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, October 15th, 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 SEPT 17, 2014

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

Mr. David Douglas stated the September minutes are adopted.

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CLOSED AND RESERVED:

A. **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 Klarl stated we have in front of us a proposed Draft Decision and Order and it goes for about 7 ½ pages, so bare with me. It starts: This is an application by the Department of Technical Services (DOTS) Code Enforcement for an Interpretation whether the pre-existing, non-conforming five-family residence on the property owned by Rita Weeks and located at 1 Hale Hollow Road, Croton-on-Hudson, NY 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. This interpretation

application arises from a prior application before this Board (Case No.2012-28) wherein the ZBA, by Decision and Order dated June 25, 2013, interpreted Section 307-79 of the Town of Cortlandt Town Zoning Ordinance as follows: Therefore, in light of the Town Attorney's three (3) memos, the case law on this issue and the "lapse period" contained in the Town of Cortlandt Zoning Ordinance Section 307-79, this Board hereby INTERPRETS 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 nonconforming use of a building ceases for any reason for a continuous period of not less than one year." The essential powers and jurisdiction of a ZBA derive from the NYS "enabling statutes", including Town Law Section 267-a, which provides in subsection 4: 4. Hearing Appeals. Unless otherwise provided by local law or 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 the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town. Therefore, Town Law Section 267-a(4) provides the fundamental jurisdictional basis for a ZBA. Section 267-a(4) above has two (2) components when considering Interpretation applications:

1. 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…";
2. "Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town".

As a result, Interpretation appeals arise from an interpretation or determination "made by the administrative official charged with the enforcement of any ordinance or local law…"; and "Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town. An "officer" includes our Town Building Officials, and "department" includes our Department of Technical Services. This is all nicely summarized in the leading treatise, NY Zoning Law and Practice (4th Edition), when Professor Salkin writes in Section 27:24: Sec. 27:24 Appellate jurisdiction; review of administrative decisions. The zoning board of appeals of a town or village or of a city which adopts the jurisdictional provisions of the General City Law, is authorized to hear and decide appeals from and review 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 the zoning enabling statutes. The jurisdiction vested in the board by this provision is appellate, not original. A zoning board of appeals has appellate jurisdiction to review decisions of administrative officials charged with enforcement of zoning regulations, but does not have jurisdiction to modify conditions imposed by a planning board or its approval of a subdivision plat. A zoning board of appeals is without authority to render an advisory opinion concerning the meaning of a zoning regulation or its application to a particular set of circumstances, but it has jurisdiction to interpret the zoning regulations upon an appeal from the issuance of a permit and a construction of such regulations by an enforcement official, and such interpretation will not be disturbed absent a showing that it is irrational or unreasonable. The jurisdiction of a zoning board of appeals to construe the ordinance includes the power to determine the application of the ordinance to specific property. It is within the power of a zoning board of appeals to determine whether an

applicant for a building permit is entitled to a nonconforming use, and a zoning board of appeals determination concerning the existence of a nonconforming use will not be reversed unless it is without support in the record. This power to rule on the application of the ordinance to specific land may be exercised by the board although it is without power to enforce its decision. The board's jurisdiction to review the zoning decisions of enforcement officers is exclusive. It cannot be exercised by other administrative officers, or by the legislative authority of the municipality. Therefore, this ZBA can hear and decide an appeal from and reviewing an interpretation, and "Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town." This Board asserts that in so far as our prior Decision and Order, dated June 25, 2013, might arguably be challenged to fall outside the bounds of this Board's jurisdiction under Town Law Section 267-a(4), we have reconsidered the rationale and logic of the 2013 Decision and Order, and adhere to it, reassert it and reaffirm it in connection with the instant Decision and Order. An important procedural issue in the matter now before this Board concerns where the burden of proof is properly placed. The property owner's attorney writes in his letter, dated February 14, 2014, to the ZBA (Page 3): A consequence of the DOTS application as phrased is that it unfairly shifts the burden of proof to the Owner. Rather than the burden of proof being on those seeking to disturb or take from what is presently a constitutionally protected legal pre-existing, nonconforming use of the Premises, it effectively shifts the burden to the Owner to prove that the use has been continuous for the past eighteen years thereby violating the Owner's constitutionally protected right to due process in an action seeking to take from the Owner a constitutionally protected property right. The property owner's attorney makes this assertion without benefit of reciting one statute or reciting one case that supports such assertion. The leading zoning law treatise in NY, New York Zoning Law and Practice (Fourth Edition) clearly sets forth the controlling principles and law in this area of zoning law:

D. PRESUMPTIONS AND BURDEN OF PROOF

5:09 Presumption of constitutionality. A zoning ordinance is a legislative act. It represents a legislative judgment as to how particular land should be classified, where zoning boundaries should be drawn, and the nature and extent of the restrictions that should be imposed. The authority to zone the territory of a municipality, and necessarily the authority to determine the nature and extent of such zoning, are vested in the legislative body. Accordingly, a legislative decision in such matters may not be disturbed unless the legislature has exceeded its powers or has acted in an arbitrary or unreasonable manner. The Court of Appeals wrote: Decision as to how a community shall be zoned or rezoned, as to how various properties shall be classified or reclassified, rests with the local legislative body; its judgment and determination will be conclusive, beyond interference from the courts, unless shown to be arbitrary, and the burden of establishing such arbitrariness is imposed upon him who asserts it. Dodge Mill Land Corp.v. Town of Amherst, 61AD2d 216 (1978). A legislative act is presumed to be constitutional and valid. Zoning Ordinances, like all legislative enactments, are invested with an exceedingly strong presumption of constitutionality, Town of Huntington v. Park Shore Country Day Camp of Dix Hills Inc., 47 N.Y.2d 61, N.Y.S.2d 774, (1979). This presumption of validity is rebuttable, but it imposes upon the litigant who alleges invalidity, the burden of proving that the ordinance is unreasonable and arbitrary. Sec. 5:10 Burden of Proof. The burden of proof rests with the

litigant who asserts that a zoning ordinance is unconstitutional. Horn Construction Co. v. Town of Hempstead, 245 N.Y.S.2d 614. One Court, commenting on the heavy burden of proof assumed by a litigant challenging a zoning ordinance, wrote: The consideration in examining the challenged amendment is that zoning ordinances, like all legislative enactments, are invested with an exceedingly strong presumption of constitutionality; the challenger to the ordinance shoulders the very heavy burden of demonstrating unconstitutionality beyond a reasonable doubt, and only as a last resort should courts strike down legislation on this ground. Kravetz v. Plenge, 84 A.D. 2d 422, N.Y.S.2d 807 (4th Dept. 1982): "That a legislative enactment will be presumed constitutional is an elementary but significant principle of law. The strength of this presumption, sometimes underestimated, has been repeatedly underscored by the Courts of this state." Marcus Associates, Inc. v. Town of Huntington, 45 N.Y.2d 501, 410 N.Y.S.2d 546 (1978). Sec. 5:11 Fairly debatable issue. The Courts frequently say that the wisdom of a zoning ordinance is a matter to be determined by the legislature, not the Courts. Within limits imposed by the Constitution, questions of policy are committed to the legislative authority of the municipality, and the Courts are without power to interfere. Formally, at least, the Courts disavow any authority to interfere with a zoning decision of a municipal legislature unless it is shown to be arbitrary and unreasonable. The burden of demonstrating the arbitrary or unreasonable character of a zoning ordinance is said not to be sustained if the proof does no more than demonstrate that the issue is debatable. Thus, in Shepard v. Village of Skaneateles, the Court of Appeals wrote: Upon parties who attack an ordinance…rests the burden of showing that the regulation assailed is not justified under the police power of the state by any classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." It is not for the Courts to substitute their judgment for that of local officials invested by statute with the authority and duty to prepare and enact zoning ordinances." Dodge Mill Land Corp. v. Town of Amherst, 61A.D.2d 216, 402 N.Y.S. 2d 670, (4th Dept. 1978). Sec. 5:12 Beyond a reasonable doubt. The New York Courts occasionally have imposed upon parties who question the validity of ordinances a burden greater than that of taking the matter out of the area of fair controversy. In Wiggins v. Somers, the Court of Appeals said that "while this presumption [of constitutionality] is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt." Wiggins v. Town of Somers, 4 N.Y.2d 215, 173 N.Y.S.2d, 579, (1958). The language, if it is to be literally construed, imposes upon the litigant who challenges a zoning ordinance the same burden of proof as that imposed upon the state in a criminal prosecution. "Because zoning is a legislative act, zoning ordinances and amendments enjoy a strong presumption of constitutionality and the burden rests on the party attacking them to overcome that presumption beyond a reasonable doubt." Asian Americans for Equality v. Koch, 72 N.Y.2d 121, 531 N.Y.S.2d 782, (1988). The New York Courts have frequently repeated and applied this standard. A simple preponderance of the evidence is insufficient to establish the unconstitutionality of a Zoning Ordinance. Snyder v. Burns, 27 Misc. 2d 645, 212 N.Y.S.2d 851 (Sup 1961): "In challenging the constitutionality of a zoning classification as applied to particular property, a landowner charging confiscation must establish beyond a reasonable doubt that he is unable to realize a reasonable return on his property under each and every one of the permitted uses is such district." Blitz v. Town of New Castle, 94 A.D.2d 92, 463 N.Y.S.2d 832 (2d Dept. 1983). Now, turning to the specifics of the case/interpretation before this ZBA brought by the within Applicant (DOTS), a brief history is in order:

1. On July 24, 2011, DOTS Code Enforcement received a complaint that there were units in this prior-to-zoning, five-family residence that had been vacant for more than a year, and should lose their pre-existing, non-conforming status under the Town Zoning Ordinance, Section 307-79.

2. Depositions dated August 8, 2011 and August 13, 2011 from Marion Callis were received in support of the complaint. Letters were sent to the property owner requesting documentation showing all units had not been vacant for more than one year. No documentation was submitted and a violation was issued by the Town on October 24, 2011. The property owner then obtained legal counsel.

3. An affidavit from Heather Murphy was submitted November 11, 2011, stating she rented an apartment from 2009-2011, but makes no mention of any other unit. A deposition from Dora Tarver was submitted August 12, 2013, and Marion Callis submitted another deposition on August 13, 2013.

4. Patricia Post submitted a letter on December 5, 2013. The letter contains an erroneous inference that a reduction in property tax in 1981 is proof of unrented apartments. The Assessor explained that there was a capitalization reduction, based on a decline in rental income. No conclusion can be drawn for the number of occupied units. By 1995, the rental income increased and the assessment was raised. Additionally, what happened in the 80's is immaterial in light of the 1996 prior-to-zoning certification for 5 units.

5. It was the opinion of the Town Attorney that Code Enforcement did not have proof beyond a reasonable doubt to pursue a court action on the violation, so this matter was referred to this Board for the instant Interpretation. It is important to note that the Town Attorney's opinion was issued April 30, 2012, prior to the various Affidavits and testimony that were submitted in connection with this ZBA application.

6. The ZBA advised the property owner (Rita Weeks) at the March 19, 2014 Public hearing that the Board would only review 7 years (2007-2014) (and not 18 years – from 1996-2014) for the period to consider proof on the "continuous non-conforming use" (with no lapse of one year or more in the pre-existing, non-conforming use).

Public hearings were held on this application for an Interpretation on December 18, 2013, January 15, 2014, February 9, 2014, March 9, 2014, April 23, 2014 and May 21, 2014, when the public hearing was closed and this Board reserved Decision on this matter.

During the six (6) lengthy public hearings, this Board received much evidence by way of various documents, and testimony by way of various witnesses as to the use and occupancy of the property over the years.

In terms of documents, much of the property owner's documents do not "carry the day" (various receipts, etc.), while many relevant documents requested by the Board were not

produced (Tax Schedules showing rental income, Lease copies and other substantive documents, etc.). Finally, in terms of documents, many of the Affidavits and Statements were circumspect, and some clearly contradictory of other Affidavits and Statements received by the Board at the public hearings from various witnesses. As a result of the rather voluminous submissions by documents and by testimony (Affidavits or in person testimony), this Board has prepared the following Occupancy Summary based upon a review of the record in this matter (i.e., the six public hearings and documents submitted): **See "Occupancy Summary" Annexed to this Decision and Order.** As can be seen, the continuous occupancy issue is apparent for Apartment No. 2 and for Apartment No. 5. There is no evidence that Apartment No. 5 was occupied from August 2009 until May 2012 except by Marlene Harman who occasionally did stay there for short stays. The most credible affidavits submitted to the ZBA suggest that this Apartment No. 5 was not equipped as an apartment and thus could not be rented as an apartment. Likewise, the only information concerning Apartment No. 2 from August 2009 to January 2012 is that Heather Murphy stayed there on and off during the week even though her actual residence was elsewhere. Once again, various Affidavits state that Apartment No. 2 was not equipped as an apartment and that Heather Murphy only used the bedroom. Again, this Board hereby interprets that such limited use does not constitute renting or occupying an apartment. These two areas of the building (Apartment No. 2 and Apartment No. 5) were simply used as bedroom extensions of Mrs. Week's Apartment No. 3. It should be noted that:

(1) No evidence was presented to this Board to challenge the most credible Affidavits that stated that Apartment No. 2 and Apartment No. 5 were not in "rentable shape" from prior to August 2009, and to the end of 2011.

(2) We hereby interpret that Apartment Nos. 1, 3 and 4 were used as apartments and their non-conforming use as such did not cease "for any reason for a continuous period of not less than one year". See Town Code Section 307-79.

This Board is mindful of (and witnessed first-hand) all the raw emotions and personal histories among the property owner and her former and present tenants and neighbors, which consisted of both supporters and detractors alike. The Board's decision is not in any way based on or been influenced by such factors. The Board is likewise in no way attempting through this Decision & Order to "take sides" in this neighborhood dispute, but merely making findings and a determination based upon its consideration of the evidence presented and the governing law and principles. DOTS made a decision to serve the property owner with a violation for having pre-existing, non-conforming apartment(s) vacant for greater than one year. DOTS then requested an Interpretation from the ZBA on its interpretation as recited in this Board's prior Decision and Order, dated June 25, 2013, and as recited in the DOTS' ZBA application and Fact Sheet of December 2013. The central issue on this appeal is whether the property owner provided sufficient evidence to prove the apartments were occupied continuously. The ZBA requested proof, e.g., Tax Schedule information, Lease copies, rent receipts, cancelled checks and other such proof. Information provided by others, e.g., neighbors, friends and relatives on both sides, is appreciated but not controlling. The Chairman on numerous occasions gave lists of the type of proof that would be considered to prove continuous occupation. In the opinion of the ZBA, the property owner did not present sufficient proof to conclude that there was continuous occupation in all five apartments. Therefore, this Board hereby FINDS that the number of apartments should be reduced from five to three, based upon the most credible proof submitted to the ZBA

on this Interpretation Application. This is a Type II action under SEQRA consisting of the interpretation of an existing Code or Rule. No further compliance is required.

Mr. Raymond Reber stated I move that the Decision & Order, as read, be approved.

Seconded with all in favor saying "aye."

Mr. David Douglas stated a Decision & Order is approved. Ken, in terms of timing for compliance, what's the timing?

Mr. Ken Hoch responded I'm not sure that's the condition of those units because I've not been in them but I would say at a minimum, probably 30 days.

Mr. David Douglas asked can we add that to the record?

Mr. Ken Hoch responded sure.

Mr. David Douglas stated that clients should be within a period of, should we say…

Mr. James Seirmarco responded two months.

Mr. David Douglas asked we'll make it 60 days?

Mr. John Klarl stated that we want the property owner to be in compliance within that time period.

B. CASE NO. 2014-16 Hudson National Golf Club for an Interpretation that:

1. To the extent necessary in order to satisfy the "country club" use criteria and the minimum lot area and frontage requirements for a Special Permit for "country club" use of the portion of its property in Cortlandt, under Section 307-4, 307-14 and 307-52 of the Town Code, the Applicant may utilize the adjoining portion of its property in the Village of Croton-on-Hudson, which is currently utilized as an approved country club and golf course, to permit the Applicant to utilize the entire property as one such country club and golf course, or alternatively,
2. The Applicant's proposed used of the Cortlandt portion of its property as a golf driving range and teaching facility, as part of one combined country club and golf course use of that portion and the adjoining portion in the Village of Croton-on-Hudson, constitutes a "country club" use permitted by Special Permit under Section 307-4, 307-14 and 307-52 of the Town Code, for requirements, including minimum lot area and frontage requirements.

The property is located on **Hollis Lane, Cortlandt Manor**.

Mr. David Douglas stated to give Mr. Klarl's voice a rest. I think Mr. Mattis is going to handle

this.

Mr. John Mattis stated this is the Hudson National Golf Club case. The Draft D&O: the Applicant herein, Hudson National Golf Club, seeks an Interpretation that: 1. To the extent necessary in order to satisfy the "Country Club" use criteria and the minimum lot area frontage requirements for a Special Permit for "Country Club" use of the portion of its property in the Town of Cortlandt under Sections 307-4, 307-14, 307-52 of the Town Code, the Applicant may utilize the adjoining portion of its property in the Village of Croton-on-Hudson, which is currently utilized as an approved country club and golf course to permit the Applicant to utilize the entire property as one such country club and golf course or, alternatively, that 2. The Applicant's proposed use of the Cortlandt portion of the property as a golf driving range and teaching facility, as part of one combined country club and golf course use of that portion and the adjoining portion in the Village of Croton-on-Hudson, constitutes a "country Club' use permitted by Special Permit under Sections 307-4, 307-14, and 307-52 of the Town Code, for requirements, including minimum lot area and frontage requirements. The Applicant's property is located on Hollis Lane, in the R-80 Single-family residential district in the Town of Cortlandt. The Town Code Section 307-14(E) (Content of Table of Permitted Uses) provides: "Certain uses which are permitted or permitted by special permit by this section may be subject to additional requirements of site development plan approval as set forth in this chapter." For all the reasons recited below, this Board hereby adopts and supports the above Interpretation No.1. The Applicant is seeking to add a driving range to its existing golf course in Croton to be located on the Applicant's adjoining property in Cortlandt. The Applicant was referred to the Zoning Board of Appeals by the Planning Division, in connection with its Special Permit and Site Plan applications before the Planning Board, to seek an interpretation from the Zoning Board of Appeals. The Planning Division's Comment No. 5 in its March 12, 2014 Review memo to the Planning Board raised the issue that: "the subject parcel, as a stand-alone parcel, does not meet the minimum lot area or frontage requirements for a Country Club, as defined by Special Permit Section 307-52. In addition, the primary use of which the proposed golf driving range is accessory to, is located in the Village of Croton. The Applicant is required to obtain an interpretation from the Zoning Board of Appeals as to whether the subject property, and application as submitted, meets the criteria of a Country Club Special Permit under the Town's Zoning Ordinance." The Need for the Zoning Board of Appeals's interpretation arises from the fact that the Town Zoning Ordinance does not specifically address the particular situation presented here, where we have two adjoining but separate parcels which are divided by the municipal boundary line between the Town of Cortlandt and another municipality (in this case, the Village of Croton). More particularly, the question for this board in this situation is this: Can the Applicant include the adjoining parcel in Croton to satisfy the Town's use and bulk requirements in order to permit the Applicant's use on the Cortlandt parcel? Unfortunately, the Town Zoning Ordinance does not directly address this issue. In this case, it is important to emphasize that the Applicant proposes to use the two adjoining parcels for just one use, i.e., for the golf and country club use which currently exists, as permitted and approved, on the Croton parcel. It also bears noting that the adjoining property, while in the Village, is located in the Town. Further, under the Applicant's proposed use, the Cortlandt parcel will be accessed only through Croton, over the existing golf course. There are zoning Ordinances in Westchester

County that address the issue of a property divided by a municipal boundary. Cortlandt's Zoning Ordinance does not. As the Town Zoning Ordinance does not provide a specific provision, we look to State law. There is not a great deal of State case law which guides us what to do in this unusual situation, but the recognized zoning treatises, citing some case law in New York and nearby states, express the principle that under these circumstances, one municipality may, but is not necessarily required to, include the adjoining property in the other municipality in order to satisfy its zoning requirements. There is nothing in the Town Zoning Ordinance that prohibits the Town, or this Board in particular, from taking into account the adjoining property in Croton. Nonetheless, while there is necessarily more than one tax lot, because the properties have to be taxed separately by the municipalities in which they are located, this Board does not accept the Applicant's argument that the "combined parcel is really just one zoning lot." The Applicant's assertion in this regard is at odds with the definition of "Lot" in Section 307-4 of the Zoning Ordinance: A parcel of land contained within one continuous legal boundary established in accordance with all laws and Ordinances in effect at the time of establishment. These adjoining parcels are not one lot as they are not "a parcel of land contained within one continuous legal boundary." With respect to the Comment raised by the Planning Division as to the bulk requirements, there is no question that, as a stand-alone parcel, the subject 19.4 acre parcel in Cortlandt would not meet the minimum lot area requirement of 50 acres for a Country Club Special Permit or the minimum 250 feet frontage requirement, as set forth in Section 307-52(B) of the Town Zoning Ordinance. There is also no issue that the adjoining Golf Course property in Croton already exceeds 260 acres in size and has substantially more than 250 feet of road frontage. As for the Planning Division's characterization of the proposed driving range and teaching facility as only "accessory" to the "primary" use in Croton, this Board believes that the Applicant's proposed facility is not merely "accessory", but rather, part and parcel of the one principal use on the lots, i.e., the "Annual Membership Club" as the use is designated in Croton, or "Country Club" as it is designated in Cortlandt. Even if standing alone, such a driving range and golf teaching facility would constitute a "Country Club" use in Cortlandt. Such a driving range and facility is an integral aspect of most golf and country clubs, and certainly those of the quality of Hudson National; indeed, the club currently has a driving range and teaching facility. In addition, neither municipality specifically denotes such facilities as accessory uses to their referenced principal uses. Thus, the Board issues the following Interpretation: To the extent necessary in order to satisfy the Town's "Country Club" use criteria and the Town's minimum lot area and frontage requirements under Sections 307-4, 307-14 and 307-52 of the Town Zoning Ordinance for a Special Permit for "Country Club" use of the parcel located in Cortlandt, the Applicant may include the adjoining property in Croton, which is currently used as an appvd country club and golf course, thereby permitting the Applicant to utilize the entire property as one such country club and golf course. This Board additionally finds as follows: 1. This Board does not agree with Interpretation No. 2 recited above, which is inconsistent with the principles discussed above and in any event is hereby rendered moot by the Interpretation adopted herein. 2. This Board does not agree with the Applicant's assertion that: "Town Code Section 307-8 (Conformance required) arguably applies to merge the two portions of the property for country club use by operation of law." First, the necessary elements do not exist under Section 307-8© to result in a merger of the two parcels. Second, and more importantly, declaring a merger by operation of law would result in one municipality's Zoning Ordinance usurping another

municipality's Zoning Ordinance. 3. Having rejected the Applicant's assertion that there has been a merger of the two adjoining parcels by operation of law, pursuant to Section 307-8, this Board requests that as a condition of the Planning Board Resolution of approval on the Special Permit and Site Development Plan applications that the two adjoining parcels be actually merged by deed (to be recorded in the Westchester County Clerk's office), to be completed in a time frame set by the Planning Board Resolution. The Applicant has agreed on the record to this condition being part of the any Planning Board Resolution. The Board appreciates the research that the Applicant's engineer provided in looking at somewhat similar cases that this Board previously considered. However, those cases are distinguishable as they involved situations where a single lot overlapped the Town boundary, with a portion of it in the Town and a portion in the adjoining municipality. Here in contrast, the application involves two separate properties (one in the Town; one in the Village) that do not "straddle" a municipal line. Finally, this Board expressly notes that it is stating no opinion on the merits of the Applicant's proposed use of the parcel – that is, whether its proposed driving range and golf teaching facility is or is not a beneficial use of the parcel, does or does not adversely affect the environment or surrounding parcels, is or is not a preferable use than other conceivable uses of the parcel, etc. – and nothing in this Decision and Order should be read as somehow doing so or taking any position on whether the Applicant's Planning Board application should or should not be approved, or what conditions should or should not be placed upon any approval (other than the merger by deed of the two parcels, as noted above.) Consideration of such issues is properly the domain of the Planning Board, and we therefore leave them to the Planning Board to consider as it sees fit. This is a Type II action under SEQRA consisting of the Interpretation of an existing Code of Rule. No further compliance is required. I make a motion that we approve the Decision & Order.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that Decision and Order is approved.

Mr. Davis stated I just want to thank the Board for its kind consideration. Thank you very much.

Mr. David Douglas stated you're welcome.

Mr. John Klarl stated good night.

C. CASE No. 2014-17 Montauk Student Transport, LLC for an Interpretation challenging the Code Enforcement Officer determination that the parking of buses is not permitted use on property located at **5716 Albany Post Road, Cortlandt Manor.**

Mr. David Douglas stated this one is shorter than the first two. Mr. Reber is going to make…

Mr. Raymond Reber stated the next Draft Decision and Order is for Montauk Student Transport, LLC, Zoning Board of Appeals case #2014-17. This is an application by Montauk Student

Transport, LLC, for an Interpretation reversing the Town of Cortlandt Code Enforcement Officer's determination that the parking of school buses is not a permitted use on vacant property located at 5176 Albany Post Road, Cortlandt Manor, NY 10567. The Applicant's property consists of vacant land (approximately 269,679 sq. ft.) in the Highway Commercial (HC) District. In his letter dated July 1, 2014, to this Board, the Applicant's engineer wrote as follows: This office has been retained by the Applicant, Montauk Student Transport, LLC, to seek approval from the Town of Cortlandt to park a total of approximately fifty school buses at the project site. There is no bus maintenance associated with this proposal. All maintenance activities are performed at an off-site location. The project site is bounded on the north side by Highland Avenue and on all other sides by Old Albany Post Road. The property is approximately 3.5 acres in size, vacant and located in the HC Zoning District. There is no inherent construction associated with the proposed activity other than preparing the ground surface for the buses and installing a privacy fence. The general business plan is that buses would be stored on site, employees would drive to the site and park their vehicles in the employee designated area. The buses would then run their routes and return to the parking area and the employees would then leave. A determination was made by the Town of Cortlandt Code Enforcement Officer in an email dated June 11, 2014 that the parking of buses by a private company on private property in an HC Zoning District is not permitted. The application is made to challenge that Interpretation as the Applicant feels that bus parking is permitted for the following reasons. Pursuant to Chapter 307 of the Town Code, and specifically Sections 307-14, 307-15 and the Table of Permitted uses in the Zoning Ordinance, there are no specific references related to the parking of buses in any district. In the Table of Permitted Uses, under the heading of "Transportation and Public Utilities" reference is made to "….mass transportation facilities" which is a permitted use requiring a Special Permit issued by the Zoning Board or the Planning Board. The issue in this case is whether a property in the Highway Commercial (HC) District can be used as a school bus depot. The Table of Permitted Uses, Part 2 has a section titled **"Automobile Repair, Services and Parking"**. A subsection titled **"Automobile parking facilities"** lists such use as a permitted use in the HC Zoning District. The first question is whether the term "automobile" includes "buses". The Town Code does not give a definition. The Code states that definitions in the NY State Uniform Fire Prevention and Building Code should be used, but no definition is recited there. The Code instructs us to then use the Webster's Unabridged Dictionary. The dictionary states "**bus: 1. an omnibus, a large motor coach that can carry many passengers. 2. an automobile**." The second question is whether defining a bus as an automobile is consistent with the other sections of the Code for the HC Zoning District. Under the Retail Stores section, automobile, recreation vehicle, motor home and boat dealers are permitted [Table of Permitted Uses, Part 2, Sec. 307-14 and 307-15**]**. Thus, the issue is not the parking of buses in the HC Zone. Is the issue the traffic of the buses leaving in the morning to transport students and then returning the same day? Such is not unusual and limited to the HC Zoning District. There are three school districts in the Town that require fleets of buses to enter the community every morning and return the same day. There is also a private bus company, Hudson Valley Bus Co., located across the street from the property in question. To assist the ZBA members make a decision on this matter, the Town Attorney provided some insights, including Section 2 of the Town's 2004 Master Plan, titled "Existing Zoning". Subsection (3) of this section of the 2004 Master Plan states that the HC District is "designed to

accommodate automobile-oriented commercial facilities serving a wide area". It further states "The HC district allows the continuation of single family and two family dwellings in existence at the time the ordinance was adopted (1993)." This seems to indicate that commercial activity was preferred. The Applicant's parcel in question is in the middle of a commercial area and on a major road. Thus, a bus depot is a use that is compatible with the HC District. The Designed Industrial (MD) District zone also is listed as permitting **"Automobile parking facilities."** The problem here is that some MD zones are not on a major road and may be surrounded by a residential district, raising the question whether a large volume of vehicles coming and going is appropriate in such an area. In such areas the Planning Board might need to be more restrictive than in the HC Zoning District. However, such concerns for the MD Zone should not unreasonably restrict the HC Zone. Bus depots are a part of all suburban communities and the HC Zoning District can better accommodate such use and activity. Given all the foregoing, this Board hereby **Interprets** that the parking of school buses is a permitted use on the vacant property located at 5176 Albany Post Road, Cortlandt Manor, NY 10567, in the HC Zoning District and, therefore, this Board hereby reverses the Town of Cortlandt Code Enforcement's determination dated June 11, 2014. This is a Type II action under SEQRA as it consists of the Interpretation of an existing Code or Rule. No further compliance is required. I make a motion that this D&O be approved.

Seconded. With all in favor saying "aye" - "no".

Mr. David Douglas asked can you pole the Board?

Mr. Ken Hoch responded Mr. Reber; approved, Mr. Mattis; approved, Ms. Hunte; approved, Mr. Seirmarco; no, Chairman Douglas; yes, Vice Chairman Chin; approved, Mr. Heady; approved. Motion carries 6 to 1.

Mr. David Douglas stated thank you very much. Thank you again to John and John and Ray for reading these documents.

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ADJOURNED PUBLIC HEARING:

A. CASE No. 2014-21 Maciej Przbylowski for an Area Variance for an Accessory Structure, a tree house, in the front yard on property located at **103 Kings Ferry Rd., Montrose.**

Mr. Maciej Przbylowski asked would we need to address the Board once again or basically would hear what you guys have deliberated over?

Mr. David Douglas stated if you wanted to give us any more information we're more than happy to hear it but…

Mr. Maciej Przbylowski responded I think that we've provided all of the information that was within our means. Again, we appeal to you all children memories to your hearts and making the decision, hopefully, influencing the decision…

Mr. David Douglas stated I think there's a split of opinion on the Board. This is John – this is your case. I don't know if you want to start.

Mr. John Mattis stated we had many discussions on this within the last month and this is a very difficult case. On the one hand you don't want to disappoint the children you want to give a place to play. On the other hand, we're running up against several things: 1. Is no accessory structures in the front yard. The other one is you're required to have a 40 foot setback and that's only 3 feet from the road. I live in that area. Kings Ferry Road is a very busy road. I would hate to be the person that voted for this and there was an accident one day. This is something that if it were any other kind of structure in any other area, and we needed a Variance from 40 feet down to 3 feet we wouldn't even consider it, but having said that, my heart goes out to you because this is one where it's – I can't say it's unfortunate but it's part of the difficulty of being on the Board like this. We are charged with certain things that we have to do and sometimes our hearts tell us to do one thing but the Code tells us to do another.

Mr. Raymond Reber stated there is a precedent some years back when a family had a similar problem with locating something for their children and they ended up putting a large play set in their front yard. I don't remember all the details. I wasn't on the Board at the time. I believe one of my colleagues was but maybe they want to comment on the fact that it was…

Mr. James Seirmarco stated 38 feet long. It was sliding boards, and climbing things and it was well used.

Mr. John Mattis stated and it was set back quite a bit.

Mr. James Seirmarco stated when I went to visit it as a site inspection it probably was 20 children there using it. I felt bad because it was a very, very expensive piece of equipment that they had bought and installed and unfortunately they had to take it down. I felt bad then and I'll feel bad today about the tree house.

Mr. Raymond Reber stated the other issue I think that was brought up was can there be a temporary permit or something of that nature. I think you had said while your children are young, 5 years or something. The problem I have with that is I don't understand, to me it's either allowed or it's not allowed. How can we say it's allowed for 5 years? The Code doesn't talk about when something can be allowed or not allowed, so to me, if we say we give you permission for 5 years, to me that's like saying you've got permission forever. Why stop after 5, 10, 15, which is basically saying it's approved. I have a problem with temporary permits. I don't think it's appropriate for this Zoning Board to say something is temporarily legal. So, we either have to decide; no it's not appropriate or yes it's appropriate and leave it at that.

Mr. Wai Man Chin stated I think I brought that up. I asked our attorney if we could give basically a temporary, or can we limit the time of a Variance and he said yes we could. Basically, that's what I was thinking about and I thought maybe something around a 5 year period might have been fine. By that time most kids grow up a little bit bigger and they tend to go away from things like that because I know my grandchildren they do that right now and I'm just saying that a parent, when he builds something like that, you didn't know that he couldn't build it. Things like that happen. I'm just trying to get a limited time span where you can keep it and see if any other Board members would go for that. I would go for the 5 years.

Mr. Maciej Przbylowski stated if I can in any way reassure you that if we were granted, maybe this helps, if we were granted a temporary permit in a way of addressing your concerns regarding safety, we put fences around the house in order to restrict any unwanted access to those places. Is this something that the Board would consider that granting a temporary permit we would put a small fence around it with a gate that would be locked and we would unlock it whenever the kids wanted to play.

Mr. Charles Heady stated putting a fence around it sounds like a good idea but this is a hard decision to make for us. The trouble is if you had come to the Board, like we said before, it's a self-created hardship. You did it on yourself. From there, I feel sorry for the kids. I like to see them playing in it but in it but on the other hand, the Code won't go for it, that's the problem right there.

Mr. David Douglas stated I agree with Mr. Chin. I think a five-year time period sounds like the best solution to me. I also see, though technically a tree house is an accessory structure, I see this, as I think I said last month, as different than other types of accessory structures like sheds, or garages, or pools, or what not. As I said, there seems to be a split on the Board. I fear from your perspective that Mr. Chin and I are not going to win on this one.

Mr. Maciej Przbylowski stated I was kind of hoping that the Chairman's vote would count as 10 and would actually tip the scale.

Mr. David Douglas responded no, in fact, I think it counts less than most people.

Ms. Adrian Hunte stated sometimes there are laws that are put into place and they don't always make for good decisions or bad decisions come out of them. For me, this is very difficult but unfortunately, we have to divorce ourselves from the emotional part of this and look at what this code says. It doesn't give us the discretion. This is something that says "it's not allowed." And, yes, you have an opportunity and a right to come before this Board to appeal the determination, however, in other cases where the code says you may grant a Variance or certain percentage, this doesn't say that and it doesn't say we can do five years, two years, it either is or isn't. The code says that this isn't allowed. The remedy is if we don't have that discretion, the remedy is that you go to the Town and ask that the Code be changed. It makes it very difficult for us, however, with that said, I don't feel that I can grant this Variance.

Mr. Maciej Przbylowski stated I have another question on this case. One of the things that were being mentioned tonight was the fact that the zoning law requires that the setback is 40 feet. Obviously, you know that our house is set all the way back…

Ms. Adrian Hunte stated that's an additional issue, a hurdle that you'd have to overcome. The primary one is that it's not allowed in the front yard, the second thing is that it's a self-created difficulty because you built it, unfortunately, without having the proper permits and, as my colleagues have said, if you had come to the Board originally or to Code Enforcement or Building's Department to find out, they would have told you "no, unfortunately you can't build it." The setback on the sides and the front are – those are just additional hurdles that you wouldn't overcome even if this is something…

Mr. Maciej Przbylowski stated but I was heading in a slightly different direction. There are many houses along the Kings Ferry Road which I looked at…

Ms. Adrian Hunte stated I don't think it's going to make a difference in this case. That's another hurdle. You've got one that I don't think you're going to overcome to begin with and then you have the secondary and a tertiary.

Mr. Maciej Przbylowski stated but I still wanted to ask one question whether it would be possible to actually have the tree house moved to what is normally approved as the boundary for the house to be located as of you say 40 feet away from the property line.

Ms. Adrian Hunte stated it's still going to be within the front yard, is that correct?

Mr. Maciej Przbylowski responded yes. So, the closest place that we could have it to the property line is meeting the front line of the house right?

Ms. Adrian Hunte stated that's if it's not in the front yard. Can you get to the side of the house, behind the house then you might not need a Variance at all.

Mr. Raymond Reber stated looking at the site, we have an aerial photograph, there is, on that side of the yard you have a row of trees going back and there's one that's pretty close to the corner of the house.

Mr. Maciej Przbylowski stated left side, right corner.

Mr. Raymond Reber stated yes, the left side, where the tree house is, on that side. Going back, you've got a number of trees working their way back on the lot and the one goes as far back as almost to the front of the house. If you said to me that you could move it back so it met the 40 foot setback, so that becomes a non-issue and it was off on that side and off the corner of the house. I personally, in that case would probably give a Variance because we do allow some encroachment in the front yard if there's absolutely no other place and yet it meets all of the

other criteria, like the 40-foot setback and it's hidden back there, away from the road. That I could approve, yes. I would give a Variance for that.

Mr. Maciej Przbylowski stated if this were the option that the Board would approve we are ready to actually…

Mr. James Seirmarco stated I would be in favor of that.

Mr. Wai Man Chin stated I still want to clarify one thing. I know that some of the Board members say that either we approve it or we don't approve it. John, can we give a time limit on it? I'm just saying; is that legal? Is that par for the course also?

Mr. John Klarl responded it is.

Mr. Wai Man Chin stated I just want to know if that could be done that way.

Mr. John Klarl stated in the mid 1990s we got the new state enabling statutes which we referred to in a couple of the Decision and Orders tonight. The new state enable statutes encourage the crafting of conditions in granting a Variance. Specifically, they talk about time limitations so they think someone can have something for two years, they can do that but it's got to be based on some kind of a…

Mr. Wai Man Chin stated I just want to clarify.

Mr. John Klarl stated you have the power to add a time factor to a Variance condition.

Mr. Wai Man Chin stated that's all I wanted to say.

Mr. David Douglas stated might it make sense for us to keep the hearing open and you come back to us next month with – because you seem to be considering a proposal to put the tree house in a different location which I believe would still need a Variance. It would be small but you would still need a Variance because you'd be partially in front of the house. If other Board members agree, I think it makes sense for us to keep the hearing open, adjourn it and in the interim, come back to us and give to Mr. Hoch a sketch of your proposed new location.

Mr. Maciej Przbylowski stated so technically speaking, we're basically I'm simplifying the process which is not going to be that simple. Have the tree house moved to a different location…

Mr. David Douglas stated to a different location, that's right.

Mr. James Seirmarco stated we'll come out and help you carry it.

Mr. Maciej Przbylowski stated I'll provide the baked goods and refreshments.

Mr. John Mattis stated that solves some of the problems. My big concern is that it's only 3 feet away and we've never given a Variance that large. Even if it's not 40 feet, if it's close to it and it's in the front yard, that's where we have some discretion but when it's that far out like it is, and this might be a very good compromise that will work for you.

Mr. Maciej Przbylowski stated in this case, we'll see you next month. I'll be in touch with Ken and we'll get all the other conditions squared away. Thank you.

Mr. John Mattis asked any other comments from the Board? Anyone in the audience like to speak? I move that we adjourn case #2014-21 to the November meeting which is November 19th, Wednesday.

Seconded with all in favor saying "aye."

[Inaudible.]

Mr. David Douglas stated I think it's better to keep the tarp on it.

* * *

NEW PUBLIC HEARINGS:

A. **CASE No. 2014-22** **Stephen Smith** for an Area Variance for Accessory Structures, an 8' x 16' shed and an 11' x 11' shed, in the front yard on property located at **10 Pond Meadow Rd., Croton-on-Hudson.**

Mr. Stephen Smith stated as you can see, these sheds are existing and I came forward to Ken telling him I wanted to make the property conforming. Some time down the road I'd like to sell the property and I think that would be easier to do. About the property, the side yards are not really conducive towards sheds. They're just narrow strips of flat land. On one side I've got a hill and on the other side I have a bit of a cliff. The front yard is very long and the sheds are set off of the driveway. I've brought some pictures that I'd like to pass over to you so you can see that the sheds are not very visible from the road.

Mr. David Douglas stated you can keep talking while we are looking at the pictures if there's anything else you want to add.

Mr. Stephen Smith responded I don't think I have anything more to say.

Mr. Charles Heady stated I was out there. I guess I spoke to your wife. She tell you I was there?

Mr. Stephen Smith responded yes.

Mr. Charles Heady stated I see that actually you've got three sheds in the front yard: one is all rotted, coming down. You're going to take that down right?

Mr. Stephen Smith stated one is falling down. That was from 1950 or 40 or something.

Mr. Charles Heady stated and you've got two other sheds in the front that we're talking about.

Mr. Stephen Smith stated two sheds that I'm applying for the Variance.

Mr. Charles Heady stated you also have a shed in the back of the house, right?

Mr. Stephen Smith responded yes.

Mr. Charles Heady stated that's about 12' x 10'. I don't know. I didn't measure. I don't know exactly…

Mr. Stephen Smith stated in the back yard it's 10 foot by 10 foot.

Mr. Charles Heady stated I didn't even measure it.

Mr. Stephen Smith stated the house has no basement and it has no attic.

Mr. Charles Heady stated it's got nothing to do with the house. It's the sheds you're talking about.

Mr. Wai Man Chin stated that one is in the back yard.

Mr. Charles Heady stated the one in the back. He agreed.

Mr. James Seirmarco asked do you intend to take the one that's falling down, down completely?

Mr. Stephen Smith responded yes, it's going to be – I think it's going to be laying on the ground before the end of the winter. Yes, it's coming down. It's in my plan.

Mr. Charles Heady asked how long ago sheds in front you put up, when did you put them up?

Mr. Stephen Smith responded my father built one in 1970 and that was a metal shed and it rusted out and then he and I replaced it and then he and I put the another one up in 1984, something like that.

Mr. Charles Heady stated there's another situation that you didn't come before the Town asking for a Permit to put them there and it's created a self-created hardship for yourself to do that. If you went to the Town they would have told you couldn't do it. It would have helped you a lot

and you wouldn't be in this predicament right now because you want to sell the house. I feel that you've got to move the shed or take them down, one or the other to make it legal, because the way it is now it's not legal: two sheds in the front yard. We don't give permits for front yard, any kind of building or gyms or…

Mr. Stephen Smith stated I'm sorry, I'm having trouble – I wear hearing aids…I'm having trouble hearing you.

Mr. Charles Heady stated what I said is that if you had gone to the Town and see Ken before you put those sheds up…

Mr. Wai Man Chin stated this is way before Ken.

Mr. Charles Heady stated well, whoever was there. It wouldn't make a difference. If you went to the Town, they would explain to you the situation which you had to do to put those sheds up and they would have told you to definitely not put those sheds in the front yard. [Inaudible] listen to what's going on, it's just a self-created hardship that you made on yourself by doing that. You either got to move them back and take them apart and put them back together in the back somehow or take them down completely, one or the other, the way this stands now. Maybe some of the other members may have something else to say.

Mr. Wai Man Chin stated yes, I'd like to say something. I live on your road. I live way back in on Pond Meadow Road. I pass by your house every day, twice a day. I know the sheds have been there for a long time. They've been there since before I built my house and that was 1980. That's almost 35 years ago. I know the one in the front right there, it is collapsing. It's falling down. Myself, I'm a neighbor, I never had a problem with the sheds there myself. I can't even see the one that's all the way, I guess by the driveway up to the right hand corner over there. The only one I can really see is the one that's been there for – God I don't know how long. I thought that was older than that. I thought it was back when they used to have cottages over – when people used to…

Mr. Stephen Smith stated the one that's falling down, I don't know how old.

Mr. Wai Man Chin stated that one – I know. That's what I'm saying. That one I think is way before that because there's a couple on a private road back further which is almost similar to that when people used to come there as vacationers. I'm just saying. I have no problem with sheds if you're replacing the sheds where they are. That's all.

Mr. John Mattis asked can I ask why the sheds were originally located in those particular spots?

Mr. Stephen Smith responded my father and my brother and I, we worked on our cars and that's where we kept tools and car supplies, lawn equipment and…

Mr. David Douglas asked anybody else have any comments? I think I tend to share Mr. Chin's basic view that these sheds have been here for decades and are not very noticeable and they're not causing any problems and I would lean toward allowing them, only for that reason. On the other hand, if you came in to the Town and asked to build these, you wouldn't be allowed to. The only thing that's affecting my view is the "how long they've been there." There have been occasions we've allowed sheds that have been there for decades and decades to continue under certain conditions and I might be open to considering that. I'm not sure.

Mr. Wai Man Chin stated I've lived there almost 40 years and they were there pretty much before I was there. I remember them. But now, like I said, I can't – I don't even notice them. I don't know of any other neighbors noticed them or I have no idea. I haven't spoken to any other neighbors. They haven't even said anything to me about it.

Mr. Stephen Smith stated I wasn't actually sure whether they were considered in the front yard but Ken said I needed the Variance for them.

Mr. Wai Man Chin stated this is a private road, number one. This is a private road, never had a name. It was given Pond Meadow Road and Pond Meadow Lane only for emergency vehicles which is only a few years back, basically, otherwise it was just a private road that was owned by the property owners on that road, that was it. We maintain it and everybody in that road maintains that road. There's no municipality that comes in there. We have to bring our garbage out to the front of the road. We have no water. We have no sewers. We all have wells and septics over there. Like I said, I see Mr. Smith maybe once in a blue moon I think but I really don't notice those sheds and I don't really have a problem with them. They're set so far back from the road actually. I think the one on the right hand side by the garage, it must be at least a hundred and something feet back.

Mr. Stephen Smith stated I haven't measured it.

Mr. Charles Heady stated it doesn't make any difference how many years it's been put up there, it's still in violation regardless.

Mr. Wai Man Chin stated he's the one who's bringing it to the town. He wants to make it legal, that's what he's saying.

Mr. Charles Heady stated yes, but we don't generally give Variances for a front yard, you know that.

Mr. Wai Man Chin stated [inaudible] I'm sorry. That's not correct.

Mr. David Douglas asked do we want to vote on it? I don't know if anybody else any other comments or do we want to vote on this? Anybody else want to be heard? Is there anything else you want to add?

Mr. John Mattis stated I think there's some extenuating circumstances here. Number one, even though it's really not a consideration, they have been there for all these years. Number two, it's a very wooded area, you don't see them. Number three, they're quite a distance from the road. They're certainly well within the setback, whatever the setback is there.

Mr. James Seirmarco stated it's a private road.

Mr. John Mattis and it's a private road.

Mr. Wai Man Chin stated I'll even say what Mr. Smith said; the terrain over there is pretty – hills and his back area, the only flat area he has is really in the front over there otherwise, when you go back, it's really hilly over there and going towards bottom of Meadow Lane it drops down quite a bit over there. That's all I have to say.

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

Ms. Sharon Smith stated I don't know if Steve's mentioned that the sheds – the sheds really can't be seen by the neighbors because of where they're located. We have a neighbor, on our side of the road, his house we can't even see and then there's across the street which is quite far.

Mr. Raymond Reber stated I don't put much weight on the fact that something's been there for a long time. If it's wrong, it's wrong, but in this situation, I do think there are other extenuating circumstances. I'm somewhat familiar with the terrain there, and you're correct, there are some real problems with the terrain. The idea of: is it easy to put it in the back? Probably not. The fact that they're in the front, they are set back, they're on a private road and they are well hidden and that's a criteria that in the past we've made exceptions. For example for generators that people can't locate them in the back we end up approving them in the front but they're usually set back, off the road, they're screened, they don't bother anybody. I think this qualifies under that criteria: it's screened, it doesn't bother anybody and the alternative of putting them in the back does raise some complications because of the terrain. On that basis, I would find this acceptable.

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

Mr. Charles Heady stated on case 2014-22 I make a motion we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Charles Heady stated I make a motion on an Area Variance for accessory structures 8' x 16' shed and an 11' x 11' shed in the front yard, SEQRA type II, no further compliance required.

Mr. Wai Man Chin asked so you're granting the Variance?

Mr. Charles Heady responded yes.

Seconded.

Mr. David Douglas asked so the motion is to grant the Variance?

Mr. John Mattis responded yes.

Seconded with all in favor saying "aye,"– "no."

Mr. David Douglas stated you want to poll the Board?

Mr. Ken Hoch asked Mr. Reber: approve, Mr. Mattis; approve, Ms. Hunte; approve, Mr. Seirmarco; approve, Chairman Douglas; approve, Vice Chairman Chin; approve, Mr. Heady; no. Motion carries 6 to 1.

Mr. Stephen Smith stated thank you very much.

Mr. David Douglas stated thank you very much. You need to get the paperwork from Mr. Hoch which will be ready next week.

B. CASE No. 2014-23 Viktor Solarik, architect, on behalf of Jean Kouremetis and Jim Mackil for an Area Variance for the front yard setback to construct a loft playroom addition and a garage dormer addition on property located at **57 Mt. Airy Rd. East, Croton-on-Hudson.**

Mr. Viktor Solarik stated good evening V & S Architects. The Variance request is for a front yard Variance to be allowed to add a partial second story over an existing building and to be allowed to build a dormer over the partial footprint of the garage. Both of the existing buildings are extending into the front yard setback and therefore, any construction in that area, by definition, needs to be approved by the Board if you so inclined. It's a small house. It's a two-bedroom residence. The owner, one of the parents works from home and that's why they are trying to build a small studio or an office over the garage. Currently, it's a storage shed. It's unfinished but they'd like to finish it and make it an office where they can spend the working day and it would be nice – this is actually the area of the shed over the garage is this rectangle and it's a low head-room. It's about a 4 foot high wall at this end. It comes down very low so it's only very small limited area that can be used of that footprint. By building the dormer across in the front would allow them to have a little more space, floor space, with a decent headroom that I can put an office furniture, and file cabinets. They work in the film industry. They have a lot of equipment that they carry around so that's one of the problems. The second issue is there is currently over this footprint of the main house, there's a small loft that was built prior to the current owner owning the house and it's really an illegally finished attic. The first thing I told

them when I came there is that they cannot occupy it really. It's not a habitable space but they want to make it work as a play area or as more space because the first floor is very limited. It's just a kitchen and a one-room living room. This is the parent's bedroom and there's one bedroom downstairs. They could really use additional space. These elevations show the front view of the house where the section over here would be the added dormer that extends out to the front line of the house and this is the dormer that's proposed over the garage and kind of similar in appearance in the architecture that the house is – there's some large trees in the front yard so it's well screened and I don't think it really impacts the neighborhood.

Mr. James Seirmarco stated a question on the office space: will there be heat and facilities in there?

Mr. Viktor Solarik responded there will be heat and light and it's going to be insolated but there's no bathroom, no plumbing.

Mr. James Seirmarco asked on the other side? The dormer…

Mr. Viktor Solarik responded there's no plumbing going to the second floor. There's a bathroom over here, it's existing and they're actually planning on building a second bathroom on the main floor so that if people come over to visit they can actually use the bathroom or go over into the master bathroom.

Mr. Wai Man Chin stated I know the house very well. It's actually, from the road it's actually – it's steep. It's a steep incline to get up the house actually and yes, it's covered by heavily wooded trees in front of it. You can barely see the house. I have no problem. It's not coming out any further than the existing house and what you're doing I think maybe enhances the house a little bit better. That's it.

Mr. John Mattis stated the key point here is that the house is set back 43 feet in a 50-foot required setback area. Having said that, it's going straight up. It's not encroaching out any further. You're just going straight up.

Mr. Viktor Solarik stated that's absolutely correct, yes.

Mr. John Mattis stated so you're not encroaching any more than what it is right now.

Mr. Viktor Solarik responded correct. I mean I'm increasing the non-conformity because it's building within the front yard setback but not in an area.

Mr. John Mattis stated but the 43 foot will be unchanged.

Mr. Viktor Solarik responded that's correct.

Mr. John Mattis stated that's the key point.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin asked anybody in the audience? I'm going to make a motion on case #2014-23 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Wai Man Chin stated I make a motion on case 2014-23 to grant the Area Variance of a front yard setback from an allowed 50 feet down to 43 feet to construct a loft/playroom addition and a garage dormer addition. This is a type II under SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted.

Mr. Viktor Solarik stated thank you very much for your time.

Mr. Wai Man Chin stated you're welcome.

C. CASE No. 2014-24 **Brian Kahn** for an Area Variance for an Accessory Structure, a garage, in the front yard on property located at **100 College Hill Rd., Montrose.**

Mr. Brian Kahn stated thank you for your time. Another accessory building in the front yard. This June, our garage burned down. Eleven p.m. at night, my son's birthday was the next day. We hear what we thought was fireworks because it's right around July 4th. It's typical out there. After the third one, it sounded a little closer. We looked out. A ball of orange flame. There went our garage. That was in the front – I guess in the front yard. It's a very strange property. I basically, I have no backyard. The property's three feet from the backyard. All my property's in front. We are the last house on what's College Hill Road. Questionable whether it's the road or driveway on that portion. There is no other place to locate it that would be behind, the side. It's where it had been. I did some counting today; at least half the homes on College Hill have accessory buildings in the front so it's not out of character. In fact, the neighbor has a rather large two-car garage right across the street, same place. I actually have a letter signed by the neighbors, my only neighbor that could actually see it with the plans and the possible garage where they state that they have no objections to the granting of the Variance. I printed additional pictures if you'd like to see both a view from my bedroom you get the picture of where the garages are. You can see where the footprint, where the garage was. You can see it in the picture, exactly there. Basically looking to put it in the same spot. There are additional pictures

in here plus you can see basically where it was. In fact, where it is, the corner, it's somewhat hidden even over there and again, the only neighbor that's anywhere in view of it.

Mr. James Seirmarco asked the garage that burned down, is it one car and this is going to be two?

Mr. Brian Kahn responded this would be a two-car garage. When it was built, I believe it's been there since 1961, families, two kids so if I'm going to rebuild it, it would make sense to have a two-car. The other garage, across the street, next door to me is a two-car garage with a shed. There are some three-car garages, again, on the street. The last house. All my property's that way. There is one property next to me that's about an acre then it's the Westchester Landtrust has about 16 acres, then it's Blue Mountain, the property behind me is the town. It's pretty well hidden. In fact, usually when people come down the road they stop about halfway and ask: are you sure there's a house still there? Ken came out and saw it as well. I think Mr. Mattis was out there.

Mr. Raymond Reber stated I guess first question: any clue as to what happened to cause the garage to burn down?

Mr. Brian Kahn responded what we believe happened was stain on rags spontaneously combusting. We had stained on the children's play area and I use that stain about 4 years now. I used it on my deck. I used it before and was careful with it. I've never seen that problem before and one rag. It's the only thing we were able to come up with and that the fire inspectors came up with. It's where it started. Apparently with oil-based they will start – with the rags, if they're compressed it acts like insolation, the oil heats up as opposed to the evaporation with a water-based stain which just evaporates. It oxidizes and starts producing heat and if it gets hot enough…

Mr. Raymond Reber stated I mean, I hear garage burning down makes me nervous. My garage is attached to my house.

Mr. David Douglas stated so is mine.

Mr. Brian Kahn stated thank God it wasn't. I'll tell you, me and the neighbor were so nervous now to put anything near the house. All I can say is, go home, take pictures of everything in your house because the insurance aspect of it is just – it's a long road.

Mr. Wai Man Chin stated don't put any rags in there.

Mr. Brian Kahn responded no more rags.

Mr. David Douglas stated I'm getting nervous. I just put a huge new gasoline in my garage over the weekend.

Mr. Raymond Reber stated there are situations in this town that sometimes cause this Board to have to be, I guess a bit creative in thinking about how to address it. Classic is when we have to do things in the hamlet of Verpanck. Nothing complies with any of the surveys, things are all out of whack. Things like setbacks and all become almost academic. Your situation is similar in that it is also very unique. You indicated you're at the end of College Hill Road and one could argue that the road ended somewhere before it even got up to you, that really it's become a driveway by the time it's by you. It's true that all of College Hill, none of it is paved but at least a good portion of it is considered a road. It has a water main that runs along there. There's fire hydrants or what have you. None of that exists when you get down towards where you are.

Mr. Brian Kahn responded no, in fact, we have an issue with that right now that there isn't one, it's private, 400 feet from the meter and it's leaking.

Mr. Raymond Reber stated yes, I happen to be one of the water commissioners so I'm well aware of the problems you're wrestling with now. If it's not one problem it's something else that pops up and unfortunately you've got a couple you're dealing with. The other factor is, as you said, in that area, for some reason, they've evolved to having garages and what have you, close to the roadway in the front yards. In fact, your neighbor just prior to you coming down the driveway has a relatively large garage on the opposite side of the road from the house in a situation similar to what you're proposing which also creates a unique situation for us because here we have a parcel that's split down the middle by some would say, maybe the road. We're tending to believe it's more just a driveway, an access, a common driveway for a couple of you. As you said, there's really very no room for you to squeeze this in by your house. So, looking at all the factors, the fact that it's at the end, it's certainly not bothering anybody else because there really are no other neighbors. It doesn't seem to detract in any way. It's consistent with the rest of the community up there and it certainly is a unique situation so it doesn't set a precedent that anywhere else in the town we'd say "well okay, we've finally changed the rules." With all that in consideration I don't really have a problem with approving this.

Mr. John Mattis stated I concur.

Ms. Adrian Hunte stated I concur.

Mr. James Seirmarco stated I concur.

Mr. Wai Man Chin stated I have no problem with this.

Mr. David Douglas stated I don't either and I just want to note; I'm quite familiar with your road because ever since I've moved up here I've heard the same line from every person I meet in town saying "the only road worse than mine in the town is yours." I too live on a dirt road with no water, with no anything and I'm at the end next to the end and in comparison to your road since I've moved up here, but they always say mine is better than yours. Am I right Ken?

Mr. Brian Kahn stated I haven't heard one that was worse.

Mr. David Douglas stated right, I'm the second worse. Yours is paved.

Mr. Wai Man Chin stated that's because I paved it.

Mr. David Douglas stated I'm always told I'm the second worse road.

Mr. Raymond Reber stated I assume there's nobody else in the audience so I guess no further comments. I make a motion that we close the public hearing on case 2014-24.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. Raymond Reber stated on case #2014-24, 100 College Hill Road, Montrose, NY for a front yard an Area Variance for an accessory structure, a garage, in the front yard that this be granted. It is a SEQRA type II and no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated now it's granted. I wasn't listening to what Mr. Reber was saying.

D. CASE No. 2014-25 Graphic Solutions and Signs on behalf of Children of America for an Area Variance from the total allowed wall signage requirement for their leased space at the **Cortlandt Town Center, 3105 E Main St., Mohegan Lake.**

Mr. David Douglas stated there's nobody out there. Ken, if you could send them a notice tell them it will be deemed abandoned if they don't come next month.

Mr. Wai Man Chin stated so we'll adjourn it.

Mr. James Seirmarco stated I make a motion to adjourn to next month and have send a…

Seconded with all in favor saying "aye."

Mr. David Douglas stated motion is granted. Case 2014-25 is adjourned.

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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 our meeting is adjourned.

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NEXT MEETING DATE:
WEDNESDAY, NOV. 19, 2014