

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 20<sup>th</sup>, 2013*. 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 JAN. 16, 2013**

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

Mr. David Douglas stated the January 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 it's my understanding that the matter is still in front of the Planning Board and the applicant has asked us to adjourn this to June so can somebody make a motion?

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

Mr. David Douglas stated **case #18-09** Post Road Holding Corp. is adjourned until June.

- B. CASE No. 2012-28                      Department of Technical Services, Code Enforcement**

for an Interpretation of whether the pre-existing, non-conforming use of a building or land is reduced by a portion of the building or land being unoccupied for more than a year.

Mr. John Klarl stated as you know, in this application, we've had a number of people speak and we've had a number of memos authored. I think the Town Attorney's authored two memos to date concerning this application. I also supplemented his affidavit, his memo with my memo which I did as suggested by Chairman Douglas's suggestion and I think you all have it tonight. Essentially, I go through the prominent case law in this area and as I was saying at the work session last night, there's no back-of-the-book answer to the question but in looking at a New York Court of Appeals case which is our highest court in New York, the matter of Toys 'r' Us case versus Silva. If you look at page 4 of my memo, the lower portion, we discuss that in New York – well, the case rights, Judge Kay was our chief Judge; she writes "in New York Harbor, the inclusion of a lapsed period in a zoning provision removes the requirement of intent to abandon, discontinuance of non-conforming activity for the specified period constitutes an abandonment regardless of intent." So, essentially, when you read the memo as a whole you see that the cases seem to say if you have a lapse provision your non-conformity legislation, the court doesn't look to intent. If you don't have a lapse provision then the court will look to intent and intent is what you intend on doing plus whether you've taken some overt action or failed to take some action. There's a 7-page memo tonight. The Chairman had suggested at our work session last night that we receive and file this memo tonight and keep it open for one more month if anyone on the Board wants to comment further, but the 7-page memo is before the Board tonight.

Ms. Adrian Hunte stated on **case #2012-28** I make a motion to keep the matter open until the March Zoning Board of Appeals meeting and receive and file the 3 memos.

Mr. John Klarl stated and just for the audience out there, once again, this is not a site-specific application, it's a generic application about the law in the area. So, we're not citing on any given application.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-28** is kept open and is adjourned until next month.

**C. CASE No. 2012-36                      Brian & Stacey Retallick** for an Area Variance to allow storage of a travel trailer in the side yard on property located at **130 Highland Dr., Cortlandt Manor.**

Mrs. Stacey Retallick stated so we have the new – shows where we're going to move the trees from where they are on the property line, move them 10 feet over, approximately 10 feet. It was actually suggested, a landscaper suggested that these trees will not survive being transplanted because they're already kind of half dead and he suggested getting white pine because they grow fuller and they make a better barrier and that'll keep – in the summer time it's not an issue between the two houses because all the leaves are there but our neighbor asked if we could keep

them there because in the winter time they lost all their pine trees in the hurricane so this is the only barrier now in the winter time between the two houses. She asked that we keep them there and gave us permission to move them onto her property to be able to keep the barrier there. We would have to level on the spot where the proposed spot for the trailer – it would have to be leveled out a little bit in order to – because at the top of the hill and it's not perfectly level right now so it would have to be leveled out. In order to park the trailer there we put gravel or item-4 down.

Mr. Charles Heady stated also, you had mentioned about your septic tank on it. Is it on the right side of that?

Mrs. Stacey Retallick responded yes.

Mr. Charles Heady asked how close are they to the driveway you're putting in?

Mrs. Stacey Retallick responded oh no, it's far.

Mr. Brian Retallick responded approximately **30** feet but I'd have to measure it to be precise.

Mr. Charles Heady stated I'm a little curious about that because we had mentioned it at the last meeting. Also the boulders; you're taking the boulders away.

Mrs. Stacey Retallick responded we're going to dispose of them. There's nothing to do with them.

Mr. David Douglas asked anybody have any comments or questions for the applicant? I'll just note for the record that we've received a variety of materials since last month; a copy of the septic plan, certain pictures which you referred to, a photo of the trailer and the trailer is indicated as being **25** feet long, **8.5** feet wide and **10** feet **10** inches tall and then certain letters: one from Gregory Martin, another one from James Connolly, these are neighbors. Also received a letter and certain documents from Deborah and Dominick Santucci who were at the last meeting and an e-mail from Mr. Retallick regarding real estate agents and all those materials in the report have been filed.

Mr. Charles Heady stated another thing I wanted to ask you Chairman, is on that one photo you showed us where you would be parking the trailer, would you be setting up with chairs and stoves and stuff there?

Mrs. Stacey Retallick responded no, that's the only picture I really had of it. We were camping.

Mr. Charles Heady stated if you get the Variance there probably would be a restriction because we wouldn't want that at all.

Mrs. Stacey Retallick responded no, it's purely for storage. We don't use the trailer when...

Mr. Charles Heady stated I just wanted to make sure.

Mrs. Stacey Retallick responded no, absolutely not, no. It's not used when it's there. It's just going to be parked there.

Mr. David Douglas asked anybody else want to be heard on this tonight?

Mr. John Mattis stated I'd like to make some comments. It's unprecedented that we allow somebody to move trees on somebody else's property. This is a very large trailer. This isn't a pop-up. This isn't a little boat that moves in and out. This is a mobile home; **25** feet long, almost **11** feet high and there's a legal question too. The Town doesn't allow **2** driveways and once you have to do a curb cut with item-4 we'd have to get a legal opinion whether that's even allowed if we decide to approve that. I just think this is too much. We've turned some down in the past that didn't even ask for anything like this. This would set a precedent that would be hard to stop if anybody else that just wants to park it in their front yard or their side yard. I oppose this.

Ms. Adrian Hunte stated the privacy hedges that will be planted just over the property line on 59 Dutch Street, I understand you have agreement with the owners of that property but will those – is there an agreement of understanding that those privacy hedges will be theirs or are you doing some sort of lot line adjustment or what's going on there?

Mrs. Stacey Retallick responded no, it'll theirs. It'll be on their property it becomes their property.

Mr. John Mattis stated I'd also like to say something, as I look up here and in the red and it's up there you can see that, in the upper right hand corner of the parking area, it certainly doesn't look like it's **30** feet from the septic fields. That encroaches pretty close to the septic fields. That raises a concern too.

Mrs. Stacey Retallick responded it's up on a hill. The septic field is down much lower. It's up much higher than the septic field.

Mr. John Mattis stated but it's still close. You push that thing back in there with a truck and you make a mistake and next thing you know you're on your septic fields.

Mr. Raymond Reber stated I personally don't have much of a problem with this. As far as the curb cut, that is up to DOTS to decide but I know that several examples, even in my own neighborhood of multiple curb cuts that have been allowed in recent years. I think it's unfair to say that even though it's not allowed that you somehow grant him for certain reason so I leave that up to DOTS to decide whether this extra curb cut is reasonable or unreasonable. As far as the septic field; there's a lot of issues in terms of being close to septic fields in different places. We can't penalize someone on the basis that they may miss their driveway and drive into their septic field. Hopefully they won't, if they do, that's their problem because they're going to mess up their own septic field. Where they're parking it, if they put it back as shown it will be towards the back of the lot, well back to the side of the house. It doesn't interfere with anybody's sight, neighbors or what have you. Based on the way they've proposed it and with the

re-positioning of the screening I would find this a reasonable request.

Mr. Wai Man Chin stated I want to ask one thing about the septic fields again. That's right now your existing septic fields. Where would your **100%** expansion fields be located if...

Mr. Raymond Reber responded it's to the house side of the fields. If you look at the plans Wai, it shows the secondary **100%** expansion is actually closer to the house from what I saw. Somewhere I saw it on one of the plans. Let me see if I can figure out where.

Mr. Wai Man Chin stated that's the expansion fields. That means it's coming closer to the house.

Mr. Raymond Reber stated it's not on there. It's on some other plan.

Mr. Wai Man Chin stated it's coming closer to the house.

Mr. Raymond Reber stated if you look on Cronin Engineering plans it shows the existing fields and the **100%** backup and the existing field is to the left, the backup is actually closer to the house.

Mr. Wai Man Chin stated yes, very close to the house actually. Those are **7** feet apart those fields so you're coming closer by another **28** feet, almost **30** feet to the house.

Mr. Raymond Reber stated yes, but that's a future if they ever need it.

Mr. Wai Man Chin stated well, you still have to have it.

Mr. Raymond Reber stated it's there. They're not going to encroach on that, they're way to the other side and the only place they encroach is on the very corner towards the very back.

Mr. David Douglas asked where you're proposing to put it now, would the trailer be in front of the house as well as into the side?

Mrs. Stacey Retallick responded it might stick out a little bit from the front of the house. For the most part it's on the side of the house.

Mr. David Douglas stated because looking at the drawing it seems to me that under the new proposal it's not just on the side, it's also in the front which parking trailers in the front is also not allowed under the Code as I understand it. You'd need a Variance in that event both to get a side yard Variance and also a front yard Variance.

Mrs. Stacey Retallick responded okay. We can only go so far back with it because it becomes even more of a hill when you go further back and then there's a wooded area there so unless we clear the wooded area we can't really go further back with it.

Mr. Raymond Reber stated I would think that we could put a restriction on it for them to not

encroach on the front. The setback is **35** and **5** inches. They said the trailer is about **25** so you're looking at roughly **60** feet going back and from visiting the property, that line is **120** feet long so they only have to go halfway to the back line to be out of the front yard and I don't remember any restrictions in that first **100** feet or so from looking at it. So, to me, I would think that the condition of approval would be that it doesn't encroach on the front yard.

Mr. David Douglas stated that's if we were to approve it. I have some serious concerns about this not just about the front and also the side, I just want to be able to state them. The Town has a policy of not allowing storage of a trailer in the front or on the side and what you're seeking is a Variance and there's various factors that we need to consider in deciding whether to grant the Variance and though I haven't made up my mind definitively I have some concerns in thinking of those factors. The first factor is whether an undesirable change will be produced in the character of the neighborhood, where there will be detriment to nearby properties. I think that arguably there will be some detriment to nearby properties caused by this and at least one of the property owners in the neighborhood has expressed concerns about that. The second factor is whether or not you can achieve your goals through a reasonable alternative which doesn't require a Variance and I think there are other alternatives. One of the alternatives of course is to store the trailer which is what many people do in the Town with trailers. A third is whether the Variance is substantial. It is substantial. It's not allowed at all and what you're seeking to do is to do something that would not be allowed under the Code. Whether an adverse impact on conditions in the neighborhood; I don't know whether it would or would not. And, the fifth factor is whether this is self-created difficulty and it is. This is something that you've created yourself. So, those are the five factors and that's my concerns as to whether or not you'd be entitled to a Variance considering those factors.

Ms. Adrian Hunte stated based on those five factors I think at least **3** or **4** out of the **5** of them would militate against allowing the Variance in my opinion.

Mr. David Douglas asked anybody else have any comments on the Board?

Mrs. Stacey Retallick responded when we were looking at the house to buy it, we met with the builder and we had a very upfront conversation with him and we told him "we've had to turn down many houses that we liked because we couldn't park the trailer in the driveway because the driveway was too much of a hill or it wasn't level property or whatever." So, we told him – it was a condition of sale basically. If he had a problem with us parking the trailer there we would not be able to buy the house because we needed a place where we could park our trailer. There was no opposition at the time to having the trailer there. He said "not a problem. No problem." Because it was a condition of sale so now it seems like the sale's made and now they're here speaking against it and now it's a problem.

Ms. Adrian Hunte stated I'm sorry, I'm not understanding: who is had no opposition?

Mrs. Stacey Retallick responded I'm sorry, you weren't here at the last meeting. Mr. Santucci is the builder of the house that we bought it from and they were here at the last...

Ms. Adrian Hunte stated I was here at the last meeting.

Mrs. Stacey Retallick responded oh you were here. I'm sorry. So they were here speaking against the trailer at the last meeting and the fact of the matter is they were in agreement of us putting the trailer there when we were buying the house.

Mr. John Mattis stated that's unfortunate because they could say anything they want but they do not represent the Town Code nor do they represent the Town.

Mrs. Stacey Retallick stated I agree, I know and I know it's not their decision as to whether or not the trailer is there but they came in and made a statement and I'm just backing up the agreement that we had with them is contrary to what was stated when they were up here last month.

Mr. John Klarl stated but of course your agreement doesn't trump the Zoning laws.

Mrs. Stacey Retallick responded no, I know that. I agree.

Mr. James Seirmarco stated I'm on the fence with this particular thing. I see your need. I see that you were straightforward with the real estate agent, the buyer of what your intentions were. I see the other side of the coin that it does cause some encumbrances on the requirements – it does affect the five recommendations for a Variance so it's sort of 50/50 but I think in this particular case it is, as asked before, even though you back up the trailer, the wheels are in the middle so the weight of the trailer isn't going to be anywhere near the fields. It is going to be off the road considering the length of that side of the property. I still haven't decided yet.

Mr. David Douglas stated I want to note another concern I have and that has to do with setting a precedent. One of my concerns is that if we were to allow this that basically anybody in this Town could come here and say "you should allow me to do it as well" because I really don't see how your property is all that different in this regard and your circumstances that different in this regard from many other properties and that's something we have to take into consideration because it would – by allowing trailers in the side we'd be changing the Town's legislative policy not to permit them. So, that's something we have to take into consideration as well.

Mr. Brian Retallick responded Mr. Douglas, it is on record that the two neighbors do approve of the plan correct? It is on record.

Mr. David Douglas stated yes, we've got the letters. Yes, when I did that list of letters those are there.

Mr. James Seirmarco stated the zoning goes with the property not with the owners though.

Mr. Wai Man Chin stated I have to say that many years ago, we had a situation along West Mount Airy with a trailer also parked on the side and we had denied that request at that time and this is going back maybe **15** to **18** years ago and at that time we didn't want to set a precedence and that was a fairly big trailer just like yours right on the side of the house.

Mr. David Douglas asked anything else you want to say? Anybody else want to be heard on this? I think at the work session we had talked about closing and reserving the matter. I think that would be a good approach.

Mr. Charles Heady stated I make a motion on case **2012-36** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Charles Heady stated I make a motion on case **2012-36** to close and reserve decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your case matter is closed and reserved. What that means is we have, under the law we've got **62** days to issue a decision. So, we either have a decision at the next meeting or perhaps the one after that.

Mrs. Stacey Retallick asked do you let us know when a decision is made or we just show up?

Mr. David Douglas responded you can either show up or not show up. What we'll do is if there's not going to be a decision next month – Mr. Hoch if we know there's not going to be a decision maybe we can tell the applicant otherwise you can come and then we'll vote.

Mr. Brian Retallick asked Mr. Douglas, just one question because I believe Mr. Hoch was following up with DOTS, did they approve of this trailer? I think one of the follow-up items was meeting with DOTS.

Mr. Ken Hoch responded no, the Department of Technical Services hasn't looked at this yet?

Mr. Brian Retallick stated oh, they haven't looked at it yet.

Mr. David Douglas stated thank you very much.

**D. CASE No. 2013-02                      Ed McPartland, dba WackyInflatables Inc., for a Special Permit Home Occupation on property located at 17 Wharton Dr., Cortlandt Manor, NY.**

Mr. Ed McPartland stated I live at 17 Wharton Drive, Cortlandt Manor N.Y. I just want to go over a couple of things about what we said last month about cleaning my floats. Again, I take my float out. I take it out in the driveway. If it needs to get cleaned and inspected, I put it on the other side of my property on the right hand side, that's where the outlet is. I vacuum it. I clean it, no more than **20 to 25** minutes. The way I clean is with these wippies. No water, just wippies you can buy from Home Depot, Wal-Mart, anywhere. Also, he says that I always park my trailers in the street and I always park it on the right side which blocks a sign that's a blind person area sign which I don't. It's not my house. I don't park there. I brought someone tonight



that he said that she walks into my trailer every time she walks the dog and she doesn't walk into my trailer because I don't park it in the street. It's parked in the driveway. Also, he said my truck is **16** feet and my trailer is **16** feet. This trailer is small. I have the title here that it's only **6' x 12'**. It's a small trailer. He said it's **32** feet with my vehicles in the street. I don't park my vehicles in the street. Maybe during the summer I'll come home and I have my regular vehicle that I drive, yes I might park in front of the stairs to get my packages and stuff like that but...then he said every time he drives home he sees that I have Sponge Bob up. I don't even have a Sponge Bob. I know he said that I've been telling a Cinderella story but I'm not. He just fabricated all that.

Ms. Adrian Hunte stated Mr. McPartland I have a question for you. If you are cleaning one of your inflatables and it starts to rain and it gets wet what happens?

Mr. Ed McPartland responded I don't take them out if I know it's going to rain.

Ms. Adrian Hunte asked how do you know it's going to rain?

Mr. Ed McPartland responded well, if it's a sunny day I'm cleaning them.

Ms. Adrian Hunte asked if it does get wet because it happens to rain, how long does it take for it to dry out? Does it have to dry out before you fold it back up?

Mr. Ed McPartland responded yes, but if I know – if they do get wet and then it stops, it takes about **5** minutes for it to dry. It's a blower – all the seams have threads in them and they have little holes so the bubbles come up, that's how it dries. It doesn't go inside into the unit. It'll just lay on the top surface. But, remember they all have a roof so water won't really get into it.

Mr. John Mattis stated I have a question about parking on the street; are there any no parking areas, are there any restrictions on parking on the street?

Mr. Ed McPartland responded no. I just wanted to show you guys that the sign that he's talking about is this sign right here. That's my neighbor's house. This is my house over so when you're coming up the hill, my driveway's over here and he's telling you guys that I park right here, which I don't, it's not my house. I wouldn't park in front of someone's house.

Mr. James Seirmarco stated one of the questions you had said you were considering buying another trailer and replacing this trailer?

Mr. Ed McPartland responded correct.

Mr. James Seirmarco asked so you never would have in the future or in the short term two trailers on the property? You'll have just one.

Mr. Ed McPartland responded I have two trailers at the moment. One's with writing on it and one has nothing on it. I just bought it in August. That's the one – and they're both **6' x 12'** and that's the title on it.

Mr. James Seirmarco asked but my question is would you at any time in the future have two trailers on the property?

Mr. Ed McPartland responded right now, yes I will but in the future no. Down the road, no.

Mr. John Mattis asked so the new trailer you got in August is replacing the current trailer?

Mr. Ed McPartland responded when it – it's just about on its way out. When it does yes I will replace it.

Mr. James Seirmarco stated that could be another year so you could have two trailers...

Mr. Ed McPartland responded I don't want to push another year. I don't think another year. I started in April so I say a couple months after that.

Ms. Adrian Hunte stated and you stop November...

Mr. Ed McPartland responded I stop usually late September and beginning of October I stop.

Mr. Charles Heady asked if you're using two trailers now...

Mr. Ed McPartland responded no, I'm not using two trailers. It's not even registered. Here's the title right here. It's not even registered yet. I just bought it.

Mr. James Seirmarco asked is it new?

Mr. Ed McPartland responded yes, brand new. This is the title right here if you guys want to take a look at it. It's not even registered. I don't even have plates on it.

Mr. Charles Heady asked you're going to end up using just one trailer eventually?

Mr. Ed McPartland responded yes, the one trailer with the "Wacky Inflatables" written on it. That's all I use.

Mr. James Seirmarco asked and you have no problem with limiting the time that you had an inflatable out of its box? If we said that you could have this except you could have up to one hour – an hour gives you sufficient time to do what you have to do?

Mr. Ed McPartland responded yes.

Ms. Adrian Hunte stated on certain times of the day.

Mr. James Seirmarco asked on certain times of the day?

Mr. Ed McPartland responded yes. Again, like I said, usually I never do it during the week

because I work during the week so usually it's done sometimes on a Sunday because it's slow on a Sunday, people don't usually do parties so my busy day is usually Saturday.

Ms. Adrian Hunte asked do you ever use the leaf blower to get any debris out of the...

Mr. Ed McPartland responded yes, I do that but it's an electric one. But, usually I vacuum. It's a small vacuum. We go in there with a vacuum, broom, sweep it to one side and vacuum it out, wipe it, done. By the time I'm done, I'm doing the wippies it's going down. I fold it up and put it in the trailer.

Ms. Adrian Hunte stated thank you.

Mr. James Seirmarco stated I have no more questions.

Mr. David Douglas asked anybody else have any questions for Mr. McPartland?

Ms. Adrian Hunte responded no.

Mr. David Douglas asked anybody else want to be heard?

Mr. Kevin Conklin stated I represent the Gilmore's. I have, for the panel, photos from [inaudible].

Mr. John Mattis stated I believe we've seen those. They were submitted already. We've seen them.

Ms. Catherine Bieder stated I live down at 71 and I walk the block often for exercise. It's been mentioned that I walk into a truck and I don't because if I did then my dog wasn't doing her job.

Mr. John Mattis stated beautiful dog.

Ms. Catherine Bieder stated and the signs are up for me for people to know that I'm out there not walking a dog. That I can't see. Other than that I don't have a problem.

Mr. Kevin Conklin stated good evening, I represent the Gilmore's. They live caddy corner to where this application is being made. We've provided the Board with some photos which depict the area and which depict some of the vehicles owned by Mr. McPartland. The first picture I've provided to the Board shows a former van and a trailer owned by Mr. McPartland parked on the street. He has a tenant as well who owns a van who also has that van at the premises. The second photograph...

Mr. James Seirmarco stated you just showed us a picture of a truck, not a van.

Mr. Kevin Conklin stated a van.

Mr. James Seirmarco stated oh, I see it now, excuse me.

Mr. Kevin Conklin asked do you want me to hand them out?

Mr. John Mattis responded no, he didn't see them. He wasn't at the meeting yesterday. The rest of us did.

Mr. Kevin Conklin stated I have the original pictures. I'd be happy and delighted to hand them out. They are respectfully pictures of the van parked on the street with a trailer. He has **2** trailers which are depicted in some other photographs we've provided to the Board with the writing on them, the two **7**-foot high trailers which are right now both on the property, on the side of the property. We have the sign showing the blind person area. We have the sign and photographs depicting the second of these vans, some **7** feet high and some appears to be like **16** feet. I'm not sure exactly how long it is, with the writing on it.

Mr. James Seirmarco stated you're calling the trailer a van.

Mr. Kevin Conklin stated no, perhaps I'm mistakenly calling the trailer a van because I saw a picture with the trailer first – no, there are **2** vans parked in the side of the house, **2** trailers parked on the side of the house, there's also a van that used to be there with a trailer and he has **2** other trucks with all this material. He has a truck and his tenant has a truck.

Mr. John Mattis stated I don't understand the relevance of that, the fact that they have trucks...

Mr. Kevin Conklin stated the fact that they have to park those things some place.

Mr. John Mattis stated yes, you showed us a picture of the tenant's truck or van and it was not parked on the street. I don't understand the relevance of that.

Mr. James Seirmarco stated and his neighbors have trucks too.

Mr. Kevin Conklin stated absolutely the neighbors have trucks.

Mr. James Seirmarco asked so, your point is?

Mr. Kevin Conklin responded my point is that these **2** vans take up a portion of the driveway and sometimes that...

Mr. James Seirmarco stated let's be more specific. A van is a four-wheel vehicle that's enclosed. A pickup truck is a two-window, two-door and a trailer's a trailer so let's be specific because this is being recorded.

Mr. Kevin Conklin stated the **2** trailers...

Mr. James Seirmarco stated Mr. McPartland says he owns a truck and a trailer and you keep referring to a van.

Mr. Kevin Conklin responded okay then let me be specific.

Mr. James Seirmarco stated because they're different.

Mr. Kevin Conklin stated a truck and 2 trailers, so the record's clear.

Mr. James Seirmarco stated and he admits to having 2 trailers.

Mr. Kevin Conklin responded I'm not saying he didn't admit that. Of course he did because we have photographs depicting them and we have photographs depicting him with the side of his house with the writing on them on one van – but he also has a truck which he owns and operates and he has a tenant and his tenant also has a van or a truck so you have all of those vehicles; vans, trucks and what have you...

Mr. Raymond Reber asked and by trucks we're talking pickup trucks, not dump trucks, just pickups?

Mr. Kevin Conklin responded yes sir. So, if you park those things on the street, you sometimes inhibit vehicular traffic and sight lines and there's photographs of folks coming down and using materials; walking their dogs which are inhibited by this situation. We feel this is a commercial endeavor. We don't think it's appropriate.

Mr. John Mattis stated but the only commercial vehicle is the trailer. The pickup trucks, he can park on the street every day. He could park cars there. Everybody in the neighborhood could so I don't understand the relevance of this.

Mr. Kevin Conklin responded the relevance is if you have the impediment in your yard and you have to park somewhere else, then you're creating a difficulty in the street when you have two lanes of moving travel...

Mr. John Mattis stated that's an issue that you should take up with the Town and tell them to put 'no parking' signs. That's not really a Zoning Board issue.

Mr. James Seirmarco stated and when you say 'commercial' the traffic laws state very clearly what a commercial vehicle; it has commercial plates on it. I don't know whether his pickup truck has commercial plates on it or not but I'm sure his trailer does not.

Mr. Raymond Reber stated I have pictures and I was out there and I noticed in his driveway, when I was there, both trailers were in the driveway, plus a car, plus an extended cab pickup; all in the driveway, they fit easily and there was plenty of room. So, I don't understand what the issue is.

Mr. James Seirmarco stated I agree with him.

Mr. Kevin Conklin stated well, the issue is, and you can see from some of these pictures that when you put these things out in the front of your house and you have the big blowups and the

blowups are all different sizes and variances that that's an obstruction in the road and it's not something you would like in the road.

Mr. Raymond Reber stated he doesn't put them in the road.

Mr. Kevin Conklin stated it's not something you'd like in your own area. It's not something you'd like across the street from you.

Mr. Raymond Reber stated he doesn't put it in the road.

Mr. Kevin Conklin stated he doesn't put the stuff in the road but he cleans his stuff right on his front lawn so much so that you can see that the grass is worn away from where he's cleaning the materials and that's photographs that we've provided to you.

Mr. John Mattis asked and he does this for how many minutes a week?

Mr. Kevin Conklin responded it depends how busy his business is on a specific weekend. I suspect, like many businesses, there are very good weeks and there are weeks that are not so good but it is an impediment, it is unsightly and it does exist and we oppose it and we'd ask the Board to take consideration of that. Thank you all very much of your time. Have you folks been provided with a copy of the online AOL material depicting signs...

Mr. James Seirmarco responded yes. From the website you mean?

Mr. Kevin Conklin responded yes.

Mr. James Seirmarco stated yes.

Mr. Kevin Conklin stated with both of those submissions I thank you for your time.

Mr. David Douglas asked anybody else want to be heard on this?

Ms. Gloria Papillion stated I live on 55 Wharton Drive. I do a lot of walking. I've lived in this neighborhood for **30** years and when I go by the house in question, on 17 Wharton Drive, I never see any kind of disruption. I mean, the man says that he blows up his inflatables and he cleans them and he does everything and he parks all his vehicles in his driveway so I don't understand why this complaint is going on here. I've lived here almost **30** years. I've never had any kind of ruckus in my neighborhood with anybody having any problem with anybody parking a vehicle on the street or off the street or on their own property. I'm here to verify that. I've gone by **20** Wharton which is across the street and I've seen vehicles and trailers right on top of the fire hydrant and I don't understand why nobody complains about that. I don't have pictures but I've seen it.

Mr. James Seirmarco asked and you don't believe they belong to Mr. McPartland?

Ms. Gloria Papillion responded no, they're not Mr. McPartland's, they're on **20**.

Mr. James Seirmarco stated okay, just for the record I was asking.

Ms. Gloria Papillion stated they're in front of the complainant's home, in front of the fire hydrant. Their cars are always parked there, in front of the hydrant. The next time I see them there, I'll definitely take photos because I just think this whole thing is absurd that they're complaining about these people that don't bother anybody and I've lived there for **30** years.

Mr. James Seirmarco stated thank you for your comments.

Mr. Tom Morrell stated I live at 26 Wharton Drive for the past **37** years. In all my time, I've never seen, as long as the McPartland's have been there, that road is never blocked. The trailers are always in the driveway. I see no problem at all with his operation. That's all.

Mr. James Seirmarco stated thank you for your comments.

Mr. David Douglas asked anybody else want to be heard? We also have a letter from somebody who was unable to attend who asked that we read it into the record so I'll do so. It's a letter from a Jacqueline Pizzulo, it doesn't have an address on it but it's somebody in the neighborhood.

Mr. John Mattis stated it says it in the letter.

Mr. David Douglas stated the letter says "I give my **100%** support to Eddy McPartland's request for a Special Permit for 'Wacky Inflatables'. I live at 16 Wharton Drive, directly in front of Eddy's home so if anyone would be affected by anything he does on his property it would be me and my family. During the few years he's had the business, in no way shape or form has it presented a problem. In fact, if anything, I think it has enhanced the neighborhood, after all looking out the window and seeing SpongeBob or Cinderella every once in a while makes you feel like a kid again. We couldn't ask for a better neighbor than Eddy. He's always there to lend a hand and he keeps his property in pristine condition putting everyone else to shame. He is a tireless worker who decided to start a side business to make an honest buck and that's all that he does. He also donates his floats and services often to schools and charitable events. My driveway is directly across from Eddy's and we've never had an issue being unable to back out or drive in because of his vehicles. Wharton Drive is wide enough in front of our homes for two vehicles to pass safely and also avoid anyone that may be walking. To contend otherwise just isn't true. We are more than happy to have Eddy and his family as neighbors and you won't find many others that disagree. In closing I wholeheartedly encourage the Zoning Board of Appeals to support Eddy and 'Wacky Inflatables' because if there were more people like Eddy the world would be a better place."

Mr. James Seirmarco stated Mr. Chairman, we have listened to the public. We heard both sides of the story. We've heard issues about traffic. I don't see anything that verifies there was a traffic problem. I listened to comments about things that are blocking the driveways and I haven't heard any conclusive testimony that Mr. McPartland's trucks and trailers block driveways or block things on the street. There's no sale of proposed articles on the premises. There's no employees. There's no delivery of goods which would not be allowed in a Home

Occupation so I don't see a big problem with this. At this time I would like to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. James Seirmarco stated I make a motion we close and reserve until the next meeting to decide on **case #2013-02**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the case is closed – the decision is closed and reserved. As we said with regard to the prior application we'll have a decision either next month or the month after.

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### **NEW PUBLIC HEARINGS:**

- A. CASE No. 2013-03                      New York SMSA Limited Partnership d/b/a Verizon Wireless** for a Special for recertification of an existing wireless telecommunications facility consisting of antennas in a stealth monopole with relevant equipment at the base on property located at **1033 Oregon Rd., Cortlandt Manor, NY.**

Mr. Michael Sheridan stated I'm with Snyder and Snyder, attorneys for New York SMSA Limited Partnership d/b/a Verizon Wireless and I'm here tonight in connection with Verizon Wireless' application for recertification of its Special Permit for its facility at 1033 Oregon Road as evidence by the certification from Verizon Wireless' radio frequency engineer that was submitted with the application. There have not been any changes to the facility since its approval and the facility remains in compliance with a Special Permit and all applicable Codes, laws, rules and regulations.

Ms. Adrian Hunte stated thank you Mr. Sheridan I see that we do have the certification of the engineer. I just had a question concerning the bond. Was that bond just for the original installation and not for any renewal?

Mr. Michael Sheridan responded my understanding is that the bond – I'm not exactly sure, I wasn't there at the original certification but the Special Permit indicates that it's a bond that the Town wanted for...

Ms. Adrian Hunte stated performance or construction.

Mr. Wai Man Chin stated a bond is only for construction.

Mr. John Mattis asked is it a performance bond?



Mr. Michael Sheridan responded it was a performance bond and it was paid at that time.

Mr. John Mattis stated none of the neighbors obviously have complained.

Mr. Michael Sheridan stated not that I'm aware of.

Ms. Adrian Hunte asked is there anyone in the audience that cares to speak? On **case #2013-03**, New York SMSA Limited Partnership d/b/a Verizon Wireless for a Special Permit for recertification of an existing wireless telecommunications facility consisting of antennas and a stealth monopole with relevant equipment at the base, I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case #2013-03** I make a motion that we approve the Special Permit or the recertification and this is a SEQRA type II no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Special Permit is recertified.

**B. CASE No. 2013-04                      Joseph Jasinski for an Area Variance for accessory structures, generator and propane tank, in the front yard on property located at 1518 Washington Rd., Cortlandt Manor, NY.**

Mr. Joseph Jasinski stated I'm the property owner at 1518 Washington Street.

Mr. David Douglas stated if you could tell us what you're seeking.

Mr. Joseph Jasinski responded my wife and I are seeking to put in a stand-by generator with propane tanks and we're looking to put it in on the side and behind our garage. It turns out that our garage is set well back from the street behind by the tennis court. It happens to be in front of the front façade of our house so technically it's in our front yard, although we don't have a front yard. We have woods for about **10** yards to the tennis court, then there's a full tennis court, then there's a rise of about **10** feet up to the garage and driveway.

Mr. John Mattis stated I'm familiar with that property. I believe, wasn't that divided – wasn't the old stone house part of that at one time?

Mr. Joseph Jasinski responded actually the three; there was a stone house in middle, there's our

property which was the tennis court and the swimming pool and it was a three-car garage and greenhouse and the property on the corner at Watch Hill and Washington was also part of that. So, it's a very old property.

Mr. John Mattis stated I played tennis there years ago so I'm familiar...

Mr. Joseph Jasinski responded many people have played tennis on my court.

Mr. John Mattis stated the only concern, and we've dealt with this before is, we try to keep these so that they're not visible from the street and where you would have – I believe is the propane tank...that would be visible and we would, as part of this approval, make sure there's some kind of appropriate screening; shrubs or something that you could coordinate with the Town just so that it's in front there so that you wouldn't see it when you drive by. Other than that it sits way back.

Mr. Joseph Jasinski stated it's behind some hemlocks.

Mr. John Mattis stated even if it wasn't screened somebody would really have to look to see it.

Mr. Joseph Jasinski responded you'd have to look up the hill. You'd have to really stare at it. We could put a little fence or some shrubs or something in front of it.

Mr. Wai Man Chin stated I've got no problem with it.

Mr. James Seirmarco stated I've just got a question; why can't you put it behind the house?

Mr. Joseph Jasinski responded so the house is one story in the front, it's two stories in the back, it's built into a rock and so basically there's no place – we have plenty of property behind our house. There's no place where we can get the propane tanks and the generator far enough away from windows and doors but still accessible to the propane company so that they can fill the tanks, it's just too long of a run.

Ms. Adrian Hunte stated I don't have a problem with it.

Mr. James Seirmarco asked there's no heater on the pool?

Mr. Joseph Jasinski responded no. The pool is also grandfathered in it. It's an exception and all that good kind of stuff. As I said, this is a very old property. The pool and tennis court and the original property were built in the '30s. As every contractor has ever been at my place says "it's not standard."

Mr. John Mattis asked is there anyone in the audience who would like to speak? I move that we close **case #2013-04**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated I move that we approve an Area Variance for accessory structures which are a back-up generator and a propane tank in the front yard subject to the Town approving appropriate screening; whether it be a fence or shrubs, and this is a type II SEQRA and there's no further compliance required.

Mr. John Klarl asked you want that condition to be at the satisfaction of DOTS for the screening?

Mr. John Mattis responded yes, to the satisfaction of the Department of Technical Services, yes.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

**C. CASE No. 2013-05                      Thomas Utko, U & I Contracting Inc., on behalf of  
Simon Chan** for an Area Variance for an accessory structure, a back-up generator, in the  
front yard on property located at **1 Napa Court, Cortlandt Manor, NY.**

Mr. Thomas Utko stated my last name is spelled U-T-K-O.

Mr. David Douglas stated if you could tell us what you're seeking.

Mr. Thomas Utko stated I'm here representing the home owner. I install generators, propane tanks, although this one is not an [inaudible] because it's natural gas. This particular lot, as Ken has explained to me, basically has front yard situation on all four sides and so there's really no place that you could put the generator that's not theoretically the front of the house. So, we've chosen the side of the house that has the utilities on it; the electric meter, the gas meter, the two air conditioning compressors and is the furthest from any, noise-wise, furthest directionally from the neighbor's so that the noise from the generator would be the least. It has the shortest runs of wiring and piping and that's about it.

Mr. John Mattis asked is this going to run on natural gas?

Mr. Thomas Utko responded it's going to run on natural gas, yes. I was unaware that we could submit photos, but I do have some photos if you guys haven't made a site visit to show you what that side of the house looks like.

Mr. Charles Heady stated I was out there and nobody was there, I don't think and I see the situation that you're talking about. Like you just said; the air compressors along side of the house, electric also at the same place where you want to put the generator which is the logical...

Mr. Thomas Utko stated certainly within – all these things have separation; the generator has to be **10** feet from the regulator, **5** feet from a window, **18** inches from combustible.

Mr. Charles Heady stated there's screen about **20** foot from the side of the house where the generator and the compressors are by the road, right now?

Mr. Thomas Utko responded there's a lot of screening there now yes.

Mr. Charles Heady stated the only thing that we had talked about at our work session is; can you put some screening there, like you're facing the garage doors there off the street?

Mr. Thomas Utko responded the home owner's very interested in having a generator.

Mr. Charles Heady stated just to block that off.

Mr. Thomas Utko responded certainly.

Mr. John Klarl asked is your homeowner here tonight?

Mr. Thomas Utko responded no he's not, that's why I'm here because he travels quite often and that's why he wanted the generator because his family gets left without power. Just to give you an idea from the driveway end, as you're looking down the driveway which is really the only place you could see it from, the generator is nominally **2** feet tall and **2** feet wide. It runs long ways on the house so we're really looking at something that's not much larger than that chair in the view from the driveway. Now, I'm certain either a little piece of the fence, which somebody might find more objectionable than a small generator or maybe a bush in front of it. The bush would have to be about **3** feet off of that end. I'm certain I can help you with that.

Mr. Wai Man Chin stated right now you've got screening on the whole side right there and you must be – you're on the side of the house right now from what I see and you're talking about almost **60, 70** feet away from the front of the driveway, almost, give or take. I don't see a problem with that and I don't think any kind of additional screening is really required over there on that little piece because it's really on the side of the house and screening is on the whole thing. Nobody can see it from the road.

Mr. Thomas Utko stated it's a standard Generac **20kw** generator which give-or-take a couple of inches, has a **2** foot by **2** foot end on it and it's **4** feet long. It looks like it's a large fishing cooler and it's very similar in color to the house. It's a sort of a natural, something similar to this sign here. It's a grayish-cream color.

Mr. David Douglas stated there seems to be a differing of opinions as to whether there should be screening.

Mr. Wai Man Chin stated my thing is from the side of the house, from the road, it's all screened in. You're not going to see it. The only time you're going to see it, if you could see it, is you have to drive right in front of the driveway and stare at it.

Mr. David Douglas stated it sounds like the owner is willing to put screening.

Mr. Wai Man Chin stated I just don't see a big deal with it though. That's my opinion.

Ms. Adrian Hunte stated I don't see any undesirable change in the neighborhood and it doesn't seem that it's going to be something that's so visible to the rest of the area and I don't see that it's so substantial. I don't think there's going to be an adverse impact or physical issue in the neighborhood so I don't have an issue with it.

Mr. Charles Heady stated at the work session we were talking about off of Napa Circle there, looking in, this little bit of screening there but the right of the garage doors there where that's where the compressors going to be just back of the ways from there. Whatever you think the rest of the Board is fine with me.

Mr. Wai Man Chin stated you have compressors right on the side of the house. Is this going to be further back than where the compressors are or...

Mr. Charles Heady responded the compressor's further back.

Mr. Thomas Utko responded it's coming back to this side.

Mr. Charles Heady stated quite a ways back.

Mr. Wai Man Chin stated right now, I'm saying the compressor's are further back from the garage or is the generator...

Mr. Thomas Utko responded I believe, and I can bring the plan up and show you or you have the plan that we drew it on – if you walk from the driveway along that side of the house; it's gas meter, electric meter, then there's an open space, then there's the small compressor and then further up is the larger compressor. This would have a profile from that view, much smaller than the compressor that's beyond it and it's also about, where it sits, is also about 2 feet lower than that compressor because the grade goes up and there's a 4-foot high compressor at the far side of the house.

Mr. Wai Man Chin asked did you say air conditioner or condenser?

Mr. Thomas Utko responded condenser, correct.

Mr. Wai Man Chin stated which is larger than this little generator.

Mr. Thomas Utko responded that's correct.

Mr. Wai Man Chin stated and behind – and this generator is behind it, further back.

Mr. Thomas Utko responded no, if you're standing in the driveway you will see the generator in front of the compressor but the compressor is larger than the generator.

Mr. John Klarl stated the compressor is behind the generator.

Mr. Wai Man Chin stated is behind the generator.

Mr. Thomas Utko responded correct.

Mr. Raymond Reber stated I think it's a little crowded in there to try and add screening doesn't seem to make much sense for something like this.

Mr. Wai Man Chin stated I don't see it, but it's up to you.

Mr. Charles Heady stated I make a motion on **case 2013-05** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Charles Heady stated I make a motion on **case 2013-05** an Area Variance for the accessory structure back-up generator in the front yard, SEQRA type II no further compliance required.

Seconded with all in favor saying "aye."

Mr. John Klarl asked Charlie, just for the record, is that motion made with or without screening?

Mr. Charles Heady responded they said without.

Mr. John Klarl stated his motion was without screening.

Mr. David Douglas stated without screening, we're all okay with that. So we approved it without the screening.

Mr. Thomas Utko stated ladies and gentlemen thank you for your time.

Ms. Adrian Hunte stated you're welcome, good evening.

**D. CASE No. 2013-06                      Carolyn Burke on behalf of Almira Simpson for an Area Variance for an existing side yard deck on property located at 37 Tamarack Dr., Cortlandt Manor, NY.**

Mrs. Carolyn Burke stated I'm here requesting a Special Variance for an existing deck. I was in my house **30** years and had no idea there was no permit already on file because it was already there. I only found out when I went to sell the house that it was not listed on the property card. So, I'm asking for this Variance so I can bring the deck up to Code for the new owners.

Mr. Wai Man Chin stated I drove by there. The house was built in **1960** and did not have a deck so you moved in there **30** years now, that's about **1984** right?

Mrs. Carolyn Burke responded right.

Mr. Wai Man Chin asked and the deck was already there?

Mrs. Carolyn Burke responded the deck was there.

Mr. Wai Man Chin asked when you bought it?

Mrs. Carolyn Burke responded right.

Mr. Wai Man Chin stated but the assessor's card did not show a deck. Let me ask you, the deck, where's it coming out from? What's the room that's...

Mrs. Carolyn Burke responded well, there's like an apartment downstairs so there's an entrance off of the deck into the apartment so it's on the side of the house.

Mr. Wai Man Chin stated it's on the side of the house but the deck is up above.

Mrs. Carolyn Burke responded well it's more or less on the ground level.

Mr. Wai Man Chin stated it's on the ground level.

Mrs. Carolyn Burke responded yes.

Mr. Wai Man Chin stated I thought it was a little higher than that.

Mrs. Carolyn Burke responded but we have a basement so naturally it's on the first level.

Mr. Wai Man Chin stated but it looks higher. The existing is **5 foot 9** and the Variance is **4.1**. I don't have a big problem with this from the house it's already pretty close.

Mr. John Mattis stated I've been out there and looked at it. The house sits down quite a bit. You have to stop and look out the window of the car down to even really see that. You hardly see the deck. The property on the right hand side where the deck is, is much higher. There's all kinds of screening in between it. It's quite a ways away and I'm not sure because it's down in that little hollow like do they really even see it unless they're sitting up on their deck which is much more visible than anybody else than this one is and I don't have any concern with this at all.

Ms. Adrian Hunte stated I agree.

Mr. Raymond Reber stated I concur that as a deck it's not a problem the way it's situated however, I do have a problem with Mr. Yates' plans and I would not accept what he says "I certify the deck is in conformance with the Building Code, etc." I've never seen plans for a deck that don't show the most important part and that is the supports and this deck you've admitted is more than **30** years old. I don't know how stable those supports are, whether they're lolly

columns, wooden on concrete. I'd hate to think that we just blatantly approve this on Mr. Yates' statement here and then a new homeowner moves in and a couple of years from now it falls down or something happens. I don't know whether it's something we would refer to DOTS that they have to.

Mr. Ken Hoch stated there's no Building Permit issued yet. They would have to review the plans after the Variance is granted.

Mr. John Mattis asked so we grant the Variance, they submit the plans and then they're checked out and made sure everything is in conformance with current standards and everything else?

Mr. Ken Hoch responded right.

Mr. Wai Man Chin stated he also certifies the deck's in conformance with the New York State Building Code both the structure and the footings are structurally sound.

Mr. John Mattis stated that's for the Town to determine.

Mr. Raymond Reber stated he says that but he doesn't even show them. In a plan, don't you think supports are usually critical?

Mr. Wai Man Chin stated well he does show the post where they are.

Mr. John Mattis stated I think that's irrelevant to us because the Town's going to take care of it one way or the other.

Mr. Wai Man Chin stated all I'm saying is...

Mr. John Mattis stated but it is certainly a concern.

Mr. Wai Man Chin stated this is up to Code Enforcement to check it out.

Mr. Raymond Reber stated that's all I'm saying. They just can't accept this statement and I think it's worthy of following up and checking.

Mr. Wai Man Chin stated I know Mr. Gary Yates for about **35** years or more and I...

Mr. John Mattis asked why are we debating this? The Town is going to issue a Building Permit. They're going to check. They're going to make sure everything's okay.

Mr. David Douglas stated I agree with Mr. Mattis.

Ms. Adrian Hunte asked is there anyone in the audience who wishes to be heard? Hearing none.

Mr. Wai Man Chin stated I make a motion on **case 2013-06** to close the public hearing.



Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Wai Man Chin stated I make a motion on **case 2013-06** to grant the Variance an Area Variance from a side yard from the required **10** feet down to **5.9**. This is a SEQRA type II, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mrs. Carolyn Burke responded thank you.

Mr. John Klarl asked did you have a closing already?

Mrs. Carolyn Burke responded yes.

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### **ADJOURNMENT**

Mr. John Mattis stated I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated meeting is adjourned.

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**NEXT MEETING DATE:  
WEDNESDAY MARCH 20, 2013**