

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, March 18, 2009. The meeting was called to order, and began with the Pledge of Allegiance.

John Mattis, Chairman presided and other members of the Board were in attendance as follows:

Charles P. Heady, Jr.  
James Seirmarco  
David S. Douglas  
Adrian C. Hunte  
Raymond Reber – absent

Also Present

Wai Man Chin, Vice Chairman  
James Flandreau, Clerk of the Zoning Board  
John J. Klarl, Deputy Town attorney

**ADOPTION OF MEETING MINUTES: 12/17/08 and 2/18/09.**

Mr. John Mattis stated can we have a motion please, seconded with all in favor saying “aye.”

**CLOSED AND RESERVED DECISIONS ADJOURNED to May.**

- A. **CASE No. 23-07 Congregation Yeshiva Ohr Hameir** for an Interpretation/reversal of Code Enforcement Officer’s determination that the dormitory housing its students is a pre-existing, non-conforming use and that a Special Use Permit is or may be required for the Yeshiva’s operation or expansion on the property located at **141 Furnace Woods Road, Cortlandt.**

**CLOSED AND RESERVED DECISIONS ADJOURNED.**

- A. **CASE No. 51-08 John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**

Mr. John Mattis stated I’ll turn that over to our attorney.

Mr. John Klarl thanked Mr. Chairman and stated if you recall we closed the public hearing on this application at our last meeting on February 18<sup>th</sup> and we reserved decision and since that time we had a work session this past Monday where the Board discussed their inclinations concerning the application with that I'd like to defer to Mr. Douglas who has a summary of those discussions.

Mr. David Douglas stated at the work session we talked about some of the issues and some of the factors involved in this application and I think it was the sense of the Board at the work session that we would close and reserve we've already closed and reserved but I think it was a sense that at this point the majority of the Board was in favor of issuing a positive interpretation that the leaf composting and the wood waste processing facility is a permitted use in this zone. I don't know if it was the intention to take a vote at this meeting or not?

Mr. Wai Man Chin made a motion to draft a favorable decision in order for the April meeting. Mr. Reber is out today, but he also concurred with that vote, this was seconded with all in favor saying "aye."

Mr. John Mattis stated we have a motion to draft a favorable decision that the two uses are allowed on that property.

Mr. John Klarl asked that would be for the April 15<sup>th</sup> meeting?

Mr. John Mattis responded yes, that's correct.

Mr. John Klarl stated so we're doing the 62 days? If somehow weather should prohibit us from meeting on April 15<sup>th</sup>, the applicant agreed to extend our time to the next meeting of the Board if it's not on April 15<sup>th</sup>.

Mr. David Douglas responded yes.

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## **ADJOURNED PUBLIC HEARINGS.**

### **A. CASE No. 03-09 Robert and Jill Young for an Area Variance for the front and side yard setback on the property located at 10 Frances Drive, Montrose.**

Mr. Robert Young stated Mr. Chairman of the Board I know that last time we left there was an expectation that I may appear before the Board with some revised plans to talk about trimming the plans a little bit and with no offense to the Board, I didn't do that. I hope the Board doesn't take it adversely that I am appearing before you tonight without having changed the plans at all. I was a little bit nervous at the last meeting and I made a quick and hasty decision to get an

adjournment when really what I wanted to do at that time was have the Board vote. Again, I apologize for wasting all of your time tonight. I do have a neighbor with me tonight if it's okay if I have him speak in front of you. It's one of my neighbors who would be most affected by this change. He has a direct view of my house and his name is Mr. Dolan.

Mr. Dolan stated I am right down the street from Rob and I have seen the drawings.

Mr. James Flandreau asked him to state his name and address for the record.

Mr. Dolan responded with Shawn Dolan at 52 Montrose Point Road, and my view of his house, I'm right down the street from him and I look directly down the street at the house. I have seen the drawings. They look good to me. I think it would improve the neighborhood. I think it would improve his house, the look of the lot. I don't see any negatives to it. I don't know what else I could say that might help persuade you guys to go that way but I really think it would be an improvement to the neighborhood and to the house.

Mr. John Mattis thanked him for coming.

Mr. Robert Young continued thank you for bringing me back and I apologize for the extra couple of minutes I've used of your time tonight, but I think the next thing that I can request is just a vote of the Board.

Mr. Wai Man Chin responded I had no problem with the variance that you were asking for because I didn't think it was a detriment to the neighborhood number one, number two you were reducing the variance that you already had been given for the carport by 1.7 feet. I would just like to ask, if possible, I still don't have a problem with the way it is, the garage right now on the inside is 12 foot, is there any way that could be reduced to 11 foot and that would be it? Just the garage.

Mr. Robert Young responded I'm not enough of an architect to know. I haven't studied enough to know. If that would work, yes. You guys know about garages more than me.

Mr. Wai Man Chin responded well your overhead door would still be the same 9 foot in width by 7 foot in height. It's just that you would have a little bit less room between the door and the side walls by 6 inches on either side. You still have plenty of room to get a car in there.

Mr. Robert Young responded sure. Mr. Chairman would I have to reappear before the Board with revised plans?

Mr. John Mattis responded no.

Mr. Wai Man Chin continued I'm just trying to reduce that variance by even another foot would even help.

Mr. Robert Young responded I can definitely do that.

Mr. John Mattis stated because that comes closer to a 50% variance as opposed to a 63% which is pretty large.

Mr. Charles Heady asked that would be 10 foot down to 2 foot right?

Mr. Wai Man Chin responded no 10 foot down to 4.7 feet.

Mr. Robert Young thanked for the suggestion.

Mr. Wai Man Chin responded that's not a problem. I would not have a problem with voting on this right now.

Mr. James Seirmarco stated I concur with Mr. Chin. I was going to suggest the same thing, reducing it by one foot. I think that makes more sense. It becomes a 50% variance and I don't have a problem with that.

Mr. John Mattis stated procedurally what would happen then is you would get revised drawings and you would go into Mr. Flandreau and get the building permit. I'm not even sure, would you require an as-built in survey at the corner just to make sure that it's as it's shown. So, you don't have to come back with revised stuff or anything else.

Mr. David Douglas stated I still have the same concerns as were expressed at the meeting last time. I really don't think that when one goes through the factors that we're supposed to go through that there's a justification for this. I think it does, it would change the character of the neighborhood because what I fear is that if this were granted then six months from now, whatever, somebody next door will say the same thing and the guy next door to that will say the same thing and say "well, you gave it to them and if you gave it to Mr. Young, you gave it to Mr. Jones, you gave it to Mr. Smith" and then we've effectively changed the zoning that the Town has set for this part of town. That's my concern we talked about this the last time and my concerns are the same as they were and as expressed I think Mr. Reber expressed them also.

Mrs. Adrian Hunte stated I concur with Mr. Chin and I don't believe that there would be an undesirable change in the neighborhood or in the character of the neighborhood if it's possible to reduce it by a foot, that's fine. It's substantial in terms of a percentage, in terms of the number of feet, I don't think it's actually that substantial. I don't believe that there'll be an adverse impact on the environment or the conditions of the neighborhood and I think, in fact, it might be an improvement to the property.

Mr. James Seirmarco stated I concur with her comments also. I think that if you ride along Frances Drive and look at the houses there, they're all on small lots and this would not be different in status to the rest of the houses who are all fairly close to one another. And, having a one-car garage is not a luxury anymore to me.

Mr. Charles Heady stated I agree with what Mr. Chin said also, you're cutting it back the way you had it, it's about 50% instead of 62%, so I would be in favor to go along to what you agreed to.

Mr. John Mattis asked I have one question that was a concern we had at our work session and that's the septic system which is in your backyard. Not for pumping it out, but if it has to be rebuilt, how much room do you have on the other side of the house to get a truck back there or something, or the equipment back there that's required?

Mr. Robert Young responded I have about 12 to 15 feet.

Mr. Charles Heady stated you've got enough there. They were concerned about getting back there to repair the septic.

Mr. James Seirmarco responded it might not be the biggest truck in the world.

Mr. John Mattis continued we were concerned that you may not have any way of getting...

Mr. Robert Young responded we've to fill in some dirt, we've brought stuff back there. My father-in-law is a heavy equipment operator and he brought equipment back there.

Mr. Wai Man Chin stated this property did have a variance from 10 foot down to 2 foot. We're raising that 2 foot back to 4.7 foot and I don't think that's really setting the precedence I think we're gaining some footage back from a variance that was given a while back for a carport. It doesn't matter if it's a carport or a garage, to me, it's still a structure. I think we're gaining that extra clearance back that we needed and since Mr. Young has agreed to that I don't see anything wrong with that.

Mr. John Mattis stated and by giving back that foot on the garage side, you may have a little tighter squeeze in the garage but it doesn't affect the living quarters that you're proposing at all. Anyone else, any other comments?

Mr. Wai Man Chin made a motion on **case no. 03-09** to close the public hearing seconded with all in favor saying "aye." Also made a motion on **case no. 03-09** to grant an area variance for the front yard setback required from 35 feet down to 26.18 feet and an area variance on the side yard setback from 10 feet down to 4.7 feet on the above-referenced property this is a type II under Sequa no further compliance is required. This was seconded with all in favor stating "aye."

Mr. John Mattis asked to poll the Board.

Mr. James Flandreau asked; Mrs. Adrian Hunte is in favor; Mr. David Douglas is opposed, Mr. James Seirmarco is in favor, Mr. John Mattis is in favor, Mr. Wai Man Chin is in favor, Mr. Charles Heady is in favor.

Mr. John Mattis stated the motion passes by 5 to 1, so your variance is granted and you can coordinate the building permit and everything with Mr. Flandreau.

Mr. Robert Young asked if I were to take 6 inches from the garage and 6 inches from the kitchen would that also?

Mr. John Mattis stated yes. I just thought it would be easier to do it through the garage because you were concerned with getting more living area. As long as it's 4.7 feet off the property line, you can work that out.

Mr. James Seirmarco stated any combination is fine.

Mr. Robert Young thanked the Board.

Mr. Robert Young's father-in-law asked would you like that survey before or after the building's up?

Mr. James Flandreau response when you're doing the foundation, you would do a foundation survey first and then we'll get a final as-built survey when the project's finished.

Mr. John Mattis responded isn't that just a spot on the corner there to make sure that it's...

Mr. James Flandreau responded yes, they'll give us the dimensions for the front yard variance that's granted and the side yard variance that's granted.

Mr. Charles Heady suggested instead of using 2'x6' I'd use a 2'x4' to give it two more inches. Because this house was probably built many years ago you're following me? And make it even more room it would be 4 inches on each side.

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### **NEW PUBLIC HEARINGS.**

A. **CASE No. 04-09 Lucy McCann** for an Area Variance for the side yard setback on the property located at **7 Louis Lane, Croton on Hudson.**

Mr. John Mattis asked could you briefly describe what you're requesting for us?

Mrs. Lucy McCann stated I'm requesting a side yard variance for a covered porch on my property at 7 Louis Lane in Croton. It is a rebuilt porch that was already there and it was rotted, and we took it down and rebuilt it.

Mr. John Mattis asked can you describe what the porch is like?

Mrs. Lucy McCann responded it's an open porch covered. It's raised one step up.

Mr. John Mattis stated but I think the important point is it's open. You just have basic pillars and a roof over it with a raised slab.

Mr. James Seirmarco asked just for the record why didn't you get a building permit when that happened?

Mrs. Lucy McCann responded we have a building permit open that was renovating our house and during that renovation we realized that the porch was rotten from bees or something so we tore it down and rebuilt it and actually making it smaller than it was. When the inspector came to inspect our back deck footings he saw that and that's when he told us that we needed to get a permit for that. So, we didn't know that if you were putting something up you already had without changing the size of it, making it bigger, that you needed a permit.

Mr. John Mattis stated and for the record you have letters here from 5 Louis Lane, 58 Laurel Hill Road and 3 Louis Lane attesting to the fact that it's the same structure that it was. It hasn't been increased in size.

Mr. James Seirmarco stated and it's a high percentage of her neighbors. There's only 6 houses on the whole street. So, that's about 70%.

Mrs. Lucy McCann responded those are all the neighbors on my side of the street including the gentleman who is right next to me who is most impacted.

Mr. John Mattis stated so basically you're just rebuilding something it's still open, it's not going to be closed in, you would have to come back to us for that. And it's been there since before you purchased the house?

Mrs. Lucy McCann responded we purchased the house 13 ½ years ago and it was there when we purchased it.

Mr. John Klarl asked is the Board putting a condition to discuss at the work session?

Mr. James Seirmarco stated I was just going to mention that. We would be inclined to make a motion to approve this with a stipulation that in the future that it would not be closed in.

Mrs. Lucy McCann stated okay, not a problem.

Mr. James Seirmarco asked that wouldn't be a problem?

Mrs. Lucy McCann responded you mean if I screened it. Is that considered closed? No screens?

Mr. James Seirmarco stated it's already got a roof on it. That's the slippery slope that we try to avoid. First people screen them in, then they put windows and then the next thing you know it's a plastic, and finally it becomes...

Mrs. Lucy McCann responded right now my dog just hangs in there.

Mr. John Klarl stated generally we put not enclosed, nor screened.

Mrs. Lucy McCann stated that's fine.

Mr. John Mattis asked if anyone else had any comments.

Mr. James Seirmarco made a motion to close the public hearing on **case no. 04-09** seconded with all in favor saying "aye." Also made a motion to approve the variance required, an area variance for the side yard setback for the porch from a required 10 foot down to 4.8 feet and an area variance for the front yard setback for the dwelling from a required 20 foot granted by the Zoning Board of Appeals in **case no.16-65** down to 19.2 feet, and an area variance for the side yard setback of the north side of the dwelling from a required 10 feet to a 4.5 on the above-referenced property. This will include no further improvements to this side porch including screening, or any other method of enclosure. This is a type II Sequa no further compliance is required. This was seconded with all in favor saying "aye."

Mr. John Mattis stated your variance is granted.

Mr. James Flandreau stated just for the record those last two variances that Mr. Seirmarco read into the record were created when the house was originally built and one was for a variance where the house was built a little too close and one was for a side yard variance that wasn't noticed at that point so the Zoning Board was just cleaning that up granting the variances for the property.

Mr. James Seirmarco stated we asked that question at the work session why the house was put so far forward and your answer was to build what the original purchaser wanted it closer to the steep slope in the back yard. Today, that wouldn't happen.

Mrs. Lucy McCann asked now what do I do? Now I have to get a permit right?

Mr. James Flandreau stated we'll send a decision and order out to you in the mail.

Mr. John Mattis stated once that's filed than you can come in and get your permit.

**B. CASE No. 06-09 Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals Case No. 33-08 Decision and Order.



Mr. James Flandreau stated we're coming back to the Zoning Board from a Zoning Board **case no. 33-08** for the decision in order and that was for an interpretation of what constitutes demotion/distribution of a concrete aggregate. The Zoning Board under that case interpreted that that use was consistent with the special trade contractor's use and there has been some discussion with the Planning Board application how it's worded that there's a little confusion. The Planning Board application is worded that a special trade contractor for stone crushing machinery material for aggregate operation and we brought it back and the Department of Technical Services asked us to bring it back to the Zoning Board to re-interpret is the stone crushing machinery material the same as what they'd heard and if it isn't, is it an allowed use?

Mr. James Seirmarco stated Mr. Chairman I think that we were all in concert that night that this was a decision on crushing pre-formed concrete. Concrete is a mixture of virgin aggregate and cement, and water, rebar whatever, that turns into concrete and if you crush the concrete into sizes that we can reuse it, you can call it aggregate-like material, but that's a size issue. I, myself, leave the term aggregate to the virgin stone that's dug out of the ground and crushed to specific sizes to mix with cement to form concrete. I think our intention was to allow the applicant to crush cement that had already had aggregate in it and was formed and hard to a size to aggregate-like material to be reused and nothing else, no virgin aggregate crushing.

Mr. John Mattis stated I think the question arose about stone or rock and it was never our intention to have either pure rock or pure stone. There may be some stone or rock in this concrete aggregate. It was basically what was coming from Route 9 as they were pulling down the bridges and things so it could be recycled.

Mr. James Seirmarco stated I use the term virgin aggregate as stone that's taken out of a mountain or dug out of the ground and has not been used to form the composite called 'concrete.'

Mr. John Mattis stated and we would not consider that under the specialty trade contractor nor was it our intention in our decision.

Mr. James Seirmarco stated I don't know how you would rewrite that but that was our intent.

Mr. John Mattis stated what we discussed at our work session is we'd like to close and reserve so we give our attorney some time to draft the proper language on that.

Mr. John Klarl stated and to further discuss it at the next work session.

Mr. John Mattis asked any other discussion from the Board? Anyone in the audience? Since Mr. Reber isn't here Mr. Seirmarco you seemed to pick up the ball on that.

Mr. James Seirmarco made a motion to reserve decision on this and construct our attorney to write a DNO that would reflect our comments I just read.

Mr. John Mattis reiterated so we would close the public hearing and reserve our decision, this seconded with all in favor saying “aye.” We should have a decision by April 15<sup>th</sup> meeting but it’s possible to go 62 days to the May meeting. I think it’s unlikely on this case.

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**SPECIAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER.**

**A. CASE No. 05-09 New York SMSA Limited Partnership d/b/a Verizon Wireless for a Special Use Permit to co-locate on an existing telecommunication tower on the property located at 3100-3105 E. Main Street, Mohegan Lake.**

Mr. Jordan Fry from the law firm of Snyder and Snyder we are the attorneys that represent New York SMSA Limited Partnership doing business as Verizon Wireless in it’s application for a special permit to collocate a personal wireless services facility at 3100-3105 E. Main Street. The facility will consist of small panel antennas on the existing monopole with equipment at the base thereof.

Mr. John Mattis asked could you describe where this is physically located on the property?

Mr. Jordan Fry responded if you’re familiar with the shopping center, I believe it’s called the Cortlandt Town Center, there’s a I believe it’s an A&P Supermarket? Behind the A&P Supermarket there’s a 140 foot existing monopole with actually antennas owned by T-Mobile. Currently T-Mobile owns the pole and were going to be collocating on that pole.

Mr. Charles Heady stated let me correct you on that. The pole is located behind Home Depot, the one you’re talking about. Because, A&P is further down, because I went up there and looked at it myself and it’s exactly behind Home Depot.

Mr. Jordan Fry stated I believe it’s between them.

Mr. John Klarl asked when you look over at A&P and look over the Home Depot store did you see it?

Mr. Jordan Fry responded yes.

Mr. John Mattis stated it’s behind that whole structure that has Home Depot, A&P and several other stores. Physically there is one change you’re making in terms of the equipment on the ground? You’re making changes to the footprint?

Mr. Jordan Fry yes, Verizon Wireless is proposing to just expand the equipment compound approximately 800 square feet just as an idea to the change to the overall property. The property is on 122 acres, so we’re proposing just 800 square feet.

Mr. John Klarl asked the 780 square feet for the cabinet is that attached to the existing cabinet or is that a separate cabinet?

Mr. Jordan Fry responded Verizon Wireless is going to be a 12'x20' or 12'x30' equipment shelter. It's Verizon Wireless's own equipment shelter it's not going to be related.

Mr. John Klarl asked no is it juxtaposed to the old cabinet or is it separate.

Mr. James Flandreau responded I think it's adjacent to the existing compound. You'll have one fence...

Mr. Jordan Fry responded it's going to be bumped out, there will be one fence.

Mr. James Seirmarco asked it's going to be 800 additional square feet?

Mr. Jordan Fry responded that's correct.

Mr. Charles Heady stated I asked you at the work session. You have to address five issues that DOT engineer had asked you to do before we can issue you a special permit. Now is that all been taken care of through engineering?

Mr. Jordan Fry responded first off number four regarding the original engineer signatures, seals and stamps, that's been submitted at the work session. As for items one, two, three and five our Verizon Wireless's engineer has spoken to Mr. D'Angelo and has indicated to Mr. D'Angelo's March 4<sup>th</sup> memo that those issues can be handled at the building permit stage as long as the Board is okay with that.

Mr. John Mattis asked so they would be satisfied in the Department of Technical Services before a building permit would be issued.

Mr. Charles Heady asked in other words if we give you this special permit then you'll make sure that those five issues are addressed, am I right?

Mr. Jordan Fry stated right.

Mr. John Mattis stated and one last item just for the record, where you are putting the equipment cabinet and I've been back there, I use that as a shortcut sometimes, you have the building and then you have I don't know probably 50, 70 feet of pavement there where trucks go back and deliver and then there's, I believe it's like a fencing and then it would be behind that, so you're really not encroaching on anything that's used today.

Mr. Jordan Fry responded no, not at all. We're really just expanding the fenced in area slightly to put Verizon's equipment down. That would be it.

Mr. James Seirmarco asked Jim do we have any documentation from Mr. D'Angelo's stating that it's acceptable to wait until the building permit's stage for the other four issues.

Mr. James Flandreau responded when I had met with him when he drew up his comments he said the one thing that he was concerned about was to get the original signatures which we have gotten from them at the work session and those are okay. He said the other items they could take care of during the approval process for a building permit if the Board agrees if that's okay with you.

Mr. Wai Man Chin stated I believe that we've done that in the past on one of the other pole co-locators.

Mr. John Mattis stated yes, those are issues that have to be cleaned up and it doesn't make sense for us to hold this case open because they won't issue the building permit until they are all satisfied, and we've done that before.

Mrs. Adrian Hunte asked did you have any special permits from DEC required for this since it does encroach on the water table and the wetlands back there?

Mr. Jordan Fry responded well I believe we're outside the wetland buffer so there's no requirements needed from the DEC. There's no approvals that are required to the best of my understanding.

Mr. John Mattis stated I think the Town would have made that a condition. Asked if there were any other comments.

Mr. Charles Heady made a motion on **case no. 05-09** to close the public hearing seconded with all in favor saying "aye." Also made a motion on **case no. 05-09** to grant a special use permit to collocate on existing telecommunication tower Sequa Type I unlisted action, seconded with all in favor saying "aye."

Mr. John Mattis asked if there was any other business. Adjourned, seconded with all in favor saying "aye."