

TOWN OF PHILIPSTOWN ZONING BOARD OF APPEALS
Philipstown Town Hall, 238 Main Street, Cold Spring, NY 10516
October 3rd, 2022 Minutes

Present

Robert Dee (Chair)
Vinny Cestone
Granite Frisenda
Lenny Lim
Adam Rodd (Attorney Drake Loeb PLLC)

Absent

Janice Hogan

Please note that these minutes were abstracted in summary from the meeting and a taped recording. Chair Dee opened the meeting at 7:33 pm and led the pledge of allegiance.

Approval of Minutes

Chair Dee: Okay, first order business is the minutes from September 12th, any changes or corrections?

Mr. Cestone: I'll make a motion.

Mr. Frisenda: I'll second.

Chair Dee: All in favor?

Chair Dee: Aye

Vinny Cestone: Aye

Granite Frisenda: Aye

Lenny Lim: Aye

Public Hearing

Dan Ward 69 HyVue Terrace, Cold Spring, NY 10516 TM#27.8-1-47

Chair Dee: Dan Ward, 69 Highview Terrace Cold Spring. Applicant is Seeking a variance to construct an 8' fence want to come up to the microphone. Tell us why you need an 8' fence.

Mr. Ward: Right, I'm having some issues as I mentioned last week with my neighbor and how I outlined in the packet.

Chair Dee: That's at 59?

Mr. Ward: Yes.

Chair Dee: Give me a little more of the Issue. It's the last couple of years?

Mr. Ward: Yeah, It's been like the last two years.

Chair Dee: All right now we talked last month you said you might get an order of protection; did you try and do that yet?

Mr. Ward: Yeah, I have it right here.

Chair Dee: All right when you get a chance make a copy of that and put it in the file so we have it.

Mr. Ward: It's been going on for the last two years.

Chair Dee: I got eight letters here from neighbors and they all pretty much say the same thing. I'm not going to read them all but they'll be in the file and they all pretty much say that your neighbor's been giving you and them also (Inaudible), it's not just you.

Mr. Ward: Yeah, not just me.

Chair Dee: It's not just you that's what I'm trying to say. I went and I viewed the property. I guess the fence is going up behind the new garage you built?

Mr. Ward: Yeah.

Chair Dee: Okay and that's the garage we gave you the variance for, correct?

Mr. Ward: Yeah.

Chair Dee: Now it's got to run the whole length of the property, not along the back?

Mr. Ward: Yeah, just between the two properties, not along the back.

Chair Dee: Not along the back?

Mr. Ward: Not along the back no just between the two parts.

Chair Dee: So, what's like about what 60 feet or how long would that be?

Mr. Ward: Good question, I think it's more than that. It's not going to be cheap.

Chair Dee: Do you have it down on your application?

Mr. Cestone: Do you have a survey?

Mr. Ward: oh yeah that was a requirement for the garage. I got a fresh survey from Badey and Watson.

Mr. Rodd: The fence is along the side yard, correct?

Mr. Ward: Along the side of the property correct, right between the two properties, me and the adjacent property.

Mr. Rodd: And the address of the adjacent property is?

Mr. Ward: 59 Hy Vue.

Chair Dee: So, the fence is between 59 and 69.

Mr. Lim: Explain to us why you need an eight-foot fence.

Mr. Ward: My neighbor is over six feet tall.

Mr. Lim: So, he can look over your fence?

Mr. Ward: You get the picture.

Chair Dee: Let me ask you a question, I viewed the property. Whose generator and propane tank is that, is that yours?

Mr. Ward: That's mine.

Chair Dee: That's yours. Okay so the fence will be on the other side of that?

Mr. Ward: Yes.

Chair Dee: I didn't see any survey sticks; did you have that line surveyed?

Mr. Ward: Oh yeah, they're in the ground there's three of them. There's one on either end and one in the middle.

Chair Dee: So, you had it surveyed, I don't want you to put the fence you know mistakenly.

Mr. Ward: No, I have a survey that Badey & Watson did in 2019. They went out and they staked the entire property so I know exactly where the property is.

Chair Dee: And they're visible?

Mr. Ward: Yes.

Chair Dee: I see that your house is below the road level, the road is pretty high and your house is pretty low. I guess that's why you have that berm for the new garage so the water doesn't go in the garage.

Dan Ward: Yeah.

Chair Dee: So, it's not going to be really noticeable from the road too much?

Mr. Ward: I don't think so.

Chair Dee: Are you going to bring it all the way up to the end of the driveway to the road?

Mr. Ward: Yeah, pretty much. As far as I'm allowed to.

Chair Dee: Do you think it's going to block any vision coming out of your driveway?

Mr. Ward: No because there's a hedge there already, the hedge is about eight feet tall on my neighbor's property. I never back out on my driveway anyway I always pull out because you're right if you're backing out it's dangerous.

Chair Dee: Like I say I have eight letters here. I'm not going to read the names or anything else like that in this instance but they're basically saying that they see that you've been having problems with your neighbor and they've been having problems with the same neighbor. So, they all attest to that issue. Are there any questions from anybody, any board members?

Mr. Cestone: Okay you put an 8' foot fence up, what is the goal, to keep them from looking in your property or throwing things on your property? I guess I'm asking what's the end game because he could actually damage your fence if you're not looking.

Mr. Ward: I just would like the privacy.

Mr. Cestone: Has he walked onto your property along the property line?

Mr. Ward: As I mentioned in the packet, he's thrown a lot of items on my property.

Mr. Cestone: Okay, I just want to get it into the record.

Chair Dee: Didn't he put a couch or some furniture on your property or something like that?

Mr. Ward: Yep.

Chair Dee: So, I guess you're trying to avoid that with the 8' fence.

Mr. Ward: I've been trying to get along with my neighbor, I didn't make any issue of that. I threw the garbage out I had to pay to get rid of it at Royal Carting. I've really tried everything to get along with this individual.

Mr. Cestone: (inaudible)

Mr. Ward: There's a picture of it in here.

Chair Dee: It's a wooden fence.

Mr. Ward: I'm going to put in the pressure sheet of four by fours and eight-foot sections.

Chair Dee: You're going to construct a fence yourself is that what you're saying, it wouldn't be an already produced fence you're going to make it?

Mr. Ward: Oh no, I'm going to buy the sections.

Chair Dee: You're going to buy the sections. The pictures I saw I have never seen a fence like that.

Mr. Ward: It's like a barn style fence. I want to do like pressure treated something like that that I can take the sections off and stain every couple years.

Chair Dee: Is there anybody in this audience wants to speak to this? I make a note that there's nobody else who wants to speak today. What we call the five factors, there is five questions we ask to help the board consider your variance.

- 1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the area variance?***

Chair Dee: That's a question to you.

Mr. Ward: I don't think so, I agree with what you said that my property is set down plus there's a lot of trees in the area people have not clear cut their properties so there's a lot of tree coverage.

Chair Dee: I saw this property really pretty much down from the road your house as well so yeah, I don't think it'll be visible.

2. *Can the benefit sought be achieved by some method, feasible to pursue other than area variance?*

Chair Dee: That would be the question about a six-foot fence, could a six-foot fence suffice instead of an eight-foot fence and that would be a question for the board to decide.

3. *Is the requested area variance substantial?*

Chair Dee: Well, I'm sure there's a lot of people in Philipstown who may have had discussions and issues with neighbors they put up a six-foot fence and that was fine. We're trying to find a reason for the eight-foot fence that's what you have to explain to us.

Mr. Ward: Well, my neighbor is over six feet tall, that's kind of my reason.

Chair Dee: He might throw stuff over the fence and you think that an eight-foot eight foot will help you?

Mr. Ward: He's been throwing all kinds of stuff on my property, brush, three couches, two mattresses, oil cans.

Chair Dee: An eight-foot fence would make it harder to throw the couch over.

Mr. Ward: Absolutely. He's taller than the fence so that the privacy issue is just not going to be satisfied with a six-foot fence. If he was a shorter guy, it would be hard to argue that.

4. *Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?*

Chair Dee: I viewed the property. I don't see that it's going to change the neighborhood or anything else like that. I think the only person it's going to really be visible towards is your neighbor and you're going to have to deal with that.

5. *Is the alleged difficulty self-created? (This consideration shall be relevant to decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.)*

Chair Dee: Well, I wouldn't say this is self-created because if you weren't having a problem with your neighbor, I guess you wouldn't want the fence. You wouldn't go through the expense.

Mr. Ward: I really don't want to go through the expense and work of doing the fence because I do all my own work so now it's a lot of extra work, a lot a lot of money especially with materials have gone up and doubled, tripled. Not my first choice, that's like the last choice.

Mr. Lim: Why not seven feet instead of eight?

Mr. Ward: If I'm going to go to the expense of doing seven feet, I'd rather do eight feet just for good measure. He's over six feet tall so it's just barely making it.

Chair Dee: I guess it comes in eight-foot lengths too?

Mr. Ward: Yeah, eight foot they usually they make six-foot and eight-foot sections.

Chair Dee: Any questions on the board? Okay, I make a motion to close the public hearing. Second?

Mr. Cestone: Second.

Chair Dee: All in favor? All right I'm going to ask for a roll call vote.

Mr. Cestone: Normally in a case like this I wouldn't support this but this is a very unique situation with a troublesome neighbor so I'm going to vote in favor.

Mr. Lim: I agree with Vinny. Normally I wouldn't vote for an eight-foot fence but sounds like you need eight feet.

Mr. Frisenda: I'll vote in favor.

Chair Dee: Like I say we usually only get six feet not eight feet but I think yours is an extraordinary situation. So, we can always make exceptions and I agree with the board that this is the right exception to make. What I'm going to do is going to sign it's okay for you and you're going to be able to take that to the Building Inspector tomorrow and get your permit.

Mr. Ward: Okay. Thank you very much everybody, appreciate it.

Chair Dee: There you go, that's yours. You'll be able to go tomorrow and he'll be able to take care of everything you need, I wish you a lot of luck.

Erika Widmann, 14 Howland Rd., Garrison, NY 10524 TM#90.8-1-49

Chair Dee: Next one is Erika Widmann, 14 Howland Drive Garrison. I saw a letter that you said that Mr. Lentini can represent you. So, what I see here is you're looking for a one story 480-foot square addition requiring a front yard variance where 50 feet is required and 33.58 is proposed. Further, the addition is a non-conforming structure exceeds the provision of chapter 175 23 B2, greater than 25% of the 1,650 square foot existing structure. So, you need two variances. You need the front yard variance and you need the variance for the area.

Mr. Lentini: I regret that I discovered a little error with the calculations on the application. We were adding to the garage which is 480 square feet. 25% would only be 413, we couldn't reach the outside walls. We however overhung the garage two feet is where I've taken the front yard set-back from but the area is actually instead of being 29% we're closer to 30%, 35% percent. The actual structure is 576 square feet. I'm not sure how that affects our noticing or anything.

Mr. Lim: What did you say it's 29?

Mr. Lentini: Well, we were required to be no more than 25 to not need that variance and we were 480. So, we need that variance by 29 but we're actually 35.

Chair Dee: So instead of the addition being 480 square feet what's it going to be now?

Mr. Lentini: 576.

Chair Dee: 576. Adam, you got that?

Mr. Rodd: I did and the enlargement is 35% as opposed to 29.06%

Mr. Lentini: That's correct. I was pleased when they avoided bothering me to fill out the applications and I wasn't the one that filled them out. I think the 480 came from it just looked like we were adding on top of the 480 but in fact we were overhanging.

Chair Dee: So instead of 29 it's going to be 35?

Mr. Lentini: 35 yes, that's a gross number.

Chair Dee: Now as far as the front yard variance I went I viewed the property it looks like the existing house itself is closer.

Mr. Lentini: The existing house is 28 feet from the road, our proposal is still beyond that.

Chair Dee: So, it's going to be over the garage there, correct?

Mr. Lentini: Yes, it's still going to be over the garage.

Chair Dee: I took a look at it and I saw it looks like there's plenty of room there. The neighbors are pretty much spaced apart. I didn't see there was going to be any kind of a disturbance to anybody or a view or anything else like that. Is anybody in the audience who would like to speak to this?

Mr. Rodd: Is there going to be a change in the front yard setback?

Mr. Lentini: No.

Mr. Rodd: That's still remaining at 33.58?

Mr. Lentini: That's correct. I took it off of a survey and measurements, a survey stating the 28 feet and then measured back to the garage and then back 2 feet more to the street I'm confident that's correct. I looked at a couple of map sources including Putnam County e-parcel and Bing, Keyhole, Google and because of the trees I can't always see all the houses but they're all about the same line I don't know that there's one house that's 50 feet set back on that side of Howland.

Chair Dee: Well, all the neighbors have been notified so if anybody had a problem with it, they would be here that's for sure. That's what gets people to chance to do that so I guess nobody has a problem because I haven't received any letters or emails or anything else like that.

Mr. Lentini: I think everybody that knows Erika, likes Erika.

Chair Dee: That's a good thing. Not like the other neighbor we don't need a fence?

Ms. Widmann: No.

Chair Dee: We've got to go over the five factors here.

- 1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the area variance?***

Chair Dee: You answered here; *"I do not believe the structure will have a negative effect on my neighbors"*. I believe that because I looked at the property myself. I don't see that it would.

- 2. Can the benefit sought be achieved by some method, feasible to pursue other than area variance?** There's no other way but a variance because the existing house front yard variance is only 33.58.

Chair Dee: Explain that one to me.

Mr. Lentini: Well, we couldn't go any closer to the street and then we'd be furthering a non-conforming and the backyard sort of drops off. The site terrain, the topo is a little difficult because otherwise we'd have to put an extension behind the house and that wouldn't be feasible to connect to the house. As it is we have to do very little to alter the inside of the house. Even though there may always be other ways but the garage is actually almost 11 feet tall so we're cutting the garage back down to the normal floor height. So, in bulk and volume we're not adding a full story we're adding closer to two-thirds of a story. In terms of the appearance of the house it is a contemporary house and we are continuing with a contemporary roof. We originally had plans to make it look more of a colonial with intersecting gables and everything it just wasn't the house and it looked too big. She wants to keep it looking modest and that's what I believe we've achieved.

- 3. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in a neighborhood district? No.**

Chair Dee: I have to agree with that.

Mr. Lentini: Oh yeah, we're not touching the ground so we're not having to dig or disrupt the earth.

Chair Dee: Looking at the project myself I agree.

- 4. Is the alleged difficulty self-created?**

Chair Dee: They're all self-created, that's a trick question.

Mr. Lentini: Well, it's not that we built the house and then you know asked for the variance.

The existing house has one has one bathroom and no storage. adding an addition above the existing garage without changing any foundation would give my family the room we need.

Chair Dee: I agree with that. Are there any questions for anybody board members and nobody in the audience? At this point in time, I'd like to make a motion to close the public hearing.

Mr. Cestone: Second.

Chair Dee: All in favor? I'm going to call for roll call vote.

Mr. Cestone: I vote in favor.

Mr. Lim: I'll vote in favor.

Mr. Frisenda: I vote in favor.

Chair Dee: And I vote in favor. Okay you're all set. Take this with you. Take it with you to the Building Inspector tomorrow and you'll be able to get your permits.

Geisel, 41 Hudson Ridge, Garrison, NY 10524 TM#60.-1-27

Chair Dee: Next one, Thomas and Karen Geisel, 41 Hudson Ridge, Garrison.

Justin Kacur: I'm an architect with Highlands Architecture. My clients are Tom and Karen Geisel and we've designed an accessory apartment above an existing garage at 41 Hudson Ridge. The contractor filed with the Building Department and was denied because the property is off of a private right-of-way it's not a Town Road so that's basically why we're here.

Chair Dee: So, you're looking for a 748 square foot one bedroom accessory apartment?

Mr. Kacur: Actually, I think the contractor must have had that in his application for building permit because that square footage is slightly off. The actual apartment area with the stair is 537 square feet. The apartment itself is 406 square feet and the stair is 131 square feet. The stair going upstairs is going to be placed into the small bay of the three bays so there are two large bays in the garage and one smaller bay which has a flat roof over it. We're intending on ripping the flat roof off and going up with a gable roof extending the ridge line not increasing the height of the building, not increasing the footprint of the building and housing the stair inside the existing garage. The only addition that we have is a second story addition above that flat roof.

Chair Dee: So, for the resolution I mean we need the square footage right, you've got 748 here but it's not 748?

Mr. Kacur: It's 537 square feet, that's the apartment habitable space and the stair.

Chair Dee: 537 square feet instead of the 748?

Mr. Kacur: That's correct. Total square footage is 537. Essentially the owner owns a single-family residence. There's a connector piece, it's a covered walkway that connects the main house to the garage. The garage is unfinished but when they bought the property upstairs above the garage on the second floor it's been plumbed for a kitchen and a bath already and the contractor has been talking with the Building Inspector and the Putnam County Department of Health. The sewer drain that goes from that second floor was already in too and it is connected to the septic tank and that's something that Greg was interested in knowing about and they just proved it the other day with a video camera going down the line to the tank. I have some handouts which are emails from the contractor about the status of the septic and I have emails from the neighbors in support of the project. I just received them a couple of days ago so I can hand them out to you now if you'd like.

Chair Dee: Do you have approval for the septic or not I guess is my question.

Mr. Kacur: Nothing official yet from the Health Department.

Chair Dee: Okay that means we can approve but I can't give you the okay to build on it.

Mr. Kacur: Yeah, I think that would be up to Greg and you'll see it in the emails when we were denied he basically stated that you need to get a special permit from the Zoning Board because you're on a private right-of-way and you need Putnam County Health Department approval. You'll see in those emails that the communication between the contractor and code enforcement. Code enforcement is favorable in not increasing the bedroom count and conveying that to the Putnam County Health

Department that's our understanding based on the communication between the contractor and the Building Inspector.

Chair Dee: I can't give you the approval form because I don't have the approval.

Mr. Kacur: Understood. You could give us the special permit though but just not the...

Chair Dee: No, I don't think I can give any.

Mr. Rodd: We can grant a special permit but the actual issuance of the building permit to the extent it might need Board of Health approval that'll wait but that'll come from Greg. You're just before us for a special permit.

Mr. Kacur: Correct that's our understanding.

Mr. Lim: (inaudible)

Chair Dee: No, we don't have to because we're just going to approve for accessory apartment but I can't give him this. Those people go tomorrow and get a building permit. Greg won't give it to him until he gets to the approval from the Health Department.

Mr. Kacur: But if we get the special permit from you and then we get the Health Department approval then he'll issue the permit.

Mr. Frisenda: We could give him that he just won't be able to get the permit until they get the Board of Health stuff, right?

Mr. Rodd: That's true you're just before us for a special permit. I mean theoretically if for some reason the Putnam Health Department says no, we can't allow this then you won't get a building permit.

Mr. Kacur: Our understanding at this time that the Building Inspector is going to convey that he's okay with everything the way it is no increase in bedroom count so we should get the approval from the Health Department no problem.

Chair Dee: Okay, so the letters here seem to be pretty much in favor of the project. What is it about three acres there?

Mr. Kacur: Yeah 2.895

Chair Dee: I went and looked at it so I really don't see it bothering anybody or be a problem to anybody or anything else like that.

Mr. Kacur: It's very far off of the road, the height to the ridge is 22 feet, I think we have a distance from the property line to the garage corner is 196 feet and the garage corner is approximately 150 feet to Hudson Ridge.

Chair Dee: Because it's just accessory apartment we don't have to go through the five factors they're not a consideration.

Adam Rodd: Right, it's just a special permit.

Chair Dee: Any questions from any board members? No?

Mr. Cestone: The only question that I have is what would the homeowner do who was denied?

Mr. Kacur: Basically, they're just looking for this apartment for Tom's mother who lives in California and she visits a couple times a year so it's really just for a visiting family members. They have no intention of renting it out or Airbnb or anything. It's really just a place for his mom to stay when she's visiting.

Mr. Cestone: So, if it was denied they'd be living inside the house with the rest of the family.

Mr. Kacur: The second thing is a lot of times Tom and Karen work from home and they wanted to use it as kind of like a secondary office so they could have some peace and quiet to work in that apartment if they're both in the house together.

Chair Dee: At this time, I'd like to make a motion close to public hearing, can I get a second?

Mr. Cestone: Second.

Chair Dee: All in favor? I'll take a roll call vote.

Mr. Cestone: I vote to approve.

Mr. Lim: I'll vote to approve.

Mr. Frisenda: I vote to approve.

Chair Dee: and I vote to approve. Okay, you're all set there. You could take that too. Any old business? Any new business? Who is going to make a motion to adjourn.

Mr. Frisenda: Second?

Chair Dee: All in favor?

The board voted unanimously to adjourn the meeting.

The meeting was adjourned at 8:02 pm.

Date Approved: 11/14/22

Respectfully submitted by



Cheryl Rockett
Zoning Board Secretary