

ZONING BOARD OF APPEALS

October 26, 2009

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, October 26, 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 - First item on the agenda is a public hearing for Theodore and Ellen Timmer. Is Mr. Timmer here? I will call him again at the end of the meeting. If he is not here, cancel him.

Kim Shewmaker - No letter first?

Robert Dee - I think we discussed this at the last meeting.

Kim Shewmaker - I didn't get the end of the minutes of the last meeting. The recorder malfunctioned. So I don't know what was discussed.

Adam Rodd - My recommendation is, I am not sure, I know he owes us some drawings I believe, that's what we asked for. I would just send him a letter saying this is a final notice. We need the drawings. If they are not produced and you don't otherwise appear, we will deem the application withdrawn at that time

Vincent Cestone - Okay fine. Review of Minutes. Has everyone had a chance. Do you need more time? September 28th, any changes or corrections? I make a motion to accept. Do I have a second?

Bill Flaherty - Second

Vincent Cestone - All those in favor?

All Board Members - Aye

received
11/12/10 (Kim)

Vincent Cestone - Okay Minutes of October 5th. We had a problem and we didn't get the entire tape, so they are incomplete. Do I have a motion to accept them as they submitted

Bill Flaherty - I'll so move

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

All Board Members – aye

Vincent Cestone - Okay. Next item on the agenda is discussion and vote on Garrison Contracting. First a little bit of clarification. I went through the minutes and we have testimony and eye witness accounts, myself included, that Wicker My Love was abandoned for many years. I just wanted to put that on the record. And then I just wanted to talk a little bit about the list that the applicant had submitted of properties that are within the setback. I don't know a lot of these properties, maybe some of the other board members can talk to them but, and some of these don't have variances at all, are pre-existing nonconforming structures. Some of them have denials for variances. One of them being the wrought iron place who recently came to us and asked us for a variance to expand a nonconformity and it was denied. So I'll start from the top. Stadium Restaurant was, we did grant them a variance but it was a decrease in nonconformity. It wasn't an increase. If you remember that the Bavarian Inn, the Bavarian Inn used to park in front and your bumper would be hanging out almost on Route 9, sometimes right up to the white line. Then the Appalachian Market, we actually denied them an increase in nonconformity on the Route 9 side because they asked for it and we denied that. We just let them keep their current nonconformity that they had for all these years and then on the 403 side, they actually decreased the nonconformity because there used to be a garage on the property that was like right on 403 that was torn down as part of this. And it is a net increase in nonconformity. Do any of the other members want to talk to any of these?

Lenny Lim - I did the same thing you did, I went down the list and I drove up and down Route 9 and I checked everything. I did my homework. And what I found, and I can only compare it to the other used car lot that we have up on Route 9 here which is R&K auto repair, but he also sells used cars. And the rest of them were gas stations, repair shops and the only one, and he is way off the line. He is nowhere even close to what this applicant is asking. And like you said most of the other ones were all pre-existing nonconforming, but I tried to compare it to the only other used car lot that we have and he is not on Route 9. He is nowhere near it, he is at least 75 to 100 feet back. And plus he has a stockade fence.

Vincent Cestone - Okay. Anybody else wish to speak on this? With that

Kevin Jones - We're not a

Vincent Cestone - The public hearing is closed

Kevin Jones - Okay. We want to make sure that we are not only talking about used car business, we are talking about commercial.

Lenny Lim - But yours is the only other business that keeps cars overnight. All the other commercial businesses, they park, they have their dinner, they eat, they leave. These cars are parked overnight and over the weekend. All these other businesses the customer comes in, parks for an hour or two and leaves

Kevin Jones - The variance is there 24 hours a day no matter what

Robert Dee - Mr. Chairman, before we, I would like to suggest that we go, the applicant took the time out to answer, to fill out all these questions, the five factors that he has given. He has filled out answers to all five factors. I would like to go over one at a time.

Vincent Cestone - Okay

Lenny Lim - I just have one more thing I would like to say. I found the original memo that he submitted to the board and in it he actually says gravel parking area for 12 motor vehicles. Eight for display and 4 for customer spaces. This is a memo from you that we have. But originally he is saying he is only going to have 12 motor vehicles, 8 for display and 4 for customers.

Kevin Jones - There is a site plan for 23 vehicles.

Lenny Lim - The memo says 12

Kevin Jones - We have a site plan

Robert Dee - Can I go through the factors? There are five factors and the applicant did take the time to answer them all. I would like to respond to his answers.

Vincent Cestone - Okay

Robert Dee - The first one is what possible detriment would the variance have on nearby properties. How close are structures? Will the structures be visible or not? His answer to that was the site is operated at the retail site for over 50 years. The applicant seeks no detriment to nearby properties. Well I took a look at that and I said what possible detriment could there be. Well first of all Doris Helwick ceased operation of Wicker My Love in December of 1996. And Mr.

Jones purchased the property June of 2004. So the property was vacant during that time.

Kevin Jones - Excuse me 1999

Robert Dee - I'm sorry

Vincent Cestone - The public hearing is closed

Kevin Jones - 1999

Robert Dee - Okay 1999. I apologize. The Deed that I have here says 2004 and in your statement you write 2004. So I apologize

Kevin Jones - Okay

Robert Dee - I read your statement and you put 2004. So I am only going by your answers. So I apologize. So it was only 3 years that the property was vacant. Secondly, what detriment could there be for nearby property owners. Well the last meeting we had, a couple of meetings we had public hearings and there were a number of people who have come, residents and all that that have complained. Not complained, but showed their opposition to it. The last meeting of September 28th, your neighbors were here. Robert Freeman, Clarence Bartow, Bob Hilpert, Ann Osborne, and an attorney Sean Kemp who is an attorney for Steven Holly, who owns property at 7 and 19 Diamond Hill Road. They all voiced their opposition. Also I received a letter from Mr. Holly that I would like to read. This is from Steven Holly who owns property at 7 and 19 Diamond Hill Road. It is addressed to the board. Dated May 15, 2009. Early this week I received in the mail a notice that the Zoning Board of Appeals would hold a hearing on Monday, May 18, 2009 an application filed by Garrison Contracting seeking a variance from section 175.39(e) to authorize parking with minimum setbacks from Route 9. Unfortunately I cannot attend the hearing because I have to travel on business. I did however want to make known my strong opposition to the requested variance. I am the owner of approximately 38 acres of property at 7 Diamond Hill Road and 19 Diamond Hill Road which abuts the applicant's property at 1315 Route 9 on the southwest side. I would be directly affected by this and I have a substantial interest in the requested variance. The property at 1315 Route 9 is an eyesore and seriously detracts from the rural character and natural beauty of the surrounding property. A used car lot is not an appropriate use of land in a neighborhood that is largely residential. In addition, having used cars and heavy equipment parked across an increasing large percentage of the property at 1315 Route 9 is not only unattractive but it threatens the creek at the back side of the property. Filliment and debris have been pushed down the embankment towards the creek damaging protective wetlands. More over the exterior lights on the white building that sits on the property at 1315 Route 9 are unshielded and extremely bright.

That generates light pollution at night and becomes a safety issue because of drivers traveling on Route 9. Finally the public policy that motivated the setback requirements in the zoning code would be undermined by granting a variance. Having numerous cars parked at the edge of Route 9, a two lane road where travel is typically moving in excess of 50 miles per hour creates a risk for accidents. This is especially true because the property at 1315 Route 9 is located on a curve with limited sight lines and the various vehicles are parked very close to the highway. For the foregoing reasons I urge the Board to deny the requested variance. If I can get you any other information, please contact me. That's just a letter from one neighbor. Now we go to 1b, what impacts would the variance have on the character of the neighborhood? Have other neighborhoods received similar variances? So on and so forth. The answer to that question is the impact of the variance would have little affect on the character of the neighborhood. Two _____ in the neighborhood have been granted for similar variances. Stadium Property which is directly across Route 9 was granted a parking variance from 100 to 25 feet. Now with that you submitted a list of 20 locations, commercial locations that run along Route 9. I went and looked at everyone of them. All 20 of them. There is a distance of 9 miles from yours to the last location. The one that I did find that sold cars was RK repairs on Route 9, he is about 8 miles north of your location. All of these other businesses have parking for cars that are in and out types of businesses. They don't park the cars or trucks overnight. I did find the RK Auto repair. The first car parked at RK auto repair is approximately 90 feet from the center of Route 9. And approximately 50 feet of that from the roadway back to where the first car is parked is landscaped. So Mr. Jones requested to park 23 cars all of which are less than 100 feet required from the center line of Route 9 and not one of them could fit into that 90 foot variance that RK auto repair has. Number 2, it says if you didn't get the variance how else could you build what you want or accomplish your goal? Mr. Jones' answer to that was due to the existing configuration of the property, the project layout that is currently proposed is the only layout that would accommodate the applicant's desire for site improvement. When I look at it, he is right. If he didn't get the variance, how else could he accomplish his goal? Mr. Jones is currently operating a home heating stove and coal business at this location. He could continue to operate that business. But he could not park 23 used cars for sale at this location if we denied that variance. Question number 3, was what code requirement do you seek to vary and how large of a variance do you seek? The variance you seek is approximately a 58' foot 3" variance. Out of 100 feet. That's a big variance. There is not one car of those 23 that would come into anywhere within that 100 foot mark from the center line nor would it come into the 90 foot that RK auto has. Question number 4 of the factors was what impact will the variance have on the current physical and environmental conditions in the area. Is grading and blasting proposed? Will there be paving and so forth. And you answer Mr. Jones was the removal of existing rock in the area proposed for parking will be required. It doesn't say whether that is going to be blasted or by machine. You don't have that. I don't know how that would be. All standard rules and regulations for rock removal will be followed. The area

where the parking lot is proposed will be a gravel top. There is a state regulated water course located in the wetlands. Approximately 7 trees will be removed from the area. So what affect will it have, 7 trees have to be removed. Will it increase traffic? Well I am sure there is going to be more traffic that is going to show up to look at cars, used cars for sale than to buy a home heating stove. In my opinion. Also it says will it produce emissions and so on and so forth, will normal drainage be affected? There is a letter dated January 12, 2009 from the New York State Department of Conservation which states, one of the statements says no work shall commence until May 1. I guess that was for some type of construction that was being done there. Due to the trout spawning classification of the stream. So there really has to be some kind of environmental thing in that stream if they are worried about the trout spawning in that stream. Question number 5, is the variance requested as a result of a self created hardship? Was there a need for a variance when you purchased the property? And how long ago did you purchase the property? Now in here you answered that you purchased the property in 2004, that's what I apologized for. But that was your answer, June 2004. But if it was 1999 that's fine. I have no problem with that but there is going to be, there was no business at the time, the time that you purchased that property you conducted your business, you opened up a home heating stove business and you ran the business. So you had no problems with that. So as far as hardship, the only hardship that you created coming here was that you wanted to do another business at that location. So he can operate the business that he has, it would be no hardship for him as far as financial. So that is pretty much all I have to say. And those are the five factors and I looked at Mr. Jones' answers.

Vincent Cestone - Lenny do you have something to say

Lenny Lim - Not right now

Vincent Cestone - Okay. I'm going to go through the five factors myself. Would an undesirable change be produced in the character of the neighborhood or detriment to the neighboring properties be created by the granting of this variance? And I say yes. Placing over 20 parking spots within the center line of the street Route 9 would be unattractive. A used parking lot is different in character than other uses in that parked cars are not transient. Cars stay, parked 24/7. This is in contrast to a retail or restaurant that uses it where cars are parked only temporarily. Placing over 20 spots near the center line of the street setback raises concern about negative impact and traffic and safety. There are no used car business in close proximity to the applicant's lot and the other businesses with parking within the setback do not have as many spots within the setback or the same type of use of the cars remaining 24/7. Okay, whether the benefits sought by the applicant can be achieved in some method? I say yes. The Board is constrained only to grant the minimum variance necessary to provide the applicant with the benefit he seeks. Here the applicant has not adequately demonstrated why he needs more than 20 plus cars on the

property. The applicant can keep less cars on the property if he so chooses in the other business that he is running on it. Whether the requested area variance is substantial. I say it is not substantial, it is massive. Every car is within the setback of Route 9. Every car is the setback of the wetlands. There are five foot setbacks on the side property and with the bulk standard, it is in violation of the bulk standard also. It has most of the land covered with the business. So I would say yes it is massive. Whether the next factor, whether the proposed variance have an adverse affect or impact on the physical environmental conditions in the neighborhood. I go yes. All cars, spots are within the street line, center line setback concerns adverse traffic impact, close proximity to the wetlands and you know when you have cars parked near wetlands enviably liquids leak and leach into the stream. That's why there is a 100 foot setback on wetlands. Whether the alleged difficulty was self created, yes. There is no reason why the applicant needs to park over 20 cars within the street line center setback. Applicant can make other productive use of this lot without creating substantial nonconformity. And that's what I have to say. Paula?

Paula Clair - Okay. Well with regard to the detriment to the nearby properties and negative impact on the character of the neighborhood, I believe that there is a negative impact on the character of the neighborhood and is a detriment to nearby properties. At least four of Mr. Jones' neighbors appeared repeatedly at the public hearings to voice their concern and their objections to the granting of this variance. One neighbor said that business presented an unsightly view which was visible from his property and that he could see the lights. Another neighbor stated that the configuration of automobiles presented by Garrison Contracting comes within 5 feet of his property line to which he objected and which would also require another application for an additional variance. Complaints were voiced that Mr. Jones, the owner of Garrison Contracting had previously abused the wetlands neighboring his property by dumping material and operating machinery there. Complaints were also voiced by neighbors that Garrison Contracting was dramatically expanding the use of a non-conforming retail operation and that said retail operation had been abandoned for more than three years which would cancel the rights to operate a non-conforming business on that site. Another complaint by neighboring residents was that the parking of cars so close to Route 9 constituted a potentially dangerous driving situation. In addition, I live in the area and I pass the Route 9 corridor past the Garrison Contracting, the area is mainly residential with a few businesses there. I had occasion to pass this site before Mr. Jones put in a request for a variance, although he had not received such variance, but there were a number of cars parked there. I counted 13 at one point and more at another time. And as I passed it in my car I was struck by the unsightliness of the site which is not characteristic of any other business in the immediate vicinity. In view of the fact that 13 cars were unsightly the requested number of 28 cars in my opinion would be even more unsightly and would constitute a negative change in the character of the neighborhood. No other businesses in the area have comparable number of cars parked on their property for extended periods of time. Okay. If the

opposite. It actually might have a detrimental effect on the adjacent property values. You say that if you didn't get the variance how else could you build what you want to accomplish your goal. You say through the existing configuration of the property and project layout that is currently proposed it is the only lay out that can accommodate the applicant's desire for the site's improvement. I think that by reducing the number of used cars proposed for sale, I would say that the excavation and tree removal that you plan to do would be eliminated and probably be reduced and probably would be eliminated. What code requirements do you seek with your variance. The variance required for the setback of Route 9 is 100 feet. But the variance that you are asking for is a significant variance. It is way out of character with the neighborhood and exceeds most of the other variances granted by this board in the past. What impact would the respective variance have on the current physical and environmental. Removal of existing rocks and other excavation, tree removal, etc etc, would be required in order for you to accommodate the number of vehicles that you have in your proposal. I say that by reducing the number of cars, excavation would not be required and the number of vehicles you have for sale would significantly mitigate that particular aspect of your application. In my opinion I believe the, I read the minutes and all the testimony given, that I feel that this situation has been self created by the applicant. And that's all I have to say.

Vincent Cestone - Lenny do you have anything you want to say?

Lenny Lim - No because you guys covered the five factors and everything else and everything I was about to say other than under factor four, where it says is the area considered scenic? I would say yes. It is considered very scenic and putting in a used car lot would not be considered scenic.

Vincent Cestone - Okay. Now we are going to do the roll call vote on this application. Bob what's your vote on

Robert Dee - I vote to deny the application

Vincent Cestone - Okay. Lenny?

Lenny Lim - I vote to deny

Vincent Cestone - Paula?

Paula Clair - I vote to deny

Vincent Cestone - Bill?

Bill Flaherty - I vote to deny

Vincent Cestone - And so do I. Okay. Next item on the agenda, let's do Mary Dawn first for review for completeness. Is there a representative for Mary Dawn here?

Alan Steiner - I am here with Sohara, I am a friend. I understand the process a little better than she does.

Vincent Cestone - Okay.

Adam Rodd - Well basically in order to get an extension, and unfortunately the code does require a public hearing. So I know that this application we've dealt with before. I believe, I am not sure if there is a complete record, but I know that there was one prior extension. So unless the board has any questions now about the nature of the application, you can certainly inquire about it but

Vincent Cestone - How far along are you with the rebuild? Have you started?

Alan Steiner - No. We tore down what was there and leveled it.

Vincent Cestone - I don't want to discuss the actual application, but at the public hearing please come prepared to

Alan Steiner - We are going to bring the builder and the representative from

Vincent Cestone - We just had something very similar to this and we made the applicant have signed contracts, and start dates, proposed end dates and this, if we do give an extension, this may be the last one. Can we advertise this for the 9th?

Kim Shewmaker - No.

Vincent Cestone - Does it make sense since we are only doing resolutions, just to make everything the fourth Monday of the month. Okay. Since we can't have it advertised by the 9th, let's put it on for the 23rd

Kim Shewmaker - You've got it

Vincent Cestone - And we won't have a meeting on November 9th and we will have a meeting on November 23rd.

Alan Steiner - Thank you very much

Lenny Lim - You're welcome Your Honor

Vincent Cestone - Okay. Next item on the agenda is a resolution for Donovan.

Adam Rodd - Okay just reading the resolution on Donovan up through conditions. The Philipstown Zoning Board of Appeals conducted a public hearing on September 28, 2009, to hear the appeal of the applicants, Timothy and Mary Cathleen Donovan, from the denial of their request to construct a 28' x 32' barn/garage with a second story accessory apartment and deck. The applicants' property is located at 293 Old West Point Road, Garrison, NY 10524. The proposed barn/garage with a second story accessory apartment and deck shall be set back by a distance of 29' feet from the front yard lot line. The applicants' request for a building permit was denied pursuant to Section 175-32, Schedule B, Item 6(b) of the Zoning Ordinance which requires, in the R-40 Zoning District, a minimum front yard set back of 40' feet. The applicants have filed an appeal from the denial of their request for a building permit, and now seek an area variance from this Board. At a public meeting of the Board on September 28, 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 Leonard Lim, 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 Timothy and Mary Cathleen Donovan from the denial of their request for a building permit for the proposed 28' x 32' barn/garage with a second story accessory apartment and deck constructed at 293 Old West Point Road, Garrison, NY despite an insufficient front yard set back of 29' 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 Variance. 1. The subject barn/garage with a second story accessory apartment and deck which is located on the northern side of the applicants' property located at 293 Old West Point Road, Garrison, NY, shall remain set back at a distance of not less than 29' feet from the front yard lot line. 2. The subject barn/garage with a second story accessory apartment and deck shall be built and configured in accordance with the plans for construction submitted to the Board from Matthew A. Noviello, PC Consulting Engineering and Land Surveying, dated September 16, 2009. 3. No enlargement, reconfiguration or extension of the subject barn/garage with a second story accessory apartment and deck, for which the above referenced variance has been granted, is authorized without prior Zoning board approval.

Vincent Cestone - I'll make a motion to accept

Bill Flaherty - Second

Vincent Cestone - All those in favor

All Board Members - Aye

Vincent Cestone - All opposed

(no comments)

Vincent Cestone - Sir do you want to talk to us

Reporter ? - No. I am covering the meeting for the PCN&R

Bill Flaherty - Oh I didn't think we had coverage at the PCN&R

Reporter ? - You must be doing something right or something wrong. You would have to talk to the editor

Vincent Cestone - I think we are doing something right. Adam, do we need to do anything with Therapeutic Equestrian? The letter from September 25th?

Adam Rodd - This is something that we will have to follow up with the Building Department. It is like information that I don't believe we have in terms of whether fees have been paid. Whether certain amounts have been deposited? But we can follow up with the building department

Vincent Cestone - And just for the record. We have the completed drawings for Rome for the record. Is there any old business or new business? If not, I make a motion to adjourn.

Lenny Lim - Second

Vincent Cestone - All those in favor

All Board Members - Aye

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

DATE APPROVED: November 23, 2009

Respectfully submitted,



Kim Shewmaker
Secretary