

# ZONING BOARD OF APPEALS

March 14, 2011

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, March 14, 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.

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

### ABSENT:

**Vincent Cestone** - Okay I am going to take these out of order. I am going to Dean Anderson and Joseph Libonati first for a public hearing. Come on up

**Dean Anderson** - Do you mind if I use the podium

**Vincent Cestone** - Use the what

**Dean Anderson** - Use the lector

**Vincent Cestone** - If you want

**Dean Anderson** - Okay great

**Vincent Cestone** - Just introduce yourself so that we have it on the tape

**Dean Anderson** - My name is Dean Anderson and I am here with my friend and attorney, Deborah Landes, who is helping me with this presentation. I am here for two area variances. I have a prepared statement I would like to read for the record. I left six copies of these remarks with Town Hall earlier today, one for each of you and one for Mr. Rodd. And I can see that they have been handed out. Does anybody need one? I have a 3.9 acre property at 4 Dale Lane in Garrison together with Joseph Libonati. We are tenants in common. In other words, we each own a half interest in the property. The property is located on the west side of Route 403 between Route 9D and Route 9. We have applied for two area variances that we need to sub-divide the property into two lots of almost

equal size. We need the first variance because the two resulting lots would not fit a 200 foot square within it due to the shape of the lot as well as the wetlands. The second is a variance from the 6,000 square foot buildable area requirement because the same lot would not meet that requirement after all the wetlands and septic fields are taken into account. I will address the five specific factors the Board must consider in balancing all the equities in determining whether the benefit of granting the variances outweighs any detriment to the health, safety and welfare of the community

**Robert Dee** - I guess before, if I can interrupt, you say that you are going to discuss the five factors. I would like to do that and discuss it with the answers that you gave to your filling out the form.

**Dean Anderson** - Oh yeah okay

**Robert Dee** - I mean I think that would be the easiest way, unless you want to keep, we can go over them one at a time. I see a lot of print here and I see a lot of things here, but as far as going towards the five factors I agree with you 100 percent, lets discuss the five factors.

**Dean Anderson** - Yes, this just gives more background to each one here than what it is in that application.

**Robert Dee** - This is the application, this is the answers that you put in

**Dean Anderson** - Yes and this is addressing those answers, we are just expanding on them

**Robert Dee** - Well let's take them one at a time then

**Dean Anderson** - Since I haven't memorized this, it is going to be a little difficult

**Robert Dee** - You don't need to memorize, it's very short. It's not that complicated. The first one it says, one of the five factors is, what possible detriment would be to nearby properties.

**Dean Anderson** - The detriment Mr. Dee is that the property could be sold

**Robert Dee** - Right

**Dean Anderson** - And that I would lose a place to live and I would lose an investment

**Robert Dee** - What do you mean the property could be sold? I am at a loss with that one.

**Dean Anderson** - Okay, I am in the middle of a lawsuit.

**Robert Dee** - Okay

**Dean Anderson** - Which is a petition actually with Mr. Libonati.

**Robert Dee** - Okay

**Dean Anderson** - A petition action seeks to separate two people's property.

**Robert Dee** - Okay

**Dean Anderson** - The New York State Legislature has actually decided that the easiest way for a petition action to move forward equitably is to separate the property physically if there is any possibility to do that.

**Robert Dee** - Yes but that in all honesty, that should not be a part of this variance. You have a lawsuit against a partner

**Dean Anderson** - I don't have a lawsuit

**Robert Dee** - Does your partner have a lawsuit

**Dean Anderson** - Mr. Dee, my co-tenant

**Robert Dee** - Equal owners

**Dean Anderson** - He is a part owner and he has advanced a petition action

**Robert Dee** - Okay. I understand that.

**Dean Anderson** - And therefore, I have to respond to the petition action and one of the quickest ways the Court has in dealing with this is to, if it can be separate, to separate the property

**Robert Dee** - I understand. The answer to number one that would cause a possible detriment and you say, the second thing you say regardless of whether the variance is granted there will be in the future an additional residential \_\_\_\_\_ on lot number 2 because the approved apartment in the barn will be completed and occupied. I guess my question is is that completed yet

**Dean Anderson** - No it isn't

**Robert Dee** - Is it occupied

**Dean Anderson** - Not yet

**Robert Dee** - Okay. That's okay. That's the only question I have.

**Dean Anderson** - No. I am just trying to

**Robert Dee** - I understand. That was granted in 2009

**Dean Anderson** - That's correct

**Robert Dee** - So it has been a year and a half and you haven't completed

**Dean Anderson** - Well I had to put a driveway in first

**Robert Dee** - But you

**Dean Anderson** - And then I had to put a septic in

**Robert Dee** - My question is that in a year and a half you haven't finished it

**Dean Anderson** - No. I haven't

**Robert Dee** - Okay. That's all. I am just trying to put a time line on it.

**Dean Anderson** - It may be a quite a bit more time. It depends

**Robert Dee** - Sure

**Dean Anderson** - It takes

**Robert Dee** - Now in question 1B in the factor

**Dean Anderson** - Yeah

**Robert Dee** - It says what impacts would the variance have on the character of the neighborhood

**Dean Anderson** - Yeah

**Robert Dee** - And again you say that granting the variance will not result in any new structure. That's true because you have two structures there already. But you say that to the best of my knowledge similar variances have not been granted to nearby properties. I guess that \_\_\_\_\_ to number 3, there has never been a variance of this type in that area. So I agree with you there. On the second one it says that if you didn't get the variance how else could you build or accomplish your goal. It is not being built, you've already got, we've granted the variance to build the apartment

**Dean Anderson** - Correct

**Robert Dee** - So you can continue on with that. If you wanted to

**Dean Anderson** - No. Not necessarily if I wanted to. I may want to, which I do want to, but if the, if I should lose the petition action in the Court, and if I can't separate that property any other way

**Vincent Cestone** - Then you have to sell it

**Dean Anderson** - No. I don't have to sell it. The Court would sell it

**Robert Dee** - Oh okay. Then that's the answer to it then.

**Vincent Cestone** - Could one of you buy the other out

**Deborah Landes** - May I?

**Robert Dee** - Can my attorney speak?

**Deborah Landes** - I'm sorry. My name is Debbie Landes. I have been assisting Mr. Anderson in this matter. One of the reasons we had him prepare what I realize is quite a detailed statement is because we wanted him to have the opportunity to lay out this context for you so that you would understand everything that has lead up to today. And we both understand why you have a lot of questions and there are a lot of issues here, but the bottom line is that if the partition action, if this Board denies the variances, and then obviously there can't be any subdivision, then the Court, the Putnam County Supreme Court will consider ordering the property sold over Mr. Anderson's objections. And what Mr. Anderson, part of what he wanted to explain to you in his prepared statement again is his background including the fact that he has lived on that property for more than 25 years and he intended to retire on that property and that his whole purpose really in having Mr. Libonati come on to the property as a tenant in common was to enable him to stay there. Unfortunately, because of a break down in their relationship between these two men, Mr. Libonati now wishes to leave. And that's why he brought the court action. The legislature has said and I address this to you because I appreciate that you don't want to get involved in a lawsuit

**Robert Dee** - Of course not, it is not really our business

**Deborah Landes** - I think that it is because what this Board has to do, it has to weigh the equities.

**Robert Dee** - The five factors right.

**Deborah Landes** - The ultimate decision

**Robert Dee** - That's what I am going over

**Deborah Landes** - I understand. But if the ultimate decision is what is the balancing of the equities between the benefit to Mr. Anderson and the detriment to the community, well among the equities are the hardship that will befall Mr. Anderson if the variances can't be granted and therefore, if the subdivision can't be granted. And so while I understand that this Board does not have a direct interest in the lawsuit, the bottom line is that it would be an extraordinary hardship to Mr. Anderson if the variances are not granted and the subdivision can't be granted because if the Court in Carmel says a subdivision is not possible, the Board has turned down the variances, then and only then may the Judge in Carmel say in that case I may have to sell the entire property and throw Mr. Anderson out. And so because the, our understanding is

**Robert Dee** - Wait, you say throw him out. I mean it would probably be sold and whatever gain would be split between the two partners.

**Deborah Landes** - Well

**Robert Dee** - They would get money out of it wouldn't they

**Deborah Landes** - Well, Mr. Dee, the situation unfortunately is that there is a large mortgage on the property that was taken out by Mr. Libonati. And after that mortgage would be paid, then there would be very very little money left over for Mr. Anderson. And essentially the value that he accumulated in 25 years of living on that property would be essentially lost

**Robert Dee** - Right. But that was through no fault of ours

**Deborah Landes** - Oh of course not. No no no. Of course not.

**Robert Dee** - Oh okay

**Deborah Landes** - No that's not your fault. I am just trying to lay out what the situation is that Mr. Anderson faces right now

**Robert Dee** - I understand that. And I sympathize with that. But we have to go through this with the five factors and determine if this variance should be granted

**Deborah Landes** – right

**Robert Dee** - And one of the factors in here doesn't say that two men have an argument over who should live there or whatever is not in there

**Deborah Landes** - No but the standard that the Board is supposed to look to, the over arching standard that the five factors go to is the standard that balances the equities of the individual against the community. And what we are trying to lay out is simply what the hardship is that would befall Mr. Anderson if he can't get a subdivision

**Vincent Cestone** - We granted the accessory apartment and an accessory apartment is basically used like mother/daughter, or grandma and grandpa are coming up for the summer. Now it goes from a house with an accessory apartment to two houses. That's a fundamental change.

**Deborah Landes** - We absolutely agree that it is a fundamental change. And one of the things that Mr. Anderson was going to lay out in his prepared statement is what happened. Why was he here in 2009 for an accessory apartment and why is he back now to separate the property. And

**Robert Dee** - I understand that, but it is 6 pages long.

**Deborah Landes** - So I will try to clarify

**Robert Dee** - We just want to go over the five factors

**Deborah Landes** - I will try to paraphrase for you

**Vincent Cestone** - Yes, if you can paraphrase

**Deborah Landes** - I would be happy to do that. Please understand that what Mr. Anderson is here for is potentially his future and the value of his land. I understand that six pages is a lot. But Mr. Anderson has a tremendous amount at stake here. So, here's what happened. I will try to put it in a nutshell for you. I understand that you do not want to be here all night long. Mr. Anderson has been on this property since 1983. He built the pig shed into a two story barn after getting the necessary approvals. That was done in the 1990's. Come 2008, Mr. Anderson was living alone in the large stone house, the main house. His financial situation made it impossible for him to continue to carry the property on his own. Mr. Libonati is someone that Mr. Anderson had known at that time for 15 years and considered a close friend, considered him to be like a son. Mr. Anderson and Mr. Libonati entered into an agreement where Mr. Libonati would buy a half interest in the property from Mr. Anderson. Mr. Anderson would take the proceeds, would turn the barn into his home, would plan to retire in the home, in the barn. So that was the purpose of the accessory apartment application

**Robert Dee** - Which was granted

**Deborah Landes** - Yes you did. I have no doubt that when these two gentlemen

made their agreement that Mr. Libonati would live in the stone house and that Mr. Anderson would live in an accessory apartment in the barn. That they anticipated that they would live happily ever after as good friends and neighbors, like father and son living next door. Unfortunately, that did not happen. Unfortunately, there was a tremendous amount of delay in getting the financing to do the transaction and then there was some additional delay in getting the approval for the accessory apartment. During that time Mr. Libonati and his partner and Mr. Anderson were living together in the house under one roof and tensions arose and unfortunately that relationship came apart. It deteriorated to the point where it just became impossible. And so a situation developed that was not within anyone's anticipation going in. And another thing also intervened. Well, after that situation became undone and the situation was simply no longer livable, Mr. Libonati went and filed this action that Mr. Anderson referred to, the partition action and asking the Judge to sell the entire property. This is after Mr. Libonati had taken out a large mortgage. Well over half the value of the property. He went to Court and said that he wants the entire property sold. So Mr. Anderson said to the Court, the law says you can't sell the entire property unless the subdivision is impossible. So that is why Mr. Anderson filed for a subdivision. So one intervening factor since Mr. Anderson was here to obtain the accessory apartment is that this close family-like relationship came apart. Obviously, that's not the Board's fault. It's simply an unfortunate reality that Mr. Anderson is now trying his best to deal with in a way that won't have this property sold out from under him when he has lived there all these years. The other factor that intervenes since Mr. Anderson was here for his accessory apartment is that the new zoning law is going to take effect. Shortly after Mr. Anderson was here for his accessory apartment application and this Board approved it, he found out that the new zoning law is going to up zone his property to a minimum of five acres. Right now it is a minimum of one and two acres. And it has been made clear to Mr. Anderson that once the new zoning law takes effect that it would be extremely difficult, if not impossible, for him to get the subdivision. Because he is going to be a minimum of 5 acres instead of one and two. And so basically the two significant intervening factors since Mr. Anderson was here for the accessory apartment are is that Mr. Libonati now wants to move away. He doesn't want to live there anymore. That's not due to anything Mr. Anderson did. Mr. Libonati wants to move. He wants to sell his interest in the property. Because they are tenants in common he can't do that without putting Mr. Anderson at risk of being kicked off his property that he has lived on for 25 years and wanted to retire on. Unless a subdivision is available. So, that's the background. That's sort of the situation in a nutshell. That's why Mr. Anderson is here. He is not here because he wants to build a bigger house. He is not here because he doesn't want to live where he wanted to live before. He wants to live exactly where he wanted to live all along. He has wanted to live the way he wanted to live all along. And he is here because of circumstances beyond his control, and he may not be able to do that any more.

**Robert Dee** - I understand. Let me just address a couple of your points. One

thing, the Town Board is working on a new zoning. They have been working 2 years tirelessly. And I think they are finally coming close to a solution to in the near future. But that still doesn't change what the way it stands today on his property. What I mean by that is it isn't 6,000 square feet. You are asking us to let him, what you are asking us to do is to turn an accessory apartment into a one-family home on 2,000 square feet which is 66 percent less than anybody else has. Okay. That's a big variance.

**Deborah Landes** - Mr. Dee, we want argue with that

**Robert Dee** - But that's what I am trying to point out

**Deborah Landes** - We understand

**Robert Dee** - That's why I wanted to go over the factors

**Deborah Landes** - We understand that

**Robert Dee** - Okay. Because factors is what we go by. That is what we are legally bound by. The five factors. And that's what we go by.

**Deborah Landes** - We understand that these are

**Robert Dee** - I understand, I am sorry for his problems. I understand those problems. But we have to do what is legally bound

**Deborah Landes** - Mr. Dee we wouldn't

**Robert Dee** - That's why I would like to finish going over them

**Deborah Landes** - That's fine, it's just that we want you to understand that we won't be here if we didn't think that you had the discretion to, of course you will consider the factors. But we believe that you have the discretion to grant the variances in spite of the size of

**Robert Dee** - We have to look at the whole Town too. I mean we are going through a new zoning code and as you say the lots are going to be larger, that's for sure. I mean a lot of the areas are going to have to have more acres to build a home on. But what you are asking us to do here doesn't play into that. What I mean by that is as it stands today, right now, it needs 6,000 square feet. And if it changes tomorrow or not, we are talking about now. And you are asking us to put a house on 2,000 square feet. So that is a big difference.

**Deborah Landes** - We agree

**Robert Dee** - That's all. Thank you

**Vincent Cestone** - We have to think of the wetlands and we would have to ask the Wetlands Inspector for his opinion.

**Deborah Landes** - Even though the building is already built and all the wetlands approval

**Vincent Cestone** - Yes. Now the use has changed. He has to make comment on it. Use has gone from, it is going from an accessory apartment to a free-standing house

**Dean Anderson** - Can I answer that? I think that Mr. Klotzle has just renewed my wetlands application.

**Vincent Cestone** - It is standard procedure for a subdivision with wetlands is that the Wetlands Inspector has to make comment on it for us when it is a subdivision

**Deborah Landes** - If I could, I understand what you are saying, and if we have to go back to Mr. Klotzle to get an opinion, all we can do is try to do that as quickly as possible. May I go back one moment to what Mr. Dee was talking about the surrounding homes because Mr. Dee has looked into this and seen that there were no other variances. One of the factors that we looked at and that you will also look at I am sure, is the surrounding area and the existing sides of the lots that are already there and do you know what page it is on?

**Dean Anderson** - Yeah

**Deborah Landes** - On one page of the materials that you have, I just wanted to point out, okay, on page 4 in the center in the discussion of the surrounding area and whether the variance of the subdivision would change the neighborhood or the character of the neighborhood, one of the things that we pointed out is that quite a number of the neighbors right by Mr. Anderson have lots that are quite small and I am not suggesting that is because you granted variances to those properties, I understand that

**Vincent Cestone** - Because we haven't

**Deborah Landes** - I'm sorry

**Vincent Cestone** - Because we haven't

**Deborah Landes** - I understand. I understand and I don't mean to suggest that you have but just in terms of how Mr. Anderson's lot would compare with the neighbors, we just wanted to point out that Nanci Ingram who is directly to the north has a lot that is only 2 acres. Ms. Ingram is here today in support of Mr. Anderson's application. Two of the neighbors right across Route 403 who have

written a letter in support of Mr. Anderson only have 1.3 acres. A neighbor right across the street, Mr. McCaffrey has less than an acre. And Jackie Van de Mark who is also right across the street has less than half an acre. So while I totally understand that these were not granted by way of variances, what Mr. Anderson is proposing is not inconsistent with the surrounding homes.

**Robert Dee** - I understand what you are saying but we granted Mr. Anderson an accessory apartment. A separate building to the main building.

**Deborah Landes** - Yes

**Robert Dee** - If we were to grant this, okay, any citizen of Philipstown who had a barn, a separate barn, or garage for that matter, can come before the Board and ask for an accessory apartment, get it granted and then come back and ask for a subdivision. So these are things that we have to think about. I mean, that's a pretty big deal

**Deborah Landes** - Well, I see your point. Mr. Dee, I would respectfully suggest to you that while someone could ask but it is not every circumstance in which it would be appropriate for you to grant that. And I think that the circumstances that Mr. Anderson finds himself in right now are quite extraordinary and unusual. They may be totally unique so I, I think they are extremely unusual and if someone else came in with such a compelling argument that essentially that if they can't get it, they are likely to be thrown off their property and entirely in that case that you would be totally justified in considering those circumstances to determine whether you know the equities balance in favor of the applicant or whether the equities balance in favor of the community. All we are really saying is that we, of course you have to be concerned about the flood gates opening and what could come down next

**Robert Dee** - Right

**Deborah Landes** - And I understand that you don't want a hundred more applications like this. But I just would venture to say that these are extraordinary circumstances.

**Robert Dee** - But not caused from no faults or any other things then the partners arguing.

**Deborah Landes** - Well,

**Vincent Cestone** - See one of the five factors is is it a self created hardship.

**Deborah Landes** - I understand

**Vincent Cestone** - This is. And through a series of bad business decisions Mr.

Anderson is in this position. And this board has a tendency, generally doesn't grant variances because of hardship from a financial business perspective. I am not saying that we are doing that now, but that is something that we have to consider.

**Deborah Landes** - Well, it's, I think that there is, I see the argument that it's self created

**Vincent Cestone** - It is absolutely self created

**Deborah Landes** - You know, well, let me just distinguish it for a moment from the kinds of self created problems where people start building something and they ignored the law and they built something in spite of the law

**Vincent Cestone** - That's illegal

**Deborah Landes** - That's what

**Vincent Cestone** - What they are doing is illegal

**Deborah Landes** - Right but it is not the kind of situation where somebody didn't know what the law was and they started building something and now it has to be corrected after the fact. I mean, Mr. Anderson, just so we can eliminate that Mr. Libonati and Mr. Anderson, Mr. Anderson I can speak for from 1983 has never, has always complied with the letter of every zoning ordinance. Has made sure that he understood what the law was and did everything that the law required. So, I mean to the extent that you are inclined to look at the current situation as self created, means Mr. Anderson in our view is essentially a victim here. I mean he's got a tenant in common who wants to move. And Mr. Libonati could want to move for any of a thousand reasons. He wants to move and that was not the agreement that he made with Mr. Anderson and that's why there is a lawsuit now. He wants to move and Mr. Anderson may as a result of that, if no subdivision can be granted, Mr. Anderson would not only be in a situation where he couldn't use the property in the way that he wants to use it, he would be off the property entirely. And so, I mean that, there is a way to look at this where the situation is not self-created. I mean

**Vincent Cestone** - I don't see your logic

**Robert Dee** - I will just give you an example. Years ago my wife and I bought a home with her sister, a summer home. And it was put down that if either one of us wanted to sell, the other one could buy the other out. And that's what we did. We wanted to sell and they bought us out. So that could have been done before hand. Let me finish. That could have been done before hand so as far as it being self created, it is self created

**Deborah Landes** - Well, Mr. Anderson doesn't have the resources to buy Mr. Libonati out nor do I understand that Mr. Libonati has the resources to buy Mr. Anderson out. The two of them reached an agreement that they would live on the property together. That's the agreement that Mr. Anderson is abiding by and unfortunately Mr. Libonati wants to leave. So, you know to the extent that Mr. Anderson perhaps was naïve in believing that their relationship would extend into the future as they had agreed and that it would continue in that way, then I think that perhaps could be laid at Mr. Anderson's feet. That he was naïve in accepting that agreement but now he faces the loss of his property. I guess the only other thing that I would like to point out, obviously, I know you all know this with respect to the self created hardship, one of the factors is obviously the Board is may grant the variance even if the Board does conclude that it is a self-created hardship.

**Robert Dee** - But there are other factors here

**Deborah Landes** - I understand. I understand

**Robert Dee** - That is not the only factor we are talking about, the lot size

**Deborah Landes** - I understand

**Robert Dee** - We are talking about a lot of different things

**Deborah Landes** - I understand

**Paula Clair** - I have a question with regard to the mortgage that Mr. Libonati took. What happened to the money that was received when taking that mortgage? Did that go to Mr.

**Deborah Landes** - Well part of the money that he got from taking out the mortgage paid off Mr. Anderson's mortgage. That was how Mr. Libonati was able to purchase an interest in the property. He paid off Mr. Anderson's outstanding mortgage and part of the purchase money went to pay Mr. Anderson to convert the barn into his home. Part of the money went to Mr. Libonati who had an outstanding mortgage on a property that he was selling. So that is why the mortgage is higher than half the value of the property. Because part of it went to Mr. Libonati who's agreement with Mr. Anderson was that the two of them would share this property in the future.

**Robert Dee** - It got pretty complicated didn't it.

**Deborah Landes** - Well, Mr. Anderson had a mortgage which part of the purchase money went to pay that off. Part of the purchase money went

**Robert Dee** - So he had no mortgage. He is mortgage free

**Deborah Landes** - Right now, well but the mortgage covers the entire property including Mr. Anderson's share of the property.

**Robert Dee** - Okay

**Deborah Landes** - And that's why if the property were sold in the partition action, Mr. Anderson would get so little money from it. Because the mortgage is larger than half of the value of the property.

**Robert Dee** - Okay

**Dean Anderson** - Also originally when I bought the property in 1983, and there were no wetland restrictions on the 200 foot square. There was no wetland restrictions on the 6,000 square. There wasn't one on a two acre property which is now being upped zoned to five acres. And there is absolutely no change in any view shed from anybody's house, there is no, I am not building out or up or into an easement or anything like that. The barn exists right now. And by your agreement I can live there as long as this partition action doesn't throw me out.

**Robert Dee** - But we are changing that now. It is not an accessory apartment any longer. Now you want to make it a one-family house and that's a different ball park.

**Deborah Landes** - Well, in order to get your approval the Board wanted to, I know you can't continue the designation I guess as an accessory apartment, but if the Board for example wanted to impose whatever requirements apply to an accessory apartment

**Robert Dee** - We couldn't do that because an accessory apartment has to be owner occupied and the owner has to be on the property

**Deborah Landes** - Okay.

**Robert Dee** - So we couldn't do that. I understand what you are saying

**Deborah Landes** - I was saying that if for example whatever limitations applied to an accessory apartment such as the square footage

**Robert Dee** - We granted this variance it would be a single family home on a single family piece of property and it has to be sold that way

**Vincent Cestone** - We can't change the law.

**Deborah Landes** - No

**Robert Dee** - But if we granted this thing, not that he would, he could live there the rest of his life, but I am saying that if we granted this he would have a one family home and he could turn around tomorrow and sell it as a one family home.

**Deborah Landes** - That I understand. But what if you imposed conditions on it? I don't mean that you can impose conditions to keep it an accessory apartment, but I mean if it would be, I hear what you are saying and you are saying that it would be a one family home

**Robert Dee** - Sure

**Vincent Cestone** - I don't think we can say it can't be enlarged or changed in any way and that's until they apply for a variance and come in and ask for a change.

**Deborah Landes** - Then it would come back to you correct

**Vincent Cestone** - Not necessarily. We could say that you could never come back, but that's against the law. Because you have the right. Do you see what I am saying

**Deborah Landes** - I do

**Vincent Cestone** - It is one of those things that we could put conditions but it is unenforceable.

**Deborah Landes** - Let me, I hear what you are saying. Mr. Anderson is in a desperate situation and essentially if there are any conditions that you can impose or would impose that would enable him to move forward and prevent him from being thrown off his property that he loves and wanted to retire on, we would appreciate your assistance.

**Vincent Cestone** - What about suing Mr. Libonati for breach of contract

**Deborah Landes** - Well Mr. Anderson has counterclaimed pending in that action, and that is one of them. But the problem that we face right now is that we are up against the new zoning law. And because once the new zoning law, and there is no way that this legal action in Putnam County Supreme Court can be resolved before the new zoning law takes affect.

**Robert Dee** - The new zoning law wouldn't be effected because we would be under the zoning law at the current time. It doesn't conform to the current zoning law

**Deborah Landes** - Well actually it won't Mr. Dee and let me explain to you way

**Robert Dee** - Explain to me why

**Deborah Landes** - We looked into this because obviously being grandfathered and to coming under the old law is essential to Mr. Anderson's success here. The way we understand the grandfather clause of the new law to work, and this is based on what Mr. Shea said at the last Public or two Public Hearings ago on the new zoning law, Mr. Shea explained that the new zoning law is going to provide that if your application has been scheduled for a public hearing before the body that has to decide the ultimate, make the ultimate decision and in this case it would be the subdivision hearing scheduled by the Planning Board, that if you are scheduled for a Public Hearing, excuse me, let me start again. If Mr. Anderson has been scheduled for a Public Hearing by the Planning Board on the subdivision, then he will be grandfathered on this subdivision issue.

**Dean Anderson** - And only then

**Deborah Landes** - And only then. So even if this board has passed on the variance and passed favorably upon it. Unless and until Mr. Anderson can get back to the Planning Board and put on their calendar for public hearing before the new law is enacted, he is going to fall under the new law.

**Vincent Cestone** - You've been to the planning board already and they sent you back to me

**Dean Anderson** - That's correct. I filed originally with the Planning Board.

**Deborah Landes** - Right. So we've been struggling, well, a couple of things have happened. One thing is that when we initially filed the application, we had looked at your website and saw that according to the website you met twice a month and so we thought okay, timing-wise we are okay because this was back in December. And then we only realized later that you meet once a month and not twice a month, so we were thinking that we had a lot more time. And then as you probably recall, when Mr. Libonati did not sign the application, we lost a month, another month because of that and then we were two months down the road and now we are right up against this imminent enactment of the new zoning law

**Vincent Cestone** - But isn't the fact that you were at the Planning Board and they sent you back to us preclude that

**Deborah Landes** - No. We've been told that until it goes back to the Planning Board and it is scheduled for a Public Hearing on the subdivision application, that Mr. Anderson will not get grandfathered. And so

**Robert Dee** - I understand but I think it is kind of a moot point. The reason I say that is he doesn't even come under the standards of today's zoning let alone

down the road. He doesn't comply under today's zoning law

**Deborah Landes** - Well he needs a variance in order to do that

**Robert Dee** - If he doesn't comply to today's zoning laws, he is not going to comply to tomorrow's zoning laws

**Deborah Landes** - No no no. Well the reason we are here is because we understand

**Robert Dee** - But that is really a moot point

**Deborah Landes** - Without you we can't go forward. But with your approval

**Robert Dee** - The variance

**Deborah Landes** - With your approval of the variance application, then he could go forward with the subdivision application. And without your approval, he is lost. Obviously. And

**Vincent Cestone** - I think you are putting too much emphasis on the new zoning law. Just to give you an example. There is a section of Philipstown where every piece of land is zoned R-80. There isn't one piece of land that even comes close to that. That doesn't preclude them from coming and getting variances. And they do it on a regular basis.

**Deborah Landes** - Well Mr. Cestone, I am not a real estate lawyer. Mr. Anderson does have a real estate lawyer who unfortunately could not be here tonight, and his real estate lawyer as well as others, and I think including Mr. Watson, who I know you are very familiar with have advised Mr. Anderson that basically once he is at 5 acre minimum, the chances of his getting this approved are minimal.

**Vincent Cestone** - His chances of getting it approved now are not that great either.

**Deborah Landes** - well, I can't tell you how sorry I am to hear that.

**Vincent Cestone** - I know. I don't want to, I am just trying to be honest with you. I understand the situation that you are in, but I don't see that big of a difference in the fact that the laws are going to change. Unless the Planning Board would have issue with it, and I don't think they would. If we granted

**Robert Dee** - And we do have a letter of protest and I don't know if there are other people here in the audience that want to talk to us, but we do have a letter of protest against it. So we have other things we have to consider.

**Deborah Landes** - Well we haven't seen the letter and we would obviously like to an opportunity to see it and respond to it. Is that from Ms. Roberts?

**Robert Dee** - Yes

**Deborah Landes** - We would like an opportunity to respond to it. Mr. Anderson does have several letters in support of his application and I know that Mr. Osborne is here today and is planning to speak in favor of the application. I hope that you will hear him.

**Vincent Cestone** - Absolutely

**Deborah Landes** - Again, I would just like to emphasize that, we both understand very well your concerns and I don't mean to minimize those concerns and I understand that you as an institution have to protect against a hundred people coming in and asking for what Mr. Anderson is asking for, obviously that would not be a good thing. But what we would ask you to do is well, keep an open mind please, and consider all the factors. Please don't just consider the issue of self created hardship. I wish that you would

**Vincent Cestone** - No that would not be a deciding, the only factor

**Deborah Landes** - And I understand your position with respect to the size of the variances. There is no question that they are substantial ones. But in considering that factor, please do consider that the building is already built and so we are not talking about constructing a building that would leave 2,000

**Robert Dee** - The building is there and has been constructed, it is not occupied and no construction has been done on it. Right?

**Deborah Landes** - Well, no, the driveway is in

**Robert Dee** - As far as the accessory apartment

**Dean Anderson** - As far as the outside of the building, the footprint

**Deborah Landes** - The driveway has been done. And Mr. Anderson since, I don't want you to get the impression that he has done nothing since you approved the accessory apartment. Immediately after the approval of the accessory apartment, Mr. Anderson has spent \$58,000 excavating and putting a driveway in. Since that time he has spent a significant amount of money putting a septic in. He would not have stopped doing that but for the fact that Mr. Libonati filed his lawsuit and Mr. Anderson is now having to contend with that. At this point Mr. Anderson is going ahead with the construction nonetheless. So he is drilling the well, the well is the next step and that is upcoming really as soon as

the well drillers say they can get into the field to drill the well. And then the next step after the well is for him to install the plumbing and do the interior. So, the main delay in getting that work done is not that Mr. Anderson is not very very anxious to be living in this barn as he has always wanted to, it is simply that he has had to contend with the lawsuit and at this point he is trying to impasse that and go forward. So, the barn will be turned into an accessory apartment. There will be somebody living there. I appreciate what you are saying. If there is a subdivision, it won't be an accessory apartment anymore. We understand that and obviously we would be happy to run to Mr. Klotzle and get an opinion if we can get one at midnight tonight, we would get one. We are really extremely

**Dean Anderson** - Mr. Klotzle, he is the wetland inspector and he does a very good job. And one of the reasons this has taken so long is because I have spent an awful lot of money doing exactly what Mr. Klotzle wanted me to do to spare the wetlands

**Vincent Cestone** - So this should be a no brainer

**Deborah Landes** - I think that we could get an opinion from him very quickly and so I hope, I understand you and I hear you when you are say there are other

**Vincent Cestone** - We need to cross the t's and dot the l's for

**Deborah Landes** - And we would want to

**Dean Anderson** - Absolutely

**Deborah Landes** - We have always tried to do everything exactly the way the Town wants it done. And we are in a situation now where we are trying to make the best of a situation that has just become a nightmare. And we understand essentially, we are at your mercy. We will do anything

**Robert Dee** - Well the board did grant Mr. Anderson a variance to build an accessory apartment so the board is understanding

**Dean Anderson** - And Mr. Dee I really appreciate that. If I did not have a lawsuit thrown at me

**Robert Dee** - As far as the board not being understanding, we definitely are. But there comes a point where you have to take the Town and other laws into consideration

**Dean Anderson** - I thought I would be living in the barn

**Deborah Landes** - We are trying to do that Mr. Dee. We are trying to do that, we are trying to explain to you why in our view

**Robert Dee** - I certainly understand

**Deborah Landes** - There are equities that are extremely compelling and what we want you to do in addition to considering the self created hardship factor and the five of the variance factors, which we understand to your view go against us. But we ask you please to give as much weight as you possibly can to the character of the neighborhood, the fact that other neighbors are whole heartedly supporting this application

**Robert Dee** - Not all

**Deborah Landes** - I didn't say all neighbors

**Robert Dee** - Oh okay

**Deborah Landes** - I didn't say all neighbors, I said other neighbors. Some of whom are here. And if you would permit us to we would like to read that letter and perhaps you would give us a chance to respond to it this evening because time is of the essence for us.

**Vincent Cestone** - It's part of the record. You can look at it.

**Deborah Landes** - Okay thank you. We are anxious to move forward if you will us to and we take nothing for granted obviously we can't, as promptly as we can, if we can. The physical and environmental conditions, I guess that Mr. Klotzle would be concerned about, we will as I said run to him to get his opinion. We will do whatever we can to try and move this forward. And I would just ask that you consider all the factors but also that over arching idea that there is a very very strong equitable concern that Mr. Anderson has that assuming, assuming Mr. Klotzle sees no problem with this, in our view we submit to you outweighs significantly

**Vincent Cestone** - I don't see why we couldn't continue you to the next meeting. I am not saying two, three, four meetings out. I am not saying that.

**Deborah Landes** - Here is our concern. Meeting of this Board

**Vincent Cestone** - Yes

**Deborah Landes** - Well our concern is simply we are looking at the schedule of the Planning board and nobody knows when the Town is going to enact the new zoning law, but we know they are in as much as a hurry of they can be and they are anxious to get it passed. So we are concerned, our concern is that if this board puts us over for another month that by the time then get on the Planning Board calendar, that the new zoning law might be passed in the interim. So what

we were going to request of you, if you would consider it, it's I think plain to us that there is no way we are going to get favorable action out of this board this evening

**Robert Dee** - Well we don't know that. Each board member has to take a vote and all that. So we don't know that. We are giving you our concerns

**Deborah Landes** - And we want them

**Robert Dee** - And you are giving us yours. Same thing.

**Deborah Landes** - We want to hear your concerns because if there is any way we can possibly address them, we want to address them. So what we were going to request if you would think about it, if you would consider it would be the possibility of having another meeting in two weeks rather than the month that you usually schedule it so that, just so that we wouldn't lose all hope because we can't get back to the Planning Board before the new law takes affect. We can't get on their calendar to schedule it for a public hearing before the new law takes affect. We have been led to believe that the new law could take affect in late April. But the new law could take affect in early May. And if we can't, assuming you acted favorably and we don't take that for granted obviously, if we can't get back there and get on their calendar, then all is lost for us.

**Robert Dee** - In all honestly, as far as I am concerned, the new zoning really doesn't have anything to do with the variance

**Deborah Landes** - Not the variance, but the subdivision. The subdivision we are told, not that it would be more difficult to get the variance with the new zoning, but it would be much more difficult to get the subdivision with the

**Vincent Cestone** - But if we granted the variances, then the subdivision is done

**Robert Dee** - What you are asking us to do, basically you've got the subdivision

**Vincent Cestone** - Well, I wouldn't go that far

**Deborah Landes** - Well the Planning Board has to have a public hearing.

**Vincent Cestone** - They can't say, the Planning Board can't say well you don't have the variances that you need to do this

**Deborah Landes** - I don't know what other grounds they might have to decide not to grant the subdivision but if the minimum lot size is a legitimate factor for them to consider, then we have gone from one and two to five by the time they are making that decision. And that is

**Vincent Cestone** - The thing is it gives you the ability that by-passes that, then I don't understand. I can't speak for the Planning Board but if you have the variances, then that section of the law has already been addressed by this board.

**Adam Rodd** - If I can quickly interject. I would by all means get all the information including the opinion that you indicated that you wanted from Mr. Klotzle concerning the wetlands issue. With respect to the new zoning and the possible affect that the new zoning might have on the subdivision or whether they might in fact need an additional variance, at this juncture we have to as a matter of law operate under the law that is now in existence period. Whether in the future

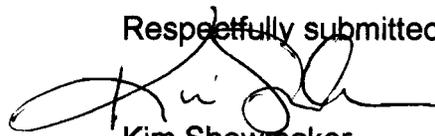
(Tape ended...changing tape, may have lost some dialogue)

## **TAPE 2...NOTHING BUT STATIC...ALL DIALOGUE LOST**

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

**DATE APPROVED:** 4/4/11

Respectfully submitted,



Kim Shewmaker  
Secretary