

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, March 21, 2007. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

John Mattis, Chairman presided and other members of the Board were in attendance as follows:

Richard Becker
David Douglas
James Seirmarco
Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.

Also Present: John J. Klarl, Deputy Town Attorney
James Flandreau, Code Enforcement

Absent: Raymond A. Reber

ADOPTION OF MINUTES: 1/17/07 AND 2/21/07.

Mr. Mattis stated we just received February, and we just received some corrections for January.

Mr. Heady made a motion to adjourn the adoption of the minutes to the April meeting seconded by Mr. Chin with all voting “aye.”

ADJOURNED PUBLIC HEARINGS

CASE NO. 66-06 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE ENFORCEMENT for an Interpretation if a lot line which separates a lot from the Bear Mountain Parkway is a front lot line.

CASE NO. 03-07 ACE SPORT REALTY HOLDING CORP. for an Area Variance if required per ZBA Case No. 66-06 for front yard for a proposed structure and Area Variance for the required landscape buffer requirement of the property located at 2054 E. Main St., Cortlandt Manor.

Mr. William Zutt, Esq. appeared before the Board. He stated I am the attorney for the applicant on the second case, and an interested party for the first case. As you know, we’ve expressed the position for the first case that the Bear Mtn. Parkway property line is not a front yard with respect to this particular case. In that the Bear Mtn. Parkway does not qualify as a street or highway for zoning purposes under NYS Town Law 280-A. I cited one particular case Novak vs. Town of LaGrange Planning Board supportive of that concept and proposition, and for that

reason we believe in rendering a decision in this case you should in fact find that the Bear Mtn. Parkway property line is not a front yard line. That is our position in the first case.

Mr. Mattis stated okay, are there any comments on that? We had actually been discussing the variance part of this.

Mr. Zutt stated I realize that, but I wanted to make sure that I protect the record in regard to the first case. We can go on to the second case. At the last meeting we presented two alternative plans to the principal plan currently pending before the Planning Board, which was the one in which we sought variances on the first alternative plan. I believe we were showing an 8 foot landscape buffer along the Bear Mtn. Parkway frontage, as well as along the Rte. 6 frontage. We would have achieved that in part by reducing the size of the lower building, the one closer to Rte. 6, and slightly increasing the other building size making it more equal in size allowing us to put in the 8 foot landscape buffer, and also retain the parcel. We would like you to move forward with this, we request that you move forward with that plan. We do need the necessary variances to accomplish it. I paid close attention to the Board's comments at the work session on Monday evening, particularly those of Dr. Becker, who was reluctant to grant a variance of more than 50 percent with respect to the landscape buffer, and having heard that comment it occurred to me that we might be able to retain the building square footage, and the parking, if we increase the buffer along Rte. 6 as was suggested from 8 feet to 12.5 feet, which would be a 50 percent reduction, if the Board would consider reducing the westerly buffer by 5 feet that would give us approximately the same amount of room in which to develop the site. That would bring the westerly buffer from 20 to 25. If that would be acceptable, we would request that we modify our application accordingly.

Mr. Mattis stated okay, so right now you're requesting a 17 foot variance, and that would go down 12.5 feet?

Mr. Zutt replied yes that variance would actually be a 12.5 foot variance, yes.

Mr. Mattis asked and the other one you are requesting 5 feet?

Mr. Zutt replied yes, along the westerly side, correct.

Mr. Mattis stated so it would be half way into compliance on the one, and you request a smaller one on the other side. Mr. Becker this is your case.

Mr. Becker stated yes, I'm still trying to follow these numbers.

Mr. Zutt stated it may help if we actually all look at the same plans. Let me see if I have the copies here. I am sorry but I left the plans on the table when I was prepping to come down here, but I know them quite well. The alternate A showed an 8 foot landscape buffer along the Bear Mtn. frontage along Rte. 6 frontage.

Mr. Klarl asked that is the two, two story buildings?

Mr. Zutt replied correct, two, two story buildings right. We would increase the buffer shown from 8 feet to 12.5 feet, and we would ask that we be able to reduce the westerly buffer, the one closest to the City of Peekskill from 25 feet to 20 feet. That would give us approximately the same amount of working area for our parking, and building.

Mr. Seirmarco asked so this again, is alternate A?

Mr. Zutt replied it's a modification, Mr. Seirmarco of alternate A.

Mr. Becker stated so if I understand you the area on the side adjacent to the west of Peekskill, or Jacobs Hill will have the larger variance.

Mr. Zutt stated no, actually the larger variance would be along the Bear Mtn. Parkway, because the buffer over by the Bear Mtn. Parkway will 12.5 feet, and along Jacobs Hill entrance it will be 20 feet. Right now we're showing 25 feet, which is the code requirement along there. The assumption Mr. Mastramonaco made when making the plan was that he would put in a full 25 foot code buffer on the west side, and nothing on the easterly side along the Bear Mtn. Parkway, but in an effort to reach a compromise we are offering up this plan as a hopefully acceptable compromise. That would be going from 8 feet along Bear Mtn. Parkway, and we now brought that up to 12.5 feet, which would require a 50 percent variance, which you said you would be willing to consider.

Mr. Becker stated I thought I said 50 percent of the allowable on each side.

Mr. Zutt stated we're not even requesting that much along the west.

Mr. Mattis stated he is only requesting 5 feet there.

Mr. Becker stated but more on the opposite side. So what is the percentage of variance on the other side?

Mr. Mattis stated 20 percent on one, and 50 on the other.

Mr. Zutt stated we are asking to go from 25 feet down to 20 feet.

Mr. Mattis stated it centers the buildings a little bit more.

Mr. Douglas stated in doing that, will you have sufficient parking?

Mr. Zutt replied yes, the preliminary parking calculations work for these buildings, and Ralph had to redesign, and take some square footage off the building to reach these buffers.

Mr. Chin stated basically you are taking the buildings, and moving them like that (referring to the drawings).

Mr. Zutt stated slightly to the west.

Mr. Chin stated again, I also agree with Dr. Becker on that 50 percent, and I would not have a problem with what they are doing by adding the 5 feet on this side, and taking away the 5 feet on the other side. So I would be in favor of this.

Mr. Zutt stated we would be very close to a collective code compliant situation, not totally, but close.

Mr. Mattis stated and this alternative also comes closer in the front yard, which you need a variance of 24, and your down to 17.5, and the rear you required 2.5, and they required nothing. So this alternative not only requires less landscape buffer than the other, and no more than 50 percent on either side, but it also cuts down on the variances for the building itself.

Mr. Zutt stated right.

Mr. Becker stated I think this is a fair compromise, and he is acknowledging the Board's need to keep the area pleasing, and still be able to utilize the space there. It is a reasonable compromise.

Mr. Zutt stated and it would 12.5 feet on Rte. 6 also. I hope I made that clear.

Mr. Becker stated I would like to see this in a drawing with all the variances that we just discussed now, and I think what you are looking for I would have no problem with.

Mr. Mattis stated so we'll adjourn for tonight, and hold off to next month to vote so we can see the final layout of this plan. Is there anyone in the audience that would like to speak?

Mr. Becker made a motion in Case No. 66-06 and Case No. 03-07 to adjourn the cases to the April meeting so the applicant can supply us with updated drawings, and the specifics for the variances requested seconded by Mr. Seirmarco with all voting "aye."

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CASE NO. 06-07 PATRICK & HILDA SCELZA Interpretation on the merger of two parcels or Area Variance to subdivide the two parcels on the property located at 2010 Crompond Rd., Cortlandt Manor.

Mr. William Zutt, Esq. appeared before the Board. He stated when we were last here the case was held over pending a search Mr. Flandreau with respect to the issue of lot merging. I was able to stop by, and see Jim today, and at that point I don't think we had anything definitive.

Mr. Flandreau stated I believe Mr. Klarl will be commenting on that.

Mr. Klarl stated at the last meeting on February 21st we discussed the possible merger, and Mr. and Mrs. Scelza filled us in with some factual material concerning how it occurred, and I told you that we'd research with Planning, and the Assessor's office, and we should have an answer for you for next month.

Mr. Mattis stated so we are still awaiting that information.

Mr. Zutt stated I missed part of that, what is it that we are exactly waiting for John?

Mr. Klarl stated I said I will take a look at it with the various departments, and get back to the Board with that information. We are just confirming everything, and we will get back to you at the April meeting. If you want to call us before the work session, you can give us a call.

Mr. Zutt asked so the issue of the merger is still open?

Mr. Klarl replied well we're looking at it. We've haven't made a final determination. We had our first presentation last month, and they offered certain evidence, and we are just researching that.

Mr. Zutt stated I did my best to get the information that was on file in the Assessor's office today, and I would be happy to answer any questions that the Board might have. It appeared to me that the property became into common ownership in the Pawling Savings Bank under a foreclosure.

Mr. Klarl stated yes, we saw that.

Mr. Zutt stated prior to that time a Mrs. Fitzgerald, I think it was back in the 80's did just what Mr. Scelza did, and was asking the assessor to put them together for tax purposes. So when they made the new tax maps I can't understand why they didn't carry them as a single lot, but when they made the new tax maps in 87 it still showed up as two tax lots. So then Pat wrote his letter, asked them to put them together as one tax lot, which was subsequently done. So that is the situation as far as I know.

Mr. Chin stated it was just to pay the taxes on one bill.

Mr. Zutt stated exactly. I guess one other point that I should make is that there is a lot of cases where they talk about back to back nonconforming lot situations, and this is a bit different, because this is sort of side to back, but in most of those cases they say that a merger doesn't happen unless the lots were physically incorporated with another in terms of use, and activity and one partook of the other. They talk about common use, and incorporating them together as one integrated use, and then when you go to separate them later on then you say now they have to get variances because they've merged. The history of this from what I have seen doesn't

indicate any prior common use, and Pat could speak to that further if you want. As far as we can tell they remain discreet parcels, one is overgrown, and somewhat unkempt, and the other has his house on it.

Mr. Douglas stated I guess the Board just needs time to digest, and analyze the information that we have.

Mr. Zutt stated well whatever you find, if you could share it with us, we'd like to know about it.

Mr. Mattis stated we should have something by next month. If you want, we should even have it by the Work Session.

Mr. Zutt stated okay, thank you.

Mr. Mattis asked is there anyone in the audience that would like to speak.

Mr. Douglas made a motion in Case No. 06-07 to adjourn the case to the April meeting seconded by Mr. Seirmarco with all voting "aye."

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CASE NO. 09-07 ROSENTHAL JCC for an Interpretation if the proposed improvements constitute an expansion of a nonconforming use or a Use Variance to allow the expansion of a nonconforming use on the property located at 500 Yorktown Rd., Croton-on-Hudson.

Mr. John Kirkpatrick, Esq. and John Iannacito, architect appeared before the Board.

Mr. Kirkpatrick stated at the last meeting I think we left it that the Board wanted to take another look at the property, and consider the situation. I took the liberty in the meantime of getting a couple of letters of support from residents of the Town, which I would like to give to the Board. He handed the letters to the Board. He stated I wasn't sure if the Board had any concern about precedents, but I thought I'd take the opportunity to address this with similar kinds of applications. I am hoping that your Board will consider, and find this a very unique use with very minor changes, and that what we are proposing is not an expansion, or if the Board finds that it is that you would be willing to grant a variance for that. I'd be happy to answer any questions.

Mr. Douglas stated I have a question about something I thought I heard you say last week, and I just wanted to inquire. I think at the end of the discussion last month you said something about our Town Code perhaps being inconsistent with the State Law with respect to the ability to grant a variance where there is a nonconforming use. Generally, we cannot grant a variance where a nonconforming use is involved, and I think you said it was inconsistent with the State Law. Did I hear that correctly?

Mr. Kirkpatrick replied what I mean is that the State Law contains no such provision.

Mr. Douglas stated so you are not saying that the Town Ordinance is inconsistent then?

Mr. Kirkpatrick replied no.

Mr. Mattis stated our Town Ordinance does contain that.

Mr. Kirkpatrick stated yes, I know.

Mr. Becker asked could you outline for us, and just for clarity the scope of all the changes that you are requesting?

Mr. Kirkpatrick replied yes, let me ask John Iannacito to go through the plans.

Mr. John Iannacito appeared before the Board. He stated the improvements that we are proposing are at the entrance gate of the camp, we're proposing a new stockade type fence which may, or may not contain a sign.

Mr. Seirmarco asked can you just describe what is there now?

Mr. Iannacito replied I think they have a small sign. There might just be a rope that runs across the driveway with two posts at each end, and the proposal is for a little fencing, and a little sign.

Mr. Mattis asked how long would that fencing run, linear feet?

Mr. Iannacito replied maybe 10 feet on each side.

Mr. Mattis asked it is just at the entrance way?

Mr. Iannacito replied yes, just at the entrance on either side of the driveway. The second improvement would be the relocation of a nature shed, which currently sits in the middle of the existing play area. We are just proposing to move it closer toward the driveway. The third would be a wood platform in the center of this irregular shaped building. That building right now is essentially a deck with a roof. It is an open air structure, and we're just looking to build a platform, which would be about 6 inches above grade. There is just a 3 foot perimeter that is uncovered. The rest of it is covered. So we are just looking to tie that in to what is existing.

Mr. Chin asked so it would be on grade?

Mr. Iannacito replied just 6 inches above. It will all line up with what is already there. It will probably just be pressure treated wood just sitting right up there.

Mr. Mattis asked is that area covered today?

Mr. Iannacito replied no.

Mr. Mattis asked will it be covered?

Mr. Iannacito replied no roof, it will just be a little platform. Then we are proposing toward the rear of the property a playing field, an all sports court, a basketball court, an archery area, and an adventure course area.

Mr. Seirmarco asked is that open now?

Mr. Mattis asked are there any trees or anything there?

Mr. Iannacito replied there may some tree removal. At this point, we are looking for an Interpretation, and we'll deal with the tree removal part with the Planning Board.

Mr. Becker stated I think what we're asking is if this area is forested right now, or is it actually a field?

Mr. Iannacito replied there is some playground equipment in this area that we're looking to relocate. So there are some open areas, and some areas with trees. It is not completely dense forest. They are just trying to make the space as an athletic field.

Mr. Seirmarco stated we're all troubled with increasing the degree of nonconformity. If it's maintenance not a problem. If it's replacement of an existing thing, not a problem. If it's moving a building that's moveable from one place to the other, not making it any bigger or smaller, just relocating it, probably not a problem. When you start with fresh nothing there, and create something, I have a problem with that, and I'm sure the rest of us will have a problem too. We are going through these things one by one to clarify these things.

Mr. Iannacito stated I think that's the case with these areas back here. They are new. There is nothing there now that is defined as a basketball court. There is playground equipment, but it is not defined as a play field. These other areas in the front of the property probably are not an expansion, they're not new things there just a maintenance type of thing.

Mr. Becker stated I think the issue comes out with any construction. Now I think the sports court, as you referred to it, does that need a variance?

Mr. Iannacito replied the athletic field, no.

Mr. Mattis asked will it have to be graded?

Mr. Iannacito replied the basketball court yes, would be a paved area.

Mr. Mattis asked will you have to grade that whole area?

Mr. Iannacito replied I am not sure how much grading will have to be done. We really didn't get into that much detail yet. There will probably be some. It is sloping off to one side so there will probably be some grading there.

Mr. Heady asked at the last meeting when you mentioned the five buildings there that you are not using anymore, is that right?

Mr. Iannacito replied there are five buildings back there that are presently unused.

Mr. Heady asked are you going to remove them?

Mr. Iannacito replied we will remove one of them for the playing field.

Mr. Mattis asked so one of them now is part of what will be the field?

Mr. Iannacito replied yes, and I'm sure if it were something where we could remove all of those buildings in order to allow this play field I am sure that is something they would consider.

Mr. Chin stated because you did say at the last meeting that those were not being used at all.

Mr. Iannacito stated they're not, they're just vacant buildings.

Mr. Becker stated I think the issue is that it comes down to how this Board interprets what a structure is, and I think we would be intuitive to how we would determine that is anything with nails, and built is going to be a structure, and probably the field is okay as long as it doesn't involve major grading, and major cutting of trees. If you removed a couple, we probably would not have a problem, but if it is an actual forested buffer, we would have a problem. We don't want to make a substantial change, and we don't want to allow an expansion, and we can't allow any new structures there, repairs are a different story.

Mr. Seirmarco stated the paving, and concrete may also be an issue.

Mr. Becker stated yes the sports field would probably be allowed, but the basketball court probably would not be allowed, because that's more like a driveway.

Mr. Iannacito stated it would probably have to some kind of a hard court.

Mr. Becker stated yes, I personally would have a problem, and I think when we all talked in the Work Session that we want the camp to survive, and to continue, but we're prohibited from allowing an expansion. So anything structural, and if it involves paving, and permanent change we would have an issue with. As Mr. Seirmarco said, removing an existing structure to create something we probably wouldn't view that as an expansion, but paving of a court would be an expansion.

Mr. Iannacito asked what about the platform on the other building?

Mr. Becker replied we would need more information on that.

Mr. Chin stated I probably wouldn't consider that an expansion. I mean it's going to be sitting on grade, if you had a deck be putting on a house and it's going to be sitting on grade, they wouldn't even have to come in for something like that. So there are some picky situations here, and I think we are going to have to sit down again, and go over what we talked about, and I think we might have a decision by next month.

Mr. Douglas stated I just want to say something. I personally think the camp is a good use, and I personally would like to see it continue and thrive, but in order to vote in favor of this I need some sort of legal hook. So can you tell us what sort of legal hook you have for these proposed changes not being an expansion? For me personally unless I see some kind of hook, something I can grab onto, I don't see how I can vote in favor of something, because we're pretty strict regarding no expansions. So give me something more.

Mr. Kirkpatrick stated in my first letter you'll find is a reference to a publication of law for Zoning and Planning. It has an extensive chapter on nonconforming uses, and subject of changes, and intensification, and I quoted from him that an intensification of a nonconforming use within the spacial limits of its' exercise with the Town it became nonconforming, and minor repair changes or alterations that do not substantially change the nature of the use are not generally considered an expansion.

Mr. Douglas stated so you are saying that if they were to be increasing the intensity of the use by having additional campers, more hours, more staff that would be an expansion, but these structural changes are not an expansion of the area?

Mr. Kirkpatrick stated that would be one way to look at it, and by the way the number of campers is staying the same, and the hours, summer only operation, that is all staying the same. It's very much case by case when you start looking at all the various court decisions out there on the subject as to what exactly constitutes expansion.

Mr. Douglas stated I just need some sort of principal reason to do that. Again, personally I am in favor of what you're asking for, but I'm having some trouble finding a principal way to grasp this as opposed to just liking it.

Mr. Kirkpatrick stated I will submit what I can find.

Mr. Mattis asked can we have that for our next Work Session?

Mr. Kirkpatrick replied yes, absolutely. I assume that if the snow is gone soon, perhaps we might schedule, for those that would interested a tour of the camp?

Mr. Mattis replied I think that would be a very good idea.

Mr. Chin stated I was going to suggest that sometime before the next meeting we can check the camp out.

Mr. Kirkpatrick asked how might we schedule that?

Mr. Mattis replied we generally schedule that the Saturday morning before our next meeting. The next meeting being April 18th, that Saturday will be the 14th at 10:00 a.m. Is that acceptable for you?

Mr. Kirkpatrick replied absolutely, thank you very much.

Mr. Mattis asked are there any other comments from the Board? Is there anyone in the audience who would like to speak?

Mr. Douglas made a motion in Case No. 09-07 to adjourn the case to the April meeting seconded by Mr. Chin with all voting "aye."

Mr. Mattis stated that is adjourned to the April meeting with a site inspection on April 14th at 10:00 a.m.

NEW PUBLIC HEARINGS

CASE NO. 10-07 CROMPOND RD. LLC for an Interpretation and/or Area Variance for a freestanding sign on the property located at 2293 Crompond Rd., Cortlandt Manor.

Mr. Howard Bogus, Sign Here Sign Co. and Mr. Ken Bowles appeared before the Board.

Mr. Bogus stated I am here on behalf of Bowles Westchester Chrysler and Chrysler Corporation.

Mr. Mattis stated can you explain exactly what you want, and what you're asking for?

Mr. Bogus stated okay. First of all, I just want to say that we worked out as many issues as we could with the Building Department as far as set backs, and that sort of thing. There were some issues in that regard. We relocated the sign to conform, and it was questionable whether we needed an easement or not. Basically, the variances we're looking for first of all is a square footage variance, second of all is a height variance, and third of all is actually an Interpretation variance.

Mr. Becker stated I have a few questions. First of all, in your statements to the Board, the written comments, you said that the sign is made by the car company is that it?

Mr. Bogus replied right, it is made by the Chrysler Corporation. There is one sign manufacturer approved for Chrysler nationwide.

Mr. Becker asked so then you are just the installer?

Mr. Bogus replied correct, I am just the installer contractor.

Mr. Becker stated because our sign ordinance allows for a freestanding sign of only 24 square feet, and by the rules of this Board we are allowed to grant a variance up to 100 percent, which would 48 square feet, but we're prohibited to go beyond 48 square feet for a freestanding sign.

Mr. Mattis stated so we have no authority to go beyond that, because you requested more.

Mr. Bogus stated yes. The way I see it we actually have not. Again, that is where the Interpretation comes into play.

Mr. Mattis stated getting to the Interpretation, I guess you were questioning the cladding, and whether that counted as part of the sign.

Mr. Bogus stated yes.

Mr. Mattis stated we have interpreted that it has. So that is not an issue. That has been interpreted. This is not the first time that we've had this, and that's the way we interpret it. In terms of the 48 square feet, you're requesting 64.28 square feet, and by law we can only go to 48 square feet. Your statement that Chrysler only makes them this size is kind of puzzling, because if you go a lot of places throughout the country, and Mr. Becker mentioned Hilton Head where signs are so minuscule you can't even read them. I am sure that Chrysler doesn't have a sign that big there, and many other places. So I find it puzzling that is the smallest sign, because I am sure there are many codes in the country that are more restrictive than ours.

Mr. Bogus stated I have an explanation for that. First of all, Chrysler Corporation makes standard sizes, if you will, and those sizes are conforming to most applications. This is the smallest standard size that Chrysler makes, then you have to go into a custom application. So it would then turn into a custom sign versus just the standard sign.

Mr. Mattis stated I guess that is going to have to happen, because we can't grant you as much as you want anyway. We can't go beyond 48 square feet, by law.

Mr. Bogus stated okay, so then there is not any negotiation as far as the pole cladding whatsoever?

Mr. Mattis replied we have interpreted that before, and once we interpret something we're consistent. There's no sense reinterpreting it. We've interpreted it, because if we don't include the cladding people are making signs with monuments on the side, and next thing you know we have a 6 foot wide sign that's 8, 10, 12 feet wide, because of the cladding.

Mr. Bogus stated I can understand that ...

Mr. Mattis stated we're consistent with our interpretation.

Mr. Bogus stated in some instances if I was here for a general pizza shop or something, and I was trying to get by with cladding adding to the square footage of the sign I could understand. This is a national program. No Chrysler dealer.....

Mr. Mattis stated we can't legally make distinctions where we say if your Chrysler you get it, and if your Joe's pizza shop you don't get it. We don't interpret that way. We're consistent with our interpretations from one business to another.

Mr. Bogus stated so if we were just to remove the cladding, and just put a pole there then it would conform with a problem, and we could paint it black. The purpose of the cladding is to keep the sign preserved for a longer period of time, and looks. I have a picture of a pole here, it doesn't have the cladding, and it looks horrible. The cladding makes it maintenance free. That's the only purpose of the cladding.

Mr. Mattis stated we understand that.

Mr. Bogus stated okay.

Mr. Becker stated even without the cladding it would still exceed 48 square feet.

Mr. Bogus stated well again, it depends on the Interpretation. The actual sign area no, does not exceed 48 square feet.

Mr. Seirmarco stated it is not an Interpretation. We have a very strict way of determining the size of the sign. It is a rectangle, or square, or box that goes around the stand.

Mr. Mattis stated well with freestanding it's the pole area including the sign.

Mr. Seirmarco stated it's not up to us to interpret that. It's a matter of what it is. It is what it is. Mr. Bogus stated I understand. I've appeared in front of many Zoning Boards, and the Zoning Board of Appeals does have interpretable value. You guys can distinguish. He is not a pizzeria. A pizzeria can make an application, and pick out the sign that they're going to want.

Mr. Mattis stated then you would have inconsistency throughout the Town. The purpose of the code is to have a certain size sign, and to have consistency throughout the Town.

Mr. Bogus stated they're different needs. That is what the Zoning Board of Appeals is for.

Mr. Becker stated well we don't distinguish in the fact whether or not you are corporate or private. If we did, I'd probably favor the small business operators over the corporations, but we'll that out. The people who live, and work in this Town I'd bend over backwards for them, if

I could. So that is the total opposite of my philosophy. We follow a very strict process where we take all kinds of people, and we don't distinguish or prejudice our decisions in favor of any one group.

Mr. Mattis stated I think if we did that, that would be arbitrary.

Mr. Becker stated if you look back over the last 6 months, you'll see half a dozen people from Cortlandt Town Center including the whole Cortlandt Town Center who had signs at both entrances, and we interpreted that way. There was a store, a building on Rte. 6 that had 6 separate occupants within it, and each one wanted to be represented, and came in with a beautiful stone arc, and we interpreted that as being part of it. Across the street from that was a gas station with numerous signs on it, and we've interpreted exactly the same consistently for all these applicants, and I think we'd only get ourselves into trouble. The other thing is that to grant a variance you need to show us that there is no alternative, and there is an alternative, you can have a custom made sign. It may be more expensive. To me I really don't have that much preference personally. It is on a commercial road, 202, the law is what it is, and we're allowed to go up to 100 percent, which is doubling of the allowable sign, and if it requires it to be made custom, then so be it.

Mr. Seirmarco stated that's the Interpretation. The Interpretation is how much over the 24 square feet would we allow, up to 48 is the answer.

Mr. Bogus stated I totally understand that. I totally respect that.

Mr. Klarl stated so given the comments you've heard from the various Board members, maybe you can try to work within the code given the comments you've heard.

Mr. Bogus stated well obviously we wouldn't waste the Board's time nor the money, if we felt that sign would fit the criteria, or the need of the customer. That is why we are seeking beyond that. Right now there is no building sign, and there is no building sign planned. This is the only sign. It is the only way this man can run his business, and that is why we came in front of this Board.

Mr. Mattis stated we don't want to harm the business. We want them to flourish, but at the same time we have a code that we have to adhere to, and in terms of interpreting from one business to another. I don't think I have enough education. I don't think I am smart enough to determine which ones should be treated differently from other ones. So we treat them all the same.

Mr. Klarl stated don't you also think that all of the Chrysler vehicles parked out front might also be advertising you.

Mr. Bogus stated they might be, but it can also be interpreted as just another car lot down the street whether it is new, used, or otherwise.

Mr. Mattis stated I can assure you that you would get a sign that people can see, and people can identify as Chrysler.

Mr. Becker stated let's be clear in what we're telling you. You're allowed only 24 square feet. This Board is allowing you to double it. You're appealing to us to exceed 24. You're not appealing to us to get what you want. Your appealing to us to go beyond 24, and we're saying no, we'll allow you to double that to 48, but that is as far as you can go by law. So I want to make it clear in understanding that we're allowing you the maximum that we can by law.

Mr. Bogus stated okay. The only other thing I have to add is the trademarks of the Chrysler Corporation all have to be proportionate. So I can't reapproach this Board in another month or two, and say okay we came in with a sign that 46 square feet. For us to make anything work that is acceptable in the corporate level, this sign has to be reduced to around the 30 square foot mark. So it's a substantial drop just to make the geometry work.

Mr. Mattis asked so do you propose that we give something more than 48, because by law we cannot do that.

Mr. Bogus stated no, like I said I was hoping quite honestly to approach this Board, and you stated your position, and I'm very clear on it, but I was hoping to approach this Board, and say the actual surface area of the sign is less than 48 square foot. The outside of the box, and I understand how you interpret it is basically just holdings for electrical sockets, and wiring, just the mechanicals of it.

Mr. Mattis stated I understand that, and I'll tell you about a case we had a number of years ago, and it was Hollywood Video, and they have this big starburst.

Mr. Bogus stated yes, I am familiar with that.

Mr. Mattis stated well if you look at the one we have on Rte. 6, it doesn't have the starburst. So I am sure Chrysler works with that. Again, I don't think what you're requesting, and what's granted across the country is unique. I am sure the sign people work with that kind of thing all over. Petsmart was another one with the bouncing ball.

Mr. Chin stated Home Depot was another one. These are big corporations also.

Mr. Mattis stated we're trying to accommodate you by giving you the maximum we can, which is 48 square feet, and that's all we can do.

Mr. Bogus stated personally I just feel that the line being drawn in the sand so to speak doesn't work for all applications.

Mr. Mattis stated you have a remedy for that. You can go to the Town Board, they set the code, and you can tell them that you think that is wrong, because they set the code. All we do is act on

the code that they give us. We can't change that.

Mr. Bogus stated I am not trying to rewrite the structure of the law.

Mr. Klarl stated this Board works with ordinances legislated by the Town Board.

Mr. Mattis stated so the line in the sand is really drawn by the code by the Town Board.

Mr. Bogus stated I understand that, and I appreciate that.

Mr. Chin stated there's a lot of places out there right now that we've never even come close to 100 percent.

Mr. Bogus stated so basically if I was willing to redesign, and submit this application this Board would be willing to entertain a variance up to 100 percent without issue?

Mr. Chin replied correct.

Mr. Mattis stated we would have to look at it before committing to anything.

Mr. Bogus stated well without much reservation.

Mr. Chin stated that would be correct.

Mr. Heady stated can I ask you something? Do you have the sign on the premises right now ready to go up?

Mr. Bogus replied no, we do not.

Mr. Heady stated now you are on Rte. 202, which is a main route there. You have going east, and going west, and the sight distance is very clear, you can see way ahead, there is no problem at all, and the way I see feel if you could even have a 36 square feet sign I think you could see it with no problem there. That is the way I feel about it, maybe the rest of the Board feels differently. Even if you went to 24 square feet, which is too small I would say, but 48 is double what we have to give you, but for the distance there, and the sight visibility there to see that sign you would have no problem either way in that traffic. That is why I feel a 36 square foot sign would suit your purpose. That is just the way I feel.

Mr. Bogus stated Mr. Heady I would concur with that. A 36 square foot sign is 6' x 6' sign and on the ground it looks very huge okay, it is as tall and as wide as I am. I don't know about as wide but, the problem you go in the air the smaller an object gets, and again Chrysler sets the standards okay. This gentleman here is a franchisee, and he can only bend so much as well. Chrysler sets the standards, and says you will have your sign in the air. If you want a ground sign, it's not his option, and that's part of his franchisee agreement.

Mr. Seirmarco stated we should also talk about that, because you are proposing a sign that is over 16 feet.

Mr. Bogus stated correct.

Mr. Seirmarco stated I am not so sure you are going to get that.

Mr. Bogus stated I am trying to work the bugs out now while I have the Board's attention. I just want to expedite this process.

Mr. Seirmarco stated that is why I brought it up, 16 feet is very high. We go by what we gave the rest of the Town, which is 14, 15, maybe 16 feet, but I don't think any sign is 20 feet in the air.

Mr. Mattis stated actually at 16 feet it will look larger, because the lower it goes, the larger it looks.

Mr. Bogus stated correct, but again there's reasons for that. Chrysler also has reasons. The reason they want their signs up higher, and this I got directly from Chrysler is the fact that trucks, and things of that sort, the sign is too low to the ground it can hit it, and damage the sign. Mr. Bowles also gets the delivery trucks there for parts, and car carriers, things of that sort. There not the best drivers. Nothing against a truck driver, because I was one, but sometimes they don't do the right thing either.

Mr. Heady stated where your putting your sign is back off the road too.

Mr. Bogus stated right, we had to relocate it back on the island.

Mr. Heady stated well there should be no trucks driving that close there.

Mr. Bogus stated but as a truck is coming in, and he turns on the island, a tractor trailer the tractor always drives shorter than the tractor.

Mr. Heady stated well there is an island there between that, and the state road, it would be in there wouldn't it?

Mr. Bogus stated yes.

Mr. Mattis stated you are showing a width there of the entrance, and exit of 25 feet, and where the sign is your probably another 15 feet back.

Mr. Bogus stated I'm sorry?

Mr. Mattis stated the entryway where the new sign is going is probably sitting back how far from the entryway?

Mr. Bogus replied about 18 feet.

Mr. Mattis asked and how far off the 25 feet width of the entrance there?

Mr. Bogus stated about 3 to 5 feet. That is what I'm saying if a truck comes in, and has to turn in front of the building, which is more than likely the case. Your typical trucks sits about 13' 6", so you need that clearance above that to make sure it doesn't whack it as it's flattening out. Now nothing to say that it's not going to take out the whole pole structure in its' entirety, but that's a horse of a different color. If you notice, the sign actually flags backwards, it doesn't flag out towards the road. That is a perfect case scenario with a lower sign, because it will just hack that right off. So that would be my argument for the height variance.

Mr. Seirmarco asked the existing sign is how high?

Mr. Bogus stated there is no existing sign, it has been removed.

Mr. Mattis stated that was considerably lower anyway.

Mr. Bogus stated but it was in a different location, it was on the other end of the property.

Mr. Bowles stated it was on the end of the property that we're not allowed to put a sign a back on now.

Mr. Douglas stated I'm not aware of us ever granting a variance of the height over 20 feet. I can't ever recall us ever going over 16 feet. I am sure at some point in the history of this Town there has been, but I don't recall it.

Mr. Bogus stated okay let's say we were to go with that 6'x6' sign hypothetically at 16 foot that would bring the bottom of the sign down to 10 feet. It is very susceptible to damage at that point.

Mr. Mattis stated I would feel more comfortable that the first time it was knocked over, and you came in, then we would have some evidence that might be a problem.

Mr. Bogus stated well that would be unfortunate. I actually do a good business on redoing my signs once they get hit.

Mr. Chin stated I know with a tractor trailer that 13' 6" is the height.

Mr. Bogus stated there is not a lot of room there at 16 feet. I think there is a valid argument for a height variance on that regard. Believe me it is not to better the field of vision. The higher you go it actually is worse for that. Again, these are all considerations on a national level that

Chrysler makes that I come to argue for.

Mr. Chin stated I understand your point. I would be willing to consider it myself, but I am only one person here. The height from 16 to 20 feet, I don't think I would have a problem with based on the fact that you have to move those trucks in. I've seen them not make a wide enough turn, and be up on the curb. So I would consider that.

Mr. Becker stated may I suggest that you come back to our Work Session with a new set of drawings approved by Chrysler trying to show us the minimum amount of variance you would require on height to maybe clear that 13 ½ feet so we can see that.

Mr. Seirmarco asked is it possible to make that sign 6'x6'?

Mr. Bogus stated again, I was only using that as an example. I honestly don't know what Chrysler specifications are going to be on that actual sign. I know it is going to have to be substantially less, because everything is going to have to be proportionate. So what that size is going to be, I don't have that information right now.

Mr. Becker stated that is why I am making that suggestion, because I don't think it's right for us to go forward without seeing what the sign looks like. So once you come back with the proportion of the sign, then we can see how much negotiation we will have on the height.

Mr. Bogus stated I'll be honest with you Mr. Becker, I think if we go with a smaller sign, I don't think Chrysler is going to want it as high, but I still think they're going to want that consideration of being able to negotiate traffic in there without compromising the sign.

Mr. Douglas stated I understand that Chrysler has its' policies, and its' rules, and all the rest, but the Town also has its' ordinances, and its' rules, and its' standards, and this Board, and my being a member of it, I feel the need to uphold the Town ordinances rather than corporate national policy.

Mr. Bogus stated absolutely, Mr. Douglas, and I'm not asking you to do that.

Mr. Douglas stated I am only so sympathetic.

Mr. Bogus stated absolutely, but on the same token it's common sense that you have people that are traversing a lot, and the last thing you need is to have the sign taken down.

Mr. Douglas stated well if they really want something, they will be willing to make a deal, and be flexible.

Mr. Bogus stated well obviously they will have to be.

Mr. Douglas stated they don't have to be, but they may not get what they want if they're not.

Mr. Klarl asked what is your best guestimate, if you had a 48 square foot sign what the height would be?

Mr. Bogus replied I'll be honest with you, and I was able to speak to Chrysler, and if I had to concede I did ask Chrysler if they would give me the authority to concede on height level provided that again, that would not effect traffic flow, or the sign being compromised.

Mr. Klarl asked so what do you think the height would be, if it is 48 square feet.

Mr. Becker stated I am just thinking that you could probably get away with maybe 17 ½ feet, which just means we are giving you a foot, and a half, but not up to 20 feet.

Mr. Bogus stated I would say 14 feet clearance just to be safe. Even bridges, and tunnels everything is marked under what it actually is.

Mr. Becker stated I am not saying you'll get it. I am just saying that would give us a little more compromise.

Mr. Mattis stated you have a 48 square foot envelope to work with, and if you come back with something next month, and when we see that, then we can talk logically about the height.

Mr. Bogus stated okay that would be fine.

Mr. Seirmarco stated I have to tell you one thing, you're very consistent for a sign manufacturer. Everybody comes in here, and says the exact same thing that you did. For the same reasons, the corporate customers demand it, they have the pre-made signs.

Mr. Bogus asked I didn't present a better argument than the competition?

Mr. Mattis replied in a better manner. Are there any more comments from the Board? Is there anyone in the audience who would like to speak? I think you know what we're looking for next month. If we could have that a week or so before our Work Session, which is the Monday before. If you would like to attend the Work Session, by all means you can.

Mr. Bogus replied I am getting paid, absolutely.

Mr. Becker made a motion in Case No. 10-07 to adjourn the case to the April meeting, and request that the applicant provide us with a new set of drawings for the new sign by two weeks before the Work Session seconded by Mr. Chin with all voting "aye."

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Accessory Apartment on the property located at 15 Arthur St., Cortlandt Manor.

Mr. Peter Baginski and Mrs. Marilyn Baginski appeared before the Board.

Mr. Baginski stated I live at 15 Arthur St., and we presented some drawings to you guys.

Mr. Mattis stated yes, you are requesting a Special Permit for an accessory apartment.

Mr. Baginski stated yes, that would be for my mother-in-law.

Mr. Heady stated I was out there a couple of days ago, and he showed me that the apartment is in there, and he bought the house that way. He wants to add on to where the garage is, and make it into a dining room. The way it is now he's going to have to see Code Enforcement, and take out the apartment downstairs, and they'll go over it with you, and you will have to make an application for a Building Permit, and then after that you have to get the CO, and wait for three years before you can put the apartment downstairs.

Mr. Mattis stated yes, there's a provision in the code that if you have any Building Permit, and then Certificate of Occupancy you must wait three years. So by converting the garage, you're actually expanding the living area. So you have to wait three years to come back and ask for an accessory apartment. That's a part of the code. So we can't grant this, because of the expansion that you're doing.

Mrs. Baginski asked suppose we don't do the garage, and we just update the apartment downstairs?

Mr. Mattis replied well then you can do that, but we'd need the revised square footage, because you need 1600 square feet, and your house is only 1287 square feet, and you're only allowed 25 percent of the total square footage, and you have 32.9 percent. So we would have to look very critically at that.

Mr. Baginski asked because there is two projects combined that is why we would have to hold off on it?

Mr. Mattis replied you see the code states that any kind of expansion to the main structure, if there is a Building Permit, and CO issued you must wait three years to apply for an accessory apartment. The intent of that is so that people aren't really expanding their houses to create accessory apartments. They want them to be incorporated within what's there already as livable space. Again, we don't write the code.

Mrs. Baginski stated we bought the house in 1970, and we bought it as an in law status. My mom lived with me at the time, and now that is not legal anymore? I don't understand.

Mr. Flandreau stated it was never legal when you bought it.

Mr. Seirmarco stated they used to sell mother/daughter houses, but they were never legal.

Mrs. Baginski stated they advertised it as an in law set up at the time. So we're being penalized, because someone did something illegal. I mean, it's just crazy.

Mr. Chin stated we understand what you are saying, but we have no alternative over what is written in the code. We have to figure out what the percentage ratio is, and see how far off you are. Right now it's 25 percent anywhere up to between 400 and 600 square feet, but it's the percentage. It's not so much the square footage. You are limited to the square footage of the accessory apartment, and it's 424 square feet.

Mr. Baginski stated it is actually not really that big. Jim has been over there, and Mr. Heady has been over there.

Mr. Mattis stated I think what Mr. Chin is saying is that your 424 square feet is within the 400 to 600 envelope, but the percent of that to the total size of the house is high.

Mr. Baginski stated I don't understand where these rules comes from.

Mr. Chin stated it's in the Zoning Code.

Mr. Mattis stated there is another issue here too. Did you contact the County Board of Health yet?

Mr. Baginski replied we've been on the phone with them several times. We have a relatively new septic system in there that was built for a two family house.

Mrs. Baginski stated they have no record of it anywhere. We have four leach pits now. The Board of Health came at the beginning, and came at the end, and the Town has absolutely so record of it anywhere. The Board of Health has no record of it. So I don't know what happened to the paper trail, and when I called they said we don't even have the manpower to look, and we're welcome to go down and look to try to find it.

Mr. Becker asked when was your house built?

Mrs. Baginski replied our house was built in 1950.

Mr. Becker asked so since that has the downstairs been used?

Mrs. Baginski replied yes, my mom lived there. We bought it as a mother/daughter house. We looked at plenty of them. So they were in the Town of Cortlandt.

Mr. Becker stated I am asking has it been occupied as such?

Mrs. Baginski replied yes, my mom lived down there when we first moved in, and my dad passed away, and about 10 years later my mom remarried. So now she's elderly, she's 85, and we were going to bring her back to live with us. So what we basically wanted to do was to take what was down there, and upgrade it, make it all up to code, and everything else. I always see people, friends of ours who have tried to sell their house, and they found out in the process of selling this wasn't up to code, that wasn't up to code. So if anything ever happens to me, he can sell the house, and if anything happens to him I can sell the house, or my children could. So that is our main purpose to just basically bring the house up to code so if I wanted to put a for sale on it, I could get out. Now to tell me that I have to put \$25000, or \$30000 back into it. So the apartment was existing there. I think the most upsetting part to me is that we're being penalized for something that we knew nothing about it. There was plenty of in law set ups out there, just as there are probably plenty of in law set ups out there now.

Mr. Chin stated I am sure there are.

Mrs. Baginski stated so we're trying to do things the right way.

Mr. Becker stated that is why we are trying to help you. I have a question for our attorney that maybe can be researched. If this is truly built in 1950, can this be considered prior to zoning?

Mr. Mattis replied if the apartment existed.

Mr. Becker stated if the apartment existed in 1950.

Mrs. Baginski stated the house is exactly the way it was when we bought it, exactly. My mom and dad were going to move in with us, and unfortunately my dad died two weeks before we moved in.

Mr. Klarl asked do you have any idea how long the former owners owned the property?

Mrs. Baginski replied I know exactly who owned the house. Rice owned it originally.

Mr. Klarl asked from what period to what period?

Mrs. Baginski replied she was in it in I guess the 50's. I'm not quite sure. Then we bought it from the DiBicelligi's, and we were the third owners.

Mr. Klarl stated so there were three owners since 1950.

Mrs. Baginski stated yes, Rice built it.

Mr. Klarl asked do you know if any of the old owners are around?

Mrs. Baginski replied no, they're dead.

Mr. Baginski stated we've been there for 40 years.

Mr. Mattis asked are there any neighbors that have lived there since the house was built? If that was built with the apartment in it, that could be pre-existing.

Mrs. Baginski stated it was pre-existing.

Mr. Klarl stated we are asking questions to see if there is anyone else with personal knowledge of the house that might assist the application.

Mrs. Baginski stated all the neighbors would know it.

Mr. Flandreau stated that for prior to zoning, we would check the records, and make sure it was built before 1951, if it was then with this case we would need to get two affidavits.

Mr. Mattis stated not necessarily 1951, if accessory apartments were allowed at some point, or were not regulated, they were just allowed. It would have to be at the point before they were regulated.

Mr. Becker stated if we can some way document that this was pre-existing prior to zoning, and at that time it was legal, then you can probably just occupy the space that was previously occupied. I think this would be very reasonable, because if you read the intent of the code as it's written, it's specifically to allow residents of our town to allow their parents to come back. This is the legislative intent. It's not to create a space so you can rent it out. I am trying to find a way that you can show that it was pre-existing so that you don't have to wait the three years. If it existed prior to the Zoning laws, and it was used, and that it has been in existence, and used prior to zoning, and we can document that, I don't think you would have a problem.

Mrs. Baginski stated well we'll have to find old neighbors that are older than us. We have them. There are a few left.

Mr. Flandreau stated if you come to the Code Enforcement office tomorrow we can go through the records, and first see if you are prior to zoning, and if there is something you do with getting affidavits.

Mr. Baginski asked what's prior to zoning 1954?

Mr. Mattis replied 1951. The original property record card may show something.

Mrs. Baginski asked so if this is approved, then the only thing we can do is update the current apartment downstairs?

Mr. Seirmarco stated that is right.

Mr. Becker stated well you would be able to have mom move in, but you wouldn't be able to expand it. You would have to apply for that as a separate variance, and it would most likely be denied. If we declared the house to allow you to get the mother/daughter, prior to zoning it then becomes a nonconforming house, and you're not allowed to expand a nonconforming house. So we're trying to find a way for you to get mom in, but you wouldn't be able to expand it.

Mr. Chin stated let's just go back to where I would like to find out what the square footage is. The actual square footage from the house to the accessory apartment. I want to know that. I want to make sure that in the accessory apartment certain things are not included as livable areas.

Mr. Baginski stated well we did that. We subtracted closets, and all the windows in the encasement are built into the cement so it's not like you can just make the apartment smaller they're all built in there.

Mr. Chin stated I understand that, but let Code Enforcement give us a percentage, and we'll try to check into the other thing at the same time.

Mr. Baginski asked so at this point what would you suggest?

Mr. Chin replied I suggest that you adjourn this until next month until we get some more information.

Mr. Klarl stated and maybe you research the records, and see what it reveals about the history the house.

Mr. Chin stated if there are any neighbors that have been there since 1950 that would help.

Mr. Baginski stated so they just have to sign an affidavit.

Mrs. Baginski stated we better get moving, they're dying. There are not many left. Would they have to have lived there prior to us moving in?

Mr. Flandreau replied they would just need to have knowledge of it. It doesn't even have to be a neighbor that lived there. It could be a friend of the family that you bought the house from that knew back in 1950 when the house was built that is what was there. It doesn't have to be somebody who lived in the neighborhood as long as they knew, and they were there.

Mr. Chin stated so tomorrow you should go see Jim in Code Enforcement, and go over the record cards.

Mr. Mattis stated the next meeting will be April 18th. Hopefully, the county will find some records also.

Mr. Baginski stated we actually have photos of the outline of where the leach pits where the snow melts there.

Mrs. Baginski stated the last time it snowed I went out, and took picture of the 4 leach pits. Is that acceptable?

Mr. Mattis replied we can't really comment on that. That is up to the County Board of Health. The Town doesn't have jurisdiction over that. Are there any other comments? Is there anyone in the audience that would like to speak?

Mr. Heady made a motion in Case No. 11-07 to adjourn the case to April meeting seconded by Mr. Chin with all voting "aye."

* * *

CASE NO. 12-07 CHRISTINA MCGUIRE for a Special Permit for an Accessory Apartment on the property located at 33 No. 4th St., Cortlandt Manor.

Mr. Phil Hersh, Esq. appeared before the Board. He stated I am representing Christina McGuire in an application for an accessory apartment retroactive. The subject premises is 33 No. 4th St., Quarry acres. I believe you should have plans that I submitted, and a recent survey.

Mr. Chin stated I was actually out there last week. I was looking at the plans. The accessory apartment is above the garage. Nobody was home there. There were cars there, but nobody answered the doorbell. I walked around the property. I wouldn't mind the accessory apartment above the garage, but is there an opening from the main house going into that open area there?

Mr. Hersh replied you want that blocked off, is that what you're saying?

Mr. Chin stated yes. Is there a room up there, or just a doorway or what?

Mr. Hersh asked his client there was doorway there, didn't you close it off?

Ms. McGuire stated there is no access there.

Mr. Hersh stated there's no access now, but there may have been.

Mr. Chin stated okay, so there might have been a doorway to that storage area, or whatever it was above the garage.

Mr. Hersh stated when I saw it I assumed it was by looking at it. That years ago there may have been something there.

Mr. Mattis asked so that was built without a permit?

Mr. Hersh replied that was built without a permit. That was not built by Ms. McGuire. That was

built when she was 20 years old by her husband, who is no longer her husband, and after he built it, and she wound up with the house in the matrimonial action, and he reported her to the Town. They increased her taxes to about \$16,000 a year. She was naive. She was unaware that it was built without a permit, not by her. So now we're stuck with this situation.

Mr. Chin stated there is one thing that kind of puzzles me, because I looked at the plans, and you have a basement down there, and it looks like another apartment.

Mr. Hersh stated no, not an apartment. It may look like an apartment. I mean they have a bathroom down there. We've removed what would appear to be a bedroom. She took the door off, so that is removed.

Mr. Mattis asked what about the kitchen area?

Mr. Hersh replied well there may be a kitchen area with cabinets, I believe. He asked his client is there a stove?

Ms. McGuire replied no.

Mr. Hersh stated there's no stove, but there are cabinets. Now I must tell you that just from my understanding there is not a living area down there. I believe that was a used area. There will be no bedroom area, that will be a condition of course, because we don't want to have that, and I'm assuming that at some point in time there would have to be some kind of Board of Health approval, or had been. We do have our Board of Health approval for the original. This accessory apartment has been there for over 20 years with no problem, until the divorce. It was built without permission, and she didn't know that. Let me address downstairs. There are cabinets down there. There is no stove. He asked his client is there a refrigerator?

Ms. McGuire replied yes.

Mr. Chin stated I know there is a sink down there.

Mr. Hersh stated but when we talk about living area, it is my understanding, and correct me if I'm wrong. We have new townhouses being sold in this Town they have cabinets downstairs. I don't want to say kitchens, but they have cabinets. They have bathrooms. Does that violate any ordinance?

Mr. Chin stated no, I am just saying that since it is set up like that, it could be another apartment. If you just block off the staircase somehow, or locking that door, to me it looks like another apartment, and that would make it a three family house.

Mr. Hersh stated just let me address that, if I may. It is my understanding that you need an access from the downstairs to the outside.

Mr. Chin stated I am not saying that you shouldn't have an access. I'm just saying it could be an access to another apartment now. All you have to do is close the staircase up, or put a door there, and lock it then it becomes another apartment.

Mr. Hersh stated well respectfully anybody could have that. You could go into Toll Bros., and see that. The Toll Bros. are selling new condominiums in this town with two bedroom approvals, and they have full bathrooms downstairs. There is no bed, and there are cabinets there.

Mr. Chin stated I don't see a problem with a full bathroom. It is when you have a kitchen, or a stove, or cooking elements. I am sure throughout this town there are a lot of basement apartments that are illegal, and rented out. Since you came in front of us, and looking at these plans to me it looks like an apartment. You're saying it is not an apartment, but personally I would like to have a site visit here.

Mr. Hersh stated right. I wish we would have been available when you came out. When you say a separate apartment I think you have to have a bathroom. I think you have to have a kitchen. I think you have to have a bed. I think you have to have a closed living area. I don't think you are going to find that there, but we welcome you to come out there.

Mr. Chin stated I have seen studio apartments without a bed also. It is just a big open area. I just want to look at it.

Mr. Hersh stated she pays \$16,000 taxes, which is probably more than anybody here pays. She pays more than I do. It is a small lot, and it is being taxed like a three family home. Am I right?

Mr. Flandreau stated for some clarification I was out at the site, and the complaint came in. I looked at the basement, and there was no stove in the location of the cabinets. In doing some research with the tax assessor's office, when they went out to the site they found that there was a kitchen area down there, and they are calling it a three family house. So that is where that came from.

Mr. Hersh stated because of the kitchen.

Mr. Flandreau stated because of the kitchen downstairs.

Mr. Hersh asked not because of the living area?

Mr. Flandreau stated they classified that whole space down there as an apartment. That is what there records show, and that is what their field operators saw.

Mr. Hersh stated I have my own issues with that, because if you go down there they have a living area without a bathroom. Although, they have the kitchen, which may be more convenient, and they have a TV room down there, but I think the suggestion they make is wrong.

Mr. Chin asked is that a bathroom right here indicated on the drawing?

Mr. Flandreau replied yes.

Mr. Chin stated so there is a bathroom.

Mr. Hersh stated yes, but there is not a bedroom though.

Mr. Chin stated you don't have to have a bedroom. You can have a studio apartment. Am I correct?

Mr. Hersh stated yes, you're correct.

Mr. Chin stated again, I would like to have a site visit with the rest of the Board, and just walk the property.

Mr. Hersh stated yes, if you could just give a time, and we will make sure to be there.

Mr. Chin stated also there is no sign there saying the applicant is front of the Zoning Board. Was that given out to them?

Mr. Flandreau replied that was given out.

Ms. McGuire stated it is front of the house. It is right in front of the birch tree.

Mr. Chin stated I went out there, and I saw no sign.

Mr. Hersh stated we'll make sure it is there.

Ms. McGuire stated it is right in front of the house. It is a yellow sign in front of the white birch tree. It's right there.

Mr. Chin stated I didn't see it. Unless somebody took it off, but when I went out there last weekend there was no sign.

Ms. McGuire stated it's right there.

Mr. Chin stated I am just stating what I saw okay. So that is my main thing right now is that this could be a three family house, or three family structure, I don't know yet. Again, the accessory apartment above the garage, I don't think I would have a problem with that.

Mr. Mattis stated I'm concerned with something here. The storage area over the garage, which is the area of the proposed accessory apartment correct?

Mr. Hersh replied that's correct.

Mr. Mattis stated well it was constructed without Building Permits. So it doesn't legally exist. So when you went for the Building Permits it becomes an expansion, and according to the code you have to wait three years. So because that was done illegally, and I know she didn't do it, her ex-husband did. She's a victim of this, and she's in a catch 22.

Mr. Hersh asked what's that mean?

Mr. Mattis replied she has to apply for the Building Permit, and then get a CO for that expansion, which to me doesn't exist today, because it's not legal. Once she applies for it to make it legal it's an expansion, and it triggers the three year rule for an accessory apartment. She's got to wait three years to establish it as an accessory apartment. That is what I am looking at right now. We're not making any decision tonight.

Mr. Seirmarco stated we have to go by what is on the card, and the card says it's a three family house.

Mr. Hersh asked what card are you talking about?

Mr. Seirmarco replied the tax card. So we have to mitigate that first, and then the second issue is the expansion or creation of the accessory apartment. What we need to do first is to make sure this is a single family house.

Mr. Mattis stated and we have to go through this one step at a time.

Mr. Seirmarco stated we don't make those cards up. So we have to deal with that first.

Mr. Chin stated this is not an easy situation right now. I am sorry for the applicant.

Mr. Hersh stated no, she is just a taxpayer, who pays \$16,000 a year in taxes, and we have no problem with that.

Mr. Mattis stated that's a different issue. It has to be, because then we'd be granting things to people with the highest taxes. It's something that really shouldn't be addressed to our Board.

Mr. Hersh stated I understand, and I just thought it may be taken into consideration.

Mr. Mattis stated well they should be reassessed when this all gets straightened out.

Mr. Hersh stated I would hope so.

Mr. Mattis stated because the house that I saw, they shouldn't be paying \$16,000 a year in year,

but that's a different issue than what we're looking at.

Mr. Hersh stated I don't think this is an issue either. I'm just trying to help a young lady out in a situation where she got herself into a jam with the Town, and now we have subsequent rules that may not have been in effect when this happened, and they are kind of punishing her.

Mr. Klarl asked do you think it would be helpful if they did a site visit out there?

Mr. Hersh replied yes, I want to make sure we're there when you come. It is a very difficult situation. When her husband built this, there wasn't that three year rule, as I understand it.

Mr. Seirmarco stated that has always been the rule for accessory apartments. The legislative intent is so that people do not build onto their houses for the specific purpose of expansion for apartments.

Mr. Mattis stated on the other hand there are no Building Permits for the expansion that was done. So legally none of this exists right now. I understand she is the victim of that, but we can't just ignore that either.

Mr. Hersh stated well let me just address that right now by saying it is part of the assessment records.

Mr. Chin stated the assessment card yes, but the building card only indicates it as a one family.

Mr. Mattis stated I think the first step is you coming here. I think the second step is to some information, and look at both what they have in Code Enforcement versus what they have in the tax records, and the next step is to go out, and have a site inspection.

Mr. Hersh stated I agree, that will be fine. When will the site visit be?

Mr. Mattis stated we have a site inspection already on 4/14 at 10:00 a.m. so we could probably be there about 11:00 a.m.

Mr. Hersh stated that will be fine. We will be there.

Mr. Mattis asked is there anyone in the audience who would like to speak?

Mr. Chin made a motion to adjourn the case to the April meeting seconded by Mr. Heady with all voting "aye."

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Mr. Vyacheslav Pechnikov appeared before the Board. He stated I live at 23 Cherry Pl. I want to get a variance to make my house bigger. I have the property, and I just want to make my future house there. I bought the house about 20 years ago, and it is too small for me, and my family. There is about .42 acres there, but the house is too small. My real estate agent told me it was 700 square feet, but in reality it is only about 600 square feet. I don't want to make it too much bigger. I would like my future house to be about 1800 square feet. That is why I am asking for this variance.

Mr. Seirmarco stated I was out there the other day, and looked at the piece of property. The house is small.

Mr. Pechnikov stated very small. This house is like a den. It is very small. It is a two bedroom house. It is very small, very small.

Mr. Seirmarco stated you do have .41 acres. The house is situated almost in the middle, but we just have to ask some questions as to why you have to have the set back as you asking. You have a large backyard. You have a large area in the side yard, on the left side yard. Why is that you have to enlarge in the front, and not the left side, or the rear.

Mr. Pechnikov stated I can explain too. I don't want to touch my neighbors, and break some additional limits. It would be possible to make the project, but it would be long, and narrow like a car wash. That is why I would like to get it done with this way. There would also be big expenses to get an acceptable house, acceptable for my family, that's why. I do not have a lot of money, and I would like to get a good house, acceptable house.

Mr. Seirmarco stated in order to grant the variance we have to find out if there is an alternative. I believe there is an alternative here. I think you could ask your architect, or engineer to lay it out slightly different to minimize the set backs.

Mr. Pechnikov I spoke with my architect the other day, and we spoke about it, but he chose this lay out for me, and my family. I don't see anything different. I am trying not to break the set backs. It will look too long, and narrow.

Mr. Seirmarco asked where is the septic system in the rear?

Mr. Pechnikov replied it is on the side of the house, and could not move it. I could not move it. I was forced to repair it, because my neighbors use a well. That is why I could not move it.

Mr. Chin stated I would like to ask a question. Jim you were at site, I am looking at the photo of the surrounding properties. Am I correct that the house to the right of his is almost right up on the road there?

Mr. Seirmarco replied yes it is.

Mr. Chin stated and the one across the street from that is all the way out to the road.

Mr. Seirmarco stated he has probably the biggest lot around there.

Mr. Chin stated I hear you.

Mr. Mattis stated I was out there also, and the house to the right is virtually on the property line.

Mr. Chin stated I am looking at the surrounding houses, and even the ones across the street from him are very close to the property line from the road. What he wants to do, I mean to me I am just looking at an aerial view, he's not coming any closer really than anybody else on that whole entire area over there.

Mr. Seirmarco stated all I'm suggesting is to slightly reconfigure this plan, not a lot, but some.

Mr. Chin stated I understand that.

Mr. Mattis stated now that 12 foot variance is only to the corner there, because that house is angled, and if it was parallel to the street, it might have that 30 foot set back.

Mr. Seirmarco stated I agree.

Mr. Mattis stated so because of it's caught, it's brings in where the porch is down to 12 feet.

Mr. Pechnikov stated you mentioned from the property line to the corner.

Mr. Mattis stated what I am mentioning is that is 12 feet that is the closest point, and then it slopes away so the variance is only to that one corner.

Mr. Pechnikov stated but from the corner of my property to the pavement is an additional maybe 6 maybe 7 feet more. All the property before was big, and the previous owner built 4, or 5 houses.

Mr. Flandreau stated just to give the Board some more information the addition on the driveway where the garage is going to be that corner is 16.4 feet off the property line, and the corner to the addition where the living room would be is 24.3 feet off the property line. So the closest habitable space is 16.4 feet.

Mr. Mattis stated right, and it will still sit back considerably compare to the house next door.

Mr. Becker stated I think this makes a well proportioned house on this lot. I have no problem with this. I don't think this deters from the neighborhood. In fact, I think it will enhance it.

Mr. Chin stated in just looking at the aerial view, I think it would acceptable.

Mr. Mattis stated it is even more apparent when your out there how close that other house is.

Mr. Chin stated what he wants to do would certainly not be a detriment to the neighborhood there, because it is really no more, or no less than anybody else over there.

Mr. Douglas stated my concern is that one of the requirements is that you can't achieve something by some other method. I am not sure I understand why you can't build toward the back. I know you said you don't want to come close to your neighbor, but you've got almost $\frac{1}{2}$ an acre, and I'm not sure I see why you can't build off to the side there so that you would not require a variance.

Mr. Pechnikov stated I cannot go back because of the septic fields.

Mr. Chin stated the septic tank is directly right behind the house. That has to be a certain distance away from the house first of all.

Mr. Flandreau stated 10 feet away from the foundation.

Mr. Pechnikov so that limits me, because of where it is.

Mr. Chin stated he is also showing us the field here, but it is not including the expansion fields.

Mr. Douglas stated so could move back there except for the location of the septic tank, and the fields is that correct?

Mr. Pechnikov stated that is correct.

Mr. Douglas stated I just want some kind of reason why he can't move to the back, and the septic tank, and fields could be that reason.

Mr. Mattis stated your septic tank is behind your house, and that prevents you from building back there.

Mr. Douglas stated I am trying to help. We need to show that you can't achieve what you are proposing in a different way, and if the septic tank is behind the house that means you can't build in that direction. So that allows us to say you couldn't build in the back. I just want to make sure it is clear on the record here that is the reason you can't build that way.

Mr. Mattis stated I think that is part of the answer. The other part is that his expansion would have to be to the right hand side. The building is angled so that if you build out to the right it gets closer to the road. So if we have him build it longer, and move it back it's going to come out to 12 feet anyway. The same thing is going to happen because of the angle there, and we're talking about 12 feet really only to the one angle of the porch. He can't go back. He can't go to

the left. If he goes to the right, and he builds out, even if he moves it back, and doesn't put the porch, he is going to keep getting closer, and closer, and it would be long, and narrow, and we wouldn't want that. So I think there are many reasons why he really can't go that way. It will still look like it is quite a ways back compared to the other houses on that street, and in that neighborhood.

Mr. Seirmarco stated the only suggestion I have is that he move this whole section here back, and move the porch to the left. That is all I was thinking.

Mr. Mattis stated then the porch would be in front of the living area. If he moves the porch to the left that is the garage. He can't put the porch in front of the garage.

Mr. Seirmarco stated okay, I see what you are saying.

Mr. Mattis asked are there any other comments from the Board? Is there anyone in the audience that wants to speak?

Mr. Seirmarco made a motion in Case No. 13-07 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Seirmarco made a motion in Case No. 13-07 to grant the front yard variance from 30 feet down to 12 feet for proposed addition on the property. This is a Type II Sequa with no further compliance required seconded by Mr. Chin with all voting "aye."

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PETITION TO RE-OPEN CLOSED PUBLIC HEARINGS

CASE NO. 41-06 LOUIS RINALDI is requesting to reopen this case for a clarification and/or modification of the approval Decision and Order dated January 17, 2007 on the property located at 445 Yorktown Rd., Croton-on-Hudson, NY.

Mr. William Zutt, Esq. appeared before the Board. He stated I am appearing on behalf of Mr. Rinaldi. I neglected to mention to you at the last meeting that the letter that brought me there, I actually copied that to the neighbors. I forgot to mention that to you. I also copied them on the letter that I sent on February 22nd also. Mr. Rinaldi is here as well.

Mr. Mattis stated I just want to correct something, this is Case No. 41-06 not 07.

Mr. Zutt stated we are obviously requesting a modification of your Decision & Order so as to allow Mr. Rinaldi to load and unload his tag along trailer outside the buildings that are proposed for the site.

Mr. Mattis asked do we have a motion to reopen the case.

Mr. Chin made a motion to reopen Case No. 41-06 seconded by Mr. Seirmarco.

Mr. Douglas was the only Board member to opposed the opening of the case.

Mr. Mattis stated we need a unanimous decision to reopen the case. You can reapply, and bring it back as a separate case.

Mr. Douglas stated I think you may have heard me say this at the Work Session, my day job is quite similar to yours, and I know when I hear people talk about principal people’s eyes roll, and they make sarcastic remarks. It really is just a matter of principal. I cannot vote to reopen. I think that the original decision was an error, and I think to vote to lessen the restrictions in an erroneous decision is the wrong way to go. I just cant bring myself to vote for this.

Mr. Zutt stated well it’s been a long time since I rolled my eyes, and I don’t intend to offer any sarcastic remarks.

Mr. Douglas stated I am just saying you know as well as I do that I am just saying it is really about principal, and clients sometimes tend to roll their eyes.

Mr. Zutt stated I gave up that practice a long time ago.

Mr. Douglas stated well, I’m jealous.

Mr. Mattis stated one of things I think I have to do legally first is to poll the Board.

The Board was polled as follows:

Richard Becker	Yes
David Douglas	No
James Seirmarco	Yes
John Mattis	Yes
Wai Man Chin	Yes
Charles P. Heady, Jr.	Yes

Mr. Mattis stated okay, so that was a 5-1 vote. I would like to make a comment. I don’t think it was an erroneous decision. I believe there was only one vote against it. So anybody on the Board is entitled to their opinion. My opinion is it was not an erroneous decision. However, anyone on the Board can vote not to reopen it, that’s their right, but I take exception to the fact that it was an erroneous decision, because it was a majority decision. We each have our opinion, and I’m just stating mine. So I think what your alternative is now is to file another application, and come back next month.

Mr. Zutt stated okay we will make an application to modify this Decision & Order. Thank you.

Mr. Mattis stated for the record we have one adjourned public hearing to June 2007.

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ADJOURNED PUBLIC HEARINGS FOR TELECOMMUNICATIONS TOWER to June 2007.

CASE NO. 48-05 CINGULAR WIRELESS SERVICES, INC. For a Special Use Permit for a wireless telecommunications facility on property located at 451 Yorktown Rd., Croton.

Mr. Heady made a motion to adjourn the meeting seconded by Mr. Chin with all voting “aye.”

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Christine B. Cothren