

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, August 21<sup>st</sup>, 2013*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

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**ADOPTION OF MEETING MINUTES FOR JULY 17, 2013**

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

Mr. David Douglas stated the July minutes are adopted.

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**ADJOURNED PUBLIC HEARINGS:**

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

Mr. John Klarl stated this is an application that we've seen before the Planning Board and the Zoning Board. They're getting close to finishing up their Planning Board Site Plan issues. Mr. Vergano has indicated he's talking to the state of New York about a better curb cut than the one that's proposed now. Given that, we discussed at our work session about adjourning this to our October meeting. I think October adjournment for Mr. Ken Hoch's advice before would work out for the applicant. Right Ken, October would work out?

Mr. Ken Hoch responded yes, October was fine with him.

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

Mr. David Douglas stated **case #18-09** is adjourned until October.

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

Mr. James Seirmarco stated Mr. Chairman we had discussed this last meeting and I just wanted to review some of the facts. I just want to ask Mr. and Mrs. Centouri how long have you lived in the house?

Mrs. Carol Centouri responded **48** years.

Mr. James Seirmarco asked and how long ago did you put the porch on?

Mrs. Carol Centouri responded **30**.

Mr. James Seirmarco asked did you, at the time, go to the Town and ask for direction?

Mrs. Carol Centouri responded we called the Town...

Mr. James Seirmarco asked do you remember who you spoke to?

Mrs. Carol Centouri responded Mr. Irish. We spoke to him and we said "we'd like to put a porch-like deck in the front and what do we have to do" and he said "you have to put the footings in concrete," he said "materials" something about the materials shouldn't cost more than **\$50** and he said "are you going to do it yourselves" and we said "we have some neighbors helping us." He said "don't go beyond your steps. Stay within the confines of the house." And so we said "all right." There was no mention of coming in and filling out a form or anything so our neighbors helped us put it up and that was it.

Mr. James Seirmarco asked and when did you build the addition and improvements in the rear of the house?

Mrs. Carol Centouri responded we enclosed the back porch – again, we called the Town, that was **47** years ago, a year after we got in there. I'm sorry, **46** years ago because we had a second baby then. We said "we'd like to enclose our back porch on two sides with windows." He said "well you have to have the electrician – if you're putting electricity in there you have to have that inspected by an electrician inspector." We said "yes we would" and again, friends helped us do it. We had an electrician come in and check it. In fact, the electrician put the wiring in. I have

to say that within that year the house was re-assessed and the person came in and checked the house inside and out so they saw that. It wasn't something we were hiding.

Mr. James Seirmarco asked you have been basically paying taxes on the rear of the building and the front?

Mrs. Carol Centouri responded I'm sorry?

Mr. James Seirmarco asked have you been paying taxes based on that re-assessment **40** years ago?

Mrs. Carol Centouri responded I would assume so. They came in and looked through the house. In fact, I said "I have this baby sleeping in the back room so don't wake her up" and he said "okay." He looked around the house, upstairs and down and he left.

Mr. James Seirmarco asked have you ever had any neighbors complain?

Mrs. Carol Centouri responded no in fact the neighbors helped us.

Mr. James Seirmarco asked about the front porch or the addition in the rear?

Mrs. Carol Centouri responded no, none. Neighbors helped us put it up and they're still there in the neighborhood, some of them.

Mr. James Seirmarco asked anybody else have any questions?

Mr. David Douglas asked Mr. Reber I know you weren't here last month. Do you have any – I'm turning to you Ray because I know you weren't here last month. Do you have any specific questions? I'm not trying to put you on the spot.

Mr. Raymond Reber stated I have no questions. I have opinions on this. It's early **1980's** is when you indicate the front deck was put on and certainly by then it's hard to believe that they weren't looking for Building Permits for decks back then because I know I did some work **5** years earlier and they certainly insisted on it for me. I have to take it with a grain of salt whatever discussions were held and only look at the facts. There are no documents verifying that the deck was put in – even the statement about not projecting beyond a house it does do that and I think that's where we have a problem because it project's in the front yard setback. I have a problem with the extent that the deck comes forward.

Mr. James Seirmarco asked Mr. Hoch do you recall when the porch was built according to the Town records?

Mr. Ken Hoch asked the rear porch?

Mr. James Seirmarco asked the front?

Mr. Ken Hoch responded the front is not on the assessor record, the rear is.

Mr. John Mattis asked so the back is not on the assessor's records so they're not paying taxes on it.

Mr. Raymond Reber stated because they're saying that the building in the back was done in the mid '60s, the deck in the front was added in the '80s so it's a totally different scenario.

Mr. James Seirmarco stated that's why I asked you before, the deck was built, you say 40 years ago and our records indicate it's in the '80s.

Mr. Raymond Reber stated no, they said it was in the '80s.

Mr. Wai Man Chin stated they said 30 years ago and the back was done 40 something years ago.

Mr. James Seirmarco stated I misunderstood.

Mr. John Mattis stated I'd like to comment. It's irrelevant when they built it. The Code says, if they built something without a Permit it's a self-created hardship and we have to look at it as if it were not there and would we approve it and we would not approve a deck in the front that is 10 feet deep that you can put a table and have picnics and stuff. We would approve a porch. For that reason I have to turn it down. It's totally inappropriate in this neighborhood.

Mr. Charles Heady stated the last meeting when you came before us you said that the neighbor next door helped you put the addition in the back for the bathroom or whatever you have there and I was surprised. He did some work across for himself and that you said that you thought he would get the permit for you to change that room around. If he did when you went to pay you should have asked him "where's the Permit and the CO?" It doesn't make sense.

Mr. Carmine Centouri responded we knew nothing about COs at that time.

Mr. Charles Heady stated he should have took care of it then.

Mr. Carmine Centouri responded we just called up and we spoke to someone. A Mr. Irish and we just followed the instructions that's all.

Mr. James Seirmarco stated I'm talking about the porch.

Mr. Carmine Centouri responded no, the porch was already there. We just put windows in. The porch was already there. We just enclosed the front and put the windows. You could see it...

Mr. John Mattis stated you put a half bath in there too in the back but that's irrelevant to this case. We're only looking at the wood deck the rest is irrelevant.

Mr. James Seirmarco stated we're talking about the front of the house, the deck. Did you call the Town about building the deck?

Mr. Carmine Centouri responded right.

Mr. James Seirmarco asked yes or no?

Mr. Carmine Centouri responded yes.

Mr. James Seirmarco asked do you remember who you spoke to?

Mr. Carmine Centouri responded we assume it was Mr. Irish but again it's **30** something years ago. I don't know.

Mr. John Mattis stated whether they spoke to somebody or whether they didn't is irrelevant. The fact is it's there and we have to look at it as if it wouldn't be there and if they came to us and asked now it would be a very easy and quick case and we'd say "no." We don't give **10** feet like that and have it come out. We've never done that and especially that it faces right to the road.

Mr. Raymond Reber stated the setback now is only **21** feet from the road and that's close, very close of what's typical in Cortlandt.

Mr. James Seirmarco stated and it'll be **19** if they cut the **2** feet off.

Mr. Raymond Reber asked what are you talking about the **2** feet?

Mr. John Mattis stated I don't think that we determined that it's **2** feet but that's also irrelevant.

Ms. Adrian Hunte stated I will just say that this ordinarily now would not be allowed, however, under the circumstances since we're talking **48-50** years ago I do not...

Mr. David Douglas stated **30** years, **1980s**.

Mr. Raymond Reber stated **30**.

Ms. Adrian Hunte stated more than **5**, more than **10**, excuse me?

Mr. David Douglas responded Adrian, the reason I interjected there is I think that makes a difference in terms of how the Town operates.

Ms. Adrian Hunte stated it does make a difference, however, I'm still going to go forward with what I'd like to say which is, it should not have been done apparently when it was, back in **1980**. We don't know all the circumstances but it's something that's not allowed but in this particular case, and I do also stress that we're supposed to look at every case on its individual merits. At this point, what you would be required to do is basically either cut it back or take it down. So, would there be an undesirable change in the neighborhood or the character of the neighborhood by leaving this particular structure there? I don't think so. Would there be any detriment to the nearby properties by granting an Area Variance? I don't think so. Whether this can be the benefit that you're seeking can be achieved by some other method or feasible – at this point, your options are take it down or cut it back and from the size of it, cutting it back doesn't appear to be a reasonable option for you. It does not appear to be a large deck and we're making a distinction between a porch and a deck and what is that? Because there are no stairs on this particular structure?

Mr. Carmine Centouri responded no, there are no stairs.

Ms. Adrian Hunte stated so if they had stairs it would a porch and it would be okay? It is substantial in the sense that it's something that's not allowed but I don't think that there would be an adverse impact or effect on the environment or the physical conditions in the neighborhood. It is self-created and in light of the condition and where we are now I would not oppose it.

Mr. James Seirmarco stated I echo those comments. I won't repeat the – it is self-created. It is not permitted under present Code but every case should be just on its merits. I drove up and down the street. It would have no adverse effect on the neighborhood. I believe the couple when they say they came to the Town whether ignorance is not an excuse but I believe they did go to the Town. Would I be surprised if they got the information that they said? No, I would not be, **30** years ago and I see no reason – it doesn't serve any purpose for them to cut it back now. It doesn't have any effect with or without the **2** feet for the neighborhood. As far as the rear yard goes, same thing goes for that.

Mr. John Mattis stated the Variance is **9** feet not **2** feet.

Mr. David Douglas stated with all respectfully with regard to Ms. Hunte and Mr. Seirmarco said, I think in looking at those factors I come to a different conclusion. I think that an undesirable change has been produced in the neighborhood because the Town has a policy with regard to having such structures in the front and how close they can be and I think that if this wasn't already existing there is no way it would have been approved and it does effect the character of neighborhoods. The benefit of having something in the front could have been achieved if this were done legally. It could have been achieved with a smaller structure in the front. The Area Variance is substantial. I don't think it will have an adverse effect on the physical or environmental conditions and the difficulty does appear to be self-created. I heard what the applicant had to say but I find it a little bit hard to believe that at that point that an applicant would have been told that they do not need to get a Permit to build something. Maybe in the

**1950s** or **1960s**, perhaps, I've heard of enough cases over the years involving structures built in the **1980s** to be somewhat skeptical of that so that's I think looking at the same factors which are the factors that the State Law requires us to look at I come to a different conclusion than what my two colleagues just did.

Mr. Raymond Reber stated I also have a concern that if we look the other way, whether it was **20, 30** or whatever years ago it was still within a time period when the normal procedure is to apply for a Building Permit on any kind of structure. If we approve this we're kind of sending a signal out that disturbs me and that signal is that people can make some modifications on their property and if nobody notices it just sits there and then 'oops' **20** years later or **30** years later they want to get another mortgage or they want to sell it and lo and behold they come forward and they plead "oh gee, we forgot to get the Building Permit" or whatever. I think it does create a problem. We have Codes. There are building requirements and I think as unfortunate as it appears I don't think we can just look the other way on these.

Mr. David Douglas asked anybody else have any other comments?

Mr. Wai Man Chin responded I would like to say that based on the front yard setback is **30** feet but the house itself is only **24.99** feet away from the front yard so really it's sticking out about **4** feet beyond the front of the house. Again, something that happened **30** years ago is hard to say what happened and everything else. Nowadays we wouldn't approve something like this but given the circumstances and everything else – it's only about, from the picture, I would say maybe a foot and a half, maybe not even **2** feet off the ground this deck or porch or whatever you want to call it. I don't see that would effect anybody else if we did give an approval on this.

Mr. Raymond Reber stated it's interesting because I looked at that also and I said to myself "is it really a deck or is it a platform?" It may not even be a deck because it can't fall where it is but that's not the issue. The Code talks about structures, any structures. It could be something on the ground. It doesn't have to be up in the air. This is a structure so I don't look at it as a deck. I look at it as a structure and say "this structure wouldn't be approved **20** feet off the road." Even if I declare it not a deck and a platform which, as you say, could easily be interpreted doesn't matter. In the back yard, if somebody did this I'd say "hey, it's not even a deck. It's just a platform like a raised patio or something. But, this is a front yard violation and the Codes are very specific about any structure shouldn't be within the setback unless this is a very special unique circumstance.

Mr. Wai Man Chin stated like I said, the house was built prior to zoning...

Mr. Raymond Reber stated yes, but that's got nothing to do with adding to it in the '**80s**.

Mr. Wai Man Chin stated but I'm saying that the front of the house is less than what's required already, that's my point.

Mr. Raymond Reber stated a lot of houses in Cortlandt are that way because the Codes have been upscaled but that was not the case in the '80s.

Mr. Charles Heady stated this is a hard case in a way because it's something that happened so many years ago that you said that somebody gave you the permission to do it and to make a decision, whether right or wrong, it's pretty hard but it is a self-created hardship when it comes right down to it. We'll have to see what the rest votes this way.

Mr. David Douglas stated I think we had talked about at our work session was to close and reserve on this case which what that means is that we will consider the matter at our next work session and then we'll have a decision to be voted on next month. Anybody in the audience want to be heard?

Mrs. Carol Centouri asked so you're going to postpone it?

Mr. David Douglas stated we're going to close the hearing and then we'll discuss it further at our work session next month and at next month's meeting which is going to be on September 18<sup>th</sup>, we will then vote one way or the other at next month's meeting so you will have a decision at next month's meeting.

Mr. John Klarl stated the Zoning Board does have two months to render a decision, **62** days.

Mr. David Douglas stated right, right, under the law we've got two months but I think that you'll have a decision by next month.

Mr. James Seirmarco stated Mr. Chairman I make a motion that we close the public hearing and then reserve decision on **case #2013-14**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed and hopefully we'll have a decision next month.

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

Ms. Adrian Hunte stated this is a request for an Area Variance to allow the accessory structure, namely the back-up generator to be placed in the front yard and at our last meeting we discussed whether you had some alternatives because we were concerned about the current location which is not really allowed. Do you have any different plans or you thought you might be able to put it in the back?



Mr. Kurt Abinger responded correct, and I did go back and I did measure from each opening like we had discussed last time through the photos and the measurements and the owner's reference of installation which is Generac, the required distance is measured from the wood deck and the windows and the openings around the home. There was no location or options to put it so that was the scenario as it stood last time. It hasn't changed. We felt that in the best interest of the safety of the home owner of where it was installed was the best.

Mr. James Seirmarco stated I have a comment on this. Not every house in the Town of Cortlandt can facilitate a generator. It's a luxury. If you have the proper space and the proper location you're certainly welcome to put a generator in there but it's not by right. I believe that I'm not in favor of putting this in the front yard. That's just me speaking. We had two meetings before that. They're the same thing along Dimond Avenue approximately four blocks away and we spoke to the woman who came before us and again she wanted it in the front yard and that case was denied. I think to be consistent -- again, I don't think that every house can facilitate a generator.

Mr. David Douglas stated just a followup on what Mr. Seirmarco said with regard to the other case on Dimond, it was a case at 48 Dimond and it was case #2013-08 that we denied this a couple of months ago, maybe even just two months ago.

Mr. Kurt Abinger asked that would be 4-8.

Mr. David Douglas responded yes. Also, last month I think that somebody from the public stepped up and talked about another case down the road where he indicated that he believed the generator had been allowed. We looked into that and that case appears to be on the Yorktown side of the line...

Mr. Kurt Abinger stated it wouldn't be of any concern of ours honestly. It's a case-by-case scenario so...

Mr. David Douglas stated okay but I just wanted to clarify that because somebody did come up and one of the neighbors came up and talked about that.

Mr. Kurt Abinger stated I do have a letter from the owner, Laura Hyman. I don't know if you'd like me to read it or you want me to give it to you or give it to you.

Mr. John Klarl asked how long is it?

Mr. responded it's not very long. "Dear Town Of Cortlandt Zoning Board of Appeals, this is Laura Hyman the owner of 2 Nickleby Place. Our family is away on vacation so we're unable to attend today but I wanted to make a statement regarding this appeal. In the last few years there have been three incidents where our home has been without power for several days, almost a week. In one of those instances my neighbor's two doors down lost their entire home due to having a fire in their fireplace which they were burning in effort to keep their house at a bearable

temperature. Fortunately, no one was hurt but it was quite frightening and was upsetting to all of us. I'm a single mom raising two children and last year during Sandy after six days following we had no power and no electricity and no heat. I was unable to adequately take care of my family, a position no parent ever wants to be in and I decided to install a generator. We have heard all these types of storms are expected to become more frequent and more severe and I need to be sure my family will be safe in our home. At the last meeting of this Board the objection was heard and raised about the placement of our generator wound up being a detriment to the esthetics of the neighborhood because it was on the side of my home facing Dimond. It was put there so that it could be as close to the gas line as possible which is what the manufacturer recommends in its printing. I planted several shrubs to conceal it from view. Last week I went to the homes of my neighbors and asked them if they had any issue with the generator and how it looks. Many of them hadn't even noticed the generator was installed there and all of them were completely fine with its placement and the landscaping that had been done. Based on this I'm requesting that your consideration in granting this appeal. Thank you. Laura Hyman." With this, Mrs. Hyman took the time and went door to door in her neighborhood and she has signed **12** of her immediate neighbors in the vicinity of her house saying that none of them object to the generator being installed. She wanted me to present it to you as well.

Ms. Adrian Hunte asked has the generator been operating and what's the noise level on it?

Mr. Kurt **Abinger** responded the generator has been operating when there was a loss of power. I don't know the decibel level that it's at.

Ms. Adrian Hunte stated I guess the question is, did the neighbors, have the neighbors heard the generator in operation?

Mr. Kurt **Abinger** responded according to her no one has complained. Everyone is fine with it.

Ms. Adrian Hunte asked they haven't heard it?

Mr. responded they have not heard it.

Ms. Adrian Hunte asked it hasn't been running for them to hear it.

Mr. Kurt **Abinger** responded it has turned on when they lost power but I think there was one situation when the power was lost and it did kick on and no one had said anything in regards to it.

Mr. John Mattis stated we had a case last week, last month and you were here and we did approve a generator. That was placed – I don't have it with me. I don't keep the old cases, probably **30** feet away from the house. It was behind a wall. It was concealed and that was ideal. Now, you claim you can't put it anywhere but if you go in your driveway, you've got a basketball hoop and even though the gas line isn't there you could run it over there. You could

put it behind there near the property line and there's trees right behind there. Nobody would really see that. I know it's not ideal but it is an alternative.

Mr. Kurt Abinger responded first of all, I'm not the owner. You said it like it was my home.

Mr. John Mattis stated but you came to us and said there's no alternative. There certainly is.

Mr. Kurt Abinger stated if you were to look at the last page and the last picture you could see evidence of how the house was built on a very rock-based property so...

Mr. John Mattis asked what does that have to do with putting it behind the basketball hoop?

Mr. Kurt Abinger responded I think it would be extremely costly to do that. I don't want to say it can't be done.

Mr. John Mattis stated we're not supposed to look at cost at all because could make up all kinds of costs. That's not one of the considerations.

Mr. David Douglas stated last month we talked about this at fairly long length. I'm happy to hear you out except we did go over in detail the different locations and the owner's or your reasons for wanting a certain spot or not wanting a certain spot. We listened very carefully to it but if you want to go through it again that's fine but we did hear it and I'm not sure that – I only speak for myself, I'm not fully convinced.

Mr. Kurt Abinger responded I would just go back to the installation manual from Generac that does stipulate that the generator should be placed as close as possible to the fuel source which is the gas...

Mr. Raymond Reber stated I've heard other arguments that say it should be as close to the electrical power source going into the house so you don't have transmission from the generator into the junction box. The junction box is next to the garage on the far side where we're recommending it. Yes, it means it's a longer feed line but like I say, you say it should be closer to the source, we purchase the opposite...

Mr. Kurt Abinger stated I don't say that I was just showing you what they said.

Mr. Raymond Reber stated I've heard the opposite which is – you look at where the power is going into the building and you try and put your generator's as close to that so you have a minimum transmission line there and that would recommend what we're saying: put it over by the garage. As Mr. Mattis had said, cost unfortunately is not something we normally consider. The point is it can be done. There are other locations on the property. To me it seems that it may not be the most convenient but it's available to you.

Mr. John Mattis stated for the record, her letter stated that she put it in her side yard but it is legally a front yard.

Mr. Kurt Abinger stated if you were to go to Wikipedia or the dictionary the definition of a front yard....

Mr. John Mattis stated I know the Town Code and that's what we are bound to look at.

Mr. Kurt Abinger stated I did go to the dictionary and Wikipedia and the front yard – the definition of a front is the front of the house, the property between the front of the house...

Mr. John Mattis stated our Code defines it differently.

Mr. Kurt Abinger stated I'm just explaining to you what my interpretation of the dictionary was and that's what it was. The side yard is the side of the house. There's a rear, a front and two side yards to every home.

Mr. Raymond Reber stated that's the house itself but as Mr. Seirmarco says some places are unique and they have different than the average. Corner lots are unique. They have special considerations.

Mr. Kurt Abinger stated and that's why we were hoping to get a special consideration here.

Mr. Raymond Reber stated when you buy a corner lot you have to take into account that you've got a corner lot. It's just like road frontage. You get a lot more room frontage when you have a corner lot.

Mr. Kurt Abinger asked so the petition from all her neighbors doesn't matter to you?

Mr. Raymond Reber responded I have a hard time ever accepting positive petitions. Negative ones are of interest even though sometimes it can be a disgruntled neighbor but the positive ones are easy to obtain because most neighbors, unless it's really egregious, don't want to agitate their neighbors so they'll kind of say "yeah, go ahead, do it." That doesn't allow us to just throw the Code out or to ignore the Code when there are logical alternatives to stay within the Code.

Mr. David Douglas stated the other aspects when your neighbors being in favor of something is that it's a rational thing where people think "well, I think it would be great if she were allowed to do this because now I'm going to be allowed to do this," and that's what everybody will then be allowed to do if we were to grant this. I think that we would be faced with another, maybe not all of them but a good number of other people all saying "well, you gave it to her. We want it." But, under the Code it's not supposed to happen. If people want to go and petition the Town Board to change the Code with its rules and regulations and prohibitions about generators, people are free to do that but that the Code is written a certain way and absent of a reason to give a Variance we have to abide by that stated policy of the Town Board.

Mr. Charles Heady asked how long ago did you put that generator in?

Mr. Kurt **Abinger** responded I think it's been sitting there about 2 months now.

Mr. Charles Heady stated we have other contractors, electric contractors that come here and they get a Permit and find out just where they've got to put the generator. Otherwise, the case we had before you was a little bit different but it's still a self-created hardship.

Mr. Kurt **Abinger** stated I agree and the only thing I can say to that is again I will go back to the front yard, rear yard, side yard and I was told and I did ask Ken and he said just make sure it's not in front of the yard and said "absolutely." I wasn't aware that you considered the side yard a front yard because it had a street on it and that was a mistake at the time. It's fine.

Mr. Raymond Reber stated as we mentioned earlier it's not up to us to design and come up with alternatives but if the owner is not interested in cutting a line through to bring a gas line across I know a number of people in the Town that don't have gas lines, they get bottled gas and run their generators that way. That's another alternative they could consider; change the unit, use bottled gas and then you don't have to dig a trench. There are always ways of looking at these problems and resolving them.

Mr. Kurt **Abinger** stated I agree. I do know that if it gets turned down she will totally remove it and not go further with it again because she just simply can't afford to do that. She's a single mom. She's trying to raise two children. She's getting by on what she can get by. She was hoping to do the best for her family the best she could and to do that would be an enormous expense.

Mr. Raymond Reber asked how can moving it and converting from a gas line to bottled gas...

Mr. Kurt **Abinger** responded because you still have to excavate the solid rock that's underneath the property.

Mr. Raymond Reber asked why? You would put it above ground.

Mr. Kurt **Abinger** stated you cannot run an electrical line or a propane line on top of the ground.

Mr. Raymond Reber stated the electrical – it's not going to be a propane line if you put a tank with the unit and as far as electrical you're going to put it back where the driveway was and it looks like that had be – that's all redone soil there. It's all been re-graded.

Mr. Kurt **Abinger** stated yes, but by Code every electrical line or plumbing line and if it goes under a driveway has to be a minimum of 18 inches.

Mr. Raymond Reber stated I'm saying in getting the driveway in they graded that area. If you look at the hillside it looks like it was graded hillside, it's behind the driveway so they can run it behind the driveway – I'm going to stop because it's not our job to do the engineering. All I'm saying is I believe there's reasonable alternatives that's not going to cost her a fortune and she can still have the generator. I'll leave it at that.

Mr. Kurt Abinger asked did you happen to see the last page of the pictures?

Mr. Raymond Reber responded yes.

Mr. Kurt Abinger asked and you don't feel that that rock is a deterrent or a difficult task?

Mr. Raymond Reber responded you have to encroach on the rock part of it.

Mr. Kurt Abinger stated I'd have to ask Vice Chairman, he's a contractor. He knows what it's like to dig up some rock. Am I right?

Mr. Wai Man Chin responded but that's up to every individual. Can I ask a dumb question; does she have gas in the house?

Mr. Kurt Abinger responded she does.

Mr. John Mattis asked is this the picture you're referring to?

Mr. Kurt Abinger responded no sir.

Mr. John Mattis stated because you could run it – I'm talking about over here, the basketball hoop, you could run it just beyond the driveway and this has been all built up so there's no rock there.

Mr. Raymond Reber stated you're concerned about this, this rock. What I'm saying is it's obvious that this ground here has been graded and to me you can put a line through here and that's just fill. There's no rock there.

Mr. Wai Man Chin asked can I just say one more thing? You got gas in the house; why can't you put the generator on the other side and bring the gas through the house off somewhere and bring it out that way?

Mr. Kurt Abinger responded because based on the distances that are required to keep from any opening of a window or door of the home, there's no single space of wall space anywhere outside the property...

Mr. Raymond Reber stated if you go out in this area where it's filled in land, there's no rock so there's no line. Five feet away from an opening so you move it away from the house 8 feet, run an 8-foot gas line as Mr....

Mr. Kurt Abinger stated I'll just go back to what I just mentioned to you and you just don't want to believe me and I understand that you don't want to believe me but there is tremendous amount of rock based on that last picture throughout the whole entire property and it would cost her a lot of money. If that's what it is, that's what it is.

Mr. John Mattis stated I don't like the insinuation that we don't believe you. It's not that we don't believe you but these pictures show that that area was graded so the rock is quite a bit down. The rock that I see is much lower on the property than that.

Mr. Raymond Reber stated the property is down at this level and here this is humped up and that's done to create the driveway and this...

Mr. Kurt Abinger asked have you been at the property?

Mr. John Mattis responded yes.

Mr. James Seirmarco responded yes.

Mr. John Mattis responded yes, I went down the driveway.

Mr. Raymond Reber stated it definitely looks like it's been re-graded and filled and I'm saying use that area where you'll have minimal rock interference.

Mr. David Douglas asked is there anything else you'd like to add?

Mr. Charles Heady responded no, I think we've discussed it enough.

Mr. Kurt Abinger stated I can only present it the way I see it and I understand and I respect your opinions as well.

Mr. David Douglas stated you've done a good job advocating for your client.

Ms. Adrian Hunte stated we just think that there are alternatives whether they're feasible is another story.

Mr. Kurt Abinger stated she won't spend the money to do it.

Mr. David Douglas stated that's her decision.

Ms. Adrian Hunte stated that's her choice, not ours.

Mr. John Mattis stated I sympathize that she's a single mother and maybe she can't afford it but that isn't something that we're allowed to consider. We don't base around financial because that would happen everybody would come in and say that and then we'd have to start looking at financials. The Code says you do not look at anything financial.

Mr. Kurt Abinger stated okay.

Ms. Adrian Hunte stated anyone in the audience wish to be heard?

Mr. Charles Heady asked to you want to close the public hearing or do you want to adjourn it?

Mr. Kurt Abinger responded sure there's no need to drag it any longer.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case #2013-16** applicant Laura Hyman, property 2 Nickelby Place, Cortlandt Manor, NY for an Area Variance to allow an accessory structure (back-up) generator in the front yard I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated on **case #2013-16** for an Area Variance to allow an accessory structure for a back-up generator in the front yard I make a motion to approve the Variance for the back-up generator in the front yard.

Seconded.

Mr. Ken Hoch stated Mr. Reber; opposed, Mr. Mattis; opposed, Ms. Hunte; opposed, Mr. Seirmarco; opposed, Vice Chairman Chin; opposed, Mr. Heady; no, Chairman Douglas; opposed.

Mr. John Klarl stated **7-0** for not approving.

Ms. Adrian Hunte stated this is a SEQRA type II action no further compliance required.

Mr. David Douglas stated thank you very much and again you did a good job.

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



Mr. Pasquale Marcella stated I live at 141 Baron de Hirsh Road and I'm here for the Area Variance on the storage shed. I took all your advices then I moved it to the side of the building. All my setbacks are right. I think I have **60** feet in the front, over **30** in the back and over **100** something on the side so I think all the setbacks are correct. That's it.

Mr. Charles Heady stated I see you took our advice to push that storage building back.

Mr. Pasquale Marcella stated not what I wanted but I took your advice.

Mr. Charles Heady stated I know but it makes it a better look for the house.

Mr. Pasquale Marcella responded I've changed it a little so now it will match the house so actually it did turn out a little better but...

Mr. Charles Heady stated I think it's pretty well set to have it the way you want it.

Mr. David Douglas stated you took our advice so I guess we can't be critical. You did everything we asked you to so we can now just be inconsistent and change our mind but I don't think that's right.

Mr. John Mattis stated again this is a two front yard situation.

Mr. Pasquale Marcella stated this is another two front yard, yes.

Mr. John Mattis stated I don't know legally how much is really on Townsend Road and that's the issue.

Mr. Pasquale Marcella responded the Town has taken my property away year by year as they widened the road so I don't know if I even have any property on Townsend but that's all woods anyway and there's about **100** and some feet and then you have Townsend and then you have another **400** feet to my next neighbor. That's all woods anyway.

Mr. John Mattis stated that's a good solution.

Mr. Pasquale Marcella asked the Camaro has a home or no?

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

Mr. Charles Heady stated I make a motion on **case 2013-17** to 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 **case 2013-17** that the application is hereby granted an Area Variance to allow an accessory structure, a **24'x 24'** storage building in the front yard. The condition of this approval, the storage building, cannot be closer to Baron de Hirsh Road than the front line of the house be closer to the building can be a maximum of **20** feet from Townsend Road side of the house and a pre-build survey must be submitted prior to ensure of the Certificate of Completion of the storage building. This is a type II under SEQRA no further compliance.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted.

Mr. James Seirmarco stated so you have some flexibility as far as how close you can make the garage to your house, up to **20** feet. You can make it **2** feet but I mean...

Mr. Pasquale Marcella responded no, that's fine. I need enough for the lawn mower and everything else.

Mr. James Seirmarco stated that's what we figured. Up to **20** feet separating...

Mr. Pasquale Marcella asked so it's ready to go?

Mr. Ken Hoch stated you'll get a letter from me.

Mr. David Douglas stated you have to wait. You'll need to see Ken.

Mr. Pasquale Marcella stated thank you.

Mr. James Seirmarco stated thank you for being so cooperative.

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### **NEW PUBLIC HEARINGS:**

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

Mr. David Douglas stated as we discussed at our work session on Monday I think the game plan is to adjourn this for a month because the effected property owner was not able to – her attorney was not able to come here tonight and he requested that we put it off for a month. He said that he is able to make it to our September meeting so as a courtesy to him we'll agree to adjourn the case for one month but we're not going to adjourn it further than that.

Mr. John Mattis stated now this was a prior **case 2012-30** and I would like to request that all documents, everything from the minutes to any documents they submitted to any documents that we had in that case be part of this case.

Mr. John Klarl asked so you want the minutes for any former...

Mr. John Mattis stated minutes, documents they submitted, documents the Town has. We want everything in there.

Mr. John Klarl stated from all former applications.

Mr. Raymond Reber stated it will become a file to this.

Mr. John Mattis stated the file for that application should be the file also for this application.

Mr. David Douglas stated that will be incorporated as part of the record on this application so that we have the whole universe.

Mr. James Seirmarco asked including the e-mail from Ray?

Mr. John Mattis responded this. That is part of this because we talked about it.

Mr. Wai Man Chin asked anybody in the audience want to speak on this?

Mr. David Douglas stated we're not going to open the hearing. We're going to adjourn it.

Mr. Wai Man Chin stated I'm going to make a motion on **case13-18** to adjourn to the September meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas asked Mr. Hoch if you could tell Mr. Turner that it did get adjourned? If he wants to come that month he's more than welcome.

Mr. John Klarl asked once again it's going to be September 18<sup>th</sup> right Mr. Chairman?

Mr. David Douglas responded yes, September 18<sup>th</sup>.

Mr. Raymond Reber stated is there a yellow sign put up over there. No because it's an Interpretation.

Mr. John Mattis asked should the neighbor be notified?

Mr. Ken Hoch stated I did.

**B. CASE No. 2013-19                      Kenneth Roche** for an Area Variance for the side yard setback to under pin the existing house foundation and construct a new sunroom/screen porch on property at **49 Baron de Hirsh Rd., Crompond.**

Mr. Raymond Hagele stated the architect for Ken and Caroline Roche. We're here seeking an Area Variance on the side of the yard to construct wrap-around front deck and screened porch. We're renovating their existing house. The proposed addition is aligning with the existing and the pre-existing non-conforming condition will not be exacerbated. The idea is to change the front entrance and build a small **10-foot** addition at the first floor and a **10-foot** addition at the second floor such that we can get a foyer and on the second floor get a second bathroom to serve the two existing bedrooms. One bedroom would be relocated forward. I have the floor plans. I'm sure Ken has them also.

Mr. James Seirmarco stated they're up there.

Mr. Raymond Hagele stated that's the Site Plan.

Mr. John Mattis stated we do have them.

Mr. Raymond Reber stated this situation – these are deep lots but relatively narrow when you look at them. They're certainly not rectangular. This house in question in fact doesn't line up with the other houses, it's forward a bit so in terms of closeness to a house and abutting structures, windows and all that, that's not an issue here. So, if you put an addition on it's still significantly away from the other homes so it's not infringing on their privacy or they're not infringing on yours. In fact, if I understand correctly part of the plan here is that the carport, which is currently on the side of the house will be removed.

Mr. Raymond Hagele stated that carport has been removed. It's gone a long time ago.

Mr. Raymond Reber stated okay so the assumption that that's not going to be replaced to us that's an improvement of the site and to the extend the structures you've indicated in the back of the house following the existing line of the house, even though it's within the setback of the side yard, as I said these are narrow lots, you're not encroaching beyond where the house is and it's not going to encumber on any of your neighbors. To me, this is a very acceptable addition. It's a Variance that we would typically give and as I say, with the condition that the carport's gone

and the Variances that were previously issued for that will be dissolved. You're improving the property in my opinion.

Mr. John Mattis stated I agree.

Ms. Adrian Hunte stated I concur.

Mr. James Seirmarco stated I concur.

Mr. Charles Heady stated I agree.

Mr. Wai Man Chin stated no problem.

Mr. David Douglas stated that was easier than you thought especially after hearing us with some of the other applicants I'm sure you were very nervous.

Mr. stated each project is judged on its own merit.

Mr. David Douglas stated on its own merit individually. Exactly.

Mr. Raymond Reber stated anyone in the audience want to add a comment if not, I make a motion on **case 2013-19** we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on **case 2013-19** at 49 Baron de Hirsh Road I make a motion that we grant an Area Variance for a side yard setback for fixing underpinning of the existing house foundation and constructing a new sunroom screened porch from an allowed **19.4** feet down to **13.5** feet which will actually align with the existing house and at the same time with the condition that the applicant has agreed that they have removed the carport and given up any Variances that were associated with that. This is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted.

Mr. stated thank you very much.

**C. CASE No. 2013-20                      New Cingular Wireless PCS LLC** for Re-certification of a Special Use Permit for a wireless telecommunications facility with the addition of three

new antennas with related equipment on property at **451 Yorktown Rd., Croton-on-Hudson.**

Mr. Anthony **Marando** stated I'm an attorney with the law firm of Cuddy and Fader and I'm here on behalf of AT&T.

Mr. David Douglas stated I have to interrupt you. I think there was some undue influence attempted on the Board here. I'm saying this with a smile. I noticed that when we got our packet of materials this month one of the things we had in it was this puff piece pamphlet from the Westchester County Association and I opened it and the very first thing I saw was a picture of Chris Fisher.

Mr. Anthony Marando stated I want to get a copy of that for myself actually. We're here tonight, as the pamphlet or our package indicates for the re-certification of an existing Special Use Permit for the existing wireless facility and tower located at 451 Yorktown Road. That's the Pony Motors car site. AT&T is the existing holder of the Permit and operates their facility there now. In connection with this request AT&T also has a pending application with the Code Enforcement division to upgrade the existing facility. What's on the tower now is, as you probably all recall, is AT&T has its antennas at about **150** feet at the top of the tower. They have **6** antennas there now. At the base within a fenced compound they have an equipment pad with their associated equipment to operate that facility. The re-certification that we're here for now, we figured we'd come in and hopefully have that account for the addition of this upgrade that AT&T is proposing. Just by way of background, as probably many of you know, the upgrade is associated with LTE Technology and the long term evolution project which essentially is enhanced data a voice services. As part of the upgrade, AT&T will be adding **3** antennas at the same location, at the same height, next to the existing antennas. They will be designed to match what's there now. Just by way of background, the original Special Use Permit did acknowledge only **6** antennas that were originally approved. The plans that were actually reviewed by this Board and submitted as part of that application did contemplate a future additional antennas at that location. So, it is something that's been contemplated and reviewed by this Board in the past. At this point, that's pretty much the extent of my presentation unless you have any questions or comments that I can respond to.

Mr. James Seirmarco asked just one question; do you have any plans to co-locate any other facilities or antennas on that spot or are you just keeping the next **3** for your...

Mr. Anthony Marando responded you mean at lower heights?

Mr. James Seirmarco stated whatever.

Mr. Anthony Marando responded I'm not aware of any other carriers that would be going there. AT&T's antennas though are at that same height so as far as future carriers that go on it, I'm not aware of any at this time.

Mr. Wai Man Chin stated it's a monopoly over there right now.

Mr. Anthony Marando stated I suppose you could say that but it's open for co-location for any people who are listening.

Mr. John Mattis stated it's a requirement that they're built that they can co-locate and that's a dead spot for every carrier so I'm surprised that nobody's piggy-backed on it.

Mr. Anthony Marando stated I actually have no background on as far as any efforts that's been made to co-locate on there but I do know that the plans were designed for co-location and so...

Mr. Wai Man Chin stated I live right there as soon as I turn the corner I lose cell.

Mr. David Douglas stated if you represent Verizon as well.

Mr. Anthony Marando stated I don't represent Verizon. I do actually have Verizon service and I drove by the site tonight and didn't have coverage.

Mr. David Douglas stated Mr. Chin and I both have Verizon and we both live right there. We both want to get Verizon on that pole.

Mr. Wai Man Chin stated as soon as we turn the corner, that's it.

Mr. Anthony Marando stated I actually experienced it tonight so I understand.

Mr. James Seirmarco stated this is for a re-certification as the gentleman just elaborated. I don't have any problems with this. I would make a motion we close the public hearing on **case #2013-20**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. James Seirmarco stated I make a motion we grant the Special Use Permit required for re-certification for Special Use Permit for a wireless telecommunication facility with the addition of **3** new antennas with related equipment. This is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

Mr. Anthony Marando stated thank you very much and have a nice evening.

Mr. David Douglas stated you too.

**D. CASE No. 2013-21                      Rosemay Cioffi on behalf of Michael Munteanu** for an Area Variance for the side yard setback for two existing side yard decks, and an Area Variance for an Accessory Structure, a carport, in the front yard on property at **31 Madeline Ave., Verplanck.**

Mr. David Douglas stated this is a case I think is going to be adjourned to September.

Mr. Ken Hoch stated the applicant's agent was called away for a family illness so the required sign wasn't posted and I had an e-mail from her and then I advised her that this would be adjourned until September.

Ms. Adrian Hunte stated I'll make a motion on **case 2013-21** applicant Rosemary Cioffi on behalf of Michael Munteanu for an Area Variance for side yard setback for two existing side yard decks and carport in the front yard, I make a motion that we adjourn this matter to the September 2013 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-21** is adjourned until September.

**E. CASE No. 2013-22                      Frontier Development** for an Area Variance for the side yard setback, front yard parking setback, landscaping for parking area, parking spaces, and signage on property at **3025 E Main St., Cortlandt Manor.**

Mr. David Douglas stated Mr. Schwartz before you begin I have to give you that same grief because that same brochure had a picture of Dan Richmond. I immediately noticed that all these pictures of these lawyers that are appearing in front of us which...

Mr. Brad Schwartz stated from the law firm of Zarin and Steinmetz representing the applicant Frontier Development. Nice to be back before this Board. It's been quite some time since I've personally have been here so it's good to see everybody. I'm joined this evening by Jim Leech of Frontier Development, Rich Pearson of John Meyer Consulting and my associate Chris **Diacavone** who attended your Board's work session on Monday night and observed your discussion and came back to share with us some of the comments and questions that your Board had so we're prepared tonight to share with your Board the overall functionality of the site as it relates to our Variance application. We do seek a couple of Area Variances with respect to signage and side setback and front yard setbacks and landscaping. Rich is prepared to get right into describing the site, its functionality, circulation and our requested Variances.

Mr. Rich Pearson stated I'm with John Meyer Consulting. I'm a senior associate. I've been with



the firm for nearly **30** years. I'm a licensed professional engineer and a certified professional traffic operations engineer. Our office has prepared the Site Plans. We've also been working with the Town consultants regarding the access modifications and we're also in the process of coordinating with the New York State Department of Transportation regarding the access modifications. Just a brief overview: I believe most of you are aware of the site, the former Geiss property. This is an aerial photograph showing existing conditions. Here is the site. The property line is outlined in red.

Mr. John Klarl asked it still is the Geiss property though right?

Mr. Rich Pearson responded technically correct, yes, I'm sorry. We have access on Route 6 and also Cortlandt Town Center is adjacent to the site and there's no access currently to the property. As part of the improvements to the site access the existing two curb cuts along Route 6 located here and here would be eliminated and consolidated into a single site access driveway in this location east of the existing location. The current site driveway is allowed left turns and right turns into and out of the site. This proposed driveway would be a right in, right out, and left in driveway so it would accommodate all movements except for left turns out of the site.

Mr. John Klarl asked Mr. Pearson because you and I see each other on the Planning Board side since the last Planning Board meeting have you gotten any further substantive comment from the state of New York?

Mr. Rich Pearson responded we have one letter from **Akhtab Sherif** that talks about the benefit of consolidating the access points. I've since spoken with Mr. **Sherif** and there is a second letter that the Town had written to the State Department of Transportation which they are currently reviewing and I am providing supplemental information to the state. We are expecting a second letter from the state discussing specifically the right in, right out driveway and the overall access to the property.

Mr. John Klarl asked when do you expect that?

Mr. Rich Pearson responded I'm hoping for a few weeks from now.

Mr. John Klarl stated thank.

Mr. Rich Pearson stated you're welcome. What we have is a proposed driveway that we've coordinated with the Cortlandt Town Center, Acadia the owners of the Cortlandt Town Center have agreed to have us have a right in, right out driveway in this location. There is a proposed raised median in that area to prohibit the vehicles from making a left turn into the site or left turn out of the site. As I believe most of you are aware also is that on Saturdays the Cortlandt Town Center gets busy and the left turns can back up considerably along that driveway. There are improvements that we're proposing that are consistent with improvements that the state and Town have been coordinating for a couple of years now. Those involve modifying the existing driveway which currently has a left turn lane, a single through lane and a separate right turn lane

and changing that lane used to be double left turns and a shared right through movement. The right turn volume is very light at this intersection because the Cortlandt Town Center has other driveways farther to the east so the eastbound traffic tends to use those driveways and very few people come out here, it's primarily Home Depot vehicles that use that and a few other vehicles but that volume is extremely low. So, combining the through and the right movement does not increase the Q-ing along that lane group and the double left turns that are provided with these improvements would substantially improve the existing conditions even with the additional traffic from the development. As part of that, there is internal circulation that's related to that so we need to have vehicles be able to move from this driveway over to this area and then the site access determines the locations of the internal roadways and associated parking. With that I could provide a little bit more detail otherwise I can go into our Variances.

Mr. John Mattis stated go to the Variances.

Mr. Rich Pearson responded the first Variance involves the green space. The Town looks for a **25-foot** wide green space along the property frontage. That line is shown – the property line is here in red and the green space setback **25-foot** is in the dash green in this location. What we have also shown in blue is the existing curb lines. As you can, a good portion of the site already is within that **25-foot** green buffer area and the existing curb is within **5** feet of the property line. Our closest proposed curb is in this area, that's within **7** feet of the property line. We're actually pulling back the parking in this area along Route 6 and also modifying the driveways. Again, consolidating the curb cuts from two curb cuts to one actually increases the amount of pervious space within the state right-of-way. This area has a relatively wide right-of-way for the state roadway and if you look at the proposed curb line as compared to the existing curb line on Route 6 it's actually **30** feet away. While we're not satisfying the **25-foot** criteria within the property itself I think we're satisfying the overall intent to have a green band along the project frontage and we would hope that you would concur. The second Variance involves...

Mr. Raymond Reber stated for clarification; as I look at the aerial photo of this site I'm curious as to where, not that I have a problem with this but I want to clarify this, a clear understanding, it says "existing **5** feet" you're going to be at **7** feet so you're claiming a greater green space along that strip but yet I look at the aerial photo and most of the green space that I see seems to be at least the length of a car and my car is longer than **5** feet. What is it one spot on the corner where it goes up the entrance to the Cortlandt Town Center where it's **5**?

Mr. Rich Pearson responded actually it might be a little easier – I can show you on both of these plans. The area where it's **5** feet is along this area, not counting the driveways which obviously are less than that. This is an area where there are **6** parked vehicles plus a planter area so I would say a minimum of **6** vehicles are parked within that existing **5-foot** setback from the property line.

Mr. Raymond Reber asked the property line I can't see from here clearly, but the property line is set back from the sidewalk so some of that green is actually on state....

Mr. Rich Pearson responded that's correct. It's deceiving and that's why I wanted to make the point that we're actually – our proposed curb here is **30** feet from the curb for the state right-of-way so there is a substantial, when you come by our property plus the extra wide state right-of-way, there's a substantial green area there.

Mr. Raymond Reber stated so the real green space is actually quite a bit...I just wanted to clarify that.

Mr. John Mattis stated it's almost impossible on Cortlandt Boulevard there, Route 6, to come to that **25**-foot setback because there were takings several years ago when they widened that road and then they changed the Code to make this **25** feet so it's impossible to meet so we take that into consideration.

Mr. Rich Pearson responded thank you, we appreciate that. Anything more on that setback request?

Mr. John Klarl stated as a matter of fact following up on your comment John, the Town Board did this blanket front yard setback on Route 6 a couple of years ago after the change because they realized people were going to be inconsistent with the Code so they gave a Variance from people from Locust Avenue to the top of Route 6. Like the Righetti house was one that caused it so they addressed that because everyone saw that distinct problem.

Mr. Rich Pearson stated the second Variance relates to the side yard setback. It's in this portion of the site. The required side yard setback is **30** feet for the building and we are providing **23** feet in this area where there is a bump out for a drive-through for the proposed restaurant on this portion of the site. The majority of the building is closer to the **30**-foot setback, I believe it's about **27** feet back and as far as the impact of this request on the neighboring property – the neighboring property is a portion of the Cortlandt Town Center. My understanding, based on discussions, not my own personal but other people's discussions with Cortlandt Town Center is that they support our requested Variances and I believe that they are willing to provide a letter to the Town to that respect. The bank itself is a neighboring use. It's nearly **20** feet higher than our property in this location. There is a substantial retaining wall which is shown here and there's vegetation between the retaining wall and our site. There are a couple of trees that would be taken down as part of this development but there are several large trees, some cottonwood trees that would remain.

Mr. John Klarl asked your side yard Variance request is from **30** to **23**?

Mr. Rich Pearson responded that's correct. That **23** is only for a small portion where the bump out for...

Mr. John Klarl asked but that's the number?

Mr. Rich Pearson responded that is the number, correct.

Mr. John Mattis asked how far out does that bump out come? A couple of feet?

Mr. Rich Pearson responded it's about **5** to **6** feet.

Mr. John Mattis stated so you're almost at the **30** feet if you...

Mr. Rich Pearson responded that's correct. The **30**-foot line is actually this dashed line and so you can see there's just a few feet, **2** or **3** feet inside of that dashed line.

Mr. John Mattis asked only at the bump out that it really comes down to **23** feet?

Mr. Rich Pearson responded that's correct.

Mr. John Mattis asked so for most of the building you're **27** feet?

Mr. Rich Pearson responded that's correct.

Mr. James Seirmarco asked just a naïve question, why don't you just put the two buildings together?

Mr. Rich Pearson responded I'd like to pass the baton to my client please.

Mr. Jim Leech stated with Frontier Development. The types of tenants we're dealing with here are all national tenants. Although they may not be as big as Best Buy, their egos and their identities are equal.

Mr. John Mattis stated their egos might be bigger.

Mr. Jim Leech stated it could be equal or bigger and endcaps are coveted positions versus something in line and in order for us to make this project work we have to provide the endcaps with convenient parking around their spaces and they kind of drove the deal. It would be better for us. It would be a lot easier financially for us if we could put it together but this is the way they required their presentations to be.

Mr. John Mattis stated the only thing it really effects is the side yard setback. If you move that over you put the parking over on the other side.

Mr. Jim Leech stated correct and maybe we would need a parking setback Variance, I don't know.

Mr. James Seirmarco stated the reason I'd asked the question is that you're coming for a Variance for reducing the number of parking spaces but if the buildings were together that would become a moot point.

Mr. Jim Leech responded not necessarily. It might be a wash depending on what happens.

Mr. John Mattis asked you've got about what, **16** parking spaces in between and you'd have to move them over? I would assume the building on the left would move over and then...

Mr. James Seirmarco stated closer than it is now.

Mr. Wai Man Chin stated you won't gain much more parking spots.

Mr. Jim Leech stated no but I think we probably started there and after we started talking to the tenants they said "we can't go here unless we get our position" which is an end cap. I think you would probably agree without the parking...

Mr. John Mattis stated number of square feet of parking would stay the same it would just be shifted.

Mr. Jim Leech responded basically.

Mr. John Mattis stated the requirements based on the businesses.

Mr. Rich Pearson stated I would say also to the point as I mentioned earlier, the impact on the neighborhood which I think is what you typically look at for a setback issue such as this is that this bank is so elevated that they're not going to perceive the difference of our **23**-foot setback versus a **30**-foot setback. People along the road in this area is heavily wooded through here so I don't think that people traveling along Route 6 would perceive that difference also. The third Variance relates to parking and we do have a mix of uses on the property that's proposed. We're proposing restaurant as well as retail. We have made the application in the intent to have some flexibility with the leasing and what we currently show was a little bit less restaurant than what we have associated with the Variance. We are required to have **99** spaces per the Ordinance based on the square footage from the land use table and we're proposing **79** spaces plus there's an area for **6** vehicles to cue within the drive-through for the restaurant. With that submission we included a parking study and this parking study was based on information for variations in parking associated with shared parking for different development types. What we use is a program that's provided and we purchased it from Urban Land Institute know as ULI, international organization that is very involved with site development issues, recommendations and the like. With ULI they have monthly adjustment factors and hourly and daily adjustment factors. We work with their program and we modified some of their factors to represent the requirements specifically for the Town, for the Code and also for their proposed use. This one portion of this building is intended to be a coffee-related use with breakfast time early morning being the predominant business time for that use. There's an opportunity to have more parking for that use as required during the mornings and then the other retail uses typically peak around Saturday afternoon and mid-afternoon when that other uses would have less of a parking demand. It's a good opportunity for shared parking on this site. On a practical basis I don't see

people, if there were difficulty parking or parking anywhere else, certainly they're not going to park on Route 6 or Cortlandt Town Center driveway and the only closest parking would be over in the Home Depot area and that's a heck of a walk to come here for a cup of coffee. I wouldn't be doing and I don't expect many other people do. First off, we believe there would be adequate parking and we don't think that it would have a detrimental effect onto their area roadways or adjacent properties. Is there any questions on that or otherwise I'll move...

Ms. Adrian Hunte asked are you anticipating a full service sit down restaurant or more take out fast food.

Mr. Jim Leech responded the term being used is fast casual.

Ms. Adrian Hunte asked fast casual?

Mr. stated similar to a Panera format, Panera Bread where you order and they'll bring it to you. It's not a white tablecloth sit down restaurant. Fast casual is a lot more quicker and lot more turnover than a normal full service sit down restaurant.

Mr. Raymond Reber stated I guess my initial reaction to this is obviously when you look at it and you see none of the setbacks can be met because you need all this space for the development and then when you do that you still come up short significantly in the parking requirements so the first reaction is "well this is over-development of the parcel." Stepping back as had been indicated earlier some of the requirements that were recently imposed like **25**-foot setbacks goes understood that that's not necessarily practical or necessary in some of the commercial areas and we have the ability to waive and I think that's a reasonable one. The issue of the side yard setback here it's unique because like you say it really doesn't impact on anybody but the parking bothers me so I think from my perspective before I would consider this kind of a Variance I would like to see these studies that were just referenced that talk about parking and the whole scenarios of the time of day or whatever. To be honest with you I will look at that not in anything that you specifically proposed today because for all we know, we approve the development, whoever you intend to have in there takes a lease for **10** years, after **10** years says "that's it. I want out" and you bring in somebody totally different and your semi - casual restaurant becomes a more formal or whatever. We have to take that into account in terms once this is built it's going to be there for a while and so my personal feeling is I would want to see those studies and determinations to convince me that a Variance this significant in parking is a rational one because you're going to have traffic issues and you say Q-ing **6** cars is probably reasonable but if you end up Q-ing more than **6** and say you have **8** cars then you're in that cross-over lane, somebody comes in off of Route 6, he can't get in there, then he's blocking the parking spots. Again, I hear you when you talk about in the morning is the busy time for drive-through for coffee and breakfast, the retail comes in later, I understand all that but I'd like to see the data. I'd like to be able to take a look at it and convince myself before I would give a Variance.

Mr. Jim Leech stated fair enough.

Mr. Brad Schwartz stated we'll give you a copy of that [inaudible] but I believe we did include that as part of our...

Mr. Rich Pearson stated I got the studies but we didn't have some of the backup materials, some of the details, factors and things which that could be provided if desired.

Mr. Jim Leech stated one other thing to note is the tenants were talking to also pay very close attention to the balance of parking. They have to pay a very high rent to locate here and they need to know they have to do the business in order to stay there.

Mr. Raymond Reber stated obviously they wouldn't be able to have their customers find a place to park. I hear you.

Mr. Rich Pearson stated the next Variance relates to a monument sign. We are proposing a monument sign that's **48** square feet and we believe that the overall square footage of the sign is in accordance with the Code. The Code has **24** square feet for the sign then there is a provision that allows up to another **24** feet for specific tenants if we are interpreting the Code correctly and with those **4** tenants they could be a minimum of **4** square feet and a maximum of **8** square feet per tenant. The sign that we have is **48** square feet yet we do have, based on what was submitted to your Board, we have one panel in the upper left hand corner that is **11** square feet and we've got a second panel that is **8.18** square feet. We would prefer to have the sign in this arrangement. If that was not satisfactory to the Board then we would obviously have to reconsider that.

Mr. James Seirmarco stated we count everything, not just the panels. We would count everything as far as the square feet goes.

Mr. Rich Pearson responded that's correct. The **48** square feet goes from the – it's actually from this area which is just above the brick for the monument foundation up to the top of the sign, up to here and then the **8** feet is from that edge to that edge; from the left edge to the right edge. We think it would not include the foundation for the sign typically but we figure – actually, we're probably slightly under since this is not a square shape or rectangular shape up on top that we're less than **48** total square feet so we think it's just a question of the size of the panel. In comparison to nearby signs there is a sign for the Cortlandt Town Center and we recognize that that is in a different zone but it is essentially immediately next to our property and that sign is about **120** square feet total and the Home Depot sign on there is approximately **36** square feet I believe. Our panels the difference between **8** and **11** feet to motorists driving by, I'm not sure they're going to perceive a difference. They're not going to know your specific regulations.

Mr. Raymond Reber asked where physically is that going to be on your lot?

Mr. James Seirmarco asked is the base included in the calculation?

Mr. Ken Hoch responded yes, but the base above **4** feet. You can go up to **4** feet for the base

which is – they actually redesigned the sign.

Mr. John Mattis stated so it starts at **4** feet.

Mr. Ken Hoch stated yes, it starts at **4** feet above.

Mr. Raymond Reber asked my question was where physically will you locate that?

Mr. Jim Leech responded I was just going to offer the explanation of the breakdown of the panels just based on the tenants pro out of share of the total center.

Mr. James Seirmarco stated it's just a rectangle that goes around all sides.

Mr. Raymond Reber stated we don't get too excited how you break it up.

Mr. Wai Man Chin stated it doesn't matter to us.

Mr. Rich Pearson stated the portion to the sides of the lease areas and that's what certain tenants look for in shopping centers that have been working on over the years.

Mr. Wai Man Chin stated it's fine with us as far as I'm concerned. It's all overall sign itself, that's it.

Mr. James Seirmarco stated it's a rectangle around the whole sign.

Mr. John Mattis stated we'll look at the overall.

Mr. Rich Pearson stated the overall I think we're permitted on it's just the specifics if I'm reading the Ordinance correctly. The specifics say that the individual tenant panels which are part of that bonus above the **24** initial square feet up to **48**, those individual panels cannot exceed **8** square feet. That would be the Variance that we would be looking for, for this is really from the **8** square feet.

Mr. John Klarl stated maybe we should go back and look at the Resolution that we approved for the Cortlandt Town Center for the sign package. That was what we did; we did **8** feet for the Singular tenants.

Mr. Wai Man Chin stated for individual panels.

Mr. Raymond Reber stated the main concern is the overall size of the sign and how bold it is and its individual blockage and that brings me to my question because you're right that's right near your property by the entrance. Where will your sign be located?

Mr. Rich Pearson responded our sign would be located over in this area here by the proposed



driveway.

Mr. Raymond Reber stated okay, it's going to be on the side of the entrance on Route 6.

Mr. Rich Pearson responded that's correct and the existing sign for Cortlandt Town Center is right here. Also a couple more photos I forgot to show earlier is that this is a portion of the green landscaped area between Route 6 and our site and then this is the existing vegetation on the eastern portion of the property. This is essentially a continuation from a different angle from the back of the site looking towards the east. You can see the bank. You can barely see the bank up here on the hill, just a small portion of it beyond the vegetation.

Mr. Raymond Reber stated in fact that photo of the green there reinforces my concern. I see numbers of **5** feet, I look at that and I say "wow that's a lot more than **5** feet."

Mr. Rich Pearson stated actually this portion comes in – I can revisit that.

Mr. Raymond Reber stated but that's on the east side.

Mr. Rich Pearson stated this is an existing curb line. We are bringing this in to **7** feet here. We are bringing this out. Here's the existing curb line and we're widening that area for a longer area as compared to existing and we are removing the two existing curb cuts in this area and consolidating, you see, there's much more pavement in these two areas as compared to this area here. The final signs relate to the building signs. There's signs where we are requesting additional building signs and also the signs of those signs are larger than what's permitted per the Code. This area is posted with a **40** mph speed limit. This is a busy intersection, as I mentioned earlier. I think any of you that drive through that on a Saturday afternoon would recognize that. So, with these signs we're trying to have identification of the property and minimize the need for the drivers to be turning their heads to try to see what stores may be in there and try to keep them concentrated on driving the roadway safely. The signs...

Mr. Raymond Reber stated just a comment; we generally do not give general blanket approvals for any Variance on a sign without specifics. In other words, because we get into things like the letter sizes and how it's geometrically laid out so for us to just say "yes, we agree with a Variance that allows you to put **48** square feet of signage." We don't know whether that's **48** feet of signs that's going to have two signs together or one sign or how it's going to be; one tall letter, the "Q Shop."

Mr. Rich Pearson stated we are showing the shape on the plans that were submitted but admittedly we're not showing specific lettering or specific tenants. I don't think those have been finalized...

Mr. Raymond Reber stated at this point, what you want us to do is agree to is the overall perimeter area and the general geometry.

Mr. Rich Pearson responded correct.

Mr. Raymond Reber stated you have signs on all sides of both buildings.

Mr. Rich Pearson responded that's correct.

Mr. Raymond Reber asked why would you want to have signs on the east side of the east building next to a drive-through? Those trees are going to read those signs.

Mr. Jim Leech responded it comes back to those egos again. Those trees lose their leaves for probably **5** to **6** months a year and there will be an impulse purchase. They fight hard to get their presentation.

Mr. Raymond Reber stated somebody will see that when they come down and crash at the intersection – I don't know. Actually, our Code doesn't allow signs on a side that's not adjacent to a road.

Mr. Jim Leech stated they asked and we do our best to...

Mr. Raymond Reber stated and also, between the buildings you're putting signs on those walls. By the time somebody actually pulls in and is in there won't they know what's in there?

Mr. Jim Leech responded I guess the theory is depending on the landscaping out front, the speed they're going, other traffic, the line of sight is better perpendicular than versus on top of the store front and you have a better opportunity to see it if you're going by.

Mr. Raymond Reber stated you've got a spacing that's going to be **35-40** feet between buildings?

Mr. Jim Leech responded **60**.

Mr. Raymond Reber stated it is as much as **60**.

Mr. Jim Leech confirmed yes. There's a line of sight there.

Ms. Adrian Hunte asked are you anticipating fewer number of shops or stores...

Mr. Jim Leech responded right now **4**.

Ms. Adrian Hunte asked and is it sort built to suit or subdivided or is that with Planning Board?

Mr. Jim Leech responded our hope is that it will all be – they'll be finalized. We're in negotiations with **4** tenants who have sincere interest and we've come pretty far and spent a lot of money to get this far with the expectation that that will get finished.

Mr. John Klarl asked are you at the liberty to disclose the tenants yet?

Mr. Jim Leech responded not right now because of their competitors. They like us to do as much as we can.

Mr. John Klarl stated because you discussed one on the Planning Board. On the Planning Board side you've talked about one tenant.

Mr. Jim Leech asked the one that requires an end cap? Is that the one because I don't remember?

Mr. Raymond Reber stated again, from my perspective when it comes to Variances to me it's relatively irrelevant because those tenants could change over time so we have to look at it more generic.

Mr. Jim Leech responded it's true and on the inverse we try to keep that in mind when we go to get approvals, make sure that we have flexibility.

Mr. Charles Heady asked can you back up on that traffic flow you've got going on the side like you're going to go up towards Home Depot there. Are you opening up another lane in there you said?

Mr. Rich Pearson responded yes, what we're doing is...

Mr. Charles Heady asked because that's a bad spot right?

Mr. Rich Pearson responded it's a busy spot. What we have is – as far as the lane did you mean changing the lanes along Cortlandt Town Center or relative to the access or both?

Mr. Charles Heady responded both really.

Mr. Rich Pearson responded existing conditions it's a single left turn lane, a single through lane and a single right turn lane.

Mr. Charles Heady asked coming out?

Mr. Rich Pearson responded correct, coming out. It starts as two lanes coming around the Cortlandt Town Center driveway. The left turn is by far the heaviest movement at the intersection. The through traffic across to Westbrook is moderate and the right turn volume is very, very low. We will be changing the lane use at this driveway to have two left turns to accommodate the heavy flow of left turns and then the through...

Mr. John Klarl stated heading towards Peekskill.

Mr. Rich Pearson responded correct. And then the through and right turn would be using what is

currently the right turn lane. With that, we would be providing a – proposing a driveway for rights in and rights out of our site driveway. I also neglected to mention that we would be improving the sight distance for vehicles looking to exit our site driveway. There were studies done actually by your Town traffic consultant, from **GHB** John Canning. He looked at the travel speeds around this curve and looked at the requirements which we had previously looked at based on the American Association State Highway and Transportation officials publication that gets into the Geometric Design of Roadways. Without getting too detailed, there's certain sight distances for certain speeds and we actually exceed the sight distance recommendations for the travel speeds.

Mr. James Seirmarco asked so you can come out of there and make a left and go up towards Home Depot...

Mr. Rich Pearson responded no, with this proposed median it would be a raised concrete median, most likely a brick-colored median that would make it so that you could not make that left turn onto the driveway or left turn from that driveway.

Ms. Adrian Hunte asked how far is that going to go to prevent people who decide once they pass that barrier to make the left turn anyway on that blind curve, make a u-turn?

Mr. Rich Pearson asked here and do that? Do this?

Ms. Adrian Hunte responded yes.

Mr. Rich Pearson responded there would be no need for people to do that because we have a right turn proposed here into our driveway so people that are coming from Westbrook can take the left turn...

Ms. Adrian Hunte stated if they feel that it's too much traffic going through – believe me they will try.

Mr. Rich Pearson stated if it's on a Saturday it's not going to be so easy even with our improvements it's still going to be traffic on that roadway so it's not an easy u-turn to make.

Mr. John Klarl stated the Planning Board was looking favorably at that.

Mr. Rich Pearson responded yes the Planning Board was looking favorably on that, also there is still a potential application for across the street and the Planning Board had us extend that median to not only restrict the left turns into and out of our driveway but also for that potential driveway of the neighboring property.

Mr. John Klarl asked which is the gas station?

Mr. Rich Pearson responded correct, yes the Shell Station and car wash.

Mr. John Klarl stated we haven't seen a lot of cooperation from that applicant.

Mr. Charles Heady asked if you're coming down from Home Depot, you can make a right into your place there?

Mr. Rich Pearson responded that's correct. The nice thing about that is that it's a way to get people to go to different stores without having to travel back out onto the state roadway.

Mr. Wai Man Chin asked getting back to the parking, are all your spaces all the same size?

Mr. Rich Pearson responded yes they are. They're **9' x 18'**.

Mr. Wai Man Chin asked is there any consideration of even compact sizes?

Mr. Rich Pearson responded we have not shown those. I hadn't checked myself in your Code to see if those are in your Code.

Mr. Wai Man Chin stated I don't know.

Mr. Ken Hoch responded they're not.

Mr. Wai Man Chin stated because I know a lot of other Towns do have compact sizes but I just didn't remember...

Mr. Rich Pearson stated right, some do. It depends in part on the type of uses. Some look at the uses and some do not. Some have a certain threshold of certain percentage of compact spaces.

Mr. Wai Man Chin stated just a thought.

Mr. Rich Pearson stated thank you.

Mr. John Klarl stated and obviously the applicant realizes we're going to do coordinated review. There's been an active application with the Planning Board and now before the Zoning Board and we're going to do coordinated review as SEQRA contemplates.

Mr. Jim Leech responded correct.

Mr. ? stated there's also [inaudible] Variance.

Mr. Rich Pearson responded for the green space, I covered, the **25-foot**? The overall we are – what is our percentage?

Mr. John Mattis responded you're at **3.3%**, you require **5**.

Mr. Rich Pearson responded we are at **3.3** and the – I know there's not much existing...

**Inaudible.**

John Mattis stated again because of the taking and widening of Route 6 at one point we always take that into consideration.

Mr. Rich Pearson stated thank you and also the existing parking basically doesn't have landscaped areas within the parking lot, it's just all asphalt there for the perimeters. There's a conservation easement all this area is part of our property but it's in the conservation easement so it's green. Again, with the overall intent of the amount of pervious area for the overall property we would exceed most of the developments along Route 6.

Mr. Brad Schwartz stated yes, that conservation easement I believe is a **0.4** acres. Mr. Klarl in response to your comment about the coordinated review between Zoning Board and Planning Board, obviously we owe your Board some information of more data with respect to the shared parking study. We understand that your Board would not make a final decision with respect to the Variances until after the Planning Board and the agency completed its SEQRA review and I'll ultimately ask of your Board, whenever you're ready, whether it's now or at the next meeting after we submit more information would be a referral or a positive referral of some kind to the Planning Board letting them know that we were here, you heard our application, generally comfortable with it. We'll work on whatever language has to be in the referral to the Planning Board but just so they're comfortable advancing our project before the planning and ultimately come back here after SEQRA is completed to actually obtain the final action on the Variances.

Mr. John Mattis stated I guess I don't have to ask if anybody in the audience wants to speak because they're all part of the application. I'll move that we adjourn **case #2013-22**. Should we adjourn this for several months? What's the action at the Planning Board right now? How far along are they?

Mr. David Douglas responded the Planning Board wants to get our input first.

Mr. John Mattis stated so let's just adjourn it until next month. We'll get a chance to talk about this at our work session. We'll adjourn it this until September.

Mr. John Klarl stated the Planning Board is waiting for – to hear about the state of New York.

Mr. David Douglas stated we'll adjourn it for a month...

Mr. Brad Schwartz stated and we'll get you that information before September.

Mr. Raymond Reber stated if you can get that to us far in advance so we have time to study it that way at our work session we can thrash through and if we have any questions we can get

back to you folks.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-22** is adjourned until September.

Mr. John Mattis stated September 18<sup>th</sup>.

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### **ADJOURNMENT**

Mr. Wai Man Chin stated I make a motion to adjourn the hearing.

Seconded with all in favor saying "aye."

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**NEXT MEETING DATE:  
WEDNESDAY SEPTEMBER 18, 2013**