

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, November 20<sup>th</sup>, 2013*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

\* \* \*

**ADOPTION OF MEETING MINUTES FOR OCT. 16, 2013**

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

Mr. David Douglas stated those minutes are adopted.

\* \* \*

**ADJOURNED PUBLIC HEARING TO DEC. 2013:**

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

Mr. David Douglas stated we'll deal with that next month.

\* \* \*

**ADJOURNED PUBLIC HEARINGS:**

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

Mr. John Klarl stated this is an application that was before the Planning Board and the Zoning Board. It's been proceeding before the Planning Board. The Zoning Board of Appeals, as you recall, indicated that they were of the mind to grant the Variances requested except for the one and now we received a written request from Brad Schwartz, the attorney for the applicant dated Thursday, November 14<sup>th</sup> where he requested a two-month adjournment for this matter because of the public hearing scheduled before the Planning Board. There's a request from the applicant for a two-month adjournment.

Mr. John Mattis stated I'll make that motion to adjourn until January.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case **2013-22** is adjourned until January.

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

Mr. David Douglas stated I think we discussed at our work session that DOTS would like to adjourn that to February.

Mr. Wai Man Chin stated I'm going to make a motion on **case 2013-18** to adjourn to the February meeting.

Seconded with all in favor saying "aye."

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

- C. CASE No. 2013-26**                    **Robert Greiss** for an Area Variance for two front yard setbacks to allow construction of a new addition on property located at **543 Westbrook Dr., Cortlandt Manor.**

Mr. Robert Greiss stated the owner of 543 Westbrook Drive.

Mr. Syd Shloman stated architect.

Mr. David Douglas asked Mr. Greiss you came back with some revised plans that you want to talk about?

Mr. Syd Shloman stated yes, I wasn't here last week. I apologize. I had an emergency but I got the comments from Mr. Greiss and from Ken and we've relooked at the project in terms of direction where we can extend the residence and we looked to expand towards the rear a bit because the house is already – it's legal non-conforming based on – it's situated on a corner lot. I understand years ago, from a previous owner, that a Variance was granted on the garage side. Basically, we're increasing on that side aligning with it, not increasing the level of non-conformance and not going in the front yard at all and going back **3** feet in the garage requiring a Variance on the corner lot that worked as their front yard, on that side of **19** feet. By going directly above the lining with the garage for a second story we would need a Variance for the other front yard of **6.19** feet. The remaining addition would be all towards the rear not requiring a Variance at all. We really looked at it, realized the impact towards the front yard and feel that this would work for us.

Mr. James Seirmarco stated many times people don't take our advice but I think in this case you took our advice and I have no problem with the changes that you made. It's certainly in keeping with the spirit of the Board. You've minimized any more intrusion in the front yard. It's minimized in the back yard so I don't have any problem with this.

Ms. Adrian Hunte stated I concur.

Mr. John Mattis stated I concur. The only actual change is about **1.2** feet larger Variance than they already had on Birch Street.

Mr. Syd Shloman responded correct because it's not parallel.

Mr. John Mattis stated so it's really not a **20-foot** Variance, most of it was already there so it's only another foot and a fraction.

Mr. James Seirmarco asked anybody else want to be heard?

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

Mr. James Seirmarco stated I make a motion on **case #2013-26** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. James Seirmarco stated I make a motion on **case #2013-26**, the property of 543 Westbrook Drive, Cortlandt to grant an Area Variance for the front yard setback from an allowed **40** feet down to **19.1** feet on Birch Lane, **33** feet on Westbrook Drive. This is a type II SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted. Ken does he need to see you?

Mr. Ken Hoch stated Rob I'll be sending you a document in the mail, a decision from the Board, about five days.

\*

\*

\*

#### **NEW PUBLIC HEARINGS:**

- A. CASE No. 2013-27**                      **Phoenix 184 Westchester** for an Area Variance for an accessory structure, a deck, in the front yard on property located at **184 Westchester Ave., Verplanck.**

Mr. David Douglas stated they're not here. Ken, you want to send a letter to them and tell them they have to be here next month or it'll be...

Ms. Adrian Hunte stated I make a motion on **case 2013-27** for the Phoenix 184 Westchester 184 Westchester Avenue, Verplanck, New York for an Area Variance for the front yard setback to demolish an existing deck and build a new one that we adjourn the matter to the December 2013 Zoning Board of Appeals meeting as no one has appeared today which is November 20<sup>th</sup>, on behalf of the applicant.

Mr. David Douglas stated and Mr. Hoch will send a letter to the applicant telling them that if they don't appear at the next meeting the case will be deemed abandoned.

Seconded with all in favor saying "aye."

Mr. David Douglas stated matter's adjourned.

- B. CASE No. 2013-28**                      **Ilene Goodman, agent for Eric Toxen** for an Area Variance for the front yard setback for an existing house on property located at **48 Lakeview Ave. West, Cortlandt Manor.**

Ms. Ilene Goodman stated I'm here to ask for a Variance – I represent Eric Toxen and Marjorie Albert, the owners of the home at 48 Lakeview Avenue West. We had a new survey done and found out that the home didn't meet the setback requirements on the left side and the right side. I'm here to get the Variance.

Mr. John Mattis stated apparently when it was built nobody took a survey. Instead of **50** feet it's existing **49 ¼** feet so it's about  $\frac{3}{4}$  of a foot of a Variance in the front yard. The side yard was required **17** and it's **15.6**. If you go out and look at the property you'll see that it wouldn't even be noticeable by anybody that it's off. It's an unfortunate mistake. It was done years ago and the impact is virtually nil so I think this is a Variance that we have no problem with.

Ms. Adrian Hunte stated I agree.

Mr. David Douglas stated just for the record, as Mr. Mattis says, **40** years ago, it's our understanding it was built around **1960** or **1961**.

Ms. Ilene Goodman stated right.

Mr. Wai Man Chin stated I have no problem.

Mr. David Douglas asked anybody else in the public want to be heard.

Mr. John Mattis stated on **case #2013-28** I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated on **case 2013-28** I move that we approve an Area Variance for the front setback from an allowed **50** feet to **49.25** feet and for the side yard setback from an allowed **17** feet down to **15.16** feet. This is a type II SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Ms. Ilene Goodman stated thank you.

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

Mr. Roger Blaho stated the architect who prepared the drawings with the reconstruction of Mrs.

Royce's house. Because somewhere along the line the planners decided to change things, my client's front yard no longer conforms and that house was severely damaged, over **50%**, that the zoning Ordinance says we have to build according to the present zoning Ordinance. That's a bit unfair. We don't want to move the house. It's been there for quite a while. I always come across these and you wonder how the planners can just sweep a whole bunch of color across the map, all the existing houses that were built, sometimes even before somebody even thought of zoning and now hope for them to conform to this new invention of theirs. But, anyhow, here we are and we want to be able to rebuild the house with the same setback lines that it has when it as built. The side yards do conform.

Mr. Charles Heady stated you're looking for a Variance for a setback for the front yard right, **4.2?**

Mr. Roger Blaho responded yes.

Mr. Charles Heady stated from what I understand there's some other violation I think you had to be cleared up before we give you that variance. I'm not against giving you the Variance you need for the front it's all good but you have other violations there for one thing the driveway on the side there and then you got a survey on it which some of it is on the neighbor's property?

Mr. Roger Blaho stated that survey does not show the driveways.

Mr. Charles Heady stated it's a dispute over it now with the neighbor right now on that.

Mr. Roger Blaho asked say that again please?

Mr. Charles Heady responded there's a dispute on that where the line is, where the driveway is.

Mr. Roger Blaho stated I'm unaware of this. Maybe Mrs. Royce could fill us in on that.

Mr. Wai Man Chin stated you're here basically for a Variance for the house.

Mr. Roger Blaho responded for the house yes. I'm just retained for the reconstruction of the house. I think that's probably another issue that we do have to solve.

Mr. Charles Heady stated that's right.

Mr. Roger Blaho stated but I don't think it should interfere with what we're requesting right now.

Mr. Charles Heady stated we can't very well give you a Variance if you have a violation still there.

Mr. John Klarl stated what Mr. Heady is pointing out is we have the policy of this Board not to

grant Variances when there's outstanding violations. Violations need to be resolved...

Mr. Roger Blaho stated is it filed as a violation or is it just a neighbor dispute?

Mr. Ken Hoch responded right now it's a neighbor dispute.

Mr. Roger Blaho stated so then it's really not officially a violation.

Mr. Raymond Reber stated it may not be but as far as I'm concerned it's got to be addressed and corrected, either according to the survey that the neighbor submitted or the owner wants to get another survey. We just need certified proof that there's no driveway on the neighbor's yard. That's my position. Once that's been addressed I have no problem with granting the Variance.

Mr. Roger Blaho stated I'm not handling that but someone else will have to do that but as far as my plans I assume you'll accept them with this clause of having the driveway issue settled. Now, do we have to come to you with how it's settled?

Mr. Charles Heady responded that's right.

Mr. Roger Blaho stated I don't know how we settle it but there's always a solution to something.

Mr. Charles Heady stated Mrs. Royce will have to talk to her lawyer.

Mr. John Mattis stated there is some correspondence from the lawyers and I would suggest that the parties get together and settle that. Once it's settled...

Mr. Raymond Reber stated it's a gravel driveway so it's not a major construction issue.

Mr. John Mattis stated it's an issue of what the survey says and once that's resolved, as Mr. Reber said, I don't think we're going to have any problem approving this. We want to make sure there's resolution to that beforehand.

Mr. Roger Blaho asked would you like to see a real survey showing the present driveways?

Mr. Raymond Reber responded no we want to see a verification – certified surveys that show there's no driveway on the neighbor's yard fine that's all we need.

Mr. Roger Blaho stated we will come back to you with whatever comes out of it. Thank you.

Mr. David Douglas asked should we adjourn it until next month?

Mr. John Klarl responded yes.

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

Mr. Michael Hussey stated I'm the neighbor you're talking about.

Mr. John Klarl asked are you represented by Mr. Gallela?

Mr. Michael Hussey responded yes sir. On that drawing there, that's the latest survey that was done when I bought it **10** years ago and it shows the driveway line going across the property line. All I'm looking for is when you grant the Variance is that we find out exactly where that is with a survey and I'd love to be there when it's done so I can see where the points are and then have her just take the gravel up and the Belgium blocks up, replace it with some soil and some grass and I'm fine. That's all I'm asking. I've contacted Mrs. Royce personally.

Mr. Raymond Reber stated that's consistent with what we've asked for. You can't put grass this time of year but the rest can be done.

Mr. Michael Hussey stated that's fine. I've talked to Mrs. Royce about this personally and she didn't really want to do anything about it. I had a lawyer contact her lawyer. Her lawyer came back and said that – insinuated that I kind of drew that line on there. I'd like the Board to stipulate that we once and for all find out where the property line is in accordance with that driveway and we'll go from there.

Mr. John Mattis stated I believe we'll hold this case open until that is resolved.

Mr. Michael Hussey stated okay thank you.

Mr. David Douglas asked anybody else?

Mr. Charles Heady stated on **case 2013-29** I make a motion to adjourn it until December.

Seconded with all in favor saying "aye."

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

**D. CASE No. 2013-30                      John Lentini, architect, on behalf of GTY NY Leasing Inc. (Mobil)** for an Area Variance for an accessory structure, a generator, in the front yard; or an Area Variance for the side yard setback for the generator from an allowed 30 feet down to 8 feet on property located at **2072 E. Main St., Cortlandt Manor.**

Mr. John Lentini stated good evening Mr. Chairman, members, ladies and gentlemen of the Board, I'm representing Manor Trading Company who leases the property from GTY formally Mobil, I think it's a derivative of Mobil. Manor Trading LLC was notified by the state that a law was passed March 29<sup>th</sup>, 2013 specifically article **16** section **192-H** that requires certain gas stations to be fitted with emergency generating power in the event of a catastrophic power loss.



Apparently, the station pumps more than **75,000** gallons a month and is within half a mile of Bear Mountain Parkway which provides for them having to do this. Where I've shown on the plan the best location which is right at the top of the page, 12 o'clock, is right by where the distribution panel for the whole gas station is to begin with. It's a rather secluded space. There's no improvement in the immediate vicinity to the west of that. However, we need a Variance for a front yard setback and a side yard setback. Our generator would be about the size of a cord of fire wood. It would be located about **8** feet or more from Locust, the front yard, but also I believe we need a Variance for the side yard as well which is about **6** feet off the fence.

Mr. Wai Man Chin stated I've been to that gas station many times and looking at the site, the parking on the left hand side as you're on Route 6, everything – and right now you've got dumpsters right in front of it.

Mr. John Lentini stated one of them is a garbage container.

Mr. Wai Man Chin stated it seems like the ideal place for it, out of the way of everything else so I really would not have a problem with that location. Is it **75** kilowatt?

Mr. John Lentini responded **75** kilowatt. I haven't done any calculations but they're supposed to be able to run the pumps and the lights and I think he's throwing his refrigeration in also.

Mr. Wai Man Chin stated that's a pretty big – you say the size of a cord of wood?

Mr. John Lentini responded about **8** feet by **4** feet by **4** feet and it's going to run on gasoline which they have plenty of.

Mr. David Douglas stated if they can get it out of the pump.

Mr. Wai Man Chin stated I have no problem with it.

Mr. Raymond Reber stated I concur.

Mr. Charles Heady stated I have no problem.

Ms. Adrian Hunte stated I concur.

Mr. James Seirmarco asked I just have one question: did you apply for your grant for this?

Mr. John Lentini responded not yet and it's unclear what we'll be entitled to but it probably won't cover the entire cost.

Mr. James Seirmarco stated probably the switch though for sure.

Mr. John Lentini responded yes. I don't think we could start – or I want to see an electrician get

on board because they should calculate it. I haven't done it for the purpose of this meeting and they...

Mr. Raymond Reber stated apparently they're offering two grants if you just put in the switch station it's **10,000**, if you put in a generator it's **13,000**.

Mr. John Lentini stated I've heard a number of **25** and they're offering **10** back so...

Mr. Wai Man Chin stated something like this will probably run about **25**.

Mr. John Lentini stated easily.

Mr. David Douglas stated I think we're all fine with the Variances. One technical thing, it's a question of whether we're granting a front yard Variance or side yard Variance.

Mr. John Lentini stated I think I need both.

Mr. David Douglas stated the Locust Avenue is technically a front yard as well by the way the Code is. I think we all agree it should be – you'd be granted a front yard Variance. This isn't going to affect you in any way, just a technical thing because apparently in **1998** the Board interpreted Locust Avenue as being a side yard and I don't think any of us understand why that happened so we're going to give you a front yard Variance because Locust Avenue is a front yard. I'm sure you don't care you just want to get the Variance.

Mr. John Lentini responded actually I do – there are some Codes that will allow you to select your front yard by your front door but the Town law – I think the Town law specifically says...

Mr. Raymond Reber stated if there's two streets there, there are two front yards.

Ms. Adrian Hunte stated also it's less substantial than granting a Variance for the setback.

Mr. Wai Man Chin asked anybody in the audience? I'm going to make a motion on **case 2013-30** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated I make a motion on **case 2013-30** to grant an Area Variance for an accessory structure, a backup generator, in the front yard of Locust Avenue setback from **30** feet down to **8** feet, type II under SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted.

Mr. John Lentini stated thank you very much.

**E. CASE No. 2013-31 William Caffrey for an Area Variance for the side yard setback for a deck on property located at 103 4<sup>th</sup> St., Verplanck.**

Mr. William Caffrey stated thanks for listening to me. I reside at the 103 4<sup>th</sup> Street. We're just looking for the deck on that – it's a dead end street there and it's on that side yard of the house, just looking to put a deck on there to take advantage of the view from the house, it's a lower deck like one step off the ground so we need steps coming out of the house. Need a little more space to go out. We had to go out of there and it kind of makes sense.

Mr. Raymond Reber stated I understand wanting the deck and I don't have any problem with putting a deck on the side of the house. Your pitch here is that needing a Variance on the premise that the adjacent property is Town property unlikely is going to have a house or any development but I don't think that we can necessarily make judgments to say setbacks shouldn't be addressed even if the Town owns the property adjacent to it, just to be consistent. Your Variance is required because you want to build a deck that's **20** feet wide and in our opinion that's excessive. You could be in compliance if you cut back **4** feet. If you make the deck **16** feet wide you can make it as long as you want going the other then you don't need a Variance and our rules are that unless there's an underlying absolute need or whatever, that it has to be that wide, like you say because you need space to get by, but that's not the case. Sixteen feet you can do whatever you want with that. I think the consensus of the Board is that we really are not interested in giving a Variance because you can build a **16**-foot wide deck without it.

Mr. William Caffrey asked do I have to come back **4** feet from the plans I have you're saying?

Mr. Raymond Reber responded in other words you asked to have **10** feet from your property line to your deck, that's the Code and we're saying if you do that you still can make the deck 16 feet wide because you have **26** feet from the side of the house to the property line. There's no justification, nothing that we can think of that says you really need to make it **20** feet and therefore we don't have any basis on which to grant the Variance.

Mr. Wai Man Chin stated a **20**-foot wide deck is half the width of this room.

Mr. William Caffrey stated I understand what width is. When I made plans I wasn't sure the Variance.

Mr. Wai Man Chin stated that's a tremendous deck. A **16**-foot wide deck is huge let alone a **20**. Like Mr. Reber says if you just drop it down **4** foot to **16**-foot wide you go the other way to make it a little longer and you wouldn't need this Variance.

Mr. William Caffrey responded I know. I was told a few different numbers how far I could go. When we first came up with these plans I didn't realize I needed a Variance. That's what we

came up and they said we needed a Variance.

Mr. Wai Man Chin stated you just have to take a look at this room. I'm counting the tiles over here.

Mr. William Caffrey stated I know.

Mr. Wai Man Chin stated that's half the width of this room. That's huge.

Mr. William Caffrey asked I don't need a Variance if I come back 4 feet?

Mr. Raymond Reber stated if you come back 4 feet all you need is a Building Permit. You don't need to address us.

Mr. David Douglas stated technically you've got a choice because of the procedure. You can either have us vote on it and you'd know which way – right now you can either have us vote on your Variance, which I think you which way it's going to go or you can just withdraw. It's up to you.

Mr. John Klarl stated or you can amend this application.

Mr. Raymond Reber stated we don't need to.

Mr. John Klarl stated [inaudible] Building Permit application 16 feet then he's...

Mr. John Mattis stated and then he withdraws.

Mr. William Caffrey stated I already have a Permit for that. What do I need to do? Withdraw?

Mr. David Douglas responded just say you're withdrawing your application that way we don't have to vote.

Mr. William Caffrey stated okay, I withdraw my application.

Mr. David Douglas stated okay, thank you very much.

**F. CASE No. 2013-32                      Kristina Knoeppel for an Area Variance for the front yard setback for a covered porch on property located at 1 Peekskill Hollow Turnpike, Cortlandt Manor.**

Ms. Kristina Knoeppel stated I'm the owner of the property at 1 Peekskill Hollow Turnpike. I'm applying for a Variance in order to build a covered porch that's open on my house. The reason I'm applying for the Variance is because the layout of the property is unusual. It's pie-shaped

and it's a corner property and also the front entrance that's indicated on the survey is actually used as a side entrance and that's where most of the open space is, and that's along that side of the house is where I would like to build an open, covered porch. It would be an improvement to my home. The appearance and the additional living space would add value to my home and to the neighborhood. There aren't any houses that are neighboring houses that it would obstruct the view. It would not be detrimental to any homes in the neighborhood.

Mr. John Klarl stated you've read the law.

Mr. James Seirmarco stated I drove by, I looked at it. I don't have a problem with this. I think it will be an improvement, you say living space. It's a porch, it's going to be covered, but it's not going to be enclosed correct? Just for the record.

Ms. Kristina Knoepfel responded correct.

Mr. James Seirmarco asked not now, or in the future?

Ms. Kristina Knoepfel responded no.

Mr. Raymond Reber stated I drove by the place and looked at it and I had the same reaction as you said. I think it would be an improvement. No way is it detrimental to the neighborhood because of the unique shape and you're set way back and there's no alignment with other houses where it would look at the place so to me it would fit in perfectly. It would be an improvement so therefore I have no problem.

Mr. John Mattis stated I concur.

Ms. Kristina Knoepfel stated thank you very much.

Mr. David Douglas stated we have to vote first.

Mr. James Seirmarco asked anybody in the audience want to make a comment about this? If not, I'll entertain the motion to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. James Seirmarco stated I make a motion on **case 2013-32** at 1 Peekskill Hollow Turnpike to grant an Area Variance for the front yard setback from an allowed **50** feet down to **21** feet **2** inches. It's a SEQRA type II no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Ms. Kristina Knoepfel stated thank you.

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

Ms. Sharon Garb stated I've lived in the Town of Cortlandt since **1951**. I came here from the Bronx with my parents and we have a complaint filed against us by one existing neighbor behind even though I'm not supposed to know that. It's to have our property fenced in. We only have one neighbor that would – other than the deer that are around us. I'm here today to share with you, if I can, photos of the existing fencing. You have the survey that shows the fence is already completely on two sides: on the driveway side and the back side. This was taken from the Peach Tree side, what the neighbor sees in his back yard. [inaudible] it's the whole thing exactly how it is. There's two fences in the back – I'll give these all to you.

Mr. David Douglas stated why don't you give the photographs to Mr. Reber.

Ms. Sharon Garb stated there's two fences in the back already that are at least **6** feet tall and lots and lots of trees because we've had the property, we've live there for **62** years. From a prior case it's already been proven that my father was a house wrecking contractor and it's been a contractor's yard since **1951**. We came in and we were grandfathered in. I have all that paperwork, of course, as well. I just wanted you to see the fence as it is. We hope to plant some trees for the highway side that's facing 202, in between the already existing **40, 50, 60**-year old maple trees that are already there. We'd like to put in some arborvitaes for trees.

Ms. Adrian Hunte asked Ms. Garb who's fence is that in the photos that we're looking at?

Ms. Sharon Garb responded one was put up by the builder who got the land ready to build Peachwood Estates and then I believe Mr. Foto put up the second one.

Ms. Adrian Hunte asked but that's on neighbor's property, it's not on your property?

Ms. Sharon Garb responded it's on top of our stone wall. The original boundaries are the stone walls.

Mr. Richard Garb stated there are two fences in the back, their fence in the back and the one on top of the stone wall. One abuts the other.

Ms. Adrian Hunte stated our fact sheet indicates that the applicant is proposing to utilize a neighbor's fence and existing vegetation on the applicant's property and neighboring properties to satisfy part of your requirement. Is that not correct?

Ms. Sharon Garb responded he put up the fence there. We didn't put the fence there. Any fences that are there were put by the neighbor on one side, an elderly gentleman, actually that one's built too tall I think to the Town rules. I think it's about **8** feet tall. Did somebody go and inspect the property today? We were told that somebody was supposed to walk around. That's from our side. The photographs are from the Peachwood side looking in.

Mr. Charles Heady stated I went out there this morning and facing your house in the driveway on the right that fence along there, did you put that fence up?

Ms. Sharon Garb responded no. The Cortese's that live – the fence on the right side is boarded by folks named, I believe it's just the lady that remains there, Elsie Cortese and it was her father-in-law at the time built it and it borders the property. In the back there's two fences and then as you see on the survey there's foliage all around the other parts.

Mr. John Klarl asked who built the two fences in the back?

Mr. Sharon Garb responded as I said, one was put up probably, not probably, it was put up by the people: **Matrow** I think his name was, who got the land ready for the Peachwood development to be built and then I believe the neighbor himself put up the second one.

Mr. David Douglas asked this foliage isn't here now though?

Ms. Sharon Garb responded yes.

Mr. David Douglas asked it is? These leaves are all on the trees now?

Ms. Sharon Garb responded yes, I mean the fence is there as it is. No, no the leaves are not there now, no, I'm sorry I thought you meant the trees themselves, not the leaves on the trees.

Ms. Adrian Hunte stated the concern we have is that the fence and maybe you can clarify a bit more, if it's on your neighbor's property and it's owned by the neighbors then we have a problem with allowing you to use property owned by someone else for your screening.

Ms. Sharon Garb stated it's put on the top of our stone wall, the stone wall boundary that are the original...

Ms. Adrian Hunte asked you allowed the neighbors to put up a wall over your stone wall?

Ms. Sharon Garb responded it was just done when the houses were built. We're there **62** years, these neighbors are there about **15** years.

Mr. Richard Garb stated the stone wall is the natural boundary between the properties. When Lako Matrow, when they bought the property they put up – I probably talked to someone when

he was doing it, they put their fence to bound everything off on top of the stone wall all the way back of the property. And the property on the right hand side was put in by Cortese, it's 8 feet tall, almost to the back of the side...

Mr. John Mattis asked so that is the Cortese fence, not yours?

Mr. Richard Garb responded no, it's the Cortese' fence.

Mr. John Mattis stated because that part is fairly clear. We have to clarify the rest of it. It's the Board's policy that you can't use a neighbor's screening, nor fencing because we have no control over that. We can put conditions on you but we can't put conditions on them. They could tear that down at any time so if we grant you a Variance and say "oh, their fence counts" they can take the foliage down, they can take the fence. You have to have your own.

Ms. Sharon Garb stated we have no idea sir if it was put exactly on their property line...

Mr. Richard Garb stated he doesn't mean that.

Mr. Raymond Reber stated it's not a matter of the border. I have my yard fenced in. It's on the property line by agreement with the neighbors but they know it's my fence and if something's wrong with it I've got to replace it, they're not going to replace it. I think that's the concern we had here is the neighbor put these fences up so technically they're their fences and they could take them down tomorrow and if we don't somehow – we have no way of preventing that and that's the concern that the Board has. Usually we require when there is a barrier required it's by the owner of the property who needs the barrier not depending on the neighbor to maintain a fence. That's where we're caught.

Ms. Sharon Garb asked if they want to block not seeing us why would they spitefully take down a fence that was thousands of dollars to put up already?

Ms. Adrian Hunte responded suppose that something happens to it, suppose it's damaged...

Ms. Sharon Garb responded that happened actually before hurricane Sandy, it was the storm before it, on the Cortese side and there were several sections taken down.

Ms. Adrian Hunte stated I don't think that's the issue whether they – what their reasons might be for – that's between you and them but if something happens to that fence and they decide that they don't want to repair it you have no recourse against them because it's not yours, it's theirs, you understand.

Ms. Sharon Garb stated so I'll repair it if it needs to be repaired.

Ms. Adrian Hunte asked do you have anything, any agreement with the neighbor to do that? Do you have some kind of contract?



Ms. Sharon Garb responded they showed a very nasty complaint against us which...

Mr. John Mattis stated we don't care about the complaints.

Mr. James Seirmarco stated here's the concern we have. We, historically, have never allowed improvements on other people's property to count for the applicant's if you have a restaurant or something and you need **25** parking spaces and you have **23** and you say "well, it's also contingent – there's three other ones on the other side of the property we can use those and my neighbor says I can use those, that's fine." We don't do that because there's no way of the applicant controlling those three parking spaces. We don't allow improvements or requirements for any screening, for parking, for fences, for anything that's required for a property on someone else's property even though it probably has worked for **50** years, it's just not enforceable.

Ms. Sharon Garb stated **62** years.

Mr. James Seirmarco stated well **62**, or **75** or **100**. There's no way the Town could control these things off-site so we don't allow off-site improvements for requirements of on-site applicants. We understand that it's been working fine, it's being a good screening, it's functioning quite well but there's nothing to say that tomorrow it doesn't fall down or they take it down and they don't want you to repair it and they just want to leave it down. What we try to do is we try to avoid to get into this situation by saying "all required improvements for a particular application happens on-site." What we're saying is we're going require that the fencing or the screening or anything that's required to be on your property installed by you.

Ms. Sharon Garb stated oh, installed by us. Maybe they even put it on our property.

Mr. James Seirmarco stated maybe, that's an issue that you have to take up with your neighbor. You may want to have some spot survey done and say that fence is – I think there is some sort of eminent domain if it's been up...

Ms. Sharon Garb stated [inaudible] on top of the stone wall.

Mr. Richard Garb asked how high – what is the limit in height of a fence between two pieces of property? Because the back of the property goes like this, it slopes down.

Mr. James Seirmarco responded there is an algorithm that tells you exactly from a sloped standpoint how high of a fence or a fence post or anything, I think it's in the Code how you calculate that.

Mr. Ken Hoch stated in a residential setting it's a **6**-foot fence in the front yard or the side yards, **8** feet in the rear, however, this is not that circumstance. This is a request for a Special Permit where the Zoning Board fixes whatever screening or fencing they require. If they said they would like a **9** or **10**-foot fence that's their prerogative.

Mr. John Klarl stated what's appropriate.

Ms. Richard Garb asked can it be higher than **10** feet or is **10** feet enough?

Mr. Raymond Reber responded usually the rule that we use, because we've had other cases where there's construction yards which is typically what precipitates this, and the height of the fence is such so that whatever is unpleasant, whether it's piles of gravels or dump trucks or whatever, can't be seen by the neighbor and if that's an **8**-foot fence then that's all it's needed. If a **10**-foot fence is required to do that then we ask for a **10**-foot. I don't know exactly the view lines here to say what the right height is.

Mr. David Douglas stated what we usually do is we usually have a site visit and we'll go out there on a given day and we'll look at it so we can better determine what we think would be appropriate.

Ms. Sharon Garb stated we were told that was going to be done – first it was going to be over this past weekend.

Mr. Wai Man Chin stated there's no site visit until this Board meets. So we won't establish a site visit [inaudible].

Mr. John Klarl stated Board members individually go out before the site inspection.

Mr. James Seirmarco stated the bottom line is the improvements will be made on your property and would be in your control. We can't allow you to say "well, that fence is working quite nicely and it's **2** foot on your neighbor's property." Because, that just doesn't work for us.

Ms. Sharon Garb asked can we put trees up alongside of it?

Mr. David Douglas stated it depends. We have to look...

Ms. Adrian Hunte stated we have to see it.

Mr. David Douglas stated like Ms. Hunte said, we need to see it. Depending on the views and the angles, sometimes there's natural screening and sometimes there's not.

Ms. Adrian Hunte stated and obviously there would have to be evergreens and whatever as opposed to deciduous where the leaves fall off.

Ms. Sharon Garb stated right, that the deer don't eat. But, also is it for view because I mean what this gentleman would like there's probably his home over the property other than us to disappear completely. When he moved there **15** years ago we were still there. We came in **1951**.

Mr. David Douglas stated that's why you're allowed to keep, with a Special Permit, you're allowed to use it, if you weren't here and you wanted to move now and start doing it there'd be a different situation. That's the reason why you may be allowed to keep it but the idea is to minimize the impact...

Mr. Richard Garb asked the fence in the back that would be **25, 30** feet high in order not to see anything.

Ms. Sharon Garb stated because it's a three-story house with a deck in the back and if he's standing up obviously you see over – that's what he sees. That's exactly what's in those pictures. That's exactly what he's seeing from Peachwood.

Mr. James Seirmarco stated I think you'll find this Board is not unreasonable. We'll use common sense.

Mr. John Klarl stated the Board would craft the type of fence they want by way of material also.

Mr. Charles Heady stated that's right what Mrs. Garb said the family behind him – it's about three stories and you would have to put a pretty high fence for him not to see over there. You'll see at the site inspection, you'll see what she's talking about.

Mr. Wai Man Chin stated we'll establish that when we go see it.

Mr. David Douglas stated yes, we'll have to see it.

Mr. James Seirmarco stated we certainly don't want to create something that's even worse than it is now.

Ms. Sharon Garb stated well the cost is very prohibitive as well. It's beyond just to imagine – besides which half of our property is residence as well so it doesn't have to be the whole entire ...

Mr. David Douglas stated again, when we go out to see it we'll get a better sense. It's hard, at least for me, some of my colleagues might be better at visualizing things than I am but it's hard for me personally to say "okay you need this type of screening here" without being able to get up there and see the actual topography firsthand.

Ms. Sharon Garb asked can you keep those photos and call me when you're ready?

Mr. Charles Heady stated we'll tell you in a minute.

Mr. Wai Man Chin stated we don't need those photos. You can take those photos back.

Mr. David Douglas stated you can have those photos back unless these are copies for us to keep in the files that's fine. You don't want these back?

Inaudible.

Mr. Wai Man Chin asked anybody in the audience want to be heard?

Mr. Richard Garb asked we have to make an appointment or you'll contact us?

Mr. Wai Man Chin responded we're not finished yet.

Mr. David Douglas stated before we finish tonight with your case we'll set a date and a time for the site visit. It'll be on a Saturday sometime within this coming month.

Mr. Raymond Reber stated before you leave...

Mr. Wai Man Chin stated have a seat sir, other people want to speak.

Mr. Raymond Reber asked I have a question, on the survey I'm a little confused. I notice there's like double lines on here and they talk about parcel 1, parcel 2, parcel 3. What's the extra lines represent?

Inaudible

Mr. Raymond Reber stated yes, in the back I see. So you did a trade of acres.

Mr. Richard Garb stated just the Rick's property and somewhere before the [inaudible] moved in they added a piece on the corner to make it square and cut off the back.

Mr. Raymond Reber stated I can see that now as I look at it. That explains why the lines are like that. Thank you.

Mr. Emanuel Foto stated good evening from 14 Peachtree Drive. I'm the neighbor on the south side. I'd also like to submit some photographs that I took this past Saturday. If I may read from section **302-82** from the Town Code? "Regardless of any other provision of this chapter the owner of every builder's supply yard, contractor's yard, or lumber yard, which after the adoption of this provision exists as a non-conforming use in all districts shall apply to the Zoning Board of Appeals for a Special Permit to establish and maintain appropriate screening for such uses. Such screening may consist of topographic features, vegetation, solid walls, or opaque fences and shall be maintained for as long as the non-conforming use continues. Such screening shall substantially conceal in the judgment of the Zoning Board of Appeals all operations of such builder's supply yard, contractor's yard or lumber yard throughout all the seasons of the year from the view of pedestrians and motorists passing such use on any public or private street and from view of any existing or future residence within an **R** district and within **300** feet of such

use.” That’s it. So, I think it’s pretty clear from this statement that the fence, it’s more than just a 6-foot fence. The purpose is to conceal the contractor’s yard. I tried to fight the fight that they weren’t allowed to have a contractor’s yard. Kenny and I spoke many times so if they want to keep that as a contractor’s yard I think they are going to have to agree with this section of the Town Code. The fence that she’s discussing on the south side, it is on my property. The original builder of the property put the fence up. In **1998** when we moved in we replaced the fence but we just replaced it in kind at the same line.

Mr. Raymond Reber asked your property is the adjacent on the south side which is what, the **8**-foot section?

Mr. Emanuel Foto responded the **6**-foot section on the south side. I believe it would be on the right of the screen there, the **6**-foot fence. The stone wall is actually on their side of the fence. If you look over the fence you can see the existing stone wall. You can’t build a wooden fence on top of a stone wall. It’s got to go in the dirt. She’s incorrect there. I hope that the Board considers this paragraph in choosing the substantial concealment.

Mr. John Mattis stated we certainly will consider it because that’s what the case is all about.

Mr. James Seirmarco asked do you think the fence that’s there is on their property or someone else’s?

Mr. Emanuel Foto responded the fence is on my property. On the existing survey of the property it shows the fence and it shows the stone wall on the north side of the fence. That’s all, thank you.

Ms. Adrian Hunte asked anybody else wish to be heard? Hearing none so we should make a motion to...

Mr. David Douglas stated I think we need to set up a site visit.

Mr. Wai Man Chin stated the Saturday before would be the **16<sup>th</sup>**.

Ms. Adrian Hunte asked the **16<sup>th</sup>** of what?

Mr. David Douglas responded December. No, the **14<sup>th</sup>**. Saturday the **14<sup>th</sup>**. Does that work for enough people? Our last site visit nobody came, it was embarrassing.

Mr. John Klarl stated the next meeting. The agenda...

Mr. David Douglas stated the agenda says the **20<sup>th</sup>** but I don’t think that’s right.

Mr. John Klarl stated it doesn’t line up as the **14<sup>th</sup>** as a Saturday.

Mr. David Douglas stated the **14<sup>th</sup>** is a Saturday...

Mr. Ken Hoch stated that should be the **18<sup>th</sup>**.

Mr. John Mattis stated the meeting is the **18<sup>th</sup>** and the **14<sup>th</sup>** is the Saturday and we usually do that at **10:00 a.m.**?

Mr. David Douglas stated okay, so Saturday the **14<sup>th</sup>** at **10:00 a.m.** is when we'll come to look. Does that work for you?

**Inaudible.**

Mr. John Klarl asked Mr. Foto will you allow the Board to go on your property?

Mr. Emanuel Foto responded yes, being an engineer who works for a heavy highway construction company I'm pretty familiar with site visits so I'd like to be part of that if I can if it's just walk and listen if I can't input.

Mr. David Douglas asked okay, so it's okay if we go on your property? You will not be able to go onto their property unless they say it's okay. That's up to them.

Mr. Emanuel Foto responded that's fine. Mr. Garb and I spoke a couple of times but that's fine.

Mr. David Douglas stated that's between you – when we go on the site visit you're more than welcome to come and then as to when we're on their property that's up to them as to whether or not they allow you on it.

Mr. John Klarl asked but you give permission to this Board to go on your property?

Mr. Emanuel Foto responded yes.

Mr. John Klarl stated thank you.

Ms. Adrian Hunte stated I make a motion on **case #2013-33** for Special Permit to establish and maintain appropriate screening for an existing contractor's yard at 2201 Crompond Road, Cortlandt Manor, New York 10567 that we adjourn this to the December 2013 Zoning Board of Appeals meeting and that we, members of the Board of the Zoning Board of Appeals will have a site visit scheduled for Saturday, December the **14<sup>th</sup>** at **10:00 a.m.**

Seconded with all in favor saying "aye."

Mr. David Douglas stated that's what we'll do. I'm not going to repeat what you said. Thank you.

\*

\*

\*

**ADJOURNMENT**

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated meeting is adjourned.

\*

\*

\*

**NEXT MEETING DATE:  
WEDNESDAY DECEMBER 18, 2013**