I think you deserve a detailed explanation of what that means particularly since that if we have the 6,000 square foot it would be nothing to prevent us from filling it up entirely with building. 6,000 square feet. We are talking about perhaps 720 square feet. So, I think that statement is misleading and I think you should ask him for an explanation as to how that works.

**Steven Kent** - I want to make a couple of points they haven't made and respond to a couple of factual points that we said here briefly. Ms. Reeves does not live at 702 and hasn't for a better part of two years. So that house has been empty, her mom went into a nursing home and it has been empty during that period. Mr. Watson said well a lot of these points are moot because we already have a building. The building is derelict, you've seen it. And it doesn't have existing building rights after abandonment for one year let alone 60 years. The building has been empty that long and untouched. Mr. Watson said something about there are extreme steep slopes to the west of the property, over here. And there are here, there is flatter land over here. There is also pretty extreme steep slopes on my property, that you didn't mention. I've looked at the slope analysis maps and I have them here, but there number 1 land here, there is also some number 1 land here that he is not mentioning that. I also would like to point out that Ms. Reeves tonight said well I may live in or I may rent it out. Two weeks ago she said the opposite. She said I won't live in it and I won't rent it out. Maybe occasionally I will have a guest there. There is nothing preventing this from becoming a spec house and that is my fear. There is also, a nice green map and it is not Glen Watson's fault, I have seen it on the topo maps and so forth, in the septic area there is one little tiny thing that says rock on it and actual fact, if you have seen the property, it is 50 percent rock ledge throughout. And we need a map that shows that before this is taken seriously or else you are there on site looking at where they are talking about shoe horning it in between rock ledge. And on that subject, to do that, 3 ½ feet of fill on top, they are going

to bull doze and regrade the whole area

**Vincent Cestone - Right**

**Steven Kent** - So selective tree cutting and so forth, I don't buy it. It is a bull doze and regrade job. Retaining wall also heightens that idea that it is going to be fill. One thing I didn't get to say in answer to your question Mr. Flaherty whether I would accept it under different circumstances is that I had framed in my mind that it could go north and west and the septic would be off in the woods where nobody could see it including my neighbor Mark Adams before I walked the property with Mr. Willingham. And he looked at it and he said this is crazy. There is no good place to put that septic. And I'd have to be, and I am not too sure that I would stop fighting it under these circumstances where the septic is so \_\_\_\_\_ and threatens the wetlands there.

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

**Steven Kent** - ...the 259 acres bought by Chris Buck will likely, and we don't know this for sure, but the intent is that it will revert to park land. Including, if the variance is not granted and the subdivision doesn't happen, that 2 acre parcel. So it is surrounded by Fahnestock now, it stands to become part of Fahnestock.

**Vincent Cestone** - It could also be subdivided and turned into houses

**Steven Kent** - Mr. Watson asserted that there would be no impact on the well, the other engineer from Badey and Watson, but there are hydrostatic pressure issues, there is up welling under the rock that comes out on my property and it could impact the well. As for linkage or more or less doubling the square footage of the building now with the idea of further damage, I think it is self evident. It is a derelict property that is kind of a fig leaf excuse, not a grandfathered existing building, and now to make it conform they are talking about remedying this by making it twice as big. At previous hearings we were led to believe that it was going to be the same size. I've got a statement here that I won't read, but I

**Vincent Cestone** - Good because I wasn't going to let you

**Steven Kent** - I will give it to you. But it basically says, it goes back and looks at the natural resources and open space plan. The build out analysis for Philipstown. The Comprehensive Plan that was adopted in March 2006. And it takes maps from there and shows where the property is on those maps. The gist of this all is that the intent is clear in all these plans that this area is to be preserved. It is exempted from the build out analysis because it is not considered buildable. It has many categories of the highest form of conservation protection. Priority surface water resource area. Priority biodiversity research area with a significant ecological community within a matrix forest. A priority community character resource area to be preserved as an agricultural district.

Priority outdoor recreational protection area. This land in particular designated as an outdoor research. So I have the maps and I drew circles on them where these things are. My basic point is that you know on the merits most of what we are talking is zoning law in general and were this anywhere else in Philipstown would it be approved, should it be approved. And there were examples of places where this kind of thing has not been approved elsewhere in Philipstown. But beyond that, this land is very sensitive. It is not just me asserting it, it is all the planning documents that for project of change in zoning which the Town has to some extent has already adopted. And the intent is clear, this area is not for spec house development. It is for the highest level of conservation.

**Vincent Cestone** - any last question

**AnneMarie Reeve** - I have just one...it's not going to be a spec house. I can tell you that right now.

**Robert Hilpert** - I just have a point of clarification. When we were here last week, when we were looking at a map, I don't remember which one of the earlier maps it was that showed an area where the septic was going to go and Mr. Watson said that was 8,000 square feet. And when I commented I said 8,000 square feet and he was quick to point out that some of it was expansion area and it really wouldn't be 8,000 square feet. Now I am seeing, I guess based on that other map that Mr. \_\_\_\_\_ showed us, we are looking at more like 20,000 square feet. Not 8,000 square feet. And based on what Mr. Willingham said we are looking at 20,000 square feet and he thinks there is all rock outcroppings so it may even be bigger than that. And we were talking last week about our concern about \_\_\_\_\_ a portion of 8,000 square feet and now we are looking at maybe \_\_\_\_\_ half of the 80,000 square feet. It is very substantial. So I would reiterate my point that notwithstanding the fact they may not make their application now, I think we need to have something definitive that shows where that septic is going to go. Because that is where all the forest goes away. And that's what has to be shown. And this really doesn't show us that.

**Robert Dee** - Could you answer Mr. Watson's question about the 720 square feet with

**Robert Hilpert** - I heard his comment in regard to what Mr. Bacon had said. I don't think that that was Mr. Bacon's point but, in the interest of time why don't we not do that. Maybe Mr. Bacon and Mr. Watson can discuss that privately. That wasn't my comment. As far as the house goes, we measured it. I think it is 22, 22 square on the outside which is a 400 square foot interior more or less. Because I wrote a letter that said 400 and everybody has been saying 550. I don't think I'm wrong.

**Robert Dee** - Now it's up to 720

**Robert Hilpert** - But what's there is 400 interior.

**Steven Kent** - There is 400 on the inside if that

**Vincent Cestone** - Mr. Watson?

**Glennon Watson** - It's not me that needs the clarification with regard to the comment of about the extension of the building within the available buildable box exacerbating the shortage. I think it is you that needs that comment and I will ask Ms. Reeve to correct me if I am wrong, but I understand that she has to deliver an option back to Mr. Buck to purchase this property if she ever goes to sell it. Is that correct?

**AnneMarie Reeve** - Yes. This reverts back to Mr. Buck if I want to sell it. So there is no speculation here.

**Robert Dee** - I am sorry, can you say that again?

**Glennon Watson** - As her right to buy it survive the contract of sale, at the closing of the sale to Mr. Buck, when she purchases it back, Mr. Buck will retain a right to buy it if she ever sells it. So the idea that it will be a spec house that she is going to sell on the open market that was floated here a moment ago, is simply not true.

**Robert Dee** - It could be rented?

**Glennon Watson** - It could be rented, I would think so. And what we tried to show you here is a much more detailed explanation of and evaluation of what will be needed. We have taken the time to grade the site, we have taken the time to locate the trees and show what trees have to come out. We know where our test holes are. So while Mr. Hilpert's comparison of 20,000 square feet of clearing to half the 80,000 square foot lot leaves a little bit to be desired in his mathematical skills. Our attempt here was to show you as much as we can show you that would need to be cleared and we have taken no short cuts that would make it seem other than as it is. Other than as we see it I should say.

**Robert Dee** - It just appears that this is growing.

**Glennon Watson** - It did grow. It absolutely grew

**Robert Dee** - It started out at 6 now we are up 20. We started out at 400 now it is growing. It just concerns us

**Glennon Watson** - It is absolutely understandable. It did grow. And I, no surprise, that you do raise that issue and appropriately raise that issue. The growing of the building to 720 square feet it was, you came to the same

conclusion in your opening remark that the building, before I got to talk to it, that the building is not conforming and we would have to make it conforming. So we are trying to demonstrate that we would try to make it conform.

**Vincent Cestone** - Speaking to that point before the next meeting which will be September 13<sup>th</sup>, that's our next meeting because we don't meet in August, I would like to see a design for the house. I am not voting on this until I see what I am voting on. So I want to see what the house is going to look like. It doesn't have to be an engineer drawing, but it has to be something that is representative and to scale so the board can see what we are voting on. And with that, we are continued until September 13<sup>th</sup>

**Robert Hilpert** - The rock outcroppings, would you ask for that too to see where that is

**Vincent Cestone** - I am not interested, that is Putnam County

**Robert Hilpert** - But they are not going to make the application to Putnam County until you vote, so you will not know

**Vincent Cestone** - If Putnam County denies them a Board of Health they basically don't do anything.

**Robert Hilpert** - I know, but they are asking you for a variance that would allow them to put in a system that we don't

**Vincent Cestone** - If we decide to approve this, which I am not saying that we are, we would put boundaries on it. And if they go outside of those boundaries, then they would have to come back here. We are not going to give them a carte blanche if we decide to approve. We would make stipulations that they would have to meet. We are not going to give them a blank check.

**Robert Hilpert** - I just think it is hard to get down the line there

**Vincent Cestone** - Without a board of health approval it is very hard to know what you are going to do, and you can't get a board of health approval unless you meet certain criteria.

**Robert Hilpert** - I understand that, the point that I was making and then Glen said my math is wrong, I need to defend my math. I'm good at math. But my point was is that it started out as something less than 8,000 and then this week Mr. Delano says it is 20,000 and Mr. Willingham says that there is more outcroppings of rock than the map shows, so it looks like it is probably going to be, if you can put a septic at all, even bigger. That's when I said maybe it could get to 40,000. 30, 40 it could be half the lot. And I thought that it was important for the board to understand whether or not people are asking you to shoe horn a

little 8,000 square foot septic or they are asking you to clear cut 40,000 square feet of trees. And that's why I thought you should have the information.

**Vincent Cestone** - Which we wouldn't approve giving them carte blanche to do that.

**Robert Hilpert** - But you don't know

**Robert Dee** - We already know the minimum is going to be 20,000. They pretty much said that.

**John Delano** - What is graphically shown on the document. That's if we are unsuccessful in getting a waiver to place the \_\_\_\_\_.

**Robert Dee** - That could get even higher if the Board of Health got there and said they wanted more done or fill or something like that. So you are saying 20,000 is it

**John Delano** - What is graphically shown on this plan is the worst case scenario as far as making the house conform and as far as fitting a 3-bedroom septic system as required by the Health Department. We are going to ask them when it comes to that point in time to provide relief on this requirement because all it is is taking down trees and putting the fill in just in case this goes bad. And if they are nice and they let no put this in, then we have this scenario here. We've had two or three systems in the past 24 years where they have let us off the hook. They are not too ambitious.

**Robert Dee** - In my mind is I am looking at this, the worst case scenario.

**Adam Rodd** - Just so I am clear, the worst case scenario that you are describing that is depicted there, that area would be clear cut where the proposed septic

**John Delano** - All the existing trees would have to be removed. There will be fill

**Robert Dee** - It is being clear cut

**John Delano** - Simply yes

**Adam Rodd** - okay

**Vincent Cestone** - No more comments.

**John Delano** - 13<sup>th</sup> with architecturals

**Vincent Cestone** - We want to see an architectural drawing of the structure at the minimum requirement

**John Delano** - Very good

**Vincent Cestone** - The sooner you get it to us, \_\_\_\_\_ What ever you want to do, two story, 1 story, if you want to give us both, great. The quicker you get it to us so that the residents can look at it, down stairs in the office, because my intention if no new information is added to close the public hearing

**Robert Hilpert** - Perc results too? Are they going to file the perc results too? Will they be filled with you

**John Delano** - We can provide them, but the application to the Putnam County Department of Health and they are typically shown on the subdivision plat that we do with the Planning Board. They are not official until they go out

**Vincent Cestone** - If you could just drop them off

**John Delano** - We can drop off a copy

**Bill Flaherty** - How long does it take to get the results from the County

**Robert Hilpert** - They have them

**John Delano** - On their application? Anywhere from 3 weeks to 9 months depending on the size, the vacation schedule, and the time of year. Typically its been 6 to 9 weeks lately to get a permit approval through them.

**Vincent Cestone** - So the quicker you get it in downstairs, the better off so the residents can go and look at them. Any other items we wish to make

**Lenny Lim** - That goes for everybody. Anything else you want to put in, put it in now.

**Vincent Cestone** - Don't wait until the last moment. With that I make a motion to adjourn.

**Lenny Lim** - Second

**Vincent Cestone** - 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: 9/13/10

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kim Shewmaker', written over a horizontal line.

Kim Shewmaker  
Secretary