

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, November 18<sup>th</sup>, 2015*. 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

Mr. David Douglas stated Mr. Hoch, before you call the roll I just want to have a moment of silence in memory and honor of the victims of the events in Paris this week.

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**ADOPTION OF MEETING MINUTES FOR OCT. 21, 2015**

So moved, seconded.

Mr. David Douglas stated the minutes are adopted.

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**ADJOURNED PUBLIC HEARINGS:**

- A. CASE No. 2015-10                      New York SMSA Limited Partnership d/b/a Verizon Wireless** for a Special Use Permit for the installation of a wireless telecommunications facility consisting of a 140 foot monopole with antennas for both Verizon Wireless and the Mohegan Fire Department, together with related equipment at the base thereof in an approximately 1,500 square foot fenced equipment compound, on property located at **260 Croton Ave., Cortlandt Manor.**

Mr. Michael Sheridan stated good evening Chairman, members of the board. My name is Michael Sheridan, attorney at Snyder & Snyder LLP, the attorneys for New York SMSA Limited Partnership d/b/a Verizon Wireless. Verizon Wireless is here in connection with locating a public utility personal wireless service facility at the 260 Croton Avenue, which is the fire district property. The facility will consist of a 140-foot monopole with an equipment compound at the base thereof. Over the past several meetings, this board has requested additional information which has been provided. Hopefully you've had a chance to review everything and that there are no further questions. We're looking to get this facility approved.

Mr. Raymond Reber stated at the last meeting there were two areas of concern that we wanted clarification on: one was the height of the pole; 140 feet and the effect of coverage and whether that was really needed for coverage. You have provided us the coverage charts which pretty much agree that because of the terrain that 140 is the appropriate height, particularly when you look at the co-locators would be eligible to be on that pole as you explained to us in your communications. That explains that issue. The other issue was the fact that you're only 20 feet setback and the code says 50 feet but when we went back and thought about how that 50-foot was set it's because traditionally, when these poles were first being built that was the distance for the break point on the pole, that pole was only 120 and the poles were designed more to break halfway rather than in smaller sections. Your pole is designed to break just the top 20 if it's under stress and that's how the 20-foot setback would match the breakpoint. For clarification as your reports and your colleagues explained to us the breakpoint doesn't mean if this thing flies off, it's designed to hinge, collapse down and it should stay right where it is. In the worst case scenario it would break loose and drop. These are heavy metal objects. They're not going to go floating around like a feather and then it can drop right there so again, it's within that 20 feet. I think in both those issues there's been satisfactory explanation as to the factors and so I would have no problem in approving the proposal as it now stands.

Mr. Michael Sheridan stated thank you.

Mr. John Mattis stated I think another point with the 20 feet off the property line; on that side of the property line, it's all trees, there's no houses there or anything, so even if it would fall and go a few feet over or something it would just fall into the trees.

Mr. Michael Sheridan stated correct, and that's why it was located in that position.

Mr. John Mattis stated there's no houses or anything in the immediate area there. The closest structure is the firehouse itself.

Mr. Raymond Reber asked anyone else in the audience have any comments they'd like to make? If not, I'd like to make a motion to close the public hearing on case 2015-10.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. Raymond Reber stated on case 2015-10 New York SMSA Limited Partnership d/b/a Verizon Wireless, a Special Use Permit for the installation of a wireless telecommunication facility consisting of a 140-foot monopole with antennas for both Verizon Wireless and the Mohegan Fire Department together with related equipment at the base thereof in approximately 1,500 square foot fenced equipment compound be approved. This is a type I unlisted action.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Special Permit is granted.

Mr. Michael Sheridan stated thank you.

**B. CASE No. 2015-17                      ASF Construction & Excavation Corp. for an Interpretation that the applicant is a Specialty Trade Contractor as defined by the Town Code Chapter 307-4 Definitions so they can submit a Special Permit Application to the Planning Board on property located at **37 Roa Hook Rd., Cortlandt Manor.****

Mr. Robert Corke stated good evening. Robert Corke for ASF with me is Ms. [inaudible] one of the principals at ASF.

Ms. Adrian Hunte stated okay Mr. Corke this is my case and as we have discussed before, the applicant ASF Construction & Excavation Corp. has requested an Interpretation from the Zoning Board of Appeals that the applicant is a Specialty Trade Contractor as defined by Town Code Chapter 307-4 Definitions and if so defined then the applicant may submit an application to the Cortlandt Planning Board for a Special Permit and thereby negate the violation for a Contractor's Yard. We have wrestled with this back-and-forth and at our last meeting we requested that you give us additional evidence proving that your particular client is in fact, a Specialty Trade Contractor as opposed to a Contractor's Yard. We received a letter from you, I believe this past week or so, that does have some information but we need you to please elaborate as to why you believe that your client, is in fact, a Specialty Trade Contractor when in fact the Cortlandt Code specifically excludes certain types of activities and unless you fall into one of those specifically mentioned, we have an issue with being able to interpret that it is a Specialty Contractor.

Mr. Robert Corke stated thank you very much. First of all I'd like to refer to Section 307-65.6 which sets forth the standards that the site must encompass. It sets forth 'A' to 'K', I listed them in my letter. ASF's use of the site is consistent with all of the standards set forth in 307-65.6. Earlier in one of our hearings, the case of the matter of Stone was raised, something that may shed some light on this matter. I read that case to mean that this board has the right and determination to make a determination regarding the use of a property and its application to a specific code.

Ms. Adrian Hunte stated Mr. Corke, may I just interrupt you for just a moment? You did cite the Stone Industries in your recent letter, however, you did not include the next paragraph which talks about what this board is entitled to do in terms of an Interpretation and that is, I think, what is the crux of this as to whether it would be reasonable for us to say one way or the other whether this is or is not a Specialty Contractor.

Mr. Robert Corke responded again, my opinion is it is reasonable because we meet the requirements that would be set forth and also if you go back to the statute itself, I believe you said Ms. Hunte that the use that ASF's usage is not included in the listing.

Ms. Adrian Hunte stated no, I asked you to prove to us that it is included.

Mr. Robert Corke responded well I'm trying to go there. I would say that the statute does not exclude ASF's usage. The statute itself is somewhat ambiguous. If you go to section D of the statute it reads: "the list of uses contained in Specialty Trade Contractor's specifically excludes all uses listed under Contractor's Yards and SIC code." If you go to the SIC code, under Specialty Trade Contractor's, every one of the uses listed in A1 is there. So, the statute on its face is ambiguous and that on one hand it lists, I think illustrative, I don't think the intent is to have every usage. I think it's there to be illustrative but the second part of the code then goes and says that everything we say that is illustrative we're going to limit it because it's in the SIC code. If you go to the SIC code every one of those uses is listed. Interestingly, in the SIC code that's referenced here, site work contractor is listed. So, we have this balancing here of what was meant when this code was drafted and I do not want to make any [inaudible] as to the drafters of the code. I just think that it's ambiguous. It does not give a definition. It lists, what I would say, illustrations of a type of a contractor not the saying 'only these' but then the code contradicts itself and says 'not these.' I think it's somewhat ambiguous. Further, in the visits to the site, I think the board members who did visit see that in fact that that area, the uses in the area are consistent with the uses that ASF is proposing. It's not different than anything to the north, south, east or west of those properties. For those reasons, I do believe it's reasonable. I think the code is somewhat ambiguous. If you have to go to the SIC, you see the things that are excluded are the things that are supposedly are included but the SIC code does have site words specifically. I listed one particular use that ASF does on the site and that is structural steel and I think most of the people who visited the site saw that. The work that is done by ASF on site as a Specialty Trade Contractor revolves around their use of rebar, bending the rebar, getting it ready for their job. The rest of their work takes place off of the site. I think again that's consistent with all of the trades that are listed in the statute. There is no trade listed in that statute who performs their trade on the property so we're not saying that we're restricting the use of a property to a particular usage because I don't think we're meaning to say it's the name that's on the side of a truck because those things aren't done there, no matter what it says on the side of the truck. You're a paper hanger, you're a painter, you're a carpenter or electrician; you are not doing that work on the site. All of that work is done elsewhere. It must be, I would say, in terms of interpretation because that's what we're talking about; interpreting a statute. What does it mean? If I look at the surrounding properties things that are there and being used are things that are consistent with ASF. You see trucks. You see heavy equipment. You do see some people

maybe who were grandfathered in doing things that are not included. You don't see any manufacturing there. You don't see any production there. What you see are people using the site for their vehicles and their equipment and doing their work elsewhere. So, the question about Contractor's Yard; well what's a Contractor's Yard? I have searched throughout the statutes, zoning codes throughout the country, Department of Labor to say: what is a Contractor's Yard? Everybody gives examples. When I speak to contractors they say the yard is where they keep their stuff, others say that – well that's where I buy my things. That's where I would go to get my aggregate. That's where I would go to get my sand. That's where I would go to get my block. So, you have people coming and going all day. Again, that's not what we're doing. If we're going to say if it's a painter; what would the painter do on that site? He'd have his truck and he'd have his ladders. The electrician would have his trucks and his conduit and his other materials. A plumber would have his pipes, some PVC. What I'm saying is that our use of that property is totally consistent within the meaning, and I believe the intent of the statute. What's there? It's the equipment that's used by ASF and the material, the material that's used for doing the forming that they use for doing their site work. It's totally consistent and we're not asking for aberration of the use of the property, nothing that's different than, I believe, if you go to the meaning of the statute this is what you see. You see people in trades having a space to put their equipment, their stuff, whatever that is, to go about and do their job. Again, I'll reiterate, there's no plumbing being done that anyone would think of that would be done on the site if a "Specialty Trade Contractor" were there. If Mr. Smith Plumbing & Heating were there, what would be there? His trucks, his pipes, some other equipment. Electrical; the same. Air conditioning; nobody's air conditioning the site. What would you have there? A truck, maybe some condensers, some other equipment to be brought to a site. Carpentry; nobody's building there. If there were a carpenter there you'd have some lumber, some equipment, maybe some steel beam, whatever; flooring, cabinet making, all these things would be things that are done off site. I think we're consistent. I don't think we're different. We're not listed. It doesn't say "Site Work Contractor" but...

Mr. James Seirmarco stated that's the problem. That's the issue. If you sat on this board, how would you deal with the 'limited to' phrase? 'Limited to' and you give a list of things that it's limited to and you're not on that list so that's what we asked you to do; is to find out and define your use as something that's on the list.

Mr. Robert Corke responded then I would not be telling you the truth. The list is there.

Mr. James Seirmarco stated that is the crux of the problem.

Mr. Robert Corke stated well I'm going to say, with all due respect, that that list is not a limiting list of definitions. Could we sit back here and think of – would a cable installer be considered a Specialty Trade Contractor?

Mr. James Seirmarco responded that's the whole crux of the issue. Our interpretation, to be parochial about it, it's 'limited to' the things that are on that list. Now, you're asking; what about something that's similar to the something that's on that list. I agree with your analogy. I

understand what you're saying that a plumber wouldn't have his plumbing off site or electrician off site, so on and so forth but those definitions of the uses are on the list.

Mr. Robert Corke stated I don't disagree with that.

Mr. James Seirmarco stated and that's the dilemma here.

Mr. Robert Corke stated again, if I may, no disrespect to the drafters of this statute, you read further down the page under 'B', okay? "The list of uses contained in the Specialty Trade Contractor's specifically excludes all uses listed under Contractor's Yards and SIC code." You go to the SIC code, every one of the listed trades is excluded. It could not be the intent of the drafters of that legislation that nothing could go there.

Mr. David Douglas asked can I ask a question?

Mr. Robert Corke responded sure.

Mr. David Douglas asked what do you think the phrase 'and limited to' means?

Mr. Robert Corke responded illustrative. I believe it's illustrative. I don't believe that someone could divine all future uses of a Specialty Trade Contractor. I don't think anyone could do that and I think zoning laws are drafted in that way that a board on a particular day or a legislative body on a particular day can divine what kind of uses would take place in the future. I don't think that they have that ability.

Ms. Adrian Hunte stated the statute specifically mentions certain things and that does not give us the discretion to go ahead and interpret that as something else.

Mr. Robert Corke, but then the statute takes it away with the second part of the statute.

Ms. Adrian Hunte stated but the second part of the statute is a second part. The first part is what states what it is limited to.

Mr. Robert Corke stated I think we looking at statutes...

Ms. Adrian Hunte stated the other is it, and we can interpret it and I believe reasonably that SIC code not using that, does not mean that the things that are listed exclusively on the top does not mean that because they're there that that means that we have to eliminate all of those things if they're listed in SIC.

Mr. Robert Corke stated Ms. Hunte I would disagree. I think when you're going to start interpreting things literally then you have to interpret the entire statute literally. You cannot pick and choose sentences out of a statute. The statute says it's excluded. That's part of the statute. Part B of that statute says everything above is excluded, now I don't think it's going to be

anyone's interpretation that that means nothing can be done there so we think we have to take the position that it's illustrative because you're not going to say that nothing else is allowed.

Mr. David Douglas asked just to be clear, if there's any ambiguous about the second sentence and you want to harmonize it with the first sentence, wouldn't it make sense to say that what they're trying to say is it explicitly excludes all other uses, specifically listed above?

Mr. Robert Corke asked then what are we talking about hotels? We're going far field here. What I think we're talking about and this is a somewhat commercial space used for a specific type of usage throughout and I believe that ASF's usage is consistent with – if you go up and down the road, what you see is what ASF is doing.

Mr. John Mattis stated I'd like to say something. You keep talking about what's up and down the road and yes it is consistent with it but they were all in operation prior to this and they're all grandfathered so it's irrelevant to talk about them. Whether or not they look the same, and in my opinion they do, but this doesn't apply to them because they were established before this statute.

Mr. Robert Corke stated again, with all due respect, I disagree for this reason; they were in existence at the time that the statute was drafted, that's what you're saying.

Mr. John Mattis stated and that grandfathers them.

Mr. Robert Corke stated and it grandfathers them, absolutely so do you believe that it was then the intention of the drafters of this statute to have something that's not consistent with what is already there?

Mr. John Mattis responded well, what they define in part A is consistent with what's there.

Mr. Raymond Reber stated part of when a Zoning Ordinance is changed or modified, a lot of times it's to prevent further expansion of something that they find undesirable so one could use that argument. However, I read this local law #12 that was passed in 2010 carefully and we've been arguing over the words in here. I've also gone over to the SIC code and when one looks at the two, it's pretty obvious that when they wrote this new local law they simply went to the SIC and they went down the list and they've picked and they've said "we like that. We like that. We like that. We don't like this" and that's how they came up with this limited list. With respect to: did they think beyond? No they didn't. So, to some extent, I would tend to agree with you that: does that mean they wouldn't consider anything no matter how benign it is? I don't think that ultimately is what they wanted. In fact, when you read the latter part under the Specialty Trade Contractor, all the conditions, they're pretty general in terms of what you're allowed to do on the property, but I go one step further and I say; I think that this, what you're applying for is reasonable for that property even under this new code and the way I can justify it is they don't define all these different specialty trades very specifically and you do mention in your letter, you say: "ASF does structural steel erection and fabrication." That's the way I look at it. That's the

equipment I see there. To me, I say fine, I put you in that category. That's on the list. I say it's okay.

Mr. Robert Corke stated thank you.

Mr. Wai Man Chin stated I would like to say I agree with Mr. Reber on that. Also, knowing that you have a lot of rebar, you do fabrication, you bend it over there but you don't – you bring it to another site to install it. You don't have anything there that's not being used on another site. Basically, even when you do your form works you have a group of carpenters who do the form work actually. They set forms, they level them, they do everything, whatever they have to do to make it secure. Again, that's another part of what I see of carpentry is part of it; like the structural steel. Again, I would think that what you're doing is okay with me.

Mr. Robert Corke stated thank you.

Mr. Charles Heady stated we went down and saw -- the inspection a few months ago we went down there. I understand this week you got a stop order on some work you're doing there? That really bothers me. I'm very much surprised. We're trying to do things straight and help you out and to me it makes it worse. Not only that, you have a 10-wheel dump truck right? A 10-wheeler dump truck you have there. It was there last week.

Mr. Robert Corke responded I haven't been there in several weeks. I don't know.

Mr. Charles Heady stated also, you have a pave roller in the yard? These things I've seen. There's also a barber greene paver that puts the blacktop down. I've seen these with my own eyes down there so I know it was there.

Mr. Robert Corke stated I'm not questioning you. You're asking me. I have no personal knowledge. I have not been there for several weeks.

Mr. Charles Heady stated it's not what you want but to me it's a Contractor's Yard when I see equipment like that in there. That's all I had to say.

Mr. David Douglas stated Mr. Heady brought up what I was starting to say at the same time, about the stop work order. It's generally the policy of this board that when there are violations on a site we will not grant anything until the violation is cleared up. One pre-condition of us even considering the possibility of a decision is you've got to deal with the stop work order.

Mr. Robert Corke stated I have no question about that and I'm just going to apologize to you. I did not know it. I think there was a misunderstanding.

Ms. Simad stated I wasn't even aware of it. I've been out of the state for about a week and a half so I apologize as well.



Mr. John Mattis asked who was aware of it? Something like this just doesn't go up by itself.

Mr. Robert Corke stated Mr. Fernandez, he wanted a temporary – he wanted something to stick his stuff for the winter and...

Mr. John Mattis stated you want to go in front of the Planning Board, the Zoning Board and you don't know that you can't do this. This is pretty substantial.

Mr. Robert Corke stated I don't disagree with you sir. There's no way in the world that I knew about this before I found out about it.

Mr. John Mattis stated I'm not saying you did but somebody did and this is pretty egregious.

Mr. Robert Corke stated I don't disagree with that.

Mr. Charles Heady stated technically, we can make you take that down now because you didn't get a permit to put it up.

Mr. Robert Corke stated I don't disagree with that either.

Mr. Charles Heady stated it really disturbed me when I found out about that from Ken, because I was all in favor of what you wanted to do but I don't know. It's kind of a strange thing to me right now.

Mr. Robert Corke stated I appreciate that. I have no answer to that.

Mr. James Seirmarco stated we typically do a due diligence. We looked at backed taxes. Are the taxes paid? It's right on the form. Are there any outstanding building permits and so on and so forth? Those things have to be mitigated before we start the process. I assume that...

Mr. Robert Corke responded I understand that.

Mr. James Seirmarco stated when we started this process; you had said there were buildings that were questionable on the property, on the state property or whatever and so on and so forth. We're aware of all this stuff and that taxes were paid and whatever. Now you surprise us with this...

Mr. Robert Corke stated it surprised me also. It was not my intention to be here tonight talking about that.

Mr. James Seirmarco stated I know.

Ms. Adrian Hunte asked do we have anymore comments?

Mr. Wai Man Chin responded I think until these little violations have been cleared up, I'm not voting on this and I think we should adjourn this case.

Mr. David Douglas stated I wouldn't call them little violations. A building is not a little violation.

Ms. Adrian Hunte asked is anybody else on the board, anyone in the audience wish to speak? Hearing none, on case #2015-17, ASF Construction and Excavation Corp. for an interpretation that the applicant is a Specialty Trade Contractor; in light of the recent stop work order, I make a motion that we adjourn the matter until that is resolved.

Mr. Robert Corke responded thank you.

Seconded.

Mr. John Klarl asked should we adjourn it to a certain date?

Mr. Raymond Reber responded I would assume by next month they can have that fixed. I would adjourn one month and see where we're at.

Ms. Adrian Hunte asked adjourned to the December 2015 Zoning Board of Appeals meeting?

Mr. Wai Man Chin stated adjourn it to December.

Mr. James Seirmarco stated what has to be done to get the building permit to allow this to come up. Does it have to have a site plan?

Mr. Ken Hoch responded he can't get a building permit right now.

Mr. David Douglas stated that's the problem so I'm not sure December is going to be – they're just going to come and we're going to push it back.

Inaudible

Mr. James Seirmarco stated has to get a site plan.

Ms. Adrian Hunte stated unless they take it down.

Mr. James Seirmarco stated or take it down.

Mr. Raymond Reber stated it's a simple structure. They can take it down. It's not a big deal.

Mr. Wai Man Chin stated we can stick with December depending on what happens.

Mr. Robert Corke responded thank you. Everybody enjoy your holiday.

Ms. Adrian Hunte stated December 16<sup>th</sup> Zoning Board of Appeals meeting.

Mr. David Douglas stated if you do it in December that's under the assumption that your current intention is to take it down?

Ms. Simad stated I'm not going to be able to take it down but I will definitely...

Mr. David Douglas stated the reason I'm asking is that if the intention is to take it down then we can put it on for December. If the intention is to try and get a building permit and go to the Planning Board then it's pointless to put this on for December.

Mr. Robert Corke stated my conversation with Mr. Hoch is that may not be a possibility at this time. I may have to go through a number of procedures. First of all, we have to get the approval of the Specialty Trade Contractor, then we would be going in for a site plan and then with that site plan we would come up with whatever changes or conditions, whatever we wanted the property and I just don't see that happening before...

Ms. Adrian Hunte asked should we put this under a control for December for status?

Mr. John Klarl responded yes, but we have to announce that there's another public hearing.

Mr. David Douglas stated the control thing doesn't work as well.

Inaudible.

Mr. Raymond Reber stated adjourn it to December...

Mr. David Douglas stated we'll adjourn it to December and then we'll see where it stands then.

Mr. John Mattis asked and if the building isn't down – we keep going. It keeps going on and on.

Mr. Raymond Reber stated from what I see it's not a complicated structure so I think you're going to need some help obviously.

Mr. David Douglas stated here's one concern about letting it go on and on; while this goes on and on, the applicant is continuing to engage in this business which is, depending on how we rule, it's either going to be found proper or it's not and I don't want us to be in a situation where because the applicant has violated the code by putting up a building, that as a result, they get to engage in illegal operations for a longer period of time.

Ms. Adrian Hunte stated that's why I think we should leave it on for December and see where we are.

Mr. David Douglas stated I agree.

Ms. Adrian Hunte stated I think there's a motion to adjourn this matter to the December 16<sup>th</sup>, 2015 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we'll see you next month.

Mr. Robert Corke stated thank you.

**C. CASE No. 2015-20**                      **Emily Fehlbaum** for an Area Variance for an Accessory Structure, a 12' x 24' garage, in the front yard on property located at **100 Laurel Rd., Croton-on-Hudson.**

Mr. Ken Hoch stated Mr. Chairman, I received an email from Ms. Fehlbaum asking that the board please adjourn this to the January meeting.

Mr. Charles Heady stated I make a motion on case #2015-20 to adjourn it until January.

Seconded with all in favor saying "aye."

Mr. David Douglas stated okay, case 2015-20 is adjourned to January.

Mr. John Klarl stated we haven't adopted the dates yet.

Mr. David Douglas stated we don't officially know what those dates are. We unofficially know what they are. In all likelihood, be on January 20<sup>th</sup>.

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**ADJOURNED PUBLIC HEARINGS TO DEC.:**

Mr. David Douglas stated the next two matters have both been adjourned to December.

**A. CASE No. 2015-23**                      **Acadia Cortlandt Crossing, LLC** for Area Variances for the Minimum Buffer Required along a residential district boundary and the Minimum Landscape coverage required, and a Variance from the required number of parking spaces on property located at **3144 E Main St. (Cortlandt Boulevard), Mohegan Lake, NY.**

**B. CASE No. 2015-25                      Demetri Vourliotis Living Trust** for an Area Variance for the rear yard setbacks for an existing shed on property located at **194 Cortlandt St., Croton-on-Hudson, NY.**

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**PUBLIC HEARINGS:**

**A. CASE NO. 2015-30                      Steven Cohn** for an Area Variance for the side yard setback for a proposed greenhouse on property located at **22 Cross Rd. Cortlandt Manor, NY.**

Ms. Adrian Hunte stated good evening.

Mr. Steven Cohn stated good evening and thank you for having me here.

Ms. Adrian Hunte stated this is my case and Dr. Cohn is seeking an Area Variance for the side yard setback for a proposed greenhouse. We discussed this at the work session on Monday and just tell us once again why you feel that this particular location is the only suitable one for this particular expansion.

Mr. Steven Cohn responded if you look at the property, it's the only area that really that's exposed to the sun as well as not being either in the woods or facing the property, as we discussed, alongside the – if you look at the map there'd be the north side of Cross Road and so that was the only place that we had come to the conclusion where it would actually be able to be used properly.

Ms. Adrian Hunte stated based on your presentation, I don't see any real alternative. You've got steep slopes and there are some other issues. There are no impacts on the neighbors that we can see, no undesirable change to be produced in the character of the neighborhood and no detriment to any nearby properties. You don't really have too many alternatives here with location. The Variance itself, percentage wise may be large but in terms of the actual number of feet, we're talking 4.34 feet so it's not that large in actual numbers. I don't believe that there would be any adverse effect or impact on the physical or environmental conditions in the neighborhood of the district. Self-created: that in it of itself is not an actual prohibition to these things.

Mr. John Mattis stated and as an extenuating circumstance in favor of the applicant, on that side where he would be going down to 1 and 2/3 feet, there's two slivers of property but they look like they could be trees but they in fact cannot be in both houses have driveways from the

adjacent street. They're basically unusable and so the setback is actually from the real neighbor, much further because that's basically unusable property.

Mr. Raymond Reber stated when someone has almost two acres, the first reaction is: you've got to be kidding! There's no other place to put it? I did go out to check the site and confirmed that, as you presented, because of steep slopes and all the other constraints on the property that you're right, this is about the only place where this would make sense. I concur.

Mr. Steven Cohn stated thank you very much.

Ms. Adrian Hunte asked any other comments? Anyone in the audience wish to speak? Hearing none, I make a motion to close the public hearing on case #2015-30.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Ms. Adrian Hunte stated on case #2015-30 for the property at 22 Cross Road, Cortlandt Manor, NY 10567, for an Area Variance for the side yard setback for a proposed greenhouse I make a motion that we grant the Area Variance for the side yard setback from a required 6 feet down to 1.66 feet for an accessory structure, namely the greenhouse, this is a SEQRA type II action, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted.

Mr. Steven Cohn stated thank you very, very much. Have a nice holiday.

**B. CASE NO. 2015-31                      Building Permit Services on behalf of the Estate of Lillian Cotter** for an Area Variance for the side yard setback for an existing screened porch on property located at **147 Cortlandt St., Croton-on-Hudson, NY.**

Ms. Nora Hildinger stated good evening board and Chairman. My name is Nora Hildinger. I am here to represent Nancy Cotter Drenan who is the executrix of the estate at 147 Cortlandt Street. The structure in question is a covered deck built in approximately 1975 or 1976. The property is R-20 zoned. The deck is approximately 20 feet by 12 feet. The side yard setback in R-20 for a covered deck is 10 feet. The far corner of the deck, as shown on the plot plan, extends out so in that corner there is a two-foot encroachment, therefore I am here to request a two-foot side yard Variance. The following are five compelling reasons to support the granting of this Variance. 1) Granting of this Variance will not impact the neighborhood. The deck as it stands today has existed for many years without disturbing any of the local residents or changing the temper of the neighborhood. 2) Granting of this Variance will not impact a residence directly. The side yard

encroachment in question is into the Springvale water treatment facility and not a residence. 3) The request is not a substantial Variance; it is only two feet in the far corner and really only a foot and a half if you apply the diminimus rule which allows minus 6 inches so it is not a substantial request. 4) The situation was not self-created. The daughter of the owner literally inherited the problem from her deceased mother. The executrice did not build the existing porch. 5) Failure to grant this Variance will cause a financial hardship on the daughter who needs to sell the home. Thank you.

Mr. John Mattis stated that's my case. There's a slight jag in the road there and as such, that property is kind of pie-shaped. It's cut off in the inner part. Because of that, that little corner, it may be two feet but it's probably, what, 5% of the whole porch in question. It's very, very small if you cut it back you wouldn't even notice the difference. It's next to the watershed. It really is not a problem at all. Any other members?

Mr. David Douglas asked anybody else?

Mr. James Seirmarco responded I concur with Mr. Mattis.

Mr. John Mattis asked anybody in the audience? On case #2015-31 I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Ms. Nora Hildinger stated thank you.

Mr. David Douglas stated we didn't grant the Variance yet.

Ms. Adrian Hunte stated hold on.

Mr. David Douglas stated we always have to do two votes.

Mr. John Mattis stated we closed the public hearing. Now we come to the vote, the important part. On case #2015-31 I move that we approve an Area Variance for the side yard setback from a required 10 feet down to 8 feet for an existing screened porch and it's actually for a little corner of the screened porch and it's a type II SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated now the Variance is granted and you're done.

Ms. Nora Hildinger responded thank you.

**C. CASE NO. 2015-32      Robert & Lindea Whalen** for an Accessory Apartment Special Permit on property located at **17 Dream Lake Rd. Croton-on-Hudson, NY.**

Ms. Lindea Whalen stated good evening. I don't know how far we can get because we're still missing some information that I didn't get from the Health Department I had requested but I haven't gotten. I would like to have it postponed to next meeting or if you want to ask any question about what we're doing I'd be more than happy to answer.

Mr. Wai Man Chin asked just for the record, you are?

Ms. Lindea Whalen responded with her name. I'm sorry.

Mr. Charles Heady asked you want to postpone it until January?

Mr. Wai Man Chin asked you want to postpone it to December?

Ms. Lindea Whalen responded yes, if it's possible, yes. I hope by then I would have received the information from the Health Department about the septic tank and the well or the field.

Mr. James Seirmarco asked have they made an inspection or are you waiting for...

Ms. Lindea Whalen responded we're waiting for building permit. Yes, we had the first inspection but due to the fact that we didn't know we had to request the certificate from the Westchester Health Department, and then when I had asked it was kind of short term so I haven't gotten yet. I called today but they don't have it yet. They had to search for it because the house was built in 1968. They don't have the record in the computer.

Mr. Wai Man Chin stated there was another thing at our work session that we were talking about, I guess the special permit for the accessory apartment as compared to the whole house, square footage. I think the architect has to clarify it.

Mr. Ken Hoch stated he did. Ms. Whalen just handed this to me tonight but I have to take a look at it to make sure he did the calculations correctly.

Mr. David Douglas asked so we'll have that for December also?

Mr. John Mattis asked I have one question: the house was built when?

Ms. Lindea Whalen responded 1968. It was finished in 1968.

Mr. John Mattis asked and when was the finished basement converted to the apartment?



Ms. Lindea Whalen responded well it was part of the house that was built. We had a paneling in the bottom part of the -- is considered an apartment, but now the only thing we did is put the sheetrock because it was kind of old and ugly and dark and -- but nothing had been really changed because it's part of the house. The house was built. That is the bottom part of the house, was not an addition...

Mr. John Mattis asked that's not really the question. The question is: it was a finished basement and it did not have a kitchen and things at that time. When was the kitchen added and when did it, functionally, start being used as an apartment?

Ms. Lindea Whalen responded right now it's going to be because I wanted to move downstairs because my husband is disabled.

Mr. John Mattis asked you still didn't answer the question. How many years has it been used as an apartment? Because it says here "an existing accessory apartment."

Mr. Odie Faria stated it is existing. I'm her nephew. I'm a contractor. She asked me to move in so this is when we started seeing what's there. I went to the Building Department and spoke to Ken and we found out that we have 5 permits for the property: 2 of these permits nobody knows what it was, we couldn't find any record and so my uncle explained to us that at the time when he built the house one of the things he asked right after was the building for this conversion, part of this basement to an accessory apartment. He didn't call it an accessory apartment. There an apartment for his parents that he lived with them at that time. That's when they started investigating the whole thing and I told my aunt that we have to now see what's going on and legalize what's there now because it was there but we can't find two permits, nobody knows for what it was. It was there.

Ms. Lindea Whalen stated he fixed that for his parents because they were old and they lived there until they died. We had that. It was not an addition. It was finished. I don't know if it was finished before his parents came in or when they came in because I wasn't married to him then so I don't know.

Mr. James Seirmarco asked was there a kitchen there all the time?

Ms. Lindea Whalen responded yes, it was a little stove, yes.

Mr. Charles Heady stated contact the Health Department and try to get the -- legal to have the four bedrooms right?

Mr. Wai Man Chin responded yes, that's what they did.

Mr. Faria asked technical question though; that's what we are doing. My uncle told me at that time whoever was doing the inspection told him "hey, I would suggest to make it an additional 10 feet of septic field for a reserve." So, he expected that additional 10 feet to be enough to

cover for the additional bedroom because right now it's going to be 4 bedrooms. Right now it's 3 but we're trying to legalize it for 4. If we don't have that then the next thing will be expand the septic field if it comes to that point.

Mr. Wai Man Chin stated so right now we're just waiting for the Board of Health...

Mr. Faria stated we can't say anything yet because we don't know – perhaps we have, perhaps we don't so we don't know.

Mr. Wai Man Chin stated so we'll adjourn it until next month.

Mr. Faria stated yes.

Mr. Wai Man Chin asked anybody in the audience would like to speak on this matter?

Ms. Kathleen Yurka stated good evening. My name is Kathleen Yurka, I live at 7 Dream Lake Road. This property that we're discussing has been used up to about 6 months ago is when your last tenant moved out.

Ms. Lindea Whalen responded we had the gentleman.

Ms. Kathleen Yurka stated you had a tenant there yes.

Ms. Lindea Whalen responded no, he moved in December.

Ms. Kathleen Yurka stated he moved in December, okay, but he was there 3 or 4 years. My concerns are; it's a private road. It's a single-lane road. If someone is leaving and someone else is coming in, you have to pull into a driveway so the person can go out. If this is turned into an apartment, it's 7 homes that if potentially could turn into 14 homes if we're going to start allowing apartments to be put in. It would just be a nightmare, a nightmare. Like I said: the road is 'this big'. I'm also under the understanding that the Whalen's are planning on selling next year. Now we have the potential of someone buying that home and making two rental properties. So, I have some very serious concerns.

Mr. John Mattis stated with an accessory apartment, the owner has to be the primary resident so they couldn't rent out both parts of it.

Ms. Kathleen Yurka responded oh good. That's good to know.

Mr. John Klarl stated it has to be owner-occupied.

Ms. Kathleen Yurka asked so if someone buys it and there is an accessory apartment – another concern has been; we pay our own road maintenance. We are not paid for by the town. In the 3, 4 years that the last tenant lived here, the maintenance was divided 7 ways amongst the 7

homeowners. The Whalen's did not feel the need, since they had a tenant, to pay their 8<sup>th</sup> share and that is also a concern of ours.

Mr. David Douglas stated I understand that concern because I live on a similar road in your neighborhood but I'm not sure that it's relevant to this issue as to the accessory apartment. That's between the various owners to work out amongst themselves.

Ms. Kathleen Yurka stated well it's hard to work it out...

Mr. David Douglas stated I understand that.

Mr. John Klarl stated when we look at accessory apartment we look at the parking.

Mr. David Douglas stated we look at the parking is relevant but who's paying whatever is paying a pro rata fair share of the road, that's for the people to work out privately. I understand the difficulty. I've been dealing with that for 20 years.

Mr. Raymond Reber stated when a special permit is issued for an accessory apartment, it is under a condition that it doesn't disturb the neighborhood and it gets reviewed every so many years. So, if in fact, the tenants that come in and live in an accessory apartment do cause problems either because of traffic, people parking on the street, whatever, those are conditions that can be brought back to the town so that the permit's not renewed. They have to be good neighbors to keep that permit.

Ms. Kathleen Yurka stated that's good to know.

Mr. Wai Man Chin stated I'd like to say that I'm kind of right nearby you also. I'm on Palmetto Road off East Mount Airy, the same driveway, and it's one lane. Everybody's got to pull over a little bit onto the dirt so the car can pass by. And there are people on our road who don't pay their share of snow plowing also.

Ms. Kathleen Yurka stated and it's a concern.

Mr. Wai Man Chin asked what are we going to do?

Ms. Kathleen Yurka responded I don't know. Thank you for your time.

Mr. David Douglas stated thank you.

Ms. Adrian Hunte asked anyone else?

Mr. Charles Heady asked anyone from the audience?

Mr. Mike Warner stated hi, I'm Mike Warner, I'm at 25 Dream Lake Road and I just wanted to say that, again, it is 7 homes on a very small road. The impact, I think, is perhaps could be more than you might think. Also, I believe it's been rented illegally for many years so I'm not sure legalizing it is an appropriate step at this point.

Mr. David Douglas stated we're going to look into whether it's appropriate for that. I'm familiar with the road. I know the road.

Ms. Adrian Hunte stated thank you.

Mr. James Seirmarco stated just to reiterate, to get an accessory apartment certain criteria have to be met: 1) the accessory apartment has to be a specific size compared to the total structure. It has to have proper off street parking. The accessory apartment goes with the owner. If the applicant gets an accessory apartment and sells the house, the new owner has to come back and get an accessory apartment approved. It's not transferrable to the new owner. It's specifically for the owner of record. They have to live at the house. They can't rent both the primary residence and the secondary residence. There's specific criteria for these things and we will go through the whole list before we would approve such a thing.

Mr. Charles Heady stated I make a motion case 2015-32 to adjourn it to December.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case is adjourned. We'll see you in December.

Ms. Lindea Whalen asked which date?

Mr. David Douglas responded December 16<sup>th</sup>.

Mr. John Mattis stated the meetings are always the third Wednesday of the month.

Ms. Lindea Whalen stated thank you very much.

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Mr. David Douglas asked can someone make a motion to go in executive session?

Mr. James Seirmarco stated I make a motion we go in executive session to discuss...

Mr. John Klarl stated to discuss litigation involving the town.

Mr. James Seirmarco stated discuss litigation regarding the town.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we'll be in executive session. For anybody who's watching, we will not conduct any business after this. There's no reason for you to stay glued to your computer or television.

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### **ADJOURNMENT**

Session was adjourned after members returned from executive session.

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**NEXT MEETING DATE:  
WEDNESDAY, DEC. 16, 2015**