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, May 16, 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
James Seirmarco
Wai Man Chin, Vice Chairman

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

Absent Charles P. Heady, Jr.

ADOPTION OF MINUTES: 3/21/07, 4/18/07

Mr. Mattis stated we just received the minutes for April at our Work Session on Monday night. So could somebody make a motion to adopt the March minutes.

Mr. Reber made a motion to adopt the minutes for 3/21/07 seconded by Mr. Chin with all voting "aye."

ADJOURNED PUBLIC HEARINGS

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

Mr. William Zutt, Esq. appeared before the Board. He stated I believe at the last meeting I think the issue that you were going to look at was the merger of the lots. I don't know how extensive our submissions, I think to this point I've give you details in terms of the magnitude of the requested variances. That was included in our application. So I think that the variance request would result in a lot size reduction of about 25 percent on each of these two lots. We're in an R-10 district, and I believe one lot would have about 6,500, and the other lot about 7,200 feet. We would be co-compliant in terms of front, rear, side yard set backs, and lot coverage. The unique characteristic present here not found in any similar cases is we have back to back lots, which is a condition the courts have looked at on many occasions, and most of these I think John would agree with me, that if you have a merger it does not occur when you have back to back situations, but in those instances where it has happened the courts have been extremely lenient in

terms of variance relief under those circumstances. The one condition is where the back to back lots have become functionally integrating with one another. So that both are improved. In this case, as I understand speaking for Mr. and Mrs. Scelza the rear lot has been unused in all the years that they have had it, and I think the current condition would bear that out.

Mr. Douglas stated I believe the first issue before is one of Interpretation as to whether or not the lots have merged, and I'll pass that over to Mr. Klarl to explain. I believe it is the conclusion of the Board that the lots have merged, and I'll turn it over to the attorney to explain our reasoning on that.

Mr. Klarl stated we talked about at our April meeting, and I think again read a memo dated April 18th in which we gave a brief history of the property, and lots. We were able to get records from the applicant, and deeds from the Assessor's office, and records from Planning, and we indicated at the bottom of the first page of the memo that the four lots are all substandard lots under the Town Zoning Ordinance as they do not meet the lot area, and lot width requirements in the R-10 Zoning District. We also indicated pursuant to the Town Zoning under Section 307-8C, which I attached to the memo that the four adjoining lots merged. I gave you a copy of Section 307-8C, and it indicates in brief that any lot with an area, or width that is less than that prescribed, the lot in the district where such lot is situated, when the owner thereof owned adjoining land on or after the effective date of this chapter, or any subsequent amendment, which increases the required lot area for width of such parcel shall be deemed as merged to said adjoining to form a single parcel. So we talked about the merger of the first page of the memo, and on the second page of the memo we talked about Section 265-4 of the Town Zoning Ordinance, which gives some status to lots on a filed map. In this case we had a 1927 filed map, and we quoted from the section of the Zoning Ordinance that says, "However, the term subdivision should not include the re-subdivision of lots comprised of two or more lots described on a map filed in the Westchester County Clerk's Office," like we have here, "provided that such re-subdivision shall result in lots which ", and then I indicated a gap in the statute, and then it says, "meet the minimum dimensional requirements at local lot record." I indicated in the ultimate line in the memo that the lots here would meet the minimum requirements if they had that area, and if they don't they could seek relief by this Board granting the Area Variances described above for lot area, and lot width. So we indicated two things in our memo. We indicated merger, and we indicated that the applicant could seek relief by way of a variance, and this applicant has made that request.

Mr. Douglas stated I think we can rule on the Interpretation first.

Mr. Klarl stated well you can close the public hearing. The public hearing is open for whatever request is being made, and that would be the ultimate decision, but first we need to close the public hearing.

Mr. Zutt stated thank you Mr. Klarl, I was going to make that comment. It would have been more appropriate to come from you, and so it did. I want to go back just a second, if I could, to the statute from which Mr. Klarl. I think it was at the end of the last meeting that I stated this, but I'll do it again now. That is the precluding sentence in the statute from which you read,

reads as follows, “If the adjoining land has been divided into several substandard lots”, which is the case here, “merger shall occur only to the extent that the minimum lot width requirements of this chapter are met, but not necessarily a minimum lot area requirements.” In this particular case merger of these lots cannot achieve a minimum lot width requirement in the R-10 zone. So that there is no merger under 307-8C, because a merger cannot result in the intent of consequence by the statute. So we don’t believe a merger has occurred, but we understand that is a ruling your Board will make. I just wanted to make our position clear on that.

Mr. Douglas stated with respect to the variance I am going to pass the buck on this one too, because at the Work Session I think Mr. Reber was so articulate in regard to this. So Ray, do you mind?

Mr. Zutt stated if I can just make one or two more comments before you move on. I was not at the Work Session, and of course whatever you say there isn’t part of the record. So I need to make a record here, and I am trying to do that. As you know, the standard by which an Area Variance must be judged is whether the benefit to the applicant outweighs the detriment to the community, and among the criteria included there are the magnitude of the requested variance, whether or not the granting of the variance would have an adverse impact on the neighborhood, or the environment, and whether there is an alternative form of relief available to the applicant, which would give the need for a variance. I don’t believe that there has been any evidence that there would be any adverse impact on the neighborhood, or on the environment, if a variance were granted. Politically, it would be a benefit to the applicant in authorizing construction of a modest dwelling on this second lot, if you will, with the aid of these variances particularly where all of the necessary set backs would be observed would far outweigh any adverse effect on the environment, or on the neighborhood. The requested variances are the minimum necessary to achieve that.

Mr. Reber stated the situation here for the audience is that we have an R-10 zone, which in itself is a relatively small zoning requirement. The zoning requirement calls for a minimum lot width of 75 feet, and these lots are 50 feet wide, and as Mr. Zutt has indicated they weren’t side by side in such a way that they are 50 plus 50 you get a 100, and therefore, you meet the 75. However, one of the jobs that we have on the Zoning Board is to kind of read between the lines, because no sentence, or any code necessarily is pure black, and white. So we have to go to the intent of these regulations, and the intent of these regulations also are to protect the character of the neighborhood. Obviously, 50 foot wide lots are something that this Town has tried to do away with many, many years ago, and has zoning in place to make 75 the absolute minimum to prevent houses from being on top of each other. If you look at this street, it is true that there are a few other houses that are on lots 50 feet wide. However, there are no two adjacent to each other. Wherever there is a 50 foot lot, there is a 100 foot. So when you go down the street, and you look at the spacing of the houses there is space between them. In this situation, if we would grant a separation from these lots so that this lot could be built on, it would happen to be right in between two lots that are one is 50, and one is 55 feet. So all of sudden now you would have three houses, bing, bing, bing, each on 50/55 feet lots. If you look at the houses adjacent they are very close to the property line, and any house put on this lot would obviously be squeezed in

likewise, and to me that's a fundamental change in the character of the neighborhood. It's one of the reasons why the code, and the regulations are put in to prevent those kind of situations. So to me it seems pretty clear that allowing that separation is really going against the intent of the code, and on Monday we had mentioned to the applicant that we understand that he's not using that piece of property, the appropriate thing to do would be to negotiate with the two neighbors who have the 50 and 55 foot lots, and see if he could somehow sell that land to them, and get a lot adjustment so that they both then have 75 foot wide lots, and they then comply, and he gets revenue for it. So there is an alternative. We don't see a hardship to the current owner, and that is one of the criteria that we have to way to the benefit, or the detriment to the neighborhood. So on that basis I think this would be a change in the character to the neighborhood, and something we should not consider.

Mr. Douglas stated also in terms of one of the factors we have to consider as Mr. Reber referred to is whether the requested variance is substantial. The requested variance are quite substantial on one of the lots there is a variance close to 40 percent, and another one is 33 percent in terms of the area, and 33 percent in terms of the width of both, which seems substantial, and I agree with Mr. Reber that the requested variance would have an undesirable effect on the character of the neighborhood.

Mr. Mattis asked are there any other comments?

Mr. Becker stated I agree with the two comments made before, and my concern is if this variance is granted that you would have to come back for another variance to squeeze a house in there. It is hard to imagine that on such a small lot a house could fit in there. It is certainly nothing that would be consistent with the neighborhood, and the houses that are there. So I see how it benefits the current homeowner, they profit from the sale, but the detriment to the neighborhood, and causing increasing density in an area that is already at its' limit, and I think it is just not consistent with the rest of the neighborhood.

Mr. Mattis stated okay. I want to read something into the record. We got a letter several months ago for this case it is from the neighbor directly next door, and the gist of it is had this property been zoned for a building when I purchased my home in the Fall of 2003 I would accept the inevitable, but it wasn't. I checked before I purchased my home. I believe building on this small parcel of land will adversely effect my family's ability to enjoy our property as well as the value of my home, and land. I implore you to deny the request that allows construction on this land, and it is signed by Ellen Dorie, who is directly adjacent to this property.

Mr. Zutt stated I just want to ask my client one question. I just would like to make a brief comment. First of all, the author to the letter is the owner of tax lot 26, which is the immediately adjacent parcel to tax lot 25, where my client is seeking a variance. The land owned by the author of that letter is a 50 foot parcel, exactly the same as the one for which the variance is being sought here. So the author of that letter is essentially asking your Board to deny a variance to allow construction of exactly the same kind that she, herself enjoys.

Mr. Mattis stated I'll reply to that. That is a house that has been there for many years, and she bought that with the understanding that nothing could be built next to her. So there is a little different situation there. She's not asking for a variance to build a building on that lot, and I'm not sure we'd grant one, if she did.

Mr. Zutt stated okay I understand. There are two other important things that I would like to reply to, corrections I think that need to be made, with all due respect to Mr. Reber. Hardship is not a criteria with respect to an application for Area Variances. It does apply to Use Variances, we're not seeking a use variance here. The other is Dr. Becker's comment regarding the perceived need for additional variances need to squeeze a house there is really not true, with all respect to Dr. Becker. We did submit another application, not just a survey, a site plan, and that site plan shows a fully code compliant house location with set backs, which actually meed the standard for a 75 foot wide lot, which is the applicable standard in the R-10 zone. We are showing an 11 foot side yard set back, where 10 foot is required. So we fully comply with both front, rear, and side yard set back requirements. I just wanted to note that.

Mr. Becker stated the point is that three houses in my mind would be very close together, and not fit in with the neighborhood.

Mr. Zutt stated we certainly can't help what happened on the adjacent land.

Mr. Douglas stated also I believe with what Mr. Reber was talking about in reference to hardship being a statutory requirement, he was talking about the factor in considering whether the applicant can achieve what they're seeking by some other method, and he spoke about the possible sale of the land to achieve some financial relief that way. I think that is what Mr. Reber was speaking about.

Mr. Zutt stated well certainly the denial of a variance to build on a lot will have significant impact on whether or not the neighbors are willing to purchase let alone pay a reasonable sum for it. I would like to make a request. I'd like to ask your Board to not close the hearing tonight, postpone the matter one month. Let me have an opportunity to speak with Mr. and Mrs. Scelza about an alternative.

Mr. Mattis asked are there any other comments from the Board? Is there anyone in the audience that would like to speak?

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

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CASE NO. 09-07 ROSENTHALL JCC for an Interpretation if the proposed improvement 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.

Mr. John Kirkpatrick, Esq. and Mr. John Iannicito, architect appeared before the Board.

Mr. Kirkpatrick stated I have with me the program director here with me in the audience in case of any questions. To quickly summarize this, after John had developed the plans, and we had some discussion, and a staff meeting, the Building Inspector had communicated to us orally that certain portions of what we were proposing were permitted such as moving the play shed, but other portions, which were new items, which would be the fence, the play field, the basketball court, the deck, those would constitute an expansion of a nonconforming use. Consequently, we made a request to your Board to make an Interpretation that the Building Inspector's interpretation of the ordinance was wrong. In other words we made an appeal to you to look at the same issue. Now the case that we bring to you in our application, and in the prior hearings is that we are staying within the spacial limitations of the existing camp, and let me take a second if we can, and go through the plans. He referred to the drawings. You have all of these in the record, but I just wanted to refer to them for the purpose of familiarizing you again. The entire south end, the upper part of the property is nothing but the septic fields, and remains open, and unused, and it will continue to be. The developed portion of the property is all the northern end. We are proposing now to reduce the play field that we showed here, and the basketball court that we showed here. At the time of the field trip, we reduced the size of this field, reduced the size of the court, and then with the last plan you had we've also indicated that these buildings here will be removed. So not only are we staying within the spacial limitations of the camp now we are actually reducing it. We've also offered you several court decisions on expansions of nonconforming use can mean. You've seen cases. We've talked about an increase in volume is not an expansion. The actual meanings of carrying on business starting with one kind of bus moving to a different kind of bus, that is not an expansion. Changing the hours of operation of a gas station. Building another building within the existing spacial limits of an airport, and even in the case of a couple of quarries expanding to the remainder the area, something we are not doing here, but all those have been found to not constitute an expansion. So we are asking you to find that this is not an expansion. We're not increasing campers. We're not increasing staff. We're not increasing hours, and we're staying within existing spacial limitations. What we have here is the whole camp, and when we're done with this, we'll still have the whole camp. Also, by the way in case there is any concern, I found precedent for decisions your Board has made before, and we have also offered to you case law on the subject indicating that if your Board in your decision differentiates this particular matter for good, and sufficient reason, then it doesn't bind you in your decisions on another matter, which of course is a complete different kind of problem. We would be pleased to continue the discussion of course, but I think just as a summary this is what we've got before you in the record, and we are requesting that you make a decision in our favor, but certainly I want to thank you for your patience, and attention, and your careful thought of this application.

Mr. Mattis asked are there comments from the Board?

Mr. Douglas stated this is a practical question. Were you planning to make these changes before the summer camp season of this year, if you could?

Mr. Kirkpatrick replied once upon a time, but no longer.

Mr. Douglas stated okay, I just wanted to see whether or not there was a time pressure or not.

Mr. Kirkpatrick stated we would still have to go for site plan approval after this.

Mr. Douglas stated okay fine. I was just trying to get a sense on time. I am not sure the Board has fully sided with how exactly to rule on this. So that is why I was asking. I wanted to make sure that by continuing to consider this matter we weren't impeding upon what you would like to do.

Mr. Kirkpatrick stated if we have a chance of getting a decision in our favor, we're a happy Board.

Mr. Seirmarco stated after the site visit I personally changed my mind. I think that the applicant has sought to reduce the number of bad buildings, and falling down buildings. So that is a reduction. There is a maintenance issue to the gate. So that's a maintenance issue. There is a reduction in the field that was just mentioned. The movement of the building is somewhat questionable, but I think that during the Work Session I asked if there was a safety issue, and he did say there was a safety issue. It would certainly be better to have the building in a different spot. That is not a big problem. The only problem we would have is the creation of the new basketball court, and the ball field. If I had my way, I would like to see a private recreational open space. That's what it is. I assume that is certainly a better use than five houses go up there. I don't think anybody would want to see that happen here. I think most people would like to see it as a private recreation open space. So personally I would tend to be in favor of these minor changes. I know the code says it defines an expansion as such moving buildings, and enlarging buildings, or whatever, but in this particular case I don't have a problem with what they have proposed.

Mr. Douglas stated I would like to add that of the specific requests that you've made the only one that I personally have hesitation over is the ball field. So going through each of them my personal vote would be in favor of each of them on a one by one basis. I also am convinced by some of the case law that you provided to us that this might not be an expansion especially under the tort and oil case. I personally found that convincing, but I think the Board wants to think this whole situation through a little longer.

Mr. Seirmarco stated in the case of expanding a nonconforming use we are very rigid, very tight on this, not enlarging a window, not enlarging a doorway, not enlarging really specific things, and in those cases I still support those things, because in those cases we would want those pieces of property to revert back to their original case. In this case I am not sure we would want it to revert back to its' original use. So I think that's the difference in my mind.

Mr. Becker stated I agree. I think that the fact that you are eliminating certain structures make it almost like a trade, and I think it would kind of follow the standard for not allowing

nonconforming property to expand, and to make sure that there are no detrimental effects on the neighborhood, and the character, and in this in my mind has no detriment. It's a summer camp, it's limited both in hours, and number of days that it operates. There is no impact outside of the property at all, and I think the changes are very minimal, and I have no problem with it.

Mr. Seirmarco stated I also believe you said for the record you have X number of students, and you are keeping that exact amount. Even though with all the changes you don't intend to take on any more students.

Mr. Kirkpatrick stated that is correct.

Mr. Chin stated I am also in favor of what you're doing. Taking down those shacks that are in bad shape, I think that is a much better idea, because you have children there, and they could get hurt playing near those. So again, the playground area, the basketball court, it is an open area, it's not like it is a new structure. So I would not have a problem with it at all.

Mr. Mattis stated okay now I would like to add my comments. First of all, personally I agree with each, and every of the four or five points that you want to do, and I think it's a nice improvement to the camp. However, when you look at the code Article 8, Nonconforming uses, and structures, Section 307-77 nonconforming use of land, and this is not expansion this is use, and what catches me is nor shall any such nonconforming use be moved, and every use there is a nonconforming use unfortunately in whole, or in part to any other portion to the lot, or parcel of land occupied by such nonconforming use at the time of the adoption of this chapter or its' predecessor. I read that as precluding this from allowing them to do the basketball court. As I said, personally I don't have a problem with it. I like it, but we have to go on what the code says, and in terms of moving the shed it talks about enlargement or alteration of nonconformity prohibited, and talks about structures cannot be enlarged, extended, reconstructed, altered, or moved unless such uses has changed to a use permitted under the regulations specified in this chapter. So I am interpreting the code here that you cannot move a use within there. I don't like to admit that, but that's the code. The code is the code. I don't base my decision on personal feelings especially with an Interpretation, and the court cases you cited for enlargements are expansions. This is not an expansion, this has to do with use. So unless I can get a legal opinion that shows me otherwise I would have to vote against those, much to my chagrin, but I feel it is my obligation to do so.

Mr. Douglas stated I would just like to make a comment. I believe that the Chairman's reading is a reasonable one. I personally don't think that is the reading that should be applied to. I believe that the code was talking about a nonconforming use, the nonconforming use here is the camp itself, it's not a specific basketball court, or a specific ball field, or a specific shed, and what the code actually prohibits would be if you would have said we want to take this camp, which is located at X portion of the lot, and move it over to the eastern side of it, or whatever, a different portion of lot.

Mr. Mattis stated well that is why I'm glad they don't want this for this year, and we have time,

because I would love to see case law on this to guide me one way or the other.

Mr. Kirkpatrick stated may I make a statement here, thoughtful people disagree, and I think that is clearly the situation here, but one thing I also heard was some real concern about the large play field. I think my client, if we could get a favorable decision tonight will drop the large play field. We would be willing to do that, but are we taking a gamble here? Would your Board rather continue to discuss this, or perhaps would you consider the possibility of giving us a decision with that being one of the conditions?
Mr. Mattis stated I would rather adjourn so that we would have time to think about that. If you could submit some case studies where you talk about use, and movement of use rather than expansion, and that would help me out a little more.

Mr. Chin stated I think we would should adjourn this to next month. Right now I am in favor based on what Mr. Douglas has said. I agree with him. It is not like moving the whole entire camp. We're talking about a little thing, and we are eliminating a lot of bad structures here. They are not small either. They are actually fairly large structures actually. I am weighing that with other things, and I think the open space, and the playground is basically landscaping there. Let's adjourn it to next month.

Mr. Reber stated I wrestle with the issue that our chairman presented, and I've had my own opinions about different aspects of what's proposed here. However, once an applicant withdraws a request, then it's gone as far as I am concerned, and you admitted you didn't need it. So for us now to say put the field in on a nonconforming use to me is most unfortunate, because I was going to argue why it didn't matter if you had it, but now if you want the field I would vote against this. My feeling on this overall is that fields, and even the court, and what have you, I think we could look at it differently if it's within as my colleague said the nonconformity is the camp. So it's unique, it's not a building, which is typically what we address, and so I am willing to look at those kind of alterations as not really an expansion of use in the regular sense of what we're concerned about, and one does have to realize, as Mr. Seirmarco indicated, in this case I am not so sure we should work extra hard to discourage you to move out, and have them put homes in there, because I don't think everybody wants to see a bunch of homes. So we do have to weigh a little of that. In the aspect of nonconforming we also at times have allowed some adjustments when the net result is the nonconformity is reduced. Now in essence by you removing those buildings you have really shrunk the physical use area of the camp. So I could argue the point that you're reducing the nonconformity in the sense of that to begin leveraging why I could go along with this. However, I have one little technicality, and that is we have in a nonconforming situation when it comes to structures, we generally do not allow any kind of upgrade. You have a little platform that you want to add to one building to me that is a structural expansion of that portion of the building. It's like putting a window in. I wouldn't have a problem with that. If you had said to me that's the thing you would forego. So now there are two issues for me. You have to give up the field, because you already gave it to us, and you have to give up the platform. If you give those two up, then I think this is perfectly within the scope of nonexpansion of use for this type of situation.

Mr. Douglas stated with respect to the field, I don't agree with that. I don't think it is fair to the applicant. I think what they were seeking was a compromise saying if we drop that would it speed up everything, and wrap it up tonight, and I don't think we should hold that against them.

Mr. Seirmarco stated the other comment I would like to make is that again, I agree with Mr. Reber as far as upgrading structures, but the platform is on ground. We've allowed on ground decks. We don't count them as area. We don't count them as structures. We don't count them in a normal sense of having that on ground little bit of deck. It is right on the ground. I don't see that as an expansion. Again, that is my opinion.

Mr. Mattis stated I have another comment. I think that the reduction where you are tearing down those buildings is a reduction of the nonconformity, and that applies for an Area Variance that doesn't apply for an Interpretation. An Interpretation is not a trade off of one for another unfortunately. So I don't think it is a reduction of use, but I think it is a reduction of some old buildings, and it is an improvement. However, when we look at a reduction of a nonconforming use it has nothing to do with an Interpretation. It has to do with an Area Variance. I don't think an Interpretation also should be based on an alternate use of the land. That goes beyond the scope of what we're supposed to do.

Mr. Reber stated I understand your point, however, the request is for an Interpretation of proposed improvements constitute an expansion of a nonconforming use. Now what they are proposing is to remove buildings to me that is a shrinkage of nonconforming use. I make the interpretation that it's a shrinkage of nonconforming use.

Mr. Seirmarco stated you could take the exact opposite of that, and say if you wanted to improve those buildings, and do maintenance on them, and bring them up to usability you would be allowed to do that, and then they would be able to be used. So even though they are in ill repair, and you are going to remove, I still think it is a reduction in the overall use of a piece of property. It depends on how you look at this.

Mr. Becker stated in that month of an adjournment that we'll have can I ask counsel to advise us how much latitude we have, and what I am getting at is that I think we all feel about the same in regard to this project, and we're struggling with how to make it consistent with our past decisions, how much latitude we have in granting some relief? How much relief we can grant to the applicant?

Mr. Klarl replied yes.

Mr. Mattis asked are there any other comments? Is there anyone in the audience who would like to speak?

Mr. Douglas made a motion in Case No. 09-07 to adjourn the case to the June meeting seconded by Mr. Chin with all voting "aye"

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CASE NO. 10-07 CROMPOND RD. LLC for an Interpretation and/or Area Variance for a freestanding sign on the property located at 2293 Crompond Rd., Cortlandt Manor.

Mr. Mattis stated we'll recall that case at the end.

NEW PUBLIC HEARINGS

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. Don and Francesca Demas appeared before the Board.

Mr. Demas stated I live at 45 Fowler Ave., and we're looking to put a garage. If you're looking directly at our house to the right you drive right into it. Right now we go into our driveway, and we make a left, and into the garage. I know it's a big variance we're looking for. I have pictures here. I had spoken to Mr. Heady, and he told me basically what I needed to do, and I did my homework, and I took pictures of the slope in our land, and how it coincides with our neighbors. Right now our neighbors are 93 feet away from our house as is. So do I show you the pictures? I've never done this before.

Mr. Mattis replies yes.

Mr. Demas handed the pictures to the Board. He stated I am also going to give you a letter from our neighbor.

Mr. Mattis stated I will just read this letter into the record. The letter we have is from Ed Gerald. He read, "We live at 51 Fowler Ave., our neighbors Don, and Francesca Demas. We understand they are requesting a variance in order to enhance their property. We would like you to know that we are not opposed to granting this variance for the Demas family to build their garage. Thank you for your attention to this matter."

Mr. Demas stated I took pictures from different angles. I tried to take some from their porch, from the front of the house, from the rear of the house, from my house at their house. They're looking at the side of my house. I don't know if you can see it, or not in the pictures.

Mr. Mattis stated I was out there so I am familiar with the site. Since Mr. Heady isn't here, is there anyone else that went out to see the property? Does anyone have any comments? I guess I will comment then. You are asking for a variance from 30 feet down to 5.5 feet. That's an extremely, extremely large variance. You're bringing your house, and garage right to the property line. Grant it you are a distance away from your neighbor, but one of the things we look at is the size of the variance, how much it is, and it's over 80 percent. The other thing we

look at is are there alternatives, and another thing we look at is the character of the neighborhood. It's a relatively new neighborhood, and every house is pretty much in the middle of their property, as is yours. In fact, yours is a little bit off centered to the right, and this will bring it much closer. Your septic is in the front, I believe.

Mr. Demas replied right.

Mr. Mattis stated you have hundreds, and hundreds of feet in the back, and this would set a terrible precedent giving you such a large variance, when there are alternatives. One of the things we have to look at is are there alternatives, and your alternative is to move it back, and away from the property line.

Mr. Demas stated I have a conservation easement in the back, and we can still go back to the same 25 foot garage width that we proposed in the back, if we continue on the driveway, and make a left.

Mr. Mattis stated yes, that conservation easement is at the back of your property, which is hundreds of feet away.

Mr. Demas stated if I do that I want to make sure it is okay. So if I continue my driveway, and go left that would be fine?

Mr. Mattis stated yes.

Mr. Demas asked so on the other side of the house if I wanted to build out of the other corner of the house?

Mr. Mattis asked toward the road?

Ms. Demas replied facing the house to the left of the house behind it.

Mr. Mattis stated yes, and I don't think you would need a variance, and you're certainly very, very far away from the conservation easement back there. I don't think you would even need a variance in which case you could withdraw this, and just work with Code Enforcement for the permits.

Mr. Douglas stated I think while we are talking here, you need to know that one of the factors to look at is if there are other alternatives, and I think there clearly is. This would apply to any variance.

Mr. Flandreau stated if the applicant would like to come to the office, and I can show you what the set backs would be, and what you can do without having to come back to the Board.

Mrs. Demas stated we came here first, because this would be our first choice, but if we can't do

this then we can go with another plan.

Mr. Seirmarco stated this would something we have never granted before.

Mr. Mattis stated and everything we grant sets a precedent for the next one. I think there are alternatives, and I would suggest that you ask for an adjournment, and then you can work with Mr. Flandreau, and if you come up with a reasonable alternative that doesn't need a variance, then you can just write a letter, or just verbally withdraw through him. Just for the record I know Mr Heady was out there, and he did talk with you, he was at our Work Session on Monday but he was opposed to it also.

Mr. Demas stated really, I'm surprised at that.

Mr. Reber stated I did not visit the site but I saw the survey, and the land, and I would not even consider it. The photographs that you conveniently submitted indicate that there are not unusual issues with your land. It is not like there's a 40 foot cliff 5 feet behind the house, all that land is accessible. So to me it would be totally wrong of us to grant any kind of variance, when there is that much land. So I would not consider a variance for this. I also don't think there is anything much you can do on the other side either, because I think that is considered a front yard as well, and I think that would be a 50 foot set back there. So you have to look to back, and to the other side, and then you wouldn't need a variance. So it looks like you have alternatives here.

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

Mr. Chin made a motion in Case No. 17-07 to adjourn to the June meeting seconded by Mr. Reber with all voting "aye."

* * *

CASE NO. 18-07 JOSEPH SCHMID for an Area Variance for a front yard set back for a proposed porch on the property at 22 Richmond Pl., Cortlandt Manor, NY.

Mr. Joseph Schmid appeared before the Board. He stated I have been living at 22 Richmond Place for the last fifteen years. I am building an addition of a front porch to enhance the look of my home as well as the neighborhood. It is rather small. The porch is 6.6 feet wide, and 20 feet in length. The front yard set back for the porch is 26.7 feet, which exceeds the requirement of 30 feet by 3.25 feet. Due to the small size of the porch, changing the size of the porch to conform to the current code is not a viable option, and would not warrant the expense to build it. There has not been any other significant renovation made to my home that has contributed to this request for a 3.25 foot variance.

Mr. Chin stated I drove by, and seeing the property, and I saw the porch that is indicated on the site plan that he wants, and everything else. I really do not have a problem with this. This is a very small variance that he is asking for. So I think it is a reasonable request.

Mr. Mattis stated I also drove by the property, and I have one additional comment. Other than the fact that I think it would enhance the neighborhood, and it's a small variance, the property directly on the right I believe is closer to the road than your porch actually would be. So it certainly would not effect the character of the neighborhood at all, and it really wouldn't stick out any further than any of the other houses.

Mr. Seirmarco stated I don't have a problem with this either.

Mr. Douglas stated I have no issues with it either.

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

Mr. Chin made a motion in Case No. 18-07 to close the public hearing seconded by Mr. Seirmarco with all voting "aye."

Mr. Chin made a motion in Case No. 18-07 to grant the front yard variance for a proposed porch from 30 feet down to 26.75 feet. This is a Type II Sequa with no further compliance required seconded by Mr. Reber with all voting "aye."

Mr. Flandrea stated your Decision & Order will be ready on Tuesday.

* * *

CASE NO. 19-07 BRIAN & LEIGH KAHN for an Area Variance for a front yard set back for a proposed deck, side yard set back for a proposed porch and an Area Variance for rear yard set backs for a proposed addition and deck on the property located at 100 College Hill Rd., Montrose.

Mr. Christopher Borchek, architect, and Mr. and Mrs. Kahn appeared before the Board.

Mr. Borchek stated I am the architect for Mr. and Mrs. Kahn. We are in front of you tonight asking for some variances for 100 College Hill Rd., which is actually the property all the way at the very end of College Hill. There are three specific variances that we would be requesting. One would be for the front yard from 50 feet down to 33.5 feet. A side yard variance from 30 feet down to 28.75 feet , and a variance for 25.74 for a dimension on the corner of the existing house as it already sits. At the rear yard we would be asking to go from 30 feet down to 7.5 feet, while that's rather large there is already a variance for 6.03 feet set back from the existing house to the rear yard. One of the first things we wanted to do here is to take the existing car port from up on the street, and actually bring that into the site itself. We have looked at expanding the existing garage, but the set backs were large. So we want to move the car port down below the house so you really don't even see a lot of it. There is a deck that would sit above it. In putting together the upper level additions for this we tried to make sure that we put the bulk of the additions away from the one closest neighbor. The way the property sits, if you're looking at the front of the house, we have a neighbor on the right side so we tried to add to the left side of the

house. We have a couple of letters from the neighbors basically supporting the additions. He handed the letters to Mr. Mattis.

Mr. Mattis stated let me summarize these quickly, and then I'll turn this over to Mr. Reber. The first letter is from Charles Wright. He writes, "I own the property located at 96 College Hill Rd., next door to Leigh and Brian Kahn. I understand that Mr. and Mrs. Kahn have applied for variances with respect to the renovations to their property. I've discussed these renovations with them, and was shown a copy of the document submitted for ZBA review, and a copy of which is attached to this letter. I have no objections to the proposed renovations, and the granting of the variances they have requested." There is another letter from Matthew Cherico at 102 College Hill Rd. So you have the neighbor at 96, which is actually the house very close on the right side, and on the other side it is on the other side of the wall that is there, it is undeveloped property. So these are the two adjacent property owners that would be effected.

Mr. Reber stated I went to the site, because it is a confusing application, and even looking at the plans it gets confusing. This is a very unusually shaped piece of property. For all practical purposes at the end of College Hill Rd. there is a piece of property that the chairman referenced beyond this that is currently undeveloped. However, when you first look at the variances you say these are very large variances, and may have heard us argue against them in the past. Two of them, the rear yard addition, you are technically not going any further than the existing house. You are going over top of it. The reason these variances are needed is because the house when originally located, and I don't know how many years ago it was, was located all the way to one end of the property. So that it is that close to the property line. As it works out, the land beyond that property line is now Town land, and undevelopable open space. So it doesn't impact on anybody, and I don't think the deer care much whether the house is 3 feet, 4 feet, or whatever. As you indicated, you're simply going up, you're not going further out. So normally the issue here would be if you're blocking the neighbor in some way, or anything of that nature. That is not the case here. So even though they're very large, a 21.5 foot variance on a 30 foot requirement, and a 16.75 foot variance on a 24 foot requirement, there is extenuating circumstances that are not really anything different than what you have. As far as the side yard porch, again, that's not even as close to the neighbor as the existing house. You are just putting in a small entryway. So again, even though it says you are getting 1.25 foot variance, the house itself is actually closer, and again there is still plenty of distance to the neighbor's house, and wouldn't change the relationship you have with that. The front yard deck, the variance is 10.5 feet on a 44 foot requirement, but again if you look at the location of the house, and the way lot is structured there are some oddities there. Normally we don't grant these, however, we have granted a few front yard variances as long as it didn't interfere with the character of the neighborhood, and it wasn't detrimental, and I think that is certainly the case here. So even though the variances look large, and they seem numerous to me this is not something that would change the nature of the neighborhood or really changes what is physically already there. So I really see no problem in granting these.

Mr. Mattis stated I went out there, and spoke with Mr. Kahn today, my concern is the one in the front yard, but when you look at the configuration of the property, and Mr. Wright who is not

only on the right, but his property loops across the road, and then makes a turn to the right, and that creates a little nitch, which necessitates this variance, and it's next to his garage, and it's an area that will never be developed or anything, and it's really and odd shaped property. There is nothing that is ever going to go around there that this would impede. You're unfortunate that you are here, because as Mr. Reber said you have a long, narrow piece of property, and your house is situated right on the edge. There is only one neighbor that is impacted, and everything is being built away from him. Nothing is really getting closer to the property line other than that deck, and that property also slopes down so they would only see a little portion of that deck. So I think this is a good plan that you put together. Are there any other comments? Is there anyone in the audience who would like to speak?

Mr. Reber made a motion in Case No. 19-07 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Reber made a motion in Case No. 19-07 to grant variances consisting of a front yard variance for deck from 24 feet down to 33.5 feet for a 10.5 foot variance, a side yard variance for a porch from the required 30 feet down to 28.75 feet for a 1.25 variance, a rear yard variance for an addition from 30 feet down to 8.5 feet for a 21.5 foot variance, and a rear yard variance for a deck from 24 feet down to 7.75 feet for a 16.25 foot variance. This is a Type II Sequa with no further compliance required seconded by Mr. Becker with all voting "aye."

* * *

CASE NO. 20-07 GEORGE KIMMERLING & LARRY KRESSLEY for an Area Variance for a front yard addition on the property located at 6 Spruce Lane , Cortlandt Manor.

Mr. Scott Canaan, architect appeared before the Board. He stated I am representing my client for the project, and they need an Area Variance for a pre-existing, nonconforming front yard structure to the house, which is an existing structure, and we're adding to the existing footprint of the rear of the lot within the conforming section of the lot.

Mr. Seirmarco stated I did get a chance to get out there, and look around. There is a large rock on this piece of property so it makes it difficult to try to find somewhere to do anything else. So where the applicant has proposed is really it. It is not a large variance, and I don't have any problem with it. There is a large rock on the property, and it would make it difficult to do it anywhere else. It's the same size, they are just going up. It is the exact same footprint. It's not getting any closer than it was, and I don't have a problem with this.

Mr. Mattis asked are there any other comments?

Mr. Douglas replied I went out there also, and I agree with Mr. Seirmarco.

Mr. Mattis stated I went out there also, and I concur with that. Are there any other comments? Is there anyone in the audience who would like to speak?

Mr. Seirmarco made a motion in Case No. 20-07 to close the public hearing seconded by Mr. Reber with all voting “aye.”

Mr. Seirmarco made a motion in Case No. 20-07 to grant a front yard variance for the proposed addition from the allowed 50 feet down to 47.75 feet. This is a Type II Sequa with no further compliance required seconded by Mr. Becker with all voting “aye.”

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

* * *

CASE NO. 21-07 ADAM GOODRICH for an Area Variance for a front yard porch on the property located at 18 Meadowsweet Rd., Cortlandt Manor.

Mr. Adam Goodrich appeared before the Board. He stated my wife, and I are applying for a 21 inch variance to construct a new front porch on our home. I submitted to you some as is drawings, and what we propose as well as a letter from the majority of my neighbors, who have had no problem with it. I have shown them the drawings. I think it would enhance the beauty of my home as it is, and it is something my wife has always wanted on her colonial home is a nice Georgian front porch, and I hope you will grant me that variance.

Mr. Douglas stated I went out to the site, and I don’t believe that one could even tell, or notice that a variance would be granted for this. I don’t think it would have any impact in any way whatsoever, and the only correction I want to make is that I think it’s even less, I think it is 19 inches.

Mr. Mattis stated it doesn’t quite make the dimenimous requirement. I was out there as well, and I concur. Is there anyone in the audience who would like to speak?

Mr. Douglas made a motion in Case No. 21-07 to close the public hearing seconded by Mr. Seirmarco with all voting “aye.”

Mr. Douglas made a motion in Case No. 21-07 to grant the front yard variance for a proposed porch from 50 feet down to 48.3 feet. This is a Type II Sequa with no further compliance required seconded by Mr. Chin with all voting “aye.”

* * *

CASE NO. 22-07 DANISH HOME FOR THE AGED, INC. for an Area Variance for an accessory structure in the front yard on the property located at 1065 Quaker Bridge Rd. E., Croton-on-Hudson.

Mr. Herbert Mathiasen appeared before the Board. He stated I am the vice president at the Danish Home in Croton. We’re looking for a variance for our front yard to put in a generator.

The generator is needed for life support for some of our residents, and this is replacing one that was there from years ago. We have a letter from our neighbor. The nearest entrance to the property is 1100 feet from the driveway, and approximately 970 feet to Quaker Bridge Rd.

Mr. Chin stated I know the area well, and like you say it is about 1100 feet from the road there. I think on a day like today, I don't know if you lost power over there today, but I would not see a problem with a generator in that location. I don't think you can even see it.

Mr. Mathiasen stated it is on the side of the building, and what we intend to do is to screen it. It is really on the side, but for the Town's purposes it is considered the front yard.

Mr. Chin asked what kind of screening are you putting there?

Mr. Mathiasen stated we are going to put a fence around it.

Mr. Mattis stated yes, you mentioned that at the Work Session. One other thing that was mentioned at the Work Session is that you have several people on life support systems that require electricity all the time.

Mr. Mathiasen stated yes we presently have two people that need oxygen.

Mr. Becker stated I think that is a good point. Many people who have generators is more for luxury, but I think here it is not a luxury it is a necessity. I don't think there is any alternative where to locate it, and as long as it screened I really would not have a problem with this.

Mr. Mathiasen stated the reason it came up is that the new regulations is that Con Edison can no longer come on to the property, and make repair so we have to have this.

Mr. Reber stated the issue isn't so much the generator it is really because it is technically in the front yard. It is a large piece of property, and in fact it really doesn't have a front yard in a classical sense. The front yard is based on the fact that is the way the main building faces so it was given a front yard classification. It is set way back, and any of the neighbors could not see it from the road. So even the idea of screening is a moot point, because normally we require screening so that people can't see it. They would have to drive well onto your property to even know that this is there. I think the key point is why put it somewhere else on the property, because it really becomes a real hassle because this is really for safety, and it really is the proper place to put this generator. I don't see any reason why we should not grant it, because it is a necessity.

Mr. Mattis asked are there any other comments?

Mr. Seirmarco stated I think in the past I have not been in favor of placing generators in the front yard, but I think this is a real good reason for life support. So I agree with this.

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

Mr. Chin made a motion in Case No. 22-07 to close the public hearing seconded by Mr. Douglas with all voting "aye."

Mr. Chin made a motion in Case No. 22-07 to grant the front yard variance for a proposed accessory structure, which is a back up generator to be placed in the front of the property. This is a Type II Sequa with no further compliance required seconded by Mr. Becker with all voting "aye."

* * *

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 Rd., Cortlandt.

Mr. Dan Richman, Esq. appeared before the Board. He stated I am with the law firm of Zarin & Steinmetz, and we have been recently been substituted in on this case. I have with me Tim Miller from Tim Miller & Associates, and Meg Henry from K B & B architects also here on behalf of the Yeshiva. We're here tonight to appeal the interpretation that Deputy Director of Code Enforcement in his April 5, 2007 memorandum that a Special Permit is required for the Yeshiva's dormitories, which house religious students. The April 5th memorandum recognizes that a place of worship, and religious instruction is a permitted use in this district, but then for no apparent reason respectfully separated out the Yeshiva's dormitory for special treatment as is being used. Respectfully, the April 5th memorandum's analogy of the religious educational experience made possible by the Yeshiva's housing. A dude ranch/hotel had previously operated on this site, and cannot be sustained. A dormitory for the Yeshiva is a strict component to the religious work, and instruction that has gone on there for more than 20 years. As the Board is aware the Cortlandt Building Code specifically establishes that a church, or other place of worship, or religious instruction is a permitted use in this district. There can be little doubt that the basic function of the Yeshiva is a religious use as your memorandum from April 5th recognizes that. If you look at the basic use which is teaching the Talmed, the Torah, Bible, ethics, and other religious codes to the students there. I don't think it would be seriously disputed that we're talking about religious instruction as a basic purpose, and basic function here. New York State Law is clear to determine with issues as defined for purposes as broadly to extend to conduct any religious purpose. The dormitory at issue here is an intrical part of the Yeshiva's basic religious use. In the Orthodox community there is a fundamental distinction between out of town Yeshiva instruction where students live on campus, and in town Yeshiva's where they do not live there. The fundamental premise of out of town Yeshiva's, where students live on campus is that students must live there in order to fully participate in their religious education, which occurs essentially on a 24/7 basis. If I can approach the Board I'd like to add a statement that was prepared by Rabbi Eliah, which explains the out of town issue, which again,

involves students not only book learning, but learning to the extent necessarily throughout the day, and up until 11:30 at night the rabbis are available to talk to students. Students study in groups, they study one on one. A large part of the learning, therefore, is being available to each other as a community to relay to each other, and discuss the religious precepts they have been studying. In this way they are able to experience the fullness, and richness of the program, which is designed to build character, and values of commitment, and promote the development of the Orthodox community. Accordingly, in one of the cases that both we, and prior counsel pointed out to you was specifically recognizing the Yeshiva that was an out of town Yeshiva that the dormitories there were part of that use, were an intrical part of that use. The court recognized, the Appellate Division recognized that the dormitory is substantially more than housing, and is an essential element, and an intrical part of the overall experience. The court specifically recognized that the requirement that the students live in the Yeshiva allowed students to perpetuate in an environment as consistent with the tenants, and puts into the practice the teachings. The academic of religious curriculum, in which the students are immersed during the school day are thereby promoted, fortified, and reinforced the values, and principals on which the institution was founded are nurtured through the dormitory setting. The positive influence is enhanced through the substantially broader assets afforded through the dormitory life. So a Court of Appeals in New York has recognized that religious instruction not only entails what goes on in the classroom, but involves the socialization that goes on when people are able to congregate with each other. This is one of several cases in this area where the Court of Appeals has stated when a member of congregation cements friendship to other members of a congregation the church benefits, and becomes stronger. There is a religious activity for the church to provide a place for these social groups to meet. Since the church by doing so is developing a stronger, and closer knit religious unit. To limit a church to merely a house of prayer, and sacrifice wouldn't largely be defied in a church of an opportunity of enlarging, perpetuating, and strengthening itself, and the congregation. Similarly, the highest court in Connecticut, and an even closer case dealing with the residential component of a synagogue that requires students to stay there said it was highly suspect that the Zoning Board, which it overruled, that it was one in the same property, and by, and the same be governed by conflicting provisions the way it is permitted, and special uses. Since the court recognized that religious instruction was a permitted use, it therefore held that the dormitories that were provided were necessarily a permitted use. With respect, if there is any ambiguity in that provision of the code that can be construed, as you all are certainly aware even when an ordinary applicant is before the Board any ambiguity must be in the applicant's favor. I would like to inform you that anywhere there is religious use as an issue, again there is even greater deference owed being there should be certain flexibility that is owed to religious uses. I think even more called for. What I believe in reading the code that the Yeshiva is a place of religious instruction necessarily as an out of town Yeshiva requires the dormitories to fulfill its' religious mission. As long as we are here, we thought it would be useful to explain the program we're doing. I think it important for the Board to recognize that there really is no expansion going on of the dormitory use. I would like to give you a hand out showing this chart what is going on with respect to the dormitories. If you look here Oklahoma is currently a dormitory which is 27,000 square foot that can no longer be used as it has been out of commission for a couple of years. They would like to replace that in time for dormitory use. So by taking that down they are essentially taking

down that 27,000 gross foot, and replacing the two dormitories here. Again, so there is a dormitory here that housed 27,000 gross square foot that is no longer usable. All the students are presently compelled to live in overcrowded conditions in the dormitory over here. That has actually resulted in a reduction of students that temporarily. So at some time during the Yeshiva's operation did get up to 240, 250, and it is now lower because of the lack of the Oklahoma facility. The Oklahoma facility again, is 27,000 square foot, and will be demolished as part of this program, and in its' place there will be two new dorm wings each totaling about 12,000 square foot. The expansion is really in the classroom building.

Mr. Seirmarco asked so this existing building, Oklahoma, is not presently occupied?

Mr. Richman replied Oklahoma cannot be used right now.

Mr. Seirmarco asked so they are presently living where?

Mr. Richman replied they are currently living in this building (referring to the chart).

Mr. Klarl asked so that building is 13,960 square feet?

Mr. Richman replied correct.
Mr. Klarl stated so you are going to leave up Dallas, which is 7148 square feet, and you are going to leave the pool building standing at 13,960 square feet.

Ms. Henry, architect, replied correct. Oklahoma will be removed, and there will essentially be three new structures put in its' place. They will be about 12,000 square feet each.

Mr. Mattis stated putting aside the square footage for a moment. When Oklahoma was operating as a dormitory how many students could be accommodated with the Dallas, pool building, and Oklahoma, and the second part of that question is without Oklahoma and the two new dorm wings what would the total population be that could be accommodated?

Mr. Richman replied the Planning Board similarly requested that we provide the student population. So approximately in 2001/2002 was when Oklahoma was last in use it got up to well summer enrollment at that time there was no high school, high school was out so the maximum would be really during the summer. So for example there were approximately 230 students for the summer of 2001/2002. If you go back to 1996/1997 there was almost 240 students.

Mr. Mattis stated I am not sure how you are getting those totals.

Mr. Richman stated the secondary is throughout the year.

Mr. Mattis stated so it would be summer enrollment plus both secondaries year round. So you've had up to 254 students in the past. Are there any other comments?

Mr. Seirmarco stated sometimes additional people stay there in trailers for different holidays, are they accommodated on site?

Mr. Richman replied yes.

Rabbi appeared before the Board. He stated I am involved in the project. I want to explain about the swimming pool building, when the new building goes up, the swimming pool building will no longer be used for dormitory purposes. Right now we're thinking about accommodating families when they come three times a year for the holidays. Right now we have no place for them to stay, and that is why we were using the trailers. The swimming pool building can then better accommodate those families.

Mr. Mattis stated so that would be housing for visiting families.

Rabbi stated three times a year for the holidays.

Mr. Douglas asked what exactly does it mean when you say that the dormitory aspect is an intrical part of the religious education that is performed at the Yeshiva?

Mr. Richman replied as part of the out of town Yeshiva system in the Orthodox community that requires the students to be living with the students to mentor their relationship with the teachers that is a large part of the learning experience, because it involves bonding with the teachers. It enhances the mentoring relationship, and again it goes on 24/7. The rabbis are available until 11:30 at night, and prayers begin at 7:30 in the morning. They are available throughout the day. It is a much more intensive experience.

Mr. Douglas stated so you are saying that in reference to your statutes that the Board has to give deference to that.

Mr. Richman state NY State Law is one of the strongest laws in the state of the union in terms of the rights, and codes of religious uses. NY State Law, the Constitution, and Court of Appeals repeatedly stated that deference is owed, and flexibility must be awarded them.

Mr. Douglas asked is there any limit on that, or is there a point where a municipal government can say yes we want to give total deference to the religious uses, but you can' t go past X? I just want to get a sense of where that law is.

Mr. Richman replied under the Court of Appeals, and the State Law both recognize that there can be when there is a serious issue of public, health, safety, and welfare, then there is some ability to place some restrictions. The RLUIPA says that you can't substantially not permit a religious use unless there is some public health, safety, and welfare issues. You really have to show that there are some serious issues, serious septic overflow problems or something like that.

Mr. Douglas stated I just want to know if the courts sort of drew a line, and the courts ruled that

is the appropriate line.
Mr. Richman stated you cannot prohibit a religious use from a residential district that is absolutely clear. Religious uses are fundamentally for the public benefit.

Mr. Douglas stated I am just trying to get a feel of where there is an appropriate place to draw the line. There are many cases saying you can't prohibit it, but that is not what we are proposing either.

Mr. Richman stated I am not really sure how to answer that. I know courts really do extend tremendous deference to religious institutions. The only thing I can think of is when the a second circuit dealt with the Westchester Day School case they at least opened the door that traffic might be a compelling governmental interest. If you could show again, if there was a traffic issue that was seriously going to endanger human life.

Mr. Seirmarco stated well there are a number of various religious institutions that function is a residential area that don't have dorms. So you're saying that your particular religious institution can't separate the institution from the dorm.

Mr. Richman stated right the institution is really necessary to the program. It is what makes an out of town Yeshiva possible.

Mr. Reber stated maybe if I could interrupt and ask our attorney Mr. Klarl to listen to what I think what we're trying to do here, and correct if I'm wrong. We're a Zoning Board of Appeals, and I know the audience may have issue with septic system, or something of that nature. Those are not relevant. If I understand it, whether it's too crowded, whether it meets septic requirements, aesthetics, and all that is the Planning Board's issue. We are being asked to what I believe, is very specific. There was an Interpretation by the Code Enforcement officer, and it addresses two points. The first point is that this is a conforming use even though the term is pre-existing, nonconforming. So there is a little confusion, and I think we have to clarify ourselves as to whether this is conforming or nonconforming. Then the second part of it that the applicant is concerned about is the statement that a Special Use Permit is required. Now I think those are the only two issues that we are trying to address. So the question is what are the criterias that determines whether a pre-existing, nonconforming, conforming use, and what dictates whether you need a Special Permit. Now there is a long history of Special Permits on this property going back to the dude ranch. So we're still trying to understand the trail of what initiated those Special Permits, and whether or not they need to be renewed. Now one of the issues that usually comes up on a Special Permit is expansion of use in a nonconforming area, and you've tried making the case that there's been no expansion of use, and they are not proposing expansion of use. I have a little trouble with that, because I go back to the John Felt letter, or the letter to John Felt responding on data from Levine & Montana wherein it goes back to referencing John Felt's letter, and questions about whether the number of students there, which is about 60, and the number of staff they shall employ, which is about 20, and half will only be housed on the premises. Your own data that you just handed us says that in 1989/1990 you had up to 65 high school students, you had 53 secondary students, and now you are quoting

numbers of 200/250 students. So I think your own data supports that over the course of time there has been an expansion of use. So again, I need to evaluate how the number went from 60 to 250, and it is not an expansion, and what had been approved, and accepted. I don't know what the answer to that is right now, and it is an issue that we have to address, but I think those are the only two issues for this Board.

Mr. Seirmarco stated the gentleman who just stood up stated that when all was said, and done the pool building would be used to house visitors so we would have no way of policing that three times a year so we would have to assume that it can house visitors any of the time.

Mr. Mattis stated that's a Planning Board issue.

Mr. Seirmarco stated I know, but that's an expansion of the number of students there, it's an expansion of the use.

Mr. Douglas stated I'm not sure Mr. Reber, that it is as necessarily narrow as maybe we would like it to be, because I think if I understand it correctly he is saying we can't divide these things out. We can't say that the dormitory is separate from the religious use, it's all part of the religious use. Religious use is permitted, and therefore it has the dormitory is part of the use to be put in perspective.

Mr. Reber stated let's step back a minute, we're not saying that they can't function. All we're saying is that there going have to get a Special Permit. A Special Permit that sets conditions that says they just can't do things without some rules. Say they didn't have a dormitory, and they just had the school, and the school was teaching 60 kids, and they said they want to teach 300 kids, that is still an expansion of use is it not. Even if there is no dormitory issue here.

Mr. Richman stated forget the constitutional law, forget theRLUIPA, forget everything else except your own code which establishes that a place where religious is a permitted use not a special permitted use, but a permitted use.

Mr. Reber stated we are trying to square all of this away. Is it the dormitory that triggers the Special Permit? We don't know the answer to that yet.

Mr. Richman stated the Yeshiva is place of religious instruction where that the dormitory is part of that religious instruction. The fact that the students learn from the rabbi, and from each other throughout the day makes the Yeshiva dormitory part of that religious purpose.

Mr. Reber stated I understand that, and we're not saying that you can, or you can't, we're just saying either you go back to the Planning Board, and there is no Special Permit, and restrictions required or you need a Special Permit, either way you go back to the Planning Board. We are just trying to understand the issues clearly.

Mr. Becker stated we need to research the history of the property here. How it went from dude

ranch to religious school to dormitories to what is being proposed now. We can't determine the status of the property without doing some research on when all of this existed, and what was granted.

Mr. Richman stated we recently obtained some information on the history as well, but I would respectfully submit that the prior dude ranch is in no way comparable to what is going here now. There may have been a Special Permit needed for the hotel. What has been going on since is a permitted use that has gotten Building Permits from this Town to operate, and to develop. Even with regard to the history, the only issue we have before this Board is whether or not a religious place that teaches the Torah, the Bible, teaches the Talmath is a place of religious instruction or not.

Mr. Seirmarco stated I think you have to look at this in different ways. It has to be a good neighbor. It has to be a safe place.

Mr. Mattis stated those are all Planning Board issues.

Mr. Seirmarco stated well they are, and they aren't.

Mr. Mattis stated no, they are Jim. We're an Interpretation. Those are not our issues.

Mr. Seirmarco stated I think that they could be. I am saying that they may be part of a Special Permit.

Mr. Mattis stated the Special Permit is not granted by us so it is not our issue. We determine whether a Special Permit is needed. It goes back to the Planning Board either it's needed or it's not needed.

Mr. Seirmarco stated you can't think about whether it's needed without thinking about the Special Permit.

Mr. Mattis stated we're looking at the legal issues only.

Mr. Douglas stated I think the legal issues brings some of those to bear. We have to look at the components such as safety, and welfare, and those issues I think we do have to consider.

Mr. Richman stated I agree with the chairman that they are part of the Planning Board process, and I think that you agree with us that this is a place or religious instruction. We go back for a site plan review in which a lot of the issues that I think you're all concerned about would be discussed.

Mr. Miller stated if I could make a quick comment. I'm a planner not a lawyer so I have a simpler mind, and to be very simple about this because this is a pretty narrow issue in front of the Zoning Board. We received an Interpretation from a Code Enforcement Officer that the

dormitories were a pre-existing, nonconforming use, and if that is so then we need a Special Permit for that use, and any expansion would require a Special Permit, and site plan. We've already requested a site plan from the Planning Board. We are here in front of the Zoning Board because, as Mr. Richman pointed out, it is our view that the dormitories are an intrical part of this religious instruction, and he has cited the cases as to why. He has cited the circumstances as to why, and if it is an intrical part of the religious instruction under the Town of Cortlandt Code it is permitted as a matter of right like a house is permitted. When you make an application for a house the Town has no authority whether it is two bedrooms, or twelve bedrooms as long as the other code requirements are met, the septic, the sewers, the water service, or what have you. So as a matter of right, it is our view that the dormitories are an intrical part of the religious worship, and that is all we're asking from this Board. Are the dormitories accessory and intrical to this religious use. We've indicated why we believe it's so. I would also state that from the day the Yeshiva opened the dormitories were there as part of the religious instruction. When the day the Yeshiva opened there was no restriction on how many students could be there. Just as there would be no restriction on the number of bedrooms allowed in the house that is allowed by right. The capacity of this is not a Zoning Board issue. It is a Planning Board issue. What we are asking for is do you agree with us that the dormitories are an intrical part of this religious teaching program? If it is, it's a matter of right we can go back in front of the Planning Board, and address the other issues that have been brought up in prior meetings in front of the Planning Board. That is as simple as I can do it. The only other issue related to a Special Permit really has to do with the matter that we have a secondary school here. We also have people that stay on after the secondary school after they complete their instruction of the secondary school for further religious instruction. There is no degree incurred. There's no certification incurred. There's no rabbinical college here. There's no college credits given. We have people that do stay on after secondary school, and we believe that is also a permitted use, and that's another matter that we would seek.

Mr. Richman stated well I would just say that any of the dormitory that goes on there is connected to religious instruction. There are post high school students there, and again it all ties into one fundamental program.

Mr. Reber stated our code does make the distinction, and this is why it gets a little confusing. When we read that section it starts with church, other places of worship, and religious instruction are permitted, and they're citing that. Then it goes on to public, or private school offering courses, and general instruction, that's permitted. Then it says vocational schools, secretarial, data processing is not permitted, and one more. They take the time to single out universities, colleges, and seminaries, and there they ask for a Special Permit just like they do for nursery schools. So that is where we have a little difficulty. We're trying to figure out whether the intent of this code was that when you started involving residency, which is typical of a university, a college, or a seminary, they're saying we want a Special Permit, and I'm not saying you can't do it. It doesn't say not permitted, we're just saying we want a Special Permit. That's the issue we're wrestling with, does this fall under that category, or the first one which limits instruction to most activities like Sunday school, or some program where the students arrive they get an hour, or two of instruction, and they leave. So for you to say it is clear cut, for me it's not clear

cut, and I am trying to understand where it falls.
Mr. Richman stated Mr. Reber, I guess my response to that would be again to an extent there is an ambiguity in your code, and I did look at the code closely, and unfortunately it doesn't define what it means by the college, university, or seminary so I'm not clear, and it is not defined as to why they have done that.

Mr. Reber stated actually there is some logic as to why they separated that out, and want a Special Permit versus permit it to the other category.

Mr. Richman stated but I think you would agree that it is an ambiguity, and again if there is an ambiguity if they were a property owner, and again, if it's a religious use the courts are also have been favorable to the applicant.

Mr. Reber stated we understand that, and if this was a matter of deciding whether this is permitted, or not permitted that becomes a serious issue. Here that is not the case. A Special Permit doesn't deny you it just changes the conditions under which the Planning Board evaluates it, but it doesn't deny it. So it's not like we are saying you can't go ahead with it. I think that is different, that's a distinction. It's a very important one.

Mr. Richman stated I agree, but again, Connecticut Supreme Court was talking about that you can't fairly distinguish saying one part of the use is permitted, but another component is somehow specially permitted, and there they were talking about a synagogue that had religious instruction in that people would stay overnight there, but then some people stayed on throughout the week, and the court said that there was no, and if you recognize that, and part of the Yeshiva here is a synagogue where people do pray, and would have to recognize that religious instruction is taking place. It may not be common religious practice, and it may not be something that we are familiar with, a little out of the ordinary, but again it's owed a certain deference as a religious use. Again, under your code, there is clearly religious instruction going on. People are studying the bible. I can't think of anything more fundamentally of a religious instruction nature than people studying religious text, and then to try and dissect out part of that, and say well we're does it end. It certainly doesn't end at the classroom door in the Yeshiva. It goes beyond that. It goes into the dining hall. It goes into dormitories where students are talking amongst themselves with their rabbis.

Mr. Mattis stated which also happens which also happens in colleges, and universities. I think you overstate the ambiguity issue.

Mr. Richman stated respectfully, again, I think if it' a college, or university with a secular focus, I think it would declare where it falls in your code. You might have a more complicated issue even a grayer area, if a religious college were making an application.

Mr. Douglas stated also what I'd like to correct that a governmental agency should be hesitant in parceling out what this about. If a religious group says this is part of our religion, I'm assuming you would feel, and be hesitant to say anything, and start picking out which aspects are part of

the religion. If the Yeshiva is of the view that the dormitories are what goes on there, and that educational experience is intrical to religion, then I see that you should be saying that the Board should be saying yes, or no.

Mr. Becker stated I'm perplexed because we're talking about an organization that has been in existence since the 1980's, and it's not clear to me how these additional Building Permits became. Why is there such ambiguity in the status of this property in 2007 when the business has been existing for 29 years. Certainly somewhere along the line someone had to say it was allowable. I just want to get to the precedence of how this happened.

Mr. Klarl stated what happened is there was an application before the Planning Board, and during that process there was issues raised by the members of the community as to the dorm use, and based upon the discussion in front of the Planning Board the Planning Board referred it to Code Enforcement for an opinion letter, and that's what dated the April 5th opinion letter, and that's what led to the ZBA application.

Mr. Becker stated but going back even before that the students were living here in dormitory fashion. Didn't they need a CO at some point allowing them to do that?

Mr. Klarl stated over the years they were probably issued, and Jim would know more than I. There were Building Permits issued, CO's issued, and from time to time Special Permits but not consistently. So there is a history of Building Permits, and CO's.

Mr. Reber stated most of them were for maintenance, and repair.

Mr. Klarl stated there has been lots of inspections from the Town in recent years concerning electrical issues, structural issues, and the Town has sent Code Enforcement people out on other occasions, and they've made certain improvement especially of electrical nature, structural nature. They were most concerned about the electrical system that was being utilized.

Mr. Becker stated I think we need to establish why you are here, which is the legal issue, which is what the status of the property is currently, to allow us to go forth, or not go forth. The dorm use, and whether that requires a Special Permit or not, and I think that is really the issue.

Mr. Klarl stated right, and that is the issue that got flushed out during the Planning Board process, and that issue was identified since Mr. Flandreau went out, and now the Yeshiva has made this application for an Interpretation and/or reversal of that opinion by Code Enforcement.

Mr. Mattis stated I would like to open this up for comments from the public now.

Mr. Richman stated Mr. Chairman again, I would just like you to remind the public that most of these matters are Planning Board concerns. This is really just a legal issue.

Mr. Mattis stated okay we are going to open this up for public comments now, and again it's a

legal issue and a lot of these issues that you may want to speak about are more properly addressed at the Planning Board, and should be saved for the Planning Board.

Mr. David Simbari appeared before the Board. He stated I live at 7 Flanders Lane. Fortunately, I would just like to stated that I have prior experience in these matters. I was former Deputy Commissioner of Finance for Oneida County, and former Director for the City of Utica, and Treasurer, and a short stint as the Town Manager. I also want to tell you that I'm in support of Mr. Flandreau's memo to the Town Board dated April 5th. It is my belief that the site approval for Ohr Hammer requires the applicant to apply for a Special Permit. Before I begin I find it interesting to note that the applicant has retained different counsel for this hearing. As an aside I find it even more interesting with the choice of law firm. Mr. Steinmeitz, and his partner are highly regarded, and have a high degree of experience in these matters. As a matter of hear say I understand they are currently representing a client in Rockland County opposed to the construction and expansion of a Yeshiva. If that's true, it's a great system we function in where justice is blind....

Mr. Mattis stated excuse me, what's happening in Rockland County, and the hear say is not relevant.

Mr. Simbari stated okay, when considering an Interpretation of zoning, and I agree with several members of the Board. The health, safety, and welfare of the community must be considered and weighed heavily. The Yeshiva's attempt to expand by constructing a larger dormitory is clearly a detriment to the health, safety, and welfare of a low density, residential zone, R-40. The welfare of the neighborhood is clearly at grave risk. I'd ask you to take a simple common sense approach in examining the facts. What happens to the property values of homes adjacent or near institutions of this nature?

Mr. Mattis stated excuse me a second, again, it's an issue of an Interpretation.

Mr. Simbari stated right, the fundamental principle of Zoning is to ensure the health, safety, and welfare of the community.

Mr. Mattis stated in this case we're interpreting whether or not a Special Permit is needed, which is a legal issue, it's not an issue that you're discussing.

Mr. Simbari stated right, as part of the legal issue it's important to understand the impact on the health, safety, and welfare of the community.

Mr. Reber stated if we were reviewing a variance, you would be correct. This is not a variance, this is an Interpretation. It is a very different situation.

Mr. Simbari stated okay, so let's talk about the Interpretation in terms of the Special Permit okay. I'll submit this to the stenographer for inclusion into the public record, but when we look

at this, we talked about RLUIPA, and that is the big boogeyman here, clearly. I would suggest that none of us be moved by this diversion. It is only mentioned to intimidate, and to your point, your job is not to interpret federal law. RLUIPA is a matter for the courts not for the Zoning Board, or the Planning Board. We are not engaged in a matter of restrictive, religious exclusion. Your charter is to solely take guidance from the Zoning Code not vagues outlines of a law intended to foster the practice of religion. Additionally, upon research, don't be influenced by the applicant's citation of case law relative to the Association of Zone A&B in Long Beach, NY. I've been through this with the Planning Board. This case is tangential to the matter before you in that it involved pre-existing dormitories in a high density zone that was permitted in a zone as an accessory use, completely different than this matter. We have no such accessory use provision in any of our residential zone areas. The other case that is cited concerned the right of religious practices within residential areas. This is an irrelevant issue. We are discussing a dormitory, and a dormitory is a convenience, and not a predicate of religious practice. I encourage each of you to evaluate other religious institutions in the Town to ascertain the existence of a dormitory. It has been abundantly clear from the onset of this application that the applicant has tried to slip through the cracks of every process. The applicant has appeared before this board, because they know if they are required to apply for a Special Permit they will fail. They cannot meet the standards that are promulgated by the Zoning Code. Foremost among them is that a facility of this type and character is required to be located on a state or county road. These roads are regional in nature and more suited to the impact of a development of this nature. It is also clear that the applicant is attempting to circumvent the high standards established by the Town by seeking your approval to avoid these standards. Unfortunately, this has been the only constant in this application, how to avoid the standards established by due process and our community. These standards include establish environmental and zoning regulations. In summary, it is obvious that the approval that the approval of this development, and overturning Mr. Flandreau's memo affects the very nature of what the citizens of this Town view as being so important. We moved here because we were enchanted by the woodlands and the scattering of single family homes. What would be the visual impact of an institutional style building in the middle of a residential zone. Approval will bring the environmental and character robbing impact of large parking areas the size of which are not accurately depicted on the site plan, bus traffic, additional vehicle traffic, and additional traffic from deliveries. I'd also like to point out something that is very, very interesting, above all else there lies an inconvenient truth in the pursuit of this approval, which was mentioned earlier, why does the institution call itself as designated by its sign on Furnace Woods Rd., a seminary? They've never used that term, but if you drive down Furnace Woods Rd., the sign says seminary, when in fact that characterization is never referred to any documents. The applicant refuses to use this descriptive, because there is no ambiguity in the Table of Permitted Uses. Seminaries require a Special Permit. Clearly, a process the applicant wants to avoid at any cost. How can they disregard their own sign? Imagine if other petitioners to this Board did the same. What would your reaction be? In regard to the ZBA application filed on May 1, 2007 I find the application interesting at best. There is no doubt that in the Table of Permitted Uses churches, or other places of worship and religious instruction are allowed in zone designated R-40. That is not what is at issue here. I refer you to page 3 of the application, first paragraph, line three, here we find the essence of what is to be determined. The applicant argued that dormitories are an

integral and essential accessory component to the Yeshiva, and I underline accessory. I refer back to the Table of Permitted Uses that clearly highlights any accessory use, it mentions parish house, rectory, or convent, and nursery school. There is no other accessory use permitted unless the applicant files for a Special Permit. The Table allows for a special school providing education in theology and religious history. This definition is culled from the American Heritage Dictionary for the noun seminary, seminaries require a Special Permit. Additionally, in that same paragraph we find another inconvenient truth. The applicant argues that the current dormitories cannot be pre-existing, nonconforming the vestige of the dude ranch. Where in the Table, or Code are dormitories permitted in R-40? Clearly, if they are not pre-existing, nonconforming the dormitories have existed illegally for a number of years. Simply, the applicant cannot admit to this classification as under the current code as alteration and reconstruction are severely restricted as highlight earlier this evening in another applicant. It is my sincere belief that by granting the applicant a reversal of Mr. Flandreau's Interpretation, the process of zoning will be cheapened. This Board will be part and parcel of a lessening of the standards. A Special Permit is required if this use is permitted at all. The course to proceed is spelled out clearly in the Town Code, Section 307-14b. It clearly states that only uses listed for each district are permitted or permitted by Special Permit shall be permitted. Uses not listed specifically or by reference as being permitted in a district shall be permitted in a district. In ruling on this, please bear in mind the existence of the inconvenient truths. Finally, I thank you for your time, and ask that this correspondence be placed in the record.

Applause.

Mr. Seirmarco asked how long have you lived in the Town?

Mr. Simbari replied 21 years.

Mr. Seirmarco stated okay, thank you.

Mr. Phil Cumberal appeared before the Board. He stated I live on Fairview Ct. As the car drives around the curvy roads, it's about 1/4 mile away from the premises in question. A straightly hit golf ball with a good driver could reach my house from their fences. So I do think I have a pretty good interest in what's going on here. I've looked at a bunch of the documentation that's involved. I've looked at the letters that went back and forth in 1985 from the attorney representing the Yeshiva to Mr. Felt, Mr. Felt's response, and the only interpretation that I can place on that is that Mr. Felt was told we're looking to move our school from New Rochelle where it's been operating for many years to the Town of Cortlandt, we'll have 60 students, 20 staff, and of the staff about half of them may be in the residence. Mr. Felt agreed with that. I may or may not have seen all of the documentation that has been consumed over the past 20 years, but that lone documentation that I've seen indicating that this is a residential facility, and that there was only going to be 60 students, and about 10 staff at the residence at the time. I hear tonight that over the years we've had growth. I don't see any approval in any of the records that I've seen permitting residential growth from 10 as agreed to by Mr. Felt to 200 as indicated by counsel for the Yeshiva tonight, and as a look at the letter that Mr. Flandreau wrote which I

believe is one of the principal subjects of this evening's hearing. He's talking about the plans that he has reviewed as a professional for the Town indicating that they wish to put in an additional 150 rooms, and it has been represented to him that there will be additional rooms with three to a room that will have an additional 150 students in residence plus the facilities that are not being knocked down with 86 residents, and his number come up to 260 some odd people that would be just students. Then he makes a pertinent point that the size of the rooms in the plans would be permissible, if there had to be 4 people to a room. So that would make add an additional 50 plus we have a history. From this Board they are looking for a legal interpretation, and as I understand the function of the Board as both legal, and equitable, and if someone is coming before you, you need to be fair at all times. The history here, the most recent violation showed half a dozen to a dozen rooms were overloaded with beds. Where there are four beds permitted, there are six beds, and eight beds. Where six beds are permitted, there are eight beds. So we do have this history of violation of what they believe the Town is permitting. I see nothing in the record, and I've heard nothing tonight indicating that this Town, or any Board of this Town, has ever permitted occupancy on a residential basis of more than 10 people, and I don't think we can start with assumption, well we've had 200 there, because there all you're dealing with now is their abuse of the situation. We've done it, we've crossed the border into America, we want to stay here, and have our rights. I think there are similarities here. I also see where they talk in their application of a deemed Special Permit. I have little expertise with what Planning Boards do, or Zoning Boards do, but I have a license to operate a car, or I don't. All I can say in my humble opinion is that they should not be able to build dormitories in an R-40 residential area. That is what they're looking to do. It's not an extension of a pre-existing use. He is corrupt when he says there was no reference in the prior approvals to this being a dormitory situation. Again, Mr. Flandreau is correct by making reference to hotels, rooming houses, and other lodging places, whether it's under the seminary rules, or the other lodging places rules. Those are the rules that apply in the residential area where I live, and he is likewise correct that the proposal is for an expansion, and that it would require Special Permitting by the Planning Board as well as a site plan, a development approval, and therefore, I come here tonight with the prayer that the Zoning Board of Appeals deny the applicant's request. Thank you very much.

Applause.

Mr. John Galvin appeared before the Board. He stated I am a resident of Cortlandt Manor, and my address is 27 Lakeview Ave. W. I am about a driver, and a sand wedge away to the Yeshiva. I am just seeking clarification, Mr. Reber referenced earlier a letter I believe that was May 2, 1985 from Levine & Montana law firm representing Mr. Moe and Louise Hirsch talking about the purchasing of this property. They talk about how they operated in New Rochelle, and they have a student body of 60, and a staff of about 20 of which approximately one half will be housed on the premises. I know nothing about zoning, planning, or the like. I am a customs attorney, which any attorney of the Board probably has no idea what I do. I do know, and I understand that counsel is looking at certain Federal and State laws, and interpreting certain phrases like places or worship, and religious instruction. Assuming arguendo, counsel is correct. Assuming arguendo that a place of worship would include a Yeshiva with dormitories. That expansive interpretation was explicitly negated in the Yeshiva's letter to the Planning Board in

1985 in which they said oh no, no, no, they'll teach here, they'll have a staff here, and of the dozen or so hotel rooms, I presume, half that staff approximately 10, will be housed here. There was no mention of dormitories. There was no mention of housing. How it got from that staffing or roughly 10 people residences to where it is now I have no idea, and that to me is relevant, I presume it's relevant to this Board, and its' Interpretation and application of the Zoning laws. Thank you very much for your time.

Applause.

Mr. Gregory Gale appeared before the Board. He stated I live at 80 Furnace Woods Rd., about a 7 iron from the Yeshiva.

Mr. Douglas asked can you translate for us in non golfing terms?

Mr. Gale replied about a 1/4 mile. I have a prepared text that I would like to follow, and then make part of the record. If I stray from whatever is not the subject here, please just let me know, because just going to have these entered into the record anyway. I've heard some questions about the interpretations of use. I'm not a lawyer, this is all new to me. I kind of confused because I am looking at the Zoning Board of Appeals application, and it does say a Special Use Permit may be required for the operation. I am going to try to go through some of these topics. I'd like to address the application before this Board relative to the seminary located on Furnace Woods Rd., and voice my strong objection to the expansion of the applicant's facility. Since the applicant is making their based on the religious school and dormitories being a pre-existing, nonconforming use I will attempt to confine my comments to those assertions, but reserve my right to raise other objections at a later time concerning other issues if the need arises. As you may be aware, I have addressed the Planning Board, Ms. Puglisi, Mr. Wood, Mr. Flandreau, and Mr. Vergano relative to this matter. However, I would like to provide some context for the ZBA. First and foremost, it is imperative that this Board understand I am not objecting to the existence of a house of worship. I am objecting to the construction of dormitories with the intent to house at least 250 + students in this R-40 zoned neighborhood. One area of agreement the applicant and I seem to have is that this project does not fall into use category of a hotel. One need only to review the code's definition of a hotel to ascertain the facility has to be open to the public. That clearly is not the case here; therefore, the attempt to assert this project falls into some protracted type of hotel use by reviewing the SIC uses is not relevant to this discussion. In May of 1985 Seymour Levine, the applicant's attorney at the time, sent a letter to John Felt indicating what the planned uses were for the Dude Ranch property that was in the process of being sold to the applicant. These uses were the basis for Mr. Felt indicating in his opinion the house of worship and school is a permitted use. On page 2 of this letter the first paragraph states, "The present student body is slightly under 60, and the staff which it shall employ is about 20, of which one half only will be housed at the premises." Clearly the intent is to house only the faculty as there is no mention of an dormitories anywhere in the letter and the use is defined by the applicant as a house of worship, and school; a religious school not a boarding school. If there is any doubt relative to the intended use of the property; one need only to review the Planning Board

application submitted by the applicant on 5/26/06, and the full environmental assessment form completed by the applicant on the same day. Both forms indicate the planned use is now a boarding school. Clearly a departure from the use that was granted in 1985. Interestingly enough, Mr. Zutt was the attorney representing the Town of Cortlandt when the anticipated use was deemed to be permissible. Until recently he represented the applicant. I understand he has withdrawn his representation of the applicant after I and another neighbor brought up what appears to be an obvious conflict of interest. Mr. Zutt in his May 11th letter withdrawing his counsel provides us a little more insight; "It was Mr. Halpern's view that since the legality of the dormitories (as part of the Yeshiva) were not addressed in Mr. Felt's 1985 letter and issues then and now are not substantiall..." Again, we are right back where we were in 1985, this is issue has not been addressed by the applicant then, and it isn't addressed now. The fascinating twist to this debate is that a reading of the applicant's own documents defeats their argument that this is a pre-existing, nonconforming use. Again, I refer you to the applicant's full environmental assessment form. The applicant attached a narrative; I direct your attention to the background portion of the narrative. The applicant indicates the prior owner, the Dude Ranch, ceased operation in 1981. I concur with this statement. I have been a resident of the Town of Cortlandt all but 5 years of my life. My in-laws lived in the home I now own and I remember the Dude Ranch being non operational for a long period of time, which commenced about a year after my wedding in 1980. The applicant goes on the state they have operated on the site since 1981. They make this allegation three times so the possibility of a typo is ridiculous. This we know is false. Any attempt to assert this was an innocent error, or new information has just come to light almost a year after the forms were filed and objections to this plan were introduced as a matter of public record before the Planning Board is an issue that needs to be presented to Mr. Zutt's professional liability carrier not this Board. Deed records, the 1985 letter from Mr. Levine indicating what the proposed uses were in 1985 prior to the sale of the property to the applicant, and statement during the public hearings of the Planning Board indicate the applicant did not operate the property until 1985. As I am sure you are aware, the Zoning Code mandates the operation of a pre-existing, nonconforming property must be continuous. Therefore, pre-existing, nonconforming use is not an issue in this case, and the ZBA has no alternative but to reject the applicant's application. Even if we were to state, purely hypothetically, that pre-existing, nonconforming use were in force; the Zoning Code forbids any pre-existing, nonconforming building to be "enlarged, extended, reconstructed, structurally altered, or moved." Additionally, the ZBA must decide that any change of use "is of the same or more restricted in nature." The Zoning Board of Appeals must find that such change is not substantially more detrimental to the neighborhood that the existing, nonconforming use. I submit, the existence of the 250 youths along with support staff, faculty and families of the faculty is much more disruptive than a seasonal Dude Ranch that allowed horseback riding to emanate from their property into the Blue Mountain Reservation. As I explained to the Planning Board, the only disturbance my in laws experienced during the years the Dude Ranch operated was an occasional loose horse grazing on their lawn. I will not detail my complaints to the Planning Board or those of my neighbors concerning the applicant in this forum, but suggest the ZBA view the tapes of the Planning board meetings on this topic. So please allow me to recap. The applicant is not proposing a hotel, the pre-existing, nonconforming uses does not apply, and even if it did, they are not allowed to "expand, extend, or structurally modify their facilities." So

why was this application not dismissed on these merits? I don't understand. However, as I found throughout this process; I have been in front of the Planning Board four times, and my one time here, this discussion never seems to cease. So I would like to address some the applicant's contentions in their ZBA application. In the narrative attached entitled "Applicant's Position", Mr. Zutt concedes the initial operation was a religious school. This is an interesting statement when the applicant is now requesting a boarding school be permitted. Once again, I'm not contesting the applicant existing as a place of worship, and religious instruction. My contention is a boarding school does not belong in an R-40 zone; period. The applicant is attempting to state they are not changing the originally granted use, but once again, all that is required is a reading of the applicant's documents to see how transparent this maneuver is. The applicant indicates this project is not an expansion, but merely a replacement of existing structures. On its' face this assertion is ridiculous. The applicant's Planning Board application indicates the existing square footage is 61, 364 and the proposed square footage is 82, 854. The amended square footage is 88,373 as referred to in Mr. Zutt's April 18, 2007 letter to the Planning Board. Yet he is trying to convince us that this increase in square footage. Additionally, the applicant is proposing new buildings that do not use the same footprint as the existing buildings or structures that were demolished because they fell into disrepair, it's amazing. The student body population has been a topic of discussion at the Planning Board meetings; requiring three inquiries before the applicant finally supplied enrollment numbers. The enrollment numbers are in conflict with the New York State Department of Education and have never been verified. None of the enrollment numbers exceed the proposed student population after the project is completed. Once again, we are presented with another symptom of an expansion, not a renovation. Additionally, an integral component of the applicant's proposal is a sewage pumping facility. As one resident of the neighborhood....

Mr. Mattis stated that is really not relevant to this Board, it is really a Planning Board issue.

Mr. Gale stated okay. The applicant contends that common sense indicates dormitories are part of any educational facility. I find this odd considering there are three schools less than ½ mile from the applicant's property that have no dormitories. There is a distinction; one that the applicant attempts to ignore. An example of a religious school and house of worship without dormitories exists not ½ mile from this meeting. The St. Columbanus facility contains a house of worship, a school, a rectory, but no dormitories. Mr. Zutt cites several cases in attempt to bolster his ex-client's position. If I am not mistaken, this is a public hearing not a court of law. I have read the cases cited by Mr. Zutt and in my layman's opinion none of them are on point. However, I will leave the interpretation of these cases to the Town Attorney and will not go into a detailed analysis of them at this time. Judging on my experience in reviewing Mr. Zutt's case law; I suggest a very rigorous analysis be undertaken before any credence is inferred from these cases. Mr. Zutt refers to the Religious Land Use Act in yet another attempt to justify his position. However, as I am sure you are aware, there is no provision requiring dormitories be allowed. Not only that, our Zoning laws are clear. The dormitories are not a permitted use as cited in the Table of Permitted Uses. We have church, or other places of worship, and religious instruction, rectory, convent, nursery school, no dormitory. I have here a discussion of the case Mr. Zutt brings up, but I will not bring that up. I want to make this as brief as I can.

Mr. Mattis stated I think I would like to point out that Mr. Zutt is not the attorney anymore. What we will be looking at is what the new attorneys will be presenting to use not what Mr. Zutt has presented.

Mr. Gale stated understood, but as far as I know that is a matter of public record. I've heard discussed this evening, and the applicant refers to prior permits in his application. So once again let us take a stroll down memory lane. I refer to the Decision and Order of this very ZBA dated 5/30/80 addressing the Special Permit granted the Dude Ranch for a 16 room motel unit known as the Chalet. The ZBA decided that the granting of this petition is in harmony with the general purpose and intent of the Zoning Ordinance as amended, will not be injurious to the neighborhood and will not change the character thereof; or otherwise be detrimental to the public welfare. The applicant want to put 250+ students in a boarding school in an R-40 district. Additionally, they will house the families of some of the faculty, they do not provide an estimate, employ support staff, and on holidays the entire families visit. How can we be assured the population of 250 will be adhered to? Again, 250 is just the students. Under the current application there is a potential for 500, 700, 1000 people out there on any given time, any given weekend. Remember this started with a proposed student population of 60; none of which were to be housed on the premises. Can any member of this Board honestly say the approval of this application "will not be injurious to the neighborhood and will not change the character thereof, or otherwise be detrimental to the public welfare? Laws are meant to be uniformly enforced. If any member of this community had a deck or porch built without a proper permit; they would be at the very least fined. About 10 days ago the Code Enforcement folks were seen trolling through our neighborhood searching for violations. Yet is seems the applicant is not subject to the same rigorous enforcement.

Mr. Mattis stated I think that is also irrelevant. Our discussion...

Mr. Reber stated Mr. Chairman we have been here for over 2 ½ hours, we've lost one Board member, can we take a 5 minute recess?

Mr. Mattis stated okay, we'll take a 5 minute recess.

Mr. Gregory Gale appeared before the Board again. He stated remember this whole thing started with a population of 60 none of which were to be held on the premises. Can any member of this Board honestly say the approval of this application with not be injurious to the neighborhood and will no change the character thereof, or otherwise be detrimental to the public welfare. Again, this Board has no alternative but to reject the application. Failure to do so will assure litigation from tax paying, voting, informed, and motivated neighbors. Again, thank you for the opportunity to address you. I am sorry if I went on too long. I'll have a copy of this letter submitted into the record. Thank you.

Applause.

Mr. Richard Kennedy appeared before the Board. He stated I am a 12 year resident of Cortlandt. I live substantially away from here, but down hill from the sewer treatment. As I was going into the meeting tonight, I caught Mr. Reber and we want the codes to protect the character of our neighborhood. Dr. Becker said keep it consistent with the neighborhood, and Mr. Chairman, you yourself said the code is the code, and we have to go by what the code says. Certainly, any type of expansion, which I think if you are going to start housing family on holidays, that's expansion. So I don't care what the RLUIPA says, your code says expansion needs a Special Permit, and that is all I have to say. Thank you.

Applause.

Mr. Stuart Rafaeo appeared before the Board. I am a 7 year resident of Cortlandt Manor, and I live on Dimond Ave. I am sorry that I don't have all the information that my predecessors do, I just learned about this today. From what I'm hearing in terms of additional dormitories, 250 people, I definitely oppose it. That is all I want to say. Thank you.

Applause.

Mr. Joel Benedict appeared before the Board. He stated I live at 11 Lakeview Ave. W. I appreciate you hearing us out here tonight. I think there is only really one issue before the Board, and that is requiring of a Special Permit. You shouldn't deal with a religious act. You shouldn't be dealing with Planning Board issues. You should just tell that applicant that they need a Special Permit for this use. Thank you.

Applause.

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

Mr. Daniel Richman, Esq. appeared before the Board. He stated I know it's been a long night so I am not going to address each, and every one of the points, but I think there are several points I need to address. First of all, I think your Board does recognize really what is before you is a narrow issue. Is this, or this not a place of religious instruction. Again, I think there is not anyone who has contested to this. The question of whether or not students have lived here, again, I think it's a matter of public record. I think there has been numerous permits over the years recognizing that there has been a consistent student body living at this site. I think for anyone to, particularly nearby residents to make an assumption that we are proposing a new use is ridiculous. These students have been here since 1985. They've lived on the site since 1985. It's a question of whether or not they can replace, and create dormitory space that is livable. They are taking down an existing dormitory that is 27,000 square foot, and replacing it with 24,000 square foot living space. I am not sure what the issue is on that. I am not going to litigate any case law. I think the case law stands for itself. The last point I do want to raise is about what the intent was. I think looking at the permitted use, and whether or not residency was intended. Again, the permitted uses in the code consists of churches, other places of worship or religious instruction, parish houses, rectories, convents, and nursery schools. I respectfully

submit that a rectory, or convent necessarily contemplates people living there. So I think it was contemplated at the time that there would be people living within certain places of religious instruction, and worship such as the Yeshiva. Thank you.

Mr. Mattis asked are there any other comments?
Mr. Preston Trussler appeared before the Board. He stated I live at 1 Hillview Ct. in Furnace Woods. I am not an attorney. I am not versing what your versing, but one thing I'd like to share with you is that 25 years ago I was actually the vice registrar of a trade school. We were only permitted to have so many students on the premises at the time due to code. If we violated that code, we were fined. If we violated the code again, we were fined, and if we defied the law again, we would have been shut down. There's no exceptions to that. Thank you.

Applause.

Mr. Phil Tombarello reappeared before the Board. He stated it seems as if we are looking to define the question as to whether or not the Yeshiva is a religious use, or function, I think that is not what we're here to talk about. It seems to me that the function of this body is to be here to interpret what is the Yeshiva law, or if there is an in house Yeshiva, or an out of town Yeshiva, and what the requirements of an out of town Yeshiva are for people living there. I don't think that's what this body is for. I think this body is here to look at the Zoning laws, and what is a dormitory, and not the religion of the people living there, but the fact that there are plans where there will be a minimum of 250 people living there, and a potential expansion to much larger numbers at other times. So the role of this Board, I don't see as being one to decide what is the proper definition of an out of town, or in town Yeshiva. Thank you.

Applause.

Mr. Andrew Chinkler appeared before the Board. He stated I live in Cortlandt Estates since 1989.

Mr. Reber asked can you give your address.

Mr. Chinkler replied 34 Ridge Rd. I want to mention one thing that I am most concerned about is that it seems to me what I have heard tonight that this is an obvious huge expansion proposed. I don't think that can be argued. I don't think that it's anybody's business here to try to tell these people that the dormitories may not be part of religious instruction, that's fine, but it's too much to do where your building it. Go 20 miles upstate, there's plenty of farm land up there.

Mr. Mattis stated that is really irrelevant also.

Mr. Chinkler stated the thing is I have lived here since 1989, and if there is going to be much this much of an expansion, I can't tell you how many times I've almost hit some of these kids from the place.

Mr. Mattis stated that is an issue for the Planning Board. That is really not our issue.

Mr. Chinkler stated well I heard the attorney before mentioning about the health, and safety of people. It seems to me that is an obvious issue with the health , and safety of the kids that are part of that religious institution that are walking around the streets, it's dangerous. Now that I have a 16 year old girl who is driving.....

Mr. Mattis stated I don't want to cut you off, but that will be addressed by the Planning Board.

Mr. Chinkler stated okay, thank you.

Applause.

Mr. Mattis asked is there anyone else?

Mr. Gene Barra appeared before the Board. He stated I live at 78 Dimond Ave. I totally agree with the people that spoke previously. Obviously, the question before you is to make a determination of exactly what is it that the applicants are trying to put forward. Is there an expansion? Is there not an expansion? Obviously, it is part of the Yeshiva. There is no question there is a religious aspect of it, that's fine. The question is, as the attorney stated over here, liking it to a rectory, or a convent, which are typically smaller in nature, and attached to the church etc. versus what Mr. Reber was stating that clearly requires a Special Permit, which is a college, a university, or a seminary, which is a schooling purpose for priests etc. So there is clear distinction in my opinion between rectory, or convent, smaller, attached to the place of worship as opposed to a schooling facility such as a seminary that clearly requires a Special Permit based on the code as you know it. Thank you.

Applause.

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

Mr. Tim Miller reappeared before the Board. He stated I just want to sum up what the applicant's request is. It's really very narrow. It has nothing to do with the question of expansion. I don't think it has anything to do with the question of size. It has nothing to do with the matters of community character. We are here to show you that this use is an intrical use of religious instruction that includes a residential facility, the dormitories. Your Code Enforcement officer has suggested an alternative Interpretation. We are simply asking this Board, do you believe, that in fact as the testimony from the applicant's attorney, that in fact, that this does represent part of the intrical instruction with this religious place of schooling, and if there is any further information we can provide to you, we can certainly would be interested in knowing about it. There has been a lot of interesting testimony tonight. I think a lot of it is going to be heard again at the Planning Board at a future time, but right now this is a very narrow question, and I conclude with that in mind.

Mr. Becker asked can someone from your legal counsel explain to me their reason for being opposed to a Special Permit? To me, the Special Permit will probably grant you what you're seeking, and to clarify to yourselves as well as the public what is allowed. I'm struggling with why your opposed to going the way of a Special Permit since I suspect that the Planning Board, and the Town would agree that a dormitory of some size would be permitted since it is part, and parcel of the religious instruction there, but it would clarify to the community once, and for all. It would draw a line in the sand, this is what you're allowed, this is the size that has been negotiated, and from that point on we have something to go by. This is what I was trying to point out, is that over the course of the last 20 years the status of this property has been very unclear. I think that if it were defined by a Special Permit, what is allowed, like what was done for the radio station, and what was done for the nursery school, you allow a certain size there, and from that point on you can proceed with your plan. I'm struggling to understand what would be wrong with getting a Special Permit.

Mr. Klarl stated under the RLUIPA the Town wouldn't be posing conditions that would substantially burden the exercise of the religious use.

Mr. David Steinmetz, Esq. appeared before the Board. He stated I am from the law firm of Zarin & Steinmetz. Sorry I was a little late. Unfortunately, I was engaged in another meeting. I am pleased that my partner is here, but I want to handle that question Dr. Becker, because you kind of eluded it to it the other night when I was at the Work Session, and I want to address it. My client's reason is quite simple. We believe, that you probably do, that if you own the property, you should have to comply with the law, but you should not have to do something different from what everyone else in your situation would otherwise do. If the law says, Dr. Becker, if your house is a permitted use, your house Dr. Becker, is a permitted use. If the law says that your office Dr. Becker, is a permitted use, it's a permitted use, and the government should not be able to say you know it would be easier for us to treat your office building as a Special Permit, because we could do things maybe a little bit more efficiently for us. If the law says you are a principal permitted use, the constitution of the United States, the constitution of the State of New York, and the Code of the Town of Cortlandt protects our property rights just like it protects everyone else. So the issue that you have before you correctly stated by Mr. Miller, is a narrow one. You need to determine is this a permitted use, or is this a Special Permit use. We believe it's quite clear. We don't think there is really room for a lot of thought here.

Mr. Becker stated I guess what I am saying is what under a Special Permit would restrict you? What rights do you feel would be incringed upon?

Mr. Steinmetz replied Special Permits require periodic review, and reissuance. Right now you're in you office building, you don't have to come back to the Town every three years, or five years, and say my partners and I want to continue practicing medicine. We don't have to come back, and say I live in my house in Cortlandt, and I want to get my CO issued.

Mr. Becker stated I am not aware that a Special Permit expires. I thought it expired with the property owner.

Mr. Klarl stated a number of Special Permits that we have had do have time factors set. We set up a time factor for junk yards, for certain recreation things. So certain Special Permits do have a time factor.

Mr. Douglas asked so what about the one we are discussing here?

Mr. Klarl replied I think here I don't think the code requires a specific time. It would be the responsibility of the Planning Board, who may say there will be a time constraint, and they may want to revisit the use in five years or so.

Mr. Steinmetz stated let me see if I can answer your question from the other side. If it's conditions that this Board, or ultimately the Planning Board decides to impose, I have gotten several approvals from your Planning Board, site plans, Special Permits, and subdivisions all of which have had various conditions attached to them. So the notion that we can only have proper administration of government at random. We can only have properly issued series of conditions will only happen with a Special Permit is inaccurate, and you're counsel would explain to you that he crafts, very artfully, in the resolutions, or approvals that your Planning Board issues, there are conditions. So the notion that my client can only be regulated if there is a Special Permit, it's inaccurate. The issue that's before you is whether when you send this back to the Planning Board whether the Planning Board has to issue a Special Permit, or the Planning Board treats this as it would any other site plan application where it reviews it for public health, safety, and general welfare. It reviews it for overall code compliance, and they can issue permanent conditions. They can issue site plan conditions. So our concern is simply because the public comes out, and they have every right to come out, and voice their concerns, but my sense is that what occurred tonight misses the issue to a large extent. They can say what they want, but a lot of what they are addressing is going to have to be addressed in front of the Planning Board. What they're suggesting does not go to the legal issue in front you, and I missed the earlier discussion, but Tim's summary was exactly what I was writing in my notes. One of the last speakers talked about expansion. We can discuss expansion in front of the Planning Board, if it is relevant. The issue is front of you is not whether there is an expansion. The issue is not whether there is an expansion of the use. The issue is whether under the way you define this use, whether we are principal permitted, or Special Permit. It's clear, and I am sure Mr. Richman hit this at the beginning, we have a very unique use here. Yeshiva is not a typical private school, let alone a typical public school. People, as I am sure we explained to you, reside on the premises. This is virtually a 24 hour process of religious instruction. You go to class you learn. You go to synagogue, or the schull you learn. You come back to your dormitory, and part of that process of study, and debate continues. That's why they have out of town Yeshivas. It's been explained to me quite clearly by Yakov, and by others, that what happens here does not, it simply cannot happen at another facility. This is a truly unique facility, and another speaker I heard say this evening that RLUIPA may not relevant, or the religious case law that was cited may not be relevant, it's absolutely 100 percent relevant! You cannot advocate the responsibility. You cannot ignore that law. That law, the federal statute, and the NYS case law evolved to protect precisely these types of uses. People may not like that, and I'm not here tonight to ask the

neighbors to like the fact that that's the way the law has evolved, but the law very clearly, and please, please confer with Mr. Klarl; the Connecticut case that was cited, that is not Connecticut law, that's analyzing law that the federal courts have analyzed, and applied to similar situations. The law says very clearly that you all have to grant leniency, and defer to this religious educational land use. Again, I'm not asking people to like that, but that is what the law of the State of NY, and the United States provides right now, and there's a very good reason, because this country was founded on religious freedom, and this is an exercise of religion, whether people like it or not. So it is a long winded answer Dr. Becker, and I hope I addressed your concern. You don't need a Special Permit to govern properly this facility. Your Code Enforcement officer doesn't need a Special Permit to do his job. The Planning Board doesn't need a Special Permit, and review to do its' job. All we're asking is treat us the way your ordinance is written, and again I am sure this was stated earlier it was in our letter to your Board, which I handed to you Monday night. If you think there's any ambiguity, any ambiguity about what does the word convent mean, what does the word rectory mean, why is religious instruction here, but then the word seminary appears down here? There is a very clear black letter of concept land use law. If there is an ambiguity in your code, it gets resolved against the Town, and in favor of the property owner, black letter legion of case law from the NYS Court of Appeals, John knows it, and I know he knows it. So if any of you are sitting here tonight thinking there is just some question I've got about the way our code was written, well that's too bad for the people who drafted it, but you're clear, you're clear that the law directs you to construe that.

Mr. Douglas stated I am not sure about that. Let me ask you a question, which I guess goes back to a question earlier that I asked your partner. Corrected that under RLUIPA, and under case law, and other statutes there is great deference given to these institutions.

Mr. Steinmetz stated we agree on that.

Mr. Douglas stated I totally agree with it. It is a matter of law, and it is a matter of my own personal philosophy, but there has to be a line somewhere. RLUIPA does not require that the government must allow a religious institution to do anything absolutely that it wants. So what is the standard? Where does the line get drawn?

Mr. Klarl asked when is there a compelling governmental interest?

Mr. Steinmetz stated okay, I just want to make sure that I am clear on what you're asking. I really think your question doesn't ultimately involve you, but yet what is the Planning Board really going to do, and where does it draw the line.

Mr. Douglas stated I am not so sure I agree with that, because if I understood Mr. Richman earlier, the argument boils down to that the dormitory use is an intrical part of the religion here, and it's all part of one religious act, and that is the end of the story.

Mr. Steinmetz stated and hopefully you just heard me echo the exact same thing.

Mr. Douglas stated I did, and that's the end of the story, which seems to me to be saying implicitly that when a religious practice is involved there is nothing that anybody can do to stop it.

Mr. Steinmetz stated I don't believe you've heard us say that. I don't believe we've taken that position in our written submission. I don't think Mr. Zutt ever took that position. So none of us are articulating the position that religious educational uses can do whatever they want.

Mr. Douglas stated I am not saying that, but can you have an unlimited essentially student body? Can you have 1000 people there? Can you have 100,000 people there. What I am struggling with is that there needs to be some sort of principal line? I want some sort of line in the sand.

Mr. Steinmetz stated I don't believe the applicant has said that this evening. I sat, Mr. Douglas, at several Planning Board meetings in the back of the room while Mr. Zutt was in the front of the room at that time, and I heard a lot of questions come up, but nobody ever said to the Yeshiva are you arguing before this Town that you should not be regulated. So my answer to your question is we're here, because they know they are regulated by the Town of Cortlandt. The issue is to what degree, that is what they are asking. What we're saying is there is clearly a place where public health, safety, and general welfare might allow the Planning Board to impose reasonable conditions. I said that earlier in response to Dr. Becker's question. Those reasonable conditions are allowed to target issue of public health, safety, and general welfare. All land use review in front of this Town, it doesn't matter what it is, that is the guiding principal that undermines this government. So if you have a truly well document, with imperical evidence, public, health, safety issue that is something that I believe your Planning Board is going to have to deal with.

Mr. Douglas stated so what you're saying in terms of this Board in terms of the issue of whether there should be a Special Permit, because the living, and dormitory situation is an integral part of the religious practice, therefore, no Special Permit is required, and that is the end of our review.

Mr. Steinmetz stated right, as I understand, and I was there the night the Planning Board referred this over to you after the issue came up with Mr. Flandreau's memo, I believe, and you ought to check with your counsel, but I believe you were forwarded a very narrow question of interpretation. I don't believe, and correct me if I am wrong, with all due respect, Dan and I are coming into this process a little bit on the late side.

Mr. Douglas stated as I understand it is whether or not a Special Permit is required.

Mr. Steinmetz stated there you go, and Mr. Douglas my answer is in analyzing that that to me, and to Dan, we know that is a legal issue. That is a very well defined legal issue under the four corners of your code. That does not require the analysis, and debate of where the line has to be drawn. I personally don't think this is the forum to figure out where that line is, but if that helps

you to determine where you come out on this Interpretation, we're happy to share that information, but ultimately that line will be drawn by your Planning Board.

Mr. Seirmarco stated with all due respect, I still don't think you answered the question. The way I look at the definition of a Special Permit is usually a Special Permit is required when you have a unique situation. By your own definition you just said that the Yeshiva is a unique situation. We should not be in the business of determining whether the religious aspects of your organization, and if it integrates or separately the need for a dormitory, or not. What I'm saying is it is a unique application just like you just described, and again, I will ask the same question that Mr. Becker asked. What is your reluctance to have it as a Special Permit, because by your own admission you say it is unique, and that's what Special Permits are for, unique situations that don't fall under the boiler plate, R-40, R-20 guidelines. It is a unique situation, and you just said it's a situation, and that's what we reserve, and that's what the code reserves Special Permits for, and I don't have a problem with that. I think Dr. Becker asked you why you have a problem with it, and you didn't sufficiently answer to me, and I am going to ask the question again. Why do you have a problem with a Special Permit? This is about as clear of a definition of a Special Permit, because of the uniqueness of this application. So I don't understand, what's your reluctance with this?

Mr. Steinmetz replied okay, if you're done, I'll try again to answer, but you've now shifted, because you've now told me why I should think it is a Special Permit. So let's go back to that. You're saying that because I conceded that this educational institution is unique that therefore, then it becomes a Special Permit. There in lies, in my opinion, with all due respect sir, the problem. If you go through your code, and you look at Special Permit uses, and you look at Special Permit throughout all Zoning Ordinances, they're not only issuing Special Permits for "unique" uses. You've suddenly made unique uses and Special Permits synonymous. Day care centers in most municipalities. John, I sat here too many nights on Tots, or whatever. There's a lot of day care centers around, I don't know how unique a use that it. I could pull out the code right now, and I could probably read you, if you gave me a couple of moments, five, or ten uses that your code construes or mandates as Special Permit uses. Please don't make the make mistake of thinking Special Permit use is synonymous with unique use, because that I believe is a fallacy, and it's inaccurate. So that's the first part of my answer. The second part of my answer, as I have already given Dr. Becker, and you may not like it is, my client like anyone else does not feel that they have to surrender their property rights to accommodate somebody unless there is a legal mandate for it. I live in a home, with all due respect, my house is a permitted use, and nobody is going to tell me my house suddenly becomes a Special Permit use because I have a three car garage not a two car garage. Why don't we draw the line, and do that, and say well Mr. Steinmetz tonight we decided that all houses with three car garages, they should be Special Permit uses. No, the constitution guarantees me certain things, and as a land use lawyer that means an awful lot to me, because I stand up too many nights, and that is what I am asked to do is to protect those property rights. The flip side is there are an awful lot of nights, and not in this Town, because you have able counsel sitting there, I sit on the other side of the dias. Our firm serves as special land use, and environmental land use counsel for more than 20 municipalities, and I've got to tell you when I am sitting on the other side of the dias I counsel my clients that

they have to read their code, and if their code doesn't say this is a Special Permit use, you can't just change the game, because it might seem like fun, or it might seem easier, or you feel pressured to that, because that's the problem. Zoning is totally inconsistent with common law property rights. It's very easy for me to get up on the soap box, and say to you that I have a bundle of property rights. Now it's the government's opportunity to regulate that, then it's got to do it clearly. We are not clearly set forth as a Special Permit use, and my client has every right. We may not like it, but they have every right to come here tonight, and say we are a permitted use don't make us become a Special Permit use.
Mr. Seirmarco stated I agree, and it is our right to say you are a Special Permit, and we'll put restrictions on.

Applause.

Mr. Steinmetz stated if the Town of Cortlandt wanted to make schools of religious instruction Special Permit uses it could have legislated that. It didn't do that, read your code.

Mr. Douglas stated with all due respect Mr. Steinmetz I don't think you've answered either Mr. Seirmarco, or Mr. Becker's question.

Applause.

Mr. Douglas stated I don't think they wanted an answer about property rights. They wanted a practical, pragmatic answer. Why in the real world, in the pragmatic world don't you to have a Special Permit? I think that's what they are getting at. For this specific use, and this specific situation not a generalized answer about property rights.

Mr. Steinmetz stated this application has been pending awhile, and we're doing our best to get up to speed.

Mr. Chin stated I think we should adjourn this to next month. I am not ready to vote either way.

Mr. Mattis asked are there any other comments.

Ms. Laura Trussler appeared before the Board. She stated I'll be short, I promise. I live at 1 Hillview Ct., and I sat at the Planning Board meetings, and listened, and I sat here and listened. If I want to do something special in my yard, add, expand, make a change I have to come, and I have to have a Special Permit. It's fairly obvious. It's fairly simple.

Mr. Mattis stated under certain circumstances yes. We are trying to determine whether there is a circumstance as to whether they do, or they do not, and that is where we at now.

Mr. Trussler stated I think adding on 22,000 square feet, and eventually quadrupling their population in a single family zoned area could be grounds for a Special Permit. Thank you.

Applause.

Ms. Patricia Villacones appeared before the Board. I live at Fremont Place, and just want to say a Yeshiva dormitory is an accessory use, and our code does not permit accessory uses in this zone. Thank you. I'll submit the case law for you.

Applause.

Mr. Robert Kennedy stated appeared before the Board. He stated I don't know the exact RLUIPA, or the religious right is, but that is their protection, and you guys are our protection. So by virtue of a Special Permit that is our protection. We also have rights too, but if they can trample on the RLUIPA law, why can't we get the benefit out of our Special Permit law so we can be protected. Thank you.

Mr. Mattis asked are there any other comments? Okay, before we adjourn, we received 6 letters, they are actually 3 copies of one letter signed by different people, and 3 copies of another letter signed by different people. I am not going to read them, because they all are relevant to the Town sewer district that they are trying to get into, and it's really Planning Board material, but they will be put in the public record.

Mr. Becker made a motion in Case No. 23-07 to adjourn the case to the June meeting seconded by Mr. Chin with all voting "aye."

Applause.

Mr. Mattis stated that will be June 20th, it is always the third Wednesday of each month.

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.

CASE NO. 10-07 CROMPOND RD. LLC for an Interpretation and/or Area Variance for a freestanding sign on the property located at 2293 Crompond Rd., Cortlandt Manor.

Mr. Mattis recalled this case. No one appeared. Mr. Mattis stated I have a comment on this case. They did not come back last month. They didn't contact us. We got a document from them, and I believe it's at the Work Session we discussed it looks like a new size for the sign. I believe we have to give the power to approve, or deny this, or we can adjourn it. I don't want to adjourn this again. They're not here. They did not come to the Work Session, all we got was a new drawing. I will ask our counsel if we can solve this case tonight, issue a decision, or I want to drop it from the agenda, and they can reapply.

Mr. Klarl stated I think we directed a letter in April that said they need to appear at the May meeting, or we would deem the case abandoned.

Mr. Flandreau stated that was sent to them, and I have not heard from them.

Mr. Mattis stated then with that information, if somebody wants to make a motion to abandon it, then we'll abandon it.

Mr. Becker made a motion in Case No. 10-07 since the applicant has failed to present himself this evening we will deem the case abandoned...

Mr. Mattis stated I just want to add something before we have a second on that. They know they had to be here, they were not here. They didn't even contact us last month, many Zoning Boards, if you don't show up the first time, you're dropped. So we've given them every chance here, and I just want that in the record.

The motion in Case No. 10-07 to deem the case abandoned was seconded by Mr. Chin with all voting "aye."

Mr. Douglas made a motion to adjourn the meeting seconded by Mr. Chin with all voting "aye."

The meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Christine B. Cothren