

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, April 21<sup>st</sup>, 2010*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

Charles P. Heady, Jr.  
James Seirmarco  
John Mattis  
Adrian C. Hunte  
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman  
Ken Hoch, Clerk of the Zoning Board  
John Klarl, Deputy Town attorney

**ADOPTION OF MEETING MINUTES for March. 17, 2010**

Mr. David Douglas stated we'll move to the adoption of the minutes of March 17<sup>th</sup>.

So moved, seconded with all in favor saying "aye."

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**PUBLIC HEARINGS ADJOURNED TO JULY 2010 DUE TO THE MORATORIUM**

- A. **CASE No. 51-08**                      **John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**
- B. **CASE No. 06-09**                      **Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **Case No. 33-08** Decision and Order.
- C. **CASE No. 18-09**                      **Post Road Holding Corp.** for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**
- D. **CASE No. 08-09**                      **Jorge B. Hernandez, RA for M & S Iron Works** for an Interpretation if a structural steel & iron erector is a Special Trade Contractor on the

property located at **439 Yorktown Road, Croton-on-Hudson.**

Mr. David Douglas stated we have on the agenda four cases that have been adjourned to July due to the ongoing Moratorium.

Mr. John Klarl stated we have the Cortlandt Organics matter; we have the Department of Technical Services matter for an interpretation; Post Road Holding Corp. and Jorge B. Hernandez matter. Those four items are being adjourned to the July 2010 agenda because there's been a Moratorium placed by the Town which has been extended and based upon the revised Moratorium we believe that's the next time that this Board should hear these cases.

### **PUBLIC HEARINGS ADJOURNED TO MAY 2010 FOR TOWN BOARD ACTION**

- A. CASE No. 11-09**                      **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8<sup>th</sup> Street, Verplanck.**
  
- B. CASE No. 30-09**                      **Dominick Santucci** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. David Douglas stated next two items are adjourned public hearings which are on for May. We're waiting for action by the Town Board and that's **case # 11-09** and King Marine **case # 30-09** Dominick Santucci. As of now, they're adjourned until May but it's our intention at our May meeting to adjourn those further to July to give the Town Board some further time to take the steps that need to be taken.

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### **CLOSED AND RESERVED DECISIONS**

- A. CASE No. 27-09**                      **Brie Gallagher** for an Interpretation/challenge of Steep Slope Permit No. 20090271 on the property owner by Kyler Cragolin on the property located at **222 Mt. Airy Road West, Croton on Hudson.**

Mr. John Klarl stated Mr. Chairman, on the Brie Gallagher application we have before the Board tonight a draft Decision and Order. That draft Decision and Order was circulated last week and discussed in great detail at our work session on Monday night. The revised D&O that you have tonight has three changes: one is on the middle of **page 1** where we added some language about this being our first appeal from the Steep Slopes Ordinance; the second change from Monday night is on **page 6** where it says "the DOTS position seems to be that's findings..." **section 259-**

**6** requires or “not necessary mandatory and can be waived in certain situations” we added that language. Last, is per a suggestion by Mr. Reber on **page 7** we added a preamble paragraph in our conclusion portion of our Decision and Order. Those are the three changes but to sum it up for the Board and for the public, this is an 8-page Decision and Order and that’s why we are going to sum it up. It indicates that Ms. Gallagher has made an application for an Interpretation of Appeal under Steep Slopes Ordinance. We indicate that we had an Ordinance since ’92, it’s been revised in ’93 and that there’s a specific section of the Steep Slopes Ordinance **259-f** that allows someone who feels a grievance by this decision of the DOTS to make an appeal to this Board and this is the first such appeal that we’ve had from the Steep Slopes Ordinance. On the bottom of **page 1** we indicate the procedural history that occurred here with Mr. Gallagher applying for a Steep Slopes Permit after consultation with DOTS. We indicate at the top of **page 2** that we have a section of the Code entitled **259-7a: Application of a Permit** and it says: “an application for a Permit to disturb or alter a steep slope shall be filed with the approval authority and shall contain the following information and such information as required by it except when waived by it as not pertinent or necessary for the proposed disturbance.” We then go, starting on **page 2**, we had received a long memo from Mr. Delano who is the professional engineer for Ms. Gallagher and he had, I enumerate, 16 principle comments as to why he felt the Steep Slopes Permit application process was deficient and in bold print DOTS responded to each one of those 16 items and we laid those out for the Board and for anyone reading the Decision. On **page 5, paragraph 17** indicates the DOTS conclusion and they concluded that “it was never the Town’s intention to impose expensive and time consuming procedures for steep slopes disturbances and stands the reason that more information would be required from a developer seeking to disturb many acres of steep slopes and a typical homeowner who disturbs a minimal area which have no or very minimal impact such as the subject application.” They further write: “the Code grants the approving authority discretion as to level of detail as needed to complete an adequate review of the Steep Slopes application.” We then had our three public hearings in October, November, and January and having closed the public hearing we’ve made some factual findings starting on **page 5**. We indicated first that when Ms. Gallagher filed a complaint about what was proceeding on the adjoining property owned by Mr. Cragolin, we believe that DOTS went out promptly and reported its findings fairly. We believe that Mr. Cragolin was credible when he told us in October that he worked within about 20 feet of his house and only performed three or four days of work and that no soil erosion occurred to the adjoining Gallagher property. We further indicate that we believe he’s likewise credible when he testified that the dead trees that were cut on his property were cut three to five years ago and none were cut for this construction. We also find factually that Mr. DiSanza’s testimony was accurate at our November 2009 meeting when he talked about assessing the Cragolin property indicating he did not see any newly taken down trees and that he made the field observation for DOTS but he did not make the calculations required under the Steep Slopes Ordinance. The Board also found that it appeared that there’s was an emergency situation here and the Board did a site visit and did not observe any run-off or disturbance created by the Cragolin that resulted in an adverse impact to the adjoining Gallagher property. On **page 6**, which may be the heart of the Decision and Order, we talk about the necessity under the Steep Slopes Ordinance that have steep slopes specific findings. We indicate that the Department of Technical Services’ position seems to be that specific findings under **section 259-6: The Standards for Approval**, what that requires or not necessarily

mandatory and can be waived in certain situations. We, as a Board, feel that this view is not the view that we adopt and we indicate in our Decision and Order that this view is not supported by the language of the Steep Slopes Ordinance, specifically **259-6** says “the approval authority shall consider and make specific findings.” Therefore, on bottom of **page 6** which is the language that Mr. Reber really latched onto on Monday night and made part of our conclusions we find that the Department of Technical Services did not make the requisite specific findings under **259-6** and therefore did not correctly comply with and adhere to the requirements that mandates of the Steep Slopes Ordinance in this case. We also indicate at the top of **page 7** that the Steep Slopes Ordinance **259-7b** recites and requires a referral to the CAC (the Conservation Advisory Council) which we found did not occur in this case. We further lay out in our Decision and Order **259-7**: The Permit Procedures concerning the waiver of certain items and we indicate that therefore many of the items on the applicant’s list of deficiencies, essentially Mr. Delano’s list, did not carry great weight with the Board, however what is very important to this Board is that while the items cited in **259-7a** may be waivable, the standards for approval on the specific findings mandated in **section 259-6** are not waivable in this or any Steep Slopes Permit case. Finally, we arrived at our conclusion: first we find that the Department of Technical Services did not make the requisite specific findings, then this Board in final form remands this matter back to DOTS to essentially do three things: 1) to review and consider each of the required items and make specific findings required under the Steep Slopes Ordinance. 2) Make the required referral to the CAC. 3) Thereafter determine and report back to this Board as to whether DOTS still adhere to or does not adhere to its granting of the Steep Slopes Permit. We ask in our remand that DOTS comply with the remand within 60 days, so that would be by June 21<sup>st</sup>, two months from tonight and then in our final page, **page 8** of the Decision and Order we indicate in prefatory but not mandatory language that this Board recommends that DOTS develop and promulgate a Steep Slopes Ordinance checklist which would mirror the Steep Slopes Ordinance to be utilized as part of the DOTS (Department of Technical Services) considerationable applications and we indicate once again we’d like DOTS to give us this recommended checklist 60 days from tonight, which once again would be June 21. Finally, as a SEQRA determination, we finish up our Decision and Order indicating this is a type II application under SEQRA as it consists of the Interpretation of the existing Code and rule and therefore no further compliance is required. That is the sum substance 8-page Decision and Order Mr. Chairman.

Mr. John Mattis stated I would just make one comment. I felt that it was so deficient that I would have preferred that they start it over and did a whole new Steep Slopes Permit but the ultimate result will be the same so I’ll go along with that. I make a motion that we adopt the Decision and Order as outlined by our attorney.

Seconded with all in favor saying "aye."

**B. CASE No. 01-10**                      **Zuhair Quvaides** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. John Klarl stated Mr. Chairman, once again, we have a Decision and Order in front of us. It is consistent with what was sent out last week and what was discussed at our Monday work session. The one difference here is we've added the Hunte footnote and that was a helpful reference by Adrian Hunte on Monday night where we talked about part of the Decision and Order that we used a Webster's Dictionary to look at some definitions and Adrian correctly pointed out that the basis for that is the Code **section 307-4** indicates when words are not defined in the New York State Fire Prevention Code, Building Code that we then look at the most recent edition of Webster's unabridged dictionary. In looking at the Decision and Order Mr. Lentini, the professional for the applicant, asked for an Interpretation concerning the definitions of two items: outdoor storage and vending machines. We pointed out that this property which is at the corner of Route 6 and Lexington is in the HC zoning district and if you're in an HC zoning district it does not permit the outdoor display and storage of goods or equipment. Mr. Lentini was making an argument that certain devices were under the canopy but not inside the building. This Board finds that from looking at the definitions of outdoor that it means that something is not being exposed to the element but that the Department of Technical Services, Code Enforcement Division nor this Board has ever ruled or found that items or materials stored under a gas station canopy or roof projection are stored inside the building. We find those items outside the building, yet although they might be under the canopy to be outdoor. In addition, there was some discussion as to whether he had vending machines with his ice machine. We looked at Webster's once again and it said that a vending machine is a "coin operating machine that dispenses merchandise" and here the applicant's ice machine and his various goods offered for sale outside the convenience store building: the propane tanks, the windshield washer fluid, the anti-freeze, the ice, and firewood even though wholly or partially under canopy constitute outdoor display and are not permitted under the Code and similarly the ice machine and propane tank racks are not vending machines because they are not machines that are coin-operated that dispense merchandise. What you do is you pick up your ice outside and go inside and pay a cashier or you pick up your propane tank and go inside and pay the cashier. We've made our interpretation as to outdoor storage and we've made our interpretation as to vending machines.

Ms. Adrian Hunte stated on **case 01-10** Zuhair Quvaides I make a motion that we close and reserve and are we adopting this D&O or are we waiting until coordinated review?

Mr. David Douglas responded I thought we were going to wait until the Planning Board...

Mr. John Klarl responded when there's a companion case before the Planning Board so we indicate in the last paragraph of the Decision and Order "this is a type II application under SEQRA as it consists, once again, the Interpretation of existing Code and rule" but this Board is going to conduct a coordinated review with the Planning Board as the Planning Board process is its companion case. What I would do is I would make a motion that you look on this Decision and Order favorably but you're not going to formally adopt it until the Planning Board process is completed.

Ms. Adrian Hunte stated on **case 01-10** Zuhair Quvaides, thank you counsel, I make a motion that we're looking at this Decision and Order favorably and that we will reserve our vote and decision until the coordinated review with the Planning Board.

Mr. John Klarl stated exactly. We're not going to formally adopt it to that time.

Seconded with all in favor saying "aye."

**C. CASE No. 08-10                      Thomas Hagen and Melissa Klay** for an Area Variance for minimum lot area, lot width, front yard setbacks on property located at **208 Colabaugh Pond Road, Croton-on-Hudson, NY.**

**D. CASE No. 09-10                      Thomas Morrow** for an Area Variance for minimum lot area on property located at **212 Colabaugh Pond Road, Croton-on-Hudson, NY.**

Mr. David Douglas stated the next two cases are cases that we consider together; **case # 08-10** Thomas Hagen and Melissa Klay; and **case # 09-10** Thomas Morrow.

Ms. Adrian Hunte stated on **case # 08-10** Thomas Hagen and Melissa Klay for Area Variance for minimum lot area lot width front yard setbacks for the front yard Colabaugh on row 2.7 Variance and Sunset Lane 37.1 feet, I make a motion that we once again, we've closed and reserved, we've done that...

Mr. John Klarl stated on the Hagen matter and on the Morrow matter, in both those matters we closed at the March 17<sup>th</sup> meeting and in both of those matters there's a companion case before the Planning Board. Both of those matters, the Planning Board is actually in the process of preparing a Resolution. I think what we ought to do is -- I think the Resolution was handed out tonight. They indicated that they were going to adopt a Resolution. They did. Mr. Kehoe's mailed you a Resolution. With that, what we can do is adopt the -- we can direct the Variances that were sought. The Planning Board has already finished their process.

Ms. Adrian Hunte stated on **case # 08-10** Thomas Hagen and Melissa Klay and also the Morrow companion matter, since the Planning Board has voted to approve that the Zoning Board also adopt -- based on those decisions, that we grant, approve the Variances in both cases.

Seconded with all in favor saying "aye."

Mr. John Klarl stated as you called me after the last Planning Board meeting, now you'll comply with the conditions in your Planning Board Resolution.

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## **ADJOURNED PUBLIC HEARINGS**

### **A. CASE No. 06-10                      Nida Associates for Area Variances for subdivision of four existing tax lots into four real property lots at 5 and 14 Dove Court, 2003 and 2005 Albany Post Road, Croton-On-Hudson.**

Mr. Ralph Mastromonaco stated I was here two months ago and we had a long discussion about the application that we have before you. We missed the meeting last month because of lack of scheduling on our part but I did go through the whole thing. I think everyone was here at that last meeting. If there's any questions you have about our application, I'm here to answer them or if you'd like me to give you a little run down on what we're doing again I'd be happy to do that.

Mr. Raymond Reber stated as you stated two months ago you did give us a review of what's been applied for here and just for the sake of the audience knows that are listening. The issue revolves around the shopping plaza Dove Court, Albany Post Road. Some of us know the Amberlands, A&P, the Chase bank, there's a treatment plant and then there's a couple of other commercial buildings on the property. The proposal is to separate and divide that area into four distinct properties. The thing that I'm wrestling with is if somebody had come to the Town with four distinct properties and said "I want to put a bank here and I want to put an A&P there and I want to put whatever here and whatever there," I'm almost certain that there's no way that any of this would be approved because we don't meet setbacks and a lot of other factors. That's the problem I have.

Mr. Ralph Mastromonaco stated Mr. Reber, may I interrupt for one second? I think when this was built those restrictions weren't there.

Mr. Raymond Reber stated that may be but we have to decide on what we would do today. Today, would the Town want to see these separate? I'm wrestling and I'm still trying to understand and look into all the pros and cons and what some of the pitfalls might be down the road if these properties are allowed to split and owned by different people and also whether it creates issues for other potential commercial properties along that strip in terms of saying does it mean they don't have to meet some of the current Codes. I don't know the answer to all that but those are the questions that I'm wrestling and I'm going to continue to investigate.

Mr. David Douglas asked was there a question regarding ownership?

Mr. Raymond Reber responded no, all I'm saying is that the intent here is to separate the property so they can be owned by different people. That's the intent.

Mr. Ralph Mastromonaco stated if I may just touch on that very lightly. Of course these buildings are already there.

Mr. Raymond Reber stated yes.

Mr. Ralph Mastromonaco continued all of the areas that are used in common will become the subject of an access easements, cross easements. In fact, all we're doing is really adjusting tax lot lines that are already there. There are the four lots already.

Mr. Raymond Reber stated but those are only tax lots. From the point-of-view of a site, it's one.

Mr. Ralph Mastromonaco stated I'm not sure that there's a difference at this point but, again, I think what we're doing is principally on paper, I don't think that there's actually any physical difference between the pre and post subdivision of the property but you can do your analysis as you wish.

Mr. Raymond Reber stated I've got to think about it.

Mr. James Seirmarco asked can you explain, you don't have to, why you want to do such a thing?

Mr. Ralph Mastromonaco responded the driving force behind this application is one of those buildings is a sewage treatment plant. The sewage treatment plant is actually owned by a corporation – members of that corporation are not getting along. What they need to do is they need to put the ownership into basically one entity and that was the driving force. The bank is really on its own tax lot, if you look at the map I gave you. That was really the driving force behind this application, if you look at the center.

Mr. James Seirmarco stated the sewage treatment plant is some sort of corporation.

Mr. Ralph Mastromonaco responded it's an odd corporation.

Mr. James Seirmarco stated that corporation could be conveyed to an individual without us doing this, without us facilitating this.

Mr. Ralph Mastromonaco stated I'm not a lawyer but there is some reason why that has to be on a separate parcel. They've been trying to do some financing or something like this plant for a long time and it's not on its own piece of property and that has lead to even more problems of ownership and the maintenance of that plant.

Mr. David Douglas asked so under what you're proposing the sewage treatment plant would be its own separate parcel with nothing else on it?

Mr. Ralph Mastromonaco responded right.

Mr. David Douglas stated I guess that's somewhat unusual. I may be wrong about this but are there other lots in Town that you're aware of it's a sewage treatment plant is the sole...



Mr. Ralph Mastromonaco responded this sewage treatment plant handles single-family homes that are privately owned, have nothing to do with this development, they're in a sewer district.

Mr. James Seirmarco stated if we were to just make it two lots; one with a sewage treatment plant and the other lot being the other three buildings, would that facilitate?

Mr. Ralph Mastromonaco responded not totally because there's the A&P on the property and the A&P – when you go for refinancing or whatever, you can't really refinance just the A&P because it's not on its own lot.

Mr. Raymond Reber stated the A&P, the Chase bank, those businesses don't actually own the building – they're not owners of any of the property?

Mr. Ralph Mastromonaco responded right, they're renters.

Mr. Raymond Reber stated the sewage plant; who's sewage does that plant treat?

Mr. Ralph Mastromonaco responded all of the Amberlands apartments, Scenic Ridge townhouses, Furnace Dock condominiums, the Amberlands condominiums and then along Scenic Drive there are 35 single-family homes that were built about 10 years ago which is privately owned, they're not part of a master development or anything like that, a homeowner's association treats all that, including the restaurants and A&P.

Mr. Raymond Reber stated it's really that whole hill side, the old Amberlands development plus the commercial properties feed into that.

Mr. Ralph Mastromonaco responded right.

Ms. Adrian Hunte asked are the principals of the corporation that own the sewage treatment plant also owners of the other parcels?

Mr. Ralph Mastromonaco responded this entire parcel is – the principal is one partner in the plant.

Mr. James Seirmarco asked say again?

Mr. Ralph Mastromonaco responded the whole shopping center is owned by one of the partners in the plant.

Mr. John Mattis asked and you've outlined the others: the condominiums and things. Are they the other owners?

Mr. Ralph Mastromonaco responded maybe I didn't understand the question but I'll use names then. Nida owns the shopping center. That's one individual owns Nida, but two individuals own

the sewage treatment plant, they're in that corporation, two totally different people. There's one stranger in this mix. That person owns the other shopping center over here which would be Shopper's Plaza they call it there's Christina's Restaurant is and Dale Novak Law Office. To really fully answer your question I'm not 100% sure why they want to do this but they have good reasons I'm sure.

Mr. John Klarl stated what Mr. Reber suggests for having ownership of the separate parcels down the road or to do separate financing of those parcels. We generally think as to be one of those two reasons. You take one commercial piece and break it into three or four, you have three owners, three parcels and maybe you can separately finance. It's probably one of those two things.

Mr. Ralph Mastromonaco responded if they were on separate parcels.

Mr. Raymond Reber asked I'm not sure I'm understanding the legal obligations. If you own one of those homes, separate homes up there, how do you know that that treatment plant is going to always be operating and if there's a problem with the plant getting it fixed?

Mr. Ralph Mastromonaco responded that's a very good question. Again, that's part of the reason I'm here. The plant does need a lot of upgrades and they need to finance it, bond it, things going on there but the corporation that owns that plant is a special type of corporation called the Transportation Corporation and in that corporation they require as not in any other corporation, a reserve fund, and I believe the reserve fund in this corporation is a quarter of a million dollars to insure that they just don't walk away from it.

Mr. Raymond Reber stated it sounds like now you've got dual partners which basically, you've got the two plazas that are jointly responsible for this plant and obviously there's some tension or friction there but it would seem to me that in some ways that's better because they're both dependent on that plant because if something goes wrong with that plant the Health Department could come in and shut down the A&P for example or shut down something else, or whatever.

Mr. Ralph Mastromonaco continued or shut down all those houses too.

Mr. Raymond Reber stated there's some exposure there. I don't understand why it's to the benefit of the Town to segregate just one of those responsible for the plant and not the other.

Mr. Ralph Mastromonaco stated I'm not sure that we're here today to make that decision and I'm not sure that you are making that decision. I only brought that up because I was led to believe that they needed to do this but, in fact, to answer your specific question when the partners are fighting it becomes a problem because they have to contribute money into this plant out of their pockets and that's a problem.

Mr. Raymond Reber stated this one's got a lot of interesting issues to it as to what would happen down the road. That's what I'm trying to sort out.

Mr. Ralph Mastromonaco responded as simply to the Zoning issue I think I basically wrote in my letter of January 27<sup>th</sup> all of the issues that are related to the Zoning – these are ownership issues that you’re talking about, future issues which I don’t know whether we all have to get involved. When you ask me those questions I’m not sure I know the answers all the time but just from anecdotally what I’ve heard. As to the Zoning issues I explained during your opening remarks that these buildings are there. Had they been looking to subdivide in 1967 when these were built, they could have and somehow they are on separate tax lots except for one sort of unusual lot off in the corner. I think that by doing this we are really more or less legalizing what’s there now even though it does require Variances but if you look at each Variance, if you look at each point of Variance I don’t think that they’re that serious.

Mr. Raymond Reber stated I hear you but usually what we do is in the case of where Zoning has changed over the years and all of a sudden somebody’s not in compliance and they want to sell their house for example we usually are very considerate of that fact and say “look they weren’t in compliance once upon a time. They didn’t change anything. They didn’t do anything,” so we grant the Variance so that they’re now in compliance and they can sell the house and the new people can get a mortgage or what have you. No changes took place. This is a change. This is saying we’re now going to have the potential for independent parcels which really aren’t allowed right now. It’s really one owner has to own even though they’re separate tax lots. So, there is a change being asked here and so then we have to ask questions like: is it going to be detrimental in some way to the Town, the community, the neighborhood or whatever? That’s why I’m asking these questions in terms of the Zoning Code – we’re supposed agree to giving changes to the Zoning for a number of reasons but they have to be very unique reasons and reasons that they don’t set a precedent, they don’t do any harm to anybody and make a lot of sense in granting it. That’s why I’m sorting through this. This is not an easy question you’re asking. I haven’t seen one like this in the past. I don’t know if anybody else on the Board has dealt with it. So, I’m a little reluctant to just say “okay, it sounds okay,” and then five years from now we find out that there’s all kinds of complications developed because we gave the Variances and the properties were allowed to split off.

Mr. Ralph Mastromonaco stated Mr. Reber, I made a description of each of the Variances and you’ll see that a lot of the Variances really refer to the amount of landscaping, buffer strips and things like that. These are not really I would say large Variances to the great extent. There’s a buffer strip lot width.

Mr. Raymond Reber stated we actually have another case that’s being brought to us, another commercial property of size elsewhere in the Town and it’s coming down to the same issue. Under the current Codes they can’t comply and it’s an existing site. It’s been there for many years. Again, we’re struggling. We’re not ready to just say “oh yeah, just grant the Variances.” The Town has said they want certain things and we’re wrestling with “okay, can we just say it doesn’t matter?” Or “Its’ okay to ignore it?” I don’t know.

Mr. David Douglas asked anybody else have any comments?

Mr. Ralph Mastromonaco asked where do we go from here Mr. Douglas?

Mr. David Douglas stated first I'm going to ask if there's anybody in the audience has anything to say.

Mr. Raymond Reber stated my feeling is I don't want to cut off discussion on this because I think we should do more homework so I don't want to close because that wouldn't be fair either for the applicant. I would recommend that we adjourn to next month and try to do a little more digging and try to get some answers and follow up at that time.

Mr. Ralph Mastromonaco responded can I speak to that as well? I think you have to remember that we are before the Planning Board for subdivision approval and what we were hoping to do is get your concurrence on these Zoning Variances to allow us to go back to the Planning Board who would probably be really answering the same questions that you have in your head about this application.

Mr. Raymond Reber stated that would be part of what we would ask is to get a consensus from the Planning Board as to how they feel about some of these issues which we haven't had a chance yet to get that feedback. I think if we could use this month to maybe get a little cross-discussion and if they're looking favorable and they don't see issues and we can resolve it ourselves than we'll be in a more comfortable position of moving forward.

Mr. David Douglas asked when we're you next scheduled to be in front of the Planning Board?

Mr. Ralph Mastromonaco responded we can't go back to the Planning Board until you've done something either give us some sort of reserved decision until the Planning Board approves the application for subdivision.

Mr. Wai Man Chin stated I don't understand that.

Mr. David Douglas stated I'm going to turn to Mr. Klarl because he's counsel but that doesn't sound right.

Mr. John Klarl stated first of all I think that the Planning Board application has been pending for some time.

Mr. Ralph Mastromonaco responded about six months. We started about six months ago.

Mr. John Klarl asked longer than that?

Mr. Ralph Mastromonaco responded I don't remember.

Mr. John Klarl stated I thought it was more than a year. There hasn't been much action by the applicant before the Planning Board and I know the Planning Board would want to see a decision here and I also think that Mr. Reber is quite correct that you ought to think about this somewhat. You've only got your initial questions answered tonight. I thought the application's been on the Planning Board – the application made some time ago and we thought the applicant lost interest in the application.

Mr. Ralph Mastromonaco responded no.

Mr. Wai Man Chin stated you do have some minor Variances that you're asking for but then there are some that are quite substantial. Like maximum building coverage from 25% to 50%, that's a big jump.

Mr. Ralph Mastromonaco responded remember now that I think we did – if you took the lot as a whole, I think we're okay. I think on the report that I did January 27<sup>th</sup> I think I tried to anticipate every single question and I think I have from what I've heard. If you can take a look at that I think I've answered that question in terms of coverage. I think that we looked at the whole lot and said the whole lot meets coverage but I have to go check back to my notes.

Mr. John Klarl stated just to follow up on the applicant's enthusiasm for the application I think the Planning Board application is a 2008 application so it's about over two years old. It was made and then it was kind of abandoned. We hadn't heard about it for a while and now this application's been brought. The applicant has had an application pending for over two years and obviously Mr. Reber raised some good questions, Mr. Mastromonaco's made his presentation and now this Board ought to think about what you want to do. I wouldn't recommend closing it.

Mr. Wai Man Chin stated no I want to review this a little bit more. I think we should go over it now that we heard from Mr. Mastromonaco this month. Last month nobody showed up and now I think we can talk about it at the next work session.

Mr. Ralph Mastromonaco responded okay.

Mr. John Klarl asked Ralph, do you know if the Planning Board gave you a review memo?

Mr. Ralph Mastromonaco responded yes they did. I believe we got a memo from Ken.

Mr. John Klarl asked Ken as in Ken Vershoor?

Mr. Ralph Mastromonaco responded Ken Hoch. I believe we got a memo from Ken telling us we needed the Variances.

Mr. John Klarl stated I know, but on the Planning Board side? On the Planning Board side, as you know, Ken Vershoor used to do a...

Mr. Ralph Mastromonaco responded I don't remember.

Mr. John Klarl stated I think they were building up to the point they were doing a review memo but I thought they felt the applicant was not pursuing it.

Mr. Ralph Mastromonaco responded no I...

Mr. John Klarl stated there's been a gap.

Mr. Ralph Mastromonaco responded we actually applied here quite a while ago. I think we got in December of last year.

Mr. John Klarl stated I think you're first on this agenda in February.

Mr. Ralph Mastromonaco responded yes but I think in December of last year we got something from the Town.

Mr. John Klarl stated I'm not certain if the Planning Board...

Mr. Ralph Mastromonaco stated I'm sorry James Flandreau sent us a letter not Ken.

Mr. John Klarl stated but I'm not sure, on the Planning Board side, in your companion application whether or not you had gone to the level where they gave you a review memo to respond to.

Mr. Ralph Mastromonaco responded no we're not.

Mr. John Klarl stated I think Mr. Vershoor back then and Mr. Vergano were formulating one and then the application seemed to die on the vine but it looks like you're here to resurrect it.

Mr. Ralph Mastromonaco responded we're trying to resurrect it. It's somewhat of a complicated application.

Mr. John Klarl stated that's why we thought that the applicant lost its enthusiasm.

Mr. Ralph Mastromonaco responded not at all. It does take a while to get through the process as you know.

Mr. Raymond Reber stated I make a motion on **case 06-10** Nida Associates to adjourn to the May meeting, seconded with all in favor saying "aye."

Mr. John Klarl stated may I suggest Mr. Chairman, since there is a companion application before the Planning Board that we request Mr. Hoch, if he can, to contact the Planning Board Clerk and if there's been a review memo by the Planning Board let's get a copy of that and see what

they've asked and if there's been a response by the applicant as Mr. Mastromonaco does on a regular basis, when you have a review memo you respond to it, let's get the response and I think that would flush out some of the questions and some of the issues that this Board has.

Mr. David Douglas stated I think that's a very good idea. Mr. Hoch, would you do that?

Mr. Ken Hoch responded yes.

**B. CASE No. 07-10 Charles and Diana Jones** for an Area Variance from the required for the front yard setback for a proposed covered porch and open stair on the property located at **95 Valley View Road, Cortlandt Manor.**

Ms. Diana Jones stated I, with my husband Charles, own the property at 95 Valley View Road. We are here again requesting a Variance to put a covered front porch on the house. We have several of our neighbors here who are willing to speak on our behalf in this project and I also have due to travel, travel commitments, a death in the family and trying to get babysitters on a school night, some of our neighbors were not able to attend but I have notarized, signed affidavits if I may approach.

Mr. David Douglas responded yes. Just for the record I'll say what you've just handed. We've got a letter from Ross Morris Simms, 91 Valley View Road and a letter from Mr. and Mrs. Anthony Cesarini at 84 Valley View Road, and a letter from Richard and Jannette Friel at 100 Valley View Road, a letter from **Angelo** and Hilda Moralez at 104 Valley View Road.

Ms. Diana Jones stated I believe there's also a letter from Mrs. Puglisi.

Mr. David Douglas stated we also got a letter dated today from Linda Puglisi.

Ms. Diana Jones stated nothing's changed. We still would like to be able to construct a covered porch on the property and we're here to...

Mr. David Douglas stated you had said that certain people were here and wanted to speak. Why don't we turn the floor over to them?

Ms. Ellen Hannon presented herself to the Board and stated I live at 112 Valley View Road. I was one of the last to be able to pick my lot, design my house, as well as a porch. We've been in the house going on close to nine years. It's a wonderful neighborhood. A very unusual neighborhood because everybody gets along, everybody sits outside on their porches and things. We watch each other's children. We take care of each other's animals. When the snow comes and the plows don't come through we help each other dig out. I have to say my husband and I have been very happy here. It's been a great place to raise children. The neighbors are wonderful and I think it's unfortunate that they are not going to be allowed to put a porch because of a Variance. When we built our house nine years ago we were told that there was a

small piece of property to the left of us and that nothing would be built on it. No sooner did we close and move into the house that the Town gave the builder a Variance and they slapped a house right on top of my house, on a cliff. That house looks like it doesn't belong there among all the other houses. It's kind of disappointing to me that they wouldn't be allowed to have a small porch put on their house like the other homes that have porches because none of the neighbors are against it. As I said, we have an exceptional neighborhood. It's a nice neighborhood, one that you'd want in the Town of Cortlandt. That's why my husband and I moved here, for a nice place to raise our family and Valley View Road, the area that we have is a wonderful neighborhood and the Town of Cortlandt should be proud how nice the neighbors keep it and everybody there and if somebody up on Locust or Oregon needed help well I could tell you that all my neighbors would pick up their shovels and pitches and go up there and help them because that's just how everybody in my area is including the Jones's. I came. I'm not used to speaking so I came to support them.

Mr. David Douglas stated the house that you mentioned next to you, what address is that?

Ms. Helen Hannon responded I'm not sure. It may be 111.

Mr. Charles Heady stated 111.

Mr. John Tepe presented himself to the Board and stated I live at 96 Valley View Road directly right across the street from the Jones's and I would just like to say that I have no objections to the Jones's building a porch whatsoever. We would be viewing this construction through that whole time and we would be looking out our front window at their porch. They keep their property immaculate as do all our neighbors in the area and, again, my wife and I we both would like to say we have no objections to them building this extension to their home whatsoever. Thank you.

Mr. John Mattis asked do you have a porch?

Mr. John Tepe responded no I do not. I have a portico.

Ms. Diana Devito presented herself to the Board and stated I live at 109 Valley View Road. I've known Diana and Charley Jones for about over 7 years. We, as Ellen mentioned previously, all get along beautifully, have many get-togethers in the front of the house, in the back of the house. The Jones's are immaculate as John Tepe said. They are considerate. They're helpful. There is no doubt in my mind that this construction won't be done properly, in good taste. I know the house will look beautiful after because any improvement they've done on their house has made it look beautiful. It'll enhance the neighborhood and we can all enjoy an evening drink on their porch. I would very much appreciate the approval because you're looking at some very fine people here. Thank you.

Mr. David Douglas asked anybody else?



Mr. Joe Devito presented himself to the Board and stated 109 Valley View Road. Thank you for letting me speak to you again. I just wanted to say I have no objection whatsoever to the Jones's having a Variance of 5 feet to make the front of their home look more beautiful than the way they keep it already. I think it's going to enhance the neighborhood greatly and as you can see from the letters and the people that are here tonight, everyone in the neighborhood is totally behind this request. We would hope that you would approve it. Thank you very much.

Mr. James Seirmarco stated Mr. Chairman this has been a difficult case from the beginning because I think everybody on this Board would like to see the porch built, it's not the issue. The issue is the requirement for the Variance. If you go down Oak Road to the bottom and turn left, that development down there was built under 280 cluster development. All the houses are architecturally the same. If you go down Oak Road and go to the right I believe there's some houses down there that are architecturally the same and built under cluster. One of my colleagues Monday night reminded me that we had a few miles away a similar situation where somebody requested a porch and I voted against it and there is a difference here, the difference was that that was a normal neighborhood with normal zoning, the houses were all different, and in that particular case it would have created a detriment to the area and we typically do not approve Variances in the front yard. The uniqueness of this is that it is a cluster development. Under cluster development things can be varied, things like lot coverage, things like lot size. I think in this development...

Mr. John Klarl interrupted setbacks.

Mr. James Seirmarco continued setbacks. In this particular development there was one porch that was put on without a Variance that encroaches on the front yard setback and that's allowed under clustering. I think this particular area, to me, is unique. If it was a regular neighborhood, R10 Zoning with various houses, various architects, I would not vote for this but this particular development because the houses are all the same, they all have the small porch in front, not all, I shouldn't say all, some. I've been corrected and I agree. Some of the houses, by right, have the room for the porch, some do not. In this particular case it is not going to be a porch and again the size doesn't matter that we're going to have a 12' x 18' or 12' x 25' porch. It is a 6 foot porch so it's not an intrusive porch. It's only going to intrude into the front yard by 5 feet, thereabouts. In this particular case I would be in favor of this. I was in favor of it last time, when it was slightly larger, another foot and a half larger, and I am in favor of it this time for the uniqueness because there is a concern always setting a precedent so that another neighborhood will come and say "I only want a couple of feet and I want it." This is a unique situation. The uniqueness is it was developed by cluster Zoning. Some of the lots, even the pie-shaped lot in the corner was given a Variance because it was a pie-shaped lot and I think that the uniqueness is the cluster and I have no problem with it.

Mr. Charles Heady stated Ms. Jones, the last time I was here a few months ago when I talked to you. I understand you put a lot of money, a lot of time and I feel sorry for the amount of time you put in and the effort you're trying to get through here. About two or three months ago we had a case similar to yours. It was 25 School Street, Mr. and Mrs. Mello. I went there to the site

visit and I talked to them and I looked at three houses down and it looked like it was out quite a bit, about four foot out from the rest of the houses lined up but the road was straight. So, I told them I thought that the Board would go with it and they wouldn't have any trouble, but when it came about we got information from Ken here, it was a complete difference. The houses were all lined up and that one house was 29 feet which the builder made a mistake and that was the only reason that was only out one foot more than the rest of the houses. I was just afraid it would make a precedent and that's why I voted against it's your case. I apologized to Mr. and Mrs. Mello at the time. On your case, I went over the facts that we have from Code Enforcement and I see that house 100 is allowed 30 feet instead of 28.9 and it needs a one foot Variance and at 103 it's 20 foot down to 20 foot to put a porch on, 104 is 30 feet down to 29 feet, and these are one foot Variances. The 111 is allowed 20 feet, it's down to 20.4, 112 is 30 feet down to 29. Looking at your street I realize now that it has a slight curve in it and the houses do vary from what they are now and as far as I'm concerned, I have a little bit of mixed emotions on this porch. You come back from 5 foot to 4 foot, am I right?

Ms. Diana Jones responded we came from 6 to 5.

Mr. Charles Heady stated at this point I'm a little bit concerned about the vote and a little bit mixed emotions on your case right now. Of course, there's facts we have from the Code Enforcement that makes me think a little bit different than what I thought before.

Mr. Wai Man Chin stated I happen to agree with Mr. Seirmarco on basically everything he had said. I don't think this would be an undesirable change to the character of the neighborhood. Can it be done some other way? No, I don't think so because the front porch and that's where you want a front porch in front of the house. I don't think the Variance is substantial. Will it be an adverse impact on the neighborhood? I don't believe that would be and as far as a self-created hardship, it's a touch-and-go on that one because it was a cluster subdivision and that's how it was made so I would not have a problem with granting this Variance.

Mr. David Douglas asked anybody else?

Ms. Adrian Hunte stated I maintain that I believe that the Variance should be granted. I think part of the uniqueness of this particular house is the commonality of the other houses looking as they do and that having this is a contained – it is a neighborhood, it is a subdivision, it is a cluster development and once again, I still do not see that there would be an undesirable change in the neighborhood. I agree with Mr. Seirmarco. I agree with my colleague to my right, Mr. Chin and that this will not create any adverse impact in this particular area. If it's a different development or a different neighborhood we have the ability to look at that particular case on a case-by-case basis. This one stands on its own with us and it does not mean that if the next person comes along that we have to rubber stamp what we've done here.

Mr. John Mattis stated there is a uniqueness in the cluster development. Mr. Seirmarco said "there's a uniqueness." The uniqueness is you're in an R20 zone which requires 40 foot setbacks but because of the cluster development you're only required to 30 foot setbacks. So, you're

already 30 feet rather than 40. That's the closest of any Zone in the Town that you can go. I disagree, there's no particular uniqueness to this house because there are others that have the same situation where they're 30 feet from the property line with no porch. I'd love to see you have a porch. I think it would look much better but that's not what our decision should be based on. That is not one of the criteria that we look at. My concern is once we do that and we had a letter from our Town attorney last year reminding us on a specific case that we are here to grant Variances, not to legislate and my concern is once we grant this to you, you've got neighbors on both sides that could come back to us and there's nothing unique about you to them that would say there's anything different, we'd grant those. We have then legislated a 25 foot setback which is less than the Town has anywhere and that's my concern. This isn't about a porch. This is about a setback where every house is 30 feet except one that was done for some reason during the subdivision.

Ms. Diana Jones stated every house is not 30 feet. I believe Mr. Heady...

Mr. John Mattis stated I'm qualifying which ones aren't. There are a couple that are 29.8 and stuff like that. They technically require Variances although that's not up to us to bring them here. We granted one Variance on a cul-de-sac where it goes around but not in a straight line where they all line up. There is another one that was granted, it was not a Variance but it was allowed as part of the clustering and we have no idea. If we had an idea why that was done, it might give us some more guidance but we don't know...

Mr. James Seirmarco asked is that the pie-shaped lot?

Mr. John Mattis responded no, the pie-shaped lot is the one we gave a Variance for. I'm concerned that we would be legislating a 25 foot setback in this neighborhood because they are identical houses. I agree with Mrs. Hannon, it's a wonderful neighborhood. I almost feel like I live there because I keep driving back-and-forth to look at this and I keep going back-and-forth in my mind "should we do this? Shouldn't we do it?" Everybody maintains it well. I think it's a wonderful neighborhood. I'm concerned with the precedent that we set and the fact that we'd be legislating rather than just granting a Variance.

Ms. Ellen Hannon stated my concern about preserving this neighborhood and the neighbors that live there is that neighbors are going to start moving because they'll feel that the Town of Cortlandt is ruling how they should live and what their houses should be like. That's the problem that I'm afraid everybody's going to start putting their houses up for sale because they're going to feel "well the Jones's can't do this, so we feel like we're being held back from doing anything here." I don't think it's an issue of the porch, is that we live here, we pay lots of money in taxes and we can't put a porch on. It just doesn't make sense to me and that's my concern is I'm going to lose this neighborhood and maybe even my husband and I would consider moving because you've lost the whole camaraderie of the neighborhood as we leave one by one. Yes, you'll get new people but what's the neighborhood going to be like?

Mr. David Douglas stated let me just say one thing so that it's clear to everybody. Every Town

in Westchester has Zoning rules. Every Town in New York State has Zoning rules. Basically, you have to go to Houston to get away from Zoning. There are rules everywhere and everybody has to abide by the rules of their specific Town and Variances are granted where it's appropriate. It's not that there's some horrible, evil force that's coming in to just say "we have to tell people you may do this, you may do that, you may not do this." That's what Zoning is and everybody is opposed to it when it affects them but they're all in favor of it when the cement plant wants to move next door.

Ms. Ellen Hannon stated I guess I'm a living proof that a Variance of the house on the top of my house is there, my daughter's bedroom can look into the people right next door, that's how close the house is and had I known that I probably would not have bought the house and built it there.

Mr. John Mattis stated actually, the Variance that you're referring to was a front yard, it was not a side yard. If she looks into the side, you have the proper setback on the side as does the neighbor that was granted the Variance. The Variance was not a side yard Variance.

Ms. Ellen Hannon responded the windows are like right there. If you look at the other houses they're not that close.

Ms. Diana Jones I believe Mr. Chin the last time said something to the effect that that's why we come here and petition for Variances that it's not etched in stone and it's each individual case and I'm not an attorney but I know that there is the spirit of the law and the letter of the law and that's where I think one applies for these Variances and weighs them as to what affect and impact it would have on the community. I think it's very clear, it does not impede steep slopes, it does not impede the sewers, it does not the traffic hazard, it does not impede anyone's view, sight lines. If each case is decided on its individual merits the only negative I hear is "if I let you do it I have to let everybody do it."

Mr. David Douglas stated let me try to answer you to some extent. The statute that we are bound by has 5 factors that we have to consider which you've heard people refer to them and those are the 5 factors and that's what we weigh. We weigh those factors in deciding what's side of the line we think something falls on or whether or not we feel that a Variance is warranted for a particular instance or not. When you hear people talking about precedent it is you have to be fair. What happens is we have to look at an application and say "does this application warrant a Variance in light of all the factors and are we treating this person in a fair way as opposed to everybody else?" And, we can't be or what the magic words that the courts like to use they talk about arbitrary and capricious. We have to be fair. We can't be arbitrary. We can't look at property A and say yes and then property B which is in the same situation and say no. So, when you hear us talk about precedent, that's what we're getting at is that we want to make sure that we're treating properties A, B, C, D and all the rest fairly and not arbitrarily. And, the issue with the precedent is that if you give something to A then B and C and D and E all come in and say "well we get it as well." I think they have a point then and that's what we're weighing and that's what we're wrestling with.

Mr. Wai Man Chin stated Mr. Chairman, the 5 factors that you said, yes there are 5 factors. I believe that you have 4 out of those 5 factors. If you only had 1 out of the 5 factors I would probably vote against this, but there's only 1. I see that you have 4 out of 5 and possibly 1 1/2. That's how I feel about this.

Mr. David Douglas stated people have come to different conclusions and some people aren't sure what their conclusions are as you know from prior meetings and again from today.

Mr. Raymond Reber stated I've also wrestled with this. I understand Mr. Seirmarco's points and I sympathize with the applicant. It's not going to be detrimental to the neighborhood, I'm sure it'll look pretty and it'll be fine but my problem is what Mr. Seirmarco kept referring to, setting a precedent and the uniqueness. This was clustered and when a clustered approval is granted there are compromises made at the time for various reasons. A lot of the times it's for environmental impact issues, they say okay we'll allow clustering because we're going to preserve other parts of this land and not disturb it. As Mr. Mattis has indicated one of the compromises was to allow the setback to be dropped from 40 to 30 to the minimum allowed in the Town. Now, my problem is they bring up the issue of well this was a 280 cluster. Well, I happen to know of a very large 280 cluster project elsewhere in the Town with many more houses and that cluster project has some houses with porches and some without. We're not only talking about this one street and that's my concern because the argument that we would have to use to say we're going to ignore the Town's requirement for a 30 foot setback to allow you to put the porch on which would allow then the other neighbors in your neighborhood to put the porches on, which again wouldn't be detrimental in your neighborhood and your neighbors indicate they don't mind. But, it opens up a Pandora's box for us because then these other projects that were 280 clustered housing that have similar situations can then come to us and say "well, we're the same. Look, my neighbor has a porch," but they meet the setback. "I don't but I want a porch." And, we're talking a lot of houses in this other subdivision. For me, I can't open that because I see nothing unique about your house from dozens of houses in the Town that were built some with and some without porches and obviously we're concerned about those without porches that we're approved under cluster housing authority. To me, that since there's nothing unique here and if we grant it we've basically legislated out the 30 foot setback and said goes 25. As much as I sympathize with you and as much as I basically agree and we've had other decisions where people have come to us. We've had architects plead to us and we sit here and we say "you know what? You're right. It would look beautiful. We can't do it." In fact, the Town has actually made more restrictive the setbacks on homes because of their concern of McMansions, what they saw happening in this Town was people would move in, buy a house that was maybe 1,500 square feet and then want to add another room on this side and another room on that side, put a second story on and the next thing you know you've got a 4,000 square foot house on a lot that really should have only had a 2,000 square foot lot.

Ms. Adrian Hunte stated Mr. Reber, with all due respect, that has nothing to do with this neighborhood, nor does the other cluster division. That's a separate neighborhood. We're talking about this neighborhood. We're talking about the houses on this particular street, this particular block. This is the Zoning Board of Appeals. If someone has a grievance or seeks

redress because they have been denied at the Building Department's level, they come to the Zoning Board of Appeals and once again I will state that we are to look at each case individually on its own merits and so-be-it if each and every other house in this particular neighborhood decides that they want a porch, they have to come before us. If we do not grant Variances what is the reason for us being here. For us to say that because we are setting a precedent, what precedent – I would like for each of you who feel that there should not be one, what is the undesirable change that will be introduced in the character of this neighborhood or the detriment to the nearby properties that will be created and answering each and every one of the 5 factors that we're supposed to consider, what are your reasons for saying, besides the fact that you're concerned about or afraid that everybody else in the Town is going to come to us seeking a Variance for a porch or whatever it is, seeking a Variance period for anything.

Mr. Raymond Reber stated I said it. I think Variances are granted for unique situations where the Code was not intended to restrict that situation and this situation here is not unique. There house is set to where it was supposed to be like so many other houses are in section 280.

Ms. Adrian Hunte stated you've set a precedent for every Variance that we've granted.

Mr. David Douglas stated I don't want to get into the back-and-forth. Does anybody else on the Board have any comments?

Mr. Wai Man Chin stated we'd like to see this closed and reserved.

Mr. James Seirmarco stated right. I was going to recommend that we close and reserve to give us an opportunity to prepare a D&O in a positive note.

Mr. John Klarl stated actually it would give us two opportunities: first opportunity is to direct what way the Decision and Order is prepared then we have a Decision and Order.

Mr. David Douglas stated it will give us a chance to talk at the next work session and see what everybody's views are given what we've heard tonight.

Mr. John Klarl stated not unlike the Gallagher case tonight, we closed, went to a work session, described the feelings of individual Board members then we wrote the Decision and Order.

Mr. David Douglas stated your motion is that we close and reserve.

Mr. James Seirmarco responded right.

Seconded, with all in favor saying "aye."

Mr. David Douglas stated what that means is that we will now go back among ourselves and discuss it further at our next work session which is open to the public. You can come to that if you want and then we will have a draft Decision and Order prepared which we will vote on and

we have to do this within 62 days, is that right?

Mr. John Klarl responded exactly.

Mr. David Douglas continued so either next month – I would hope that at next month's meeting we'll be able to have a decision one way or the other then but it could be at the one after that.

Mr. John Klarl stated what happens also just to supplement what the Chairman said is we have a work session and a meeting, the meeting tonight is Wednesday night, it'll be Wednesday night in May but the work session is a Monday night.

Ms. Diana Jones asked what is different from what you told me last month to what you're telling me now?

Mr. David Douglas responded what we did last month is we adjourned it so there would be an opportunity for other members of the public to speak, for you to speak for there be further discussion.

Ms. Diana Jones stated just about everybody in my neighborhood has spoken.

Mr. David Douglas stated if we had closed and reserved last month than none of that would have been possible.

Mr. John Klarl stated the curtain comes down, the public hearing process tonight but if it had continued tonight you could speak tonight but with this motion now the public hearing process is over this Board now deliberates and makes a decision.

Mr. David Douglas stated at our work session next month which is May 17<sup>th</sup> we will discuss among ourselves again the issues and we will find out what side and what the majority is and then Decision and Order will be prepared to be voted on either at that Wednesday or the next month. The only reason – it might not be the next month that the vote would be it's just the logistical one depending what happens on Monday there has to be sufficient time to prepare a Decision and Order and that's not always possible to do within 48 hours.

Ms. Diana Jones asked will we be notified?

Mr. David Douglas responded yes. We'll have our work session and we can have the staff notify you as to whether or not we intend to vote on the next Wednesday meeting or whether we intend to vote at the June meeting.

Ms. Diana Jones asked am I to understand that you've never discussed this then amongst yourselves?

Mr. James Seirmarco responded we have discussed this in great detail.

Mr. David Douglas stated we've discussed it lots of times. We've discussed it in depth.

Mr. James Seirmarco stated and there are a certain things that came out this evening that we will discuss further.

Mr. Wai Man Chin stated the last time you were here you were voted down 4 to 3 now we don't know what it is right now. You've got 3, 4, you've got 2 against and there are 2 other members that don't know what they're doing yet. This is something we'll discuss at that next work session and say "okay, you're going to go this way or that way" then we do a draft D&O and that's how we would vote on it.

Mr. John Klarl stated to follow up on your question this Board has had a public hearing in March and now in April so all the comments that they've made about the application have been done in your presence and then we've had work sessions. The work sessions the doors are open, people can come in, you're certainly invited to the May work session. You can hear the Board deliberate. It's not like the U.S. Supreme Court where the decision is just announced. This Board actually talks amongst themselves in a public process and then they'll direct the Decision and Order to be prepared but it is a public process and beyond discussion in front of you and the executive session the Board doesn't have discussions or meetings.

Mr. David Douglas stated this is a common approach. Some of the matters that were handled earlier in tonight's meeting that's exactly what we did, for instance the Gallagher decision that was read, we had multiple public hearings then we had at some point in time closed and reserved and then we had further discussion and that Decision and Order was prepared.

Mr. John Klarl stated but tonight a 62 day clock begins. This Board has 62 days to render a decision unless we mutually extend the time between Town and applicant. Essentially, it's a two-month process.

Mr. John Mattis stated I think what you might not be understanding is the difference between close and vote. When it's a clear-cut case we will close it, we will vote that night. We've closed. The public hearing is done. We don't comment anymore we've heard everything. The difference is we now can deliberate for up to 62 days so we can rethink it, go over everything that we've heard, go over all of our notes, go over everything that's submitted before we have to render our decision.

Mr. John Klarl stated to follow up with what Mr. Mattis said on tonight's agenda we had two situations where we did a close and reserve on a Decision and Order where the Board wanted to discuss at the work session and gave me, as the author of the Decision and Order the direction the Board wanted to proceed. This happens probably once or twice every meeting where we close and reserve and discuss at our work session to give – but this Board when there's a decision that requires some thought, some reading, some research and some writing they close and reserve and do the decision. The curtain comes down for the public hearing process tonight,



the next step will be the work session on May 17<sup>th</sup>, you can attend and hear the Board discuss what they believe to be the ups and downs of the application and hopefully to formulate a decision so that we can prepare the appropriate Decision and Order.

Ms. Diana Jones stated that's fine. I just don't know how many more ups and downs we can get out of this.

Mr. John Klarl stated I'm sure you're hoping for more ups than downs.

Ms. Diana Jones responded yes, and I'm beginning to wonder if perhaps we shouldn't have taken Mr. Reber's advice the very first time we came in front of this Board and he very curtly told us we probably should go live someplace else.

Mr. Raymond Reber stated wait a minute, I did not say – all I said buying a house is a choice, you could have bought elsewhere...

Ms. Diana Jones stated maybe you should consider to live someplace else.

Mr. David Douglas stated Mr. Reber please don't respond I don't think it's productive.

Ms. Diana Jones stated all I'm saying is I'm really hoping that you view us favorably. We are very much...

Mr. David Douglas stated everybody here is viewing taking this very seriously. We all try to be fair. We have an open mind to everything and as you can see there has been a difference of opinion, there's been a further discussion of the facts and everybody's going to – that's what we do. That's what the process is. We're going to discuss it and we'll have a decision.

Ms. Diana Jones stated I appreciate that.

Mr. David Douglas stated it is a fair process. Sometimes people get what they want sometimes they don't but I truly believe it's a fair process.

Mr. James Seirmarco stated just have patience with us.

Ms. Diana Jones stated I'm a first grade teacher, I have lots of patience. If there's one thing I have it's patience.

Mr. David Douglas stated so you have to wait a maximum 62 more days.

Ms. Diana Jones asked do we need to be in attendance on the 19<sup>th</sup>?

Mr. David Douglas responded what we can do is we can tell you, after our Monday's work session as to whether or not we intend to vote on the 19<sup>th</sup> or whether our vote will be the next

meeting.

Mr. John Klarl stated if you show up at the May 17<sup>th</sup> work session you'll know what's occurring. If you don't come to the May 17<sup>th</sup> work session you can call Mr. Hoch.

Mr. David Douglas stated if you call Mr. Hoch. If you call him on Tuesday the 18<sup>th</sup>.

Ms. Diana Jones stated he doesn't want to hear from me. Mr. Hoch has been wonderful. I would just like to say I don't envy his job and he is absolutely upper canonization.

Mr. John Klarl stated if you don't come to the May 17<sup>th</sup> work session you can call him the next morning and he'll give your direction.

Ms. Diana Jones stated I would like to thank you all very much. I'm sure you're so tired of seeing us and hearing from us. I appreciate the patience.

Mr. David Douglas stated not at all.

**C. CASE No. 42-09                      Nick Danisher** for an Area Variance from the requirement for the front yard setbacks for a proposed single family dwelling on the property located at **22 Pierce Street, Cortlandt Manor.**

Mr. David Douglas stated which I believe has been adjourned to May at the request of the applicant.

Mr. John Klarl stated Mr. Chairman, I know it's indicated at our last meeting in March we adjourned it to May, yes. At the March meeting...

Mr. David Douglas asked we already adjourned it to May?

Mr. John Klarl responded at the March meeting it was adjourned to May.

**NEW PUBLIC HEARINGS**

**A. CASE No. 10-10                      John Delaney** for a Special Permit for an Accessory Apartment on property located at **41 Forest Ave. Cortlandt Manor.**

Mr. John Klarl stated just for the record, I see the owner responded to your call on this item but I just received from Code Enforcement a Court Order involving some people involved with the property here and that may have led to the applicant not showing tonight. Also, based upon the Court Order I have some serious concerns on whether the application will go forward. I think we

should adjourn this to our next meeting. We'll find out what's going on between the parties. Are you an applicant?

Ms. Diane Hill stated I received this notification because I'm a neighbor.

Ms. Diane Hill continued I live on Evergreen Road which is around the corner from Mr. Delaney.

Mr. John Klarl asked do you know Mr. Delaney?

Ms. Diane Hill responded no I do not. I'm in my house for 28 years. Just like the neighbor before me I love the Town of Cortlandt. I am in the process though of moving and retiring to Florida so my house is on the market and I have people coming to see my house and they love my house, they don't like the neighborhood. Since Mr. Delaney has moved into that house he has cut down, I would say about 25 trees on that property. All we have are tree stumps in his yard. People pass his house to get to my house. I am appalled at what that house looks like. Has any of you driven by to see that house? Any of you? I think one of you should. Even though I'm a little obsessive-compulsive about my house, not everyone's going to keep a house as nice as mine but drive by and you will be appalled. There are flags from his country all over his fence, there are I think he has a business, there's some type of trucks in the driveway.

Mr. John Klarl asked what kind of trucks?

Ms. Diane Hill responded I don't know what kind. John do you know what kind of trucks? Construction. Minnie **Abernson** lives next door to me, she's 92 years old. She asked me if I could represent her also. She's not very happy. This is an area where it's cape houses but I was a larger in the back, very nice neighborhood, very well kept neighborhood. When he moved in I thought I was going to have a heart attack and now I see he's applying for an apartment. God only knows the people and the transients that are going to be living in that apartment. I love the neighborhood so much. I've lived here for over 28 years, even though I'm moving I feel I should speak up for everybody in the neighborhood.

Mr. John Mattis asked you live on Evergreen?

Ms. Diane Hill responded I live on Evergreen. It's a cul-de-sac. It is beautiful. It is just a beautiful neighborhood. This whole area is not zoned to have – it's one-family homes. I don't think there's anyone in this area who has an accessory apartment so if you grant it to Mr. Delaney, is everyone over there going to get an apartment also? I don't think it's fair. Although, if I were to have I would hope that you'd give me one because I'm very good.

Mr. John Klarl asked do you happen to know who the occupants of the house are right now? Do you know?

Ms. Diane Hill responded I believe he has a wife and two children. There was – my insurance agent is State Farm, Avery Arzu in Peekskill and there was a woman who lived in the apartment that you're talking about. So, I guess she lived there illegally and when I spoke to her on the phone I said "are you still living in that apartment?" and she said "no, actually Mr. Delaney bought the house for \$50,000." And if that didn't aggravate me. That took my property value down so I can't get \$900,000 for my, I can only get \$300,000 because that's all factored in. \$50,000 for that house, within a month he had a 'for sale' sign on that property. And I said to my husband "he just bought the house, he's selling it already?" And, then I think the sons got involved and I believe the woman who sold him the house said "if you let me live in the apartment I will sell you the house for \$50,000 on the note that I can live in that apartment until the day I die." And, this is what the woman told me. Now I believe she's not living there anymore.

Mr. John Klarl asked I don't want to get too far into it but do you know a woman name Anya Wehleu?

Ms. Diane Hill responded that's Anya. She's the one who sold him the house.

Mr. John Klarl asked is she living in the house?

Ms. Diane Hill responded from what Mrs. Abernson, my neighbor told me, no. There is no one living in the apartment now.

Mr. John Klarl asked but you did hear my remarks as we called this agenda item that we just received a Court Order and there's some litigation involving persons associated with the house and so we have to look into the status of the litigation and there's also some judges issues orders of protection so we have to look into all of those issues before we entertain the application.

Ms. Diane Hill continued there are cop cars constantly there, constantly. I just fear that if he gets an apartment Variance that it's not going to be good for that area.

Mr. John Klarl stated there's some threshold issues for this Board before the application can go forward but Mr. Delaney not being here tonight doesn't show much of an interest in the application right now.

Ms. Diane Hill stated I really do think though that you should just drive by one of you and see this house.

Mr. James Seirmarco stated we will.

Mr. Raymond Reber stated when we have this seriously on our docket we always go and visit because we do like to see the neighborhood. We are very concerned about accessory apartments. We understand the reasons for them and they do serve a purpose in our Town but, as you stated, the last thing in the world we want is to have an accessory apartment that causes problems in the

neighborhood. So, we have a lot of things that we have to look into in terms of how it's established.

Ms. Diane Hill stated the fact that he cut down all his trees. Is that legal?

Mr. Raymond Reber stated unfortunately we're not – that's a Code Enforcement issue.

Mr. John Mattis stated he may be in violation of the tree Ordinance and as Mr. Reber said that's Code Enforcement that's not a Zoning issue.

Mr. David Douglas stated that's something that Code Enforcement could look into.

Ms. Diane Hill stated I could sit in my backyard and not see his house and now you can and also you heard Country music 24/7 so he's an Irishman that listens to Country music.

Ms. Jackie Seidler presented herself to the Board and stated I live on Evergreen and I'm one of Diane and John's neighbors. One thing that I have noticed that you've said about most of the cases is the word precedent and the fact is that if you do allow one, what's going to stop everyone else. I've lived in the neighborhood for over 30 years. When I moved there, there were horses coming down my yard and now we only have to worry about traffic. When the Vineyards was put up 15 years ago, I know there was a big concern about the traffic and it was built and Forest Avenue itself is a narrow road and if people are allowed to have accessory apartments, you're talking more traffic and I hate to see a neighborhood change. I don't know if I can comment about it, the placement of the sign.

Mr. James Seirmarco asked which sign are you speaking of?

Ms. Jackie Seidler responded the Planning Board sign?

Mr. James Seirmarco stated the notification sign, okay.

Ms. Jackie Seidler stated it's behind a fence so you really can't see it that well. My husband never noticed it. Also, like here's 202, here's Forest, here's his house, here's Cross Lane. No one's going to see the sign except the people from the south part. Most people don't know what's going on. Is there a way to notify people other than the property that abuts...

Mr. James Seirmarco stated the first that we would do is to notify him to make sure that the sign is put – there is rules on where he has to put the sign.

Ms. Jackie Seidler stated I did call Code and they informed me it has to be on the man's property.

Mr. Wai Man Chin stated yes, in front of the fence though.

Mr. Ken Hoch stated I'm not sure the fence is on his property.

Ms. Jackie Seidler stated the problem is there is that fence. To read it, you have to stop, pierce through the fence to try and read the sign.

Mr. Wai Man Chin asked so it's behind the fence you're saying?

Mr. John Mattis asked so most people in an automobile and if they're driving won't even see it.

Ms. Jackie Seidler responded especially men. My husband didn't notice it. I had to say "George, there's a sign there." "There is?" He drove past it to work. He drove past it coming home. He never saw the sign.

Mr. Raymond Reber stated I would think as a minimum, if it's behind the fence that Code Enforcement could at least...

Mr. John Klarl asked do you know Mr. Delaney?

Ms. Jackie Seidler responded I've never met him.

Mr. John Klarl asked do you know a woman named Anya Wehler?

Ms. Jackie Seidler responded yes.

Mr. John Klarl asked is she an occupant of the house?

Ms. Jackie Seidler responded I haven't seen her in a while. Last time I saw her she had a cane and she'd be by the mailbox but that was about it.

Mr. Wai Man Chin asked how long ago was that?

Ms. Jackie Seidler responded could be over a month at least. It's been quite a while.

Mr. John Klarl asked was she a former owner of the house?

Ms. Jackie Seidler responded yes. I think she raised her three kids there.

Mr. John Klarl stated you heard, once again, that we have a Court Order involving the people that are associated with the house and we have to look into that Court Order before we could consider the application.

Ms. Jackie Seidler stated I know how I would vote.

Ms. Diane Hill asked how would we know that he's not going to be granted?

Mr. John Klarl stated I would say that this Board's probably in a few minutes going to adjourn this to the next month's meeting in May. You can call Code Enforcement a week before the next meeting and ask for a status and we'll be happy to tell you what's occurred if anything.

Ms. Diane Hill asked will I get a notice like I got in the mail?

Mr. John Klarl responded no just tonight the Board will give you the next date.

Ms. Jackie Seidler stated the 180 plus houses in the area would not be notified?

Mr. John Mattis responded the adjacent property owners are the ones that are notified. That's what the law is. That's why the sign is there for people who may live two doors down or down the street.

Mr. Raymond Reber stated as a minimum I would think that Code Enforcement could ask him to at least put the sign on the outside of the fence up against the fence.

Mr. James Seirmarco stated it's not his property though, maybe.

Mr. Ken Hoch stated I'll take a look. I'm not sure the fence is on his property.

Ms. Jackie Seidler stated if there's some way to make it visible or somehow more legible for the people who live there. If they have concerns they would be able to voice them one way or the other.

Mr. David Douglas stated I think that Mr. Hoch said that they're looking into it.

Mr. Ken Hoch responded yes.

Mr. David Douglas stated the reason for the signs is so people see them. That's why we've got that.

Ms. Jackie Seidler stated yesterday it was at a 45 degree angle.

Mr. John Mattis stated I make a motion that we adjourn **case 10-10** to the May meeting, seconded.

Mr. Wai Man Chin stated I think we should also have a letter sent to whoever the applicant is to appear...

Mr. Ken Hoch stated I have a comment on that. I had a call today from the applicant's architect and I made him aware of the Court Order that nothing could happen. He figured he wouldn't get

paid to be here if nothing was going to happen. I said “the Board can’t take any action tonight other than adjourn it.” And, that’s why his architect wasn’t here.

With all in favor saying "aye."

**B. CASE No. 11-10                      Curry Properties LLC for Area Variances for the**  
requirement that 25% of the site be landscaped, for the requirement that there be a 50 foot  
landscape buffer between an HC Zone and a Residential Zone, for the requirement that  
there be a landscape strip of 25 feet between the interior curb and the street curb.  
**Cortlandt Manor.**

Mr. Joel Greenberg stated I’m the architect for Curry Properties Incorporated. Just to give you a brief history, I’ve given out a little booklet and an explanation in the first page there which basically gives you the history of what’s going on. This property was originally built by Bill Geis back in the early ‘70s and I think over the years he has added buildings, added onto the building. At one point there was a gas station at the intersection of Route 6 and Westbrook Drive. At the present time there is an HSBC Bank and there’s another building which was formally run by Midas Muffler. Basically, the proposal here is to take the main building, the old Geis building which was Buick and that will eventually become strictly Toyota. The HSBC Bank and the former Midas Muffler building will be demolished and a new building will be constructed there and that building will contain Subaru and Hyundai. Basically, you’ll have three dealerships on the site: the big building for Toyota which will be totally renovated, and the new building which will be for Hyundai and Subaru. The basic schedule is that if you’ve passed by recently, Toyota which is on the other side just by the Cortlandt Town Center has now moved into the big building as of April 1<sup>st</sup> then on March 1<sup>st</sup> of 2011 the HSBC lease will be up and that building and the Midas Muffler building will be demolished and then on January of 2012 Subaru and Hyundai will move into the new building and then after that is done the Toyota building will be totally renovated. We will have in effect three dealerships, three brand spanking new buildings...

Mr. John Klarl asked it will be totally removed or totally renovated?

Mr. John Mattis responded renovated.

Mr. Joel Greenberg responded the Toyota building will be totally renovated, you won’t recognize anything that you’ve ever seen before. Of course, the Subaru and Hyundai will be a brand new building. That’s as of January 2012 and after Subaru and Hyundai move into their new building, Toyota building will be totally renovated and completely – basically in the Toyota image. The site itself, as I said, has been around as a dealership since the early ‘70s. The site itself has been added on to many times over the years by Mr. Geis and right now we’d like to sort of pull the whole thing together and make this basically one dealership at the intersection of Westbrook Drive and Route 6. I think the important thing to understand is that, and of course I understand having been before this Board and many other Zoning Boards is that obviously you



have to look at the criteria, you have to grant the minimum Variance that would allow the project to proceed and be successful. The most important thing is that we conform to the area requirements. A very important thing is that we conform to the lot coverage. We do not exceed the lot coverage at all. A third thing, and parking is always a big issue in many of the shopping centers and car dealerships in the area, we more than conform to the parking requirements. Basically, we're here tonight for 3 Variances basically all related to landscaping. We have been before the Planning Board twice. We have had a site inspection with the Planning Board members about a month ago on a Sunday morning and, again, walked through it, explained to the Board members exactly what we're doing, where it's going to happen, when it's going to happen and they appeared to be looking favorable on the project itself. Another thing that's happened and I'm sure this Board is very...

Mr. John Klarl interrupted the Planning Board conducted a site visit.

Mr. Joel Greenberg stated that's what I just said. The Planning Board conducted a site visit. I believe it was at the end of March. Again, the Board members understood what we're doing and seemed to look favorable on what we were doing. Another thing that's very important, as you probably know, I believe there have been some grants to basically change that area of Route 6 starting from Lexington Avenue changing the name to Cortlandt Boulevard and we had a very important meeting about two weeks ago with Chris Kehoe who is the Planning Director and Ed Vergano who is the Director of Engineering, Town Engineer. We went over what is going to be happening at the intersection of Westbrook Drive and Route 6. Additional lanes are going to be added so that left turns will be easier, people going straight across Route 6 from Westbrook Drive at the Cortlandt Town Center will be easier and a separate right turn lane will be also involved. There obviously is going to be a lot of landscaping sidewalks, benches put all along that section of Route 6 starting at Lexington Avenue. I believe, if I'm not mistaken, I don't know if the signs are up yet but the name is now being changed to Cortlandt Boulevard. I think the Town is really making a tremendous effort to upgrade the entire area, upgrade the entire Boulevard itself and I think what we're doing will certainly be start to upgrading the buildings and the developments along that section of Route 6. Getting now specifically into the Variance that we need. The first is a Variance which at the present time requires 25% of the site to be landscaped. The area that is impervious now will not change. Obviously when this dealership was originally developed by Mr. Geis the requirement for the 25% was not there. However, since we're going for an amended site plan now that does come into play and we do need a Variance of approximately 9%, however, if you look at the overall site itself and you look at the areas along Route 6, along Westbrook Drive beyond our property lines, the curb lines, based on our meeting with Mr. Vergano will not change so those areas will also be re-landscaped.

Mr. David Douglas asked the Variance you're seeking, you want it to go from 25% coverage down to 16% coverage?

Mr. Joel Greenberg responded right.

Mr. David Douglas asked so it's not you're asking for a 9% Variance?

Mr. Joel Greenberg responded actually what is there now is the 16% we're not asking, with the change, it's pre-existing non-conforming but, again, since we have an amended site plan the Planning Board recommended that we come to the Zoning Board for basically to get the pre-existing non-conforming situations legalized. Yes, I apologize, we are at 16% and we are going to remain at 16% but again, if you take, and you'll see as we go down through the other Variances, and you take the entire site even the portions that are part of the Town right-of-way and the portions that we're going to discuss in the adjacent properties, the actual visual percent of landscape of the entire area itself will be approximately 34%. Again, we are asking for the Variance to keep it at 16% which it presently is. The second Variance is, again this was not in effect when Mr. Geis developed the property, is that the present Zoning Ordinance requires that if a commercial property abuts a residential property there should be a minimum of a 50 foot buffer between the commercial property and the residential property. Again, we're not changing the impervious surfaces so the curbing which sort of meanders along the residential properties in some areas it's close to 40 feet, in some areas it's down to as much as 17 feet. That Variance of approximately 33 feet would be required although, as I said, many of the areas along the existing curb are more than the 17 feet that's there. However, in order to mitigate that situation as you see in the lighter color and you can look at the drawing that I've put into your packets there, the situation along this area here where the houses along Cynthia Road are, the Curry Corporation now owns this vacant property, the first three houses, this house barely touches our property so we do not own this and we own this house also. I've given to Ken Hoch the deeds to the ones that we already own and there are two properties that are in contract with Mr. Geis to purchase. After all is said and done within the next probably 30 days we will own the vacant property on Route 6, the three houses here, and one house over here. Our proposal basically is to provide a permanent easement so that at any point along the portion where the commercial property abuts a residential property there will be at least a minimum of 50 feet but as you can see from the dark area this does meander, there are certain areas which will be a lot more than 50 feet and the closest area which is this point over here will be exactly 50 feet. What we're willing to do, unfortunately when these houses were built they were built fairly close to Cynthia Road and what we're willing to do is to provide a permanent easement where this light colored area here would remain. No buildings could be put on it. No storage buildings. No building at all and the area here would remain natural except for dead trees, nothing could be removed from that as far as the vegetation is concerned so that in effect, even though we don't have 50 feet from our curb here to the property line, we will have basically the spirit of the 50 foot buffer that is called for in the Zoning Ordinance. So, that is the second Variance that we're asking for. The third Variance requires between, again the curb along Westbrook Drive and Route 6 to the curb of the right-of-way within Westbrook Drive and Route 6 has to be a minimum of 25 feet. Again, this is pre-existing non-conforming and in this particular case we have at the narrowest section approximately 16 feet. At that particular point which is the narrowest point we would need a Variance of 9 feet. Again, this is all pre-existing non-conforming but again we're totally upgrading this property. Just as an aside, when these projects are finished there'll be more than 80 people that will be employed in these three dealership. We've also agreed that on this vacant lot, we've discussed this with Chris Kehoe and Ed Vergano from the Town Engineers office, that we will also, in keeping with this concept of the Cortlandt Boulevard, we will provide right now

this lot is just brush and a mess, weeds and so on and so forth and what we'll do here is also provide, again it's not required by the Code, but in order to continue the concept of upgrading the entire Cortlandt Boulevard we will landscape this entire area over here. Basically, you're going to have a landscaped area coming along Route 6 from this lot, which will remain vacant, we have no plans to build anything all the way up through here and all the way around to here. I think that, again everything here is pre-existing non-conforming. We realize that there will be a coordinated review with the Planning Board but we have been moving along with the Planning Board quite rapidly. We have the memo from the Planning Board with the comments that they have and we're in the process of responding to all those comments none of which we have any problems with and we will have substantial renderings at the next meeting with the Planning Board meeting to show exactly how these buildings will look, how they'll fit into the neighborhood itself. If you go through the criteria for the granting of the Variance, even though this is all pre-existing non-conforming, I think it will certainly not be an undesirable change but a very desirable change to the neighborhood because the buildings will be upgraded, the landscaping will be upgraded, the landscaping will be maintained. At the present time there's a lot of areas there with dead trees, underbrush and certainly not a very desirable situation. The requirement and the benefit of the situation itself cannot be done by any other means or methods because again everything here is pre-existing and non-conforming and we're just trying to bring it up to the present Code. There are no additional impervious surfaces that are being requested so that all, again just repeating myself, we're just requesting that the existing situation be legalized from the pre-existing non-conforming situation. Certainly, it will not have an adverse impact on the area or the neighborhood and, in fact, will have a positive impact on the neighborhood. Of course, the question of self-creation, again, we brought an existing situation, we're not changing it and we're just upgrading it and trying to make an appealable architecturally esthetically pleasing intersection of Route 6 and Westbrook Drive.

Mr. Charles Heady stated I just want to compliment you on a drawing. It's the second time you've used very good drawings. You've got one piece of property residential that you don't have the deed for?

Mr. Joel Greenberg responded this one.

Mr. Charles Heady stated yes so in other words I don't think we can really vote on it until we get the deed for the property right?

Mr. Joel Greenberg responded by the time you vote I believe the contracts – within 30 days.

Mr. Charles Heady stated not tonight though.

Mr. Joel Greenberg responded no I understand that.

Mr. John Klarl stated Charlie there's a Planning Board application we're going to do a coordinated review.

Mr. Joel Greenberg stated we have to do a coordinated review anyway but as soon as we get those deeds for those two other properties we will forward them.

Mr. Ken Hoch stated that's the **Defonse** property Charles.

Mr. Joel Greenberg stated you're talking about this property here? This property we're not buying, I'm sorry. This property comes to a point here and at that particular point we have enough landscaping to provide what the Code requires. It's along this area over here and this area over here. We own again one, two, three, four, five.

Mr. John Klarl asked you don't need a Variance at the point?

Mr. Joel Greenberg responded no, again because it comes to a point so it's only a point but from there to there we will maintain the 50 foot requirement.

Mr. **Corinci** stated Joel that piece doesn't touch...

Mr. Joel Greenberg stated in actuality that's right.

Mr. **Corinci** stated it touches **inaudible** Cynthia.

Mr. Joel Greenberg stated this is Mr. **Corinci** who is with the Curry Corp. and Mr. **Corinci's** point is that in fact that this particular piece of property, this point actually is not even touching our property. It comes to a point.

Mr. David Douglas asked what does it touch?

Mr. Joel Greenberg responded it's abutting this property and this property but it doesn't abut the Curry property. Even so, just so that we can maintain the spirit of the Ordinance, from this point to this point we'll maintain the 50 feet so I don't think it's a question anymore.

Mr. Raymond Reber stated I like what Curry's doing. I appreciate you upgrading the property. I'm hoping that we can work out a solution to this. I'm a little confused. You said earlier that the Town has got some ideas about the intersection and some additional lanes but what you're proposing is the existing layout of the property. After all this gets approved five years from now is the Town going to take?

Mr. Joel Greenberg responded no. At that meeting that we had with Chris and with Ed Vergano the taking of property will be on the Kohl's side, not on our side. This intersection and this curb will not change. One thing I forgot to point out which is very important, I think this Board will appreciate it too, at the present time because there was a gas station on this corner there were additional curb cuts on Route 6 and Westbrook Drive. Those curb cuts are going to be gone it will be closed up. They are going to be closed up which will make it a lot safer situation because you won't have cars coming out almost at the intersection which under the present DOT Code

wouldn't be permitted anyway. Again, these were pre-existing non-conforming but they're gone.

Mr. Raymond Reber asked what's the proposed site coverage for the buildings when you're done? What percentage?

Mr. Joel Greenberg responded the lot coverage required – the maximum is 25% and that's what we have. We have exactly 25%.

Mr. Raymond Reber stated it will be 25.

Mr. Joel Greenberg responded we don't need any Variances.

Mr. Raymond Reber stated the issue of the 50 foot buffer, again, I want to work through this so hopefully we can improve all of this because I think the Code in many ways is too restrictive on existing properties but unfortunately the Code doesn't give us an out for existing. If it was a grassroots project, I'd say fine you can have whatever you want. However, I'm aware of such easement restrictions on other properties, actually there's one on my own property but I also know they are not enforced at all. I can take you through this Town and show you on deeds it says x number of feet on this property is not supposed to be disturbed except for removal of dead trees and whatever, and people have gone in and cut them down, they've planted things, they've put sheds in there, they've done all sorts of things. I tend to feel I want to work this out somehow so we don't have to have those covenants because they will not be enforced and 10 years from now they'll be violated. People will go in there and they'll clear cut it and what are you going to do? Oh, you're going to put back the old brush, no and then somebody will put a shed on it. This Town doesn't have the where-with-all to enforce these things so I really don't think that's a good approach. I think we've got to find another way either a compromise on that Variance or whatever but personally, to use that approach here is just kidding ourselves. There's no way that's going to be enforced in the future.

Mr. Joel Greenberg responded in the future, future maybe you're right but I think in the immediate and the long term future I think that problem is not going to be a problem.

Mr. Raymond Reber stated they're going to own it I understand that but we can't make Code decisions based on current owners. We have to assume that something happens to Curry Corporation, they get into some reason why they have to sell that property off then it becomes owned by somebody else and I don't know how we can guarantee that that buffer is going to be a true buffer.

Mr. Joel Greenberg continued that is the purpose of easements. Also, not to put any burden on Ken but that's what we have enforcement for in this Town. I agree with you, in many cases you're probably right in that they are violated especially if they live way off in an area where Code Enforcement isn't driving by every day but the difference here is, and you're right, Curry may own this year they may not own next year. They have no plans to sell it in the immediate

future so while they're owning it, it will be maintained. It would seem to me that especially after all the money and the grant money that the Town is putting into upgrading this that if let's say 15 years down the line Code decides "well we don't need this anymore, we're selling these." Let's say this person here decides "well, I want to put a shed but I don't want it in the way of my house," and starts cutting down trees. It would seem to me that in a situation like this the Town has spent all its money to upgrade this, this will be so obvious that I think Code Enforcement will be out there rather quickly.

Mr. David Douglas asked you've worked with this Town a lot, you probably know that that's not necessarily how it's going to work. I think Mr. Reber's concern is a valid one because in the real world there are, in fact, I was involved in a project that we tried to catalog the number of various easements in the Town and how they were enforced and the reality is that they simply are not enforced. They're just not. In one of my other capacities in this Town that drive me absolutely nuts. I've been trying for years to get them enforced.

Mr. Joel Greenberg stated I agree with both of you, you're absolutely correct, but I think in this particular situation where all this money and time is being spent to upgrade this area it would seem to me that, I'm not saying that Code Enforcement would notice it but it would seem to me that they would very quickly, somebody would notice it and call Code Enforcement because this would be a detriment to this whole purpose of the Cortlandt Boulevard. If there's another way that Mr. Reber wants to...

Mr. Raymond Reber stated as I preface by saying, I want this to work...

Mr. Joel Greenberg responded I know and we're certainly willing to listen to any alternatives.

Mr. Raymond Reber stated maybe we'll come up with a compromise whether there's partial easements someplace, not elsewhere, minimize the need to have a restrictive easement that's got to be enforced. I'm not saying it's either black or white but I'm saying let's try to figure out the best way to do something that we feel comfortable in the spirit of things we're doing our best to adhere to what the intent is and then consider what we have to do in a way of Variances.

Mr. John Mattis stated I'm just brainstorming here but there's a possibility, I'd have to ask our attorney, but I think we could require a 3 or 4 foot fence where that easement area is so that it doesn't appear that it's part of the property of the houses that it appears that it's part of the property of the auto dealership.

Mr. Joel Greenberg stated it would seem to me that...

Mr. John Klarl stated with conservation easements we've used split rail fences, we've used boulders, we've used signs to delineate a certain area.

Mr. Joel Greenberg stated I think that's certainly could be worked into the D&O that as part of the decision that a fence shall be put in here, something that's attractive...

Mr. John Mattis stated that would create the barrier so there won't be sheds there so they won't be clearing it out.

Mr. John Klarl stated Mr. Greenberg's a veteran and knows that in various Towns we've used split rail fences, we use boulders, we use posts and signs to indicate a conservation area.

Mr. Joel Greenberg stated in this case this is an area you want to see big boulders there. I think I nice split rail fence would probably do the trick but thank you very much John, that's an excellent idea.

Mr. David Douglas asked any other comments from anybody at this point?

Mr. Ken Hoch stated I have one comment for you Joel. On the vacant parcel where you're going to create this buffer area, does that parcel become unbuildable?

Mr. Joel Greenberg responded probably not because the buffer would be about the same as the buffer we decide here.

Mr. Ken Hoch stated no in terms of the area that you're taking what it's going to do to that parcel.

Mr. Joel Greenberg responded let me check that out. It's a good point. It's not part of this application but it's a good point to discuss maybe at the Planning Board level as to whether or not that becomes unbuildable.

Mr. David Douglas stated our game plan is to keep this open for coordinated review.

Mr. Joel Greenberg stated I think that's a good point but at a point in time I think before the Planning Board can really do their Resolution of Approval we'll have to have something from the Zoning Board so the Planning Board knows then they're not making a Resolution in vain.

Mr. John Klarl stated what we do is we go as fast as the slowest Board. Say the Planning Board is the slower Board to proceed with the application by that point – but then what will happen is this Board will anticipate when they're ready to finish up but this Board will be ready to adopt the D&O and when the Planning Board adopts a Resolution two weeks later this Board will adopt the D&O.

Mr. Joel Greenberg responded sounds good to me.

Mr. Charles Heady stated I make a motion on **case 11-10** to adjourn the public hearing until May, seconded with all in favor saying "aye."

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## **RE-OPEN PUBLIC HEARING**

### **A. CASE No. 04-10 Gyrodyne Company of America, Inc. for an Area Variance from the requirement of total number of parking spaces on the property located at 1985 Crompond Road, Cortlandt Manor.**

Mr. David Douglas stated first we need to vote on whether to re-open it.

Mr. John Mattis asked can we discuss first?

Mr. David Douglas responded yes. On the question.

Mr. James Seirmarco stated as you recall last month I wanted to postpone that decision to 30 days to give us a chance to look at the overall information and I was outvoted. Let's review the facts. The facts were that we had a year – the applicant had an expert Tim Miller Associates, traffic consultant, and he said that the requirement was 266, the existing was 135 or so and he recommended 190. I assume that Mr. Miller who has been in the business for 20 plus years thought that the 190 parking spaces were all doable, feasible, safe and that's why he suggested that. Now we go step 2: the Planning Board goes and makes a site visit to the site and they determine that 9 spaces are, in fact, have a defect. The memo that we got says that they're unsafe. I'm in a dilemma here. The applicant's expert said "we can put 190 safe spaces and here's my design," the Planning Board goes to a site inspection and their expert, I don't know who their expert is, says we want to see 9 less. I'm in the same dilemma again. I didn't want to rush it last time. I don't want to rush it this time. Maybe it's 4 less, maybe it's 6 more. I don't think we have enough information again to make this decision. I'm not even in favor or re-opening it until I get some information as to why we should re-open this and that's what I'm going to say.

Mr. John Mattis stated I may be jumping ahead but I think I know the reason because I watched the Planning Board meeting. Where you first come in they were going to have some parking as you first come in and when they do the intersection, if the State ever does that, there'd be some takings and the concern was you'd be turning in right where those parking spaces are, people were backing out to get out. Is that correct? Pretty much? That's how I understood but you guys can explain it to us.

Mr. Peter Pitsiokos stated for Gyrodyne Company. Just to quickly answer your question, the Chairwoman of the Planning Board expressed exactly that concern and that was the basis for her suggesting to our architect that he rework the plan in order to accommodate her concern.

Mr. James Seirmarco stated what surprises me, I don't mean to be argumentative here, but Tim Miller does a lot of work in this Town, is very familiar with the proposed intersection change



there and I can't believe that he forgot all about that. That's what I can't understand. He's very up to speed on what's going on in the Town. I'm sure he's seen preliminary drawings on the intersection changes there and I don't understand how 30 days later we're looking for 9 less parking spaces.

Mr. John Klarl stated if we look at the timing, the chronology of it, they were here Mr. Miller and the two gentlemen here were here on January 20<sup>th</sup> when this Board opened the public hearing, closed the public hearing and granted a Variance of 266 down to 190 for 76 spaces. At that point Mr. Miller, their planning guru, had not received any feedback from the Planning Board. The Planning Board only went out to the site inspection in late March and at that point when they went out several members of the Planning Board suggested that spaces go from 190 down to 181 to improve traffic flow and safety. Mr. Miller didn't have the benefit of the Planning Board review and comments in January. It only came after he sought 190 and he received 190 and then the Planning Board subsequent to that said "we think for various reasons that it should go down to 181" and the applicant apparently has agreed to that number. But, the timing was the Zoning Board was first, Mr. Miller's comments from the Planning Board was we received were second.

Mr. John Mattis stated this happens with the Planning Board many times. An applicant comes in and the Zoning calls for a two-acre zoning and they say they want 40 houses on 85 acres and by the time the Planning Board gets done, even though as of Zoning right they could have it, they cut it back instead of 40 maybe 30 or something. These things happen all the time.

Mr. John Klarl stated actually if we had done strict coordinating review we didn't even think we needed coordinated review that night because the applicant asked for something, we granted something, it was just spaces.

Mr. David Douglas stated two of us thought we did.

Mr. John Klarl stated there are members that thought we did but I don't think we expressed it in those terms.

Mr. James Seirmarco stated that was my concern then and I still have the same concern. We open this again and approve 181 that may not be the end of the story.

Mr. John Klarl stated what we could do, we could improve upon our January performance and do a coordinated review if you are of the mind to give 181 said but we're not going to formally adopt the Decision and Order until we get close to the end of the Planning Board process so that they don't have further comments that might alter that number.

Mr. Peter Pitsiokos stated as to Mr. Seirmarco's question, I think that we as the owner applicant we're sensitive to this Board's needs and this Board's concerns that we were going far lower than that 266 number and I think if you'll recall there were even some discussions at this Board level about possibilities like structured parking and all sorts of alternatives to try to drive that

number up. We were instructing Mr. Miller to try to accommodate as best as he could this Board's desire to try to get that number as close to the 266 as possible. Perhaps we pushed him too hard in that direction. That's what was driving – our instruction to him was “do what this Board wants. Get that number as high as you can so that this Board's concerns are accommodated to the degree possible.”

Mr. David Douglas asked Mr. Klarl, I'm going to see if I'm understanding what you were procedurally proposing, were you saying you suggest that we would vote, assuming that it's unanimous, that we would vote to re-open the matter but we would not vote on the actual number tonight?

Mr. John Klarl responded we would do like we did in a similar application tonight, we'd indicate that we are favorably impressed with a certain result in this matter but we would not formally adopt the Decision and Order until the Planning Board comes to the point where they're ready to adopt their Resolution. So, we'd put it in abeyance...

Mr. David Douglas stated I'm not sure if I heard Mr. Seirmarco correctly. I'm not sure that he at least is necessarily convinced that that should be the number. Can we re-open it and not take that second step?

Mr. John Klarl responded absolutely.

Mr. John Mattis stated I would like to re-open it and then just adjourn it without making any decision because the Planning Board could make another change. They already have...

Mr. John Klarl stated we should do a coordinated review. We didn't think it was really necessary.

Mr. John Mattis stated they already have our decision and said we're comfortable with 190 so let them determine the exact number they want which could be 181 or it could be something slightly different than that. Let's wait until that's determined before we take action.

Mr. James Seirmarco stated I agree with that.

Mr. John Mattis stated I don't want to make another decision and then they go to 175 or something and we keep bouncing the ball around.

Mr. John Klarl stated that's why we do coordinated review.

Mr. John Mattis stated if we could just open it and adjourn it and keep it adjourned until we have a final approval from them or an indication of an approval of how many that they'd be comfortable with.

Mr. James Seirmarco stated here's my concern with that, I burn my hand, we have 190 right now. Their experts says that they're safe, they're manageable, they're doable. I re-open this and the Planning Board says "well, they have 135 and maybe 141 is good." I have 190 now that their expert says is doable. I don't want to take the risk. I don't want to open this thing until the Planning Board comes over and tells me exactly what they want to do. As soon as you open it the 190 is off the table.

Mr. John Klarl stated if you don't open it obviously the applicant has a remedy. They can go tomorrow and file a new application.

Mr. John Mattis we don't want to cause that.

Mr. John Klarl stated for closing they're coming to this Board.

Mr. James Seirmarco stated once we re-open it the 190 is gone.

Mr. John Mattis stated no, not until we vote on a different number.

Mr. John Klarl stated right now the 190...

Mr. Wai Man Chin stated there is nothing going on until we vote on it based on the Planning Board.

Mr. John Mattis stated if we don't re-open this they have to apply all over again.

Mr. John Klarl stated the 190 is not gone. There's a Decision and Order on file at this Town Hall that grants them a Variance of 266 down to 190 so that's in place.

Mr. David Douglas stated it's not officially gone but what I think the concern is that if we re-open it that there's going to be a vote and the 190, that Mr. Seirmarco has now, will be outvoted on that.

Mr. John Mattis stated I'm not prepared to vote until I see a hard number from the Planning Board and I think most of us share that opinion. Like we've done with other cases, we wait until we get some more direction from the Planning Board before we take action. If we vote not to re-open this they're going to have to apply all over again for a decision that we can hold in abeyance until we get the number.

Mr. John Klarl stated the action tonight is to re-open the public hearing or ask them to get a new application.

Mr. James Seirmarco stated here's my concern, Mr. Miller's been in the business for many, many, many years. He is an expert they tell me. He came here and said 190 works. He's the expert. Where's the Town expert.

Mr. Raymond Reber stated wait...

Mr. [ ] stated it was not only Tim Miller, it was Calvin Black and Engineer, it was Russ Davidson...

Mr. James Seirmarco stated I agree.

Mr. [David Wald?] stated what the process was with the Planning Board was rather informal. They came and visited the site, we all took a look at it and said "maybe we should push it back a little bit" and we agreed. We agreed to do it along the lines that they felt they were comfortable with which was a reduction of 9 spaces. We can't replace those 9 spaces anywhere on the property but that's fine.

Mr. John Klarl stated just for the record, Mr. Miller told us that at the January meeting he could even be satisfied with achieving 170 spaces.

Mr. [David Wald?] stated that's correct. The traffic studies that were completed indicated that at peak demand we required an additional 34 spaces which would bring us to 170. We're exceeding that in any event so we feel there's a level of comfort but we want to accommodate the Planning Department. We're confident that their Resolution will be 181 or 180 whatever it might be and I can understand we need to wait until May 4<sup>th</sup> to get that Resolution but we would then hope, because we've got our major tenants that are asking us all the time and they're anxious to know that this is resolved, so that we can tell them we will in fact be able to develop the new parking. We would just like to keep the process going.

Mr. David Douglas asked why don't we then we'll make a motion to re-open it, it'll either be unanimous or it won't be. Because, the rules require it to be unanimous.

Mr. Raymond Reber stated to help insure that maybe we get a unanimous vote...

Mr. Wai Man Chin stated let's vote on it now.

Mr. Raymond Reber stated the thought is I think we've all agreed we'd like to see a maximum parking there for those of us who use that facility one would think you can't have too much but I'll also admit as a professional maybe Mr. Miller didn't have all the input or maybe something else or some other input came in that he didn't realize. These things happen. He has a staff working on these things. I'm not going to say that the number that he came up with took into account everything is perfect and is ideal so what I would recommend is we re-open it, we wait, and if in fact they decide they want to hold to a number less than the 191 then Mr. Miller should come and explain to us what changed and that he now endorses this new number as being the max acceptable, rational number and on that basis I would be willing to make an adjustment.

Mr. John Mattis stated we have to think of the implications of this vote. We either re-open it and hold it in abeyance and if you will adjourn, call it what you want, until we get a hard number from the Planning Board or we vote no. What's going to happen? We know they're not getting 190. We know they're going to have to come back to us. So, we're going to force them to pay a fee and go through the whole application process where can re-open it tonight and wait. It doesn't make sense and it's not fair to the applicant not to re-open this.

Mr. Wai Man Chin stated I agree.

Mr. John Mattis stated I'll make a motion that we re-open **case number 04-10** Gyrodyne Company of America Incorporated, seconded with all in favor saying "aye."

Mr. John Mattis continued your case is re-opened but...

Mr. John Klarl stated now that it's re-opened...

Mr. Wai Man Chin stated now we make an adjournment.

Mr. John Mattis stated now that it's re-opened do we officially adjourn it tonight?

Mr. John Klarl responded yes.

Mr. John Mattis stated I make a motion that we adjourn **case 04-10**...

Mr. John Klarl stated we're adjourning it for further deliberation before the Planning Board.

Mr. John Mattis asked how close is the Planning Board to a decision do you have any idea?

Mr. [David Wald?] stated they actually wrote a memorandum and they indicated the Planning Board supports Gyrodyne's application to the Zoning Board of Appeals to modify the Variance.

Mr. James Seirmarco stated we have that.

Mr. [David Wald?] stated I understand that will be ready May 4<sup>th</sup>.

Mr. John Mattis stated we may be able to act on this next month.

Mr. John Klarl stated you may be able to act on this next month two weeks after the Planning Board, if the Planning Board adopts a Resolution.

Mr. John Mattis stated if we turned it down you would have to wait to get a decision and then reapply and it would put you back a couple of months.

Mr. Raymond Reber asked before we adjourn then can we as part of the adjournment include having feedback from Mr. Miller on his study before the next meeting then based on whatever the Planning Board wants.

Mr. John Klarl stated would you like a laconic report or an appearance from Mr. Miller?

Mr. Raymond Reber responded he doesn't have to appear as long as he gives us a report that explains...

Mr. Wai Man Chin stated indicating a site plan, indicating what was the changes...

Mr. John Mattis stated show us what changed and give us the reasons why.

Mr. Raymond Reber stated that would be sufficient.

Mr. Wai Man Chin continued just circle it a revised data on it.

Mr. David Douglas stated but also we want to hear the reasons.

Mr. Wai Man Chin stated that's what I'm saying.

Mr. David Douglas stated it shouldn't just be a revised site plan but with the rationale for it.

Mr. Wai Man Chin stated and say that DOT is taking whatever.

Mr. Raymond Reber stated based on the data and the review of whatever the parameters are he agrees that the maximum safe level would be the 181 or whatever number it is.

Mr. James Seirmarco stated not because the Planning Board recommended it but technical reasons.

Mr. John Mattis stated I move that we adjourn **case number 04-10**, seconded with all in favor saying "aye."

Mr. John Klarl stated and request the appearance or report of Mr. Miller.

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## **ADJOURNMENT**

Mr. John Mattis stated I move that we adjourn the meeting, seconded with all in favor saying "aye."

**NEXT MEETING DATE:**  
**May 19, 2010**