

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, September 21<sup>st</sup>, 2011*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

**ADOPTION OF MEETING MINUTES for Aug. 17, 2011**

So moved, seconded.

Mr. David Douglas stated the August meeting minutes are adopted.

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**PUBLIC HEARINGS ADJOURNED TO SEPT. 2011 FOR TOWN BOARD ACTION**

- A. CASE No. 11-09**                      **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8<sup>th</sup> Street, Verplanck.**

Mr. David Douglas stated we've got a memo indicating that the Town Board has taken action and it's a short memo and I'll read it into the record. It says: "pursuant to the Zoning Board's memo to the Town Board, the Town Board has discussed at length the issue presented in Zoning Board of Appeals **case 11-09**. At the current time the Town Board is not desirous in proceeding with any amendment to the Town Zoning Ordinance and the subject premises would have to be treated and used in accordance with the existing provisions of the Ordinance. Should you require any additional information please do not hesitate to contact me," "me" being Mr. Wood, the Town Attorney. This was an application for an interpretation.

Mr. John Mattis stated we sent this to the Town Board since we had no power to grant relief for this. Now that it's come back to us we still have no power. First I'd ask if there's anyone in the audience who would like to speak and then I move that we close this case and reserve our decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated this **case 11-09** is closed and reserved and we will issue an interpretation within the **60** day period.

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**CLOSED AND RESERVED DECISION ADJOURNED TO SEPT. 2011 FOR TOWN BOARD ACTION**

- A. CASE No. 01-10**                      **Zuhair Quvaides** for an Interpretation of the definition of outdoor storage and vending machines on the property located at **2072 E. Main Street, Cortlandt Manor.**

Mr. David Douglas stated I understand that the Town Board has this on its agenda for – is it October? Mr. Hoch, can you tell us what the status is?

Mr. Ken Hoch responded I'm not sure if it's at the October meeting but it has been discussed by staff and forwarded to the Town Board.

Mr. David Douglas stated we had discussed at our work session the idea of adjourning this until November to give the Town Board time to act.

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

Mr. David Douglas stated **case #01-10** is adjourned to November.

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**ADJOURNED PUBLIC HEARINGS**

- 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 got an email from the applicant's representative indicating that they will be submitting their papers in October and asking that we adjourn it until the November meeting.

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

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

**B. CASE No. 15-11**                      **James Meaney** for an interpretation – does Local Law 12 of 2010 prevent the Green Materials application to the Planning Board, PB No. 28-08 filed 8/22/08, from proceeding; and does Local Law 12 negate the ZBA Decision and Order in case No. 33-08.

Mr. David Douglas stated I believe, Mr. Hoch, you got a request from the applicant's attorney that it be adjourned to October, is that correct?

Mr. Ken Hoch responded yes.

Mr. David Douglas asked do we have a motion to adjourn **case #15-11** to October?

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

Mr. David Douglas stated **case #15-11** is adjourned to October.

**C. CASE No. 14-11B**                      **Capurro Contracting, Inc.** on behalf of Patricia Doherty for an Area Variance for a front yard setback to rebuild a deck and for the existing front steps; and the side yard setback for the existing house on property located at **122 Westchester Ave., Verplanck.**

Mr. David Douglas stated Mr. Hoch got a memo saying that there's a new survey that's being plotted, hopefully to resolve all issues, however as of now, we do not have a working survey and they've asked for an extension. At the work session we discussed the idea of adjourning this case until November. Do we have a motion?

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

Mr. David Douglas stated **case #14-11B** is adjourned to November.

**D. CASE No. 20-11**                      **Gas Land Petroleum Inc.** for Area Variance for minimum lot area, rear yard setback, canopy setback, minimum landscape coverage, landscape

buffer strip, maximum driveway width, driveway within 50 feet of an intersection on property located at **2148 Albany Post Rd., Croton-on-Hudson.**

Ms. Margaret McManis stated sorry I was late. I was at the field hockey...

Mr. David Douglas stated speaking personally that is an excellent excuse. I use that excuse myself. In fact, I think I'll be going to a field hockey game later this week. There are very few things more important than field hockey.

Mr. John Klarl stated I appeared to each Planning Board meeting and Zoning Board of Appeals meeting. At the last Planning Board meeting I gave a preamble because of the two applications and I'd like to do the same thing here. Obviously this application's been before Planning Board for Site Plan Approval. It's before the Zoning Board for a number of Variances that were identified by the applicant's engineer last time. The applicant's engineer was asked last time to push the building back a little bit. She was willing to work with the Board and then she gave us a memo a couple of days after saying that if she did push it back more she would lose parking and parking's critical on this site. The Planning Board had its meeting already in September. I told them of what had occurred before the Zoning Board of Appeals and about the applicant's engineer, Ms. McManis's thoughts about pushing back the building, it wouldn't really work. The Planning Board is ready to grant Site Plan Approval but they want to hear from this Board under coordinated review. Site Plan Approval is anticipated next time but we're waiting for the Zoning Board of Appeals and the Zoning Board of Appeals obviously is going to look at a different plan tonight and we'll find out if we're looking at the same one.

Ms. Margaret McManis stated same plan as last time. I did take into consideration of moving the building back. Two factors: if you were to move the building closer because of where the garbage receptacles are anticipated and the parking, this required area for the handicap parking would not be covered by a sidewalk. So, either, I can move the building but I couldn't move the sidewalk, make the sidewalk bigger, can't move the canopy back and then that sort of defeats the purpose of moving the building to begin with. We'll let it stand.

Mr. John Mattis asked what will these signs look like?

Ms. Margaret McManis responded the sign is anticipated to be here and I have a rendering of the sign. We are no longer having these columns. He has built this style at other locations but I realized that in this Town, this area would be included in the consideration for the size of the sign so we can look at this sign which does not have the columns it just has a little decorative wall underneath.

Mr. John Mattis stated you're allowed **16** square feet and you're asking for **32**.

Ms. Margaret McManis responded correct.

Mr. John Mattis stated it would be **14** feet high as opposed to the Code calling for **10** feet.

Ms. Margaret McManis responded correct.

Mr. John Mattis asked and the business sign on the building, could you describe that?

Ms. Margaret McManis responded there's a sign anticipated **4' x 12'** saying "Food Mart."

Mr. John Mattis stated and it is four feet high.

Ms. Margaret McManis responded four feet.

Mr. John Mattis stated and that requires a **100%** from **24** to **48** square feet.

Ms. Margaret McManis responded I believe that...

Mr. John Mattis stated and again, that would be a little higher – we're allowed **10** and you're requesting **15** there for the maximum height.

Ms. Margaret McManis responded correct. That was based on the height of the windows and the anticipated construction of the building.

Mr. John Mattis stated it's how it would fit in there, sure. The freestanding sign at **32** square feet is smaller than one down the road that we approved before. I have no problem with the height, personally. I think they're easier to see when they're up high when you're driving in traffic, so I have no problem with that. The **32** square feet is no larger and it's probably smaller than some of the other signs in the area. As far as the one on the wall, the letters being four foot are not egregious, it's just that it's quite long but the building is a pretty wide building. I have no problem with any of this. Any comments?

Mr. Raymond Reber responded I concur.

Ms. Adrian Hunte stated I concur.

Mr. Wai Man Chin stated no problem.

Mr. James Seirmarco stated it's not a highway there it's a stop-and-go place. There's a high school. There's a lot of other establishments there so you're not having to see it from **300, 400, 500** yards away. You're going to see it – I'm not sure whether that height is necessary. I haven't made the decision yet. As far as the "Food Mart" sign goes, it just seems to be just too big for me. Three foot letters are – if it was, again, it's a sight distance thing. You're going to be on this building before you know it you're going to be right next to it but I don't see why the letters have to be that big. I just don't.

Ms. Margaret McManis responded as far as the height of the sign and the size of the sign, the

size of the sign comes in a standard five foot width. We would have to actually order a smaller sign from Sunoco would be custom made in order to get the size down to being within the 48 feet.

Mr. James Seirmarco stated I actually don't have a problem with the size. I just have a problem with the height.

Ms. Margaret McManis stated with the height of the sign. I actually looked at – we had talked about the location and whether there were sign distance issues. I did calculations. The sign is actually not in anybody's sight line but if someone were back farther than necessary, if this sign is 7 feet from the ground you can see under it and see traffic as opposed to having it lower then there is a possibility that there would be a little more obstruction if the sign were down here.

Mr. James Seirmarco asked do you know the height of the existing sign from the old station?

Ms. Margaret McManis responded I do not know the existing sign from the existing station. I can measure it for you though.

Mr. Wai Man Chin stated I don't mind the height at all because I'd rather be able to see that open area from the bottom of the sign to the ground rather than having something block my vision or somebody coming out around from the back and all of a sudden you just don't see it. I think the visual aspect of seeing through the bottom portion of it, I think is a lot better than having that closer to the bottom of the ground.

Mr. John Klarl asked so you care about sight distance?

Mr. Wai Man Chin responded yes.

Ms. Margaret McManis stated the sign for the building we're asking for is obviously the maximum allowable by the Code. He may or may not put it that large. It's anticipated that on the size of the structure that that size of lettering would look the best.

Mr. David Douglas asked anybody else have any comments?

Mr. Charles Heady stated I agree with Wai where you're going to put the signs, height makes a difference, a safer vision.

Mr. David Douglas stated I agree on the height. I prefer to have that open space underneath. I think it's safer to do it that way. I'm not thrilled with the size of the "Food Mart" sign and I'm not going to rehash the reasons because everybody on the Board is sick of it. Mr. Seirmarco and I will vote against that probably.

Mr. Raymond Reber stated we were wondering, Mr. Hoch, whether you would, off the top of your head, have in your mind all this data – across the street, there is Fulgum's, do you have any

idea what those letter heights are?

Mr. Ken Hoch responded no. They've been there a long time.

Mr. Raymond Reber stated that's right on the road and that's a pretty good size sign.

Mr. Ken Hoch stated I could look to see if we have a file that would show the sign.

Mr. David Douglas stated actually, I think that's a good point Mr. Reber is making because I don't know what the size of the Fulgum's sign is but it's large and it may well be...

Ms. Margaret McManis stated I actually don't feel that the size of the sign will be out of character with anything in the neighborhood.

Mr. Raymond Reber stated we could approve it as requested but not to exceed the letter height of the Fulgum's sign. If that means they're three feet then she has to reduce the "Food Mart" to three feet because it's certainly easy to read whatever it is.

Mr. James Seirmarco stated that just exacerbates the problem because maybe that sign is illegal and I don't...

Mr. Raymond Reber stated no, it's not illegal, it's been approved. That's an approved sign. That sign was approved.

Mr. John Mattis asked anyone else in the audience? I move that we adjourn....

Mr. David Douglas asked how did we want to do it with coordinating with the Planning Board?

Mr. John Klarl stated the Planning Board would like to have a decision, if they could for their early October meeting.

Mr. David Douglas stated the Planning Board wants an actual decision because a lot of times they want us to keep it open and then we all vote at the same...

Mr. John Klarl stated they've finished their piece of the puzzle so they're all waiting for the Zoning Board of Appeals so they can close and issue their Resolution. I think there's a Resolution already drafted.

Ms. Margaret McManis stated there's a Resolution already drafted.

Mr. David Douglas stated and the Architectural Review Council...

Mr. John Mattis asked the CAC, did they issue a statement on this? Did they look at the signs? The Architectural Review Committee.

Mr. John Klarl stated the Cortlandt Architectural Advisory Council. Part of the Planning Board – did Mr. Clemens...

Ms. Margaret McManis responded they saw the building. I think Chris said they don't need to see the signs. I believe that's what Chris said.

Mr. John Klarl asked did you ever see a memo from them?

Ms. Margaret McManis responded yes I do. Actually, I have an email from Chris saying that they approved everything.

Mr. John Klarl stated usually Chris refers it to them and he gets a one liner back saying they approved on it. I don't have the file here but Margaret you're saying you recall a?

Ms. Margaret McManis responded yes. That's the rendering of the building.

Mr. John Klarl stated the Planning Board was pretty happy to see that elevation compared to what's there now.

Mr. Wai Man Chin stated I like it.

Mr. David Douglas stated with regard to the sign, I'm convinced by the Fulgum's size so I may abandon Mr. Seirmarco on this one for once.

Mr. John Mattis stated living in that area and going by there so often, I don't think we want to approve it the size of the Fulgum's letter or we'd probably end up with a bigger sign.

Mr. David Douglas stated I like the condition of voting that it's the smaller of either the **48** square feet or the Fulgum's...

Mr. Raymond Reber stated well it's the height that we're...

Mr. David Douglas stated sorry, the height.

Mr. John Mattis stated the height will not exceed the Fulgum's.

Mr. Raymond Reber stated four feet or the height of the Fulgum letters, whichever is lesser, right?

Mr. David Douglas responded right.

Mr. James Seirmarco stated that I don't agree with. I don't think you should mention Fulgum's at all. Just let it stand on its own sign.



Mr. Raymond Reber stated then we'll approve the application as it is.

Mr. John Mattis then we'll approve it at four feet.

Mr. Wai Man Chin stated I don't have a problem with it.

Ms. Margaret McManis stated I think it will be tastefully done.

Mr. John Mattis stated I guess we're prepared to vote on this then.

Mr. John Klarl stated the freestanding sign, Ms. McManis, is the one way over by the...

Ms. Margaret McManis responded without the pillars.

Mr. David Douglas stated we have to vote on all the Variances not just the signs.

Mr. Ken Hoch stated Mr. Chairman, if I might, the last time the Board granted a Variance in a situation like this, the Planning Board changed the site plan and we had to reopen it.

Mr. David Douglas stated that's why I'm asking. I didn't want to bring that up but that's exactly why I'm asking Mr. Klarl.

Ms. Margaret McManis stated the Planning Board didn't vote because they said you still had it open. I feel like I'm a hockey puck here.

Mr. John Klarl stated if you recall, I told the Planning Board to keep their open in the event that there were some Variance identified here that would affect the site plan. The Planning Board is anticipating...

Mr. John Mattis stated if the Planning Board has indicated they're waiting for us, in this case I think it's appropriate to vote on it.

Mr. John Klarl stated as of the last meeting, which was this month. I specifically said don't close it in the event that there's something identified here that would change the site plan tonight.

Mr. Ken Hoch stated Chris told me they're supposed to – they're going to consider adopting the Resolution October 4<sup>th</sup>.

Mr. John Klarl stated they'd like to.

Mr. Ken Hoch stated if possibly we inform the Planning Board that, yes, we are of the mind to grant these Variances after – they're Resolution usually says "here's what we're granting subject to any Variances you need from the Zoning Board."

Mr. John Klarl asked but, are we not prepared tonight to go through the list?

Mr. Wai Man Chin responded I am.

Mr. David Douglas stated I think we are prepared.

Mr. John Mattis stated I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. John Mattis stated I propose the following Variances: minimum lot area from the required **20,000** square feet to **12,783** square feet; the rear yard setback from **30** feet to **11.7** feet which is the current setback of the current building; the canopy setback from **30** feet to **13.2** feet; the minimum landscape coverage from **30%** to **26%**; the landscape buffer from **25** feet to a range to **0** to **15½** feet; the maximum driveway width from **30** feet to **80** feet and no driveway within **50** feet of the intersection where there are four driveways. I'd like to make a comment that many of these Variances are necessary because of the uniqueness of that property and the type of neighborhood all these were properties were prior to Zoning. As to the signs, a freestanding sign proposed **32** square feet versus the allowed **16** and the sign height of **14** feet versus the allowed **10** and the business wall sign of **48** square feet with a maximum letter height of **4** square of the allowed is **24** and the height of the business sign from the **10** feet to **15** feet. This is a type II SEQRA and no further compliance is required.

Seconded.

Mr. John Klarl asked Ms. McManis does that cover every area Variance that was identified?

Ms. Margaret McManis responded yes it does.

With all in favor saying "aye."

Mr. John Klarl stated so, the Planning Board has a work session tomorrow. I'll report it at the work session tomorrow about this and then you'll be getting a Decision and Order, which the Planning Board will see before their next actual meeting.

Mr. John Mattis stated that's going to really spruce up that property nicely.

Mr. John Klarl stated it's going to be a big difference.

**E. CASE No. 21-11 Custom Mechanical Service and Design Corp. on behalf of Eric Roppa** for an Area Variance for an accessory structure (shed) in the front yard on property located at **2069 Quaker Ridge Rd., Croton-on-Hudson.**

Mr. David Douglas stated I believe that the applicant has withdrawn that application. **Case #21-11** is withdrawn.

**F. CASE No. 22-11                      2045 Post Road Realty Corp.** for a Special Permit to establish and maintain appropriate screening for an existing contractor's yard on property located at **2045 Albany Post Rd., Croton-on-Hudson.**

Mr. David Douglas stated we had a site visit on this case on Saturday.

Mr. Wai Man Chin stated I didn't make that site visit but I was there once before looking at it. I would have no problem with what the applicant has requested except for what we've indicated on the D&O which I believe the applicant has agreed to. "The applicant is required to install a new **8** foot high chain link fence covered with dark green mesh (Midwestern Cover Construction **85** Windscreen as proposed by the applicant) along the eastern property line, opposite the residential zone. The fencing will continue along the northern property line to a point where it meets the existing fence. Should the existing fence along the northern property line and along the western property line (Albany Post Road) need to be replaced, as determined by Code Enforcement, the applicant will use the above noted Midwestern Cover of fencing, or equivalent. There's a small section of fence along the southern property line near Albany Post Road. The existing commercial use on the adjacent parcel does not require additional screening on the southern property line at this time. Should the use of the adjacent property, or conditions on the applicant's parcel, change, the applicant may be required to install the above noted Midwestern Cover fencing, or equivalent, as determined by Code Enforcement." That's the new D&O. This is a type II under SEQRA, no further compliance is required.

Mr. Tolli asked did you mention the west side on that? The west is the front. That was mentioned?

Mr. Wai Man Chin responded right.

Mr. David Douglas stated I think he mentioned if it needed to be replaced...

Mr. Tolli stated I think we would like to probably install a very nice white picket fence about **8** feet high. That was what my tenant wishes down the road if I can say that now.

Mr. James Seirmarco stated it's certainly up to...

Mr. Wai Man Chin stated this is again a cover fence or equivalent as determined by Code Enforcement.

Mr. Tolli responded okay.

Mr. David Douglas asked does anybody else have any comments?

Mr. Wai Man Chin asked this was closed and reserved?

Mr. David Douglas responded no, it wasn't closed and reserved.

Mr. John Klarl stated it was adjourned to September so we have to close first but you indicated the preamble tonight.

Mr. David Douglas asked does anybody in the audience want to be heard?

Mr. Wai Man Chin stated I make a motion on **case 22-11** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated I make a motion on **case 22-11** to accept the D&O as indicated.

Seconded with all in favor saying "aye."

Mr. Ken Hoch stated you'll get a copy of the Decision and Order in the mail once the Chairman signs it.

Mr. Tolli stated I want to thank all of you for your professionalism in this matter. I think the visit helped in your decision and that was a good thing, you came to the yard.

Mr. Wai Man Chin responded your welcome.

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### **NEW PUBLIC HEARINGS**

- A. Case No. 23-11**                      **Lawrence Bennett on behalf of Lidia Alexander** for an Area Variance for the front yard setback to rebuild an existing front portico on property located at **21 Buena Vista Ave., Cortlandt Manor.**

Mr. Lawrence Bennett stated with Caimar Construction representing Lidia and Lawrence Alexander. We're here tonight to get a Variance for a **50** front yard setback to **26.8** foot which is a pre-existing non-conforming. They have an existing awning as you can see here, that measures **5** foot out by **6** feet. We want to demolish this and replace it, virtually in kind, it's going to be a tad wider but the same distance out, like so, with a reversed gable to look like the other houses and maintain the continuity on the block. Most of the houses in this area, on the upper section of Buena Vista, were built pre-Zoning and that's why most of the houses are within or beyond the setback. More than **50%** of the house is built over the **50** foot setback and all we're trying to do

is replace an existing awning.

Mr. Raymond Reber stated I did visit the site to take a look at what's there. It sounds like a major Variance, **23** feet, but as you have stated on behalf of the applicant, the houses themselves are not **50** foot back, none of them are on that street. What you're proposing is something that we have granted many times. You're simply replacing a cover over the entranceway with a new entry portal. As long as it's open and outdoors, which this still is, it's just basically a rain shelter which will be more attractive. Its impact on the front is minimal. As I've said, we've granted these in the past and I see no problem in granting this application.

Mr. David Douglas asked anybody else have any comments?

Mr. John Mattis stated I went out there and looked at it and I concur with Mr. Reber.

Ms. Adrian Hunte stated and I have seen it as well.

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

Mr. James Seirmarco stated I don't either.

Mr. David Douglas asked anybody else want to be heard? Did you want to say anything else?

Mr. Lawrence Bennett responded no.

Mr. Raymond Reber stated on **case 23-11** I make a motion to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on **case 23-11** I make a motion to grant a Variance setback from **50** feet down to **26.8** feet. A Variance of **23.2** feet for a front entranceway portico that will be **4.6** feet out from the existing house and extend **5** feet total for a roof overhang and I believe it's **5** feet wide?

Mr. Lawrence Bennett responded right.

Mr. Raymond Reber stated this is a type II SEQRA no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted. I think Mr. Hoch you need five

days for the paperwork?

Mr. Ken Hoch responded yes.

**B. Case No. 24-11                      Julie Evans, architect, on behalf of Lionel and  
Stephanie Mellul for an Area Variance for the front yard setback on property located at  
2065 Quaker Ridge Rd., Croton-on-Hudson.**

Ms. Julie Evans stated I'm Lionel and Stephanie Mellul's architect. The project is to convert an existing low courtyard into a new vestibule. We're calling it vestibule, mudroom/entry for this home. The existing corral or low wall is about **4.2** feet over the front yard setback. The functional need that we hope to solve is one of topography. There's a detached garage and there's really not a great way for them to enter and to even manage trash bins and all that type of stuff. It's just a tough site. So, we're trying to take advantage of what's already there with foundation and enclose it in a roof structure. The other thing to mention is that this part of the house, the house is set down as are most of these river-facing properties, set down from the road and hardly visible. There's quite a bit of tree screening on the site. I'm not sure if you visited.

Mr. James Seirmarco stated just for the record, the garage seems like two stories because it goes down a slope. Is there storage underneath the garage?

Ms. Julie Evans responded no. The garage is a one-story garage and it's right up on the road.

Mr. James Seirmarco stated in the back, the wall is quite high. Is that just dead space? You can't get in the back of the garage in the basement so to speak?

Ms. Julie Evans responded no. It's just a little path winding up the hill to get back to the garage.

Mr. James Seirmarco stated I couldn't see it when I walked it.

Mr. David Douglas asked anybody else have any comments?

Mr. James Seirmarco stated Mr. Chairman, I did visit the site and the garage is pretty much right on the road, on Quaker Ridge Road. There is sort of a catacomb wall at the entrance to the house. It is as the architect suggested. The house is sloped down towards the river. The Variance required, in the big scheme of things, is only **10%**. I have no problem with this.

Mr. David Douglas asked the house was built prior to Zoning?

Ms. Julie Evans responded that's right.

Mr. David Douglas asked what you're proposing is not bringing it any closer to the road. It's going to be in line with the existing house.

Ms. Julie Evans responded no.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin responded no.

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

Mr. James Seirmarco stated I make a motion on **case 24-11** 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 to grant the Area Variance for the front yard setback from the allowed **50** feet down to **45** feet. 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.

**C. Case No. 25-11                      Janet Hecken** for an Area Variance for the front yard setback for an existing carport on property located at **623 Croton Ave., Cortlandt Manor.**

Ms. Janet Hecken stated I'm the home owner at 623 Croton Avenue. I'm requesting a Variance for a front yard setback of **29.8** feet for a pre-existing carport. It's not highly visible from the road so it's not a distraction to drivers. It's not seen by any neighbors because I have a cemetery next to me and an empty property on the other side and nobody across the street from me.

Ms. Adrian Hunte stated I visited the property and this is the garage – is prior to Zoning. I do have some questions. The carport is not prior to Zoning.

Ms. Janet Hecken responded correct.

Ms. Adrian Hunte stated what I can see it's behind the garage.

Ms. Janet Hecken responded it's backed off from the garage.

Ms. Adrian Hunte stated I did notice though that there's ground cover or ivy growing under the carport. Is it being used?

Ms. Janet Hecken responded the carport was being used at one point, now I just really store ladders and things like that there.

Ms. Adrian Hunte asked I do have some questions because it is something that was basically done without approval. As much as I don't think that it has any detrimental effect on the area of the neighborhood, I don't know what the structural integrity of it is at this point. I know you had a note that it was structurally sound when it was built but that was quite a while ago.

Ms. Janet Hecken responded I've had an architect come over and he has done drawings of that – Mr. Hoch has drawings.

Ms. Adrian Hunte asked does anybody have any questions or comments?

Mr. James Seirmarco asked your plans are to reuse or continue to use the carport?

Ms. Janet Hecken responded my plans are to just leave it there. I don't want to have to take it down but I don't really use it. It was actually – at one point when I first moved there we bought a boat that was supposedly car topable. I couldn't get it on so my husband said “let's just build something so that we could put it up,” but my husband passed away so I don't really use it. I have one car and I have a garage under my house, attached to my house, so I use that. I never go into the carport. As I said, I use it for storage.

Ms. Adrian Hunte stated I think it's been there a while and looking at the rest of the road, on Croton Avenue, are quite a few properties where items are extending very close to the road in less than the required setback. I don't think there's an undesirable change that'll be produced in the character of the neighborhood or a detriment to the nearby properties would be created. In terms of any alternative, obviously this is something that was self-created and it was done. I don't know, is there somewhere else you could put this carport?

Ms. Janet Hecken responded no.

Ms. Adrian Hunte stated the required setback is **50** feet and you're basically at **29.7**, it requires a Variance of **20.3** feet which is a **40.6%** Variance, which could be deemed substantial but I don't think there's going to be an adverse impact on physical or environmental conditions in the neighborhood or the district. Anybody else have any comments?

Mr. David Douglas asked anybody else have any comments?

Mr. Raymond Reber responded I noticed by the survey, which is dated 1971, it wasn't there. It was added after that obviously without permits but as Ms. Hunte indicated, it doesn't really violate the basic criteria that we would use to grant a Variance and I think in this case, had the applicant come to us and asked if they could put a carport here, we probably would have granted it without too much thought. I do note though that the architect is indicating a new roof. I,



myself, when I looked at it thought the whole structure may be questionable so my only thought would be that before the Town would grant the permit for this carport that it be properly checked out for structural integrity because, like I say, I just don't know at this point. But, as far as tearing it down, I think it's unreasonable to take it down because I think if they had come to us – it's set back from the existing garage so I don't see any real problem with it.

Mr. Wai Man Chin stated I see some drawings from an architect over here. Again, it doesn't say that it's structurally sound or anything. I think the Town should send somebody out who's an engineer and check it out first before I would even think about voting on this right now. I'd like to adjourn it.

Mr. Raymond Reber stated I don't even know if the Town would take that responsibility on. I think that the applicant would have to...

Mr. Ken Hoch stated what I can do is – we obviously need to issue a Building Permit after the Board makes a determination and if the Board so desires, we can have the architect add a statement to his plan that the structure is currently structurally sound.

Ms. Janet Hecken stated there is a notation that says “note: the carport is structurally sound and complies with state and local Building Codes at the time of the construction.”

Mr. Wai Man Chin stated at the time of construction.

Mr. John Mattis stated it has to confirm with the current standards.

Mr. Raymond Reber stated it has to be as of now.

Mr. Ken Hoch stated he's saying that it's structurally sound. We could just make sure that he says as current.

Mr. Wai Man Chin stated I don't know if he does that himself or he has a structure engineer take a look at it. I would need something like that.

Mr. James Seirmarco asked you're doing this because you don't want to incur the cost of taking it down?

Ms. Janet Hecken responded no, I'm doing this because I realize a Permit should have been obtained in the first place and it wasn't so I'm trying to get it legal. This was done many years ago. My husband took care of it and through the years you hear people talking about Permits and I thought “I don't think there was ever a Permit for this.” So, I'm just trying to right something that wasn't done right in the first place.

Mr. John Klarl stated but your option now is to either try to ask us to let it remain or to take it down. And, Mr. Seirmarco's asking...

Ms. Janet Hecken responded no, I'd like it to remain. I don't want to have it taken down.

Mr. James Seirmarco stated it might cost very little to take it down.

Ms. Janet Hecken stated I would just prefer to have it.

Mr. Wai Man Chin stated that's not the point. I would like to have something written that it's structurally sound as of now not when it was constructed.

Ms. Janet Hecken responded I think he probably phrased it wrong. I think he probably meant to say it was structurally sound now and it met the Codes at the time.

Mr. Wai Man Chin stated when it was built, that's why he said it that way, when it was originally built.

Ms. Janet Hecken asked so you just want a statement on this?

Mr. Wai Man Chin responded some kind of statement that to Code Enforcement and I would hold off on – I would wait until next month before I would even vote on this.

Mr. David Douglas stated we can vote on it and make it subject to.

Mr. John Mattis stated we've done that in the past.

Mr. David Douglas stated the garage that the carport is attached to, that's prior to Zoning?

Ms. Janet Hecken responded yes.

Mr. David Douglas stated we can vote and make it subject...

Mr. Wai Man Chin stated close the public hearing and vote on this subject to an affidavit from the architect saying that it's structurally sound – certification.

Ms. Adrian Hunte asked anyone in the audience? Regarding Zoning Board of Appeals **case #25-11**, applicant Janet Hecken, address of the property 623 Croton Avenue, Cortlandt Manor, NY request for an Area Variance for the front yard setback for an existing carport we close the public hearing, I make a motion.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated Zoning Board of Appeals **case #25-11** requesting a Variance of **20.3**

feet from a required of **50** feet existing **29.7** feet, that we grant the Variance for the existing carport subject to an affidavit from an architect – certification as to the current structural integrity of the carport. This is a SEQRA type II, no further compliance required.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated you have to get that certification to Mr. Hoch from the Architectural...

Ms. Janet Hecken responded thank you very much.

**D. Case No. 26-11**                      **Bojan Petek** for an Area Variance to allow an accessory structure in the front yard on property located at **28 Hollis Lane, Croton-on-Hudson.**

Ms. Adrian Hunte stated Mr. Petek, it appears as though we have a memorandum email dated September 21<sup>st</sup>, 2011. I do appreciate the analysis that you have provided in terms of your reasons why the Variance should be granted. However this involves a cease and desist, and do we want to read this?

Mr. John Mattis asked what was the purpose of this?

Mr. Bojan Petek asked you're talking about the letter I sent, emailed.

Ms. Adrian Hunte stated you to Mr. Hoch concerning Barbara Kinney.

Mr. Bojan Petek responded that letter was written by the daughter of the neighbor across the street who was writing back in response to my letter which I also emailed, which was basically just courtesy informing them that I'm applying for Variance so that I could keep the existing shed.

Mr. John Mattis asked what was the reason why you submitted this to us?

Mr. Bojan Petek responded the response from the neighbor was "we don't care," if you subtract the personal invective that's in that letter.

Mr. John Mattis stated you can't subtract the personal invective. I think she basically said get out of their life. "We don't care what you do." That's not an endorsement of what you're doing at all.

Mr. Bojan Petek stated I searched back through my emails to see if I had sent them anything objectionable. I've sent them very few emails so this was a very strange response. It's copied to three attorneys.

Mr. John Mattis stated you had told us at the work session Monday that they did not oppose this

and you had a document. Is this what you were referring to?

Mr. Bojan Petek responded yes, I don't see any opposition in there.

Mr. John Mattis stated I hardly see it as an endorsement.

Mr. Bojan Petek stated it's a personal, kind of disrespectful letter but I think it says "we don't care."

Mr. David Douglas asked just so it's clear, you submitted this for the purpose of showing that your neighbor did not oppose your application?

Mr. Bojan Petek responded this is the only neighbor who is affected by my application.

Mr. David Douglas stated this is the email at the work session you said the neighbor did not oppose the application and this is what you submitted to show that she did not oppose it.

Mr. Charles Heady stated is that **33** Hollis Lane?

Mr. Bojan Petek responded yes.

Mr. Charles Heady stated I told you at the work session, when we were there, that your affidavit, it really upset me because you're talking about the Code Enforcement and the Zoning Board the rules that we did wrong and here's what you had put down which I really don't particularly like what you said. "Allegating difficulty namely the existing of a possibility of a illegal shed not through any action of the applicant but rather from a possibility lacks in Ed, Hoch enforcement of the Town Building and Zoning Laws by the Town's own Building Department. Officers, officials from insufficient documents available to establish the date of construction of the subject." Now, you're talking about the house on **33** Hollis Lane? Am I right, you were talking about that?

Mr. Bojan Petek responded no, I'm not specifically talking about that house. What I'm saying is that there were a number of outstanding Permits that had to be closed out by an inspector both on **33** Hollis Lane and on **28** Hollis Lane which an inspector would not have been able to avoid seeing that there was an accessory building.

Mr. Wai Man Chin stated he's not there for that. He's there only for the Permit that was issued.

Mr. Bojan Petek responded I understand.

Mr. Charles Heady stated that was pre-Zoning that's why you couldn't find documentation on that. He checked out the list on it and that's why there was no documents on that house at all.

Mr. Bojan Petek responded we don't know whether this building is pre-Zoning or not.

Mr. Charles Heady responded yes we do.

Mr. John Mattis stated it's quite clear that this was built in 1966 or '67 and you gave us a statement from your neighbor that says that.

Mr. Bojan Petek responded no, she just...

Mr. John Mattis asked you want me to read it to you?

Mr. Bojan Petek responded no. What she remembers is that she played with the children...

Mr. John Mattis stated she says when it was built.

Mr. Bojan Petek responded she wasn't there so she doesn't know. She moved in there in '65.

Mr. John Mattis stated you're playing with words here.

Mr. Bojan Petek responded I don't think it's that material whether it's...

Mr. John Mattis stated we know it is not prior to Zoning and you're claiming that we don't know that. It's very clear that it wasn't prior to Zoning. Mr. Reber was on that street. He knows what's prior to Zoning.

Mr. Bojan Petek stated I asked Mr. Hoch whether there was any knowledge about that building and he said "no."

Mr. John Mattis stated it's not mentioned on the 1964 Building Permit so it wasn't there and you have a statement from your neighbor which says it was built in '66 or '67.

Mr. Bojan Petek stated she was a child at the time.

Mr. John Mattis asked does that make her incompetent?

Mr. Bojan Petek responded no, it only makes...

Mr. David Douglas stated let me shift this subject a little bit. Could you just tell us what the difference is between your prior application and this application?

Mr. Bojan Petek asked what prior application?

Mr. David Douglas responded you had a prior application. You were in front of us in February. I want to make sure I understand exactly what you're asking for now and what you asked for then and what the difference is.

Mr. Bojan Petek responded previously I was asking to build a garage at the location of the existing shed because it was the most convenient place to put one. Now, since you were very adamantly not going to approve that, I'd like to get a Variance so that I can keep a building that's been there at least **45** years, maybe longer so that I can keep it because it's very useful. Just like the lady before here, she doesn't even use her carport, but I'm using this building.

Mr. John Mattis stated I would like to read into the record what you submitted as exhibit c.

Mr. David Douglas asked let me just finish with this. What you're proposing is to keep the existing shed and not to add anything to it?

Mr. Bojan Petek responded correct.

Mr. David Douglas asked you're not going to make any changes to it?

Mr. Bojan Petek responded I don't need to make any changes. I can agree to not make changes to it.

Mr. David Douglas asked all you want to do is legalize this existing shed which is has been in existence since sometime in the 1960s but there's no evidence that it existing prior...

Mr. Bojan Petek responded we cannot prove that it was prior to Zoning.

Mr. David Douglas stated we can show that it existed for **45** years or so but it's not prior to Zoning based on anything. What you're seeking is to make it legal to have that shed and you're not going to build anything further on top of it?

Mr. Bojan Petek responded correct.

Mr. Raymond Reber stated I would like to interject and say that, as far as I'm concerns, a lot of the debates that are going back and forth is irrelevant to me. The personalities are irrelevant. Here's a very simple case but it's a difficult decision. The simple case is there's a shed there as it's been stated, it's been there approximately **45** plus years. It doesn't make it prior to Zoning, it doesn't meet setback requirements, there's no documentation that this was ever approved and, in fact, we have documentation when the house was granted Variances that this shed was not there and it was very specifically stated, I think it was 1964 when that Permit was granted, that there were no other Variances required and that none were granted which meant that the owner at that time was obligated to come and get a Building Permit and a Variance to put that shed up. He didn't do it. However, I sit here and I say to myself, we are a Board that's supposed to think about what's rational and what does and does not impact on a community. If we just follow the rules here, yes, he should tear down the shed. However, it's been there over **45** years, obviously no one has complained in **45** years. The applicant is not responsible for putting that shed there. It was there when he bought the property and it's still there. To me, I think it's very

unreasonable that something that's been a round that many years and hasn't bothered anybody and hasn't caused any trouble, for us now to say that on the technicality that it hadn't been granted a Permit **48** years ago, or whatever. I think that there's, in my mind, a statute of limitation that I would go by and say, if this was five years or ten years I'd say that's got to be fixed, but after **40** some odd years I think there is a point at which you say "let's get reasonable." Tearing down this shed accomplishes what? Nothing...

Mr. John Klarl responded actually Mr. Reber what you're arguing, in the law we have what is called a statute of limitations for a contract action in **6** years. We also have what's called equity where a court does equity and there's the doctrine of Laches, not a statute of limitations but it's where a judge says, forgetting the statutory provisions really here given certain factors, a judge can look beyond something saying that the doctrine in Laches puts in that long enough time has gone by that what is occurred shouldn't be disturbed by the court.

Mr. Raymond Reber stated that's the way I feel about this.

Mr. John Klarl stated statutorily you have a statute of limitations and under a fairness doctrine you have the doctrine of Laches.

Mr. Raymond Reber stated I think the fairness doctrine here with saying this situation is unique. I would say the shed should stay. It can't be expanded or anything, just maintained as is and continued as it's been for the last **45** plus years.

Ms. Adrian Hunte stated I would say notwithstanding the doctrine of Laches, if we fall within the parameters here for our decisions, and unless we can show that there's some sort of imminent danger to health and property that Laches would probably stand. I don't see that there'd be an undesirable change to be produced in the character of the neighborhood or a detriment to the nearby properties. Whether there's any alternatives, this was something that was there when you purchased the property. In terms of the Variance, is it really substantial? You're not really replacing anything. You're asking to leave it there. It's been there for **45** years. Whether it will have an adverse impact on physical or environmental conditions in the neighborhood, I don't think so and self-created difficulty, it's on your property but it was there before you got there. Based on our basis parameters I would say that I concur with Mr. Reber notwithstanding all the invectives and all the other issues that you have put in that are totally superfluous and irrelevant.

Mr. David Douglas asked anybody else have anything else to say?

Mr. Wai Man Chin stated I read the last statements and also your memo David, and I would like to close and reserve on this thing and make up our...

Mr. David Douglas stated I agree. I think we should close and reserve. I tend to agree with what Mr. Reber said and what Ms. Hunte said. On the other hand I think we need to seriously consider this because it would be granting a Variance for an accessory structure in the front yard which is something we rarely do. We have done it on rare occasions in unique circumstances. I

think we need to weigh whether this is a unique circumstance that warrants that. I do agree with Mr. Reber and Ms. Hunte's view of what the factors are and what the issues are.

Mr. Bojan Petek asked what is reserved?

Mr. David Douglas responded we close and reserve means what we would do, if that's what we vote to do, we would close the public hearing and then we would have **62** days from today to make a decision.

Mr. Bojan Petek asked is it that you want to talk it over or you want to go visit the property?

Mr. David Douglas responded we would want to talk it over if we decided we wanted to visit it – I think most of us have seen it already from the other application.

Mr. Bojan Petek responded it's nicer now than it was a couple of years ago.

Mr. David Douglas stated that's not really relevant at this point.

Mr. Bojan Petek stated also, I should say, as far as structural integrity, this building withstood heavy snows this past winter and the wind.

Mr. David Douglas responded I know. We talked about that. We had a lengthy hearing on your other application so I don't want to rehash any of that.

Mr. Bojan Petek responded it wasn't about that but ok.

Mr. David Douglas responded I think it would be wise for you at this point to – you understand what we're trying to do.

Mr. Bojan Petek responded you're trying to help me, I think.

Mr. David Douglas stated we might be so...

Mr. Wai Man Chin stated let's leave it like that.

Mr. John Klarl stated what you're hearing from the Board, what I'm hearing from the Board that there's some different opinions here, not all the opinions have been crystallized and the Board wants to come back to the next work session and talk about it. The Board has **62** days from tonight to render a decision.

Mr. Bojan Petek asked should I be available to appear next time around?

Mr. Wai Man Chin responded you can't speak the next time. We're closing and that's it.



Mr. David Douglas stated you're more than welcome – first of all does anybody else want to be heard on this?

Mr. Bojan Petek responded I have a neighbor who wants to speak.

Mr. Joe Pimbly stated I live on Hollis Lane down the road from Bojan.

Mr. David Douglas asked which number on Hollis?

Mr. Joe Pimbly responded I'm **1** Hollis Lane.

Mr. David Douglas asked so you're the first house on the left or the right?

Mr. Joe Pimbly responded on the right. My family and I moved in 1993, so that's a little more than 18 years ago. I thought I'd just appear and say that I have no concern about the shed that's in Bojan's front yard and it's been there and he hasn't added to it. I have no concern as one of his neighbors.

Mr. John Mattis stated but on a daily basis you never see that shed? You don't go in that far? You're the first house.

Mr. Joe Pimbly responded good question. No the last time I was there this past weekend, I do go for walks up the street, but you're right, I don't see it from my property. I have to walk or drive on the street to see it but I do see it on occasion.

Mr. Raymond Reber stated for the record so that we at least have – I would like to note that there are other structures on that street, in fact right across the street, that are very close to the road, some of them prior to Zoning but the point is this one doesn't stick out like "ooh, this is the only building close to the road." There are others.

Mr. David Douglas stated thank you. Does anybody else want to be heard? Mr. Petek do you want to say anything else?

Mr. Bojan Petek responded I appreciate that the Board is giving this serious consideration. When I was here Monday I thought I was dead in the water.

Mr. Raymond Reber stated we give all cases serious consideration. Not always favorable but serious.

Mr. Charles Heady stated I make a motion to close the public hearing on **case 26-11**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Charles Heady stated I make a motion on **26-11** to reserve decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the matter is closed and reserved.

\* \* \*

Mr. David Douglas stated the only other item that might have been on the agenda had to with the proposed sign Ordinance. Is the Town Board going to...

Mr. Ken Hoch responded yes, the Town Board adjourned their meeting to November.

Mr. David Douglas stated so we'll consider that next month.

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### **ADJOURNMENT**

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

Seconded with all in favor saying "aye."

\* \* \*

**NEXT MEETING DATE:  
WEDNESDAY OCT. 19, 2011**