

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 19th, 2014*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

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ADOPTION OF MEETING MINUTES FOR FEB. 19, 2014

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

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

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ADJOURNED PUBLIC HEARING TO APRIL:

- A. CASE No. 18-09 Post Road Holding Corp.** for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**

Mr. David Douglas stated we'll deal with that next month.

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ADJOURNED PUBLIC HEARINGS:

A. CASE No. 2013-18 **DOTS Code Enforcement** request for an Interpretation and determination of the non-conforming status: in **Case #161-87** an Interpretation was granted to this property that a tutorial service conducted by the Petitioner within their home was a customary home occupation. The Application was accompanied by statements from the applicant as to the number of students, employees, etc. At the time the Interpretation was granted, the Ordinance did not contain a cap on the number of employees or students that could be on the premises. Subsequently, the Ordinance was amended to limit the number of students and employees. A determination is needed as to what if any limits apply to **Case #161-87** presently.

Mr. David Douglas stated I believe at our work session we talked about adjourning this to April.

Mr. Wai Man Chin stated I make a motion on **case 2013-18** to adjourn to the April meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-18** is adjourned until April.

B. CASE No. 2013-29 **Marcia Royce** for an Area Variance for the front yard setback to rebuild a fire damaged house on property located at **2223 Maple Ave., Cortlandt Manor.**

Mr. David Douglas stated the applicant had asked we adjourn that to April as well.

Mr. Ken Hoch stated Mr. Chairman, I received an email from Ms. Royce's attorney asking that it be adjourned to the April meeting.

Mr. Charles Heady stated I make a motion on **2013-29** to adjourn it to April.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-29** is adjourned until April.

C. CASE No. 2013-31 **William Caffrey** petition to re-open this case for an Area Variance for the side yard setback for a deck on property located at **103 4th St., Verplanck.**

Mr. William Caffrey stated it's a Variance for – it's on a dead-end street and it's just a deck we're going to put on the edge of my house. I'm basically asking for going about **4** feet further than allowed. The reason I'm doing that is because from the house we're coming out and stepping down three steps, it's almost to ground level for the deck and then another step off the

deck. So, the actual deck is basically only about a little more than **10** feet, maybe **11** feet. That's why it's going out further than **10** feet from the house.

Mr. Raymond Reber stated we had, when this first came to us, questioned some of the need for the extra large deck and I guess I'm not too sure of the general consensus is of whether **14** is still the necessary dimension or whether it should be cut down some. Because your Variance is significant: it's **39%**. I think there was some talk on this Board that if you cut it down to **12** feet, your Variance then is **1 foot** 11 inches which cuts it into a more reasonable dimension. I understand there's extenuating circumstances to the extent that there's nothing really behind you, it's open space, it's not going to be developed, it drops off sharply. I think that's where we stand. I don't know if any other Board members have any strong feelings on the extent of this Variance.

Mr. David Douglas asked anybody have any strong feelings or not so strong feelings?

Mr. Wai Man Chin responded I don't mind the **14** feet actually. The extra **2** feet is not going to bother me on what he's asking for. The situation is that what's next to it. There's nothing there. There's never going to be anything there. I would go with the **14** feet.

Mr. John Mattis stated I concur with that.

Mr. David Douglas stated I concur.

Ms. Adrian Hunte stated I as well. I don't see any undesirable change in the neighborhood and you do have extenuating circumstances with the slope of the land. It may be somewhat substantial but in terms of percentage but in footage not bad. I don't think it's going to have any adverse affect or impact on the physical or environmental state of the area. So, I concur.

Mr. James Seirmarco stated I concur with other Board members.

Mr. David Douglas stated I do as well. For me the key factor is something Mr. Chin mentioned that the next lot is vacant and it's going to remain vacant, it's owned by the Town. It's not going to get developed.

Mr. Raymond Reber asked anyone in the audience have anything to add? If not, on **case #2013-31**, William Caffrey, Verplanck I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated based on the unique extenuating circumstances here, I make a motion that we grant the Variance on 103 4th Street, Verplanck for a deck in the backyard. The deck

proposed **14** foot wide which reduces the required backyard setback of **10** feet to **6** feet **1** inch for a **3** feet **11** inch Variance, this is a type II SEQRA, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted. Ken you'll have whatever the paperwork is...

Mr. Ken Hoch stated I'll send you paperwork.

D. CASE No. 2013-33 Sharon Garb for a Special Permit to establish and maintain appropriate screening for an existing contractor yard on property located at **2201 Crompond Rd., Cortlandt Manor.**

Mr. Ken Hoch stated we don't yet have a plan for the exact trees and locations. I spoke to Mrs. Garb this week and we should have that ready for the April meeting.

Ms. Adrian Hunte stated I make a motion on **case #2013-33**, Sharon Garb for a Special Permit to establish and maintain appropriate screening for an existing contractor yard on the property 2201 Crompond Rd.. Cortlandt Manor; I make a motion that we adjourn to the April **2014** Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case 2013-33** is adjourned until April.

E. CASE No. 2013-35 Miriam Arrighi for a Special Permit for an Accessory Apartment on property located at **4 Hollow Brook Court South, Cortlandt Manor.**

Mr. Ken Hoch stated again, Mr. Chairman, I spoke to Ms. Arrighi today. She has not received a letter from her architect with the dimensions of the house and the apartment so she has to have an adjournment until April.

Mr. Charles Heady stated I make a motion on **case 2013-35** to adjourn it to April.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-35** is adjourned until April.

F. CASE No. 2013-37 DOTS Code Enforcement for an Interpretation that the pre-existing, non-conforming five-family residence has been in continuous use since July

15, 1996, with none of the units vacant for more than one year from that date to the present on property located at **1 Hale Hollow Rd., Croton-On-Hudson.**

Mr. John Sullivan stated good evening Mr. Chairman, members of the Board, good evening Mr. Hoch. My name is John Sullivan. I represent Rita Weeks, the property owner at 1 Hale Hollow Road. I wanted to speak this evening about certain legal issues that I have raised and certain objections that my client has with regard to this proceeding. It's our position that we need to raise these issues and obtain some type of response or determination from this Board in order for my client to effectively determine how to proceed and/or respond to the Notice of Hearing. As I believe you're all aware I've previously submitted a letter to this Board dated February **14th of 2014**. That letter sets out my client's objections to the proceedings in greater detail than I intend to go into this evening while I'm up here but I did wish to touch upon just a few of those points. The first objection relates to the Notice of Hearing itself. The notice reads that "the Department of Technical Services is seeking an Interpretation that the pre-existing, non-conforming, five-family residence has been in continuous use since **July 15, 1996** with none of the units vacant for more than one year from that date to the present." I would submit that the question as phrased is not seeking an Interpretation is actually seeking a specific finding of fact and it's our position that it's not the function of this appellate Board to make findings of fact where there's been no order, determination by DOTS or any other department charged with the enforcement of the applicable statute and so for that reason we object to the Zoning Board of Appeals's involvement in this matter at this time. The second point I would like to address relates to the specific wording of the Interpretation sought by DOTS which we maintain violates certain rights of my client, again, in relevant part the Interpretation is seeking an Interpretation that the pre-existing, non-conforming, five-family residence has been in continuous use since **July 15 of 1996** with none of the units vacant more than one year from that date to the present. I submit that the DOTS application as phrased unfairly shifts the burden of proof in this matter to my client, the property owner, rather than the burden of proof being on those seeking to take away what is presently a constitutionally protected, legal, pre-existing, non-conforming use of the property. It effectively shifts the burden of proof to the owner to prove that the use has been in continuous use for the past **18** years. I submit this in violation of my client's constitutionally protected right to due process. There are other due process considerations here as well. When this situation involving my client began about two years ago, Town Code Enforcement commenced an action against my client alleging a violation of Code section **307.79**, the same section involved in this proceeding. In effect, that proceeding sought to take from my client certain property rights by reducing a legal, non-conforming, five-family residence to something less than that. The charges were ultimately dismissed by the town prosecutor. That proceeding being brought in a Court of Law, however, at least affords a respondent the right to due process by, among other things, properly placing the burden of proof on the party seeking to take away property rights of another, affording the right to confront witnesses and then as to their motives and credibility and affording the right to have the rules of evidence enforced in that proceeding. Based upon these due process considerations, my client objects to the Zoning Board of Appeals considering the requested Interpretation as phrased.

Mr. David Douglas asked I hate to sound like a lawyer but are you saying that not conforming to the rules of evidence necessary violates due process?

Mr. John Sullivan responded what I would be saying is that the combination of all those factors: an action to take away a constitutionally protected property right should enable my client to the protections of due process including confronting witnesses properly placed in the burden of proof. We would further object to the fact that DOTS has requested that the Interpretation they're seeking requires proof going back **18** years to **1996**. It's our position that under any measure of fairness asking my client or any other property owner in this town who owns a pre-existing, non-conforming piece of property to submit proof that they have been in compliance with the law for a period going back **18** years, and again this is not refuting an allegation that you have not been in compliance with the law, this is asking somebody to prove going back **18** years that they have been in compliance with the law. Virtually every legal proceeding I can think of is subject to time bars and statutes of limitations that are a fraction of the time period being placed on my client here. As I point out in my letter of February **14th**, there's sound reasoning for precluding the government or anybody from bringing stale claims. The United States Supreme Court has said statutes "promote justice by preventing surprises to the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared." Based upon the excessive scope of the Interpretation sought here my client objects to the Zoning Board of Appeals considering DOTS requested Interpretation as phrased. With regard to...

Mr. David Douglas stated with regard to the timing, we talked at last night as part of our work session about the – you came to our work session last night and we discussed that and then we had an executive session after you left and I believe what we'd be willing to do at this point is to narrow the time period that we'd like to see proof for, for a period of **7** years: so in **2007**.

Mr. Raymond Reber stated actually, even though the wording on the Interpretation goes back to **1996** which was the last time that the Board had reviewed this issue, if you actually look at the documentation, Mr. Hoch had sent the original letter on August **16th**, **2011** to Rita Weeks and in there all he asked for – and this is in response to depositions that the town received claiming these apartments weren't being continuously used all five, so based on that he simply sent this letter and it says "can you supply us with documentation showing that all five apartments have been occupied since August **2009**?" It's not like we were pushing the issue. All we asked for was in **2009**. Had the documentation been submitted we wouldn't even be here today, so to say that there was no basis and that we were going back to **1996**. That was never specifically asked for; **2009** is what was asked for. There was no proper response and as a result it was the town then followed up with a Notice of Order, that was on October **24th** of **2011** and no response and that's why we're here.

Ms. Adrian Hunte stated I would say in terms of jurisdiction you mentioned that this Board does not have jurisdiction, the New York State Town Law **267-84** does specifically vest this Board with jurisdiction. It says "unless otherwise provided by Local Law Ordinance the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals

from and reviewing any order requirement decision, interpretation, or determination made by an administrative official charged with the enforcement of any Ordinance or Local Law adopted pursuant to this article such appeal may be taken in by any person aggrieved or by an officer, department board or bureau of the town.” We have here in front of us this October **24th, 2011** Notice and Order, a violation which clearly states that client has failed to provide documentation on the continued use of two of the apartments in the pre-existing, non-conforming structure. Request for documentation were made on certain dates and they were not provided. That is where we have – and it’s a request for an Interpretation but it is an appellate issue because there is a Decision and Order, a Notice and Order here.

Mr. John Sullivan stated if I’m understanding you correctly are you referring to the violation that was ultimately dismissed?

Ms. Adrian Hunte responded I don’t see that this was dismissed. I don’t know but there is a Notice and Order and whatever, in any event, even if it were dismissed there’s an opportunity to appeal by the person who lost if that was the case.

Mr. John Sullivan stated I’m not certain frankly who lost there and I’d have to take a look and I will at what you’re referring to. The statute that you refer to though I refer to in my letter arguing that the jurisdiction is appellate and that there’s no underlying decision or determination....

Ms. Adrian Hunte asked what is this Notice and Order? It says that there’s a violation.

Mr. John Sullivan asked what’s the date of that just so I can review it?

Ms. Adrian Hunte responded October **24th, 2011**.

Mr. John Sullivan stated my recollection of dates is that the violation preceding was ultimately dismissed by the town prosecutor. With regard to the letter, Mr. Reber that you referred to, it has always been my client’s position that the statute **307.79** does not require that all five units are occupied at the same time and it does not even preclude, although we’re not conceding, that one or two may not be occupied for a period of a year or more. It’s our position that that does not violate the statute. I know...

Mr. David Douglas asked didn’t this Board issue an Interpretation on that exact issue?

Mr. John Sullivan responded June **25th, 2013**, yes.

Mr. David Douglas stated right, so we’ve already addressed that issue –matter at odds with the position you’re taking now.

Mr. John Sullivan stated but I still need to preserve my record and make my point known that I think that was an erroneous Interpretation.

Mr. David Douglas stated right, but that was decided in July.

Mr. John Sullivan stated correct.

Mr. David Douglas stated for more than **30** days ago.

Mr. John Sullivan stated and I was not a party to that. I was not involved in that and I'm not seeking to take action with regard to that...

Mr. David Douglas stated right, well you personally weren't involved.

Mr. John Sullivan stated well, that was a generic Interpretation as far as I can tell.

Mr. David Douglas stated which was not appealed from.

Mr. John Sullivan stated and not site-specific, right, understood. So, essentially as indicated, it's our position that as to these threshold matters we're requesting that the Interpretation be denied for those reasons. It's our position there's no underlying determination to appeal from. It violates my client's right to due process and that the request is overly broad. I'll note that the **2007** forward although I would still submit that that is overly broad.

Mr. John Klarl asked you do understand that the Board has narrowed the scope of the inquiry though?

Mr. John Sullivan responded pardon me.

Mr. John Klarl stated the Board has narrowed the scope of its inquiry from **18** years as you thought walking in here tonight, to a **7**-year period.

Mr. John Sullivan stated right, I do take note, thank you.

Mr. John Klarl stated that's part of the record right now.

Mr. John Sullivan stated I take note, thank you. The additional point I just wish to make this evening, I would like to reiterate in my letter items **5** through **10** relating to that June **2013** Decision interpreting section **307.79** of the town Zoning Ordinance. Again, that Decision concluded that "the pre-existing, non-conforming use of a building or land is reduced by a portion of the building or land being unoccupied for a continuous period of not less than one year, i.e. if any non-conforming use of a building ceases for any reason for a continuous period of not less than one year." As just indicated, Mr. Chairman, and it was my understanding that the Board intends to utilize that Interpretation of the statute when considering the facts of this matter, it's our position that that Interpretation is erroneous and applying it to the facts of this matter would be erroneous and for that reason we object. I would just point out briefly, some of

the reasons we believe the Interpretation is erroneous, the Interpretation of section **307.79** is inconsistent with the plain language of the statute and substantively alters the conduct prescribed by the statute by adding language relating to portions of the buildings in place where the statute speaks only to the defined term of building and substituting word ‘occupancy’ in place of the defined term under the code of use. The Town Zoning Ordinance, the definition of the word ‘building’ does not address in any way portions of buildings and the word ‘use’ refers not just to occupying a building but the way a building is maintained. The New York State Court of Appeals has indicated zoning restrictions being in derogation of common law property rights should be strictly construed and any ambiguity resolved in favor of the property owner. I went back and reread section **307.79** of the Code in the last day or two. I reread the definitions of the words ‘use’ and the word ‘building’ in the Code, all of which are part of section **309.79** and then I read the June **2013** Interpretation and it’s our position that if the legislature intended that section **307.79** be applied against portions of buildings rather than buildings under their definition in the entirety the language would have been incorporated into the statute. It’s our position that the legislature intended that the maintenance component of the term ‘use’ they excluded, under section **307.79**, they would have used the term ‘occupancy’ in place of ‘use.’ Again, as stated by the Court of Appeals, zoning restrictions should be strictly construed and ambiguities resolved in favor of the property owner. We also take issue with the Interpretation of section **307.79** as being inconsistent with applicable case law. Among other cases pointed out in my letter is a New York State Court of Appeals case *Mozela V. Monroe* that I would submit as most similar to the facts of this matter. In that case, the municipality sought to reduce a non-conforming four-family property to a three-family on the basis of abandonment because one house remained vacant for **15** years so that three families rather than four resided on the property. The Court of Appeals disagreed with the municipality, finding insufficient evidence to establish that the entire non-conforming use had been abandoned. In doing so, the Court of Appeals explained that “abandonment does not occur unless there’s been a complete cessation of the non-conforming use.” An additional point, we maintain that the Interpretation of section **307.79** conflicts directly with the statutory right of a non-conforming property owner under section **307.80** of the Cortlandt Zoning Ordinance. That Ordinance allows a property owner to make repairs, replacements and maintenance to a non-conforming building in any period of **12** months. I would argue that section **307.80** makes clear that maintaining a non-conforming building is an equally valid measure of use as occupancy is. Finally, I’d point out our objection to the Interpretation of section **307.79** in this proceeding on the grounds that the language of the statute as interpreted, fails to provide sufficiently definite warning to a person of ordinary intelligence of what conduct it prohibits. In addition, it authorizes arbitrary and discriminatory application. The case law is clear, when a statute fails to provide definite warning as to what conduct it prescribes or where a statute authorizes arbitrary and discriminatory application, the statute is unenforceable and again as stated, zoning restrictions must be strictly construed, ambiguity resolved in the favor of the property owner. The foregoing reasons I would respectfully request that the Board consider some of these points before applying the June **2013** Interpretation of section **307.79** to the facts of the instant matter.

Ms. Adrian Hunte asked Mr. Sullivan, isn’t it true that a non-conforming use of real property that exists at the time of restricting Zoning Ordinance is actually constitutionally protected and will

be permitted to continue notwithstanding the contrary provisions of the Ordinance? Is that your positions?

Mr. John Sullivan responded yes, generally yes.

Ms. Adrian Hunte stated I believe there is case law that says that a party that is seeking to overcome a restrictive Zoning Ordinance must demonstrate that the property was indeed used for the non-conforming purpose as distinguished from a mere contemplated use at the time the Zoning Ordinance became effective, and there's a Court of Appeals case to that effect: Syracuse Aggregate.

Mr. James Seirmarco stated I would like to make a comment. I'm not legally technical as my colleagues here, but I do know one thing that we define a dwelling unit as an apartment or dwelling unit has to have a bathroom facility, a kitchen facility and a bedroom facility. If those things don't exist it's not a dwelling unit. You can't say "well I had my uncle Louis living in the bedroom for a year so that apartment's good," if there was no bathroom or no kitchen facility. That has to be whole, specifically in our code says that the dwelling unit has to contain a kitchen facility, a bathroom facility and a bedroom facility. So, if any of those things were missing for more than one year then that was not a dwelling unit and even though there was somebody living in the bedroom or using the bathroom or cooking in the kitchen if that was available, that doesn't make it a dwelling unit. That's a concern of mine that if you're going to define five dwelling units as a non-conforming use then they have to be dwelling units, they can't be part of dwelling units and say "well, we were using the bedroom or we were using the sitting room" or whatever. I think that's a very important point for me.

Ms. Adrian Hunte stated and also that a building is not a use, the structure is not a use, the use is what takes place on the building or on the premises, I would say. The section **307.79** appears to be pretty clear to me "if any non-conforming use of a building ceases for any reason for a continuous period of not less than one year or if the building on which it is conducted or maintained is moved and any future use of such building shall be in conformity with the regulation specified by this chapter, for the district in which building is located."

Mr. John Sullivan stated and 'use' is defined in the code as the matter in which a building is occupied or maintained.

Ms. Adrian Hunte stated right, an occupancy, vacancy, is part of the use. If you're not occupying or if it's vacant then you're losing the privilege because you are a non-conformity, therefore, it is reduced...

Mr. John Sullivan stated again, I would say 'occupied or maintained' – it's my position that maintenance of a building under the language of the statute is an equally valid definition of use and again a partial without a full ceasing of the use under the case law, the Mozela case that I referred to, for **15** years one of the four units remained vacant and the Court of Appeals held that the use was not abandoned because the entire use had not ceased.

Ms. Adrian Hunte stated well, I believe we have – is it the Toys’R’Us case which I think is an opposite to your position?

Mr. Raymond Reber stated I don’t think it’s appropriate for us to rehash a Decision we already made but I think it’s clear from our point-of-view that, as Ms. Hunte indicated to us ‘use’ is what actually goes on not the physical and to us, the non-conforming use was **5** separate residences under one structure and when that five is not continuous and has a break in it that in our definition is more than a year, then we say it has discontinued and what continues is what: four, three, none, who knows but anyway, we made a decision. Like I said, I don’t think it’s appropriate for us to re-debate that, however, we have a lot of input on this case. We have depositions on one side and on the other side going back-and-forth which we have to sort through if we’re going to get some sense as to how this building was actually used. One of the documents that you had provided is a February **1st, 2014** communication from a Ravi Reddy. It’s a simple statement. The trouble is there’s no signature or anything. I think you have to agree that we can’t really do anything with that. That could have been issued by anybody. Affidavits are one thing – so this, we’re going to ignore this. We have no choice.

Mr. John Sullivan stated I would agree that if a sworn statement from that individual has not been provided, I would understand...

Mr. Raymond Reber stated and I think you would also have to explain his residency. Has he been there continuously all through these recent years, if he hasn’t – so we have to know what his status is so any affidavit he submits has got to be thoroughly explained.

Mr. John Sullivan stated understood. I thought that individual had sent a sworn statement subsequent to that but I’ll look into that and get to the bottom of it.

Mr. James Seirmarco stated thank you. What I’m looking for and I’m sure other Board members shares, if there is some timeframe where the maintenance to be done on a particular room in a particular dwelling, if the kitchen was being remodeled, or if the bathroom was being remodeled, or whatever. Just provide us with some statement or fact that said: you know I was working for ‘x’ number of days to do maintenance on that particular unit. You’re right, when you’re doing maintenance that could be construed as being occupied or whatever, but we just need something to go by when we’re making this decision...

Mr. Raymond Reber stated I think on that issue that was the purpose of the one year. The feeling is that almost any maintenance could be conducted within the one year. We don’t consider maintenance as occupancy in our interpretation of how our regulations are written.

Mr. John Sullivan asked you don’t consider maintenance as occupancy?

Mr. Raymond Reber responded no. When we say occupancy we mean living there, making use of the facility as a living quarters and so we give you this window of a year. You can basically

kick everybody out and for up to a year do what you want with that building as long as you get it re-occupied at the end of that year, you don't have to justify anything further. You don't have to tell us what happened during that year. The argument is that's why we have that window. It's there for you to do those kind of things: to rehabilitate, maintain, whatever you want to do.

Ms. Adrian Hunte stated that was the Court of Appeals determination in the Toys'R'Us case, that intent is not relevant.

Mr. John Sullivan stated we're not saying intent is relevant. I concede that the one year statutory provision takes content out of it but the definition of use and the one year statutorily, specifically permitted maintenance period, is our position that you're within the legal use of the property if pursuant to the statute you're doing maintenance during up to a one-year period.

Mr. David Douglas stated in terms of documentation, another thing we'd ask you to provide is I believe it's schedule E of one's tax return that shows profits and losses from use of property.

Mr. John Klarl stated not the entire tax return.

Mr. David Douglas stated we're not interested Ms. Weeks' whole tax return, that's none of our business but we would want to see that schedule for each of those years going back to **2007** to see what she did or did not report in terms of income or expenses associated with the property.

Mr. John Sullivan stated and I will discuss that with my client. I'm inclined to point out that I don't believe the statute requires rent in a formal sense to be collected. Many multi-families involve relatives living in the same building and there may not be – my point is scheduling may not be as...

Mr. David Douglas stated if what your position is that rent was never collected for any of these apartments for any of this period of time then you can put that on the record and then I agree with you, then perhaps schedule E is irrelevant if there was no rent and no expenses associated with any of these and you want to put that on the record, then I think that answers a question in a certain way.

Mr. John Sullivan stated and that's not what I'm claiming...

Mr. David Douglas stated but if there was any rent from any of these apartments in that **7**-year period or any expenses associated with any of those apartments in the **7**-year period, we'd like to see that schedule showing that.

Mr. Raymond Reber stated taking into account we have affidavits of people claiming they paid rent during this period, for some period of time so there is some evidence that somewhere it was collected.

Mr. John Klarl stated but bank statements, checks, schedule, Douglas referred to, would all be helpful I think to show there were rentals during those periods.

Mr. John Sullivan stated again, I will discuss that with my client.

Mr. John Klarl stated once again, you've just gone from **18** to **7** years so you got rid of **11** years.

Mr. James Seirmarco stated we're not looking for a book that shows **5** rents for **12** months for **10** years. That's an unreasonable request but we are looking for as much information as we can get so we can make a conscious decision.

Ms. Adrian Hunte asked are there leases in effect at all?

Mr. John Sullivan responded in some cases I believe there are, in some cases they're not. Again, I will discuss all of this with my client. I'm taking notes as you're asking. I just don't know if we end up in the middle area how this positive evidence of some rents and some leases may be but I'm certainly noting the requests and I will discuss it with my client.

Mr. David Douglas stated we can debate what's this positive but I think you'd have to admit that it's relevant and if you don't give us any evidence it's relevant that we don't have any of it.

Mr. John Sullivan stated yes, it may be relevant, absolutely.

Mr. David Douglas asked anything else?

Mr. John Sullivan responded no, not from me.

Ms. Adrian Hunte stated thank you Mr. Sullivan.

Mr. John Sullivan stated thank you.

Mr. Raymond Reber asked anybody in the audience who wants to add a comment?

Mr. Louis Pelosi stated I live at 10 Hale Hollow Road at the other end of the street, I've been here before. I have a very naïve question for you. If a claim has been made that these units have not been used as dwellings, it would seem logical that at some point the town would have sent someone to inspect to see that these places were capable of being used. Have there been any inspections ever done and if not why not? Since the claim was made that these are not habitable structures...

Mr. Ken Hoch responded first of all, we don't regularly inspect properties in the town for their particular use. In this case, I was prohibited from doing an inspection there by a previous attorney.

Mr. Louis Pelosi stated in other words, by Mrs. Weeks' attorney.

Mr. Ken Hoch responded correct.

Mr. Louis Pelosi asked is that sufficient? Can someone's attorney simply tell you that you have no right to inspect what's being asked of the town?

Mr. James Seirmarco responded you have to live with that decision.

Mr. Louis Pelosi stated but that also tells you something. Why would somebody refuse to have an inspection if there was no basis to wonder about it? Just like, why would somebody need more and more time to provide documentation that these places were occupied when you don't get any documentation; time and time again you don't get any documentation?

Mr. John Klarl responded you're absolutely right that inference can be drawn but a property owner also has the right to consent or not consent to...

Mr. Louis Pelosi stated but that's part of the record now.

Mr. John Klarl stated you can draw the inference.

Mr. Louis Pelosi stated that's part of the record. Finally, in reference to this letter, this email from Ravi Reddy, you probably have a letter from me in response to that. Ravi Reddy has not lived in his house for at least a decade so if he's going to be even marginally considered as a reference it's a stretch.

Mr. Raymond Reber stated that's why I asked that any affidavit that he submits also includes in there that he has to state specifically what his residency status has been in that property. We have to respect property rights and in this country you can't just walk into somebody's house. You have to have permission.

Mr. Louis Pelosi stated of course.

Mr. Raymond Reber stated the alternative is you go to a judge like the police do but you can't do that in a case like this so the alternative is it comes before the Board. Code Enforcement says I got the affidavits, now I need to know. He couldn't get in to do an inspection. If he could go in and do an inspection and see it was occupied and everything it would have ended there. He wasn't allowed in so that's why we're here now.

Mr. Louis Pelosi stated that's part of the record. It would seem like this matter could be solved very quickly if you were allowed to see. That's all I wish to say.

Ms. Adrian Hunte stated thank you.

Mr. Raymond Reber asked anyone else?

Ms. Gabrielle Barkan stated I live right next door to Rita. I just want to express...

Mr. Raymond Reber stated excuse me, the actual address that you live in.

Ms. Gabriella Barkan stated number 3 Hale Hollow Road. I just want to say that I feel ashamed of what's going on in my block. It's really shameful because we all are humans and it's a shame to put Rita through this for so many years. I really don't understand this. She has to pay all that money to cover her fee, her case and all she's been given by the people who put her through this is pain and it's not just me, there's other neighbors on the block that feel the same way it's just they don't want to face and come here and talk. I just feel ashamed of what's going on. That's all that I have to say because I feel that Rita has been paying property taxes, she's been doing what she's supposed to do and she's a human as everybody else in here. I just going through a lot in my block myself with probably the same people who has put the same complaint to Rita. I feel what she feels and as someone who lives and pays taxes it's just not a way to live and I know that she's doing what she can. I'm here to support her. It does not bother me at all whether she – it doesn't bother me if she keeps the 5 house unit that she has. Every tenant that she has brought was absolutely decent, pleasure to have in the block. This is all I have to say.

Mr. Raymond Reber stated certainly this Board does not want to cause stress for anyone but I think as the previous speaker said, this could have been resolved very quickly and unfortunately it wasn't and we're now we're going through this difficult situation.

Ms. Gabriella Barkan stated it's more than what this is. I don't know if I can express this any better. It's a lot deeper than what this is here, because of what people are here for, it goes a lot deeper. There's hatred, there's un-neighborly manners, there's insults, there's great insults, deep insults and I'm don't even going to say it here because I don't want to insult anybody here but there's great insults coming from this – that only God knows what has been said to me, to my kids and to a lot of people who live on the block. This is not about me but I'm telling you, this is deeper than just what's going on right here.

Mr. Raymond Reber stated this Board often has been involved, a number of times at least, have been involved in cases that involve a lot of personal issues. Obviously, this Board ignores all that. We have to strictly go on the rules and regulations. We have to kind of put blinders on to those issues.

Ms. Gabriella Barkan stated I understand. I absolutely understand. I do respect that and I hope it's unfair for everyone.

Mr. John Klarl asked have you provided an affidavit on this case?

Ms. Gabriella Barkan responded yes sir, I have.

Mr. John Klarl asked how do you spell your last name.

Ms. Gabriella Barkan responded B-A-R-K-A-N.

Mr. John Klarl stated thank you.

Ms. Susan Braue stated I also live on Hale Hollow Road, 5 and I live next to the person that just – Mrs. Barkan. I can tell you this, there's never been any yelling or screaming or any of that from me so I take that as a total insult that she says that people on the block are yelling and screaming. I just want to say that it's now...

Mr. Wai Man Chin stated let's stop.

Ms. Susan Braue stated no but she said that all the neighbors on the block and I am on the block and I represent myself. That's all I'm saying. I just want to tell you it's not from me and I find it as an insult to me.

Mr. David Douglas stated I appreciate it. Thank you and I appreciate you coming up here but I just want to reiterate what Mr. Reber said, that we're looking at the technical issues and the facts and we're trying to put the animosity – it's not going to play a role in our decision one way or the other. Obviously there's bad blood between certain people but that's not going to have an impact on us one way or the other. I'm sorry that happens to be the case on this street but...

Mr. Raymond Reber stated in fact we've had comments made by applicants when they come to us and we have to turn them down and they say things like "we've been a great neighbor, a great resident and we volunteered in this town and all did such good work." That's wonderful but just like we can't pay attention to the negative, we can't pay attention to the positive. We just put the blinders on and we look at the case on the specific issues of the case and that's all.

Mr. John Klarl stated try to strip away the emotions and look at the facts of the law.

Mr. Raymond Reber stated right.

Mr. Wai Man Chin stated that's it.

Mr. Raymond Reber asked anyone else?

Mr. John Sullivan stated with regard to your point Mr. Reber about this could have been resolved in **2011** with a different response, it was my client's impression after Code Enforcement brought a violation proceeding in **2012**. My client appeared and defended that proceeding. It was ultimately dismissed. It was her impression at that point that this matter had been resolved only to lead to subsequent proceedings.

Mr. Raymond Reber stated I believe Code Enforcement to explain exactly what happened. If there's no further comments, does anybody on the Board need to add anything at this point? If not, I would make a motion on **case 2013-37** to adjourn this case to the April meeting for further consideration.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-37** is adjourned until next month and we'll have further hearing at that point.

Mr. John Klarl stated people in the public who are here tonight, our thought – we sketched an outline we would have a public hearing tonight, which we had, we'd adjourn it and probably the next meeting, possibly, close the public hearing at that point and there would be **62** days for a decision. So there was a public hearing tonight, there'll be another public hearing next month in April but we might close at that point and render a Decision within **62** days. That was a guideline to tonight. If people who are here tonight can come out once again and speak – this gentleman looks like he wants to speak.

Mr. David Douglas asked did you want to speak? Oh, you're the next case.

G. CASE No. 2014-01 **Edward Merriam** for Area Variances for the front yard setback from an allowed 50 feet down to 35.5 feet, the side yard setback from an allowed 16.4 feet down to 8.4 feet, maximum building coverage from an allowed 1,625 square feet up to 1,797 square feet to allow construction of front and side porches on property located at **18 MacArthur Blvd., Cortlandt Manor.**

Mr. David Douglas asked anybody here for Mr. Merriam's case? I think, Ken am I right? Did we send a letter saying that if he didn't show up it would be deemed...

Mr. Ken Hoch responded yes, I sent a letter and I followed up with a phone call and I did not hear back from Mr. Merriam.

Mr. James Seirmarco stated I make a motion that this case is deemed abandoned.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2014-01** is deemed abandoned. Ken, the copy of the letter is in your file?

Mr. Ken Hoch responded yes.

H. CASE No. 2014-03 **Victor Conte** for an Interpretation that proposed alterations to a two-family residence and a one-family residence on one parcel do not constitute an expansion of a non-conforming use on property located at **33 Old Locust Ave., Cortlandt Manor.**

Mr. Victor Conte stated I'm here for the second time. Last month I was here for an Interpretation of the non-conforming use of a two-family and a one-family.

Mr. John Mattis stated do you have Building Permits for these buildings?

Mr. Victor Conte responded not yet.

Mr. John Mattis stated not yet and we just received something that we're giving a stop work order because you've already began work without a Building Permit.

Mr. Victor Conte responded yes, in anticipation of it, yes I did start.

Mr. Wai Man Chin stated you can't do that.

Mr. John Mattis stated and you state that you're only doing repair work to the existing structure, that's the cottage. Are you putting the walls back where they were? All the plumbing back where it was? You're not moving the bathroom, you're doing all of that?

Mr. Victor Conte responded yes.

Mr. John Mattis stated and if you submitted plans to Mr. Hoch to that...

Mr. Victor Conte responded yes.

Mr. Ken Hoch responded no. What I told Mr. Conte we will need because we issued a stop work order yesterday. It appears he has removed all the interior walls and reframed it according to the plan that he wanted to do not the plan that was existing.

Mr. Victor Conte responded that's not true.

Mr. Ken Hoch stated we're going to have your architect draw us a new plan and certify that...

Mr. Victor Conte stated you have both plans.

Mr. Ken Hoch stated I want a new plan from your architect showing that this dwelling will look like his original plan for the demo; where all the walls were, where all the bathrooms were and that any walls that are now new and not in the right place will be removed and returned to their original place.

Mr. Raymond Reber stated this should be easy for him because you did, in the other package, you showed the before and after so really all that they're asking is take the before for the cottage, put it on the after for the main house so it's just re-copying that over on one presentation to the town and then they can make a decision on issuing the Building Permit.

Mr. Victor Conte stated but we did that. We did that. I don't understand. There's a plan for the main house and a plan on the same sheet...

Mr. Ken Hoch stated and I believe the – what you did in the cottage is on the revision plan not the same as the original plan and I just want your architect to certify that. He will sign and seal it.

Mr. Victor Conte stated well it is but it's okay. It is. There's two different plans. You can see that.

Mr. Raymond Reber stated it's easy enough.

Mr. Victor Conte stated it's easy. It's verifiable so...

Mr. Raymond Reber stated and you understand the issue. The cottage is going to be rebuilt. You can fix it up back to the way it was so that it's got all modern structure and all. The other house, you've asked to go from a two-family to a one-family. We understand that and we've agreed, I think, the consensus is I think we'll grant that for you, we'll get you Building Permits and then when all is done they will come in, inspect. If everything is fine they'll issue you COs and that's it.

Mr. Victor Conte stated that's all I'm trying to do.

Mr. Raymond Reber stated exactly, so that's where we're at.

Mr. John Mattis stated but you're not going about it in the proper order. You're doing work without Building Permits.

Mr. Victor Conte stated I don't want to get into that but okay.

Mr. John Mattis stated we're not getting into that...

Mr. David Douglas stated what you need to do is between now and next month, you need to give Mr. Hoch the plans that he needs with the certification and the architect that he needs and then we'll go from there. In terms of, you had sent a letter saying you wanted to rescind your application. You can't technically rescind it because you still need to get approval from us regarding buildings going from a two-family to a one-family. You will most likely get that but you can't just not – you can't just withdraw the application.

Mr. Victor Conte stated I didn't know.

Mr. David Douglas stated I assume you didn't know that so we're telling you since you're here. You're going to need to come back next month for those two purposes.

Mr. Wai Man Chin stated make sure that before anything happens again over there, like all this construction, everything has to be...

Mr. Ken Hoch stated he currently has a stop work order and until we receive a plan we think is acceptable for what will take place there, he cannot do anymore work there.

Mr. Victor Conte stated I will do whatever it takes.

Mr. David Douglas stated okay, so you know what it is that Mr. Hoch needs, right?

Mr. Raymond Reber stated actually, on the cottage, if I understand correctly, if he submits the plans you can issue a Building Permit for him to fix the cottage and he doesn't have to wait for that for us because he's just putting back what was there?

Mr. John Mattis responded as long as you're satisfied there.

Mr. Raymond Reber stated you can work on the cottage. Once you get the plans to him and he gives you a Building Permit for the cottage because you need one now.

Mr. James Seirmarco asked does he need a Building Permit for the cottage?

Mr. Raymond Reber responded yes, if he's taking the walls down and structurally -- yes, he's got to get a Building Permit but that can be done -- you don't have to wait for us next month on that. The main house...

Mr. John Mattis stated but you have to get permission from Mr. Hoch. He has to see the plans.

Mr. Victor Conte asked so what is next month? What does that mean?

Mr. David Douglas stated April 23rd.

Mr. Victor Conte asked what is that going to involve?

Mr. James Seirmarco responded that will be a public hearing on the reduction from a two-family house to a one-family house.

Mr. Victor Conte stated I thought that's what we were doing tonight.

Mr. David Douglas responded no, that will be next month.

Mr. Wai Man Chin stated you're jumping the gun.

Mr. Victor Conte stated I was told at the beginning that – I thought that...

Mr. Wai Man Chin stated you couldn't have told that because Mr. Hoch indicated to you, we indicated to you last month what you should and what you shouldn't do and you went ahead and did it anyway. Right now, I have a mind to even vote for it and vote against you from what you did already, you know what I mean. We're giving you the opportunity, Mr. Hoch is giving you the opportunity to put it back the way it was, okay. Just listen to what he says and do it that way.

Mr. Victor Conte stated yes sir.

Mr. Raymond Reber stated the understanding last month is we assumed that what happened is you would go back to the architect, explain to him what was going on, get back to Mr. Hoch and say "okay, we understand. Here's the corrections. Here's what we want to do now and let's proceed." If we had had that then yes we could have voted tonight but what Mr. Hoch is saying is you haven't confirmed, in a document from your architect to certify that yes in fact the cottage will be restored to where it was and yes this is what we're going to do on the other house. He wants it all clarified simply on a straightforward document that has been certified by the architect that this is where we're headed then we can make the vote.

Mr. John Mattis asked and you understand you can't do any more work until he gets all the plans?

Mr. Victor Conte responded I understand.

Mr. John Mattis stated and issues a Building Permit.

Mr. Victor Conte stated I'm sorry about that.

Mr. John Mattis asked is there anyone in the audience who would like to speak? In the matter of **case #2014-03**, Victor Conte on behalf of Linvic Incorporation, I move that we adjourn the case to the April meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2014-03** is adjourned to April.

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NEW PUBLIC HEARING:

A. CASE No. 2014-05 John D'Angiollilo on behalf of D3 Homes, Inc. for an Area Variance for the front yard setback to construct a 2nd floor addition on property located at **32 Locust Ave., Cortlandt Manor.**

Mr. Joe Palumbo stated good evening, I'm the architect for John D'Angiollilo and D3 Homes. The property at 32 Locust clearly a distressed property. They're looking to develop the site with a new second floor and a new addition off the back. It's a pre-existing, non-conforming lot with **20.3** where **30** is required. Side yard is appropriate. On the Site Plan you can see, as well as the floor plans, you can see there'll be a deck, besides the second floor, there'll be a covered deck that wraps around the right hand side and then around the back. The front elevation – the addition on the second floor where we're proposing a loft area is the section that obviously we're looking for the front yard setback. We would be going straight up from the existing line of the first floor below and that's really where we're at. We're looking for a proposed **9.7** setback.

Mr. Wai Man Chin stated I was out there and saw the property and saw the house and I looked at the plans and everything else. Basically you are building just straight up. You're not doing anything really, except for that little thing in the back over there. I don't see a problem with that because it's going straight up. It's not coming out any further on the other parts of the property that would effect a Variance on that. I would have no problem with this one at all.

Mr. James Seirmarco asked what's the overall height where the addition is put on?

Mr. Joe Palumbo responded to the mid-height of the roof it's **26** feet above grade.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin stated there's no violations on the building for anything right Mr. Hoch?

Mr. Ken Hoch responded no.

Mr. David Douglas asked anybody in the audience want to be heard?

Ms. Gisele Staino stated I live at 25 Old Locust Avenue which abuts up to this property and no one would be happier than me to see a house standing there. The issue that I have is we've recently had the Town of Cortlandt, Mr. Dyckman came out, I've spoke with you Mr. Hoch on the phone. There's a major runoff of water coming down that property. I have pictures I could show you that we have pools of water in the backyard, of water. Twenty years ago Skeet Kelly, I don't know if any of you remember the name, came in and they actually put a catch basin. Locust Avenue is definitely higher than Old Locust which is us. So, he put a catch basin between my property and the one next door. The water runs like a river through there, which I understand they've tried to do that but the pool – I have a pool in my backyard, the line has been washed out twice that I've paid for, it washes the sand out underneath. I would love to see a home up there but I need this water issue fixed. Mr. Dyckman did contact me today and he let me know that he ran a dye test on the water. He's not finding any broken pipes. The town has

definitely been on top of this with me, Mr. Hoch's been great, Mr. Dyckman's been wonderful but I can't see a house going there and my concern is, you've been to the property, you see how much lower my yard is.

Mr. Joe Palumbo stated yes, I brought some pictures of your property.

Ms. Gisele Staino stated I'm so afraid of backfill. How do you plan – what do they plan to do with this backyard? This is the property before the deterioration if any of you want to see it. That's the way it used to be and that's the pool of water in my backyard. That's what we're dealing with now.

Mr. Joe Palumbo responded I have no problem. I brought pictures of it too. As the architect, I've been on this site – I'm not a civil engineer. There's clearly, clearly, water running off, ground water and clearly the development of the site which would fall under the engineering department, a curtain drain's clearly required somewhere on the site, maybe two to cut things out. I believe, according to John D'Angiollilo's conversation with Ken and perhaps he can – that on the left – do you have that slide of the site again? On the lower right hand corner of the plan there's a catch basin at the street line, just maybe **10** feet in and to the best of my knowledge, based on a conversation John had with Ken there was a drain pipe that runs through the property that the town installed at some point. I don't know if you recall that conversation?

Mr. Ken Hoch responded I had that conversation with John. I was not able to verify that with highway yet.

Mr. Joe Palumbo stated so, under the assumption that that's there, we would be able to run, I think, some curtain drain into that. I think the town conversation I got was the town would accept that possibly.

Mr. Ken Hoch stated yes, he could get a permit from highway to do that.

Mr. Joe Palumbo stated so we recognize there are things that need to be done. We are not here for the Building Permit tonight. We're here for the Variance. We appreciate the neighbors. I went out there – John happens to be out of town so I went out before they put up new silt fences. There was a silt fence there at some point and even the silt fence wouldn't stop the water. It obviously is not intended to stop the water, it's intended to hold back silt. What they did on Monday this week is they put hay bales and a silt fence and are trying to at least protect it as much as they can. I don't believe there's much they could do until they can start developing the property, that's just my opinion. We haven't had a civil engineer in there but that would be the process with the Building Permit, etc, to get approval to develop the site.

Mr. David Douglas stated it sounds like they're taking steps and we don't have really any control over that, that's not our little branch of what we do.

Inaudible

Mr. I know the next step is him coming in and saying he wants a backfill to even up with my neighbor's property. I know that's what's going to happen.

Mr. James Seirmarco stated and your concern that that would exaggerate.

Mr. stated we'd get washed away.

Ms. Gisele Staino stated and we're not architects by any mean, the wall would have to be **8** feet high in order for him to be level with the neighbor's – Locust Avenue is higher than Old Locust Avenue is what the issue is. I'm afraid that once everything gets started – we've lived there **27** years and all of a sudden we'll turn around and it's like...

Mr. John Klarl asked have you been in town at all during the day DOTS, the Department of Technical Services to talk about these problems?

Ms. Gisele Staino responded no, I've spoken to Mr. Hoch a couple of times. I've dealt with Mr. Dyckman. He did the dye test like I said. Mr. Hoch's looked at the property. It's obvious. You go there, you see what the issue is.

Mr. John Klarl stated I didn't know to what extent you had discussions with the town department so far.

Ms. Gisele Staino stated I think my first concern is to be sure that the water issue is being addressed before my pool gets washed away again and the water starts – we have water running in the garage because of this, it just runs towards the house. That's my first concern and the second concern is how they intend to grade that property. I guess that's the next step once the Building Permits...

Mr. Raymond Reber stated they way this sorts out is we don't get involved in any construction work or normal Building Permits and those things. It's only when there is something with respect to a code requirement of setbacks or what have you that we require it. In this specific case, adding a second floor, it's tradition for us, unless there's very unusual circumstances, we don't have a problem with adding a second story to a one-story structure. In the case of water runoff, what have you, theoretically it doesn't change. It ran off the roof if the roof is **8** feet high it doesn't make any difference. What happens is to do the work that they want to do they have to get a Building Permit. Well that's another issues, that's where DOTS can work with the owner to say "look, before we issue a Building Permit there's things that have to be fixed." It has nothing to do with us. We have to divorce ourselves from that, let you work with – and that's why our attorney is saying: make sure you inform DOTS what the issues are so that they can work with the architect and the contractor to make sure that all the corrections are made if they're going to disturb the soil and do any other work on the property. Meanwhile, we have to address that very narrow issue. Is there any reason why a second story would detrimentally affect the area and normally our position is no.

Ms. Gisele Staino stated which we appreciate but we needed to be here to...

Mr. Raymond Reber stated absolutely.

Mr. Wai Man Chin stated and the architect they know about the situation and I'm sure they're going to be addressing it somehow or someone.

Mr. Joe Palumbo stated and obviously the town has regulations of how much fill can even come in. I can't say there wouldn't be a change in the grade but I think that I can say 8-foot walls and things are not going to happen. I know that they recognize whatever they do there has to fit into the neighborhood as if it was there. They're not looking to do something that would become any more detrimental to a neighbor. We understand. We're still going to go through that process if we are granted that Variance tonight and we understand we'll work with the town and the neighbors with that regard, with our civil engineer, etc.

Mr. James Seirmarco stated I would make a suggestion to you that you document your position and your concerns and your observations and pictures and send that documentation to DOTS to get on the record, just for your own piece of mind.

Mr. stated my main concern is, you're the architect, the owner really disregarded the neighbors, the Town of Cortlandt. We called up a thousand times, 8 years he never mowed the lawn...

Mr. Joe Palumbo stated two years. He's a new owner.

Mr. stated I apologize. This is why I'm afraid because I knew how the other owner operated. I apologize.

Mr. James Seirmarco stated it's okay, I still stick to my comment you should document something...

Mr. John Mattis stated to summarize this, the issue before us is whether we will allow a second story that doesn't come out into the setback any further, it goes straight up and you don't have a problem with that and it's going to make it look better. The next step then, is to get the Building Permits to do that and that's when the issue of the water comes into play.

Ms. Gisele Staino stated we've learned a lot tonight. Thank you.

Mr. David Douglas stated thank you.

Mr. Wai Man Chin asked anybody else?

Mr. Steve Navon stated 28 Locust Avenue right next door to the property. I'm not exactly sure how the whole process works and where you guys come into play but do you take into

consideration, before you grant the Variance, just if the property is a viable piece of property even as it stands now? Does it even have a CO as it stands now?

Mr. Ken Hoch responded it's a prior to zoning house. It is a lot of record with a structure on it.

Mr. Steve Navon stated quite honestly, it's amazing that it's still standing and to go to a second story, I don't know if the plan is to tear it down to the foundation and rebuild it back up. I don't know if that's something you look at, but I can stand on my front porch and see through the house to the house next door. The chimney's falling off. There's holes in the house. The windows are all boarded up. It's a dangerous situation as it stands right now. I can't imagine that a second story can be put on without tearing everything down and starting over. I'm not an engineer...

Mr. Raymond Reber stated that's not a Zoning Board issue. As Mr. Hoch has indicated, it's a house of record. It's a legitimate home. If the condition is such that it can't support a second story that's where Code Enforcement they just say "we're not going to issue a Building Permit unless you agree to redo the first floor."

Mr. Steven Navon stated so that will come later.

Mr. Raymond Reber stated oh yes, that's where the Building Department has to address that.

Mr. Steven Navon asked what about just issues such as septic? When you're going up a second story does that...

Mr. Raymond Reber responded same thing. If they're going to add bedrooms to the structure it has to go back to the Health Department, they have to review the whole situation with septic.

Mr. Steven Navon stated I'm just concerned, I didn't realize it either that there's a new owner and I'm not even sure that that is – could this owner have been the same guy? From what I understand it was a corporation that bought it.

Mr. Raymond Reber stated again, ownership to us is...

Mr. Steven Navon stated it was a corporation that bought it 8 years ago and is this person still one of those people that will part of that corporation 8 years ago?

Mr. Joe Palumbo responded not to my knowledge this corporation has owned two or three years.

Mr. Steven Navon stated because they've left it to deteriorate.

Mr. John Klarl asked how long have you lived in the neighborhood?

Mr. Steven Navon responded **20** years. I've been there since **1994** at that property. There was a woman living there all along and then this corporation bought it about **8** years ago and has done nothing to improve it. They show up, they work for a day, they disappear for a year. They show up, they work for another day, they disappear for another year. Every time they show up it goes backwards. We had flooding issues and – I've had beautiful forsythia bushes all along the side of my driveway. They all got overtaken by prickly bushes and everything else coming up from his property. It's a real bad situation.

Mr. Raymond Reber stated as with the previous owner, you raise valid questions but these are all issues for Code Enforcement and the Building Department.

Mr. Steven Navon stated I understand that but I'm concerned that if this Variance gets granted and they start work, my fear is that he's going to do what he's done for the last **8** years: he's going to show up for a day, he's going to tear the roof off and you're not going to see him...

Mr. John Mattis stated he's owned it for **2** years.

Mr. Steven Navon stated I have a feeling this guy's been around for the whole **8** years.

Mr. David Douglas stated if there are issues you should talk to Code Enforcement. If you notice that there's an issue that comes up while there's construction then you should immediately...

Mr. Steven Navon stated I just fear and maybe I'm wrong, maybe this guy is new and he's only been around **2** years...

Mr. David Douglas stated the thing to do is that if during construction you notice there are issues, that very day, call -- not to dump work on Ken but call Ken.

Mr. Steven Navon stated I just worry that it's hard to believe that this place could be in any worse condition than it is now but it can and I'm afraid that he's going to start, realize that...

Mr. Raymond Reber stated you have to understand, like we said earlier, we can't make decisions based on the people involved. We've heard these stories before where they say "the applicant will never comply. He will never follow through." We can't make that judgment. We can't deny somebody something because we don't like them or we don't trust them. It's all irrelevant. We can't base our decisions on anything but the legal issues, that's it, not any personalities. Those are things that end up going back to Code Enforcement and the Building Department.

Mr. Wai Man Chin stated maybe you'd be surprised in a year from now it will be beautiful.

Mr. Steven Navon stated that would be great but what I worry is that it's going to be a more dangerous situation than what it is now. If something gets started and they disappear – I have little kids, there's little kids that live in the house next door on the other side, it's dangerous.

Mr. John Mattis stated I don't want to cut you off but Mr. Reber said; we can't make those assumptions. We only make an assumption as to whether they can put a second story on. If the first story isn't sufficient, there are Building Codes. It has to meet certain criteria. It's got to meet all those criteria or they will not begin any construction whatsoever. And if you see anything going on you call Mr. Hoch and he will be out there right away or somebody from his staff and they'll take care of it.

Mr. Steven Navon stated okay thank you.

Mr. David Douglas stated thank you very much.

Mr. Joe Palumbo stated I would just like to respond to that. John D'Angillilo and I have contracted our architect for **30** years. I don't want to misrepresent – I've only known him owning this property for two years, if it's longer I don't want to misconstrue anything. He hired me to do a full set of drawings already. They clearly are coming into develop the property. This is not going to get dragged on. I feel confident. I can tell the Board that. I know it's not your concern it's the Building Department's concern but to the neighbors the intention is to make this a viable, livable, well constructed piece of property that will be helpful to the neighborhood.

Mr. Wai Man Chin stated thank you.

Ms. Gisele Staino stated I do have one question that I'm not even sure any of you can answer. Everything is granted, Variance is approved, Building Permits go through. Is there a legal timeframe that the town has in place that says you have to have this house up within a year, you have to have this house up within two years?

Mr. Ken Hoch responded a Building Permit is good for one year. You can get two one-year renewals.

Ms. Gisele Staino stated ultimately it could be **3** years.

Mr. Ken Hoch stated correct.

Mr. Wai Man Chin stated I'd like to say something. I think the property owner by hiring an architect, drawing up a conceptual plans and coming in to the Zoning Board for a Variance and everything else, they're spending money to do something. They're not just going to let it sit there. That's what I wanted to say. Thank you.

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

Mr. Wai Man Chin stated I make a motion **on case 2014-05** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. Wai Man Chin stated I make a motion on **case 2014-05** to grant an area Variance for a front yard setback to allow from **40-foot** down to **20.3** feet to construct the second floor addition. This is a type II under SEQRA, no further compliance is required.

Seconded.

Mr. Joe Palumbo stated **30** feet?

Mr. Raymond Reber stated down to **20.3** feet.

Mr. Joe Palumbo asked from **30**?

Ms. Adrian Hunte stated from **40**.

Mr. John Mattis stated **40** is required.

Mr. Joe Palumbo asked but what's **30**?

Mr. Wai Man Chin stated **40** is required and you're going down to **20.3** feet.

Mr. John Mattis stated it's going down to **20.3** which is where it sits right now.

Mr. Wai Man Chin stated you're building a second story above the...

Mr. Joe Palumbo stated I apologize.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. Joe Palumbo stated thank you very much for your time.

Mr. Wai Man Chin stated I hope it works out fine with everybody.

**B. CASE No. 2014-06 Joel Greenberg, architect, on behalf of Enan Sassoon for
an Area Variance for the height of a new house on property located at 33 Hill and Dale
Rd., Cortlandt Manor.**

Mr. Thomas McDermott stated good evening Chairman Douglas, members of the Board. This is Nicholas Fusco, we're here from Architectural Visions from Joel Greenberg's office representing Mr. and Mrs. Sassoon. Tonight we're here before you requesting a height Variance of **3.75** feet

in an **R-40** zone where **35** feet is required and allows to construct a new residence with a proposed building height of **38.75** feet. There are a few key points that I would just like to mention before we move forward. First is that the Variance is not substantial, it's only a **10.7%** Variance. This is also the only Variance that we require. We're not coming before you looking for setback Variances or other Variances such as lot coverage, those all meet the code. Originally, this property was two lots that were merged into one. One lot was unbuildable due to the steep slopes of the site so we merged both lots into one and are just putting one house essentially on two lots. We've worked closely with both the Building Department and Engineering to do our best to minimize the site disturbance as best we could, try to balance the size of the building along with the retaining walls required and the driveway to get this to work as best we could and minimize site disturbance. We've investigated several different house designs to get this to work. We looked at doing a single-story ranch that would allow you to reduce the height and not have to come for a height Variance but the size of a house that's required for Mr. Sassoon and his family, they would need to be a much longer house and would require more retaining walls. Within the office we investigated as many ways we could to try to eliminate the need for this Variance. We even reduced the roof pitch a couple of degrees to get it down as best we could and minimize the Variance that we're requesting. Lastly, my take that this won't produce an undesirable change in the neighborhood and won't adversely affect to any of the adjacent properties by granting a Variance of **3.75** feet for the height. Thank you.

Mr. Raymond Reber stated for those that are maybe watching to explain the situation; the town has a code that doesn't want to see a structure more than **35** feet high. In this case, they're requesting **38.75** feet. The problem here is because of the tremendous change of grade, the property drops off quite severely in the front and rises in the back and the code says that how do you measure height from grade when the grade is not level and so there is a formula which requires taking **8** points: basically you go perpendicular off each corner at **90** degrees and you end up with **8** readings, **20** feet out and you average those numbers and that's what we have to determine on. As the applicant has said, it is a large lot. It's over an acre. We get concerned sometimes with tall structures obviously if it's in a smaller lot close to other neighbors, it just looks totally out of place, that would not be the case here. The closest property line is **31 1/2** feet on one corner of the house but in fact that approaches a property that is currently a proposed road. There's an existing trail there. In other words, there'll never be a house or anything over there. In no way does this house will it stand out relative to its neighbors in any extent and as the applicant said, the alternative would have been making this a large one-story structure which would have disturbed a lot more of the land on a steep slope which is something that normally is not desirable because it raises all sorts of other issues such as drainage, as we heard from a previous applicant. That becomes a concern. They've tried to minimize it. There was also the question that there is some exposed foundation in the front and the question was: could that be reduced and bring the house, overall, down a few feet? The problem is that in the back the grade continues to go up and as it is already a good portion of the back is sub-grade, they are going to be cutting into the hillside, putting retaining walls in and I specifically at the work session had asked why not lower it some and obviously that creates a serious problem on the backside of the structure in terms of cutting in and grading. It does appear that the architects have done their best to minimize the impact on this property and, as I said, I don't think it has a negative impact

relative to looking like there's going to be too tall so to me, I think this application is reasonable and I would have no trouble with this Variance.

Ms. Adrian Hunte stated I concur.

Mr. John Mattis stated I concur.

Mr. James Seirmarco stated I concur.

Mr. Wai Man Chin stated same here.

Mr. Charles Heady stated me too.

Mr. Raymond Reber asked anyone in the audience? No one in the audience wants to speak. On that basis then I would propose on **case #2014-06** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on **case 2014-06**, applicant by Joel Greenberg, architect on behalf of Enan Sassoon for 33 Hill and Dale Road to construct a two-story home with a total elevation of **38.75** feet that we grant an Area Variance for the height of the proposed new one-family home from an allowed **35** feet up to the **38.75** feet, this is a type II, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. Thomas McDermott stated thank you. Have a great evening.

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ADJOURNMENT

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated meeting is adjourned.

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**NEXT MEETING DATE:
WEDNESDAY, APRIL 23, 2014**