

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, August 16th, 2017*. The meeting was called to order, and began with the Pledge of Allegiance.

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

Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.
James Seirmarco (absent)
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

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Mr. David Douglas stated before we begin with the items on the agenda, I just want to note something really briefly because I think it's worthy to mention. I just want to thank and commend the Town Board and each of their members for issuing the statement that they did, a very eloquent statement, reaffirming the values of our country and of our Town in the wake of the events in Virginia the other day. So I just wanted – I think that's worthy of note. It's on the website. This isn't a pitch for people to go to our website. I just think it's important to note what was stated.

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ADOPTION OF MEETING MINUTES FOR JULY 19, 2017

Mr. David Douglas stated more mundane but perhaps equally as important, the first item on the agenda is the adoption of the minutes for last month.

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

Mr. David Douglas stated the minutes for July are adopted.

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ADJOURNED PUBLIC HEARINGS:

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

Mr. David Douglas stated this case, as people may know is now also in front of the Planning Board and the Planning Board is the lead agency under the SEQRA statute. I'll let your lawyers explain what that means, but what that means for us here is that we're engaging in what's called a coordinated review. We're going to give the Planning Board a chance to catch up since we have a basically almost a one year head start on them. So what we're going to do is we're going to adjourn that matter until November and see what stage the Planning Board is at that point with the steps that they're taking and then we'll go forward in coordination with them at that juncture. Anybody have a motion to adjourn this to November?

So moved, seconded.

Mr. David Douglas stated case #2016-24 is adjourned to November.

- B. **CASE NO. 2017-17 Michael Kane Jr.** for an Area Variance for the side yard setback for a 2nd floor addition on property located at **5 Tryon Circle, Cortlandt Manor.**

Ms. Adrian Hunte stated good evening.

Mr. John Lentini stated good evening Mr. Chairman, ladies and gentlemen, members of the board. I want to apologize for not being here last month, even though I was [inaudible]. He paid pretty decent money for the house and he's willing to invest some money into it. In order to do that he has to keep his cost down. I fear that if we were to set the second floor back that it wouldn't – take away space and add more expense and create detail that doesn't really lend to the job. One of the hardships, one of the problems it's a very unusual lot. I'd asked Ken to pass out this area – there's a couple of pictures. The second one is the main one, just to demonstrate the various size lots in this area. Usually you go down, it looks like a checkerboard but here we have all various shapes, his being probably the most unusual. It has an 80 foot or so drop from the front to the back and you can't really see the back of the lot. The only usable part is around the house. He is a little bit below the neighbor next to him. The reason why I provided the first picture is to show that the houses on either side of him are taller than him so by allowing him to be a second, a two-story house wouldn't be very unusual. It would fit in on that side of the block. On the third page I provided a topo thanks to Westchester County GIS system that shows these various grades. Then finally, a scaled and not exaggerated, the X and the Y scale are the same, the last page shows the actual steepness of his lot. Why I'm considering this as a hardship

is you can't develop at anywhere else. I don't believe it's very safe to even walk from his house on Tryon Circle to McDougal which is a through lot and McDougal is in the back of his lot. We're hoping that we can satisfy any of your other concerns and that's about all I have to say.

Mr. David Douglas stated Ms. Hunte, I think you had...

Ms. Adrian Hunte stated this is Mr. Seirmarco's case but he's not here so we're seeking an Area Variance for the side yard setback, 2nd floor addition required 8 feet, existing 6.4 feet, proposed 6.4 feet, 1.61 foot Variance, 20%. Does anyone in the audience have any comments? I'll take that as a no.

Mr. Raymond Reber stated I just had one question at our work session but your photos help answer that question. When someone is this close to the property line, as this is, and they're looking to put a second story on, one of the concerns we have is: how close is it to neighbors house and is there an issue of blocking vision. It's not like they live in Yonkers, you want to look out your window and five feet away is another person's window. That's not the case here. There's enough space, they've offset the houses. So I don't have any problem adding the second story.

Ms. Adrian Hunte stated I don't see any undesirable change to be produced in the character of the neighborhood, no detriment to the nearby properties and the benefit sought by the applicant, because of the unusual shape of the lot you don't have too many alternatives. The requested Variance in terms of the actual footage is not that substantial, even though it's 20%. That's not in it of itself dispositive. It will not have any adverse affect or impact on the physical environmental conditions in the neighborhood, with that, I don't have any issues with this.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin stated no, I have no problem with this.

Ms. Adrian Hunte stated on case #2017-17, the applicant Michael Kane Jr. for the premises located at 5 Tryon Circle, Cortlandt Manor, NY 10520 for an Area Variance for the side yard setback for a second floor addition I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Ms. Adrian Hunte stated on case #2017-17 for the Variance of the side yard setback for the second floor addition, the required 8.01 feet, existing 6.4 feet to a proposed 6.4 feet for a 1.61 foot Variance I make a motion that we grant the Variance and this is a SEQRA type II action, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. John Lentini stated thank you very much.

Mr. David Douglas stated and then you should see Mr. Hoch for the necessary paperwork Monday, Tuesday, whatever day.

Mr. John Lentini stated I'll talk to him.

Mr. David Douglas stated call Mr. Hoch.

Mr. John Lentini stated thank you very much.

Mr. David Douglas stated okay thanks.

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NEW PUBLIC HEARINGS:

- A. **CASE NO. 2017-19** **Rito Arroyo** for an Area Variance for an accessory structure, an above ground pool, in the front yard on property located at **82 Red Mill Rd., Cortlandt Manor.**

Ms. Adrian Hunte stated good evening.

Mr. David Douglas asked you're Mr. Arroyo?

Mr. Rito Arroyo responded yes sir.

Mr. David Douglas asked could you tell us what it is that you're seeking?

Mr. Rito Arroyo responded I'm just seeking a permit for above ground pool. I want to put in my backyard but they say it's a front yard because I have a big property. Red Mill Road, Oregon Road and Trolley. Because of that, they call it a front yard. I don't know how because I have a the deck in the back. There's nothing back there, nothing but wood.

Mr. David Douglas stated Mr. Heady this is your case. Do you have anything you want to say?

Mr. Charles Heady stated I've never seen four front yards come before us before. There's no problem we had two or three but some of the members said we had one one time, but that's immaterial. Actually I have no problem with what you want to do.

Mr. Wai Man Chin stated you actually have four front yards. The parkway is another front yard.

Mr. Rito Arroyo stated I didn't get that either. How could it be four front yards? There's nothing in the back but woods.

Mr. David Douglas stated it's because of the definition, the way the code is understood and worded is that if the house is on a road, that counts as a front yard even if it's not the front, even if it's the side, even if it's the back. And that fourth road, it's a paper road. So if you look at the map but there's no road there.

Mr. Rito Arroyo stated yes I have that in my house. There's no road back there.

Mr. David Douglas stated so technically you have four front yards but in the real world you don't. Anybody else have any comments?

Mr. Wai Man Chin asked anybody in the audience?

Mr. Charles Heady stated I make a motion on case 2017-19 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Charles Heady stated I make a motion on case 2017-19 to give him an Area Variance for an accessory structure for an above ground pool in the front yard at the rear of the house. No further compliance required, SEQRA type II.

Seconded with all in favor saying "aye."

Mr. David Douglas stated okay, the variance is granted and as I said to the person before you, you should speak with Mr. Hoch about getting the necessary paperwork. Thank you.

Mr. Rito Arroyo stated thank you.

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

Mr. Wai Man Chin stated Mr. Chairman, I'm going to recuse myself from this case.

Ms. Adrian Hunte stated good evening.

Ms. Roseann Schuyler stated good evening.

Ms. Adrian Hunte asked would you state your name for the record please?

Ms. Roseann Schuyler introduced herself. I represent Andrew Young and Susan Todd who are the property owners. They are here seeking an Interpretation of section 307-45 subsection (4) of the Zoning Code addressing special permits for accessory apartments in an accessory building in an R80 or an R40 district. My client's situation is that they purchased their property with a structure that had been used as a principal structure that was in existence prior to 1979, the date in the code. Thereafter, they built another structure, a principal structure behind the existing structure and when they moved into their home the first structure was given the status of an accessory structure. They're now here asking for an Interpretation of the Code that the original structure on their property would meet section (4) because the structure, the accessory building in which they would like to house the accessory apartment was in existence and there's no question that it was in existence prior to April 21, 1979 which is what the requirement is in section (4) of the Code. What we understand the Building Department has added to this section of the Code is the requirement that the accessory building have been designated as an accessory building prior to 1979 and I do not see that in the Code. I think that we start with the basic principle that the Building Department would not be permitted to add limitations to the Code so we have to look at what's in here. One of the canons of statutory construction is that the entire statute should be read together, and if you look at section B: Standards and Conditions, sections (2), (3) and (4) all deal with accessory apartments in current structures; (2) deals with accessory apartments in two-family dwellings. I think we would all agree that if we look at that section, the two-family dwelling designation certainly indicates the legal classification of the property currently. If we look at section (3), that deals with accessory apartments within a single-family dwelling, and again I think there would be no question but that this board would interpret that a single-family dwelling as used in that section of the Code would be today's classification, today's legal classification that that was a structure that this was single-family dwelling. We would not be looking back to what that single-family dwelling structure was prior to 1979 and I think that if you look at number (4), number (4) is dealing with accessory apartments in accessory buildings, today's classification of accessory building. I don't think that you can read back the idea that it was an accessory building prior to 1979 if you look at the structure of the Code. I think that the Building Department's Interpretation also adds a number of requirements that are not stated in the Code but you would have to read into the Code in order to effectuate their Interpretation. I think first of all, if the building would have to have been an accessory building prior to 1979 then I think that it would need to have been accessory to something. There would have to have been a primary structure on the land as well. That's certainly not in the Code. I think it's very easy to think of a factual scenario where that might not happen, for example, somebody buys the property early in 1979, builds a garage or builds part of a garage and part of it is in existence in 1979 since, you know, if part of a building was in – that the statutory definition of building in the Town's Code means even part of a building, any part of a structure. If you had a garage built in 1979 that was in existence in April but the primary

structure, the principal structure wasn't built until December or February of 1980, well you know, would that building that existed as an accessory structure but not really accessory to anything because you didn't have a primary structure, would that really count in this case? I don't think that it would and I think that that adds in a requirement that really isn't there. I think, number two, it requires that if something had the designation of accessory structure prior to 1979, I think that reads in the requirement that the structure be complete, but the Town's Building Code would not have required that because section 307-3 Word Usage says that whenever a provision applies to a building or structure it should be deemed to apply to any part or portion of that building or structure. So, if for example, something was a shed in 1978, pre-existing the 1979 date, sometime in the 80s turned into a larger garage then turned into an accessory structure in the 90s. I think that it would, according to the Code and the way that you would interpret the Code in a consistent manner, I think that the structure would meet this requirement but according to the Building Department's Interpretation that would not be an accessory structure that could house an accessory apartment. I think that the Building Department's Interpretation also reads into the Code, the requirement that whatever structure is going to house the accessory apartment that that structure have been legal prior to 1979 and I also don't think that that is there because if it has the designation of accessory structure one would assume there was a primary structure, that there was a CO that had been issued and none of that is actually addressed in the law. Now, in this section of the Code, none of that is there but I think all of that is implied by the Interpretation that the Building Department would like for you to adopt in which we oppose. I think that if you look at the plain language of section (4) which says that no special permit for an accessory apartment and an accessory building may be issued except in R80 or R40 districts where such accessory building existed prior April 21st, 1979. If there's any doubt about that then Town Code is also very comprehensive and tells us to go right to the dictionary to look at the word. To exist means to have being in space and time. The accessory building that my client proposes to house the accessory apartment they would like to put there, had being in space and time in April of 1979. There is no question about that. I also think that if we're looking to the Code and looking to interpret what it means if there is any kind of ambiguity I think we have to look at the beginning of section 307-45 which is the purpose of that section of the statute. The purpose of this section of the statute says very plainly that the purpose is to allow accessory apartments by special permit in order to provide opportunity and encouragement for development to allow more efficient use of the Town's stock of dwellings and accessory buildings. The purpose of this Code favors the development of accessory apartments in structures that meet it. There are a number of standards and conditions. There are in fact 12 of them. Some of them are actually not applicable to my client's application but most of them are and every single one of them they meet. I think that what the Building Department has determined as the basis on which to deny the application for a special permit that the accessory structure was not an accessory structure in 1979 is really not upheld by the plain language of the statute or by any kind of canon of statutory construction. Are there any questions?

Ms. Adrian Hunte stated just to be clear, we are only here for the Interpretation.

Ms. Roseann Schuyler stated only for the Interpretation.

Ms. Adrian Hunte stated we're not getting into the merits of this at all.

Ms. Roseann Schuyler stated there should be no comments I think about the substantive merits of any application that my clients might make.

Ms. Adrian Hunte stated and I think that is precisely the issue here, the construction of section 307-45 because the question I have is whether the structure, it was not used as an accessory structure in 1979, that was in 2000 so that's one thing. The other is whether the Code is stating that it's to be used as an accessory or just that the structure was to exist prior to April 21st of 1979 and part of the – that is not clear in the Code. So we were looking for some sort of legislative history beyond what's stated here in the purpose which the purpose, we understand what the purpose is, however that is not dispositive in terms of what is actually meant by accessory building whether it means the structure itself was used as the accessory then or whether it is just that the building existed. With that said, we need to try to interpret this a bit more and I don't know that there's any case law on this but we clearly need an opportunity to review that a bit more to see if there is any more legislative history. Does anybody else have any comments? Audience?

Mr. John Mattis stated I have a comment. In this, in section 307-45 (B)(4) it says where the accessory building existed prior to April 21st 1979. You can't have an accessory building until you have a primary building.

Ms. Roseann Schuyler stated correct.

Mr. John Mattis stated there was only a primary building so no accessory building existed prior to 1996 when they built the new home. You can't rewrite history and go to 1996 and say that that was an accessory structure in 1979 because all there was at that time was a primary structure. There was only one structure, it was primary. The Code says accessory building. You can't have an accessory building unless you have two buildings and one is a primary. There was one building, it was their house. It was the primary residence at that time.

Ms. Roseann Schuyler stated it was in existence.

Mr. John Mattis stated if we interpret it that way then this Code is thrown out because everybody can build something today and change it to an accessory and then we wouldn't need a special permit. Well that's what you're saying.

Ms. Roseann Schuyler stated no, not at all because you have the limitation first of all that we're talking about limited zoning districts and also that it has to have been in existence in April 21st 1979.

Mr. John Mattis stated as an accessory building. You're forgetting the word accessory.

Ms. Roseann Schuyler stated I'm not. What I said...

Mr. John Mattis stated it was not an accessory building...

Ms. Roseann Schuyler stated it was not but in section (2) talks about accessory apartments being permitted in two-family dwellings.

Mr. John Mattis stated apartments, it's not buildings. You're confusing building – if you're hanging on the word accessory, I'm hanging on the word accessory and building and you referred to sheds, you referred to garages, you referred to apartments. You did not refer to building in a lot of what you said.

Ms. Roseann Schuyler stated what I'm saying is that section (2), (3), and (4), they're put together in the Code for a reason and they're talking about whether accessory apartments will be allowed in certain buildings. (2) Talks about accessory apartments in two-family dwellings but I think that you and I would agree that when we read this we're talking about...

Mr. John Mattis stated don't tell me what I agree to. Because you said that several times. You will agree, you will agree. There are things I don't agree. Don't put words in our mouth.

Ms. Roseann Schuyler stated I'm not putting words in your mouth. I'm saying that I think that if you look at this, what it's talking about is a two-family dwelling that exists today as a two-family dwelling, that no accessory apartments will be permitted in a two-family dwelling that today exists as a two-family dwelling, not that existed as a two-family dwelling in 1979, not its category back then.

Mr. John Mattis stated we're looking at accessory building not a two-family. We're looking at section (4). You're talking about section (2).

Ms. Roseann Schuyler stated I know that but what I'm saying is that (2), (3), and (4) all talk about accessory apartments being placed in different types of buildings under the Code: two-family dwellings, one-family dwellings, accessory buildings. Three different types of structures.

Mr. Raymond Reber stated that's the key. They're three separate issues that's being addressed.

Ms. Roseann Schuyler stated that's right but when you look at section (3) for example and you say that no special permit for an accessory apartment within a single-family dwelling shall be issued unless three years have been elapsed. Are you looking at that single-family dwellings classification as a single-family dwelling today in 2017 or what its classification was in 1979? Because if you're looking at what's its classification is today as a single-family dwelling then I think in (4) you have to look at the modifier accessory building as being what its category is today not what it's legal classification was in 1979. I think the fact that the 1979 date is keyed to town-wide aerial photography suggests that, very strongly, that existence is the issue not its legal classification, because accessory use certainly wouldn't be indicated in any kind of an aerial

photograph.

Mr. Raymond Reber stated you bring up existence, the fact that okay the building was there. I counter that with a parallel issue. When we have a non-conforming situation, somebody is doing something with a piece of property and the Code now declares it's non-conforming, they get grandfathered. However, if they're using it, and for a prime example, I know someone that had a tavern but it was in a zone now that was non-conforming. If they stop using that for over a year, they lose the right and it's gone and they cannot have the tavern anymore. And this happened, and I know somebody who that unfortunately happened to, because the Town's Code says: okay, we grandfathered you because it was there, it was continuously used. What we're saying if you can't say that because there was a building there that that means that that was continuously used or prior used as an accessory apartment. It wasn't. There was no accessory apartment. Just the fact that the building was there, the use wasn't there and if we're looking at the use and the concern in the Code is use, not physical buildings, it's use. The Code is very clear in what they're trying to do here. Accessory apartments, they want to be restricted to within the structure wherever possible, within a home that you take a piece of it and you carve it out for a relative or a close friend, or whatever. There has been a reluctance to have separate buildings with apartments because they feel that that's not something that you can manage as well. It's not the intent of what accessory apartments were for. It's to take care of, have a place of the parents, the children, relatives, what have you. That's the primary reason. And when you look at (2), (3), and (4), that's what they're trying to do and in (4) they're saying, look, we understand that there may have been an accessory situation prior to 1979. They kind of say, we're going to grandfather it as long as you get a special permit but otherwise we don't want them. And that's the way I interpret this. It wasn't there in '79 as an accessory use. The use wasn't there. Just because the building's there, somebody can't come along and say: well the building was there, even though we never used it as a tavern for 20 years the intent maybe was there and even though the Code doesn't want us to do it we're going to open up a tavern. It doesn't work that way. From my perspective, I think (2), (3), and (4) are very clear in the intent. Each one addresses a different physical situation and the physical situation for (4) is clearly when it's a separate building, that you now want to set up an accessory apartment in a separate building and I think it's clear that they're saying: we'll grandfather it if that function was there prior to 1979. If it wasn't, we want it to go away. Sorry, that's the way I see it.

Ms. Adrian Hunte asked anyone else?

Mr. David Douglas stated I just want to say that I think my perspective is very similar to Ms. Hunte's. I don't know which way I come out on the conclusion but I think the way she framed the issue is, is the correct way of framing it. In a lot of ways it's whether you're focusing on whether the building existed prior to that date or whether or not -- should we be underscoring accessory in the phrase accessory building or underscoring the word building in the phrase accessory building because it seems to me that the answer to how we should probably interpret the Code very much lies in what we underscore; the accessory part which this wasn't in this situation or the building part which did exist in this situation. And I don't know how I come out but I do think that that's really the crux of the issue and I think that's what Ms. Hunte was

saying. I think we need to discuss this further among ourselves. We discussed at some point at the work session, we're hearing what you have to say and we're going to take it under consideration.

Ms. Roseann Schuyler stated so you're not going...

Mr. David Douglas stated we are not going to rule tonight. This is something we have to hash out and think through and we would issue a written decision and order on it. We're not going to vote today.

Ms. Adrian Hunte asked does anybody else in the audience wish to be heard? Anymore board members? Hearing none, on case #2017-20 for the applicant Roseann Schuyler on behalf of the Andrew Young and Susan Todd for the premises at 48 Pond Meadow Road, Croton-on-Hudson, NY, I make a motion that we close the public hearing concerning an Interpretation that the structure built in '74 is a principle dwelling and converted into an accessory structure whether that meets the requirements of the Town Code's section 307-45.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated and on 2017-20 I make a motion that we, in addition to close, reserve the decision so that the board has an opportunity to review and issue its determination.

Seconded with all in favor saying "aye."

Mr. David Douglas stated so what that means time wise is that we've got a, under the statute we have 60 days to issue a decision. We will try – well, I don't know that we'll have one next month because we have to talk about it at our work session and that's not until two days before the hearing. So my guess is that we'll have one at the October meeting. John is that within the 60 days?

Mr. John Klarl stated that's 62 days.

Mr. David Douglas stated 62 days so we would then ask...

Mr. John Klarl stated if we weren't within the timeframe, we'd ask for an extension.

Mr. David Douglas stated if we can't do it in the time period, we would ask you for an extension for the extra two days.

Ms. Roseann Schuyler stated two days.

Mr. David Douglas stated if you want to grant that extension now, we'd appreciate it. Could you

grant us that extension?

Ms. Roseann Schuyler responded yes, I'll grant you the two day extension, absolutely.

Mr. David Douglas stated thank you very much.

Ms. Roseann Schuyler stated of course, thank you Mr. Chairman. Thank you.

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

Mr. David Douglas asked anybody here on that case. We'll put that at the end and see if somebody appears.

Mr. John Mattis stated I move that we adjourn case #2017-21 Post Road Holding Corporation until the September 27th meeting and that we send a letter that if they do not appear or contact Code Enforcement that we will consider this case abandoned.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case #2017-21 is adjourned to next month and Mr. Hoch if you could please send a letter along the lines of what Mr. Mattis just said.

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

Mr. David Douglas stated sorry, welcome back Mr. Chin. I forgot you were gone.

Mr. Ralph Mastromonaco stated good evening.

Mr. David Douglas stated Mr. Mastromonaco, before you begin I just want to request again, as we discussed at the work session that you confine -- the topic is solely the jurisdictional standing issue about whether this board has the power to hear your application. So, if you could just confine what you're going to speak about tonight to that topic and not get into the merits of the case.

Mr. Ralph Mastromonaco stated I totally understand, yes.

Mr. David Douglas stated I'm just repeating because you know that we talked about it at the work session, however the other people in the room and the people watching us don't know that.

Mr. Ralph Mastromonaco stated I have some words I'd like to read to you about this issue. I submitted a bunch of material but it's specific to what the Chairman has requested. I am allowed to make this application for appeal, an Interpretation under the Town Code. The following Codes are relevant; Town Codes 307-92 Zoning Board of Appeals: any applicant for an Interpretation shall file with the Clerk of the Zoning Board accompanied by a fee established by the Town Board Resolution. Secondly, New York State Town law regarding Zoning Boards and hearing appeals: unless otherwise provided by Local Law Ordinance any person aggrieved may strike an appeal with the Zoning Board. Part of the standing issue is whether or not I am aggrieved. That has come up, Mr. Hoch has mentioned it, and I am allowed to request this Interpretation even without the necessity of being aggrieved since the Town of Cortlandt provided Local Law 307-92 that permits any applicant to file requests and thus my request is in conformance with both Town Law and Town Code. However, I am aggrieved by the environmental impacts of the concrete plant operation and the rock crushing on the site. The so-called contractor's yard operates six days a week and on holidays. Incredibly, the site operates in the middle of the night. Trucks pass my residence all through the night, entering and leaving the site. I'm awakened almost every night at 3:30 in the morning by large tractor trailers full of sand and gravel that brake from 60 miles an hour to 5 miles an hour in a few hundred feet before turning into the site. The noise from this convoy of trucks from Long Island is deafening. The sound of the trucks revving their engines and unloading in the middle of the night can be heard clearly through closed windows. I wake in the morning to the sounds of cement trucks revving their engines. The noise never stops. In fact, there is no zoning district in the Town that permits rock crushing and processing...

Mr. David Douglas stated that's getting into the merits. We don't want to do that tonight.

Mr. Ralph Mastromonaco stated I'm not straying from – if you would just let me finish. The noise from the rock crushers and the conveyors that transport the pulverized concrete up to the top of massive piles, it's like listening to fingernails scratching a chalkboard. The Town has a noise ordinance where limits are set on maximum decibel readings from contractor's yards. My readings show these sites exceeded the limits by 20 decibels continuously throughout the day, even on holidays. If those readings are exceeded there is again an automatic presumption of effect when it comes to the question of being aggrieved.

Mr. David Douglas asked just out of curiosity, where's your residence?

Mr. Ralph Mastromonaco stated 2083 Albany Post Road.

Mr. David Douglas asked and where is that in relation to...

Mr. Ralph Mastromonaco responded across from the VA Hospital. It's a brand new townhouse. I have shown you that the prevailing winds take the silica dust from the mountain of pulverized

concrete directly over my residence. One can actually see remnants of the dust on the roadways near the site. I have provided you with the harmful effects of silica dust and silicosis from the OSHA literature. And though more subtle, the fact that the Town knowing that there are no permits, has never reacted to noise complaints nor violated the site for any infraction.

Mr. David Douglas asked are you affected in any way different than anybody else in the Town?

Mr. Ralph Mastromonaco responded yes, absolutely. I live there.

Mr. David Douglas asked but anybody else in within a half a mile of the site? I'll tell you why I'm asking. I'm somewhat aware of standing principles and especially in the environmental area because this is often where they come up, where people say that they want to – they're aggrieved by some sort of environmental alleged harm. There's certain principles that apply to that and a lot of those cases hold, rightly or wrongly, I'm very much an environmentalist although I'm not sure I'm in favor of a lot of these holdings, that unless there's some sort of harm that's different, that a generalize member of the public doesn't really have standing to say they're aggrieved.

Mr. Ralph Mastromonaco stated well Mr. Chairman, out of the millions of people that have passed by this site in the past 15 years, I'm the only one that has complained. I think that's answered your question.

Mr. David Douglas stated you might have. I'm not sure you answered the way you think you did though.

Mr. Ralph Mastromonaco stated but I am aggrieved also when my clients in town are routinely violated by the town for replacing air conditioners or having too much space between the [inaudible] on their deck. The machinery noise fugitive a great dust create streams of illegal concrete truck washout and truck to and from the site are enough to aggrieve any resident. In order for this contractor's yard to have been legally existing it was required to comply with the conditions of the approved site plan. One of the most important conditions of the site plan was that the owner obtain all required state, county and federal permits. If the owner had been in compliance in 2010 when the contractor's yard law went into effect, then he would have benefited from the escape clause that allowed legally existing contractor's yard to inherit a special permit by default. We now know that no state or county permits were ever obtained and are still lacking. This means that the owner's operating contractor's yard without the special permit that is required by zoning enacted in 2010.

Mr. David Douglas asked can I ask you a question getting back to the jurisdictional part? There is the question of Town Law section 268-2 which I know you're familiar with because there's a letter written to you from Mr. Wood in which he quotes from there.

Mr. Ralph Mastromonaco responded 268-2, I don't know if I have a copy.

Mr. David Douglas stated Mr. Wood's June 20th letter reads quotes from 268-2, Town Law section 268-2.

Mr. Ralph Mastromonaco stated I'm not prepared to answer that. What does he say?

Mr. David Douglas stated what the law seems to say that where there's somebody aggrieved by the failure of refusal of a proper officer or board to institute action then three tax payers who are aggrieved can institute appropriate action. I'm just wondering whether you think that that section applies to you.

Mr. Ralph Mastromonaco stated there's no bearing on this case, zero.

Mr. David Douglas asked why is that?

Mr. Ralph Mastromonaco responded that has to do with, as I understand, when you're filing an injunction. We're not filing any injunctions here. We don't need to file an injunction. We're asking for an appeal. But let me finish Mr. Chairman. I just got another page to go.

Mr. David Douglas asked okay so, I know you're not a lawyer but so you're saying you think that 268-2 only applies to somebody seeking an injunction?

Mr. Ralph Mastromonaco responded it's an alternative way of stopping something I suppose but it has to do with injunctions and we did look into this and it has nothing to do with this case.

Mr. David Douglas asked well I'm asking why?

Mr. Ralph Mastromonaco responded I'm not a lawyer.

Mr. David Douglas stated I know but I'm trying to get some insight.

Mr. Ralph Mastromonaco stated I said my lawyer's out of town this week. He will be back...

Mr. David Douglas stated that's why at the work session I said, did you want to adjourn this until your lawyer came back and you didn't want to.

Mr. Ralph Mastromonaco stated and the reason is because I believe if you let me finish that my position is so clear that I don't think I even need a lawyer to determine standing. Let me finish please. I would like you to note that my residence is within the Town of Cortlandt and more directly is within a 1,000 feet of the contractor's yard. The Town Code on contractor's yard requires a buffer of a 1,000 feet from residential districts. The Zoning Code – I believe that the Town has by its own law recognized the effect of this land use and has set up a zone of interest whether or not the contractor's yard is legal or not of the 1,000 feet where there's an automatic presumption of effect. I fall into that category. As you may know also, if there is any ambiguity in my standing to submit an appeal to the ZBA it is said in law that an applicant shall receive the

benefit of a strict construction against the Town and in his favor. And most importantly, as to my standing, number one, I made a request for an Interpretation of the Zoning Code. Number two, I then received an Interpretation from the proper town officials and number three that alone gives me standing to appeal. Now, I have been living and working in this Town for the past 33 years taking numerous projects, taking numerous projects through the various boards and committees. I was required to adhere to all the rules and laws of the Town. It aggrieves me again that I must follow procedures that others don't. Also, I know that friendships exist between members of the various Town Boards and the owner operator who was once a member of the Planning Board. I have known the principals also for many years. I appreciate the independence of this board that it has shown on all other applications and I am sure that your board will see this issue only in relation to the law as well.

Mr. David Douglas stated Mr. Mastromonaco, I can assure you that this board will be totally impartial and does not care about friendships or lack of friendships. I think you've been in front of us enough times over the years, we make a decision based on what we think is right. Sometimes we make decisions and people will shoot at us afterwards because they don't like it. We try to be fair. We try to do the things by what the law requires and the way we see things. You don't have to worry about that.

Mr. Ralph Mastromonaco stated I know that. Mr. Chairman and board, and finally, if you believe that I can't make this appeal, if you find that I don't have standing after all I have shown you than who can? Thank you.

Mr. David Douglas stated Ray I apologize, I jumped in front of you and I apologize for that.

Mr. Raymond Reber stated this was assigned to me. The question Mr. Mastromonaco that I'm wrestling with in terms of jurisdiction is, as a Board of Appeals, appeals assumes that we're appealing a decision. My problem here is I don't think it's been clearly defined in your interaction with the Town in specifics of where something was cited and somebody in the Town or whatever, made a decision and now you're saying you don't agree with that decision, so move on, come to us and then we can review the situation. My problem is, there's not much documentation in terms of a specific body. You've made statements that they didn't have permits and what have you, however, there's no specifics listed and counter to that is this June 20th a letter that was sent to you by the Town attorney and on page 2 he says: rest assured that any violations that may now or in the future exist will be violated and pursued by the Town. And then there's a p.s. it says: "furthermore, a case in the early 1980s that went to the Court of Appeals upheld the asphalt, concrete batching at the site. Their position is it's legal, it's not in violation of any of the rules and regulations and I don't – we haven't been presented specific items. Well, what was violated? What is it that the Town refuses to acknowledge specifically? Now you say traffic and noise on the road. Well that's a public road. Route 9A, there's no requirements of sound or traffic control on that. There is potentially on the property itself going into the property. I guess that's what I'm having trouble with right now with jurisdiction is to what is it exactly, where it has to do in terms of a Board of Appeals.

Mr. Ralph Mastromonaco responded Mr. Reber, April 13th, 2017 I was sent an Interpretation by Michael Preziosi. The Zoning regulations you're referencing cannot be applied to applications predating their institution.

Mr. Raymond Reber stated in other words they're saying there's no violation.

Mr. Ralph Mastromonaco stated this letter was a denial and I might mention also that these Interpretations don't have to be written. You can simply ask. All they have to do is be orders. So you can ask Mr. Hoch, you can ask Mr. Preziosi. They're not here I don't think but they gave me the reason to be here. I was given their Interpretation and that's what I'm appealing. I provided that letter in my May 24th, 2017. You may have to read a lot more words there.

Mr. Raymond Reber stated like I say, I think we're still struggling a little bit to be on firm ground of just how we approach this. Personally, I'm not ready to make a decision on it. I don't know how the rest of the board feels.

Mr. David Douglas stated I agree.

Mr. Raymond Reber stated obviously, anyone in the audience that wants to address the legal issue as opposed to traffic, please come up and make your contribution.

Mr. Allen Singer good evening Mr. Chairman, members of the board. My name is Allen Singer. I'm a member of the firm of Welby, Brady & Greenblatt and we represent Dakota Supply, the company whom the applicant is complaining of. I had sent a letter to this board late last week which I think you have and I'd asked that it be made part of this record if it hasn't already been done so.

Mr. David Douglas stated it is.

Mr. Allen Singer stated thank you. It seems clear to me and I agree with Mr. Klarl and Mr. Wood that this board has no jurisdiction to hear a question of an Interpretation. It's only an appellate board. That is absolutely clear in the law. So the applicant has no – there's no jurisdiction to even hear this application. Beyond that, the operations of my client as we know have predated the Zoning Code. They're grandfathered. The Director of Technical Services and your Town Attorney have both opined to that affect. The operations are fully permitted by both DEC and the County of Westchester. They are monitored by those organizations and except for one pending violation which has to do with the washing of some of the trucks which we are in the process of remediating, and I think the Town officials will tell you that we are acting in good faith in doing that, but except for that there has been no violations ever cited for this site. As a matter of fact, we've gone beyond that. We have recently instructed the trucks that do come in in the morning to be rerouted...

Mr. David Douglas stated Mr. Singer I'm just going to make the same request I did of Mr. Mastromonaco. Just keep this to the standing jurisdictional issue because we only deal with the

merits which is what you're talking about now, if and when we decide we have the power to hear it.

Mr. Allen Singer stated I understand. I think the opinions of the Town Engineer, the Town Attorney, and as my letter indicates, is absolutely clear that there is no jurisdiction here to hear an Interpretation of the Zoning Code.

Mr. David Douglas asked I think Mr. Mastromonaco before was referring to a letter from Mr. Preziosi which I guess is the April 13th letter. Does that constitute a decision that can be appealed from?

Mr. Allen Singer responded I don't believe so because I don't believe that a proper application is ever been made. There again, he was asking for an Interpretation.

Ms. Adrian Hunte asked application by whom?

Mr. Allen Singer responded by the applicant. He was asking for an Interpretation of the Zoning Code. He was given an Interpretation of the Zoning Code that there is no violation. There is absolutely no basis for determining that there is a violation.

Ms. Adrian Hunte asked and if the applicant disagrees with that Interpretation, is he entitled to come to the Zoning Board?

Mr. Allen Singer responded he has the right, under the Town Law to commence an action to enforce the Zoning Code if he gets to other people to agree with him. And it's not just an injunction action.

Ms. Adrian Hunte asked you were saying he has the right to institute an action, meaning where?

Mr. Allen Singer responded an action in Town Court to enforce the Zoning Code.

Ms. Adrian Hunte asked in a Court of Law, not the Zoning Board of Appeals?

Mr. Allen Singer responded that's correct, in a Court of Law. And as a matter of fact, the Town Law to which the Chairman has recited is one which allows exactly for this situation for individuals, at least three, who feel aggrieved by the lack of enforcement by the enforcing officer of the municipality have a right to commence their own enforcement action in Town Court or Justice Court, Village Court whichever court has jurisdiction. And that is the only action that this applicant can lawfully take, and I respectfully suggest that this board has no jurisdiction to hear this application. Thank you, unless you have any other questions.

Mr. Raymond Reber asked anyone else have anything to contribute? No? Board member have anything additional to say? Mr. Chairman is it your preference to adjourn or close?

Members of the board stated adjourn.

Mr. David Douglas responded I'm sorry I think Mr. Mastromonaco wants...

Mr. Ralph Mastromonaco stated well if you have any questions I'm here. Do you mind, I just want equal time to what was just said in a sense.

Mr. David Douglas stated if you have something to say, we'll listen to it, sure.

Mr. Ralph Mastromonaco stated I'll put this mildly, as far as I can tell when Mr. Singer mentioned that this is like a fully permitted site and DEC and all kinds of stuff, unless something happened in the last few weeks that I wouldn't know about, there was only one permit on this site, considering all the permits that are possible, one permit, and that's for a machine...

Mr. David Douglas stated this is the same thing...

Ms. Adrian Hunte stated you're going into merits.

Mr. Ralph Mastromonaco stated I'm just responding that's all.

Mr. David Douglas stated no but when he started doing that I think I cut him off and said, please we don't want to hear about the merits. So you don't need to respond to the merits because as we talked about it at length on Monday night, we have to decide whether we have the power to hear this case.

Mr. Ralph Mastromonaco stated I'm sorry I hate to disagree with you but they see all of that as part of the aggrievement.

Ms. Adrian Hunte stated I think that as per the week's decision that one of the questions is whether the application might be understood to constitute a request for an advanced ruling or an advisory opinion or whether there was presented a prior Interpretation by a Zoning enforcement official under the Town Code. And if there was not, then we don't have jurisdiction is basically what the [inaudible] Court is saying.

Mr. Ralph Mastromonaco stated I know that and I specifically underlined in my report the letter from Mr. Preziosi and I think you really should kind of look through that again. There were – they did not want to give me this information. It took a lot of work to get Mr. Preziosi to make his Interpretation.

Ms. Adrian Hunte stated I think what we're saying is we need an opportunity to review all of this. We're going back-and-forth. We're now becoming a bit repetitive.

Mr. Ralph Mastromonaco stated I don't mean to...

Ms. Adrian Hunte stated I understand that but I think we basically ready to proceed.

Mr. David Douglas stated I'm fine with closing unless anybody has...

Ms. Adrian Hunte stated I think we can close.

Mr. David Douglas stated Mr. Mastromonaco, unless you have an objection, we're prepared to close the public hearing and then we'll issue a decision on the jurisdictional. Because the public hearing just does the jurisdictional part.

Mr. Ralph Mastromonaco stated I'm fine. That's fine.

Mr. David Douglas stated if we rule in your favor then we have power then we'll hear the merits and if not we don't have the power to.

Mr. Ralph Mastromonaco stated in terms – I would like to know whether my attorney would have a chance to speak to that issue too. So I don't whether you're closing the public hearing...

Mr. David Douglas stated that's what I tried to ask the other day and again earlier tonight, whether you want your attorney to address this issue. I'm only speaking for myself, if you want your attorney to address just this issue further than what you said tonight then I'd personally be in favor of us of keeping this matter open and adjourning it to next month and then your attorney can add whatever he wants.

Mr. Ralph Mastromonaco stated I would appreciate that.

Mr. David Douglas stated then we'll close the hearing on the jurisdictional issue and then decide if that's okay with everybody else. Okay, so we'll do that. We'll adjourn and then your attorney can have a chance to say what he has to say.

Mr. Ralph Mastromonaco stated just adjourn it. Thank you very much. The meeting would be late September?

Mr. David Douglas responded it will be September 27th. And the work session will be the 25th.

Mr. Ralph Mastromonaco stated thank you very much.

Mr. Raymond Reber stated on case #2017-22, applicant Ralph Mastromonaco request from Briga Enterprises for an Interpretation of not permitted uses on M1 Zone, we'll adjourn this hearing until the September regular meeting of the Zoning Board.

Seconded with all in favor saying "aye."

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

E. **CASE NO. 2017-23** **Michelle Brady** for an Area Variance for the total square footage of accessory structures to allow construction of an in-ground pool on property located at **16 Arlo Lane, Cortlandt Manor.**

Ms. Adrian Hunte stated good evening.

Ms. Michelle Brady stated good evening. Hi, I'm Michelle Brady. I'm asking for a variance to have a in-ground in my background, 50% of the square footage of my home, it's over that. So I need a variance approval.

Ms. Adrian Hunte stated this is Mr. Seirmarco's case so I'll take this. Based on the location of your property, I see very little impact and you're surrounded by woods and Bear Mountain Parkway. I don't see an undesirable change to the neighborhood. Your property – are there any other locations you could consider or can consider? Why have you chosen that spot?

Ms. Michelle Brady responded because it's right behind the house and we have a deck off the back. It's more ideal for entertaining family and children, and watch them while they're in the pool.

Ms. Adrian Hunte stated it's a reasonable request or location as opposed to right by the Bear Mountain Parkway.

Ms. Michelle Brady stated and we have 3.7 acres.

Ms. Adrian Hunte stated I don't believe that there'd be an adverse impact or affect on the physical or environmental conditions of the neighborhood or the district. Although it might be self-created, that in it of itself is not a reason to deny. So I personally don't have an issue with this. Any members of the audience or board have any comments?

Mr. John Mattis stated I have one concern. Two years ago, we granted a variance for a very large shed; 30 x 28. Without that, you would not need this 80% variance now. So this is just creeping along. You ask for one thing. You used over 800 square feet of the 900 that's allowed. Now you're asking to go up to 80% variance. We generally give one or the other. I would approve this if you want to cut your shed down but 80% is – because you have a very large shed and the only reason we allowed that was because you could have it and we gave you the location but now you want to go 80% over. I don't care if it's a big property. I don't care. You come to us for one thing then you come for another thing. You keep adding on, adding on, adding on. That's my concern.

Ms. Michelle Brady asked is that not allowed to have accessories on the property if you have...

Mr. John Mattis responded they're allowed, yes, but my concern is you keep coming and coming and coming. We give you something two years ago and now you come back for something just as large again that requires an 80% variance and I have a concern with that. If you had that existing shed when you moved in then that would be different but you created this hardship by getting that shed two years ago. If you didn't have the shed, you could have built the pool. You wouldn't even have been here.

Ms. Michelle Brady stated the shed is not two years ago. It's currently. We're in the process of building the shed.

Mr. John Mattis stated it was approved in 2015. So you haven't even built it yet?

Ms. Michelle Brady responded well it's up, the structure but we didn't...

Mr. John Mattis stated I'm referring to case #2015-06 which was approved on May 20th, 2015, two years ago.

Ms. Michelle Brady stated it's still in the process. I don't know what else to say.

Mr. John Mattis stated but that's my concern.

Ms. Adrian Hunte stated anyone else have comments?

Mr. Raymond Reber stated for clarification, you say it is built?

Ms. Michelle Brady responded the structure's up but we're not done with it, no. We need to put, what is it called? My husband, can he come up? He's more inclined to answer that...

Mr. Brady stated it just has to be sided and then the fire inspector.

Mr. Raymond Reber stated so structurally it's there. The other thing I noticed too with that is the original approval was for a 30 x 28 but I understand that's not what you built.

Mr. Brady responded that is what we built, yes.

Mr. Raymond Reber asked it is 30 x 28 in dimensions?

Mr. Brady responded yes.

Mr. Raymond Reber stated okay, just trying to clarify some information.

Ms. Adrian Hunte asked anyone else?

Mr. David Douglas stated generally I'm concerned about giving such large variances in terms of the square footage that one can have for accessory structures on the property. However, in your case it seems you have a classic situation of a relatively small house on a large lot and given the location of where that lot is, I don't see it having any impact on anything but I did want to at least state that because so when the next person comes in and says they want such a large variance I wanted at least point out that to me your situation is, it's unusual. It's not unique, there are other situations and that's the type of situation where we've granted these. If your property weren't as large and the house were bigger and then it would be different but you've got almost four acres here and I don't see it as being a problem. It's not having any impact on any neighbors.

Ms. and Mr. Brady responded no.

Mr. Wai Man Chin stated I would happen to agree with the Chairman on this thing except that basically you have nothing but the Bear Mountain Parkway on one side and New York City property on the other side which can never be built on. That's the only thing I would say I would give you the variance, otherwise I probably would not. It's kind of unique on this situation of the property surrounding your property.

Ms. Adrian Hunte asked any other comments? Hearing none, on case #2017-23, the applicant Michelle Brady for the premises located at 16 Arlo Lane, Cortlandt Manor, NY for an Area Variance for the total square footage of an accessory structure for a proposed in-ground pool I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte on case 2017-23 the applicant is proposing a new construction in-ground pool which would exceed the allowed accessory structure square footage. This is a large lot with an 1,800 square foot house and as we mentioned, surrounded by governmental properties that the likelihood of being built on is minimal. I make a motion that we grant the Area Variance for the total structure square footage from an allowed 900 square feet up to 1,618 square feet. This is a type II SEQRA action, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

Mr. and Ms. Brady stated thank you very much.

F. **CASE NO. 2017-24** **Christopher Manfredonia** for an Area Variance for the height of an accessory structure, a detached garage, on property located at **47 Maple Row, Crompond, NY.**

Mr. Wai Man Chin asked and you are?

Ms. Vicky Manfredonia introduced herself. I reside at 47 Maple Row, Crompond, NY. What should I say?

Mr. Wai Man Chin asked what are you here for?

Ms. Vicky Manfredonia responded we here because we would like to build a garage and we need the 9 feet doors because we have two vans and we would like to keep our property nice and put them inside, not leave them out so that's why we would like to get the variance of the three feet extra height.

Mr. Wai Man Chin stated this is my case. Basically, the only variance that you're asking for is the height variance. So basically the size of the garage is no problem with setbacks and everything else from what I see. Usually we don't give a variance that great. That's three feet over what's for any kind of accessory structure. Usually I would go up to maybe 15 ½ or 16 feet, the maximum but I don't know how the rest of the board feels about this.

Ms. Vicky Manfredonia asked would that be a foot and a half?

Mr. Wai Man Chin responded a foot and a half lower or maybe, I would say 15 feet, 14 feet but 17 is a little bit too high and we usually have never given many variances beyond the 16 feet if ever.

Ms. Adrian Hunte asked how tall are the vans?

Ms. Vicky Manfredonia responded I don't know.

Ms. Adrian Hunte asked are these Sprinter type vans or regular? Do you know?

Ms. Vicky Manfredonia responded they're a little higher than.

Mr. Raymond Reber stated the problem you have here with the dimensions is you're proposing a 40 foot by 28 foot deep, three-car garage. It's the 28 feet that creates the problem because the depth is what sets the total reach for the roof and where the peak comes. Your slope on the roof is not unreasonable. Obviously you want some slope for drainage and what have you. The issue is usually 24 feet is more than sufficient for the depth of a garage. I, for example, have 24 feet and there's plenty of room in front of my vehicles inside the garage. And if you can constrain yourself to the 24 feet then you cut back on the peak and can probably get back more than a foot on the height, probably closer to a foot and a half which gets you down under the 16 foot

requirement, which as Mr. Chin indicates, we consider those things because we know that garages at 24 foot is typical. So I think that would be the recommendation we would make if you could just redesign it a little shorter to the 24 foot depth.

Ms. Vicky Manfredonia stated [inaudible] what I've given you is the two papers from either side of our -- where we live this house and this house. Then the sketch that we thought how we could lower it, I think it's like one and a half foot if you can't give us the three then he said maybe the one and a half.

Mr. David Douglas stated it sounds like you've got alternatives that you can do.

Ms. Vicky Manfredonia stated well because you know my husband is a carpenter and a builder. He would have liked that because of the snow that it gets in the back. It would definitely be a nice roof for the weather that we've been having and stuff. The guy next door, he lost half of his roof when it snowed because it was flat.

Mr. David Douglas stated I live in a house with a flat roof so I understand that.

Ms. Vicky Manfredonia stated that was the reason.

Mr. David Douglas stated what was handed to me before is a letter that says: "To whom it may concern. We are the adjoining neighbors to the Manfredonia property on Maple Row and gladly approve the desire to construct the three-car garage on their property." That's from Louise and Olga Garcia at 51 Maple Row. And there's another email that says: "To whom it may concern, we are adjoining neighbors to the Manfredonia property on Maple Row and gladly approve their desire to construct the three-car garage on their property." Sounds familiar. That's Fred and Judith...

Ms. Vicky Manfredonia stated I think you know Freddy.

Mr. David Douglas stated at 43 Maple Row.

Mr. Charles Heady asked how high are those vans you got? How high do they measure?

Ms. Vicky Manfredonia responded I really don't know.

Mr. Wai Man Chin stated from the sketch that you gave us or the drawing, it looks like your husband wouldn't mind going down. Like I said, 15 foot 6, and here it is 15 foot 6.

Ms. Vicky Manfredonia stated he did right. I think a foot and -- that's why I asked you a foot and a half because he told me he said we'll go like that but then I don't know what to do if it's going to be -- we're done, he goes.

Mr. Wai Man Chin stated at 15 foot 6 I would not have a problem with this then.

Mr. Raymond Reber stated that conforms with the suggestion I made I think is the same adjustment that your proposing with that alternative. And it still allows you to have a pitch on the roof.

Ms. Vicky Manfredonia stated right. Thank you.

Mr. Wai Man Chin asked anybody in the audience would like to speak on this matter? Anybody else on the board? I'm going to make a motion on case 2017-24 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Wai Man Chin stated I'm going to make a motion on case 2017-24 to grant a Variance required for Area Variance of the height of the detached garage from 14 feet to 15 foot 6 inches and this is a type II under SEQRA, no further compliance is required.

Seconded.

Mr. Wai Man Chin stated and we'd like to keep this as a record of the 15 foot 6.

Ms. Vicky Manfredonia stated thank you.

With all in favor saying "aye."

Mr. David Douglas stated so it's granted to the 15 and a half foot height.

Mr. Wai Man Chin stated thank you.

Mr. David Douglas stated thanks a lot.

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PLANNING BOARD REFERRAL:

- A. July 31, 2017 Memorandum from Chris Kehoe, Deputy Director, Planning Division, for comment on t application of Cortlandt/Peekskill Animal Hospital for Site Plan approval on property at 2158 Crompond Rd.

Mr. David Douglas stated we received a memorandum dated July 31, 2017 from Chris Kehoe, the Deputy Director of the Planning Division asking us to comment on an application of the Cortlandt/Peekskill Animal Hospital seeking site approval on property located at 2158

Crompond Road. We discussed this at our work session and I think it was the consensus of the board that we do not have any objection to this and from a Zoning perspective it seemed fine. We were asked for our view on this because it's a transitional property meaning that it's right on the border of a commercial and residential district. Assuming that that's still our consensus today, I'm going to ask Mr. Hoch to send a memorandum to Mr. Kehoe conveying that to him. That's still our consensus?

Members of the board responded yes.

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REQUEST TO RE-OPEN CASE NO. 2016-10 DANISH HOME CELL TOWER:

Submitted by M. William Sherer, Esq.

Mr. David Douglas stated before you speak Mr. Sherer, basically the way it works with motions to re-open is that the public hearing has been closed. It has to be a unanimous decision by all the members of the board to re-open it or not to re-open it. If we decide to re-open it then we would proceed with whatever additional information you want to give and allow people to talk and have continued public hearing. And Mr. Klarl can correct me if I'm wrong, but I believe unless we re-open the public hearing we don't take any additional information. Is that correct?

Mr. John Klarl responded this is a motion to re-hear and actually it's governed by section 267-a of the Town Law and it says if you get a unanimous vote you can have it open and if you don't have a unanimous vote, it doesn't open. Only when it opens up we then take something in. We don't take something in for a hearing that doesn't exist. So that's the threshold question for this board is whether or not to open up the public hearing.

Mr. William Sherer stated my question would be this, the letter that I sent identifying the grounds for seeking the re-hearing obviously brings up information...

Mr. David Douglas stated we've got that.

Mr. William Sherer stated and that's information you will consider?

Mr. David Douglas responded we understand the grounds for why you're seeking to re-open. We've got your letter. We've discussed the issues at the work session. We discussed it on Monday. It's just that unless we vote to re-open then we can't have additional material.

Mr. William Sherer stated that's fine, but the basic information in the letter that I wrote will be considered in making the determination as to whether to...

Mr. John Klarl stated you wrote a couple of letters and one was June 23 I think or so.

Mr. William Sherer stated that's the basic letter with the basic information.

Mr. John Klarl asked so how many letters do you think you've written, just so we know?

Mr. William Sherer responded the only letter that I wrote which addressed the substance of this application would have been the letter asking for a hearing. I did write a letter dealing with the article 78 that's been commenced and the suggestion that I thought that the Town and the Town Board had a conflict of interest with the ZBA in terms of representation because the issue I think is presented is no different than what was presented with Hudson Ridge here.

Mr. David Douglas stated we've got the June 23rd letter and the attachments. That's what we've got.

Mr. William Sherer stated yes, that's fine, sure.

Mr. John Klarl stated but then you wrote one to the Board today I think also.

Mr. William Sherer responded that was simply if I was going to have the opportunity to explain. All that this does is to encapsulate what the other...

Mr. John Klarl stated it had eight points or something.

Mr. William Sherer responded yes, and it was simply a summary.

Mr. David Douglas stated so the bottom line is we have your June 23 letter and all the attachments and we considered what you have there and that's what we're going to decide. The issue before us is should we re-open the hearing based on what you've provided?

Mr. William Sherer responded fine.

Mr. David Douglas asked do people have any comments about that?

Mr. Raymond Reber responded I don't know except that, as I understand it, the question is if there was an alternative about site location which the gentleman has requested that we were unaware of and I guess our problem is, looking back at our records and our own recollection is the issue of the different alternatives including the cell towers on Con Ed towers was part of an overall comprehensive evaluation in the beginning and we have some communications that all those alternatives were considered inappropriate to get the coverage that Verizon was looking for and that is why they requested the location that they did request. So on that basis it seems to me that this was reviewed early on, was discounted and we moved on from there. So I don't see any basis on which we should have to reconsider those issues.

Mr. William Sherer asked may I address that?

Mr. Wai Man Chin responded no.

Mr. William Sherer stated that's just factually incorrect.

Mr. David Douglas stated that's the problem. I'm explaining to you that we can't allow additional hearing.

Mr. William Sherer stated I understand that but with all due respect, if a statement's made about what was addressed, it wasn't addressed. If you read the supplement which just to explain it was not addressed.

Mr. David Douglas stated we've got the records from before. We know what we have and we know what was addressed and what wasn't addressed. The question is whether or not whether you've put forth additional information that all of us feel is sufficient to re-open.

Mr. William Sherer stated fine, and I will say just one thing. I have that whole record. I looked through that whole record. It does not identify Con Ed tower F18. It does not identify the fact that there was a building permit issued by this Town.

Mr. David Douglas stated at the work session we talked this through at length and maybe it would have been beneficial for you to be there but you weren't and we talked it through.

Mr. William Sherer stated I didn't know that I was invited frankly.

Mr. David Douglas stated it's open to the public. There was discussion there about the RF reports that Verizon submitted and unless we unanimously feel that there was not sufficient consideration of the other alternative sites in the RF report and all the other evidence that we heard over the months then we can't – we can only re-open it if everybody agrees that it should be re-opened. That's the rules. We haven't voted yet.

Mr. William Sherer stated if I was going to have an opportunity to attend the work session and explain, with the record in front of me, why – you're saying it would have been pointless then it's pointless.

Mr. David Douglas stated I'm not saying it would have been pointless, what I'm saying is you did have the opportunity to attend the work session but I'm also saying that it's not that you weren't there that's going to lead to a result or not to a result. We have what you sent us. I can speak for myself and I think I can speak for all of us actually. I think we all looked at this very closely what you submitted. Nobody gave it short shrift at all. We gave it a lot of consideration.

Mr. William Sherer stated I'm not suggesting you did.

Mr. David Douglas stated we considered what you submitted and we discussed among ourselves the months of hearings and whatever was submitted and now we've got to decide whether we

unanimously feel that we should re-open the hearing and that's what we're going to do. We're going to vote on whether or not to re-open the hearing. That's how the system works and you've got your lawsuit and that's how the system works too and if the judge finds that you were right, then you're right. That's fine. As I think I've said before I believe in the system. I believe in the system. If you win your appeal that's great.

Mr. William Sherer stated I hear what you're saying. You'll make the decision that you consider to be appropriate.

Mr. David Douglas stated we're going to vote right now. I'll make the motion. How do I do this procedurally John? I make a motion to – I'll do it in the affirmative way. I make a motion to re-open case #2016-10 regarding the Verizon's application for a cell tower on the premises of the Danish Home.

Seconded.

Mr. David Douglas stated all in favor of re-opening it?

Mr. Wai Man Chin stated no.

Mr. Charles Heady stated no.

Mr. Raymond Reber stated no.

Mr. John Mattis stated I abstain since I wasn't at the work session. I didn't hear the discussion.

Ms. Adrian Hunte stated no.

Mr. David Douglas stated no.

Mr. William Sherer stated I heard you. I want to poll the board.

Mr. Ken Hoch stated Mr. Reber; no, Mr. Mattis: abstain, Ms. Hunte; no, Chairman Douglas; I'll vote yes, Mr. Chin; no, Mr. Heady; no. Four to one.

Mr. David Douglas stated thank you.

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ADJOURNMENT

Mr. John Mattis stated I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

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**NEXT MEETING DATE:
WEDNESDAY, SEPT. 27, 2017**