

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 17<sup>th</sup>, 2013*. 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 (absent)

Also Present

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

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**ADOPTION OF MEETING MINUTES FOR MAY, 2013**

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

Mr. David Douglas stated the minutes are adopted.

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**ADJOURNED PUBLIC HEARING TO AUGUST:**

- 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. John Klarl stated as you know there's an application before our Board requesting a Variance for the dwelling count the a proposed mixed-use of the building. There is also an application before the Planning Board concerning Site Plan Approval and as I reported to the Board on Monday night at our work session, the last time this was on the Planning Board agenda was July 2<sup>nd</sup> and at that time the Planning Board was discussing certain landscape and other Site Plan issues with the applicant about a retaining wall, about trees. Based upon that the Planning Board

public hearing was adjourned to the August meeting of the Planning Board. We have ours on for August and maybe the Planning Board will have closed by that point but I'll report to the Board.

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**ADJOURNED PUBLIC HEARING TO AUGUST:**

- A. CASE No. 2013-14 Carmine and Carol Centouri** for an Area Variance for the front yard setback for an existing wood deck on property at **5 Whittier Ave., Cortlandt Manor.**

**Inaudible.**

Ms. Caroline Centouri stated 5 Whittier Avenue and my husband Carmine. I just want to say first of all it's very strange to stand here because the last time I was here was **25** years ago as a teacher and it was a cafeteria and I was saying "boys and girls, keep it down please. Eat your lunch so we can get outside." We're here tonight to ask for an easement for our deck. Thirty years ago, **1983**, we wanted to put a porch on our house but we knew it would make it too dark in our living room so we decided to make like a platform type deck in the front just so we can sit out there and see our neighbors. We did call the Town and we asked what we had to do, and the person I spoke with said "you have to keep it within the confines of your house, the lines of your house. You can't go past the steps. You have to put the supports in concrete so many feet." I believe he said something about "and the materials shouldn't cost more than **\$50**." It was a long time ago. It was **30** years ago. That was it so we had a couple of neighbors help us. One person had built his own house so he said he would help us and we put the deck on. Now we find out while we're trying to sell our house that I think it's **4 ½** feet too close to the road, not so much close to the road but to the property that's actually ours. So, we're here to ask for an easement on that.

Mr. James Seirmarco stated I did visit it. I think you were there when we came. We have some nice pictures of the porch and the – the problem is the structure's in the front is the issue. Personally, I think that looking at the rest of the street I don't think there's any more development going on in the street. I think the porch fits in quite nicely. It's not covered. I know other people don't agree with me but in my estimation I don't have a problem with this. It's been there a long time. It doesn't surprise me that the Town, **25** or **30** years ago someone in the Town told you some issues about how to construct it. At the time they should have told you – they should have probably told you not to construct it in the front yard but they did not. We'll have to go by what you say but still, I think in this particular case I don't have a problem with it.

Ms. Adrian Hunte stated I concur with Mr. Seirmarco. I don't believe that, although it should not have been done, it is there. Yes, it may have been self-created, however I do not see that there would be an undesirable change in the character of the neighborhood, no detriment to the nearby properties would be created by giving you the Variance. Can there be another way for you to achieve this; short of taking it down and moving it back, no. And, I don't believe it'll

have an adverse affect or impact on the physical or environmental conditions in the neighborhood in the district.

Mr. James Seirmarco stated I just want to add one thing to that. If we were to make you remove two feet of it to be in conformance I don't see the spirit of the thing changing or the – it doesn't affect that extra two feet doesn't affect anybody else, on the neighborhood it's not sticking out any further than any of the other houses. Again, if I thought that removing two feet would help, I would vote to remove those two feet but I don't see any reason for it.

Mr. David Douglas asked anybody else?

Mr. Charles Heady stated I was out there and I saw you did a nice job as far as putting the deck on but what I wanted to ask you: your wife said they give you permission to put that on? Is that what you said?

Mr. Carmine Centouri responded again, this is **30** years ago and when we made the phone call we assumed this was permission. Not being involved with building we had no idea what the whole process of permits etc and so forth. Ignorance is of the problems we had here at that time.

Mr. Charles Heady stated that's why I asked you that because I didn't realized they'd told you it was all right to do it without a permit.

Mr. Carmine Centouri responded they said "fine, as long as you don't go beyond the front of the house." I assumed the front of the house was the stoop to the front door. I guess the front of the house is called the front door which of course if we had followed that there would have been no way to get on the deck.

Mr. Charles Heady stated I did have a problem with it but what you're saying now that you had permission to do it **30** years ago without permit I was really surprised at that.

Mr. Carmine Centouri stated we couldn't have done it at that time.

Mr. John Mattis stated I have a question; are you doing this to come in conformance because you're selling the property or just to come in conformance?

Mr. Carmine Centouri responded obviously, at my age eventually there's going to be a termination and when that takes place my daughters will have the responsibility of taking care of the house. We're trying to make everything ready for eventual accepting of the estate. The fewer problems they have the easier it will be for everyone.

Mr. John Mattis stated I understand what you said about the front deck but at the same time, apparently, you built a rear sunroom and a half bath without any building permits?

Mr. Carmine Centouri responded that goes back when we first bought...

Mr. John Mattis asked that was even before that?

Mr. Carmine Centouri responded again, we bought the house in '63 or '64 and we got a porch and we called up about the porch "can we close in the porch?" They said "yes, as long as you know." It was just two sections that we had to close in because there were already two sections – and there were two sections and we closed in. The bathroom was put in by a plumber whom we thought he was a licensed plumber. Again, we thought that he had made all the provisions to make it legal unknowing to us there were problems that developed years passed. Ignorance of not being a property owner that was our first house and it's been our only house. We simply were not aware of many of the situations involved in doing normal things around the house.

Mr. David Douglas asked when did you add the sunroom?

Mr. Carmine Centouri responded the first year or so that we were there; in '64 or '65.

Mr. David Douglas asked did you build that at the same time you built the bath?

Mr. Carmine Centouri responded then the bathroom was done – the bathroom was there already. All we did was put a toilet in it, that's all.

Mr. David Douglas asked did you get a permit when you did the sunroom?

Mr. Carmine Centouri responded no, there was no permit.

Ms. Carol Centouri responded we moved into the house in 1965 and we had a small child. We realized we needed a bathroom downstairs so a friend of ours recommended a plumber and he said he was the plumbing inspector for Put. Valley – Anthony Macucci and he said he'd take care of it. We had him do it. We had just moved into the house. It was our first and only house so we figured he knows what he's doing so he put the bathroom in. We didn't get permission. We didn't do it because we thought that was what the plumber did. Apparently he didn't and since he was a plumbing inspector for another area we trusted him to do the job.

Mr. David Douglas asked was the sunroom there when you moved in or you added that?

Ms. Carol Centouri responded the sunroom was a porch on two sides. It had columns. It was a two-sided porch and we did call the Town again and we said "we'd like to enclose it" and a friend of ours had just renovated his house he said "I have windows I can give to you" so he said "I'll help you." We said "we'd like to enclose the back porch." We were told that we would have to have an electrical inspector check the electricity when we put it in, which we did. Again, we did call. We asked for permission of what we had to do. No one ever told us "you must come in. You must get a permit. You must..." whatever you're supposed to do. That was 47 years ago, 46 years ago when we first moved there. We've been in the house for almost 48 years. It was like a year after we got in there, like 47 years ago.

Mr. Charles Heady stated it's understandable.

Ms. Carol Centouri stated but that was a back porch. It was there. It had two sides. We put the other two sides on with windows. Like a year later, a man came to the door, I remember he was dressed in a suit and he said "I'm here to reassess your house" and he went through the house and he saw the bathroom and he saw the back room enclosed. It wasn't like we were trying to hide anything.

Mr. John Mattis stated I've been by the property and I'm looking at a picture here and generally, when a house has a front porch it's **5** or **6** feet deep and it's a porch. This is clearly a deck and your front yard is required **30** feet and you want to go down to about **21** feet. It's a **30%** Variance, that's substantial, but I see a table there. Apparently you eat out there and stuff. I'm concerned that if we approve this, even with you or somebody else – this is more of a deck. A deck is for having parties. It's not a **6** or **8** foot deep porch that people sit on and the purpose of the Code is so that we don't have these so people don't have parties in their front yards. I don't think this is appropriate at all. I would be willing to cut it back to the – a couple of feet so that it doesn't go out any further than the house but I don't think it's appropriate the way it's...

Ms. Carol Centouri asked cut it back two feet did you say?

Mr. John Mattis responded yes. I don't think it's appropriate **10** feet deep.

Ms. Carol Centouri stated the gate is only this wide so if you cut it back two feet we can't get on it.

Mr. John Mattis stated you'd have to just put an entrance somewhere else.

Ms. Carol Centouri asked it doesn't count that we called the Town and asked what we had to do and we weren't told that you had to measure how far you are from the road or anything like that?

Mr. John Mattis responded you know there's many violations out there and if everybody called and got amnesty then we could throw the Code out the window. We deal with the Code. We don't deal with how or why it happened. We have to look at it as if it wasn't there when somebody has something. Would we approve it this way? And I would never vote for something like this. Sorry.

Mr. David Douglas stated part of the difficulty that we're grappling with is that we hear a lot people say "oh, I didn't know that I needed a permit" or "I thought I could do it this way." I'm not saying you're not telling the truth but one thing we have to weigh is what sort of precedent we've be setting and how granting a Variance in one circumstance might be used as a precedent in other circumstances that might be very similar. Those are the sorts of things that we're dealing with and I think it's a closed question. What I'd lean toward doing, especially since one of our members isn't here today so what I would lean toward doing is adjourning this and

keeping it open for a month so we can discuss the situation more among ourselves at our next work session and then we'll probably vote at next month's session if people agree with that.

Mr. John Klarl stated and also to prevail in your case you have to get **4** favorable votes from this Board and it's easier to get **4** out of **7** than **4** out of **6**.

Mr. David Douglas stated right, there's only **6** of us here today and in order to get a Variance you need **4** votes whether it's **4** out **6** or **4** out of **7** so I think it might be better – because we've talked about this among ourselves and there's a split or difference of opinion among the members here and I think it's probably best that we talk about it more and then you get the benefit of there being all **7** people present when the vote is taken. That increases your chances of getting a Variance.

Mr. Wai Man Chin stated I have to say, since it was **48** years ago give or take, I don't think that something like this would really set a precedence. For a porch/deck, whatever you have in the front. If it was done recently or whatever I would have something to say but something that's almost done a half a century ago I would not have a problem with this at all. That's my opinion.

Mr. John Mattis stated I have to disagree with that because we're told to go by the Code and the Code doesn't say "when it was built." The Code doesn't say "within **5** years, within **10** years, within **50** years." The Code says "is it there or isn't it there and what's allowed." It doesn't give reference to date.

Mr. Wai Man Chin stated well they're asking for a Variance and I would permit it myself.

Mr. David Douglas stated as you can see there's a difference of opinion here so it other people will agree with me I would suggest we adjourn this and discuss it. I can be outvoted on that.

Mr. James Seirmarco asked what does the applicant want us to do? Would you want for us to vote tonight then we can vote? If you don't want us to vote wait until next time we can do that or we would take your input and decide...

Mr. David Douglas stated I personally would feel more comfortable...

Ms. Carol Centouri asked you want to discuss it amongst yourselves?

Mr. David Douglas stated I'd feel more comfortable if we didn't vote tonight because I really think we need to discuss this. I know at the work session we discussed it and people's leanings were – there was a split and I just think we need to discuss it more in light of what we heard tonight and consider it. We'll decide things next month. We're not trying to stall you in any way. We'll just decide it next month after we discuss it further and we have the benefit of having our last member here.

Mr. Charles Heady stated and you've given us more input tonight about the house and so forth so

we'll discuss it at our work session.

Mr. David Douglas stated just so you know the next meeting is on August 21<sup>st</sup>.

Mr. John Klarl asked you want to make a motion?

Mr. David Douglas stated while we're here has anybody else come out here that wants to be heard on this that's here tonight?

Mr. Carmine Centouri asked do we have to come to the next meeting?

Mr. David Douglas stated I think it would be beneficial if you did in case we have any other questions for you.

Mr. Carmine Centouri stated it's our 50<sup>th</sup> wedding anniversary.

Mr. David Douglas stated we can adjourn it for two months.

Ms. Carol Centouri stated we can have the party on our deck.

Mr. James Seirmarco stated you can send a representative. You don't have to come yourself. You can send a representative.

Mr. David Douglas stated if you want us to adjourn it until September that's fine. It's up to you. I do not want to interfere with your 50<sup>th</sup> wedding anniversary.

Ms. Carol Centouri stated we'll be here.

Mr. David Douglas stated you're all going to make us feel really guilty. You're sure?

Mr. John Klarl stated the next meeting is August 21.

Ms. Carol Centouri responded it's important to us.

Mr. David Douglas stated my wedding anniversary is August 22<sup>nd</sup> by the way for whatever that's worth. It's my 20<sup>th</sup>. I'm not spending it with the Zoning Board though.

Mr. James Seirmarco stated I make a motion to adjourn this case until the August meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned until August.

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**NEW PUBLIC HEARING:**

**A. CASE No. 2013-15 Christopher and Nadia Brown** for an Area Variance for an accessory structure, a back-up generator, in the front yard on property at **52 Pamela Rd., Cortlandt Manor.**

Mr. Chris Brown stated 52 Pamela Road. Do I just start?

Mr. David Douglas stated yes, if you could tell us what it is...

Mr. Chris Brown stated after living without power for a week or so after Sandy we, along with most of everybody else in Cortlandt decided to try to get a generator. This is going back to January now, so we went to the Home Depot and contracted with who we thought was going to do a good job and the contractor came out and like these poor people you tend to believe the “professionals.” The generator’s been sitting in our garage since January. The contractor came out with a representative from Paraco Gas so I guess does a lot of local work. They picked a spot with my wife behind the retaining wall. Everything was fine and the contractor said “I’ll take care of the permits. Everything’s in the price. Don’t worry about it.” Then, months and months go by as I explained to Ken here. Apparently this man had several personal problems which were tragic but it’s still affecting us. He finally submitted for the permit in May, I believe, and I got a call from Mr. Hoch here “you have a little problem here. You have two front yards.” And I said “I don’t think so.” So, he very kindly came out to the house met with myself and this wacky contractor the next day, and thank you again, explained why I had two front yards, and I showed him exactly what the issues are. The issues are all that space behind us is wetlands, as you can see from the plot plan and right in back of the house is this steep slope down into the wetlands. It flattens out only up above where that retaining wall is and that was going to be really the only logical place. It does several things: it hides it from any of the neighbors because it hides it behind a retaining wall – it’s about 5 feet in the back. You can’t see it from Jonathan Road because there’s trees and brush and there were pictures that I sent too. Then, going down in the back of the house the propane can’t go under the deck. The generator can’t go under the deck because there’s windows in the basement. Then as you come around the other side of the house then it’ll be clearly visible from the street and to the neighbors on the other side. So, I’m in a bit of a pickle.

Ms. Adrian Hunte stated thank you for your presentation Mr. Brown. I see that the retaining wall that this would hide the generator so it would not be seen. The other is I just question whether you would be able – I know you said you can’t put it very close to the deck in the back but you need a certain number of feet – is there any way that you could put it back there by the deck more than 10 feet?



Mr. Chris Brown responded no because there's – it's hard to tell. See where the deck ends on the right of the house?

Ms. Adrian Hunte responded yes.

Mr. Chris Brown continued there's a door to a walkout basement and then a double window and then the end of the house. So, the whole back of the house is glass in essence.

Ms. Adrian Hunte stated I don't have a problem with this. I don't see that there – although we don't allow, unfortunately for you, your corner property is – that's considered two front yards but I don't see that there would be an undesirable change in the neighborhood, no detriment to any nearby properties, the neighbors can't see it. You've described the reasons why you can't put it in other locations on the property and although this is something that's not allowed so yes it would be substantial in that sense. It won't have an adverse affect or impact on the physical and environmental conditions in the neighborhood. You haven't done it yet but of course it would be self-created but I don't have a problem with this.

Mr. James Seirmarco asked can I ask a question? On your map you have 'a', 'b' and 'c'.

Mr. Chris Brown stated that's in the plan. I don't even know what that refers to.

Mr. James Seirmarco stated my question is why not put it where 'c' is or 'b' is or between 'a' and 'b'?

Mr. Chris Brown responded because that's really the front yard then the whole street would see it, number one, where 'c' is, is the existing standup propane tank.

Mr. James Seirmarco asked let me ask you a question; the front yard is on Pamela Road and the other one is Jonathan Road correct?

Mr. Chris Brown responded yes, but the real...

Mr. James Seirmarco stated well, we've got to go by what the two front yards are so it leaves you with the other two sides of the house and I'm looking for alternatives on the other two sides of the house.

Mr. Chris Brown stated this front yard on Pamela is the one that is visible from the street, visible to every neighbor driving by, visible to neighbors across the street. Anywhere in the 'a' and 'b' area is in wide open space.

Mr. James Seirmarco stated but that's technically the side yard.

Mr. Chris Brown stated I don't know the zoning terminology, I'm sorry. I'm just explaining what it looks like from the street.

Mr. James Seirmarco asked correct Ken?

Mr. Ken Hoch responded that would be the side yard.

Mr. James Seirmarco stated that's your side yard so if you...

Mr. Chris Brown stated but there's the air conditioner units are where 'b' is and the oil tank is under 'b' and the septic field is right over here, the septic pump.

Mr. James Seirmarco stated it's okay to have those things in what you say is the front yard but a generator which is **2' x 2' x 4'** you can't put it in either 'a', between 'a' and 'b' or 'b' and 'c'. I don't get that.

Mr. John Mattis stated I went out there and I drove by on Pamela, I drove by on Jonathan. Where you're putting it requires a Variance yes but it's probably the most logical place to put it. You can't see anything back there. It's not visible to anyone. One of the things that we try to accomplish is to have generators that aren't visible. If you would put it in what the real side yard yes you wouldn't need a Variance but at the same time it would be visible to the neighbors. I think this is a very reasonable request.

Mr. Chris Brown stated I'd rather apply for this and go through this than do that to my neighbors to be honest.

Mr. Wai Man Chin stated I don't have a problem with where the generator is also behind that retaining wall. I mean, a generator, to me it's smaller than a ConEd transfer box that sits in the front of your house and to me that's even more of an eyesore than the generator is so I really do not have a problem with this at all.

Mr. Charles Heady stated it's even smaller than an air conditioner too right Wai?

Mr. Wai Man Chin responded yes.

Mr. David Douglas asked anybody else?

Mr. Charles Heady stated no I have no problem with it.

Ms. Adrian Hunte asked anybody in the audience wishes to be heard? Hearing none, on Zoning Board of Appeals **case 2013-15** the applicant Christopher and Nadia Brown our applicants, for the property 52 Pamela Road, Cortlandt Manor, NY for an Area Variance to allow an accessory structure backup generator in the front yard I make a motion to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case 2013-15** I make a motion that we grant the Area Variance to allow the accessory structure, namely a backup generator in the front yard which is behind a retaining wall and this is a type II SEQRA action, no further compliance required.

Seconded.

Mr. David Douglas stated all in favor.

Members stated “aye.”

Mr. David Douglas asked opposed?

Member responded “opposed.”

Mr. David Douglas stated poll the Board.

Mr. Ken Hoch stated Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; no, Chairman Douglas; yes, Mr. Chin; yes, Mr. Heady; yes. Motion carries **5 to 1**.

Mr. David Douglas stated your Variance is granted.

Mr. Chris Brown stated thank you.

Mr. Ken Hoch stated Mr. Brown I’ll get back to you with this decision and then issuing of the permit.

**B. CASE No. 2013-16                      Laura Hyman** for an Area Variance for an accessory structure, a back-up generator, in the front yard on property at **2 Nickelby Place, Cortlandt Manor.**

Mr. Kurt Abinger stated I am a licensed electrical contractor, license number **1522**, Westchester County. I am representing Mrs. Hyman this evening in the Variance request for the standby generator for her home located at 2 Nickelby. I had handed out and printed out some pictures as well as the plot plan where the generator would stand. If you would open to those pictures as well as the survey or plot plan I could start at the northernmost part of the home which is the front door of the home which actually shows the sign of 2 Nickelby. You have those pictures in front of you. That is the northernmost part of the house and obviously that’s the front yard. It was assumed to be the front yard. I wasn’t aware at the time when Mrs. Hyman that the west side was also considered a front yard and it was brought to our attention by Ken later on.

Proceeding through the pictures, I have about **10 to 12** of them we go to the west side of the house where there is the garage, there are windows and there is not ample space for the measurements allowing the generator to be installed – that’s the west side. Those first two pictures are the garage, the electrical meter and then the chimney as well as those windows, those first three pictures.

Mr. David Douglas stated when you say there isn’t ample space I’m not sure I understand. Why can’t...

Mr. Kurt Abinger stated to open up the owner’s manual which is handed out in your Building Department, which is recommended spacing based on the National Fire Protection Code.

Mr. John Klarl asked NFPA?

Mr. Kurt Abinger responded yes, and if you were to look on the second page of that, all the third page, you could see an illustration of it’s **60** inches is a minimum required from an opening of a home, meaning a window or a door. Based on that illustration and those Codes if you were to follow around those pictures of the home – and before I go any further I would also mention that there is a stipulation on wood decks that you can’t have anything within **48** inches of a wooden deck above or below or next to. So, proceeding around the pictures and this is why I did the illustrations of the pictures of every foot of the perimeter of the house so that you could see we felt that the best option was the west side – am I correct? The side I ended up on which is up on your plot plan but the rear pictures of the house show the deck and the openings that are there; the two air conditioning units are on the back left corner of the house there as well. Taking measurements there are no ample spots to put that unit and then you come around the side that we did do and placed it there so that you could see it. It is hidden by landscaping. It is one, it complies also with the recommendations of keeping the generator as close to the fuel source which is a not propane but natural gas and that’s where the natural gas meter is located in the front corner of the house there on that side, or that front yard I should say on Dimond I believe it is. That’s basically it. We felt that was the best alternative, the best option that we had to install it and put it there. The last picture on the list is to show you how thoroughly covered the house is built on stone and rock and it’s very difficult to even think about going anywhere else.

Ms. Adrian Hunte asked Mr. Abinger what’s the status now because the application says that it was installed?

Mr. Kurt Abinger responded it’s in place. It is wired and ready to be turned on but obviously waiting for permission for us to do that.

Mr. James Seirmarco stated now the side that you show the two air conditioning units...

Mr. Kurt Abinger stated that is the rear of the home.

Mr. James Seirmarco stated right, on the other side of that wooden deck, from the end of the

deck to the corner of the house, there's roughly what...

Mr. Kurt Abinger responded there's an entrance door there you see that? That's to the basement.

Mr. James Seirmarco stated okay, and around the corner.

Mr. Kurt Abinger responded and that corner there is about **4** feet to that corner, **5** feet.

Mr. Wai Man Chin stated another window.

Mr. Kurt Abinger responded I'm sorry.

Mr. Wai Man Chin stated there's another window.

Mr. Kurt Abinger stated and as you go around that corner there is another window for the living room which is on the left side of the fireplace. As you can see, the fireplace is that bump out that comes out, that's the chimney.

Mr. James Seirmarco stated in my humble opinion, not every house can facilitate a generator because you want a generator and it's not enough reason to get one. We just turned down one about – the last month, on Dimond exactly the same thing, generator in the front yard, yours is even closer and I don't see any reason to put this one there. I really don't.

Mr. John Mattis asked I have a few questions; first of all you say it's hidden by shrubbery or whatever, when I drove out there, it's partially hidden. You can see it. It's not totally hidden, secondly there's a window right there.

Mr. Kurt Abinger responded that is a non-opening window.

Mr. John Mattis asked so that doesn't count?

Mr. Kurt Abinger responded that's correct.

Mr. John Mattis stated it's not up to us to say where to put it but I would suggest that you could find a way of putting it somewhere past your garage on the other side of the house and that would be appropriate because it wouldn't be seen by anybody and you might have to get a little creative to put it there but past the driveway somewhere. You can get it **5** feet away from windows in the house and whatever. It may stand out a little bit but really it's not up to us to say where to put it. It's up to us to work on what you're requesting and Mr. Seirmarco said we turned one down on Dimond already and this is even closer...

Mr. James Seirmarco stated and it was further away than this.

Mr. Kurt Abinger responded further away? I'm confused.

Mr. James Seirmarco stated from Dimond.

Mr. Kurt Abinger responded further away from the street, oh okay.

Mr. John Mattis stated it was mentioned about the ConEd things that are out in the front and stuff. We can't control those. We'd like to get rid of those if we could but that doesn't mean we have to ignore this and say because they have that we have to give this. The purpose of the Code is not to have any of these in front yards. It's unfortunate that there are two front yards here. It complicates things.

Mr. James Seirmarco stated this is a silly question, it says "existing or proposed deck" that's there?

Mr. Kurt Abinger responded that was from an existing plot plan.

Mr. James Seirmarco stated I assumed that. I just wanted to give it for the record.

Mr. Kurt Abinger asked so in your eyes you feel that it's unsightly to the neighborhood even with the shrubbery in front there?

Mr. John Mattis responded if I owned the other property on Dimond I'd file an **Article 78** and come in and say "you just gave one that's closer and you turned me down." We're opening up a hornet's nest here. I'm sure there's other people that want to put them in their front yards there.

Ms. Adrian Hunte stated I think in your situation you may have an alternative. It may not be optimal or optimum but that you can put it...

Mr. Kurt Abinger asked and what do you think that option is? I'm just – if you can enlighten us so...

Mr. James Seirmarco stated somewhere not in the front yard.

Ms. Adrian Hunte stated not in the front yard. You have some space on one of the sides.

Mr. Kurt Abinger stated you had mentioned earlier Mr. Mattis that back corner...

Mr. John Mattis stated I would try to fit it in somewhere in here.

Mr. Kurt Abinger stated but if you were to look at the rear, the very last picture, it shows the rear corner of the house and within **3** feet of the house you could see all the stone and rock that that house is built on so anything that has to be installed electrically or gas has to be installed **18** inches below grade and I don't feel with all that stone there it would be able to dig that stone out to just run a generator.

Mr. John Mattis stated well that's behind the house. I'm saying put it on the side of the house past where the driveway is.

Mr. Kurt Abinger responded all that stone goes up the side of the house.

Mr. John Mattis stated in the pictures it just shows grass.

Mr. Kurt Abinger stated I'm sorry. I tried to get the best views for you.

Mr. John Mattis stated regardless of whether you can put it there or not, you could find a place and it's not appropriate to put it on Dimond.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin responded I'm just looking. I'm not sure yet.

Mr. David Douglas stated there's a gentleman in the back that wants to be heard.

Mr. Lou Silver stated I'm a resident of 5 Nickelby Place. I've lived on Nickelby Place since the house was built around the year **2000** so I've been there for about **12** years, maybe **13**. I saw the generator being installed and I also the plants being installed around the generator. With all due respect, I would say that it was done very tastefully. It's true, you can still see it a little bit but those plants are only two or three weeks old. They're going to grow in and you will not going to see the generator. It's a very small unit and I don't think, if I've gone around that house, as I've gone around pretty most of the houses in the area and there is no other location. And, I know that you're basically saying it's not your job to find a location but the location where that generator is installed right now is professionally done, it's esthetically pleasing and I believe that it would be unfair to penalize for what I think is a perfectly acceptable location in a nice residential area. It's still a nice residential area. That generator does not at all take away from the esthetic value of the subdivision.

Mr. David Douglas asked let me ask you something. If you had a generator in everybody's front yards then I think it would take away from the esthetic character of the neighborhood and one of the concerns is that – the Town Code is written so that you're not supposed to have these things in the front yard and if we allow this it seems to me that we're basically saying "you can put a generator in the front of every front yard" and that would be essentially rewriting the Code.

Mr. Wai Man Chin stated we should.

Mr. David Douglas stated which is not our job Mr. Chin. We can't rewrite the Code.

Mr. Kurt Abinger stated with due respect, I do understand – the front yard of a home is the front of the home and we all have to agree that the front of the home – it is unfortunate in her case that

she is on two roads but realistically the front yard is the front address of the house.

Mr. James Seirmarco stated Dimond is the front yard.

Mr. Kurt Abinger stated I'd have to disagree with you only because the front entrance of the house...

Mr. John Mattis stated to all the residents on Dimond, that is the front yard. Anybody that drives up and down Dimond say that's a front yard.

Mr. Kurt Abinger stated I agree with you there. I just feel if it's not to go there, there really is no other place to put it. I carefully walked the property. I carefully thought about this and gave her the best option there. Based on all the pictures I really felt that that was the option. I'm doing this over **20** years so I just felt that was the best spot. I wouldn't know where else to put it to be honest with you. There really is no other place to put it.

Mr. Charles Heady stated if you'd come here to the Code Enforcement first you wouldn't have the problem you've got now.

Mr. Kurt Abinger responded if you could tell me where to put it. I'll move it. That doesn't matter to me. I want the right job for my client.

Mr. James Seirmarco stated that's not what he said. We wouldn't be having this conversation...

Mr. Kurt Abinger responded I'm confused.

Mr. James Seirmarco stated if you had come to the Town first before you put the generator in, we wouldn't be here.

Mr. Kurt Abinger responded yes we would because I would have requested the same spot and we'd be here for a Variance for it.

Mr. James Seirmarco stated I'm sure that Ken would have told you that there's no generators in the front yard.

Mr. Kurt Abinger stated so we would still be here today discussing it and asking for a Variance for that location.

Mr. John Klarl stated we agree there's only one way to get here.

Mr. Kurt Abinger responded whether it was before or after it doesn't matter at this point. If you would find a location for me I will move it within a day as soon as I get a permit to do it. I want my client to have the best possible scenario. You know, she's a single mother. She was without power for a week and a half so she was very, very concerned when the power went out that there



would be issues. Her carbon monoxide and smoke detectors had failed. There was issues that went on. In our industry it's all about safety. Everything's all about safety. Every code, everything that we do is about safety so my first concern is my customer, my client and that's why we're here.

Mr. David Douglas stated we understand why you're here. We understand what you're trying to do and you're doing what you should for your client. I understand that but there are – we're looking at things from a different perspective.

Mr. Kurt Abinger asked and don't you agree that there are times where there are circumstances that...

Mr. David Douglas stated there are times when we grant Variances for generators.

Mr. Kurt Abinger stated and I thought this was going to be one of them. I'm sorry.

Mr. David Douglas stated you just heard us grant one but, I only speak for myself, I'm not sure that this is one of them.

Mr. Wai Man Chin stated I would like to think about this a little bit more because I'm looking at all the pictures and everything else based on what you have said and everything else and around that whole house I really couldn't find another place for it except for where you showed it right now but again, some of the Board members have their opinions about generators in the front yard. It's unlucky that you do have two front yards. To me, an architectural front is the front of the house and that's the street that it's on.

Mr. David Douglas stated but Dimond is the true front here.

Mr. Wai Man Chin stated I understand, the other houses are on Dimond, this one is on Nickelby so to me the front yard should be on Nickelby.

Mr. David Douglas stated but Mr. Chin, that's what the Code is. The Town Board wants to change the Code they can change the Code.

Mr. Wai Man Chin stated I understand, that's why this Board's here to either give Variances or not or whatever based on that. If we're going to follow the Code to **100%** we might as well not even be here.

Mr. David Douglas stated Wai, you know what I'm saying.

Mr. Wai Man Chin stated I know what you're saying too. I'd like to think about this before we vote on it.

Mr. John Klarl stated and the applicant would like that also.

Mr. Kurt Abinger stated if I may, it's stated that the Code – I'm looking for the exact words but the Code is to be followed by the jurisdiction of who has the authority so the Code is the Code, yes and we try to follow every single Code but the jurisdiction that has authority has the authority to approve or disapprove certain things.

Mr. David Douglas stated we have the authority, there's no question of that.

Mr. Kurt Abinger stated he just had mentioned "the Code is the Code" and I understand that but even I know in electrical, there's certain things that we cannot do and we have to...

Mr. David Douglas stated we know the authority we've got.

Ms. Adrian Hunte stated I will say this, once again, this is the Zoning Board of Appeals and yes the Code says what it says however, the reason why we have a Zoning Board of Appeals is for people to come to us to seek redress or help in situations. Once again, I will say, each case has to be looked at individually and yes we are concerned about precedent however, usually these cases are distinguishable in some way just as we made this distinction with the last case where there were two front yards as well and here we are with a different opinion. I usually go back to the basics with this, whether there would be an undesirable change in the neighborhood; no.

Mr. James Seirmarco stated I disagree.

Ms. Adrian Hunte stated no detriment to the nearby properties; no. Do you have an alternative; you've made a presentation, you've said that you don't believe there's an alternative. We're not responsible for determining where you actually locate it but if you believe that that is the case, that you can't put it anywhere but that place then for you the benefit the applicant seeks can't be achieved or there's a problem with achieving it doing it another way. Yes it's substantial in the sense that it's not allowed. It will not have, I don't believe, an adverse affect or impact on the physical or environmental conditions in the neighborhood. It would be self-created but overall I believe in the interest of safety and what you're trying to do that I would tend to grant it.

Mr. David Douglas stated going through those factors which she quoted, as you may know, those are the ones that are in the statute as to the factors that we're supposed to consider and I do consider those in every case that sits in front of us and I think in going through those factors that this case is clearly not one that warrants a Variance. There will be, I believe, an undesirable change in the neighborhood. I believe that if we were to grant this Variance we'd basically, as I've said before to Mr. Silver, I think we'd be opening the door for people to come in and getting a generator and basically every other front yard along Dimond in this area. I do believe that it can be achieved by other methods. It is substantial because it's just simply not allowed as a general rule so it is a substantial change under the Code. I don't think that it would have a major impact on the physical or environmental conditions but it is self-created so in my mind that's **4** out of **5** and not one of those factors – none of them by itself is controlling but when you've got **4** out of **5** of the factors that weighs heavily in my mind. Do we want to adjourn it or do we want

to vote?

Mr. Wai Man Chin responded I would adjourn it because I want to see if there's other alternatives.

Mr. David Douglas stated that's fine. We'll adjourn it.

Mr. Lou Silver stated I know you talked a little about benchmarking and you certainly don't want to open the door for everyone on Dimond – if you go up Sonoma, on the main road, Sonoma, this house that I'm speaking about is actually on the corner of Sonoma and I don't know the street but it's also a cul-de-sac, the house is also on a corner and the generator they put in is exposed; no plants, to Sonoma which under your rules would also be considered a front yard and that generator is already there.

Mr. John Mattis stated well, Mr. Hoch will take a look at that. We're not aware of that.

Mr. Lou Silver stated there was a similar Zoning Board of Appeals sign there as well but it wasn't in my cul-de-sac, I chose not to go. There was a sign in that property and it's in the Town of Cortlandt so I'm surprised that you're not aware of it. It might be worthwhile at least going back and reviewing that because it's the same size generator. It's on the same kind of front yard. It's on the corner of a main street and a cul-de-sac.

Mr. John Mattis stated we didn't hear that case. It never came to us. Maybe they just put it there without a permit.

Mr. Lou Silver stated I don't think they did. I don't know for sure. All I know is I saw the sign, because I walk my dog five days a week and I know the sign was there and I know people had the opportunity to appeal.

Mr. John Klarl asked was it for a Zoning Board of Appeals application as opposed to a Planning Board application?

Mr. Lou Silver responded I wouldn't know that. I can just tell you that the generator is there.

Mr. John Mattis stated we'll have Mr. Hoch look at it. I can assure you we wouldn't let something sit out there if it came in front of us without having it shielded by shrubbery or something.

Mr. Lou Silver stated I understand and it sounds like you want to do the right thing. All I'm saying here is that...

Mr. David Douglas asked where'd you say it was Sonoma and what corner?

Mr. Lou Silver responded I can get you that. If you go up Sonoma, there are two Sonoma's but

if you go up the one that's closest to Route 202 and it's the first cul-de-sac on the right and the house is on that corner.

Mr. James Seirmarco stated that could be out of our district.

Mr. Wai Man Chin stated that could be Yorktown.

Mr. Lou Silver stated I don't think it is. It's so far from Yorktown.

Mr. David Douglas stated we'll look into it.

Mr. James Seirmarco stated I'm pretty sure it's not in our district.

Mr. Wai Man Chin stated Mr. Hoch will look into it.

Ms. Adrian Hunte asked do we want to adjourn this?

Mr. David Douglas responded yes.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case 2013-16** applicant Laura Hyman for an Area Variance to allow an accessory structure, backup generator, in the front yard, I make a motion that we adjourn this matter to the August 21, 2013 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the case is adjourned.

**C. CASE No. 2013-17 Pasquale Marcella** for an Area Variance for an accessory structure, storage building, in the front yard on property at **141 Baron de Hirsh Rd., Crompond.**

Mr. Pasquale Marcella stated I live at 141 Baron de Hirsh Road. I'm actually trying to add a storage/storage garage for my '69 Camaro and lawn furniture and things I just can't put anywhere. I've been there **20** something years. There is a shed in the back but they had beams connected to that. I put stuff in there but it just gets rotted away every winter. I've decided now to try to put something that's – it's not an active garage. It's for the Camaro and my son and I can work on it and on the other side basically for all my furniture, grills, things that I have in the winter, my lawn tractor, snow blowers. I just have no place to put them anymore.

Ms. Adrian Hunte stated Mr. Marcella, I went by the property, what is that structure that's in...

Mr. Pasquale Marcella responded that's where the Camaro is right now. It's a temporary canopy. The Camaro's in there right now. That's where I have it stored. It used to be in a

storage but since my wife passed away and I've been raising my kids by myself I don't have the money for the storage so now I put it there for the last – it's been like 6 years now, 7 years.

Mr. Charles Heady stated I was out there and I looked at the situation. Now, you had that garage in the front. Is there a reason why you can't push that back to the house instead of having it way out in the front yard?

Mr. Pasquale Marcella responded that's not even going to sit there, actually it's 30 feet away from the front – actually it was more but the Town has taken like a few feet from my property for the road so it's 30 something feet away now. That structure would be actually a little over 30 feet if the property was still all the way out but it's 30 feet back from the road and it's actually 10 feet back, which I thought was the side of my property. I'm on the same thing, I have two front yards I guess if you want to call that little nub at the end a front yard but that's my situation. I can't put it in the back and the driveway's there and if I want to use the Camaro I need it near the driveway and also for the snow blowers and everything else it's a lot more efficient to have all my equipment there than 300 feet in the back of the yard which is the corner all the way in the back but there is a little shed right now, an 8' x 12' but I just can't handle...

Mr. Charles Heady stated we have to look at all the situation. If you didn't have a way you could go back with it, it would be different, but you can push that shed back further off the road. This is in the front yard now, way in the front yard.

Mr. Pasquale Marcella responded temporary one.

Mr. Charles Heady stated no, the one you're going to build.

Mr. Pasquale Marcella responded it's 30 feet from the road.

Mr. Charles Heady stated I know but it's still in the front yard.

Mr. Pasquale Marcella stated I understand – how far would I have to go back?

Mr. Charles Heady responded it should go back to the house really.

Mr. Pasquale Marcella stated if I go back to the house there then you have to build a whole new – you have to build driveways and everything else if I want to get the Camaro out I'm not going to drive – I have dogs. I have fencing there. If I can't put it there I'm just not going to do it. It's irrelevant.

Mr. Charles Heady stated actually you could put it either side of the house but you say it's too far back.

Mr. Pasquale Marcella stated well, on the other side of the house I can't. The road actually is below grade. There's a hump from the road onto the property – the only flat area you have to

enter the property is where that driveway is right now.

Mr. Charles Heady stated it's way too far in the front yard.

Mr. Wai Man Chin stated you have this new storage garage, whatever you want to call it, is totally in the front of your whole house.

Mr. Pasquale Marcella responded it looks that way there but actually – I drew this myself, it wasn't a good job but actually that isn't as big and it's farther to the side. It's not as close to that road as it appears on that map. I can move it farther back this way but if I go to the house then I don't have any driveway or any way to access it anyways so it's...

Mr. Charles Heady stated you'd have to make your driveway longer if you push the shed back to the house, without a doubt.

Mr. Pasquale Marcella stated that would cost a lot more money than I want to spend on that. Basically I just wanted a place to work on the car and have a place to store it. I don't want to spend **\$30,000** to get it on the road three times a year.

Mr. Wai Man Chin stated the only other thing I'm looking at is that your house right now is **24' x 26'**...

Mr. Pasquale Marcella responded no, no, that's the addition. I came here in **2004** I think we were here for a Variance for the house. That's the addition I built onto the house. The original part of the house is another **1,000** square feet. The entire house is **2,000** something square feet. I had to go for the Variance for the house because it was **2** inches – I needed **30** feet from the back yard and it sits **28** and  $\frac{3}{4}$ , whatever it was, **28** and  $\frac{3}{4}$  and I had to come for a Variance for the other **2** inches which I got and I built the addition but now I'm just trying to put a place to put my stuff that's all.

Mr. John Mattis stated this is just too large and it's right on the road.

Mr. Pasquale Marcella responded like I said...

Mr. John Mattis stated I understand what you're trying to do and I sympathize with it but we have to look at what the Code is. We don't look at what you're going to use it for.

Mr. Pasquale Marcella responded I understand. How far do I have to go back? Right to the side of the house? If the front...

Mr. John Mattis stated you have an acre of property but you don't want to spend any money to put driveways in or anything else and it's inappropriate to put it where you want it.

Mr. Pasquale Marcella responded there's no room.

Mr. John Mattis stated it's kind of between a rock and a hard place.

Mr. Pasquale Marcella stated to the right here there's a big Town-created gutter so I can't create driveways on this side. On the other side it's all raised up. Everything is fenced. I have my septic fields over there. I thought this was the most logical place to put it. I mean the driveway's already built for it. It's just a matter of...

Mr. John Mattis stated ignoring zoning yes it's the most logical place, absolutely.

Mr. Pasquale Marcella asked could I put it next to the house there? I'm just looking for a place to store the Camaro? I really don't care where – closest place to the driveway I can get it to.

Mr. Wai Man Chin stated this whole is totally in front of your whole house.

Mr. John Mattis stated and when you drive by there right now you see that canopy or whatever it is and to put a **24' x 24'** structure there would look even much more imposing. It looks like it's right on the road.

Mr. Pasquale Marcella stated I can probably move it back another – I don't even know what the house is. The house is probably...

Mr. Wai Man Chin stated the house is **73** feet from the front.

Mr. James Seirmarco stated we're saying that the front of that building that you're proposing has to be in line with the front of your house not just a corner touching the house, the whole – it has to be out of the front yard.

Mr. Pasquale Marcella asked it has to be on the side of the house?

Mr. John Mattis stated and it would look – you can make it look like it's just a long house and the garage is just part of it.

Ms. Adrian Hunte asked can you angle it so...

Mr. Pasquale Marcella responded I'm sure we can do that – I'm sure I can do a lot of things it's just that – I was just trying to get a Variance where I thought it was most feasible and the easiest way to get around it basically.

Mr. Wai Man Chin stated the whole entire structure is totally – your house right now, according to this thing, is **73.4** feet away from the road to the corner. That's the closest corner of the house right here. Right now you have your whole entire structure is way in front of the whole house. That's just way too much.

Mr. Pasquale Marcella stated from **73 – 24**, yes it is over **30** something feet. Like I said, I didn't know about the front yard situation. Like everybody else I wasn't aware that this was still my front yard over here. I thought my front yard was in front of the house and everything to this was the side yard – that little end piece all the way at the end...

Mr. David Douglas stated but that's not the problem in your circumstance. I think you've realized that...

Mr. Wai Man Chin stated what's the front yard over there?

Mr. Ken Hoch responded **50** feet.

Mr. Wai Man Chin stated **50** feet. Right now you would have to move it back, if you're **30** something, you'd have to move it back at least another **15** feet to get it away from **50** feet just to get out of the front yard.

Mr. Pasquale Marcella asked so I can put it there on the side of the house and do that without a...

Mr. David Douglas responded as long as it's **50** feet.

Mr. Wai Man Chin stated as long as it's **50** feet away from the front of Baron de Hirsh you don't have to come in front of us.

Mr. Pasquale Marcella stated Ken told me that but it was – he said “come up here and see what happens.”

Mr. Wai Man Chin stated it's just too close.

Mr. David Douglas stated you tried. It's worth the effort.

Mr. Pasquale Marcella stated it was worth the **\$150** or whatever. So I can move it to the side of the house and get away with that?

Mr. James Seirmarco responded as long as the front of the building will be **50** feet back, yes.

Mr. John Mattis stated coordinate that with Mr. Hoch.

Mr. David Douglas stated you'd have to talk to Mr. Hoch. Don't do it without talking to Mr. Hoch so we don't have a situation **20** years from now somebody comes in and said you said okay.

Mr. Ken Hoch stated he may want to adjourn this, submit a revised plan and let's see if he needs a smaller Variance.



Mr. Pasquale Marcella stated for the money I have to pay for that I don't think it's really going to go through.

Mr. David Douglas stated what Mr. Hoch was suggesting instead of withdrawing, we'll adjourn it, you can come up with better ideas, you can speak to Mr. Hoch...

Mr. Pasquale Marcella stated the only other idea is to move it to the side of the house. There is no better ideas. It's either there or to the side. It's cut-and-dry. There is no gray matter here.

Mr. Wai Man Chin stated what Mr. Hoch is saying to you is if we adjourn it, you talk with him and see what you come up with first, maybe a Variance maybe a lesser Variance or something we might – maybe you want to adjourn it and talk to Mr. Hoch first.

Mr. Pasquale Marcella stated I'm not going to worry about it.

Mr. David Douglas stated what we're suggesting is adjourn and if it turns out you talk with Mr. Hoch and after five minutes you realize "okay, forget it" then you're good to go but if not it could be that what you want to do is something that still technically needs a Variance...

Mr. Pasquale Marcella stated then adjourn it then. I have no problem with that.

Mr. David Douglas stated we're just trying to keep it open so you don't have to come back to us and start over.

Mr. John Klarl stated give you time to think.

Mr. Pasquale Marcella stated I have plenty of time to think.

Mr. Charles Heady stated I make a motion on **case 2013-17** to adjourn the public hearing to August.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated talk to Mr. Hoch.

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## **ADJOURNMENT**

Mr. John Mattis stated I make a motion to adjourn the meeting.

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

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**NEXT MEETING DATE:  
WEDNESDAY AUGUST 21, 2013**