

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, February 17th, 2010*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

ADOPTION OF MEETING MINUTES for 11/18/09, 12/16/09, 1/20/10

Mr. John Mattis stated I make a motion that we adopt the minutes, seconded with all in favor saying "aye."

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PUBLIC HEARINGS ADJOURNED TO APRIL 2010 DUE TO THE MORATORIUM

- A. **CASE No. 51-08** **John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**

- B. **CASE No. 06-09** **Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **Case No. 33-08** Decision and Order.

- C. **CASE No. 18-09** **Post Road Holding Corp.** for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**

- D. **CASE No. 08-09** **Jorge B. Hernandez, RA for M & S Iron Works** for an

Interpretation if a structural steel & iron erector is a Special Trade Contractor on the property located at **439 Yorktown Road, Croton-on-Hudson.**

Mr. John Klarl stated we do have four items on the agenda tonight that have been adjourned to the April 2010 meeting due to the Moratorium. That would be **case 51-08** John Nolan doing business as Cortlandt Organics; **case 06-09** Department of Technical Services doing an Interpretation; **case 18-09** Post Road Holding Corp; and **case 08-09** Jorge B. Hernandez and per the agenda recital these are all being moved to April. I don't think a motion is necessary because we previously adjourned each of the items stated.

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PUBLIC HEARINGS ADJOURNED TO MARCH 2010 FOR TOWN BOARD ACTION

- A. CASE No. 11-09** **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8th Street, Verplanck.**

- B. CASE No. 30-09** **Dominick Santucci** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. David Douglas stated next on the agenda we have two items that have been adjourned to March. I'd like to turn that over to Mr. Klarl as well.

Mr. John Klarl stated on the agenda, Mr. Chairman, we have two items until 'Public Hearings' adjourned to March; one is **case 11-09** which is King Marine; the second is **case 30-09** which is Dominick Santucci. As the agenda reflects, they've previously been adjourned by this Board to March so we're just noting the adjournments tonight.

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CLOSED AND RESERVED DECISIONS

- A. CASE No. 23-07** **Congregation Yeshiva Ohr Hameir** for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing, non-conforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at **141 Furnace Woods Road, Cortlandt.**

Mr. David Douglas stated we have three closed and reserved decisions; first is **case 23-07** and I'll turn it over to you John as well.

Mr. John Klarl stated as to **case 23-07**: Congregation Yeshiva Ohr Hameir, this Board has had a reserved decision, we've held it in abeyance since September '07. The Planning Board passed a Resolution and adopted a Resolution at their January meeting on January 13th, so this Board is ready to act. As you can see tonight we're missing several Board members so I indicated to the applicant's attorney when he called me this afternoon, if there were four members here to vote for it, it would be considered. If we didn't have a full compliment of the Board and there weren't four votes, we would adjourn it. I see that we have four members and one member is going to recuse himself, so there's only three members here to consider it. Based upon my understanding with the applicant's attorney I think we should adjourn **case number 23-07** to our March meeting which be held on March 17th, 2010 and at that time consider the adoption of the revised Decision and Order which the Board reviewed at last night's work session.

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

Mr. John Klarl responded we should do a motion because we're going to adjourn it at that time and also the applicant's attorney authorized me to place on the record that they were extending our time for decision to the March meeting because of the lack of a full compliment of the Board tonight.

Mr. John Mattis stated I move that we adjourn **case 23-07** to the March 17th meeting, seconded with all in favor saying "aye."

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

Mr. David Douglas stated I think that's another one that's been closed and reserved and we're going to be considering this at our next meeting. Is that correct?

Mr. John Klarl responded you're correct Mr. Chairman. We looked at the Gallagher application last at our January 20th meeting and at that night we closed and reserved and did a reserved decision on this application. At last night's work session we didn't have a full compliment of the Board for the same reasons we don't tonight and therefore, we were discussing a proposed Resolution and decisions matter at our next work session in March and then to have it on the March agenda. We're under a reserved decision clock at this point and it started on January 20th and our next meeting March 17th so I don't see the applicant or their attorney here tonight but I gather we're going to discuss this at our March work session and give a decision at our March meeting.

Mr. John Mattis stated I move that we adjourn **case 27-09** to the March 17th meeting, seconded with all in favor saying "aye."

C. CASE No. 05-10 **James M. Flandreau, Deputy Director of Code Enforcement** for an Interpretation of how fence height is measured.

Mr. John Klarl stated I think on that score I'm going to turn it over to Mr. Hoch who's been involved in this application.

Mr. Ken Hoch stated as the Board has discussed previously and it did at its work session last night, this is an Interpretation of how a fence wall is measured. Historically, Code Enforcement has measured it from grade to the top of the fence of the wall on the side of the fence of the installer. There can be a difference in elevation between the installed side and the neighbor's property, however, we have always interpreted as being measured on the owner's property side. That's the matter before the Board now. It's a confirmation of that Interpretation.

Mr. David Douglas stated I believe there was a draft D&O that was prepared correct?

Mr. Ken Hoch responded correct, yes.

Mr. David Douglas asked do we have a motion with respect to that draft Decision and Order?

Mr. John Mattis stated I move that we approve the Decision and Order on **case number 05-10** and this is a type II SEQRA action no further compliance is required, seconded with all in favor saying "aye."

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ADJOURNED PUBLIC HEARINGS

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

Mr. John Klarl stated I understand from Mr. Hoch has received correspondence.

Mr. Ken Hoch stated Mr. Chairman we received correspondence from Patrick Bell of Cronin Engineering. The applicant's engineer requesting that the matter be adjourned to the March meeting as Mr. Bell has a previous engagement for this evening.

Ms. Adrian Hunte stated I move to adjourn **case number 42-09** to the March 2010 meeting as per the request of the applicant Mr. Danisher for an adjournment, seconded with all in favor saying "aye."

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

Mr. John Lentini stated I have no comments. I'm expecting a decision from the Board.

Ms. Adrian Hunte stated I think at the work session we discussed that we need further definition and discussion on what a vending machine is and some of these other items and that we would refer this to Code for discussion. Do you have any other information for us?

Mr. John Lentini responded there's a number of questions I would hate to see them not all addressed but the definition of outdoors and indoors is one of them that we are contained under a canopy. The definition of a vending machine versus storage, versus outdoor sales, obviously all those aren't permitted outdoors but to some extent they're not completely outdoors. I had spoke to Ken this afternoon and I suggested we determine what the original focus was. Ken suggested that it was other abusers who took up parking spaces or blocked the road. We're not taking up parking spaces, we're not blocking the road. If that were the case than perhaps the definition could be made as well as we're not interfering with any other approvals. I don't believe it's a simple matter of what the definition of what a vending machine is.

Ms. Adrian Hunte asked does any body else have any other comments?

Mr. John Klarl asked is your client here tonight Mr. Lentini?

Mr. John Lentini responded yes.

Mr. John Klarl stated I think the discussion at the work session was that this might have far reaching affects rather than just applying to this one property owner and the Board felt that there's some further research has to be done into the issues that have been raised that Ms. Hunte recited and that you, Mr. Lentini, recited and that we want to have a further discussion at our next work session with people from Code Enforcement as to what is recited in the Code now and what maybe should possibly be amended if the Code is deficient. I think the Board really wanted to address it in a further work session discussion at the next work session meeting in March.

Mr. John Lentini asked could I provide further evidence or information relative to this to the Board for just helpfulness?

Mr. John Klarl responded along the way if Code Enforcement during the month thinks you could submit that would be helpful I'm sure they would call you but if you want to submit something

along the lines of the issues you laid out tonight it certainly would be something the Board would take a look at.

Ms. Adrian Hunte stated I make a motion to adjourn **case number 01-10** Zuhair Quvaides to the March 2010 meeting, seconded with all in favor saying "aye."

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NEW PUBLIC HEARINGS

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

Mr. Ralph Mastromonaco stated I did send a package of information. If you've gone over it I won't bore you with it. Essentially, my client owns the shopping center down by the Chase Bank, A&P in Croton and as we looked at it we noted that even though there were tax lots on the property, the shopping center, that there had never been a filed map so we made efforts to go to the Planning Board to correct or legalize what already existed and, of course, we knew we would need some Variances under the current zoning, in order to subdivide it. I believe when this project was constructed it didn't need any zoning Variances in order to divide these into lots. The property's made up of the A&P, Chase Bank, there's an office building on the corner of Baltic and Dove Place and in the middle of all that there's a sewage treatment plant. If you've ever seen it, it's a very well hidden plant. The whole property is owned by one entity: Nida Associates, however the sewage treatment plant becomes a problem because it's operated by a corporation that is owned by the former partners. What they wanted to do was find a way to split this all up once and for all. Each lot that is left on the map is conforming as to parking. There will be, when we get to the Planning Board, cross easements that allow access, complete travel throughout on the site. I believe there are five lots now we want to ultimately end up with just four lots. I've listed all of the particular Variances and I think Ken helped with that. There's series of Variances here and there. I think I've shown where those Variances are on the submittal that we made. Essentially, we're here to see if there are any other issues you have with this proposal.

Mr. John Klarl asked Mr. Mastromonaco are there five lots or four lots now?

Mr. Raymond Reber responded I believe it's four.

Mr. John Klarl stated there's the bank, there's the A&P, the office building...

Mr. David Douglas stated and the sewage treatment plant.

Mr. Ralph Mastromonaco responded I count five.

Mr. David Douglas asked there are five currently.

Mr. Ken Hoch stated Ralph I have four tax lots: 7, 8, 9 and 10.

Mr. Ralph Mastromonaco stated four tax lots, that does count the one up in the corner there.

Mr. Raymond Reber stated I had a number of questions I needed clarification on really involves our role versus the Planning Board and some other issues which I unfortunately have not had time to get clarified. From a zoning point-of-view, maybe one can be answered by Code Enforcement or our attorney, if this is approved and they split this into multiple lots, the lot that has the office building to the back, next to the sewer plant, does that still fall in the HC zone because it's no longer on the highway? I was wondering how far off the road does the HC zone go if you have a lot that falls...

Mr. John Klarl stated it's a distancing from the roadway.

Mr. Ralph Mastromonaco stated I don't know if you have the current map, but we show the zone line – I don't know if you've got the map of the zoning line or not but...

Mr. Raymond Reber stated it does go beyond that fenced lot? Okay that at least answers that one question. It's not an issue on the zoning on that. You've already addressed another issue which was easements because that was obvious there's going to be a number of easements. My only other concern, and maybe this is a Planning Board issue our attorney can clarify for me if it's not something we should be worried about, obviously there is a common owner on a plaza that was approved and built as a complex, originally to divide it up, to me raises some issues that change the nature of the complex from having it as one owner and one common interest certainly one could envision in the future if it got split up and say the bank goes out of business, there's a different incentive and different financial factors involved in terms getting a tenant back in there and if they don't and they're not maintaining it the other businesses now suffer. These may be more of a Planning Board issue but if we could have another month so I could talk to council and maybe understand better how we interact with the Planning Department and who does what in terms of reviewing some of these issues. I'd feel more comfortable before I'd say "oh yes, approve the Variances."

Mr. John Klarl stated at the work session last night we said we wanted to hear Mr. Mastromonaco's presentation to find out exactly why they wanted to go from a status quo to the goal and I assume it's for separate ownership, separate tax lots, financing.

Mr. Ralph Mastromonaco stated I can't say that I know all of the reasons John but I do know that the sewage treatment plant was the engine behind doing this.

Mr. John Klarl asked is that the catalyst?

Mr. Ralph Mastromonaco stated the sewage treatment plant is on its own lot already although it's a tax lot and I haven't been able to locate any file map on it. To answer Mr. Reber's question, these buildings, they always felt, were on separate lots already. You can find those lots on the tax map. Theoretically, they could have been sold separately already.

Mr. Raymond Reber asked then why do you need to come back to the Town if you have that freedom to sell them off and operate them separately?

Mr. Ralph Mastromonaco responded because the lot lines as drawn and as surveyed are a little bit strange. They're running through parking lots...

Mr. Raymond Reber asked this is really a lot line adjustment application essentially?

Mr. Ralph Mastromonaco responded in a sense it is. We're not building anything here, we're just making it more ordinary.

Mr. Raymond Reber asked would council agree that, essentially, they have existing independent lots and that this is just moving lines?

Mr. John Klarl responded I haven't seen a subdivision plat with separate four lots. I think what I understand so far tonight that we're waiting to get the presentation from the applicant tonight that there's four tax lots. For example, a tax lot is different from an ownership lot. At the Cortlandt Town Center we have a McDonald's, McDonald's has its own separate tax parcel. They don't own it but if they get taxed because they want to pay their taxes directly rather than have a pass-through from the Cortlandt Town Center. When you go over to Home Depot, that's a separate lot, they own fee simple lots and so with Home Depot owning their own property we had to do cross easements, that kind of thing. I haven't researched this yet and seen the subdivision map but I think Ralph is explaining to us tonight that there's tax lots, I'm not aware that they're separate for fee simple lots.

Mr. Ralph Mastromonaco stated we know that they are not maps of lots shown on a file map, we know that but there's somehow, over the years, these lots – I don't know when they were established probably back when the shopping center was built. I didn't feel the need to research that.

Mr. John Klarl stated we're going to look into it but I think right now, what we understand, just from our work session review last night, it looks like there's four tax lots not four ownership lots.

Mr. Raymond Reber stated it's also interesting, you've got that one right in the corner of the parking lot which is kind of "what happened there?"

Mr. Ralph Mastromonaco stated that will be gone.

Mr. John Klarl asked are you aware of any file maps that shows lots separately?

Mr. Ralph Mastromonaco responded we've checked and there's no file.

Mr. Raymond Reber asked any other insights that you can give us? Like I've said, I think we're going to hold this over for a month as we do a little research and understand better before we make a decision.

Mr. David Douglas stated I think we have to hold it over because there was a problem with the notice, am I correct?

Mr. Ken Hoch responded we had a fax malfunction and we had a snow day where Town Hall was closed which is the day we confirmed that the newspaper got it and they didn't get it because the fax didn't work right so they never put it into the paper so we have to hold it over to advertise it for next month.

Mr. David Douglas stated it's not the applicant that sent the proper notice. Your notice was fine, it was the notice in the paper.

Mr. John Mattis asked since this is in front of the Planning Board as a coordinated review, don't we keep this open?

Mr. John Klarl responded absolutely. As we did with our previous applications tonight...

Mr. John Mattis stated we would close and reserve until probably next month. I would like to make a couple of comments. If you came in and asked for this and built those buildings obviously those Variances would never be granted. They're really excessive however we're cleaning up a bad situation. We've done that before where people have done lot line adjustments and where they've had two that are tremendously non-conforming, one may come it to conform it so they both become closer. Nothing physically is changing on the properties. I do understand Mr. Reber's concern if they're split off and separate properties and let's say the bank goes out of business it sits there and they let the weeds grow, but any standalone business and you could have on Route 6, for example, five different businesses in a row that are separate ownership and one of them goes out of business. You don't make a consideration that somebody may go out of business. I understand it, it would be a concern where today it would be one property and they would maintain that. Those are my comments.

Mr. David Douglas asked anybody else have any comments? Anybody in the public have any comments?

Mr. Raymond Reber stated I make a motion on **case 06-10** to adjourn to the March meeting, seconded.

Mr. John Klarl stated and to properly re-advertise.

Mr. Raymond Reber stated well put, and to properly advertise, with all in favor saying "aye."

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NEW PUBLIC HEARINGS

A. **CASE No. 37-09**
re-opened.

Letter from Mr. Charles Jones requesting that his case be

Mr. David Douglas stated it's my understanding when somebody requested it to be re-opened that it has to be a unanimous vote. Is that correct?

Mr. John Klarl responded it's a Town Law.

Mr. John Mattis stated we have cases all the time. We vote on them, whatever the vote is we move on. I don't understand – we have re-opened stuff before where something has changed, something was overlooked, new information became available but I see no reason to re-open this case. We had our vote, we move on. What do we do, re-open so we vote over it again? We'd have the same vote. If everybody that got voted down and asked us to re-open and we did it, we'd never get anything done. This isn't a Board of do overs.

Mr. David Douglas asked if the matter is not re-opened does the public have a right to speak?

Mr. John Klarl responded this isn't a public hearing. It's at the Chairman's discretion.

Mr. David Douglas stated in looking at Mr. Jones' letter, I believe, we haven't voted yet on whether to re-open it or not but if it's not re-opened it's my understanding from his letter that he was going to submit a revised plan and he's perfectly free to do so and then the Board will consider the revised plan. We should therefore vote. It seems to me that if it's not re-opened it would not be appropriate to have the public speak until we have something in front of us. I think we should probably vote on whether to re-open it first.

Mr. Charlie Jones stated there is new information. You said if there is new information then it should be considered.

Mr. David Douglas stated Mr. Jones, I'll let you speak but this is a procedural matter.

Mr. Charlie Jones stated I understand that but this gentleman said if there were new information and what I'm saying is that there's new information.

Mr. David Douglas asked do you want to tell us what the new information is?

Mr. Charlie Jones stated at the time the Board voted back in February, the Board was laboring under the misapprehension that all of the homes on Valleyview Road had a 30-foot setback. You, yourself were the one that maintained that. We all know now that that's not true. 103 Valleyview Road has a 20-foot setback. At the time I was told that if this Variance were passed it would create a precedent. Well, the precedent's already been set. Like I said, I can't help it if you were misinformed but what I'm saying is when you made that decision, you didn't have all the information. That's why I think you should revisit this. I don't think that's too much to ask. On top of the fact that the night we were here we were rudely treated by the Board.

Mr. John Mattis stated I take exception to that.

Mr. Charlie Jones stated you can take all the exception you'd like...

Mr. John Mattis stated I don't treat anybody rudely.

Mr. Charlie Jones stated I beg to differ with you sir. You can watch the video.

Mr. John Mattis I have watched the video.

Mr. Charlie Jones we had a gentleman come to our house the following evening who we didn't even know who told us how sorry he was as to how we were handled here. This is totally unsolicited.

Mr. John Mattis stated I have never treated anybody rudely in 15 years.

Mr. Charlie Jones stated I didn't say it was you.

Mr. John Mattis stated you said the Board. I am part of that Board collectively, you name me.

Mr. Charlie Jones stated you want somebody specific, he's sitting next to you.

Mr. John Mattis stated be specific then, but don't blanket me with that.

Mr. David Douglas stated I'm not sure much is going to be gained by an argument now.

Mr. Charlie Jones stated I'm not looking for an argument but like I said the point is there was information that the Board wasn't aware of, now you're aware of it. Now, you're telling me if I want to submit another application I have to go through additional expense, for an architect and for fees, come back to you and that might not be approved. Why would I want to do that?

Mr. John Mattis responded if we re-open it you'd have to go through that expense wouldn't you?

Mr. Charlie Jones responded after spending \$3,000 already don't you think enough is enough? Am I the only person in Cortlandt Manor who wants to put a porch on his house? Is this too much to ask for?

Mr. John Mattis stated I would suggest if there is something submitted in writing why you would want it re-opened. You just said "re-open it" there's no reason here. Please submit it in writing.

Mr. John Klarl stated his alternate request as a letter is that he's pursuing a different plan and obviously he has the ability to come in and make an application for a different plan.

Mr. David Douglas stated Mr. Jones clearly has...

Mr. Charlie Jones asked how much money do you throw at this? That's my question.

Mr. David Douglas stated at this point the Board is going to vote on whether or not to re-open. If they re-open it than it's re-opened, it's got to be a unanimous vote and if it's not re-opened then, of course, you've got the right to come in with a revised plan. Those are the rules of how it works.

Mrs. Diana Jones stated to submit a revised plan we still would need the Variance so we're talking 6 to 12 inches. I don't understand. What are we going to accomplish?

Mr. David Douglas responded we don't know, obviously what your revised plan is. If it's not re-opened and you submit a revised plan and it requires a Variance then the Board will consider the requested Variance. Here we're talking hypothetically.

Mrs. Diana Jones stated I understand that but what I'm saying is if you're not going to consider 8 feet, I'm going to have to pay the architect again, pay the fees again and then you're going to tell me you still need a Variance and we won't consider 5 feet or 5 1/2 feet. I don't understand what the purpose is of that?

Mr. David Douglas stated from my perspective, you're asking me a hypothetical question. I don't know what your new plan would be or...

Mrs. Diana Jones stated I'm telling you what my new plan would be. It would be 5 feet rather than 6 feet depending on what the Board felt was doable. If I'm going to do all of this and I'm telling you what it is and I come back and I get the same answer.

Mr. David Douglas stated I don't think anybody can tell you what the result would be because we would have to consider that plan on its merits and the vote last time was 4 to 3. You can't get any closer than that. If you can convince one of the four people who voted against you last time to change their mind, then you'll get your Variance.

Mrs. Diana Jones asked and what would cause someone to change their mind for 6 inches. This is what I'm trying to say. It makes no sense.

Mr. David Douglas responded I don't know whether people would change their mind or wouldn't change their mind. I don't know how I could know that. I'm just saying that's what the issue would be on a revised be if that's what the difference is.

Mrs. Diana Jones stated I don't have great confidence that we will be seen in a pleasant light.

Mr. David Douglas stated I can assure you that you will be treated fairly and everybody would do it with an open mind because that's how this Board operates. I know that you feel that you had a negative experience last time.

Mrs. Diana Jones stated I don't feel it, I know it.

Mr. David Douglas stated I don't want to get into a debate about that.

Mrs. Diana Jones stated I don't either. We're not here to do this we just live in this community...

Mr. David Douglas stated as do all of us.

Mrs. Diana Jones stated we would like to have our home look somewhat like the others in the neighborhood. It's not such an egregious request. I did a little research and I looked at what people are asking for Variances for and they far exceed what we are asking.

Mr. David Douglas stated the first step is whether or not the Board will vote to unanimously to re-open it. If not, then you've got the right to submit a new request. That's how the system is set up and that's how it works.

Mrs. Diana Jones stated I understand that. As I said, I can't understand how 6 inches or a foot is going to change anyone's mind.

Mr. David Douglas stated it either would or it wouldn't but, again, I don't know how to answer that question.

Mr. John Klarl asked is that what you anticipate your application is going to be for 6 inches less or a foot less?

Mrs. Diana Jones responded yes, we were willing to discuss it at the last meeting but we were not permitted to speak to that effect so we never had the opportunity to say "is there a way we can compromise?"

Mr. David Douglas stated I don't think that you were not permitted. I don't want to debate with you.

Mrs. Diana Jones stated we never got the opportunity. We were more than willing to then say "is there something we can do to make this amendable for everyone and avoid this whole new process?" It never came up...

Mr. John Mattis stated that's incumbent on you to do that. We are not here to make suggestions that you do this or you do that. You come with a request for a Variance.

Mrs. Diana Jones stated you have to understand the climate of that meeting being totally unprepared for what we had to face. It was an experience I never want to repeat and I was not prepared and left here somewhat upset and shaken and I was not thinking as clearly as I am tonight because now I know how the game's played, so to speak. I was being very polite the last time too, product of Catholic school education, only speak when spoken to. That's why my concern is go through all this angst again and get all excited, come back in here only to have you say "no we can't give you a Variance because you'll be 5 feet short." My neighbor's 10 feet short, but I'll be 5 feet short. I don't mind going through the process, don't misunderstand, I have no problem doing this but I don't want to waste your time and my time and money. That's really what it comes down to.

Mr. David Douglas stated you won't be wasting our time because we would view it with an open mind. I think what you're trying to ask is that will – yes, I can assure you that people always view things with an open mind.

Mr. John Klarl stated Mr. Chairman they also talk about architectural drawings. I'm not sure they would have to give us a fully developed architectural drawing. We have people come in here and ask us just give us a certain dimensional Variance without giving us a drawing in itself. If they came in with the last drawings and say we want to be so many feet from our house and so many feet from the property line, that wouldn't require a further architectural rendering. You don't have to get another architectural...

Mrs. Diana Jones asked I don't have to involve an architect?

Mr. John Klarl stated you can bring a drawing and say "I want to be 'x' feet from my house and 'xy' feet from my property line" without having a fully developed architectural drawing. For building purposes, Code Enforcement requires certain things but to obtain a Variance people come in and they say "my deck is 24 feet from the house. I want to extend it another 3 feet." They don't give us a fully developed architectural drawing to make that request.

Mrs. Diana Jones asked let me understand this. I don't have to have the architect involved again?

Mr. Ken Hoch responded you would. Let me clarify. What you would need is a new rendition of A1 on your submission which is the plot plan showing the location of the porch with

dimensions. Those dimensions are now going to change. The Board would need a document, a revised plot plan showing what those new dimensions are going to be. What you also have here is construction drawings for the porch. They don't have to be revised at this point. They would have to be revised if the porch changes dimensions which is a fairly minor adjustment by the architect but you would need just one changed sheet.

Mr. John Klarl stated for the purposes of the Variance as Mr. Hoch pointed out, it would be the plot plan sheet that shows where the proposed construction is on your property and what the dimensions would be. That's not a fully developed construction drawing.

Mrs. Diana Jones stated I'll take you gentlemen at your word. We'll be back. Thank you very much.

Mr. David Douglas stated first I think we need to vote on whether or not to re-open it. I'll move to re-open **case number 37-09**, seconded, all in favor? All opposed, nay. We don't have a unanimous vote to re-open it so if you wish to submit a new application, feel free to.

B. Referral from the Town Board – Comments sought for a Proposed Local Law with respect to Zoning Board Policies and Procedures.

Mr. John Mattis stated the part of this that really applies to us is **section II: Meetings and Attendance**. We have one work session and one meeting a month and occasionally we have tri-Board meetings, that is several times a year meetings of the Zoning, Planning and Town Boards. Basically, the only change from what we're doing now is in attendance requirement that if we can only miss five meetings. If you have five or more absences you forfeit your seat on the Board unless any additional absences are approved in attendance by the Town Supervisor. I don't think that's bad at all. It also reaffirms that we have to do our continuing education which I think we all do. Basically, the only thing that's changed is if we don't attend the meetings we can be removed.

Mr. David Douglas stated I agree with Mr. Mattis that I don't think that these changes really affect us in any real sense. I agree that's a good requirement.

Mr. John Mattis stated we have a very good attendance on our Board, but having said that we do have three people missing tonight. Most people don't miss more than one a year if that.

Mr. John Klarl asked is there any memo that you want Mr. Hoch to send back?

Mr. Raymond Reber stated the only one that I thought was kind of interesting is the application with respect to undeveloped properties for subdivision or site plan approval which means it could be an individual piece of property.

Mr. John Klarl asked this is **3F**?

Mr. Raymond Reber responded yes “may only be submitted as an applicant during the first month of each quarter. They shall then be reviewed by staff, placed on the Zoning Board agenda at the end of said quarter for a determination.” My problem there is, particularly for the Planning Board but also for the Zoning Board when we have reduced staff in both departments, Mr. Hoch is taken on extra duties, the same is true for the gentleman that is handling the Planning Department, Mr. Kehoe. This seems to be counter-productive in that why would you want to load things up in one month each quarter when from an efficiency point-of-view and a departmental point-of-view you’d actually prefer that you spread it out each month and besides what do we accomplish here other than inconveniencing our own staff then to cause unusual delays with the application? If the application is a good and valid application it should be processed. If it’s a bad application, it should also be processed and the applicant should be so told that this is inappropriate and turned down. It just seems strange that we would want to add that. The others I agree with Mr. Mattis, it makes sense, it’s requiring the Board members to be efficient and productive. I think that’s great. But, ‘F’ to me confuses me. I just don’t know why the Town would want to do that.

Mr. David Douglas stated I don’t have any insight into this whatsoever but I think what might be behind it is an intention to make things easier for staff so that the applications will come in during the first month of the quarter but they don’t have to be placed on the agenda until the end of the quarter which gives staff more time to consider it. I think that might be the intent. I’m just guessing that from reading it.

Mr. Raymond Reber stated in other words give them two or three months to work on it rather than having the one month.

Mr. David Douglas stated I think that might be the intent. Again, I know nothing other than what I’m reading here.

Mr. John Mattis stated I rarely attend Planning Board meetings but I watch every one on television and basically, the first month it’s just brought up anyway and referred back to staff. The same thing is happening anyway so I don’t know why they change it.

Ms. Adrian Hunte stated I just have a question on that ‘F’

Mr. John Klarl stated Mr. Mattis is absolutely right, the first time it’s on the agenda of the Planning Board says “refer back” it gets referred back for a review memo, then Mr. Kehoe or Mr. Vergano and others spend a lot of time on the review memos so maybe it’s to lessen how frequently they’ve got to refer back and have a review memo in a given quarter. I’m not exactly sure but I thought what David said might be the thinking is to let staff not have to be pedal to the metal when the application comes in the door.

Ms. Adrian Hunte stated on that second sentence “they shall then be reviewed by staff and placed on the Planning Board or Zoning Board’s agenda at the end of the said quarter.” Is the

“shall” making this matter mandatory the “review” or putting it on the “end of the quarter’s calendar,” is that also mandatory?

Mr. John Klarl responded you and I know that generally the word “shall” is mandatory and the word “may” is purgatory in the statutes. It seems to me it’s really giving direction rather than a mandate. It should be “these documents will then be reviewed by staff,” “shall” sounds mandatory.

Ms. Adrian Hunte stated also whether it means “shall be” does it also say that it “shall” be at the end of that quarter – placed on the calendar?

Mr. John Klarl responded you’re right. I really think it should have been “will” given a process rather than giving a mandate. I think it was to give direction of a process and not to give a mandate.

Mr. Raymond Reber stated because that makes it even worse because if the intent is as indicated they submit it at the beginning of the quarter, it gives a whole quarter for the department to review it, currently now, particularly with the Planning Board, it gets submitted, it gets put on the agenda and then it gets referred to staff. Does that mean here that it won’t necessarily already be a memorandum to the Board so they wait three months and the memorandum’s not written? In other words the “shall” is not mandatory. Now it goes on the agenda and what happens? They remand it back to staff? So, you’ve just lost three months? I think the “shall” is very appropriate. If you’re going to give it three months, then fine, otherwise do the old system, it gets put on the agenda and nothing happens. It gets remanded to staff and then staff can work on it when they get around to it. These are Planning Board issues more than Zoning Board. From a Zoning Board I think the same thing. Does it really help to delay it? I don’t see, Mr. Hoch may have a different opinion on this as to whether it helps or not but I think from the way we’ve operated with Code Enforcement I don’t see any benefit to anybody with this kind of delay other than a delay.

Mr. John Mattis stated if this applies to us, if somebody doesn’t make an April deadline they would come in May 1st for example, they would not be able to apply until July. It would not be reviewed until September and if it’s a very simple case that we can do in 20 minutes where they want to do a simple addition and they want to get it done in the summer, they’ve lost that opportunity.

Mr. David Douglas stated it only applies to subdivision or site plan.

Mr. John Mattis stated I’m sorry. So, it wouldn’t apply to the simple ones.

Mr. John Klarl stated if it came to us it would be coordinated with the Planning Board. If it was a subdivision requiring Variances, so really the slowest Board is – it would really be a Planning Board procedure not a Zoning Board.

Mr. Raymond Reber stated take an example, obviously residences normally wouldn't apply because they don't have to go for site plan, they would just go for building permits, but say it was a commercial lot...

Mr. Ken Hoch stated Ray, you're talking about Nida Associates, it's a subdivision.

Mr. David Douglas stated but it's not an undeveloped property. It wouldn't apply to them either.

Mr. Ken Hoch stated correct. I don't think the Zoning Board would have any.

Mr. Raymond Reber stated that's the question. I can understand for a major subdivision residential, there's going to be a lot of work on it anyway. My concern when I first saw this was more the individual, commercial property. I don't know if we have any commercial lots that are undeveloped. Maybe not, maybe they all have some development, maybe they need a lot of re-development, if that's the case than they're exempt from this. It may be very restrictive the way it's worded that it only applies to true subdivisions which will basically be residential projects on undeveloped land and there are going to be few and far between in the future. If that's really all it's going to affect here, then it's not a big deal.

Mr. John Klarl stated I think in looking at 'E' the first two sentences are really one sentence. "Application is pending for the Planning Board and Zoning Board shall be deemed dormant or withdrawn by the applicant if the application does not appear on a Board agenda with new or additional information for a period of one year or more." The way I'm looking at it those two sentences should be joined?

Mr. David Douglas responded I think that's right.

Mr. Raymond Reber responded I think that should be one sentence.

Mr. John Klarl asked do you want Mr. Hoch to write back about the comment about 'e' and as to 'F' indicate that it doesn't appear that 'F' really applies as Zoning Board of Appeals applications but we want the Board to be mindful of the Planning Board process and how it might affect the Planning Board process? We really don't have a Zoning Board of Appeals comment.

Mr. Raymond Reber responded that seems reasonable.

Mr. John Klarl stated anything else Mr. Hoch should include in the memo? It looks like the Town Clerk is looking for us to address the proposed Local Law by giving written comments. I comment on **3E** and **3F**, anything else?

Mr. David Douglas responded we could also say in it that we agree with the...

Mr. Raymond Reber stated we can say that we endorse the others as a good move.

Mr. Ken Hoch asked do you want me to prepare something for the next meeting? Do you want me to try to do something and mail or e-mail it around?

Mr. John Mattis stated the Town Board's next meeting will be before ours. If you could do it before then it would be helpful.

Mr. Ken Hoch stated get it done before then and get it out to everybody, okay.

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ADJOURNMENT

Mr. John Mattis stated I move to adjourn, seconded with all in favor saying "aye."

**NEXT MEETING DATE:
March 17, 2010**