

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, July 18th, 2012*. The meeting was called to order, and began with the Pledge of Allegiance.

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

Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman
Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

ADOPTION OF MEETING MINUTES FOR JUNE 20, 2012

Mr. John Mattis stated I make a motion to adopt the minutes.

Mr. David Douglas asked you have a comment?

Ms. Adrian Hunte stated there's a spelling of the attorney on page **17**, I believe, to change the name from Esposito to Spiziro?

Mr. John Mattis stated I make a motion to approve the minutes as amended.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the minutes are approved as amended.

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ADJOURNED PUBLIC HEARINGS TO AUG. 15, 2012:

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

Mr. David Douglas stated this has been adjourned until August.

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CLOSED AND RESERVED:

A. CASE No. 2012-07 Salvatore Fertucci for an Area Variance for a side yard setback for an addition on property located at **73 Paulding Lane, Crompond.**

Mr. John Klarl stated we have in front of us tonight a draft Decision and Order on this **case #2012-07**. In the Decision and Order we indicate this is an application by Mr. Salvatore Fertucci for an Area Variance for a side yard setback for an addition on his property located at **73 Paulding Lane**, in the hamlet of Crompond in the Town of Cortlandt. The property consists of a two-family house at the present time with a two-car garage. It's on a lot of **9.2** acres in the **R-40a** single-family two-family residential district. It's an unusual district we've got over in the Crompond area. The applicant here is proposing new construction for a garage at the end of his existing driveway with an addition above. In **2002** a Building Permit was issued to demolish the existing house and to construct a new two-family house with a two-car garage. We have an original application from the applicant. We've had a couple of various changes. In the original application the applicant seeks an Area Variance for the side yard setback from an allowed **20** feet down to **6.25** feet for the proposed garage and addition for a side yard Area Variance of **13.75** feet or **68.8%**. In the applicant's latest revised plans submitted **June 11th, 2012** he seeks an Area Variance for the side yard setback from an allowed **20** feet down to **14.25** feet for the proposed garage and addition above for a side yard Area Variance of **5.7** feet or **28.75%**. This Board held four public hearings in March, April, May and June. We took in substantial testimony from the applicant. We looked at his various alternative plans. We looked at the new plans as presented by his architect and we had much discussion concerning his testimony, the plans and the affect on the neighborhood. The applicant told the Board he need to expand his two-family house to accommodate his mother moving in and for his growing family and with that he gave us great detail about various interior plans that he had for the house. In the four public hearings though, the Zoning Board of Appeals members consistently underscored several fundamental problems involving each of his alternative plans: 1) the applicant had maxed out the lot and the side yard setbacks; one is **19.69** feet on one side and one's **19.81** feet on the other side. The second problem was the applicant should consider pursuing any expansion of the rear of the yard and not on the side yard and on a regular basis we heard that from various Board members. We also indicated and thought it was a problem that the applicant was concentrating just on his interior plans which were driving his exterior plans which didn't really sit well with the Board. Having reviewed the extensive testimony from the applicant, his various alternate plans, and the history of the property, the Board looked at the five factors under section **267b** of the Town law and found as follows: 1) if the Board were to grant this sought after side yard Variance of **20** feet down to **14.25** feet an undesirable change would be produced in the character of the **R-40a** neighborhood and a detriment would be created to the adjoining area and other properties. This two-family house already fills the applicant's lot and the limited side yard

setback shall not be further reduced. 2) The benefits sought by the applicant can be achieved by some other feasible method other than an Area Variance. Time and time again the Board told the applicant that an expansion of the house should be considered in the rear yard and not only of the side yards. 3) The Area Variance that's requested by the applicant is substantial, it's almost **30%**. 4) The proposed side yard Variance will have an adverse affect on the physical conditions of the neighborhood, the granting of the side yard Variance will leave only **14.25** feet from the applicant's house to the neighbor's property line and finally factor 5) the alleged difficulty is self-created. The applicant will be further expanding a two-family house and further reducing the side yard setback both of which would be caused by the applicant himself. For all the foregoing reasons, the Area Variance application for a side yard setback **20** feet down to **14.2** feet is hereby denied by the Board. So is there a motion to adopt that Decision and Order?

Mr. Wai Man Chin responded so moved.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that Decision and Order is adopted and the Variance is denied.

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ADJOURNED PUBLIC HEARINGS:

A. CASE No. 2012-20 **Department of Technical Services, Code Enforcement**
for an Interpretation of how an animal rescue shelter, whether for profit or not-for-profit,
is classified under the Town Zoning Ordinance.

Mr. John Mattis stated I'm recusing myself on this case.

Ms. Adrian Hunte stated I'd like to read part of article **26A: Care of Animals by Pet Dealers of the New York State Agriculture and Market's Law**. It states under definition section **400**, subdivision **4**: "a pet dealer means any person who engages in the sell or offering for sale of more than **9** animals per year for profit to the public. Such definition shall include breeders who sell or offer to sell animals provided that a breeder who sells or offers to sell directly to the consumer fewer than **25** animals per year that are born and raised on the breeder's residential premises shall not be considered a pet dealer as a result of selling or offering to sell such animals. Such definition shall further not include duly incorporated humane societies dedicated to the care of unwanted animals which make such animals available for adoption whether or not a fee for such adoption is charged." And then it goes on to say under section **400-A: Pre-emption of Local Laws**: "the provisions of this article shall apply to all municipalities including cities with a population of **1** million or more and shall supersede any local law, rule, regulation or Ordinance regulating or licensing pet dealers as defined in this article. Nothing in this section shall be construed to limit or restrict any municipality from enforcing any local law, rule, regulation or Ordinance of general application to businesses governing public health, safety or

the rights of consumers.”

Mr. David Douglas asked what is that from?

Ms. Adrian Hunte responded this is article **26A** of the New York State Agriculture and Market’s Law section **400** definitions concerning pet dealer.

Mr. David Douglas asked and that applies to cities of **1** million or more?

Ms. Adrian Hunte responded it says that “it applies to all municipalities including cities with a population of **1** million or more.”

Mr. David Douglas stated I’m sorry I didn’t hear that. As you know, often, that’s how they make New York City different from everybody else.

Ms. Adrian Hunte stated I just thought I would add that to our discussion.

Mr. David Douglas stated at the hearing last month we had some discussion from the public, does anybody want to be heard on this?

Mr. Wai Man Chin stated I have to agree with that. When there’s **60** dogs housed in a building to me that’s a kennel. A kennel, we need a minimum of **5** acres for a kennel in this Town. Again, I would say that this is not a good situation right here.

Mr. David Douglas asked anybody else?

Mr. James Seirmarco responded I agree with Mr. Chin’s comments. I’d just like to add one thing that there was a question about whether or not profit or not-for-profit and I think that in that case whether they are non-profit or profit, to me means nothing. They’re still the same use. They’re still the same dogs. They’re still the same feeding. They’re still the same disposal of waste that has to have a Permit. It’s whether they are tax exempt or not or taxable should have no influence on the use of the building. I would agree with Mr. Chin.

Mr. Raymond Reber stated I agree with Mr. Chin in terms of whether **60** dogs are appropriate for that space but I guess I would like to ask about the reading of the Agricultural regulations; does that kind of infer though that you can’t prevent a shelter if they’re taking in dogs as long as they meet other regulations?

Ms. Adrian Hunte responded it sounds as though there is pre-emption by the State but apparently there’s this other – this last sentence which says nothing in this section “shall be construed to limit or restrict any municipality from enforcing any local law, rule, regulation or Ordinance of general application to businesses governing public health safety or the rights of consumers.” The question then becomes whether our local laws or Westchester County Department of Health would then be able to come under that jurisdiction.

Mr. Raymond Reber stated I think it's a little unclear because as stated the way our regulations are written if we declare it a kennel, our regulation says 5 acres. Well, nobody would have 5 acres for any kind of – they're so rare in the Town so I would think that that regulation would be overridden as long as you can meet all the other things: noise control so you don't disturb neighbors, Health Department comes in and regulates how many could be housed there in a healthy environment. I think there's a grey area here in terms that I don't think it's a matter we can just say 'no you can't do it.' I think it has to be looked at in terms of what reasonable conditions and can those conditions be met at that location based on the fact that there is this overriding statement from the Agricultural Department saying that it is a good thing that they're trying to take in these dogs or cats or whatever and put them back into the system. Like I said, I don't think at this point we could clearly say yay or nay. I think maybe we've got to look into it further and decide how these two regulations work against each other and what the right decision is.

Mr. David Douglas stated I'm not sure I agree with that. At most, it seems to me that that means that on a case-by-case basis if somebody applies for a Special Permit, you may have to look as to whether you need to require the 5 acre minimum or not or whether that could be an exemption there. To me that doesn't seem to say anything about whether or not an animal rescue shelter falls into the Town's definition of a kennel and it seems to me that it clearly does. That's the specific question in front of us right now.

Mr. Wai Man Chin stated the other thing is I'm not sure if we should actually adjourn this or close and reserve on this thing.

Mr. David Douglas stated I think the plan was to, unless there are any comments, which there don't seem to be from the public, that we were going to close and reserve and consider it further. Someone want to make a motion?

Mr. Wai Man Chin responded I'm going to make a motion on **case 2012-20** to close and reserve on this.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case 2012-20** is closed.

Mr. John Klarl stated Mr. Chairman we would discuss this at our next work session.

B. CASE No. 2012-21 Department of Technical Services, Code Enforcement
for an Interpretation of how an academic tutoring use in a commercial zone is classified under the Town Zoning Ordinance.

Mr. Raymond Reber stated on reviewing our Code, I think we concluded that it was not

addressed anywhere in the Code for commercial properties and so we have asked, and Mr. Hoch has prepared a letter to the Town Board recommending to them that they do add to the Code permission for tutoring facilities in commercial zones. But, as we read it right now, that's not covered.

Mr. David Douglas asked does anybody in the public want to be heard on this? I think procedurally, what we talked about, I think Mr. Hoch you were going to withdraw the application and we would send a memo to the Town Board along the lines of what Mr. Reber said.

Mr. Ken Hoch stated I'll agree to withdraw my application.

Mr. Raymond Reber stated so that's withdrawn.

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PETITION TO RE-OPEN CASE #2012-22:

- A. CASE No. 2012-22** **Maria Hardman** for an Area Variance for the side yard setback for a 2nd story addition on property located at **21 Battery Place, Croton-on-Hudson.**

Mr. David Douglas stated there was a petition to re-open that case. We discussed this at the work session with the applicant and I think the applicant has agreed to withdraw their petition to re-open it. Is that correct?

Mr. James Seirmarco responded that's the way they left it at the workshop yes.

Mr. David Douglas stated the petition to re-open **case 2012-22** is withdrawn.

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NEW PUBLIC HEARINGS:

- A. CASE No. 2012-25** **Mateo and Kim Velardo** for an Area Variance for an accessory structure (above ground pool) in the front yard and an Area Variance for the front yard setback for a proposed deck on property located at **8 Lent Ave., Montrose.**

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

Mr. Mateo Velardo stated at first it was a Permit/Variance for a deck. We put a pool up last year on the side of the house and our architect then came back and said that we now need a Variance

for the pool and for the deck.

Mr. Charles Heady stated I was there and I talked with the gentleman about the deck and also the pool which I had mentioned to him that we seldom give front yard Variances. We had talked at the work session and you really have to move the pool back and you'd have to bring the deck back with it **5** feet. If you did that, you really don't need to come before us to have a Variance. That would clear it completely. I know that would kind of jam you up a little bit but you want a bigger deck then if you put it back I understand but to make it legal that would be the only way you could do it.

Mr. Mateo Velardo stated when I had put the pool up I had called and I was told I didn't need a Permit. I didn't know that there was anything indicating that the pool had to be back certain feet from where the front of the street is. I think there's a discrepancy of it's less than **5** feet – it's like **4.7** and change. The gentleman that installed the pool had told me that it had to be **10** feet from my neighbor's yard and I had to put a fence up where the front of the house came which is on the side of the property and in speaking with the architect, he didn't understand some of the prints from the old house when we purchased the house – some of the neighboring houses to the left and to the right are actually closer to the front of the street than my house is so I considered it the side and had no idea that there was any measurements there that broke the Code.

Mr. Charles Heady stated like I said the house was bought that way. The enclosed porch you have there was made before zoning anyhow and the extension – the terrace in front which the fellow, whoever owned before did that also. There's nothing we can do about that as of now because you bought it that way but you want to think about moving that back and then you could withdraw this application if you want to because then you won't even need a Variance from us. It's up to you what you want to do but like I told you we never give a Variance in the front.

Mr. John Klarl stated not for a pool.

Mr. Charles Heady stated because, you can move it maybe in the fall when you're finished.

Mr. Wai Man Chin stated I don't think we would ask you to move it now. Wait until the season's over and so forth when you drain the pool it would probably be easier to move than at this moment. I think we could give a little leverage on that but it's only moving it back a short distance because we've never given a Variance for a pool in the front yard actually.

Mr. Raymond Reber stated actually, it was unfortunate that the advice you did get was obviously not too accurate because it's not that complicated. The **10** foot setback side yard is to the primary structure it doesn't include accessory structures but of course you still were closer than **10** foot there anyway, you're only **7** foot **8** but actually, for an accessory structure which is what a pool is considered, you only have to be **4** feet off the line so you actually had more room to move it over and likewise, if you do move it over closer to the line, which you're allowed to do then you have plenty of room to move it back to **5** feet and get behind the front yard setback which lines up with the house and the setback line. You have the room to do it and since you

have the room to do it we really don't have justification to say "leave it where it is." But, as my colleague said, wait until the season's over and you're all done with the pool and then you can drain it at your leisure, reposition it. The same would be true for the deck. You can build a deck within – from the front line setback around the pool, going back and to the side, that's fine. Again, we would not want to see that deck protrude out to the front. I think if you make those adjustments you should be okay.

Mr. Mateo Velardo stated and with the first setback you're saying to the left and then back **5** feet.

Mr. Raymond Reber responded in other words, you can move the pool to the left because you only have to be **4** feet off the property line. So say if you go **5** feet off the property line and then go back that'll give you an extra **2** feet **8** inches to move it over and it'll give you extra room and then you can fill in between the house and the pool with a deck. Again, as long as that deck doesn't go any further forward than that front yard setback lining up with the pool you'll be fine.

Mr. James Seirmarco stated and you wouldn't need a Variance for the deck.

Mr. Raymond Reber stated no because then you'll be compliant with Code.

Mr. James Seirmarco stated your setbacks would be correct. It won't be in the front yard. It won't be too close to the side yard.

Mr. Raymond Reber stated like I said if the architect or whoever understood in the beginning and said that it would have been simple, you would have been putting it where it was supposed to be and you wouldn't have this headache.

Mr. David Douglas stated procedurally, I guess would suggest perhaps withdraw. You withdraw your application, wait until the weather cools down and when the pool gets drained move it and then you're set.

Mr. John Klarl asked Mr. Chairman should we rather adjourn it since he's going to do something?

Mr. James Seirmarco stated adjourn it until November or something.

Mr. David Douglas stated I agree with you. That's a better way to do it procedurally. So instead of withdrawing it we'll adjourn it to November.

Mr. James Seirmarco stated that gives you sufficient time to do what you have to do.

Mr. Charles Heady stated I make a motion on **case 2012-25** to adjourn it until November.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-25** is adjourned until November.

Mr. John Klarl asked Mr. Hoch, when's the November date?

Mr. Wai Man Chin stated at that time you can talk to Ken Hoch before that and make sure everything's proper and everything else that way it'll be easier that way.

Mr. Ken Hoch responded November 14th.

Mr. John Klarl asked so he'll be back on our agenda then?

Mr. Wai Man Chin stated go over with Ken Hoch on that in the near future and then he'll go over everything with you and that way you can get the proper things and so forth.

Mr. Mateo Velardo stated okay, sounds great.

B. CASE No. 2012-26 Carol Hillis for an Area Variance for the side yard and front yard setbacks for a new deck, and an Area Variance for an accessory structure, propane tank on a concrete pad, in the front yard on property located at **29 Anton Place, Lake Peekskill.**

Ms. Carol Hillis stated this is my co-speaker Gary.

Mr. Gary Yates stated I'm the architect for Mrs. Hillis and I made drawings for her deck here. The reason they want the deck in the side yard, it only has a – we're proposing a **2** inch setback which is not very much but it's the only place to put a deck on the property and be able to get into the house because that's also the main entrance of the house for up those stairs that are shown there as an existing concrete stairs in the front. That's how you get up to the house. There used to be an existing concrete porch there which was very small and so they would like to build this deck in this particular side yard with a **2** inch setback. The house is presently legally non-conforming because nothing has a proper side yard setback. It only has **4** feet in the back or whatever it is, **3.17** feet in the back and so it doesn't really – it's legally non-conforming. They want to sit out on the deck and enjoy the sunset in the west and be able to look at their front of their property. Their neighbor is the golf course and I'm sure it doesn't pose any problems to the golf course. It's excess land for the golf course. It's not in a fairway or something like that. That's the reason why they're coming here for a Variance to build this – there was an existing deck there but the existing deck that's there right now is **5** feet over the property line so we have to tear it all down and it was illegal to begin with and now we're proposing this new wood deck which is at least within their property but it only has a **2** inch setback. We're hoping you would consider the fact that it's not going to cause any problem for the neighbor next door.

Mr. David Douglas asked are you also seeking an application with respect to a propane tank?

Ms. Carol Hillis responded yes.

Mr. Gary Yates responded the propane tank I knew nothing about until I came here tonight.

Ms. Carol Hillis responded yes, I have a letter that I got from the propane company. The reason they want to put it where they have it is the property is a very steep slope and the problem that the gas company told me would be filling the tank for the generator. If they can't fill the tank, the generator won't run which is the reason I want the tank because with the power failures I'm concerned – my pipes will freeze when I'm not there.

Mr. David Douglas asked and this is the letter from the Stewarts?

Ms. Carol Hillis responded that's the letter and also there are some pictures, I think, of the property and Stewart told me it would be very dicey to put it up on the side of the hill because he couldn't guarantee they could fill the tank.

Mr. Wai Man Chin stated we had a discussion on Monday about the deck, number one. Mr. Yates, I know you're trying to get it as close to the property line as possible but I think most of the Board members are trying to say; well that means if you've got to maintain it or anything else, you're going to be on the property of the golf course. And, sometimes if you get injured on a golf course it might be a little bit difficult between legal things on that of getting injured...

Ms. Carol Hillis asked can I tell you something about this land? There's a stream and then the golf course is way further in at the end of the road. Nobody has been on that land since I'm there **37** years.

Mr. Wai Man Chin responded no, I understand that but it's still somebody else's property. All I'm saying is there any way we could bring that deck in just maybe another **2** feet? That way, at least you could walk on your own property to maintain it and so forth. I don't have a problem with that.

Mr. Gary Yates stated that's fine.

Mr. Raymond Reber stated I concur because I looked at the property and you're right, it's woodland now and nobody bothers but there's nothing that says down the road that the golf course gets concerned maybe because the kids are going in there and they decide to put a fence up. Well, if they put a fence right there, then you're in trouble. That's why we're recommending a **2** foot setback we could probably consider.

Mr. Wai Man Chin stated we've just got to update that property right there. It's owned by the Town not the golf course.

Mr. Raymond Reber stated the point is it's still an issue. I have a question for Mr. Yates, I'm a little puzzled. I know on the application it said that the old deck crossed over the property line

yet the way this is laid out it looks like this is all one parcel. Where is the cross over on the property line?

Mr. Gary Yates responded it was this dotted line here. That's the existing deck and it's across the property line.

Mr. Raymond Reber stated I thought you were referring to this one over here. Okay, there was a deck over here that crossed over. I understand. Thank you.

Mr. Wai Man Chin asked so you don't have a problem with just bringing it back just **2** feet from the property line and...

Mr. Gary Yates responded okay, the only problem is, Mr. Chin, is that if I bring it **2** feet in from the property line and go all the way back – at the rear there, I'm going to have to straighten it out because that's where you get on to the deck from above.

Mr. Wai Man Chin asked from the house you mean?

Mr. Gary Yates responded from the property behind the house. See where it's existing house there, well that's the back yard.

Mr. Wai Man Chin asked it's **3.17** feet?

Mr. Gary Yates responded yes, I'll need at least **3** feet there to get onto the deck from that side or else you can't get onto the deck.

Mr. Wai Man Chin stated I see what you're saying. If you add that **3** feet or there about and it comes straight and then cut back the **2** feet from the property, would that be okay? I don't see a problem with that then. You have to jog it. You have to jog that porch in.

Mr. Gary Yates responded in other words if I just come vertical...

Mr. Wai Man Chin stated well, parallel with the house...

Mr. John Mattis stated until you hit **3** feet.

Mr. Wai Man Chin stated until you hit the **2** foot mark and then come back you got it.

Ms. Carol Hillis asked you know what he's saying?

Mr. Gary Yates responded I know what he's saying.

Mr. Raymond Reber stated you'll be offset **2** feet going back until you get within **3** feet of the house then you'll go parallel to the house.

Mr. John Mattis stated we'll allow a minimum **3** foot on the deck there.

Mr. Gary Yates stated no problem, we can do that.

Ms. Carol Hillis asked what about the tank?

Mr. Wai Man Chin responded the only thing – I think we all had a little discussion on the tank. If the propane company indicates they can't fill a tank – we have a picture of a propane tank already up there by the house.

Ms. Carol Hillis responded they only fill that – that tank hardly ever gets filled for a gas stove and if they're going to fill it, they're going to fill it in the summer but what the guy told me this tank is solely for the generator...

Mr. James Seirmarco stated which is an emergency use only.

Ms. Carol Hillis stated exactly right. If it goes on – if there's a power outage and the generator is running for a few days and they have to fill it and he said if let's say it's on the side yard and they can't get in there because of snow or something, because I'm not going to be there, then they can't fill it which means...

Mr. Raymond Reber asked can't they piggyback – I don't know of any reason why they can't parallel these tanks so that this other tank could be a backup...

Ms. Carol Hillis responded no, they're not close enough.

Mr. Wai Man Chin stated they won't do it.

Mr. Raymond Reber asked they can't put **2** on the same circuit?

Mr. Wai Man Chin responded yes, it's different.

Ms. Carol Hillis stated he told me that you don't want anything else on the generator tank but the generator. That's what he told me, Stew.

Mr. Wai Man Chin stated you can't put the gas stove and anything on that.

Ms. Carol Hillis stated the dryer and the gas stove are on the other tank.

Mr. James Seirmarco stated it used to be they could plumb them with copper tubing. They cannot do that anymore. It all has to be black pipe. I have a tank that's probably **100** foot from the road. It's not a big hose. I think the man is telling you for his convenience it would be easier if you put the tank down by the road...

Ms. Carol Hillis stated well because I'm gone in the winter. If it's snowing, he can't get up there. That's what he's telling me and I know he's right because the property is all a slope all the way up. That's why he wants it down so that he can have access to the tank.

Mr. Wai Man Chin stated and especially in the winter time you're saying.

Ms. Carol Hillis stated well yes. This is really for the winter. It's really not for the summer.

Mr. James Seirmarco asked and you don't have anybody shoveling the sidewalk or anything like that.

Ms. Carol Hillis responded no, I'm not there.

Mr. James Seirmarco stated just asking the questions to get them into the record.

Ms. Carol Hillis responded well yes, but he told me this is where you should put it because I can make sure I can fill it for you.

Mr. James Seirmarco stated we have to be concerned with safety...

Ms. Carol Hillis responded it's not on the road. It's up on the side of the property.

Mr. James Seirmarco stated I've seen the pictures. I'm just trying to weigh in my mind whether that would be the optimum spot.

Ms. Carol Hillis stated we looked everywhere on the property and that was really the only place that we could put it that wouldn't be up on the hill.

Mr. James Seirmarco stated I don't see anything on your drawing of screening. We usually require, when they're up in the front yard like that, some sort of bushes or something to screen it.

Ms. Carol Hillis stated I could screen it. If you wanted, I could put up a fence. I don't care.

Mr. James Seirmarco stated we've required it in the past and I think that would be a good idea.

Ms. Carol Hillis asked put a fence in front of it?

Mr. James Seirmarco responded or whatever.

Ms. Carol Hillis stated I could block it so it's not visible.

Mr. Raymond Reber stated I think the way it's set up, greenery is not going to work because you're right close to the wall but you could put a little privacy fencing in there because we tend

not to want people to have things exposed in the front yard.

Mr. Wai Man Chin stated some kind of fencing that has like slats in it or like green slats or something just to hide it so we don't see it.

Ms. Carol Hillis stated I'm willing to try to hide it.

Mr. James Seirmarco stated it's probably for security and safety so that people don't come along and just shut it off or whatever.

Ms. Carol Hillis stated okay.

Mr. James Seirmarco stated it's like an attractive nuisance.

Ms. Carol Hillis stated we looked everywhere on the property and it's – okay, so put up some kind of...

Mr. Raymond Reber stated something to make it so people don't see it's a tank there. For all they know it could be your garbage can, it could be anything.

Ms. Carol Hillis stated I could have my handyman do something to cover it. I can leave the side so the guy can get to the tank though? It's just going to cover it so that it's not visible?

Mr. Raymond Reber responded whichever side he's going to come in you just make it a gate, he can open that section up.

Ms. Carol Hillis responded okay so then that's good.

Mr. David Douglas stated there was only one other thing we had talked about at the work session. We wanted to make sure that this was subject to the consent of the Highway Department and the Town attorney. Apparently they've stated that they don't object to the tank location as long as it's 5 feet from the road. We wanted to make sure that we have something in writing confirming that.

Mr. James Seirmarco asked can you get a letter from the Highway...

Mr. David Douglas asked Mr. Hoch if you could do that? We would grant it subject to getting in writing from the Highway Department and the Town attorney that they don't have an objection.

Mr. Raymond Reber stated we just need to have that on file.

Ms. Carol Hillis asked okay, but can I let them put the generator in?

Mr. Raymond Reber responded I wouldn't.

Mr. David Douglas stated I think you should wait until you get the letter.

Mr. Raymond Reber stated it shouldn't take long for Mr. Hoch to get that letter.

Mr. Wai Man Chin stated or what we could do is we could adjourn it for a month. By that time Mr. Hoch...

Ms. Carol Hillis stated this is all open and they're waiting to inspect it. The gas line is there and they're waiting to come and see it.

Mr. Raymond Reber stated I would recommend we approve it conditional on those letters which shouldn't take long.

Mr. Wai Man Chin stated if the Highway Department and the Town attorney already stated, which they stated to you Mr. Hoch?

Mr. Ken Hoch responded I believe I have an e-mail.

Mr. David Douglas stated if you have an e-mail, to me that's in writing.

Mr. Raymond Reber stated so it's documented already.

Mr. David Douglas stated okay, that's fine. That's in writing.

Ms. Carol Hillis asked so that's it? I can do it?

Mr. David Douglas responded we have to vote on it but if you wait about **2** minutes.

Mr. Wai Man Chin asked anybody in the audience? I'm going to make a motion on **case 2012-26** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Wai Man Chin stated I'm going to make a motion on **case 2012-26** grant an Area Variance for the side yard and for the front yard setbacks for a new deck and an Area Variance for the accessory structure, propane tank on a concrete pad with some kind of fencing around it with a gate where they could have access to it. On the deck it has to be **2** feet from the side yard and it will go **3** feet from the house at the very back corner where it enters from the back yard – where it meets. The front yard setback is from **30** feet down to **22.5** feet. This is a type II under SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that Variance is granted.

C. CASE No. 2012-27 Daniel and Judy Lee for an Area Variance to allow an accessory structure, a hot tub, in the front yard on property located at 4 Linda Lane, Cortlandt Manor.

Mr. Daniel Lee stated I am the owner, along with my wife, of 4 Linda Lane. This is my formal request to grant an Area Variance for a hot tub to be placed in what is termed the front yard. My concern was that there are several spots in which I considered putting the hot tub; one of them was towards the back on the driveway which is sloped and it actually prevents me from being able to get to the double doors in the basement behind the house. The other places on more to the side are where my septic tanks are formally. Where I would like to place it and my request is to put this more in the front of the house but it's really toward the side and from the street – if you look from the street, it's completely covered, hidden because it's behind a rock outcropping. It's screened from the street and the reasons I want it over there is that if I put it too far back – I have a conservation easement so there's no back yard on my property. I have beautiful trees but there are trees that I really can't groom that much because they're on the property. I'm worried about the branches falling down and damaging the tub. If I were to put the hot tub closer to the outcropping which is more in the front I have the benefit of not having to worry about the trees damaging it and plus I have three girls at home and if they're using the hot tub, I'd rather not anybody know – even know that the hot tub is there, to see them. I brought some additional pictures that show the aspect from the street and everything and I guess you guys would want to look at it at another meeting or I don't know how to proceed at this point.

Mr. David Douglas stated you can hand us the picture.

Mr. James Seirmarco stated I visited it today and looked from the street. I didn't come on the property. I did see the wall but you're basically talking about coming out 25 feet in front of the wall. I see the area between the – I see your 1,250 gallon septic tank and the bump out pump. Have you thought about the area between the conservation easement and – I'm just trying to think of alternative positions for this. I think you just went through it and if you move it back...

Mr. Daniel Lee stated the problem is if I'm too close to the conservation easement I have some huge oak trees that the branches are constantly falling.

Mr. James Seirmarco stated I saw that yes.

Mr. Daniel Lee stated like I said, the conservation easement abuts the gorge that goes into the stream.

Mr. James Seirmarco stated yes, I'm looking at your drawing here. I didn't walk the property

because there was nobody home and I just don't do that. To my knowledge, we never have allowed a swimming pool or a hot tub or anything of this nature; accessory structure in the front yard. There's got to be another position here for a **8' x 9'** tub. We may want to take a look at this a little closer. Ken, have you...

Mr. Ken Hoch responded no, I haven't had a chance to go there yet.

Mr. James Seirmarco stated I think you guys looked – there might be an alternative if we walk in the back yard.

Mr. John Mattis stated it's really not up to us to look at the alternative. It stands on its own merits. If we think there's an alternative then you've got to look into it.

Mr. Raymond Reber stated hot tubs are obviously aren't necessities and as much as it might be a little inconvenient in the locations, again, I don't fully understand something about blocking entrances and all. If you put it behind the driveway there is room on the other side away from the septic tanks. You mentioned being close to the easement and the overhanging trees; well, that's unfortunate but if there's space there, there's a space there. For us, as my colleague indicated for something like this, it's not really a necessity, it's a luxury. We've never given any front yard Variances on something like. It's just not done.

Mr. James Seirmarco stated especially not on **25** feet into the front yard. I couldn't see exactly down there but I think, again Mr. Reber just said, it's unfortunate that you're around the tree but that's the significance of your property. I would look long and hard again for an alternative that's in the side yard somewhere in this area to put it as far away from the conservation easement, not on any of your septic areas. There is a block here. There is some room in here because right now I would not support placing a hot tub in the front yard. We just would never do that. You see, we were just making the previous gentleman move his pool which is already installed by error. We're asking him to take the pool down and move it.

Mr. Raymond Reber stated and actually, **80%** of his pool is in the side yard but unfortunately **20%** of it goes into the front yard and we're making him move it.

Mr. James Seirmarco stated that's how we seem to look at this.

Ms. Adrian Hunte asked Mr. Lee is there any room in the back near the deck?

Mr. Daniel Lee responded no.

Mr. John Mattis asked even in the back left corner of the property behind the driveway?

Mr. Daniel Lee responded that corner slopes down like this and right up there there's a gorge going down. That's the walkway that I use to get to the basement door's in the back.

Mr. Raymond Reber stated maybe you've got to do some regarding, I mean I don't know but those are issues that the homeowner has to address.

Mr. James Seirmarco stated as it stands right now I don't think, I'd personally, can support the position that you have the tub located. You have to look harder for an alternative spot in the side yard. I notice there's that one tree there but you might be able to pick a spot that's away from a major branch of that tree or something. You just have to look for a better area rather than the front yard.

Mr. David Douglas stated I would add that if you could find an alternative that's great but even if you can't then unfortunately I think you'll have to do, from my point-of-view, you'll have to do without the hot tub. I don't think it's a necessity and as other members have said, we've never approved something like this in the front yard and personally I don't think it's appropriate to have a pool – I think the Town's rules are correct that generally we shouldn't be having things like pools and hot tubs in people's front yards. So, even if you don't have an alternative I would still be opposed to granting this Variance.

Mr. John Mattis stated and I fully agree with the Chairman's statement.

Ms. Adrian Hunte stated I concur.

Mr. Daniel Lee responded thank you.

Mr. David Douglas stated you have a choice here; you can either vote on it. I think you know which way we're going but we can vote on it or you can withdraw it. It's really up to you.

Mr. Daniel Lee responded I was wondering if there was a way that somebody could walk the property with me – I'm not a designer. I'm not really...

Mr. John Klarl stated the third option you have is to consider alternatives for the next meeting.

Mr. James Seirmarco stated we can keep the meeting open and give you chance to find alternative spots, to get an expert in there, get an architect or suggest some different alternative spots.

Mr. Raymond Reber stated the problem with that is, I think my position, I would vote not the front yard regardless of how many alternatives because this is a luxury item. Walking the property and claiming that they have difficulties, it's not going to sell for me. You can always do a little regarding or something. There's obviously some space. If they wanted to they can squeeze it in someplace behind the front line. Walking the property, delaying it for a month, to me – we can do it but it's not going to change my vote.

Mr. James Seirmarco stated if you're talking about walking the property to justify the present position that probably wouldn't fly with anybody. We really shouldn't be in the position to

suggest the spot that you should put it in. You need an expert besides us.

Mr. Wai Man Chin stated he might be able to talk to Ken Hoch. He could give you ideas where or maybe Mr. Hoch has a chance to come out there or meet with you or something like that, fine. It's like the last person with the swimming pool and he's got to move it back behind the setback requirements and he's going to do that but we gave him a little leeway to wait until the summer's over before he does that but he's going to be doing it. Maybe we should adjourn it and maybe Mr. Hoch could give you some ideas and maybe if it's beyond the front yard, not in the front yard then you don't have to...

Mr. David Douglas stated I'm not sure what the point of adjourning it would be because it seems that most people here would not be voting for it anyway.

Mr. John Klarl stated maybe he might give us some alternative plans next time that are within the Code.

Mr. David Douglas stated well then he won't need us.

Mr. Charles Heady asked in the back of the house where the deck is, that small deck, is it possible to put it back there on the side of the deck, at the end of the driveway?

Mr. Daniel Lee responded behind the driveway – the driveway is here then there's another slope going down. The driveway pretty much has three rocks...

Mr. Charles Heady stated it drops quite a bit.

Mr. Wai Man Chin asked have you talked to any hot tub companies. Sometimes they could give you ideas...

Mr. Daniel Lee responded no. It's more in terms of getting a hot tub. Basically, they deliver it and plop wherever you want it.

Mr. Wai Man Chin stated like Mr. Reber says, that back porch if it does slope it can be re-graded or put some kind of concrete or whatever you can put your hot tub back there and then you kind of hide it from everything else too.

Mr. Daniel Lee responded the problem is that it's land and then there's a slope. For me to put a wall it probably would be at least **7** to **8** feet tall which I would have to file a Permit to put in a wall of that size to hold the soil.

Mr. Raymond Reber stated it's not our job to give recommendations but if you have a drop off – I've seen people also, you put a deck. Put it on stilts, put a deck, put the hot tub on the deck and you have steps go up to that. It's a matter of connecting it to the house. I mean, there are alternatives. It's really not our job to solve these problems. The point is it's not to be in the

front yard and the applicant has to work on finding alternatives. If there's a space for it, there's always some way to figure it out.

Mr. Wai Man Chin stated if you want we could adjourn it or you can just withdraw it and speak to the Building Department over here, Mr. Hoch, maybe he has whatever – maybe he has some suggestions.

Mr. James Seirmarco stated there are a number of hot tubs that I'm aware of that are up on decks. The deck has to be robust to support the weight but it's not that bad.

Mr. John Klarl stated you can explore your alternatives.

Mr. David Douglas stated I have no objections for us to adjourn this, I'm just saying that I think it's kind of a waste of time but that's okay, we can adjourn it.

Mr. Daniel Lee responded I'll talk with the Department because I spent **\$750** on it.

Mr. David Douglas stated we can adjourn it. Anybody in the public want to be heard?

Ms. Andrea Zahl stated I live next door to the Lee's. It's very awkward because we have nothing personal against the Lee's, they're great people, they're a great family and they've been great neighbors but I'm speaking on behalf of my family that lives next door, on behalf of brand new house owners Paul and Margo Di Natale who live on the other side and Chris and Maura Malinowski who also live in our cul-de-sac and for full disclosure that's also my sister. As you said, and as you repeated I'm just a little concerned too about the adjournment because to me it seems like a waste of time. You've repeated throughout a lot of the cases that you've never given a Variance for something in the front yard. Although Dan said it's termed at the front yard, it is clearly the front yard that is completely visible from my house and completely visible from anybody driving down my driveway or going to the house over here and certainly visible to the house next to them which is higher than them and their deck would face over the hot tub.

Mr. James Seirmarco stated yes, I've visited it today.

Ms. Andrea Zahl stated my concern is that it's really incumbent upon a house owner when you buy a land and a house that you are informed and knowledgeable about the Zoning laws. I understand that there may be alternatives and if they can figure it out where it's not devaluing the properties surrounding their homes that's fine. I would support that but I don't support anything that's in the front of the house that's open and exposed to everybody and that really is not characteristic of the neighborhood. We live in Covington Estates. It's a nice area. There are nice homes and to be honest, I've lived in Cortlandt Manor for **12** years and I've never seen a hot tub that's visible from the street or when you visit any other person other than when you're in their home and you see it in their back yard or if you are lucky enough to be invited over to join and use the hot tub. I just want – I know this is on the record and I just wanted to make our statement. It was very uncomfortable and very stressful for us because we really enjoy the Lee's

and their family and it's just uncomfortable but I don't feel that my property and the surrounding properties should be devalued because they want this luxury item. If their property does not warrant and support that then so be it, then do without it.

Mr. John Mattis asked and you're speaking on behalf of yourself and three other property owners?

Ms. Andrea Zahl responded two other property owners. I reside at **6** Linda Lane which is...

Mr. John Mattis asked is that on the left as you're looking at their house?

Ms. Andrea Zahl responded correct, and the new house owners Paul and Margo Di Natale who couldn't be here tonight. They're on the other side, **2** Linda Lane and then my sister Malinowski on the end – it's a cul-de-sac, at the end which is **3** Linda Lane.

Mr. John Mattis asked across from you?

Ms. Andrea Zahl responded yes, and I venture to state...

Mr. Raymond Reber stated we can only accept the statement on your behalf. I mean, the others would have had to submit something in writing. It becomes hearsay unless they want to speak.

Ms. Andrea Zahl stated my sister can clearly come up and just states that she concurs with what I'm saying.

Mr. Raymond Reber stated again, just for the record I just want to make it clear.

Ms. Andrea Zahl responded okay, thank you. I did speak and had verbal expression from the neighbors Paul and Margo but I understand. They were away so they just came back yesterday.

Ms. Laura Malinowski stated I live at **3** Linda Lane which is diagonal to the Lees' and I concur with what my sister and neighbor has said. I have no problem it being in other areas but not the front of the property.

Ms. Andrea Zahl stated and there really is no back property and that's the problem other than putting it under their deck. Dan described the slopping and it is the slopping.

Mr. Wai Man Chin asked are all your properties like that?

Mr. Raymond Reber responded no.

Mr. Wai Man Chin asked with the easement or...

Ms. Andrea Zahl responded no. We have wetlands that abut our land on the side. I'd love to do

an in-ground pool but I can't because the Zoning would restrict me from doing an in-ground pool because I don't have the land for that. Anyway, we just wanted to make our statements on the record. I understand if you want to adjourn but you know I think I would like to implore and respectfully ask that you consider the neighboring properties and if this wasn't a cul-de-sac and it was a street and a house that everybody in the neighborhood went around I bet there'd be a lot more people here today.

Mr. Wai Man Chin stated we're just giving them an opportunity to adjourn it or they can withdraw it but like I said, you heard what the Board was saying already.

Ms. Andrea Zahl stated I did but I just wanted to state on the record just in case it is adjourned. I assume we'll get notification once again, but...

Mr. John Klarl responded tonight you would hear if it was adjourned.

Mr. David Douglas stated you'll know in a couple of minutes.

Mr. Daniel Lee stated please accept my request to withdraw. I had no idea it was going to be offensive to my neighbors.

Mr. David Douglas stated thank you very much. **Case #2012-27** has been withdrawn.

D. CASE No. 2012-28 Department of Technical Services, Code Enforcement
for an Interpretation of whether the pre-existing, non-conforming use of a building or land is reduced by a portion of the building or land being unoccupied for more than a year.

Ms. Adrian Hunte stated after reading the Town Code, article **13 Non-Conforming Uses and Structures**, true there is no specific reference in section **307-77** concerning land nor is there any specific reference concerning buildings in section **307-79** concerning partial non-conforming use. The question is whether the non-conforming use seizes for the entire building or land in order to require the future use of the building or land to be brought into conformity or can the non-conforming use be reduced by degrees as portions of the building land or unoccupied for more than a year. I think the legislative intent is to decrease the non-conforming uses and once – if you're not using the property as suggested that you lose the right to use, you're forfeiting. There's a recent case in New York City that involved a high rise building that had a **5** foot commercial overlay and a restaurant on the ground floor – a new restaurant wanted to go into the space and it was basically told “no you can't go in there because there's just a **5** foot overlay and obviously you need more space for your restaurant unless of course you can show that you have had a tenant in that space in the past” – New York City was **2** years, and the tenant was able to show or the landlord was able to show that there was in fact a lease there within the two-year period but otherwise it would be lost. I tend to lean towards losing the status and forfeiting if you're not using it, the building.

Mr. John Mattis stated I agree that you should lose that in steps, it's the intent of the law. They want to eventually have the non-conformity conforming properties come into conformity and we actually had a case about **10** years ago where not all of the apartments were being used and we – I don't know if it was **4** down to **3** or **5** down to **4** but we did exactly that. They hadn't used the one apartment for a year and so we voted that they could not use that as an apartment anymore. I think that that would be consistent with what we've done before and it would be consistent with the intent of the Code.

Mr. James Seirmarco stated I agree. I think that the legislative intent of the non-conforming use is to someday have it come into conformity. As it becomes more conforming the non-conformity is reduced and if it's vacant or not being used for a year – I guess it's a year in our Code?

Ms. Adrian Hunte and Mr. John Mattis responded yes.

Mr. Wai Man Chin stated one year.

Mr. James Seirmarco continued one year, it reverts back to its original use as a conformed use so I agree.

Mr. David Douglas asked anybody else? I agree as well but I understand that there may be some recent case law which we're going to get a hold of so I would suggest that we keep this open for another month so we can see if there's anything in that case law that may change our view.

Mr. John Klarl stated actually Mr. Hoch brought up at the work session that he had worked on this issue with Mr. Wood recently and I spoke to Mr. Wood and he wants to put together a little something for the work session to consider. Why don't we bring it back at our August work session and see where we go from there? I think we're going to have at least **2** members missing in August so we might have the discussion put it over again for September.

Mr. Wai Man Chin stated maybe we should push it until September.

Mr. David Douglas asked is that okay if we push it until September?

Mr. John Mattis responded yes.

Mr. David Douglas asked somebody want to make a motion to that effect?

Ms. Adrian Hunte stated I make a motion on **case #2012-28** that we keep the matter open and adjourn it to the September 2012 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-28** is adjourned until September.

E. CASE No. 2012-29 **New York SMSA Limited Partnership d/b/a Verizon Wireless** for recertification of a Special Permit for an existing wireless telecommunications tower on the Con Edison tower, commonly known as River Tower East, and a request for a like-kind antenna replacement with related equipment, on property located at **Highland Ave. and 9th St., Verplanck.**

Mr. Michael Sheridan stated I'm an associate with Snyder and Snyder LLC attorneys...

Mr. David Douglas stated you're going to say what you said last month.

Mr. Michael Sheridan responded yes, pretty much. New York SMSA Limited Partnership d/b/a Verizon Wireless. As the Chairman just said, I'm here in connection with an application for a re-certification for the Special Permit and also in connection with certain work at the facility.

Mr. John Mattis stated like they just said, this is a repeat of last month basically. It's pretty much a perfunctory renewal of the license, again, as you were doing in the case that was approved last month. You're replacing antennae with like antennae I guess because it gives a stronger signal. Nothing else is changing. Physically it'll look the same. It'll function the same way and I don't see any problem with this.

Mr. David Douglas asked anybody else? I think we all agree.

Mr. John Mattis stated I make a motion on **case #2012-29** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated I make a motion on **case 2012-29** to recertify this Special Use Permit for a wireless telecommunications facility with a like kind replacement of antennae with related equipment. This is a type II SEQRA and no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Special Permit is granted.

Mr. Michael Sheridan stated thank you for your time.

F. CASE No. 2012-30 **Marcia Royce** for a Special Permit for a Home Occupation on property located at **2223 Maple Ave., Cortlandt Manor.**

Mr. David Menken stated I'm with the law firm of McCarthy Fingar in White Plains. I'm representing Ms. Royce and parenthetically the Chairman of the Zoning Board in my own town, in Bedford so it's educational to be on this side of the table and to see how other Boards operate.

Mr. John Mattis asked how are we doing?

Mr. David Menken responded nobody on the Board I serve ever wants to make a motion so you're doing really well. We're here to request that the public hearing for our Special Permit for operation of a home occupation be postponed and that in its place before the Board has that public hearing that we schedule a public hearing for determination as to whether the use of Mrs. Royce's home for her home occupation as presently constituted, constitutes a pre-existing non-conforming use with the same intensity as it has since **1987** which precedes the limits set forth in your Zoning Code. If the Board would give me two minutes just to explain briefly the procedural history behind this application. Mrs. Royce initially with her husband and since his passing in **2006** has lived in the property since **1961**. She's been operating a tutoring service out of the house since **1984** and in the same intensity with essentially the same number of students since **1987**. In April of this year she received a notice from Mr. Hoch indicating that she has been operating her tutoring service in excess of the limits established by the Code and that is what brought us here and initially, to request a Special Permit. When I presented my application on behalf of Mrs. Royce for a Special Permit I asked also in my cover letter that the Board determine whether or not her use of the property is pre-existing and non-conforming. I now understand that that determination is not made by the Town or the Board in connection or at the same time as a public hearing on the Special Permit but actually in a separate proceeding. Accordingly, on **July 12th** I sent a letter to your Board requesting that we postpone the public hearing for the Special Permit and instead request that your Board hold the public hearing for determination as to whether Mrs. Royce's use is pre-existing non-conforming and is essentially grandfathered. I also indicated that Mrs. Royce would be willing, able and eager to accept any conditions, obviously reasonable conditions that your Board would set if it agrees with her that it is a pre-existing non-conforming use which precedes the limitations set forth in the Zoning Code. I would ask that we – I'm not familiar with your procedure but I understand that we would have to notice a new public hearing and if we do I would request that that public hearing be in the September meeting only because I'm going to be out of town for the August meeting.

Mr. John Klarl asked would you like us to re-advertise it for the September meeting?

Mr. David Menken responded if you would yes.

Mr. David Douglas stated so Mr. Klarl, let me turn to you. So, procedurally what is the best thing for us to do?

Mr. John Klarl responded just what he did. He had apparently had one application, thought about it a little bit more and wants to pursue a different application which hasn't been advertised and he's indicated he's not around for the August meeting so I think what we should do is

advertise it for what he wants it advertised for and put it on for September agenda.

Mr. Wai Man Chin asked what about this meeting then?

Mr. David Douglas stated I agree with that approach. The only hesitation I have is there seems to be a good number of people here and I don't want them to have wasted their time. Can we procedurally allow anybody who wants to speak tonight...

Mr. John Klarl responded absolutely Mr. Chairman. It's a public hearing. Anyone who wants tonight to speak can speak.

Mr. David Douglas stated because I don't want to cut this off because there are a number of people here.

Mr. David Menken stated that's perfectly acceptable to us. I'd like to ask Mrs. Royce to speak first. I don't think that she has prepared herself to speak on the merits of the Special Permit but I think that she's got enough to say on her own and I would welcome any comments pro or con that would be made at this meeting assuming that we have the opportunity then to have another meeting in which we can respond.

Mr. David Douglas stated yes.

Mr. Ken Hoch asked Mr. Menken for clarification since I'm going to re-advertise this. If I'm re-advertising it the request for an Interpretation that this use is pre-existing, if that is denied do you then want to continue the application for the Special Permit?

Mr. David Menken responded yes, then we would ask...

Mr. Ken Hoch asked so then it would be a two-part advertisement for the next meeting.

Mr. John Klarl stated what Mr. Menken talked about his application was we talked about giving an alternative application where he applies for something and if that fails and/or the second part of it is updated which would be the Special Permit for the home occupation so he would be advertising and applying in the alternative. Yes, he can do that.

Mr. David Menken stated as you wish, as long as we get heard. Thank you.

Mr. David Douglas stated before Mrs. Royce speaks let me just note that I received copies of a few more documents. I just want to note for the record what we got here. In addition to what was previously submitted we got a letter, I believe it's dated of **July 16th** from a Praveen Kurnio. We got a letter that's not dated but it was received today from Richard Goods and Brenda Ayers. We received a letter dated **July 15th** from Mr. D. Brown. We received an e-mail dated today from Terry Luken's e-mail address but it's signed by Christopher Oliver – not signed but it's indicated being from Christopher Oliver. We received a letter dated **July 12th** from Robin

Stephen. I just want to note for the record that we received those additional materials.

Mr. David Menken asked is it your Board's procedure to indicate the tenure of those letters or are they just entered into the record?

Mr. David Douglas stated sometimes we do, sometimes we don't. They're available to look – especially given procedurally what we're going to do I don't know that it's worthwhile me summarizing what they are. You're obviously free to see them.

Mr. David Menken stated thank you Mr. Chairman.

Mr. Raymond Reber stated Mr. Chairman, if I may since we obviously have a large audience, it might be useful to give a little background as to where we stand on this and how it came about because I'm sure they're very nervous. As you heard earlier there was a question raised about the possibility of having a tutoring facility in a commercial piece of property and the concern was that there was nothing in the Code that said it was allowed and so, we on the Board, were somewhat puzzled by that because there actually is one tutoring facility in existence in a commercial property and we're well aware of the Key Institute which is in a residential Zone. Our reaction was "well, that doesn't make much sense, these things already exist." That's when Mr. Hoch did some research and that result was and he says "yes, the Key Institute, there is a provision to allow that or in a commercial we don't have a provision." The issue wasn't that the Key Institute can't function but now it required for Mr. Hoch to review and decide; well, is it still in compliance with the requirements and that's what the attorney has just raised the question that there's two options here: 1) was it grandfathered? Has it operated continuously as is or has it now in a situation where it has progressed to something different and then that would require a Special Permit? Special Permit doesn't mean that it can't continue to operate, it just means we might have to put certain criteria to make sure that it operates in an acceptable parameters being in a private home. That's really where we stand and those are the issues we have to address.

Mr. David Menken stated I wish I had said that. Thank you Mr. Reber.

Ms. Marcia Royce stated I'm the director/owner of the Key Institute. We have been tutoring since **1984** and then in **1987** it became a full blown operation. I had taught at the graduate school at the College of New Rochelle and I had zeroed in on what is needed for a child to really be helped and I developed a program along these lines called the "Total Learning Plan." In the Total Learning Plan requires **5** teachers and these teachers each have a subject: math, reading, writing, study skills and art. You say why so many teachers and why all these subjects and why art? If a child can't read, if a child can't do math, a child can't write, what do you do? You give him art because he has a talent for art and when he gets confidence then the confidence seeps into well he starts to read. If he has dyscalculia which is a math problem, he starts being able to do math and these children they develop beautifully. I have some of these children here tonight. May I have your permission Chairman Douglas to bring some of these children forward? This whole area are my parents and some children.

Mr. David Douglas stated that's fine. I don't want to turn this into a testimonial but that's not really the issue.

Mrs. Marcia Royce stated I realize it's not the issue but it is the culmination of what we actually do at the Key Institute.

Mr. David Douglas stated I understand that and I don't have a problem with them coming up but I just want to make sure that it's clear that nobody's here saying whether you do a good educational job or not or this is a valuable service. I think that most of us, if not all of us, would agree that educating children is an extremely valuable service. Can some of the parents come up and talk about the Key Institute?

Mrs. Marcia Royce stated can some of the parents come up and take about the Key Institute?

Mr. David Douglas responded yes that's fine.

Ms. Elizabeth Gardner stated I'm a Cortlandt resident. My son Matthew goes to the Key Institute and he's done remarkably well since he's been there.

Ms. Brenda Ayers stated this is my daughter Asahi. We are previous residents of Cortlandt Manor but recently moved to Putnam Valley, despite that, we continue to have Asahi at the Key Institute because of the great education that she received there and our plan is her younger sister Farrah will be starting in September at the Key Institute. I have submitted a letter to the Board and I hope you all get a chance to take a look at that because we do feel that, we, my husband and myself feel that it is an invaluable asset to the greater community what they do there. To my knowledge this is the first issue that we've known come forward about the Key Institute and as a parent – my daughter was there for 2 years and our older son actually consistently takes preparatory classes at the Key Institute and we've never noted any issue surrounding the operation of the place. There's never been any issue with traffic flow. If you look at the layout of the Key Institute, the driveway is more than ample to support the number of parents that come. The years that we've been there, the class size has been roughly the same. There haven't been any major changes there. I think that to – I hope that going forward that it will be allowed to operate much the same way as it is now because to change it I think in any way to make it conform to maybe any special Variance or anything may diminish it. Asahi felt – she was very concerned about the Key Institute and wanted to come along today. Would you like to say something? No? As a result of her tutelage at the Key Institute she actually is presently a student at the Hackley school and doing quite well, got high marks as a kindergartener. She's not the only one. There are a lot of success stories. Thank you.

Mr. Raymond Reber stated if we're taking testimonials – I can even give one. A member of my family some years back used the Key Institute and got good results. I personally am aware of what the Key Institute can do for the children.

Mr. David Douglas asked anybody else want to speak?

Mr. Glen Cropsy stated this is my son Matthew and we're just here because we'd like to see if the Key Institute continue on its good work. They did wonders for my son. He was threatened to be left behind and she helped him get back up to current standards and my daughter's gone there. It's a very worthwhile program and I'd hate to see it diminish or end. We're here to show our support.

Mr. John Klarl stated now he's at the University of Buffalo?

Mr. Glen Cropsy responded yes, he's going in the fall. He enjoyed the program very much and he wanted to come out to make sure it didn't end. He didn't like school because he was having problems, now he enjoys school and reading very much. Thank you.

Mr. Praveen Kuning stated I value your time and as for all the people here...

Mr. John Klarl asked did you write a letter tonight?

Mr. Praveen Kuning responded yes, I think so, that's the first one. I value your time and our time as well. I'm not here for a testimonial. I think people have given that and I know you have your own approach to this and there are some criteria. I would abide by – I think she would also be an abiding citizen to all those folks and we would like, as parents, some of them are ex students and other things, it's a valuable program but what has been happening – it would not be a valuable program but four or five kids. I could see a huge difference when my son started going there and the social behavior change for a sizable number of kids and the training they imparted. For the four or five kids he would have had the same thing. My son has also gone to one of the tutoring centers which was in a commercial area – I don't want to name the tutoring institute and there is a difference between these two things. I think for any public hearing I would be present if time and other constraints were not there and none of us were coached – I was not coached by the lawyer or somebody to come over here and I think it's straight from the heart. Thank you.

Mrs. Lorraine Alvarez we're not parents of Key Institute students, we're teachers. I've been a teacher for **36** years; **10** of those years I've spent with Marcia Royce. You should have a letter from me.

Mrs. Jennifer Petro stated I've been working with Ms. Royce for a year now. I have also sent a letter and I teach writing at the Key Institute.

Mrs. Lorraine Alvarez stated Mr. Heady, you were there this week and you saw us in action and as you could see we work like a really well oiled machine.

Mrs. Jennifer Petro stated anything that Ms. Royce does and provides for the Key Institute she does it an orderly fashion and accommodates all the students. When it comes time for the students to leave she makes sure that they're ready. It does not cause any traffic whatsoever and she also maintains the area very nicely. She always makes sure that there's a maintenance man

at least once a week comes in, checks everything and makes sure that everything is working properly, makes sure everything's maintained the way it's supposed to.

Mr. Mike Hussey stated I'm a neighbor of Mrs. Royce. I'm not here to dispute that she's a good teacher and she does great things for these kids. I'm just here to tell you how her operation affects my existence. I've been a neighbor of hers for **9** years and there's been quite a few occasions where her driveway goes up next to my lawn and when there are kids that are coming in and going out, dismissing, there's a big crowd because they've got one group leaving and one group coming in and they can't wait so if somebody's in the driveway ahead of them they can't wait, they go around, they drive on my lawn, not all the time but many occasions. I've talked to Marcia about it. She's told me she's going to try to work it out and it never seems to happen. Out on Maple Avenue, many times there's lots of traffic build-up because they're backing up, they're coming out – at times she actually has a parking attendant with an orange vest and cones out there to try to prevent the problem on Maple Avenue. She knows there is a problem. I've had kids, students walk across my lawn from her property across my lawn to get to their parents who are parked on Galloway Lane which is where I live to get to their parents because those parents don't have enough room to park in front of Marcia's place because it's too crowded. Like I said, I'm not here to argue her ability as a teacher. I'm sure she's great. I'm just asking you to give a little concern about how it affects me. The last thing I would say is, I'm thinking about selling my house in a couple of years and as we all know it's not easy selling a house now anyway but let's say somebody comes and says they like my house but in due diligence they say "let's go take a ride around and see what things are like on the weekend." And, they come in and they see **14** cars going up and down and a parking attendant walking up and down the street, they're going to say "what am I doing? How am I going to buy here?" That's all I have to say.

Mr. John Klarl asked have you ever filed a complaint with the Town?

Mr. Mike Hussey responded no. I've dealt with Marcia in person.

Mr. John Klarl stated I just wanted to know. Thank you.

Mr. David Douglas asked anybody else?

Mr. David Menken stated if the Board grants Mrs. Royce either the pre-existing non-conforming determination or the Special Permit, I'm sure that she would be willing, able to set any conditions which would satisfy Mr. Hussey to the extent that she could and satisfy the Town. There's no desire or intent to be a bad neighbor. Thank you.

Mr. David Douglas asked anybody else? Anybody up here?

Mr. John Mattis stated I'd like to make a comment...

Mr. Charles Heady stated I was out there and talked to the applicant a couple of days ago when I was out there and the children and everything was very orderly. I had no problem with that at

all. Maybe there were **6** or **7** children in there with teachers there and everything seemed to be very quiet and orderly when they were teaching the children. I had no problem with that whatsoever but the Board is not against what you want to do. I think it's a great thing you're doing but the problem is your in violation and we have to try and get that straightened out for you. It's going to run into, from what I gather now, you're going to have to get an architect to get things straightened out and not only that you might have to bring on – you may have to head it up with the Board of Health maybe get more or septic lines put in, that's possible without a doubt. There are so many other things that Code Enforcement is going to have you do. You're going to have to make more room for parking. From what I understand it's a bad turn there and have a problem with the cars coming in and out. All in all saying that, also expense for your lawyer. He's going to run you a lot of money. Just a suggestion, you can think about it. I thought maybe you might think about going to the Town and getting a place commercial and rent a place and you can have as many children as you want. Now, even if you get all this done you can't even have as many children out there now. You're still going to be cut down to **1** to **4**. I don't see where it's going to be profitable for you to do that. That's up to you. This is a suggestion for you to do what you think in the long run. I think in the long run if you went to the Town and got a commercial place and rented it you had parking, no problem, children, no problem but that's up to you. It's just a suggestion. Anybody else have any comments?

Mr. John Mattis stated generally when I make a comment I say that I'm only one person and have one vote and don't speak for the rest of the Board but I think in saying that the Key Institute provides a valuable and a very useful service in our community, I think I probably can for once say that I do speak for the Board, having said that, that is really not the issue. As Mr. Reber said, this came about because of a discussion of a tutoring service that wanted to come into the Town in a commercial area and in the discussion in our work session we decided to look at all of the areas and I think this is – as I said, tutoring is a very valuable service. My ex-wife is an educator. My daughter is an educator. I certainly know the value of helping these children and what Mrs. Royce has done. What we're merely looking at and we'll look at is; was this a pre-existing non-conforming use as of **1987** and if not if we need a Special Permit how we would go about giving a Special Permit. We're not trying to shut this down. We're not trying to do anything like that. We know it provides a valuable service. We're just trying to make sure that once and for all, this is done so that there are no questions of how she's doing it and what she's doing and she can go along with her very valuable business.

Mr. David Douglas asked anybody else? I fully concur with what Mr. Mattis said and I think it's important to make it clear that we are all very supportive of the service that's being provided. We're all in favor of education. We're all in favor of tutoring and that's not the issue and that's not going to be a factor really in how we address this and I don't want the applicant in any way to think that we're at all critical of the service that she's providing and the value that she provides to the children. I admire it. I've got family members who are educators too as do many of us.

Mr. David Menken stated thank you Mr. Chairman, members of the Board, at the public hearing we will address the substantive issues and hopefully to your satisfaction. I appreciate and Mrs.

Royce appreciates your time.

Mr. John Klarl asked and you'd like the Board to adjourn until September and you'd like the Board to re-advertise it in the alternative asking for one form of relief or the other form of relief?

Mr. David Menken responded that's what we thought we were going to do but yes that's what we want. First we want the pre-existing with the grandfathering, the pre-existing non-conforming determination and if that's not...

Mr. John Klarl asked so you want us to re-advertise in the alternative?

Mr. David Menken responded correct.

Mr. Raymond Reber stated for clarification too, I think in terms of deciding whether this is grandfathered I think the grandfathering has to go back to the '87 because '87 was when it was defined. If somebody comes before us and says "since 1992 it hasn't changed," that's not satisfactory.

Mr. David Menken stated my understanding is that it was a 1994 amendment to the Zoning Code.

Mr. Raymond Reber stated what I'm saying is people will come up and say "oh well, for the last 20 years it hasn't changed." It has to go all the way back to 1987. It can't be any expansion of the services since 1987. If that can be proven then it could be considered for grandfathering.

Mr. David Menken asked my question is; if your law did not substantively state the limitations until 1994, don't we have to prove that we operated since 1993?

Mr. Raymond Reber responded no because there was a Zoning Board decision made in '87 based on representations made by the applicant and those were the conditions that the Zoning Board approved the performance of the school.

Mr. David Menken responded thank you.

Mr. David Douglas asked does anybody want to make a motion?

Mr. Charles Heady stated on case 2012-30 to adjourn it until September and to re-advertise.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case 2012-30 is adjourned until September and will be re-advertised.

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ADJOURNMENT

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated our meeting is adjourned.

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**NEXT MEETING DATE:
WEDNESDAY AUGUST 15, 2012**