

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, July 21st, 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:

Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

ADOPTION OF MEETING MINUTES for June 16, 2010

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

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PUBLIC HEARINGS ADJOURNED TO JULY 2010 DUE TO THE MORATORIUM

- A. **CASE No. 51-08** **John Nolan dba Cortland 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 the first four matters have all been adjourned for a while due to the Moratorium. That's **case No. 51-08; John Nolan dba Cortlandt Organics, case No. 06-09; Department of Technical Services, case No. 18-09; Post Road Holding Corp., and case No. 08-09; Jorge B. Hernandez**. Mr. Klarl you want to explain where those stand?

Mr. John Klarl stated as you know the Moratorium has been extended by the Town Board to July 31, so these four applications come within the umbrella of the Moratorium and this Board still can't deal with them at this month's meeting and we understand that there may be legislation passed by the Town Board between Monday night and the next time we meet so we'll see how that legislation applies these four cases but right now they are subject to the Moratorium. They should be adjourned to next month which is our August meeting.

Mr. James Seimarcos stated I make a motion to adjourn to our August meeting, seconded with all in favor saying "aye."

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PUBLIC HEARINGS ADJOURNED TO JULY 2010 FOR TOWN BOARD ACTION

- A. 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 8th Street, Verplanck**.
- B. 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. David Douglas stated these next two cases: **case No. 11-09; King Marine** and **case No. 30-09; Dominick Santucci**, which have been adjourned several times for the Town Board to take action. It's my understanding that the Town Board is looking into these matters. I don't know that there have been any steps taken. Mr. Klarl are you aware of any?

Mr. John Klarl responded not on those two matters no. Mr. Hoch might have just a little more insight.

Mr. Ken Hoch stated no other than the Town Board still has them under consideration.

Mr. Raymond Reber stated I make a motion to adjourn to the August meeting for **case 11-09 and 30-09**, seconded with all in favor saying "aye."

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CLOSED AND RESERVED DECISIONS

- A. CASE No. 01-10 Zuhair Quvaides** for an Interpretation of the definition of outdoor storage and vending machines on the property located at **2072 E. Main Street, Cortlandt Manor.**

Mr. John Klarl stated if you recall on that application we looked at a Decision and Order back in April and we said that we'd only adopt that when the Planning Board adopts its Planning Board Resolution and do a coordinated review. The Planning Board still has this application on its agenda so therefore we should adjourn this to the September meeting.

Ms. Adrian Hunte stated on **case No. 01-10 Zuhair Quvaides** I make a motion that we adjourn this matter to the September 2010 meeting, seconded with all in favor saying "aye."

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ADJOURNED PUBLIC HEARINGS

- A. CASE No. 06-10 Nida Associates** for Area Variances for subdivision of four existing tax lots into four real property lots at **5 and 14 Dove Court, 2003 and 2005 Albany Post Road, Croton-On-Hudson.**

Mr. David Douglas stated I think we had requested certain information from the applicant and his representative and we have a July 16th, 2010 letter to the Board providing certain information and the last paragraph of which the applicant has requested an adjournment of today's meeting. We also have a July 20th letter addressed to Ed Vergano, Director of the Department of Technical Services which we got from the applicant providing certain information. I did this in the wrong order; we have a July 16th letter from the Department of Technical Services to the applicant's representative to which the July 20th letter is a response. In any event, the applicant has requested an adjournment and I we had talked about giving an adjournment until September.

Mr. Raymond Reber stated on **case 06-10 Nida Associates** I make a motion that we adjourn until September, seconded with all in favor saying "aye."

- B. 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. Patrick Bell stated I'm from Cronin Engineering. I'm here tonight in representation of Nick Danisher. Mr. Danisher was unable to make the meeting tonight. I was at last month's meeting

where we presented a different plan than what you're being presented with tonight. At last month's meeting the house was – the Variance for a front yard setback along Pierce Street. During discussions with members of the Board at last month's meeting it was requested to shift the house back to line the front of the house up with the front yard setback for Pierce Street which would cause the house to encroach on the front yard setback from Ladd Street which is unmaintained right-of-way. I also shifted the house closer to Ladd Street for two reasons: 1) there's an existing storm water drainage pipe that picks up the swell on the east side of Pierce Street and the pipe crosses under Pierce street and discharges onto Mr. Danisher's property and shifting the house closer to Ladd Street this would allow the opportunity to put a catch basin at the end of that pipe and pipe it directly down towards the wetland and increase mitigation possibilities that were presented in the wetlands consultant's review letters. I realize that the Variance that we are seeking for the Ladd Street front yard setback is still substantial for the property however, considering it's an unmaintained right-of-way I don't see much opportunity for improvements for properties along Ladd Street so I feel that the impact it would have to the neighborhood will be much less than what was previously presented for the Variance along Pierce Street. The second opportunity of shifting the house closer to Ladd Street would also allow us to explore the possibility of possibly accessing the property off of Ladd Street with a driveway with a garage underneath which would decrease the amount of disturbance in the extending of Pierce Street in front of the existing residence which I know the residents across the street are not in favor of the project and by presenting an opportunity where the street is not extended up in front of their house.

Ms. Adrian Hunte stated I still have questions concerning the safety issues with the property and the slope of the driveway and how you're going to minimize the impact of that, the difficulty for ingress and egress of emergency vehicles to get to the house.

Mr. Patrick Bell responded as far as accessing off of East Hill Road to the house -- we're presenting to extend to East Hill Road which then turns into Pierce Street and we'd have to build it in compliance for what the Town standards are and I believe that would be a shared common driveway, minimum width of 18 feet. We would have to receive approvals from the Department of Technical Services for sending the common driveway.

Ms. Adrian Hunte asked what are we looking at in terms of a Variance now?

Mr. Patrick Bell responded it would be for a Variance along the Ladd Street right-of-way. It's a front yard setback which is 50 feet, we'd be asking for a Variance to reduce the front yard setback from 50 feet down to 28.4 feet for the lower left-hand corner of the building.

Ms. Adrian Hunte asked what happened to the Pierce Street for the 25.8 feet and the Ladd Street 12.8 and there's 26.2?

Mr. John Mattis stated it's all changed.

Mr. Patrick Bell responded we shifted that last month's meeting I believe Mr. Reber requested the house be shifted back onto the front yard setback along Pierce Street to lessen the impact there.

Ms. Adrian Hunte stated so now it's 28 feet...

Mr. Patrick Bell stated along Ladd Street.

Mr. John Mattis asked you're creating a 43% Variance to Ladd Street. You mentioned it's only a right-of-way and then in the next sentence you said you might put the driveway there, well if it's only a right-of-way how are you going to put the driveway there?

Mr. Patrick Bell responded the property owner has access to Ladd Street right-of-way.

Mr. John Mattis continued then if they're using like a street then I don't understand how you can justify a Variance of that nature. Second question, when moving that over you've created a big Variance for part of the house now that's outside of what's allowed. What percentage of that house needs a Variance? When we told you to move it back it would have been a little corner.

Mr. Patrick Bell responded 25%.

Mr. John Mattis stated 25 % that's a lot. In square feet that would be, roughly?

Mr. Patrick Bell responded approximately 375 square feet.

Mr. John Mattis stated 375 square feet would require a Variance, okay.

Ms. Adrian Hunte asked anybody else have any questions?

Mr. Raymond Reber stated as has be stated I did request to have it moved back directly the intent being to minimize the Variance. I have a fundamental problem because I keep hearing each time we meet some issue and initially there was the issue of the wetland and every sighting pretty much that has been proposed, you're coming very close to the "wetland zone". You are certainly within the 100-foot perimeter that the Town normally tries to avoid encroaching on with any wetland but obviously to avoid that you wouldn't be able to use this property at all. We then were told at the last meeting that we shouldn't be too concerned about this wetland, this was some material that Mr. Vergano had obtained that indicated that this was a minimal type of wetland from an environmental point-of-view it really was borderline as to whether you would even call it a wetland and that it really was no problem that if the house was placed here, it shouldn't be a concern. You've raised some issues about the grade, access, driveways, how you're going to locate it because there's also a steep slope issue here. My problem is this: if there's no real issue with the wetlands then I feel the house should be put within the triangle as best as possible to minimize the Variances and if the Variances are minimal then you're not pushing this Board to throw out all the setback rules. If in fact there is a concern about the

wetlands then I'm no sure that building here in any manner is appropriate because no matter where you build it you're going to be very close to the wetlands and I saw in a recent document now that we got from "Creative Habitat Corporation". This document was signed by Sven Hoggar, President and he discusses our wetlands Ordinance and how it relates to situations like this and he talks about putting in a "buffer of vegetation, weeding certain areas, landscaping" and I'm saying to myself; wait a minute, if all these things have to be done and maintained adjacent to the house to protect this wetland there's no guarantee that any homeowner that moves in is going to do that. That's an unreasonable request when it's going to be right next to the house. More and more what I'm hearing from everybody as you keep juggling around and I get this feedback is I don't think you can build here. My feeling is I would not want to give anything other than a minimal Variance and go back and let the applicant work out the issues on wetlands and steep slopes and let it be somebody else's problem. I just don't see why we should be giving significant Variances to juggle this around when in the end there are apparently still issues with wetlands, steep slopes, drainage and all these other things and we're getting conflicting reports as to how significant and insignificant they are. I think it would behoove us to avoid giving into that by granting these Variances.

Mr. Patrick Bell stated the Sven Hoggar's letter dated January 1st spoke about what he felt was the most reasonable from a wetlands perspective was the plan that was presented at last month's meeting where the house was then...

Mr. Raymond Reber stated yes he wants it as far from the wetlands. That's what I'm saying. That's the conflicting information that we're getting. He doesn't care about our setbacks he just cares about getting it away from the wetlands which is what I would expect from him but we have other considerations which is setbacks that have been established and it behooves us to try and accomplish that. Even if you do go to that particular version, you're not moving it very far from the wetlands. It's minimizing an issue marginally, it's still an issue. You're close, you're certainly within the buffer zone that normally is reserved with wetlands and we're saying we're going to plop a house right down next to a wetland and the people who are moving in are not going to disturb it, there's not going to be any problems with it.

Mr. Patrick Bell stated to counter point to your point though the Town wetlands laws require that it be added to the deed of the property that the homeowners need to maintain the property. I read that in Mr. Hoggar's – he broke that down.

Mr. Raymond Reber stated I understand that, my argument is fine put the house with minimal zoning Variances and then Planning Board and DOTS and the rest of the organizations can work out whatever has to be done to protect the property. Then if they can work it out with the applicant...

Mr. Patrick Bell stated the plan that was previously presented that showed the house furthest away from the wetland would have provided the most opportunity to minimize the impact on the wetlands.

Mr. Raymond Reber stated it's still a significant Variance.

Mr. Patrick Bell stated I realize it's a balancing act. That's why we came to the Zoning Board originally was to try to minimize our impacts to the wetlands and then we were asked to shift the house back towards the wetlands.

Ms. Adrian Hunte stated we have a June 15th memo?

Mr. Patrick Bell stated you have a June 1st memo from Sven...

Ms. Adrian Hunte stated no we have a June 15th memo from staff stating that the wetlands impact may be minimal if the house is placed closer to the wetlands and that would minimize any Variances if any at all.

Mr. Patrick Bell stated I believe that's from Mr. Ed Vergano.

Mr. Raymond Reber stated right the June 15th communication.

Mr. Patrick Bell continued where he stated that the wetland is ecologically insignificant. I spoke with him about that and in further correspondence he said to me that he had a conversation with the wetlands consultant and said that the impacts to the wetlands could be mitigated.

Mr. Raymond Reber stated and it says here "since it is our consultant's opinion that the wetland is ecologically insignificant and could be adequately enhanced if the house did encroach into the wetland I would be inclined to approve the building application assuming that other development issues are adequately addressed." Based on that, my position last time was move the house back to the setback line for the front of the house. Keep it over toward the wetland to minimize how much of that corner of the house will encroach on the alternative front yard setback and yes you will encroach a little bit in the wetland but to me that's a compromise that apparently is okay according to this communiqué and it requires a minimum Variance and therefore we're not bending rules too extensively to permit the applicant to go forward.

Mr. James Seimmarco stated I don't think our goal was ever to try to minimize the impact on the wetlands. It was certainly our goal to be within the Zoning Board to minimize the percentage of requirements for the Variances and I look at the numbers and we typically do 10% to 15% to 20% but some of these things will be 40% and 50% and we typically don't approve those if there's some way to mitigate that.

Mr. Patrick Bell stated I understand that and we originally we came in with – the last plan showed a requirement for a 30% Variance.

Mr. John Mattis stated which is substantial, very substantial.

Mr. Patrick Bell stated and I don't disagree with that but based on the configuration of the lot that in some of the hardships of the lot with the wetlands...

Mr. John Mattis stated maybe a smaller house would make sense too.

Mr. Patrick Bell stated the property owner has a right to develop their property with an adequately sized house.

Mr. John Mattis stated within the zoning, within the wetlands and within the steep slopes. He doesn't have a right just to build a big house.

Mr. Patrick Bell stated no I'm not saying that but if he's going to go forward with building a house and that's what he feels – I feel he has the right to develop it with...

Mr. John Mattis stated he has the right to come before us and the Planning Board to do this.

Mr. David Douglas stated what he's got a right to do is to develop his property within the requirements of the Zoning Ordinance and one of the requirements has to do with setbacks and that's what we're concerned with here. There are other requirements regarding wetlands in which he'll have to convince the people at DOTS that what he's proposing is acceptable. I think I said this last time but this isn't for us to decide but I would urge DOTS to look more closely at the record. Quite honestly, it's not my decision or not for me to be making the ruling on this but I don't think Mr. Vergano's June 15th memo was supported by the record when he's says "there's minimal impacts and that he would approve it". I think that I would suggest to Mr. Vergano that maybe he wants to rethink that.

Mr. Patrick Bell stated and that's the point I spoke to him on that and he said that it was based on a conversation – it was more that it would be able to mitigate what any impacts we had on it but with the placement of the house we're also trying to minimize the impact of the wetlands. That was one of the points is shifting the house closer to Ladd Street was to what Mr. Hoggar had previously presented that something needed to be done with the existing drain pipe that is dumping water onto the property and that was one of my concerns that's why I shifted the house closer to Ladd Street so that you could put a drainage structure and you could pipe the existing flow down into the wetland and do something...

Mr. David Douglas stated I just want to make sure I understand the bottom line on the numbers what you are currently proposing is a 43% Variance for the front setback along Ladd Street which constitutes 25% of the house and 375 square feet is that correct?

Mr. Patrick Bell responded I don't know what you said 43% but...

Mr. David Douglas stated that's the number Mr. Mattis calculated from 50 feet down to 28.4.

Mr. Patrick Bell responded yes, okay.

Mr. David Douglas asked so that's what you're proposing?

Mr. Patrick Bell responded correct.

Mr. David Douglas stated that is – since I've been on the Board I don't think we've ever granted a Variance anything remotely close to 43%.

Mr. James Seimmarco stated for the record what is the square footage of the house?

Mr. Patrick Bell responded 1,500.

Mr. James Seimmarco asked two floors?

Mr. Patrick Bell responded the footprint is 15' x 30' as far as the height of the building we haven't gone that far. It would have to meet the height requirements of the Town.

Mr. Raymond Reber stated but if you go to a two-story colonial you can use a smaller footprint than 1,500. That's a pretty good size footprint if you go with a colonial style, ranch maybe not but you go colonial that's a big house.

Mr. Patrick Bell stated the size of the house isn't out of characteristics with the neighborhood. The house two lots down is more than the footprint is more than 1,500.

Mr. Raymond Reber stated it's irrelevant. It's a matter of what the lot can tolerate.

Mr. Patrick Bell stated isn't that one of the points of the Zoning Board is the characteristics of the house of the neighborhood?

Mr. Raymond Reber stated the point is the characteristics of the lot. This is a very constrained lot which means you don't have the space. By the time you take the setbacks that's your problem so how do you get around it? You use a minimal footprint house so instead of a ranch you go to a colonial or some other style to get the living space you want. That's not unreasonable request. The lot is constrained. You don't have a right to just put a big spread out house on a difficult lot just because someone down the street happens to have a nice, flat lot and plenty of room. There's no logic to that otherwise why do we have these zoning requirements and these setbacks, it's to protect parcels.

Mr. John Mattis asked Mr. Hoggar's letter; on the last page it says "Town and developer may want to consider off-site mitigation options at that time" this has to do with wetlands "since the Danisher property is clearly too small to allow for a mitigation set aside." We don't deal with that normally so can you explain that and what is off-site mitigation? To me that means not on that property so even if you put this house in you're going to have to do some kind of wetlands mitigation somewhere else?

Mr. Patrick Bell responded that would be up to the Department of Technical Services to decide if they – I believe that this wetland might, and he had talked about possibly extend further down so that means doing mitigation somewhere else within the wetlands, I’m not sure, but that would obviously be something we’d be addressed at the time of getting the wetlands permit.

Mr. John Mattis stated because you’re asking for two very substantial – it would be unprecedented to give a 375 square foot Variance, one fourth of the house and as far as wetlands go that’s a problem with Technical Services. We’re looking at Variances. Wetlands is not an excuse to grant a Variance of that nature. It basically says what Mr. Reber said “build a different type of house or something that fits there.”

Mr. Raymond Reber stated also you mentioned the concern about a drainage pipe and how you’re going to handle drainage. There are ways to rearrange drainage systems so that you can still work your way around the house if the house is moved somewhat over to here to my right.

Mr. Patrick Bell stated what’s presented here would provide the least disturbance of improving the drainage system. I agree with you, there are other – I’m not saying this is the only way to do it but what’s presented would allow the least disturbance to a lot that’s already had questions about the amount of disturbance on it.

Ms. Adrian Hunte asked is there a way for you to perhaps change the shape of the house in the back that’s closest to where we’re looking at that 375 square foot Variance so that both sides are...

Mr. Patrick Bell responded I could shift the house further back over which...

Mr. Wai Man Chin asked why are we talking about shifting? We’ve already asked at one point to either move the house or we just can’t give a Variance this large. Either you want this adjourned and you decide what you want to do and that’s it. I’m not going to approve it just the way it is.

Mr. James Seimmarco stated we should not do the design here.

Mr. Wai Man Chin stated I’m not doing the design for you. You’ve got to tell us that’s the minimum Variance that you can get. This is not a minimum.

Mr. Raymond Reber stated if you had come back with what I had asked for last month, to me that would have been a minimal amount of a Variance, just a little corner of that house might intrude instead of a quarter of the house and I would have been able to vote for that and really I don’t see the need to vote for any other option.

Mr. John Mattis stated one of the major things we’re charged with is if you grant a Variance it has to be minimized and there are clearly other options to minimize these Variances.

Mr. Patrick Bell responded also is the environmental impact. That's something that...

Mr. John Mattis stated that just says to me that maybe you don't build on that property or you build a different configuration house. Like a two-story instead of a one-story.

Mr. Patrick Bell stated I'm trying to balance environmental impact to the wetlands that need to be mitigated...

Mr. John Mattis stated I think it's clear that it's totally out of balance in terms of Variances.

Mr. Raymond Reber stated the key is we earlier recognized a fact that it's not up to us to determine wetland impacts or how to mitigate or deal with any of that so we asked some months back that we'd be told by DOTS to look at this and tell us is this something that should be considered or not? And, we got our answer; June 15th, that's the official response and that's what we're basing it on which is this is a minimal insignificant wetland issue so if it's that minimal you can make some adjustments, deal with it and put the house to a minimum Variance.

Mr. Wai Man Chin stated exactly.

Ms. Adrian Hunte stated there seems to be reasonable alternatives which do not involve the necessity of possibly no Variance at all or at best a minimal Variance and that's what we are supposed to try to achieve. Unfortunately, you've got some issues that you have to try to overcome but it's not for us to have to try to solve those for you by issuing a Variance.

Mr. Patrick Bell stated my attempt to what I've shown is to try to balance the property. I'm not here to insult the Zoning Board in any way with what I presented but if there is no wetlands there and I showed the house where I did then I understand but I'm trying to balance...

Ms. Adrian Hunte stated I understand you're trying to balance but we basically told you that the Variance is too large and your options are: either come back with something else which you were asked to do and apparently you don't have that would minimize the Variance or to not build. It's either go back and you redesign the house that's not for us as the Board has said but it seems as though you may be able to do something in terms of the design. The fact that the owner wants to put a certain type of house there he may have to rethink that.

Mr. John Mattis stated quite honestly I'm a little surprised because I thought it was quite clear last month that all you had to do was move the house back and there would be a small Variance on the corner. You may not have even had a front yard Variance with that right-of-way.

Mr. Patrick Bell responded it still would have required it.

Mr. John Mattis stated but it would have been very small.

Mr. Patrick Bell stated it would have been less than is shown here.

Mr. John Mattis stated much, much less and you would have less than 10% on the corner of the house. It would have been very small. Instead, you come back and you moved it over and you gave us Variances which I thought you understood from before were way too much than what we'd ever consider.

Mr. Patrick Bell stated my understanding from last month's meeting was that the Variance was too large along Pierce Street because of the impact of the neighbor across the street.

Mr. John Mattis stated I thought it was quite clear that you were going to move it directly back and then it got shifted over which created these large Variances.

Mr. Patrick Bell stated but I shifted it over in an attempt to, as I've clearly pointed out, is to minimize the disturbance on the property...

Mr. John Mattis stated we're looking to minimize Variances not disturbances.

Mr. Wai Man Chin stated that was last month, I wasn't here last month but the month before that we talked about it moving it over.

Mr. Patrick Bell stated we talked about moving it over to reduce the...

Mr. Wai Man Chin stated let's put it this way, right now, as far as I'm concerned, the Variance is too large. You want us to vote on it tonight you know how I feel. You want to go back and study this over again, be my guest.

Mr. James Seirmarco stated I think being parochial, I think if you were to poll the Board right now I think it would be unanimous that none of us would approve as the map shows tonight. If that's something you wanted to discuss with your client they might say "this is what I want" and they might put you in the middle. We can vote tonight and that would probably be not to your liking. I don't want to come back next month and have the size of the Variances required, they can't be this magnitude, they just can't be because we would turn it down tonight and if it was just similar situation next month we would turn it down for sure and we just can't keep going along like this. I think everybody has spoken as to the requirements. If your client says "I want this" then we can vote if that's what he wants.

Mr. Patrick Bell stated unfortunately he's not here tonight so I'd ask to have it adjourned to at least discuss with him...

Mr. Wai Man Chin stated you can have it adjourned you can say you want it adjourned to next month.

Mr. Patrick Bell stated I want to have it adjourned so I'd rather not have you vote on it unless the applicant's willing to move it.

Mr. Charles Heady asked you didn't want to bring the house forward because of the neighbors over across the street, is that why? The Variance for the front would bring the house closer the road.

Mr. Patrick Bell responded that's what I showed last month.

Mr. Charles Heady asked did your neighbor complain because it was too close to the road?

Mr. Patrick Bell responded that is what Mr. Mattis indicated at last month's meeting.

Mr. Raymond Reber stated we were complaining. We said we didn't want to give the Variance.

Mr. John Klarl stated but Mr. Bell to the extent that you might have gotten confused or got mixed signals from last month about what the Board was headed tonight and what the Board's been pretty clear about what they'd like to see here and based upon that I gather you need time to sit down with your client and discuss the Board's comments.

Mr. Patrick Bell responded yes, I'd ask to have it adjourned until next month and at that time we'll...

Mr. David Douglas stated so next month the idea will be either you'll come back with a new plan that has a minimal Variance or you'll not go forward.

Mr. Patrick Bell stated or I'll come back with this one and know what the outcome will probably be.

Mr. David Douglas stated with this one and take your chances.

Ms. Adrian Hunte stated is anyone in the audience here to speak in this matter? I make a motion that **case No. 42-09**, the applicant Nick Danisher for area Variances be adjourned to the August 2010 Zoning Board of Appeals meeting, seconded with all in favor saying "aye."

C. CASE No. 10-10 John Delaney for a Special Permit for an Accessory Apartment on property located at 41 Forest Ave. Cortlandt Manor.

Mr. John Klarl stated I don't have any direct information Mr. Chairman on the Delaney file but at our work session on Monday night Mr. Hoch had been contacted recently by the attorney in the case and I don't know if he's given any further direction.

Mr. Ken Hoch responded we have nothing in writing yet. We're still waiting.

Mr. John Klarl stated but it appears that the matter is being settled by the parties involved in this property.

Mr. Ken Hoch responded yes.

Mr. John Klarl stated so what we're going to do is now we've identified an attorney which has helped us and we're going to ask the attorney to write a brief report to the Board for the next meeting to tell us the status of the litigation involving the parties. We'll send that letter out this week.

Mr. John Mattis stated I move that we adjourn **case No. 10-10** to the August meeting, seconded with all in favor saying "aye."

D. CASE No. 11-10 **Curry Properties LLC** for Area Variances for the requirement that 25% of the site be landscaped, for the requirement that there be a 50 foot landscape buffer between an HC Zone and a Residential Zone, for the requirement that there be a landscape strip of 25 feet between the interior curb and the street curb.
Cortlandt Manor.

Mr. David Douglas asked did the applicant request an adjournment for this?

Mr. Ken Hoch responded yes he did.

Mr. John Klarl stated the professional her wanted to adjourn this until August.

Mr. Charles Heady stated I make a motion on **case 11-10** to adjourn it to August, seconded with all in favor saying "aye."

E. CASE No. 14-10 **Michael Parthemore** for an Area Variance for a 3rd freestanding sign for **CRISTINA'S** restaurant at **15 Baltic Place, Croton-on-Hudson.**

Mr. James Seimmarco stated Mr. Chairman just to bring everybody up to speed Mr. Parthemore had asked to come in because his sign for Cristina's restaurant was in fact in violation. That was just one of the number of signs that were on this site. The landlord has graciously been coming to the meetings and trying to work with this Board to rearrange all and bring into conformance all the signs that are on the site known as Amberlands. He provided us with, at Monday night's workshop, a spreadsheet of all the signs with their square feet and tried to make a proposal to rearrange a number of signs. A number of signs were down for maintenance and the building being painted and they are being reattached. We just received the spreadsheet on Monday night. We are going to schedule a site visit to look at all these signs. There's some 32 signs on the site including the one from Cristina's. There are proposals for combining some into a larger sign and

removing some and minimizing some so I'll let the applicant speak.

Mr. John Klarl stated I think we indicated on Monday night it's like 32 signs and 19 tenants were involved here.

Mr. John Mattis stated 16 of the signs need Variances.

Mr. James Seirmarco stated I was going to get to that. We do thank the owner of the property for providing us information and we are looking at this. The Town has, in the past, approved a site signage plan and we are trying to work with that and some of the additional signs will require additional Variances and some that would require now, like Cristina's may not require a Variance at all.

Mr. Wai Man Chin stated during our work session we had a site visit scheduled for Tuesday, July 27th at 7:00 p.m. for the Board members to go and look at it and check out the signs.

Mr. James Seirmarco stated yes July 27th is the site visit as planned.

Mr. Wai Man Chin continued to look at the signs that are proposed and so forth.

Mr. John Klarl stated I see we have Mr. **Barteck** the property owner. Mr. Barteck the application was made by Mr. Michael Parthemore, he's the proprietor for Cristina's restaurant and he appeared before us in May and in June, do you know if he's coming here tonight?

Mr. **Barteck** responded I don't believe he's coming here tonight.

Mr. John Klarl stated but any disposition of the application we would want to work with Mr. Parthemore because it's his application.

Mr. **Barteck** stated I understand that.

Mr. James Seirmarco stated this is a unique set of buildings their upstairs offices with breezeways and this is not a straightforward issue as far as signage goes. There are location signs, there are building signs, there's a bank, there's signs for directional so we will review all those July 27th at 7:00 and we will discuss it at the August workshop and we will be back next month for hopefully a closure.

Mr. **Barteck** stated it is a complicated building with all the different signs. It's hard to just describe it or even come up with it. I think the site visit makes the most sense.

Mr. John Klarl stated Mr. Parthemore indicated to us Mr. **Barteck** the other night that you were travelling, are you going to be around for the 27th?

Mr. **Barteck** responded I'm sorry I won't be here but I can try to have my secretary there.

Mr. John Klarl asked you have someone who will be able to accompany the Board if they want to look at where the tenants are?

Mr. **Barteck** responded I can probably send my secretary there to accompany the Board.

Mr. David Douglas asked will you be back in Town for the August 18th meeting?

Mr. **Barteck** responded yes.

Mr. James Seimmarco stated is there anyone in the audience who would like to comment on this? I will make a motion to adjourn this to the August 18th meeting and we will have a site visit on July 27th at 7:00 p.m., seconded with all in favor saying "aye."

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REMANDED CASE

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

Mr. David Douglas stated we had issued a Decision and Order in this case requesting that DOTS take certain steps. My understanding is that DOTS one of the steps that they were to have made was to make the referral to the CAC and there seems to be question as to whether or not that referral was made. Mr. Hoch, am I correct that they now have made the referral to the CAC?

Mr. Ken Hoch responded yes.

Mr. David Douglas stated that was done this week and CAC needs some time to review the matter and to get back to DOTS as to its views.

Mr. Ken Hoch responded yes. At present time I believe the CAC Chairman's away on vacation.

Mr. David Douglas stated I think that he's away so what I'd suggest is that we adjourn this until September so that the CAC has some time to review it.

Mr. John Klarl added and to make sure you have more Board members in attendance because September and August are vacation season and we want to have a fuller compliment of the Board.

Mr. David Douglas asked is that okay with the rest of the Board?

Board members responded “yes.”

Mr. John Mattis stated I make a motion the remanded **case No. 27-09** to the September meeting, seconded with all in favor saying "aye."

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NEW PUBLIC HEARINGS

B. CASE No. 15-10

Janette Aiello for an Area Variance for the side yard height for a detached garage on the property located at **7 Old-on-Hudson**.

Ms. Janette Aiello stated I live at 7 Old Albany Post Road in Croton-on-Hudson. I'm an artist and I'm a teacher at Hendrick Hudson High School. I've been at this property for 28 years. I gave out a packet of materials that sort of indicated in large format here. The photographs are numbered oddly in your packet because I printed them for conservation of paper but I posted them for logic up here so just [inaudible44:07] will indicate and talk about. I'd also like to thank Mr. Hoch for really helping me through this process which is very confusing for me. We have an old property that's non-conforming in a lot of ways. It's a quarter acre in a one acre zoning. We have a tumble down garage on that property and you can see in picture #1 that it's a modest sized garage and the objects that are under the blue tarp in front are our bicycles because they are dryer outside under a tarp than they are in the garage. The project that we're proposing is to take down this garage and build a building that has got better drainage, any drainage around it. There's no drainage at all around this building. The right-hand wall of this garage is cracked. It's not easy to see but you'll see other pictures of the wall that adjoins it that are terribly cracked. There's no drainage in that wall either which is a separate issue. The garage is very small and it's wet and rotten and cracked. I did some clever things with a hammer and some shingles five years ago and it stopped some of the water coming down through the rotten roof, however, there's so much moisture in the building itself that we can't even use it for storage. My proposal is to fix the drainage around this building to increase the left side of the garage. There's a picture of that east wall and that's picture #2, it's also up here on the boards, to move that east wall out about six feet and creating a larger footprint on the bottom floor. I'd also, being an artist, I would love to have a drawing studio above. The house is very modest. It was called a starter home and we've raised a lot of kids there, dogs, cats and exchange students but there's never been a place for me to do my artwork. I've rented studio space in Peekskill but I would really like to have a space on my property that I can get to just by stepping outside the door. Above picture 2 you see the heave and cracked wall, picture #3, this is exactly adjacent to the garage and picture #4 on the first page of pictures is a separate place on the same wall about two or three feet away from the first picture of the crack shows you the extent of the water damage. It exists like that inside the garage it's just hard to take a picture of it. I have a bulleted list here and I tried to figure out what the problems were and how I'd be trying to solve them. We want to rebuild structure that's not just esthetically pleasing but also has got proper drainage in it, that

makes it a useful building on our property. Right now it is a useless eyesore. Correcting the drainage involves digging around it which means we'd be going onto our neighbor's property. I have a letter attached to your packets. I was lucky enough to receive this letter from my neighbor last night. They are the adjacent property, they actually own the wall and they've told me that they will allow me to pursue a Permit to rebuild the wall so that I can proceed with the project of the garage. They also talked about the setback which it's built practically on the property line. It's a difficult building. From their point-of-view, from their property, they only see the roof of the garage right now. Part of the drainage problem is the east wall and the back wall of the garage are built into a hillside. There's no drainage holes in the wall, there's no proper drainage around the garage. If we add a story to that, which is why I'm here, if we add a second story to that it will provide me with a small drawing studio and they will see a one-story building and in the letter they state that that's fine with them. The impact on my other neighbors; the neighbors to the left side of the property that's #3 and 5 Old Albany Post Road, they don't have visual – they can't see this building, there's too many trees in the way. The people across the street are the Tores family, they see a strip of the front of the garage as it stands now because it's sort of partially behind my house and they have a high fence in their property so they don't have a large view of the building. We're trying to not just correct the drainage but also to create something that's beautiful on the property as well as useful. It would be a small increase in size plus adding the second floor I think for the small amount of increase that we would get an awful lot of usefulness out of that building. Down at the bottom of the bulleted page there's a different color red title, the reason why I put that on is because I wanted the Board to know that I do seek permission and have gotten permission to file a Building Permit to have the wall rebuilt, not the whole wall, just the section that's about 10 feet at the top of the driveway that's adjacent to this garage. Whoever built that wall put no drainage up at the top but near the bottom of the driveway there's three drainage holes, go figure and so the bottom of the wall is fine, the top of the wall is the part that's all cracked and pushed out and that damage is also inside the garage too. I would love a useful space as well as an attractive space. It's an old property and we're just trying to keep it prim and proper and it's a modest building in keeping with the whole neighborhood. We would like the garage to still be an attractive part on that property. If we were allowed to build the second story on it the roofline would still be much lower than the roofline of our house. Does the Board have any questions for me?

Ms. Adrian Hunte stated thank you for your presentation Ms. Aiello, it's nicely done. A couple of questions and issues: 1) you mentioned that the roof of the garage or the second story is going to encroach on the neighbor's property. Is that correct? Is there an overhang?

Ms. Janette Aiello responded no the overhang is the same an overhang of about six inches is the same now. It doesn't cross the property line. When we dig for drainage around the garage, though, we're going to be up on their property with machinery.

Mr. James Seimmarco asked but the improvements will be on your property?

Ms. Janette Aiello responded yes. The wall that I'll be improving, but that's another Permit that's not about tonight particularly but I'll be improving their wall for them.

Mr. James Seirmarco asked I'm asking you the improvements to your planning around the base of the garage for drainage is entirely – those improvements will be on your property?

Ms. Janette Aiello responded on my property yes.

Ms. Adrian Hunte asked but the retaining wall is their property?

Ms. Janette Aiello responded is theirs, the Floyd property. I spoke to them about it last year when we were thinking we were going to try this and it wasn't clear to us – we had a little Xerox of the map and we couldn't get a clear determination of who owned the wall. They don't see the wall but I see the wall and there are trees on their property that are pushing the wall, there's one particular tree but it's also no drainage at the top edge of my driveway. They've stated that they don't have money right now to do the repair on the wall and my architect, Karl Grimm, said that I can't proceed with the garage plan unless we can at the same time do the wall because we're going to be correcting the drainage, we want to correct it as it goes down the part of the wall that's broken to. I think also to dig around the garage they're going to be on the wall and it's not a stable structure right now. I don't exactly know how they get the machinery up there.

Mr. Raymond Reber asked Ms. Aiello, the neighbor that we're referring to that's the commercial parcel where the beer and soda?

Ms. Janette Aiello responded yes, that's Opal Moon.

Mr. Raymond Reber stated and it's not unusual in a situation like that. I even had worked an arrangement out with a neighbor of mine that they had something on our property that impacted on me so I paid them to have it fixed because they didn't have the money. I'm not concerned about how you work out the wall. I agree that it would be foolish to do something with the garage and not fix the retaining wall. I was curious though, in the pictures that you provided, picture #4 where you're showing us one position of the wall being split, apparently there's a tree right there against the wall that you've got that wire around? Is that one tree squeezed between the wall and the garage?

Ms. Janette Aiello responded no. The garage is on the top left side that the wall makes a tiny angle and so the right side of that tree is just lawn. It goes all the way up to the Opal Moon building.

Mr. Raymond Reber stated to me I don't see how you would fix that wall as long as that tree's there.

Ms. Janette Aiello responded I think that Christine McEwing and Frederic Floyd, we've talked about this over tea and said that if there's a tree that needs to come down, that's the tree.

Mr. Raymond Reber asked but that doesn't impact on the garage part?

Ms. Janette Aiello responded no.

Ms. Adrian Hunte stated the proposed height that exceeds our limits on...

Ms. Janette Aiello responded right now the building is 15 feet high and with the second story it would be 21 feet high. Right now the footprint of the garage, the concrete pad that is presently is 162 square feet and with making it a little bit wider on one side that goes into my garden and with the second story, if I were allowed that would be 576 square feet. Picture 2 shows the side of the garage that's in my backyard and where all these bushes are that's where we would like to extend it out a little bit.

Ms. Adrian Hunte asked where's the door to the garage actually, the front?

Ms. Janette Aiello responded if you're looking at this picture #2, the door to the garage is on the right side.

Mr. Wai Man Chin stated where the top is.

Ms. Janette Aiello stated that blue tarp. On this picture here this is the front of the garage, this is the backyard, this is my garden back here. All these trees are on Floyd's property.

Mr. John Mattis asked your architect Mr. Grimm in a July 7th letter said "the roof shall overhang the adjacent neighbor's property a few inches."

Ms. Janette Aiello responded I've spoken to him about that and we went to the property lines and we sighted down from the center of the front edge of the wall to the orange tape at the post on the back corner and it's a straight line. The closest the corner of the garage gets to is about 14 inches.

Mr. John Mattis asked so it doesn't go over?

Ms. Janette Aiello responded no it doesn't and I asked him why did he come to that conclusion and he said "well I drew it on my paper but the line is bent."

Mr. David Douglas stated I've got a question following up Mr. Mattis' we've got a July 14th letter from Mr. Grimm saying "the eave overhang cannot be precisely determined from the survey" is that...

Ms. Janette Aiello responded the eave overhang?

Mr. David Douglas asked are we talking about the same thing? Are we talking about the roof overhang? Originally it said it would overhang the neighbor's property a few inches and now

you've said it's not but when he says in his letter "it cannot be precisely determined from the survey" are we talking about the same overhang?

Ms. Janette Aiello responded I think he said on the survey there's a lot of lines drawn there then he said "where's the property line" and I said it's from this post where there's an orange tape hammered down to the center of the wall so he told me "go sight it" and we did and I had my son with the ruler at the front center of the wall, it's a line of sight to the back of the post.

Mr. Wai Man Chin stated look at the survey itself you have the mean center line wall and also center line showing that it's 1.45 feet at the back of the garage to the property line, according to this, from **Burrano's** survey and in the front it's hard to say what it is, it looks like it's 2.63 feet east over that way, going that way.

Ms. Janette Aiello responded visually that's about the amount it is.

Mr. Wai Man Chin stated that's what I see on here when I'm looking at the survey. They're showing two points: 1.45 east over there and then 2.63 east on the front of the house to the property line.

Mr. John Klarl stated this was October '79 it looks like.

Mr. Raymond Reber stated I think with those dimensions and up to a 12 inch overhang I think there's enough leeway. Particularly considering that you've got a wall and then you've got commercial property and there's a lot of distance, you're not going to encroach.

Mr. Wai Man Chin stated you've got about almost 18 inches at the back of the garage right now from what I see on the survey.

Ms. Janette Aiello responded the new roof does not have a larger overhang, it has the same overhang.

Mr. Raymond Reber stated from what I see in terms of everything that's being requested I personally don't have a problem with the garage itself, it's there, they want to rebuild it, that makes sense. We have to give a side yard a Variance which I would consider again because of the neighbor and the way it's situated and the impact it would have on the neighborhood. The fact that the applicant wants to increase the garage to the interior side of the property, again that doesn't bother us, I think the only fundamental issue is and we have clear directives with the Code that do not allow second stories on accessory buildings. They very specifically don't want them and that's why we have this 14 foot height limit. We have no leeway to give in on that. They've been very specific. That's the Town Code.

Mr. Wai Man Chin stated when this was built, this was probably built prior to zoning because...

Ms. Janette Aiello responded 1929.

Mr. Wai Man Chin continued and back then even after zoning came about there was a certain height limitation but it was based on the average height around the building of the accessory building around the building but that was changed years ago to 14 feet maximum from the lowest point, from the garage floor so even I would have no problem with anything else but to add the second story we have never ever given a Variance for that. That is something I don't think I could do right now because...

Mr. Raymond Reber stated about the only thing that we've granted is a foot or two Variance so that they can get a proper pitch to at least get some drainage off the roof that's about all.

Mr. Wai Man Chin stated for a second story on that. I've done this for 20 years and we've never ever had a second story.

Mr. John Mattis stated the purpose of the Code is to restrict an accessory structure to have maybe a crawl space or something for storage but not to have any room or anything that can be used. I have a question; the doors that are shown on this, they're not really garage doors are they?

Ms. Janette Aiello responded on my original garage?

Mr. John Mattis asked no, what you're proposing?

Ms. Janette Aiello responded I don't like those doors. I don't want sliding doors. I don't want anything like that.

Mr. John Mattis asked but you're not going to put a car in there it looks like?

Ms. Janette Aiello responded I probably wouldn't put a car in it. We're on a dead end street and we just park in our driveway which is long enough to park two or three cars.

Mr. Wai Man Chin stated more for storage than anything else.

Ms. Janette Aiello responded I've talked to Karl about this. I don't want sliding doors because it's not a patio room.

Mr. John Mattis stated it looks nice but technically it's more of an accessory structure than a garage.

Mr. John Klarl stated apparently you don't want garage doors either.

Ms. Janette Aiello responded I'm fine with garage doors, fine with garage doors, spoke to him about it. I'm fine with the garage doors and how I had wanted to get into the studio on the second floor since the property stepped up was to put four little wooden steps up to a door in the back so I wouldn't lose any floor space inside.

Mr. Raymond Reber stated the issue, one of the other issues we have in terms of accessory buildings is that if it's not a garage obviously people are entitled to have storage buildings and other structures, one of the things that you would be prevented from doing is that these accessory structures cannot have any plumbing or heating.

Ms. Janette Aiello responded and it doesn't.

Mr. John Mattis stated well you were proposing a propane heater.

Ms. Janette Aiello responded oh, did you say heat also?

Mr. John Mattis responded yes.

Ms. Janette Aiello responded I didn't know that it couldn't be heated but that's fine with me. I mean, it can be insulated.

Mr. Raymond Reber stated the argument is that they don't want people residing in there, sleeping in there over night or what have you.

Ms. Janette Aiello responded there's specifically is no water service to that building, I didn't understand about the heating.

Mr. Raymond Reber stated the argument is if cars and lawn mowers and those things, they don't need heat.

Ms. Janette Aiello stated painters do but I understand what the issue is. To seek a Variance for a second story is impossible for an accessory structure in the Town of Cortlandt?

Mr. Raymond Reber responded we have no way of granting it.

Mr. Wai Man Chin stated for 20 years I have been on the Board I have never given one.

Ms. Janette Aiello asked so the people that live on Albany Post Road towards where the new garden center is passed Lupocello's the old garden center that have a studio accessory building on their property that's not a two-story or it's not within your...

Mr. Wai Man Chin stated it might have been built prior to zoning. It might have been built prior to 1951. We don't know that.

Ms. Janette Aiello asked if making a one-story structure that's a little bit bigger on the side that Mr. Reber said that he doesn't have a problem with that would it be a problem to add another two feet on the back of the building to excavate a little further into the hill in the backyard? Right now that's quite a bit a ways from the back fence property line, maybe it's 25 feet.

Mr. John Mattis stated it's really not visible by anybody. I drove by the property and it's pretty isolated back there.

Ms. Janette Aiello responded yes it's pretty isolated.

Mr. James Seimmarco stated the question is can you make the equipment ...

Mr. Wai Man Chin stated the further back you go the closer to the property line you get so you either got to put a [jog] in or something like that.

Ms. Janette Aiello stated I understand that back corner is close.

Mr. Wai Man Chin stated the property line is on an angle so if you can cut back straight from the side of the garage, you're going to be eventually hitting that property line. You don't want to do that. You might want to offset or do something. I don't know or angle the wall. I wouldn't have a problem with you adding something back that way at all.

Ms. Janette Aiello asked what does the Board recommend that I ask Karl to figure out something else for me and I come back again? Is that how it's done?

Mr. Wai Man Chin responded I would rather see a new drawing or new sketch or whatever it is, just take off the second story or he can make the pitch a little bit bigger just to get the snow off.

Mr. Raymond Reber stated there's just two things that he has to show us: the height, if anything he's going to do is more than 14 than he's got to explain whether it's 15 or 15 ½ and why and any encroachment on that side line because in fact it's mostly 16 off the line and you're not, anything that you do beyond the 16 won't affect us or anything you do on the other side if you want to expand it to the side or the back or whatever as long as it's six feet off the property line it doesn't affect us.

Mr. John Mattis stated I think what you're saying is if you build to the back to build yourself a little studio on the left side, which would be the new addition because the only Variance we'd have to grant, unless it's a little bit on the roof a little bit above 14 feet, would be the existing side yard Variance and we don't really want to build the property back further and that Variance back so if you can move it over just a little bit but you build on there and it's six feet away, then the Variance we're granting is only for what's existing and we don't have a real concern with that because it's already existing.

Ms. Janette Aiello responded I think I understand what I need to do next and then I'll see Mr. Hoch.

Mr. Wai Man Chin stated yes, have the architect revise the plan based on what we're talking about and see Mr. Hoch or if you have any questions I'm sure Mr. Hoch can talk to you about prior and then ask for a new date for next month.

Mr. David Douglas asked do you think Mr. Grimm will be able to do this in time to be able to be on the August agenda or should we give him more time?

Ms. Janette Aiello responded he calls me every day. Yes, I think it could be done. I think it's an eraser job.

Mr. David Douglas stated then we can adjourn it until August but if he needs more time we can adjourn until September.

Ms. Janette Aiello responded I don't think he needs more time on it and I appreciate your input is very valuable to me knowing that I want to improve the property and keep it within the size constraints and still make it a useful building for me. I could use a ground floor. If it was dry, I could use a ground floor.

Mr. Wai Man Chin stated if you have any questions come in and see Mr. Hoch and I'm sure he'll go over that with you too.

Ms. Adrian Hunte asked is there anyone in the audience who would care to speak? On Zoning Board of Appeals **case No. 15-10** applicant Janette Aiello for area Variances for the side yard setback and height of detached garage I make a motion to adjourn the matter to the August 2010 meeting to allow the applicant to consult with her architect concerning designing issues, seconded with all in favor saying "aye."

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ADJOURNMENT

Mr. John Mattis stated I move that we adjourn the meeting, seconded with all in favor saying "aye."

NEXT MEETING DATE:
August 18th, 2010