

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 20th, 2016*. 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. (absent)
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

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

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ADOPTION OF MEETING MINUTES FOR DEC. 16, 2015

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

Mr. David Douglas stated the minutes are adopted.

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ADJOURNED PUBLIC HEARING TO FEB.:

A. CASE No. 2015-32 Robert & Lindea Whalen for an Accessory Apartment
Special Permit on property located at **17 Dream Lake Rd., Croton-on-Hudson, NY.**

Mr. David Douglas stated we will deal with that next month.

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ADJOURNED PUBLIC HEARINGS:

A. CASE No. 2015-17 ASF Construction & Excavation Corp. for an Interpretation that the applicant is a Specialty Trade Contractor as defined by the Town Code Chapter 307-4 Definitions so they can submit a Special Permit Application to the Planning Board on property located at **37 Roa Hook Rd., Cortlandt Manor.**

Ms. Adrian Hunte stated good evening Mr. Corke.

Mr. Corke stated good evening.

Ms. Adrian Hunte stated we discussed this case at our work session and I believe we are looking to close the public hearing and reserve the decision.

Mr. David Douglas stated first I want to confirm: the violations were cleared up?

Mr. Corke responded yes.

Mr. Ken Hoch stated yes they were.

Mr. David Douglas stated if there's anything further you want to add, that's fine.

Mr. Corke stated I think we've said what has to be said on this matter.

Mr. David Douglas stated as Ms. Hunte said, we're going to close and reserve it and that means we'll have a decision within the next, probably at the next meeting, maybe not. It has to be within 62 days.

Mr. Corke stated thank you very much. I would like to thank the board for all the attention and the efforts you put into this matter. Thank you very much.

Ms. Adrian Hunte stated just for the record, case #2015-17 ASF Construction and Excavation Corp. for an Interpretation that the applicant is a Specialty Contractor as defined by Town Code Chapter 307-4 Definitions so they can submit a Special Permit application to the Planning Board on property located at 37 Roa Hook Road, Cortlandt Manor, N.Y. I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Ms. Adrian Hunte stated on case #2015-1, I now make a motion that we reserve decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that's what we'll do.

Mr. Corke stated thank you.

Mr. David Douglas stated thanks.

B. CASE No. 2015-20 Emily Fehlbaum for an Area Variance for an Accessory Structure, a 12' x 24' garage, in the front yard on property located at 100 Laurel Rd., Croton-on-Hudson.

Mr. David Douglas asked were you able to reach her Mr. Hoch?

Mr. Ken Hoch responded I was unable to reach her. I emailed her and I tried calling and her voicemail box was full so I was unable to leave a message.

Mr. David Douglas stated I think what we had talked about is that we would send a letter to her telling her that if she doesn't come to the next meeting then it will be deemed withdrawn.

Mr. John Mattis asked do you want me to make that motion?

Mr. David Douglas responded yes.

Mr. John Mattis stated I make a motion that we adjourn case #2015-20 to the February meeting and send Ms. Fehlbaum a letter that if she does not contact us and either ask for another adjournment or appear in person that we will drop the case, we'll deem it abandoned.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it will be on for next month. Mr. Hoch, you'll send that letter?

Mr. Ken Hoch responded yes I will sir.

C. CASE No. 2015-23 Acadia Cortlandt Crossing, LLC for Area Variances for the Minimum Buffer requirement along a residential district boundary and the Minimum Landscape Coverage requirement, and a Variance from the required number of parking spaces on property located at 3144 Main St. (Cortlandt Boulevard), Mohegan Lake, NY.

Mr. David Douglas stated I believe the applicant has requested that it be adjourned until February as they're working with the Town Board.

Ms. Adrian Hunte stated on case #2015-23 Acadia Cortlandt Crossing, LLC for Area Variances for the Minimum Buffer requirement along a residential district boundary and the Minimum Landscape Coverage requirement, and a Variance from the required number of parking spaces on

property located at 3144 East Main Street, Cortlandt Boulevard, Mohegan Lake, N.Y. I make a motion that we adjourn this matter to the February 2016 Zoning Board of Appeals meeting at the request of the applicant. The matter is still before the Town Board.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that case is adjourned to February as well.

D. CASE No. 2015-25 Demitri Vourliotis Living Trust for an Area Variance for the rear and side yard setbacks for an existing shed on property located at **194 Cortlandt St., Croton-on-Hudson, NY.**

Mr. Ed Schmidt introduced himself and stated good evening board members. I was involved with the lot line adjustment and we had some conditions that I have been in discussion with...

Mr. David Douglas asked you're representing the trust...

Mr. Ed Schmidt responded I'm representing the neighbor Mazi who's neighbors with Vourliotis on this lot line adjustment.

Mr. John Mattis stated their case is not before us.

Mr. Ed Schmidt stated no, it's Mr. Vourliotis is here for the Variance. I'm not representing anybody on the Variance. I was representing the neighbor on the lot line but I was told there might be some questions here for me tonight and that's really why I'm here.

Mr. John Klarl stated maybe I can bring the board up-to-date. This application is before two boards: Planning Board for a lot line adjustment and the Zoning Board for a Variance. What has happened is we received a deed required by the Planning Board Resolution, received it recently. We had a staff meeting last week. I made some changes. Our tenants here made some changes. I got the deed yesterday. I got your ancillary forms, the transfer tax return, D&A form today. I've approved both. Your Planning Board Resolution for this board's edification, it had three conditions. Really there's two conditions. First condition is the filing of a map or alternatively corrected property deeds is the way they head. Number two is lots 46 and 47 shall be merged. I understand you attempted to do that for your client with Tom Waitkins but he wanted a legal description for each new lot. You're going to do that tomorrow?

Mr. Ed Schmidt responded that was done this afternoon via email but I'll follow up tomorrow.

Mr. John Klarl stated third thing it looks like an initial but it's not, it's an advisory. It says that "if the applicant does not pursue their lot line adjustment conditions in six months, they lose their approval." It's advisory. One requires a deed. I have the deed. Number two requires a merger. Apparently that's being done so I think he satisfied his Planning Board Resolution conditions.

Mr. Ed Schmidt stated we'll undertake to have the deeds signed and filed and should have a receive and file within a week or so.

Mr. John Klarl stated which is well within the six months.

Mr. John Mattis stated I understand that that lot line adjustment now requires a Variance from Mr. Mazzei?

Mr. Ed Schmidt asked what's required of...

Mr. John Mattis responded I believe he has a shed near his lot now. With the lot line adjustment, he's going to require a Variance.

Mr. Ed Schmidt responded yes, I've heard that.

Mr. John Mattis stated that is not this case.

Mr. Ed Schmidt stated correct.

Mr. John Mattis stated this case is for Mr. Vourliotis and it's a required 6 foot rear yard and side yard setback. The existing shed is 4.1 feet from the rear, 4 feet from the side. It's a minor Variance, less than 2 feet on each one. I don't think any of the board has a problem approving this. However, those conditions are in the process of being met. They're not fully complied with yet with the Planning Board. I, for one, would rather wait until that is completed. I don't like to approve conditional approvals based on something else unless there were extenuating circumstances, for example, if somebody was closing on a house before next meeting or something yes then we'd do it conditionally but otherwise I like to see it plain and clear on our part.

Mr. Ed Schmidt stated that is an extenuating circumstance here...

Mr. John Mattis asked on Mr...

Mr. Ed Schmidt continued Mr. Vourliotis is under contract. The closing date in the contract for his sale, the target closing date in the contract has passed so they're waiting on him to get this Variance so that the lender will...

Mr. John Mattis stated but you're not representing him.

Mr. Ed Schmidt responded correct.

Mr. John Mattis stated and he's not here to tell us that.

Mr. Ed Schmidt stated he's out of town.

Mr. John Mattis stated he could have sent somebody. I'm uncomfortable approving – I have no problem with approving it. I'm uncomfortable approving it tonight, that's all, based on somebody who's not representing him telling us he's got a closing. He never mentioned that to us last month.

Mr. Ed Schmidt stated I'm not representing Mr. Vourliotis but I do represent the purchasers that are in contract with him to buy the premises so I can represent that those things are actually in contract, that everybody's waiting on it. I'm certainly involved in the transaction.

Mr. John Mattis stated I for one am still uncomfortable approving tonight but I'm only one vote.

Mr. Ed Schmidt stated the only thing I can say that maybe will give you a little more confidence is the conditions have been met. The deed is done. All of the surveys and legal descriptions have been approved. It's just a matter of actually getting a signature on the deed, filing it...

Mr. John Mattis asked do they have a closing date?

Mr. Ed Schmidt responded we can't have a closing date until the loan is cleared to close which it can't clear until title is resolved so...

Mr. John Mattis stated so you're waiting on this for title to resolve...

Mr. Ed Schmidt stated we're waiting on this.

Mr. John Mattis stated and if we approve this tonight and title is resolved and then they get the loan, would they be closing before next month?

Mr. Ed Schmidt responded absolutely.

Mr. Ken Hoch stated if I could add John, I got a call from Mr. Vourliotis this morning, he's in South Carolina and he indicated that he has a purchaser. He's in contract and there's a potential problem with the purchaser's mortgage commitment if it goes to the next meeting.

Mr. John Mattis stated that is the extenuating circumstance and we were not aware of that last night at our work session.

Mr. Ken Hoch stated no, he just called me today.

Mr. John Klarl stated Mr. Vourliotis showed up at the last meeting but I don't think he approached the microphone. We didn't learn that from the last meeting. He was here but he didn't explain...

Mr. John Mattis stated he didn't but that's the first I've heard of it...

Mr. Ed Schmidt stated I understand your position and fortunately if it's resolved tonight it helps everybody who takes care of...

Mr. John Mattis stated it makes sense now.

Mr. Raymond Reber stated and our exposure is minimal. If we approve it we approve it with conditions so it's straightforward.

Mr. John Mattis stated if he had it on the market and didn't have a buyer then in all likelihood it wouldn't close before next month or something, we'd put it off but I understand the – but we didn't know that until just now. Thank you.

Mr. Ed Schmidt stated you're welcome.

Mr. David Douglas asked anybody else have any comments?

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

Mr. Ed Schmidt stated thank you very much.

Mr. John Mattis stated on case #2015-25, I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated on case #2015-25 an Area Variance for the rear yard setback from a required 6 feet down to 4.1 feet and an Area Variance for the side yard setback from a required 6 feet down to 4 feet for an existing shed and shed overhang. This is a type II SEQRA, no further compliance is required.

Seconded.

Mr. John Klarl asked you want to add three conditions Mr. Mattis to that?

Mr. John Mattis stated with the three conditions of the Planning Board being met.

With all in favor saying "aye."

Mr. David Douglas stated it's granted subject to those conditions. Thank you for explaining the situation to us.

E. CASE NO. 2015-33 CRP Sanitation for an Interpretation that the manufacturing of compost is permitted use in the M-1 Zone on property located at **2 Bay View Rd. Cortlandt Manor, NY.**

Mr. Anthony Carbone stated good evening.

Ms. Adrian Hunte stated good evening.

Mr. Anthony Carbone stated representing CRP Sanitation.

Mr. David Douglas asked anything that you want to add from last time?

Mr. Anthony Carbone responded no.

Mr. Wai Man Chin stated we discussed at the work session and, as a matter-of-fact Mr. David Douglas had a letter indicating that we should really send this back to the Town Board for some clarifications since the Zoning Ordinance doesn't have enough for us to go by. I'm going to tend to agree with the letter Mr. David Douglas had indicated to the Board.

Mr. David Douglas stated the problem is, the way the code is written it basically says that if something is a listed use in the code then it's permitted. If it's not listed then it's prohibited. Since you're not expressly listed, we basically seem to have our hands tied. We understand what you want to do and we talked a little bit about it last time. It seems, personally speaking, it seems like a good idea to me. I'd be in favor of that sort of use but it seems that it's problematic for us to allow that based on the way the code's written.

Mr. Anthony Carbone stated I'm comfortable with it if we have to sit with the Town Board. I've had a couple of discussions with some of them already so I'm comfortable if we have to go and speak to them.

Mr. David Douglas stated what we intend to do is I think we're going to close and reserve this and as part of the decision we would send a memo to the Town Board explaining the situation and recommending that they take steps. It's something we've done in other situations like that with definition issues.

Mr. Wai Man Chin stated that way they can give us a better direction.

Mr. Anthony Carbone stated sure.

Mr. David Douglas stated and then you can speak with them and if you convince them they'll change the code.

Mr. Anthony Carbone stated okay, you got it.

Mr. David Douglas stated so I guess we're going to close and reserve this?

Mr. Wai Man Chin responded on case 2015-33 we'll close and reserve decision on this.

Seconded with all in favor saying "aye."

Mr. Anthony Carbone stated thank you.

Mr. Wai Man Chin asked you understand what we're saying?

Mr. Anthony Carbone responded yes, I got it.

Mr. Wai Man Chin stated thank you.

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NEW PUBLIC HEARING:

A. CASE NO. 2016-01 Bruno Pesavento for an Area Variance for a new generator and an existing generator in the front yard on property located at **1038 Quaker Bridge Rd Rd. Croton-on-Hudson, NY.**

Mr. David Douglas stated congratulations for being the first case this year.

Mr. Bruno Pesavento responded thank you. Good evening Mr. Chairman, Vice Chairman, members of the board and Mr. Hoch. Thank you for hearing me tonight.

Mr. John Mattis stated this is a request for a back-up generator in the front yard. I go by that property several times a week. I go up to the Danish home and it's a long driveway; approximately 200 feet would you say?

Mr. Bruno Pesavento responded I estimate it at 250 feet to where the generator is.

Mr. John Mattis stated 250 feet, even further. There's trees there. There's shrubs there. You do not see the existing generator. My only question is; why would you need a second generator rather than getting a larger one or whatever?

Mr. Bruno Pesavento responded originally when we purchased the property in 1991 there was a generator there that supplied both properties. Subsequently, we got a legal accessory apartment and they're both on their own meters and my father's main house has been on a generator since. We didn't need a permit when we actually installed it 10 years ago and we figured now that

we're here we might as well grandfather that in and put in an application so that we don't have any trouble going forward. We have actually been supplying power to the separate dwelling.

Mr. John Mattis asked that's the one above the garage?

Mr. Bruno Pesavento responded correct...with a portable generator which is very loud, requires gas filling and manual hook up and disconnection. With my dad being almost 80 years old I think it's safer and better for him and the neighbors and everybody involved to have a quieter system put in that's automatic and...

Mr. John Mattis asked so you want a permanent one for each building...

Mr. Bruno Pesavento responded correct.

Mr. John Mattis stated that makes a lot of sense.

Mr. Wai Man Chin stated that's the only question I had.

Mr. James Seirmarco asked why can't you put it in the backyard?

Mr. Bruno Pesavento responded I guess we could but it would inquire putting in an additional 500 gallon buried tank or an above-ground tank somewhere else on the property. This one has one already for the existing generator and it would just be sharing the same fuel supply.

Mr. John Mattis stated that makes a lot of sense also. Like I said, I don't have to call anybody in audience since there is nobody. On case #2016-01 I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. John Mattis stated on case #2016-01 I propose an Area Variance for accessory structures which is an existing generator and a proposed new generator in the front yard, this is a type II SEQRA, no further compliance required.

Seconded.

Mr. David Douglas asked all in favor?

Members of the board stated yes

Mr. James Seirmarco stated no.

Mr. James Seirmarco stated no, it's a principle thing with me that there's no good reason not to

put it in the back yard. Just because that you have...

Mr. Bruno Pesavento stated if I put it in my backyard it would be closer to my neighbors. My backyard is shorter than my front yard.

Mr. John Mattis stated and much more expensive, correct, with the tank and everything?

Mr. Bruno Pesavento responded the expense isn't the thing. The noise, I'm trying to keep down for the neighborhood. Expense isn't really an issue.

Mr. David Douglas asked if you could poll the board?

Mr. Ken Hoch asked Mr. Reber; yes, Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; no, Chairman Douglas; yes, Vice Chairman Chin; yes. Motion carries 5 to 1.

Mr. Bruno Pesavento stated thank you very much.

Mr. Wai Man Chin stated thank you.

Mr. John Mattis stated thank you.

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ADJOURNMENT

Mr. John Mattis stated if there's no new business I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we're done.

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**NEXT MEETING DATE:
WEDNESDAY, FEB. 17, 2016**