

ZONING BOARD OF APPEALS

June 13, 2011

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 13, 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
	Geoffrey Chanin	-	Counsel

ABSENT:

Vincent Cestone – Okay, the first thing on the agenda, I don't think we got any correspondence from Dean Anderson and Joseph Libonati.

Kim Shewmaker - We got a letter, but I am not sure what they meant. I think they got their dates mixed up. It was dated June 7th but it says please don't put us on the May agenda. I think he meant the June agenda.

Vincent Cestone – I read it and I didn't quite understand what they meant.

Paula Clair - He sent a similar letter last month and I don't think he changed the date.

Vincent Cestone – Next item on the agenda is K. Kimball Richmond. And this is a continuation of a public hearing so refresh me. I know about this, but just refresh us a little bit.

Applicant's Representative - It is about a pool house that we are going to construct over an existing footprint of the stables. Here are some photos of the stable and the neighbor's house beyond.

Vincent Cestone – How close is this

Applicant's Representative - 240 feet

Vincent Cestone – Remember the board had advised you last time about the

size of the structure

Applicant's Representative - Yep, we are definitely reducing it because we agree with you and second, because we are currently working on the renovation of the house, and there's not much money left. So we are scaling back much much from what we had proposed. In fact what we are going to do is, this is the existing stable, we are going to perhaps keep this structure as is and add doors for the time being. We are not quite sure what we need from this board at this moment but we agreed to stay within that footprint and I think by next month we might know exactly what we can afford. But in the mean time we would like to show you

Paula Clair - Can I just ask you a question? The house in this photograph, is that the neighbor's house or is that the house

Applicant's Representative - That is the view from this way looking at the existing stable and the house beyond.

Paula Clair - That's the neighbor's house

Applicant's Representative - Yes.

Paula Clair - It seems close

Lenny Lim - No no no. This ain't the house. The house is more up here. This is the shed. I walked it today. The house is much further away.

Paula Clair - Okay great.

Applicant's Representative - And there is another photo that shows the house, I couldn't get too much of the house in relation to the stable. So I brought that photo because one of the questions was what was the site line, what was the relationship of the stable in relationship to the neighbor. We will be staying within the outline of the existing structure and the roof. We are not quite sure what we can afford at this point so maybe within another month we will have that finalized for you but we wanted to show today what our architect had done...all is within the setback. One open area is, our client would like a patio. Which is landscaped patio. It is not structurally connected to the pool house. It is going to be pavers on the ground and we were getting conflicting information whether we would need a variance for that or not.

Vincent Cestone - On pavers. I am not sure of that. That would be a question for the building department. I don't think so, but I am not positive.

Applicant's Representative - He said if it was part of the landscaping, then he doesn't have any say in it. If it were attached to the pool house then we might

need a variance but as far as we are concerned it is not structurally attached to the house

Vincent Cestone – Is it physically attached to the house or does he mean a structure that is an accessory to the house? Do you know what I mean?

Applicant's Representative - Right I was trying to get clarification. I'll try further to get it.

Vincent Cestone – The building department would be the definitive answer

Applicant's Representative - Okay

Vincent Cestone – Because I'd have to read the code and I am not sure

Applicant's Representative - Okay

Vincent Cestone – Well a patio would be a permanent structure to the house. So in my opinion it would have to be a part of the variance.

Applicant's Representative - That was the gray area. The landscape architect called as well and they said any disturbance in that zone is not allowed. So we were hoping to get the board's opinion. Because the concern is they don't want to track grass into the pool.

Vincent Cestone – I'll check the code

Applicant's Representative - Okay

Vincent Cestone – And we will let you know at the next meeting

Applicant's Representative - Okay

Lenny Lim - Where is the pool house. Point to the pool house.

Applicant's Representative - The pool house is right here

Lenny Lim - And you said it is a pre-existing nonconforming

Applicant's Representative - Right. And we are using the same exact footprint. No extended roof.

Lenny Lim - Pre-existing nonconforming means it was built before zoning. That building does not look like it was built 50, 60 years ago.

Applicant's Representative - So you think it was built without a permit?

Lenny Lim - When I went on a site visit today, the building does not look 50 years old.

Geoffrey Chanin - It could also mean simply that it was pre-existing situation before the latest amendment to the zoning code. So if the zoning code is amended by the Town Board over time and that facility was existing before the last amendment, then it is grandfathered in. It doesn't necessarily mean that it existed before the code was adopted, just before the last amendment to the Code that affects that condition. If it wasn't allowed by the old zoning code but it was permitted because it was either grandfathered in or because there was a prior variance granted then it has the right to be there.

Lenny Lim - I thought all the stuff that was grandfathered in was there before zoning.

Geoffrey Chanin - Yes or before an amendment.

Paula Clair - Is it a possibility it was there _____

Geoffrey Chanin - Yes it is possible. I don't know the history of the parcel. But one way or the other, either before the code existed at all or before the code was amended that normally would prohibit it.

Lenny Lim - But the building didn't look that old.

Robert Dee - Well let's ask for proof that it is part of the _____

Applicant's Representative - Okay, I will look through the records. Often you will find there are none. What do we do?

Robert Dee - You tell the Town Building inspector and you tell him of our conversation and ask him what's on his records. He would have records.

Vincent Cestone - And if there is a C of O for that

Robert Dee - Right

Lenny Lim - You have the back lot marked with little pink ribbons and it looks like it was really close to the back.

Robert Dee - The building inspector should be able to tell you that and then at the next meeting we can go from there. If it is legal, it's fine. If it is not legal, then you've got another application.

Applicant's Representative - And if it is not legal, is there a way to get legal

Robert Dee - Well you would need a variance for that. Before you start.

Applicant's Representative - Okay

Geoffrey Chanin - Because you wouldn't be able to get a building permit.

Applicant's Representative - All right.

Robert Dee - If it is not legal, then you have to come before us for a variance.

Applicant's Representative - And if we get that variance then we can rebuild on that

Robert Dee - Well then you go for the second variance

Applicant's Representative - Okay. Great. And then the other portion of the fence which is mainly for the pool. That's it. And I have to keep to that maximum height.

Vincent Cestone – At our July meeting we will get a final proposal?

Applicant's Representative - I think that if we are not ready, because I know your vacation schedule is coming up

Vincent Cestone – Then it would be September. If you are not ready, we would appreciate your letting us know. It saves you trouble and it saves us trouble. And of course in July if you want to be here if you have additional questions, we are more than welcome to answer them.

Applicant's Representative - Okay.

Vincent Cestone – The building department is the definitive answer on whether or not that is a legal. If they say it is an approved structure, then they have the C of O and everything that goes with it and that whole other issue goes away.

Applicant's Representative - Great. Thank you very much.

Vincent Cestone – Next meeting would be July 11th

Geoffrey Chanin - Yes sir it is. It is the second Monday in July, exactly one week after July 4th. And if there is no August meeting, the second Monday in September would be the 12th which is exactly one week after Labor Day.

Vincent Cestone – All right. I am going to ask the question anyway. Is there anyone in the audience wish to speak? For the record there is no one in the

audience except for the Town Board representative. With that we will continue this on to July 11th. Okay. Review of Minutes for April 4th. Any additions or corrections? I make a motion to accept them as submitted.

Bill Faherty - I'll second

Vincent Cestone – All those in favor

All Board Members – aye

Vincent Cestone – Minutes of May 9th. Any corrections? I'll make a motion to accept them

Bill Faherty - I'll second

Vincent Cestone – All those in favor

All Board Members – aye

Vincent Cestone – Next item on the agenda is Appeal #874 for the resolution. Geoffrey would you read the resolution up through conditions

Geoffrey Chanin - Certainly

Vincent Cestone – If you want to give me one to sign, I'll do that too

Geoffrey Chanin - The one that needs to be signed is the one with the blue back on it. I have 8 copies and I will hand up to you the one with the blue backer and I will provide a copy other Board's clerk

Kim Shewmaker - Thank you

Geoffrey Chanin - And I'll give one to each of the other board members. Reading the resolution into the record then. It reads as follows: In the matter of the Application of Tim Beachuck for a variance to install a new freestanding sign 9 feet in height whereas the Zoning Code allows a sign of only 4 foot in height in a B-2 District. This is tax map #27.8-1-10. And this is Appeal #874. And for the record today is June 13, 2011. We are reading of the Zoning Board of Appeals at 238 Main Street in Cold Spring, New York. The Philipstown Zoning Board of Appeals opened a public hearing on April 4, 2011, to hear the request of the Applicant Tim Beachuck to install a new freestanding sign nine (9) feet in height whereas the Town Zoning Code allows a sign of only four (4) feet in height, at premises known as and located at 3212 Route 9, Cold Spring, New York 10516, and identified on the Town of Philiptown tax map as Section 27.8, Block 1, Lot 10. Section 175-77(A)(4) of the Zoning Code provides that "...on any lot, one sign may extend to within ten (10) feet of any street line, provided that the sign

does not exceed a height of four feet, an area of 24 square feet and more than six feet in any dimension.” In this application the Applicant proposes to erect a freestanding sign which shall be nine (9) feet in height. At a public meeting of the Town of Philipstown Zoning Board of Appeals held on Monday, May 9, 2011, the Zoning Board of Appeals closed the public hearing; and further, upon all discussion and testimony heard in this matter, and site visits by Board members, and a review of all submissions and proof submitted by the Applicant to the Board, Vincent Cestone made a motion, seconded by Bill Flaherty, as follows: Be it Resolved, that the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York determines and finds That the Balancing of equities weighs in favor of granting the request of the applicant Tim Beachuck for a variance granting permission to the applicant to erect a new freestanding sign of nine (9) feet in height on premises known as and located at 3212 Route 9, Cold Spring, New York identified on the Town Tax map as Section 27.8, Block 1, Lot 10. Shall I continue with the Findings of Fact sir?

Vincent Cestone – I don't see any conditions on this resolution

Geoffrey Chanin - We have the finding of fact, findings and conclusions, balancing test and roll call vote and the usual notice to applicants. There are no conditions that I am aware of at the present however, the board has the right to impose conditions if it is within the board's discretion to do so.

Vincent Cestone – Generally what we like to put into our resolutions are that no changes, modifications can be made without zoning board approval.

Geoffrey Chanin - That can be added as part of the resolution should the board so require and should it be approved by the board's final vote.

Vincent Cestone – Would there be any other conditions on this? And the other condition would be

Geoffrey Chanin - As you all know, as it might please the board at least for the present, I am going to be providing legal services to the Board as the successor to Mr. Rodd. I was here last month with Mr. Rodd as kind of my introduction to the Board. As of last month and as of today and I have reviewed the file and I have reviewed all of the applications, I did not hear anything about lights dating from last month through today. I know as a general rule, and I have just for the board's information covered many many meetings of many many zoning boards of appeals for various municipalities in the Hudson Valley. Part of my experience is that for 7 years I was the corporation for the City of Newburgh and my obligations and responsibilities in that position was also to cover the Planning Board, Zoning Board of Appeals, the Architectural Review Commission and other boards of the City. In my experience I know that as a general fact that where a sign requires the approval of one of the municipal bodies in the municipality if there are lights or if there is a source of energy, electrical power connected to the

sign, then in addition to the usual requirements including the variance if necessary it is a standard operating procedure to make sure that the building inspector and/or the code compliance officer makes sure that those connections are in compliance with not only the local code but also the state building code and fire safety codes and other things. So I am just telling you that I am aware of that in general there is a rather standardized municipal process to make sure that if there is some sort of additional quality about the sign whether it be lights or some other enhancement or embellishment of the sign, that those additional approvals and inspections by the code enforcer are necessary. The point being that in this case as long as I have been introduced to this particular application I have not been made aware that there is anything other than the approval of the shape and size of the sign.

Lenny Lim - Exactly. So the other condition we want is not lighting.

(Conversation inaudible)

Robert Dee - Right here it doesn't show that it is lit. There are no wires. It doesn't show any lighting. It doesn't show anything. Just a regular sign.

Lenny Lim - But can he come back

Robert Dee - Sure he can come back

Vincent Cestone – we can also be quiet on the subject.

Geoffrey Chanin - That's correct Mr. Chairman you could do that because as I say even if this board is silent on that specific question that sign and any other structure for that matter is still subject to the State safety and fire and electrical codes. So it would still be subject to the Building Inspector and Code Compliance Officer's review at any time. Now if the board wanted to, the board could also add a condition to this that would impose an additional future requirement on the applicant that should he add some sort of electrical source of power for lighting or any kinds of reflectors, or anything else that is not on the sign as of this moment of this application, the board can do that as well. So I agree with the Chairman's answer that you can remain silent and leave it up to the Code Compliance Department to make sure that it is compliant with the existing state code or at its option can take a little more active role and make the specific requirement that he has to come back. But whether you do one or the other is entirely within the discretion of the board.

Lenny Lim - I would say if he wants any lighting he has to come back.

Vincent Cestone – So that's how we will handle that.

Geoffrey Chanin - And if you did that, that would have the same force and effect

as requiring the applicant to come back to you in the future because if he wanted to do something like that, he would be expanding the permission that you would have granted him tonight which would require him to come back.

(Inaudible conversation)

Bill Faherty - We have granted several variances for various businesses along Route 9 and I don't recall ever broaching the subject of lighting. Appalachian Trail, we granted them a variance and the sign was nonconforming and they moved the sign, but that is a lighted sign. (Inaudible)

Geoffrey Chanin - I would also say that a moment before this specific discussion about the light came about what the Board said that immediately preceding that was to add a condition that there would be no further changes without Board approval. That language in itself would cover lights.

Kim Shewmaker - So am I putting this on for the next meeting.

Geoffrey Chanin - I will be re-writing it

(inaudible)

Vincent Cestone – Put this to a vote.

Lenny Lim - Second

Vincent Cestone – All those in favor?

All Board Members - Aye

Vincent Cestone – Opposed

Vincent Cestone – So it is 100% change

Geoffrey Chanin - So the board has disapproved the resolution with the additional change that the applicant may not make any further changes beyond what the application that the board has now approved without coming back.

Vincent Cestone – (inaudible)

Geoffrey Chanin - Yes it is. But you are entitled Mr. Chairman to be specific about it in this case. And you are doing this of course as clarity.

Vincent Cestone – I am going to call Dean Anderson and Joseph Libonati one more time. They don't appear to be here. They are moved to July. So Kim if they don't show next time we will give them a warning. I just want to remind

everyone that June 22nd there is a workshop down at the VFW hall for the new zoning code. I was told it was a required meeting so I will see you all there. Any other business?

Geoffrey Chanin - It is a Wednesday sir and I will be there as well.

Lenny Lim - What time

Vincent Cestone – 7:30

Vincent Cestone – With that I make a motion to adjourn

Lenny Lim - Second

Vincent Cestone – All those in favor

All Board Members -

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

DATE APPROVED: July 11, 2011

Respectfully submitted,



Kim Shewmaker
Secretary