

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, November 19, 2008. 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:

Raymond A. Reber  
Adrian C. Hunte  
David Douglas  
James Seirmarco  
Wai Man Chin, Vice Chairman

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

Absent: Charles P. Heady, Jr.

**ADOPTION OF MINUTES:** 9/17/08

Mr. Mattis stated we were delayed in getting those, and we didn't have a chance to review them so can we have a motion to adjourn that to the next meeting please?

Mr. Seirmarco made a motion to adjourn the Adoption of the Minutes to the December meeting seconded by Mr. Chin with all voting "aye."

**ADOPTION OF MEETING DATES FOR 2009.**

Mr. Mattis stated since everyone has had a chance to review those, can we have a motion to approve that.

Mr. Chin made a motion to adopt the meeting dates for 2009 seconded by Mr. Seirmarco with all voting "aye."

**CLOSE AND RESERVED DECISION**

**CASE NO.L 23-07 CONGREGATION YESHIVA OHR HAMEIR for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its' students is a pre-existing, nonconforming use and that a Special Use Permit is, or may be required for the Yeshiva's operation or expansion on the property located at 141 Furnace Woods Rd., Cortlandt Manor.**

Mr. Mattis stated for information we have a Closed and Reserve Decision, and I'll turn that over to our attorney for a brief comment on that.

Mr. Klarl stated on Case No. 23-07 we've looked at this case before. We have closed our public hearing, and Reserved Decision. That Reserve Decision is awaiting action by the Planning Board in connection with the applicant's application before that Board. The Planning Board is awaiting for the applicant to proceed based upon a revised scheme that they have indicated they are going to send the Planning Board. So we can act as soon as the Planning Board acts on their case.

Mr. Mattis asked can we have a motion to adjourn that until next month, or should we adjourn until later?

Mr. Klarl replied I think January would be sufficient.

Mr. Chin made a motion in Case No., 23-07 to adjourn the case to the January meeting seconded by Mr. Reber with all voting “aye.”

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**NEW PUBLIC HEARINGS**

**CASE NO. 41-08 MAUREEN MERCER for an Area Variance for the floor area of the dwelling on the property located at 24 Kings Ferry Rd., Montrose.**

Ms. Maureen Mercer appeared before the Board. She stated I am requesting a variance to add a second floor bathroom, and a third bedroom. There are three bedrooms, but I am taking one bedroom away to make a second bathroom, and then I am adding a bedroom over the existing family room.

Mr. Seirmarco stated so you’re technically replacing a bedroom.

Ms. Mercer stated right.

Mr. Mattis stated and you are not increasing the footprint of the building at all.

Ms. Mercer stated no.

Mr. Mattis stated you are adding just under 200 square feet above an existing area.

Ms. Mercer stated right.

Mr. Seirmarco stated I am familiar with this house, and as was just said, there is no increase in the footprint, and she is just adding a bathroom, and replacing another bedroom. I really see no problem with this at all.

Mr. Mattis stated for explanation what you need your variance for is the floor area coverage, which is defined as the square feet of the house divided by the square feet of the property, and you are in an R-15 zone, which is 15000 square feet, and you only have 5000. So although your house is quite small, because of the small property, most of those properties in that area of Montrose even a small house violates that. There was a new Local Law that was put in 2007.

Mr. Douglas stated I want to emphasize that to me that is a deciding factor, and as the chairman mentioned, it is consistent with the other houses in the neighborhood. Though it does exceed the floor area, it is consistent with the area. It is not a McMansion by any means.

Ms. Mercer stated no it is not. It falls in line with the other houses actually.

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

Mr. Seirmarco made a motion in Case No. 41-08 to close the public hearing seconded by Mr. Reber with all voting “aye.”

Mr. Seirmarco made a motion in Case No. 41-08 to grant the Area Variance for the floor area from the required 1300 square feet up to 1555 square on the above referenced property. This is a Type II Sequa with no further compliance required seconded by Mr. Reber with all voting “aye.”

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**CASE NO. 42-08 ROSEMARY OSWALD for an Area Variance for the side yard set back for an existing side porch on the property located at 5 Hampton Place, Cortlandt Manor.**

Ms. Rosemary Oswald appeared before the board. She stated I am seeking a variance for an existing roof over stairs that enter into a playroom, and a variance for a ceiling height for a room that was part of an addition.

Mr. Flandreau stated the ceiling height requires a State variance so you are only here for the roof over the existing steps.

Ms. Hunte asked was the structure there when you purchased the house?

Ms. Oswald replied this was a deck, and this is just really an overhang.

Mr. Mattis asked over a stairway?

Ms. Oswald replied yes.

Ms. Hunte stated I'm sorry, so where does the porch come in?

Ms. Oswald replied it is not a porch.

Mr. Flandreau stated it would be considered a porch by definition. It's covering an area that has access to the house.

Ms. Oswald stated right, a sliding glass door.

Ms. Hunte asked when did you purchase the house?

Ms. Oswald stated about 40 years ago.

Ms. Hunte asked so it was there?

Ms. Oswald replied it was there, the stairs were there. We just put the overhang over it, because of the water, and flooding. So we added the overhang for protection.

Mr. Reber stated I personally think there is a safety issue here, and it is appropriate to have a cover over it. It is not an enclosed porch, or living area. It is only covering the stairwell, and by putting a canopy over that structure it will help the water to drain. I speak from experience. I have a similar situation. So I think it really doesn't create any visual problems, or intrusion. So I don't see any problem with this.

Ms. Hunte stated I don't see where it has brought any undesirable change to anything, and I don't see any problem with it either.

Mr. Mattis stated considering it has been there for so long. I don't see any neighbors here wanting to say anything. Are there any other comments from the Board? Is there anyone in the audience that would like to speak?

Ms. Hunte made a motion in Case No. 42-08 to close the public hearing seconded by Mr. Reber with all voting "aye."

Ms. Hunte made a motion in Case No. 42-08 to grant the side yard Area Variance for a covering over an existing stairway from 16 feet down to 9.64 feet. This is a Type II Sequa with no further compliance

required seconded by Mr. Chin with all voting “aye.”

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**CASE NO. 43-08 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE ENFORCEMENT for an Interpretation if the demolition of a majority of an existing building and the rehabilitate/reconstruction of a portion of the building within the existing footprint would require Site Plan Approval from the Planning Board.**

Mr. Flandreau stated we are asking for an Interpretation that the demolition of a majority of an existing building, and new construction in the portion of a building within the existing footprint would require a Site Plan Approval from the Planning Board. At this time I would like to ask for an adjournment for the next meeting. There is some additional information that I need to gather for this case.

Mr. Chin stated we talked about this at the Work Session. My conclusion basically, even though we are not voting on it right now, I think it should go in front of the Planning Board. It doesn't matter whether it is a short EIS, or a long EIS. So I think the Planning Board should make that decision on the site plan review as to the demolition, and the construction of a new building.

Mr. Chin made a motion in Case No. 43-08 to adjourn the case to the December meeting seconded by Mr. Reber with all voting “aye.”

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**CASE NO. 44-08 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE ENFORCEMENT for an Interpretation of what constitutes a kitchen in the dwelling unit.**

Mr. Flandreau stated there is significant trades of thought in Code Enforcement as to what constitutes a kitchen, more of a second kitchen in a dwelling, and we were coming to Zoning Board to ask for an Interpretation on that, and as to what components you would need for a room to be determined as a second kitchen in a basement, or other part of a house.

Mr. Reber stated there are obviously a lot of options thrown at us in this situation in terms of what really would make it comply as a kitchen. In the State code a definition of a kitchen is that it shall have means, and materials use, or designated to be used in preparation of food. Is there any further delineation within the code, Mr. Flandreau, or is that the limit on that?

Mr. Flandreau stated that is the only definition that I could find.

Mr. Reber stated so they don't go any further that just that?

Mr. Flandreau stated that is what we were discussing. Is it a full stove, or a microwave, or a hot pot, or hot plate. That is what we are trying to determine here.

Mr. Klarl stated I thought we had some thoughts at the Work Session that we go from an Interpretation application to maybe requesting that there be some text amendments to the code. So it would be part of the code itself rather than an Interpretation.

Mr. Mattis stated I would agree with that, because in absence of a good definition in our code, and asking us to interpret, if turn to the definition by NY State, it says an area used, or designated to be used for the preparation of food. If you have a microwave in your den to pop popcorn when you are watching television, that's a kitchen, because it prepares food. So the fact that there is no definition in our code, and the fall back to the State doesn't give us much more guidance, I would like to see that the Town Board

delineates this, and does a text amendment to the code.

Mr. Reber stated another reason we were thinking of referring this to them for code clarification is because there is a number of unique situations. Some people will have a house, and will have what they call a summer kitchen in the basement or somewhere to prepare food, or will have an extra kitchen area, because they have big family gatherings. So the question is do we prevent that, or do we acknowledge that, and by the same token it is a single family home, and we don't want to have a separate living unit. So then the question comes down to it is not just looking at whether there is a "kitchen facility", but it is a kitchen facility that is isolated in a separate building. In other words there may be a separate entrance, maybe a bedroom, or even if it is a studio apartment. So I think with all those issues it really complicates it to the point that we need to send it back to the Town Board so there will be proper amendments to the code for future cases.

Mr. Mattis stated I agree that would be the best idea so that we will have an amendment for future cases.

Ms. Hunte stated I think we are extrapolating on what a kitchen is, and it would be better to have something more firm to follow.

Mr. Mattis stated yes, and it is not our purveyance to look at the legislative intent, and the Town Board, by defining it, they always have a legislative intent, which can help us, and guide us, even if it is not 100 percent clear in every case.

Mr. Seirmarco stated it has never been a problem having a second kitchen. It is always when you couple it with living space, and a bathroom, bedroom, that becomes a problem. The definition of a second kitchen never gives us a problem.

Mr. Chin stated I agree with that. I think the main problem is a full bathroom. That really then could become a second apartment, a studio apartment, or something like that, but if you just had a toilet, and sink, and no shower, or bathtub, then you can't have an apartment there, because people could not shower, take a bath, or anything like that. So my point is that I see a lot of people with second kitchens, a summer kitchen, or because they have big families. So I don't see a problem with that myself, but again, I think a bathroom is the key point here.

Mr. Seirmarco stated it always comes down to whether it can be a second dwelling, or not. Having a second kitchen, or having just a bathroom with a toilet, a sink, has never been a problem.

Mr. Mattis asked are there any other comments?

Mr. Reber stated so the question here is do we define this, or do we sent it refer it to the Town Board for an amendment.

Mr. Klarl stated the Town Board would have to make a text amendment to clarify it in the code.

Mr. Mattis stated I would prefer that, and that text amendment could actually also define a little better what constitutes a bathroom too. So that we can clarify when does having a kitchen make it a possible dwelling area.

Mr. Klarl stated so there are really three questions here. The definition of a kitchen, the definition of a second kitchen, and when a second kitchen is permissible, and when it is not permissible.

Mr. Mattis stated I agree.

Mr. Klarl stated so we can refer this to the Town Board to give us the authority to direct staff to prepare a

text amendment. So what you could do Jim, is you could withdraw it, and prepare a memo to the Town Board asking them to prepare a text amendment, for guidance in those three questions.

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

Mr. Flandreau stated I would like to withdraw the case.

Mr. Mattis stated okay.

Mr. Klarl stated so Jim will prepare a staff memo asking the Town Board to refer this to staff for a text amendment.

Mr. Douglas stated I am confused here, why is he withdrawing it?

Mr. Reber stated why don't we just make a motion to just refer it to the Town Board.

Mr. Klarl stated it would be just as easy to withdraw the application, and direct the staff to do a memo to the Town Board saying that they would like to see a proposed text amendment on a kitchen, second kitchen, and when it is permissible.

Mr. Seirmarco stated it is just going to fall into a black hole that way, and I don't like that.

Mr. Mattis stated so that is why I am asking for legal guidance. Should we make a motion that we vote on that we referred this to the Town Board, and direct staff to write a memo?

Mr. Reber stated I think that would make more sense.

Mr. Reber made a motion in Case No. 44-08 to refer the case to the Town Board to direct staff to prepare an opinion, and a recommendation as to the definition of a kitchen, a second kitchen, and when a second kitchen is allowed, or not allowed seconded by Mr. Chin with all voting "aye."

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**CASE NO. 45-08 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE ENFORCEMENT for an Interpretation that regarding a requirement for an Area Variance for a front yard set back for a second story addition to a pre-existing, nonconforming structure when the addition does not expand the footprint of the dwelling into the front yard.**

Mr. Flandreau stated this application is for an Area Variance for a front yard set back for a second addition to a previously nonconforming structure, and the addition does not expand the footprint of the dwelling in the front yard. There has been some discussion in the past from the board about maybe doing an Interpretation on this so that we would not necessarily need to hear all of these cases.

Mr. Douglas stated my personal opinion on this is that under the language of the code is that this is a variance. It may be the type of variance that we usually grant, but I think that this is the type of thing that should come before the Zoning Board to be decided. Most of the time we probably will grant them, but it might be some circumstance where for some reason it doesn't fit into the nature of the surrounding community, and we would like to decide not to grant it. I think we should still here these case individually, and decide what is best on a case by case basis.

Mr. Chin stated I agree.

Mr. Seirmarco stated I agree also.

Mr. Reber stated I concur. I think our board has a history of expediting these applications quickly. So I think that we should continue to hear these cases.

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

Mr. Douglas made a motion in Case No. 45-08 that the Board interprets that this scenario does require to appear in front of the Zoning Board of Appeals for decision. This is a Type II Sequa with no further compliance required seconded by Mr. Seirmarco with all voting "aye."

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**CASE NO. 46-08 SALVATORE C. CUCCIA for an Area Variance for the total signage of the Freight Liquidators store on the property located at 2093 E. Main St., Cortlandt Manor.**

Mr. Mattis stated there is no one here for this case at this time so we will call this again.

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**CASE NO. 47-08 NORTHERN WESTCHESTER VETERINARY HOSPITAL for an Area Variance for the die yard set back for a proposed addition on the property located at 2068 E. Main St., Cortlandt Manor.**

Mr. Patrick Bell appeared before the Board. He stated I am from Cronin Engineering here to represent our client, Dr. Paul Moss, who owns, and operates Northern Westchester Veterinary Hospital on East Main St. in the Town of Cortlandt. The project is currently in front of the Planning Board for a site plan, and wetlands permit, and during the process we were referred to the Zoning Board for variances on front and side yard encroachments. We are proposing a two story addition on the northerly side of the building as shown on the plan. Also, seen on the plan is the existing structure as the existing encroachments are on the front and side yard, which have variances. So we are looking for a decision on the addition.

Mr. Mattis asked what is the highlighted line that you have on there?

Mr. Bell replied this is the set back set forth by the building envelope. The property is in the HC, Highway/Commercial zoning area. Obviously, when the property first developed the HC zone didn't even exist, and it encroaches on all of the set backs.

Mr. Mattis stated that is actually more of a set back than would have been required a year or two ago.

Mr. Bell stated 10 years ago the side yard set back was 25 feet, and increased to 30. I also went back into the records, and back in 1988 this property was in the C-1 zoning district, and at that time the side yard set back was 10 feet. The building is 11 feet from the side yard set back, and this property to the west is actually the New York City aqueduct. So this is about a 200 foot buffer, and then beyond the aqueduct is an R-10 zoning area. So the property is pretty much isolated. There is a gap right there, but the elevation changes about 10 feet, and then the back section of the property is undevelopable area for Con Edison.

Mr. Flandreau stated just for clarification they're only asking for a side yard variance. The existing dwelling is where the front yard is set, and is pre-existing, nonconforming. So it is only the side yard set back that would be encroaching.

Mr. Mattis asked has anyone been to the property to look at it?

r. Reber stated I am familiar with the property, the Joint Water Works that I work with is directly across

the street. The applicant has been asking to extend its' building along the same line as the existing structure, and it really doesn't encroach on any of the immediate areas. So I really don't see a problem with it. The set backs are not unreasonable. I see no problem with granting the variance. They are going to the rear of the building, and there is still plenty of property to buffer the area.

Mr. Douglas stated I agree. I think that this will not bring any undesirable change to the neighboring area, and I am in favor of this application as well.

Mr. Mattis stated I would just like to add one thing. Even though it is only an 11 foot set back, it's effectively a 200 foot set back because of the aqueduct, because that is never going to be developed. So for a visual set back, it's 200 feet, even though from a legal set back it is not 200 feet.

Ms. Hunte stated I also agree. It is commercial property, and I don't think it will bring any undesirable change to the area.

Mr. Mattis stated it is in the back of the building, and it goes straight back so nobody will even be able to see it back there. Is there anyone in the audience that would like to speak?

Mr. Reber made a motion in Case No. 47-08 to close the public hearing seconded by Mr. Seirmarco with all voting "aye."

Mr. Reber made a motion in Case No. 47-08 to grant the side yard Area Variance for a proposed addition in the rear of the building from the required 30 feet down to 11.3 feet. This is a Type II Sequa with no further compliance required seconded by Mr. Chin with all voting "aye."

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**CASE NO. 48-08 NICHOLAS AND BETH PHILLIPS for an Area Variance for an accessory structure (shed) in the front yard set back on the property located at 152 Colabaugh Pond Rd., Croton-on-Hudson.**

Mr. and Mrs. Philips appeared before the Board.

Mr. Philips stated we come before you this evening to request an Area Variance for a shed that we want to put on our property on the south side of the yard on Colabaugh Pond Rd. We discovered that we have two different fronts on Knoll Road, and Colabaugh Pond Rd. So we would need a variance. We went to Code Enforcement to find out where we could put the shed, and they sort of drew an L there to the west of that line. We could put it on the north side of the property, but there is a lot of rock there, and the ground is not level there. It is not very convenient to the house. The east side has space there, but the septic system is based there. So we don't want to put the shed on the septic. So we thought the best place to put the shed would be just to the south, sort of next to the house, and driveway.

Mr. Douglas stated I think the situation here is basically that it is a legal matter where you have two, or three front yards. You have Colabaugh Pond Rd., which is the real front yard, and then there is Knoll Road, and Shady Lane, which at the moment is a paper road, but under the Town's definition of front yard, it still counts as a front yard, which is why you need a variance. I don't have a problem or an issue with you putting the shed where you proposed given the fact that it is not really a front yard, at least at the moment. The reason I say not at the moment is because I am aware that the owner of the land behind you is in the process of talking with the Town about developing that land. So there may be a real road there at some point. I don't think that will pose a problem in you putting a shed there. The only thing that I think might make it preferable is if you could push it back so that it is not any closer to Knoll Road, and the line of the house. If you pulled the shed back so that it is the same distance from Knoll Road as the house.

Mr. Seirmarco stated if you just draw a line parallel to the back of the house between the deck and the house near Shady Lane Road, and you stay behind that, you should be okay placing the shed in that area.

Mr. Philips stated there is a lot of rock underground there, and I was sort of a little bit constrained, because I was actually trying not to go any closer to that in the front.

Mr. Reber stated I am familiar with the property, and there is a little bit of a lawn area there. What I would suggest also, because right now the front yard facing Colabaugh Pond Road is a physical road. So to minimize that, and I recognize it would still be in the front yard, but using long ways using that back line of the house as a fine line in terms of how it goes to Knoll Rd., and I also request that you don't go more than 20 feet away from the house with the shed. What I don't want you to do is go toward Colabaugh Pond Rd.

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

Mr. Reber stated what I want you to do is to keep it at least this far away from Colabaugh Pond, and I think that will work with that little grass area that you have there too.

Mr. Philips stated there is a lot of rock there, but I think I can make it work.

Mr. Douglas stated I agree with Mr. Reber, because obviously Colabaugh Pond Rd. is a real road, and we do not like to allow accessory structures such as a shed in the front yard.

Mr. Mattis asked is there anyone else who would like to comment?

Mr. Chin stated I would say that the rock in this area is very, very hard. I know because I live on East Mt. Airy Rd., and that rock is like emery, and you cannot even break it with a jackhammer. I know that from my own experience at my own house. So I agree with Mr. Reber's suggestion, as well.

Mr. Mattis stated I am familiar with this area as well, and you probably have one of the most unique properties that we have run into in terms of the way the Town defines front, and back yards. You have probably the smallest backyard of anybody, and that area is really not even appropriate to put this in. Is there anyone in the audience that would like to speak?

Mr. Douglas made a motion in Case No. 48-08 to close the public hearing seconded by Mr. Seirmarco with all voting "aye."

Mr. Douglas made a motion in Case No. 48-08 to grant an Area Variance for an accessory structure in the front yard, specifically a shed, on the condition that the shed not be any closer to Knoll Rd. than the edge of the house, and not be moved any closer to Colabaugh Pond Rd. than as proposed in the drawings. This is a Type II Sequa with no further compliance required seconded by Mr. Seirmarco with all voting "aye."

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**CASE NO. 46-08 SALVATORE C. CUCCIA for an Area Variance for the total signage of the Freight Liquidators store on the property located at 2093 E. Main St., Cortlandt Manor.**

Mr. Mattis stated this case is second call, and they are not here. I would like to ask our attorney a question. Can we open this case without the applicant being here?

Mr. Klarl stated yes.

Mr. Mattis asked can we decide this case without them here?

Mr. Klarl replied well there is usually a presentation by the applicant.

Mr. Mattis stated well I would like to open it, and make a comment. I don't know how the rest of the Board feels. If you want to just adjourn it, I'll adjourn, but we have some information here that I would like to bring up.

Mr. Klarl stated you can certainly do that.

Mr. Mattis stated okay, this case is Mr. Heady's case. This is a case for an additional sign at Freight Liquidators, and they were granted the permission for the sign saying that they would remove two other signs so that they would stay within the code.

Mr. Flandreau stated well there is actually about six signs that have to be removed.

Mr. Mattis stated okay about six signs. They put the new sign up, they left several of the old signs up, and now they come in for a variance. If we would act on this case tonight, I would deny it, and make them take the sign down, because they're intent was to get a sign up, and then to try to find a way to keep some of the other signs up. They confirmed in writing that they would be taking the signs down that we told them had to be removed. We can wait until next month, but I am going to vote against this just on the basis that when you put something in writing, and then you don't comply with it, and then you come back for another variance, that was their intent all along, and they shouldn't have been able to put up the sign until they complied. Are there any other comments right now? I would also like a letter sent to the owner stating that we will hear this case next month, and we will act on this case even if they don't appear.

Mr. Seirmarco made a motion in Case No. 46-08 to adjourn the case to the December meeting seconded by Mr. Douglas with all voting "aye."

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

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Christine B. Cothren