

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 16, 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 (absent)
Adrian C. Hunte
Raymond Reber

Also Present

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

ADOPTION OF MEETING MINUTES for 8/19/09

Mr. John Mattis stated we'll dispense the adoption of the meeting minutes for August since they were not available to us for review this month.

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CLOSED AND RESERVED DECISIONS ADJOURNED TO NOVEMBER 2009

Mr. John Mattis stated as information:

- 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.**

- 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.

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CLOSED AND RESERVED DECISION TO OCTOBER 2009

Mr. John Mattis stated we also have two cases and they are as follows:

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.**

B. CASE No. 18-09 **Post Road Holding Corp.** for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**

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ADJOURNED PUBLIC HEARINGS

A. CASE No. 08-09 **Jorge B. Hernandez, RA for M & S Iron Works** for an Interpretation if a structural steel & iron erector is a Special Trade Contractor on the property located at **439 Yorktown Road, Croton-on-Hudson.**

Mr. John Klarl stated on the application Hernandez that we had indicated at our April meeting that it was subject to the Moratorium that was passed the night before. We indicated to the applicant that he could apply to the Town Board for a hardship. So we've adjourned this June to the July meeting and July to the September meeting because of the Moratorium. I don't believe the gentleman is here to go ahead realizing that he had any relief it would be going to the Town Board. I don't think we've heard from the gentleman for some time.

Mr. John Mattis asked should we adjourn this for one month or possibly two?

Mr. John Klarl responded let's just do one month. I think at our work session on Monday we were doing both 'A' and 'B' to the October meeting.

Mr. John Mattis asked do we have a motion to adjourn to next month? So moved, seconded with all in favor saying "aye."

B. CASE No. 11-09 **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for

marine storage, sales and services on the property located at **285 8th Street, Verplanck.**

Mr. John Mattis stated that was a case where the zoning line went through the middle of the building and we suggested that he go to the Town Board and have them move the zoning line so he's not split zoned in the middle of his building. He has gone to the Town Board but hasn't received any action yet. Do we have a motion to adjourn that? So moved, seconded with all in favor saying "aye."

C. CASE No. 23-09 **Matt Mello** for an Area Variance from the front yard setback requirement for a proposed porch on the property located at **25 School Street, Cortlandt Manor.**

Mr. Matt Mello stated I think I had asked for an adjournment two months ago about putting a front porch on my house. When we were here we had discussed some possible other options because the set back is 30 feet at that part of the road and I was asking for a five foot Variance for the front porch. The thought was "okay, go drop a couple more different plans. See if there's some other things that you can do." One of the suggestions was a portico over the front door. The problem is, as we looked at these plans and looked at the front of the house, the house is originally a ranch house that we've just putting an addition on. It looks more like a center hall type colonial now but the door is off-set to the left. There's this big space between the front door and where the windows are on the right and that means if we were to put a portico in the front door the left part of the house looks very cluttered. We looked at that option but esthetically it doesn't look the way I would want it to look. I'm not going to put something on my house that I don't think looks right or improves the look of the house. Just to give you a brief history on this: the Westchester County Board of Health wouldn't allow me to build the exact same square footprint above as below so I couldn't go straight up with my house. I had to actually subtract 29 square feet from the addition that I put up top. In the middle of my house in the front there is a cutout roughly 16' x 2' where there's this little over the middle of my house there.

Mr. John Mattis asked I don't understand why they'd do that. Maybe you can explain that.

Mr. Matt Mello responded it had to do with the septic we would have had to redo our entire septic field if we were to do that.

Mr. James Flandreau stated they've changed some of the rules this year with how big expansions that you can do. Anything over 1,000 square feet or doubling the size of your existing house they would then take a look at your septic to see how old it is and they might make you put a new septic system in.

Mr. John Mattis stated it's not just triggered now by additional bedrooms, also square footage addition.

Mr. James Flandreau stated they still have to see for existing bedrooms or relocation of bedrooms they still want to see it.

Mr. Matt Mello stated it was a very frustrating process. What that means is where that is inside my house on the other side of that is the stairs to go upstairs and there's closets there. I couldn't move the front door to center it, which would have been another option, which might have taken care of some of the esthetic problems with the front of the house. That's why the house was there. The thought was to take that existing roof that's there, it's a relatively small roof but extend it out and widen it so it would go over a front porch and that would, to the eyes, take away from that clutter on the left, clutter towards the right, this offset to the house. That was the original reason for that, plus my wife and I thought "this would be a nice to have a front porch." There's a history of where I was going with this. Then to look at it and think "we'll put a portico over it," just doesn't look right. We scratched that idea. What I've put forth, what I've re-submitted is instead of a six foot porch, a four foot porch to throw out there. We think that it's got to be something like that in order to improve the look of the front of the house.

Mr. Charles Heady stated first I have to say that you had a death in the family and couldn't make it last month but when I was out there at the site inspection I was talking to you about it and I thought there wouldn't be any problem with you've putting a deck there. At six foot we talked about and I said that the fellow next door is about four foot out from the property line. Since then Code Enforcement has given us some information on the surveys that the houses on that street. Next to you, the house I thought was out so far they had gotten a Variance for 28 feet to the road from the property line and what happened is they only used one foot. It's actually it's only 29 feet. Yours is 30 feet now. The rest of the houses on the block there, I've got the whole list of them, most of them are 31 feet or a little bit more. Some are 30 feet, 35 feet all of them are back within the Variances they're supposed to have. Like David Douglas said last month it's pretty hard to single out one person to have the porch there. However, at the work session we had talked and said that the Board would allow you to have a roof over the front entrance but the porch I don't know how the rest of them feel about it. I'm sorry it worked out that way but that's the way it is. I didn't realize that those houses are so far back, 31 feet. We have the whole list of the houses alongside of you.

Mr. Matt Mello stated I understand that. One of the other things that was brought up last time, and I think the major concern was if you put this porch on then there's nothing to stop everybody else from coming in and putting up a front porch. I looked at that issue itself and what I did is I drove around to a whole bunch of the neighborhoods around and I was looking at those one-level houses which are predominantly on our road. The majority of them are one-level capes or one-level ranches and if you look at those, if you drive around, none of those people have front porches on their house and there's a reason why you don't put a porch on a ranch house because esthetically it won't look right. It's too low to the ground to put a porch on there. If you drive around and take a look at that which I did but I wanted to get an idea of what these other neighborhoods looked like, what other houses had and you drive around and none of these ranches have porches. There's a reason for it, it's just not going to look right. People are not just going to go put a porch on because somebody else did because they want a front porch. That's not the way it works. People look at their house and they try to determine: is this going to improve the look of my house? Is this something I really need? I wish I had a picture of it to

show you but people aren't going to put that, I never would. The next question would be: what's to stop them from putting an addition on their house and then a front porch and then going through that process? Our development started in the 1950's as well as many of these around here. There aren't many people who would put a second level on their house and then decided to add a porch to it. There aren't many people on my road itself, I forget the exact number of houses on that road but there's one other house on that road that actually put an addition on the top, going up one more floor and they only did it half the house. They don't have a porch. Our major concern, you do it, everybody's going to do it. That's not necessarily the case. You have to take a look at the house itself and try to understand why people would do this and what it would look like. I would say in my case I think it's rather unique. I don't think it's something that other people are going to just imitate. I'm not putting up a garage because I need a garage I think other people would do that, we're talking about a front porch. I think they would need a reason to do that.

Mr. Raymond Reber stated your argument doesn't hold water and the reason it doesn't is that back at the time most of those houses, first of all, I can show you several ranch houses with porches. That argument that you don't put porches on ranches is wrong. The reason those houses don't have porches is because at that time, in that era, people saw no value in a porch. The lots, the way they set them up, that's the way the houses were built back then. Nobody was interested in porches. It wasn't a thing back then. Porches came about after that again "hey maybe we'd like to have a porch." The fact that it doesn't look good, no, because I can show you several ranch houses with nice porches and verandas around them. The argument is, at the time those houses were built porches were not an "in" thing. It wasn't something people would spend money on. They thought it was a waste of money and back then houses people weren't putting a lot of money into houses. You're talking a lot of esthetics. Everything you're talking is esthetics and I have a hard time considering Variances for esthetics and I do believe it sets a precedent and yes I could see where people could redesign their house and put porches on if we say "hey, that setback no longer holds." I'm sorry, my own view is I could not support giving a Variance for what is basically esthetics and you've pretty much admitted it, you're doing this for esthetics.

Mr. Matt Mello stated just to reiterate this I didn't make it up. I took a ride around and maybe you can show me or maybe you know where these are but I took a ride around these neighborhoods around here and there weren't.

Mr. Raymond Reber stated I agree there aren't because when they were built people didn't put them on and added them afterwards would need a Variance and we don't give them so that's why they don't have porches.

Mr. Matt Mello stated or maybe because it wouldn't look right so they didn't have the porch. I can sit here and argue with you all day about that but I'll leave it at that. I don't have another option.

Mr. John Mattis asked other comments? I agree with Mr. Reber. We cannot assume that your

neighbors will not want to build porches. You may say they don't. Somebody else may come in here and say they will. We cannot make those assumptions. If we can incorporate esthetics into a Variance where there's a reason for the Variance and it doesn't set a precedent, because I've been up and down that street four times now looking at this and we looked at all the others and you would be by far the closest one to the street and you would set the precedent. We don't know that people with ranches will do that or not and if we make the wrong assumption based on what you've told us they're all going to come in here and we've set a legal precedent that would hold up in Court and in effect we've changed the Zoning. We are not supposed to give Variances solely on esthetic reasons. I think it would look very nice if you put a porch there but unfortunately we have to live with the Code the Town Board gives us and that Town Board says 30 feet and one of the things that we have to look at is how all those houses will line up down that street. They all line up almost perfectly and yours would be jutting out and that would set the precedent for the others to come back to us. What you're arguing that people won't do you're doing yourself so how do we know that everybody else won't do it. You've chosen to do it.

Mr. James Seirmarco asked I have a question for you: you're saying that that bump in required for your septic system there's going to be a small roof over that area?

Mr. Matt Mello responded yes there is.

Mr. James Seirmarco continued and this porch that you're proposing would be covered with the extension from that roof?

Mr. Matt Mello responded yes.

Mr. James Seirmarco continued without extending the porch, the lower portion, would it help you just to extend the roof?

Mr. Matt Mello responded it's over the part of the house where there isn't a door. Yes, we have the esthetic reason but the other reason is that we want coverage, you know you get your keys out of your pocket to try and open the door and get in the house, it doesn't cover that part. The door is that off-center because it was originally a ranch-style house.

Mr. James Seirmarco asked if that roof came down four feet all the way across that 16 foot you would be able to walk underneath that at ground level and go to your existing stoop for lack of a better word and that would be covered also.

Mr. Raymond Reber stated it doesn't cover the door he said. The door is not lined up.

Mr. James Seirmarco stated I'm saying extend – where the bump is Ray, just extend the roof the whole length of the bump that will cover the off-set stoop and also cover some ground level area without increasing the size of the porch.

Mrs. Adrian Hunte stated that was my thinking too that you might be able to extend, because you mentioned that there is a piece that extends over now it just doesn't cover the door. Is it possible to just extend that piece farther and that would be more of a portico?

Mr. Matt Mello responded it would have to probably extend to the left six to eight feet. It would have to come out the four feet and extend to the left six to eight feet. I'm not a builder and I don't know does that roof sit fine without any support underneath it? Do you have to put a column in and isn't that in essence a porch?

Mr. James Seirmarco responded I don't know.

Mrs. Adrian Hunte stated that's something we could possibly consider. The Variance we have problems with on the porch aspect for the reasons cited.

Mr. James Seirmarco stated you might want to talk to your designer and see if he can extend 2' x 6' out the four feet to cover your existing door off-set and for, I hate to use the word esthetics, have symmetry in the overall roof in that whole 16 feet.

Mr. Raymond Reber asked I have a question for Code Enforcement, Mr. Flandreau what's our ruling in terms of overhangs and whether they're considered encroaching on setbacks?

Mr. James Flandreau responded there's a part of the Code that allows a roof overhang to encroach, I forget the exact dimension, into a setback if it's only a roof overhang.

Mr. Raymond Reber stated which would mean it would be unsupported. No posts or anything. Posts then we'd have to give a Variance?

Mr. James Flandreau responded right.

Mr. James Seirmarco stated that's all I'm saying. It's something to consider.

Mr. John Mattis stated if you could fit within the criteria which he's looking up right now and it's not supported that would be fine. But, once you put the supports it's going to turn into a porch or something.

Mr. Raymond Reber stated I would have a problem with it.

Mr. James Seirmarco stated we all would I think.

Mr. John Mattis stated I think it would look better with a porch but we're up against certain things that we have to look at and we have to consider. We've run against this in other neighborhoods unfortunately when all of the houses are pretty much lined up the same and they all look pretty much the same, you give one Variance and you're stuck giving them all and then you've basically said to the Town Board "we don't care what your Code is we're throwing it out

and we're basically rewriting it" and we can't do that. We just can't do that.

Mr. Matt Mello asked do we know when the Code was written?

Mr. John Mattis responded 1951 it started and there's been many revisions.

Mr. Matt Mello stated I was just curious. We've progressed as a society since 1951 and things look a lot different.

Mr. John Mattis stated from time to time we get minor changes, sometimes there's major changes.

Mr. John Klarl stated there's was a complete review of the Code in 1994, the ZORP and we've done revisions since then but the Code is fairly modern.

Mr. James Flandreau stated **section 307-18B1** Cornices, Canopies, Eaves or similar features at least 10 feet above finished grade is allowed to encroach 2'6" into a setback.

Mr. John Mattis stated you could extend that two and a half feet out.

Mr. Raymond Reber stated I don't know if he came make the 10 feet.

Mr. John Mattis asked how low is your roof now? It has to be 10 feet off the ground.

Mr. Matt Mello responded right now it is. It might be – it goes halfway up the second floor.

Mr. John Klarl stated maybe the applicant would like to consider everything he's heard tonight.

Mr. James Seirmarco stated you want to consider that before you ask us to vote.

Mr. John Mattis stated if he considers that he's going to do it he doesn't need a Variance. Our question is do we give him a Variance or not?

Mr. Raymond Reber stated he can get an esthetic value out of that by doing that.

Mr. John Mattis stated I don't know why we have to adjourn it. He's either going to do it or not do it and he doesn't need our permission for that.

Mr. Matt Mello stated I don't need to drag this on.

Mr. John Mattis asked does anyone in the audience would like to speak?

Mr. James Flandreau asked wouldn't he still need a Variance for the porch part where the door is because that's where the stoop is it's still considered a front porch and that's still going to be

covered, that Variance just for that area by where the door is?

Mr. John Mattis responded not if there's no supports.

Mr. Raymond Reber stated if he stays within the 2 ½ foot.

Mr. James Flandreau stated I just wanted to make sure and clarify.

Mr. John Mattis stated if there's no support then it's just roof.

Mr. Raymond Reber stated we should clarify what specifically he wants us to vote on. Does he want us to vote on a four foot post as latest proposed or does he want us to vote on a portico because I think the portico he can get if he wants the four foot porch I would vote against it.

Mr. Matt Mello responded it would be the four foot porch. I'm not putting a portico there it won't look good, but thank you.

Mr. John Mattis stated we had discussed the portico at our work session and we weren't aware of the reasons why you didn't want it but that would have been a solution but unfortunately the Board of Health precluded that.

Mr. Matt Mello stated when I left the last time that was my thought. I thought that was a great suggestion that this would be great but when you start putting it on paper and looking at it – we took some boards and put them up there and it didn't look right so I didn't do it. I appreciate the suggestions.

Mr. Charles Heady asked he doesn't need a Variance at all then for the overhang?

Mr. James Flandreau responded if he's going to do it as an overhang of the roof.

Mr. John Mattis stated but we should vote on it.

Mr. Raymond Reber stated he wants us to vote on a four foot porch.

Mr. John Mattis stated I'm going to take exception to our withdrawals because we have cases and if we don't vote on them they don't go into the record and people can come back later. I don't like this idea of withdrawing cases. I think they should be voted on.

Mr. Raymond Reber stated the only question we had was did he want to modify what he has? And he said go for the four foot porch.

Mr. John Mattis stated so we should be voting on that. Anyone in the audience would like to speak?

Mr. Charles Heady stated I make a motion on **case 23-09** to close the public hearing, seconded with all in favor saying “aye.” I make a motion on **case 23-09** the Variance required an area Variance from a front yard setback required for the proposed front porch for a required 30 feet down to 27.8 feet on the above-referenced property SEQRA type II no further compliance required, seconded with all opposed saying “opposed.”

D. CASE No. 26-09 **Steve Erenberg** for an Area Variance from the front yard requirement to legalize an addition and an Area Variance from the front yard requirement to legalize the eave overhang of the addition on the property located at **23 Furnace Brook Drive, Cortlandt.**

Mr. John Mattis stated we had our site inspection on Saturday, most of us were out there, several couldn't make it. Does anyone that was there would like to discuss it?

Mr. Charles Heady stated first thing I noticed the sign wasn't up in the front yard where it's supposed to be. It was on the side of the porch in the back. You couldn't even see it.

Mrs. Erenberg stated I would like to say that after last month's here on that date, I had called the offices and I had asked them whether I needed to keep it up or take it down or get another sign because the date was already passed the following day after the hearing last month, and whoever I spoke to, it was a woman on the phone, said being that we were here the night before we should take it down. I explained to her that we're coming back next month and that you're doing a site evaluation and she seemed to just tell me again “you can take it down, it's not necessary anymore.” That's why we took it and just put it along and put it to the side, what you saw.

Mr. Steve Erenberg stated we have nothing to hide.

Mr. Charles Heady stated it shouldn't come down until the case is finished.

Mr. Steve Erenberg responded we understand that.

Mr. John Mattis stated I think some of the women in that department are clerical in nature and I think someone has to tell them what the regulations are. They're supposed to stay up until the end of the case but if they told you that.

Mr. Steve Erenberg asked do we get a new sign with a new date?

Mr. James Seirmarco responded you wouldn't have a new date because it's the original date of the original public hearing.

Mr. John Mattis stated the sign just stays up.

Mr. Steve Erenberg stated it's the date of the original the last meeting.

Mr. John Mattis stated the sign just stays up for the duration.

Mrs. Erenberg stated even though it has an August date on it, I'm going to put it back up tomorrow?

Mr. Charles Heady responded it should be, yes.

Mr. Steve Erenberg stated we saved it.

Mr. Charles Heady stated it's got to be up until we finish the case completely until we turn it down or whatever we have to do with it. When I was there, also in the front there you have that overhang on that addition you put on which is quite far out from where it's supposed to be. You need a Variance for that but otherwise, if you don't get the Variance you've got to cut it back. One of us was talking about having a survey, right?

Mr. James Seirmarco stated you had said that the question was forty feet from the wall to the property line, Mr. Heady I understand measured it and it was 53 inches. We really don't want to get involved in the: is it four feet, is it 53 inches, or four and a half feet? We discussed this at great length at the work session on Monday and we all felt that it's a very difficult curvature in the road. We're not sure – if you look at it, some of us are not engineers and architects, if you look at it, it looks like there's some errors in setback numbers but it's hard for us to tell.

Mr. Steve Erenberg responded there are. I checked it myself after somebody said something and I have the new numbers.

Mr. James Seirmarco stated here's our problem, in order for us to vote on something we need to have an accurate location for buildings and setbacks and whatever. We're not asking for a complete survey but we would ask that you get a survey to spot the critical dimensions.

Mr. John Mattis stated it is wrong do you know if it's closer or further?

Mr. Steve Erenberg responded basically it was simple math. I think the architect looked at the old survey which is a little blurry. It's from 1967 and I took a loupe out and took a closer look at it and I found that the building itself is 2 foot 8 inches over.

Mr. John Mattis stated it's 2 foot 8 inches, it's not 9 inches.

Mr. Steve Erenberg stated that's my dimensions. If you take the existing building and you simply add on the addition I found that I was 2 foot 8 inches over.

Mr. John Mattis asked the other thing that really disturbs me is that you show the bump out is 36 inches.

Mr. Steve Erenberg stated he was wrong.

Mr. John Mattis stated it's 53 inches.

Mr. Steve Erenberg stated he didn't design it. He came back and checked it and he made a mistake with his math. I measured it tonight when we got the call and that's my measurement.

Mr. John Mattis asked can you explain to me again specifically what you accomplished by doing that? That was to put your bed in there and give you more room in that room?

Mr. Steve Erenberg responded the house itself was a tiny ranch. The living spaces were enlarged and we still have tiny bedrooms. So, for a master bedroom to put a bed in when you open the closet doors, it would basically hit the bed. It's a tiny room, so I just did enough of an extension so I can pull the bed back away from the closet doors.

Mr. John Mattis stated yet you had room on the side. You chose not to go to the side.

Mr. Steve Erenberg stated no I didn't.

Mr. John Mattis stated where you wouldn't have needed a Variance.

Mr. Steve Erenberg responded no I would not of. It never crossed my mind. I know you don't like esthetics but that's my thing. I wanted to balance the house out.

Mr. John Mattis responded it's not that we don't like esthetics that's not what we're charged with. We're charged with the Code and there's no esthetics in the Code.

Mr. Steve Erenberg responded I understand that. When I did the extension I wanted it to be the minimal amount not realizing that there was a Variance involved aside from all the other problems and all the other things I wanted it to be as simple and as small as possible. If I went to the side it would require the whole roof to be redone. It's a different project.

Mr. Charles Heady stated on this Variance and so forth, what you've done – you have the shed in the back which you built which is a nice shed in the back or garage I guess it is. You really knew better. It's a self-created hardship. You're causing trouble for yourself and trouble for the Board and if I had my way I'd have that shed taken down but we can't. As far as the overhang that you're going to have to cut back or else you'll have to get a surveyor and find out for sure exactly where it is and then we'll have something to go by like Mr. Seirmarco said. We're only guessing the way it is now. You said you measured it but we have a professional do that just the front to find out exactly where it is.

Mr. John Mattis asked what are the dimensions of that bedroom?

Mr. Steve Erenberg responded they're 17 wide by about 10 deep.

Mr. John Mattis stated 10 to the closet. That's not such a small bedroom.

Mr. Steve Erenberg responded it's a strange shape. It didn't work.

Mr. John Mattis stated but you're portraying it as a tiny bedroom. Just as the bump out was portrayed as 36 inches when it's 53, just as the Variance was 9 inches when it's two feet eight inches and I want to add something else. The woman next door came out, and this is irrelevant to the case, but you've shown a pattern here. When we discussed the shed and you talked about the gravel that's always been there, she said "that was a swamp and that was all weeds until about six years ago."

Mr. Steve Erenberg responded that's not the case.

Mr. John Mattis stated I'm just telling you what she said. I'm not saying that you're not telling the truth on that but it seems like nothing here is what it appears to be. It's very disturbing.

Mr. Steve Erenberg responded the gravel was always there.

Mr. John Mattis responded I'm just telling you what she told us. It's not an issue for the Variance, so we'll move on but there's a pattern here of everything being different than it's portrayed, that's all.

Mr. Steve Erenberg responded that's why I'm responding because it's not the case and I don't want to be painted with that.

Mr. Raymond Reber stated but you indicated that you weren't aware of the Variance and I can understand that sometimes that can happen but am I also correct that you did not get a building permit for these modifications that you made?

Mr. Steve Erenberg responded I got nothing.

Mr. John Mattis stated you had put additions on before and got building permits. You were well aware that you needed them.

Mr. Raymond Reber stated that's the thing I look here and I see in the past you've gotten building permits when you've done work. Existing screen porch, open deck, screen porch work what have you that was in...

Mr. John Mattis stated I'm beginning to question everything that's on here quite honestly. No building permits, no COs, dimensions all off in every case understated. It comes down to the root of the question is we have to look at this as if you did not have that built and would we grant you that Variance if it were not built? The answer is to put a bump out to move your bed out a little bit is a Variance that I wouldn't give. You could come out until you're two feet eight and you would have gotten a little bit but I wouldn't have given any more. We don't give Variances

for people to move their beds. People have smaller bedrooms than that and they put the beds in the corner. They do what they have to do.

Mr. Steve Erenberg stated as I said before you didn't find this out. I came to you. I volunteered all the information. I brought an architect.

Mr. John Mattis asked what year did you build that?

Mr. Steve Erenberg responded three years.

Mr. John Mattis stated three years. I think it was stated from the neighbors that it was more than that but you came to us now. You didn't come to the Town having put other additions on when you knew you had to get building permits.

Mr. Steve Erenberg stated I came as a volunteer and I wanted to make things right. If I have to take it down.

Mr. John Mattis stated I find that amusing. I didn't get a building permit. I didn't pay the extra taxes. I came here as a volunteer. You know how that sounds?

Mr. Steve Erenberg stated I said I would do whatever it takes to make it right. If it has to come down, it will come down.

Mr. Raymond Reber stated my own feeling along the lines as the Chairman has indicated, you have a right to come out to the line and if that allowed you 2 ½ feet or two feet instead of the three feet or whatever, that's fine but I think my recommendation would be redo it, cut it back and bring it within the cut-off line.

Mr. James Seirmarco stated I am not ready to say that. I really want to see the exact numbers here. It could be a minimal problem here or a much bigger problem. I would prefer to see the citings done, an accurate drawing made and we'll see...

Mr. Steve Erenberg asked and then there's a chance I'd get a Variance?

Mr. James Seirmarco responded I don't know. I'm being honest with you, I don't know.

Mr. Raymond Reber stated if you were talking a few inches I would say – I wouldn't have a problem with a few but when we're getting into 2 ½, three feet that would be hard to grant.

Mr. Steve Erenberg stated we're talking about a five plus percent Variance.

Mr. Raymond Reber stated I understand percentage wise I'm just saying when the dimension is not diminimous I guess it would be a concern. I would consider up to six inches somewhat diminimous. The thickness of a wall nowadays they're building are 2' x 6' so I could say that

someone measured it the wrong side. They measured it from the inside instead of the outside or whatever one they were putting it on. That's the limit I would go in terms of what I would consider diminimous in terms of Variance for something like this.

Mrs. Adrian Hunte stated I would feel more comfortable with a survey reading or something that's more accurate because you said that yours is based upon just adding on numbers and we don't have exact from the original.

Mr. James Seirmarco stated it's a difficult siding because the road is curved there. As you move down the road the distances change. One foot to the left or to the right may change it one foot setback. You just don't know. I would prefer to see...

Mr. Steve Erenberg responded I'll do it. I don't have a problem with that.

Mr. James Flandreau stated we require, once the building permit's issued to get a C of O for any Area Variances an as-built survey so if it's already built to get an as-built survey now instead of at the end if a Variance is granted it would accomplish the same thing and then it would be able to give the Board an exact number since there has been discrepancies between what's actually there and what the architect put on the plans.

Mr. John Mattis stated if a number of us are not going to grant a Variance we could save the gentleman a lot of money by not forcing him to do a survey. And, then he can do the survey and if by chance, maybe it doesn't need a Variance. He could have what he has. Apparently because we have dimensions all over the place. They get smaller, they get bigger, maybe it fits. I don't know what the dimensions are anymore. If it goes over and he needs a Variance, I'm going to vote against it and that would save you the money, unless the others feel differently, I'm only one vote. That would save you the money of a survey.

Mr. Charles Heady stated I agree with Mr. Seirmarco though....

Mrs. Adrian Hunte stated I don't think we can vote anyway because of the sign issue, is that correct?

Mr. John Mattis stated there's extenuating circumstances. If he was told by someone in the Town I'm not going to hold somebody to that.

Mr. Charles Heady stated I agree with Mr. Seirmarco that we should have the survey. He'll know where he is and we'll know where it is, the line is. It would be the easiest all the way around.

Mr. John Klarl asked before you consider the application you want a survey?

Mr. Charles Heady responded I would like to see a survey.

Mr. James Seirmarco stated I feel more comfortable opining my decision.

Mr. John Mattis stated I guess we'll need a survey because you need four votes. We don't have four votes to not do the survey. You also have two other members next month.

Mrs. Adrian Hunte stated if the survey comes back that the distance is okay they may not need a Variance.

Mr. Charles Heady stated that's the chance he takes.

Mr. Raymond Reber stated I think we owe it to him to say if he believes there's a chance he can with a survey prove that the Variance is not needed or it's absolutely minimal than he can go for the survey. The message we're sending is that any significant Variance some of us would not give if it was more than a diminimous number and I think if we voted if that's the way we feel basically to say we won't give any Variance, we could do it or we could wait and he can come up with the dimensions. If he thinks he can get it within a small distance. But, if he's going to come back and tell us that he needs a two foot Variance, I'm not going to vote for it.

Mr. John Klarl stated Mr. Chairman we often told applicant's and we have done so tonight when we have five members that they have to get four out of seven, there's only five here tonight so your job tonight would be get four to five which is a tougher burden than if we have a full competent of the Board. You might want to factor that in also as to whether or not you want the Board to take action or you want to consider your options or you want a survey.

Mr. Steve Erenberg asked I need four votes.

Mr. John Mattis stated you need four votes regardless. We have four you have a quorum, you need a unanimous vote. If there's seven you need four favorable votes. It's probably fair to you to wait until the other two members are here next month. It would also give you the time to determine whether or not you want to do the survey. If you want to do it you can possibly go ahead and have it done by then.

Mr. James Flandreau stated at the very least you'll have to re-submit the plans to us showing the correct dimensions so I can give that to the Board.

Mr. Charles Heady stated don't forget the sign.

Mr. Steve Erenberg asked if I re-submit...

Mr. James Flandreau stated the architectural plans that your architect drew where the dimension is wrong, how far that comes out, you would need to re-submit those plans to us so we could give that to the Board so they know what that number is either from the architectural plans or from the survey because that number's going to change.

Mr. John Mattis stated I'm going to vote against it if it's architectural plans because we can see – we need a survey in my opinion. If you want to go through with this, we need a survey.

Mr. Steve Erenberg stated and corrections on any of the numbers.

Mr. John Klarl stated the survey will be accurate and will correct any of the numbers, yes.

Mr. John Mattis stated I can understand that the property line, maybe you're not sure where it is, but when you tell us you bumped it out three feet six inches and it was 53 inches, I don't know how your architect could miss that.

Mrs. Erenberg responded we just found out today this information.

Mr. Steve Erenberg stated I went out and measured it.

Mr. John Mattis stated just going close to it, it's very evident. It stuck out immediately that it was much more than three feet.

Mr. Steve Erenberg stated I went out today and measured it and I found out.

Mrs. Erenberg asked so the bottom line is we should get a survey and do we need the architectural drawings as well?

Mr. John Mattis responded yes. You can use the ones you have just change the dimensions on them.

Mr. Raymond Reber stated just change the dimensions, that's all. When the survey's done they'll fix that for you too because they'll give you where the points are.

Mr. John Klarl asked who did the survey in the '60s?

Mr. Steve Erenberg responded I think Irish.

Mr. Raymond Reber stated he won't help you now.

Mr. Steve Erenberg stated it was a father and a son I believe.

Mr. John Klarl asked J. Wilbur?

Mr. John Mattis stated it probably was back then.

Mrs. Erenberg stated Jim Wilbur, I don't know.

Mr. John Klarl stated we can tell you that there's surveyors that have bought their records.

Badey & Watson in Cold Spring have bought the Irish records both J. Wilbur Irish and James W. Irish Jr. so they'll have your survey on file.

Mr. John Mattis asked anyone in the audience would like to speak?

Mr. Raymond Reber stated on **case 26-09** I move that we adjourn to the October meeting to allow them to get the survey and make any necessary corrections on the plans, seconded with all in favor saying "aye."

Mr. John Mattis stated the next meeting is October 21st, the third Wednesday.

E. CASE No. 27-09 **Brie Gallagher** for an Interpretation/challenge of Steep Slope Permit No. 20090271 on the property owner by Kyler Cragolin on the property located at **222 Mt. Airy Road West, Croton on Hudson.**

Mr. John Mattis stated we have a memo from the attorney asking for an adjournment.

Mr. Raymond Reber stated I make a motion that we adjourn to the October meeting **case 27-09**, seconded with all in favor saying "aye."

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NEW PUBLIC HEARINGS

A. CASE No. 28-09 **Wal-Mart** for an Area Variance from the total allowed signage requirement and the maximum letter height requirement on the property located at **3135 E. Main Street, Mohegan Lake.**

Mr. Bob Eberts presented himself to the Board and stated from Cross River Architects representing Wal-Mart. Wal-Mart is renovating their existing store or renewing some of the finishes inside and as part of this Wal-Mart has come up with a new brand identity for the front of their store. Their sign used to be the "Wal" with the star in the middle and "Mart," as you see in the red. Now, they've got the Wal-Mart with what they call the "splat" or the asterisk at the end of it and that's their new logo. In addition to that they're painting in the area behind that logo a different color and it's tough to see from here but there's a sign right down there, you can also see it, it's hard to see it's in white, it says "Outdoor Living." The reason we're asking for the Variance is that the current signage that's on the store is 448 square feet. The two signs that we're asking for totals 375 square feet which exceeds the 298 square feet that's permitted. We're reducing the area of the signs from what's currently on the store. Furthermore, the Wal-Mart sign, in red the old Wal-Mart sign is seven feet tall, the new sign, the capital letters, capital letter 'W' is five feet six inches tall. The "splat" is seven feet six inches from the tip to tip as it is

right now. We're reducing the height of the sign as well. Lastly, these smaller signs, this "Pharmacy one-hour photo and Vision Center" that were on the store are getting eliminated instead we're putting this one two-foot six sign "Outdoor Living" sign near the garden center and that's again in white. That's the reason we're asking for the Variance. We're still over the signage but we're moving closer towards what the Town stipulates.

Mr. John Klarl asked so you're going to want to put two signs and right now how many total signs are up on the building right now?

Mr. Bob Eberts responded there's four.

Mr. John Klarl asked so you're going from four signs to two signs?

Mr. Bob Eberts responded that's correct.

Mr. James Flandreau asked and what did you say the total square footage of the signage is? Of the existing signage.

Mr. Bob Eberts responded the existing signage is 448.

Mr. Raymond Reber asked how much is the Wal-Mart itself not counting the other three? Just the Wal-Mart part. What's the square footage on that? What's the dimension?

Mr. John Klarl asked the existing?

Mr. Raymond Reber responded the existing.

Mr. Charles Heady stated my understanding was that the existing signage, was it approved in the beginning?

Mr. Raymond Reber responded I think he said it was. Seven foot high letters.

Mr. Bob Eberts responded they're currently seven foot high letters.

Mr. Raymond Reber asked you've got the dimensions up there. What's the total length?

Mr. Bob Eberts responded it was 53 feet...

Mr. James Seirmarco stated I'm confused here. I have a sheet in my package called "Cortlandt Town Center Building Signs." Wal-Mart proposed 189.

Mr. James Flandreau stated that was what was approved under the Building Permit. It seems at some point Wal-Mart may have come in and changed the size of their signage without getting a permit.

Mr. James Seirmarco stated that's what I need help with. The original sign's 189, "One-hour Photo" was approximately 19, "Vision City" was 25, "Pharmacy" was 16 ½ for a total of 297 for all of those. Where are you coming up with 400 square feet?

Mr. John Mattis corrected actually 448.

Mr. Bob Eberts responded it's 448 square feet. I don't have the calculations in front of me exactly but I'm sure that they're accurate.

Mr. James Flandreau stated they're probably accurate to what the building has.

Mr. Raymond Reber stated here's the problem we have. According to the paperwork from 1997 what was proposed and approved by the Zoning Board was a 5' x 38' sign. You're now telling us that what's physically up there is 7' x 53'. The question is where did that 7' x 53' sign come from? Or is that the one they put up from the beginning and nobody checked and we were hoodwinked?

Mr. James Seirmarco stated that would not be uncommon because pretty much everybody did that to us.

Mr. Bob Eberts responded I can tell you that I wasn't involved at the time so I really can't say how that happened.

Mr. Raymond Reber stated from our perspective we're looking at the primary sign, not including the other ones and the other ones look like they grew too because you're saying – what's the height on those "Pharmacy," "One-hour," and "Visions?"

Mr. Bob Eberts responded 1'6'' high.

Mr. Raymond Reber stated that complies. That was granted 1'6''.

Mr. John Klarl stated it lines up with the chart.

Mr. Raymond Reber stated it's the main one.

Mr. James Seirmarco asked and the "Vision Center" was 1'6'' high also?

Mr. Raymond Reber responded yes. It's really the Wal-Mart sign itself that somehow ballooned up substantially from...

Mr. John Mattis stated and became 371, 7' x 53'.

Mr. Bob Eberts asked it was approved if you don't mind me asking?

Mr. Raymond Reber responded 189, 5' x 38'.

Mr. James Seirmarco stated just for reference, here's the table in 1997 if you'd like to see it.

Mr. John Klarl stated in short we approved 189 but existing feature is 371.

Mr. Raymond Reber stated we never approved any seven foot signs anywhere, not that I know of.

Mr. James Seirmarco stated it's not uncommon. We're not blaming it on you. We have been asked to do this in other stores there and we take the existing sign down to find out that it's much bigger than what was approved.

Mrs. Adrian Hunte asked Mr. Eberts did you say that the new Wal-Mart sign, the letters are five feet?

Mr. James Seirmarco response except for the asterisk...

Mrs. Adrian Hunte continued except for the asterisk which is seven feet.

Mr. Bob Eberts stated 5'6''.

Mr. John Mattis stated but unfortunately under the Code you'd have to use the seven feet all the way. You draw a rectangle on the outer dimensions.

Mr. James Seirmarco stated it's a box around so it would be seven by the length.

Mr. Raymond Reber stated for an area count we have to use the whole box but from a letter size we can address that separately.

Mr. Bob Eberts asked would you consider the asterisk as a separate sign?

Mr. John Mattis responded no.

Mr. Bob Eberts stated however you want to look at it.

Mr. John Mattis responded that's how the Code tells us to look at it.

Mr. James Seirmarco stated the Code tells us it has to be a boxed-in, the largest dimensions and the other dimensions.

Mr. Raymond Reber stated if they go with the 5'6'' letter height that's consistent with Home Depot and some of the others, A&P, they're 5'6'' or 6' aren't they in that range?

Mr. James Seirmarco responded I think that's on that piece of paper.

Mr. John Klarl stated we don't have the Bianchi chart with us.

Mr. Raymond Reber stated these were all smaller back then.

Mr. John Mattis stated I believe Home Depot is six feet.

Mr. Raymond Reber stated that's what I was thinking they got up to six. I think 5'6" for letter height is not unreasonable. Then, the question is do we look the other way on "splat" as part of a design. That gets to be hard because we had the same problem with Best Buy with their marks that they want to put with the lettering.

Mr. John Mattis asked what would happen if you moved the "splat" down to six feet because that would accomplish the letters probably be 5 ½ and recalculate the dimensions based on that? Basically, you're replacing like for like then.

Mr. John Klarl stated do a 5'6" letter and a six foot "splat."

Mr. John Mattis stated whatever the letter would come to. It might even be less than that.

Mr. Bob Eberts stated we might go down to a five foot then.

Mr. John Mattis stated keep it in the same proportion, I'm sure that's what you want to do.

Mr. Raymond Reber stated he's saying he wants 5 ½ foot letters so if they stick to the 5 ½ foot letters and put a 6' "splat" it still will look like it's larger than the letters but it's within the numbers that we've approved for other stores. Then, it's a matter of dealing with the area which, as you say, is certainly a lot less than what's hanging up there now. If what's up there now is 7' x 53' and I'd like that to be verified somehow before we make a decision. I'd really like to know what is up there now.

Mr. Bob Eberts stated I can go up there and measure that. That's no problem.

Mr. Raymond Reber stated since our records say it's not there, that's why I'd like it confirmed somehow that that's really what's there.

Mr. John Mattis stated as in the last case there's some inconsistencies but you were not a part of that at all here.

Mr. Bob Eberts responded no I didn't know that this was the case.

Mr. John Mattis stated we just found this out when we looked at this.

Mr. James Seirmarco stated I think I've got to tell you from my perspective though that whatever the square footage of the existing sign is today it's already some percentage bigger than what was granted and I would not go not one square inch bigger, speaking for me.

Mr. Raymond Reber asked bigger than what they've got or bigger than what was approved previously?

Mr. James Seirmarco responded bigger than what was approved previously.

Mr. Raymond Reber stated oh, the 189.

Mr. James Seirmarco responded yes.

Mr. Raymond Reber stated my only reason for conceding a little bit would only be that we did so for A&P and Home Depot.

Mr. James Seirmarco stated you did so without me.

Mr. Raymond Reber responded that's true.

Mr. James Seirmarco stated and I'm going to be consistent here.

Mr. John Mattis stated I'm going to be consistent what I looked at and I'll tell you the reason why we gave the larger signs. When you drive down the service road these businesses all sit way back and for safety reasons you want to make sure that you can read them. Even what the Code allowed, some of those you're going to have to really turn and take a look at them and that becomes a safety issue. That's why we've been granting some of these Variances. I think if you can come in with six feet on the "splat" and proportionately whatever your letters would be. I think that would be in the spirit of what we're looking for.

Mr. James Seirmarco asked the 189 is what according to that chart?

Mr. Bob Eberts responded the 189 is five foot letters but the "splat" would take up much more room than the smaller star did.

Mr. James Seirmarco stated what I'm saying is five foot letters is probably big enough. That's what I'm saying.

Mr. Raymond Reber stated if he's got seven foot now and you're going to cut to five I'd like to have that confirmed.

Mr. John Mattis stated it's quite a long building just as the Home Depot was and their sign is quite large. Their letters are six feet.

Mr. Raymond Reber stated and that store is way back from the service road even more so than Home Depot.

Mrs. Adrian Hunte stated the width of the letters is less on the new signage from the old.

Mr. Bob Eberts responded from what's up there yes. We're proposing 5'6'' letters what's up there is 7'.

Mr. Raymond Reber stated it's almost a one quarter reduction in the size of the letters.

Mr. Charles Heady stated you want to be able to see that sign.

Mr. Bob Eberts stated you can see it. There's also some lower case letters which are even shorter. When you go to a smaller sign, the lower case letters actually get very small.

Mr. John Mattis stated I can't read from here but the existing signage schedule, does it show what that Wal-Mart is? I can read the title but I can't read the numbers. Front signage.

Mr. Raymond Reber asked are those two signs drawn to scale?

Mr. John Mattis stated the front signage shows seven feet high and 389.1 square feet where our record show significantly less.

Mr. James Seirmarco stated and they're all capital letters. You're proposing some small letters.

Mr. Raymond Reber asked did you draw that to scale so that the old sign and the new sign are both to proper scale?

Mr. Bob Eberts responded yes.

Mr. Raymond Reber stated I'd hate to see it get any smaller. Based on what I know of what's out there, just my own vision, if that's how much they're shrinking it, I don't think shrinking it any further would serve the purpose of being easy to recognize.

Mr. James Seirmarco stated don't forget the top is in brilliant red and the bottom is outlined.

Mr. Raymond Reber responded I understand that but that's still a significant reduction.

Mr. Bob Eberts responded your answer is that this sign here is 290 square feet so if we have to lose 1/3 of that to go back to what was originally proposed, that would be a very small sign indeed.

Mr. Raymond Reber stated are you saying that the new Wal-Mart sign is 298 square feet?

Mr. Bob Eberts responded that's correct.

Mr. Raymond Reber stated that's actually allowed. If it was the only sign they were putting up, they're allowed 298 correct James?

Mr. James Seirmarco responded I don't think so, no.

Mr. John Mattis stated they're allowed 298.

Mr. James Flandreau stated they're allowed 298, yes.

Mr. John Mattis stated basically we're giving a Variance for the "Outdoor Living."

Mr. Raymond Reber stated which to me is not a big issue.

Mr. John Mattis stated which is a trade-off of "Pharmacy," "One-Hour Photo," and "Vision Center."

Mr. Raymond Reber stated I don't see an issue here. The only issue is the height of the letters.

Mr. John Mattis continued as we just determined because they have the actual dimensions we're going from 389 square feet to 298. We're going down over 90 square feet on the main sign. We are coming more in compliance with...

Mr. James Seirmarco stated you're going down to 375.

Mr. John Mattis stated no, it's 298.

Mr. James Seirmarco stated when the Code is 375.

Mr. John Mattis continued total.

Mr. Raymond Reber stated if you've got an 80 square foot that other sign, the "Outdoor Living" which is way down at the other end of the building.

Mr. John Mattis stated I'm looking at them as two separate things. First the main sign. The main sign was 389 square feet what they're proposing is 298. I would approve that. We're going down 90 square feet. With the others, we had – it doesn't show the total square feet here, yes it does, 19.25 and 16 ½ and we're going to 80 but we're having one "Outdoor Living" versus the "Pharmacy," the "One-Hour Photo," and the "Vision Center" which esthetically is much better and since it's white it's not that easy to read.

Mr. Bob Eberts stated it's also at the other end of the building.

Mr. John Mattis stated and it's also all the way down at the other end of the building. As this is unfolding what I'm seeing is something that I think is certainly reasonable.

Mr. James Seirmarco stated I have to take a look at this.

Mr. Charles Heady stated on the service road coming in when you see Wal-Mart, now this is something you can think about maybe – on the parking places with all the islands they have all these trees there, you can't see the sign because of the trees. You ought to ask if they could top them trees off, five or six feet. It would help a lot. It won't hurt the trees but at least you can get the vision to see the sign not what's there today. I noticed that very clearly. It's a suggestion that I think would help out a lot.

Mr. Raymond Reber stated as you get closer to the building if they could just shave them down.

Mr. James Seirmarco stated I'd be very interested to see the size of that Wal-Mart sign. It's funny because not being to find the existing Wal-Mart Zoning Board of Appeals case so you wonder why.

Mr. Raymond Reber stated like I said if he's asking for what's allowed for the big sign I have a hard time arguing against it other than for the height. That's the only Variance really and that's kind of easy to grant because it's really just for the "W" and for the starburst and that other sign is a small sign.

Mr. John Mattis stated actually that total area because it includes the starburst has empty space above the Wal-Mart that we're counting.

Mr. Raymond Reber stated I think that's a very easy – it actually worked out to be a good move. Our problem when we first looked at it was that we were going based on what was approved in '97 and said "wait a minute, if that was in '97 and that's how big it is out there my God what's it going to look like now." What you're saying is that is not a five foot sign, that's a seven foot sign.

Mr. Bob Eberts stated I understand your confusion entirely.

Mr. John Mattis stated what we'd be doing then is we'd be getting a smaller Wal-Mart sign but we'd be giving 20 square feet back from 60 to 80 on the secondary signs. We'd be eliminating three and putting the "Outdoor Living" all the way at the other end and I think that's a very good trade-off.

Mr. Raymond Reber stated I agree.

Mr. John Mattis stated any other comments? Anyone in the audience?

Mr. Charles Heady stated I make a motion on **case 28-09** to close the public hearing, seconded with all in favor saying “aye.”

Mr. John Mattis stated that would be a Variance from the allowed 298 to...

Mr. Raymond Reber stated the only modification to the way it's written would be we're granting the letters up to a maximum of 5'6'' as he's proposed and the starburst up to eight.

Mr. John Mattis stated 7'6''.

Mr. James Flandreau stated it's shown on the plan as eight but they said they're going to do 7'6''.

Mr. James Seirmarco stated then that would be a rectangle including eight by the length.

Mr. Raymond Reber stated and it still fits the 298 square feet.

Mr. John Mattis stated it's still smaller than what they had by 90 square feet. Smaller than what they have on the main sign now.

Mr. Raymond Reber stated they're within the square footage it's just that they've got that starburst that thing that is a little bit large.

Mr. John Mattis continued and because of the requirement that we do the area based on the largest dimensions, that starburst as I said creates a lot of empty space above Wal-Mart which really isn't signage but is part of the calculations.

Mr. James Flandreau asked what are we saying the starburst...?

Mr. John Mattis stated the reduction is actually more than that as a visual reduction.

Mr. James Flandreau asked what are we saying the starburst is? 7 ½ or 8?

Mr. Raymond Reber responded eight is what's on the plan right?

Mr. James Flandreau stated eight is what's on the plan but it was discussed as 7 ½.

Mr. John Mattis stated eight and the total and that gives us the 298. If we give them the eight on the starburst they're still 298.

Mr. Raymond Reber stated 5'6'' on the maximum letter height so 8' for the starburst.

Mr. James Seirmarco stated what about this it says 375....

Mr. Raymond Reber stated that's when you add the "Outdoor Living" sign to the Wal-Mart sign. We're really giving them a Variance to put up the "Outdoor Living" sign as far as the area goes but it's still less than what's supposedly is up there if you add up all the numbers he's got currently.

Mr. James Seirmarco stated but if he makes the asterisk 6' he doesn't even need the Variance.

Mr. Raymond Reber asked you mean the starburst pattern?

Mr. James Seirmarco stated yes the starburst whatever you want to call that thing.

Mr. John Mattis stated we're going down 90 square feet and visually we're going down by more than that.

Mr. Raymond Reber stated it is the way they're setting up their logo. I don't really want to tinker with it that badly.

Mr. Bob Eberts stated if we dropped that height we would have to drop the lettering as well.

Mr. Raymond Reber stated which I don't want to do.

Mr. John Mattis stated because you want to keep that in proportion.

Mr. Raymond Reber stated they've probably got that registered as a trademark.

Mr. John Mattis continued and that "splat" would look way too big with those surrounding smaller letters.

Mr. John Klarl asked Mr. Chairman what the Board is considering is three features at 298 square feet, 5'6" on the letter height and 8' on the "splat?"

Mr. John Mattis asked yes, is it 5'6" is the letter height on this?

Mr. James Flandreau stated the total square footage of both signs the Wal-Mart and the "Outdoor Living" is 375.44 square foot.

Mr. Raymond Reber stated we're saying we're limiting the main sign to 298.

Mr. John Mattis stated we'd give the total of...

Mr. Raymond Reber continued the total of 375.44 to allow them to put "Outdoor Living."

Mr. Charles Heady asked what figures we've got here now?

Mr. John Mattis asked can we have that as a motion Mr. Heady?

Mr. Charles Heady responded yes.

Mr. John Mattis stated okay, that's the motion, seconded with all in favor saying "aye."
Opposed, one opposed. Could you poll the Board please?

Mr. James Flandreau stated Ray Reber; in favor, Adrian Hunte; in favor, James Seirmarco;
opposed, John Mattis; yes, Charles Heady; yes.

Mr. John Mattis stated it carries four to one.

Mr. Charles Heady stated let me remind you sir when you get the signs made you have to call
Code Enforcement before you put them up he wants to measure them. That's very important.

Mr. Bob Eberts stated I would offer you a certification on the height once it's up.

Mr. James Flandreau stated we have to measure it. If you put it up we make you take them
down.

Mr. John Mattis stated we've been doing that for this very reason. This is a type II SEQRA and
there is no further requirement.

B. CASE No. 29-09 ACRS, Inc. for an Area Variance from the total allowed
signage requirement and the maximum letter height requirement on the property
located at **3061 E. Main Street, Mohegan Lake.**

Mr. Peter O'mara presented himself to the Board and stated I'm with O'mara Associates the
architect.

Mrs. Adrian Hunte asked Mr. O'mara would you please let us know what it is that you would
like to do in terms of signage for ACRS, Inc Bed Bath and Beyond?

Mr. Peter O'Mara responded for the Bed Bath and Beyond project we're seeking a maximum
Variance from I believe a 105 square feet to 210 square feet of sign.

Mrs. Adrian Hunte asked would you describe the sign?

Mr. Peter O'mara responded basically it's channel letters mounted to the façade of the building.
It's actually not a rectangular box if you will. It's actual individual channel letters.

Mrs. Adrian Hunte asked you have two letters on top of...

Mr. Peter O'mara stated basically it's "Bed Bath and" in one row and "Beyond" is a second row below that. The way I determined the square footage was I took an imaginary rectangle around each row and added that up and I maximized that until I achieved 209.9 square feet of sign letter essentially.

Mr. John Mattis asked each row? You mean you did "Bed Bath and" as one row and "Beyond" as another row? Or, did you do it as one continuous rectangle?

Mr. Peter O'mara responded no, I have a rectangle high and a rectangle low and together if you add those up it equals 209.9.

Mr. John Mattis stated but that isn't how our Code says to do it.

Mr. John Klarl stated he's not including a gap.

Mr. John Mattis stated you're not including the gap. When you have the letters like that you've got to include the entire...

Mr. Peter O'mara asked include the gap?

Mr. John Mattis responded yes. So, it would actually be larger than that.

Mr. John Klarl stated essentially you're lassoing the graphic presentation.

Mr. Peter O'mara stated that's my fault then I wasn't aware of that.

Mr. John Klarl stated you've got a gap between those two boxes.

Mr. Peter O'mara responded he has a slight gap, correct.

Mr. John Mattis stated than we couldn't grant a Variance because it would be over 210. We're only allowed to give 100% over what's allowed. As we recalculate this it's going to be over 210.

Mr. Peter O'mara stated if you consider the space between the two rectangles.

Mr. John Mattis stated which by Code we're required to.

Mr. Peter O'mara asked would it be – if I shrink it down or eliminate that space in between in this sign that you see here gets a little bit smaller to follow your Code and be 210 square feet, that's what we're seeking?

Mr. James Seirmarco stated the existing sign that was on there before was for a bigger building, now the building has shrunk.

Mr. Peter O'mara responded slightly. There's space for an additional tenant that the owner wants to allocate.

Mr. James Seirmarco stated in my opinion 105 is allowed and if you're going to have another sign for another tenant that tenant is going to want a sign similar to yours or the same size letters. It would go to 100% Variance right off the bat plus I feel that 105 square feet is enough for the sign. We tend to take for granted that 100% every time and that's not what the sign Code, to me, represents.

Mr. John Mattis stated I'm not sure who takes for granted the 100% because the last one wasn't. I don't look at 100%. I don't know who does. The applicants do. We don't.

Mrs. Adrian Hunte stated at our work session we were concerned about visibility and the fact that the linear footage has decreased that your sign concomitantly is supposed to be a little smaller. What we had talked about and Mr. Reber was...

Mr. Raymond Reber interrupted we had looked at the previous sign which was 159.4 normally 160, we did debate this issue of the smaller frontage and allowing for another sign but in the end it still comes back to what we discussed on the Wal-Mart account that the letters still have to be big enough so that someone can easily spot it and distinguish it when they're coming down the service road so that they're not slamming on their brakes or their not straining or being distracted. The suggestion I had made was if we give you the 160 square feet and we ask that what you do is put up a banner sign just to display what it would look like, don't make up a fancy sign but just a printed sign, mount that up there and then we do a site visit and we decide. Is it bigger than it needs to be? Is it smaller than it needs to be or the right size? I've seen this done in other communities in these types of locations. We can't be arbitrary and say 105 is enough. I don't know if 105 is enough when you've got "Bed Bath and Beyond." I don't know what that looks like. I'm an engineer and I do architectural work and I can't perceive that. That's my suggestion was let's start with 160, make up a banner sign. Put it up there, we'll do a site visit and we'll look at it and we can talk more intelligently as to what the right sign is that would be appropriate for that particular location. That's my opinion and my recommendation. The Board has to decide whether it's reasonable or not.

Mrs. Adrian Hunte stated I think it's reasonable.

Mr. John Mattis stated I think that's very reasonable. The difference between this and the last case is Wal-Mart was being replaced with Wal-Mart. You're replacing something with more letters than was there before therefore to fit the footprint you're going to have smaller letters and that can run into a problem. Again, we want to make sure there is adequate visibility for safety reason. The best sign you can get is something that says "AA" and then you can make gigantic letters. The longer your name the more you get penalized in the letter size. Having said that we can't let people run away with that because people with long names so we have to strike a balance of what really works.

Mr. Peter O'mara stated I absolutely agree.

Mr. James Seirmarco stated the banner signs are relatively inexpensive.

Mr. Peter O'mara stated as the architect I don't want to speak for Acadia or ACRS but I will certainly bring that to their attention and say that that was your suggestion. I don't think it's your concern as the Zoning Board but that I know that Bed Bath and Beyond is still in negotiations with this lease and nothing to do with you guys, I know the Code is the Code but depending on – they're already unhappy with the size of the sign so if it gets much smaller and even if they see it, I don't want to say it's a deal breaker but it's a concern very much to them. I'm sure you guys are well aware of that.

Mr. Raymond Reber stated that's why we want to see it.

Mr. John Mattis stated we weren't aware of that by the way. I wouldn't want Bed Bath and Beyond to think they can blackmail us into a larger sign or they're not going to sign a lease. It doesn't work that way.

Mr. Peter O'mara stated I didn't even want to bring that up. I just want to paint a bigger picture so you can understand where they're coming from. They have a prototype sign that I think, Jim saw from an original or maybe all of you have seen. It's a monster of a sign.

Mr. John Mattis stated there are communities that I've seen the signs are very small. They probably get 100 square feet. So, they must have a smaller sign somewhere. We work with our Code.

Mr. Peter O'mara stated that's why I stated that. I agree with you.

Mr. John Mattis stated on the one hand you're cutting down 134 square feet that you'd be allowed because you're saving that space for a future tenant so you would have been allowed 139, you're allowed 105. On the other hand we want to make sure that this is distinguishable and somebody can read it. So, that's what we're wrestling with right now.

Mr. Peter O'mara stated esthetically too, proportionally if you have 105 square foot sign I do have a drawing that shows that, it looks for a lack of other words, ridiculous on that size façade placard. It's just much too small. It looks almost like a mistake if you will.

Mr. Raymond Reber stated I hear you and you're right you don't want it to look like a postage stamp on the corner of a big surface but there's also ways as an architect you can do a few things there to help that within reason. Let's go for the 160 and see what it looks like.

Mr. Peter O'mara responded 160 with – so your recommendation is 160 to put something up there and we can do a site visit?

Mr. Raymond Reber stated that way we can look at it and see: is it readable? Is it proportional? Is it the right sign for that location for that store?

Mr. Peter O'mara stated I'm not an attorney so I'm going to take your advice and relay that back to the clients.

Mr. James Flandreau stated if you would like to let me know if you're going to go forward with that. Give a call to my office and can forward that along to the Board members that you're going to go ahead with the banner and they can go out and check it at that point.

Mr. John Mattis stated generally we go out the Saturday before the meeting which would be the 17th of October which would give you the longest possible time to get a sign put together if they chose to do that.

Mr. James Seirmarco stated banner signs are pretty quickly made.

Mr. Peter O'mara stated just so I know and I don't know if this is the forum to do that. If we're going to agree to that I can talk to you Jim, as far as getting on to the next possible meeting and then have the site visit scheduled.

Mr. John Mattis stated we'll adjourn you to the next meeting. We'll come out and look at that and we'll say hey that looks great. It's too small or it's too big. I have my own opinion right now but that could change once I see it. I wouldn't want to express my opinion right now.

Mr. Raymond Reber stated we'll stay on the agenda.

Mr. Peter O'mara stated we're automatically bumped to the 17th of October.

Mr. John Mattis interrupted the 21st. It's always the third Wednesday but on the 17th, the Saturday we would go out at 10:00 a.m. I'm sorry, the 21st is the meeting, the 19th is the work session that Monday and the 17th would be the Saturday that we would go out and take a look at it and then it would be fresh and we'd discuss on Monday at our work session and we'd have our general meeting on the 21st on Wednesday.

Mr. Peter O'mara stated I'll contact Jim.

Mr. James Flandreau asked let me ask the Board a question, what if Bed Bath and Beyond agrees to do a banner but doesn't want to put their name up just yet, would just letters be sufficient?

Mr. Raymond Reber responded no I've got to see.

Mr. John Klarl stated they've done a public application here, so.

Mr. James Flandreau stated I just wanted to get that out and make sure they have to do what the sign is.

Mr. John Mattis stated if they're so close together and they look so small that you can't read them I'd go for a larger....

Mr. Raymond Reber stated if they're so concerned they can put it up Saturday morning at 9 o'clock and take it down at 1 o'clock in the afternoon, if they're concerned about leaving it up there.

Mr. Peter O'mara stated I'll mention that as well.

Mrs. Adrian Hunte asked does anyone from the public have something to say? On Zoning Board of Appeals **case no. 29-09** ACRS, Inc. for Bed Bath and Beyond I make a motion that we adjourn this matter to the October 2009 meeting, seconded with all in favor saying "aye."

Mr. John Mattis reiterated the site inspection will be Saturday the 17th at 10:00 a.m. and the meeting will be the following Wednesday the 21st at 7:00 p.m.

C. CASE No. 30-09 Dominick Santucci for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. Ed Gemmola stated that's just a handout we also had submitted the original approved site plan.

Mr. Ed Gemmola presented himself to the Board and stated from Gemmola Associates Architects. What we presented here for an Interpretation in March 25th, 1992, the site plan was approved when it was a C1 neighborhood business district for an auto parts store which presently is in business. I believe currently the CEC community commercial might have replaced the C1 and then the anthology here is that at some point the Zoning Board which the zoning was changed to HC (highway commercial). I believe in the CEC zone and also in the HC9A there was a component for a residential above or behind commercial and what we're applying for here would be – not applying for what we're requesting is for an Interpretation based on a mixed-use in that area which seems to be prevalent in the Town of Cortlandt. I'm not sure why that was zoned just the HC which didn't have the commercial component. What the site is 15,265 square feet and the zone says since it's sewerded you'd be able to divide through it by 7,500 square feet which would mean we'd be able to get two dwelling units as a mixed-use.

Mr. James Flandreau stated that's if you were in the CEC zone, this is an HC zone.

Mr. Ed Gemmola responded I understand that. Once it became C1 to replace I'm not sure if it replaced the CEC but basically it's a zone which is prevalent in the Town and we're requesting

that we would make an application to get dwelling units above on the second floor presently. The original second floor over the main auto parts was a residential unit. We've done some car counting and we know we would have to increase the number of cars. Presently, the facility is closed on Sundays. It's open on Saturdays 8:00 to 5:00. Most of the transactions are between 8:00 and 12:00 on Saturdays. Weekdays it's open 8:00 to 6:00. Deliveries are always at night. There's an alcove in the back. They drop that off. It's in small panel trucks they deliver it. During the weekdays from 8:00 to 6:00 we basically counted between four and five vehicles which included the workers. 90% of the business in this store is delivery. They have two small pick-up trucks/van type vehicles. They stop back at the store. They load up and then they deliver to gas stations and other mechanics in the area. On the weekends, we counted six to eight cars and that would be on Saturday in the a.m. period, again after 12 the business really dwindles off so I think we could probably dovetail the parking that's there. There's also some parking that if we had to we could parallel park on the driveway so we feel that hopefully in the hard economic times that this would alter some of the income because the Town taxes here are belly high which is not a reason to give a Variance but this is the point-of-view where we're coming from. That's where we're at and we will entertain any questions or any comments we would appreciate that.

Mr. John Mattis asked comments from the Board?

Mr. James Seirmarco stated it seems to be something that we have encouraged in other areas having residential on top of commercial. For safety reason it's good. For insurance reasons it's good. It seems to help the owner continue to keep the building full. As you said, in hard economic times is not a reason to grant a Variance but it's a good philosophy to have a residential over commercial in things like this. I, for one, would be supportive of this.

Mr. Raymond Reber stated as explained by the applicant there's a number of questions here which I think complicate life in terms of the changes that have occurred, the history and what can carry forward, what can't carry forward. My gut feeling is as Mr. Seirmarco indicated it seems like a reasonable request. The question is whether we're able to do that and I think the only recommendation I can make is that we're going to have to adjourn and do some research on this to better study all these issues to find out whether in fact we have the ability to make that type of an Interpretation or what it is that we have to do if in fact this is to go forward. At this point I don't know what the right answer is.

Mr. James Seirmarco stated one of the things we might suggest is that we might be conceptually in favor of this but not be able to grant a positive Interpretation but we would write a letter suggesting that this particular piece of property the zone be changed to facilitate what you're proposing. This has been done in the past sometimes we have recommended to the Town Board that they find a way to re-zone this.

Mr. John Klarl stated Mr. Seirmarco just to follow up on your question, have you written a letter to the Supervisor of the Town Board about this? I think I saw an e-mail.

Mr. Ed Gemmola responded I think my wife wrote a letter.

Mr. John Klarl asked you haven't scheduled a meeting?

Mr. Dominick Santucci responded I haven't scheduled anything we just sent a letter to her to see what the response was.

Mr. John Klarl stated right now you're not scheduled for a Town Board work session though?

Mr. Dominick Santucci responded no.

Mr. John Klarl asked are you requesting one?

Mr. Dominick Santucci responded I don't know where we're going with this. The reason that I'm going all through this is down the street Auto Zone is going to open up.

Mr. John Mattis asked that's in the Beach Center, I believe, correct?

Mr. Dominick Santucci responded I think it's down further. Down in the Beach Shopping Center another place opened up.

Mr. John Mattis stated there was no Auto Zone it was another auto store.

Mr. Dominick Santucci stated there's the other one down by Circuit City, there's another place I think Napa opened up there. Auto Zone is going to open where the Cadillac dealership and the Carvel used to be right in Peekskill, right next to the Beer and Soda place there.

Mr. John Mattis stated where they had that fire.

Mr. Dominick Santucci stated I've seen it in the prints and I know that's happening. I don't know if this fellow is going to stay here yet. He has a small store down in Town. I'm going to be talking to him within two to three weeks about staying longer but if I can get something like this maybe I can do something with his rent to lower it somehow to keep everything running. The taxes are getting crazy over there, I don't have to tell you, but everybody's crazy to stay around here. I'm not looking to make a killing right here I'm just trying to look at surviving. If he leaves, that's going to take me a long time to rent downstairs and to have no rent upstairs at all, nothing coming in and to support \$20,000 in taxes there.

Mr. Raymond Reber stated it's certainly in the interest of not only to us on the Board but as residents of the Town of Cortlandt we don't want to see properties not being properly utilized. We don't want to see vacant buildings. That would be the last thing we'd want to see for you to lose your tenant and not be able to make use of this property. The question, again, are we the right body and can we do it and we've got to do some research?

Mr. Dominick Santucci responded it doesn't have to be approved tonight or next month but if we start the ball rolling somehow I appreciate everything.

Mr. John Mattis asked as background was that ever used as apartments years ago?

Mr. Dominick Santucci responded yes, there was apartments up there years ago and I wanted to put an apartment at the time. I had asked but this was done 1992 or 1993. I don't remember exactly what happened why they didn't let me do it.

Mr. John Mattis stated you might have got caught when ZORP came in and it might have changed. I don't know, I'm just suggesting.

Mr. Dominick Santucci stated I think what might have happened was at that time when I built the building I had to put a septic tank in the front because there was no sewers then the State came in and put in sewers and then we ran a store for years, me and my wife and Bobby who had a partner in there. Then he got out and we ended up selling because I couldn't do the construction in this. You guys all know me I've been building here in the area. I'm trying to save this building. I want to hold it but it's getting tougher and tougher so if I can do something upstairs. Maybe if it had sewers at the time I would have been allowed, I don't know.

Mr. James Seirmarco stated that was probably the case.

Mr. John Mattis stated it looks like pretty much in a row there on each side they look very similar and if I'm not mistaken I think they do have apartments on either side. But, they were there and grandfathered.

Mr. Dominick Santucci responded I don't know their history. I didn't go check out.

Mr. John Mattis stated I would assume that.

Mr. Dominick Santucci stated there's people living upstairs.

Mr. John Mattis stated it's not inconsistent with what's being done in the neighborhood.

Mr. Dominick Santucci stated I just have a big area up there doing nothing.

Mr. James Flandreau stated the property – there was a single-family house with a detached garage and accessory building which was prior to zoning and then I guess Mr. Santucci started the process to add an addition to make it commercial that was back in '92 so from before 1951 to '92 there was a single-family residence.

Mr. John Mattis stated they were all houses along there at one time.

Mr. Dominick Santucci stated I want to keep it looking like a house if I do something on top. We'll get a set of plans made.

Mr. John Mattis stated hopefully your tenant would stay. The look of the house – the building wouldn't change in the front.

Mr. Dominick Santucci stated nothing's going to change but the inside upstairs.

Mr. Ed Gemmola stated if you get everything under the roofline maybe we could put some dormers.

Mr. Dominick Santucci stated yes, put in a couple of dormers in the front which look nice.

Mr. Charles Heady stated I agree with Mr. Seirmarco and Mr. Reber on having you go to the Town Board and see if you can get that change so that we can vote on it and give you what you want and help you out. It will take time.

Mr. John Mattis stated we'll have to do some research. There may be a way that we can even do this and that's what we're trying to look at.

Mr. Dominick Santucci asked should I wait for you guys to do some more research and then you can come back to me.

Mr. John Mattis responded you can adjourn it.

Mr. Raymond Reber stated but you're not in a rush. Give us a month at least.

Mr. Dominick Santucci stated give it a month and then we'll come back and if there's no other way to do it but if that's what we have to do.

Mr. John Klarl stated I think we should adjourn it and refer it back to staff to look at the application to see what the way he should process it if he wants to move forward.

Mr. James Seirmarco stated we have written letters to the Town Board and they have been very supportive in changing the zones to facilitate this.

Mr. Dominick Santucci responded that's great news.

Mr. John Mattis stated the most expedient way is if through research that we can figure out a way that it is something that we can act on.

Mr. John Klarl stated what I would do is adjourn it and refer it back to staff and if he wants we could schedule a daytime meeting with Mr. Gemmola and Mr. Santucci with the relevant department heads to see what can be reviewed and discussed here.

Mr. Dominick Santucci asked you want to let me know when you guys are available?

Mr. John Klarl stated just call tomorrow.

Mr. Dominick Santucci asked I'll give you a call at your office then?

Mr. Charles Heady stated there was an apartment there it should be...

Mr. Dominick Santucci stated I've got to think that because of the sewers, because I remember I had to put a tank in with some fields in the front and I was only allowed to have that bathroom and that was it. Then the State came in and did sewers and I never went ahead and did anything. This was good and we were running everything and I had done it basically for us.

Mr. John Klarl asked did you connect to the sewer?

Mr. Dominick Santucci responded yes we did, it's all connected.

Mr. John Mattis stated it's just a matter of changing the interior maybe a dormer.

Mr. Dominick Santucci responded that's it, put a couple of dormers maybe, we'll have to put in some kitchens. The plumbing's all there so we don't have to deal with anything. We have the parking. It should work out if we can make it work.

Mr. John Mattis asked anybody in the audience would like to speak?

Mr. Raymond Reber stated I make a motion on **case 30-09** to adjourn it to the October meeting, seconded with all in favor saying "aye." And refer to staff for review.

Mr. John Klarl stated Mr. Gemmola you can give me a call to set up a separate daytime meeting.

Mr. John Mattis stated it's adjourned to next month's meeting.

D. CASE No. 31-09 Paul G. Feliu for an Area Variance from the requirement that no accessory structure (above ground pool) is permitted to be installed in the front yard on the property located at **103 Eton Downs, Cortlandt Manor.**

Mr. John Mattis asked can you describe briefly what you're requesting?

Mr. Paul Feliu stated a couple of weeks ago I was in the process – I was having someone install a pool for me and I didn't realize but I was informed that I could not install an above ground swimming pool in the front of my property. I'm on a corner property. I didn't realize that the property is in the front. The process was stopped and I'm here now in front of the Board for a

Variance.

Mrs. Feliu stated I was surprised to find out that we have two fronts.

Mr. John Mattis stated yes the Code is if you front on a street even though it's the architectural side of your house, it's considered the front. You have two legal front yards.

Mr. James Seirmarco stated this is something that comes before us quite a bit. It's a classic house on the corner. It has two front yards. It doesn't have much natural screening and the pool will be able to be observed by the people going by. It's very difficult to grant these things. We have, I would say in the last year had two or three cases like this. We have not approved any of them because of that reason. Not every piece of property can support a pool. Corner lots like this are the most difficult. If you can give me a hardship or a reason that we should grant this, we're certainly willing to listen but we have not granted these things in the past.

Mr. Paul Feliu stated we took the screening into consideration. We actually have – when we purchased the home there was already some mature trees that have since gotten older and larger and in the last portion where there were no trees we actually put eight 6' tall pine trees and a series of holly bushes and two rhododendrons that are there.

Mr. John Mattis asked that's on Eton Lane side?

Mr. James Seirmarco asked Eton Lane or Eton Downs?

Mr. Paul Feliu responded Eton Lane side, Eton Downs is where the mailbox is.

Mr. John Mattis stated your side front as opposed to your front front.

Mr. Paul Feliu responded yes. We're fairly well screened off from anything that's the actual intersection at the corner of Eton Downs and partially screened off if you're looking from the front because the trees cover up that extent. We were going to put the pool on the other side of the house but we have an easement and that's not an option and we don't have an option to put it in the back. We simply don't have enough space. My daughter went ahead and purchased this from someone in Yorktown. It was sort of a surprise because we've always been talking about the pool and went ahead and made the arrangements, paid for this, I said "okay I'll install it for you," and again we had no idea I had two fronts. We sort of went ahead with this and believe you me we weren't trying to do something that we're not supposed to. Had we been aware of this – I did a lot of research on the pool and I came here. I wanted to make sure I didn't need a permit. I got a pool alarm. I got everything I believe that I needed so that when this thing is up it's safe and secure and ready to go. The other thing is we actually drove around and I have about eight or nine examples with me here where there are corner properties with pools on them. Some have a variety of screens and some don't. I didn't take pictures of the actual house. I didn't want to violate anybody's privacy but I did go to Google and get satellite shots of them and I have them here. This was done before that's why I didn't think the side of the house was

going to be an issue.

Mrs. Feliu stated especially when it was above ground we didn't need a permit, we didn't know that we had two fronts. It wasn't until James came over and that's when we unfortunately found out.

Mr. James Seirmarco asked you have an easement on the other side, it's not on your survey, where is that?

Mr. Paul Feliu responded I don't know why it was never put on the survey but the easement is – there's a shed on the back of the property on the left hand side, a large oak tree and just in front of the shed there's a sewer plate.

Mr. James Seirmarco asked so it would be between the garage and the property line?

Mr. Paul Feliu responded we thought about putting it there but because of the easement and the Town needs to have access to that. Obviously that pool would be in the way.

Mrs. Adrian Hunte asked Mr. and Mrs. Feliu did you say that you could or could not put the pool on the Eton Lane side of the house?

Mr. Paul Feliu responded that's the side of the easement. The Lane side is where it's proposed. The Eton Downs or where the garage or where my mailbox is that open space that's the easement.

Mr. John Klarl stated the Eton Downs side that has the sewer grate?

Mr. John Mattis responded yes and the easement. It's on the left side of the functional front.

Mr. Paul Feliu responded when you're looking at the mailbox the easement is on the left. A little behind the garage.

Mr. John Mattis stated this is a tough one. I'm surprised that you found any because we haven't granted any Variance for any corners.

Mr. Paul Feliu stated I can share these with you.

Mr. John Mattis stated it's possible these things were constructed without any permission from the Town too.

Mr. Paul Feliu stated we have two at least.

Mrs. Feliu stated there's a lot on Fox Hill Lane.

Mr. Paul Feliu stated that's been there since about 12 years ago. That's one of the ones in that's photographed there.

Mr. John Klarl asked are all the examples corner properties?

Mr. Paul Feliu responded yes, some a little more obvious than others, there's one on Westbrook Drive that's pretty well hidden but if you can see it from above you can see that it's there. There's at least one that's at least two or three feet from the edge of the property.

Mr. Raymond Reber stated my problem is they may exist and they may exist for a number of reasons. They may have been put up illegally. They may have been put up so many years ago before the Code got tightened. We have all sorts of situations in this Town where they're grandfathered or what have you. But, the Town has gotten very concerned in recent years about front yards because people put gym sets in the front yard because they didn't have space in the back yard, they put their garden in their front yard. Generally, the Town has said unless there's a very unusual situation where it's something that they really have to do and there's really no other way of doing it we're not supposed to allow anything in the front yard. Even ornamental things are considered structures. You can't build a statue and stick it on your front lawn or an arch. We've gone accord on these issues. I understand you'd like to have a pool but corner lots have problems. It's one of the things about corner lots in general. I can't see myself conceding even if you put screening because the screening dies what guarantees that it's replaced all sorts of things can happen. We allow you to put this pool in, you screen it and then the neighbor says "I want to put a big playground in my front yard because I don't have room for it in the back, well I'll screen it." Screen it how? With a big fence? We only allow six foot fences in the front yard is that high enough to screen it? I think it's a problem and it's not a necessity, it's a nicety and there are lots where it's not appropriate and I'm not ready to start deviating from the restrictions that the Town has set for it not having structures in the front yard.

Mr. Paul Feliu stated in terms of the screening if I can just address that, I take immaculate care of my property. Anything that dies is immediately replaced.

Mr. Raymond Reber stated you decide you move for some reason and somebody else buys the house and they don't have the same dedication. There's no guarantee what's going to happen tomorrow.

Mr. John Klarl asked have you fully explored your property and alternatives to the pool?

Mr. and Mrs. Feliu responded yes.

Mr. Feliu continued I can't put it in the back I don't have enough space from the fence.

Mr. John Klarl stated but you can ask for a Variance in the back yard.

Mr. Paul Feliu responded I have a stone patio in the back which is not Unilock it used to be slate.

That was originally built with the house and then we can tear that up. On the side of the property is an easement.

Mr. James Seirmarco stated I can tell you that some of these that are close to the property line I'm sure that they don't have a permit or an easement.

Mr. Paul Feliu stated unfortunately, as I said, while we're driving around...

Mrs. Feliu stated we had actually called and asked if we needed a permit because it was above ground and was told "no," not knowing that we had two fronts and that was a complete surprise.

Mr. Paul Feliu stated I wish I had never asked that question.

Mrs. Feliu stated we came from the City that all we had was a little bed and then coming here, even though we're here almost 13 years, but it's a surprise.

Mr. James Seirmarco stated just for the record are you trying to tell us, and it means nothing the economics of this, that they wouldn't take the pool back?

Mrs. Feliu responded no.

Mr. Paul Feliu stated it's not a new pool. It was purchased from someone in Yorktown. He's not going to take it back and I've already had some partial excavation work done which we had to pay for and some crushed stone put down.

Mr. James Seirmarco stated it's just for the record.

Mrs. Feliu stated when we moved in we had an addition made. We were so meticulous about our property that we had our contractor Joe Bruno go somewhere to match the bricks so that the addition will definitely match the bricks that were existing on the house.

Mr. Paul Feliu stated I know you guys aren't big on esthetics but we didn't apply for an addition that looked like an eyesore to the area. It's out of respect for our neighbors.

Mrs. Feliu stated it's just that we take pride where we live and our property.

Mr. John Mattis stated it's not that we're not big on esthetics it's just the Code doesn't call for us – if we can incorporate esthetics into the decision, we try to do that.

Mr. Paul Feliu stated we took it into consideration when we did the addition on the house. We actually spent the extra time trying to find aged brick so that it would match what was there.

Mr. John Mattis stated I went out and looked at it and I can't tell what you've put on and what was the original because it all looks the same. I wasn't really looking for something.

Mrs. Feliu stated the garage is all new.

Mr. Paul Feliu stated I'm not sure where Mr. Bruno got the bricks but they were taken out of some tenement that was about 50 years old which was the approximate age of the house and whoever the mason was they hired did a great job matching it up.

Mr. Charles Heady stated I know you really want that pool from what you're talking you've bought the pool and so forth and it's too bad you can't work out something to get it in there but our hands are tied because we don't give a Variance for the pool for the front yard like this and you didn't know you had two front yards which makes it worse for you. It's pretty hard to figure out something to get you to get the pool in there for you.

Mr. James Seirmarco asked is that, again hung up on the easement, does that easement go right between the garage and the fence or is it towards the fence?

Mr. Paul Feliu stated this is the side where the mailbox again it's right about there at that line. This would be my driveway, the garage, this is the portion of the property where the easement exists, there's a shed here.

Mr. James Seirmarco stated it takes a major portion of this.

Mr. Paul Feliu stated that easement is approximately where that line is.

Mr. John Mattis asked so that whole side yard is pretty much shot because of that easement?

Mr. Paul Feliu responded yes.

Mr. James Seirmarco stated but right behind that. I'm trying to think whether they could fit it into the back yard.

Mr. Raymond Reber stated it's kind of tight. How much space is on that?

Mr. Paul Feliu responded the back yard is mostly occupied by again a stone patio.

Mr. Raymond Reber stated they've got just under 22 feet.

Mr. John Mattis stated we're thinking if you could put it in that corner. I would certainly consider a Variance to put it in that corner.

Mr. Paul Feliu stated if the Town doesn't mind it would be close to the sewer plate that's there. You could still have access to it.

Mr. John Klarl stated you'd have to talk to Mr. Vergano about the relation to the pool to the...

Mr. James Seirmarco stated but the access would be from the other side – the access is going to be from this side so they could get pretty close to the back of that because they’re going to have the easement according to...

Mr. John Mattis stated it’s probably a good idea to adjourn this to explore whether you could put it in that area and if it would need a Variance.

Mr. James Flandreau asked do you have any record showing the easement on a survey or anything like that?

Mr. Paul Feliu responded no, even when I believe this is the same documentation that was used for our closing and when we did the addition.

Mr. James Seirmarco stated maybe some meets and bounds described in your closing papers.

Mr. John Klarl asked this was the sewer easements that were established in recent years. In the last couple of years.

Mr. Paul Feliu stated that’s been there since we purchased the property almost 13 years ago.

Mr. John Klarl stated but there were contemporary construction easements granted with the sewage being put up there so the Town would have some records or some descriptions if it’s a Town easement.

Mrs. Feliu stated it is because it says “Town of Cortlandt” on it.

Mr. John Mattis stated I think that’s worth pursuing and see if there’s a possibility of putting it there and that would solve the problem and then if we leave the case open if there’s a Variance required and it’s reasonable we could give you a Variance to put it there.

Mr. Raymond Reber stated we would have to give them a Variance for the setback from the side yard.

Mr. John Mattis responded yes and we would certainly consider that.

Mr. Raymond Reber stated as long as the neighbors have no problem with it.

Mr. Paul Feliu stated I don’t want to speak for my neighbors but I think we have a pretty good relationship.

Mr. John Mattis stated we can leave the case open. If we close the case you’d have to re-apply.

Mr. James Seirmarco stated we’re trying to help as much as possible.

Mr. Paul Feliu stated I appreciate that. Thank you very much.

Mr. James Seirmarco stated I just don't think that any of us would support it where it is right now.

Mr. John Klarl stated the key thing to ascertain is: is to look at the placement of the pool versus the Town easement and see if it works out.

Mr. John Mattis continued and see if it fits in there somehow.

Mr. Paul Feliu stated is it possible if we move the shed the other side behind the house, that's another possibility.

Mr. John Mattis asked so we can adjourn that then and you can talk to the people.

Mr. Paul Feliu stated I'm hoping I didn't get anybody in trouble with that. That was not the purpose.

Mr. James Seirmarco stated we're not the pool police.

Mr. Paul Feliu stated it wasn't the purpose of bringing the documentation and like I said we had driven around and I had used them as examples.

Mr. James Flandreau stated what I'll do for you is I'll talk to Engineering tomorrow or Friday and have them try to pull out what they have for easements and then I'll get in contact with you and you can come in and we'll go over it from there.

Mr. John Mattis asked anyone in the audience would like to speak?

Mr. James Seirmarco stated I make a motion on **case 31-09** to adjourn this to the October meeting for the purpose of investigating a possible alternative to placement of the pool, seconded, with all in favor saying "aye."

Mr. John Mattis stated that's October 21st.

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NEW PUBLIC HEARINGS FOR TELECOMMUNICATION FACILITY.

A. CASE No. 32-09 MetroPCS New York LLC for a Special Use Permit to co-locate a wireless telecommunications facility on the property located at 51 Scenic Drive, Croton On Hudson.

Mr. Tony Joffrey presented himself to the Board and stated I'm a member of the law firm of Cuddy and Feder in White Plains and I'm here this evening on behalf of MetroPCS also in support of the application this evening is Mr. Anthony Boda, Engineer for the project and Mr. Harbiarsing, Radiofrequency Engineer for the project. MetroPCS is a Federal Communications license provider of wireless communication services. They're basically the same type of entity like Verizon, Sprint/Nextel, AT&T, T-Mobile. You might not have heard of them yet as they are currently building out their systems here in Westchester County. They're on air right now in Manhattan and other parts of the Country as well but before they can start to market their services here they have to go through zoning, they have to get sites acquired, they have to get sites built and it takes some time. If you're down in Manhattan you've probably seen some advertising. You might have heard it on the radio but just by way of introduction they're an FCC license provider just like the other entities that I mentioned. What MetroPCS is seeking to do is to provide coverage to an area of the Town that currently does not have coverage and that is in the general vicinity of the subject premises which is located at 51 Scenic Drive and is classified in an R40 zoning district. A Special Permit is required and in fact the Town has granted Special Permits to each of the other license carriers in this market. There is a 150 foot tall tower on the premises designed as a tree pole. I'm sure you've heard other names for this design: a monopine, a Frankenpine. Effectively, this is the highest preferred location under the wireless ordinance for this type of facility. MetroPCS was able to find a location that's on an existing tower. The equipment is proposed to go on the confines of the existing compound at grade so for MetroPCS they're not trying to reinvent the wheel. They found an ideal location. It's consistent with the approvals for the other carriers that are there. On the tower right now at the top is Sprint/Nextel at 143 feet, T-Mobile at 133 feet, AT&T at 123 feet, Verizon's at 113 and MetroPCS is proposing to locate it's antennae at the next level below which is 103 feet. We're proposing six antennae.

Mr. John Klarl asked so it will be five carriers?

Mr. Tony Joffrey responded so there will be five carriers and those are the five licensed carriers in this market. As a result of the various mergers there are only five licensed carriers in this market.

Mr. Raymond Reber asked you said that the next lowest is Verizon at what level?

Mr. Tony Joffrey responded it's Sprint at 143, T-Mobile at 133, AT&T at 123, Verizon's at 113 and MetroPCS has proposed at 103.

Mr. Raymond Reber stated so a step down 10 feet.

Mr. John Klarl stated so 10 feet between each.

Mr. Tony Joffrey stated and that's the industry standard for interference reasons they need to be a certain distance away so that the antennae's don't interfere with each other.

Mr. John Klarl stated that's probably the most we've ever had co-locate.

Mr. John Mattis stated and the Town encourages co-location. In fact, when a new tower is built it has to be built with that in mind. It makes sense to everyone.

Mr. Tony Joffrey stated in the voice of proliferation of towers it's consistent, you have them all in one location. In this instance there's a remuneration that goes to one entity because it's a Town-owned municipal land underneath I'm sure the Town, although I'm not purview to the details, I'm sure the Town is getting some piece of the pie which is good in this instance. As far as the rest of the infrastructure there is one GPS antenna that is proposed with the equipment that's a receible on the antenna. That does two things: that enables the facility to communicate with the landline system and it also enables MetroPCS to comply with the FCC's regulations regarding 911. If someone generates a call in distress can identify the location if they're not familiar with the area or if they can't speak for any reason or if they lose consciousness eventually that call will be able to be triangulated so that emergency response personnel can go to the vicinity of where the call was generated from. That's a requirement for the FCC as well.

Mr. James Seirmarco asked does every company have to put a GPS up there, or just one?

Mr. Tony Joffrey responded they'll all have their own. I can't speak to the other carriers but I'm pretty confident that they each have their own GPS antennae and those are about the size of my fist. It's a small antenna. As I indicated the equipment in this instance will be located within the confines of the existing compound at grade. A portion of the fence will be removed to accommodate a gate so that MetroPCS technicians can have access to their equipment based upon the location of the equipment at grade. MetroPCS is using exterior equipment cabinets and most of the communication providers have been migrating towards cabinets. They're smaller as opposed as to what you've probably seen ten, fifteen years ago where Verizon had a 15' x 30' shelter or a 12' x 20' shelter. So, these are much smaller. They look like small refrigerators and they're on a concrete compound within the compound.

Mr. Raymond Reber asked the total footprint that you will actually be utilizing on the ground?

Mr. Tony Joffrey responded 5'10'' x 17'. We supplied some additional information and materials to demonstrate compliance with the Special Permit criteria in the Code and just of note I would like to just highlight we did supply a cumulative emissions report which takes the worse case scenario for all of the communications provider that are existing plus MetroPCS's equipment and the cumulative worse case scenario emissions would be about the 1% threshold

promulgated by the FCC. That figure is 1.0917 % of those thresholds. That's an overview of the proposal. It's consistent with what's been approved for other carriers in the past and I'd be happy to entertain any questions that you might have.

Mr. Raymond Reber we have a document from the Department of Technical Services, they've reviewed your application and they've raised a number of points. We also have a letter from the Saw Mill River Audubon – they have adjacent property. I'd like to address that one first. They're just concerned that whether you're going to disturb by the work you do there in any way the adjacent Brenton Brook Sanctuary that butts up against the Town property up there. Is it accurate to say that your equipment that will be going up there and your erection and everything will it all be within the Town property and the access road that the Town has there and no way is it beyond the property line?

Mr. Tony Joffrey responded I think if we went beyond the property line then we would have to get permission and authority otherwise we'd be held into court for trespass.

Mr. John Mattis asked is the area fenced in now?

Mr. Tony Joffrey responded the compound at grade? I believe it is.

Mr. John Mattis asked and you'll be within the fencing?

Mr. Tony Joffrey responded absolutely.

Mr. John Mattis asked so the fencing won't increase?

Mr. Tony Joffrey responded right.

Mr. John Mattis stated because they wanted to do a field visit which isn't necessary since you're staying within that.

Mr. Tony Joffrey responded there is no bump out of the compound whatsoever.

Mr. John Mattis stated generally we like to accommodate these but it's not necessary.

Mr. Raymond Reber stated I just want it for the record. I just wanted to make sure that we address that so that the public knows that we take these letters seriously. Now we're going back to the Department of Technical Services. They've obviously asked for a number of certifications which you will be able to provide as you proceed with adding the antennae and what have you, that's standard practice. When we give the approval it's based on the condition that should meet the requirements for those. There is one item in particular that creates a problem for us that we're going to have to address and that is they have identified sheet Z1 and accordance with the Code of the Town of Cortlandt of **section 277-16A**, "it appears from the subject drawing that the 1,500 foot radius may need to extend further and additional property owners notified of the

proposed project.” In reference to that statement Mr. Flandreau has checked and in fact there were a number of properties that were omitted that in previous applications were included and so we are required basically to adjourn so that notices can be sent to them even though I don’t expect a problem. There is a total of five properties in the case of two of those lots they’re the same owner. It’s the Croton Jewish Center and then there’s three other private properties that have to be notified.

Mr. Tony Joffrey stated that’s news to me and obviously if there is a deficiency we’ll have to comply with the notice otherwise it’s a jurisdictional defect.

Mr. Raymond Reber stated for us it binds our hands because we have an obligation to at least allow them to come in here before we make a decision.

Mr. Tony Joffrey stated understand and we have to re-notice to those properties and if we can verify that, that will certainly be done. That strikes me as surprising as this list was generated by the same Engineering Company that did the AT&T application and that wasn’t a problem.

Mr. James Flandreau stated all three of the applications by that Engineering Company had three different lists where some were added and some were subtracted. They were all different, not one of them was the same.

Mr. Tony Joffrey stated that’s something obviously we’ll have to address.

Mr. Raymond Reber stated I’m also a little confused. Since you’re going to be within the fenced area, if they’re not making any changes, there’s references under **section Z2**, they talk about under item 2: existing grade in front of the proposed equipment area slopes off, they’re asking for a sidewalk to show a walkway or service area in front of the proposed 12 foot double gate. So, you’re going to isolate your specific area off with fencing and gates inside the perimeter fencing?

Mr. Tony Joffrey responded I’m not sure I’m following your question but if I can walk you through Z3 maybe I can show you where it’s going. If I can reference you to the Site Detail Plan on Z3 on that sheet. May I approach to make the reference easier? This is the existing fenced compound. This is an existing fence right here. Our equipment is going inside this fence. We’re just going to be replacing this portion of the fence to include a gate instead of the existing static fence here.

Mr. Raymond Reber stated so you’re taking it and putting a double gate on the existing static fence. What’s on the other side of that fence? Is that a paved access area now? Because, if it’s not then you’ll be disturbing.

Mr. John Mattis stated that’s a flat grass area.

Mr. Raymond Reber stated now we are getting into issues at the Audubon Society would be concerned with in terms of altering the terrain creating maybe some drainage issues. Following up on that also I see item 3: there's a question about a tree that's next to the gate and whether that tree has to be removed. I guess it raises a question we can't arbitrarily just say it's not going to have an impact. So, the question is do we refer it back to the Department of Technical Services to evaluate this from an environmental impact? As an individual if I do a site visit I wouldn't know what I was looking at in terms of drainage and impact.

Mr. Tony Joffrey responded if this gravel is going to grade there's going to be impervious there would be no impact from a drainage standpoint. I'm just addressing it for the record. Whether there's gravel or there's grass, with all due respect, I don't perceive any environmental impacts whatsoever.

Mr. Raymond Reber stated the issue of the tree. If it's a sloped area a tree roots will stabilize the hillside, again I don't know the slope so since we have to postpone anyway for the notices maybe what we should do is ask Department of Technical Services to answer their own questions in terms of environmental impact, what they're talking about here in terms of a walk, a gate, cutting a tree, or whatever has to be done. Does it have any environmental impact or is it insignificant?

Mr. John Mattis stated and if it does I think we owe it to the Audubon Society to have a site inspection for them. If it doesn't it's a moved point.

Mr. Raymond Reber stated I'm not an expert enough to know whether it would or would not have an impact.

Mr. John Mattis stated but we can get the answer from the Department of Technical Services.

Mrs. Adrian Hunte stated whether the tree falls within the new tree ordinance?

Mr. Raymond Reber stated those are issues.

Mr. Tony Joffrey stated my office had called for copies of any correspondence or any memorandum that had been issued and I don't if these are available to me.

Mr. James Flandreau stated I'll give you a copy. They all came in at 3:00 this afternoon.

Mr. John Mattis stated they were all dated September 15th and 16th, we just saw them tonight for the first time.

Mr. Tony Joffrey stated I didn't know if they were inter-office. If we had copies of these and my secretary called as late as this morning, if we had copies I would have had answers on some of these issues.

Mr. Raymond Reber stated those seem to be the only issues that DOTS raised other than that I don't see where adding another provider on this column, this tree, or whatever we call it as an issue but I think we at least have to address these particular questions.

Mr. Tony Joffrey stated obviously we do have to come back and we'll do whatever is necessary and if necessary if you'd like us to reach out to any of these entities we'd certainly be happy to do so. I can't image that co-locating equipment on an existing tower with equipment within a compound and the addition really of some gravel in a grass location when there's a tower that's been there would rise to the level of an environmental – I'm just putting something on the record for the purpose...

Mr. John Mattis stated that's why we're asking the Department of Technical Services for those answers.

Mr. Raymond Reber stated this can obviously be coordinated through Mr. Flandreau.

Mr. John Mattis asked any other comments or questions? Anyone in the audience?

Mr. Raymond Reber stated I make a motion on **case 32-09** to adjourn to the October meeting for the purpose of permitting notices to be sent out to the additional identified properties and at the same time for the Department of Technical Services to evaluate any environmental issues that may have arisen as requested by the Saw Mill River Audubon Society, seconded with all in favor saying "aye."

Mr. John Mattis stated it's adjourned to next month, October 21st. Do we have any other business to discuss? Do we have a motion to adjourn, so moved, seconded with all in favor saying "aye." Meeting is adjourned.

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**NEXT MEETING DATE:
October 21, 2009**