

ZONING BOARD OF APPEALS

January 10, 2011

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 10, 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
	Robert Dee	-	Member
	Paula Clair	-	Member
	Adam Rodd	-	Counsel
ABSENT:	Bill Flaherty	-	Member

Vincent Cestone - We'll start with the resolution. You're on Adam.

Adam Rodd - Okay. Reading the Resolution on Good up through conditions. The applicant Kyle Good is the owner of a parcel of property located at 85 Lower Station Road in the Town of Philipstown. The parcel is improved by a single family dwelling, and is within the R-40 Zoning District. The applicant seeks to construct a two-story addition on the northerly part of his property, which, for the reasons set forth herein, will not strictly conform with particular setback requirements set forth in the Town of Philipstown Zoning Code. Specifically, Section 175-32, Schedule B, Item 7 of the Code requires, in the R-40 Zoning District, a minimum setback from a side property line of 20'. In this application, the applicant's proposed addition will have a side yard setback, at the south corner of the proposed structure, of 19.13'. Further, Section 175-32, Schedule B, Item 6(b) of the Code requires, in the R-40 Zoning District, a minimum street line setback of 40'. Because the street subject to this setback requirement (to wit, Lower Station Road) is less than 50', Section 175-32(D) of the Code requires that the 40' street line setback be increased by half of the difference between 50 feet and the actual width of the street. Applying this requirement here, the applicant is required to maintain a street line setback of 48.34 feet. In this case, the applicant's proposed addition will be setback from the street line by a distance of 43.19'. Because the applicant's proposed two-story addition does not strictly conform with the above-referenced Code requirements, the applicant's request for a building permit was denied. The applicant has accordingly appealed from this denial, and now seeks area variances from this Board. At a public meeting of the Board on November 8, 2010, and upon all discussion and testimony that preceded it, site visits made by individual Board members, and a review of all



submissions and proof submitted to 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 appeal of Kyle Good from the denial of his request for a building permit to construct a two-story addition on his property at 85 Lower Station Road in the Town of Philipstown, despite an insufficient side yard setback of 19.13', and despite an insufficient street line setback of 43.19'. The grant of the subject area variances, with the following conditions, for the reasons set forth herein, shall constitute findings based on the factors set forth in Town Law 267-B. Conditions of the Variance. 1) The proposed two-story addition to be constructed at 85 Lower Station Road shall be setback at least 19.13' from the side yard lot line, and at least 43.19' from the street line. 2) The proposed two-story addition shall be constructed and configured in accordance with the Plans for construction submitted to this Board from Jeff Wilkinson, RA, dated September 7, 2010, and as depicted on the Survey of property submitted to this Board from Badey and Watson Surveying and Engineering, PC, dated September 4, 2009. 3) No enlargement, reconfiguration or extension of the proposed two-story addition, for which the above-referenced variances have been granted, is authorized without prior Zoning Board approval.

Vincent Cestone - Any additions or corrections? I'll make a motion to accept it as submitted. Do I have a second? All those in favor?

All Board Members - Aye

Vincent Cestone - Roll call vote.

Paula Clair - I vote in favor

Lenny Lim - I'm in favor

Robert Dee - I vote in favor

Vincent Cestone - And so do I

Vincent Cestone - Review of Minutes. Any additions or corrections? I make a motion to accept them as submitted.

Lenny Lim - I'll second

Vincent Cestone - All in favor

All Board Members – aye

Vincent Cestone - All righty. Reviews for completeness. First one on the

agenda is Lyons Realty Company. And we have Mr. Gainer, Engineer, here from our side for the Board if there are any questions or concerns. And Mr. Watson, I guess you represent Mr. Lyons.

Glennon Watson - I do and Mr. Lyons is here.

Vincent Cestone - So does the board have any questions for Mr. Gainer or Mr. Watson? Just a short little over view of what is going on.

Glennon Watson - Okay. This is an application actually that was before you well over a year ago and was sent to the Planning Board for its review and comment at the same time it was sent to the State and we have been working on the plan for a number of years. It is for a soil mine. This mine is located on the east side of Route 9, half a mile or so south of the Town line. It is behind the building, what used to be the _____ Court Building. It has a big horse in front of it and a barber shop for a while. That building is right here. In front of the project, Jay Mark Jewelers is two doors up just to get you oriented, it is the north end of town. It is a 30 year plan to mine about 3 million yards out of about 30 acres. Frankly I don't know the exact number for this evening. We have gone through a fairly extensive review with the State and Mr. Gainer has a copy of the stuff we gave to the State and we are down to two issues. One has to do with visibility of the project and the other has to do with the rattle snake habitat that is not within here but not terribly far away and we are having those two addressed right now. What will happen when the project is over there will be 7 phases of the project so you will never have a situation where the whole thing will be disturbed. You will have roughly 4 to 5 acres, and we will always keep it below 5 acres being disturbed at one time. The first thing we will do is go in through the back and build this road way down to Route 9 and put in the drainage and infrastructure that we need in order to serve the property. There is plenty of sight distance and then once the road is built it will be broken through and that will be access to the mine.

Lenny Lim - Is that between Clove Creek and the barber shop?

Glennon Watson - Yes. Between Clove Creek and the barber shop. And actually if go up on the _____ you will see that there once was a cut out for a road. You can't see it as you go by, but it is there. So the first phase is to build the road and a little bit of the mine site and then as that is being reclaimed we will move to phase 2; as Phase 2 is being reclaimed, move to Phase 3; and the line will progress to the southwest. What is important to note is that there is no disturbance here, this dark green line, and in between the roadway we are going up the slope, build the road; further up the slope over the top and back down. So we are leaving the bank so that it will form a natural screen of the mining operation for the duration. What we hope to accomplish is to have all agreeable soil, it is now an hour trip at 4 miles to the gallon to get a load, a 20 yard truck has to drive an hour at 4 miles to the gallon and this will help alleviate that

problem. So there is some disturbance, we did do an extensive amount of work with regard to the planting and re-grading and actually got some very out of the way positive comments with regard to the reclamation plan. So what you have before you is now a return of that recommendation from the Planning Board. I believe it is a positive recommendation. We are getting very close with the State. At this point we are subject, we need your special use permit in order for you to get that I think you need to make a referral to the County Planning Board if that has not already been done and I am not absolutely sure about SEQR because the State is doing their own SEQR determination. So maybe you can piggy back on that, I really am not sure. And we would like to have a public hearing so we can get you to a decision.

Lenny Lim - I have one question. Mr. Lyons, the back road you are cutting across is that connected to this?

Mr. Lyons - You can get to there from here but it is not going to be used for

Lenny Lim - That road is not going to connect to this?

Mr. Lyons - no

Glennon Watson - We actually had at one point talked about that and we talked about it with the State and they didn't want to see it, so we pulled it out of the plan and it is no longer part of the plan

Lenny Lim - I know they just cut a new road in there and I was curious as to what it was for

Glennon Watson - That is a private road and it is a dead end. It is the other end of the same piece of property.

Lenny Lim - I know that, that's why I was wondering if it was going to connect into it

Paula Clair - Regarding the rattle snake habitat that you mentioned

Glennon Watson - If you go further back in this property towards Esselborne Road, there is a fairly high rocky mountain back there and it is a couple of thousand feet at least away from this site and when you do this sort of investigation, you write the State and find out where there are known habitats. So they do have some back there and they want us to be sure that what we are doing is not going to disturb that habitat. We have distance in our favor

Paula Clair - Sounds good

Glennon Watson - And hopefully we will have a report soon

Robert Dee - Is this mining for Item 4

Glennon Watson - Yes. All unconsolidated sand gravel

Robert Dee - Will it be going down deep?

Glennon Watson - It is quite deep. I believe it is about, I believe the floor is 80 feet below the mine surface today at its deepest. And this will become a very gentle slope across here, downward here, there will be a permanent storm water treatment basin at the end of it for the drainage. With the exception of the road which will drain to a storm water basin here and go through a treatment facility under the road before going into Clove Creek, everything will drain to this pond and be allowed to be recharged.

Robert Dee - 80 feet deep

Glennon Watson - Yes.

Robert Dee - It is a big project

Glennon Watson - It is a 30 year project

Adam Rodd - Just a point of clarification, is part of the property that is subject of this application in the R-40 district?

Glennon Watson - I don't think so but I will clarify that, I'm sorry, part of the property in a residential district but I don't think part of the mine is. I think all of the mine is totally within the Industrial Zone.

Adam Rodd - Okay.

Glennon Watson - It is definitely within the overlay zone.

Adam Rodd - The mine is totally within the overlay zone?

Glennon Watson - Yes

Adam Rodd - Okay. And you think it is outside of the R-40?

Glennon Watson - I believe so. Is it R-40 or 80 there? I will check that

Adam Rodd - I looked at the application and I think technically a part of the operation falls within the R-40 boundary. That raises the issue of a potential need for a use variance as well

Glennon Watson - No. We are in the overlay zone for soil mining. I am absolutely sure of that

Adam Rodd - Okay.

Vincent Cestone - Does anyone on the board have a question for Mr. Gainer? Mr. Gainer?

Ron Gainer - I guess my expectation was to just hear the applicant present a status on the DEC permit. My expectation is now that it is now back before you, we'll prepare some formal memorandum just to summarize status and we would have no objection to having you schedule a public hearing for your up-coming meeting.

Vincent Cestone - I appreciate that. With that I am going to put you on for a public hearing at our first meeting in February. February 14th.

Glennon Watson - Very good. Thank you.

Robert Dee - Now everybody there is going to be notified on that

Glennon Watson - Yes. In fact what we should do, probably I should give you a revised list of adjoiners

Kim Shewmaker - It is outdated already

Glennon Watson - It is old

Kim Shewmaker - Okay

Glennon Watson - So I will get it down to you in the next two days

Kim Shewmaker - Great

Vincent Cestone - Next item on the agenda is Mary Dawn asking for an extension. Someone to speak for the applicant

Alan Steiner - Yeah. Sakara asked me to come here tonight on her behalf. She would be here but a very close friend of hers needs a kidney transplant and it just so happens that she is a match. So she is at John Hopkins Hospital getting final blood work done.

Robert Dee - That is some excuse. We've heard some excuses before...

Alan Steiner - Remind me of Judge Sweeney

Vincent Cestone - If I remember correctly when she asked for an extension last time, she had agreed that that would be the last

Alan Steiner - She did

Vincent Cestone - And we need to talk to her as to why. But I am going to put you on for the 14th.

Alan Steiner - Okay

Vincent Cestone - For the public hearing

Alan Steiner - And the guy from Score that she has been working with will be here and he has been helping her with the financing and he can explain in whatever detail you want to hear about the difficulties she has been running into. But he is quite optimistic at this point. Thank you very much.

Vincent Cestone - You're welcome

Alan Steiner - Good night and happy new year

Vincent Cestone - Happy New Year to you to

Glennon Watson - Excuse me, could you also make that 239 referral with the County Planning Department that needs

Kim Shewmaker - Paula you have my file, did I send it out already?

Adam Rodd - The record shows that it was sent actually back in November of 2008

Glennon Watson - Good. Thanks

Vincent Cestone - The next item on the agenda is a review for completeness for Dean Anderson and Joseph Libonati and this one is incomplete in my opinion because we have an email stating that Mr. Libonati doesn't agree to this application. Until we receive his approval, it is incomplete.

Robert Dee - I have a question regarding this. It has to be signed by all applicants, but looking back at the variance we granted, not variance, the special use that we granted for the same property

Vincent Cestone - How long ago

Robert Dee - 6/26/09. So I was looking back at the application, the same

gentleman didn't sign that either. So, and it says at the bottom that the owner must sign. Now at this point in time we really don't know if he agreed to that first one let alone the second one. So my request would be that if possible a hold be put on any construction that is going on for that accessory apartment until Mr. Libonati notifies us and personally appears before the board to let us know if he agreed to this one. Because if he didn't agree to this one, it could be illegal.

Kim Shewmaker - When did we grant the special use permit?

Robert Dee - Appeal #851

Kim Shewmaker - What date was the appeal

Robert Dee - 6/26/09

Kim Shewmaker - It was a month after the Deed. The Deed is dated May 27, 2009.

Robert Dee - The resolution was dated 11/23/09. My concern is that this gentleman called up and said he does have some kind of issue with this variance. So I don't even know if he knows that the Special Use Permit has been granted on his property. So I would request that he appear before this board and in the mean time a hold be put on any construction if any construction is going on. And if appears before us and tells us he agreed to the Special Use of the apartment I would understand it. But if he appears and states he didn't agree to it, then it is a legal issue.

Vincent Cestone - That's a legitimate concern

Adam Rodd - Well the, I will certainly communicate your concern to the Building Department and I will up.

Robert Dee - He never signed the first one

Adam Rodd - My understanding from the email and I know that the issue is not what we granted previously which was an Accessory Apartment, the issue as I understand it is not that at one point he objected to that, what he objects to is subdividing the property to make each lot a stand alone lot with a dwelling. He objects to that. That is my understanding from the email and I spoke to the attorney for the planning board about the proceedings on this proposed subdivision. That is my understanding.

Robert Dee - Under the circumstances I don't think it is unreasonable to request both parties to come in here.

Adam Rodd - Well at this juncture we are not even going to be putting this on for

a public hearing at all because we can't. He is a co-owner and he says I don't agree to the proposal by the other owner. So we are not even going to hear this. We are not going to entertain it until they both say yes we want you to entertain this appeal. As far as what has been previously granted and what they have been doing on it, I will certainly follow up with the Building Department. Because the Zoning Board of Appeals does not have the authority to issue a stop work order. The building department could, so I will follow up.

Robert Dee - Okay

Kim Shewmaker - So I am going to send a letter to Mr. Libonati telling him to please be here for review of this application on the 14th.

Adam Rodd - I would even, my thinking is that we should simply write a letter saying in light of the fact that you've objected to this and it should be sent to Libonati and Anderson, we will not be proceeding further on this matter until there is an agreement.

Robert Dee - My question is, and I agree with that 100 percent, but my question is on the one that was issued, the Special Use Permit, we don't know if Mr. Libonati agreed to that

Adam Rodd - Well that I will follow up with the Building Department.

Vincent Cestone - I will call the Building Department myself

Kim Shewmaker - But the thing is, look at all the other applications we get where it is husband and wife and there is only one person signing. It is the same thing. We only take one signature even though both names are on the Deed. We have a precedent problem

Robert Dee - You can see we have an issue here because only one person signed

Kim Shewmaker - Yes

Vincent Cestone - As far as old business, the Reeve application has been withdrawn. Any other old business. I make a motion to adjourn. Do I have a second?

Lenny Lim - Second

Vincent Cestone - All in favor

All Board Members - aye

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

DATE APPROVED: 2/14/11

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kim Shewmaker", written over the printed name below.

Kim Shewmaker
Secretary