

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 27th, 2017*. 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 16, 2017

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

Mr. David Douglas stated the August minutes are adopted.

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ADJOURNED PUBLIC HEARING TO NOV.:

- A. **CASE NO. 2016-24 Hudson Ridge Wellness Center, Inc. and Hudson Education and Wellness Center** for an Area Variance from the requirement that a hospital in a residential district must have frontage on State Road for this property located at **2016 Quaker Ridge Road, Croton-on-Hudson, NY.**

Mr. David Douglas stated that is on for two months from now.

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CLOSED AND RESERVED:

- A. **CASE NO. 2017-20** **Roseann Schuyler** for an Interpretation that a structure built in 1974 as a principal dwelling and converted to an accessory structure in 2000, meets the requirement of Town Code Section 307-45 (B)(4) which allows an accessory apartment in the R80 zone, where the accessory building existed prior to April 21, 1979 on property located at **48 Pond Meadow Rd., Croton-on-Hudson.**

Mr. Wai Man Chin stated Mr. Chairman I'm going to recuse myself.

Ms. Adrian Hunte stated I believe we have a proposed D&O.

Mr. David Douglas stated we have a proposed Decision and Order on that. I'll ask Mr. Klarl if he could read and then we'll vote to see whether we adopt that Decision and Order or not.

Mr. John Klarl stated thank you Mr. Chairman. I have in front of me the proposed Decision and Order that the board's considering tonight. The proposed D&O states as follows:

This is an application by Roseann Schuyler for an Interpretation that a structure (dome) built in 1974 as a principal dwelling, and later converted to an accessory structure in 2000, meets the requirements of Town Code Section 307-45 (B)(4) which allows an accessory apartment in the R-80 single-family residential district, where the accessory building existed prior to April 21, 1979 on the property located at 48 Pond Meadow Road, Croton, NY.

Ms. Roseann Schuyler represents the property owners, Andrew Young and Susan Todd. The property consists of 7.054 acres and is located in the R-80 Zoning District.

By way of background and to understand this Interpretation application, there is a substantial history to review (concerning the development of the property, and prior applications for Building Permits, Certificates of Occupancy, etc.):

1. The current owners filed the same application in ZBA Case #2015-09, which was subsequently withdrawn.
2. Building Permit No. 2164 was granted 2/27/74 to construct a dome-shaped single family dwelling on this property. A Certificate of Occupancy was granted on 10/6/76.
3. The owners purchased the home in 1996. On 7/13/1999, they were issued Building Permit No. 23005 to construct a new home behind the existing home, and to convert the existing home to an accessory structure. At that time, no variance was required for creating an accessory structure in the front yard, nor for an accessory structure exceeding 14 feet in height. Certificate of Occupancy No. 15330 was granted on 10/23/2000.
4. On 1/13/03, the Applicants were issued Building Permit No. 25117 to finish the basement in their home and to remove all cooking equipment in all structures. There was an error in the written description of the work on the permit, as the application was to remove all cooking equipment in all accessory structures. C/O No. 20070257 was issued 9/18/2007 closing this Building Permit.

The key Town Code section here is Section 307-45, “Accessory Apartments.” Specifically, Sub-Section 307-45(B)(4) provides as follows:

“No special permit for an accessory apartment in an accessory building may be issued, except in R-80 and R-40 Districts where such accessory building existed prior to April 21, 1979. (April 21, 1979, is the date of Town-wide aerial photography.)”

The documentation above shows the accessory building clearly existed prior to April 21, 1979. The central question is: Does this accessory building, which was a prior principal dwelling, meet the requirements of Town Section 307-45 (B)(4) which allow an accessory apartment in the R-80 Zoning District?

If the interpretation is that the Applicants meet the requirements of Section 307-45(B)(4), the Applicant then must file with the Planning Board for a Special Permit for an accessory apartment (here, an accessory apartment in an accessory building).

This Board hereby interprets as follows:

An interpretation that a structure (dome) built in 1974 as a principal dwelling and later converted to an accessory structure in 2000, meets the requirements of Town Code Section 307-45(B)(4) which allows an accessory apartment in the R-80 Zone, where the accessory building existed prior to April 21, 1979, allowing the applicant to file with the Planning Board for an Accessory Apartment Special Permit.

SEQR: TYPE II – No further compliance required as this application consists of the interpretation of an existing Code or Rule.

That’s the language of the D&O.

Ms. Adrian Hunte stated on case #2017-20, applicant Roseann Schuyler on behalf of Andrew Young and Susan Todd for the property located at 48 Pond Meadow Road, Croton-on-Hudson, NY, for an Interpretation that a structure dome built in 1974 is a principal dwelling and later converted to an accessory structure in 2000 meets the requirements of Town Code section 307-45(B)(4) which allows an accessory apartment in the R80 zone where the accessory building existed prior to April 21, 1979 allowing the applicant to file for the Planning Board for an accessory apartment Special Permit. I make a motion that we adopt the Draft Decision and Order as drafted.

Mr. David Douglas asked all in favor?

Members stated aye.

Mr. David Douglas asked opposed?

Members stated opposed.

Mr. David Douglas asked could you poll the board?

Mr. Ken Hoch stated Mr. Reber; opposed, Mr. Mattis; opposed, Ms. Hunte: grant, Mr. Seirmarco; opposed, Chairman Douglas; I vote in favor, Mr. Heady; opposed. Motion fails 4 to 2.

Mr. David Douglas stated the proposed Decision and Order that Mr. Klarl read has failed to pass the board so the effect of that is therefore that the Interpretation that the applicant sought is not allowed. The accessory apartment in that zone on that property is not allowed under the decision of the board.

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ADJOURNED PUBLIC HEARINGS:

- A. **CASE NO. 2017-21 Post Road Holding Corp.** for an Area Variance for the size of a freestanding sign on property located at **2083 Albany Post Rd., Croton-on-Hudson.**

Mr. David Douglas asked is the applicant here.

Mr. Ken Hoch stated I spoke to him this afternoon. He assured me he would be here. Maybe we can put him at the end of the agenda.

Mr. David Douglas stated he didn't show up at the last meeting and then you sent him a letter saying it would be deemed abandoned if he didn't come. So we'll put him at the end but consistent with the letter, if he doesn't come by the end then I think it will be deemed abandoned.

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Mr. David Douglas stated I guess we have to go back to case 2017-21 Post Road Holding.

Mr. John Mattis stated case 2017-21, the Post Road Holdings. They did not appear last month. They did not ask for an adjournment. We adjourned it and sent them a letter that said if they did not appear this month that we would consider it abandoned. Many municipalities don't give them that opportunity. They just abandon it immediately if they don't show up, so we're being fairly generous there. The applicant told Mr. Hoch that he would be here tonight. It's nearly eight o'clock, almost an hour late and he's not here so I move that we abandon the case. Is that the motion that we would make? Deem the case abandoned.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case is deemed abandoned.

Mr. John Klarl stated deemed abandoned as of tonight.

Mr. David Douglas stated Mr. Hoch, if you could – they'll probably contact you.

Mr. Ken Hoch stated I'll write them another letter.

Mr. Raymond Reber stated they can reapply and start over again.

B. CASE NO. 2017-22 Ralph Mastromonaco for an Interpretation of Permitted Uses in the M-1 Zone to address the ongoing Construction and Demolition use at Dakota Supply, on property owned by Briga Enterprises, Inc, **2099 Albany Post Rd., Cortlandt Manor.**

Mr. Ralph Mastromonaco stated good evening. At the work session, you received a letter from my attorney and you received a letter from the facilities attorney. You said that you needed time to digest those letters because they were not sent in two weeks or 10 days before the meeting. As a result, I'm here. I believe that you still need that time. My attorney will not be here tonight. I'm here. If you have any questions of me, I'd be happy to answer them.

Mr. David Douglas stated Mr. Reber, this is your case.

Mr. Raymond Reber stated we had this case started last month. The defendant had an attorney here and you'd indicated you didn't have one so you wanted to have us wait a month so that we could hear your side of the story. So I think what you have to do now is summarize for the record and for the audience the key points of why you think you have a case and why we should be hearing this case, what the issues are for a Zoning Board to hear. So if you could summarize that for the record we would appreciate that.

Mr. Ralph Mastromonaco stated my residence is at 2083 Albany Post Road, coincidentally the same as your previous applicant. I am within a thousand feet of the Dakota Supply Corporation which operates a contractor's yard, a construction C&D facility, and a concrete manufacturing plant. I believe that, based on the noise and the truck traffic, the dust from the site that I'm aggrieved and therefore I made a request of Mr. Hoch and Mr. Preziosi to determine whether or not that facility was legally operating, whether it was permitted in the zone, were any of those aspects of that site permitted in that zone. I received an Interpretation of the zoning code. The first one I received said that the C&D facility was not a permitted use. The second opinion I received said that everything on the site was legal. It's been there for a long time. It's all legal. I took that opinion and I filed an appeal of that Interpretation to your board and that's why I'm here.

Mr. Raymond Reber stated the specific concerns that you raise of course are not a Zoning Board issue; sound, dust, those things are...

Mr. Ralph Mastromonaco stated that's the aggrieved part.

Mr. Raymond Reber stated but those issues are a matter of the enforcement of Code Enforcement. Your premise is though that those would not exist if they weren't operating and you don't believe they have right to operate. That's why you're before us. Now, my understanding was that what the town was claiming was that if you look at when that operation received its permits, and as long as it complied with the regulations of the permits it received, it was legitimate. It may not conform to the latest code but codes normally cannot put a business out of business unless there's a severe problem and violation. So I think that probably is where the issue is with the town. So the question comes to us then, I guess first question is: is this something that we would normally entertain from an individual like yourself in terms of having standing. I think that's one of the questions that we probably have to address and if we decide that we do have standing then to review what the town claims relative to the codes and see whether what they're assuming or stating to you is correct or what you're stating is correct. But I think the first issue is there's still a question of standing and I defer to the Chairman as to how we may want to address that if at all.

Mr. David Douglas stated I think what we had discussed is the idea that we would address that issue first based on the submissions last month and now, this month, and then we would render a decision on that issue and if we find in favor of your position on that then we'll go ahead and deal with the merits. And if we don't, then we won't.

Mr. Ralph Mastromonaco stated very difficult to separate the merits from the standing. It's a little difficult.

Mr. David Douglas stated there's somewhat of an overlap but I think that what we'll do is, as we discussed at the work session, is that since we just got these other materials, next month we'll consider what was previously given to us and stated on at last month's hearing, and what's stated today and what's been submitted the other day and then we'll have a decision on that next month.

Mr. Ralph Mastromonaco stated if there needs to be a debate about this issue I can have the lawyer come here, after you've digested the materials that we've already submitted which I unfortunately submitted them Monday, I guess.

Mr. David Douglas stated that's what we talked about last month. The idea was that he was going to come this month.

Mr. Ralph Mastromonaco stated he would have except you told me that we would have been in that same situation, you would have said, well we only got your materials Monday and we needed to have them two weeks before the meeting.

Mr. John Mattis stated that's been common practice on this board. We get our package about a week in advance so we can review everything. If we get something the night of the work session, we can't do our proper due diligence.

Mr. Ralph Mastromonaco stated I know John, that's exactly what I'm saying.

Mr. John Mattis stated we will listen to the arguments but we won't make any decision until the next month.

Mr. Ralph Mastromonaco stated but that's exactly what I'm saying John that I would like to give the board this next month to look at what was submitted and what I can do here today is I can answer any questions you have because there was a question about whether I actually lived there so I brought my junk mail if you want to take a look at that and my taxes, whatever you want to look at.

Mr. David Douglas stated there may be some members of the board that do want to see that but let me just answer the first question, the first issue. If you, again I think it's similar to what I said last month, it's up to you if you want your lawyer to have an opportunity to expand on or explain what's been submitted and what we just got on Monday, next month, personally that's fine with me, then we'll just adjourn it and then next month he'll have that opportunity, but I'd ask that if we do give that courtesy that the lawyer does come next month.

Mr. Ralph Mastromonaco stated yes, but now you have the materials well in advance of the next month's meeting. If our attorneys need to go over it, plus the opposition's lawyers need to go over it, good. We have that time. I don't know the deadline to resubmit for the next meeting is tomorrow? You have the materials for next month.

Mr. David Douglas stated okay, so then what we can do is -- it may be that other people here want to speak but at the end of this meeting, we'll adjourn it and it'll be on for next month and we'll hear whatever your lawyer may want to add then which would mean that we would render a decision on that standing, are you aggrieved issue, in November.

Mr. Ralph Mastromonaco stated and I apologize. I submitted the materials as soon as I got them from my lawyer. I wasn't trying to jump ahead of any procedure or anything like that.

Mr. David Douglas that no, it's always the lawyer's fault. I have no problem with that.

Mr. Ralph Mastromonaco stated and I am here if there's any questions you have on the issue, I'm here to answer that and if anybody else wants to get up and speak maybe I can come up later and speak again.

Mr. Raymond Reber stated since we're going to be talking about whether we have jurisdiction and whether it should be pursued, that's strictly a legal issue of knowing how the law's

interpreted. So in terms of the normal issues that we would address as a Zoning Board for a variance where audience participation is significant, this issue, I mean the audience can speak but if they're going to talk about noise and things like that tonight, that would not really be appropriate. If they want to speak on a legal issue then they speak on that. But that's what we're going to focus on for the next month and I guess for two months if we're going to wait another month for your attorney to follow up.

Mr. David Douglas stated thank you Mr. Reber. I didn't make that clear. Thank you.

Mr. Raymond Reber stated so I guess the question is: is there anyone in the audience that wants to provide their input on the legal issue of whether the applicant has standing before the Zoning Board? If not, I guess we're going to adjourn. Please go to the microphone.

Mr. Alan Singer stated Mr. Chairman, members of the board, my name is Alan Singer of the firm of Welby, Brady & Greenblatt and I represent Dakota Supply. I have forwarded a letter and I have another letter that I will send out tomorrow in response to Smith, Buss and Jacobs' letter but I just wanted to say I'm a little bit confused as to where we are with this case. And my confusion is because this is not the normal kind of case that this board hears. This is not a situation where you have an application for a variance or for a special permit or you're taking an appeal from denial of a building permit or anything of the usual nature that you have here. Based upon the application, I'm not sure what the application is. It claims to be a request for an Interpretation, and I think we've been through this. This board has no jurisdiction to issue such interpretations, is an appellate body only. And somehow, the applicant's attorney has now said: "well, it's not really an application for an opinion. It's an appeal from the decision of the enforcement officer." But that's not what the application says nor does it comply with the Town of Cortlandt code as to what has to be in the application, namely exactly what was the appeal was from and the basis for the appeal. We don't know what the basis for this appeal is. We do know that somewhere in the application, the applicant has said that the enforcement officer, the director had made a determination that my client's business is allowed within the zone and that's not true. He never said that. We never claimed that it's allowed in the current zone nor did he. What he said was, and the evidence is overwhelming and uncontradictable that we are in fact grandfathered. The 2010 Ordinance specifically says that any pre-existing business can remain and is exempt from the 2010 Ordinance. We have nothing in this application which says on what basis was that determination that we're grandfathered, incorrect? The application itself...

Mr. David Douglas stated that's the substance part.

Mr. Alan Singer stated no, no, I beg to differ Mr. Chairman that it's not the substance it's that the application itself is deficient, that without such an allegation of exactly what it is that's wrong with that decision, and we can't think of what anything that it is, then the application itself is deficient and should not be listened to because it does not comply with your code as to what has to be in the application to begin with. And I would submit that is a jurisdictional issue not a substantive issue.

Mr. David Douglas stated right, that's the issue.

Mr. Alan Singer stated thank you very much.

Mr. Raymond Reber asked anyone else have anything?

Mr. Ralph Mastromonaco stated I submitted on May 24th of this year, I submitted the specific Interpretation that I am appealing. The wording is contained in my application. It's underlined. It's from Michael Preziosi and there are two letters from Michael Preziosi that I am appealing his Interpretation. It's very specific that I'm not asking for an Interpretation. I'm asking to appeal Mr. Preziosi's Interpretation. Secondly, there's a lot of flack about the 2010 change in zoning. That only referred to contractor's yard which is one third of the element that's going on at this site, the contractor's yard. And that law that said if you were legally existing prior to 2010 then your contractor's yard is legally existing after 2010. It doesn't address C&D operations, nor does it address concrete manufacturing. That gets into the merits a bit but you let Mr. Singer mention that so I'm just rebutting.

Mr. Raymond Reber stated understood. I think that's part and parcel of some of the issues we have to resolve as to whether this is an appropriate application, whether we should hear it. I think with that, I don't believe there's anyone else interested in speaking so Mr. Chairman the understanding is we'll simply adjourn, hold it over for our meeting.

Mr. Ralph Mastromonaco stated one question before you vote, if there's any material that I would like to submit for the next meeting, can I submit it tomorrow or is it too late tomorrow?

Mr. Ken Hoch responded, no you can submit it tomorrow because this is an ongoing case.

Mr. Ralph Mastromonaco stated okay, but when is the last day I can submit then, tomorrow?

Mr. Ken Hoch stated about 10 days before the next meeting so I have time to get it to the board.

Mr. Ralph Mastromonaco stated so okay good, so I can submit within 10 days...

Mr. Raymond Reber stated before the work session.

Mr. Ralph Mastromonaco stated before the work session. So you'll adjourn. Okay, thank you.

Mr. David Douglas stated and our next work session is on October 16th so that would make it the 6th if I'm doing the math right.

Mr. John Mattis asked is it 10 calendar days or business?

Mr. Raymond Reber stated on case 2017-22, Ralph Mastromonaco on a case for 2099 Albany Post Road, Montrose, NY an Interpretation a permitted use in an M1 zone to address ongoing

C&D use and concrete plant use at Dakota Supply, I make a motion to adjourn to the October meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case #2017-22 is adjourned until next month.

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NEW PUBLIC HEARINGS:

- A. **CASE NO. 2017-25** **ARQ HT. Design Group Inc., architects, on behalf of Mr. & Mrs. Edward Abboud** for an Area Variance for the side yard setback to allow construction of a new two car garage on property located at **31 Furnace Brook Dr., Cortlandt Manor.**

Mr. JB Hernandez stated good evening Chairman, board members. My name is JB Hernandez. I'm the architect for the project. I represent ARQ HT. Design Group. This is a property located on the east side of town, 31 Furnace Brook Drive. It's about an acre. Right now there's a one family home approximately 2000 square foot on it. We are trying to locate a garage and as you can tell from the site plan, after studying the site, we established that there's only one place that makes sense to put the garage in. As per the garage, we want to have two cars. We have extra depth in the garage because eventually they will have an electric car and they want to be able to park during the winter. The variance in itself that we're requesting, instead of 22 feet side yard, we will require 14.2 or a reduction of 7 feet 10 inches. This property, the uniqueness of the situation is that this is the only property on Furnace Brook Drive that doesn't have a garage. They have owned the house for about 10 years. As you can tell in the pictures, they usually have three cars. They had to park outside so when we went through the design and we have about a 700 square foot garage. There is a septic in the back so they couldn't park in their rear yard and the other side of the house it would be too far away from the kitchen and also there would be no room or we will require to grade in a variance. The immediate neighbor to the north which is 35 North Brook, they're been approached by my client. They have provided us with a letter, if you would like we could provide you a copy of the letter. They had no opposition to the work. Also, we have provided the Homeowner's Association Furnace Brook Woods, we have provided them with a copy of the drawings and they didn't give us a letter. They did provide an email that they say that they also support this variance. Again, as you can...

Mr. David Douglas asked Mr. Hoch, do we have that email?

Mr. Ken Hoch responded I do not have that email.

Mr. John Mattis asked is that a requirement of the Homeowner's Association to give the approval?

Mr. JB Hernandez responded no. I can read the email to you. They are commending us that we are the first one that we have provided them with a copy of the drawings. They put that in place.

Mr. John Mattis stated but some Homeowner's Associations require an official approval. That's what I'm asking.

Mr. JB Hernandez responded no, no, it's not an official approval.

Mr. John Mattis stated but we would like a hard copy of that for the record. Why don't you just read it into the record for us? I'm not going to read it here myself.

Mr. JB Hernandez stated "to Sonia and Eddy, thank you for submitting your garage plan to the board to the Furnace Brook Homeowner's Association. We commend the first ever to honor section B of the FBHA covenant. We wish you the best with the Town of Cortlandt Zoning Board and the ensuing challenge that construction create. That's signed by Paul Schneber."

Mrs. Sonia Abboud stated yes, he's the president.

Mr. John Mattis asked what is that section? It refers to a section.

Mr. JB Hernandez stated it refers to you need to present the board a copy for them to review it. That is not a formal approval but...

Mr. John Mattis stated and if you could provide a copy to Mr. Hoch that would be good.

Mr. JB Hernandez stated again, the uniqueness of this case is that this is the only house on Furnace Brook Drive it doesn't have a garage. Also, as to the detriment to enhancement, again, the neighbors are not opposed to it and also as you can see as per the pictures of the home – I don't know if you had a chance to drive by and what we are proposing this will be an enhancement to what is there now. Again, we have no other location where we can physically locate this garage. If you have any questions...

Mr. John Mattis stated my question, if you could go back to the picture that showed the garage with two cars in it. Why is it so large? Why is it so deep?

Mr. JB Hernandez responded again, because they're going to have eventually we're hoping to have a third car there. They would like an electric car which they're not going to use every day but...

Mr. John Mattis asked and then the topographical pictures showed like seven cars there. My understanding is there's five, six, seven cars there. Can you go back to that other one Ken? Are they still there?

Mr. JB Hernandez responded no, they only have three cars.

Mrs. Sonia Abboud stated my parents were staying when they did the work.

Mr. John Mattis stated my concern was the size but that's not the part that needs the variance. It's just the corner of it because it's angled and it's a 7 foot variance on 22 feet, it's about 35%. It's a little large but again, if it were a variance for the whole thing it would be a different story. We generally grant these.

Mr. JB Hernandez stated and honestly that's why I felt that it was important if they couldn't come today to the adjacent neighbors provide something in writing to that.

Mr. John Mattis asked anybody else?

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

Ms. Adrian Hunte responded no.

Mr. John Mattis asked anybody in the audience would like to speak? On case #2017-25, ARQ Design Group on behalf of Mr. and Mrs. Edward Abboud, an area variance for the side yard setback from a required 22 feet down to 14.17 feet to construct a new two-car garage – you should take that out of there “two-car garage” if it's going to be a three-car.

Mr. JB Hernandez responded okay.

Mr. Wai Man Chin stated you have to close the public hearing first.

Mr. Raymond Reber stated just a comment since you're going right to closure, I think it should be noted that the bulk of this structure is within the allowable zone. So when people hear that we're cutting down that much on the allowed it's only for the back corner of that garage. It's not for the whole...

Mr. Wai Man Chin stated triangular section of the corner of the back of the garage.

Mr. John Mattis stated because of the angling of the house and the garage.

Mr. JB Hernandez stated the total area is less than 40 square feet.

Mr. John Mattis stated 40 square feet of 700 it's not that much. I'm going to do this correctly now. I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated now I move that we approve an area variance for the side yard setback from a required 22 feet down to 14.17 feet to construct a new garage with a storage room above. As a condition of this approval applicant must obtain a building permit and any other required permits and submit an as-built survey. It's a type II SEQRA no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the variance is granted.

Mr. JB Hernandez stated thank you very much.

Mr. David Douglas stated you're welcome, and you'll need to pick up the report from Mr. Hoch whenever it's ready.

Mr. Wai Man Chin stated Ken, that's for your record.

B. CASE NO. 2017-26 Steven Auth for an Area Variance for the minimum landscape coverage and landscape buffer strip on property located at 70 Roa Hook Rd., Cortlandt Manor.

Mr. Michael Finnegan stated Mr. Chairman, members of the board, after 30 plus years of marriage and practicing law, I've learned two lessons: it is always the lawyer's fault and at home it's always mine. Two rules to live by.

Mr. John Mattis stated the lawyer's fault and the husband's fault.

Mr. Michael Finnegan stated roger that. We're here to present to the public and to the board a request for three minor area variances to allow for the construction of a sustainable carwash facility in the Annsville Waterfront District.

Mr. David Douglas stated just so it's clear, could you tell us who you are.

Mr. Michael Finnegan stated I'm sorry, Michael Finnegan, attorney at law, husband of Candace Finnegan, both rather significant details. It's a sustainable carwash facility that is to be located on a substandard irregular lot which is what has precipitated the request for three area variances. The variances are for the 25 foot buffer requirement on the front edge of the property for a 30% lot coverage for vegetation and for the side lot variance. On those three points, because of the irregular shape of the property and the curvature of Route 9 at that location, the buffer variance actually ranges from a request for zero to – because there is at some points along that curvature the requisite 25 feet of buffer. At the furthest northern point there's zero because of the curvature. But we would also note that there is the existence of a state buffer along that entire way which actually, taken together, negates the whole buffer requirement. The applicant has

offered to plant both the property that he would own if this is approved together with the property in the state part of the buffer area and that discussion has been had with the State DOT. With regard to the lot vegetation we would note that the applicant, Mr. Auth, has been in contact with State DMNA, that's the Division of Military Naval Affairs. He's agreed to plant an additional 15,840 square feet of space on the hillside behind the property that is actually owned by DMNA. They have said they like his plan. It would actually reduce erosion. It would increase the visual appeal of their property, etc, but they have a procedure which I think this board is aware of, certainly the Building Department and the Town is aware of. They will not approve anything until they actually have something from this board. So we're sort of in a bit of a catch 22 but Mr. Auth has submitted evidence of the discussions and the soft agreement, if you will, from DMNA on that point. The third lot variance is for about a 120 foot portion of the south side lot. For that portion of the side lot where the building is to be located, we'd be going from 30 foot requirement to 25.25 feet, one inches. So it's a variance request for about 4 feet from the code provision.

Mr. David Douglas asked you said there's three variances sought?

Mr. Michael Finnegan responded yes Mr. Chairman there were three. I appreciate that the memorandum and the plan only indicated two but when reviewing the plan with my client, we noted that there actually should have been a third one which is that small portion of the south side lot where the building is closest to the side property there, that 120 feet area.

Mr. David Douglas stated John, since there's a third variance that wasn't advertised, do we need to re-advertise or not?

Mr. John Klarl asked my first question would be whether the additional variance he's talking about whether that's covered in our advertising and I don't think it necessarily is. If we could argue it's within a side variance for this, side variance for this, but this looks – let's look at the language and see...

Mr. David Douglas stated it says minimum landscape coverage and landscape buffers. That's what it says.

Mr. John Klarl asked does the applicant have a position there?

Mr. Michael Finnegan responded first of all we're trying to be completely straightforward here and not delay further. We would note that it is rather diminimus and that it's only that small portion of the side lot. It's not the entire side lot. It's the small portion that is closest to...

Ms. Adrian Hunte asked can you just go through what three are because we have two: one is landscape coverage 30% required, proposed 11.3 and the variance of 18.2 and landscape strip 25 feet, proposed zero, 25 foot variance. What is the third as part of minimum lot coverage?

Mr. Michael Finnegan responded it's the side lot requirement of 30 feet. There's a portion of the building that is only 25 feet, one inches from the property line.

Mr. Raymond Reber asked when we look at the display, when you say side, what would that be on that graphic?

Mr. Wai Man Chin stated I'm looking at it right here.

Mr. Michael Finnegan stated it would be the left side.

Mr. Raymond Reber stated so it's on the left side you're saying...

Mr. Michael Finnegan stated 25 feet, one inches [inaudible].

Mr. Wai Man Chin stated I'm looking at the site plan and where it says 25 foot, one inch or 25.1 feet which is the left side of the building as you're looking at it from Roa Hook Road which is supposed to be 30 feet and you're asking for almost a 5 foot variance. That's the one that you're missing.

Mr. Michael Finnegan responded yes.

Mr. Wai Man Chin asked what's next to that on that side? What's the property on that side?

Mr. Raymond Reber asked that's the DOT yard isn't it?

Mr. Steven Auth responded DOT yard. DOT has a substation area. It's a chain link fence. The elevation is probably [inaudible]. We have to construct a retaining wall on three sides of the property. We've been talking to Military Naval Affairs to grade into their property to make it look like some [inaudible].

Mr. John Klarl stated the question Mr. Chairman becomes whether or not what's been advertised, this third variance could come within the ambit of what we've advertised for.

Mr. David Douglas stated as a substantive matter I don't have any problem with the side variance you're requesting. I'm just concerned about the rules, about advertising things. I think it's separate. I don't think it falls under the landscape coverage or the landscape strip so that I think that it really would have to be advertised...

Mr. Steve Auth responded another month.

Mr. David Douglas stated another month.

Mr. Raymond Reber stated not that we think the DOT would be concerned but...

Mr. Wai Man Chin stated I don't think anybody has a problem with it.

Mr. Steve Auth stated I understand.

Mr. Michael Finnegan stated perhaps I'm over-lawyering this. I was concerned that it was not depicted and I guess not requested and wasn't pointed out either by DOT or the Town as being a requirement.

Mr. David Douglas stated I think you did the right thing.

Mr. Michael Finnegan stated I noted so if it's the board's wish that we come back, may I make a request so that we can proceed with at least the Division of Military Naval Affairs that we get a variance approval for the other two requests and then we'll come back for the third on the side lot next month?

Mr. Wai Man Chin stated I don't see a problem with that.

Mr. John Klarl stated as slow as this one, why don't you indicate you grant the first and second but we have to leave it open to hear number three.

Mr. Michael Finnegan stated that would be helpful because at least we can proceed with DMNA which has their own process.

Mr. Raymond Reber stated when I saw the application and the plans, a question came to me and I wanted to ask Mr. Hoch from Code Enforcement, there's no issue with an actual setback from the front property line since this building seems to come pretty close. There's no, in the code, of any distance of the setback.

Mr. Ken Hoch responded we didn't examine that. We went by the applicant's application and zoning table which indicated he only needed the landscape variance.

Mr. Raymond Reber stated I would ask if that be looked into because I've got to say, the building comes very close to the property line on the front and I was just wondering if there's a variance needed to allow it to be that close.

Mr. Ken Hoch stated the other issue with this is this is a coordinated review. This is still before the Planning Board. Typically, the Zoning Board won't make a decision until the Planning Board's granted them preliminary site plan approval.

Mr. John Mattis stated we usually give an indication.

Mr. Ken Hoch stated we can give an indication but...

Mr. Michael Finnegan stated [inaudible]

Mr. David Douglas stated what we usually do with this coordinated review is we'll indicate which way we're leaning. We won't formally grant something. We will say on the record which way we're leaning and Mr. Hoch will relay that.

Mr. Michael Finnegan stated I understand Mr. Chairman.

Mr. John Klarl stated and just to let you know, at the last Planning Board meeting, they were satisfied with the site plan but they said "come to the Zoning Board of Appeals for the two variances."

Mr. Michael Finnegan stated that's correct.

Mr. John Klarl stated so the Planning Board is looking for two variances from this board and now a third. They're ready to go...

Mr. Wai Man Chin asked can we give them the two variances that's on there now and then wait until...

Mr. David Douglas stated what we can do is indicate to the Planning Board that we're willing to give these two variances and the third we'll deal with next month after it's been re-advertised.

Mr. Wai Man Chin stated but you needed – you have to talk to somebody else.

Mr. Michael Finnegan stated unfortunately Mr. Vice Chairman, the DMNA will not move unless there's an actual approval. And we need to get that to the Planning Board so that they can complete the review.

Mr. David Douglas stated I don't think we can do that, for two reasons: one is the advertising issue we talked about, and the other one is when we've got coordinated review, we won't issue...

Mr. Michael Finnegan stated I understand Mr. Chairman. Could we approve the two variances that were requested and advertised...

Mr. David Douglas stated we can say we are inclined to grant them but we can't officially grant them today because of the advertising issue and also with coordinated review, we wait until we go back to the Planning Board and then it's all done at the same time.

Mr. Michael Finnegan asked would that be in a form of a letter we could share with DMNA? They unfortunately need something in writing to proceed.

Mr. David Douglas stated that's fine. Mr. Hoch will send a memo to the Planning Board indicating our views...

Mr. Ken Hoch stated on the landscape issues and then wait until next month for the...

Mr. David Douglas stated on the landscape issues and then you can have a copy of that letter.

Mr. Michael Finnegan stated that can be shared with us, the memo? Okay, that would be fine.

Mr. David Douglas stated so what you'll have in writing is that we intend to grant.

Mr. Michael Finnegan stated it sounds like an episode of MASH, I know. We're caught in a catch 22.

Mr. Raymond Reber stated your plans may answer my question. The confusion for me is I didn't realize the cross-hatched area that you show on the plans with the diagonal hatching, that represents what, sidewalk or pavement?

Mr. Steve Auth responded yes, that represents checkered walkways. In front of that last bay of the carwash...

Mr. Raymond Reber stated I didn't know whether that was structural. Then I see you've got the 50 marked off to 55, 6.

Mr. Steve Auth stated and the front yard requirement is 30 feet, we have 56 I believe.

Mr. Raymond Reber stated that answers that. I wasn't sure what I was looking at. I thought it was part of the structure and then...

Mr. Steve Auth stated this property back in '08 had a, not a final approval but a preliminary approval and variances issued for 5 feet on both sides of the property, back in '08 that was to be an office building which never should be.

Mr. John Mattis stated in terms of the landscape coverage itself, the perception will be that you have a lot of landscape coverage because it's woods behind. It's going to be on the state property in front. On the northerly side I believe it's woods also and then you've got the DOT on your south side.

Mr. Steve Auth stated it's DOT but it's really owned by DMNA so we're going to be grading into their property. I'm constructing retaining walls anywhere from three feet to seven feet and from those walls we'll grade back two on one to meet the town code for slope and then we'll landscape the entire area.

Mr. John Mattis stated but even though it's zero it's not going to look like desert there or anything. It's going to look like it's very well landscaped.

Mr. Steve Auth responded yes, exactly.

Ms. Adrian Hunte stated on case #2017-26, is there anyone in the audience that wishes to speak? Hearing none. On case #2017-26 for area variances for minimum landscape coverage and landscape buffer strip, I make a motion that we leave public hearing open as far as the third request for a third variance for side lot because we were just given notice today that there is a request for this third variance and we need to comply with the proper advertising and notice requirements. So that portion of this request for a variance remains open. As far as the other two requests for variances, namely the landscape coverage of a required 30% down to a proposed 11.3% with an 18.7% variance and also for the landscape strip a required 25 feet down to a proposed 0 feet for a 25 foot variance of a 100%, I make a motion that we indicate to the Planning Board that since this is coordinated review with the Planning Board, that the ZBA is leaning in favor of granting the two variances; namely for the landscape coverage 30% down to 11.3% and for the landscape strip from 25 feet down to 0%. But we're unable to vote on these two variances at this time pending proper notice concerning the third variance. This is a SEQRA Type II, no further compliance required.

Mr. John Klarl and Mr. Wai Man Chin stated at this time.

Mr. David Douglas stated we're not voting.

Mr. John Mattis stated we're going to do a memo, and we're going to adjourn.

Mr. John Klarl stated so SEQRA is not complied with until...

Ms. Adrian Hunte stated so Mr. Hoch will have a letter or some sort of memo prepared for the applicant so that they can present it to the DMNA or some other authorities to show that there is action being taken. However, we have some procedural requirements that have to be complied with before we can make a final determination.

Mr. David Douglas stated so we're voting to do all that and to also adjourn it.

Ms. Adrian Hunte stated and adjourn.

Seconded with all in favor saying "aye."

Mr. Steve Auth stated thank you very much.

Mr. Ken Hoch stated Mr. Auth, if you would, have your architect prepare a new site plan with a new zoning schedule that shows the need for the side yard variance.

Mr. Steve Auth stated will do, absolutely. Thank you again.

Mr. Michael Finnegan stated it's always the lawyer's fault.

Mr. John Mattis stated but you proved your honesty tonight bringing that variance out that we missed.

Mr. David Douglas stated wait, an honest lawyer.

Mr. John Mattis stated spoken from a lawyer.

Mr. David Douglas stated there are no other honest lawyers in this room are there?

Ms. Adrian Hunte stated I beg your pardon. Speak for yourself.

Mr. John Mattis stated yes there are.

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ADJOURNMENT

Mr. John Mattis stated I make a motion that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

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**NEXT MEETING DATE:
WEDNESDAY, OCT. 18, 2017**