

# ZONING BOARD OF APPEALS

September 28, 2009

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, September 28, 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** - Adam, do you want to do the Review for Completeness first?

**Adam Rodd** - Sure. We can do that.

**Vincent Cestone** - Okay. Is Mr. Mercado here?

**Milton F. Mercado Jr.** - Yes.

**Vincent Cestone** - This is for a review for completeness and we are going to put you on the agenda for a public hearing.

**Adam Rodd** - Just so I am clear, I understand, so the Board has an understanding of what you are proposing here. You are proposing to do a second story addition. Correct?

**Milton F. Mercado Jr.** - Yes sir

**Adam Rodd** - And that second story addition, is that going to be in the same footprint of the existing house

**Milton F. Mercado Jr.** - Yes sir

**Adam Rodd** - Okay. So you are not going any further in towards any of the setbacks with respect to the second story addition

**Milton F. Mercado Jr.** - That's correct

**Adam Rodd** - You are also proposing a sun room. Correct

**Milton F. Mercado Jr.** - Yes sir

**Adam Rodd** - And the sun room based on the plans that I have here is that going to be, what is the setback from the side yard lot line

**Milton F. Mercado Jr.** - It is 15 feet. It is in compliance with the setbacks

**Adam Rodd** - The sun room is

**Milton F. Mercado Jr.** - It would be. Yes sir

**Adam Rodd** - So you are telling us that you don't need a variance for the sun room

**Milton F. Mercado Jr.** - I do not need a variance for the sun room sir.

**Adam Rodd** - Okay. And you are also proposing a motorcycle shed

**Milton F. Mercado Jr.** - Yes sir

**Adam Rodd** - Is that an existing shed or something you are proposing to construct

**Milton F. Mercado Jr.** - No it is an existing shed based an error or a misunderstanding on my instructions.

**Adam Rodd** - Okay and that is within the 60 foot street line

**Milton F. Mercado Jr.** - 40 foot setback

**Adam Rodd** - Okay. So the motorcycle shed is 10 feet from the street line

**Milton F. Mercado Jr.** - It is approximately 20 something feet from the street line. From the property line. If I could explain here.

**Adam Rodd** - Well you have 10 feet there right? That's 10 feet from where?

**Milton F. Mercado Jr.** - From the property line. There is a wall here. A rock wall. And then this is actually the street line right there. Where the pole exists.

**Adam Rodd** - And what is the distance to the street line

**Milton F. Mercado Jr.** - It is about 20 feet from the street line. I want to say it is more like between 15 and 25 feet.

**Adam Rodd** - Well you still need a variance for that.

**Milton F. Mercado Jr.** - Yes sir

**Adam Rodd** - Okay.

**Robert Dee** - I just have a question. I did a site visit today. Looking at your house on the left hand side, what is that little thing that you are building next to your house

**Milton F. Mercado Jr.** - It is just a mud room. It's a mud room for the dogs.

**Robert Dee** - Is that included in this variance also

**Milton F. Mercado Jr.** - No. That's, I don't need a variance for that sir.

**Robert Dee** - Okay. Now there is no height elevations with this drawing

**Milton F. Mercado Jr.** - And I spoke to my architect about that sir and as you can see you don't have stamped copies. I spoke to my architect, I will get that before the end of this week and submit for next week's review. So you will have that all in hand by next week sir.

**Vincent Cestone** - So we have you down for the 5<sup>th</sup> of October. It has to be here for that meeting. If it is not, I cannot call you

**Milton F. Mercado Jr.** - Absolutely sir

**Vincent Cestone** - So you are all set.

**Milton F. Mercado Jr.** - Thank you

**Vincent Cestone** - Lets get to the public hearings. First on the agenda is Garrison Contracting with a continuation. We just got plans tonight

**Applicant's Attorney** - How come you didn't get them sooner? They were provided to you by Cronin Engineering. I have a letter dated the 22<sup>nd</sup> of September. I don't understand why you didn't get them on that date.

**Vincent Cestone** - It didn't even come in our packet.

**Applicant's Attorney** - I can't explain what the Town did with it after we dropped it off.

**Kim Shewmaker** - When I mailed out packets there was nothing new in the mailbox.

**Vincent Cestone** - Because people from the audience, residents of the community have to have an opportunity to review this so I have to keep the meeting open so they can look at it. I was sort of hoping to

**Applicant's Attorney** - If I can just read into the record on September 22<sup>nd</sup> which was last week there was a letter from Patrick Bell the Project Engineer addressed to Chairman Cestone and members of the Board. Enclosed find eleven copies of the project plan for the above noted property at the corner of Route 9 and Diamond Hill Road in the Town of Philipstown. I won't read the rest of the letter but basically it demonstrates the plans were provided to the Town on the 22<sup>nd</sup>.

**Bill Flaherty** - Well could you explain to us what the difference is between the two documents.

**Applicant's Attorney** - The difference between the two documents is this incorporates all the requested changes the Board made from the last meeting. They are all on the document. As you asked, I will read the remainder of the letter which outlines what you requested all right? The enclosed plans have been revised to reflect the comments received from your board at the project's July 27, 2009 public hearing. The revisions include a table on the plans that list the distances from the proposed parking spot to the center line and road line of New York State Route 9, the distance to the wetlands which was considered the edge of the stream on the property, and the distance to the property line that adjoins the residential distance to the north of the property. Per your request, a copy of the plan has been also been forwarded to the New York State Department of Conservation requesting a jurisdictional determination on the property. At the time of this letter no correspondence has been received from the New York State DEC, however any correspondence received from the New York State DEC between now and the continuation of the public hearing, on September 28<sup>th</sup>, will be provided to the board at that meeting. We have not received any further communication from the New York State DEC. It closes, should you have any questions or request any additional information, please contact me

**Bill Flaherty** - Okay thank you

**Applicant's Attorney** - You're welcome

**Kevin Jones** - The second page is the revised page

**Bill Flaherty** - The number of parking spaces has not changed

**Applicant's Attorney** – No. The parking spaces are defined and they are numbered number 1 through number 23 on the plan. The setbacks for each parking space is set forth in this box

**Lenny Lim** - There we go

**Applicant's Attorney** - Each parking space is 10 x 18

**Marla Rubin** - It's on the second page sir

**Bill Flaherty** - I see 27 spots

**Marla Rubin** - You don't have the right map.

**Applicant's Attorney** - Second page

**Marla Rubin** - You moved all the spaces that were south of the building

**Kevin Jones** - We just edited the spaces for you and numbered the spaces, it shows the distance between the road, wetlands

**Vincent Cestone** - Does the board have any questions because obviously we have to study this

**Paula Clair** - I would like an opportunity to look at this

**Vincent Cestone** - There is no way I can close this. Does anyone in the audience wish to speak on this because I know you haven't had a chance to look at this, we are going to keep the public hearing open until next week and the plans will be downstairs for your review.

**Bill Flaherty** - Now you have a letter from the New York State Department of Environmental Conservation which grants you an extension to operate that particular property up until September 30<sup>th</sup> of this year.

**Marla Rubin** - I am Marla Rubin and I am an attorney and I joined the team here. That's not what the letter says. The letter says that in terms of his constructing the new parking he would only have until September 30<sup>th</sup> not operate his business

**Bill Flaherty** - Well according to this request by extending to September 30<sup>th</sup>, 2009

**Marla Rubin** - Yes the permit to construct the parking space that we are waiting for approvals on

**Applicant's Attorney** - The permission to operate the business was granted by Judge O'Rourke and we have provided you copies of those

**Bill Flaherty** - I have a copy of that

**Marla Rubin** - The business permit to construct and we are going to apply for an extension. I would just like to say for the record that I don't see, and I am new to the case so forgive me if I'm off a little, but I don't see that there is anything more than about 5 square inches of new information here. It is exactly the information that you asked for before.

**Vincent Cestone** - We had asked for sizes, which is here. Side yard setback and rear yard back

**Marla Rubin** - Do you have our cover letter or did that not show up in your packet either

**Vincent Cestone** - It may be here, but I haven't had a chance to read it.

**Marla Rubin** - Okay

**Applicant's Attorney** - It is one page and I actually read it to you.

**Marla Rubin** - There is still so little here to look at. You said you need to study it but there doesn't appear to be that much to study. It is exactly what you asked for

**Robert Dee** - That's your opinion.

**Marla Rubin** - Yes that is my opinion. That's what I was brought here for to give you my opinion.

**Robert Dee** - Okay

**Vincent Cestone** - In that letter does it say how far parking spot 23 is from the side yard

**Marla Rubin** - Not in the letter but it is marked on the map

**Vincent Cestone** - I don't see where it is marked

**Applicant's Attorney** - In the lower right hand box

**Marla Rubin** - Sir you are looking at the wrong map

**Lenny Lim** - You need to look at this box to know where everything is

**Vincent Cestone** - I don't have that box.

**Kim Shewmaker** - Here is an extra set

**Bill Flaherty** - The problem is we have too many maps

**Applicant's Attorney** - Well the problem is we have been asked to make too many maps is what I think the problem is

**Bill Flaherty** - I understand

**Vincent Cestone** - Oh okay

**Robert Dee** - The distance is 3.7 feet

**Applicant's Attorney** - correct

**Vincent Cestone** - Okay

**Robert Dee** - Now that I found the box, it's understandable. We were just handed this 5 minutes ago.

**Vincent Cestone** - That's very helpful

**Lenny Lim** - Now what about the DEC

**Marla Rubin** - May I, it has nothing to do with what we are doing here. It is a permit to construct if we get, to construct the parking spaces if he gets permission from you to construct the parking spaces. If the permit expires, he was getting ready just in case you gave him the go ahead, so the permit expires September 30<sup>th</sup> because he is adjacent to a trout enhanced creek I guess but that can be extended and we will apply for an extension so that should not enter into your deliberations. If he doesn't get the extension, he will just wait to April

**Applicant's Attorney** - The variance we are asking for is very straight forward. We are asking for a variance of the setback requirements from

**Vincent Cestone** - I wish it were straight forward

**Applicant's Attorney** - We have 20 similar properties all which have greater variances

**Vincent Cestone** - Let me just talk to that. You brought that up. I went through and I personally checked everyone of those. Everyone of them was either a

decrease in nonconformity, no increase in nonconformity, and none of them were a used car lot with 20 or more spaces. I went through everyone of them.

**Marla Rubin** - Why would it have to be a used car lot. They are all totally different businesses. Each one of them is different

**Robert Dee** - One at a time

**Applicant's Attorney** - Okay

**Marla Rubin** - Sorry

**Applicant's Attorney** - All we have here is we have a businessman here who is trying to operate a business in this Town. In 2006 this Town tried to take the position that he was operating in a residential zone. They doctored up a map and provided it to a Judge

**Vincent Cestone** - Well

**Applicant's Attorney** - Excuse me. I would like to make this for the record. All right. Unless you are telling me that I can't make a statement for the record.

**Vincent Cestone** - I am not saying that but keep it relative to the point.

**Marla Rubin** - It is

**Applicant's Attorney** - It is exactly relative to the point

**Vincent Cestone** - One person, this is not a tag team

**Applicant's Attorney** - What is relative to the point is that my client, there seems to be two sets of rules here in this Town. One for my client and one for everyone else.

**Vincent Cestone** - That is absolutely not true and I take offense to that

**Marla Rubin** - We have documentation to that sir

**Vincent Cestone** - Will you stop

**Marla Rubin** - No I won't. I have a right to say something also

**Vincent Cestone** - Please sit down

**Marla Rubin** - We have documentation

**Vincent Cestone** - Please sit down. Will you sit down please

**Kevin Jones** - That's my attorney

**Applicant's Attorney** - She is entitled to stand up here with her client

**Marla Rubin** - I am sorry if I was rude but you made a mis-statement

**Vincent Cestone** - And you interrupted me. And I don't appreciate that.

**Marla Rubin** - I don't appreciate this either

**Vincent Cestone** - And this is not one of those things were we are picking on this gentleman

**Marla Rubin** - Sir you are entirely

**Vincent Cestone** - Will you stop interrupting me

**Marla Rubin** - There are entirely different set of rules for Kevin Jones then you have for every other application that we have seen in this Town in the last two years at least.

**Russell \_\_\_\_\_** - My name is Russell \_\_\_\_\_ I am a resident

**Lenny Lim** - Wait wait wait hold on

**Vincent Cestone** - It's okay. I called him

**Russell \_\_\_\_\_** - I am a resident of Garrison. I have not inspected the new maps and I haven't seen them. I would love to be given the opportunity to do that. I am led to believe from the statement that this gentleman just made that the distance from the so called wetlands is measured from the distance of the edge of the stream. I have no doubt that that distance was measured in recent months when the stream is at its lowest point. I am familiar with the variation and the flow of that stream intimately. I have fished that stream all my life. I know that that stream can vary dramatically. And I also object to the notion that the edge of the wetland is defined as the edge of the stream. As you well know, wetlands extend far beyond the stream.

**Vincent Cestone** - There is 100 foot setback from the center of the stream. I know

**Russell \_\_\_\_\_** - Thank you

**Applicant's Attorney** - This is no different than the Stadium's parking lot. The

Stadium's restaurant parking lot.

**Vincent Cestone** - How is it the same. Explain it to me

**Kevin Jones** - How it is the same? It is less of a variance.

**Vincent Cestone** - That was a decrease in non-conformity. And it is not in a wetlands

**Kevin Jones** - But parking spaces

**Vincent Cestone** - I am not getting into a debate about other properties. Now you brought the point of other properties. I took the effort of going to each one of those properties' records and each one of them was decrease in nonconformity or no increase of nonconformity. The gas station at the end of 403, that was no increase in nonconformity. The Stadium was a decrease in nonconformity. I don't want to get into an argument about this. You brought this up. I am talking to it.

**Marla Rubin** - The nonconformity is not a standard for variance here sir. It is not under the law. It is not.

**Vincent Cestone** - That is absolutely true but

**Marla Rubin** - Then you are apples and oranges when say

**Applicant's Attorney** - Then why are you bringing it up other than to justify the position

**Marla Rubin** - It is apples and oranges

**Applicant's Attorney** - No all we are doing is explaining to you that there seems to be two sets of rules here. One for the rest of the Town and one for Mr. Jones

**Vincent Cestone** - That is absolutely not true

**Marla Rubin** - We have documented that

**Adam Rodd** - If I can, excuse me, if I can just make a suggestion. And certainly you have a right to be heard, to make whatever statement you feel is appropriate and we will consider that. I don't think it is productive at this point to argue the merits or argue kind of characterizations about. I mean if you feel you have been treated differently, you have a right to make a record of that. And to spread that on the record that will be transcribed. You have the right to do that. We will listen to it. We will consider it. As you know, and again, we are not disagreeing with you, but we just literally got this new map a few minutes ago. So the

Chairman indicated that we are going to hold the Hearing open and you can make whatever statements you feel are appropriate in support of the application. We have noticed that there is a public hearing, the public has a right to make any comments tonight if they wish to be heard. But with that said we are going to have to keep it open until, what is the next meeting? The 5<sup>th</sup>?

**Vincent Cestone** - Next week

**Applicant's Attorney** - What I would like to know is why when these maps were provided to the Town on the 22<sup>nd</sup>, they were hand delivered. They don't reach the Board until 7 days later

**Kim Shewmaker** - Can I answer that?

**Vincent Cestone** - Yes you can

**Kim Shewmaker** - Because I come on Monday nights to pick up everything that has to go into the packets that get mailed out on Tuesday. When I come on Monday night, I get everything in the mail box, make copies, pack it up, come back Tuesday and stamp it. It was not in the box Tuesday when I came in otherwise I would have put it in the packet as well. I don't come back now until Monday. I am not in Town Hall everyday. Last submission is Monday, the Monday before the next meeting.

**Applicant's Attorney** - Okay. And it was submitted on Tuesday.

**Kim Shewmaker** - I was not here

**Applicant's Attorney** - I thought you just said you come back on Tuesday

**Kim Shewmaker** - Tuesday to stamp, and there was nothing in the box. So where it was, I don't know. Because if it was in mailbox, it would have made the packet and they would have it.

**Marla Rubin** - Was there a notice to Mr. Jones that all material has to be in the Monday, by the Monday night before the next meeting in order to be admitted

**Vincent Cestone** - It's 2 weeks

**Kim Shewmaker** - 2 weeks for new appeals. Any submissions is the week before

**Vincent Cestone** - But it has been months. It has been since July

**Kevin Jones** - It's been since July. But you couldn't get us in on the early September meetings and we are here on September 28<sup>th</sup>

**Vincent Cestone** - But what I am saying is how come the plans didn't come in August

**Applicant's Attorney** - How come it didn't come whenever. It doesn't matter. It came a full six days ahead of time. That's more than sufficient time for the Town to have the plans and look at them. If the Town chooses to adopt procedures that we are not going to look at anything for 6 or 7 days at a clip, I can't help how the Town's inefficient procedures impact your proceedings.

**Lenny Lim** - But we can't make a judgment on something that was just handed to us. It was just handed to us

**Applicant's Attorney** - Take as much time as you need, there aren't that many changes on the document from the one that you had before. There really aren't

**Marla Rubin** - And everything that is changed is set out so clearly that even I

**Vincent Cestone** - It's not that. It is that the public has to have an opportunity to review these documents and comment on them. They were put in the record tonight. They have to have a chance to look at them

**Marla Rubin** - Could there be an adjournment perhaps where the gentleman can take them out and look at them

**Vincent Cestone** - No no. I am not going to do that. We are going to continue this until next week and we will address this it then. I have to give the people in the audience and people who are not here an opportunity to walk into the Building Department, grab the record and look at it.

**Marla Rubin** - But we were on the agenda. We have been on the agenda for a week right so, they could have been looking

**Vincent Cestone** - So you are asking me to not give the public a chance to look at it

**Marla Rubin** - No I am not. If the public was interested, the public would be here. So there is one individual here who is interested and the map is right here for the individual to look at. This cost Mr. Jones so much money

**Vincent Cestone** - Please don't. I am not going to argue the point

**Marla Rubin** - You shut him down. He's got no water there. I have never seen anything like this in 25 years of practice.

**Audience Member** - I would like to make a comment for the record that the

applicant has failed to show up on other instances where he has been on the record. Thank you

**Vincent Cestone** - Okay. Are there any more comments from the Board?

**Bill Flaherty** - Well I would like to make a comment relative to the fact that you accused this board of having two sets of rules. I have been on the board for 4 years and I will tell you unequivocally that this board is fair and reasonable at every single person that ever comes before this board. We look at all the facts and make an intelligent decision as to what direction it should go to. There is nothing to do with whether or not, we are non-discriminatory in every respect. I can't say that more clearly than that. I take offense to what to said.

**Applicant's Attorney** - I am not trying to impugn any individual on this board. I am not trying to impugn anyone at this board in its entirety. What I am talking about is the Town of Philipstown. The Town of Philipstown made misrepresentations to a Judge of the State during a deposition. An employee of the Town of Philipstown could not explain how he came up with a map with a line that he hand drew through it saying this is where the zoning border is

**Vincent Cestone** - We are not party to that

**Applicant's Attorney** - That is why Judge O'Rourke did what he did

**Vincent Cestone** - We are not party to that

**Applicant's Attorney** - I understand that but the Town is and you are part of the Town

**Vincent Cestone** - We are not doing this. You are making an accusation

**Applicant's Attorney** - To the Town. Not to you individually or this board in general

**Vincent Cestone** - So you are saying the Town and not the Zoning Board

**Marla Rubin** - We are saying every step of the way

**Applicant's Attorney** - I don't have any evidence yet, I haven't taken any depositions sir yet. I may get there but I haven't as of yet. I haven't done discovery with you yet but I have with other members of the Town.

**Vincent Cestone** - Okay. Does anyone have any additions to this so that I can open it up for comment from the audience?

**Applicant's Attorney** - Yes I would just like to say that, that the proposals to this

property have no detrimental impact on the nearby properties. No property can see this other than the Stadium that is across the street. It does not, it is not going to appear to look anything different. If anything it is going to appear to look better. It is going to improve the sight lines of the road. It is going to improve drainage on the road. There is no other variance that we could ask for that would enable my client to use the property in a matter that is permitted. The impact, excuse me just a moment, DEC says that no permit is required for the wetlands. This is isn't a self-created hardship. This is simply an entrepreneur who is trying to use his property as best he can under the zoning regulations. All he is asking for is a setback of the variances of the setback from Route 9 which have been granted all over Route 9. He is just asking for another. Thank you.

**Vincent Cestone** - Any comments from the audience? Please sit down.

**Robert Freeman** - My name is Robert Freeman.

**Robert Dee** - Can we ask you to step away so he can get up here

**Robert Freeman** - Our home is immediately across Diamond Hill Road from his property. And we can see it. Certainly in the winter and even in the summer because of the bright lighting that is there. What we believe is going on is a fairly dramatic expansion of an abandoned non-conforming use that used to be conducted within a building that is probably less than a third the size of this room to where the retail operation is now covering the entire site or virtually the entire site. The non-conforming use that related to the retail operation was abandoned in December of 1996. This property was not acquired by the applicant for nearly 3 years later so there could not have been a business continuing to operate. The operation does not conform with a number of provisions of the Zoning Law primarily because of the setback requirement and the proximity to the wetlands and I think even acting on a variance is premature because there should be a decision made on whether or not a non-conforming use of this character is permitted in this location. And it, there is certainly more than one member of the public here tonight specifically for this reason. To hear this thing. We would all like the chance to look at the plans and see what is going on. The operation has been in operation for quite sometime without appropriate permits and we expect it is going to be an on-going enforcement hassle for the Town given the history. And hoping very much that the board will reject this application.

**Vincent Cestone** - Anyone else from the audience wish to speak? Sir. Introduce yourself please.

**Clarence Bartow** - Clarence Bartow. I live down the road too.

**Adam Rodd** - What is your address sir?

**Clarence Bartow** - 31 Everett's Hill, Garrison, New York. I just wanted to

mention that aside from being right on the wetlands and has a history, and correct me if I am wrong, of dumping stuff into the wetlands. The cars are parked really right next to Route 9. And I dropped pictures off here several months ago when the meeting was going, and it is a blind curve both ways. South and North. There is a sign that says when you go North do not turn into Diamond Hill Road about 100 feet before you would turn left into the parking lot for the Garrison Contracting place. And the cars there that are there right now, there are not too many, but there is still according to the measurement, and the rain, and the traffic, there is still about 12 feet from the white line that draws from the edge of Route 9 to where the car is. And if that's what the zoning says, I would be really surprised if that's allowed. That's all.

**Vincent Cestone** - Anyone else from the audience wish to speak?

**Shawn Kemp** - My name is Shawn Kemp. I am an attorney with the law firm McCabe and Mack in Poughkeepsie, New York. I am here on behalf of Mr. Steven Holly. He owns property at 7 and 19 Diamond Hill Road. First I would first like to thank the board for giving the public an opportunity to speak but also for adjourning the meeting so that the public has an opportunity to inspect the maps that were recently provided to the board. I know there has been a lot of discussion involving this matter in the past and rather than rehash all the arguments that have been made, the thing that is straight forward is that when you look at the elements or the factors under Town Law Section 267(b)(3) that there is no doubt that this application for a variance should be denied. One of the most striking things about this variance is the substantial nature of it. Now the mass might indicate something different, but from what I understand the variance seeks to go from what would be 100 feet, parking with 100 feet to the center of Route 9 to down to 41.7 feet. I don't think there is any explanation for why such a substantial variance should be granted. Again, when you look at the fact that whether or not this is self-created, there is not evidence that it is not self-created. It is the applicant's own decision to move forward and expand this use that would ultimately needs the variance because of the setback requirements. Overall, I don't really have much further without having an opportunity to look at the map, but again, I am here on behalf of Mr. Steven Holly and we are against the granting of this application.

**Vincent Cestone** - Anybody else wish to speak? Sir.

**Bob Hilpert** - I am Bob Hilpert. Upper \_\_\_\_\_ property owner. I don't have much to add to what I think has been eloquently said but I think the point here is that we keep talking about a use and an expansion of a use. I don't think the use exists here any more. There had been a use for this property which doesn't conform in any respect to the wetlands and that use has been abandoned. There is no question it has been abandoned. There is no application to restore it. I think a variance is premature and has to be denied.

**Vincent Cestone** - Anyone else wish to speak?

**Ann Osborne** - Ann Osborne, 365 Old West Point Road. I am about a mile and a half north of this use. I am a former President of the Garrison Volunteer Ambulance Corp and as a volunteer ambulance responder any use of a property on a 50 mile an hour road which increases the likelihood of injury and death is not something that I would think you would want to grant.

**Vincent Cestone** - Anyone else wish to speak? With that this is adjourned until October 5<sup>th</sup>.

**Kim Shewmaker** - Let me know when the next meeting is going to be after the 5<sup>th</sup>. Is it going to be the 26<sup>th</sup>?

**Adam Rodd** - I don't know

**Vincent Cestone** - Okay next item on the agenda is Billy Williams. Hi how are you doing?

**Billy Williams** - Good. How are you tonight?

**Vincent Cestone** - So explain to us what you are here for.

**Billy Williams** - There is a shed attached to the back of the garage

**Bill Flaherty** - Attached to the garage

**Billy Williams** - Yes.

**Vincent Cestone** - And the shed is I would assume is in the setback. Is that correct?

**Billy Williams** – yes

**Adam Rodd** - Is this, just so I am clear, is this an existing shed

**Billy Williams** - Yes

**Adam Rodd** - Something that has been there since 1989

**Billy Williams** - I would not carve that in stone but it's

**Adam Rodd** - So it's been there for about 20 years

**Billy Williams** - Yes

**Adam Rodd** - Approximately

**Billy Williams** - At least

**Vincent Cestone** - And how did you ended up before us? Did the building department come?

**Billy Williams** - Well I sold the property. I have been there for like 45 years

**Vincent Cestone** - So what kind of structure is this? Is this a permanent type of structure

**Billy Williams** - Yes. It is on a concrete slab

**Vincent Cestone** - And it is one foot from the property line

**Billy Williams** - Yes.

**Robert Dee** - I took a look at it. There are two sheds there right?

**Billy Williams** - No just, it's the back of the garage and then it is a shed off. There is a plastic shed.

**Vincent Cestone** - Okay what would the consequences be if your application was denied tonight?

**Billy Williams** - I would have to, I put money in escrow for the gentleman to tear it down and do away with it. It kind of seems ridiculous to me, it makes the property. It makes that corner and makes it neater. Before I had the shed there, I had a compost heap there. My neighbor, my ex-neighbor, he still lives there, he wanted to come up with me and tell you that this is great. They thought it was much improvement there instead of a compost.

**Vincent Cestone** - Did he put something in writing in support of this for you

**Billy Williams** - No he didn't. But he would if I asked him. Both neighbors would do it.

**Lenny Lim** - It might be nice to put it into the record.

**Billy Williams** - Okay. We can get that tomorrow or the next day.

**Vincent Cestone** - And the two neighbors that you are talking about are the one on this side

**Billy Williams** - The two that it is close to

**Vincent Cestone** - Okay.

**Adam Rodd** - The shed is, so I am clear, is one foot from the rear property line

**Billy Williams** - The back corner right. It's a corner lot.

**Adam Rodd** - Is this an attached shed.

**Billy Williams** - Yes

**Adam Rodd** - So it is attached to the back of the garage.

**Billy Williams** - Yes. And the same siding and everything

**Lenny Lim** - Do you also need a side setback

**Billy Williams** - The side setback, they tell me since this is a corner lot it only needs 5 feet

**Lenny Lim** - I am not debating that. But it also looks like you are right up against this property. I mean it is 5 feet to this property

**Billy Williams** - 5 feet to one and 1 foot to the other

**Lenny Lim** - That's what I mean. Doesn't it need one for the other

**Billy Williams** - It is normally 10 feet but it doesn't pertain to a corner lot.

**Vincent Cestone** - It's R-10

**Lenny Lim** - I didn't think there were any more R-10

**Vincent Cestone** - Yeah, in Continental Village

**Lenny Lim** - The side would be this way and the back is this way

**Billy Williams** - But the house is facing the other way, so it is the back to us

**Adam Rodd** - I think the board is going to ask for these written submissions

**Billy Williams** - Yes

**Adam Rodd** - We would probably want to keep it open until

**Vincent Cestone** - The 5<sup>th</sup>. What I suggest you do is get your neighbors to put

something in writing for you.

**Billy Williams** - Something simple like I do not object

**Adam Rodd** - I do not object to the variance as it has been defined.

**Vincent Cestone** - That 1 foot from the property line is okay with them

**Billy Williams** - Okay

**Vincent Cestone** - Because that is an important thing. We would weigh what the residences say.

**Billy Williams** - Okay.

**Bill Flaherty** - I want to ask you, you built this shed?

**Billy Williams** - Yes

**Bill Flaherty** - How long ago did you build it

**Billy Williams** - About 20 years ago

**Bill Flaherty** - And you didn't realize at the time that you needed a permit

**Billy Williams** - No. Actually I didn't even consider it. To tell you truth. I wanted a shed there, and I put it up.

**Bill Flaherty** - Well it would have been appropriate if you did

**Billy Williams** - I realize that now

**Bill Flaherty** - Now you've closed on this property already

**Billy Williams** - Yes. I put money in escrow in case it had to be torn down. But

**Bill Flaherty** - How much money do you have in escrow

**Billy Williams** - \$3,500. I sold my house and I am buying a condo. Can't do this stuff anymore. So basically I have always been very proud of that property. I still get compliments on it.

**Vincent Cestone** - Just how big is the shed

**Billy Williams** - 8 by 12

**Vincent Cestone** - Okay

**Lenny Lim** - On for the next meeting

**Vincent Cestone** - Yes. On for the 5<sup>th</sup>. Does anyone wish to speak on this? Then you are continued until next week

**Billy Williams** - Thank you. When do we have to have the letters in and who do we submit the letters to? I've learned from the last appeal.

**Vincent Cestone** - The quicker you get them the better. If you don't get them

**Kim Shewmaker** - It is only one week to the meeting. It would be impossible.

**Vincent Cestone** - Bring them with you next Monday.

**Billy Williams** - Okay. Thank you

**Lenny Lim** - The more people in support is always a good thing

**Billy Williams** - Thank you

**Kim Shewmaker** - Vinny, just so you know you have six public hearings on for next week so far.

**Vincent Cestone** - I know.

**Kim Shewmaker** - Just giving you a heads up

**Vincent Cestone** - Next item on the agenda is Tim and Mary Donovan. How you doing Tim? Explain to us what you are doing.

**Timothy Donovan** - I am proposing a garage in the setback. I am requesting an 11 foot variance.

**Vincent Cestone** - Okay

**Timothy Donovan** - From the road. On this survey, on this side of the property. And it is basically the only place it could go. And one of the reasons is because of topography and the other reason is because of my septic. And there will be two garage doors facing Old West Point Road and I don't really have a very large house so I need storage. And we are proposing an accessory apartment upstairs. I have board of health approval on the plans and it will comply with the 800 square foot requirement by the Town.

**Robert Dee** - You say that it is board of health approved but I don't see any

board of health drawings that say that.

**Timothy Donovan** - I have the board of health approval right here.

**Robert Dee** - Where are the plans though to show where the septic system is going to go

**Timothy Donovan** - It is actually going to tie into the existing septic

**Robert Dee** - It doesn't show that

**Timothy Donovan** - I have a letter from the board of health approving it for one more bedroom actually

**Robert Dee** - There is no diagram here showing where the septic is going to go, it shows from the current home which I understand

**Timothy Donovan** - Let me give you what the board of health gave me. I am sorry that you don't have it

**Robert Dee** - You have to have a pipe going out

**Timothy Donovan** - I understand that.

**Robert Dee** - I don't see it is what I am saying

**Timothy Donovan** - Understood. I understand your question

**(Turning tape over...may have lost some dialogue)**

**Timothy Donovan** - ...this is the letter from the board of health. It says that the plans have to be reviewed by the Department prior to them giving approval. He has a check list.

**Robert Dee** - So you don't have plans yet

**Timothy Donovan** - We have site plans. The plans that we gave him, I don't know, truthfully I didn't have that conversation with them. My engineer did

**Robert Dee** - But I don't see a copy here. I don't have a septic plan showing the septic going from the building. Do you see what I am saying to

**Timothy Donovan** - I understand exactly what you are saying. I believe that is why he gave that letter so that he would actually inspect them prior to them being covered up. Because he won't be able to give a C of O.

**Robert Dee** - Number 2 here is proposed garage shall not be constructed with a kitchen

**Timothy Donovan** - Right

**Robert Dee** - So you are going to have an accessory apartment without a kitchen

**Timothy Donovan** - Yes. We don't intend to be living in it. We are actually going to be using it to visit. It will have a bathroom in it. And the reason you need a, I had to go to the board of health is because there is going to be a bedroom upstairs.

**Robert Dee** - This is where accessory apartment laws. You know what I am saying? Is it an accessory apartment or is, if it is an accessory apartment I imagine you would have to have a kitchen for someone to live in. Accessory apartments, well actually the law was made for apartments that were already existing like people have illegal apartments. So the town passed an accessory apartment law for that reason.

**Timothy Donovan** - Well this is a very temporary, in fact it is for when we visit. And it is also for storage of our things which if anybody has been up to the property, they will notice there is a big green box there.

**Robert Dee** - But the accessory apartment gives you the right to rent it.

**Timothy Donovan** - No actually I believe it was supposed to be just for family members. I believe that is actually

**Robert Dee** - No. If we give you a permit for an accessory apartment, you can rent it out to anybody. Do you understand?

**Timothy Donovan** - Well it is going to be hard to rent it if there is no kitchen in it right?

**Robert Dee** - That's not the point. But you could rent it.

**Vincent Cestone** - Tim, how come,

**Bill Flaherty** – well, you could rent that out.

**Robert Dee** - If he is given approval for an accessory apartment over the garage, he could certainly rent it.

**Bill Flaherty** – Well we could make that stipulation at that time if we go ahead and approve this application.

**Robert Dee** - Then you are going to deny the accessory apartment?

**Bill Flaherty** – Well

**Timothy Donovan** - There is a reason why he said no kitchen is because they are looking at that as though it is an additional bedroom. Because he actually permitted me to have one more bedroom on my property. That's basically what the septic system

**Lenny Lim** - Who permitted

**Timothy Donovan** - The board of health permits one more bedroom on my septic system and that is actually where the bedroom is and he said you know what we are not going to have a kitchen in there because he said they classify it as bedroom now. Brand new ruling

**Robert Dee** - You only have two bedrooms in your home now

**Timothy Donovan** - Exactly

**Robert Dee** - Okay. But you understand our concern is we are looking at it as an accessory apartment. That's what you asked for

**Timothy Donovan** - Well I think that is the right thing to ask for

**Robert Dee** - Which is rentable all the time

**Vincent Cestone** - Tim, how come you can't move this over here so that you would only be asking for a 6 foot variance? So that you are not this far away, if you move the whole structure this way so that basically that it's

**Timothy Donovan** - Right. On the other side of the drawing, that is the drawing from the prior meeting. There is actually no place to move it. There is a stone wall, basically it is hand in glove right there. If I could move it, I would move it.

**Paula Clair** - Can I just have some clarification on what you want to do with this accessory apartment. You said you would use it to visit. What exactly are you planning to do?

**Timothy Donovan** - Well we don't have any storage in our house. We have a small home. We have things. We would like to be able to put them somewhere. And this would really serve that purpose. Downstairs is a garage, normal use. Upstairs would be storage, studio and temporary, whenever we want accessory apartment

**Paula Clair** - What would you use it for

**Timothy Donovan** - Guests, my daughters, well it really goes with my daughters, maybe me visiting

**Paula Clair** - Visiting what though

**Timothy Donovan** - Oh where am I? We, I got transferred up to central New York temporarily so I like to come down and be able to stay somewhere instead of on a neighbor's couch.

**Robert Dee** - What is the square footage of the living space that you are looking for

**Timothy Donovan** - It will be 800 square feet. It will comply with 800 feet.

**Paula Clair** - So you are not living there now?

**Timothy Donovan** - No I own it

**Paula Clair** - You own it and you are renting it

**Timothy Donovan** - I am renting it yeah. To Vinny \_\_\_\_\_

**Lenny Lim** - If I do 28 x 32 I come up with almost 900 square feet.

**Timothy Donovan** - Yeah you do, but we actually cut that off if you look at the drawing.

**Lenny Lim** - I can't figure it out.

**Timothy Donovan** - The front side. From the front left when you look at it. Right here. There is a stair that goes up from the front. See that jog right here. It will comply with 800 square feet

**Robert Dee** - Yeah but it shows more than 800 on the plan

**Timothy Donovan** - Well because downstairs we want to have enough room for cars

**Robert Dee** - No the living space shows more than 800 feet

**Timothy Donovan** - Well actually I think the living space shows, cuts down to 760

**Lenny Lim** - Okay 28 by 32

**Timothy Donovan** - Right that's 960

**Robert Dee** - All right. And if we take out the stairs, but I don't know the distance, I don't know

**Timothy Donovan** - The regulation is it can't any more than 800 and we know that.

**Robert Dee** - You are building a second structure and you are trying to put an accessory apartment in it. I understand that. That's what you are trying to do. Let me ask you a question, I have a letter here from \_\_\_\_\_ Inc. The person writes in support to your request. But that is one of the things I have a question it says the party of the first part \_\_\_\_\_ reservations and covenants into your property

**Timothy Donovan** - There are some deed restrictions

**Robert Dee** - It says under D no residential structure in addition to the single residential structure exists on the premises to date here of shall be permitted or constructed at any time

**Timothy Donovan** - Right

**Robert Dee** - So wouldn't that go against that? If you are building another structure for somebody to live in

**Timothy Donovan** - I think the interpretation as it goes on is that it is for permanent residents

**Bill Flaherty** – We also have a letter from Mr. Osborn

**Robert Dee** - A permanent residence is an accessory apartment. Whatever you are going to do with it is your own business.

**Timothy Donovan** - I will let Mr. Osborn explain

**Robert Dee** - Wait wait I'm talking with you. I'll speak with him later. And as far as that residence goes, permanent is permanent. If we give you an accessory apartment, that's permanent. Somebody could live there forever. So it comes as a permanent structure.

**Bill Flaherty** – Well we have a letter that we just got at the beginning of this meeting which exempts that particular paragraph from us to implement. Since Mr. Frederick Osborn III \_\_\_\_\_ in accordance with the proposed building that Mr. Donovan anticipates building. So I assume that would negate that particular

paragraph in the covenants. Because I picked that up going through the file as I did. Adam,

**Adam Rodd** - Well just to clarify the issue with respect to the issue of any deed restrictions or deed covenants. That is not in the prevue of the board. We don't have a right to either disapprove or approve based upon a private covenant between two private parties. We are just here to interpret and apply the zoning law period.

**Bill Flaherty** – Well who has the jurisdiction for this type of thing

**Adam Rodd** - Well if for example there was a violation of a covenant in the deed the him building a particular structure, the person that is benefited by the covenant might have a private right of action against the person that develops the property. But it is not within the prevue of the zoning board.

**Vincent Cestone** - This is a pretty large building. Couldn't you make it smaller and fit it in without a variance? Because this is a pretty large structure

**Timothy Donovan** - There is not much, if you look at where the septic is, we would like to do that. The challenges it would serve no useful purpose if I, lets say cut it down by a third. It still wouldn't fit in.

**Vincent Cestone** - What if you knock six feet off the front? And you would need a much smaller variance.

**Timothy Donovan** - I am trying to stick two cars in there. I have two garage doors there.

**Adam Rodd** - Just so I am clear

**Timothy Donovan** - People, the property owners that surround that property, did write a letter in support. I just want to make sure that that is noted

**Adam Rodd** - Just so I am clear. The proposed barn is going to be setback 29 feet from Old West Point Road

**Timothy Donovan** - Yes

**Adam Rodd** - Okay. So when you are saying 11 foot variance it is 11 feet from the

**Timothy Donovan** - Our problem is that we are really hard by the septic, I mean the board of health told us where we had to put it. And, based upon the topography as well as some of the impediments, the building impediments that we face with respect to rock and stone walls that are already in place that

support the hill

**Vincent Cestone** - What if this board denied this? What would you do?

**Timothy Donovan** - I would probably appeal

**Vincent Cestone** - Sorry?

**Timothy Donovan** - I would probably appeal. Because I really need, I have a small house

**Lenny Lim** - 28 by 32 is a big garage. Basically you are asking for a garage you said

**Timothy Donovan** - I'm sorry

**Lenny Lim** - Basically you are asking for a garage

**Timothy Donovan** - That's what we are building, two car with a studio upstairs that can be lived in.

**Lenny Lim** - 28 by 32 is kind of big for a garage

**Timothy Donovan** - 2-car garage

**Lenny Lim** - I have a two garage and it ain't 28 by 32

**Bill Flaherty** – Well in this case we wouldn't have to issue a special use permit for this particular structure. Normally an accessory apartment requires a special use permit but in this case we would not necessarily have to issue a special use permit. It is not going to be used as an accessory apartment

**Adam Rodd** - Just to clarify, on his road he is entitled to an accessory apartment as of right. It is a permitted use. If he was on a different type of road and the Code speaks to it, then he would need a special use permit. So he is not before the board to get a special use permit or permission per se to have an accessory apartment. He can have that. As of right.

**Robert Dee** - Without going before the Town

**Adam Rodd** - Without getting a special use permit. He doesn't need a variance from this board, he doesn't need approval from this board to have an accessory apartment per se. He is before this board because he is proposing to site the structure within the 40 foot setback. He is 29 feet back. He is supposed to be 40 foot back. So he is here for the 11 feet.

**Robert Dee** - And the reason he doesn't need it is why

**Adam Rodd** - It is a permitted use.

**Robert Dee** - In what? In certain zones

**Adam Rodd** - Yes. It is a permitted use in the R-40

**Robert Dee** - So you are saying that anybody in an R-40 doesn't need to come before the board for an accessory apartment

**Adam Rodd** - An accessory apartment is a use permitted as of right as long as you are on a lot with direct access to a State, County or Town street.

**Robert Dee** - So if you are in an R-40 zone

**Adam Rodd** - If you are in an R-40 zone but for example if you are on a right of way, if your home is accessed by a right of way, not a Town, County or State road, then you would need a special use permit. There are requirements in the code that govern when you need a special use permit and when it is permitted as of right. It is not anchored to what zoning district you are in. You might need a special use permit even in an R-40 depending on how your lot is accessed.

**Lenny Lim** - He is just asking for a variance. I want to know if there is any way you can downsize it a little bit or move it back like Vinny said, is there any place you can move it back

**Timothy Donovan** - We tried. And here's the thing. When we applied, when we looked at the original maps and other people looked at the original maps, we thought we might have to ask for a three foot variance. Until I was issued this. And when I looked at it with my builder, I said, you know once we did additional work, I said you know what we are in the setback which is the reason why I have come back to you. Because I was issued this not for any reason other than it was a misunderstanding of the lines. Because typically if you look at Old West Point Road the actual lines goes 8 feet back into my property. Into what we think is our property. So when we looked at it, there was no intent to deceive or even to try, we weren't even trying to do anything other than build it. We actually, we did all this work based upon that and we could fit it in there. So when you ask if we can downsize it, you know, downsizing it to what is a better question. Because when you really look at the size of the spot that I am in, there is not a lot of room. Because you have to be 10 feet from the septic fields, septic pipe, I've got rock like we invented it in Garrison, and then the topography just drops off pretty dramatically on the far side. So I don't know what I would change it to.

**Vincent Cestone** - Generally a two car garage is 23 feet wide by 25 feet deep. And this is bigger than that

**Timothy Donovan** - Yeah because you want to be able to go upstairs, you want to be able to do stuff in it

**Bill Flaherty** – Well I have a two car garage and it is 22 feet by 24. And it is adequate for what I use it for and I have an artist studio up above.

**Timothy Donovan** - Based upon where I am on that hill though,

**Lenny Lim** - It seems like most of us are saying we have two car garages that are within 25, 26 feet. You are asking for 32. We just want to know if you could reduce it

**Timothy Donovan** - Well 32 long is what I was asking for.

**Lenny Lim** - Yeah, that's what I am saying. Most of us are 24 or 25 feet.

**Bill Flaherty** - Adam, as a result or in the event that we do this, could we put a stipulation in the document prohibiting this particular building from being leased in any way?

**Timothy Donovan** - It doesn't have a kitchen

**Adam Rodd** - Well, an accessory apartment is a use permitted as of right and the only thing that I would caution is that when a board attaches conditions, the conditions have to be related to the variance that is sought. So here the issue is the structure, however it is used, is within the setback. It needs 40 feet, he is 29 feet. So I am not sure how that type of stipulation relates specifically to the spatial issue. And he is only here due to the spatial issue.

**Bill Flaherty** - Well Bob indicated earlier that this could conceivably be converted into a rental apartment

**Adam Rodd** - Well, I think it is appropriate to ask the board would he agree to that condition. Would you agree to a condition not using the structure for rental purposes

**Timothy Donovan** - Absolutely

**Adam Rodd** - There we go

**Lenny Lim** - As long as he agrees to never put a kitchen in it

**Timothy Donovan** - Well it is already in this, the board of health says that.

**Adam Rodd** - The applicant would agree not to rent it. And so based upon that

agreement, we can incorporate that into the resolution. If the board decides to vote in favor.

**Vincent Cestone** - Sir, introduce yourself

**Fred Osborne** - My name is Fred Osborne and I live at 365 Old West Point Road. My family owns the land surrounding Mr. Donovan's lot here. We also sold the lot to him and we are the holder of the covenant on the Deed which states that we agree that there will not be a second residential structure. We have been talking about the term accessory apartment, we do not perceive it as that. It is an extra bedroom. It is just a place with a bathroom where they can sleep. Mr. Donovan's intention is that there not be a kitchen. I understand that. In order for us to accept and support his proposal we essentially have to waive that provision of the Deed restriction. I understand the attorney's comment, that that is not your purview but, it is an important issue for us to be able to support the proposal because we can deem this not a residence and essentially not a rentable apartment as it is. If there is no kitchen, I don't see how it can be rented anyway. So that is one point. Second point is that the size of the building is intentionally a bit bigger than a minimally sized two car garage because the Donovan's need storage space. I know this house well that they bought. Mr. \_\_\_\_\_ built it with his own hands before Tim and Cathleen bought it. It is tiny. It has nooks and crannies but that is about it for storage. And Tim and Cathleen have had to rent a pod, a storage box which they have on the property and essentially two cars plus the stuff in the pod is the intention and that is why the building is a bit bigger, intended to be a bit bigger than just a two car garage. And we support the proposal. We live on Old West Point Road. We also live up above this house and we see it all the time. So inside of the curve which to us makes the variance less important and more grantable it seems to us. So that's my comments.

**Vincent Cestone** - Any one else wish to speak on this? Do we wish to close the public hearing?

**Lenny Lim** - I so move

**Vincent Cestone** - I second. All in favor

**All Board Members** – aye

**Vincent Cestone** - Vote? Do we wish to vote or do we want to think about it. Anybody want to think about it?

**Bill Flaherty** - I think we should vote. I vote in favor

**Vincent Cestone** - Do you want me to by-pass you

**Paula Clair** - Yeah

**Vincent Cestone** - Len?

**Adam Rodd** - I would suggest that the board go through the five factors.

**Vincent Cestone** - Bob?

**Robert Dee** - I would like to go through the five factors

**Vincent Cestone** - Okay. Let me find the five factors. I usually have them with me.

**Adam Rodd** - I could go through them. Basically does the board feel that the proposed variance will have a negative impact on the neighborhood or any adjoining properties?

**Vincent Cestone** - I don't think so

**Robert Dee** - Except for the size. The size is a little bit of a concern.

**Vincent Cestone** - I say it was a small impact on the neighborhood

**Robert Dee** - Right

**Paula Clair** - This may be out of turn, but I just can't understand why he is building this away from the original house. If it were me, if I wanted another bedroom I would build it next to the house. Or a second floor.

**Timothy Donovan** - Can I speak? There is actually no place to put this next to the house. I would put on the other side of the property, there is a, you will see there are two stone walls that run close together. Actually it is water most of the year. And you have to have a 100 setback from any water course. And there is virtually no other place to put it. There is also an old driveway opening there. The original house which was 312 square feet, \_\_\_\_\_ so it would naturally come in that way. If I could build it closer to the house I would have. But it is basically the only place I could put it.

**Paula Clair** - Could you add on to

**Timothy Donovan** - Add on to the back? No. There is no place to add on to that.

**Bill Flaherty** - I know this is a sparsely populated area, but I remember a house not too far from your property. How close is that house

**Timothy Donovan** - Nick \_\_\_\_\_ letter did not arrive. It is a yellow house across the road

**Bill Flaherty** - Yes

**Timothy Donovan** - And down the street. He told me he supports this but he wasn't opposed to it. You know I would be lying if I told you a number. 100 yards. I think it is as far, maybe a little further but not much more, maybe 110. It is probably as far from this structure's proposal as my property line is on the eastern border. It is a long way off.

**Audience Member** - It is on the parcel on the map

**Timothy Donovan** - Nick is a long way off. I could get a letter from him

**Bill Flaherty** - It wouldn't do any harm

**Vincent Cestone** - The public hearing is closed though

**Timothy Donovan** - He actually knew about this

**Adam Rodd** - If you want the letter you can vote to open it to receive the letter

**Vincent Cestone** - We would have to re-open the public hearing

**Timothy Donovan** - We don't want to do that

**Vincent Cestone** - Let's complete the five factors

**Adam Rodd** - The first factor is will the variance have a negative impact on the neighborhood or adjoining properties

**Bill Flaherty** - Not many houses in the area and the building would be in accordance with the neighborhood. I know the property and I know where you live. I have been down there sometime ago looking at it.

**Adam Rodd** - Can the applicant obtain the benefits that he seeks without an area variance

**Vincent Cestone** - I say yes. Smaller structure. Cut it further down into the back. Move it over a little bit.

**Lenny Lim** - I would probably say yes on that one too. It might be very expensive if he has to cut back into the back. It might be very expensive

**Adam Rodd** - Okay

**Bill Flaherty** - Well on the statement Mr. Donovan said that he would need an engineering bridge over the stream

**Timothy Donovan** - If I wanted to put it in the back of the property

**Bill Flaherty** - Yes

**Timothy Donovan** - There is a lot of land there but you have to go over the stream. If that was a requirement, I wouldn't do it truthfully. Because I would have to

**Bill Flaherty** - The topography just wouldn't render itself to, it would be very very expensive.

**Vincent Cestone** - The question is can he achieve his goals another way

**Paula Clair** - No I don't think he can. He wants, it is a dual purpose the garage and the bedroom

**Timothy Donovan** - It is a huge storage issue

**Paula Clair** - Right. So in terms of cutting it down, I don't think he could achieve his goal

**Vincent Cestone** - Bob?

**Robert Dee** - Could be a little smaller. It could be a smaller building

**Vincent Cestone** - You could build a two car garage and use the up stairs for storage instead of an apartment

**Adam Rodd** - The third factor is the area variance substantial

**Robert Dee** - It is 11 feet right

**Vincent Cestone** - I would say it is not very substantial. It is less than half of the setback. We've given bigger ones but not necessarily on the street but this is like a third

**Adam Rodd** - Will the, the fourth factor is will the variance cause adverse, physical or environmental impacts

**Vincent Cestone** - I personally say no. Does anyone

**Lenny Lim** - I say no

**Robert Dee** - I would have loved to see the septic thing, drawings. But that's fine. I am just trying to figure out how you are going to hook it in to the house. The location

**Adam Rodd** - And the fifth factor is was the need for the variance self created

**Vincent Cestone** - Absolutely. Okay do we want to vote or do you still want to talk about it, think about it

**Lenny Lim** - I am ready to vote

**Vincent Cestone** - Okay. Len?

**Lenny Lim** - I vote in favor

**Vincent Cestone** - Bob?

**Robert Dee** - I would probably have to abstain because I wouldn't vote for it unless I knew that nobody was going to live upstairs. That it had to be included in the thing that there was no occupancy

**Vincent Cestone** - What do you mean? That it wouldn't be rented as an apartment

**Robert Dee** - It wouldn't be occupied. Period. So I guess what I am saying is that I would vote no. The way it stands now, I am against it.

**Vincent Cestone** - Okay.

**Bill Flaherty** - I vote to approve

**Paula Clair** - I vote to approve

**Vincent Cestone** - And I vote against. Because I think you could make it smaller. But it carries.

**Kim Shewmaker** - Vinny, when is our next meeting. I know it is the 5<sup>th</sup>, what is the next meeting after the 5<sup>th</sup> for this resolution?

**Vincent Cestone** - Well we couldn't actually advertise anything until the first meeting in November.

**Kim Shewmaker** - We could meet the fourth Monday of the month, October 26<sup>th</sup>?

**Vincent Cestone** - The 26<sup>th</sup>

**Adam Rodd** - So I will have the minutes before that?

**Kim Shewmaker** - I am going to try. I am on my way to Ohio on Friday.

**Vincent Cestone** - Next item on the agenda is Dean Anderson.

**Dean Anderson** - Good evening

**Vincent Cestone** - Hi how are you doing

**Dean Anderson** - Doing well

**Vincent Cestone** - Okay.

**Dean Anderson** - I am here for an accessory apartment.

**Vincent Cestone** - So explain exactly what you want

**Dean Anderson** - I am looking to put an accessory apartment in my built barn. Built in 1994. And this is an accessory apartment that is not going to change the structure. It is going to stay within the same footprint as existed before. And as I get older, I am looking for a place to live.

**Vincent Cestone** - How big is this

**Dean Anderson** - It is under 800

**Bill Flaherty** - Is that building, so you are using the same footprint.

**Dean Anderson** - Same footprint. I will be down below on the first floor where the hay is now.

**Bill Flaherty** - What is it 6 stables

**Dean Anderson** - That actually, yeah, I never did get the stables built because I realized that horses can be, especially if they are thoroughbreds they like to kill themselves everyday. And I really didn't want to deal with that

**Vincent Cestone** - Adam, this is an R-80. Why does this one require a special use permit and the other one didn't?

**Adam Rodd** - Because it is on a private right of way

**Vincent Cestone** - Okay

**Dean Anderson** - To that point, I actually share a driveway with Mr. Dale back here. The property lines goes right up the center of the driveway and both his deed from 1952 and my deed originally from the man I bought it from, have easements. I have an easement to go over his half of the driveway and he has an easement to go over my half of the driveway in his deed and I have one in my deed.

**Vincent Cestone** - Who does the maintenance? I've always wondered

**Dean Anderson** - He's done a lot and I've done a lot. We share. We don't have an agreement we just keep doing it

**Vincent Cestone** - Good neighbors

**Dean Anderson** - Yeah. Mr. Dale has been a great neighbor. This is my deed which is part of the package. This is the easement

**Adam Rodd** - Okay

**Dean Anderson** - And this is Mr. Dale's deed and this is the easement

**Adam Rodd** - Okay

**Vincent Cestone** - You are proposing the accessory apartment in the garage

**Dean Anderson** - In the barn

**Vincent Cestone** - In the barn

**Robert Dee** - It is a two story framed shed right? That's where you want to put the accessory apartment in

**Dean Anderson** - Yes

**Robert Dee** - That's the barn. And you have board of health approval on it

**Dean Anderson** – yes. I have it as part of the package. I have board of health approval, wetlands approval, and I have all that stuff. Have it for a couple of months now. And there should be a map of the wetlands and there should be a map of the board of health septic system approval. You should all have a copy.

**Robert Dee** - I've got it

**Vincent Cestone** - Any comments from the board

**Bill Flaherty** - Now you say you share a roadway

**Dean Anderson** - We share a driveway. If you look at this map here, this

**(Cannot hear over the multiple conversations)**

**Bill Flaherty** - Do you have that in writing

**Dean Anderson** - Yes

**Bill Flaherty** - I don't think we have a copy of that

**Dean Anderson** - The copy is in my package, it is part of my deed and it is an easement. And this is a copy of his deed.

**Bill Flaherty** - Okay because that is really essential

**Dean Anderson** - Oh yeah

**Vincent Cestone** - Any more comments from the board? Any comments from the audience?

**Mr. Dale** - Yes. I have a comment

**Vincent Cestone** - Sir please introduce yourself

**Mr. Dale** - I have the original survey by Mr. Ted \_\_\_\_\_ of the Dale property and what Mr. Anderson said is true except for where he leaves his property to come out to his shared driveway. That's my property. And I have asked him before not to use the driveway. He doesn't live in the house. He rents his house out. It used to be David Osborne's house. And I don't want him on the driveway.

**Bill Flaherty** - How do you suggest that get be mitigated?

**Robert Dee** - Is that the driveway the accessory apartment has to use

**Dean Anderson** - Actually that survey while correct was Mr. Dale's driveway does not have my driveway on it. My driveway was constructed after 1952 by William H Osborne and it veered to the right before Skip's property line comes up. And

**Vincent Cestone** - Where are you saying that he is crossing your property

**Mr. Dale** - Okay, right here. There is a white oak tree there and there is a pipe in there. This is all my property here. This is not shared. The shared driveway comes in off of Cat Rock Road up to that white oak tree.

**Bill Flaherty** - Well how would you suggest that this be remedied? Any ideas

**Mr. Dale** - I don't have a problem when he was living in the house. But now he rents the house out, I don't want the people on my driveway.

**Dean Anderson** - If you look at this drawing here, this is the line that Mr. Dale is talking about. This is my driveway which is not depicted in that survey. That survey depicts another driveway coming up here

**Vincent Cestone** - Does that have your driveway on it

**Dean Anderson** - Yes.

**Mr. Dale** - Once you leave the stonewall Dean and you come out to the driveway, that's my property

**Dean Anderson** - Actually Skip the easement that you have in your deed and I have in my deed says I have the right to use whatever part of that driveway that delivers me to my property.

**Mr. Dale** - You have the right to half of the driveway

**Vincent Cestone** - That is not really relevant to this discussion

**Bill Flaherty** - Is there a separate driveway to this accessory apartment or are you going to use this driveway

**Dean Anderson** - I am going to use this driveway right here. If you look this drawing the driveway to the existing house right now that I occupy cuts out just a little before the driveway, the property line to Mr. Dale's. I can actually point it out

**Mr. Dale** - How many years did you live there before you put this connecting piece into my driveway

**Dean Anderson** - I did not put it in. William H Osborne did

**Mr. Dale** - No I am sorry

**Dean Anderson** - Yes

**Mr. Dale** - No you put it in

**Dean Anderson** - No I didn't

**Mr. Dale** - When you put the pipe in

**Dean Anderson** - That's the only driveway I have ever had. I have no other right of way over any other property

**Mr. Dale** - You came in off of Willie Osborne's driveway

**Dean Anderson** - No

**Mr. Dale** - You went by Nancy Gully's house and

**Dean Anderson** - No

**Mr. Dale** - Don't tell me

**Robert Dee** - Let me ask a question. Let me ask a question here. The gentleman said you rent the house out, you don't live in the house. Is that correct

**Dean Anderson** - No. I live in the house as does Joe \_\_\_\_\_ who owns half the house, half the property with me.

**Robert Dee** - So there are two owners. You and another person own the property

**Dean Anderson** - Yep

**Robert Dee** - You live there though

**Dean Anderson** - Yes

**Robert Dee** - How many other families beside you live there

**Dean Anderson** - Basically there are two families living together in the house

**Robert Dee** - The same house

**Dean Anderson** - Yes

**Robert Dee** - Okay

**Vincent Cestone** - Have you talked to the building department of this

**Mr. Dale** - No

**Vincent Cestone** - That's what I suggest you do because if he is in violation, they will cite him for that

**Mr. Dale** - Okay I will talk to the building department

**Vincent Cestone** - That's where you would resolve it, not here

**Mr. Dale** - Okay. I'll talk to the building department

**Vincent Cestone** - Because we don't have the enforcement ability to do something like that

**Mr. Dale** - Okay

**Vincent Cestone** - And they would look at the plans and they would make a determination

**Mr. Dale** - The building department downstairs

**Vincent Cestone** - Yes the building department downstairs

**Mr. Dale** - Oh boy.

**Vincent Cestone** - Explain to him what the issue is and they will look at the property and make a determination

**Mr. Dale** - Okay

**Vincent Cestone** - And they can put this puppy to bed one way or the other for you

**Mr. Dale** - Let me explain to you why this is a shared driveway. When my dad bought the property from Mr. Fred Osborne, there was a big reservoir in the back. 52 foot long, 12 foot wide and 9 foot high. That supplied all the water to the Sloane estate and my job when I got out of Haldane was to fill up the reservoir. And they wanted half of that driveway.

**Vincent Cestone** - Okay

**Adam Rodd** - Has the issue of this property and the right of way ever been the subject of a quiet title action or some sort of legal action

**Mr. Dale** - No. never. This gentleman moved in there, he is a former fireman, I worked with him, I let him hook into my electric lines so he had power to the sheep shed that I call. I tried to work with him and it doesn't do any good. So

**Adam Rodd** - I mean this board obviously cannot decide a quiet title action

**Mr. Dale** - I will go to the building department

**Vincent Cestone** - They will guide you on what needs to be done

**Mr. Dale** - Okay

**Vincent Cestone** - Anyone else from the audience wish to speak on this? With that I would entertain a motion to close the public hearing

**Bill Flaherty** - I'll so move

**Vincent Cestone** - I'll second. All in favor?

**All Board Members** – aye

**Vincent Cestone** - Do we wish to do a vote on this? Does anybody wish to not do a vote on this? Let me put it that way

**Bill Flaherty** - I would wish that we not take a vote this evening

**Paula Clair** - Me too

**Vincent Cestone** - Okay. So it is on the agenda for discussion and vote on the 5<sup>th</sup>

**Dean Anderson** - I have a deed from 1952 when the land was transferred to Mr. Dale. An easement

**Vincent Cestone** - The easement is not the issue. That really is not the issue because we are not looking at the problem that you and your neighbor are having. That is something that the building department, we are only looking at your application. The road is not the issue

**Dean Anderson** - Okay. Then what in the application is incomplete or not closeable

**Vincent Cestone** - Nothing is incomplete. The only thing is the board members want the opportunity to think about it before they vote on it. That's the only thing. Previously what we used to do is take a straw poll vote and the attorney would write up the resolution and then we would have a real vote. But the problem with that was sometimes

**(Changing tapes...may have lost some dialogue)**

**Dean Anderson** - If there are any questions that you need right now

**Vincent Cestone** - Like I said if the board had questions we would ask you, we can make a motion and vote to open the public hearing, but if we have questions, we don't have to do that. Don't read anything into this. Review of minutes of September 14<sup>th</sup>. Do we have any changes? I make a motion to accept the minutes. All in favor?

**All Board Members** - Aye

**Vincent Cestone** - Any old or new business? I'll 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:** October 26, 2009

Respectfully submitted,

Kim Shewmaker  
Secretary