

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 23<sup>rd</sup>, 2014*. 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:

Wai Man Chin, Vice Chairman  
Charles P. Heady, Jr. (absent)  
James Seirmarco  
John Mattis  
Adrian C. Hunte  
Raymond Reber

Also Present

Ken Hoch, Clerk of the Zoning Board  
John Klarl, Deputy Town attorney

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**ADOPTION OF MEETING MINUTES FOR MAR. 19, 2014**

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

Mr. David Douglas stated the March minutes are adopted.

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**ADJOURNED PUBLIC HEARINGS:**

- A. 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.**

Mr. David Douglas stated as discussed at our work session on Monday, that's going to be adjourned until May.

Mr. John Klarl stated the Planning Board is acting on it.

Mr. John Mattis stated I'll make that motion that we adjourn to May.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that's adjourned until May and as Mr. Klarl was starting to say, and I cut him off, that's because the Planning Board will have acted by that point. We've been acting in coordination with them.

**B. CASE No. 2013-18**                      **DOTS Code Enforcement** request for an Interpretation and determination of the non-conforming status: in **Case #161-87** an Interpretation was granted to this property that a tutorial service conducted by the Petitioner within their home was a customary home occupation. The Application was accompanied by statements from the applicant as to the number of students, employees, etc. At the time the Interpretation was granted, the Ordinance did not contain a cap on the number of employees or students that could be on the premises. Subsequently, the Ordinance was amended to limit the number of students and employees. A determination is needed as to what if any limits apply to **Case #161-87** presently.

Mr. David Douglas stated we discussed at our work session Monday that that's going to be adjourned to May also.

Mr. Raymond Reber stated I make a motion to adjourn **case 2013-18** to the May session.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-18** is adjourned until May.

**C. CASE No. 2013-29**                      **Marcia Royce** for an Area Variance for the front yard setback to rebuild a fire damaged house on property located at **2223 Maple Ave., Cortlandt Manor.**

Mr. Frederic Turner stated good evening, Frederic Turner for Marcia Royce. Mr. Chairman, members of the Zoning Board of Appeals...

Ms. Adrian Hunte stated good evening.

Mr. Frederic Turner stated good evening. We were last here I believe in February and made the application for this front yard setback, it's **50** feet required. The house and property, as you know, suffered a fire. We want to rebuild it to the existing footprint; requires approximately **9** foot setback. Immediately after our last meeting here, it turned extremely cold. I think the polar vortex hit that same week and the earth could not be moved. The Board wanted us to clear up an anomaly: the surveys revealed that there was an encroachment on the adjoining property and the Board asked that we correct that encroachment before the Board took any action. We're ready to do that. We have done that, I believe. I haven't seen it personally but I have been advised by

Mrs. Royce that it has been done. Therefore, we would ask that the Board please consider an act on this request for a relatively minor front yard setback to rebuild this house damaged by fire to the existing footprint.

Mr. John Mattis stated Mr. Hoch I think confirmed that, in fact, they did...

Mr. Ken Hoch stated they did, yes, I actually was out there today and they moved the gravel, graded and seeded the area that was the driveway.

Mr. John Mattis stated and in terms of this request, this was built within the confines of the zoning in effect at that time and we've had cases like this before and it certainly wouldn't change the character of the neighborhood to go back to where it was. It pretty much lines up with the others on that street so I don't have any concern with granting a Variance like this.

Mr. James Seirmarco stated I went there too and there's a fence also between the two properties. The driveway is moved and seeding is commenced so I don't have a problem with it either.

Ms. Adrian Hunte stated I concur.

Mr. Wai Man Chin stated it's fine.

Mr. John Mattis asked anyone in the audience would like to speak regarding this case? **Case #2013-29**, Marcia Royce, I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. John Mattis stated I move that we grant an Area Variance for the front yard setback from an allowed **50** feet down to **41.35** feet. This is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. Frederic Turner stated thank you very much.

Mr. David Douglas stated thank you.

**D. CASE No. 2013-33 Sharon Garb** for a Special Permit to establish and maintain appropriate screening for an existing contractor yard on property located at **2201 Crompond Rd., Cortlandt Manor.**

Ms. Sharon Garb stated good evening.

Ms. Adrian Hunte stated good evening. This is my case. Good evening. I think last we've spoken that you were in discussions, conversations with the neighbors and that you had come to some agreement, along with Mr. Hoch, concerning the screening and that we just need to hear a bit more about where you are in terms of the progress and we may need to put this over...

Ms. Sharon Garb stated we've had a dumpster in and it's been filled up and taken away. We've had – the trees are ordered. What's the machine you use to grade it with – what he used to grade it with? Anyway, it was a big machinery, they came in and moved all the piles of firewood that had been accumulating from hurricane Sandy over to a different area so that the space is cleared for where the trees are going to be planted.

Mr. Garb stated we removed a lot of the wood already and what was left we just moved out of the way so that we could proceed and that will be taken away in due time.

Ms. Adrian Hunte asked what else remains to be done?

Ms. Sharon Garb responded well, the trees need to be planted when they arrive.

Ms. Adrian Hunte asked Mr. Hoch, do you have any additional...

Mr. Ken Hoch responded I did get a – I sent an email to Mr. Foto, who's the adjacent property owner, and he raised a few questions. I don't know if you can answer them tonight. One of his questions was: what's the height of the trees that will be planted?

Mr. Garb responded about 9 feet, somewhere in the neighborhood of 9 from what I understand the contract.

Ms. Sharon Garb stated it's supposed to grow a foot a year.

Mr. Ken Hoch stated there was discussion, when we were out at the site, that after these trees are planted I would go back with our engineer and if we felt several additional trees had to be planted further down from where these are, we'd let you know that that would be something you would have to do and as you said, Mr. Foto also asked about – he also stated you have begun cleaning up the property and asked: when will that be completed?

Ms. Sharon Garb responded it's already completed.

Mr. Garb responded we already did. We cleaned that whole corner out, took everything out of there and put a tree in its place.

Ms. Adrian Hunte asked should we put this over – anybody in the audience wish to speak? On **case #2013-33** for Sharon Garb for a Special Permit to establish and maintain appropriate

screening for an existing contractor yard on the property located at 2201 Crompond Road, Cortlandt Manor, I make a motion that we adjourn to the May 2014 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Ms. Sharon Garb asked could I have the date of that May meeting?

Mr. David Douglas responded May 21<sup>st</sup>.

Ms. Sharon Garb stated oh it's on the bottom, I'm sorry. Thank you. Okay, we'll see you then.

Mr. David Douglas stated thanks a lot.

**E. CASE No. 2013-35                      Miriam Arrighi for a Special Permit for an Accessory Apartment on property located at 4 Hollow Brook Court South, Cortlandt Manor.**

Ms. Adrian Hunte stated good evening.

Ms. Miriam Arrighi stated good evening. I have the paper that Ken requested from Tom Nugent. We submitted a paper to Ken Hoch that Tom Nugent did.

Mr. James Seirmarco stated yes we got that and when we look at the figures of the accessory apartment versus the main house, the accessory apartment is approximately **39%** of the regular house and that historically, we typically do not exceed or approach those kinds of numbers so you're going to have to rework something in the accessory area to reduce the ratio for the main area of the house to the accessory apartment to get it in the **20%** maximum range.

Mr. Wai Man Chin stated not **20%**.

Mr. David Douglas stated high twenties.

Mr. James Seirmarco stated twenties, in the neighborhood – certainly under **30**. You might have to block off a closet. We really shouldn't do the design here but you're going to have to get Mr. Nugent to maybe sit down with Ken and go over some of the possibilities Ken?

Mr. Ken Hoch stated he can call me, sure.

Mr. James Seirmarco continued make a phone call and work it out because some of those areas have to be blocked off because that's far in excess of what we would normally do.

Ms. Miriam Arrighi responded okay.

Mr. James Seirmarco stated have Mr. Nugent call Ken and they can work out a reduction in the accessory apartment area to fulfill the requirement.

Ms. Miriam Arrighi stated okay, thank you.

Mr. David Douglas stated I just want to – so you understand. The apartments under the Code is not supposed to be more than **25%** of the area. We've granted slightly bigger than that so as long as it's in the twenties so we might be willing to...

Mr. James Seirmarco stated but not **39%**.

Mr. David Douglas stated right, it's going to have to stay in the twenty-something percent range.

Ms. Miriam Arrighi stated thank you.

Mr. James Seirmarco stated I make a motion to adjourn this to next month's meeting to give the applicant an opportunity to contact Ken to reduce the area of the accessory apartment to a reasonable ground – in the mid-twenties, the high twenty percent...

Mr. Raymond Reber stated as a little background, it may seem strange with the numbers because your accessory apartment is within the square foot limitations, well within it so you might wonder why we have this tool/formula but the reason for the numbers on the percentage is that the intent was that small houses wouldn't have accessories – they figured for a larger house where you could afford to have a separate area and because the overall house is small it makes it difficult to justify an accessory apartment so that's why we're struggling here to meet the numbers but...

Mr. John Mattis stated actually, before we close this case, we may have solved this ourselves. We overlooked something at our meeting. The formula says "the percentage of the accessory apartment to the total." We were looking at the percentage of the accessory to the primary, it's to the total so if you add the square footage: **1,050** roughly and **410** of respectively the residence square footage of the **1,049.7**, the apartment of **410** it comes out to **28%**. We're just about there.

Mr. David Douglas stated we were following the percentages that the architect gave us.

Mr. John Mattis stated we were following the percentages the architect gave us and he miscalculated it. It's the percentage of the apartment to the total. He was doing the apartment to the residence and something looked out of line here. I'm glad I looked at that.

Mr. David Douglas stated hold on a second. He's saying that the apartment, the ratio of the apartment to the residence it's the second line. He is doing it right.

Mr. Raymond Reber stated yes but that's not...

Mr. John Mattis stated **410** divided by **1,049**; **1,049** it's the percentage of the accessory to the total of both.

Mr. Wai Man Chin stated you're right. John, I'm glad you caught that.

Mr. David Douglas stated hold on a second. No, John I think that's right. I think he is doing the apartment to the total habitable space. The number above – the higher numbers are the total including habitable and not habitable.

Mr. John Mattis stated right, habitable on the apartment is **1,049.7** and on the apartment is **410**, that comes out to **1,459.7**...

Mr. David Douglas stated no, no, no. I don't think that's what it says. I think he's saying that...

Mr. Raymond Reber stated he gives a breakdown. If you look at the top...

Mr. David Douglas asked oh this isn't a division sign, that's just a ...

Mr. John Mattis stated it is but it's not using – you use the total of the two: the residence, the primary residence and the apartment. He's doing percentage of apartment to primary residence not the – you do the apartment to the sum of the two. So, **410** divided by **1,459.7** is...

Mr. David Douglas stated I'm just not clear on what his upper box where it says "residence square footage:" does he mean the entire residence or does he mean...

Mr. Wai Man Chin responded no.

Mr. Raymond Reber stated no, it's the upstairs, the main floor.

Mr. John Mattis stated he's only looking at the main floor.

Mr. James Seirmarco asked why does he have basement on the top list?

Mr. David Douglas responded yes, I'm not sure he is looking at just – I think he's looking at the entire...

Mr. John Mattis stated basement he shows as non-habitable. He doesn't show any habitable in the basement.

Mr. David Douglas stated no, that's right.

Mr. John Mattis stated for the residence he shows: mudroom, kitchen, dining room, living room, master bedroom and a second bedroom for **1,049.7**. For the apartment: **144.6** for the living room, **135** for the kitchen and **130.4** for the bedroom, number one, there is only one bedroom.

Mr. Raymond Reber stated the top listing, there's only one kitchen listed...

Mr. David Douglas stated that's what I was looking for. As you were talking I was looking to see what's the story with the kitchens because that would solve it.

Mr. John Mattis stated so the actual number is **28.1%**.

Mr. Wai Man Chin stated I agree.

Mr. David Douglas stated then it works.

Mr. John Mattis stated he miscalculated it and we had gone by his numbers without checking them that closely.

Mr. John Klarl stated then she's within that umbrella.

Mr. John Mattis stated the fact that it's only **410** square feet, it's a small house, that's why it's slightly over the **25%**. They're allowed up to **600**. I don't think that I'm really concerned with this.

Mr. David Douglas stated no that's fine. That gets us into the numbers we talked about.

Mr. Wai Man Chin stated based on what you just did, you're right, we were looking at it based on what the architect did and he didn't add the two.

Mr. James Seirmarco asked Ken, what do you think?

Mr. Ken Hoch responded I think John's correct. I think on his second calculation he did not put the total house, he put only the upstairs...

Mr. Raymond Reber stated one against the other.

Mr. Ken Hoch stated that's how he got to **39**.

Mr. Wai Man Chin stated we're not closing the public hearing yet.

Mr. David Douglas stated the bottom line is you're going to get what you want.

Mr. Raymond Reber stated we solved the problem. John solved the problem.

Mr. John Mattis stated I'll try to explain it. The rule says; you take the size of the apartment versus the total living area of the apartment versus the total living space of the house. He took the percentage of the small apartment to the residence rather than the whole house and that's why



that percentage looks so far out of whack. That's why it looked like it was **39%**. When I looked at this I said it's not much more than **2 to 1**. It can't be that high so that's why I just looked at it now. I didn't catch this either the other night. So, it's really **28.1%**.

Mr. John Klarl stated she's coming into a safer percentage now.

Mr. Raymond Reber stated which would fit certainly...

Mr. Wai Man Chin stated within our parameters.

Mr. James Seirmarco stated I still think we would adjourn this tonight to next month just to verify all of that.

Mr. Raymond Reber stated I don't think that's necessary. We've got the detailed numbers.

Mr. John Mattis stated you've got it right here and here's the statement on the town's checklist: "percentage..."

Mr. James Seirmarco stated I understand your calculations.

Mr. John Mattis continued of accessory apartment to total."

Mr. Raymond Reber stated and you can pretty much just look at the plans themselves and look at the dimensions and you realize, wait a minute, something was wrong with the numbers.

Mr. John Mattis stated all of a sudden it clicked.

Mr. Wai Man Chin stated we were just going by the architect's summary and that was it and not realizing that. They did not line up.

Mr. David Douglas stated so we all apologize for not checking the architect's numbers and the architect should apologize for getting the numbers wrong.

Mr. Wai Man Chin stated I make a motion on **case 2013-35** to reopen the public hearing.

Mr. David Douglas asked did we close it?

Mr. John Mattis responded we didn't vote to close it.

Mr. James Seirmarco stated I'll make a motion to close the public hearing on **case #2013-35**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is now closed.

Mr. James Seirmarco stated I'll make a motion to grant the accessory apartment based on the new set of figures and being at **28%**, this is a type II SEQRA, no further compliance is required.

Mr. Wai Man Chin stated **28.1%**.

Mr. John Klarl asked it was **28.1**?

Mr. Wai Man Chin responded yes.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your apartment is granted.

Ms. Miriam Arrighi stated thank you so much. Is that it?

Mr. David Douglas responded that is it.

Mr. Ken Hoch stated Miriam I will be sending you some paperwork. Give me a few days.

Ms. Miriam Arrighi stated okay, thank you again.

Mr. Wai Man Chin stated very good John.

Mr. David Douglas stated and thank you Mr. Mattis.

Mr. John Mattis stated sometimes it takes us longer but we always end up getting it right.

**F. CASE No. 2013-37                      DOTS Code Enforcement** for an Interpretation that the pre-existing, non-conforming five-family residence has been in continuous use since July 15, 1996, with none of the units vacant for more than one year from that date to the present on property located at **1 Hale Hollow Rd., Croton-On-Hudson.**

Mr. John Sullivan stated good evening Mr. Chairman, members of the Board. My name is John Sullivan. I'm here representing Rita Weeks, the owner of 1 Hale Hollow Road. Mr. Chairman, on Monday I submitted through Mr. Hoch, a letter to your attention and to the Board dated April 18<sup>th</sup> with **10** documents attached to it and then on that same date I submitted a letter dated April 21<sup>st</sup> with **3** documents attached to that. I've also provided copies of that this evening to Mr. Hoch for all members of the Board and for Mr. Klarl. My application this evening would just be those letters and the attachments be accepted as part of the record of this proceeding.

Mr. David Douglas stated they are. We just got the April 21 letter and the attachments tonight as we came here. We haven't looked at them at all but they are now part of the record and we'll consider them.

Mr. John Sullivan stated thank you.

Mr. James Seirmarco asked can I make part of the record that we asked – this is in response to the questions, I lost my list of requests. Does anybody have that list?

Mr. John Mattis stated it's in the minutes.

Mr. James Seirmarco asked John, do you have notes?

Mr. John Klarl responded notes on?

Mr. James Seirmarco responded on what we requested to be addressed by this meeting.

Mr. John Klarl stated yes, you're talking about the schedule from the income tax return.

Mr. James Seirmarco stated yes please.

Mr. John Klarl stated there was one request was to – give that portion of the income tax return that indicates the profit loss on sale of a rental property and would show the number of apartments consideration for that tax year, that was one of them. Mr. Sullivan said he would send some leases and some rents and there were also – you were asking for proof of the continuous **5** units and Mr. Reber was saying that you have to consider maintenance as part of occupancy. There's discussions mostly about leases, other proof and specifically the portion of income tax returns, I think it's schedule E that indicates how many apartments you operated in a given year on a given property.

Mr. David Douglas stated and I'm looking at the minutes and I think we also talked in terms of bank statements and checks, just skimming through the minutes – whatever's in the minutes.

Mr. John Klarl stated there was discussions about that also Mr. Chairman, yes.

Mr. James Seirmarco stated this memo that we just received from Mr. Sullivan is pertaining to those requests that we made at the last meeting.

Mr. John Sullivan stated some of the attachments – there are leases provided which do...

Mr. John Klarl stated Mr. Chairman, you narrowed the scope for the applicant at the meeting in March also because you said you only wanted **2007** to **2014** and not **18** years. You gave that window of **2007** to **2014**.

Mr. James Seirmarco stated right...

Mr. John Klarl stated those were among the documents that were discussed...

Mr. John Sullivan stated after consideration, you will see that there are certain leases attached to one of the letters. There are affidavits which address some of the questions. There are not tax returns or bank statements. My client has opted not to submit these for a variety of reasons including privacy considerations, the value that they might offer, certain assumptions that I think are being made with regard to how those tax returns are prepared, whether it's in the form that might assumed by the Board and so for a variety of reasons, my client has opted not to submit tax returns. As I indicated, there are other documents which I would argue provide the same type of evidence that might be gathered from a tax return in a form that you might assume.

Mr. David Douglas stated as we discussed at the work session, it's up to your client what you decide to submit or not submit. We'll just consider what's been submitted and what's not been submitted and weigh it all accordingly. We're not pressuring you to do anything, we're making requests and then you either do it or you don't.

Mr. John Klarl stated whatever form of proof you have the Board will entertain.

Mr. James Seirmarco stated and when you say tax returns, we were not interested in the income tax returns it was just the one schedule E that would just be pertaining to the rental because we have no right, nor would we ask for any kind of income.

Mr. John Sullivan stated understood, thank you.

Mr. Raymond Reber stated as stated, it's up to the client to decide – they can decide to provide information or not provide information. The burden we have is we're being asked to determine whether or not the occupancy has been relatively continuous and satisfactory and so the real key is if we don't see that then we're struggling with the argument of how do we decide in terms of what really has been the situation at that location. To date, I think it's been difficult for us to say that what we have demonstrates to us clearly that these apartments have been rented on a regular basis. You have given us a lot of additional information which, you know, maybe with that we'll feel more comfortable but we still have to look at it, but as I had indicated at the work session, I think the burden does fall on the applicant or on you for the applicant to make sure you do provide us adequate information. Normal landlords, they have leases, they have rent receipt copies, various things normally that a landlord has to show what they're doing in protecting themselves. For us, those are the things we would normally expect. If you were going to provide alternative information and it's complicated as certainly a lot of this stuff is indirect, I think the burden falls on you and the applicant or the defendant to then sort through all this and give us a master plan. Basically it says you've got 5 apartments and at no time should these apartments be left vacant for more than a year. They can be left vacant for a number of months, obviously if they're doing repairs, renovations, whatever that's acknowledged but I think the burden falls on you to sort that out and present that to us and say "here's a chart and starting with

**2007 or 2008**” which we said is as far back as we’ll go “and working forward” and you’ve got unit A, unit B and unit C and this is the occupancy of it and then here’s some backup information that shows this person was in this apartment during that period. I don’t think the burden’s on me or any of the Board members here to have to sit and sort through that and put that grid together. I think you have to do that to convince us that yes, here’s the evidence, here’s how it fits things, review it. Just like we ask architects on things we just had the apartments, they have to provide us with the details of all the occupancy, the space, the calculations. On this case he made a mistake and we picked it up but it’s not for us and sit there and do all the mathematics and what have you, that’s up to the architect, the same way here. I think it’s up to you to put the story together for us with the backup information and say “here it is, look at it. Let us know if there’s something missing,” and we’ll go from there.

Mr. John Sullivan stated I’ve previously noted, and we don’t need to bring it up again, with regard to the burden as you describe it, I would respectfully disagree in terms of who the burden should be on. You made reference to my client as the defendant here. This is a request for an Interpretation by the Department of Technical Services that the use has been continuous and the Department of Technical Services has done nothing in furtherance of that. There have been some very broad allegations made by two tenants. To my knowledge there’s been no backup with regard to any of those allegations, no documentation, no support. We’ve done our best through previously submitted affidavits from tenants, from the property owner. We have painted a picture of the five units over a time period, who the occupants were, periods of repair. We’ve now submitted some leases to further document that. We’ve submitted other documentation that you’ll see, sworn testimony...

Mr. Raymond Reber stated you had that as background from previous work then it shouldn’t be that big a deal to kind of sort it out in a representative presentation. Part of the problem here is this uniqueness here and that is if this was a normal, legitimate apartment complex we would have no right to interfere, landlord’s – it’s a five apartment complex and that’s zoned that way and they can operate it, but when you are in a situation where you’re no longer in compliance and a town has a code that says what you’re doing is not acceptable, but we’re going to grandfather it, there is an agreement at that point that there’s a certain burden that you have to show to keep that non-conforming function to show that yes, I’m living up to the standards. I think there is a different standard that has to be met here than a traditional apartment owner where he has a legitimate, legal apartment then it’s not an issue. Mr. Hoch can tell me it’s different but that’s my understanding.

Mr. John Sullivan stated I would submit this is a legitimate protected property right and to refer to it as illegitimate. It’s pre-existing, non-conforming under the code so I would start with the premise that this is a legitimately occupied...

Mr. Raymond Reber stated exactly, they have the right to continue operating. All we’re saying is show us that you’ve done that.

Mr. John Sullivan stated and we have submitted, in addition to the various legal objections in regard to the factual front submitted and hopefully you'll see from the additional submissions, the additional affidavits, the additional documents and photos, it perhaps will fill in more pieces of that puzzle that you're referring to.

Mr. James Seirmarco stated one of the things that I mentioned last month and I'll repeat it again is that a dwelling unit has to contain parts. It has to contain a kitchen, a bathroom, a bedroom. It can't, even though somebody is living in the bedroom, if it doesn't have a kitchen and a bathroom it's not a dwelling and that's important. If you feel as though these five units were always dwelling units and they always contained the kitchen facility, the bathroom facility and bedroom facility that's fine. I'm going to be looking for some sort of documentation that says again somebody stayed there, they were my uncle and there was a kitchen and there was a bathroom and there was a bedroom facility, if that's in there that'll help.

Mr. John Sullivan stated I think you also need to keep in mind this is a property owner who's occupied this five-family building for **35** years. Legally and with the protection of law, without ever being asked to provide the type of documentation that's now being requested given the Interpretation that, in our view, modified the existing statute, so in terms of habits, in terms of expectations, this is somebody who for **35** years has not been asked on a regular basis to provide things and perhaps in hindsight or with the knowledge of how the Interpretation of the statute now reads going forward I would think those are things that Ms. Weeks would be aware of and would pay more attention to but sometimes, if you're operating for **35** years without the need for these you might not have the best records, you might not know to keep certain things you certainly don't have – for example you mentioned bedrooms, bathrooms and kitchens. You have sworn statements from a number of people that you'll review that there are and have been bathrooms and kitchens. Ms. Weeks was never in the habit of taking photographs on a regular basis.

Mr. Raymond Reber stated my only rebuttal to that is your own statements made earlier that you said this issue has been raised before. There has been questions raised before. If I was in a situation where somebody was questioning my situation from that moment on I'd be very careful and I would make sure I keep my records and do what's right so that they don't ever come back to me because oh no, here's the records. So, to say she never thought she needed this, she didn't want to bother with it, to me that's saying – being very naïve if in fact the question has been raised. I'm not so sure I accept that argument that she wasn't aware that there's was a concern here.

Mr. John Sullivan stated again, beginning with the Interpretation, less than a year ago, you will find that yes my client is on notice and perhaps, not that there was an obligation or is there now but just for the sake of having to defend yourself in the future, that's something that has been noted but prior to that time...

Mr. David Douglas asked but didn't the questions first get raised back, I think, in **2009**?

Mr. John Sullivan responded raised and answered in **2011** and '**12**.

Mr. David Douglas stated in terms of being on notice that there are issues...

Mr. Raymond Reber stated that was put on notice in **2009** you'd expect that they would make sure they were protected so they would never be challenged again. Anyway, we know where we're at...

Mr. David Douglas stated two things: one is I'm not trying to rephrase what Mr. Reber said but my interpretation with what Mr. Reber was saying in terms of when you talk about the burden, I don't think he was speaking – you heard that as a lawyer hears it in terms of a burden of proof. I think what Mr. Reber was getting at is something we talked about at our work session is that the burden shouldn't be on us to go through all this and put it together and tell the story and to tell the documentation. I think what he was saying and what I would be saying is I think there's a burden on the applicant to put it together for us in a way that there's a timeline, a chart, something to make it easier for – again, if you choose not to do that, we can't force you to do it.

Mr. John Sullivan responded we're not the applicant.

Mr. David Douglas stated wrong word, you're not the applicant. You're the property owner. Point is well taken, you're not the applicant. You do not have to do anything, okay. I'm just saying that I think that it would be useful and I think that in a sense of not putting a burden on us to slog through piles of paper that you know what it is and you and your client know what it is and how you think it all ties together and not to put it together for us in a coherent way, that's what I think the burden should be on you to do that. That's not a burden in a legal sense. It's just sort of who's going to do the work to make us understand. I would think you would want us to understand it.

Mr. John Sullivan responded again, and I think I do want you to understand and that's why there have been previous affidavits submitted which I hope you've reviewed and there are additional ones which I do think tell the picture. I would also would have hoped or would have liked that a similar request be made to those who just level very broad accusations with absolutely no documentation to back it up either.

Mr. David Douglas stated that's a matter of weighing evidence that's in the record. I'm just saying that I would think that you and your client would want to do this. You don't have to. You won't hear anything further from me on this. If you don't want to do it, don't do it. I would just think it would be helpful to you and your client.

Mr. John Mattis stated I was just leafing through this which we got this evening and there's pages and pages from Marlene Harmon showing that she's made many purchases: restaurants, whatever, in this area. However, I look at page **24** and you've given us volumes and volumes of where she's spent money and has receipts. She flew from Salt Lake City to Kennedy Airport and back, that's page **24**. I go to page **21** and I see a receipt from Iowa Peddler in Leclair, Iowa. I

see a receipt from Jaguar's marathon in Morris, Illinois. I see an Ernie Pyle Plaza in Howe, Indiana. I go to page 2 and I see something from North Platte, Nebraska where she bought gas, bought gas again in North Platte, Nebraska also Little America which I think is a gas – yes, it's more gas purchase in Wyoming. What is the relevance of this? I'm a little insulted that you're putting this in here. There's nothing from local on those pages that I just referenced. Page 21 is Indiana, Illinois, Iowa; page 3 is Iowa and North Platte, Nebraska; page 2 is Nebraska, Nebraska, Wyoming. Are you just trying to just throw pages and pages to confuse us. I don't understand what this is all about.

Mr. John Sullivan responded absolutely not and if you read the entire affidavit you will see a statement, a sworn statement that that woman drove from where she lives in Utah and those are the gas receipts that you see along the way. On other occasions...

Mr. John Mattis stated we don't care how she got here. We care whether she stayed there or not. I don't care what restaurants she went to. I don't care about any of that. I went to Charlotte, North Carolina two weeks ago. I can show you receipts everywhere I was but I can't prove where I stayed, okay. We're looking for proof where she stayed.

Mr. John Sullivan responded and you have an affidavit from 3 people that indicate where she stayed. To the extent that you want to corroborate...

Mr. John Mattis stated the affidavit is fine but why we're getting inundated with all of this is really beyond me.

Mr. John Sullivan stated on the one hand we ask for corroborating evidence, we can only provide what we have. If we don't have certain things we can provide what we do have but certainly that puts the person who flew to New York, who is the sister of Ms. Weeks, who has sworn that she stayed in one of the units, who Ms. Weeks has sworn has stayed in one of the units. It puts her in the neighborhood during those time periods. It certainly would corroborate the fact that she is in New York during those time periods. That's the relevance, that's why it's submitted.

Mr. David Douglas asked I was looking at the photos that you gave us tonight. Can you tell us, I guess I've got two questions about the photos in my first looking at them: could you tell us or could somebody with knowledge tell us when these photos were taken?

Mr. John Sullivan responded I will have somebody who will be available to do their best to do that at the meeting next month. I don't have that information in front of me and I didn't take them certainly.

Mr. David Douglas stated that's fine, and the other question I had is I'm not sure if I'm missing a page or you didn't submit it. I see the page labeled apartment 1, apartment 2, another page saying 2, a 4 and 5 and another page 5. Is there no apartment 3?



Mr. John Sullivan responded you'll see part of the sworn affidavits that's where my client has resided for many years. My client resides in apartment **3**.

Mr. David Douglas stated there's no photos of apartment **3**.

Mr. John Sullivan responded no.

Mr. James Seirmarco stated that makes sense.

Mr. David Douglas stated okay, that makes sense. Does anybody else want to be heard this month? Anybody else in the public want to be heard this month?

Mr. Raymond Reber stated obviously there's a lot more discussion to be had and documents to be reviewed so we'll leave the public hearing open and I'll move that on **case 2013-37** we adjourn to the May meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-37** is adjourned to May. Thank you.

**G. CASE No. 2014-03**                      **Victor Conte** for an Interpretation that proposed alterations to a two-family residence and a one-family residence on one parcel do not constitute an expansion of a non-conforming use on property located at **33 Old Locust Ave., Cortlandt Manor**.

Mr. Victor Conte stated good evening Mr. Chairman, members of the Board. I'm here to hopefully get a resolution on my application for a Permit to change a two-family to a one-family and restore the one-family, the non-conforming use.

Mr. John Mattis stated we have plans that you will be restoring the cottage, we'll call it, to the exact way it was prior.

Mr. Victor Conte responded yes.

Mr. John Mattis stated you're going to put the walls back where they were. You're going to put the kitchen back the way it was, the bathroom's going to stay where it was.

Mr. Victor Conte responded yes.

Mr. John Mattis stated and Mr. Hoch will be watching that every step of the way.

Mr. Victor Conte responded yes, he's going to be inspecting.

Mr. John Mattis stated because you told us a couple of months ago you weren't going to do anything and then all of a sudden you tore everything out and then you smile at us and say "well, well, well." You know that doesn't go over very well.

Mr. Victor Conte responded I'm sorry about that.

Mr. John Mattis stated you could be sorry but you knew very well you weren't supposed to be doing that so the trust factor here isn't too high right now, let me tell you.

Mr. Victor Conte responded no, I did not know that but okay, let it be.

Mr. John Mattis stated well, if you look at the minutes and verify that but I won't go there. You will be restoring that and that will be – and in terms of the two-family making that a one-family does not include an expansion of a non-conforming use as in prior cases when somebody brings it more into compliance as a conforming use even though it won't totally be there, we've always looked favorably on that and the size of it won't be any bigger and so I think that's appropriate.

Mr. Wai Man Chin stated I think Mr. Hoch indicated on the cottage that bedroom windows were being made larger based on code and so that I would not have a problem with, for access, fire department, egress.

Mr. John Mattis stated that's a safety feature. Generally you can't expand the size of the windows or doors or anything like that but to bring it up to the new code as you're doing this the windows will be bigger.

Mr. Victor Conte stated the windows that affect the safety in the bedrooms were made into proper egress, that's all.

Mr. John Mattis stated and that's fine, yes, I had mentioned that but that's fine. Any other comments? Anyone in the audience? I move that we grant an Interpretation that the proposed alterations to the two-family residence on the one parcel at 33 Old Locust Avenue does not constitute an expansion of a non-conforming use and that the one-family residence that we refer to as the cottage will be brought back to the exact room dimensions in the same location as it had been prior to you gutting it. This is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that's the Interpretation.

Mr. Victor Conte responded thank you.

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**NEW PUBLIC HEARING:**

**A. CASE No. 2014-07                      Tom Gardner** for an Area Variance for the total area of accessory structures on property located at **32 Young St., Cortlandt Manor.**

Mr. Tom Gardner stated good evening. This is Stephan Carlson of Arborscape which is the landscape company that's doing the proposed work. I'm seeking a Variance for our total square footage of -- with the pool and patio that we've designed exceeds the **50%** or my interpretation, or my understanding the **50%** of the total square footage of my primary residence.

Mr. Stephan Carlson stated the primary residence is at **3,693** square feet. As Mr. Gardner said, we are proposing a pool project for a lack of a better description and it has all the amenities included: including a patio and a little cabana next to it. The pool: just back it up a second, the **50%** of **3,600** feet comes down to approximately **1,847** square feet that were submitted for accessory structures. Of course, the accessory structure, the pool, the pool house and the pool deck. The pool that we're proposing is **800** square feet. The pool house that we're proposing is **112** square feet and the patio surrounding the pool and the pool house and also the areas leading to the pool is approximately **2,500** square feet so that gives us a total square footage of **3,412** square feet that we're proposing. As I mentioned before the allotted amount on this property would be **1,847** so we're basically asking for a relief of **1,565** square feet of pool decking. As you've seen the plans that we've submitted, there's a significant amount of landscaping around and I also understand you've visited the property a couple of months ago because the application was in front of you because there's two front yards per se on this property and there's a significant amount of woodland that surrounds the property so we feel that there's enough coverage that would buffer the project from the neighbors.

Mr. James Seirmarco asked Ken, I have a question for you: will this require a fence around the pool?

Mr. Ken Hoch responded yes.

Mr. John Mattis stated by law.

Mr. James Seirmarco stated it was just a rhetorical question by the way. Just for the record.

Mr. Stephan Carlson stated just to give you a better understanding, the blue is what is permitted by code and the orange is what we're proposing and that whole area is surrounded by a fence, and the fence is masked by landscaping.

Ms. Adrian Hunte asked do we have a determination on the total square footage?

Mr. Ken Hoch responded no, that's what I was going to bring that up. I had sent Mr. Gardner an email that he had a figure of **3,200** square feet. I came up with **3,693** from the assessor record

but I asked them to have you verify the square footage of the principle building and I didn't get an email back on that just so we can fix the numbers that we're going to be working with here.

Mr. Stephan Carlson asked are the tax assessor's records possibly wrong?

Mr. Ken Hoch responded they could be. They're a drawing and they're based on someone's measurements some years ago so I don't know how accurate they are.

Mr. Stephan Carlson stated because we had the landscape architect certify all our submissions with our square footage on the pool, the pool deck and the...

Mr. Ken Hoch stated that's fine, we have to measure that against the total square footage of the principle dwelling and I'd like to get that from the architect to say "yes, here's the confirmed square footage."

Mr. Stephan Carlson responded okay.

Mr. Wai Man Chin stated nice pool.

Mr. John Mattis stated it is.

Mr. James Seirmarco stated I'm going to be in the minority here I know that. We discussed this at the work session. I can't speak for anybody else but I can speak for myself. I think that the pool patio and the pool area is just too big for me. If it could be cut down a little bit, downsized a little bit, I would probably – I know it's all on one level. I know it's a nice patio around a **20' x 40'** pool but it seems like if you add the house area and the pool coverage and everything you're – we've allowed things like this before on properties of **5 acres, 6 acres, 8 acres**. This is, what is it...

Mr. stated it's **42,500** square feet.

Mr. James Seirmarco stated roughly one acre. You're covering it quite a bit.

Mr. Stephan Carlson stated our coverage right now is roughly **15%** and we're going to go up to about **20%** and that gives us, again I think the code is **60%** is what our landscaped area should be and we'll still be about **80%** even if this project unfolds, we'll still have **80%** landscaped areas.

Mr. James Seirmarco stated again, just my personal feeling is it's just slightly too big. I'm sure my other Board members – I don't know how they feel but I don't think they share my feelings.

Mr. Raymond Reber stated I'll take the opposite position. I look at it – I must admit that your April 21<sup>st</sup> submission that came in referenced: pool, deck and of course that got me concerned, I was saying "wow a deck!" But then when I realized the look of the plans and the rest of it, it's

just masonry, it's on grade and so my concern wasn't in terms of the structure because I don't really worry about a patio because people can put patios all over the place and the town really doesn't get upset over that. The real issue becomes coverage and I did ask Mr. Hoch at our work session and he reconfirmed what you just said which is there is enough land here. It is an acre and there's still going to be close to **78** to **80%** landscape so in terms of drainage and coverage, it's well within what's allowed. Also, the fact that where this property is located, it's not – there are no houses right next to it on the side where we had to give the Variances when we went to look at the property. It's certainly isn't imposing on neighbors so when I look at it I do look at it basically what I consider a structural components which is the pool and the house associated with it and what have you and as you say that's going to be under a thousand square feet and to me that's reasonable and within the other factors so I'm willing to not get concerned about the fact that there's a patio that's got **2,500** square feet as long as it allows enough landscaping and apparently it does.

Mr. Stephan Carlson stated just so you understand, the design intent with it and you've seen the property, immediately right behind the house we have our septic and our expansion fields and not that – whether this is the ideal location via esthetics or whatever have you, because it's a little bit further away from the house it almost lends itself to need the accessory structure and a little bit extra patio down there because if they do go down there to entertain and spend the afternoon down there, it's nice to be able to setup a table and chair so this was all thought out when we came up with the design scope.

Mr. James Seirmarco stated you'll be able to set up a table and chairs. You'll certainly be able to do that.

Mr. Stephan Carlson stated we could do the next meeting there.

Ms. Adrian Hunte stated I don't see any undesirable change in the character of the neighborhood and because of the landscaping and the location of the property, I don't think there'll be any adverse affect or impact on the physical or environmental conditions in the neighborhood.

Mr. John Mattis stated and I agree with Mr. Reber and Ms. Hunte.

Mr. Wai Man Chin stated I agree with Mr. Reber.

Mr. James Seirmarco stated somebody else should make the motion then.

Mr. Wai Man Chin asked anybody else in the audience would like to speak on this?

Mr. Raymond Reber stated I guess the question is; do we have to hold off until we get the dimensions on the main residence for the record?

Mr. Ken Hoch responded I don't think so. I can adjust the D&O for the specific. It's going to be a change in the number, not in the Variance...

Mr. John Mattis stated it's only the ratio. The actual square footage we have, that's the important number.

Mr. Ken Hoch stated it's only a couple of feet one way or another.

Mr. Raymond Reber stated okay.

Mr. Wai Man Chin stated I make a motion on **case 2014-07** to grant the Area Variance...

Mr. Raymond Reber stated close the hearing.

Mr. Wai Man Chin stated close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. Wai Man Chin stated I make a motion on **case #2014-07** to grant an Area Variance for the allowed square footage of an accessory structure on the residence property from s.f. to s.f.

Mr. Ken Hoch stated I'll fill in the blanks.

Mr. Raymond Reber stated to accommodate a pool and related building of **912** and a patio of **2,500** square feet.

Mr. Wai Man Chin stated this is a type II under SEQRA, no further compliance is required.

Seconded.

Mr. David Douglas stated all in favor.

"Aye"

Mr. David Douglas asked any opposed.

"Opposed."

Mr. Ken Hoch stated Mr. Rebber; yes, Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seimarco: no, because it's just too big, Chairman Douglas; no, Mr. Chin; yes. The motion carries **4 to 2**.

Mr. James Seimarco stated enjoy.

Mr. stated thank you very much.

Mr. John Klarl asked Ken that was **4 – 2** right?

Mr. Ken Hoch responded **4 – 2**.

**B. CASE No. 2014-08 Amberlands Realty Corp.** for an Area Variance for the front yard setback for construction of a new caretaker dwelling, an area variance for an accessory structure in the front yard (an existing caretaker dwelling converted to a storage building), and an interpretation of whether the floor area of the proposed storage building exceeds 50% of the floor area on the principal building, on property located at **Scenic Drive, Croton-On-Hudson.**

Ms. Adrian Hunte stated good evening.

Mr. John Mattis stated it's been a while since we've seen you.

Mr. Ralph Mastromonaco stated I did submit a letter to the Board. I don't know if there's any questions about what we're trying to do here but it boils down to Mr. Bartzik is trying to improve the caretaker's cottage that's on the site. When we went in to see Ken, he raised some questions about zoning. I think two of the questions are fairly easily answered. I think that one of the issues is we want – there's a **40** foot front yard setback required, excuse me, it's **40** or **50**.

Ms. Adrian Hunte stated **50**.

Mr. Ralph Mastromonaco stated **50** I'm sorry. Behind this building there is a buffer zone that was created years ago when Amberlands was created. We've had some experience in the town trying to do things within that buffer zone and actually we had an application before the Planning Board, it was actually rejected because we needed to use -- the buffer zone ran along one of the curbs and we wanted to put a little shed there to store some snow equipment and the Planning Board turned it down. That buffer line almost becomes like a property line for us and so we wanted to keep the building some distance away from that just a reasonable distance away from that line. Someday it could be fenced, whatever, and this was the decision years – in **2004** where the Planning Board would not permit anything and even suggested that there might be a fence there someday. That's really the reason why we wanted the actual Variance of **15.5** feet in order to construct this single-story caretaker's cottage.

Ms. Adrian Hunte asked could I ask you to just state your name for the record please?

Mr. Ralph Mastromonaco stated his name.

Mr. Rich Bartzik stated his name.

Mr. David Douglas stated you said there were other questions.

Mr. Ralph Mastromonaco stated if you've ever been by there, I don't know if you've seen this place yet but I've lived there since **1984**, roughly in that area, but there's a little log cabin, that is currently the caretaker's cottage and that log cabin is too small now, let's say it's a hundred years old and that's the building that they would like to improve. So, we thought we would tear down the log cabin and put up this one building but then we started looking at the log cabin and said "why should we tear it down, it's just not hurting anybody. It's there. It almost has a historical or a cultural significance" and we thought we could just use that for storage. That building, that caretaker's cottage is very much closer to the front yard line than the proposed building that we plan to erect. We could have taken the existing log cabin and without coming to you, simply expanded it towards the rear without needing any Variances because we would not be changing the degree of non-conformance of that cabin but we thought we'd kind of leave that alone and the best solution would be to leave that alone, leave the building there, don't mess with it and just put up this one-story building for the caretaker. It's a small building. We were asking for the Variance so that we don't have to push the building so that when he steps out the back door of this house, he'd be walking into the buffer zone. We don't want to put any pressure on that buffer zone. There are other issues. Ken is here. I'm glad to see he's here. He's the one that brought these up and I take issue with two of them. He asked us, in this log cabin that's already there, he asked us to get a Variance because it's already there. I don't think we need that, maybe he's changed his mind. It's a clearly existing, non-conforming. The second one that he asked us to look at was – there's a rule that the accessory buildings can't be more than **50%** of the principle buildings and I think in that Variance request **#3** it's clear that we are considering the principle buildings to be all those apartments that are up on the hill, those are the principle buildings. I think the code backs us up on that because it talks about the lot and those buildings are **15,000** square feet on that lot, our building is way less than **50%**. Ken can speak about the difference with that but I think I was kind of clear in my letter on how we would approach that question.

Ms. Adrian Hunte stated we're talking one whole lot for the **6** apartment buildings and the current existing caretaker's residence.

Mr. Ralph Mastromonaco responded yes, that's one lot.

Ms. Adrian Hunte asked that's one lot and taxes, it's one tax lot. Is the current caretaker's residence considered an accessory structure or another principle building?

Mr. Ken Hoch responded it's considered a principle building. It's a dwelling unit that was included in the original Site Plan Approval.

Ms. Adrian Hunte stated we really do need to get some more background here. I think your letter is well done but there's still the issue of whether the existing caretaker's residence which will now be a storage unit, whether that becomes an accessory structure of a new residence for the caretaker.



Mr. Ralph Mastromonaco stated on that issue, I know that that issue came up but we don't believe that that building is an accessory to – the storage building is an accessory to the proposed new residence.

Mr. David Douglas stated your position is that the...

Mr. Ralph Mastromonaco stated it's the lot...

Mr. David Douglas stated those **6** buildings, what's the total square footage of the **6**?

Mr. Ralph Mastromonaco responded **90,000** square feet.

Mr. David Douglas stated **90,000**, okay so under your interpretation you could put up a **45,000** square foot accessory building because that would be **50%** of **90**.

Mr. Ralph Mastromonaco stated there's no room to do that.

Mr. David Douglas stated I understand there's no room but...

Ms. Adrian Hunte stated or **45** out at a thousand.

Mr. David Douglas stated or you could put a **10,000** square foot one which maybe there's room for that.

Mr. Ralph Mastromonaco stated Mr. Chairman, even if you took one of those buildings as the principle building then that would still be fine with us.

Mr. David Douglas stated I understand that but I'm just saying to my mind that's just part of the problem of the interpretation you say is the right one because to me that would be absurd to be able to put a theoretically a **45,000** square foot accessory structure on the lot.

Mr. Ralph Mastromonaco stated it's the way the code is written.

Mr. David Douglas stated I don't know. I don't think the code really envisioned this situation where you have **6** buildings on a single lot. I don't think that's what they had in mind. We have to think it through but that's...

Mr. Ralph Mastromonaco stated we can think it through but I think, in my letter, I explained that an accessory building is incidental and is located on the same lot as the principle building.

Mr. David Douglas stated as a principle building.

Mr. Ralph Mastromonaco stated yes, building.

Mr. David Douglas stated that's the thing, as we said, the code hasn't really envisioned multiple buildings...

Mr. Ralph Mastromonaco stated we're fine, even if you pick one building.

Mr. David Douglas stated okay, that's your fallback.

Mr. Ralph Mastromonaco stated to be **15,000** or so that would be, I forget now, **15,000** square feet, something like that and we're still **50%** less than if you selected one building as the principle building.

Mr. David Douglas stated okay, so you're fine with either being the **6** buildings or one of the other apartment buildings but not just the caretaker's...

Mr. Ralph Mastromonaco stated our total footprint here is **1,900** square feet.

Ms. Adrian Hunte stated Mr. Mastromonaco, if you had a development that has multiple units, condos or something, are those considered to be – those are separate lots if they're condos? They could be separate lots or is that one lot? Not this particular complex. What I'm getting at is some of these complexes have gatehouses at the front, are those considered accessory structures or...

Mr. Ken Hoch responded it depends.

Ms. Adrian Hunte asked on?

Mr. Ken Hoch responded sometimes they are individual, they're town houses and they're individually owned on an individual lot as opposed to a co-op where...potential gatehouse would have been approved by the Planning Board as a gatehouse.

Ms. Adrian Hunte stated gatehouse accessory or gatehouse that doesn't...

Mr. Ken Hoch stated it would be incidental.

Mr. Raymond Reber stated my problem here is I don't think you're wrong with what you're trying to do. I don't think it's detrimental, it makes sense or what have you. I have a jurisdictional issue because normally in a residential situation; I got a lot and I want to build a house. As long as I meet the code requirements I don't have to go to the Planning Board. I just have to meet what the requirements are and I build it. When this project was started it had to go to the Planning Board to get a Site Plan Approval because it's not a traditional residential piece of property being developed as a single-family or whatever the code calls for. I'm sitting here saying; I don't see where does it really matter what's accessory and what's primary because this is a unique situation and the Planning Board reviewed the whole thing and said it makes sense, we're going to approve it. I'm sitting here saying; my logic says it should go back to the

Planning Board and let the Planning Board look at it and say “yes, that’s still consistent with what we envisioned for this site. we approve it and you need some Variances, then go see the Zoning Board” which is traditionally what happens and then we look at it from the setbacks and all and we make a decision and say “yes, we’ll give you the Variances you need so that you can get an agreement with the Planning Board that this is a reasonable site development.” As I said, personally, if the Planning Board looked at this and said “no problem,” I don’t personally have a problem with what you need in the way of Variances. That’s why I’m sitting here saying I don’t think I have jurisdiction to make determinations and say “yes you can go **50%** of the total buildings,” and all this other stuff because this is a Planning Board Site Plan approved project as opposed to a traditional residential.

Mr. James Seirmarco stated it seems to me that you just amend the Site Plan to include what you propose and the Variances would come back to us. I feel uncomfortable making a decision on building a new building which we traditionally don’t do. It would be a Planning Board decision.

Mr. Raymond Reber stated it’s usually DOTS for a single-family, DOTS would approve it and come to us and say they need this Variance and we see no reason or the Planning Board would approve something. We don’t unilaterally take on those responsibilities...

Mr. James Seirmarco stated for buildings.

Mr. Ralph Mastro Monaco stated I understand what you’re saying and remember, we’re here because we wanted to get a Building Permit and Mr. Hoch said we had to come here so that’s why we’re here.

Mr. Raymond Reber stated I understand.

Mr. Ralph Mastro Monaco stated I believe that there are thresholds before you have to go to the Planning Board for a Site Plan Approval and I can grab those for you. I just don’t happen to have them here.

Mr. John Mattis stated yes, if we could clear that up that would be great.

Mr. John Klarl stated on Monday night we discussed doing an amended Site Plan Approval with Planning Board rather than doing these other back flips here.

Mr. Wai Man Chin stated as Mr. Reber said, as far as the Variances and everything else, I really don’t see a problem with what you want to do, myself. If that’s indicated to the Planning Board we should go to the Planning Board then I think our recommendation that we don’t have a problem with a Variance and see what they say.

Mr. Raymond Reber stated and if it’s diminimus and it’s something that DOTS itself can departmentally stay within the boundaries then the Planning Board doesn’t get involved, that’s fine too.

Mr. Ralph Mastromonaco stated I believe it hinges on the number of parking spaces.

Mr. John Klarl asked would you like us to have a meeting with Mr. Mastromonaco during the day, with our Town Engineer to sit down and see if we find a better solution?

Mr. Ralph Mastromonaco stated I think the plan here was to do this as quickly as possible and the Planning Board would be a yearlong process. You know that.

Mr. John Mattis stated our Town Engineer has discretion on somewhere there.

Mr. Ralph Mastromonaco stated Ken does too.

Mr. John Klarl stated this is kind of contortions, **90,000** and **45** as your accessory.

Mr. David Douglas stated I think that sounds like the best way to go.

Mr. Ralph Mastromonaco stated I'll review that with Mr. Klarl and Mr. Hoch to see if there's a Site Plan issue first and if there's a Site Plan issue we'll make that application. It might be a minor Site Plan or something. Then you would just simply adjourn this and we would come back.

Mr. David Douglas stated we'll just adjourn it.

Mr. John Klarl stated we'll hold it in abeyance.

Mr. Ralph Mastromonaco stated thanks very much.

Ms. Adrian Hunte asked anyone in the audience wish to speak? On Zoning Board of Appeals **case #2014-08**, applicant Amberlands Realty Corp. for an Area Variance for the front yard setback for construction of a new caretaker dwelling, Area Variance for an accessory structure in the front yard, existing caretaker dwelling converted to a storage building and an Interpretation of whether the floor area of the proposed storage building exceeds **50%** of the floor area on the principle building, I make a motion that we adjourn this matter to the May 21<sup>st</sup>, 2014 Zoning Board of Appeals meeting to give the applicant and the town staff an opportunity to discuss issues concerning Site Plan amendment or other documentation that might help...

Seconded with all in favor saying "aye."

Mr. Ralph Mastromonaco stated thank you.

**C. CASE No. 2014-09**                      **Jeffrey Comparetto** for an Area Variance for the front yard setback to construct an open deck on property located at **4 Hood Place, Cortlandt Manor.**

Mr. David Douglas stated welcome Mr. Flandreau.

Mr. James Flandreau stated good evening Chairman, Board. I'm here for a project at 4 Hood Place. We want to replace the front concrete landing with an open front yard open deck. The existing house is built within the front yard setback. Also, the property is in an **R-40** zone which is the size of the lot is substandard so it's existing, non-conforming in those two items. What we're looking to do is the existing concrete landing here is in disrepair. The railing's starting to fall down. The concrete's starting to crack. What we're looking to do is build a platform a little bit bigger to – so when the door swings, when you're coming in with the screen door, you don't have to step back down the steps to then come back up the steps once you ring the doorbell. What we're also looking to do is a lower area of the deck which would be close to grade, **11** feet long with the width the same walkway that's there. Right now it's on a slope and during the winter with the ice and stuff, people are falling on there so what they want to do is level the ground out, do a little deck there to get them a safer entrance into the house.

Mr. John Mattis asked this is coming out another **6** feet, is that correct? You're showing here; existing is **33.9** proposed **28**.

Mr. James Flandreau responded it's coming out a little over, what is it, **3** feet...

Mr. John Mattis stated I had trouble finding out how much further it's coming out.

Mr. James Flandreau responded **3** feet **2** inches but it's still going to be in line with where the existing walkway is so the concrete landing is going to get a little bit bigger for safety so when you swing the door you don't have to go up and down the steps. It's going to come out to be in level with the existing concrete walkway that they're going to replace and put the lower deck there.

Mr. John Mattis stated but you're already non-conforming.

Mr. James Flandreau responded yes we are.

Mr. John Mattis stated it's going to come out **7** feet **6** inches.

Mr. James Flandreau responded yes, from the front of the house. There's an overhang on part of the house that – it's a **33.9** from the front property line so the **7** feet from the closest part of the house is really only about **5** feet that's coming off of that overhang.

Mr. John Mattis stated this is the part that shows basically from the side how it sticks out.

Mr. James Flandreau stated and if you look at the other side view it has the overhang here that shows how far it comes out.

Mr. John Mattis stated I went out in that neighborhood and that's pretty much what everybody else has there. These are small lots. They're all closer to the street than what the current zoning allows. We don't look favorably on anything that in anyway resembles a deck in the front. They already have a side deck. There isn't much screening around there. The houses are close together and **7 feet 6 inches** is more than I think is needed. They've lived with this for a long time. If it's coming down maybe they can just repair it. I don't think it's appropriate to give a Variance like this.

Mr. James Flandreau responded they are proposing to do landscaping. If you've been out there, you've seen the landscaping that they did on the rest of the house. They're going to continue that in front of the deck to soften the elements of the deck being...

Mr. John Mattis stated we've had problems with decks before. When something's **7 foot 6 inches** all of a sudden a table's there and people are eating there and they have parties – it's not appropriate for a front yard. Porches are fine but when you're proposing open decks like that what you really need is what you have. You come out and you go down the steps. I just don't think this is appropriate. I'm sorry.

Mr. Raymond Reber stated I, likewise, have a problem being that it's non-conforming. To me it's excessive and like I said, the house has been there for years without this. It's fine if they want to change some grading and avoid some slippage or whatever but people have this all the time. In my neighborhood a lot of the houses have a situation where they have to turn and go down in front of the house but they just have a hallway; **3 ½ feet** and that's it to get down to the grade alongside the house so to me, I think this – again, because it requires the Variance coming closer to the property of the front line and it's been lived with all these years, I can't justify it.

Mr. Jeffrey Comparetto stated may I add one quick note actually? When we bought the house **4** years ago, there was not a storm door on the outside of the main door. We found that that was needed anyway and we added the storm door but now, as people do visit our house, knock on our door, children on Halloween to open that door there is no room and everybody needs to step down the steps in order for us to open that door so we're at least looking at a minimum to potentially increase the depth of at least the stoop level just to provide more of a safer zone for that visitor to our house to knock on the door and be able to step back and let us open the door to them instead of having to step down, because we actually have had my mother-in-law unfortunately fall down those steps, luckily she wasn't injured but dealing with the door opening – the house, yes, has had that stoop since it was built but now that we have the storm door in addition to the main door, there is no safe zone for that door to open in order to have visitors on that front stoop.

Mr. Raymond Reber stated you don't need a **7 feet 6 inches** in order to do that.

Mr. Jeffrey Comparetto stated but right now the door actually just barely leaves a couple of inches to the railing so we'd like to add a few feet to step back for that clearance there.

Mr. John Mattis stated one of the things I did not mention, it's a **43%** Variance, even with the **6** foot allowance for the steps it's still a **36%**. Those are considerable Variances. We very rarely entertain any kind of Variance that's anywhere near that.

Mr. Jeffrey Comparetto stated at the same time when looking at the history of when the house was built...

Mr. James Flandreau stated Ken did look in and there was no – Mr. Hoch looked into it for us, there was no Variance granted on the house so we're not sure how the house was built into the front yard setback like this.

Mr. John Mattis stated I would guess the zoning changed. I don't know because they all seem to line up.

Mr. James Flandreau stated they're all lined up so we're not sure. It sounds like the Board, or the first two members and from that the front, the lower portion is too far out for what you're saying and we can re-grade that to make that level. If we can get the upper portion a Variance for that, it's only – it's **4** foot **3** wide, if it does come out to **7' 6"** that would give enough landing for somebody to safely be there while the door opens.

Mr. Raymond Reber stated I don't understand the issue. I have a storm door, mine does come out straight but I have a **4' x 4'** landing. We get a **100** to **150** kids every Halloween. We have visitors all the time. No one's ever fallen, never had trouble now my neighbors have this kind of arrangement and their landings are only **4** to **4 1/2** feet and they have a railing and they have to open – they all have screen storm doors, they open up the door, nobody's been hurt in my neighborhood. Those homes have been there for **40** some odd years. There's dozens of them in my neighborhood and I don't know of one incident of somebody not being able to open that storm door to get into the house. I can't be sympathetic, I'm sorry.

Mr. Jeffrey Comparetto stated may I share with you guys?

Mr. Raymond Reber responded yes you can share.

Mr. Jeffrey Comparetto stated our storm door open to show that there is no clearance...

Mr. Raymond Reber stated yes, that's exactly like all the houses in my neighborhood and my landing's no bigger than this. Like I said, I can't be sympathetic. We've lived there and there has not been one incident in our neighborhood in all the years we've had it. It's almost an identical layout, certainly my neighbors are identical to that and that's the only clearance they have.

Ms. Adrian Hunte stated Mr. Flandreau you started to talk about some alternatives.

Mr. James Flandreau responded I was talking with the clients after I spoke to Mr. Hoch about the work session and from what it sounded like, the Board wasn't too keen on the lower portion of the deck and there's other options that we might be able to do to make that level and still get the effect that they wanted to. The upper portion of the deck, this 4' x 7'6" area, that's what they're really looking for. I know Mr. Reber is not sympathetic to us but it is something of a safety concern. They're the ones if somebody does fall and it's not a relative, that will get sued so we're looking to make it safer for anybody who does come up to the house.

Mr. David Douglas asked do you want to come back to us with some alternative plan?

Mr. James Flandreau responded I don't know what other alternatives that we could do. If we do a landing to the front here and run the steps out we're still going to be asking for the same Variance because the steps are included within the calculation so...

Mr. David Douglas stated I tend to share Mr. Reber's feelings and even looking at the photo, this looks like hundreds of homes I've been in, in terms of the layout. It seems pretty standard.

Mr. James Flandreau stated the house isn't within the – it's already within the front yard setback so I think that's a unique characteristic of why we would need to ask for a Variance where in other properties, like neighborhood, the house is setback so if somebody wanted to...

Mr. Raymond Reber stated my neighborhood's got the same problem because zoning was upgraded so...

Mr. James Flandreau stated but in a lot of these neighborhoods they would be able to encroach because they have that extra 6 feet.

Mr. David Douglas stated another concern I have is that if you look in the neighborhood it seems that all the houses are set up similarly so if we were to grant this it seems to me we have basically, effectively be re-zoning that area. If other people came in, we would have to give them Variances too and that would be a change in the zoning.

Mr. James Flandreau stated the house to the right has about a 4 ½ foot landing where this one is only 3 feet.

Mr. Raymond Reber stated I've had neighbors who have had to rebuild, I mean these houses are 45 years old, some of the landings the concrete is deteriorating, they've had to rebuild them but they have decided to stay pretty much where they were because they recognized that they have this problem. They're well encroaching on the setback and to ask for Variances for 40 some odd percent or whatever, realized that was unreasonable and they lived with it that many years, so they just kind of rebuilt it the way it was and like I said, it looks like the photos you show.



Mr. John Mattis stated and you just mentioned the property next door. They only came out one foot more than this. You're asking for three.

Mr. James Flandreau stated you said that these properties, they're all exactly the same, they're not. It's at least a **4** foot landing, it might be greater, it might be **5** feet.

Mr. John Mattis stated it's not **7** foot **6** inches.

Mr. James Flandreau stated we're looking for something a little bit bigger for the safety aspect.

**Ms.** stated when they have their door open they also have a chair on their stoop so that's how much room they have for the swing of their screen door being open that they have room to put a chair where they watch their kids play in the front yard. So, it's more than **4** feet.

Mr. John Mattis stated how they got that I don't know. They didn't get that through a Variance.

Mr. James Flandreau stated there is no Variances granted on any of these houses. Mr. Hoch looked up the information for us and there was none granted for the houses or any – on any of the properties.

Mr. David Douglas stated I think you can see, at least three of us expressed a view, negative view. My suggestion is you talk it through with the owners and see if there's something else you might want to propose.

Mr. James Flandreau stated if we pull the **7'6"** to **6** feet or so would that be something that would be....

Mr. Wai Man Chin stated Mr. Flandreau, based on **7'6"** I mean if you came out **5 ½** feet even **6** feet and then come down the step but then maybe that lower deck has to be a much narrower, I wouldn't mind that just to come down a couple of steps to go to a deck that's – like a walkway deck and then come down by the garage, but the **7** foot **6** wide I think I hear what the Board is saying...

Mr. James Flandreau stated one of the other reasons why we did the **7** foot **6** is because the existing concrete walkway is **7** foot **6** off the house and we also have a bay window in the front there too so we wanted to give them some width to be able to get in. If we can cut it back if the Board – to **6** feet or so, the Board is okay with that number, **6** feet by **4** foot **3** wide then we can do something with the walkway where it's not going to require any sort of a Variance for a patio or...

Mr. David Douglas stated I'm not sure that I'm, I can't speak for anybody else, I'm not sure I'm okay with **6** feet, at least not tonight, if you were going to say **6** feet or nothing that's why I'm suggesting – and my suggestion is that you come back, you sit down with the applicant and you talk it through and come back with something for next month. That's what I suggest.

Ms. Adrian Hunte stated minimal – what happens at a foot and a half, two feet...

Mr. James Flandreau stated we can look into it.

Ms. Adrian Hunte stated get back...

Mr. John Mattis stated I'm looking at this and what size is the deck or the stairway right now, the top landing? How far does it come out?

Mr. James Flandreau responded I believe it's about...

Mr. John Mattis stated I see **7 foot 6 inches** but you never show what the dimension of what's existing.

Mr. James Flandreau stated I could provide that.

Mr. John Mattis stated I'm surprised that that wasn't shown here.

Mr. James Flandreau stated I can provide that to you. It's shown on the dotted line, it's very light. There's no dimension, you're right.

Mr. John Mattis stated you could have a solid line it still doesn't say is that **3 feet**, is that **3 feet 6 inches**? I don't know what that is. You're telling me what it is but for the record we don't have it.

Mr. James Flandreau responded **4 foot 3**.

Mr. John Mattis stated so, you want to come out **3 foot 3 inches**.

Mr. James Comparetto asked do zoning rules change every turn of our neighborhood? I'm just curious, like literally every turn or most likely our neighborhood always the same zoning rules.

Mr. David Douglas responded probably, unless you happen to be right on the line.

Mr. James Comparetto stated I'm curious only because as we walk the neighborhood and everything, as we've learned our rules of what our setbacks were and everything, we look around at everybody's huge additions to the front of their house it seem so much closer to the street than what we're asking for and we saw the big yellow sign on our lawn. Every neighbor goes "oh, what are you guys doing?" "Oh, we're just building this entryway deck in front," and they go "oh, that's it." Because, everyone talks about the kitchens added to the front of this house and the dining rooms added to the front of this house and they go "oh, you guys should be fine."

Mr. John Mattis stated they must have been within their setbacks then...

Mr. David Douglas stated well if they weren't within their setbacks they weren't in front of us.

Mr. John Mattis stated if they weren't within their setbacks it wouldn't be approved if they came to us for a Variance and we haven't had Variances for those.

Mr. James Seirmarco stated they may have done it a long time ago.

Mr. John Mattis stated we did a side yard Variance on 24 Hood Place. We denied a request on Whittier Avenue for a front yard Variance for an existing deck.

Mr. Raymond Reber stated sometimes what happens and again I'm not familiar with this neighborhood so I can't say, but we had a situation in a relatively new neighborhood where there were some differences in the setbacks on the houses the way they were set up and we had an applicant who wanted to do something and it required a Variance. The thing that we discovered was when they get a subdivision like that, the developer submits a set of plans to the Planning Board and they lay it all out and a lot of times, as part of the plan somehow, the overall plan, it's approved. The one with the porch that we had to add. Well this doesn't make sense, this one's closer – but you go back to the original records and that was the overall Site Plan that was submitted and approved. Now I don't know what the situation is here, why we don't have record of Variances, whether it's done a long time ago, it was before the zoning became more constrained if it was changed. We don't know so we can't answer your question as to why there may differences.

Ms. Adrian Hunte asked so are we considering adjourning to...

Mrs. Camparetto asked can we just get an idea of what would be acceptable for the stoop so that we know when we have to come back to you next month what to...

Mr. David Douglas responded I'm not sure that we have a consensus on that up here.

Mr. Wai Man Chin stated I think we all have a different consensus right now.

Mr. John Klarl stated I think the Board has to react to a certain plan.

Mr. David Douglas stated I think it would work better for us if you come back with a proposal then we can look at the proposal and talk among ourselves at our next work session and maybe we can...

Mr. John Klarl stated maybe alternative A, B and C kind of thing.

Mr. David Douglas stated yes, that's easier because I don't think...

Mr. James Seirmarco stated I think we're unanimous that 7 foot 6 is too big. Now the question is

5 foot too big, or is 6 foot too big, 4 ½ feet too big.

Mr. John Mattis stated I think we also have a consensus that there shouldn't be a lower deck, you just bring the steps down to the ground level.

Mr. Jeffrey Comparetto stated I think let's work on leveling our ground to make it safer there anyway but we wanted to at least try.

Ms. Adrian Hunte stated and see what it would take for you to be able to open the door with the...

Mr. Jeffrey Comparetto stated absolutely, because whether it's one visitor or 4 kids on Halloween, it's a concern. We want to make sure that it's a safe environment.

Mr. James Flandreau stated I'll show that on some of the sketches that I will provide to you.

Mr. Jeffrey Comparetto stated and at the same time, just in general too, while we do this we always want to do something at the same time but never be an eyesore to the community. You guys mentioned that you drive through the neighborhood all the houses have that and they've all had that since the '60s when it was built. At the same time as we see some houses being sold, we sometimes hope that we're helping to beautify the neighborhood as well to keep everything more up to date and modern as well while keeping the classic.

Mr. John Mattis stated the problem is when all the houses, at least on that side of the street I can't speak for the other side but it's probably similar, are already within the existing setback. It's difficult to let them come out any further because then the next guy, the fellow next door that looks almost identical may want to come out and then what do we do? Then we've basically allowed for a zoning change because we'll approve them all up and down the street, that's what we have to wrestle with. Since there's nobody in the audience I don't have to ask if anybody has any comments. I'd like to make a motion that we adjourn **case #2014-09** to the May meeting.

Mr. John Klarl stated May 21<sup>st</sup>.

Ms. Adrian Hunte stated May 21<sup>st</sup>, second.

With all in favor saying "aye."

Mr. David Douglas stated your case is adjourned. We'll see you next month. Thank you.

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## **ADJOURNMENT**

Mr. John Mattis stated before we close with the approval of our Chairman I'd like to have a moment of silence for Mr. Frank Cernese who died recently. He was a mentor of mine when I first got on the Zoning Board. He was a former Zoning Board Chairman, a former Planning Board Chairman. He was also the town assessor. He was also the Deputy Supervisor and I don't know what else he was, probably many other things. He did more things for this town than most people could do anywhere in a lifetime. I'd like to have a moment of silence for you.

Mr. James Seirmarco stated he was a Town Board member too.

Mr. John Mattis stated yes, as a Town Board member he was also the Deputy Supervisor and a Town Board member, that's correct.

Moment of silence observed.

Mr. John Mattis stated okay, now I'd like to adjourn.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we're adjourned.

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**NEXT MEETING DATE:  
WEDNESDAY, MAY 21, 2014**