

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 20th, 2011*. 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. (absent)
James Seirmarco (absent)
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman
Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

ADOPTION OF MEETING MINUTES for June 15, 2011

Mr. David Douglas stated may I have a motion in respect to that?

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

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

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PUBLIC HEARINGS ADJOURNED TO SEPT. 2011 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.**

Mr. David Douglas stated this has been adjourned until September.

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CLOSED AND RESERVED DECISION ADJOURNED TO SEPT. 2011 FOR TOWN BOARD ACTION

- 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. David Douglas stated this case has also been adjourned until September.

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CLOSED AND RESERVED DECISION

- A. CASE NO. 11-11** **William Caltagirone** of 230 Watch Hill Rd. for an interpretation that Building Permit #20110152 granted to **Padraig & Deidre Carroll** for a new single family residence on property located at **10 Rocky Ridge, Cortlandt Manor** was not properly issued.

Mr. David Douglas stated I think the game plan is to vote on a Decision and Order next month. That will be on for next month.

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ADJOURNED PUBLIC HEARINGS

- A. 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.**

Mr. David Douglas stated I believe we got a letter from the applicant wishing for that to be adjourned to September. Is that correct?

Mr. Ken Hoch responded yes, September.

Mr. David Douglas asked do we have a motion to adjourn **case #18-09?**

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

Mr. David Douglas stated **case #18-09** is adjourned to September.

- B. CASE No. 01-11** **Bojan Petek** for an Area Variance to construct a new garage on property located at **28 Hollis Lane, Croton-on-Hudson.**

Mr. David Douglas stated we got some e-mails and letters from him and it's my understanding that he has withdrawn his application. That withdrawal is a full withdrawal. It's not conditional on anything. It's not temporary. It's not for the time being. It's not being put on hold.

Mr. John Klarl stated we receive something confirming, Mr. Chairman, as you say, I think we received an e-mail from him today that was a little – he wanted to make it conditional but I think we received...

Mr. David Douglas stated Mr. Hoch received a second e-mail from Mr. Petek. He explained to him that he can't put applications on hold and he understands that he is free to make a new application if he wishes. That's my understanding and I'm not – he wrote what he wrote and if he files a new application than we can deal with...

Mr. John Klarl stated I think I referred to an earlier in the day an e-mail has been trumped by subsequent e-mails from Mr. Petek.

Mr. David Douglas stated **case #01-11** is withdrawn.

C. CASE No. 14-11B Capurro Contracting, Inc. on behalf of Patricia Doherty for an Area Variance for a front yard setback to rebuild a deck and for the existing front steps; and the side yard setback for the existing house on property located at **122 Westchester Ave., Verplanck.**

Mr. David Douglas stated we got a letter from Mr. Capurro requesting an adjournment to – is that to September as well?

Mr. Ken Hoch responded no until August he said.

Mr. David Douglas stated until August. Do we have a motion to adjourn?

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

Mr. David Douglas stated **case #14-11B** is adjourned to August.

D. CASE No. 15-11 James Meaney for an interpretation – does Local Law 12 of 2010 prevent the Green Materials application to the Planning Board, PB No. 28-08 filed 8/22/08, from proceeding; and does Local Law 12 negate the ZBA Decision and Order in case No. 33-08.

Mr. David Douglas stated we got a letter from the applicant asking that this be adjourned as well. Did he request a date to adjourn it?

Mr. Ken Hoch responded September.

Mr. John Klarl stated he said he wanted to adjourn it tonight and he's on vacation in August.

Mr. David Douglas asked do we have a motion to adjourn **case #15-11**?

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

Mr. David Douglas stated **case #15-11** is adjourned.

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NEW PUBLIC HEARINGS

- A. CASE No. 17-11** **Barry Ferguson Contracting** on behalf of Steven Kline
for an Area Variance to allow an accessory structure (garage) to be rebuilt in the front
yard on the existing footprint on property located at **14 Briar Lane, Cortlandt Manor.**

Mr. Barry Ferguson stated I'm here for Mr. Steven Kline. We have an existing one-car garage. A tree fell on it and damaged the roof and both the walls. We've taken the garage down for the hazard and then we realized the footings aren't acceptable to Code today. They were built **50** years ago. We would like to just take up the existing slab and the rest of the block and put in a new garage with the correct footings in the same exact position as it is.

Mr. Raymond Reber stated I was out to visit the site. The problem that we have here and we've faced this in other cases in the past, once a structure is totally demolished, which obviously this is, it's inappropriate for us, unless there's further extenuating circumstances such as there's no alternative and it's a must and whatever to grant variances to replace something that was not in compliance. In this case, this is grossly not in compliance because the garage was right on the front edge of the property right next to the road. There's really no way that we would be in a position to grant replacing the garage at that location. As far as the garage goes I also realize looking at the plans and visiting the site, that's a very deep yard. There is plenty of space so even though there is a second building to the back and I noticed there's a driveway that runs all the way back to it, the applicant does have alternatives to build garages. He doesn't have to build it where the other one was. I see no justification for allowing something that's that against the Zoning; being in the front yard and being right on a road to me is totally unacceptable and there's no way I would grant the variance to replace that garage.

Mr. Barry Ferguson stated the existing basically to ground – the blocks to ground level is there. The garage itself is gone but the foundation to the ground level is still there.

Mr. Raymond Reber stated it doesn't matter. It still counts. There's no walls. There has to be more than **50%** of the total structure, has to still be there.

Mr. Barry Ferguson stated but when I applied for a Building Permit, on the plans here it says to check to make sure that the footings and stuff are adequate and I have Building Permit to build it and we got there and we took down the danger and then we checked for footings and found there were no footings so we were just letting the Town know that we now have to put the footings in.

Mr. Raymond Reber stated well all I know I don't know what the state of the garage was. Obviously an existing structure can be repaired and if that was the understanding when that Permit was issued that may be. I don't know, all I know is once it's down, and we've had this before where people have taken a building down to its foundation and then wanted to replace that building and we can't do it. The Zoning Code does not permit that. Since the garage is gone and all that's left is some footings, that's not a repair, that's a replacement and replacements are not allowed.

Mr. Barry Ferguson stated this was done by the architect what he wanted.

Mr. Raymond Reber stated you can still use those plans just put it in the back.

Mr. Barry Ferguson responded stated I don't know if he has the room according to the plan. Does he have enough according...

Mr. Raymond Reber responded there's plenty of property in the back someplace he can work it out. But, it doesn't matter whether he can or he can't we can't grant replacing that garage.

Mr. John Mattis asked I have a couple of questions. When was the garage taken down?

Mr. Barry Ferguson responded just that time after we got the Building Permit and stuff and we started.

Mr. John Mattis asked and was it used for just storage or were there cars in there?

Mr. Barry Ferguson responded I guess it was just basically storage. I never saw a car in it.

Mr. John Mattis stated right, because there was grass in front of it.

Mr. Raymond Reber stated there's no driveway into it.

Mr. Barry Ferguson stated he never used that.

Mr. Raymond Reber stated which is another reason why it's easy to put a building in the back if that's what it's used for.

Mr. Barry Ferguson stated I guess that's it if there's nothing I can do about it. I just thought we did the right thing the way we did to abide by the laws – put on top of the block that's there.

Mr. John Mattis stated and we have a Code that guides us and the Code says any structure that's more than **50%** rebuilt is considered a new structure and that would be, except for the footings, it's basically – and you were going to replace the footings which would make it **100%** a new structure.

Mr. David Douglas stated you did do the right thing. We commend you for doing the right thing.

Mr. Barry Ferguson stated I know what I'm going to get when I go back to the owner though.

Mr. David Douglas stated but it's the right way to do it and if you hadn't done it you would have been in violation and then he would have gotten a violation for that and there would have been issues...

Mr. Barry Ferguson stated basically he has to find a spot on the property and then apply again. Now, do I have to go for another variance?

Mr. David Douglas responded it depends where it is.

Mr. Raymond Reber responded that's a question for Code Enforcement but if there's no...

Mr. Wai Man Chin stated it depends where it is. If it's beyond the front of the house, no but it depends how close to the side yard it is, yes.

Mr. Barry Ferguson stated that's what I mean. I don't know what he has there.

Mr. John Mattis stated if it's anywhere in the front yard it requires a variance.

Mr. Barry Ferguson asked so it has to be, from the front of the house to the back, no more than even with that?

Mr. John Mattis responded and they have to have the offset for the side then you would not need a variance.

Mr. Barry Ferguson stated then I could just apply for a Building Permit.

Mr. John Mattis stated then it's got to fit with the Code of **14** feet high and some various other things.

Mr. Barry Ferguson stated we had the letter that said that anyway.

Mr. Raymond Reber stated everything that you've done and the architect's done should be applicable anywhere else in the yard as long as it's within the confinements that are allowed.

Mr. Barry Ferguson stated I appreciate it.

Mr. David Douglas stated there's two procedural ways we can do it. Either we can take a vote on this which I think you know which way it's going to come out or you can withdraw it. It's really up to you.

Mr. Barry Ferguson stated we'll withdraw it then. Thank you.

Mr. David Douglas stated **case 17-11** is withdrawn by the applicant.

B. CASE No. 18-11 **Craig Gustavson** for an Area Variance for the front yard setback for a pool deck; and an Area Variance for the total square footage of accessory structures on property located at **8 Woodland Blvd., Cortlandt Manor.**

Mr. Craig Gustavson stated 8 Woodland Boulevard. I'm here for a front yard setback and a total square footage for an accessory structure area variance.

Mr. John Mattis stated you're looking for about **425** square foot decking around your pool.

Mr. Craig Gustavson responded correct.

Mr. John Mattis stated most of us are familiar with this because you've been in front of us before.

Mr. Craig Gustavson responded yes.

Mr. John Mattis stated and you did a really good job with your – it used to be an old barn I guess it's now a garage. It looks real nice. We were out there the other day and you've cleared the property. You've done some really nice things there.

Mr. Raymond Reber stated and the rearrangement of the driveway that worked out nice too.

Mr. John Mattis stated the requirement that brings you here is that the accessory structures cannot be more than **50%** of the size of the square footage of the main building. Your principle dwelling is **2,152** square foot which is rather small for a property that size.

Mr. Craig Gustavson responded correct.

Mr. John Mattis stated it's an older. In fact, it's quite old.

Mr. Craig Gustavson responded it's on assessment in **1967** it was **150** years with a question mark and when I bought the house he said it was **1805**.

Mr. John Mattis stated and most of the accessory structure is the one-story barn. All of it actually except for this proposed deck?

Mr. Craig Gustavson responded correct.

Mr. John Mattis stated that's right. And, the property is quite large. The pool sits way down below. As it stands now, without a deck, your children could only climb in and climb out.

Mr. Craig Gustavson responded correct.

Mr. John Mattis stated and if you would sit there, I was looking at the height, you'd probably hardly could see in there so you've got to sit up above, way up on your deck to even see them.

Mr. Craig Gustavson stated or I can sit on the ladder.

Mr. John Mattis stated it makes all the sense in the world. For safety reasons, you and your wife and whoever could sit there, the kids would have something to go out where they would not have to climb out onto the grass. They could lounge around then go back in the water. It's totally, totally isolated from any other neighbor. Nobody can see and I'm not even sure in the winter, with all the leaves off the trees if they could see back there the way it's tucked in. You've got a very large property and the total coverage – you're allowed **60%** coverage and this goes to the small size of the house and the large size of the property even with this proposed deck, your total coverage of that property is only **5%**. The extenuating circumstances, and we've done this in some other places where you have an older structure that's small which penalizes you in what you can put as an accessory. You had a pre-existing barn which would not have been allowed that size but it is there but you have a very large property, none of this is really visible and your total coverage is, as I said, **5%** which is minimal. So, I look at this very favorably.

Mr. Raymond Reber stated I was also at the property and I concur the key points. You had the accessory structure was there. It's a single-story, low profile, it doesn't create a problem but it does create the square footage. The pool is set down in an area where it can't be seen from the road or from the neighbors. There is a safety issue. When you look at the size of the property, as Mr. Mattis indicates, you're still only going to be **5%** lot coverage. So, to me, I agree. I would not have any problem with this because of the unique situation here and the unique factors that have just been presented.

Mr. David Douglas asked anybody else?

Mr. Wai Man Chin responded yes, I agree. I believe that the safety issue was a key point for me and I have no problem with this.

Ms. Adrian Hunte stated safety and no visibility.

Mr. David Douglas stated I agree. The other thing I'd point out is that I believe, though you'd be

putting the deck into the front yard, it's still back **84** feet from the line which is a substantial distance.

Mr. Craig Gustavson responded I have two front yards.

Mr. David Douglas stated right, you've got two front yards and this would be **84** feet back from one of those front yards.

Mr. John Mattis stated in fact, you changed your primary front yard. You used to – the entrance when you bought it was on the Red Mill wasn't it?

Mr. Craig Gustavson responded right, until the front axle's been ripped off the front of the car.

Mr. David Douglas stated this seems a lot safer.

Mr. John Mattis stated and your mother-in-law is very happy about the thing. She was showing us all the things that you've done there. You've done an awful lot to do some nice things with that property. She took us for a whole tour.

Mr. David Douglas asked have we talked about closing and reserving?

Mr. John Klarl responded yes we did.

Mr. David Douglas stated we talked about closing and reserving so that we could have a Decision and Order that spelled out the reasons why we would be granting this where ordinarily we'd be quite hesitant to grant...

Mr. John Klarl stated I think Mr. Chairman we talked at the work session that we want to really express how this is unique from other properties so that other people can't just latch onto this Decision but that it has a number of unique features that lead to a unique result.

Mr. Wai Man Chin stated basically what we're going to do is close and reserve. That means our D&O won't be ready until either next month or something like that.

Mr. Raymond Reber stated it'll be ready next month.

Mr. David Douglas stated it'll be ready next month.

Mr. Wai Man Chin stated it'll be ready next month, it's just that you hear what the Board's basically granting.

Mr. John Klarl stated we must go over the language of the Decision and Order so our next meeting is August 17th so they should be voting on the D&O that night.

Mr. David Douglas stated as you heard from the five of us that are here we're all in favor, so quite honestly even if the other aren't in favor, you're going to get what you want.

Mr. John Mattis stated you need four favorable votes so even if one of us backs out you're still okay. Is there anyone else in the audience who would like to speak? Since nobody's here I guess not. I move that we close **case #18-11** and reserve our Decision to the August meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #18-11** is closed and reserved.

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ADJOURNMENT

Mr. Raymond Reber stated I make a motion that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is closed.

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**NEXT MEETING DATE:
WEDNESDAY AUG. 17, 2011**