

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, January 20<sup>th</sup>, 2010*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

**ADOPTION OF MEETING MINUTES for 11/18/09 and 12/16/09**

Mr. David Douglas stated I don't believe we got the complete minutes yet for November or December meetings so we'll deal with that at our next meeting.

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**PUBLIC HEARINGS ADJOURNED TO FEBRUARY 2010**

- A. CASE No. 42-09**                      **Nick Danisher** for an Area Variance from the requirement for the front yard setbacks for a proposed single family dwelling on the property located at **22 Pierce Street, Cortlandt Manor.**

Mr. David Douglas stated first item on our agenda, I just want to note, has been adjourned until next month.

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**CLOSED AND RESERVED DECISIONS**

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

Mr. David Douglas stated I'll turn it over to our attorney to explain where we stand regarding that matter.

Mr. John Klarl stated we had the Yeshiva application on our agenda for some time now. Just looking at my folder I see the Zoning Board of Appeals application looks like it began back on May 16<sup>th</sup>, 2007 and obviously the Yeshiva has made an application before the Planning Board. They had one application that was of a grander scale involving a number of buildings and then after a certain period of time they decided to file for a different application which really focused on two things: when they made their application to the Planning Board for site development plan approval, wetland and tree removal permits and for a Special Permit for a Seminary for the construction of a new on-site waste water treatment plant, and for the renovation/reconstruction of the existing Dodge City building and classroom. Essentially, the newest application before the Planning Board was about the sewage treatment plant and about the renovation of the Dodge City building. We spoke at our work session last night about the D&O that we've held in abeyance for some time. That Decision and Order of our Board was looking favorably on the question that the Yeshiva would have to apply for a Special Permit and we also recited two possible Variances: 1) a dimensional Variance, 2) a Variance concerning it not be located on a State or County Road. Also, last night Mr. Reber was doing some academic philosophizing and he was asking about the sewage treatment plant and the Dodge City and whether there might be an expansion of a non-conforming use and we just had an executive session tonight on attorney advice, a brief executive session, and I discussed that issue with the Board. I brought to the Board's attention that one week ago tonight we had a Planning Board meeting and at that Planning Board meeting, the Planning Board adopted **Resolution 1-10** which granted conditional site development plan approval and a Special Permit approval. In granting that Special Permit approval the Planning Board has permitted the two uses: the sewage treatment plant and the renovation of the Dodge City building to be permissible uses on this property in the **R-40 zone**. Specifically, in the Planning Board Resolution that I worked on with my colleagues on the Planning staff, we indicated among our whereas clauses that the Town had determined that the Yeshiva is deemed under the Town's Zoning Ordinance we've granted a Special Permit as of 1994 and that the applicant is required to make an application to the Planning Board for site development plan approval and Special Permit. We also indicated in our Planning Board Resolution that a University, College or Seminary is permitted by Special Permit in the **R-40** single-family residential district, and we further indicated that under the previous Planning Board application the Yeshiva filed an application with the Zoning Board of Appeals contesting the Deputy Director of Code Enforcement's determination that the Yeshiva is required to have a Special Permit. We also indicated in the Planning Board Resolution that the Zoning Board of Appeals indicated previously to the Planning Board that it would likely render an Interpretation if the Yeshiva requires a Special Permit as a University, College or Seminary. With that, the Planning Board voted on this Resolution and adopted it a week ago tonight. It's my recommendation that we look at our Decision and Order that we did sometime ago and I believe some time ago was in 2007, and that we modify it in at least three respects: 1) we delete the possible request for the Variance on the dimensional issue for an addition to a structure as the addition is no longer proposed for this structure. 2) We recite that the Planning Board has granted a site plan and Special Permit approval. 3) We recite that the Planning Board also

adopted a neg. dec. a week ago tonight. With that, Mr. Chairman, I think that we should revisit the D&O and adjust it in those three respects.

Mr. David Douglas asked do we have a motion along those lines?

Mr. John Klarl responded I think Mr. Chairman we talked about taking a look at the full Decision and Order and adopting it at the February meeting.

Mr. David Douglas asked Mr. Steinmetz would you like to be heard?

Mr. David Steinmetz responded I would, I want to understand procedurally in the way of the motion and...

Mr. John Klarl stated he was going to do a motion and then on question.

Seconded.

Mr. John Klarl stated to direct the D&O for the February meeting?

With all in favor saying "aye."

Mr. David Douglas stated we'll mention that it was all in favor with one abstention.

Mr. David Steinmetz stated I was hoping to speak before you actually voted.

Mr. John Klarl stated he was waiting for "on the question."

Mr. David Steinmetz stated first of all I agree with what Mr. Klarl has just presented after a very long, very comprehensive and very detailed process. Last week, we finally received all of our approvals from the Planning Board. Amended site plan, amended Special Permit, wetlands and tree removal.

Mr. John Klarl asked has the applicant received a copy of the Resolution from the Planning Board?

Mr. David Steinmetz responded I did receive a copy of the Resolution, thank you. It was my understanding that your Resolution which had affectively voted on but not formerly sometime ago was being held in abeyance so that we could track it specifically to occur at the same time as these approvals. I certainly don't question what Mr. Klarl has indicated. Taking it in reverse order, a negative declaration was adopted by the lead agency. There's no question about it. You technically could not vote and take action until that occurred. That occurred, you can make note of that in the record. In fact, it's already in the record. The Planning Board granted all of its approvals. There was a second item, Mr. Klarl, identified. We all know that. It's also clear and part of the record. The only thing that it sounds you're actually talking about changing is

eliminating that portion of your D&O that related to an area setback Variance on the Rabbi's house because originally in the first application which was far more extensive with a lot of buildings being renovated, some being taken down, etc. There was going to be an addition on that structure. That was taken out when we came back to the Town with what I call the simplified application which was basically renovate in place the Dodge City building and build a sewage treatment plant. The only reason I'm going through this is because I heard the three modifications and I, with all due respect, would ask you to reconsider because I don't think there's no reason why tonight you can't vote, adopt the D&O. I can show you which paragraphs you need to take out if you want to take out the setback Variance for the Rabbi's house. We'd like to put this to an end. I don't want to in any way appear to be impatient after we've adjourned for as long as we've adjourned, but I just want to make sure you all understand we adjourned for some real, legitimate, honest, and forthright reasons. We're here tonight because we kind of got to the end of the process. The Yeshiva would like to leave with its Resolution adopted and be done with this Board and take us off your agenda and move forward. I have no problem if Mr. Klarl is going to "clean up" the Resolution. I've been to many, many meetings in front of this Board and your Planning Board where votes are taken and council's directed as part of the vote to knock out a paragraph such and such and, in fact, adopt a clean Resolution. Indeed, the thirteen-page Resolution adopted by the Planning Board was adopted a week ago with some clean-up items that John and I know he was asked to do by the Planning Board. Simple procedural request without appearing to be impatient, and not wanting to wait, would love to come back to your February meeting. I'll come back on something else. We'll find something else to talk about in February. I would ask that you reconsider. I would ask that you entertain a motion to adopt your D&O with the changes that have just been identified.

Mr. David Douglas asked do people have views as to which approach we prefer? Initially, I think we preferred to see the reworked D&O and have a chance to read through it but does anyone feel differently?

Mr. Wai Man Chin responded I would not have a problem with what Mr. Steinmetz is asking. I would like to see it in black-and-white but based on what we've talked about I'm sure it's going to be done that way. I would not have a problem with going over it tonight. Like I said, I'd like to see it in black-and-white also too.

Mr. David Douglas asked are you going to suffer any actual prejudice if the vote were in four weeks? I personally would not want to prejudice you but if you're not going to be prejudiced than I feel more comfortable seeing things in front of me.

Mr. John Klarl stated it's February 17<sup>th</sup>.

Mr. David Steinmetz responded there are two answers to that question: one of which I really wish I didn't have to say but if you want me to I will. The first of which is easy, from a procedural standpoint, from a litigation standpoint we would like the clocks to be running pretty much simultaneously with one another. We just got a Resolution adopted last week. It was finalized by the Planning staff and dated yesterday. Mr. Klarl, correct me if I'm wrong, it was

always very openly our intent to try to have these two start at the same time for very obvious reasons it's a lot easier for the Town, it's a lot easier for the applicant should there be litigation.

Mr. John Klarl stated and SEQRA tells us to do that also.

Mr. David Steinmetz continued just so you know that's what we were doing two years ago when we were holding in abeyance. The second, if you can all tell me that you're all going to be sitting here on February 17<sup>th</sup> and there are going to be no more changes. I owe it to my client when I have your full Board, after everything my client has been through, if this is just a housekeeping matter and I've got a full Board here tonight, I owe it to my client, with all due respect Mr. Chairman, to ask for a vote tonight. You have to decide what to do. Those are my reasons. I would not have come here tonight but for the fact that I appreciate the fact that I learned at the work session there was some discussion or philosophizing as the case may be, and I didn't want you to keep philosophizing if you didn't have to.

Mr. James Seirmarco stated personally I made the motion and I feel comfortable with waiting until February, waiting for the actual D&O.

Mr. David Douglas stated that's how I lean but we'll see if anybody else...

Mr. John Mattis stated I would have to agree with that. If you were starting construction or something right away and it held you back but I don't recall ever having a Closed and Reserved decision where we haven't had the D&O in front of us to review and I'd like that opportunity even though I suspect that nothing will be changed.

Mr. John Klarl stated Mr. Chairman, what we do in fairness to the applicant at the work session night we'll give the applicant the copy of the proposed Decision and Order so that he can see it too.

Mr. David Steinmetz stated we'll see you in February.

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## **ADJOURNED PUBLIC HEARINGS**

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

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

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

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

Mr. David Douglas stated I'll turn that over to our attorney for the status on that.

Mr. John Klarl stated looking at A) John Nolan, B) Department of Technical Services, C) Post Road Holding and D) Hernandez, we discussed at the work session last night about adjourning those four items: A, B, C, and D to the April 2010 meeting because those are prohibited from going forward based upon the one-year Moratorium. That's the status Mr. Chairman of A, B, C, and D.

Mr. David Douglas asked procedurally do we need to do a separate motion for each of them or can we deal with them all at once?

Mr. Wai Man Chin responded you can do them all at once.

Mr. John Klarl stated and the record will just indicate you've dealt with each one on the same basis.

Mr. David Douglas stated do I have a motion to adjourn **case 51-08, case 06-09, case 18-09 and case 8-09** to the April meeting, so moved, seconded with all in favor saying "aye."

**E. CASE No. 11-09**                    **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8<sup>th</sup> Street, Verplanck.**

Mr. David Douglas stated again, I'll turn it to our attorney.

Mr. John Klarl stated in the case of King Marine, at our work session last night we discussed adjourning it to the March 2010 meeting as apparently they're proceeding before the Town Board.

Mr. David Douglas asked do I have a motion to adjourn **case number 11-09** to the March

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

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

Mr. David Douglas stated maybe we should hold off on this one because there may be somebody from the Town appearing on this and he's not here at the moment.

*Continued...*

Mr. David Douglas stated we agreed procedurally that Mr. Mattis and I were going to flip on this. I took the lead and now he and I changed seats so he now has the honor of taking the lead on this.

Mr. John Mattis stated for the second month in a row we were hoping that our Department of Technical Services Director would be here but, obviously he's not here. I'm sure you had some questions for him. He's been to our work sessions. He basically conceded that they really don't have much back up for any of this. I don't know what else to say at this point. Maybe somebody else wants to add something.

Mr. Wai Man Chin stated I think we should direct DOTS to start all over again and try and get some paperwork on this thing. That's what we talked about at our work session.

Mr. David Douglas asked from the applicant's perspective, would you prefer that we keep the hearing open and have another hearing next month with a Town representative asked to come or would you prefer we close the hearing and proceed to our decision?

Mr. Dan Adams stated I'm the attorney representing the applicant. We would prefer that the Board close the hearing and take its vote and make its judgment.

Mr. David Douglas stated my personal opinion is if the applicant that's their preference, I personally think that that's the right approach, I would agree with that, so long as the applicant is in agreement.

Mr. Dan Adams stated the applicant is completely in favor of that.

Mr. John Mattis stated my understanding at the work session were not going to close it. What we had suggested at the work session was we were going to remand this back to Code Enforcement for them to actually resurvey everything and do a steep slope study incorporating those pieces which are deemed inadequate right now and come back to us with that.

Mr. David Douglas stated my understanding, which may be wrong, is that we were going to do a

Decision and Order that might incorporate some instructions along those lines.

Ms. Adrian Hunte stated that was my understanding.

Mr. John Klarl stated we had both discussions.

Mr. Wai Man Chin stated we had both discussions but I think Mr. Douglas, you're right, I think we were going to make that decision in the D&O direct DOTS...

Mr. David Douglas continued to take certain steps which would be spelled out in the D&O.

Mr. John Klarl stated just to let the two professionals what we talked about at the work session. Essentially, the Board is wrestling with the outcome here versus the paperwork that led up to the outcome. The Board was thinking last night about remanding this to Department of Technical Services to make the findings that are required by the Steep Slopes Ordinance to the extent that they might have already done that. That was discussed both ways about remanding during the public hearing process, it was discussed to closing the public hearing and doing a formal remand so the Board is discussing that among themselves right now. They were going to think about the remand. Mr. Hoch, we had Mr. Vergano appear before us last night, Mr. Hoch had his cell phone on because apparently Mr. Vergano had some kind of appointment.

Mr. Ken Hoch responded he just called. He was delayed. He had to go for some tests.

Mr. John Klarl stated we were going to voir dire Mr. Vergano as to the issues that Rich DiSanza from the Town could not provide for us. Mr. DiSanza, if you recalled, testified as to certain items and certain items he said "I defer to the Department of Technical Services' Engineering Division where I don't have the expertise that they do in handling this." Mr. Vergano was going to be faced with those questions from the Board.

Mr. John Mattis stated I have a concern with closing and reserving this. We have the people here that are challenging this. If we close and reserve, we close them out. They're going to have no more input and no more questions. I think they should be able to look at what the new, I'll call it renewed, revised, completed call it what you may, steep slopes study is.

Mr. John Klarl stated whatever results from the remand.

Mr. John Mattis stated right. I think they should have the opportunity to review them and to comment on them before we just accept them carte blanche with a closed public hearing where you're shut out of the process.

Mr. John Klarl stated that's why I was trying to point out that Mr. Vergano was supposed to be here tonight and hopefully face our questions and then we'd proceed from there.

Mr. John Mattis stated absent him being here and I question whether he'll ever be here quite



frankly. I would like to remand this back to them to complete the study in all those areas that are deemed inadequate and keep the public hearing open so that you will have an opportunity when you see this revised and completed to comment on it. If we close the public hearing now, you have no more recourse unless you file another appeal because it's going to be closed, you can't comment and then we're going to vote on it and I don't think that's fair to you.

Mr. Dan Adams stated I appreciate that. I'm a little bit confused. A couple of things; we have recourse obviously but we'd like to keep it within the Zoning Board of Appeals and the Town if we can. That's our preference, that's why we've been here on several occasions. I'm also unclear or unsure about what the remand would accomplish given that it's been, apparently, difficult to have anybody from the Town Building Department show up and answer your questions, the Board's questions and some of the issues that we've raised. It's been a few months now that we've tried that. I would also, I don't know how important it is to you, but I would also mention to you that before we came to you folks we met with the Town Building Department folks and we tried to get from them an informal response in an informal meeting before we took up all of your time and had you face this issue. We found it very difficult if not impossible to get that response. It is the applicant's opinion, which I share, that when the Building Department made its decision to issue the Building Permit, or the Slopes Permit it did so incorrectly and it did so outside the bounds of its lawful authority. I haven't seen anything presented that would dissuade me from that position. I don't see the point of remanding. Is the remand simply going to tell the Building Department "follow the Code this time and redo it?" Is that what they were talking about?

Mr. David Douglas responded we haven't decided exactly what any remand. That's why we would close and reserve and then we would vote on a Decision and Order to see what it said. If you want an opportunity – you're saying that you haven't gotten satisfactory answers from the Town, that's partly why I asked at the beginning "would you prefer?" Because, I want to give you, your client as the applicant, a full opportunity. If you want us to keep the public hearing open, I personally would vote in favor of doing that. But, if you would prefer that we close – at the beginning you said you preferred that we close it. That's why I was deferring to you on that. If you want us to do it and adjourn it for another month and ask that the Town representative come in so that there'd be opportunity to discuss some of those issues in a public form here, that's one out of seven votes, that's fine. But, if you prefer that we close it, that's fine too.

Mr. Dan Adams responded I see this as a certain level of adjudication. This is what this whole process is. From my viewpoint, we presented our case to you folks. We've tried to point out, we've provided legal memorandums of law, we've tried to provide you with whatever expertise we can put together, we provided you with the factual documentation we can provide you with so we've made our case. We have waited for the Town folks to come back and point out the limitations and weaknesses in our case, it's not here. I don't know what else this Board could even rely upon except what they've been presented on that date. Baring that in mind, then I would again ask that the Board close the public hearing now, make this determination based on what it has in front of it and then we'll do what we have to do from there.

Mr. John Klarl stated for the record, just so we don't forget, there was a representative of DOTS here at the November meeting. We had one gentleman from DOTS here at the November meeting. We did not have somebody here in December and tonight but there was someone from DOTS...

Mr. John Mattis stated but that person that was here was not part of the process of doing the Steep Slopes Permit. They were only preliminary to that.

Mr. John Klarl stated we did the field work.

Mr. Dan Adams stated he did what he did, it's on the record. I'm satisfied with the position that we have brought to you. There is nothing more that we can bring to you from our side. The Town has asked on at least two occasions to have the Building Department here. They're not here again. I don't take any implication from that. It doesn't matter to me why they're not here, my only point is they're not. You have a record before you and I would ask that you close the hearing now as we said we would do before I got here tonight and we said at the last meeting. So, I would ask that you do that and make your determination and let the chips fall where they may. And, we take whatever the folks do what they do from there. I think that's the only fair thing to do at this point.

Mr. John Klarl stated what the Board was considering last night at the work session with Mr. Vergano in attendance, was doing the remand to the extent the Board felt that there wasn't a sufficient response to a specific Steep Slopes finding. They wanted a remand to get that specific response.

Mr. Dan Adams stated I understand that. We're here doing the process, we tried to follow the process throughout and we would like the process, at least this stage of it, to end. We hope that it's in our favor and then we move on from there and if it's not then it's not. The chips fall where they may. We made our case to you. I don't want to keep it open on some hope that the Town Building Department is going to come through and present us with things that otherwise satisfies. I would again ask that the Board close the hearing and that you make your decision.

Mr. David Douglas asked you already moved to close the public hearing right? We just discussed it? Okay.

Mr. John Mattis stated if you read what this case is, I think we kind of lost track as we got along. It's for an Interpretation/challenge of the **Steep Slopes Permit number 20090271**. Remanding it back and getting another answer is not the answer to what this case is. The case is: did they do it right or didn't they do it right? As much as I'd like to remand it back and have them redo it that is not what this case is about.

Mr. David Douglas stated what I propose is that the public hearing be closed, that we close and reserve, and then there'll be a D&O drafted and then we can debate amongst ourselves whether we agree with that draft D&O or not.

Mr. John Mattis stated I don't want to close the public hearing. We don't have a consensus yet what the D&O will be. We generally have a consensus of what it'll be before we close the public hearing.

Mr. David Douglas stated the interested party has indicated that they would like the public hearing closed...

Mr. John Mattis continued right, and they want an answer on a challenge/Interpretation, they do not want a remand and that's not what this case is about.

Mr. James Seirmarco stated they're not saying that.

Mr. David Douglas stated they've said they would like the public hearing closed and us to reach a decision and then they will either be satisfied or dissatisfied and they'll do what they decide to do.

Mr. Dan Adams stated my sense is that this was a fact finding procedure we've gone through so the Board can acquit itself and can make a reasonable, rational, law-abiding decision whatever that might be. My point is that's done. We're done. The other side's been given two or three bites at the apple. They're not here. There's nothing more for us to do from the applicant's position at this point and we think denying the closing of the hearing just denies us closure to this matter. I would ask that you close the hearing and make your decision based on whatever it is you are going to make your decision on.

Mr. Wai Man Chin stated the applicant wants it closed. I think we should close it and reserve.

Mr. John Klarl stated if the Board is of the mind to close it should be a reserved decision.

Mr. James Seirmarco agreed. The reason we're remanding it back is to get some additional findings that we feel as though are missing.

Mr. Dan Adams stated I thought we were not going to remand it. I thought we were closing the hearing. That's my request that we close it at this point and that's it.

Mr. David Douglas stated we're going to close. First, I'm going to ask if anybody else wants to be heard.

Mr. Kyler Cragolin stated 226 West Mount Airy. My feeling on this is that I'd remind the Board that the applicant early on in this process requested adjournment two months in a row and held the process up. I think in the interest of hearing from Mr. Vergano and what his thinking was, what processes he went through as well as hearing what precedence exist in this matter I don't see the harm in keeping the public hearing open so that we can all hear from him next month. I understand that he wasn't able to make it tonight. There are a couple of months went

by where the applicant's representatives weren't able to be here for whatever personal reasons they had. In fairness, I think I personally would like to hear from Mr. Vergano and I would hope you keep the public hearing opened until next month.

Mr. James Seirmarco stated I don't feel comfortable with this. We've been talking about this for the last four months. What I feel comfortable with is something written down on a piece of paper that these are "my decisions were based on this finding and that finding, and this finding" on a piece of paper. If he comes and says that, it's still not on a piece of paper, to me. I would like to see them on a piece of paper, see the procedure followed, see the findings that came from his mental exercise, see them in writing and make them part of the record and let the chips fall where they may. Questioning him again, he's going to tell you what he told us six months ago. That's doesn't do anything. I would like to have the man go through the process, document his answers, let us look at the documentation and then we'll make a decision.

Mr. John Mattis stated that's what we've been attempting to do for several months and it hasn't happened.

Mr. James Seirmarco stated we haven't asked and the reason we should remand it to Mr. Vergano with instructions on "please go through the process and document your answers whether they were mental calculations, or what you thought your powers were, put it down on a piece of paper and send it back to us."

Ms. Adrian Hunte stated I agree with Mr. Seirmarco. We've been asked to render an Interpretation and in order for us to render an Interpretation, if we have questions and we can put them in writing and present them to the individual who supposedly either conducted this study or is going to render the answer as to how they arrived at these decisions concerning the Permits. I don't know that we need to have Mr. Vergano here in order for us to give this information back to him so that we can now have our decision. I don't see where holding this open is going to change that.

Mr. Wai Man Chin stated I think we should close and reserve.

Mr. Dan Adams stated again, I understand your call. We've asked you to make an Interpretation. Our application I think makes it clear what we're asking to do. It's my understanding that the procedure followed is the applicant comes in, makes his showing. This Board then questions or asks for information, whatever it does, but at some point the process ends. I believe that you should make your decision based on the records you had before you. The rationale I could think for not closing the hearing is that you want to give the Town Building Department more time to get back to you. That's the only rationale you could use to keep it open other than that, you have a record in place before you, it's been several months now and yes we did ask for a month or so during this whole process, which we've asked for in advance and the Board has known about. I don't know what the rationale is other than we're going to give the Building Department another bite at the apple. You've got your record and I think you're called upon to make your decision based on the record.

Ms. Adrian Hunte stated Mr. Adams we have questions concerning what's in the report and we have every right to ask the Town officials to answer our questions.

Mr. Raymond Reber stated I don't believe you can do that if you close the public hearing.

Mr. John Mattis responded no, it's closed.

Mr. Raymond Reber asked Mr. Counselor, can you please help us here. Are we allowed to debate, make changes after we close the public hearing based on further input?

Mr. John Klarl responded once you close the public hearing, the curtain comes down. We're not supposed to be accepting any more testimony or any more submissions.

Mr. Raymond Reber stated so we can't talk to Ed Vergano after we close, we have to take what we have and make a decision.

Mr. John Mattis stated and we can't go back to them and ask them for more information.

Mr. John Klarl stated and we also understand that Mr. Vergano is not here tonight for a medical reason.

Ms. Adrian Hunte asked we have the right to send this back over to DOTS?

Mr. John Klarl responded this Board has various powers. Among the powers is the power of remand which you have done on occasion.

Ms. Adrian Hunte stated our decision is for them to do something a certain way.

Mr. Dan Adams stated I don't challenge the Board's authority to do it. You obviously have the authority. I'm not even approaching this, but I'm just saying that at some point I can go and get a Writ of Mandamus. I'm not saying you're close, I'm not saying that at all, I'm just saying that's the only limitation I know is to run down to a courthouse somewhere and have a judge force you to make a decision. From my viewpoint, my applicant's viewpoint, we've been here before you, I don't think you're going to see anything different. We've given you everything that they gave us. There is nothing out there and that's why they're not here to give you anything.

Mr. John Klarl stated Mr. Adams, being a seasoned attorney in these kind of matters, you know that generally if you enter the courthouse in that they would say "I want you to exhaust your administrative remedies first before the Zoning Board of Appeals" so that the court would want the Board to speak before...

Mr. Dan Adams responded I agree. I wasn't even saying that as an available threat, I'm just

saying the only limit I know to your authority is that. You clearly have the authority to remand this. You could probably remand this for several more months before somebody even raised an eyebrow. My question is: what are you going to get from it? Nothing. What are you going to be shown? There hasn't even been an inkling been shown to you that the Town Building Department did any kind of written review. There's not even an inkling of it. The fellow that was here didn't know anything about the questions you're asking. It wasn't even part of what he was asked to look at the time. I think he was asked to look at a sill fence or something. There's not even a hint that the Town Building Department did anything even approaching a sensible and law-abiding review based on the Code and the Building Code and the zoning Code it has in front of it. They didn't do it. They're improper. It clearly was improper. I think we all know it's improper and you want to give them another shot at the apple to come and tell you it wasn't. I can't stop you from doing that no, I just don't think it's fair and I don't think it's going to change the record at all. I think at some point you close things down and you move on. Like I said, the chips fall where they may.

Mr. Kyler Cragolin stated I naturally disagree completely with Mr. Adams' assessment. I was out there for at least five site visits by the Town. As I've said before, I thought they were very thorough. I thought they did their due diligence. As far as the site visits and the questions, to me in such, that's the part that I'm aware of. What happened back in their office, in their staff meetings, their discussions, I'm not partial to so I can't give you any input on that. I thought they were very thorough. Once again I'd like to put this in a healthy perspective. We're not talking about a large project on undeveloped land. We're talking about somebody doing something in his backyard 15 feet from his house. It's a small three or four days worth of landscaping and site work, the applicant has tried to give the appearance of some sort of large undertaking here, which it was not. In about 40 years of being involved in the building and construction trades and being on job sites, I cannot imagine with the most vivid of imaginations how anything that I did on my property could have in any way possibly damaged or negatively impacted the Gallagher property. It's important to keep that in perspective and to understand that. When judging how this Permit was issued and what may or may not have been waived at that point in time. I'm involved not because I'm part of this. I'm not. I'm just a member of the public here. The reason I'm involved, and it's important that we all understand this, the motivation of the applicant...

Mr. David Douglas stated Mr. Cragolin I think we've gone through those issues before and I think we tried to narrow it.

Mr. Kyler Cragolin continued I'm just saying, it's unfortunate that these proceedings were used to proffer a litany of allegations about me all of which I've answered in writing to you, with the exception of a few things which in the interest of not making this totally the never ending story, I have chosen not to. I think it's important to keep this in perspective. I personally would like to hear from Mr. Vergano. Again, Mr. Adams attempted to minimize it. They did request two months of adjournment in a row early on in the process so I don't feel that they're really used if two months go by now and Mr. Vergano couldn't come and appear. That's my opinion. Again, I just urge you to keep this in perspective as far as the size of the work, the size of the job.

Mr. Wai Man Chin stated I don't think that's the question.

Mr. John Mattis stated we're not questioning what happened in terms of what you did or anything. The question is: did they follow the procedures and did they issue that Permit properly?

Mr. Kyler Cragolin continued I guess what it comes down too then were those aspects that were waived by Mr. Vergano whether he had the right to do that. I personally would like to hear what his opinion is about that.

Mr. John Mattis stated we've been trying to get that for four or five months and we haven't been able to.

Mr. Kyler Cragolin stated I understand that. Your displeasure is apparent Mr. Mattis, I understand that.

Mr. Raymond Reber stated listening to the comments that were just made reminded me of something that was discussed earlier and that was a question specifically to Mr. DiSanza because it was one of the things he was required to do and it was mentioned here to check that they were proper silt fences in place so that there would be no impact on neighboring properties. I remember at that time Mr. Delano made a big issue of the fact that the silt fences were not properly put in place and he made an issue over the fact there was supposed to be a trench they were supposed to be buried in it so they were sealed and what have you. Just for the record, I was up at the Happy Tots on Radio Terrace. There is a silt fence up there. I don't know what the purpose of it is but it's a silt fence and the label on it says it was by Batey & Watson, they've got the project. That silt fence doesn't even touch the ground, let alone be buried. I find it very interesting that a representative of their company makes a big issue here in this case and yet, I find another silt fence in the Town that doesn't come close to meeting the requirements and I just felt it necessary to put that on the record. As far as this case is concerned, to me it appears, from our visits at the site that the decision that the Town made which was to allow this individual to proceed with the project was not an inappropriate one. There was no potential harm or what have you. If it in fact it was a mental decision by DOTS to waive certain requirements that may be the case. I don't think the issue is that there was harm done and that the Town was careless in allowing him to do something that was detrimental. I believe the only is they never bothered to document it so there's no record. I think our decision should be just to state that. That, we felt there was no real detrimental impact from this project but that there is no record to confirm that they did due diligence and that's our decision, that there should be due diligence and it should be documented.

Mr. Wai Man Chin stated I agree.

Mr. Dan Adams stated there's several requirements that are required. The silt fence if you think it's diminimus, I'm not going to argue that point with you. I'll tell you one thing that is in there

that is serious, and we would like an answer on and one of the reasons we've been here, there's a requirement that septic systems be described and indicated on the drawings showing where that work's done and making sure it doesn't impact. You're supposed to show your water lines. None of that's done. So, please do not let me leave here leaving you the misimpression that the silt fence is the critical reason we're here. I would like this Board to at least, what you just said, have this applicant be forced to go back and provide post-construction the documentation that he should have provided to begin with. That's what should go on here. We should get to see what he's got there for his infrastructure so we can decide whether or not what he did somehow compromise the integrity of our property which is right next door. The silt fence is one of several requirements.

Mr. Raymond Reber stated I wasn't raising the silt fence as being the key. I raised the silt fence only because in my own mind, I'm given this big lecture by a company that says "this is the way to do it," and then I see one where it's not – there may be reasons for it, it doesn't really matter.

Mr. Dan Adams stated there's nine or ten violations that were waived.

Mr. Raymond Reber stated the big issue here is more basic than that. As I stated, it's got nothing to do with the silt fence, it's got nothing to do with anything specific. It's got to do with the fact that the Steep Slopes Ordinance requires a due diligence of a whole bunch of steps that have to be taken and I agree that there's no documentation that they were taken. I think our decision is the evidence says the documentation isn't there so do we think there was any harm done, that they were negligent? We don't believe so, but that doesn't say that they went through the process appropriately. We don't know, as somebody said here, maybe they did it mentally and they never bothered to document it. We don't know and we'll probably never know so we have to make a decision.

Mr. Dan Adams stated and if they didn't document it, they didn't follow the Code as far as waiver goes, then I think it falls upon you folks to decide what the remedy is to remedy that fault if you find they were at fault. You can't just give a decision that sits out in the air and means nothing. That's what we've come to you for.

Ms. Adrian Hunte stated I don't it was a decision that means nothing.

Mr. Dan Adams stated no, I'm just saying is if what Mr. Reber is saying is "yes, we'll tell you they did it wrong but we're not going to direct that the Building Permit be rescinded," then I think that doesn't resolve what the application came for.

Mr. Raymond Reber stated all I'm saying is, at least my personal opinion is, I didn't see anything being wrong done but the trouble is I don't have any written evidence that they went through the checklist. They may have done the checklist. If I saw some damage, I'd say "what happened here? Somebody wasn't paying attention." I didn't see any of that. I didn't see any negative impact. All I don't have is the documentation. That's all I can claim. I can't claim that they didn't do it. I just can claim that there's no documentation. So, what's the remedy? The remedy



is “go back and re-document it and justify that you went through this.” However best they can do it. I don’t know what else to ask for.

Mr. David Douglas stated I think that I have enough evidence in front of me to move forward to close the public hearing and to have us debate what the decision would be. That’s my personal view. I don’t think that adjourning this, assuming the applicant doesn’t want to and he doesn’t want to, then I don’t think as much would be served by continuing to drag this on.

Mr. Dan Adams stated I share your view.

Mr. Wai Man Chin stated I agree, I think it should be closed but I think it should be reserved.

Mr. David Douglas stated yes, definitely should be reserved.

Mr. John Klarl stated we all agree that if the Board doesn’t mind closing it would be reserved.

Mr. John Delano stated on advice of council, I will not respond to Mr. Reber’s ill comments.

Mr. Raymond Reber stated they’re not ill comments. They were simply comments of the fact that I don’t understand.

Mr. John Delano stated now I feel compelled to respond. The man is implying defamatory comments upon my company and the work that we do on the projects in this Town. It’s not right to do that in the public form.

Mr. David Douglas stated and you’ve responded to it and that...

Mr. John Delano stated I try to be polite and I walk away and let the situation rest and the man again makes comment. I do not expect this of a public official from a Board to another professional, professional to professional. What you said was that the Happy Tots project was associated with Batey & Watson...All I’m saying is... install silt fences, we were not asked to inspect the silt fence, maybe it was inspected by the Town.

Mr. David Douglas stated Mr. Delano Happy Tots has nothing to do with this case.

Mr. John Delano continued I know it doesn’t that was the point I was trying to make when I politely deferred to advice of council.

Mr. David Douglas stated you’ve made your point. I agree, let’s just move on. Thank you.

Mr. John Mattis stated I make a motion to close the public hearing on **case 27-09** and reserve our decision, seconded with all in favor saying "aye."

Mr. John Klarl stated just so Mr. Adams knows it’s a 62 day clock now. Just so the Board

understands about further comments, with the closed and reserved decision, at the next work session we'll discuss where the Board wants to head with the decision.

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

Mr. John Klarl stated Mr. Chairman once again on this application for an Interpretation we understand the applicant is proceeding before the Town Board for relief and we discussed last night adjourning this to the March 2010 meeting.

Mr. David Douglas asked do we have a motion to adjourn this case to the March meeting? So moved, seconded with all in favor saying "aye."

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**NEW PUBLIC HEARINGS**

**A. CASE No. 01-10**                      **Zuhair Quvaides** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. Lentini stated I'm here representing Mr. Zuhair Quvaides. He is the operating owner of the Mobil Courtesy Mart in Cortlandt on Locust and Route 6. We are here to see if the definitions to determine what kind of violations we have. It seems apparent that we have to get approval one way or the other. However, we were violated initially for bringing an ice machine to the station which yields ice but you don't pay for it at the machine, you pay for it inside and it was Code Enforcement's opinion based on many definitions that you have to put a coin, not even a dollar, but a coin most definitions say, a coin or slot operated machine, a slot you can put a dollar in. The Code which complicates **19:07**. A lot of the things I do get involved with do start with a definitions and your **Code section 307.4** says whatever's not defined in your Code you would seek a definition in New York State Uniform Fire Prevention and Building Code, however, we don't use that anymore. In any event, I went to that Code and to the new **BOCES** Code and if you don't find it there you go the most recent edition of Webster's unabridged dictionary. That I did a crash course in Webster's, Noah Webster apparently published his first dictionary in 1806 and to spare you all the details, there really is no published one anymore. The newest ones are published by Myriam Webster, Random House, Wiley Publishers. Actually, the newest one is on-line. It's a digital version. In any event, the ice machine which caused this attention lent more attention to the fact that Mr. Quvaides was offering anti-freeze, windshield washer detergent, salt in the winter, piles of wood, several pieces not cords, several little bundles of wood occupying a very small area right outside the door that's a convenience to people. That too

now was outside sales as storage which is prohibited as an accessory use. I suggested that perhaps it wasn't really outside because we are under a canopy of the building which is under a canopy of the whole gas station. Some definitions say "outside" it means having no roof, it means open to air. The two matters before you are whether a machine has to have a coin accepted to be a vending machine and whether or not we're truly outside. In any event, I believe, I talked with Ed Vergano today that we will still have to go back to the Planning Board to get their approval whatever decision you have.

Ms. Adrian Hunte asked Mr. Lentini would you say that the gas pumps are outside?

Mr. Lentini responded yes, I questioned how they did that without a Variance because they are outside and they are actually vending machines you could pay for the gas with a credit card. There is a slot. No coins though, you can't put coins in there but according to Technical Services and Code Enforcement that was approved through the power of the Planning Board. I went through the records, there was no Variance given and, in fact, there's also an air dispenser and a vacuum cleaner which are vending machines which are considered a courtesy station, neither vending machines are but they were already approved. They're all outside and incidentally, we have one other thing I failed to mention, the last one which was the first that was put in was a row of exchange tanks for propane. That was put in when the gas station was rebuilt in 1996. I've been friends with the owner of the gas station for a while. I was involved just with the sign Permit back then but I recall, because I buy propane there all the time, that's been there and apparently nobody – it didn't bother anybody, there was no competition with anybody and no complaints but that too now is being examined for whether it's outside, whether it's a vending machine.

Mr. Charles Heady asked in the back of the building you have propane tanks caged in, right? I don't know if that's taken care of or not under the Code.

Mr. Lentini responded that's part of my application it shows on my sketch three rows of tanks, they're not contiguous.

Mr. Charles Heady asked the other thing you have there is 55 gallon drums and it says "waste" on it and I asked your gentleman there and he said "it's not waste it comes from other gas stations or something." It must be waste if it says...

Mr. Lentini responded it's ground testing. They were there doing barrel test and taking samples out of the earth for several weeks, maybe more a month, maybe Zuhair could answer that.

Mr. Zuhair Quvaides responded this is all over the United States. All the Exxon Mobil stations are tested for leaks all over, not only here but all over the United States.

Mr. Charles Heady asked in other words that's from other stations also besides yours?

Mr. Zuhair Quvaides responded yes, they will be removed on the 27<sup>th</sup>. This is how it's written in

the schedule.

Mr. James Seirmarco asked that's test barrels for your station? It's not for a number of stations?

Mr. Zuhair Quvaides responded every station in the United States was tested.

Mr. James Seirmarco asked I understand that but that barrel is your station only.

Mr. Zuhair Quvaides responded yes, it's mine.

Ms. Adrian Hunte asked are the propane tanks partially outside of the canopy, some of them?

Mr. Lentini responded they're wholly inside. The building itself has a canopy, has an eave, it's a flattish roof, it's a pitch roof but it's relatively flat and it's completely inside that outer portion of the foundation. It's not a walkway. It doesn't interfere with travel and then that whole thing is underneath the main canopy.

Ms. Adrian Hunte asked and it's up against the side of the building?

Mr. Lentini responded yes.

Ms. Adrian Hunte asked if you wanted to could you bring those tanks inside?

Mr. Lentini responded not easily and I might imagine it would be hazardous. Some of them are empty, half of them...

Ms. Adrian Hunte asked that means they're outside?

Mr. Lentini responded the leak outside would dissipate. The leak inside could be disastrous.

Mr. David Douglas asked anybody else have any comments?

Mr. Raymond Reber asked I'm not sure I understand Mr. Matthews issued back on April 21<sup>st</sup> a Notice of Order stating that "it was in violation of the New York State Uniform Fire and Building Code" and then attached to it, it says "memorandum of violation. Outdoor ice machine and the sale of other goods outdoors." That is covered under the Uniform Fire and Building Code?

Mr. Lentini responded it's actually covered under **307** attachment **2.3** of your zoning Code **14 and 15** "Accessory Non-Residential Uses: outdoor display and storage of goods or equipment except as authorized by the Town regulations; live plant materials, automobiles, boats and above-ground pools for retail sales are exempt." If you go to the HC zone it says it's not permitted so it's a zoning violation.

Mr. Raymond Reber stated I can understand our Code I just don't understand why he issued this violation referencing...

Mr. Lentini stated I questioned him about the other sales in that line and then he went back to show me the propane tanks. I'm still not sure who made the complaint. I believe it was a competition complaint from another vendor, not a zoning complaint.

Mr. Raymond Reber stated I think the point to make is that whatever is decided here as being appropriate or not appropriate affects a lot of businesses in the Town of Cortlandt because this is a common practice in many of the retail operations not only limited to gas stations. There are delis and other businesses that have propane tanks or fire wood or what have you that's sold sitting outdoors/indoors however you want to define it, whatever we decide this has broad implications.

Mr. Lentini responded I believe that it should be considered as a courtesy, it's a transfer point with some of it. The propane tanks they do pose a certain question but the anti-freeze, the windshield washer that's a life saver. People forget or at the last moment especially with the salt on the road they have the ability to grab a jug of the windshield washer while you're checking the oil in your car, it's very handy. Mostly, these things, including the ice or heavy items that you don't want to make people trek all the way back through the store. Their stock is kept in the store. They just put a few out just as a courtesy. That in itself could be a question of whether that amount stored – if I put something down for myself I put it down it would be outlawed.

Ms. Adrian Hunte stated I'll make a motion that we adjourn this to the February meeting so that we have an opportunity to – does anyone in the audience wish to speak? I move Zoning Board of Appeals **case number 01-10** for the 2072 East Main Street, Cortlandt property for an Interpretation of the definition of outdoor storage and vending machines that we adjourn this matter to the February 2010 meeting, seconded with all in favor saying "aye."

Mr. John Klarl asked I think it's February 17<sup>th</sup> right?

Mr. David Douglas responded yes.

**B. CASE No. 02-10                      Shirlee and Jan Brownell** for an Area Variance from the requirement for the front and side yard setbacks for a proposed carport on the property located at **10 Trolley Road, Cortlandt Manor.**

Mr. David Douglas stated if you could tell us what you're applying for. Give us an overview of what you're seeking.

Ms. Jan Brownell presented herself to the Board and stated I would have brought mom Shirlee Brownell with me but she had dialysis on Wednesday's and she gets wiped out. We're appealing to the Board for a consideration of a Variance on our property at 10 Trolley Road to construct a carport adjacent to our existing garage due to the following conditions: currently we have a single car garage. I take care of my elderly mother, she's diabetic and she has renal failure and I need to keep a car ready at all times so that I can get her to dialysis in the bad weather and to the doctors and to the hospital. My husband and son are both members of MVFA and they need to keep a car available so that they can be out on emergencies for the Town.

Mr. John Klarl asked what association is that?

Ms. Jan Brownell responded Mohegan Volunteer Fire Association. We just moved into this house over the summer. We've lived in Cortlandt Manor for 26 years and we love it here and that's why we didn't want to go when it was time to move in with mom so that I could take care of her. We were unaware that there was any condition that was prior non-conforming for this property. Our closing was, in addition, delayed by a legalization process that didn't reveal the lack of **R-40** conformance, something that I now know about. The area to the left of our garage is really the only place based on the unique property design where we could possibly put some kind of a sheltering structure. Only one corner of the proposed carport would actually be within the 20-foot zoning area. There is a full buffer, there's a slope with a buffer of trees between our property and their property and the fence down there, you can't even tell, it's far enough away. I was hoping you would consider those circumstances and possibly let us have a Variance so that we could put a carport up. I've got a copy of the statement for you.

Mr. Raymond Reber stated my compliments, you were nervous but you did a very good job of explaining the situation. I did visit the site and as you indicate the issue really is only the back corner of the proposed carport because your side property line is a diagonal line. Your house is located at the end of a paved section there on Trolley Road. The side for which you've proposed the carport there's a tremendous distance from your house to your neighbor's house, quite a large buffer zone and I don't even think they can see your house normally from where there house is, it's so far set off and the same is true for the house in the back it's quite a distance. The only other option you would have would be on the other end of the house and actually if you put it on the other end: a) it wouldn't make sense with your arrangement of the house but it would actually be closer to your neighbors than what you are proposing. So, you are minimizing the complications. There's two Variances required: 1) is for a front yard Variance. There is a 50-foot requirement which is only because of the zone to **R-40**. Your house is 31 feet which is more typical of the older zoning. The house is there. You're not proposing coming any closer to the road than what structures you currently have and for us this is pretty typical. We usually don't argue those points when you're just extending the front line at the same distance or going up to a second floor. The real issue is the side yard. The only question we had with respect to what you're asking for and again, on the back corner you need be to be at least 30 feet, the back corner would be 20 feet. You would require a 10-foot Variance but that's based on asking for a carport of 16 feet in width which for a single car seems to be a bit wide. We were wondering why – if

we gave you 12 feet, then the Variance would be almost minimal. It's four feet and it's only four feet back in the corner.

Ms. Jan Brownell responded it's only a matter of time before I'm going to be using a wheel chair for my mother. As it is, she's got a walker now and she make it clear around the car but that's the thing I'm concerned about, the equipment that I'm going to need to get her in and out of the car.

Mr. Raymond Reber asked so you're looking for some extra room?

Ms. Jan Brownell responded I'm looking for enough room so that I'm not making her get out in the snow or if we're in the garage...I'm not sure how it's going to work so I wanted to give myself enough room to work with.

Mr. James Seirmarco asked so you're looking for an extra four feet?

Ms. Jan Brownell responded yes.

Mr. Raymond Reber stated I don't really have a problem. I just wanted some logic behind it since it's a littler wider than normal. I see no problem with it. It doesn't impose on the neighbors. The setbacks are rather large. The requirement for this neighborhood because of the **R-40** zoning, you're still going to be 20 feet to the side yard instead of 30. You're going to be 31 feet from the front instead of 50 in line with your house. It conforms. I checked the rest of the neighborhood particularly as you go out to the corner. They're all at that distance back. You're still conforming with the neighborhood. I really don't see any problem with it. It makes sense to me.

Mr. John Mattis asked my only question and I was the one that raised it was the width and I certainly don't think, we as the Board, want to be responsible for your mother having to be out in the elements that you have to back the car out and then have her outside to get in. Based on your explanation it makes all the sense in the world.

Ms. Adrian Hunte stated I agree with my colleagues.

Mr. James Seirmarco stated me too.

Mr. David Douglas stated I agree as well.

Mr. Raymond Reber stated I make a motion on **case 02-10** to close the public hearing, seconded with all in favor saying "aye." I make motion on Zoning Board of Appeals **case number 02-10** for Shirlee and Jan Brownell property at 10 Trolley Road to grant an area Variance from the requirement for the front yard setback for a proposed carport from a required 50 feet down to 31 feet and a requirement for the side yard setback for a proposed carport from a required 30 feet

down to 20 feet on the above-referenced property, this is a SEQRA type II no further compliance required, seconded with all in favor saying "aye."

Mr. Ken Hoch stated Ms. Brownell don't forget to come in for your building Permit. Probably next Tuesday or Wednesday.

**C. CASE No. 03-10                      McCaffrey Signs for 2141 Crompond Rd LLC for an Area Variance from the maximum allowed size for a freestanding sign on the property located at 2141 Crompond Rd, Cortlandt Manor.**

Mr. Tom McCaffrey presented himself to the Board and stated I'm from McCaffrey Signs. As you probably already know we want to put a new sign at the Toddville Plaza using the same size as the existing sign we have now which I found out was too big but using a 24 square foot space and changing the sign so that all the tenants can be listed below. You probably have copies of the design, I would imagine.

Mr. James Seirmarco responded we do.

Mr. Charles Heady stated Tom, I was out there where the old sign you have out there now. You're asking for 25 square feet more than it was already there. You already have 24 square feet there on that sign that's there now right?

Mr. Tom McCaffrey responded yes, the sign it's a 4' x 6' and it's horizontal. We were going to make it 4' wide and 6' high, vertical.

Mr. Charles Heady stated you're allowed 16' and you've already got 24 square feet now.

Mr. Tom McCaffrey responded that's right. Well, there's 24' there which I found out I put that sign up in 1986 or 87 I would imagine and I thought it was – I'm sure John felt -- I know I remember dealing with that when the property was bought from Dan Sadofsky and they did all the renovation on the parking lot then we made the new sign and to find out so many years later that it was apparently it was not the right size.

Mr. Charles Heady stated what you have on the sign over here you have a little too much "Toddville Plaza" now that's "Shopping Center" and the word "Center" is on the right-hand side right across. Here, you've got the Shopping Center on the bottom.

Mr. Tom McCaffrey responded we had to fit the whole format of the space changed. We're taking all that copy that's in a 4' x 6' and compressing it to the size of that one panel.

Mr. Charles Heady stated at the work session we thought you'd like that 2141, the lot you have there, the building. You could put that underneath the bottom where "Center" is. You can put the word "Center" on the side like you have on the old sign.



Mr. James Seirmarco stated the reason for that is in order for us to calculate the dimensions of the sign...

Mr. Charles Heady stated you cut the dimensions down.

Mr. Tom McCaffrey responded one thing is that there is a law – I don't know when, several years ago, 941, or 911 requires that all properties have to post a number at a minimum of four inches high and I didn't know if you have to suck out room on a sign to put something that's actually required.

Mr. James Seirmarco stated the rule is that you have to encompass the outline of the sign with a rectangle. That 2141 drives it up another 10 inches all the way across. You have to put a rectangle across the top of that to the bottom. That'll make it bigger than 25.

Mr. John Mattis stated 27.33 if you make that a rectangle.

Mr. James Seirmarco stated because that's what the law says. You take the outer extremities of whatever you have there, and this is at the location of 2141, so it would be from the top of that to the width of the sign down to the bottom. That's the envelope for calculating the area of the sign.

Mr. Tom McCaffrey responded the sign that's there now where the 2141 was put on the column. If I put a 2141 on the column we'd have to actually take the area of the column to include into a sign because of that number?

Mr. Charles Heady asked you mean the post you're talking about? No, posts don't count.

Mr. Tom McCaffrey stated but if you require to put in a number by law you have to actually take a space in a very valuable real estate let's say to put in a number that's four inches high onto a design and then include it into the size of the sign?

Mr. Charles Heady stated let me tell you what we're talking about. Where you have the "Shopping Center" name there on that sign, alongside that put the "Shopping Center" what you have on the old sign now, that's the way the old sign's set up, and then you can put the number underneath where it says "Shopping Center".

Mr. Tom McCaffrey responded if you have "Shopping Center" in one line.

Mr. Charles Heady stated or in one spot I should say.

Mr. Tom McCaffrey responded the only problem with that of course is that would make the lettering very small. I'm working a lot less width than the sign. The other sign's 6 feet wide and 4 feet high. This one we're making 4 wide and 6 high and then I'm reducing the height and the

important message on the sign is “Shopping Center,” that lettering is much smaller than the lettering on the existing sign and yet the only way to fit it in, I had to put in two lines. The 2141, I had to put that somewhere by law. This sign does not have a column. The other sign has a narrow column that blocks the – it actually covers the post so it doesn’t look like a big lollipop, it gives it a structure and the 2141 is lettered on top of that and then the 4’ x 6’ sits on top of that column. I had to put that in somewhere but like I was saying, in real estate value there was no place I could put this on the sign. I actually did not realize that taking a number that’s required has to be fit in to a square footage of a sign. Because, I know there’s a lot of signs that when this came out we had to add numbers on signs. Some of them had no room to put them and you had to put little – you’ll probably see them from all over the place, there’s little squares that are fastened at the top of signs, sticking out the side with a number. I wanted to put that in and I just put that in to make it look nice. I had to put it somewhere and there was no other room.

Mr. Raymond Reber stated to clarify an earlier statement about the posts. There is a previous case that we dealt with at Springvale when they wanted to replace their signs and for decorative purposes Springvale had wide pillars on both sides and at that time we decided no. The intent of the Code is for a standing structure you include the entire dimension. We went through this also with the Mobil station on Annsville Circle as to how you calculate because the argument was that if we don’t include it, the architect could come up with this very elaborate framework to attract attention and then it’s not included and then you’ve got this little sign in the middle. That is supposed to be included in the calculation. What we have, in the past not included is, from the bottom of the sign down, whatever the supports are to the ground are not included. But, we have included in the past the sides.

Mr. Wai Man Chin stated I hear what you’re saying Mr. Reber. I thought that half-moon circle with the 2141 up on top would be made as a rectangle by itself not all the way out to the side.

Mr. Raymond Reber stated I’m arguing the side posts. At the Mobil station we went through this and at Springvale we went through this and we agreed that the intent is that all that has to be encompassing otherwise you give freedom to the architect to go and put big, fancy framework up.

Mr. Tom McCaffrey stated where the posts they have here are pretty much the minimum amount to support the structure.

Mr. Raymond Reber stated I understand and I’m not arguing the square – I’m just saying to have it accurate so that somebody can’t come back and say ‘we didn’t approach it properly.’ That should be included in the square footage and then debate what size Variance is needed.

Mr. Charles Heady asked would that be 24 feet 10 inches overall? With that number on the top?

Mr. Wai Man Chin asked the width of the post is a four inch post?

Mr. Tom McCaffrey responded it’s 4’ x 4’.

Mr. Wai Man Chin stated it's 48 inches clear from the inside post to inside post plus another 7 inches. That makes almost 56 inches wide or 57 inches wide somewhere around there rather than only 48 inches wide.

Mr. Tom McCaffrey stated that would be the width of the structure beyond the width of the sign.

Mr. Wai Man Chin stated including the structure. Mr. Mattis when you calculated that was 55 inches which is the four foot sign plus a 3 ½ inch post on each side?

Mr. John Mattis responded I didn't calculate the posts in it. Just the sign itself excluding the posts was 82 inches high; 72 plus the 10 inches higher for the number, the 2141 and it's 48 without the poles so the 82' x 48' is 27.33 square feet.

Mr. Wai Man Chin asked so you're not including the posts at all?

Mr. John Mattis responded no I wasn't. It didn't show on the dimensions here what they were.

Mr. Wai Man Chin stated what Mr. Reber is saying is that some of these people, like one time we had somebody was making a post that was so elaborate that it was almost two feet wide and we had [inaudible 47:33]. This is a simple pole, I understand that. I think the half circle above should be counted as a half circle square or rectangular.

Mr. John Mattis stated that's now how the Code reads though. I'd like to do that but we can't.

Mr. Tom McCaffrey asked you can't do the square footage of an ellipse divided by two?

Mr. John Mattis responded no, and we've had other cases where that would have really come back to haunt us because we had some crazy designs. It's always one box.

Mr. James Seirmarco stated we did the same thing with Freight Liquidators.

Mr. John Mattis stated yes. I think what we could do is determine what – are they 3 ½ inches, the posts? That we can determine what the posts are as long as they remain 3 ½ inches.

Mr. Tom McCaffrey stated they're actually 4, a steel post is 4.

Mr. John Mattis stated we could determine those to be diminimus and not count them where on a case by case basis if somebody comes in with a large post or something where we're concerned then we can...

Mr. David Douglas stated I don't know that eight inches is diminimus.

Mr. John Mattis stated four inches on each side is not much.

Mr. David Douglas stated my gut reaction is that we should include it just like we've included all the other signs.

Mr. Wai Man Chin stated you're not going to get a structure to hold up something like that less than that.

Mr. James Seirmarco stated that's not the issue. The issue is do you count it?

Mr. David Douglas stated obviously he needs that structure but it should be calculated in just like we've calculated in on all the other signs.

Mr. John Mattis asked instead of butting up against that support, can you put it in front of the support? Then, the support is inside it.

Mr. Tom McCaffrey responded to put it inside then all the electrical would be in, so the light...

Mr. John Mattis stated you'd have a dark spot on the edges.

Mr. Tom McCaffrey responded on the edge and the only other alternative is to put it on a single post and have it in the center. You have a center post holding the sign in the center and have a single pole which would have to be a little bit heavier and then supporting it. I didn't realize that a structure, a utility part of the sign was part of the sign.

Mr. David Douglas stated I've got a very simplistic view on this. The Code allows 16 square feet, absent anything that happened in the past, my personal vote would be you're allowed 16 square feet and no more. That's what I would vote. The other members here know my views on signs and this is not at the Town Center. There's currently a sign that's 24 square feet. You've had that, so personally my view is that you've got 24 square feet so I guess we would be okay, as me speaking as one member of the Board, to have whatever the new sign be 24 square feet, not an inch more, not a millimeter more and I personally don't care what the design is. That would be the maximum. That's my simplistic view.

Mr. Tom McCaffrey responded can I eliminate the 2141 altogether off that sign?

Mr. David Douglas responded you have to have the number on it. The law requires it.

Mr. Tom McCaffrey responded it doesn't have to be on the sign.

Mr. John Mattis stated put it on the building.

Mr. Tom McCaffrey responded that's the only other thing but there's really no room there because all the tenants have signs that are on the building.

Mr. David Douglas stated you can shrink down the sign. Every property owner in this Town that ever comes in front of our Board regarding a sign insists that it is absolutely crucial that their sign be huge.

Mr. Tom McCaffrey responded these are not.

Mr. David Douglas stated I know but that their sign be larger, substantially larger than what the Code talks in terms of. We hear from every business and obviously every business owner wants their sign to be as large as possible but my view, again as I've said many times, is that I don't see that to be a benefit to the Town. Personally, my view is that I would vote for you to have 24 square feet and that's it.

Mr. Wai Man Chin stated I'm going to have to agree because your sign before was 6' x 4' horizontal now you're putting 6' x 4' is your vertical than make it 24 square feet and that's it. Just calculate it and make it 24 square feet.

Mr. Tom McCaffrey responded what I'm finding out now is that we have to add posts as the square footage of a sign.

Mr. James Seirmarco stated that's what the Code says. We didn't make it up. That's what it says.

Mr. Tom McCaffrey asked it's not just the visual part of the sign? What's the maximum that a Variance can go to? Can it go to 27?

Mr. John Mattis responded twice what's allowed.

Mr. David Douglas responded under the law the maximum we can give you is 32. I'm one of seven votes but I would never vote for – like I said, anything more than 24.

Mr. James Seirmarco stated and I agree with Mr. Douglas. I think that I would prefer 16 but it's been 24 for so long I'm in favor of 24 not a millimeter larger.

Mr. Tom McCaffrey stated the reason for not using 16 also was that all these tenants were going to be put on there and so you're trying to take all – it would be so small that I told my client, if you're going to propose doing a 16 square foot sign and have all of these, it's not even worth doing and if you do it people will be slowing down to read what was on there. It's crazy. To take it 16 square feet that means that I would either have to design a support system which is a utility thing. If I do this on a single pole and remove the 2141 sign altogether, make everything that can be visible including the support structure and the total at 24 square feet then that would be approved?

Mr. Wai Man Chin responded 24 total square foot. Mr. McCaffrey be happy that you didn't make the sign already larger and then you couldn't use it.

Mr. Tom McCaffrey responded I put this in. I'm not coming here after the fact.

Mr. Wai Man Chin stated I'm just saying. There are a lot of people who have put the signs out larger than we approved and we tell them to take it down.

Mr. Charles Heady asked Tom, is that going to be a two-face sign or one-face?

Mr. Tom McCaffrey responded it's a double face, perpendicular.

Mr. Charles Heady asked on both sides?

Mr. Tom McCaffrey responded yes.

Mr. John Klarl asked the exact same on each side?

Mr. Charles Heady stated exact same on both sides.

Mr. John Klarl stated exact same number of signs.

Mr. Tom McCaffrey responded yes.

Ms. Adrian Hunte asked to the numbers have to be horizontal? Can they be vertical? Can you put them on the side of the sign where it says "Todddville" and "Shopping Center" vertically?

Mr. Tom McCaffrey responded you could do that but that would be too Tijuana, Mexico. That would not make a very nice design. Actually, if you had four inch height and that would be 20 plus margin that would be too large for the panel to fit.

Mr. Wai Man Chin stated I understand why we keep on – 24 is what I'm giving up and that's it. I don't care how the design is done that's it. I don't want to design it for you. You've got to come up with the design, 24 foot.

Mr. Tom McCaffrey asked in order to do that what steps do I have to take now once I put a new design together?

Mr. James Seirmarco responded we approve it for 24 square feet.

Mr. Wai Man Chin stated we're going to approve it for 24 square feet and that's it. You can design any way as long as it's 24 square feet. Someone over here is going to measure it when it goes up.

Mr. David Douglas stated what we would do is we would vote and presumably we will, in a couple of moments we'll vote and allow you up to 24 square feet and before you put it up you

have to bring it over to Mr. Hoch...

Mr. Tom McCaffrey responded submit a design that fits that space.

Mr. Charles Heady stated he'll check the measurements.

Mr. Wai Man Chin stated install the sign he'll also check the dimensions.

Mr. James Seirmarco stated we say that because you know how many signs they've put up and when they come down to change the design it's bigger than what it was supposed to be? A lot.

Mr. Tom McCaffrey responded I wouldn't be here if I was going to do that.

Mr. John Mattis asked can you fit the 2141 on the building because if you don't need that on that sign, you're at 24 square feet excluding the poles? What you have to shrink it down the poles is minimal.

Mr. Tom McCaffrey responded we could find a spare – the requirement is four inch high minimum. I'm sure I can find a space on the building that we could fit that number but the thing is as far as a safety issue, it may make everything 'great we got the number up there,' but if somebody is actually looking at it for a safety issue or can't find it or can't see it...

Mr. John Mattis stated if I'm looking for Paisano's Pizza I'm going to look for the name, not the number.

Mr. Tom McCaffrey responded or if you're going to Toddville Plaza or 2141 you would have to look for a number...

Mr. John Klarl stated you're talking about an emergency vehicle responding.

Mr. Tom McCaffrey responded yes, 911 requires anything with a height of four inches or greater and the building sits back pretty far from the road in a relative sense. There is a place we could put numbers on the building. That wouldn't be a problem.

Mr. John Mattis stated we're just trying to make it easier for you for this sign.

Mr. John Klarl stated it sounds like the Board is ready to give you 24 square feet.

Mr. David Douglas asked do you have anything else you would like to say? Is there anybody else in the public who would want to be heard on this matter?

Mr. Tom McCaffrey responded actually I'm pretty surprised that every time I go down to that plaza everybody's always asking me about how the sign's coming along. They don't want to come.

Mr. Charles Heady stated I make a motion on **case 03-10** to close the public hearing, seconded with all in favor saying "aye." I make a motion on **case 03-10** to grant an area Variance for a maximum allowed sign for a free-standing sign from an allowed 16 square feet up to 24 square feet on the above-referenced property, SEQRA type II no further compliance required, seconded with all in favor saying "aye."

Mr. David Douglas stated a Variance of 24 square inches has been granted and you should see Mr. Hoch.

**D. CASE No. 04-10                      Gerodyne Company of America, Inc. for an Area Variance from the requirement of total number of parking spaces on the property located at 1985 Crompond Rd, Cortlandt Manor.**

Mr. Tim Miller presented himself to the Board and stated I'm a planner with Tim Miller Associates representing Gerodyne of America. With me tonight representing Gerodyne is Peter Pitsiokos and David Wald, David Wald Realty. This case is related to 1985 Crompond Road. I have an aerial photo that shows the subject site. This is a medical office building that's located across from the Hudson Valley Medical Center. This is Crompond Road. This is the entrance to the Hospital. This is the part that is adjacent to the office buildings of the Medical Center. The center is in an **R-40** zoning district. Medical office facilities are permitted by Special Permit when they're within a 1,000 feet of a hospital. This piece of property supports about 32,000 square feet of medical office space. It was built sometime probably in the mid-1970's and it's been operating pretty much at full capacity since it's been constructed, to my knowledge. We are here in front of the Zoning Board requesting a Variance relating to parking. I am not familiar with the history of this and what calculations were used when it was originally approved but based on the number of physicians that are there, the number of employees, etc, it appears as though there would be about 266 parking spaces required by the Town of Cortlandt's Code. We've done an examination of the parking and compared it to other Codes. We find that the Town has a very aggressive set of calculations. In other words, there's a lot of parking that would be required for medical offices that would not normally be required in most places or be utilized for this type of use. The owner's asked us to do a parking demand study which we did late in 2009. What we determined was that at the peak parking demand at this site was about 170 cars. At the present time there's a 136 spaces that are built and serve the facility. That is not enough parking for this facility. What has happened is people are parking in places that are not marked parking places. They're parking in fire lanes. There's ticketing that's taking place. Tenants aren't happy. It doesn't work. We have submitted a parking plan to the Planning Board and we've requested an approval for an additional 54 spaces on the site that would be 190 spaces. One calculation that we did shows that if you applied the total number of physicians employed at the site you'd need 266 spaces. However, we know operationally that at any one time only 32 physicians actually are ever working at the site at any one time. Under that scenario 226 spaces would be required by Code. I don't know the right way to do this calculation but I'm giving you those numbers because they're accurate. It's 226 based on the



maximum number of physicians that would be at the site at any one time. It's 266 based on the number of physicians that are employed. We're proposing 190 and thus the Variance that we would be requesting would be 266 minus 190.

Mr. David Douglas stated our math says it's 76.

Mr. James Seirmarco asked before you turn that over where are you proposing the additional spaces?

Mr. Tim Miller stated that's what I'm going to show you. This is the plan of the property. Here's the access drive coming in. The existing parking field. As you can see these are where the spaces are being proposed at this location and along the access drive. As you can see from the aerial, it's right here and just an extension of where the existing parking is located. We're picking up 54 spaces there and then we're proposing a turn-around at this end of the facility there's an orthopedic facility here and a lot of elderly people come in here. They do not have a place to drop-off and get easy access to that building right there. Right now this is just dirt used as parking for doctors. There's three handicapped spaces there and a turn-around would allow for a much easier type of operation for the facility and its clients. That covers what I wanted to tell you. I'm happy to answer any questions.

Mr. James Seirmarco stated I visited the site on Monday and it was a holiday. I counted the parking spaces in the whole place. It was a quarter to twelve. There's approximately 7 parking spaces available. I passed it today. You look down from the top coming from Lafayette Avenue, you can see the whole parking lot, it's pretty much full. It's pretty much full every day.

Mr. Tim Miller stated Mondays tend to be the busiest days.

Mr. James Seirmarco stated I would like to see you get close to 266 as possible. Is there any other area that you can commandeer for parking spaces?

Mr. Tim Miller responded not really. This is a wetland. That's not it, we can't use this. We're using this and we're using this and this starts to get into our setbacks and we don't really have access to it. There wouldn't be enough width there for another double-loaded parking aisle. It starts to get pretty far away from the facility and we're proposing 190 spaces. The maximum use we've ever seen there is 170. We believe we're going to have excess spaces.

Mr. James Seirmarco asked help me out. You only have 156 and you're saying that you've only see 190, where were they parking?

Mr. Tim Miller responded well they park along this fire lane. They park on the edge here.

Mr. James Seirmarco stated that figure doesn't make any sense to me. You're saying that if you had more space you'd have – that 170 is sort of an arbitrary figure.

Mr. Tim Miller responded it's not arbitrary.

Mr. James Seirmarco stated you count them because people are illegally parked but if you'd have more area, you'd have more cars there.

Mr. Tim Miller responded we would not.

Mr. James Seirmarco asked why?

Mr. Tim Miller responded because this is an operation that has established the pace of activities are totally made by appointment. It's totally managed by the number of physicians and the number of people that can be processed by those physicians. We know without question that the number of people that could be processed are maximized at approximately 170.

Mr. David Douglas stated I'm not sure we know that for the future. The number of people processed in a medical practice is tied in, to a certain extent, I think to a larger extent to insurance and that changes. It may have been that 20 years ago there would be people coming in every 45 minutes or half an hour, now people are coming in every 15, 20 minutes and for all we know in five years appointments will be 7 minutes and that number of patients coming in may change in the future. Because, doctor's scheduling – it's based on business and insurance factors.

Mr. Tim Miller responded the future's uncertain. No one knows what that's going to be.

Mr. David Douglas stated I agree but what I'm saying when you're saying "it's set. The process is set." I'm not sure it's set. I have no way of predicting what would happen.

Mr. Tim Miller continued I agree with you. From everything we know right now, the number of people that are being processed at this operation represents, as far as we can tell, a maximum. That's all I really know.

Mr. David Douglas stated the other variable is, I don't know about the nature of this practice, you said there's 32 on staff or there at any given time, that could change too. I assume they could change their practices now that there are 45 at any given time. We're just guessing.

Mr. James Seirmarco stated the other thing is that it used be that a doctor had a nurse to help him and a receptionist. Now, they tend to have part-time people doing the computer, the books, the scheduling. Most offices have four or five people. That's changing and they're becoming more and more part-time people and parking is going – I can see nothing but increased need for parking here especially in a medical profession. You see additions to hospital parking lots and medical center parking lots all over the place just for that reason. Just because doctors are taking on more patients and they're taking on more help. It's just the nature of the business.

Mr. Tim Miller stated unfortunately, when this site plan was approved originally, whatever

calculation was done was done. We have setback issues. We have impervious coverage issues. We have drainage issues. I am just not certain that we would be able to find more parking spaces on this site. Our parking study did demonstrate that the maximum demand at any one time was 170. We're proposing 190 so we have a 10% buffer for what may be a future demand. If in the future we have to curb the operation or find some other way to address it if it changes that would be a challenge that we would have to face at that time. I just don't see any way that we can get 266.

Mr. James Seirmarco stated we can't look back but we don't see a Variance in the application for 260 down to 156 or whatever.

Mr. Tim Miller corrected 190.

Mr. James Seirmarco stated whatever it is today.

Mr. Wai Man Chin stated it's been a long time. I know that back area where you're talking about which is the road which is Lafayette, it's kind of a steep incline going down to the property so parking over into that area is very – you have to almost dig everything out and put retaining walls.

Mr. Tim Miller stated this falls down the hill very steeply.

Mr. Wai Man Chin stated I go there twice a month myself because I see my cardiologist and another doctor over there and I would say parking, yes, sometimes it gets difficult in there where people are parking on the edges, on this and that, on fire lanes and everything else. Can I get around it? I can, I have at alternate times of the day. Adding the amount of parking that you're showing us right now probably will relieve a lot of the situation right there. The only other question I have is by the front of the road. You come out by the front of the road and make a left turn is almost impossible. Has anybody ever thought about a traffic light over there also?

Mr. Tim Miller responded there's going to be a traffic light at the new entrance to the hospital. What that will do is it will create gaps in the traffic for those people that are traveling westbound and that will make that intersection much safer and much easier to get out.

Mr. Wai Man Chin stated the traffic coming down around the hill from Peekskill, coming down this way, they go pretty fast. Many times I come out over there, of course I have to make a right turn, sometimes I'm stuck over there waiting for somebody to make a left turn because it's not the traffic coming from eastbound to westbound, but from westbound coming down around that bend, they're going awful fast and they don't slow down.

Mr. John Mattis responded I think the quick answer to that is the hospital has been trying for years to get a traffic light and they still don't have final approval. I think they have approval but not the money.

Mr. Tim Miller stated they're very close now.

Mr. John Mattis continued and to get a traffic light here – but the traffic is going to be the traffic whether there's 120 parking spaces or 500, the traffic is the traffic. Those cars are going to have to get in and out. I think the chances of getting a light there are less than zero and that's really not something we should be concerned with.

Mr. Tim Miller stated I'll go with zero.

Mr. Wai Man Chin stated I don't know about zero.

Mr. Raymond Reber stated it's very unlikely because the DOT who regulates this road putting traffic lights that close to each other is something that they very rarely will consider. Getting back to the main issue which is the parking I concur with Mr. Chin. I am also a regular there so I'm quite familiar with the count. I think I would confirm your numbers. I believe probably the peak does reach about 170. It doesn't go much beyond that. The spaces you're proposing certainly represent a 40% increase which I believe is more than enough to alleviate the problems. Would it be nice to have more than that? Maybe, maybe in the future it might be a little congested. Who knows. We can't predict the future. The problem is you're maximizing what can be done at the site. As it is the building coverage, the pavement coverage, you're really getting pretty extensive. There is no place else to go unless you want to go multi-level parking and that's absurd for that property. I think what you're proposing is the maximum that seems reasonable as moving in the right direction. Based on your own data and my personal and Mr. Chin's personal experiences, I think if you're going from 136 to 190 with a 40% increase, you're going to more than take care of the current problems. Like I said, who knows five or ten years from now what we need. We can't worry about that now. It's a move in the right direction and I endorse it.

Mr. Wai Man Chin stated there's a big increase right now compared to what it is.

Mr. John Mattis stated I agree with Mr. Reber and we're talking about an existing facility and an existing land locked property. It's like the difference between Disneyland in California and Disney World in Florida. Disneyland was built, there were things around it and now it's very small compared to Disney World where it was out in the middle of everywhere and they purchased all the land. You can't expand more than that. You're basically building out the property as much as you can and it's going to be a big improvement. You didn't have to come in to us. You could have left it the way it was. This is a big improvement over what you have and it's about the best you can do.

Mr. Tim Miller responded it's a very honest assessment of the situation.

Mr. David Douglas stated that assessment may be right. I just want to say, there's another way of looking at it. I'm not sure this is the correct way of looking at it. There's no requirement that this facility be used at the level that it's being used. If there's a problem they can always have

less medical offices there. I'm not saying that that's good or I'm not saying that it's not good. I really don't know if it's better to have more doctors in that location and more doctors in a different location but that's another way of looking at it. If you have less use than there's less need for parking.

Mr. Tim Miller stated I would invite you to look at the Town zoning and where we have hospitals. You're only allowed to have this use within a thousand feet of a hospital.

Mr. David Douglas stated that may be the answer.

Mr. Tim Miller continued period. And, we have a population that has to be served and you want it to be near your hospital. I hear what you're saying and it is what it is.

Mr. Raymond Reber stated and it's not a problem.

Mr. David Douglas stated I'm just raising as something to think about because assuming that – because everybody assumes that this has to be maximized, the utilization has to be maximized. You may be right. You may very well be right I just had a thought.

Mr. Tim Miller stated we have a very poor alternative available to us and you know what that is? Walk away from here and just leave it go as it is. We don't want to do that. It doesn't work for the tenants. It doesn't work for the clients and the patients. It doesn't work for the world that we're in.

Mr. James Seirmarco stated Mr. Reber made a comment about making a multi-level parking. Why not do that?

Mr. Raymond Reber responded it's difficult because to build a proper multi-level parking you need a certain square foot. If you look at the layout of this property where would you put it?

Mr. David Douglas asked has that option been explored? Obviously, there are problems with this site and the parking and everybody's constrained in certain ways but has that option been looked into?

Mr. Tim Miller responded the construction of a multi-level parking is extraordinarily expensive. It's rarely done in a suburban location unless there's really no option. This property is leased out based on contemporary office rents. I do not believe that the rent roll from this property would in any way support the financing of a structured parking facility quite honestly. Spatially, in order to do that you need distances for ramps to go up, up and down.

Mr. David Douglas asked that's why I was asking.

Mr. Tim Miller responded it just never got to the place where a design even looked like it was practical, especially when we believe that we're going to be providing enough parking to service

the demands that are taking place right now.

Mr. James Seirmarco stated I don't agree with that number. You're only at 170 because that's as much as the site can hold right now. It's going to be 190 the minute you put those extra spaces in. That number to me is meaningless.

Mr. Raymond Reber stated I don't understand how would that happen?

Mr. Wai Man Chin stated I disagree with that also.

Mr. James Seirmarco stated if you've got 15 parking spaces you're going to say I only have 15 parking spaces.

Mr. Wai Man Chin stated I'm sorry but I go there all the time and let me tell you, I always find a parking space. Yes, there are people parked on the sides and in the fire lanes but you know what we'll get an extra 54 spaces. That's a tremendous amount compared to what's there now.

Mr. Raymond Reber continued and the site is being fully utilized. It's not like there are a lot of vacant spaces that bring in a lot more doctors and I can guarantee you...

Mr. James Seirmarco interrupted I don't disagree with that. I disagree with the fact...

Mr. Wai Man Chin stated then I understand the logic of what you're saying.

Mr. James Seirmarco stated I disagree with somebody saying "there's always going to 170 spaces needed."

Mr. Wai Man Chin stated he's utilizing the property to the maximum it affords right now. So, what do you want to do? Leave it the way it is or...

Mr. David Douglas stated can I get back to something Mr. Miller said. You'd said before, correctly, that multi-level parking is only really considered in a suburban-type setting when there are no other options. From one perspective that describes exactly the situation we are here because of the contours of the land and the structure and the reasons you've already explained, there may well not be other options. So, that's why I raised the idea of a possibility of multi-level parking. Maybe that's the only other option then we have to weigh whether or not that option makes sense or we could live with a smaller number and then obviously the owner has to make a decision whether it's economically feasible. But, it's something I think we should explore.

Mr. David Wald presented himself to the Board and stated I manage the property for Gerodyne. I would like to make a comment specifically to address Mr. Seirmarco's comment. I talk on a daily, if not weekly basis, to the practicing physicians and the owner's of their practices at the medical center. They were thrilled when we took the initiative to have a traffic study done and

come up with an attempt and a plan to increase the parking. If they were here tonight, there's not one physician who would question that 54 spaces, which is what we're asking to accomplish, would not be satisfactory to accommodate the needs. Most of the doctors we talked to said "we project that if we add another 30 to 40 spaces, there would not be the congestion. People would be able to loop around and get in and out" and so forth. I just wanted to comment on that, that the people who serve the community there firmly have conviction that 54 spaces would, in actuality, alleviate, even on the busiest days, the parking.

Mr. Raymond Reber stated I regret that I brought up the multi-level parking. I did that rhetorically. As a P.E. let me say, I have no idea how they could construct a multi-level parking lot on that site and make it practical.

Mr. Tim Miller responded I think it's fair to say that it's an interesting idea. We have absolutely less than zero intent to put multi-level parking on this site. Less than zero.

Ms. Adrian Hunte stated there's multi-level parking and then there's multi-level parking. You can have a structure as a building with ramps and what have you or you can have, or you can have as they have in the city, those multi-level retail...

Mr. Wai Man Chin stated you would have to have somebody to say park a car here and then we lift it up and then back...

Ms. Adrian Hunte stated maybe they need to have somebody in there for crowd control.

Mr. Wai Man Chin stated that's not going to work.

Mr. David Douglas stated I don't want anybody to misunderstand. I didn't say I necessarily endorse multi-level parking. I think that it is something that one should explore because there's no ideal solution to this. So, we have to decide what's the best non-ideal solution? Is it the number you've said? Is it some larger number? Is it some larger number that involves multi-level parking? Is it something that intrudes into a wetland? Some of these may be bad ideas but I just think we need to explore them.

Mr. John Mattis stated I think we're doing a disservice to ask them to even look at multi-level parking. There is none in the Town. There will be a parking garage for the hospital. It will be the only one. I don't think it's the intent of the Town to have multi-level parking anywhere and I don't think that it can be put on that property. I don't think we should even explore that option. This is just going to hold this up. This is almost like a reverse Variance. They're here to ask for relief for something that they're asking for because it's inadequate. They're trying to do the best that they can. We have to give them a Variance because they can't get up to the number that they're required that probably if you had the land, you'd do it. You'd probably go to 260, but you can't do it.

Mr. Tim Miller stated right now we're at 130 spaces short of what the Code would require.

We're asking is to be 76 spaces short and that's a big jump in reducing...

Mr. John Mattis stated and it's a vast improvement over what you have now and, in my opinion, it's the best you can do.

Mr. Tim Miller stated we also are very much interested in getting this parking built in the spring as soon as the weather breaks. It's an interesting thought and I'm happy to discuss interesting thoughts but I think in this case it's not going to move us in any direction that's going to change things, unfortunately.

Mr. David Douglas stated that may be true.

Mr. Wai Man Chin stated I've been in the field of architecture for almost 45 years. Knowing this site because I go there twice a month. It's impossible to put any kind of parking structure on this site. I'll tell you right now. I know Mr. Tim Miller for many years and over those years he has done traffic study all over. All the jobs I've done in previous times as an architect and also from going to other Zoning Boards in other Towns where I've heard what he's said. I believe that he has done the right job right now based on this particular property. I don't think you can get any more than what he's asked for a Variance for.

Mr. David Douglas stated I am in no way questioning whether Mr. Miller is outstanding or competent. I just feel an obligation to explore the situation and to see whether we agree as a Board with what the applicant has proposed. We may decide "yes, Mr. Miller is exactly 100% right." That's all.

Mr. Raymond Reber stated I would also like to comment, as a client, and I go there regularly, my wife goes there regularly. I really don't want to encourage doing things that would make that site less economical, raise the price, the cost of operation, which would result in one of two things; my cost go up unnecessarily. What they're proposing is a low-cost correction to the problem or the alternative is if it gets too pricey than some of these doctors are going to move out and then I lose the services that I have.

Mr. David Douglas stated is that a fact that we're allowed to consider? We often tell applicants that we can't look at...

Mr. Raymond Reber responded you said we have to look at what's the practical alternatives. Why, when they have a proposal that appears to satisfy the needs of this site based on their traffic studies, based on the tenant's requirements, based on the experiences of at least two of these Board members who feel that the numbers they are proposing is quite adequate, why would we want to burden them with the more complicated solution when it doesn't seem to be required?

Mr. Tim Miller responded it's part of your balancing effort.



Mr. David Douglas stated I will say it the same way I said it before. I feel an obligation to spend more time with this application and to explore whether I agree that they've come up with the ideal solution. I cannot justify just accepting that it's the ideal solution. I just want some more time to consider whether I agree that this is the best of an imperfect situation.

Mr. Wai Man Chin stated I happen to disagree. I think what they've shown us is probably the best that can be done on that site. I have no problem with this right now.

Mr. Tim Miller stated if you look at the space that is available on site for the existing parking field, because of the grades, we basically have enough land in this location to simply a single-loaded parking aisle. We have a couple of areas like this strip right here and this location right here where we have a double-loaded parking. Practically speaking, it would be impossible to build a structure that would accommodate the turning movements of cars and get them up and down at a 6% grade. If I can address the Chairman's concern, as far as a parking structure on the site, short of leveling the building and building underground parking, it's just not feasible on this piece of property. We only have three acres.

Mr. Charles Heady stated I agree with Mr. Chin and his remarks he just made also. As far as putting a garage in there, like you say, you haven't got the room. I understand it from the drawing and what you said that it wouldn't be feasible to do such a thing. I can't see why we shouldn't give you what you need tonight.

Mr. David Douglas stated I would like to keep this matter open for another month so we can consider it further if I get outvoted on that, I get outvoted on that. I just find it interesting that we have applications where people are talking about there should be two feet or four feet on their residence and we make them come back another month while we mull it over but there's a hesitation to keep this open for a month. To me, that seems wrong. If I'm outvoted, I'm outvoted.

Mr. Peter Pitsiokos presented himself to the Board and stated I'm the chief operating officer of the applicant company. In addition to the Cortlandt Medical Center we own medical office parks in New York and in the State of Virginia. We have experience with structured parking. I can tell you that one of the medical office buildings that we own in Fairfax, Virginia has structured parking. There is a parking problem at that site despite the fact that we have a parking problem with the surface parking, we find it very difficult at that location to encourage people to park in the structured parking. There are security issues that are associated with structured parking, particularly for women and for men. There's anxiety about parking underneath structured parking and we're having a very difficult time in the City of Fairfax, Virginia to try to figure out how do we encourage, even physicians, staff and patients, which are the biggest problem, to get them into the structured parking. What we, in studying that particular location, what we find and what we have found in our studies there is people will keep circling and circling in the open areas where we have parking as well, the surface parking area, to wait for a space to free up rather than go into the structured parking. This is particularly the case in the winter months where it's darker. By the way, this is a lighted parking structure, very well-lit. I thought I'd

offer that up only because my understanding is that the Town of Cortlandt does not have much structured parking. We met with the Deputy Town Attorney and, Ed Vergano, about a year ago when we started looking at this and we've only owned this location for about a year and a half now and we knew from the beginning that the parking was an issue and that we needed to address it. I have to say, it really, from an emotional standpoint, it's really difficult to see people on crutches, particularly the people who are going to the orthopedic practice which is one of our largest tenants at that location, have to find a parking space close to Crompond Road or not find a parking space, park on the grass down near Crompond Road and then make their way slowly up to the orthopedic practice to attend to their appointment. What I'm trying to impress upon you is that this is a real problem for the citizens of the Town of Cortlandt for the patients who are attending those practices and yes, as a landlord we also want to keep our tenants happy. They've expressed a concern about this on behalf of their patients. That's something that should weigh on the members of the Zoning Board of Appeals. The other thing is that there is somewhat of a public safety issue here. There are Town Code Enforcement people there every week ticketing cars that are being parked in areas that should remain open and accessible to public safety vehicles. We recognize that this is a public safety issue. We'd like to address it as quickly as possible. We're a responsible landlord and this is why we're here. We certainly hope that in the future that if the need arises and if healthcare legislation or whatever ends up happening that may cause the parking problem to become exacerbated if that does indeed happen then certainly we would look to address it. We did, in that meeting with Ed Vergano at least conceptually, discuss the idea of structured parking on the site. I don't want the Board to think that these things haven't been looked at. It should also be mentioned that in addition to Tim Miller, we've had KGD Architects looking at this, exploring different alternatives. We've already spent a considerable amount of time and energy, effort and money to develop a plan that we think makes sense. This is what we're trying to do. We're simply trying to address what we think is a fairly urgent issue and we'd like to address it as quickly as possible and we hope that you'll allow us to do this.

Mr. David Douglas stated I just want to commend you. I don't know if it was your orthopedic comment was very fitting, I don't know if you realize I have a broken foot right now. When you say you feel sorry for the people who are limping around I thought "oh, he must have seen me. He's playing on the heart strings here." Very good.

Mr. John Delano presented himself to the Board and stated I would like to share, along with Mr. Reber, Mr. Chin, I have a recurring medical condition and I regularly attend these premises more than twice a year it seems, unfortunately and have been doing so for the past 13 years and have yet, I have appointments at different hours of the day I've yet to have trouble finding a parking space. I want to take the opportunity to applaud Mr. Mattis for his brief speech.

Mr. David Douglas asked anybody else want to be heard? I've expressed my view and I don't know if anybody shares it.

Mr. James Seirmarco stated I would like to have one more meeting to think about this. I would make a motion that we adjourn this meeting to the February meeting to talk about this a little bit

further.

Mr. Raymond Reber stated I would oppose any delay.

Mr. Wai Man Chin stated so would I.

Mr. David Douglas stated second. With all in favor? “Aye,” all opposed? “Opposed.” Could you poll the Board?

Mr. Ken Hoch stated Chairman Douglas; aye, Vice Chairman Chin; opposed, Mr. Heady; opposed, Ms. Hunte; opposed, Mr. Mattis; opposed, Mr. Reber; opposed, Mr. Seirmarco; aye. The motion fails 5 to 2.

Mr. David Douglas stated procedurally somebody has to make another motion?

Mr. Wai Man Chin responded I’m going to make a motion that we close the public hearing on **04-10**, seconded.

Mr. David Douglas stated all in favor? “Aye.” All opposed? “Opposed.” Poll the Board again.

Mr. Ken Hoch stated Chairman Douglas; opposed, Vice Chairman Chin; aye, Mr. Heady; aye, Ms. Hunte; aye, Mr. Mattis; aye, Mr. Reber; aye, Mr. Seirmarco; opposed, not because I’m not in favor of it, I just want more time to think about it. The motion carries 5 to 2.

Mr. Wai Man Chin stated I make a motion on **case 04-10** to grant the area Variance for the required total number of parking space from required 266 parking spaces down to 190 on the above-referenced property, this is a type II SEQRA no further compliance is required, seconded.

Mr. Raymond Reber asked can I just ask that we add to that for clarification for the record that this represents a 54 space improvement, 54 spaces being added to the current.

Mr. Wai Man Chin continued an improvement to what is there now, seconded.

Mr. David Douglas asked all in favor? “Aye.” All opposed? “Opposed.” Poll the Board again.

Mr. Ken Hoch stated Chairman Douglas; opposed, Vice Chairman Chin; aye, Mr. Heady; aye, Ms. Hunte; aye, Mr. Mattis; aye, Mr. Reber; aye, Mr. Seirmarco; opposed. The motion carried 5 to 2.

**E. CASE No. 05-10**                      **James M. Flandreau, Deputy Director of Code Enforcement** for an Interpretation of how fence height is measured.

Mr. Wai Man Chin stated based on what was given to us by the former Deputy Director of Code Enforcement I would say the fence height is based on the height of the fence by the property owner on his property not by any adjoining property as long as the fence is on that property owner. If it's six foot then it's measured six foot from his property, not six foot five if the adjacent property happens to be a little bit lower.

Mr. James Seirmarco stated this was taken into consideration when the fence Ordinance was generated. Having fences on steep slopes, and fences on walls, and fences on property and to me it's clearly spelled out. It comes from the property owner's level up to the height of the fence.

Mr. David Douglas asked anybody else want to be heard.

Mr. Wai Man Chin stated I make a motion on **case 05-10** to close the public hearing, seconded with all in favor saying "aye." I make a motion on **case 05-10** to indicate that the fence height of six foot is measured from the owner of the property who puts it up as long as it's on his property.

Mr. David Douglas asked do you want time to draft something for this?

Mr. John Klarl responded we had a work session last night. I think last night we said we were going to discuss this. We were going to close it and reserve. I think that was the heard outcome.

Mr. Raymond Reber stated I would clarify that we shouldn't restrict ourselves to the six foot fence because we do allow eight foot fences in the back. Any measurement of fencing according to the Ordinance is the way it should be addressed.

Mr. John Klarl stated the key features would be what Mr. Chin?

Mr. Wai Man Chin responded that the six foot fence is measured from the top of the owner in question who put up the fence on his property and not to any adjacent owners who have property at a higher grade or lower grade from that property owner who puts that fence up on his own property.

Mr. John Klarl asked anything else they would like to add to the central features of their decisions.

Mr. Charles Heady asked you put the face of the fence goes to the adjoining property right John?

Mr. Wai Man Chin responded good face always faces...

Mr. Charles Heady stated some people don't know that.

Mr. Wai Man Chin stated that's in the Code.

Mr. David Douglas stated that's required.

Mr. Ken Hoch stated just one clarification. The fence could be on the owner's property or it could be on the property line. I don't know if you want to make that distinction. Some people do put it on the property line. They will actually have it surveyed so they know where that is.

Mr. Wai Man Chin stated it has to be on his side of the property line.

Mr. James Seirmarco stated I think when you say it's on his property that's implied.

Mr. John Mattis stated I think that's implied because whether there's a slope or not they do that now. That's no change.

Mr. John Klarl stated we'll have a reversed decision on that.

Mr. David Douglas asked so there's a motion to close and reserve? Second, with all in favor saying "aye."

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### **ADJOURNMENT**

Mr. Wai Man Chin stated I make a motion to adjourn, seconded with all in favor saying "aye."

**NEXT MEETING DATE:  
February 17, 2010**