

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted via Zoom webinar on *Wednesday, October 21st, 2020*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

Wai Man Chin, Vice Chairman
Adrian C. Hunte
Eileen Henry (absent)
Thomas Walsh
Frank Franco
Cristin Jacoby
Chris Beloff, alternate board member

Also Present

Chris Kehoe, Deputy Director for Planning
Joshua Subin, Assistant Town attorney

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Mr. David Douglas stated Mr. Beloff is an alternate but he'll be sitting on the board this month in the place of Ms. Henry who's not going to be at today's meeting.

Ms. Boyle stated Mr. Chairman, you have five attendees just so you know.

Mr. David Douglas stated thank you very much.

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ADOPTION OF MEETING MINUTES FOR SEPTEMBER 23, 2020

Mr. David Douglas stated the first item on the agenda; the adoption of the meeting minutes for the September 23rd meeting.

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

Mr. David Douglas stated the September 23rd minutes are adopted.

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OLD BUSINESS

A. Case No. 2020 – 5 Application of Ed Mauro on behalf of Brad Fredman for an area variance for accessory structures, a pool and deck, for property located at 1848 Spring Valley Road.

Mr. David Douglas stated at the last meeting we closed and reserved that matter. I believe we've got a draft proposed Decision & Order. If either Mr. Subin or Mr. Kehoe – I'm not sure which one of you wants to take the lead. If you could read through that draft.

Mr. Joshua Subin stated I can read it if you'd like. The following Decision & Order is hereby made. The subject house totals 3,419 square feet. The applicant is proposing to construct dimensionally conforming above ground pool and deck totaling 1,279 square feet which does not exceed the 50% accessory coverage requirement. The subject property previously received a building permit from the town to construct a 6,384 square foot tennis court. The square footage of the proposed pool and deck along with the square footage of the existing tennis court exceeds the 50% accessory structure coverage requirement. The circumstances presented are rather unique. Although the requested variance exceeds the 50% accessory structure limitation by a substantial amount, that is only because of the already existing tennis court which the town previously approved. The pool itself does not exceed the limitations and is fully compliant. Furthermore, this board has previously taken into consideration that there are accessory structure percentage is exceeded because of the existence of an already existing tennis court. A variance may be appropriate given that the court already existed and the tennis court is of a very different nature than other forms of the accessory structures. For instance, sheds. Thus, the ZBA case 2019-9, this board granted a variance notwithstanding the presence of an existing tennis court. The ZBA has also taken into consideration the benefit to the applicant if the variance is granted as weighted against the detriments of the health, safety and welfare of the neighborhood or community by such a grant. In making such a determination, the board makes the following additional findings: no undesirable change will be produced in the character of the neighborhood and no detriment to the nearby properties will be created by the granting of the area variance. The proposed pool and deck are well within the setback requirements of this zone. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue other than an area variance. As noted above, while the request appears substantial there is currently as a pre-existing condition, a 6,384 square foot tennis court on the site. The pool and deck add 1,279 square feet without the pre-existing tennis court. The total square footage of the proposed pool and deck is under the 50% threshold. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or the district. The pool and deck are common accessory structures. There is a significant existing vegetation between the subject property and the abutting neighbor to the northeast. In addition, the applicant has agreed to plant three, three to five-foot-tall evergreen trees to further buffer the pool and tennis court. The alleged difficulty is not self-created. Though applicants are deemed to have knowledge of the zoning code in prior applications properly made, the square footage of the existing tennis court was not included and was approved by the town. This error, by no fault to

the applicant, prevented this subsequent application from being granted as-of-right. In sum, these findings and very specific facts presented merit the granting of the application. And then it's just pro forma, the application is granted and I don't think you really any more.

Mr. David Douglas stated this is Ms. Henry's case. She's not here so Mr. Walsh do you want to make a motion?

Mr. Thomas Walsh stated I'll make a motion in case No. 2020-5 for the Fredman's residence at 1848 Springvalley Road, for an area variance; they're allowed 1,709 square feet. They're proposing a total of 7,859 square feet which includes the pool, the deck, the tennis court and the existing shed for a variance of 6,150 square feet which is a 360% variance. This is a SEQRA type II, no further compliance required. The building permit will be issued by the town Code Enforcement office.

Mr. David Douglas stated that permit would be conditioned on them doing the plantings of the three, three to five-foot trees I believe right?

Mr. Joshua Subin responded they're going to plant the – they have to plant the trees before they get a CO.

Mr. David Douglas asked somebody want to second Mr. Walsh's motion?

Seconded with all in favor saying "aye".

Mr. stated obscene.

Mr. David Douglas asked any opposed? Mr. Kehoe, you want to poll the board?

Mr. Chris Kehoe stated Chairman Douglas; in favor, Mr. Franco; in favor, Ms. Hunte; grant, Ms. Jacoby; [inaudible], Mr. Walsh; yeah, Mr. Beloff; in favor and Mr. Chin noted as abstained.

Mr. Wai Man Chin stated correct.

Mr. Chris Kehoe stated the motion carries 6-0 with one abstention.

Mr. David Douglas asked the applicant should contact you Mr. Kehoe?

Mr. Chris Kehoe responded I will be sending out, after you and I certify the Decision & Order, it will be mailed, it can be emailed as well but it will be formally mailed to the applicant and the property owner. I believe they are in contact with the building department seeking their permits already because they've been in front of them for quite some time. But yes, I'll be in touch.

Mr. David Douglas stated the variance is granted and the applicant should take whatever steps are required.

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Mr. David Douglas stated before we move onto the new public hearing I realize that I missed the most important thing in the whole meeting. I want to welcome back Mr. Chin. I'm glad you're feeling better.

Mr. Wai Man Chin stated thank you. Thank you.

Other members stated welcome Wai.

Mr. Wai Man Chin stated thank you again.

Mr. David Douglas stated I was supposed to start the meeting with that. I forgot until you abstained, I forgot.

Mr. Frank Franco asked Chairman, did we adopt the minutes?

Mr. David Douglas responded yes we did.

Mr. Frank Franco stated sorry I missed it.

Mr. Chris Kehoe stated I know this is sort of after the fact but we did not ask the applicant's architect, Mr. Mauro, if he wanted to speak. We didn't tell him he needed to raise his hand. I see that he's there. I guess we're done with it, it's too late, but...

Mr. David Douglas stated also we have to close the public hearing.

Mr. Chris Kehoe stated this is just the applicant, if he had anything that he had to say but I think it's all set.

Mr. Joshua Subin stated I think Chris is asking sometimes we let them ask questions about how to apply, really to Chris, not to us.

Mr. David Douglas stated that's true. When we're all in person it's done more informally but you're right.

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NEW PUBLIC HEARING

- A. Case No. 2020 – 8 Application of Michael Casolaro** for an area variance for a side yard setback for a recently constructed foundation for an approved garage/shed for MCAS Roofing/MLC Expansions, LLC located at 2006 Albany Post Road (Route 9A).

Ms. Adrian Hunte stated this is my case. Is Mr. Casolaro here? Yes. He's muted.

Ms. Boyle stated I just promoted him to speak so he just needs a second.

Mr. Michael Casolaro stated It's Michael. Hello everyone. Good evening. Sorry I have to bring you out here on another evening to revisit this, but I'm here.

Ms. Adrian Hunte stated good evening Mr. Casolaro this is Adrian Hunte. This is my case. I'd just like for you to start with what happened here, what you're trying to do.

Mr. Michael Casolaro stated the structure was approved and I did not build the structure myself. I hired a contracting company. After the foundation was done being constructed it was brought to my attention that one of the corners of the thing is approximately three feet closer to the property line than it was supposed to be. I did do some research. I spoke with Joseph Link the surveyor and it appears that the original plan and the built plan were slightly different and he surveyed it a foot off. When my contractors put the building up, there were some measurements that just went away. It was a mistake. It was nothing intentional. There's a – it doesn't change anything. It doesn't benefit me in any way. It was something I was unaware of. It was not something that I requested. I don't think it's a large deal. I do apologize for it but by the time I found out this happened, and I have supplied some photos, it is what it is.

Ms. Adrian Hunte stated I see we have letters from Land Corp and from JRL Surveyors and a letter from you indicating that this was inadvertent or not intentional. I suppose the issue that's raised here is because of previous variances awarded or granted at the property reducing the side yard setbacks and so it was a 66% variance basically requested or looking for now. I visited the site and I don't see that we have any objections from neighboring properties. Is anyone in the audience here on this case besides Mr. Casolaro?

Mr. Wai Man Chin asked this is Wai. I'd like to ask one question. That dimension that went – the one corner that went over from 13 foot 7 inches, to 10 foot 1 or 10.1. This is a rectangular building but the all four corners actually move or just – if you're keeping the same dimension of the footprint of when you move one corner over 3 feet, doesn't that move all the other corners?

Mr. Michael Casolaro responded if I may answer that Mr. Chin, the opposing corner also moved three feet closer to that side. So the building is still rectangular but the rear of the building did shift over three feet on both sides.

Mr. Wai Man Chin stated I understand that. I figured that would be. On the site plan wouldn't we change those dimensions also? Even though this one changed from 13.7 to 10.1, when that moved over, they all kind of shifted, all those dimensions shifted so we should get the correct dimensions. Am I correct on that?

Mr. Michael Casolaro responded yes, I did supply a new site plan that shows the original intent of the building and where it is now. I don't know if you have those. I did submit them.

Mr. Wai Man Chin stated I'm just asking because again I'm not – to me it's not a big deal overall but I'm just saying that the dimensions should all be coinciding with the change from now on to all the lot lines. That's all I'm saying on the site.

Mr. Michael Casolaro stated I agree. The footprint is different.

Ms. Adrian Hunte asked Mr. Casolaro is the shed itself going to be flush with the height of the foundation or is it going to be inserted by the four corners of the foundation?

Mr. Michael Casolaro responded the shed is left flush with the driveway so when the doors are open you can walk directly into it. I'm not sure if I follow the question but it's level with the driveway as intended. The height is as intended.

Ms. Adrian Hunte asked what is the height exactly? Chris you had sent us some height...

Mr. Michael Casolaro responded it's level with the existing driveway.

Mr. Joshua Subin stated member Hunte I know you had opened this up to the public at one point. There are two people who are there. I don't know if they are related to this. It says "JC" and one "Michael McKee". Just wanted to let you know to revisit that because I don't know who they are.

Ms. Adrian Hunte stated I didn't get an answer and then someone decided to interject there. Is there anyone in the audience who wishes to speak on this case 2020-8 for 2006 Albany Post Road?

Ms. Boyle asked and if you do, could you please use the 'raise your hand' function in Zoom? Thank you.

Ms. Adrian Hunte stated that's long enough. Hearing none, I will proceed.

Mr. Chris Kehoe stated late this afternoon I received an email. It was addressed to the Director the Department Michael Preziosi and I was cc'ed on it. It is from a property owner located in the rear of the site. Am I still sharing my screen? Let me get to my screen share.

Ms. Adrian Hunte stated it appears to be vegetation in the back.

Mr. Chris Kehoe stated it would be the person back here. I'm sharing my screen now.

Ms. Adrian Hunte stated yes.

Mr. Chris Kehoe stated this person back here sent an email to Planning and Zoning staff requesting a fence along this property line back here and potentially I believe the curve around the corner over here. I believe Mr. Casolaro has been in touch with this property owner in the back and is amenable and agreeable to a fence?

Mr. Michael Casolaro responded yes. I plan on constructing a fence. I'm looking to find out the required way to go about it. Once the building's done being constructed I plan on constructing a fence to make everything neat and clean to the neighbors, yes.

Mr. Chris Kehoe stated that email didn't come in until 4:20 and I just figured that I would explain it to the board rather than try to forward it to you. I can forward it to you tomorrow but it is pointed out that he believes he can see into the property a little bit more. There was some tree removal to construct the shed/garage and he would appreciate a fence.

Mr. Michael Casolaro stated I'm happy to take care of that.

Ms. Adrian Hunte asked is he looking for a fence that totally obscures of the view? Because we height restrictions on fences too, don't we?

Mr. Wai Man Chin responded yes we do. Usually they put slats in the fencing so you don't see through it exactly.

Mr. Chris Kehoe stated we'll work out those details.

Ms. Adrian Hunte stated usually we go through our factors so I don't see any undesirable change in the neighborhood or the character of the neighborhood, and no detriment to the nearby properties or the neighborhood. Unfortunately, this was a mistake and I don't know – are you able to move that piece of foundation or is that going to cause some severe hardship? Sounds like it would be a hardship but you tell me otherwise, Mr. Casolaro?

Mr. Michael Casolaro responded it would be a tremendous hardship. And just to let the board know, I do have the owner of Land Corp present, and they're here with me just to corroborate everything that happened.

Ms. Adrian Hunte stated the variance itself, the three feet, 3.6 feet is not substantial in of itself it's just that this is on top of a more substantial variance from back in 2016 with the 30 feet down to the 10.1 now and then 13.7 to 10.1. However, in it of itself, the 3.6 feet is not really that large in terms of actual numbers. The variance itself would not have adverse impact on the physical or environmental conditions of the neighborhood or the district. It is self-created, but that in it of

itself is not a reason to deny. So at this point on this case 2020-8 I would make a motion, if there's no one in the audience, hearing none I would make a motion to close the public hearing.

Seconded with all in favor saying "aye".

Ms. Adrian Hunte stated on case No. 2020-8 for MCAS, MLC Expansions LLC with the applicant Michael Casolaro for an area variance for the side yard setback for the recently constructed foundation for the storage shed for an additional 3.6 feet for the previously approved 13.7 to 10.1, I make a motion that we approve or grant the variance. This is a SEQRA type II, no further compliance required. However, I would say that this should be made subject to compliance with all other rules and regulations and the addition of the fencing as stated by the property owner in the rear of the property to have some sort of buffer or fencing on the rear and around the side of the property as Mr. Casolaro has indicated he is willing to agree with, with the property owner in the rear of the property.

Seconded with all in favor saying "aye".

Mr. David Douglas stated the variance is granted with the condition regarding the fence that Ms. Hunte mentioned.

Ms. Adrian Hunte stated good night.

Mr. Michael Casolaro stated thank you very much. Have a great night. I appreciate it.

Ms. Adrian Hunte stated you as well.

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NEW BUSINESS

A. Referral from Legal and Technical Services Staff of proposed Zoning Code modifications.

Mr. David Douglas stated we will review those and we will provide any comments prior to the town – I understand the Town Board has that on for a public hearing in November so we'll provide any comments prior to that.

Mr. Joshua Subin stated since we had a ZBA case on it pretty recently, I think we have some expertise to add.

Mr. David Douglas stated right, we just issued a decision on something along those lines last month, two months ago.

Mr. Joshua Subin stated yes it was last month.

B. Referral from the Town Board regarding their Intent to be Lead Agent for the Port Cortlandt project.

Mr. David Douglas stated the second item is moot but we've got to referral from the Town Board regarding its intent to be the lead agent for the Port Cortlandt Project. The Port Cortlandt Project has been withdrawn so we don't need to concerns ourselves with that.

Mr. Joshua Subin stated we also have to add the Hudson Wellness agenda item for next month.

Mr. David Douglas stated that's next month.

Mr. Joshua Subin stated I didn't know if we had to do it now. It doesn't matter.

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ADJOURNMENT

Ms. Adrian Hunte stated I make a motion that we adjourn the Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye".

Mr. David Douglas stated the meeting is adjourned. Thank you everybody. We'll be in touch soon.

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NEXT REGULAR MEETING WEDNESDAY, NOVEMBER 18, 2020