

ZONING BOARD OF APPEALS

October 24, 2011

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, October 24, 2011, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

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

ABSENT:

Vincent Cestone - Real long agenda tonight. Review of minutes for September 12th. Any additions or corrections? I make a motion to accept them as submitted

Bill Flaherty - Second

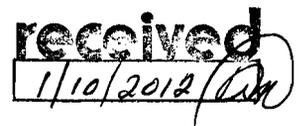
Vincent Cestone - All those in favor

All Board Members - Aye

Vincent Cestone - Opposed?

Vincent Cestone - Next item on the agenda is William Mordhurst for review of completeness. Mr. Mordhurst or someone here to talk to us? Refresh my memory, you were here last time and we asked you to refine your application and I have your application here and I see some specific information. Since this is not a public hearing I am not going to go into an immense amount of detail but did you, as far as the sections of the code that you want us to interpret, did you that in for us?

William Florence - I submitted, the answer to your question is no. That is the short answer. The expanded answer is the disagreement here is on the words customary, _____, and incidental use. What those words mean in the context of this application. The second thing that we said to you that we have not elaborated on and where that comes in is in Section 36 of the Code that Mr. Donohue cited as the 1968 it is a local law number too from 1968 but it continues



through today. Not today, up until May. So the proposition there that we say is different, the building was built without a permit, it is an unlawful building.

Vincent Cestone - Right

William Florence - And so if it is an unlawful building you can't, logically, you cannot give a certificate of occupancy to make what was unlawful lawful. In addition to which as a matter of legal principle the question gets to be whether or not, I am not saying I know all of the law but I am saying that in this case, the building which is unlawful because it had no building permit and right now a building permit has been issued to construct something that is already constructed. That is contrary to Section 2.1 I think of your 1968 law that says no construction should occur without a building permit. Hence we say that is an unlawful construction. I would like to speak a little bit more also on the other point and that is the size of the structure and what kind of structure, whether or not that is incidental to the residence that is there.

Vincent Cestone - I am going to stop you right there. Since this is not a public hearing, I don't want to go into a full presentation. I am just looking to make sure this application is accepted and ready to go to public hearing.

William Florence - What I wanted to do

Vincent Cestone - And the question that I need answered is is this application exactly what you want us to determine because we are not going to deviate from that in the public hearing and the decision is going to be made on that

William Florence - I understand that

Vincent Cestone - Because if you bring other things to the public hearing that are not addressed in this, it is not going to be considered

William Florence - I have a letter that talks about the history of the site

Vincent Cestone - You can submit it but we will not discuss it now

William Florence - We are not asking you to talk about it I just want to be more complete about things which the board might inquire. I brought copies of the subdivision map for your further, background.

Vincent Cestone - Give that to Kim and Kim will make sure that she has a copy, our attorney has a copy and we all get a copy.

William Florence - I did give one to Mr. Hirsch and I've got one for each of the board members who are present

Vincent Cestone - Okay

William Florence - If you'd like, I'll hand them up.

Lenny Lim - What year was this built

William Mordhurst - In the current application it said it was there for 25 years

Lenny Lim - What year was it built? Give me the year

William Mordhurst - I would say it was 1987

Lenny Lim - So this doesn't pre-exist zoning

William Mordhurst - Oh no. No one said it pre-existed zoning

??? - If I have not been precise on my question 1, question 2 and send it right away to the board

Vincent Cestone - This year we have one more meeting in November, December we don't meet, and we meet again in January. So, I am sure that you want to do this as expediently as possible just like we do because we don't have much on the agenda. But I can't put things on to the agenda unless you're comfortable that it is perfected and our attorney feels that it is perfected. Would you like to speak on that?

Amy Zamenick - I would. Right now, on September 29th we did have a letter submitted to the code enforcement officer Mr. Kevin Donohue. I don't know if you have this. I have an extra copy. And the letter response. Would you like a copy of that? This letter he does speak to the issue but in an inadvertent way. And I think that's what we really have to clear up. Most of, the question really asks for an interpretation of an ancillary structure. _____ about use in the old zoning which we are assuming to apply. A lot of the references are to Chapter 175 in the new zoning. We really, once you get down to elevations on page 4, I think we are getting to the heart of this issue. I do believe that Mr. Donohue and I could work through the applicant's attorney to _____ it down to the two questions of is this a lawful structure and then the issue of the incidental or customary use if that is still applicable in the old code. Of the top of my head I don't remember. But if you would ask the _____ interpretations of Mr. Donohue, then maybe you could come forward and do the public hearing and you can see what the response is there. But as it stands now, I don't think that it is unacceptable.

William Florence - I have, and I will give one to John as well,

John Hirsch - Sure whenever you can get to it

Vincent Cestone - If it is agreeable with the board, I am willing to schedule this for a public hearing in November assuming that it is perfected and our attorney is comfortable with that. If it is not, if she is not comfortable with it, we are not going to have a public hearing.

William Florence - I recognize that. I have spoken with Amy, if I can call her that

Amy Zamenick - Of course

William Florence - This afternoon and I can say clearly what we have in mind and I have always said that to you with a clear understanding so I will clarify that in my correspondence and make certain there is no question about what it is that we are talking about.

Vincent Cestone - Okay

Amy Zamenick - I just also want to make sure that we have enough time in your letter in request of an interpretation to have enough time to respond. Is there anything that I missed?

(everyone talking among themselves)

Amy Zamenick - I was just talking with the building inspector. He says as long as we stay within Article 2 which is an area which he has identified in his letter and Article 7 of the old code, those are the Articles he has identified. If we stay within those sections Kevin says there will be no problem with his being prepared with a response in time for a public hearing. I only have in front of me the Article numbers. I have Article 2 and Article 7 of the old code. That is, I think it is 175, is that right? You tell them what numbers it is

Kevin Donohue - This is the zoning 1968 to 2011 the former zoning, this will be Article 2

Robert Dee - What section though

Kevin Donohue - That is the section, the Chapter Article 2 is about building permits and certificates of occupancy. And Article 7 is permitted uses. Use these specifically because if you go, there is no specific section that Bill is quoting because it refers you, Article 7 refers you immediately to the tables, and it is number 45 in the table, in the permitted use table in Schedule A. So that is why we are using Article 2 and Article 7.

(Everyone talking at once)

William Florence - Schedule A #46 is what I am referring to accessory use is customary with and incidental to

Lenny Lim - Schedule A?

William Florence - Yeah. Page 5 of Schedule A. Now,

Kevin Donohue - The specific numbers will be clarified at the meeting and that's why I was citing Article 2 and Article 7 for the public meeting.

Vincent Cestone - We need this ahead of time so we can review it for the meeting

Amy Zamenick - Okay

Lenny Lim - I can't read it at the meeting

Vincent Cestone - We are not going to nail that down _____. Why don't you get together and verify it and get it to Kim as soon as possible so she can get it to the board members as soon as possible so that we can review this. Okay?

Amy Zamenick - And perhaps after the meeting we can sit down and go through it together so we are all on the same page

Kevin Donohue - There is a critical step here because of the last date this board might have here. So I have to make copies of this and the electronic version for this. Because it is what the permit was issued under in March. So I have a copy here and that's why using Article 2 and Article 7 because what Bill has he has some adjusted differences.

Vincent Cestone - Okay so Kevin if you can get that to Kim as soon as possible so she can

Kevin Donohue - I have to get this printed first

Lenny Lim - We have the old book

Kevin Donohue - Fine. The old book with the last revision date is what we are using.

Vincent Cestone - So if you can get that to us, that would be fine.

William Florence - We can certainly talk the same language

Vincent Cestone - Okay

William Florence - so that won't be very hard to do. We will do it tomorrow

Vincent Cestone - so what I am going to do is I am going to tentatively schedule you for a review for completeness and a public hearing at our next meeting November 14th.

William Florence - Okay

Vincent Cestone - At that time you can present any information that you want and it will be a full blown public hearing and it will be posted in the newspaper and all that.

William Florence - Who is responsible for making that happen?

Vincent Cestone - What the posting in the paper

William Florence - Yeah

Vincent Cestone - We are

William Florence - Okay so I just show up

Vincent Cestone - Pretty much.

William Florence - Okay

Robert Dee - If we don't have everything before hand in time to look at it and study it,

William Florence - Before the week is over Mr. Donohue it may be by phone, but I will sit down and we will give you whatever he thinks the numbers are. I am looking at something that was published at the time, I know I've been practicing for over 20 years and then I have 1968, 1973 and 1986.

Vincent Cestone - If our attorney does not believe the appeal is complete, we will not go into the public hearing.

William Florence - okay

Vincent Cestone - Kevin about those applications, just hang around a couple of minutes.

Vincent Cestone - Are there any other questions from the board on this matter? Okay.

William Florence - We're done

Vincent Cestone – yes

(Board members talking among themselves)

Kim Shewmaker - Are we adjourned?

Vincent Cestone - I make a motion to adjourn do I have a second?

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: 1/9/12

Respectfully submitted,



Kim Shewmaker
Secretary