

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, September 18th, 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 AUG. 21, 2013

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

Mr. David Douglas stated the August minutes are adopted.

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ADJOURNED PUBLIC HEARING TO OCTOBER:

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

Mr. David Douglas stated this case has been adjourned until October. We'll just deal with it in October.

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CLOSED AND RESERVED:

A. 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. John Klarl stated we have before us tonight a draft Decision and Order on this matter. I am taking a look and I'll summarize it if I can. We indicate first this is an application by Mr. and Mrs. Centouri for an Area Variance for the front yard setback for an existing wood deck on their property located at 5 Whittier Avenue which is in the **R-10** single-family residential district. The lot size is **7,530** square feet. The applicant's house is a prior to zoning structure. They purchased the house in **1965**, **48** years ago, and added a rear sunroom, half bath, front deck, all without a Building Permit. They now wish to legalize the construction. The house does not meet the **30** foot setback requirement as it is **20.99** feet from the property line. Therefore, the applicants are requesting an Area Variance for the front yard setback from the required **30** feet down to **20.99** for the existing front wood deck. This Board closely questioned the applicants at two public hearings held in July and August concerning when the applicants purchased their house, when they built the front structure, albeit you call it a porch, a deck or platform and what context they had with the Town in **1980s** when they built the front structure and also reviewed the history of their improvements to the rear of their house. This Board deemed that review really irrelevant to the matter at hand. This Board deduced the following information from Mr. and Mrs. Centouri: 1) they purchased the house in **1965**, **48** years ago. 2) They built the addition improvements to the rear of the house in **1967**, **46** years ago. 3) The front deck, which is the subject of this application was added approximately **30** years ago in the early **1980s**. Mr. and Mrs. Centouri said that in getting ready in the early **'80s** to construct their front deck they spoke to the Town and the Town Engineer. They said they contacted Mr. Irish and the following dialogue took place with Mr. Irish. "We spoke to him and we said we'd like to put up 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 materials shouldn't cost more than **\$1,500**" and he said "are you going to do it yourselves?" 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 any form or anything so our neighbors helped us put it up and that was it." Therefore, the applicants stated they were not required nor directed to pursue the obtaining a Building Permit for the front deck construction in the early **1980s**. Obviously this Board doesn't know exactly what transpired in the **'80s** concerning the applicant's contacts with the Town officials, however, some Board members who had long association experiences with the Town concerning the issuance of the Building Permits and C of Os have doubts about the applicant's **2013** recollection what took place in the early **1980s** with Town officials. Importantly, this Board notes that the applicants have not produced any documents concerning the construction of the front deck nor building the front deck "within the confines of the house." In addition, this Board has learned that the front deck is not shown on the assessor's record card while the rear improvements are shown on the card.

To this Board, an essential question to this application is whether this Board would have approved this Area Variance request if it came in before the Board before the construction of the front deck. This Board believes that the application would not have been granted by this Board for several reasons including: 1) the Town Zoning Ordinance does not permit structures in the front yard, furthermore, this Board is stringent in granting Area Variances for structures in front yards for example: generators, playsets, etc. Therefore, this Board believes it would not have granted the application ab initio. 2) In addition, the applicants here are requesting an Area Variance from **30'** down to **20.99'** for the existing front open wood deck. This Board believes that **21'** to the road is far too small a distance to the road in front of this or most other houses in a residential Zoning District in the Town. There is no compelling reason here to alter the Board's traditional view of observing and complying with the front yard setback in a residential Zone. Finally, several Board members reviewed the five factors recited in the NYS Town Law Section **267-b** for granting of an Area Variance in New York. Although all seven Zoning Board of Appeals members received the same file documents and heard the same testimony at the two public hearings, different Board members arrived at different conclusions in reviewing the five factors. By this D&O, this Board finds as follows under Section **267-b**: **Factor 1:** An undesirable change will be produced in the character of the neighborhood because the Town Zoning Ordinance has a firm policy with regard to placing structures in the front yard – and this application would not have been granted if made before the construction of the front wood deck. **Factor 2:** Whether the benefit sought by the Applicants can be achieved by some method other than an area variance. Here, the Applicants could have constructed the front deck (or a porch), whatever you call that structure, within the front yard setback. **Factor 3:** The requested area variance is substantial—**30'** down to **20.99'** for the existing wood deck. For the purpose sought (a front wood deck), the variance requested is very substantial to this Board. **Factor 4:** Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district. At first glance this does not seem to apply to this application. However, were the Board to grant the variance to the Applicants, it would set a terrible precedent to be utilized by other property owners in the **R-10** Zoning District in attempting to place their own structures in the front yard setback. **Factor 5:** Whether the alleged difficulty was self-created. Here, the difficulty is clearly self-created. The Applicants constructed the front open wood deck within the front yard setback. Therefore, for all the reasons recited in this D&O that I've just read tonight, this Board hereby **DENIES** the applicant's application for an Area Variance for the front yard setback from the required **30'** down to **20.99'** for the existing front wood deck. Mr. Chairman that's the draft D&O you have before you.

Mr. John Mattis stated I'll make that motion.

Mr. John Klarl asked to adopt the Decision and Order?

Mr. John Mattis responded yes.

Seconded.

Mr. David Douglas asked all in favor?

Members responded aye and no.

Mr. David Douglas asked could you poll the Board?

Mr. Ken Hoch asked Mr. Reber; aye, Mr. Mattis; aye, Ms. Hunte; no, Mr. Seirmarco; no, Mr. Heady; no, Vice Chairman Chin; no, Chairman Douglas; yes but I think there's some confusion.

Mr. David Douglas stated this is a motion where voting 'yes' is a denial. A 'yes' is to adopt the D&O which would deny the Variance.

Mr. Ken Hoch asked Mr. Reber; yes, Mr. Mattis; yes, Ms. Hunte; no, Mr. Seirmarco; no, Mr. Heady; yes, Vice Chairman Chin; no, Chairman Douglas; yes. The motion's carried **4 to 3**.

Mr. David Douglas stated the motion to deny the Variance and adopt the Decision and Order along the lines read by Mr. Klarl is adopted.

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ADJOURNED PUBLIC HEARINGS:

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

Mr. David Douglas stated we're going to have a public hearing on this case but we're not going to close it in light of the sad and unfortunate but fortunately not tragic events that have occurred today at the property. We will have a public hearing but we will not close the public hearing. We'll keep it open until next month.

Mr. John Klarl stated i.e. there was a fire today.

Mr. David Douglas stated right, to explain for other people, there was a serious fire at the property in question today but fortunately, very fortunately nobody was hurt including none of the children that were there. That's what we're going to do today. I think one of the things we talked about was that we were going to incorporate into the record all the documents and papers, the minutes of the meeting from all prior proceedings and specifically includes record in **case #2012-30** which is a prior proceeding. Mr. Hoch, on the record, we've incorporated all the prior proceedings and records in that case. Does anybody want to be heard tonight on this? The other thing we want to do is we want to incorporate into the record the documents that we received from Ms. Royce's attorney from the firm of Turner and Turner had submitted a letter and various materials so we want to note that that's been received and that will be part of the record.

Mr. Wai Man Chin stated I really don't have anything to say. I want to listen to their explanation why we should interpret it their way and I don't know if anybody's here for them.

Mr. David Douglas stated I believe Mr. Hoch had been contacted by the attorney who said that they would probably not be here because of what happened today and informed that we would go ahead with the public hearing but we would not close it so they would have an opportunity next month.

Mr. Wai Man Chin stated unless any of the Board members have anything to say I would just adjourn it until next month.

Mr. John Klarl stated Mr. Chairman, as we discussed this afternoon, there may be some ramifications for this application given the fire that occurred this afternoon and the destruction that occurred on the property.

Mr. David Douglas stated right, and we'll need to discuss that at our work session next month and at the hearing next month as well.

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

Seconded with all in favor saying "aye."

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

B. 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. Marek Zalewski stated Michael Munteanu is not here. He is in Europe right now and he asked me to represent him instead of Rosemary Cioffi which is in Florida. She couldn't be here today.

Mr. John Klarl asked did you receive an authorization?

Mr. Ken Hoch responded I have an email from Rosemary telling me that Marek Zalewski that he would be here on behalf of the applicant.

Mr. John Klarl asked did she file an authorization with us?

Mr. Ken Hoch responded she filed an authorization, yes, but she's got an ill relative in Florida.

Mr. John Klarl stated she's delegated to someone else.

Mr. Ken Hoch responded she's delegated to Mr. Zalewski.

Mr. John Klarl stated she had authority so she could bring anyone on her behalf. It would be better if she was standing here but if she's indicated in writing to us that this gentleman was appearing that bridges the gap.

Ms. Adrian Hunte stated Mr. Zalewski please tell us what Mr. Monteanu is trying to do here.

Mr. Marek Zalewski stated it's a hard question. I was expecting some questions and I hope I can answer that question. I'm just taking care about this house because I'm his friend. I know he did some job for whatever was necessary to bring the deck in safe condition and all the jobs which was suggested from the architect from engineer was done. It was about the deck and the carport and it was accomplished.

Ms. Adrian Hunte stated Mr. Zalewski this is an application for an Area Variance for the side yard setback for two existing side yard decks from a required **10** feet down to **0** feet and an Area Variance for an Accessory Structure, namely a carport in the front yard with the front yard setback of **6.82** feet and a side yard setback of **0.65** feet. If you can address those issues as to – if not, then I would suggest that we adjourn this until we can have Ms. Cioffi or someone who is able to respond to questions that we might have.

Mr. James Seirmarco stated because we have a significant number of questions about the carport, about the small deck, about a lot of different things.

Mr. Marek Zalewski responded the only what can I say about this it was done a very long time ago. The deck and the yard was built shortly after they bought the house. I know they bought the house in **1977** and the deck was built one year after that and the carport was built two years after that. It was existing garage, a ruined garage which was with the gate, a very old one and they took down the garage and they built just the roof and they changed it to the carport. That's the only thing what I know about.

Ms. Adrian Hunte stated okay, thank you.

Mr. David Douglas stated I tend to agree with what Ms. Hunte said. I think it would be best to have somebody here that has more information...

Mr. Marek Zalewski stated I hope Ms. Rosemary Cioffi will give you more details about it.

Mr. David Douglas stated I agree with Ms. Hunte. I think we should adjourn it and have Ms. Cioffi come and be knowledgeable about what the application is.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case# 2013-21** – anybody in the audience want to be heard? Hearing none. The applicant Rosemary Cioffi on behalf of Michael Monteanu for the property 31 Madeleine Avenue, Verplanck, NY there is a request for Area Variances for the side yard setback for two existing side yard decks and for a carport in the front yard. I would make a motion that we adjourn this matter to the October 2013 Zoning Board of Appeals meeting to give the applicant an opportunity to appear and address questions that the Board has.

Mr. Wai Man Chin asked can we have Mr. Hoch...

Mr. Ken Hoch responded yes I'll contact Rosemary.

Mr. Wai Man Chin stated because this is not getting us anywhere this way.

Mr. John Mattis stated I second that motion.

With all in favor saying "aye."

Mr. David Douglas stated **case# 2013-21** is adjourned to October.

Ms. Adrian Hunte stated thank you for being here Mr. Zalewski.

C. 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. Brad Schwartz stated good evening Mr. Chairman and members of the Board from the law firm of Zarin and Steinmetz representing the applicant Frontier. Joined this evening by Joe Montafieri, John Meyer Consulting and Eric Gordon from Frontier Development. Jim Leech who was here last time couldn't make it this evening so Eric Gordon is here in his place. As you all recall we were here last month and presented our application for a number of Area Variances. Very quickly just to remind all of you, the side yard Variance, a front yard for parking, landscaping for the parking area, the number of parking spaces and signage. Mr. Reber and the Board had asked for some additional back up information with respect to the shared parking and

we provided that information to you. Joe is here if you have any questions about the shared parking analysis and otherwise we're here to address any further questions your Board may have this evening with respect to these applications.

Mr. John Mattis stated concerns we had last month were the parking, primarily, and also signage is not allowed on the sides of the buildings and we had some questions about that also. So, if you want to address those please.

Mr. Brad Schwartz asked Joe, why don't you hit the parking first and we can get into the signage?

Mr. Raymond Reber stated with the parking, we did get the analysis that was provided which I went through. It's interesting, the basic parameters for the different types of use are very similar to what's in our Code which would indicate that on that basis is not enough parking. However, your study does a time analysis in terms of time of day and which month and what have you and it does come out in that analysis that the types of businesses that would normally be there, it's not appropriate to add up a **100%** for each one and I see how it's discounted and under discounting you make it. It's tight in certain times, particularly December, the Holiday season, that's going to be a busy lot. My personal opinion is I think we're pushing it a little. It would be nice if you had a little more room but the numbers to add up and it does indicate that the parking spaces that are there should be adequate for the businesses that are planned for there.

Mr. Joe Montafieri stated in regards to December, as indicated in the study ULI recommends that you design for the **20th** highest hour. You don't design for those first **19**. No matter where you go on Black Friday, you're going to drive around looking for a space to park. The other part of this balance is we do have two restaurants; one is intended to be a morning type of restaurant which was adjusted in those numbers as well. I think the numbers prove themselves. In addition, it's not a place that has close proximity to another site. No one's going to park at Home Depot and walk down to our site.

Mr. Raymond Reber stated only this parking area will serve these businesses. That's obvious.

Mr. Joe Montafieri responded and my client does not want to bring tenants in that are not going to be able to have a business that's going to operate because it's not – they wouldn't want to provide not enough spaces to support the proposed businesses because these people will leave and he'll have a vacant site.

Mr. Raymond Reber stated understood.

Mr. Brad Schwartz stated so with respect to the signage and as Eric can elaborate as we discussed at the last meeting, the types of high-end national retail tenants that our client is trying to attract, they demand that this type of signage. We do recognize the prohibition in your Code but we are making the request and taking into account the balance [inaudible] of which consider the benefit to the applicant and again the tenants that they are trying to attract. The discussions

that I've had with respect to the leases versus any potential detriment, we don't see frankly the detriment to the community to have these signs facing one another with the end cap buildings. Our position would be, again, to give the benefit to the applicant given the retailers are trying to attract, no detriment to the community and therefore our request for those sign Variances.

Mr. John Mattis stated I would disagree with that because it sets a dangerous precedent that anytime two buildings face each other they're going to want it. We're going to have to give it to everybody and people that are coming across Route 6 don't need those side signs to see what's in there to get in there. It may be an identifier once you're in there but they can find the stores properly.

Mr. Brad Schwartz stated but short of a slippery slope argument and I'm not sure how many applications come before your Board on one lot with two buildings facing one another so I'm not sure that there are going to be other applicants coming forward in the future making the same, similar type of request.

Mr. James Seirmarco stated I think we could debate this back-and-forth. If you'd like we can poll the Board because I'm going to tell you I'm not in favor of those side signs.

Ms. Adrian Hunte stated neither am I.

Mr. David Douglas stated nor am I.

Mr. James Seirmarco stated cut right to the chase.

Mr. Brad Schwartz stated I think we hear you then. Anecdotally, we drove around the Cortlandt Town Center before the meeting tonight – we didn't go in the Town's files and review the different uses and to see how the different signs got there but...

Mr. James Seirmarco stated so you want to continue the debate but okay.

Mr. Brad Schwartz stated I guess as John I'm sure I could say you're right when the judge, when a good lawyer knows when to stop...

Mr. John Klarl stated to be a good lawyer you've got to stop now.

Mr. Raymond Reber stated I can't swear to it but I think if you went through the Town Center the only place where you might find a sign that's actually not on a road like may be on the back side by the theater, it would just be an identification over the door so that the people know that that's the door to get into a certain area. I think that that was the case here and you came before us and you said "look we've got a main entrance on the side here and we just want to identify that this is the door" we might consider that but that's an identifier just for people who are standing there say "do I go through this door or not?"

Mr. James Seirmarco stated you think you're going to have popular brand name stores there and in about the first week you're probably – no one will need a sign to find that.

Mr. David Douglas asked is there anything further that the applicant wanted to address? Was there anything further that you wanted to present to us, any of the Variances?

Mr. Brad Schwartz responded there's not, unless you have other questions.

Mr. David Douglas asked anybody have any further questions?

Mr. John Klarl asked Brad, do you think the last time you were here you gave a narrative on each Variance you're seeking? You gave a response on each one? You flushed it out for the Board? You did? Just want to make sure you hit every point.

Mr. Brad Schwartz agreed.

Mr. John Mattis stated and there are other Variances that we went over last month: the side yard setback, the front yard parking setback, the parking area landscaping. Tonight we talked about the parking spaces, the front, the north façade we can only give a **100%**, that was corrected I believe, the rest of the signs appeared okay so really we pretty much covered everything. What we proceed from here is to adjourn this since it's joint with the Planning Board, we leave it open and we would send a letter to them saying that we have no concerns except that we would not recommend those – and we would agree with the parking, the side facades where they are not permitted we would recommend that they not approve that.

Mr. John Klarl stated since Mr. Schwartz is a hockey player, we'd hose the face off signs.

Mr. John Mattis stated is there anybody else in the audience? I make a motion that we adjourn case # **2013-22** and send a letter...

Mr. John Klarl stated to November we talked about.

Mr. John Mattis stated to November yes and send a letter to the Planning Board that states what I just outlined.

Seconded with all in favor saying "aye."

Mr. John Klarl asked Ken, do you know the November meeting date?

Mr. Ken Hoch responded November 14th.

Mr. John Klarl stated we'll do a memo to the Planning Board.

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NEW PUBLIC HEARINGS:

A. CASE No. 2013-23 Tom Gardner for an Area Variance for an Accessory Structure, 20' x 40' in-ground pool, in the front yard on property at **32 Young St., Cortlandt Manor.**

Mr. Tom Gardner stated I'm looking to get a Variance to put a pool on my property. We currently – my property abuts a paper road in the back and as I understand from what the rules are, is that's considered a second front yard as opposed to my actual front yard when I walk out the door. I understand I have to seek a Variance to be able to put a pool in my back yard or my second front yard.

Mr. Charles Heady stated I was out there Saturday about **10:30** but you weren't home. I didn't realize it at the time but you actually have two front yards. You have a paper street in the back where you have the swing, in the back of that.

Mr. Tom Gardner responded yes, we have the swing set and stuff like that...

Mr. Charles Heady stated I have no problem with it because it's in your front yard but it's not because you have two front yards, you have no other place to put it really. We've gone with something like that before in the past.

Mr. Tom Gardner stated and the paper road – I go all the way to the paper road and then the paper road, the back yard of Old Oregon Road, those houses, their back yard abuts that paper road so there's no house that's going to be built there.

Mr. Charles Heady stated in between, right.

Mr. John Mattis stated I was also out there. Even if they'd ever open that paper road and it's so wooded back there that it's doubtful. You may have some cars that go by there but like you said – the only person that would even see this is the one next door neighbor to your left and being out there and looking at it it's certainly the proper place to put it.

Mr. David Douglas asked anybody else?

Ms. Adrian Hunte responded I don't have a problem with it.

Mr. David Douglas stated I don't have a problem with it either. I just want to note for the record that the Town Engineer has indicated that it's his belief that the Pugsley Parkway, the paper road will – it's unlikely to be approved which I think is a correct assessment.

Mr. Wai Man Chin asked anybody in the audience?

Mr. David Douglas asked anybody want to be heard?

Mr. Gary Amboni stated I own the property right next door, the undeveloped property there. I just want to know for sure because I don't really see anything there that indicates exactly where this pool is going to go and what the setbacks are, distances from the property. The house is already built on a Variance because the builder built the house in the wrong place.

Mr. John Mattis asked your property is the one directly to the right? It would be beyond this house?

Mr. Gary Amboni responded yes. If I'm looking at the house from Young street.

Mr. John Mattis stated deep but very narrow.

Mr. Gary Amboni responded that's correct.

Mr. Raymond Reber stated from your lot, the plans show that the pool itself would be **53** feet off the property line.

Mr. Gary Amboni responded I see that. What is going to be put on that property line for privacy? Nothing between – the reason why I'm a little concerned about that is because, as I said, the builder built this house in the wrong place, too close to the property, my property. At that time I came here; the terms of the Variance was that the builder who was Dominic Santucci plant pine trees there, Steve Auth was here, Badey and Watson made some sort of mistake. You can go up there now there's no pine trees. Nothing was ever planted. There was nothing there for privacy. If a house was to be built on that side it would be very close to this structure itself and little or no privacy for the property next door.

Mr. Raymond Reber asked when was this house built?

Mr. Gary Amboni responded this is quite some time ago.

Mr. John Mattis responded the Variance was in the **'90s**.

Mr. David Douglas stated the Variance was in **2003**.

Mr. Tom Gardner stated I wasn't the original owner of the house. I think it's **'02** or **'03**.

Mr. David Douglas stated there's a Variance from **2003** and the condition of the Variance does speak about a buffer of evergreens or a berm of evergreens.

Mr. Tom Gardner stated and there are some actual evergreens that were planted, again, not by us but that are probably **6** to **8** feet tall. They're actually – they're growth is a little bit stunted

because of all the taller trees that are there. Those were existing when we bought the house, but also this will be heavily landscaped as much as privacy that you would want if you develop there we would want as much for ourselves.

Mr. Charles Heady asked you'd have no problem putting some evergreens along the side there for him right?

Mr. Tom Gardner responded no, this would be heavily landscaped. We wouldn't want our pool out in the open either.

Mr. Charles Heady asked you'll pay for both of you right?

Mr. Tom Gardner responded right, exactly.

Ms. Adrian Hunte asked will you have a fence around the pool?

Mr. Tom Gardner responded there will be a fence which is required as well.

Mr. Gary Amboni stated okay, I don't have a problem. I actually saw Mr. Gardner today. He seems like a reasonable person. I just want to make sure that the terms are met and at that point who's responsibility does it become to make sure that the terms of the Variance are met?

Mr. David Douglas responded Code Enforcement is responsible for making sure that the terms are abided by. If you have any issues you can just speak with Code Enforcement. There's the man to talk to.

Mr. Gary Amboni stated yes. I know Ken. He knows me. Thank you very much.

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

Mr. Charles Heady stated I make a motion on case **2013-23** 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 **2013-23** an Area Variance to allow an Accessory Structure a **20' x 40'** in-ground pool in the front yard. This is a SEQRA type II no further compliance required.

Seconded Mr. John Klarl asked what about the screening condition?

Mr. Charles Heady responded oh yes, with the screening.

Mr. John Klarl stated with the condition that it'd be screened to the satisfaction of DOTS. Ken? To make screening to the satisfaction of DOTS?

Mr. Ken Hoch responded yes which is the condition that was on the old one.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted with that condition. Thank you.

B. CASE No. 2013-24 Cathy Jenkinson for an Area Variance for an Accessory Structure, a 12' x 21'6" garage, in the front yard on property at **22 Kingston Ave., Cortlandt Manor.**

Ms. Cathy Jenkinson stated Ron Meyers is my significant other.

Mr. Ron Meyers stated the Variance we have to replace a garage that was destroyed by hurricane Sandy. It's been there for, I guess, forever before we bought the house. Because it's in the front of the house we have to go for a Variance to rebuild it. We're not changing the platform at all. It would stay in the same dimensions. The only change is it going to be built out of wood instead of cinder block because the insurance company says it's cheaper to go the wood route and it would match the house better.

Mr. Wai Man Chin stated I happened to drive by and I saw the picture with the tree leaning on the – the only question I want to ask is: is there any reason why you couldn't put it on the other side of the road, the garage, so you wouldn't need a Variance? I'm just asking that...

Mr. Ron Meyers responded well part of the foundation is there and the slab is there and the insurance company is paying so they're going to go – they're not going to let us move it and pour a new footing and a foundation for it. It's a more cost-effective issue at this time.

Mr. Wai Man Chin stated again, I really didn't have a problem with you just re-building it over there because it is a garage that has been there forever basically and because of Sandy a lot of things like that happened. I just want to ask because to build on the other side only and you gave me a reason why you're not putting it anywhere else so I'm satisfied with that.

Mr. Ron Meyers stated no, actually that would be the only feasible spot right now rather than moving the front wall around or redesigning the driveway to a certain extent.

Mr. Wai Man Chin asked anybody else?

Mr. David Douglas asked anybody else have any comments, questions?

Mr. Raymond Reber responded yes I do. There was a Variance granted in **1991** but that's

because it was existing and I have to assume, I don't know probably at that time it was so old that they figured they grandfathered it. We are supposed to and we've had other cases where this happened where buildings come down to try if at all possible to minimize Variance requirements if they can be corrected. That's why Mr. Chin's request is there an alternative so we can avoid having to give a Variance here. I understand your economic issues in terms of the pad that's there having to replace it but we're not supposed to take economics into account when we make zoning decisions. The pad is right next to the driveway, obviously, it still could serve as a parking space. I was at the property and one of the things we have to look at is there an alternative and to me it appears that directly opposite of where that is, if you turned to the right, right off the driveway, you could put a new pad on that side. You have this bush, you have a little embankment and then there's a bush there...

Mr. Ron Meyers stated that would still be in front of the house though.

Mr. Raymond Reber stated I don't think so if you...

Mr. Ron Meyers stated it would actually block the house, the view of the house.

Mr. Raymond Reber stated again, that's not a factor that we're supposed to consider. The point is I think if you go over on that side you can line it up so that you're not in front of the house or if you are you're in front by a foot but I don't think so. I think there's enough room in there. It would take leveling it and putting a pad in which you're trying to avoid...

Mr. Ron Meyers stated but the structure since now it is actually hidden by pine trees also which is also not really – the only time you see the garage at all is when you drive by.

Mr. Raymond Reber stated I understand but one of our criteria is: is there a reasonable alternative that doesn't require tearing up the whole yard and rebuilding the whole place where the applicant can fix the problem and not have to have the Variance and in my opinion, yes, I think that can be considered and I would like to have that looked into. Right now I don't see any reason why that would not work. I would say that at this point...

Mr. Ron Meyers stated I just think it would be a waste of money to – everything is right there, it just has to be built right back up.

Mr. Raymond Reber stated it's a pad, it's a concrete pad so you have to do some grading and pour some concrete. I agree, it's going to cost a little bit of money but we're not supposed to give Variances based on economics. We've had that many times come before us and people plead "well, it's going to cost a little extra." If we start letting economics get into the picture it creates all sorts of complications and so we're not allowed to look at economics.

Mr. Ron Meyers stated the structure's been there for so long I don't see why we'd have to – an issue now of moving it.

Mr. Raymond Reber stated again, the Code, the way it works is when something is eliminated you don't replace something that was inappropriate you make it appropriate if it can be done.

Ms. Cathy Jenkinson stated but it wasn't inappropriate before...

Mr. Raymond Reber stated it was granted because it was there. I read the '91 Variance that was granted. It was granted for an existing building so it could be that the argument was grandfathered. If a building was put up before Code came to effect then you get grandfathered and you were grandfathered. As long as it stayed there and you didn't expand it...

Mr. Ron Meyers stated in **1991** when it would be grandfathered what would they – I don't know if that's the actual date that it was built.

Mr. Raymond Reber stated then it gets grandfathered. We had another case where a person had a cottage on their property, he actually rented it out, the second building and it was getting old and deteriorating so they decided "well let's rebuild this." So, they tore it down to the concrete pad and then came to us because they knew you couldn't have two houses on one piece of property. Guess what? We had to say 'no' even though they had it there for years. Once they tore it down, it was down to the pad the Code says now we have to move toward eliminating something at this time is illegal. In that case he couldn't build it anywhere. He just never got his cottage back, period, because of the way the Code is written. In this case you have an alternative. You can get your garage back it's just we're asking that you relocate it.

Mr. Ron Meyers stated but it's still going to be in the front of the property. It's not going to be behind the house.

Mr. Raymond Reber stated I think we should look at it. You should go back, check the numbers and look at it but I think that if you extend it, looking at the plans, if you extend it flip side – you've got to look up closer to the house which again you don't want to put in that lawn area. What I'm saying is if you get closer to the house you have a slight embankment to the back of the house, there's a bush there, I don't know what type of plant it is, next to that. You don't even have to take the bush out. Next to that thing there's a space there and if you go back off the driveway, I don't think you have to go back very far, a few feet and you'll get it in.

Mr. Ron Meyers stated I just can't agree with that for some strange reason I just can't agree with moving, redoing something that's been there for over almost **30** years at this point.

Ms. Cathy Jenkinson stated especially since this wasn't something that we just decided to tear down. This happened because of hurricane Sandy.

Mr. Raymond Reber stated I understand. I'm sympathetic. I'm just telling you. I feel like my hands are somewhat tied.

Ms. Cathy Jenkinson stated this wasn't something that we tore down. This was something that

Super Storm Sandy did and we're just trying to replace it where it was and try to make it a little bit better.

Mr. Raymond Reber stated I understand and I'm just saying we'd like to see...

Mr. Ron Meyers stated esthetically where it is it would match the house and I think...

Mr. John Mattis stated I'd like to make a suggestion since apparently only three of the Board members have been out there I would suggest that we adjourn this for a month and do a site inspection so we can go out and look at the alternative, look at where it is and make a better decision based on that.

Ms. Cathy Jenkinson stated and especially since we're not quite exactly sure where Mr. Reber wants to put it. Maybe there's a big tree there, maybe there's an embankment there that you really shouldn't be putting something there.

Mr. Ron Meyers stated where it is now is a perfectly flat piece of property. If you go further up is a hill...

Mr. Raymond Reber stated there's a slight incline, it's not major.

Mr. David Douglas stated I think Mr. Mattis had a good idea.

Mr. Wai Man Chin asked anybody want a site visit?

Mr. David Douglas stated yes, I think Mr. Mattis had a good idea about seeing the site so we can look at it. When would that...

Mr. John Mattis stated Saturday before the meeting would be the **12th**.

Mr. Wai Man Chin stated the next meeting is October **16th**.

Mr. John Mattis stated so it would be the **12th** of October.

Mr. Ron Meyers stated the other issue we're having is the bank is pressuring us to get it done because it's part of the mortgage and the insurance company wants it to close their case on this issue...

Mr. David Douglas stated I understand. You can tell the insurance company it can wait a month. The Zoning Board is looking into it.

Mr. John Mattis stated I'm sure after we visit it we can clear this up.

Mr. Ron Meyers asked when can I expect you guys?

Mr. Wai Man Chin responded about 10 o'clock.

Ms. Cathy Jenkinson asked tomorrow?

Mr. David Douglas responded no, Saturday October 12th. Does that work for you that Saturday?

Mr. John Mattis stated and then we come back the following Wednesday is our meeting.

Mr. David Douglas stated let me just note for the record, I want to respond regarding – generally, as a general matter I agree with what Mr. Reber says. I think that this case, and again I think the site visit will be helpful, I think this case may be different for two reasons from what Mr. Reber's concerns were: when he talked about the example with somebody had another structure, if I'm remembering the same one he is, there that was a non-conforming use and I think that's different. We had a non-conforming use as opposed to a Variance here which may sound technical but I think that that is in a point of distinction. And the other factor which is, at least someone pointed out to me, which is there was a prior Variance for this garage and I haven't seen the property so I would like to go to the site inspection and to me the fact that there was a prior Variance that allowed a garage in exactly the same spot, to me that's somewhat convincing. I don't know that the situation has changed all that much in terms of what effect it would have on the neighborhood.

Mr. Raymond Reber stated I believe that, first of all it was an existing structure when the Variance was granted and I believe it was prior to zoning but I can't...

Mr. David Douglas stated the Variance doesn't say anything one way or other or whether it's prior to zoning it just says if it was existing, it doesn't say...

Mr. Wai Man Chin stated back in '91 back then it was kind of a little vague, more vague than – I really don't have a problem with what you want to do. I think some of the Board members would take a look at it and hopefully we'll find everything out by the following Wednesday.

Mr. Ron Meyers asked should I bring coffee and donuts when you guys come?

Mr. John Mattis responded no, that's okay.

Ms. Adrian Hunte stated I would just like to say a couple of things: one is as you said this is not something you planned to do on your own. This was a force of nature that destroyed something. You were just trying to put it back together. Once again, I don't see an undesirable change to the neighborhood. I don't see what can the benefit be achieved by some other alternative that's feasible to the applicant not feasible to the Board. Feasible is something that can be a reasonable person that can disagree as to what feasible is for you. Yes, we're not supposed to take the economics into consideration but in a situation where you have basically something that is dangerous the way it is if left that way then in terms of safety you may need to take that into

consideration. I don't think that – maybe looking at another side on the property might be helpful but I don't think that that's going to necessarily change the way I feel about this particular application.

Mr. Ron Meyers stated I'll see you on the **12th**.

Mr. Ken Hoch stated just to clarify the garage is not prior to zoning. The garage was granted a Permit in **1991**. The existing house and two sheds were deemed prior to zoning also in **'91** but I believe at that time they must have discovered that the garage was not built before **'51** which is why the owner at that time filed for Building Permit and obtained one and a CO and also had the Variance.

Mr. Raymond Reber asked but it was an existing building.

Mr. Ken Hoch stated it was an existing building yes.

Mr. Raymond Reber stated it wasn't prior.

Mr. David Douglas stated which I think strengthens what I was saying so I appreciate what you're saying.

Mr. Wai Man Chin stated I'm going to make a motion on case **2013-24** to adjourn to the October meeting and have a site visit on the **12th** of October at **10 a.m.**

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated so we'll have a site visit on October the **12th** at **10 a.m.**

Mr. David Douglas stated thank you very much.

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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 OCTOBER 16, 2013**