

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 19th, 2014*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

*

*

*

ADOPTION OF MEETING MINUTES FOR JAN. 15, 2014

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

Mr. David Douglas stated the minutes are adopted.

*

*

*

ADJOURNED PUBLIC HEARINGS:

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

Mr. David Douglas stated I think that's going to get adjourned until March.

Mr. Ken Hoch stated yes, we should adjourn to March.

Mr. David Douglas stated I assume nobody wants to be heard on that. Someone wants to make a motion to adjourn it?

So moved with all in favor saying "aye."

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

B. 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 asked Mr. Klarl could you fill us in on that?

Mr. John Klarl responded as we talked about before, this application has a companion application on the Planning Board agenda. Mr. Mattis is right, last night I looked at my file and the Planning Board meeting held on February 4th – the Planning Board adjourned this to April and that will obviously be the first week of April. We discussed at our work session last night that we would adjourn it to our April meeting which would follow two weeks after the Planning Board.

Mr. David Douglas asked does the public want to be heard on this?

Mr. Raymond Reber responded if not, I make a motion on **case 18-09** to adjourn it to the April meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #18-09** is adjourned until April.

C. CASE No. 2013-22 Frontier Development for Area Variances for the side yard setback, front yard parking setback, landscaping for parking area, parking spaces, and signage on property located at **3025 E Main St., Cortlandt Manor.**

Mr. David Douglas asked Mr. Klarl could you fill us in on that? Okay, we have somebody here.

Mr. Joseph Modafferi good evening Chairman Douglas, members of the Board, my name is Joseph Modafferi with John Meyer Consulting. If you recall we were here a few months back similar to the project we just heard about. We were in front of you to present the Variances that we were requesting and then went back to the Planning Board to finalize our approvals with the

Planning Board. We received that I think last month. Just to go over quickly the Variances that we were requesting. It was a side yard Variance where **30** feet is required. We're proposing **23**. A parking Variance where **99** was required, we're proposing **79**. Interior landscape coverage required is **5%** and we're providing **3.3** and we just note that there is no current interior landscaping on this site right now. And, a front yard landscape buffer where **25** feet is required, we're providing **7** which is a reduction of the existing non-conformity of **5** and then there are **2** sign Variances for the front of the building, the north elevation of both buildings. We're requesting roughly – one has a maximum permitted of **80** square feet and we're proposing **160** and the other one has a maximum permitted of **58.33**, we're proposing **116.33**. Last time we were here we had proposed signs on the facades of the buildings that faced each other. The Board had indicated a positive recommendation to the Variances that I went over with the exception of that one so the packages that were submitted to you for tonight's meeting removed those signs from the interior for the building. We're no longer requesting that Variance. I do have the boards with me if anybody has any questions that they want to go through but...

Mr. John Klarl stated and the Planning Board gave you actually approval this month and on February 4th you go conditional approval. One of the big conditions was subject to obtaining Variances from this Board.

Mr. Joseph Modafferi responded that's correct.

Mr. John Mattis stated yes, we had gone over these – actually we had some problems with the east and west signage which was taken out. We didn't have a problem with the front of the building, the north façade because we felt that was good to give identity to those since the building sits back a little bit. The landscaping is a problem and the front setbacks because Route 6 has been widened and it's very hard on those properties to get the proper setbacks. We had a little concern with the parking spaces, less than required. There was a parking study, they're shared stores and the proposed, as it was explained to us, the proposed tenants are all comfortable with the number of spaces and obviously if you can't park there you're not going to do business there so they're comfortable with that.

Mr. Joseph Modafferi responded that's correct.

Mr. John Mattis stated it looks like we don't have a problem with any of these.

Mr. Joseph Modafferi stated thank you.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin responded no it's fine.

Mr. David Douglas asked anybody from the public have any comments?

Mr. John Mattis stated I move that we close **case #2013-22**.

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 the following Variances: the side yard from a required **30** feet down to **23** feet, the front yard parking setback from **25** feet to **7** feet, the parking area landscaping from a required **5%** to **3.3%**, the parking spaces from **99** to a proposed **79** and for the signage the north façade on building "A" which has **96** linear feet; **80** square feet is allowed and they proposed **160** and the north façade on building "B" which has **58.33** square feet – of linear footage which allows **58.33** square foot and they're proposing **116.4** square feet. This is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated those Variances are granted.

Mr. Joseph Modafferi stated thank you. Have a wonderful evening.

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

Mr. David Douglas stated it's my understanding, Mr. Hoch, that the applicant has requested an adjournment?

Mr. Ken Hoch responded yes, I received an email from Rick Turner, Ms. Royce's attorney stating that due to the weather they haven't been able to accomplish the work that needs to be done to remove the driveway from the neighbor's property so he asked that we adjourn it to March.

Mr. Wai Man Chin stated I make a motion that we adjourn **case 2013-29** to March.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-29** is adjourned until March.

E. CASE No. 2013-31 William Caffrey petition to re-open this case for an Area Variance for the side yard setback for a deck on property located at **103 4th St., Verplanck.**

Mr. David Douglas stated he'd requested this be adjourned until March. Someone...

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

Mr. David Douglas stated **case #2013-31** is adjourned to March per the request of the applicant.

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

Ms. Sharon Garb presented herself.

Ms. Adrian Hunte stated good evening Ms. Garb. When we met last, there was discussion that we would put the matter over to give you and the contractors, and the neighbors an opportunity to meet. I understand that that meeting has taken place and you've come to some sort of agreement in principle.

Ms. Sharon Garb responded I guess we're going to be planting trees – the contractors are going to be planting trees in agreement with the neighbor – the complainant, as soon as the weather gets applicable. Not doable right now.

Ms. Adrian Hunte stated of course the agreements naturally have to comply with the requirements and Mr. Hoch has met with you as well.

Ms. Sharon Garb stated Ken and the Town Engineer were both there. We all met together.

Ms. Adrian Hunte stated I think at the work session we discussed that we would put the matter over until...

Mr. Ken Hoch stated I told Mr. and Mrs. Garb that I'd be looking for a plan; what kind of trees, how many, that I can then review with Arty D'Angelo of our Engineering Department, but in principle, the neighbors, the Garbs, the contractors were all in agreement at the site. Part of the area where the trees would go has to be cleaned up. There are a lot of stumps and some debris that would take place and we'd come to an agreement on the trees which we may have to add one or two depending on what it looks like in the spring and summer if there needs to be anything added to it.

Ms. Adrian Hunte asked any other comments?

Mr. Wai Man Chin responded we just need that plan before we can vote on this thing.

Mr. Ken Hoch stated I think we can adjourn this to March and hopefully the Garb's and I can get together and we'll put a plan together.

Mr. Raymond Reber stated within the regulation that says “such screening shall substantially conceal in the judgment of the Zoning Board of Appeals all operations of the building supply yard, etc, etc.” As we discussed last month, because of the terrain and the nature of the adjacent houses truly conceal is kind of difficult so that’s why it went back to the neighbors and the owner to work up a plan and what I think we need since this is a grey area and we don’t want to have this come back a year from now and somebody says “well, it’s not what I agreed to.” I think not only should we have a plan but we should have a statement from the neighbors signing off on that plan for the file. So, that should be an acknowledgement that they accept that what has been approved meets conceptually in their minds this part of the Ordinance, because, like I say, we ourselves have already said that it’s a difficult situation and you can only go so far.

Ms. Adrian Hunte asked any other comments? On that **case #2013-33...**

Mr. Wai Man Chin asked anybody in the audience?

Ms. Adrian Hunte stated **case #2013-33** for Sharon Garb for a Special Permit to establish and maintain appropriate screening for an existing contractor’s yard on property located at 2201 Crompond Road, Cortlandt Manor, I make a motion that we adjourn the matter to the March 2014 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Ms. Sharon Garb asked could I just know the date of the March meeting please?

Mr. John Mattis responded the 19th.

Ms. Sharon Garb stated thank you very much.

G. CASE No. 2013-34 Jesse Stackhouse for a Special Permit for an Accessory Apartment on property located at **3 Hill & Dale Rd., Cortlandt Manor.**

Mr. Jesse Stackhouse stated 3 Hill & Dale Road, the Town of Cortlandt. I guess from the adjournment from the last meeting, the Board wanted my architect to put the footage on the floor plan. I believe that was the problem.

Mr. John Mattis responded yes, and we have a detailed breakdown from him. The entire building has **1,785** square feet of habitable square feet. The principle dwelling has **1,263**. The apartment is **522**. This meets the maximum size of **600** square feet under – but it is slightly over the **25%**, it’s **29.2%**. In our discussion, at the meeting, at the work session on Monday since it’s only **522** square feet it’s not excessively large we felt that that would be appropriate to approve this.

Mr. Wai Man Chin stated I have no problem with this, **29%** is within reasonable.

Mr. James Seirmarco stated I concur.

Ms. Adrian Hunte stated I agree.

Mr. John Mattis asked is there anyone in the audience who would like to speak? I move that we close **case #2013-34**.

Seconded with all in favor saying "aye."

Mr. John Mattis stated I move that we approve a Special Permit for an accessory apartment and this is a type II SEQRA with no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Special Permit is granted.

Ms. Jesse Stackhouse stated thank you.

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

Ms. Miriam Arrighi stated good evening.

Mr. Ken Hoch stated Miriam there's a problem with this in that the architect submitted a drawing but he didn't submit statistics on the square footage. I had left him a message but I didn't hear back from him. I've asked the Board to adjourn this so that the architect can supply that square footage.

Mr. Wai Man Chin stated without the square footage we can't make a determination right now and we need square footage like in the last previous case. We had a certain square footage for the whole building plus what the apartment was that way we got percentage and also the square footage. So the architect has to indicate that to us so we can review it.

Ms. Miriam Arrighi stated okay.

Mr. Wai Man Chin stated what we do is maybe adjourn this until next month until we get that from him.

Mr. John Mattis stated and Mr. Hoch will work that out with him.

Mr. Wai Man Chin asked anybody in the audience on this? I'm going to make a motion on case **2013-35** to adjourn to the March meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-35** is adjourned to March.

Ms. Miriam Arrighi stated thank you.

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

Mr. John Sullivan stated good evening Mr. Chairman and members of the Board, John Sullivan appearing the property owner Rita Weeks. Mr. Chairman I had submitted a letter dated February 14th to the Board, an additional letter dated February 17th to the Board. This evening it would just be my request that in order to allow the Board some time to review the material that was just recently submitted, that this matter be put over until the next meeting in March for further proceedings.

Mr. David Douglas stated as we discussed at yesterday's work session, we just got those materials. We will review them. We're not prepared to discuss them tonight having just gotten them last night.

Mr. John Sullivan stated I would ask that they be made part of the record.

Mr. David Douglas stated and they are now part of the record.

Mr. John Sullivan stated thank you.

Mr. David Douglas asked anybody else want to be heard on this case this month? We're going to explain what's going to happen: we're not closing this. This is going to be adjourned until next month and the hearing will be continued but anybody who wants to talk tonight that's – we're all ears.

Mr. Raymond Reber stated if not then, as explained, we need time to review the material that Mr. Sullivan has presented us so I propose that we adjourn **case 2013-37** to the March meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-37** is adjourned to March.

J. CASE No. 2014-01 **Edward Merriam** for Area Variances for the front yard setback from an allowed 50 feet down to 35.5 feet, the side yard setback from an allowed 16.4 feet down to 8.4 feet, maximum building coverage from an allowed 1,625 square feet up to 1,797 square feet to allow construction of front and side porches on property located at **18 MacArthur Blvd., Cortlandt Manor.**

Mr. David Douglas stated as we discussed at the work session...

Mr. Ken Hoch stated I haven't heard from Mr. Merriam. I can contact him...

Mr. David Douglas stated you contact him, tell him that if he doesn't come next month it'll be deemed withdrawn.

Mr. John Klarl stated abandoned.

Mr. David Douglas stated abandoned, sorry.

Ms. Adrian Hunte asked does anybody want to be heard on this, audience?

Mr. James Seirmarco stated I make a motion that we adjourn this until the next meeting for the stipulation that Ken will call and make a phone call informing him that if they do not show up at the next meeting, they'll be deemed abandoned.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2014-01** is adjourned to March.

*

*

*

NEW PUBLIC HEARING:

A. CASE NO. 2014-02 **Edward Rice** for renewal of an Accessory Apartment Special Permit on property located at **256 Sprout Brook Rd., Cortlandt Manor.**

Mr. David Douglas stated Mr. Rice appeared at the work session last night and he gave us a statement. Do we have...

Mr. John Klarl stated we don't have it in front of us but...

Mr. Ken Hoch stated Mr. Rice gave us this statement last night: "this will serve to confirm that I will be out of the country during the Zoning Board of Appeals public hearing tonight," and he is submitting this written application as his presentation to the Zoning Board of Appeals request approval of the requested Special Permit.

Ms. Adrian Hunte stated based on our discussion we had at the work session that we've decided that this should be approved. On **case #2014-02** for Edward Rice for a Special Permit for an accessory apartment located at 256 Sprout Brook Road, Cortlandt Manor, NY 10567 I make a motion that we renew the accessory apartment Special Permit. This is a SEQRA type II action, no further compliance required.

Mr. David Douglas stated I just want to not that there have been changes of the Special Permit.

Ms. Adrian Hunte stated and there are no changes in Permit or to the house or to the apartment since the Permit was initially granted **1492**, renewed in **case 8-98** but apparently we have a new owner therefore there had to be a Special Permit issued.

Mr. John Mattis stated nor have we had any complaints or anything from any neighbors which is one of the things we look at.

Mr. John Klarl stated generally we look and see if there's been any substantial complaints.

Mr. Wai Man Chin asked anybody in the audience?

Ms. Adrian Hunte stated I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Ms. Adrian Hunte stated I make a motion on **case 2014-02** for a Special Permit for an accessory apartment that we grant the Special Permit and that this is a SEQRA type II action, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the application is granted.

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

Mr. Victor Conte stated good evening Chairman Douglas and the Board. I'm looking to get approval for a Building Permit on a two-family which I'm converting into a one-family and a one-family to improve and renovate.

Mr. John Mattis stated this is a pre-existing, non-conforming and generally no changes can be made except to bring it into conformity or closer to conformity. We've looked at both buildings. The first one is a two-family you're converting to a one-family, that's acceptable because it's bringing it closer to conformity. The second one, if you look at the Code where it talks about enlargement or alteration of non-conformities, you're still keeping that as a one unit building and it says "no existing building designed, arranged or intended for or devoted to such a use not permitted under the regulations" which is not now but it's pre-existing "in which this building is located shall be enlarged, extended, reconstructed, structurally altered or moved unless such use has changed to a use permitted under the regulations specified by this chapter. Work may be done, ordinary repairs, or repairs or replacements of non-bearing walls, fixtures, wiring or plumbing." You're basically gutting this and starting over.

Mr. Victor Conte stated it was [inaudible].

Mr. John Mattis stated unfortunately you can repair but you can't take the walls out and change where what walls are located. You can't do all of the things that you wanted to do. You wanted to really gut it and really change where – what rooms and everything else. I know you're making it better but in a non-conforming situation the Code is very specific that you can't change any of the non-bearing walls. You can't do most of the things that you're proposing to do to that structure.

Mr. Victor Conte stated I'm not increasing, I'm not encroaching...

Mr. John Mattis stated we understand that but I think I read – it's very specific what you can do and it's unfortunate that we have no leeway to allow you to do that. You can repair everything that's falling apart and you can put in new cabinets. You can put in new sink. You can put in a new refrigerator, all of that but you can't move walls around and change where rooms are located it's just not permitted in the Code whatsoever and we have no authority to override that.

Mr. Victor Conte stated I can't accept that. I bought this as a two-structured building. I'm making the place better by changing the two-family to one. What it used to be before is a three-family, unaccepted but it used to be – my neighbor told me it was always cops there because there was problems. This is going to be much improved. I bought this as a three-family. I bought this as a two structures – I'm not going to walk away from it – I'm not going to knock it down.

Mr. David Douglas stated let me explain what the rationale is: the idea is that the only reason you're allowed to have the two houses on that lot is because they've been there, they pre-exist the zoning.

Mr. Victor Conte stated I understand.

Mr. David Douglas stated and the zoning has since changed and you're not allowed, under the current zoning, to have two homes on that one lot so what the Town wants and it's not just this

Town it's every town is that non-conforming uses; uses that used to be permitted that aren't permitted anymore that they gradually disappear. It's not fair to tell people they can't have what already exists before the Code but the idea is the Town wants gradually for the non-conforming uses to be altered so that they come into conformity so that you're not allowed to expand things and repair things beyond to agree what Mr. Mattis mentioned because the Town would like this to be a one – there wants to be one house on this lot. So, you're permitted to keep the two houses but only because it's pre-existing the Code but you can't make those substantial improvements.

Mr. Victor Conte stated I consider it as a repair. I mean I just don't understand.

Mr. Wai Man Chin stated once you do anything structural it's not a repair.

Mr. Victor Conte stated it's not structural.

Mr. Wai Man Chin stated no, no, you're not listening to me. Once you start removing walls, that's structural it automatically takes away the non-conformity.

Mr. Victor Conte asked what am I supposed to do now?

Mr. Wai Man Chin responded let me finish.

Mr. Raymond Reber stated you, yourself, you're backing away but you yourself said several times "I'm improving it." That's exactly what the Town says you can't do. You can keep it as is. You can replace a broken window. You can replace a worn out or broken cabinet or an old refrigerator but whatever has been there, the type of cottage that is, has to stay the way it is.

Mr. Wai Man Chin stated let me say one more thing. A while back, a couple of years ago, there was a gentleman on Watch Hill Road who took down a structure, an accessory apartment. He took it down and he wanted to rebuild it again. Once he took it down he lost it and we couldn't do anything about it. I mean, he took it totally down to the foundation.

Mr. Raymond Reber stated for the same reason; he said structurally it had become unsound...

Mr. Wai Man Chin stated he thought that he could rebuild it and he could not rebuild it no more. I'm just saying if you took this down now you're not going to be able to have it back.

Mr. Victor Conte stated I understand that but this is not down. The outside wall...

Mr. Wai Man Chin stated you can't change the structures.

Mr. John Mattis stated what I read to you in the Code basically, you can leave the walls where they are. You can put in new plaster board if you have, you can do all of that but once you start moving walls around and things like that it is not allowed according to the Code and we're not

giving any leeway to overrule that. We just can't do it. I understand what you're trying to do and it would make it much nicer but we have no authority to approve that under the Code.

Mr. Victor Conte asked so you want me to put back the wall just the way they were?

Mr. Raymond Reber responded yes.

Mr. John Mattis asked have you already begun doing this?

Mr. Victor Conte responded it's half – pretty much, yes.

Mr. John Mattis asked did you get a Building Permit?

Mr. Victor Conte responded no, just the outside – I bought it half-gutted.

Mr. Raymond Reber stated the point is it has to be put back the way it was.

Mr. John Mattis stated and we have no authority to say anything but that. We can't vary that.

Mr. Victor Conte stated I understand the law but what is the purpose is not to make things better ...

Mr. David Douglas responded no, no this is what I said. The purpose is the Town wants it to go away.

Mr. Victor Conte stated I'm no – I can't afford...

Mr. David Douglas stated I'm not saying – right, and that's why you're allowed to keep it. That's what it is, is that because of trying to be fair you're allowed to keep the non-conforming use that's there but you can't improve upon it. You can't enlarge it. You can't expand it.

Mr. Victor Conte stated but you said a lot of things that I haven't done. I'm not enlarging...

Mr. John Mattis stated but you're moving the walls around.

Mr. Wai Man Chin stated once you change walls that's already a no-no. You're not listening. First of all you bought the property you should have known what was happening on here before you actually bought the property saying if it's a non-conformity that I can't do anything to it except for repair it.

Mr. Victor Conte stated when I bought it I checked the records, it said three unit, three-family.

Mr. James Seirmarco stated right. That's absolutely correct.

Mr. Wai Man Chin stated and also it's a non-conformity...

Mr. Raymond Reber stated and you can keep it just the way it is.

Mr. James Seirmarco stated you can have three families there if you'd like.

Mr. Wai Man Chin stated it's a non-conformity. You can't change it. Most places only have one house per lot.

Mr. Victor Conte stated I take offense to it. I don't accept it.

Mr. David Douglas stated we don't write this Code. This is given to us by the Town Board.

Mr. Victor Conte stated it's up to you to interpret it. It's up to you to make...

Mr. John Mattis stated it's very clear. It's black and white and I read it to you. It's very clear. The Town Board does not give us the authority. You can go in front of the Town Board and ask them to change the Code but we have to, by law, act on the Code that's given to us. We're allowed to give Variances for certain things but in this case it says we cannot do it. I'd like to make it look better but we just have no authority to do it. I'm sorry.

Mr. Raymond Reber stated and there's a lot of precedent, not only in this town but in many municipalities and the most extreme one is what Mr. Chin said. This person just wanted to replace what was there. He thought the best way was to just take it down and rebuild. Nope, he lost it.

Mr. Wai Man Chin stated he lost it.

Mr. James Seirmarco asked let me ask you a question: why can't you make the improvements of the existing wall structures, the load-bearing walls, the existing room dividing, make the improvements to the wall that you feel comfortable with, change the wall coverings, change all the things that are in there right now without moving – what is your goal for moving all the walls?

Mr. Victor Conte responded this is a cottage. It's a self-supporting room structure – the walls have to go back to the same place -- maintain the same wall because – some of the walls – it used to actually be a three bedrooms and now it's really – one room had nothing, I shouldn't say it was a bedroom so I was making it into two nice rooms and open area for the living room, kitchen...

Mr. John Mattis asked did you purchase this recently?

Mr. Victor Conte responded I purchased it last fall.

Mr. John Mattis asked have you done any work to it at all?

Mr. Victor Conte responded just cleaning it up that's all.

Mr. John Mattis asked so it already been gutted by the prior owner which they really can't do without a permit. Unfortunately you're stuck with that.

Mr. Victor Conte stated so help me.

Mr. John Mattis stated we can't. We can't. We have to go by the Code. The Code says we can't.

Mr. Victor Conte asked who do I appeal this to?

Mr. Raymond Reber stated obviously since this is prior to zoning, this situation, that cottage has been there for many, many years, obviously it was acceptable for many years, previous owners didn't tear it down or give up on it. All we're saying is you can put it back to use, just fix it, don't improve it, fix it, that you can do and we have no flexibility beyond that. You want to appeal to the Town Board you can but that requires them to agree to change the Code which I doubt – it's not going to happen but that's your prerogative.

Mr. John Mattis stated we can sympathize with you and I do but we can't do anything about it.

Mr. Wai Man Chin stated right now if you sat with Mr. Hoch on this thing and he can tell you exactly what you can fix up – am I correct Ken? And, then you can do that but you just can't move things around. You move things around you're going to lose it.

Mr. Victor Conte stated well, the only thing I was moving was the bathroom...

Ms. Adrian Hunte stated Mr. Conte, the plan shows that you're taking down walls to enlarge certain rooms and remove others, unfortunately that is not allowed unless you can show that the place is really falling apart and is unsafe then – and all you're can do is to repair.

Mr. Wai Man Chin stated all you do is make repairs.

Mr. John Mattis stated the walls have to go back where they were. As I said, you put in new cabinets. You put in new appliances, things like that but you can't change the dimensions of the rooms or anything like that; move a bathroom, make it larger. You're just not allowed to do that.

Mr. John Klarl stated new doors or windows, we don't allow the insertion of a new door or new window...

Mr. Wai Man Chin stated you can't make them larger. You can replace the doors.

Mr. John Klarl stated you can replace the door but you can't replace a new setting or a window in a new setting. We've had those cases.

Mr. James Seirmarco stated yes, people have come and asked we want to take this window and close it and put it over here, open – we can't permit that.

Mr. John Klarl stated or even the level of the roof. We had people who wanted to push the roof a little bit.

Ms. Adrian Hunte stated you'd have to appeal to the Town Board to see about changing the Code, as to the likelihood of that we don't know but that's the procedure.

Mr. John Mattis stated we're bound by the Code and they write the Code.

Mr. Victor Conte stated it seems like it's an onerous Code there for penalizing somebody who's trying to do something better.

Mr. David Douglas stated again, the reasoning behind it is because this is a use that's not permitted at all. There's nobody else would be allowed to have these multiple houses on a single lot except for people in a situation like you are where it's been there for such a long time but it pre-exists the Code change. It's not a penalty. One, from a different perspective you're getting something that nobody else can get.

Mr. Victor Conte stated I paid for that, the value...

Mr. David Douglas stated right, that's what you paid for and that's what you're getting but you're not getting – you can't improve upon it and expand it.

Mr. Wai Man Chin stated whoever did your – they should have told you that this is a non-conformity that you can't make any changes to it.

Mr. Victor Conte stated let me check with the Town and find out what it's...

Mr. Wai Man Chin responded no, all they do is tell you it's non-conformity that somebody's got to tell you – a legal person's got to tell you why you can't change it. You can't do anything to it. That's the way it was, is indicated as a non-conformity. When you bought that property, it's indicating two houses on one lot which is substandard nowadays. We just can't make – you have it now, fine but once you change it, like I said the person on Watch Hill Road he tore down a cottage, accessory building and he thought he was just going to rebuild it. He totally lost it.

Mr. Victor Conte stated I understand, he went beyond...

Mr. Wai Man Chin stated it doesn't matter. He lost it.

Mr. David Douglas stated what I suggest is you sit down with Mr. Hoch and talk through what it is you can do and what you can't do. I think that would be the most fruitful approach. What I suggest is we'll adjourn this for another month. In the interim, you speak with Mr. Hoch and see what is allowed and what's not allowed.

Mr. John Klarl asked you have an architect or a professional you're working with?

Mr. Victor Conte responded yes, he has the plan...

Mr. John Mattis stated Jim Cronin.

Mr. John Klarl stated he's not an architect.

Mr. Wai Man Chin stated he's an engineer.

Mr. Victor Conte stated I submitted a plan so...

Mr. Wai Man Chin stated we know.

Mr. David Douglas stated why don't we do that? We'll adjourn it and you meet with Mr. Hoch and we'll see where we are next month.

Mr. Victor Conte stated all right, thank you very much.

Mr. John Mattis asked is there anyone in the audience that would like to speak regarding this case? I move that **case #2014-03** that we adjourn it to the March 19th meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2014-03** is adjourned until March.

C. CASE NO. 2014-04 **SBA 2012 TC Assets, LLC** for a Special Permit for recertification of a wireless telecommunications facility with an amendment to allow removal of decorative, non-structural faux tree branches on premises located at **51 Scenic Drive, Cortlandt Manor.**

Mr. Anthony Morando stated good evening. I'm an attorney with the law firm of Cudey and Fader and I'm here on behalf of SBA. As the Chairman just indicated, we're here first to recertify our existing Special Use Permit for the existing facility at 51 Scenic Drive. As part of that recertification, we're also here to discuss the potential of a modification to address the recent issues associated with the faux branching that's at the top of that tower or was at the top of that tower, because it's not currently there now as I'm sure many of you have seen. To understand our request I'll just go through a quick background on the existing facility and permit history.

The underlying property, as you know, is owned by the Cortlandt Consolidated Water District and as of **2012** SBA is the owner of the tower and is also the holder of the Special Use permit. In **2004** the Town Board issued this Special Use Permit for this facility. It's not clear whether faux branching was a condition of that approval but nonetheless, in any event, the tower was built with it and it stayed up there for some time. As of today, there's **5** carriers on the facility. All the equipment is at grade with an existing fence compound and the site also, as I said, contains the water tank facility directly next to it. As I said, SBA has acquired this in **2012** and coincidentally or unfortunately, a violation was issued very soon thereafter them acquiring it. The violation was issued to deal with these non-structural decorative components of the facility but essentially it was a Building Code violation that SBA had worked with the Code Enforcement division to deal with it at the time with the understanding that we'd come back here when we applied for our recertification to discuss how to proceed with the existing or previously existing faux branching. To address the Building Code violation, we did submit information from the manufacturer of the tower, a professional engineering reports and data and we conducted a field inspection, again, confirming that the branching actually should be taken down due to the attachments weren't sufficient. After, again, discussions with the Code Enforcement office we agreed to remove that and proceed here. It's my understanding the tower's currently Code-compliant from a Building Code perspective and safety concerns have been alleviated. There hasn't been, as far as I can see, a tremendous outcry as far as what we've heard in support of the faux branching which is usually the case in a lot of situations. Now, coming full circle, again we're here for our recertification and to discuss this change to the existing conditions. We're here namely to mention a few things: first, that given the site and the backdrop, the existing environment there, we don't believe that the re-branching is necessary from a visibility standpoint. We do believe the brown color of the tower is effective in screening the visibility of the tower but we think that the lack of branches alleviates any potential concern for that in the future particularly given that no manufacturer will certify at **100%** that it'll never happen again. I know from my own experience, monopine-style towers are traditionally in a more setback, deep wooded area so that if a branch was to fall down, unfortunate circumstance, nobody would be there to see or hear it, kind of one of those exocentric: if you're in the woods and the tree falls: does it really fall? At this point, I would defer to the Board for both issues on the table: to discuss it and have any comments or questions.

Mr. Raymond Reber asked if the engineers were not able to design appropriate attachments for the evergreens, why should I assume that the rest of it is designed adequately?

Mr. Anthony Morando responded like I said, it's been certified to be – it's structurally sufficient as far as the tower goes. What we're dealing with is the actual attachments.

Mr. Raymond Reber stated but it's a component and it failed.

Mr. Anthony Morando responded again, we've went through this with the engineering, with the Code Enforcement Department...

Mr. Raymond Reber asked Code Enforcement knows how to design a tower?

Mr. Anthony Morando responded no, but we've certified the...

Mr. Raymond Reber stated I'm just busting chops. I'm going to miss those. That was an artistic feature of the neighborhood. Is there an alternative? Can we put flowers or something else on it?

Mr. Anthony Morando responded municipalities have approved those and eventually said: please take those down and it had nothing to do with structural issues.

Mr. David Douglas stated this is the ugliest – with the branches, the ugliest structure the entire Town -- I drive past it every single day to come home and I curse it every single time I see it and anything you can do to make it less – it's up on the hill and...

Mr. Anthony Morando stated they're not there now.

Mr. David Douglas stated no, they're gone but – and I know you said the brown color camouflages it, sadly, nothing can camouflage it but it's an improvement.

Mr. Raymond Reber stated silver is what you need to camouflage...

Mr. Anthony Morando stated it is a tower but I understand.

Mr. James Seirmarco asked all the branches are down?

Mr. Anthony Morando responded yes.

Mr. Raymond Reber asked if there's no comments, I make a motion on case...

Mr. Dale Novak stated I'm an attorney, I represent Nida Associates, the neighboring landlord – or whoever you want to call the guy under the tower. When they first came here they, as part of their bargain with you, agreed to mitigate some of the look of that tower and for years it was an ugly tower albeit, it looks better than it does today. Looking up there now, they changed it from an ugly tree to a Christmas tree looking thing of antennas all over the place. I think what has really happened is that they have sold so much space on that antenna, or the pole that they have no more room to put it back like it was. It was all about money and selling space and selling antennas that they have so many of them up there now that there's no more room left. Their bargain with you was that they were going to mitigate the look of that and now they're stepping back from that and saying "leave it as an ugly tower sitting there," but that's not what the landlord or Nida Associates wants.

Mr. Raymond Reber stated trouble is that federal regulations mandate that when a tower's approved every effort should be made to co-locate and so what they did by agreeing to have co-location on that tower follows government mandates otherwise we'd have five towers on the hill

instead of one. We have no control over that.

Mr. James Seirmarco stated our local statute requires that also.

Mr. Dale Novak stated I sat on the Zoning Board in Mount Pleasant for **15** years. I'm well aware of what the Code requires and that the FCC has mandated that they control where those towers go and I realize that it's out of your hands to a great extent but the faux branches on that is not out of your hands. You can make them put them back.

Mr. Raymond Reber stated I think the consensus, I know myself the people I've always talked to is they don't want them back. I think if you let the public decide, they'd rather not see them.

Mr. Dale Novak stated we're part of the public and it's our decision or our stance is that it looks better with them than it does without them.

Mr. Wai Man Chin stated I have a pole right around the corner from me off of 129 and I did not want those branches on that pole when they came in front of us. I'm sure everybody around that area preferred just a single pole with the antennas on it. I drive by there every day, like Mr. Douglas drives by that one, and I don't even realize the pole's there now.

Mr. Dale Novak stated maybe it's looking up at it every day, we see it and...

Mr. Wai Man Chin stated I see mine every day too, twice a day, three times a day. I go in-and-out. As soon as I turn the corner, it's right there, right on 129 and Mount Airy Road.

Mr. James Seirmarco stated I think what's happening here...

Mr. Wai Man Chin stated it's tall, very tall. I wish they would cohabitate on that one also.

Mr. John Klarl stated collocate.

Mr. Dale Novak stated it looks better from a distance. It's easier to say "I just won't look at it" but when you're right under it...

Mr. Wai Man Chin stated I'm right under it. I'm right there. I'm right around the corner. As soon as I come out it's right there.

Mr. John Klarl asked so the position your client has is add the branches back on?

Mr. Dale Novak responded yes.

Mr. John Mattis stated what we're discussing right now is very subjective and subjectively I think it looks better without them but that's my opinion. You're representing your firm but there are a lot of apartments around there and everything else and not one person has written a letter,

not one person has come out. We have a whole list of people...

Mr. Dale Novak stated I'm here representing that owner or those apartments.

Mr. John Mattis stated the owner, but we have a whole long list of hundreds of people that were sent letters notifying them of this public hearing and not one showed up and we have no letters from anybody. You're a party of one.

Mr. Dale Novak stated okay, well, it's our stance is that we would like them back.

Mr. John Mattis stated I understand.

Mr. John Klarl stated noted.

Ms. Adrian Hunte stated duly noted.

Mr. Raymond Reber asked anyone else want to speak on **case 2014-04**? If not, I make a motion that we close the public hearing for **case 2014-04**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on **case #2014-04** SBA, TC Assets, LLC for a Special Permit to recertify the wireless telecommunication facility and at the same time amend that Special Permit to allow removal of the decorative non-structural faux tree branches, located at 51 Scenic Drive on the Town's water district property in Croton-On-Hudson, I move that we grant that Permit. This is a SEQRA type II, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

*

*

*

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.

*

*

*

**NEXT MEETING DATE:
WEDNESDAY, MAR. 19, 2014**