

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 18<sup>th</sup>, 2017*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

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Mr. David Douglas stated before we start, I would just request for people to, two things: if you're speaking tonight, please speak into the microphone. The meetings get recorded. They're on the Internet and they're on the cable TV so for people that watch it you need to talk into the microphone. The other thing is, everybody please turn off your cell phones.

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**ADOPTION OF MEETING MINUTES FOR DEC. 14, 2016**

Mr. David Douglas stated first item on the agenda is the adoption of the minutes for December.

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

Mr. David Douglas stated the December minutes are adopted.

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**CLOSED AND RESERVED:**



frontage requirement is an Area Variance. We addressed that in our Memorandum of Law last October in sections V and VI. We addressed it again in our November 11<sup>th</sup> letter which responded to Mr. Steinmetz's letter of November 7<sup>th</sup> where he raised that issue and now two months later we just got another letter from Mr. Steinmetz responding to my letter. We have responded to that in detail with a letter that I've handed in tonight, given a copy to Mr. Schwartz. Hopefully he'll find that as entertaining as I did. Both counsel argued this issue back and forth, as you mentioned, at some length on December 14<sup>th</sup>. Members of the public here at that time who wished to be heard were heard on it. You have a copy of my presentation outlined for that meeting. You of course have the video of that meeting. In short, tonight, we would just respectfully summarize that the law on the issue, again in our view cannot be more clear. First, all of the state statutes which are relevant including that which defines Area and Use Variances, which is section 267 of the Town Law, that which expressly provides for the issuance of Area Variances from Special Permit requirements which is section 274-b(3) of the Town Law and that which specifically provides for the granting of area variances from the road frontage requirements that govern all building permit applications and which include the alternative of state road frontage variances, that's section 280-a of the Town Law. All three of those statutes, in article 16 of the Town Law, mandate that what we're requesting is an Area Variance. Second, the Court of Appeals, the highest court in the state in Real Holding and other cases mandates that what we're requesting is an Area Variance. Thirdly, the President of this Zoning Board and that of other local Zoning Boards in adjoining municipalities dictate that this is an Area Variance. And it's an Area Variance by the way, important to note, for two independent reasons. First, the law that we've cited specifically requires that any variance from any Special Permit requirement is an Area Variance. Second, even if that were not the case, frontage is a "physical requirement" and therefore falls under the definition of Area Variance in any event under Town Law section 267. Notwithstanding the Herculean efforts of our opposing counsel to the contrary, there's absolutely zero law to the contrary and you've been offered none. Accordingly, in our view, any decision of the board to the contrary would not have any legitimate legal basis and would not stand judicial scrutiny. Other than that, we would just respectfully submit that as the Chairman noted, this is purely a legal issue that really should be relegated to attorneys in this field to address before the board. We'd be pleased to answer any questions the board has tonight and other than that, that's really all we have to say on the issue and we would commend the board to the letter which we handed in tonight. Thank you.

Mr. Brad Schwartz stated good evening Mr. Chairman, members of the board. For the record, Brad Schwartz from the law firm of Zarin & Steinmetz. As you know, we represent the group of concerned Teatown residents in connection with the project. First, Happy New Year everybody! We did make a full presentation last month and we also, last week, did submit a letter that clarified a couple of the issues that we wanted to address that were raised during the public hearing, mostly really involving case law interpretation. I'm not going to give a full summary tonight but I will emphasize that we think this is a fairly straightforward matter. We all agree this project does not satisfy the front on a state road requirement. The threshold issue is, everybody knows, is it a Use Variance or an Area Variance? In deciding that answer, we submit that your board, a property owner, must look at and focus on the type or nature of the requirement at issue from which a variance is sought. We disagree with the applicant. We don't

think the case law stands for what they claim. There have been sweeping generalizations made that we disagree with. The case law does not stand from the proposition that every single variance from a Special Permit requirement is automatically an Area Variance. You need to look at, again, the type and nature of the requirement at issue and we submit here that this front on a state road is not a dimensional or physical requirement that would necessitate an Area Variance. It is in contrast a locational requirement that requires a Use Variance. That's been our argument. We fully submitted to the board and it's before you now for a decision. I would just ask that we did receive this literally as I walked in this evening, have not had a chance to review it. I don't know if there's anything new in here. Is the board keeping the comment period open even just for a couple of days so we have a chance to review it and submit anything that I would say is new? I'm not going to regurgitate prior arguments. I want to bring this to a close as I know the board does.

Mr. David Douglas stated yes, our point is when we close the public hearing we have a ten-day comment period so if you want to submit anything within ten days after today that's fine. Please stick to what you just said. Don't – anything new.

Mr. Brad Schwartz stated understood.

Mr. David Douglas asked anybody else want to be heard on this particular issue? I guess we want to close the public hearing on this particular Area versus Use Variance issue. Somebody want to make that motion?

Mr. James Seirmarco stated I make a motion to close.

Seconded.

With all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed on the Use Variance versus Area Variance issue and, as noted, we will seek to have a decision on that next month or the month after.

- B. **CASE NO. 2016-29** **Alex and Diana Daoud** for an Area Variance for the front yard setback for an addition on property located at **11 Buena Vista Ave., Cortlandt Manor, NY.**

Mr. David Douglas stated last month we had said that and agreed with the applicant that that would be adjourned to February. That will be heard next month.

- C. **CASE NO. 2016-30** **Maria Angelico** for Area Variances for and rear yard setbacks for an addition on property located at **2 Mountain View Rd., Cortlandt Manor, NY.**

Ms. Maria Angelico stated good evening everyone, Mr. Chairman, I thank the board for your patience in adjourning this to this month.

Mr. David Douglas stated this is much shorter this month.

Ms. Maria Angelico stated oh my goodness, you caught me completely off guard. Of course, tonight I made better preparations for my kids to be covered and I don't have to run out the door but it's a pleasure to be before you. My name is Maria Angelico. I live at number 2 Mountain View, just up the road, in Cortlandt Manor. I have been a home owner there for six years, since 2010. When I moved there from Mill Court, just two streets up on Red Mill with my two little ones at the time when I was getting divorced and it has become, was our safe haven, our new home as we started a new life together. As life has gotten good and life has changed, I am looking to expand our living space. It's still my two kids and myself. My kids are now eleven and thirteen. One bathroom just isn't quite cutting it with a teenage daughter. The variances that I'm asking for – it's an awkward little property. It's located right on the corner of Red Mill and Mountain View and it was built in 1950 so I think it was before any of the codes were really written. It was built as a summer cottage. It's tucked right square in the corner of the property. Apparently I have two front yards and only one side yard which was an education to me. The variances that I'm asking for are primarily for the front yards to come out just a little bit, expand the footprint just a little bit on the first floor and basically add most of that living space to the second floor. It sort of started when – exactly a year ago. I had an electrical fire from some of the old wiring and our safe home became a little bit of a less safe place. In looking to make sure that everything is safe for my kids and I, and stays that way, and it's a place we can stay because we like where we are. We're just hoping to expand that space and make it a little bit more comfortable than even it has been. It is within – a couple of my neighbors have expanded their summer cottages so it's not excessive for the area or the street and it's straightforward. I can answer any questions you might have.

Mr. David Douglas stated Mr. Chin this is your case.

Mr. Wai Man Chin stated yes it is. I had gone by looking at the property and everything else. Basically, your house was prior to zoning so the setbacks were pretty large already from way back when. What you're asking for the front yard from existing to proposed is not a real lot.

Ms. Maria Angelico responded no, it's just a little bit.

Mr. Wai Man Chin stated on the front yard setback on Red Mill Road because you have two front yards and on the front yard setback from existing from 56 to 27 feet on Mountain View Road, that's a pretty big variance basically. Again, looking at what you have there and the way the topography and the way the land is situated, the rear yard I don't see a problem with that either so I really don't have a problem with giving you a variance on what you want to do.

Ms. Maria Angelico stated thank you.

Mr. Wai Man Chin stated I don't know what the other board members would like to say about it but...

Ms. Maria Angelico stated I appreciate your time and your consideration.

Mr. James Seirmarco stated I concur with Mr. Chin's comments.

Mr. Raymond Reber stated likewise. I concur.

Mr. David Douglas stated the idea of having a site visit, we decided we don't need one.

Mr. Raymond Reber stated we don't need one.

Mr. David Douglas stated okay, that's fine.

Mr. John Mattis stated not unless we hear some comments from the audience.

Mr. Wai Man Chin asked are there any comments from the board, anybody in the audience?

Ms. Maria Angelico stated thank you all very much.

Mr. Wai Man Chin stated I'm going to make a motion on case 2016-30 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Wai Man Chin stated I'm going to make a motion on case 2016-30 for an Area Variance for Red Mill Road front yard setback from 40 feet down to 10.3 feet, from Mountain View Road front yard setback from 40 feet down to 27.6 feet and the rear setback for a required 30 feet down to 9.5 feet for an addition. This is a type II under SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your variances are granted. You should see Mr. Hoch and he'll tell you what paperwork you need and what you need to do.

Ms. Maria Angelico stated will do. Thank you very much for your time.

Mr. David Douglas and Mr. Wai Man Chin stated thank you.

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**NEW PUBLIC HEARINGS:**

- A. **CASE NO. 2017-01**                      **Luis Otavalo** for Area Variances for side and rear yard setbacks for an existing deck and addition on property located at **58 Sherwood Rd., Cortlandt Manor, NY.**

Mr. David Douglas stated congratulations, you're the first one for this year.

Mr. John Scavelli stated good evening everybody. My name is John Scavelli. I'm a professional engineer. I'm working with Luis on this application to go over with all of you guys tonight. Just a little bit of an explanation. As you can see from the site plan, it's a one-story, single-family dwelling located at the backside of the property and the original dwelling, the rear setback was originally 12.1 and there was actually a wood deck that was also built on the back side when Luis purchased the property. There's two – the rear setback as well as the side setback that we're looking for a variance for. From the rear setback is 20 down to 0 as the wood deck is all the way back to the back side of the property line and then also on the west side of this property line, the requirement is 7.5; we're looking to bring that down to 1.1 feet away from the setback.

Mr. David Douglas stated Mr. Seirmarco this is your case.

Mr. James Seirmarco stated yes, Mr. Chairman this seems to be a lot of issues. It's got some history. It's got some building without Building Permits. It's got encroachments on the edge of the property. Usually what we do is try and correct some of these things before resolving the final variance. There was one particular thing I think on one of the D&Os it said that you were to enter with your neighbor to get an easement. We checked. There's no easement filed with the county and you're going to have to correct those things before we can entertain this variance, the present variance. The deck, I believe the deck is larger than according to what the plans were, the original plans, it's larger, so we either...

Mr. John Scavelli stated yes, it's less. The original – it was actually over the property line but then it was resurveyed and it's actually at the property line.

Mr. James Seirmarco stated we would like – do you concur with that Ken?

Mr. Ken Hoch responded it appears looking at the survey that it's still over the property line. That would have to be verified.

Mr. John Mattis asked you had that surveyed?

Mr. John Scavelli responded yes, yes, there's a new survey on this.

Mr. John Mattis stated we'd like to see that survey then.

Mr. John Scavelli stated okay.

Mr. John Mattis stated that would clear it up.

Ms. Adrian Hunte stated and it's over the property line into the Peekskill Hollow Brook, the deck.

Mr. John Mattis stated well he's saying the survey shows that it's not.

Mr. James Seirmarco stated that's what he's saying. We'd have to see that.

Mr. Ken Hoch stated we have the Link survey. Is that the survey you're talking about, 2016? August?

Mr. John Scavelli responded yes.

Mr. Ken Hoch stated well it appears on here that the deck still extends over the property line and over the brook so that would have to be corrected.

Mr. Wai Man Chin stated it doesn't actually give a dimension how far over the property line but it's showing that the deck is over the property line.

Mr. John Scavelli stated okay.

Mr. Wai Man Chin stated so there's some things right here that we're missing.

Mr. James Seirmarco stated judicially we frown upon building without a Building Permit. In some instances we have asked the applicant to remove the part that was built. We reserve decision on this right now but I would suggest that you correct these things and then return.

Mr. John Scavelli stated okay, so just to be clear on what you need. Definitely submit the survey...

Mr. John Mattis stated well if it's the same survey as that you don't have to resubmit it. It shows that it's over the property line. You're going to have to cut it back. We can't approve anything over a property line.

Mr. John Scavelli stated so, yes as far as just clarifying...



Mr. John Mattis stated and I'm not sure I'd give a Variance down to 0. I'd like to make a statement. You put us in a terrible position. You're an architect right?

Mr. John Scavelli responded I'm an engineer.

Mr. John Mattis stated engineer, and you work on these things. You know they need Building Permits.

Mr. John Scavelli stated this is a retroactive Building Permit.

Mr. John Mattis stated wait a minute. You did it without a Building Permit. He may not know you need a building permit but you should know that. You build it and then you come to us and you put us in a terrible position.

Mr. John Scavelli stated I came in after the fact sir. I'm just trying to...

Mr. John Mattis stated then he put us in a terrible position. So we're the bad guys if we say no because he's put money into it but the way the code works, this is what I want to explain: the way the code works is we have to look at this is as if it was not there and financial hardship is not to be considered. If we had voted against this then we have to vote against it even if it is there because otherwise people would run around the town and put up whatever they want without a Building Permit and then they'd come to us and say what a hardship it is and then we'd be giving everything away. That's why it's written that way. We cannot consider the fact that it's there. We have to consider the fact that if they came in and didn't have it would we have approved it? It really puts us in a bad position though.

Mr. John Scavelli stated I understand. I understand. Do you think it's worthwhile to submit to the board at another hearing to completely remove the deck? The existing dwelling is still – it's 12.1 feet away from the rear so that still doesn't comply. Do you think that is a better – because there was the existing footprint of the building? Is that a better...

Mr. John Mattis asked you're talking about the deck only?

Mr. John Scavelli responded well to completely remove the deck but the rear side of the property is still closer than what's allowed for this zone...

Mr. James Seirmarco stated you would need a variance for that.

Mr. John Scavelli stated exactly, so is that a better way forward?

Mr. John Mattis asked you're talking about the back or the side?

Mr. John Scavelli responded the back. The back is 12.1 feet away...

Mr. Raymond Reber stated what you're asking is: would we be willing to give the variance for the main structure which has been there and you're going to take the deck away so it's not an issue.

Mr. John Scavelli stated well yes, as far as – because I completely understand the fact that the deck – the fact that it's already there really shouldn't be brought up, I agree but the structure has been there since this property was been designated. Is that a more reasonable presentation...

Mr. Wai Man Chin stated but a two-story structure over there, you built it further out than what it was originally. That's – see if you had gone up straight from the existing building I would say maybe we might have given that. Say, okay, but you actually built it further out. As a matter-of-fact, there's no dimensions on here how far it went out from the existing structure out to the side yard. This is something that he created himself by doing that. That is a no-no.

Mr. John Scavelli stated I understand.

Mr. Raymond Reber stated I have the same problem that Mr. Chin has and that is it looks like the house as it stood, the front corner on the left as you're looking at the house, came within about a foot or so of the property but the house is angled. As you went back you had space. And there is an issue that goes back to when, in 1984 I guess, when this house and the property was being established, there was an agreement that because of that, that the town would say that was okay if they got an easement from the neighbor, a five-foot easement that says: okay, the neighbor would have no trouble with you accessing within five feet of the property line because you've got to maintain the side of the building. Now, first of all we don't have a record but that doesn't mean it wasn't granted. It could have gotten lost but what the applicant has done in redoing it is now put that wall straight back so that basically the whole side of the house is one foot off the property without any permits. To me, I go ballistic because now I'm saying, the whole side of the house he has to go on the neighbor's property to maintain it. He apparently had to go on the neighbor's property to build it which I don't know what the story there was. Those things to me are very egregious because you're supposed to have a minimum setback for emergencies, for maintenance. You just don't go to zero unless you live in Manhattan and buildings are touching each other. This to me is so bad that if it was up to me I'd want him to tear it down. Tear it down and go back to where it was. That is just too egregious to me that he would just build that without any consideration and put it that close to the property line where it's mandated that he has to encroach on the neighbor's property.

Ms. Adrian Hunte stated I have an issue with the – there may be an easement but we don't have a record of it and also this issue of the inability to have the one-hour fire rated wall because the setback is down to 1.1 feet. I'm not sure whether what you're proposing would...

Mr. John Scavelli stated we were talking with the Building Department and about fire rating that whole wall because it's within the five feet of the property line but I think the constructability is a separate issue from the location of the property on the property.

Mr. John Mattis stated I have the same problem that Mr. Reber has. That one foot or six inches or whatever it is, it shows here as 1.1. feet. That was only the corner and then it angled away from the property line. If he had come to us and said I want to go straight up, we would have given him a good shot at that but to build the whole thing along that property line. I feel he should just tear it down and, as I said, we have to look at it as if it wasn't there. If it wasn't there I would never in a hundred years vote for that; never. I'm going to have to vote against this.

Mr. Charles Heady asked who owns the land next to you where the – you need a variance in there? Is it a big piece of property?

Mr. John responded of the one who owns the property next door..

Mr. Luis Otavalo asked to the right or the left?

Mr. John Mattis responded the left, where you're on the property line.

Mr. Wai Man Chin stated where you built the two-story.

Mr. Luis Otavalo responded his name is Joe.

Mr. Charles Heady asked the house is on that too, also? Is there a house on that lot?

Mr. Luis Otavalo asked to the left?

Mr. Charles Heady responded yes.

Mr. Luis Otavalo responded no.

Mr. Charles Heady stated maybe you can make a deal with the people who own that land, you could buy a piece of that land, maybe ten foot strip if they would. It may be cheaper than take the two-story down. It's up to you. It's a suggestion you know.

Mr. John Mattis stated we have an aerial view here that shows on the left there's a house near the front with a circular driveway and it's in the front but that is the adjoining property according to the GIS survey that we get in the aerial view.

Mr. James Seirmarco stated as you can see there's a lot of issues to mitigate here and you can come in and sit down with Ken and go over the specifics.

Mr. John Mattis stated I don't know what we want to sit down about. I'm ready to vote tonight. This is so egregious that it's insulting that somebody would do something like this. How long ago did you do this? How long have you lived there?

Mr. Luis Otavalo responded I'm not living there.

Mr. John Mattis stated you don't live there.

Mr. Luis Otavalo stated no we rent.

Mr. John Mattis asked you rent and who built this?

Mr. Luis Otavalo stated good evening everybody.

Mr. John Mattis stated I'm trying to get a background here of what happened.

Mr. Wai Man Chin asked you're name is Luis?

Mr. Luis Otavalo responded yes. My name is Luis Otavalo and my wife is Rosa, she's there too. I'm just trying to build with my sons and my family helped me a lot. I never touched the footings, nothing. I'm just trying to fix because it was a mess and everything.

Mr. John Mattis stated but you don't own the property.

Mr. Luis Otavalo asked excuse me?

Mr. John Mattis stated you said you do not own it.

Mr. Luis Otavalo stated when I bought the property. I tried to fix the house.

Mr. John Mattis stated so you can rent it.

Mr. Luis Otavalo stated yes, I'm renting it.

Mr. John Mattis stated you're going to rent it out.

Mr. Luis Otavalo stated I tried to just fix with my sons, with my family helped a lot. I just tried to fix it and move with my family. That's it.

Mr. Wai Man Chin stated yes, but you can't just add to it without getting a Building Permit.

Mr. Luis Otavalo responded yes, but I never did it before this. This is the first time in my life.

Mr. John Mattis asked how long ago did you buy the property and when did you do this?

Mr. Luis Otavalo responded I bought it in June of last year and I just removed – I don't touch anything. When I bought it the house a couple of months...

Mr. Wai Man Chin stated but when you built it out to the side you – you're not building the corners of the foundation where it was.

Mr. Luis Otavalo responded no, no, no, I don't touch nothing from the foundation.

Mr. Wai Man Chin stated that means you had to extend beyond the foundation.

Mr. John Mattis asked who built this? Did you build this yourself? You didn't have a contractor come in or anything?

Mr. Luis Otavalo responded no, I'm doing landscaping service.

Mr. Raymond Reber stated what's confusing us is if you look at this particular plan that you submitted. Over here it shows new construction.

Mr. Luis Otavalo stated like I said, I built it with my family.

Mr. Raymond Reber stated but the thing is disturbing is it shows that the foundation allowed for that and that's puzzling us as engineers and architects you're saying there was a foundation there so you didn't move the wall you just replaced the wall?

Mr. Luis Otavalo responded yes, just we fix. We put cement. I have more holes I have to – I have to put more cement in the corner, in the middle...

Mr. Wai Man Chin stated wait a minute, you're losing me.

Mr. Raymond Reber stated that's what's confusing us because you—this plan shows that this is new, in fact on the second story the window actually extends over the existing part. I've been out there to look at the house. You put all new siding on it. You did the whole thing correct?

Mr. Luis Otavalo responded yes.

Mr. Raymond Reber asked so it's all blended together nicely but this is what bothers us. Expanding this out as this indicates...

Mr. Luis Otavalo stated no, no, I'm sorry sir, there's a wall, it was there. Everything was there.

Mr. Raymond Reber asked you didn't expand?

Mr. Luis Otavalo, Jr. stated the house was everything the same. We didn't like move it, make it more stretch out or anything.

Mr. Raymond Reber asked you didn't change the profile of that wall?

Mr. Louis Otavalo, Jr. responded no. Everything there, all we did was change the room – the new one that we made on top.

Mr. Raymond Reber stated you added a second story.

Mr. Louis Otavalo, Jr. stated that's the only thing that we did. Everything in the bottom we did not stretch it out. We do nothing. You can tell the neighbor, he saw us every single time. We were working there we did not stretch out the house. We did not do anything. All we did was work on that how it's supposed to be.

Mr. Raymond Reber stated we still have the issue of there's supposed to be a fire foot minimum or you have to get an easement or you've got to get a lot line adjustment. Somehow you've got to work that out.

Mr. Wai Man Chin stated I'm still kind of confused because besides the elevation, looking at the plan it shows that that portion is all new.

Mr. John Scavelli stated part of that issue was – the original Building Department files didn't show that location as well as the deck so when they did purchase the property that was there but technically it wasn't legalized because it wasn't in the Building file.

Mr. Wai Man Chin asked it was there when they bought it?

Mr. John Scavelli responded yes, well the footprint of it was there when they bought it but they still went up but that's why part of this application is showing that as well as the deck. It was part of it but it was never legalized under the Building Department file.

Mr. Wai Man Chin asked Ken, do we have anything on record of anything?

Mr. Ken Hoch responded no, the issue here is, after the '84 decision, sometime between then and '86 which I picked up from the assessor record, the previous owner built an addition without a permit. Now, Mr. Otavalo has built on top of that addition. He's stuck legalizing what the previous owner did plus the second floor that he did. Now, the issue becomes it's too close to the property line. He doesn't have the five-foot separation which gets into a building issue which Mr. Heady suggested maybe he can get some property from the neighbor or if the board grants a variance which would be less than 1.1 foot because he's going to have to fir out that wall to make it fireproof for a one-hour rating. He's got some issues there.

Mr. Wai Man Chin stated I understand that but you know now that you explained that it kind of...

Mr. Raymond Reber stated in this you document that that was covered in 1984 D&O, this issue of being too close to the line.

Mr. Ken Hoch stated no, they didn't specifically say that. They came up with the fact that he needed an easement from the neighbor and never clarified why.

Mr. Raymond Reber stated but you say the second part of the D&O granted a reduction of the side yard setback down to 6 inches with the stipulation that the applicant obtain an easement, that's '84. That's not '86.

Mr. Ken Hoch stated no '86 is when the assessor picked up the fact that it was built. It was there by that time.

Mr. Raymond Reber stated so the 6 inches, that part that we're debating wasn't the addition apparently because it was addressed in '84. I just wanted to clarify that.

Mr. Wai Man Chin stated that's what got me kind of confused.

Mr. Ken Hoch stated and the deck came in apparently in '86 also without a permit.

Mr. Wai Man Chin stated this puts a different point...

Mr. James Seirmarco stated he didn't really...

Mr. Wai Man Chin continued I understand that but you know it's just that you built a second story but the first story was already there.

Mr. Raymond Reber stated that's what we're understanding, right. Again, you've got the same problem. Now, you've got access to a second story for maintenance and fire wall and all of this which has to be addressed. We can't just give a variance and say so what.

Mr. Wai Man Chin stated I think they have to – before we even attempt to give any kind of variance, I believe that they have to either try to talk to their neighbor and try to get some kind of easement or something or whatever.

Mr. Raymond Reber stated or lot line adjustment or something. I agree.

Mr. Wai Man Chin stated before we do anything.

Ms. Adrian Hunte stated if they have the easement then that would give them...

Mr. James Seirmarco stated so I was saying that they have to mitigate some of these issues before we...

Mr. Wai Man Chin stated before we do anything, period.

Mr. Ken Hoch stated they could but they don't have the easement.

Ms. Adrian Hunte stated I know they don't have it but if they were to obtain the easement, that would be in compliance with '84...

Mr. Ken Hoch stated except that it would be much better to have a lot line adjustment so that he then owns that little piece of property versus. Easements are always tough.

Mr. David Douglas stated so we're going full circle from the very first thing Mr. Seirmarco said, I think, is maybe we should hold off until you have a conversation with your neighbor.

Mr. John Klarl stated a boundary line agreement is not a bad idea.

Mr. David Douglas stated so I think maybe what we should do is adjourn this so that you can speak with your neighbor about getting either an easement or you purchase a portion of their property.

Mr. Raymond Reber stated I'd like to go on with what Mr. Hoch suggested. An easement to me is a wishy-washy thing. I looked at the property. The neighbor's house is way up front. A small section of the property on the back line there is trivial. I personally have had to make lot line adjustments for properties my family has had. It's not a big deal. These kind of adjustments, which are minor, usually can be worked out and then it's finalized. You've got the property, it's not debatable.

Mr. Wai Man Chin stated and we had some cases like that before we did a decision where they had the lot line adjusted and everything else.

Mr. Raymond Reber stated I think a lot line adjustment is what – for me to give a variance on this, I want a lot line adjustment.

Mr. Wai Man Chin stated again, that's up to the neighbor too. You're going to work out something with your neighbor before we even address this or something.

Mr. John Klarl stated it has some implications for the lender involved but lenders insuring properties owned by somebody as an easement. They'd obviously look at the boundary line agreement much more seriously...

Mr. James Seirmarco asked is there a lender or did you have to go to the bank to purchase this?

Mr. Luis Otavalo responded yes.

Mr. David Douglas stated okay, so there is a bank.

Mr. James Seirmarco asked did they do a title search?



Inaudible.

Mr. John Mattis stated they did a title search. They don't give a mortgage without it.

Mr. Luis Otavalo stated when I bought the house it was already two-story. My lawyer, when I bought the house, the broker they not check so if it was two-story I'd never buy the house. When I bought it, when I was trying to [inaudible].

Mr. Wai Man Chin stated when the bank – didn't they do a title search?

Mr. Luis Otavalo responded yes, they look at the title and everything. They say the title is clean. [inaudible]. They say no, this house has two stories so.

Mr. Wai Man Chin stated yes, because when they do a title search they have to go to Mr. Hoch and...

Mr. Luis Otavalo stated it was late because I bought it...

Mr. David Douglas stated why don't we do what various members of the board suggested. Why don't we adjourn this for now and you speak with your neighbor about the possibility of entering into some sort of agreement with them as to purchasing the back part, a certain part of the back part of the property?

Mr. Wai Man Chin asked Mr. Scavelli, you understand what we just said?

Mr. John Scavelli responded yes, correct.

Mr. Wai Man Chin stated it may be helpful if you helped them out and maybe talk with the neighbors and see if they can do some kind of lot adjustment before we even do anything on this.

Mr. John Scavelli stated and then just as far as the rear setback as well, do you think the best way forward is deck removal and then ask for the 12.1?

Mr. David Douglas responded I think that was a good idea you had.

Mr. James Seirmarco stated that's a good idea.

Mr. Wai Man Chin stated like I said, before we go ahead with anything else, you have to get this all straightened out. Somehow, the title company made a mistake or something. I'll tell you right now.

Mr. David Douglas asked how much time do you want? Do you want us to adjourn it one month or do you think realistically you need more than a month? We can adjourn it to February or to March.

Ms. Adrian Hunte asked do you think it can be resolved in a month?

Mr. Wai Man Chin stated I don't know. One month may be tough.

Mr. Raymond Reber stated the trouble is they have to go – the lot line adjustment has to go before the Planning Board. We should adjourn for at least two months.

Mr. Wai Man Chin stated at least two months, yes.

Mr. David Douglas stated that's fine.

Mr. Wai Man Chin stated I think you should talk to Mr. Hoch about the whole situation too.

Mr. James Seirmarco asked is there anybody else in the audience that have a comment on this? I make a motion we adjourn this for two months to give the applicant...

Mr. Wai Man Chin stated until March.

Mr. James Seirmarco stated to March.

Mr. Wai Man Chin stated we want to adjourn it to March.

Mr. James Seirmarco stated to give the applicant time to correct some of the...

Mr. Luis Otavalo asked another meeting?

Mr. Wai Man Chin responded yes, there's going to be another meeting. You'll have plenty more meetings before you finish. It's going to be two months before you have another meeting. You can't do anything over there until this is resolved. And we're not giving no variances, no nothing until this is resolved. I mean it's not your fault in a sense but somehow it became your problem.

Ms. Adrian Hunte stated the meeting is March 15<sup>th</sup>.

Mr. Luis Otavalo stated I'd like to do it more early, as soon as possible. I rent and the owner they don't want any – I tell them if they can't...

Mr. David Douglas asked do you think you'll be able to reach an agreement with your neighbor between now and February?

Mr. Luis Otavalo responded yes, I think we can.

Mr. Wai Man Chin stated we'll make it to February.

Mr. David Douglas stated we'll make it to February then.

Mr. Wai Man Chin stated we'll make it to February and if you don't then we'll have to adjourn it again. You know what I mean.

Mr. Luis Otavalo responded please, because I have a March I have to leave the house...

Mr. David Douglas stated that's fine, we'll do it to February.

Mr. Luis Otavalo stated because he want to renew the lease and I don't want to wait for one year more.

Mr. David Douglas stated okay so we'll do it to February then.

Mr. Luis Otavalo stated for March I'm done the rent. They're finishing other houses already.

Mr. David Douglas stated I don't know that everything will be resolved in February but we'll put it on for February.

Mr. Luis Otavalo stated please. For my family.

Mr. Wai Man Chin stated we can't help it on that, you know what I mean?

Mr. Luis Otavalo stated thank you everybody.

Mr. John Scavelli stated thank you everybody.

Mr. James Seirmarco stated I make a motion to adjourn this to the February meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we'll see you in February. The date of the meeting is February 15<sup>th</sup>. Okay, thank you.

Mr. James Seirmarco stated and if there's any questions certainly contact Ken.

B. **CASE NO. 2017-02**                      **Patricia Miller** for an Area Variance for the total square footage of accessory structures to allow construction of a larger pool patio on property located at **2154 Maple Ave., Cortlandt Manor, NY.**

Ms. Patricia Miller stated hello. We bought the property – bought the house in May.

Mr. Wai Man Chin stated will you state your name?

Ms. Patricia Miller stated Patricia Miller -- and we bought the house in May and we had started the process of getting a pool permit and so we worked on that and we got that approval and they're in the process of building the pool and based on this area variance that we're asking for, we are right now, since we just bought the house in May there was already accessory structures on there: the big driveway and such. So in order to have a decent size patio, right now there's nothing, we're asking for the variance. That's not ours but you guys have it in front of you right?

Several members responded yes.

Ms. Adrian Hunte asked and the patio is on the ground?

Ms. Patricia Miller responded there's nothing there right now.

Mr. James Seirmarco stated some people build -- have patios a few inches to six inches off the ground. What we're asking is this going to be ground level.

Ms. Patricia Miller responded yes, with pavers, right at the level for the in-ground pool.

Mr. John Mattis stated this is my case. The reason for the variance is you're allowed 1,178 according to the formula, square feet and the pool patio is 1,017. You've virtually -- and then with the accessory structures, even if you didn't have the pool but it's on the ground. If this were just a patio and there was no pool, you don't need a variance. You can have patios but by virtue of having the pool you need a variance for the patio. It's at ground level. It's not built up like a deck or anything and I don't see any problem with this.

Ms. Adrian Hunte stated I concur.

Mr. James Seirmarco stated I concur.

Ms. Patricia Miller stated excellent. That was a lot easier case right?

Mr. John Mattis stated it looks like a large variance but in reality it's only because you're having a patio on the ground level.

Mr. David Douglas stated but it's got to be on the ground.

Ms. Patricia Miller stated of course.

Mr. Raymond Reber stated the first question was how do you get a thousand square feet but when you look at it, what you're doing is you've got walkways basically on the side, three feet wide, which is minimal and then you've got some areas where you can put some chairs and

sitting on both ends which again was reasonable and it just happens to add up to the thousand square feet.

Mr. David Douglas stated don't leave yet though, okay? We haven't voted plus anybody – we have to find out if anybody...

Mr. John Mattis asked is there anybody in the audience who would like to comment? I move on case #2017-02 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 I move that we approve an Area Variance for the total square footage of the accessory structures from an allowed 1,178 square feet up to 856 square feet for a larger pool patio. This is a SEQRA type II, and no further compliance is required.

Mr. Wai Man Chin stated it's 1,876 square feet.

Mr. John Mattis stated oh 1,876 not 856.

Seconded with all in favor saying "aye."

Mr. David Douglas stated okay, now it's granted.

Ms. Patricia Miller stated thank you.

Mr. David Douglas stated thank you.

Mr. Wai Man Chin stated you're welcome.

- C.     **CASE NO. 2017-03**                    **Viktor Solarik**, architect, on behalf of Richard Joseph for Area Variances for the total square footage of accessory structures, and an accessory structure, a chicken coop/garden enclosure, in the front yard on property located at **14 Bramble Bush Rd, Croton-on-Hudson, NY.**

Mr. John Sarcone stated good evening Mr. Chairman, I'm John Sarcone. I'm the attorney for the applicants. Members, counsel, Mr. Hoch, tonight we're here for a public hearing and I did have conversation with Mr. Klarl earlier today about what may transpire this evening and our hope for tonight is to be able to present our case. We have our architect Mr. Solarik here who'll present the project and we also have some witnesses who'd like to make some statements: Ms. Stephanie Bishoti and Ms. Leah Tahl and there's a number of other neighbors and friends who had written

in support. We'd like to enter that into the record and your comments from the board if that's okay.

Mr. David Douglas stated Mr. Chin this is your...

Mr. Wai Man Chin stated this is my case. I drove up to the property and looked around and saw this chicken coop and enclosure and so forth. You're asking a variance because it's larger than normal and it's also – it's pretty big. Let's put it that way. The only thing is right now you have about five acres of land or something like that.

Mr. Sarcone stated 6.3.

Mr. Wai Man Chin stated 6.3, okay. There's no other place to put this instead of where you want to put it for the type of variance you're looking for?

Mr. David Douglas stated I thought we were going to focus on the Homeowner's Association issue.

Mr. Wai Man Chin stated I was going to do that also.

Mr. Viktor Solarik stated if I may. Viktor Solarik the case architect. Good evening everybody. I'd like to...

Mr. David Douglas stated at the risk of stepping over Mr. Chin and I apologize about this...

Mr. Wai Man Chin stated I was going to comment next on that.

Mr. David Douglas stated yes, but I think we want to do that first so that we can avoid the details of the other. There seems to be an issue what we view might be a preliminary issue about the Homeowner's Association bylaws and whether or not there's a restriction...

Mr. John Sarcone stated yes, I read it, there is no restriction.

Mr. David Douglas stated there seems to be a dispute as to whether there's a restriction.

Mr. John Sarcone stated no, there's no dispute. No dispute between this body and this application because this body, correct me if I'm wrong, as we have an application...

Mr. David Douglas stated there's no dispute between us and the applicant. There's never a dispute between us and the applicant, us or anybody else. We don't get into disputes about that but there seems to be an issue regarding what the Homeowner's Association bylaws permit or don't permit.

Mr. John Sarcone stated there's no issue as far as we're concerned.

Mr. David Douglas stated some of the neighbors feel otherwise.

Mr. John Sarcone stated I understand that and...

Mr. David Douglas stated let me finish. At our work session we discussed whether it would make sense for that issue to be resolved before we go forward with the variance because it may be that it's either permitted under Homeowner's Association bylaws and then we go forward and then it's not and then it never reaches us. It's a similar – it's analogous to situations where there's an easement required or something along those lines where we have said to the applicant: you need to resolve this with your adjoining owner and work out the legal issues before you come to us rather than – otherwise you're getting the cart before the horse. At the work session we were talking about that as a possibility that wouldn't it make sense for that issue to be resolved before we proceed with the variance which may be mooted by the resolution of that issue.

Mr. John Sarcone stated Mr. Chairman I appreciate your concern, the board's concerns about this, however, I believe that that red herring issue is prejudicial to my client's rights, the property rights and the rights to have their hearing before this board on their variance. I understand...

Mr. David Douglas stated it's not being prejudicial to it, it's just a matter of which do we want to address first. We try to be efficient. We thought that it made sense to have that issue addressed first.

Mr. John Sarcone stated frankly, I don't understand how that has any impact on whether or not they can make their case out for a variance or not and certainly the opposing points could be raised but I don't know of any precedent for...

Mr. David Douglas stated as I said there is this precedent on this board about having the legal issues resolved before going forward with the application for a variance.

Mr. John Mattis stated we're not going to not hear your case. We're going to adjourn it until that issue is settled. We're not prejudicing, we're just adjourning. We do that many times. Until we hear something with the question is raised – we have letters that say it is not allowed in your Homeowner's Association to do this so until we get a letter from the Homeowner's Association and you may have to go to court, I don't know, but once that's settled then we can decide the issue of whether we want to do this or not. We don't want to go through the whole trouble of deciding this and then you have the court issue and we did this and we didn't have to, but we don't know if that's the case or not. We're prepared just to adjourn it until the Homeowner's Association comes back and says either we have a decision that you can't do it or you come back and say I won and we can do it then we're prepared to make the decision.

Mr. John Sarcone stated thank you Mr. Mattis. The prejudice that I'm referring to is the timeliness of their right to have this hearing and to have a decision either way from this board.

Mr. David Douglas stated but I don't think we would issue that decision until that other issue got clarified so they're not being prejudiced.

Mr. Viktor Solarik stated it could be conditionally.

Mr. Raymond Reber stated and we've dealt with associations in the past on this board. This isn't the first time and we just don't want to get caddy wacked on it. We'd like to know that it's a clean situation in terms of the association. Yes, they have some legal rights or they don't, that's all. All we're asking for is, I guess in the audience if there's anyone who wants to bring that case and say the Homeowner's Association has some jurisdiction here, fine, let us know. If they don't, then you're right, we'll just proceed as we're going but one way or another we're going to hear the case unless legally the association has the right to decide this and if they do then there's no point in us hearing it.

Mr. John Sarcone asked why does my client have that burden? Why don't they have the burden to prove to you that they have...

Mr. David Douglas stated it's not a matter of burden. We're asking them if the Homeowner's Association if anybody comes forward and says this is an issue. If it turns out that it's not and the Homeowner's Association doesn't feel it's prohibitive, we're just going to proceed but we got some submissions that indicated that it might be an issue and we want to clarify that first.

Mr. Raymond Reber asked basically, is there someone in the audience that can present that case? That's what we're asking.

Mr. John Sarcone stated I have a copy of the bylaws. There's nothing in there that restricts it.

Mr. David Douglas stated we know what your position. We understand what your position is but we were trying to find out from the Homeowner's Association. Is there somebody here on behalf of the Homeowner's Association? We would like to hear from them at this point.

Mr. Wai Man Chin asked is that okay with you Mr. Sarcone?

Mr. David Douglas stated well whether it's okay with your or not this is the way we want to proceed.

Mr. John Sarcone stated I hear you. I understand that.

Mr. David Douglas stated let's hear from the Homeowner's Association.

Mr. John Sarcone stated I'm just saying that I really feel that my client's application is...

Mr. David Douglas stated you've made your point and we respectfully think that our way is more efficient at this point. You're entitled to disagree but let's hear from the Homeowner's



Association.

Mr. John Mattis stated and as I stated in the earlier case, we're again put in a position where something was built without a permit. That drives me ballistic. I do not like that at all.

Mr. Viktor Solarik stated if I may address that issue just very briefly. The applicant has gone to the Building Department and discussed constructing the enclosure with the Building Inspector and it was indicated to them that they did not need a Building Permit for the fence. What resulted was an opinion that was rendered that this is not a fence but an accessory structure. Clearly a misunderstanding, nobody's trying to pull any fast tricks on anybody.

Mr. Raymond Reber stated like I said, I would be willing to continue the discussion tonight if there's no one here to bring up the Homeowner's Association.

Mr. David Douglas stated there is.

Ms. Adrian Hunte stated I think we should hear from the Homeowner's Association first then we can go into substance...

Mr. Raymond Reber continued then we should hear from them, let them make their case.

Mr. Steve Gaetano stated good evening to the board. My name is Steve Gaetano. This is my wife Laurie Gaetano, the [inaudible].

Mr. David Douglas asked can you say your full names and addresses just so we know who.

Mr. Steve Gaetano stated Steve Gaetano, Laurie Gaetano 18 Bramble Bush Road.

Ms. Rina Aviram 44 Bramble Bush Road.

Ms. Debbie Colby stated at 2 Bramble Bush.

Mr. [Ari] Aviram stated I am a member of – I am neighbor on Bramble Bush Road #44 on that street. Just a second I want to say something. We did not anticipate that the board will ask us to speak on behalf of the entire Association. Maybe Steve, Mr. Gaetano he knows about it but I do not represent the entire Association, maybe he does.

Mr. David Douglas asked why don't we hear from Mr. Gaetano then?

Mr. Ari Aviram stated we are neighbors so the Association probably will deal with it or maybe it has already.

Mr. David Douglas stated we understand.

Mr. Steve Gaetano stated like Ari said, we are neighbors. We don't represent the entire Association. There's 14 home owners. We called for a special meeting. It's going to be held the 28<sup>th</sup> of this month. That's the quickest we could get it because the bylaws call for a fifteen-day notice. We had met with the new property owners as adjoining neighbors. The structure is very large. We feel it's not in keeping with the area.

Mr. David Douglas stated I don't want to get into...

Mr. Raymond Reber stated may I interrupt.

Mr. David Douglas stated Mr. Reber and I, I think we're going to both be saying the same thing. We don't want to – it's not fair to them. We said we didn't want to hear about that from them. We have to be fair. Just about the bylaws.

Mr. Raymond Reber asked what's in the bylaws? It's not a matter of how you feel about things. Is there something legally in the bylaws, and I notice you didn't bring any paper. I also notice that out of all the letters and everything we've received there's nothing here in the way of an attachment that says article 7, section sub-c says no property owner can add structures to their property without approval from the Association. I haven't seen it. You're not bringing it to me tonight. So I'm questioning whether the attorney of the applicant is correct.

Mr. Steve Gaetano stated I had emailed that information to Ken. We gave him...

Mr. Ken Hoch stated he emailed me a copy of their bylaws.

Mr. Steve Gaetano stated section 7 of the declaration which are the restrictions.

Mr. Raymond Reber stated you find it Ken and read the section he's referencing.

Mr. David Douglas stated yes, it says: if I'm reading from Mr. Gaetano's email it says article 7, it's on the bottom of an email that Ken gave to the board but it's on Mr. Gaetano's email to Ken of January 12<sup>th</sup> of this year and it says "article 7 restrictions on use of lots. The lots a) the lots may be used only for residential purposes as defined in the applicable zoning Ordinance as the same may be amended from time to time and such other accessory usage as permitted by such zoning Ordinances." Is that the only language in there?

Mr. John Mattis stated we have another one. We have another one from 2 Bramble Bush Road, the Colby's, Debra and Scott Colby and this goes into more detail. It's their declaration; the covenant conditions and restrictions of the Bramble Bush's Association. They've been advised by counsel that "the structure is not permitted in the restrictions of the declaration that run with the land. Accessory uses are restricted by the declaration in that they are only permitted as the town Ordinance allow those. They are not permitted by variance of town Ordinance" and they're asking for a variance. This is their lawyer's opinion. That's what we have to straighten out.

Mr. Raymond Reber stated they can come before us but we're not allowed to give a variance is what that's indicating?

Mr. John Mattis responded that's what it sounds like, according to the Association's attorney. And then there's part II "because of use of an oversized accessory structure is not permitted in the town Ordinance it is therefore not permitted by the Bramble Bush Association. And part III: the variance requested by Mr. Joseph to the town is premature. The declaration of the Bramble Bush Association must first be amended by an 80% vote of the members and then, if approved, Mr. Joseph can request this variance."

Mr. Steve Gaetano stated that's our position.

Mr. John Mattis stated I'd like to see something from the lawyer himself. Apparently, the lawyer must have written – this is just a letter that summarizes this but the...

Ms. Adrian Hunte stated this is in addition to the bylaws. This is a Declaration of Covenant, Conditions and Restrictions of the association...

Mr. John Mattis stated the CCRs.

Ms. Adrian Hunte continued as recorded in Westchester County. We need that. We need to see that.

Inaudible

Mr. John Mattis stated and that appears very restrictive.

Mr. Steve Gaetano stated so we have a meeting scheduled on the 28<sup>th</sup> where all of the members of the Association could meet. Our attorney, we feel the same, that this is premature, that they should come to the Association first to discuss what mitigation may have to be done. If it has to be moved. They should appear before all of the home owners. This was built without any notification to anyone. It was just put up and everyone there was like "wow! Where did this come from?" It would have been nice if we could have all got together beforehand, before it was built to discuss it but it wasn't so we went ahead and we scheduled a special meeting on the 28<sup>th</sup> of this month, as quickly as we could to try to get all the home owners together with the applicants to discuss how we can resolve this.

Mr. David Douglas asked would it make sense then, since that meeting has been scheduled for just two weeks from now, to have that meeting and next month and hopefully you'll have resolved whatever those issues are? Is that okay with the applicant?

Mr. John Sarcone stated my apologies to the board. I was not – my clients were never provided these declarations that counsel in his letter opines about so if they are in existence then we will get a copy of them and we'll review them. Certainly the language there is interesting to say the

least. I agree that we need to adjourn and take a look at those and meet with the residents. My clients want to be good neighbors and Mr. Joseph is a world renowned veterinarian and he's a neighbor or soon to be neighbor. They haven't moved in yet. His wife is also an animal rescuer and they have a great love for the environment and they do want to have a peaceful co-existence.

Mr. John Mattis stated we just got this tonight. This was emailed yesterday.

Mr. James Seirmarco stated I have a curiosity.

Mr. John Mattis stated that's why none of us knew anything and I happened to be looking through here for the other email and saw this email.

Mr. John Sarcone stated now it makes sense why you had that position – I apologize.

Mr. John Mattis stated you can have the meeting on the 28<sup>th</sup> and come back with a decision on this and if it's favorable that it's allowed then we'll go through with whether or not we want to grant the variance. If the Homeowner's Association says no then that's something that you guys have to work out in court or drop the case or whatever you want to do. Giving it one month will clear all of that up.

Mr. John Klarl stated hopefully.

Mr. Wai Man Chin stated like Ms. Hunte said, this was filed in Westchester County so you know let's straightened this out.

Mr. James Seirmarco stated I have a natural curiosity. The size of that building; how many chickens would it accommodate?

Mr. John Sarcone responded by law they're allowed to have 24 birds on their property so that's the max.

Mr. Wai Man Chin stated but besides that chicken coop you can put about a thousand.

Mr. Viktor Solarik stated it's not a building, it's a fenced in enclosure for the wire hanging over the top. It doesn't have a roof. It's totally transparent. It's not a building.

Mr. David Douglas stated I'm going to stick to what I said before. We don't want to hear – I just jumped on my colleague here.

Mr. John Sarcone stated if anybody would like to look we have some colored pictures we brought just for curiosity. We'll leave them to the board.

Mr. Wai Man Chin stated you can pass them out to us if you want and then we'll discuss it at the next meeting.

Mr. John Sarcone stated thank you very much.

Mr. John Klarl stated if you'd like you can come in the Town Hall during the day to get a copy of all the correspondence.

Mr. John Sarcone stated I certainly will. I will stop by.

Mr. Wai Man Chin stated I'm going to make a motion on case 2017-03 to adjourn to the February meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's adjourned until next month. Thank you all very much.

Mr. John Sarcone stated thank you so much. Have a nice evening.

Mr. Wai Man Chin stated same to you.

Mr. John Sarcone asked sorry, what was the date?

Ms. Adrian Hunte responded February 15<sup>th</sup>.

Mr. John Mattis stated third Wednesday.

D. **CASE NO. 2017-04**                      **Nick Conte** for Area Variances for the side and rear yard setbacks for an existing above ground pool and an existing rear deck on property located at **5 Abraham Gunn Memorial Dr., Cortlandt Manor.**

Mr. Jim Flandreau stated good evening board. My name is Jim Flandreau. I'm the architect for the project for – that's in front of you tonight. Here we are legalizing the construction of the enlarging of the existing deck and the deck around the pool. The pool was installed. It didn't require – the pool is an above ground pool which didn't require a permit but was set too close to the property line when it was constructed and they went ahead and they enlarged their deck without getting a permit about 20 or so years ago and now they're going to sell their house and now we're here to legalize the construction. That needs a rear yard setback.

Mr. John Mattis stated seems like permits are a rare thing in this town.

Mr. David Douglas stated Mr. Reber, this is you.

Mr. Raymond Reber stated this is my case. I did go out to look at the property to see what the

situation was. The question I have -- this is not unlike some of the cases we've heard where things have been changed recently. It looks like that pool and the deck and the perimeter fencing and whatever has been there for a while. When was the pool set up?

Mr. Jim Flandreau responded the owner told me the pool was probably put in about 25 years ago he was saying and the deck around it was put in probably about 20 years ago and the enlargement of the upper deck was about the same time.

Mr. Raymond Reber stated we kind of guessed it at looking at the wood and the weathering that it had to be at least that age. I think that part of why I would be a little more willing to accept the situation that we have here. As it is, the variance for the side yard setback for the pool, you're asking for 2 ½ feet. It doesn't sound like a lot but it does represent almost a 40% variance because the required is 6 so you're really eating up 42% of that. Then the rear yard setback which requires 14 feet, you're asking for only 8.4 so again it works out to be a 40%. The percentage numbers normally bother us. We don't make concessions to that extent, however, in this situation if you consider two factors: one of course it's been like this for 25 years and apparently it was never an issue. Nobody was complaining. It didn't bother anybody. The second factor is the physical layout. You drive past this house. The fact that the deck goes back a little further than normal, you don't know that. The only people who would know it usually, the problem is the neighbor behind. Well, the trouble is when you go there you realize that there's a massive steep embankment behind this deck and when they put the deck in they just decided, well there's no point in leaving a three foot gap in there so they basically built the deck back to where the rise is. It doesn't disturb anybody. It doesn't affect anybody. It goes obviously 5 ½ feet further than they should but in this case it's been there for many years and it doesn't bother anybody. You really wouldn't see any impact because of that. The other side yard setback and the applicant has agreed apparently that he will cut back the deck so there's no issue there. So it's a question of this pool which is an above ground pool. Theoretically, yes, you can take a pool apart and you can move it. This pool obviously has been here for many years. To move it, they would have to again do more cutting on the deck because then they'd have to cut into the deck that's to the -- as you're looking at the house from the pool, to the right of the pool, to move it 2 ½ feet. Now you look at that side of the house, you don't know there's a pool there. You don't even know there's a deck there because they have privacy fencing to the front and on the side there is a -- it's an evergreen, I can't think of the name of the tree. It's not a pine or anything like that.

Mr. Jim Flandreau stated I think it's an arborvitae.

Mr. Raymond Reber stated they make for a very good shelter, they're very tall. They block the side out completely. So, again, not only do you not notice a pool there but from the side yard they can be in the pool, they can be doing -- you'll hear them but you won't see them. So the question is: it obviously hasn't bothered the neighbor. If we tell them to move the pool 2 ½ feet over and cause for a total disruption of what he's got there, nothing really changes. They still won't see anybody. They'll still hear them when they're in the pool. From an environmental neighborly situation, nothing changes. Again, to me, it seems that it would be inappropriate

because of the unique situation and the way it's set up to force moving the pool 2 ½ feet over so my feeling is we should grant these variances even though percentage wise they look large, impact wise, I think they're insignificant, in terms of the impact on the neighborhood and the effect it has on the neighbors, the value of the property, etc. So I would move to grant the variances.

Ms. Adrian Hunte stated I agree.

Mr. Wai Man Chin stated I agree.

Mr. James Seirmarco stated I concur.

Mr. John Mattis stated I agree but I'd like to make a comment. When he said it's there 25 years. It doesn't matter how many years. I don't want anybody that watches this on TV to think that "hey you get away with something for 'x' number of years and it's yours." There are extenuating circumstances. It's not a house. If you move the pool because of the arborvitae – I mean that is so thick you never see through it. Nobody sees the deck. It's virtually hidden from everything. All the other things that Mr. Reber said but I disagree with the statement about the number of years because sometimes people put stuff in and their neighbors don't know they need a variance and they just let it go and I don't want to give the impression that you get 'x' number of years something that's in violation and then we become a rubber stamp but other than that I think it's okay and I'm going to vote for it.

Mr. Raymond Reber stated I agree with you. My understanding was that apparently, and maybe I'm wrong, the applicant that's before us now said he put the pool and stuff where it is. He bought it that way.

Mr. Jim Flandreau stated he put the pool in.

Mr. Raymond Reber stated the current owner – oh okay, I'm corrected then. Then Mr. Mattis makes a valid argument.

Mr. John Mattis stated thank you.

Mr. Jim Flandreau stated part of the issue with the pool portion of it is Cortlandt doesn't require a permit for an above ground pool so when you put it in there's no checks and balances to make sure that it's close enough or far enough away from the property line.

Mr. Raymond Reber stated you're correct and that's another issue.

Mr. Jim Flandreau stated that's where that issue is.

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

Mr. John Mattis asked anyone in the audience?

Mr. David Douglas asked you sure? You don't want to say anything?

Mr. John Mattis asked is your father doing okay?

Mr. Raymond Reber stated in the case of 2017-04 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. Raymond Reber stated in case #2017-04 applicant Nick Conte of 5 Abraham Gunn Drive, Cortlandt Manor, N.Y. for an Area Variance for a side yard setback for an above ground pool from a required 6 feet to an existing 3 ½ feet which calls for a 2 ½ foot or a 41.7% Variance and for rear yard setback for the deck from a required 14 feet down to what will be 8.41 foot encroachment for a 5.59 foot variance, that's 39.9%. This is also a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated okay, it's granted.

Mr. Wai Man Chin stated okay Jim.

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### **ADJOURNMENT**

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned. Thank you and thank you to our new videographer.

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**NEXT MEETING DATE:  
WEDNESDAY, FEB. 15, 2017**