

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, June 20, 2007. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

John Mattis, Chairman and other members of the Board were in attendance as follows:

Raymond A. Reber  
Richard Becker  
David Douglas  
Wai Man Chin, Vice Chairman  
Charles P. Heady, Jr.

Absent: James Seirmarco

Also Present: John J. Klarl, Deputy Town Attorney  
James Flandreau, Code Enforcement

**ADOPTION OF MINUTES: 4/18/07**

Mr. Heady made a motion to adopt the minutes for 4/18/07 seconded by Mr. Chin with all voting "aye."

**ADJOURNED PUBLIC HEARINGS**

CASE NO. 06-07 PATRICK & HILDA SCELZA Interpretation on the merger of two parcels or Area Variance to subdivide the two parcels on the property located at 2010 Crompond Rd., Cortlandt Manor.

Mr. William Zutt, Esq. appeared before the Board. He stated at the last meeting I had asked you to hold this case over so Mr. and Mrs. Scelza could consider their options, and so forth. I have had the advantage of some additional research as well, and I have provided the Board with a letter June 11<sup>th</sup>, and I ask that it be put into the record. I won't read the entire letter, but in substance it cites a case called Blue Ridge Gardens against the Town of Cortlandt. In that particular case the court was confirming a very, very similar situation involving two nonconforming lots, which formed an L configuration, and the property owner in that case sought to develop on both lots, and was denied permission to do so on the grounds that the lots had merged, and on appeal the courts stated they were not adjoining parcels, and we believe we have the same situation here, and for that reason we would ask you to rule that these are not indeed adjoining lots, and if that is true then obviously they cannot merge. If for some reason you would find that the case with Blue Ridge Gardens didn't apply, we still believe that under your merger statute as written merger doesn't occur, because if it did, you still wouldn't have a lot that who's width was conforming, and that's the test. Beyond that we believe that the

granting of variances for these lots would be appropriate. We believe that the benefit to the property owner doesn't exceed any detriment to the neighborhood. We've given you a site plan showing the conforming front, rear, and side yard set backs. So for that reason we would ask you to grant our application.

Mr. Douglas stated I believe at the last meeting our counsel explained the theory that there was a merger here under our code. I don't see anything in the Blue Ridge Garden case that personally makes me change my mind. I can't speak for the other members of the Board, but I don't see where the similarities would change my mind.

Mr. Zutt stated I would just point out Mr. Douglas, with due respect, you were not aware of the Blue Ridge Garden case at the last meeting, nor for that matter was I, but the holding in the case seems to be directly the same point saying that the two lots do not adjoin. That is a fairly direct statement of the law on that case as applied to the facts.

Mr. Douglas stated in that case yes, but I am not sure really where it applies to this case.

Mr. Zutt stated well it does refer to two nonconforming parcels in an L shaped configuration, and that is exactly what you have here.

Mr. Mattis stated we just received this on Monday so we really haven't had a chance to review the case.

Mr. Zutt stated I see. I tried to get it out earlier so you would have it before your Work Session.

Mr. Mattis asked are there any other comments? I think we need some more time to review this case that you submitted.

Mr. Reber stated I have not had a chance to read through this either.

Mr. Klarl stated this did not get to the ZBA on Monday so they need some more time.

Mr. Zutt stated I would be happy to accommodate the Board with another extension of time.

Mr. Mattis asked is there anyone in the audience who would like to speak?

Mr. Douglas made a motion in Case No. 06-07 to adjourn the case to the July meeting seconded by Mr. Reber with all voting "aye."

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CASE NO. 09-07 ROSENTHAL JCC for an Interpretation if the proposed improvements constitute an expansion of a nonconforming use or a Use Variance to allow the expansion of a nonconforming use on the property located at 500 Yorktown Rd., Croton-on-Hudson, NY.

Mr. John Kirkpatrick, Esq. appeared before the Board. He stated I have here with Mr. John Iannicito, architect, and John Roberts, who is the vice president of Rosenthal JCC. I'd be happy to answer any questions, if need be. Just for a brief background, we are requesting to expand the facilities of Camp Discovery. The Building Inspector had informed us that this constitutes an expansion of a nonconforming use. We've asked you for an Interpretation that what we are proposing to do does not rise to the levels of an expansion. We've offered you several relevant cases, which you've gone through. Those cases found had even had an increase in volume, a change in the means of the character of business, a change in hours of operation, a new building within the spacial limits of an airport, and none of these constituted in the court's view an expansion of a nonconforming use. We are actually asking for less. We have no increase in campers, no increase in staff, no change in the hours of operation, no change in the spacial extent of the camp. We've also, in case there is any concern about the precedent of the decision in our favor, we offered case law to show the Board rational, and reasoning as to why in this particular case this interpretation would be correct. However, at the last meeting one question did remain as to whether the cases that I had given you address the same kinds of language that you had in the Cortlandt code. So I went back again, and looked at the cases, and found that although maybe the court decisions did not cite the specific language, and there were three, and I'll ask you take a look at Developer versus City Board of Appeals, City of Rochester, and the court found that the Rochester language which said a nonconforming use may not be reconstructed or structurally altered, that provision is essentially identical to one of the two provisions in the Cortlandt code which address nonconforming uses, and expansions. One of them is 307.80, and that provides essentially that the nonconforming use cannot be enlarged, extended, reconstructed, structurally altered, or moved. I also draw your attention to another case I have given you, which is Syracuse versus Weiss, and that case the language is that code was a use cannot be enlarged, or increased to occupy a greater area of land, even though we're not occupying a greater area of land, nonetheless, the court founded that language did not prevent expansion to the entire parcel, and that again was very similar language, Cortlandt code 307.77, which says a nonconforming use cannot be enlarged, or increased, or extended to occupy a greater area of land. The third case is essentially the same language, and again the same reference to the Cortlandt code 307.77. I am hopeful that we have addressed all the issues. Your Board has been very patient, and very attentive, and we very much appreciate the consideration that you've us. Of course, we will answer any questions, if there are any. Thank you.

Mr. Douglas stated I don't have anymore questions. As you may recall, at the beginning of your application I could not see how we could grant you what you wanted, but I think you have swayed me. If you bear with me, I want to explain why it is I think you are entitled to what you're asking for, and I want to stress in this open meeting that this is a unique situation. I want to make sure that is clear, and on the record. Having gone on the site visit, and looking closely at the code provisions, and reviewing the case law you provided to us, and I also researched, I think that you're entitled to the Interpretation you are seeking. The changes that you're seeking are not an extension of the camp. The camp is not getting any bigger, even in terms of the number of campers. The camp is not moving to a different part of the lot, rather staying exactly where it is, and the same portion of the lot it has occupied. In fact, there will be reduction in

some items. I think the changes are likewise consistent with the specific sections of the code, Section 307.77 of the code says, "No nonconforming use shall be enlarged, or increased, or shall any nonconforming use be extended to occupy any greater area of land, and that occupied by such use, nor shall any such nonconforming use be moved in full or part to any other portion of the lot, or parcel of land." As I previously expressed, to my mind a specific "nonconforming use" here is the use of the parcel of the camp, and the elements of the camp that is subject to the application of itself is not nonconforming. A basketball court, a fence, or a shed, or a platform, or a field those are permitted in this zone. So each of those is conforming. The overall nonconforming camp itself as not being enlarged, or increased or "extended to occupy a greater area of the land." I also think it's likewise consistent with Section 307.78, 307.77, and 307.80. Section 307.78 says that no nonconforming use "shall be extended to occupy any land outside the building." I think Mr. Kirkpatrick mentioned similar land in other cases. Section 307.80 says, "No existing building designed or arranged, or intended for, or devoted to nonconforming use shall be moved." The only building that is being proposed to be moved is a shed, and again, in and of itself the shed is not nonconforming, it's the camp as a whole that is nonconforming. I also found the case law that the applicant has supplied to be convincing. In particular I want to mention the Torton Oil case that was in 1995 from the second department, which is the Appellate Court that covers this part of the state. In this case the court held that the replacement of old gas pumps, and a new installation of the same number of new gas pumps is part of vitalization of the gas station. It is not an expansion. The modernization of machinery used in a business does not constitute an expansion of that business. On the same token, in my mind, the modernization of this camp by replacing an old basketball court with a new one, or an old ball field with a new one also does not constitute an expansion using the logic of the oil case. This camp is unique in the Town, and I think if we were to grant this it would made clear that this is unique. This is not being used as a precedent for other nonconforming situations in the Town.

Mr. Mattis asked are there any other comments from the Board?

Mr. Chin replied I'd like to say that I agree with Mr. Douglas on everything he had said. I'd like to say that the shed also is only for storage, and is not habitable. So again, moving that shed I think is part safety, some of the other structures being removed is also for safety. The fence, and the gate is also for safety. Again, that is part of the unique situation for this site.

Mr. Becker stated I agree with what's been said. The only thing I'll say is moving the shed I think is somewhat contrary to the code. I don't think that generally is allowed. However, because where it is currently located is less safe than where they're proposing to put it, I would be in favor of moving the shed. So I think it is a reasonable move under that condition. Otherwise, I would not be in agreement.

Mr. Mattis asked are there any other comments?

Mr. Heady replied I also agree with Mr. Douglas, but where is that shed going again, over by the ball field, is that right?

Mr. Kirkpatrick replied yes.

Mr. Heady stated that is understandable, for safety purposes to move it. I have no problem with it.

Mr. Mattis asked is there anyone in the audience who would like to speak?

Mr. Douglas made a motion in Case No. 09-07 to close the public hearing, and Reserve Decision seconded by Mr. Chin with all voting "aye."

Mr. Mattis stated so we have 62 days to have a formal decision.

Mr. Klarl stated we should have the Reserve Decision prepared for the July meeting.

Mr. Kirkpatrick stated thank you very much.

CASE NO. 17-07 FRANCESCA P. DEMAS for an Area Variance for a side yard set back for a proposed addition on the property located at 45 Fowler Ave., Cortlandt Manor.

Mr. Mattis stated we will call this case again at the end.

CASE NO. 23-07 CONGREGATION YESHIVA OHR HAMEIR for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its' students is a pre-existing, nonconforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at 141 Furnace Woods Ave., Cortlandt Manor.

Mr. Mattis stated we will recall this case as well.

## **NEW PUBLIC HEARINGS**

CASE NO. 24-07 RICHARD CEDENO for an Area Variance for a size of signs on the property located at 3272 E. Main St., Mohegan Lake.

Mr. Gabrielle Solomon, architect appeared before the Board. She stated I am representing the applicant for an Area Variance for the size of the sign. We are about 10 percent over the required size.

Mr. Mattis stated well actually are calculation is at 29 percent over.

Ms. Solomon stated we already reduced the size.

Mr. Mattis stated well you're asking for a 44.74 square feet, and you are allowed 34.5 square feet. That is roughly a 30 percent variance.

Ms. Solomon stated okay, I'm sorry.

Mr. Heady stated I was out there a couple of days ago. I understand there are other problems on the building also. So we think that maybe we should adjourn the case until you get code compliance with everything else before we go ahead with ours.

Ms. Solomon stated we also have a Planning Board application so that would not be a problem.

Mr. Mattis stated this shouldn't hold up the Planning Board application.

Ms. Solomon stated we just started them. We just got the violations.

Mr. Mattis stated yes you constructed a building without a permit on the other people's property.

Mr. Heady stated we think this should be adjourned until the other issues are cleared up, and then come back here for the sign size.

Mr. Chin stated we fell an adjournment would be more advantageous for everybody, because once everything else has been cleared up especially with the one story garage that is on the neighbor's property, and some other things that you have been given violations for by Code Enforcement.

Mr. Heady stated you should also think about bringing those signs into compliance also.

Mr. Flandreau stated they are here for a variance for a sign that is 10.2 square feet for the overall amount of signage on there. They still have a freestanding sign that's up, and should be removed.

Mr. Mattis stated so as of right now, since you constructed those signs without a Building Permit you're in violation there also.

Ms. Solomon replied right, and that is why we are here, to address that.

Mr. Mattis stated we are of the mind that we don't want to act on this until to come into compliance with the other issues.

Mr. Flandreau asked do you want them to have full Planning Board approval, or just have a Planning Board application for those items?

Mr. Mattis replied personally I'd like to see that building removed first. They have numerous violations here, and things were done without Building Permits.

Mr. Klarl asked should you then ask for a list of the violations so that we see what the Board would absolutely require to move forward?

Mr. Mattis replied that is a good idea.

Mr. Reber stated I would say that until Code Enforcement can tell this Board that this applicant no longer has outstanding violations then we wait. Why should we be giving variances until the other violations are cleared up.

Mr. Flandreau stated they are here before this Board to get of one of the violations for the signs being too large, and they need a variance to keep those signs up.

Mr. Klarl asked how many violations do you think they have right now?

Mr. Flandreau replied they one violation for the sign permit. They have one violation for starting construction of the dormers on the main glass building, and a third violation for the construction of the single story garage.

Mr. Becker asked your client is not here tonight?

Mr. Solomon replied no, he's not.

Mr. Becker stated we are a Zoning Board of Appeals, you come to us as an applicant asking for a variance. You are entitled to have a sign of 34.5 square feet, anything beyond that up to 100 percent is at our discretion. I don't think this Board will entertain anything beyond what you're allowed until any other violation has been remedied. You are in violation now, and I think it needs to be cleared up before you come in here, and ask for a variance.

Ms. Solomon stated actually this was scheduled a long time ago. The violations came after.

Mr. Becker stated well the shed has been there for a long time. There is already a history here. So my recommendation is that we not act in any way for a variance until these have been remedied.

Mr. Chin stated Mr. Becker based on what Code Enforcement has said, the signs are already up.

Mr. Reber stated well maybe they should take them down.

Mr. Mattis stated that is a self imposed hardship, and we don't recognize those, or people would build stuff all over town, and say it's a hardship.

Mr. Reber stated they can make a sign in conformance, and then we don't have to address, and they deal with their other problems.

Mr. Douglas I think it would be improper for us to be granting a variance for any applicant who had multiple violations already on the property.

Mr. Mattis stated personally I don't think they should leave those signs up there, and leave this case open until they clean up the other ones. I would prefer to bring them into compliance now, and let them come back later, if they want to ask for a variance. They can be in front of the Planning Board for a year or two in which case they will have signs that are in violation, and I'm not too prepared to grant a variance for something under these circumstances.

Ms. Solomon stated there were already two sign removed.

Mr. Mattis stated that means nothing, because you're still in violation. You were much more in violation before it, you've come somewhat into compliance, but you're still in violation.

Ms. Solomon stated I guess my client contracted with a reputable, local sign company, and he assumed that they were okay.

Mr. Mattis stated that may be an argument for the signs, but what is the argument for the garage that was built without a permit, and encroaches on the neighbor's property.

Mr. Chin stated we have had cases where a sign contractor was supposed to be reputable, and everything else, and they built the sign too big.

Mr. Becker stated in fact this Board has been so deceived by some of the local sign contractors that we have a policy that before the sign is erected Code Enforcement must go out to the site, and measure the sign before it's even put up.

Mr. Mattis stated we have approved signs, and then found out they put up bigger signs.

Mr. Reber stated in defense of the sign company, I have discussed this issue with some of them, and they have said that it is very hard to blame them, because they have had some owners of companies say just make me the sign, I'll deal with the variances. So if they want a sign twice as big after we recommend something, they will make it. So we don't know whether it is the sign company, or the owner, or who is too blame. Sign companies have also claim they are aware of our code, they discuss with the applicant, and the applicant says that is the sign I want, and I'll deal with it. So I don't know who's at fault.

Mr. Mattis stated it really doesn't matter.

Mr. Reber stated exactly, it doesn't matter. So we shouldn't be picking on the sign company.

Ms. Solomon stated my client is willing to do what it takes to come into compliance. He will comply with the garage, and the dormers, everything.

Mr. Mattis stated so he is nice enough to comply with a garage that is on somebody else's property.

Ms. Solomon stated there was a misunderstanding as to where his property is.

Mr. Mattis stated well everybody else in town goes into Code Enforcement, the Building Department, they get surveys, they get Building Permits, they get sign permits, they do everything to the code.

Ms. Solomon stated he did not know that he had to do anything.

Mr. Chin stated well you're a professional, and I am sure you make sure everything is right, but now that your client has made some mistakes on his site, we can't entertain a variance right now.

Ms. Solomon stated he is trying to remedy it.

Mr. Mattis stated I'd like to remedy this by giving him 34.5 square feet, and bringing him into compliance, and if you want to do that you can withdraw the case, or we can vote against the variance that is being requested, the outcome is the same.

Mr. Klarl stated or they can adjourn it for now.

Ms. Solomon stated well we will just withdraw it, and make the signs into compliance.

Mr. Klarl asked are you prepared tonight to say on record that you are going to withdraw the case?

Ms. Solomon replied yes.

Mr. Mattis stated okay so Case No. 24-07 is withdrawn by the applicant.

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CASE NO. 25-07 ANNA DORFMAN for an Area Variance for a side yard set back for a proposed second story addition on the property located at 144 Kings Ferry Rd., Montrose.

Mr. Rick Sharrow, contractor for the owner, and George Jorno appeared before the Board.

Mr. Klarl asked who is Anna Dorfman in relation?

Mr. Jorno replied that is my fiancé'.

Mr. Klarl asked is her name on the deed to the property?

Mr. Jorno replied yes.

Mr. Klarl asked is your name on the deed also?

Mr. Jorno replied no.

Mr. Klarl asked are you here as her representative?

Mr. Jorno replied yes.

Mr. Klarl asked do you have a letter authorizing you to appear on her behalf.

Mr. Jorno replied yes, I do.

Mr. Klarl read the letter authorizing Mr. Sharrow, and her fiancé to proceed on her behalf.

Mr. Mattis explained please describe what you are here for.

Mr. Sharrow stated the back portion of the house has a lower section on the first floor. They want to expand the back section, the bedroom to the back of the house, squaring up. We are not encroaching the property, we are working within it.

Mr. Mattis stated so basically you are going straight up.

Mr. Sharrow replied correct.

Mr. Mattis asked what about the porch in the front?

Mr. Sharrow replied there is a porch in the front of the house at present, so we are going to be putting windows in it, stairs, and an overhang.

Mr. Mattis asked so you are closing that in?

Mr. Sharrow replied no, we're not closing in the front porch, it's an open canopy just for the rain.

Mr. Mattis asked are there any comments? This is Mr. Seirmarco's case, but he is not here. Ray, are you familiar with the property?

Mr. Reber stated no to be honest I am not.

Mr. Mattis stated I am familiar with the property, and it sits about 50 feet back probably. It is not very close to the other houses, and they are staying within the footprint. It is just an expansion, they're going straight up. Are there any other comments? Is there anyone in the audience that would like to speak?

Mr. Becker made a motion in Case No. 25-07 to close the public hearing seconded by Mr. Reber with all voting "aye."

Mr. Becker made a motion in Case No. 25-07 to grant the side yard variance from 20 feet down

to 5.2 feet for the addition on the property. This is a Type II Sequa with no further compliance required seconded by Mr. Reber with all voting “aye.”

Mr. Flandreau stated the Decision & Order will be ready on Tuesday.

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CASE NO. 26-07 VS CONSTRUCTION CORP. for an Interpretation and/or variance to permit parking associated with commercial building in residentially zoned portion of property where the property is bisected by a zoning district line on the property located at 0 Albany Post Rd., Croton-on-Hudson.

This will be called for second call.

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**ADJOURNED PUBLIC HEARINGS FOR TELECOMMUNICATIONS TOWER**

CASE NO. 48-05 CINGULAR WIRELESS SERVICES INC. for a Special Use Permit for a wireless telecommunications facility on property located at 451 Yorktown Rd., Croton, NY.

Mr. Mattis stated we did receive a letter on this asking for an adjournment to the December meeting.

Mr. Douglas stated can I ask a question. Should we adjourn this for six months, or should this be withdrawn, and if they want to pursue it again they can put it back on the calendar?

Mr. Klarl replied well there is actually a significant application fee, so I don’t think we would want to have them file again. It actually helps to adjourn it month to month.

Mr. Mattis asked is there anyone in the audience who would like to speak?

Mr. Chin made a motion to adjourn the case to the December meeting seconded by Mr. Heady with all voting “aye.”

Mr. Mattis stated we have three cases to recall.

CASE NO. 17-07 FRANCESCA P. DEMAS for an Area Variance for a side yard set back for a proposed addition on the property located at 45 Fowler Ave., Cortlandt Manor.

Mr. Mattis stated they are not here. Can we have a motion to adjourn the case to next month, and send them a letter telling them if they don’t appear, or ask for an adjournment that we will

deem the case abandoned.

Mr. Heady made a motion in Case No. 17-07 to adjourn the case to the July meeting, and to send a letter to the applicant stating that they must appear, or send a letter asking for an adjournment, or the case would be deemed abandoned seconded by Mr. Chin with all voting "aye."

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CASE NO. 23-07 CONGREGATION YESHIVA OHR HAMEIR for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its' students is a pre-existing, nonconforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at 141 Furnace Woods Ave., Cortlandt Manor.

Mr. Daniel Richman, Esq. appeared before the Board. He stated as you may recall the last time we were here we presented to you fairly persuasively, why the Yeshiva is , and should be recognized as a permitted as of right use. It is an intrical part of the religious and educational use, which is specifically recognized as a permitted use in this zone. Since the last time we were here we had an opportunity earlier to review the Town's own records, and I think that as our submission to you dated June 6, 2007 indicates the Town's records indicate that not only did it realize the Yeshiva was being used in part to house students, but in fact permitted it, and in fact received Building Permits to allow the Yeshiva to alter the pool building, which is now being used as dorms. Specifically recognition of the fact that the previously existing dormitory building, which again the Town knew it was being used as a dorm for several years, was uninhabitable, and would have to be rehabilitated, or replaced. So the Town, as our records show, granted a Building Permit in that recognition, monitored the development of the rehabilitation of the pool building to dormitory use, and actually issued a Certificate of Occupancy to the Yeshiva so that it could house students there. In addition to all the other arguments we presented to you last month, I think not only, in my opinion, formally shows more than ever that it is a permitted use, that the Yeshiva has in fact relied on the Town's representation the Town enacted at this point. Its' actions are fairly determinant not only the Town issuing permits as a permitted use. The Yeshiva obviously had no understanding, and no belief given not only the Town Code but the Town's actions that it would be a permitted use, and had continued to develop there. If there are any questions about our presentation, I would happy to answer them.

Mr. Klarl stated I had actually had some discussions, and I'd indicated to the Board that the Board was of the mind that based upon our review of the code, and the history of the property that this really should be a Special Use Permit application, and if this Board did close, and find a Special Permit application, we then go to the Planning Board, and the Planning Board would act on site plan, which they have now, and I think it was adjourned to August, and they would have to have a Special Permit. This Board was of the mind to determine a Special Permit application, and looking at the Special Permit the Planning Board would be looking at crafting the usual Special Permit conditions for a use that involved the number of people that are involved with this

property. In addition, of course, if this Board was going to grant the Special Permit. The Special Permit would in no way infringe on the religious practice. We spoke about this before at both the Planning Board meetings, and the ZBA meetings that there are federal statutes no that prohibit local municipalities from infringing upon a religious practice. So I have spoke to Mr. Richman at our last meeting, and our Work Sessions that this Board was of the mind that a Special Permit would be required, and if it was required, this Board would not act on a Special Permit, it would be sent back to the Planning Board for them to review the site plan application, and that Special Permit application. So I've told Mr. Richman that's our position. They've obviously filed papers with the Board, letters to support to go the other way, but I wanted to let you know that Mr. Richman and I have had off the record those discussions.

Mr. Richman stated we have, and we still believe we have a strong case for a permitted use, but in the interest of moving forward we would be willing to go to the Planning Board, but again, if that is the Town ZBA's determination we would like to at this stage request a variance.

Mr. Klarl stated I've looked at the code with Mr. Richman here, and I've identified two variances. One variance in the code involves the requirement that this type of use, college, university, seminary be on a state, or county road. The second variance is to look at a two family residence that is currently existing, I don't know for how many years, but it's been existing, but it's within the 100 foot set back. So right now we've advertised this application as an Interpretation, this application then would have to be amended to incorporate those two variances. Therefore, we couldn't act on it tonight anyway, we would have to readvertise for the July meeting.

Mr. Mattis stated so we'd have to adjourn it, and keep it open until July so that we could readvertise those two variances.

Mr. Klarl stated once again, if a Special Permit was pursued, it would not be pursued before this Board, it would be pursued before the Planning Board along with their site plan review.

Mr. Becker stated for purposes of clarity for the public, the Zoning Board is really charged with a single issue, and that is to make a determination whether a Special Permit is required or not. It is clear that the Yeshiva has been there since 1983, or thereabouts, and that it is in a state of disrepair, and something has to be done. What will be constructed, if anything, will be determined by the Planning Board, and there will a full investigation, an outline, and a scoping document with what is allowed, and permissible, and what's not. To the Planning Board does this application proceed as right, or does it require a Special Permit, and I found it works both ways. I am feeling stronger that a Special Permit is important for both the applicant, and the community. I think for the applicant it will state on the record what this Town, this Board, and the Planning Board what will be allowed, because upon them is an institution that has right to exist as a religious organization, and for you that will give you a statement from the Town that will never need to be clarified further. It will also show the public that the decision to proceed has gone through the normal process, how big, or how small, how many dorm rooms, how many occupants, how it will be used, will all be discussed, traffic issues etc. I think the best way to do

this is in an open, transparent form through a Special Permit, and I think that can be constructed in such a way that you are not limited as far as your rights. The structure is a Planning issue not a Zoning issue, but the right to exist can be done within a Special Permit I'm hoping without impeding on any of your rights.

Mr. Richmond stated I appreciate your comments, and I agree that this a narrow issue before the Zoning Board solely on interpretation of the Cortlandt code, and I would just like to clarify something. Again, that whatever the case may be in other municipalities ultimately the decision weighs on the Board as to what the Cortlandt Town Code is, and again it our position, and I think it is clear that religious institutional uses are permitted, and if there is any ambiguity that should be viewed in favor of the applicant, and again there have been in fact permits issued to the Yeshiva over the years, and I think that is further evidence that it is a permitted use as of right.

Mr. Mattis asked are there other Board members who wish to comment?

Mr. Reber replied I debated at the last meeting the distinction of some of the different classifications that would apply here in the code. It may be vague, and unclear, and when there is that situation you have to bear on the side of the applicant, but my conclusion is that it is not vague. When you look at those cases, and I'll state them again, you have public, or private school offering courses in general instruction, vocational schools such as businesses, you have church, or other places of worship, religious instruction with parish house, rectory, or convent, you have all of those categories, but the Town went to the added trouble to define university, college, or seminary, and the distinction there basically is the residency issue, and I can't speak to what was done in the past. This is an Interpretation. To me I cannot try, and interpret what was in the minds of certain Town employees, or personnel ten years ago. I can only interpret the code that I look at, and to me it's black, and white. This qualifies as a seminary, and under that classification you would require a Special Permit. So I am fully convinced that a Special Permit is required here based on that Interpretation.

Mr. Richmond stated I just have to voice my position that I respectfully disagree with that.

Mr. Mattis asked are there any other comments from the Board?

Mr. Klarl stated Mr. Richmond you have alerted your clients that there are at least two variances which the Zoning Board has to look at also.

Mr. Richmond replied yes.

Mr. Klarl stated therefore, that would be the subject of the July ZBA meeting. I know there are people out here tonight in regard to this application, strictly the operation of the Yeshiva are Planning Board issues, and the next time the Planning Board will see this application is August. It was adjourned the last time it was on the Planning Board until August. So they will not be on the July agenda for the Planning Board. So the next meeting will be the ZBA in July, and

thereafter will be the Planning Board in August. If this Board was of the mind to close the public hearing on the ZBA issue in July, we would have a Reserve Decision for August. Since Sequa tells us we are supposed to have a coordinated, and we have applications before the Planning Board, and Zoning Board we would probably adjourn the decision of the ZBA until the Planning Board were to have their resolution, and there would be an adoption of the Decision & Order by this Board, and the adoption of a resolution by the Planning Board, and then if the applicant wanted to challenge those determinations they could do so at that time in one legal challenge.

Mr. Mattis asked are there any other comments from the Board?

Mr. Chin stated I am just going to say I have to agree with Mr. Reber, and Mr. Becker on this issue. I totally agree that a Special Permit is needed.

Mr. Mattis asked now I will open it up to comments from the audience, and I remind you that this is an issue of whether a Special Permit is required, or whether a Special Permit is not required. All of the other issues, the sewerage, and everything else are really Planning Board issues.

Mr. John Galvin appeared before the Board. He stated I live at 27 Lakeview Ave. W., Cortlandt Manor. I have lived there for about 15 years. On the points that were addressed by the counsel, as to the applicability of RLUIPA the two principles sponsors make it abundantly clear that the act does not provide the institutions from immunity from land use, regulations, nor does it relieve religious institutions from variances, Special Permits, or exceptions, cited from the congressional record, July 27, 2000, pages 7774-79. Reasonable people, reasonable circuits in this great nation of ours may disagree/argue as to that act from 2000. We fortunately reside within the enlightened second circuit.

Mr. Klarl asked are you referring to the Second Circuit Court of Appeals?

Mr. Galvin replied yes. A recent decision in 2004 entitled Westchester Day School versus Mamaroneck supports this limited applicability of this 2000 act, and I would respectfully refer that case to the Board. As concerns the question of variance, it seems to me, and I believe I addressed this to Mr. Reber at the last meeting, the concept of a college university, or seminary implicitly brings with it a concept of dorming, or housing of students. I understand that the Yeshiva does not grant or dispel secular priests nor rabbinical priests. As I understand the definitions, this is not college; this is not a university; and this is not a seminary. A prior counsel had made statements, public statements at one of the Planning Board meetings to the effect that provision in the new code grandfathers in prior use of this as being permitted. My only comment on that observation is I assume he was talking about legal uses, and that brings us back to the question of the 1985 application and the scope of that. Thank you for your time.

Applause.

Mr. Mattis stated before we go any further I want to ask anyone that has cell phones to either them or off, or put them on silent please.

Mr. Preston Trussler appeared before the Board. I live in Furnace Woods, and I have a statement that I was asked to present to you by our neighbors, and fellow Lakeview Homeowner Association, and I promise you it won't be as long as the statement last month. He read, "Members of the Town of Cortlandt ZBA, my name is Gregory Gale, and I live at 80 Furnace Woods Rd. I requested Mr. Trussler to deliver this presentation as I will not be able to attend the June meeting of the ZBA. Ironically enough; I am on a business trip conducting a review of insurance liability claim files focusing on municipal liability. Mr. Flandreau has been very patient and helpful to me during my attempt to understand the history of the subject property and how it impacts the current proposed application. I want to make sure this Board and Ms. Puglisi are aware that I am very thankful for his assistance and want to make sure his efforts did go unnoticed or unappreciated. Last month I attended the ZBA hearing and addressed you concerning the expansion of the Seminary located on Furnace Woods Road. I spoke about many issues surrounding this application, but will narrow my focus for this presentation. This document should not be interpreted as a dismissal of important items raised during prior addresses. It is a prioritized selection of issues that highlight the apparent selective enforcement of the Town of Cortlandt's zoning laws. The first item I would like to address is the issue of pre-existing, nonconforming use. As you know, Mr. Levine's letter and Mr. Felt's reply in 1985 has been a topic of much discussion. You should have both documents so I will not restate their contents. However, as you are aware, there is no mention of a proposed dormitory or the housing of any students in the original description of use of the property by the Applicant. In examining the history of the property in question we are required to go back to the last Special Permit issued for the subject property. This Permit was issued in 1980, and I referenced it during my presentation last month. The Permit was for a 16 room motel unit know as the Chalet. As I discussed in my May presentation, the assertion that the applicant is functioning as a hotel cannot hold up under scrutiny as they are not open to the general public; as required by code. It should be noted the applicant seems to agree with me on this point. During last month's meeting the Chairman of this Board indicated during a public hearing concerning another application, he had no alternative but to enforce "the code". It is refreshing to see the Town of Cortlandt take such a strident approach to their Zoning Code, and I welcome it. I look forward to a uniform application of the Zoning Code relative to this planned expansion. The Dude Ranch ceased operation in 1981; a fact asserted by the applicant in their Full Environmental Assessment form. It is established they took possession of the property in 1985. Hence, there is a four year gap in operations. As I discussed last month, the operation of any pre-existing, nonconforming use is required to be continuous. Clearly that is not the case and this Board has no option but to declare the applicant not pre-existing, nonconforming but simply nonconforming. During last month's meeting I patiently listened to the attorneys for the applicant blather on while providing circular responses to many inquiries from this Board. However, the applicant's attorneys were allowed to discuss many items that were not addressed in their application and were given great latitude by this Board. For example, the architect was allowed to show their drawings and explain in grand detail the anticipated expansion. In fact, the first attorney even referred to the

project as an expansion. This; coupled with the ZBA application in which the applicant refers to this project as an expansion certainly lends credence to one of the many assertions I have been making since January; this is an expansion; not a renovation! Additionally during last month's presentation I attempted to mention, but was not allowed the same latitude as the applicant, that during my meeting of April 16<sup>th</sup> with Town Supervisor, Ms. Puglisi, she posed the following quandary when referring to the population of the applicant's seminary. "How did we get from 60 to 250?" When is that question going to be posed to the applicant? Better yet, when is the Town going to address this? Further, how did we get to 60 in view of the fact that no students were proposed to live on premises during the initial description of use? Last month's hearing was fascinating. The applicant has changed their described use by now describing it as a boarding school in their Summary of Application. Yet on their ZBA application the applicant refers to their function as a religious school. This distinction is material and requires further examination. Last month the applicant attempted to claim the dormitories were an integral part of their learning experience. I submit, why if they are such an integral part of the educational experience were the dormitories not specifically addressed when describing the anticipated use of the facility in 1985? The applicant drew a distinction between themselves and Yeshivas that have no dormitories. Are they implying these Yeshivas are less worthy or offer a less pious environment? Furthermore, why does the applicant feel the need to segregate the dormitory function now when they did not before? This clearly is at the very least symptomatic of a change of use, if not a disingenuous representation of the initial intended use. The omen of RLUIPA has been raised by the applicant. This Board can not be cowed into submitting to the possibility of a convoluted interpretation of unsettled law. Our zoning laws are clear and unambiguous and must be uniformly enforced; there are no exceptions. Let me be clear; I have no objections to the applicant existing as a religious school as described in their original letter of intent in 1985. There are many religious institutions in the town; a point for which the Town deserves to be proud, but I am unaware of any dormitories associated with these institutions; self described as a seminary, located on rural roads. In the interest of brevity I will conclude. The applicant has changed their described use from a religious school to a boarding school and then to a religious boarding school. Why has it taken an objection from the citizens for the Town to examine their zoning code? In view of the myriad of descriptions presented to the Town, I find it odd during this application process the applicant has not described themselves to the Town as a college, university, or seminary; despite doing so on numerous filings with the State of New York, and their own sign outside the facility. The seminary's enrollment has allegedly swollen from 60 non-resident students to over 200 resident students and nobody can explain why. Incredibly; Ms. Puglisi posed this question. I have yet to hear anyone from the Town demand a direct response to this question from the applicant, amazing!

Mr. Mattis stated to a person in the audience. I am going to say one last time, cell phones must be turned off, or used outside of this room. Thank you.

Mr. Trussler read, "Additionally, there is a four year gap in use according to the applicant themselves from 1981-1985, thereby negating the argument of pre-existing, nonconforming use. Again I ask, why did it take the tax paying citizenry to demand the Town to enforce the laws the Town authored? This is unacceptable and will be ignored no longer. So once again I ask; shy

are we here? When is the Town of Cortlandt going to honor their fiduciary responsibility to the citizenry and equally enforce their own laws? These are not rhetorical questions; the Town must reject this application. Further, the applicant must show cause as to why they should be allowed to operate a facility with a dormitory. No such intended use was described prior to their ownership; or for that matter is allowed to exist according to the Town of Cortlandt Zoning Code. To reward this applicant with an affirmative response to their application and continued occupation by resident students will invite a very messy and public Article 78 hearing. Thank you for the opportunity to address you and I apologize for not being able to deliver this presentation in person, and thank Mr. Trusler for his kind assistance. Please enter this into the public record. Signed, Gregory H. Gale, 80 Furnace Woods Rd., Cortlandt Manor, NY 10567. “ Mr. Trussler stated as I mentioned I am on the board of the homeowner’s association, and if you could just indulge me for a moment, because a lot of people come to these things, and they’ve never spoken at anything like this before, they don’t know what to do, and they don’t know what to say, but they know what they want, and don’t want. Would you all please rise if you are here for this issue?

People in the audience stood up.

Mr. Trussler stated thank you very much. I’ve got a quick question, because this has been a real education for me. When I first came to the Planning Board meeting, my questions, and objections were about sewer, what has upset me as these people have dug, and several of them here have done the work of multiple paralegals, going through your Town documents, County documents, State documents, internet, anything you can think of, and they just keep finding this growing stack of code violations, there is no end to end. Now I’ve got to ask you something, please indulge me. There was a lady here a little while ago, and she wanted a sign variance, and one you gentleman said well if I have the sign, and it’s too big for the code, and I come and apply for it, you reject it. Can you explain that for me?

Mr. Chin replied we didn’t say it that way.

Mr. Trussler asked how did you say it?

Mr. Reber stated the distinction was in the case of applying for a specific variance, which is basically asking a favor of the Town to look the other way on the Code, and we said it doesn’t seem appropriate when you have so many violations to address. That is not the situation here, because they are not asking us for a variance at this point. What is being requested from us is an Interpretation, and we have to decide how to interpret the code. Whether or not a Special Permit is needed or not needed, and as I said previously, you can’t address other issues. We can’t address the history. That is all we can do right now. All the other issues are issues for Code Enforcement, and for the Planning Department, and those people to address.

Mr. Trussler asked where has Code Enforcement been for 22 years?

Mr. Reber replied that is not for us to decide. You can speak to the Town Supervisor. We are strictly the Zoning Board.

Mr. Trussler stated okay, thank you very much.

Mr. Joel Benedict appeared before the Board. He stated I live on Lakeview Ave. West, no speech, I just want to understand the process now that's going to happen. I am getting the impression you are going to adjourn this hearing, and it is going to going to Planning?

Mr. Mattis replied we will adjourn this to next month, because they have two variances that would be required, and they were not advertised. So we have to carry it forward so it can be advertised properly for those two variances. So we're adjourning it as the Zoning Board to the next Zoning Board meeting, which is July 18<sup>th</sup>, the third Wednesday in July. It is I believe until August with the Planning Board.

Mr. Benedict stated so at this point in time no decision will be made on this Special Permit?

Mr. Mattis stated that is correct.

Mr. Klarl stated there is no decision until we close the public hearing here, and that will not happen until probably next month. The earliest they would close would be in July, and then Reserve Decision, and then the Planning Board would start their public hearing process again in August. If this Board was of the mind to recommend a Special Permit then the Planning Board would have to readvertise for a Special Permit. They would study a Special Permit, and then draft conditions of what they want.

Mr. Benedict asked so zoning has to be resolved first?

Mr. Klarl replied yes. As I said before we have SEQUA that tells us it contemplates coordinated review, and if this Board was of the mind to close the public hearing, we'd probably adjourn our decision until the Planning Board process was over, and then vote, and the Zoning Board would adopt the Decision & Order, and the Planning Board would adopt a Resolution so that there would be one determination of the property.

Mr. Benedict stated so no decision is going to be made as to whether a Special Permit is required until it's heard before the Planning Board?

Mr. Klarl stated no, we would probably close the public hearing here, and give an indication by memo to the Planning Board as to which we're headed, but they wouldn't formally adopt the decision right away. This applicant would be able to challenge it in court before the Planning Board process begins.

Mr. Benedict asked are we allowed to ask which way you are leaning?

Mr. Klarl state when we close the public hearing this Board will probably give an indication by memo to the Planning Board. As I indicated on my comments to the outset, this Board is of the

general opinion that a Special Permit would be needed. I have had serious discussions with Mr. Richmond that that is the Board position. He has had serious discussions that he opposes, but I let him know that this Board is generally of the opinion that a Special Permit is needed.

Mr. Benedict stated we need to understand the process so that we don't get rolled over with some technicalities, or some loopholes that we're not aware of that a lawyer would be. I don't know if it is going to come down to it where we need our own land use attorney. It seems to me there is going to be a lot involved with this RLUIPA law.

Mr. Becker stated actually as our attorney has just eluded to I think that on this issue as to whether a permit is needed or not, the public seems to feel that a permit would be the best way to go. We haven't voted on it yet, but the inclination of this Board is the same. That only means that if it were to go forward through the Planning process that it would go through under a Special Permit, which is what seems the public agrees with, and personally I feel confident in that at this point, and I haven't heard anything different from any of the other members of the Board. So I think you are aware of the process. Because of the public interest in this case, and because it's controversial we want to be very careful, and we want to be very transparent, we everything that we do, and say, and the entire process to unfold to be open government.

Mr. Klarl stated you heard from tonight's public hearing that the Board is of the mind a Special Permit is needed. The applicant is of the mind that they are an as of right use, and are opposed to the permit, but I've given the applicant fair warning that they are probably looking at a Special Permit so they have been advised. We haven't closed the public hearing, and officially decided, but you have heard serious comments by serious Board members that it is probably what is going to be in the cards.

Mr. Benedict stated okay, thank you.

Applause.

Mr. Mattis asked is there anyone else who would like to speak?

Mr. Phil Tombarello appeared before the Board. As I stated before I live very close to the seminary. I sat here tonight, and one of the things that I do think I've learned is that it does seem from this Board from the comments that I'm hearing is prepared to say yes, a Special Permit will be required. I do have some questions, and I do have a presentation to make. My first question is what is involved with respect to the two variances? I believe now that the determination is that they are talking about a boarding school, a seminary, as defined in the codes that a variance will be needed, because this is not a large road that it's on. I've been here since 1987, fortunately I've come close sometimes to hitting deer with my car, and I've come even closer to hitting several of the students who are walking these roads, and hopefully that won't happen.

Mr. Klarl stated the two variances we are talking about are flow from Section 307-50 of our Town Zoning Ordinance, specifically sub-section B, and there is a condition that it requires it to be a 100 foot set back, and we've identified in looking at the plan that there is not an adequate

set back so they would need a variance for it. In addition, they want to put a bump out addition on that structure, and under I think condition 8 of Section 307.50 B, it is required that it be located on a State or County road, and this isn't a State or County road so they would seek relief from this Board from that requirement.

Mr. Tombarello stated so the Board would have to vote on whether or not that requirement can be waived, and if that requirement is not waived then it doesn't logically follow that a dormitory, or seminary, or university, or college cannot exist on this property. Am I correct on making that assumption?

Mr. Klarl replied I am not going to make their argument. Their argument might mean something like that 307.50 came from our new Zoning Ordinance. On January 1, 1994, we adopted a new Zoning Ordinance. I am not going to make their argument, but they might make an argument that they preceded that, and therefore they have certain rights, but that is for the applicant to make that argument.

Mr. Tombarello stated my second question is that you are telling us a variance is needed for a currently existing two family residence in a one family zone, am I understanding that correctly?

Mr. Klarl replied they are proposing an addition on the two family. I think it might be an 80 foot dimension, I am not sure. Mr. Richmond, do you know what engineer said?

Mr. Richmond replied it is about 80 feet back.

Mr. Tombarello the only question I am going to raise, and then I have something that needs to be put into the record is what I'm hearing from counsel for the applicant is they're saying they deemed to be allowed to what their doing. It is a permitted use. We've been doing it all along, and because we've been doing it, we can continue to do it, and I think in my view of the Town, this Board, the Planning Board, the Town Board, or the Supervisor's office or any of the Town employees whos' job it is to enforce the codes, and compliance to say because you've been doing it wrong all along doesn't mean that it get nonprotunc in, and allowed, and I would make a great exception to that. What I do want to mention is that as this Board well knows, this issue is becoming a bit of a hot topic issue with the citizenry, because of the questions involved, and the confusing aspects of the questions. Those of us who are not experts in land use law question whether or not the issues belong in the Supervisor's office, the Town Board, the Planning Board, or this Board? So about 15 days ago a petition started to be circulated. There were only a few people that were actually doing it so I was extremely impressed that within such a short period of time, I have it here, and I will read it into the record, but there are over 300 signatures. It would not surprise me that as the issue gets more public, as you mentioned earlier, there will be further advertisements related to it, that other people will want to sign the petition. A couple of things that were interesting about the petition, and why I think there are so many people here tonight. I think the people are here tonight, because they're afraid. They're afraid of environmental issues. They're afraid of the fact there have been numerous safety problems that have been uncovered

on the premises that there have been fire code violations, safety code violations. I know we're not here to talk about sewage. There is concerns about the sewage here that might be effecting the water that goes down to the school, and into Lakeview. So people are afraid, and that is why they come here. The other thing I found that was interesting, and one of the things they are afraid of is for many of us our most important asset is our home, and they're afraid that home values will be affected if there is a large public, not a public, but multiple dwelling, 250 students, maybe 1/3 as many staff. We know there are a lot of children living there now, I drive by with some regularity. We don't know how many people live there now. We don't know how many people will be living there if the approvals sought by the applicant come through. So the other thing I thought that was interesting when this petition was solicited that the over 300 signatures everyone who was approached to sign it, signed it with the exception of 3 individuals, all of whom happen to be real estate agents. So that gives us more reason of concern that maybe the real estate agents are out there thinking it will be upright from the area, lots of homes sold, lots of commission, so people are afraid. I would like to read this petition, which I suspect there will be more coming. He read, "June 5, 2007, To: The Supervisor of the Town of Cortlandt, The Town Board of the Town of Cortlandt, The Planning Board of the Town of Cortlandt, and The Zoning Board of Appeals of the Town of Cortlandt: Introduction: Language quoted from Ohr Hameir application of 5/6/06: "Yeshiva Ohr Hameir is a private religious boarding school for boys locate at 141 Furnace Woods Road in Cortlandt Manor, Town of Cortlandt, Westchester County, New York. The proposed....modifications are designed to enhance and upgrade classroom worship, dormitory and housing facilities. The proposed modifications would permit...enrollment of 250 students:, (plus full time residences for staff and their families.) The current proposal includes...a sanitary sewer connection to the Red Oaks Sewer District... Building area is proposed to increase to 82,854 square feet. The project site is located south of Maple Avenue and is surrounded by single family homes... The rear portion of the project site abuts Blue Mountain Reservation. Site and building improvements are proposed in two phases...Phase 1 includes (among other items)... a new building with a new classroom wing and two new dormitory wings...improvements to the access drive, signage and landscaping...the upgrade of existing facilities such as tennis courts...a 9000 square foot building with three staff housing residences is proposed in a second, future phase of development." **Petition:** We the undersigned residents of the Town of Cortlandt, Westchester County, State of New York, hereby petition the Town of Cortlandt and all appropriate Town Officials, elected representatives and members of all appropriate boards to oppose any applications for the expansion, erection, rebuilding, construction, modification or upgrading of any of the facilities at the Yeshiva Ohr Hameir Seminary. We further petition all appropriate Town representatives to maintain and keep in force the R40 zoning applicable in the area currently occupied by Yeshiva Ohr Hameir Seminary and to fully and completely investigate all current permits, special permits, uses, occupancy, safety codes, sanitation codes, and requirements, building codes, electrical codes, lodging requirements, food preparation and service requirements, waste disposal and traffic impact to assure full and complete compliance with all rules, regulations, laws, codes, and requirements that are applicable in a residential R-40 zoned area. The Yeshiva Ohr Hameir Seminary contends that it is now operating as a tax exempt house of worship and school for religious instruction. We ask that the Town and all appropriate Town officials employ due diligence in their investigation of the impact that the current use and proposed modifications will

have on Town financed municipal functions such as garbage, trash, and solid waste removal, snow removal, emergency evacuation requirements, fire protection requirements, transportation, sanitary disposal etc. We further request that this petition be designated as an item on the agendas of the next scheduled meetings of the Town Board of the Town of Cortlandt, the Planning Board of the Town of Cortlandt, and the Zoning Board of Appeals of the Town of Cortlandt and that this petition be entered into the official minutes of these meetings.” He then stated I have the 300 signatures right now, and as this Board knows I don’t think I am breaking the ground when I say that this is a very serious issue to many of the members of the community. People are saying that we want our Town to do the work that their supposed to be doing. I thank you very much.

Applause.

Mr. Mattis asked do we have anyone else who like to speak?

Mr. David Wald appeared before the Board. He stated I would appreciate that there be no applause after my very brief comment. I am a real estate broker in the community, and my office during the course of the year receives many inquiries from organizations, religious profit, and non-profit. There would be no use for this property that could have less of an impact on our community in reality. It’s practically manastic in nature. If you go by, there is hardly any traffic coming to this site. If you look at the back parking lot, it is almost empty. As far as home values are concerned, people are well aware that the Yeshiva has been 22 years. People have moved into the neighborhood during that period. The values have went up. It has no impact, and I can understand that people have, and any legitimate concern subject to pedestrian traffic, the Yeshiva takes very seriously, and two of the other concerns that I think are valid site plan issues, and the Yeshiva takes them very, very seriously. Out of concern that we have here a lot of dissemination of misinformation. I don’t understand why anyone would think that an organization would buy the property, which had 60 or 65 hotel rooms that could accommodate 4 people, and not over a period of over 22 years. For the last 10 or 12 years there has been a population at the Yeshiva of approximately 250 boys. So there’s no need for fear in the community. There’s really no need for fear, and people would like to call me I’d be happy to take them to the property, and talk to them personally, and try to alleviate some of what I think is just misplaced apprehension .

Applause.

Mr. Mattis asked is there anyone else?

Mr. Ron Sassine appeared before the Board. He stated it is good to be here tonight, and I would like to say a few things. First of all, I would sincerely like to commend the members of the ZBA for the work that you’ve spent tonight in the way you presented your thoughts, and I think you have done a very good job, and I appreciate that as a resident. Also, I’d like to speak to the issue of apprehension, and fear. I’d like to say very clearly that is not what I feel. That is not the motivation that I think many people have. We’d like to see the Town enforce the zoning regulations that are currently on the books. I think the Town has done a great job of putting

those out there, and I appreciate it. Thank you very much.

Applause.

Mr. Trussler appeared before the Board again. He stated I am addressing a legitimate concern of all these homeowners, and some of the other people who couldn't come here tonight. The real crux of this issue is the deplorable conditions that Ohr Hameir has been in for the 12 years that I have lived here. Other people here have lived longer, and it's been just as bad. This is an expansion. Mr Wald has a piece on line written around January where he states this is great, this is going to be an expansion. He actually the E word that these people have tried to say this isn't an expansion, it's a renovation. The E word is used in their own paperwork, it's used on-line. What these people are worried about is that it's going to expand, and it's going to be three times the deplorable mess that it is now. That is going to effect our property values, and any realtor knows that. Thank you very much.

Applause.

Mr. Mattis asked is there anyone else?

Mr. John Galvin appeared before the Board again. He stated I spoke earlier. The concept of the Yeshiva has been put to rest by the state course, and the concept as I understand may, or may not residency and dorming of the students. With that said, what I find the most offensive aspect of the entire proceedings to date is the apparent disregard by the applicant for the Town's code. My neighbor, if he wants to expand a porch 3 feet, little did I know, has to come to this Board. So be it, I think that's admirable. If we homeowner's have to play by the same rules, and businesses, and rest of the land owners here, it seems to me that the applicant should as well. It seems to be in the past over 20 years complete disregard for the code, and for necessary permits that were needed, and think it's time. As far as the Yeshiva it does not bother me whatsoever. I find it tranquil. I don't find it to be at all abusive. What bothers me is the institution has to play by the same rules that my fellow neighbor down the street has to play by. I would be the first to argue against this Board using the Zoning Code against a certain religious sect. That is not what is on the table here. What is on the table here is the simple code as well as those codes, the responsibility of the Planning Board particularly for the environmental aspects, and the Dept. of Health which is the County of Westchester. I don't believe the County of Westchester has ever been there, but that is just a summation on my part. I presume during the overview by the Planning Board the sanitation aspect of this, which falls within a purview of the County will be brought up as well. I don't want to wake up to find out that 68 burnt to death down the street. Thank you.

Applause.

Mr. Mattis asked is there anyone else who would like to speak.

Mr. Dan Richmond, Esq. appeared before the Board. I just want to make a few comments. I

want to reassure that the Yeshiva when it decided to do this expansion it met with the Code Enforcement when it needed to expand. It got approval from the Town to expand the dormitory, to expand the pool into a dormitory. It got a Certificate of Occupancy showing that building was in complete conformance with the Town Code. To say that the Yeshiva has been disregarding, I think that does not reflect the facts here. The Yeshiva is now before the Board seeking to play by the rules. That is all we ask is that it is a level playing field. We believe in following the normal rules of the statutory of Interpretation, and we think it clearly shows the Yeshiva should be permitted. We understand the Board disagrees. We're willing to go forward, because we're not interested in having a fire travesty either. The Yeshiva wants to make sure that the students can live safely, and that is why we'd like to move this forward, because to delay this process any longer I think is a disservice to the students there. Thank you.

Mr. Mattis stated yes sir, would you like to speak?

Mr. Gene Barra appeared before the Board. He stated I actually have a two page letter but since you have already enumerated a lot of things I was going to say I won't bore you with it. The one thing I would like to make a comment about is the comment that their attorney just made, and that is regarding how they've just now started to what they need to do to be within the code etc., etc. What my question is the 15 years that I lived in this area why haven't then done anything up until this point? At which time now they are looking to you to grant them something to expand. So what is to prevent them once that is granted to return to what we've seen over the last 20 years? That is my imposition.

Mr. Mattis stated that would up to the Code Enforcement to do inspections, and make sure they stay in compliance.

Mr. Barra stated I would like to submit this letter into the record though. He handed the letter to the Board.

Mr. Mattis stated we have a number of other letters. We've received over a dozen letters, and rather than read them all, and many of them are just copies of the same letter with different signatures, and they will entered into the record also. Many of them refer to the issue of the sewers, which is not an issue for this Board. I am sure that the Planning Board will be addressing that.

A gentleman from the audience asked how many did you get?

Mr. Mattis replied after counting the letters, there are 14.

The gentleman stated thank you Mr. Mattis.

A gentleman came up, and did not give his name. He stated I wasn't going to delve into arguments as to whether we're going to do this, but as far as my research the school building, I believe it is a over 3,000 square foot building, other buildings went from one family to two

family dwellings. So as far as I can tell from the records I have been able to get there is only 14,000 square feet of possible, allowable dormitory space. It is not what they're asking for now.

Applause.

Mr. Mattis asked is there anyone else? He asked Mr. Richmond do you want to summarize?

Mr. Richmond replied we will come back next month.

Mr. Mattis stated we will have to readvertise the two variances that we discussed.

Mr. Becker made a motion in Case No. 23-07 to adjourn the case to July meeting so that we can have time to advertise for the two needed variances seconded by Mr. Chin with all voting "aye."

Mr. Mattis stated I want to thank everyone for coming out, and showing interest in this project.

Applause.

## **NEW PUBLIC HEARINGS**

CASE NO. 26-07 VS CONSTRUCTION CORP. for an Interpretation and/or variance to permit parking associated with commercial building in residentially zoned portion of property where the property is located by a zoning district line on the property at 0 Albany Post Rd., Croton-on-Hudson, NY.

Mr. David Steinmetz, Esq. appeared before the Board. He stated I am from the law of Zarin & Steinmetz. He stated I apologize for being late. We were contained in another community a little earlier this evening, and we tried to get here as quickly as we could. We appreciate your holding the matter until we got here. We think we have a fairly simple issue. We discussed it with you last month at your Work Session. This is Mr. Santucci he has a construction on his property located at Watch Hill Rd., and Rte. 9A. This is a property that is somewhat unique in that it's bisected by a zoning district line. The front, or the road portion of the property is in the HC zone, 9A, and the balance of the property is in the R-40 zone. The property has been the subject of several different applications most recently the application that many of you might be aware of for a recreational facility including an ice skating rink. That would require a zoning text amendment. That application was filed, it was processed, and ultimately withdrawn after the Town Board, and the Planning Board elected not to pursue the necessary text amendment. The resulting application was a commercial building with retail office, and with some residential units to the rear. Mr. Santucci engaged in a series of discussions with certain members of the community, which resulted in that building being significantly reduced in size and magnitude. Right now the size of the commercial building is at 30,000 square feet, a 15,000 square footprint, 30,000 total square feet building on two stories with 5 residential units on the rear of the property. The only reason we are here this is an application presently pending before your Planning Board, the only reason we are here is that approximately 35, 36 of our parking spaces

(referring to drawings) the ones shaded here in gray project over the HC/Rte. 9A zoning line, and into the R-40 zoning line. That has prompted a series of questions about whether parking associated with a mixed commercial/residential building can be located in an R-40 zone. I had some discussions with the Town professional staff, and I don't think there's necessarily a code provision that's directly on point here. I discussed it briefly with Mr. Flandreau, certainly with Mr. Verschoor, Mr. Klarl, and there is nothing that we can point that categorically addresses this situation. As a result of which, we think you're in a position to issue an Interpretation that there is nothing inappropriate, or violative of the Zoning Code for those parking spaces to there, and our entire reason for having them there is we'd like to have fire access to the rear of the building, and a fire lane so that a fire truck could go around the building. If that happens, it pushes some of the parking back over the line. Now we could move the building further in towards Watch Hill Rd., and possibly even reconfigure the parking, or put all of these in the HC/9A zone. To do that, however, we would have a significant additional impact to the wetland, and wetland buffer located in the lower left hand corner of the site. So we think what we've produced is an application, and a design that's most favorable from a design, and environmental standpoint. We think it is going to be favorably received by the Planning Board, but we need to know that our parking is not violative of the code. So we need either an application for an Interpretation that we are not violating the code by having 35 or 36 spaces partially over the zoning district line, or the alternative for whatever necessary variances it would be to keep the parking there, and that's it. So we're hoping your Board can conduct, and close the public hearing on this, and proceed to a resolution of this particular issue.

Mr. Reber stated for the record the split zoning does not effect the commercial building itself. It is on commercial zone facing 9A. As the applicant mentioned, the section of the parking part of it is in the R-40 zone, and obviously we wouldn't have commercial parking in a residential zone. However, as the applicant has indicated they are making some attempt to minimize other things such as infringing on wetlands, and wetlands buffer, also to provide proper set backs from the road so that there can be appropriate landscaping, and for the desire for safety. The fire company can then circumnavigate this building for a better response. These are all positives in terms of what they are doing. It is also worthwhile noting that the earlier use of this property the applicant had divided the residential section to 5 single family homes. If you look at that plan, there was going to be a lot of pavement for roads, driveways, and what have you. They have altered that plan minimizing the impact on the R-40 zone. So essentially the R-40 zone is not going to be disturbed, and limiting that section to a smaller section of paving for residential homes. So the overall picture is showing less impact on the R-40 zone than would have been under the original as of right plan. Also, it is right on the border line, and it's hard for someone to necessarily say 200 or 205 feet of this is in what district. If you didn't draw a line, and you didn't have a map, and you built it with or without that slight encroachment no one would ever know the difference. So with all of this I would interpret that it is probably not a problem, and that part of this commercial facility is going to house residential parking. So you can argue the case that these are the parking places for the residential. So my decision on that would be an Interpretation that this is not something that is unacceptable. However, it raises a nasty little question. Here we're talking about blacktop for parking in an R-40, and all through the record there is a commercial piece of property, which for whatever reason has decided to pave a

driveway access into the parking area to the rear of the building. That parking area, actually the pavement encroaches on the applicant's property. That cannot be justified, because there is no residential component. Also, it is not minimal encroachment, because if you continue the 200 foot set back line, it basically wipes out that parking area. So I have great difficulty in agreeing to blacktop, and paving while there is that significant encroachment, which to me cannot be easily justified. So I just can't look the other way on that.

Mr. Steinmetz stated my understanding is that encroachment of the parking area onto Mr. Santucci's property was pre-existing. Someone had paved, and created an encroachment. Mr. Santucci purchased the property, and he entered into discussions, and decided to give basically limited commission to the gentleman to keep that parking area there. My understanding is that at any time Mr. Santucci can revoke that permission, and that parking area can be removed. So I think we can rectify that as part of the ultimate development of the site.

Mr. Reber stated by saying that my interpretation is that, the other parking lot does comply, there is a 200 foot set back, and it is commercial use.

Mr. Steinmetz stated to me yes, there may be a couple of residential units on the upper level, we haven't made a final decision on that, but that is certainly in the cards, and there may be 4 residential units. To us the more significant issue of having those 35 or 36 parking spaces there is the wetland area, and more than anything the safety issue. The fact that we want to have fire access, and fire safety behind the building. That is not the issue on that other property. So if you are looking for a meaningful distinction what's happening at that restaurant property, and what's happening here, I don't think the interpretation that we're asking you for on this property would ever pertain to that property.

Mr. Reber stated I agree, it is not based on whether that other parking area is acceptable.

Mr. Steinmetz stated personally at any time the Town could have stepped up, and decided it was a violation. I don't represent that property owner. I'm not trying to defend that property owner, but that property owner is certainly always subject to the Town stepping up, and saying you can't do this. So unlike that property owner we're not just building it, and hoping the Town closes its' eye to the issue. We brought it to your attention. We filed an application, and flagged the issue, and we're making sure everybody knows it's paved. We want to build 35 parking spaces over the property line. Quite frankly, it's a shame that there is this mystical zoning district line going through our property. If it wasn't there, there would be a host of issues that would not have to be addressed. This is just one of the unlucky properties that has been left to deal with the fact that we are split into two zones, and yet still makes a meaningful, productive use of this property for the community, and to really make it a productive site.

Mr. Klarl stated it is because of the line that you are seeking relief from this Board.

Mr. Steinmetz stated yes, exactly.

Mr. Reber stated my personal opinion is that set back is rather arbitrary. We have to go by what our rules are, and we have to live by them.

Mr. Becker stated I think the issue comes down to the first part as to whether we think you need a variance, and I think that is clear now. In my opinion, I think it should be granted. It is a minimal variance. The public safety is most important here. Also, it is more appealing to have the property situated this way. The other part is Section 3077. B where it says that in all cases where a district boundary divides a lot in more than 50 percent of the area such lot lies in the residential district. The regulations apply to this case. So I believe the way we interpret this is that you can't put parking in a residential area, because most of the property is residential. However, we can grant a variance for that relief.

Mr. Steinmetz stated I don't want to argue with your conclusion, but correct me if I'm wrong. I've discussed this with Mr. Klarl, and Mr. Verschoor, I don't know whether I discussed this with Mr. Flandreau, but I think 3077B actually does not apply, because we have, correct me John, if I am wrong, we have more than 50 percent in the residential zone so this code provision, correct me if I am wrong, is actually written for the reverse situation. Am I right John?

Mr. Klarl replied right.

Mr. Steinmetz stated so Dr. Becker, again, I think your reasoning ultimately is sound, but the predicate for it, I don't think is. My position is that there are several provisions of the Cortlandt code that I think are bred together, and seem to indicate is really not inappropriate to have parking from one area associated with in another area actually located there. I've debated this a little bit with Mr. Verschoor. You actually have a provision in your code that talks about parking in general. I think it is in the schedule of permitted uses at the end. There is no real clear definition of the parking. I read that as any parking. Mr. Verschoor has told me that the Planning Board has looked at, and associated it with parking for condominium complexes, and residential developments. As a result of all of this, I think your code is capable of being interpreted, but I have an application before you for either an Interpretation, or a variance. The most important thing for us is we would like to see a decision.

Mr. Klarl asked have they determined how many parking spaces will flow for the residential use for the building?

Mr. Steinmetz replied I think for those 4 units, we're talking about 8, maybe 10 spaces.

Mr. Klarl stated you are also saying 8 of the 36 would be tied for residential use.

Mr. Steinmetz stated correct, that is what Mr. Reber saying, part of our issue theoretically that it is not for all 36 spaces.

Mr. Douglas asked I just want to ask in your letter you stated code sections that addressed this issue, which sections are those?

Mr. Klarl stated he said there were code sections that didn't address the issues.

Mr. Douglas stated no I am referring to his letter from June 6<sup>th</sup>, where it says, "We've identified several code sections from the Table of Permitted Uses."

Mr. Steinmetz replied 307.7 for sure. I think Section 307.23 kind of approaches the issue.

Mr. Douglas there may be one more, and to me possibly the most important one was contained in a schedule, or table at the end of the code.

Mr. Chin stated I believe we had a similar type of a case in Verplanck. It was a few years back, I seem to remember something about a split zoning district, and the parking. I think it was the funeral home.

Mr. Mattis stated yes. We also entertained putting in a staging road in a residential area behind Luposello's garage for the car wash. For other reasons, we turned that down.

Mr. Steinmetz I also just want to mention there is also a provision that allows parking on one lot for use in another lot even if they are separate lots, but under the same ownership. Here I'm not on a separate lot. It is just that they are bisected by the district line.

Mr. Heady asked if you were to make that building smaller, you wouldn't have to ask us to give you parking in residential right? You could make that a buffer right.

Mr. Steinmetz replied since 1984 we worked on this project. We were at 70,000 square feet, and now we're down to 30,000 square feet. Part of it also to push it back, and besides the 25 foot buffer, we've increased the buffer from more than 25 feet. Also, in terms of the residential comments from the group from Watch Hill tried to get this as far away from Watch Hill Rd. So by doing that we're going into a more narrow portioned road. Certainly if we reduce the size of the building, in terms of getting a ring road with the depth of parking, and the aisle space of 25 feet, if we kept this buffer we'd have to move it closer to Albany Post Rd., and then possibly we could eliminate some of it, but if want the fire lane to come around it becomes a tough design. The public is not as concerned because they are going to see a reasonable amount of space to come out with a reliable project the size for rental, and retail.

Mr. Heady stated you would have to change the buffer to bring it down more right?

Mr. Steinmetz stated we would have to reduce the buffer, but we've tried to again, go along with the homeowner's group by pushing it away from Watch Hill, and increasing the buffer. We pushed it as far against that east, or southeast as possible.

Mr. Mattis asked are there any other comments from the Board?

Mr. Chin replied I agree with Mr. Reber on this situation.

Mr. Steinmetz stated we still have a real process ahead of us in front of the Planning Board, but we just did not want to get too far out in front of this Board. So we just wanted to secure the Interpretation or variance, and at least we know what issues we have to deal with.

Mr. Mattis asked is there anyone in the audience who would like to speak?

Mr. Jeff Stone appeared before the Board. He stated I live at 16 Sassi Drive. I guess when he referred to speaking with residents from the area I think it was basically John that he talked to. I agree with Mr. Heady, make the building smaller. I heard Mr. Reber talking about if, if there were no line there, but there is a line there. The buffer again, if it all fit in there, then there wouldn't be a problem with it. This has been going back and forth for years, and years, and years, and it keeps going on. Again, it has to end somewhere. I really don't think they should have any variances. They should make the building smaller.

Mr. DeBenedictis appeared before the Board. He stated I have over the years been protesting some of Mr. Santucci's developments here. Most recently the sports center which I organized quite a few people, giving out hundreds, and hundreds of e-mails, and having quite a response to the sports center. I still send out a considerable number of mailings to the residents who were very active in the sports center. This proposal was suggested, and was sent to the same people. Mr. Stone was also aware. I have received one negative comment on this proposal, and that is from Mr. Stone. Now there might be a few other people, but the people that I have been sending e-mails to that are on record, and you could look at the number of responses, e-mails, letters sent to the Town Board, and the Planning Board, they have not responded with any comment.

Mr. Klarl asked you haven't received any comment about parking in the residential portion of the property?

Mr. DeBenedictis stated no, there's a couple people who are along that road that cuts down off of Watch Hill. I don't even know the name of it to be honest with you, but it's this road in here (referring to the drawings), and a couple of those people were concerned that the building would encroach over here, but once this area was levied as woodlands, it negated any of their concerns. Would it be nicer to have the building smaller, of course, but there has not been the opposition to this project. I have gotten literally no response negative on this proposal, and it saves the woodlands, then I certainly am for it, and I think most of the people are for it. They want this building to be as inconspicuous as possible.

Mr. Mattis stated thank you. I think the purpose of the Zoning Board is to look at things like this, and see what the detriment is to the neighborhood, the benefit to the applicant, and weigh all those, and make a judgement, and if you just want to say make the building smaller so you don't need variances, then you don't need our Board. Is there anyone else who would like to comment?

Mr. Don Fuller appeared before the Board. He stated I've seen a number of these projects over

the years, and I'd like someone on the Board, if they can, to describe for me what the footprint of a 30,000 square foot building is. What is it compared to? Is it 15,000 square foot per floor?

Mr. Mattis stated that is correct.

Mr. Fuller asked now what is 15,000 square foot look like for someone who's not an engineer, conceptually? How big is the Carbone building off hand?

The architect answered I think it is about 17,000 square feet.

Mr. Fuller asked that is both floors?

The architect stated correct.

Mr. Fuller stated and your building is twice as big as that.

Mr. Mattis asked please address your comments to us, we don't want to dialog back, and forth.

Mr. Fuller stated okay, I'm sorry, and this is certainly twice as big as the Carbone building is that correct?

Mr. Chin replied the footprint is smaller, it is just that it is two stories high rather than one story high.

Mr. Fuller stated the Carbone building is two stories high. There is a gym on the second story. So that is 17,000 square foot. So this is twice as big. Okay, now you do you have to build a building that is that big. You can't even compromise by building the building smaller, as Mr. Heady suggested, and not have a violation of the Zoning ordinance.

Mr. Mattis stated it is not a violation.

Mr. Fuller stated well you have to make an exception, is that right?

Mr. Mattis stated we grant a variance, which we look at every month in many cases.

Mr. Fuller stated okay, it is an unusual request, when you have to come to the Board of Appeals to get it done.

Mr. Mattis stated that is not necessarily true. That is what the Zoning Board of Appeals does every month. You ask for relief from the code, and we look at and see what the detriment is to the neighborhood, what the benefit is to the applicant, several other factors, and whether or not it's reasonable, or whether or not it's extensive.

Mr. Fuller stated well I'd like to just apprise this Board as Mr. Heady's suggestion that it be

smaller.

Mr. Becker stated I just want to point out a couple of things in concern of your specific comments. Number one is the applicant if he were to move the building closer to the road would not need a variance, he could do it as of right. So by moving it back, and seeking this variance he is actually pleasing the public more for privacy issues. So he is in a sense accommodating what Mr. DeBenedictis brought up that the community wants this to be as innocuous, and to diminish the visibility, and visual impact that such a structure would have. The other issue that you brought up is the size of his two buildings, and there not exactly comparable, because this lot is almost 93 feet plus acres, where as the Carbone building lot is much, much smaller. So that 8 times the amount of property to build on. So that is what we have to weigh out, and what this Board is pondering on tonight is whether to grant this variance so that we can move the building to a more desirable area as far as the public concerned, and he is willing to go through this whole process to do it.

Mr. Fuller stated thank you.

Mr. Douglas stated there are certain factors that we look into when we consider granting a variance. It may be helpful to just run through them, because I think that the applicant here meets those factors. One is whether there will be any desirable change in the character of the neighborhood, and I don't believe that this proposal would have an effect on where he is placing it. The second issue is whether or not the benefit he is seeking can be achieved another feasible method, and the benefit he is trying to do here is giving protection to the wetlands, and he is make it more safe for fire concerns, and I don't think that could be achieved in a different way. The variance he is requesting is not substantial. It's really just going slightly over that other zone for the parking. It is not going to have any adverse impact on the physical character of the neighborhood. The alleged difficulty is not self created. It is created as a result of this somewhat unusual split zoning. There are very few effects of parcels of land in the Town that have split zoning, and this happens to be one, and that is not something that he created.

Mr. Fuller stated okay, thank you.

Mr. Stone stated when he was talking about undesirable change, there is not building in that general area of more than 70,000 square feet.

Mr. Mattis stated he can as of right move that building forward, make it less desirable to the people.

Mr. Becker stated we can deny the variance, and just let the applicant build closer to the road.

Mr. Stone stated I don't know all the legalities, and how all this works.

Mr. Mattis stated it is not less desirable than what he is allowed to do. It is less desirable for what he can propose without the variance. I think just the opposite applies here. He's moving it

away from the people, and away from the road, and results in a minimal number of parking spaces that encroach onto the residential area. He can move that forward, not have a variance, and it would be much less desirable. He could do that as of right. He has every right to build a building that size is what we're saying, but we're trying to accommodate him where he can locate it, and minimize the impacts everywhere. As a result of that some of his parking spaces in the back of the building where they won't be seen by anyone will encroach over that invisible, magic line that defines the residential, and the commercial.

Mr. Klarl stated the essential question to this Board, and you might ask yourself would it be a better plan with the variance, or without the variance what do you think?

Mr. Stone replied I have no idea.

Mr. Klarl stated in terms of building placement, with a variance?

Mr. Stone replied I guess that will be up to the Board.

Mr. Mattis asked is there anyone else who would like to speak?

Mr. Reber stated I just have a question for the members of the Board first, is this an Interpretation, or will we be voting on this in terms of a variance?

Mr. Douglas replied I would personally prefer it if we do it as a variance. I would not somebody coming down the road six months from now saying you interpreted this way.

Mr. Mattis stated when we dealt with the case on the other side of the road, we dealt with that only as a variance. It is within our right to grant the variance.

Mr. Chin stated I agree with the variance.

Mr. Reber made a motion in Case No. 26-07 to close the public hearing seconded by Mr. Becker.

The Board was polled as follows:

Raymond A. Reber	Yes
David Douglas	Yes
Richard Becker	Yes
John Mattis	Yes
Wai Man Chin	Yes
Charles P. Heady, Jr.	No

The public hearing was closed by a 5-1 vote.

Mr. Reber made a motion in Case No. 26-07 to grant a variance for parking into the R-40 zone for all, or part of the total of 36 parking spaces as shown on site plan dated 05/21/06. This is a Type II Sequa with no further compliance required seconded by Mr. Becker. The Board was polled as follows:

Raymond A. Reber	Yes
Richard Becker	Yes
David Douglas	Yes
John Mattis	Yes
Wai Man Chin	Yes
Charles P. Heady, Jr.	No.

The motion was carried by a 5-1 vote.

#### ADJOURNED PUBLIC HEARINGS FOR TELECOMMUNICATIONS TOWER

CASE NO. 48-05 CINGUAR WIRELESS SERVICES INC. for a Special Permit for a wireless telecommunications facility on property located at 451 Yorktown Rd., Croton, NY.

Mr. Chin made a motion to adjourn the meeting seconded by Mr. Becker with all voting “aye.”

The meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Christine B. Cothren