

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, December 17th, 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.
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 NOV 19, 2014

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

Mr. David Douglas stated the November minutes are adopted.

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ADOPTION OF 2015 MEETING SCHEDULE

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

Mr. David Douglas stated the **2015** meeting schedule is approved.

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CLOSED AND RESERVED:

- A. CASE No. 2014-27** **Worth Properties, LLC** for an Interpretation that the use of the property as a school bus depot is permitted as-of-right in the MD Zoning District on property located at **301 6th St., Verplanck.**

Mr. John Klarl stated thank you Mr. Chairman. We have in front of us tonight a proposed Decision and Order and I think the attorney for the applicant's here. The Decision & Order recites as follows: This is an application by Worth Properties, LLC ("Worth"), for an Interpretation that the use of the property as a school bus depot is permitted as-of-right in the MD (Designed Industrial) Zoning District, on the Applicant's property located at 301 6th Street, in the Hamlet of Verplanck.

The Interpretation application is almost identical to an Interpretation application this Board heard and rendered a Decision on October 15, 2014 (Case No. 2014-17, by Montauk Student Transport, LLC; annexed D&O adopted October 15, 2014). The two (2) applications involve the same Applicant (Montauk Student Transport LLC), seeking the same use (a school bus depot), both using the same type of ZBA application to attempt to achieve same (an Interpretation application). The key difference is that the two Interpretation applications involve different (but similar) Zoning Districts in the Town:

1. Case No. 2014-17; 5176 Albany Post Road, Cortlandt Manor; HC (Highway Commercial) Zoning District.
2. Case No. 2014-27; 301 6th Street, Verplanck; MD (Designed Industrial) Zoning District.

The Applicant's property is approximately 4.98 acres, located in the aforesaid MD (Designed Industrial) Zoning District, and includes a one-story concrete building (which contains a small office), and macadam pavement that is in disrepair.

Montauk Student Transport, LLC ("Montauk") operates a school bus depot on the Applicant's property, providing school bus transportation services for the Peekskill City School District, as well as transportation for handicapped students in the Hendrick Hudson and Lakeland School Districts. The school bus depot involves approximately 60 buses performing morning and afternoon runs.

The Applicant's property was formerly used as a fuel storage, filling, dispatch and distribution facility from approximately the 1920s until 2009. The property had been abandoned for approximately five years before Worth purchased the property, and Montauk began operating the school bus depot in August 2014 (four months ago).

This application is submitted to address and/or correct certain zoning violations issued by the Town of Cortlandt against Worth and Montauk, to wit:

1. Montauk is "parking buses without an approved Site Plan".
2. Worth is "parking buses without an approved Site Plan".
3. Worth is "enlarging the parking lot without approval".
4. Montauk is "violating a stop work order".

The application also states: "The ZBA should further be advised that the Applicant will also be submitting an application to the Planning Board for a Change of Use Permit and Site Plan Approval relating to the school bus depot operations," (i.e., traffic; drainage; hours of operation; noise and lighting, etc.).

Having heard the arguments in Case No. 2014-17 (for 5176 Albany Post Road), and the similar arguments in the instant Case No. 2014-27 (for 301 6th Street), this Board finds as follows:

1. As an initial matter, this Board has previously determined that the use of the term "automobile" in the Zoning Code includes "buses". (See Case No. 2014-17).

Accordingly, the school bus depot, by definition, is entirely consistent with other uses permitted as-of-right in the MD District under the “Automobile Repair, Services and Parking” section in the Table of Permitted Uses. These include “automobile parking facilities,” “automotive service,” and “car washing,” as well as an accessory use of “employee parking”. Indeed, the property is used to park school buses and employee vehicles, and the Applicant performs light automotive maintenance and service work on the buses, including washing. The similarity of these “automobile”-related uses to the school bus depot is also specifically acknowledged in the DOTS Letter by Mr. Hoch, dated October 1, 2014 to the Applicant.

In addition to the uses identified in the “Automobile Repair, Services and Parking” category, the Applicant maintains that the school bus depot is also fully consistent with certain of the uses listed under the “Transportation and Public Utilities” section in the Table of Permitted Uses for the MD District. These include “taxicab operations”, and “trucking and courier services.”

2. The school bus depot is consistent with the intent of the MD District. Under Section 307-5(c) of the Zoning Code, the MD District is intended to “permit and encourage industrial development and compatible commercial activities that will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the Town and contribute to the soundness of the economic base of the Town...”

The school bus depot’s industrial/commercial operations appear to be precisely the type of use or activities envisioned when the Town created the MD District. In addition, the school bus depot is appropriately located in an area immediately surrounded by other industrial/commercial uses and in close proximity to a major road. Moreover, the school bus depot is an important part of the economic base of the Town. The Applicant pays substantial taxes to the Town, and employs many Town residents.

Given all the foregoing (including our Board’s recent Decision and Order in Case No. 2014-17 on the Applicant’s property located at 5176 Albany Post Road), this Board hereby INTERPRETS that the use of the subject property as a school bus depot is permitted as-of-right in the MD (Designed Industrial) Zoning District on the Applicant’s property located at 301 6th Street in Verplanck.

Of course, as underscored at the Public Hearing on November 19, 2014, the Applicant must apply to the Planning Board for a “change of use” application and for Site Development Plan approval to operate a school bus depot on the Applicant’s property at 301 6th Street, in Verplanck.

This is a Type II action under SEQRA as it consists of the Interpretation of an existing code of rule. No further compliance is required.

Mr. John Mattis stated I move on case #2014-27 that we approve the Decision and Order. This is a type II no further compliance required.

Seconded with all in favor saying "aye," "no."

Mr. David Douglas asked can you poll the Board?

Mr. Ken Hoch responded Mr. Reber; yes, Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; no, Chairman Douglas; yes, Vice Chairman Chin; yes, Mr. Heady; yes. Motion carries 6 to 1.

Mr. stated Happy Holidays.

Mr. David Douglas stated have a good Holiday. Just wanted to note for the record that Mr. Heady is here now and in fact that was his vote.

Mr. James Seirmarco stated Mr. Chairman, just for the record, the vote was 'no' because I don't believe the school bus is an automobile and I don't believe that this particular application there is a major road next to the property.

Mr. John Klarl stated for the record, you're consistent with your previous vote.

Mr. James Seirmarco stated that's correct.

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ADJOURNED PUBLIC HEARING:

A. CASE No. 2014-21 Maciej Przybylowski for an Area Variance for an Accessory Structure, a tree house, in the front yard on property located at **103 Kings Ferry Rd., Montrose.**

Mr. David Douglas stated I understand the applicant wants to adjourn this until February, is that correct?

Mr. Ken Hoch responded that's correct.

Mr. David Douglas stated do we have a motion? John I think this is you again.

Mr. John Mattis stated I make a motion that we adjourn case #2014-21 to the February 18th meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case #2014-21 is adjourned to February.

B. CASE No. 2014-25 Graphic Solutions and Signs on behalf of Children of America for an Area Variance from the total allowed wall signage requirement for their leased space at the **Cortlandt Town Center, 3105 E Main St., Mohegan Lake.**

Mr. Wai Man Chin asked have we heard anything from them?

Mr. Ken Hoch responded I haven't heard from them and I did email them but haven't had a response.

Mr. Wai Man Chin stated maybe we should send them a letter.

Mr. Ken Hoch stated send them a letter.

Mr. Wai Man Chin stated saying that if they don't show up it will be deemed: case abandoned.

Mr. David Douglas asked do we have a motion to that effect?

Mr. James Seirmarco stated I make that motion.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case #2014 – I'm not sure we had to vote on that. Yes, we did have to adjourn it. Case 2014-25 is adjourned and Mr. Hoch you'll send them the letter telling them that if they do not come to the next meeting it will be deemed abandoned.

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NEW PUBLIC HEARINGS:

A. CASE No. 2014-31 Sprint Spectrum, L.P. for a Special Use Permit for recertification of an existing wireless telecommunications facility consisting of antennas on the existing Con Edison tower with associated equipment at the base of the tower on property located at **Route 9, 0 Montrose Station Rd., Montrose.**

Mr. Doug Warden stated good evening Mr. Chairman, members of the Board. My name is Doug Warden. I'm an attorney with the law firm of Snyder & Snyder, here on behalf of Sprint. We have an existing wireless telecommunications facility on a Con Ed tower. It was originally approved in 1998. There have been no changes to it. It was most recently approved in 2009 and we are here to [inaudible] its re-approval.

Mr. James Seirmarco asked there were no open issues with DOTS right?

Mr. Ken Hoch responded no.

Mr. James Seirmarco asked everything was resolved?

Mr. Ken Hoch responded yes.

Mr. James Seirmarco asked anybody in the audience who wants to speak? If there is none, I make a motion we close the public on Zoning Board of Appeals case #2014-31.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. James Seirmarco stated I make a motion that we approve the Special Use Permit required for the Special Use Permit for recertification of the existing and wireless telecommunications facility consisting of an antenna on an existing Con Ed tower with associated equipment at the base of the tower. This is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated you've gotten your Special Permit approved due to your brilliant argument.

Mr. Doug Warden stated Happy Holidays.

Mr. David Douglas stated make sure to tell your client you persuaded us.

B. CASE No. 2014-32 Jonathan Trager of Jet Enterprises for Area Variances for the size of three business wall signs and for the total allowed wall signage for Moe's Southwest Grill on property located at the **Cortlandt Town Center, 3089 E Main St., (Cortlandt Blvd.), Mohegan Lake.**

Ms. Adrian Hunte asked did we hear anything from him?

Mr. Ken Hoch responded I don't know where he is, no, I didn't hear from him.

Mr. David Douglas stated he came to our work session.

Mr. Ken Hoch stated and he knew he was supposed to be here.

Mr. Wai Man Chin stated maybe he thinks he's last on the cases and we're going to be here for an hour.

Mr. David Douglas stated he didn't realize this is December and the meetings tend to be shorter.

Mr. John Mattis stated he was in concurrence at the work session with – and we were in concurrence with what he proposed. Do we want to put this off a month or can we do it in his absence? There's no controversy. There's really no questions.

Mr. Ken Hoch stated I don't think there's any objection to doing it without him being here.

Mr. John Mattis asked is he going to object to the approval? It's what he wants.

Mr. John Klarl stated you have a written application before you to work on.

Ms. Adrian Hunte stated this is my case. The applicant is Jonathan Tragger of Jet Enterprises. This is case #2014-32. The request is for Area Variances for the size of three business wall signs and the total square footage of all of the wall signs. The applicant is the owner of the new Moe's Southwest Grill at the Cortlandt Town Center who's space is adjacent to Subway and they're requesting Variances to increase the size of the wall signs. The building has frontage on three sides. I visited the property. It is not very wide, however it's very deep and the back of the facility fronts onto one of the entrances to the Cortlandt Town Center. Since it is one of our Cortlandt Town Center establishments and we do have precedent in case #19-10 where Subway was granted Variances for the front sign from an allowed 16.25 square feet up to 31 square feet which was a 90% increase and then also for their rear sign which was a 94% increase. The signs we usually allow 50% increase and in this particular instance the amounts are for the front: 30 up to 47 which is a 17 square foot Variance of 57% so the 7% itself is not that substantially different. Side: 15 square feet up to 21 square feet which is a 6 square foot increase, which is 40%. The rear: 15 square feet up to 21 square feet, a Variance of 6 square feet for 40% increased Variance. The maximum allowed is 80 square feet and the proposed is 89 square feet. The 9 square foot difference for a Variance of 11.25%. Anyone here in the audience who wishes to speak? Hearing none, I make a motion that we close the public hearing on case #2014-32 for Jonathan Tragger of Jet Enterprises for the Cortlandt Town Center, 3089 E. Main St., (Cortlandt Blvd.), Moe's Southwest Grill; Area Variances for the size of the wall signs from an allowed 30 square feet up to 47 square feet. The side wall sign from an allowed 15 square feet up to 21 square feet. The rear wall sign from an allowed 15 square feet up to 21 square and the total wall signage from an allowed 80 square feet up to 89 square feet. This is a SEQRA type II no further compliance required action.

Seconded.

Mr. David Douglas stated this is a vote on closing the public hearing first.

With all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated on case #2014-32 I make a motion that we approve the requested Variances and this is SEQRA type II, no further compliance required action.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted. The people that are here, did you want to be heard on something?

Inaudible.

Mr. David Douglas stated unfortunately you picked a bad month to come.

Mr. Wai Man Chin stated not much on the agenda tonight.

Mr. David Douglas stated usually in December we have a shorter agenda and this was not – we'd like to think that our meetings are fascinating to watch but I can't imagine that this one was.

Mr. Wai Man Chin asked how did we do?

Mr. David Douglas stated wait, before they answer that, let's close the hearing and let them speak off the record.

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ADJOURNMENT

Ms. Adrian Hunte stated I make a motion that we close the December 2014 Zoning Board of Appeals meeting for the Town of Cortlandt.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we are adjourned. Happy Holidays to everybody.

Ms. Adrian Hunte stated Happy Holidays.

Mr. David Douglas stated and hopefully there are more people who are watching this on the web or TV than there are in live today.

Mr. Wai Man Chin stated Happy Holidays everybody!

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**NEXT MEETING DATE:
WEDNESDAY, JAN. 21, 2015**