

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 17th, 2014*. 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

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ADOPTION OF MEETING MINUTES FOR AUGUST 20, 2014

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

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

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CLOSED AND RESERVED:

- A. CASE No. 2013-37** **DOTS Code Enforcement** for an Interpretation that the pre-existing, non-conforming five-family residence has been in continuous use since July 15, 1996, with none of the units vacant for more than one year from that date to the present on property located at **1 Hale Hollow Rd., Croton-On-Hudson.**

Mr. David Douglas stated we anticipate having a decision next month on that. Mr. Hoch, do we need your approval for the extension?

Mr. Ken Hoch responded yes, I would grant an adjournment until next meeting.

B. CASE No. 2014-19 **Bill Allen of SolarCity on behalf of Jean Oitice** for an Area Variance for the total square footage of accessory structures on property located at **269 Lafayette Ave., Cortlandt Manor.**

Mr. James Seirmarco stated we completed everything. We made a site inspection. The Board members are positive about this. I'm not sure whether the D&O is completely corrected so that I'd like to make a motion to postpone this to the October meeting.

Mr. David Douglas stated if the D&O is ready I think ...

Mr. James Seirmarco stated that was corrected? That's fine.

Mr. David Douglas stated maybe then, Mr. Klarl you can summarize for us.

Mr. John Klarl stated Mr. Chairman, we have in front of us a Decision and Order on the application of Bill Allen of SolarCity on behalf of Jean Oitice. This is an application by Bill Allen of SolarCity on behalf of Jean Oitice for an area variance for the total square footage of accessory structures on the property located at 269 Lafayette Avenue, Cortlandt Manor, NY. The Applicant's property is located in the R-40 Single-family district, and the Applicant's property consists of approximately 3.17 acres. The Applicant seeks an area variance for the total square footage of accessory structures from an allowed 1,300 square feet, up to 4,720 square feet to allow for the installation of, what's called, a "ground mount solar array system". The ground mount solar array system is secured to the ground, and not placed on the roof (as the public usually witnesses when observing a residential solar system). Here, the Applicant does not want to use a roof system as the roof system does not generate the power of a ground mount system (thus reducing the pecuniary return from installing a solar system on a residential property). The Town Code's Table of Dimensional Regulations (Note 3) states: "The total floor area of all accessory buildings may not exceed 50% of the floor area of the principal building". This Board has interpreted that the entire area of an in-ground pool is to be included in the accessory square footage calculation. We, therefore, are treating a solar array system in similar fashion, and suggest the Code be amended to expressly cover this practice by this Board. The Table also requires minimum landscape coverage of 50% for non-dwelling use. The proposed 4,720 square foot of accessory structures will cover about 3.5% of the lot. A building permit for the pool was issued in 1974 and the existing garage was legalized in 1999. The house is prior-to-zoning. The Board received testimony concerning the size of the Applicant's property (3.17 acres), and the proposed location of the ground mount solar array system. The Board learned that the ground mount solar array system would be located on the property so that it would not be seen from the street, Lafayette Avenue, as it is located behind the house, behind the pool, and down a slope in the rear of the property. In certain previous unique cases before this Board, this Board has granted substantial variances for the total square footage of accessory structures (such as garages, pools, tennis courts, etc.) on large secluded lots where the accessory buildings/structures would have little, if no impact on the neighboring properties and their owners (e.g. see Jacobs ZBA Case No. 67-02). This Board has always underscored that these applications are unique and, once again, does so in this case. This Board concludes that the property is unique. Once again,

this Decision & Order should not be utilized or adopted by a future applicant in an easy or carefree manner. The Applicant's property is unique because of its size (3.17 acres), its secluded location, its very low level of impact on the adjoining properties and it not being visible from the public street. Clearly, the benefit to the Applicant by the granting of this area variance outweighs the detriment to the community or the neighborhood by granting this area variance. Therefore, for this unique property, this Board hereby GRANTS an area variance for the total square footage of accessory structure from an allowed 1,300 square feet, up to 4,720 square feet to allow for the installation of a ground mount solar array system in the rear yard. This is a Type II Action under SEQRA with no further compliance required.

Mr. David Douglas stated Mr. Klarl, I had one additional suggestion which I think I had made on Monday. On the sense when we talk about treating this array system in a similar fashion and suggesting that the code be amended to expressly cover this practice by the Board, I would suggest we also say and it be amended to directly address the matter of solar power systems generally.

Mr. John Klarl stated yes, I saw that. I think we'll amend my reading of the D&O with that language.

Mr. James Seirmarco stated we've made a site visit, we've discussed numerous things as our attorney just mentioned: the height, the position, the size of the ground, the position, the inability to see this from the street nor even from the backyard of the house. The property does slope down so that it's probably not going to be visible from her backyard so at this time, I would make a motion to accept the D&O on case #2014-19 at 269 Lafayette Avenue. The Area Variance, as mentioned before is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

Inaudible

Mr. David Douglas stated yes, that's all you wanted to know, yes.

Mr. James Seirmarco stated you've got to get your permit next week though. What is it, Tuesday?

Ms. Oitice asked excuse me?

Mr. David Douglas responded you need your Building Permit from Mr. Hoch.

Mr. James Seirmarco stated on Tuesday of next...

Ms. Oitice stated thank you.

C. CASE NO. 2014-16 Hudson National Golf Club for an Interpretation that:

1. To the extent necessary in order to satisfy the “country club” use criteria and the minimum lot area and frontage requirements for a Special Permit for “country club” use of the portion of its property in Cortlandt, under Section 307-4, 307-14 and 307-52 of the Town Code, the Applicant may utilize the adjoining portion of its property in the Village of Croton-on-Hudson, which is currently utilized as an approved country club and golf course, to permit the Applicant to utilize the entire property as one such country club and golf course, or alternatively,
2. The Applicant’s proposed used of the Cortlandt portion of its property as a golf driving range and teaching facility, as part of one combined country club and golf course use of that portion and the adjoining portion in the Village of Croton-on-Hudson, constitutes a “country club” use permitted by Special Permit under Section 307-4, 307-14 and 307-52 of the Town Code, for requirements, including minimum lot area and frontage requirements.

The property is located on **Hollis Lane, Cortlandt Manor.**

Mr. David Douglas stated as discussed at our work session, we anticipate issuing a decision on this one next month.

Mr. John Klarl stated you just closed last month.

Mr. David Douglas stated it was closed already last month. That will be within the 62 days to issue decision, I believe.

Mr. John Klarl stated and I told Mr. Davis that there wouldn’t be a vote tonight so that’s why he’s not here. Are you going to make a motion to adjourn Hudson National to October?

Mr. David Douglas responded it’s already closed and reserved.

Mr. John Klarl stated oh okay, you’re absolutely right. The 62 days ran from that motion. You’re right.

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ADJOURNED PUBLIC HEARINGS:

- A. CASE No. 2014-15 Blair Companies on behalf of Domino’s** for an Area Variance to allow a second freestanding sign with an Area Variance for the size and height of the second freestanding sign on property located at **Pike Plaza, 2050 Cortlandt Blvd. (E. Main St.), Cortlandt Manor.**

Mr. David Douglas stated I understand, Mr. Hoch, that they've withdrawn this application?

Mr. Ken Hoch responded yes, I've received an email from the applicant dated September 5th requesting that we withdraw this application and they're going to submit for a Building Permit for signs that don't need a Variance.

Mr. David Douglas stated that case is withdrawn then.

Mr. Charles Heady stated he's going to cut that sign down right?

Board members responded yes.

B. CASE No. 2014-17 Montauk Student Transport, LLC for an Interpretation challenging the Code Enforcement Officer determination that the parking of buses is not permitted use on property located at **5716 Albany Post Road, Cortlandt Manor.**

Mr. David Douglas asked somebody here on behalf of that? I think somebody's here on behalf of this.

Mr. Ken Hoch stated Mr. Laskos, you're on.

Mr. Laskos stated Cronin is taking care of the project but they couldn't come and he told me that you may be making a decision so I'm here to just to listen. I don't really think I need to say anything.

Mr. David Douglas asked is there anything you wanted to say in addition to that?

Mr. Laskos responded not necessary.

Mr. David Douglas stated I think our intention was to close the public hearing today and we'll consider the matter and have a Decision probably next month.

Mr. Laskos responded okay, but last month you postponed it so you can make a decision this month.

Mr. David Douglas responded no, we postponed it to consider the matter and now what we need to do as a matter of procedure, is we now need to close the public hearing this month and then we'll have a Decision next month.

Mr. Lasko responded that's why I had come in because I don't understand the procedures. Okay, thank you very much.

Mr. Wai Man Chin stated we adjourned it last month.

Mr. John Klarl stated for the public hearing.

Mr. Wai Man Chin stated for the public hearing.

Mr. Laskos stated I'm going to learn English one of these days. Do you have any questions? Do you need anything from me?

Mr. Wai Man Chin responded no.

Mr. David Douglas responded no, unless there's anything you want to say to us.

Mr. Laskos stated no. Thank you. Have a good night.

Mr. Wai Man Chin asked anybody in the audience?

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

Mr. James Seirmarco asked should I make a motion?

Mr. Raymond Reber stated make a motion to close.

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

Mr. Wai Man Chin stated I make a motion on 2014-17 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case #2014-17 is closed and reserved.

Mr. Wai Man Chin stated closed and reserved actually.

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NEW PUBLIC HEARINGS:

- A. CASE No. 2014-21** **Maciej Przbylowski** for an Area Variance for an Accessory Structure, a tree house, in the front yard on property located at **103 Kings Ferry Rd., Montrose.**

Mr. Maciej Przbylowski stated I live in 103 Kings Ferry Road in Montrose. I'm here tonight with my wife Marjena and my daughter Martes and Magda and we wanted to basically answer

some questions and maybe have some remarks regarding the case. Mr. Chairman, members of the Zoning Board of Appeals, let me begin by saying thank you very much for taking the time to consider our application for a Zoning Variance hopefully allowing us to keep Martes and Magda's tree house in its current location. Both my wife and I are first generation immigrants from Poland. We came to America in early 2000 and immediately fell in love with this country. We feel very fortunate to have been given the opportunity to make this our home. In September 2010 we are able to realize the American and also Polish dreams of home ownership when we bought our first house. We chose Montrose for its great community, schools and because it is a place where kids can grow up safely and have the opportunity to experience fun-filled, worry-free childhood. We spend a lot of time with our daughters, both in and out of the house all year round, regardless of the weather. We try to engage them in all kinds of activities to teach them appreciation for nature, physical activity and responsibility, something that we hope will benefit them in their adult lives. In spring and summer we work in the yard. In winter, when most of the people complain about the snow, we actually build igloos and snow castles. It is very rewarding to watch them have fun and help out. It is also amazing to see how fast they learn. Ever since we moved in, we have been working very hard, as a family, to make our house and property look beautiful, not only for ourselves but also to make sure that we bring in something of value to the community. Just to give you an example, I would like to mention our efforts around the front line of our yard. We provided you the pictures of before and after for comparison of 2011 versus 2014. This is the project that we undertook. It was basically cleaning up the ditch. The whole project started after the Hurricane Irene and before Tropical Storm Sandy. We realized that this particular part of Kings Ferry had storm water flow problems. The ditch on our side of the street was heavily obstructed and thus not allowing the rain water to flow freely. We started with cleanup along our property and actually continued all the way down to the Trolley Road and along our neighbor's property and with her help. It is remarkable to see how well the water moves now on and helping many properties along the Kings Ferry Road. This summer while our daughters were spending time with their grandparents in Poland, my wife and I came up with an idea of a tree house for our daughters. We wanted to surprise them and add even more fun and wonderful memories to their childhoods. The place we selected for the tree house is the only spot on our property that has trees suitable for that purpose. We did not realize that there were any restrictions regarding this project. While working on the house, we had many neighbors and passersby stop by and chat. All of them expressed their great appreciation for the project. It was really amazing how many people shared their childhood memories saying that when they were growing up their dad would build a tree house for them and what wonderful time they had playing there. This is exactly what we would want for our daughters. Unfortunately, when I was putting the finishing touches, actually it was a day before Marta and Magda came back from Poland, we learned from Ken that we needed to stop the work and apply for a Variance in order to have a chance to keep the tree house in its current place. We immediately complied with these requirements and filed the paperwork. Actually, we spoke to Ken on Thursday I believe around lunchtime. The following day I was already in the office submitting the documentation to whatever extent it was possible at that time. In your package, you will find, outside from other documents, pictures of the tree house. We have submitted the video of Marta and Magda seeing their surprise for the first time. I don't know if you had a chance to see that video, we hope that you did. The ending part is basically the younger daughter

hugging the tree house which was very touching and heartwarming. You will also find the signatures of immediate neighbors as well as other residents of the Town of Cortlandt in support of our application. We have to state that the support we had gotten is truly overwhelming. We would like to recognize all the community members for the support and express our deepest gratitude. Many of these people are actually, today, in the public. From the pictures, we hope that you can see that we have put every effort into making sure that the tree house is neat and safe, that it is not an eyesore. We tried to make sure that the trees play an integral part of the tree house because this is what a tree house is supposed to be. While working on the house, we removed only one small branch. If there were any branches in the way they would actually be pulled away on ropes to ensure that we keep the trees unharmed and that the trees still play an integral part of the project. Marta and Magda's tree house is just that. It is not a shed. It is not meant for storage. It is a place where our daughters can experience the smell and texture of the wood, watch the birds and experience the nature and also learn responsibility of taking care of the little enchanted wonderland. It is a place where precious childhood memories will be created, memories that will last a lifetime. In closing, we would like to ask you to let us keep the house where it is. You have a very rare opportunity to ensure that those wonderful childhood memories will happen and the best part is that it comes with a 100% guarantee. With that, I will be more than happy to answer any questions that you might have.

Mr. John Mattis stated this is my case. First of all, I want to applaud you for what you've done to that property. Several of us live in that area and go by there almost on a daily basis and you probably never saw the house that was there before they built this one.

Mr. Maciej Przbylowski stated we only remember that as being something in the back.

Mr. John Mattis stated it was an eyesore. The house looks nice. You have really improved the front end area there so you've done a really good job but let's get to the matter at hand. This is a difficult one because it involves children and they're playing and they're fun and what they're learning but there's several things we have to take into consideration. We have to look at the code, the intent of the code and why it's written, how it's written. The code is very specific. They do not want things in front yards. We've turned down pools in the past, we've turned down playground equipment and this creates a real problem for us because: number one, it needs a Building Permit. It was done without a Building Permit. It's more than 10' x 10'. I think it needs a Building permit anyway if it's a front yard, doesn't it, regardless of the size, Ken?

Mr. Ken Hoch responded it wouldn't get approved because it's in the front yard.

Mr. John Mattis stated and it doesn't meet the setback on the side or in the front. It's close to the road and the setback is not sufficient but that brings into consideration another factor and that factor is safety, because there'll be other children playing there too I'm sure and that is awful, awful close to the road. We don't write the code but we have to enforce it. The reason that the town wrote that code is they really don't want things in front yards: first it's a tree house there, then somebody wants a pool, like I said, then they want this, then they want that and all of a sudden things are springing up all over the place. They want front yards to be just that; open

front yards. We have to consider this if it were not there. The code says you have to – it's a self-created hardship. We have to look at this as if it wasn't there and if you came to us with that application, we would not approve that for the reasons that it's too close to the front, it's too close to the side, it's larger than what it should be. It's very unfortunate. I wish there was an alternative or you could put it somewhere else but it would also open a big can of worms that everybody – the comments that we had, I mean you've got a lot of people that like it and I think it looks good myself. I go by there, but none of the comments, I don't think these people understand what the town code is or what it's about, not one comment addresses the code itself. Yes, it would be a very nice thing for your children and that's what tugs at my heart but at the end of the day, we have to put that aside and look at the code and look at the safety factors and look at the intent of the code.

Mr. Maciej Przbylowski asked and there's nothing that we can do in assuring you that whenever our kids play outside, they're always supervised. It's either by a member of the family or a nanny. If there is a play date, the play dates never happen without the parents being in the house and quite frankly, before we did any improvements our daughters actually weren't even psychologically stopped, if you know what I mean, from going close to Kings Ferry Road itself.

Mr. Raymond Reber stated we hear you and definitely this is a tragic story. I understand where you're coming from. I appreciate that you chose our community. As my colleague has said, you've done a wonderful job in fixing up the house and you admitted you don't understand all the rules and regulations and that's understandable but it's not an acceptable defense for a project like this. I'm an engineer. You did an excellent job. It's built extremely well. I've got to give you credit. It's a beautiful job which makes it all the more painful for somebody like myself to say "but it can't stay there." You can tell us that you will monitor the kids but there's also the argument of what's known as an attractive nuisance. You may go away for the weekend. You're not home. Some other kids will come down the street and say "oh, that's curious. Let's go in the play house." They start playing. They start running around. You can't guarantee 24/7 days, all the time, but it's irrelevant, even if you could because, as my colleague said, this town and the Town Board and ourselves and all, have wrestled with this subject many times over because there are situations that have come up. Somebody has a yard like yours, they don't have enough room in the backyard. They say "we really need a pool. It's physical therapy." They even use the argument that somebody in the family has been told for physical therapy they should be swimming so they want to put a pool. Unfortunately, we can't do that. The town has realized that it becomes a problem, same way with a playground. A family says "we don't have room in the backyard." They wanted to put a play set in the front yard and that raised all the issues about kids playing – they run around and next thing you know somebody runs out into the street or they're playing in the front and somebody has a ball, they start kicking it around. You just can't manage that stuff. The town wants front yards to be just passive and no activity, no obstructions, no buildings of any type and we don't really have much leeway on that and certainly don't have any leeway when it comes to something like this.

Mr. Maciej Przbylowski stated but in terms of the safety just to consider that, let's say that we installed the gate that we locked with a key to make sure that no one enters the...

Mr. James Seirmarco stated see, let me make a comment of that, zoning goes with the land, not with the land's owner, because it would be chaos because you're the greatest people. You are very responsible and you sell your house a year from now and the new people who move in are not responsible and they're not – so zoning goes with the property, it doesn't go with the property owner. That's the only way that history has shown, that's the only methodology that works. So, we can only consider the zoning for the piece of property not for the property owner. I know that sounds cruel but that's the way it goes. That is the law.

Mr. Wai Man Chin stated there's another factor also. If we had granted something like this, it sets a precedent, that means anybody can come in here and do the same thing and that – I'm not just talking about in this town, it sets a precedent throughout the country.

Mr. Maciej Przybowski stated the last thing that I want to do is basically pat myself on the back and argue with you but I think that quite frankly you have a very small chance of another person come into a project like that.

Mr. Wai Man Chin stated we all agree that you did a beautiful job. It's a beautiful tree house but it's just in the wrong location.

Mr. James Seirmarco stated we had a similar case about 2 or 3 years ago, someone had purchased a pre-fabbed play set. They put it in the front yard. The only reason we found out about it is neighbors complained because it was such a nice set they would get home from school and there would be 20 or 30 kids playing on it like it was the local park. It was right on the street. It was in the front yard and unfortunately when we got a chance to evaluate it we made them take it down. You won't be the first one this has happened to. These people were very upset. Everybody was upset: the neighbors. Some of the neighbors liked it and played on it or whatever but we don't have any leeway. There's no way for us to approve it. There's just – we don't have that power to approve it.

Mr. Wai Man Chin stated you have to go in front of the Town Board and have them change the code. That's the only thing.

Mr. Charles Heady stated they'll never do it.

Mr. Raymond Reber stated for us it's hard to differentiate a specific item. It's an accessory structure and we don't allow any type of structure in the front yards. So, if we granted this because it's nice for your kids and it has benefits for the family and all, somebody else could come and ask for the solar cells that we were talking about earlier. They don't have a backyard. They have a nice front yard. They want to put the solar array in the front yard, they say "hey, we're saving energy, green, everybody in this country wants energy." Well, how do we differentiate? It has benefits. It fits in the front yard. It's not an attractive nuisance. It's not a safety issue with it and next thing you know if we have to approve that and then up and down the street all of a sudden you've got solar panels laying on everybody's front yard. I mean, this is

where we get into trouble. Once we open up the door it's hard for us to constrain it again and the code is pretty comprehensive in that: "nothing in the front yard."

Mr. David Douglas stated I'm not sure I'm going to convince the other members of the Board on this but I see it slightly differently. The way I come at this is there are five factors that we're supposed to take into consideration in considering Variances and this is something that Ms. Hunte stresses a lot and she's right. I'm looking at my cheat sheet here even after a decade of doing this, I still need to have the cheat sheet in front of me. It seems to me that some of these factors go in your favor and some don't. The first one is whether there's an undesirable change in the character of the neighborhood. I don't think that there's an undesirable change in the character of the neighborhood from the tree house so I think that works in your favor. The second is whether you can do it some method other than an Area Variance and in this circumstance, given your property, it seems to me that you can't just because of where the trees are. You can't do it in the backyard. The third is whether the Variance is substantial. It is substantial because there's not, as a general rule, permitted. That cuts against you. Will it have an adverse affect or impact on physical and environmental conditions in the neighborhood and I don't think it would at all. The fifth is whether the difficult was self-created and it is. You built this thing so – and there's no one factor that's determinative, we're supposed to weigh those five factors and in this particular case, I personally think that it comes out in your favor because I think a tree house is different than pools. I think it's a different type of situation about having a pool in the front yard that's being used as opposed to a tree house. I think this is different than the solar panels. There's all sorts of different examples and I agree with the principles of what my colleagues have said. I just think in this circumstance that what is a structure that is not going to harm the town, it benefits. The fact that kids are playing the front yard, that raises some safety issues but not because of the tree house. They're going to play in the front yard whether the tree house is there or not because that's where you're space is. There's lots of properties where kids play in the front yard because that's the layout of their house. Ideally, there'd be more play space in their backyards but that depends on every property is different that way. So, I don't see that what you're doing is creating a safety problem. I don't know that I'm going to convince anybody.

Mr. Maciej Przbylowski stated maybe we can convince the members by saying that actually when we were building it wasn't intended to be a permanent structure. Our daughters are 7 and 8. I would love to believe that they would want to be playing in the tree house when they are 17 but let's be realistic, that's not going to happen. So, quite frankly the way it was put together we are able to, at some point down the road, remove it from its current location. Make sure that when it's no longer being used by our daughters and I know that you're going to say okay everybody can come here and promise different things and then we would have it removed at that point to make sure that there are no kids from the neighborhood that can come over and harm themselves. Quite frankly, when it comes to the safety, if there's a playground put behind the house, what stops the child from trespassing, going behind the house, hanging off the bar, falling on the ground and injuring themselves? I thank you very much for your support Mr. Chairman.

Ms. Adrian Hunte stated I was going to say that, yes, I usually do refer to these, they are advisory guidelines and they are not something that we are required to follow, however, they do help us when we have close issues and we try to look at these things. My problem here is that we're talking about what discretion does this Board have when we have a code section that says there are not supposed to be items in the front yard? The town is looking for a certain amount of uniformity and consistency. As my colleagues have said, that allowing this also sets a precedent in terms of others coming forward to do the same and there is somewhat of a safety issue, notwithstanding what you have said, there is the issue of – even if there is a fence, children can climb fences. That is the attractive nuisance. It's very close to the road. You have setback issues in addition to the code allowing the structure to be there. And, it is self-created because you've already, unfortunately, put it there without the proper permits but they would not have been granted if you hadn't put it there in the first place and come to the Board requesting the Building Permit. Even though there may not be an undesirable change in the neighborhood and it won't be any detriment to properties in that sense there is the overriding concern of the town in allowing this type of a structure in the front yard. Unfortunately that puts us in – and it is substantial because it's not allowed. In other cases we have certain discretion because of perhaps if this were in the back of the house or somewhere else where it would not be seen from the road, we might have more of an opportunity to say perhaps: yes.

Mr. Maciej Przbylowski stated to counter that a little bit, I would have to say that if we put the tree house within any other spot on our property that is actually behind the front line of the house, which was explained to me by Ken as the only option, quite frankly it is way more visible than it is right now. If you take a look at the pictures, the side street view going both down to the library and from the library from one side you cannot see the house at all, from the other side, of course it is visible, we're not going to change that. We wanted to emphasize the fact that we did retain tree cover just to keep the character, keep it hidden. Some of the trees are evergreens. They will remain foliage if you can call it that. English is my second language

Ms. Adrian Hunte stated ordinarily, with this type of situation the alternative for you is to go to the Town Board and ask the code be change. Our hands are pretty much tied concerning this.

Mr. Raymond Reber stated my bigger concern is is the closeness to the road being that far forward, more so than the visibility. The visibility will change once all the leaves fall off and winter comes, it becomes visible again. That's an on again off again issue.

Mr. Maciej Przbylowski stated quite frankly, with all of the work that we had done in the front, it's probably much less desirable for any passersby to actually enter our property at this point than what it was previously when it was an open area. We actually had cases where the kids were cutting through our property to go to high school when neighbors were cutting through our property because they felt that: well, first of all, it looked abandoned. No one ever actually paid any attention to that lot, which we changed and it was very easy to actually step across. Right now, if you want to enter our property because of the cleanup work that we did in regards to the ditch cleaning effort, let me call it this, you actually have to be pretty well exercised to make it into our property and then you enter into the pine trees which are probably not a very desirable

thing to encounter by either kids or grownups. So, I'm a little bit torn here to be quite honest because obviously I am going to side with the arguments that I had from Mr. Chairman and I see that also there are two different points of view within the members of the Board itself. There's hardly anything more that I can say. I can only...

Mr. Raymond Reber stated as my colleague said, it's weighing the five factors and how you weigh them and I go along with the argument of the fact that we don't really have much leeway on the code and the code is so explicit in this area, it's different than other areas like our sign Ordinance says we have the freedom to go to 100% beyond the requirements if we think it makes sense but there's nothing in the code that gives us that kind of leeway. That weighs very heavily on us in terms of weighing the different five factors.

Mr. Maciej Przybylowski stated in terms of the setting of the precedence, this is one thing that you had mentioned that you are concerned with, if this structure is qualified as a tree house. It is not a shed. What is the risk that you will actually be facing a large number of occurrences?

Mr. Raymond Reber responded we can't speculate and I can't see the difference between you put a tree house up and somebody else coming now saying "I want to put a shed." What's the difference? One is for the kids and one is for the guy's lawnmower or for whatever he wants to put in it. It's a structure. It sits there.

Mr. Maciej Przybylowski stated I'm going to bring in the emotion in a moment. It's about the memories. Lawnmowers don't have memories.

Mr. Raymond Reber stated our code doesn't have any way to factor that in as much as we appreciate what you're saying.

Mr. John Mattis stated this is a case that really tugs at your heart because we've had a few of these in the past where your heart tells you, you want to do one thing but we have to go back to our responsibility as Zoning Board members and what the code is and what we have to do as Board members. It doesn't make this easy. Let me tell you. It's very, very difficult to say no.

Mr. Maciej Przybylowski stated go with the heart. That's what parents do. I think I'm out of my arguments. I hope that I presented the case. I hope that I was able to convince you that it would be a good idea to approve that Variance and I don't know what the process calls for. This is the first time that we encountered that. We still will be hoping for a positive outcome and I do appreciate your time and your consideration.

Mr. John Mattis stated thank you.

Mr. James Seirmarco asked who printed this? Fantastic penmanship.

Mr. John Mattis asked is there anybody in the audience – I know some of you are here that would like to speak. Would any of you like to say anything regarding the case? Can you identify yourself?

Mr. Chris Niebrzydowski stated I'm not immediate neighbor but I live in Buchanan so a couple of blocks down the road. From what I'm hearing you guys are impressed with the quality of the property and what happened with it since 2 or 3 years ago – and the fact that Maciej put so much work into it and the fact that the code, Mr. engineer I appreciate your words that you can't really overstep or do anything with it. It's a little more to it than just the code at this point, I think. Yes, there was a setback issue. Yes, there is a proximity to the street but still, the fact that it has improved the sight of the property itself and the fact that you guys, as community leaders, can recognize the fact that, yes people here trying to help themselves and make it a little better for kids and adults. I wish you just reconsider this correctly. That would be great. I understand code, yes and I hate it because it's not 100% right, you guys know that.

Mr. David Douglas stated it comes to the code itself, it's the Town Board that has the power to – they're the ones who adopt the code and can change the code.

Mr. Chris Niebrzydowski stated we're not looking to change the code, no. We're looking for a Variance to existing laws and yes, you guys are actually capable of granting it or not. Out of the five issues that we talked about, I think we're on the top, aren't we? We're better off with it than without. We're not making an eyesore. Thank you guys.

Mr. John Mattis stated thank you.

Mr. James Seirmarco stated thank you.

Mr. David Douglas stated well, you've convinced me, but...

Mr. John Mattis asked would you like to speak also?

Ms. Elyza Niebrzydowski stated I've had the chance of babysitting those kids and with or without the tree house and the house is a far too strong word for it, they will continue playing in the front yard. There is no other place in that property where they can play so the issue of safety was and will be there forever. House does not change anything there. The other thing you mentioned was that the goal of the code is to have majority of properties compliant and free front yards. Well this property is the front yard and nothing else, so majority will have free yards but this house has no backyard. So, majority is one thing, a few or one exception that's temporary in nature, I think would be very nice and allowed. It's not permanent. It will be gone in a couple of years as they grow up. There is no access. Safety is not changed. That's some of the things that I would consider if I had a chance of being on your side and I would like you to think about that.

Mr. John Mattis stated thank you.

Mr. James Seirmarco stated thank you.

Mr. Wai Man Chin stated you made a good point.

Mr. John Mattis asked would anybody else like to speak? Yes, come forward please.

Ms. Morgan stated I grew up here. I went to Hen Hud. Maciej and Majan when they came to the states actually pretty much raised me. They're very close to me. I guess what is a little bit confusing to me is that you have the strictness of the code but we are still able to grant Variances to projects you feel – what contributes to a project, like for example the solar panels, you know, it's still in the front yard. It could still provide a nuisance because it's still a structure in the front yard and just because it's removed from the road, I just don't really know how that necessarily makes a difference. It's a different project.

Mr. Raymond Reber responded it doesn't. We didn't say we would approve it. That was the whole point. We would not approve it.

Ms. Morgan it just seems like you if you granted her the ability to keep building...

Mr. James Seirmarco stated let me just correct you for a second, the solar panels are not in the front yard. They're not in her backyard where her pool is, they're behind the pool. It's a piece of property, 3 acres plus and it's not anywhere near the front yard or the backyard. It's way in the backyard and it's sloped way down so that even though they're going to be 9 foot tall, no one in that piece of property or their neighbors are going to be able to see it. I don't want to give you the impression that we would approve the solar panels in the front yard because we wouldn't.

Mr. John Klarl stated we haven't approved generators in the front yard.

Mr. James Seirmarco stated I didn't want to bring that up but...

Ms. Morgan asked why wouldn't you want to bring that up? I'm just saying that I think you have to – the point of the Variance is to kind of consider the uniqueness of this property. As we've mentioned before, there is only a front yard. That area, because it's so close to the school, no matter what kids will walk by, will walk through that yard. It's a small tree house. I don't really see the whole school coming after school, coming to play in this tree house.

Mr. James Seirmarco stated again, it's the zoning goes with the property not with the property owner. I'm sure that they are responsible enough to make sure that they're going to police who goes to that, into that tree house or whatever. It's not the issue of the property owner. It's the zoning goes with the property so assuming that they move one year from now and somebody goes in there and doesn't care about it, that's why we don't rely on the property owner to enforce the zoning on the property. The zoning goes with the property, not the property owner.

Mr. Raymond Reber stated also the issue of the layout on the property, the fact that the house is set back. That's not totally unusual. For example, across the street in my neighborhood where all the houses on the street are that way because of the terrain and putting in septic, they had to put them in the front yard. They don't have backyards. None of them were able to put in pools or any structures or anything on their property because it would have to be in the front yard. It happens quite often. It's a thing that, as far as when you buy a piece of property, it's just sometimes properties are too small or they're set up in such a way that there's some things you can't do. We've had people come to us and they want to put in a two-car garage. Well, they don't have enough space. They would have to put it right up to the property line which we're not supposed to allow. We understand and we sympathize with applicants but unfortunately a lot of times the property dictates what a person can have and can't have and unfortunately, there's not a sufficient backyard here to put a tree house in the back. We understand that. That's why I say it's a painful choice for us. We're very sympathetic but, I personally feel my hands are tied on this one.

Mr. James Seirmarco stated we have some leeway as Adrian mentioned, say the setback on a piece of property is 30 feet, I mean for a Variance. Very seldom do we give more than a couple of feet out of that 30 feet. We wouldn't give 29 feet to build it. Yes, we have some leeway but not a great deal. In this case, we have very little leeway at all. We can't say "well, you can just move it back three feet." We can't. We don't have that leeway. We have certain leeway but not very much in this particular case.

Mr. Charles Heady stated I think Mr. Reber or John there explained it very well, not that we don't want to give it to you but our hands our hands are tied. We have to go by the code like they explained to you. We feel sorry for the children too but we have to go by the code, but if the applicant had gone to the town first to see Ken and to find out about building where to put it, he would have told them then and there that it can't be done. So, it's really a self-created hardship for himself that he made it. That's what it all boils down to. The Board would like to have them have it but it's impossible the way the code is. Like somebody said before, the only way you could go to is go to the Town Board but I don't know if they would give it to you or not, change the code.

Ms. Morgan stated I hope that – it seems that the response is relatively negative but I hope that everybody considers everything that's been said today and consider how wonderful it would be for these kids to have a tree house.

Mr. James Seirmarco stated there's no question about that.

Mr. John Mattis stated thank you.

Ms. Kerry Friedman stated Chairman, members of the Board. I am Morgan's mother and I have known Marjana since she came to this country in 1999. I feel very bad about this because Maciej told me when he started building the tree house and I feel that I should have said to him "did you check with the town just to see what the rules might be about such a structure?" But,

thinking of it as something perched in a tree I just didn't make that connection. One of the points that's been raised tonight is that this is a temporary structure, although it was built like the Empire State Building, it's a temporary structure for a period of time during the children's lives when it's an appropriate structure for them to have access to. Is it possible to grant a temporary Variance for a short period of years so that this won't be something that would permanently be in the front of the yard but perhaps for only a period of 7 years perhaps, with the understanding, running with the land, that it cannot be sold without the removal of the tree house prior to sale so as to allay any concerns that anyone might have about a subsequent purchase or deciding...

Mr. David Douglas stated I'm looking at Mr. Klarl. I don't know...

Mr. John Klarl stated this Board has the power in a given case to grant a Variance with a time restriction on it. It depends on whether they feel that this is an appropriate case, but we can give Variances that can stay up for two years, that type of thing.

Ms. Kerry Friedman asked so it is a possibility?

Mr. John Klarl responded yes, but the question is whether the facts as applied to the law allow the relief you're requesting but you can have a Variance with a time limitation, yes.

Ms. Kerry Friedman stated thank you Mr. Klarl. I would hope that this would be something that the members of the Board would consider as a possible solution for this situation, because I don't think that there can be any doubt in the mind of anyone who has driven past this property and seen the change in it that the Przbylowski's are tremendous contributors to the neighborhood and they will continue to be so. Thank you very much.

Mr. John Mattis stated thank you.

Mr. Wai Man Chin asked does any Board member have any objection of adjourning it for one month?

Mr. John Mattis stated I was going to suggest that rather than to close the public hearing.

Mr. Raymond Reber stated give us a chance to evaluate all the potential options that might be available.

Mr. John Mattis asked did you want to speak also? Yes, please do.

Ms. Shar Lacey stated and my husband and I passed Adolfus Lacey own the house to the right of the facility and being that I appear to be the only neighbor right close to them that are here tonight, I just wanted to stand up and to support them in all of their efforts. I know-- I'm not trying to beat a dead horse. It's been beaten enough tonight but my husband and I are very pleased to have them as neighbors. We've seen the structure that was there prior to they're moving in and what they've done is a total 180 degrees. I know you recognize that. I just really

want to stand up and support all of their efforts and if there is any way that you can possibly even put a temporary Variance in place, we ask that you would do so. Thank you.

Mr. Wai Man Chin stated thank you.

Mr. John Mattis stated and I guess there's one person that we haven't heard from. Did you want to say anything? Any other comments from the Board? Based on the fact that there could be some options, I'm going to suggest that rather than close the public hearing and vote on this, that we adjourn until next month to weigh these options.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that's what we'll do. We'll adjourn it.

Mr. John Mattis stated we'll have more time to evaluate this and discuss it.

Mr. David Douglas stated what will happen is that we will discuss it among ourselves. We have a work session before the meeting, Monday before the meeting and then we'll continue to mull it over and consider options and we'll see what happens next month.

Mr. Wai Man Chin asked how old are your girls?

Inaudible.

Mr. Wai Man Chin stated 7. My grandsons would love that.

Mr. John Mattis stated I wish everybody in all the neighborhoods in Cortlandt did half as much to their properties as you have done. Really. You did a wonderful job.

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ADJOURNMENT

Mr. John Mattis stated is there any other business? I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated meeting's adjourned.

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**NEXT MEETING DATE:
WEDNESDAY, OCT. 15, 2014**