

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, April 18<sup>th</sup>, 2012*. 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:

Charles P. Heady, Jr.  
James Seirmarco  
John Mattis  
Adrian C. Hunte  
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman  
Ken Hoch, Clerk of the Zoning Board  
John Klarl, Deputy Town attorney

**ADOPTION OF MEETING MINUTES FOR FEB. 15, 2012 and MARCH 14, 2012**

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

Mr. David Douglas stated the minutes for February and March are both 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. Ed Gemmola stated the architect for Mr. Picucci and Post Road Holding. I just looked at an old agenda – I guess the last time we were here was in '09. We were here for an Interpretation and also a Variance for apartments over commercial. We originally had a site that had two buildings. This building is originally a commercial residential project that was done years ago, probably **10** or **12** years ago, we had two buildings. We asked for an Interpretation and try to get around the building of two buildings which was very dense on the site. We are proposing one building with **6** units in there. We have retail at the bottom and a total of **6** rental apartments above and that would have been the same total that we could fit on the site originally with the two buildings. We felt this was less cumbersome on the site and made more sense. We were at

several meetings with the Planning Board. We were waiting, believe it or not, to get a Health Department approval which we finally did about **6** months ago. We basically worked now to come back and start the process again, come back to the Zoning Board as a courtesy since we had postponed quite a few meetings to get the approvals on the Health Department. We since worked out plans. I believe you got copies of the floor plans for the retail on the first floor. What we show is a possibility of **6** retail stores. That's a maximum. We're hoping that we get bigger users but that would be the worst case scenario which would divide the retail at the ground level into **6** and then we have the **6** apartments which we're actually a duplex. So, they have a lower level with entry through the rear from parking on the high side and we have kitchen, bathroom, family room, living/dining at this level and at the second level we have a bedroom and a loft area which is very similar to the project that we did for Mark years ago. The architecture we're trying to do is very similar. I know this is not a Planning Board but I'm just trying to bring everybody up to speed to what we're doing and I believe this would fit in with the surrounding zoning, the architecture vernacular in the area. The only change, other than getting approval on the septic, is we jumped from required **28** spaces and we have **43** parking spaces. We were able to work some spaces into here and also – it's just a loading zone, if somebody was to move in they'd have a box truck, not envisioning any kind of tractor trailer but this basically represents the parking for the apartments. There's also usually a number of spaces that are available during the day so I believe we meet the zoning but the excess during the day is generally witnessed at this site where people are at work and we feel we have a good distribution of parking, residential and in the front a drop-off and there's some area here for snow removal. I believe the next meeting with the Planning Board, if we still have your blessing on everything, is then to try to finalize the Site Plan Approval with the Planning Board and hopefully leave this meeting open in case they require some additional items or that they're not happy with something. But, originally we did start with the Planning Board and, conceptually, they like the idea. I guess we're here to try and get back into the project and we appreciate the adjournments you gave us for the delay but it is very tough getting approvals from the Health Department. One other thing I think which is different, we left also the openings that were in the street, the in and the out, because that makes the OT a little easier otherwise that could be a pretty long process and where this is now presently, when we got the original approval it was in a spot where the sight lines were the maximum because there is a curve here. I think, in terms of what we're proposing to do is very similar other than the increase in parking and this remaining area for ingress/egress. If there's any questions I'll try to entertain that.

Mr. Raymond Reber stated pretty much what you've presented here is what we saw in '09. We had also seen originally with two separate buildings and the complications that had created. It definitely made sense to go the direction you're going. I certainly find that a preferred approach to using the property there. The issue before us isn't so much setbacks and what have you it's the issue of the dwellings, the **6** dwellings. Again, I see no problem I mean the Code gives you **4**, you're asking for **6** because you've combined the buildings and that, to me, also makes sense so I have no problem granting a Variance for the **6** apartments versus the **4**. With me it seems quite acceptable, the project.

Ms. Adrian Hunte stated I concur.

Mr. James Seirmarco stated I do too.

Mr. Wai Man Chin stated I have no problem. I had no problem back in '09. I think we were ready to vote on this then at that time. It's fine.

Mr. Charles Heady stated you needed the improvement there what is there now and the improvement you made now is very nice.

Mr. John Klarl stated as a matter of fact, Mr. Chairman, just to bring you up-to-date a little bit, I wrote a memo on August 20<sup>th</sup>, 2009 to Mr. Gemmola indicating that the "above case appeared on the Zoning Board of Appeals agenda last night under 'reserved decisions' having closed the public hearing last month," members of his office told me he was in California that day and I wrote to him: "enclosed please find a copy of the draft Decision and Order which I summarized at last night's meeting. The Board indicated they're in agreement with the Decision and Order but it was not formally adopted by the Board last night as the Board is doing coordinated review under SEQRA with the Planning Board, i.e. the SEQRA determination and formal adoption of the Zoning Board of Appeals Decision and Order will take place at the time of the Site Plan Approval by the Planning Board." Then, I asked them to give me a call so we could do mutual consents for an adjournments, but we actually gave him a draft version of the D&O in August of 2009.

Mr. Raymond Reber stated so what you're telling us you don't even have to write a new D&O...

Mr. John Klarl stated obviously he had to re-energize his application before both the Zoning Board and the Planning Board and the Health Department was a 37 foot high Fenway monster wall for you to jump over.

Mr. Ed Gemmola responded it usually is but we're at that point. Thank you.

Mr. David Douglas stated I don't think any of us see any reason not to stick with what we felt in **2009**. I think you're in good shape.

Mr. Ed Gemmola responded that's good to hear.

Mr. David Douglas asked John, I think we'll still keep it open so we can continue to do coordinated review with the Planning Board.

Mr. John Klarl stated the Planning Board could do something to the site which might adjust Variance for this Board. So, yes, Mr. Gemmola has to be at both applications back on their proper tracks.

Mr. Ed Gemmola responded yes.

Mr. David Douglas stated we should adjourn it until next month.

Mr. Raymond Reber stated I make a motion on **case 18-09** to adjourn to the May meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated you're adjourned until May.

Mr. John Klarl asked Mr. Gemmola when will you appear back on the next Planning Board agenda?

Mr. Ed Gemmola responded as soon as I can. I'll talk to the powers to be and – I mean we had everything so hopefully I can just print it and go back in.

Mr. John Klarl asked you'd be on the May agenda?

Mr. David Douglas asked will you be in May?

Mr. Ed Gemmola responded I'll try to.

Mr. Ken Hoch stated I don't know the date for the Planning Board.

Mr. John Klarl asked you're going to be on May or June though?

Mr. Ed Gemmola responded yes, what I can do is I was going to check – I have the sheet in the office. If it's just a matter of resubmitting the proper number of copies I don't see why we can't get on.

Mr. John Klarl stated maybe you can give us a one line letter when you know if you're on the May or the June Planning Board agenda. One line letter to the Zoning Board of Appeals...

Mr. Ed Gemmola responded absolutely.

**B. CASE No. 14-11B**                      **Capurro Contracting, Inc.** on behalf of Patricia Doherty for an Area Variance for a front yard setback to rebuild a deck and for the existing front steps; and the side yard setback for the existing house on property located at **122 Westchester Ave., Verplanck.**

Ms. Patricia Doherty stated it's in regards to the porch that I've repaired and we had the survey done. Should I bring this up to you?

Mr. David Douglas responded we have a copy of this.

Mr. Charles Heady stated this case has been going on for a couple of years also as was the previous case we just had. Your surveyor has gone through the road and made another survey which the Board has seemed to adopt the survey he's made up. We're going along with what your surveyor has made up for your Variance you need.

Ms. Patricia Doherty responded thank you.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin responded I have no problem with that.

Mr. David Douglas asked did you want to say something sir?

Mr. Doherty responded I'm just here to support her with that and make sure it gets finished tonight – hopefully anyway.

Mr. David Douglas stated it should be finished within the next one or two minutes.

Mr. Charles Heady asked does anybody in the audience have any comments to make on this case. I make a motion on **case 14-11B** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. Charles Heady stated I make a motion on **case 14-11B** an Area Variance from the front yard setback for the porch that allowed **30** feet down to **6.7** feet, a front yard setback for stairs for the allowed **24** feet down to **2.03** feet, a side yard setback for an existing house from an allowed **5.85** feet down to **3.1** feet, SEQRA type II, no further compliance required.

Mr. Raymond Reber asked should we reference the survey that we used just for the record that list it as the reference that's used for the Variance...

Mr. Doherty stated the survey has been done several times and I hope this is the last one.

Mr. Ken Hoch stated since this is '**B**' we already adopted a Decision and Order for the front when we split this into **14A** and **14B** so **14B** here is dealing with the side and the new survey has the side at **4.2** which changes slightly what I had written.

Mr. Raymond Reber asked which date is your survey?

Mr. Ken Hoch responded this is **11-28**.

Mr. John Klarl asked by who, what surveyor?

Mr. Ken Hoch stated by Tec Land?

Mr. Raymond Reber asked **11-28-10**?

Mr. Ken Hoch responded **11-28-11**.

Mr. Raymond Reber stated because the one I have here is **4-26-11**. So, you have a more recent one.

Mr. Wai Man Chin asked why don't we go by what you have?

Mr. David Douglas stated you seem to have the most recent one so let's use your numbers.

Mr. Ken Hoch stated ex survey dated **11-28-11**.

Mr. John Klarl stated and that seems to be the latest date right Ken?

Mr. Raymond Reber stated as long as you reference it because the one that I have does agree with the **3.1** that you have on the...

Mr. James Seirmarco stated that was the one that was previous to that April.

Mr. John Mattis asked so that correct number is what?

Mr. Ken Hoch stated **4.2**.

Mr. James Seirmarco asked what date do you have on yours?

Ms. Patricia Doherty responded **11-28-11**.

Mr. David Douglas stated okay, so you have the one that Mr. Hoch has.

Mr. James Seirmarco stated that's the most up-to-date and accurate.

Mr. Raymond Reber stated that's the one we'll use.

Mr. James Seirmarco stated that's the one we will be using for this Variance.

Mr. Wai Man Chin asked so Ken, could you just – maybe just reiterate the Variance that's required.

Mr. Ken Hoch stated the Variance here would be **14B** which would be for the side yard setback from a required **5.85** feet down to **4.2** feet as indicated on the survey by Tec Land survey dated **11-28-11**.

Mr. Wai Man Chin stated this is a type II SEQRA no further compliance is required.

Mr. David Douglas asked Ken, that's the only change right?

Mr. Ken Hoch responded correct.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Ms. Patricia Doherty asked this is in regards to the Variance for Mr. Carbone, is that correct?

Mr. David Douglas responded correct.

Mr. Raymond Reber stated that survey is the survey that we've approved.

Mr. Wai Man Chin stated that we're going by.

Ms. Patricia Doherty responded your going by this survey.

Mr. David Douglas responded by that one, the one you have.

Ms. Patricia Doherty asked in regards to the Variance?

Mr. Wai Man Chin responded right.

Mr. David Douglas asked Ken, you'll have the paperwork ready for the Variance? Is it five days?

Mr. Ken Hoch responded yes.

**C. CASE No. 2012-04                      Enterprise Rent-A-Car, lessee, for an Area Variance for side and rear yard setbacks for a car wash structure on property located at 2077 E Main St., Cortlandt Manor.**

Mr. Joel Greenberg stated the architect for Enterprise. As you recall, at the meeting we had a month ago, there was some concern about one of the neighbor's, Mr. Rughetti. The Board suggested that I sit down and meet with him to find out what his concerns are to see what we can do. I met with him twice and basically, if you look at the drawing here, and I have copies if you want copies. I had the Geomat company which is doing this work, actually do a rendering showing exactly what Mr. Rughetti was requesting. Basically what he wanted us to do is to the portion of the Geomat structure that was facing his property that instead of it being open, to be closed which is what this sketch shows. He also was concerned about, not that it has anything to

do with this particular Variance but we want to try and be a good neighbor, he was also concerned about the vacuum and the noise that came from it. So, we agreed to put it on the side of the property way down over here away from his property. Also, if you recall, I had suggested that we put a fence along his property line but he's got some very well manicured hedges which he wants to keep and he doesn't want any fences there and Enterprise allows his gardeners to manicure. He said "no" he doesn't want the fence he'd just rather have at the end of the structure to have that closed in so he doesn't have to look and see what's going on in there. We agreed to move the vacuum along over here where the adjacent property owners a much further away. Mr. Rughetti's, unfortunately, if you recall on your site inspection, his deck is pretty close to the property line so he sees it all the time. Anyway, I think we came to an agreement. Hopefully that will resolve it.

Mr. David Douglas asked you said you've got copies of that sketch? If you could just give at least on to Mr. Hoch just so we have one for the file that would be great.

Mr. James Seirmarco stated Mr. Chairman this was supposed to just go right through but someone suggested that he comes to the Zoning Board just for our review and I'm glad that they did. Mr. Rughetti was here and he had some valid points. The applicant has met with him and seems to have satisfied all of the outstanding issues that Mr. Rughetti had come forth with. I think I see no reason not to approve this at this point.

Mr. David Douglas stated I would also not that I believe that the Planning Board has approved your application subject to our approval, DOTS's approval and ARC's approval.

Mr. Joel Greenberg responded right, I forgot to mention that this Board had indicated that they would like to see the Planning Board approval first before and it was approved last month.

Mr. John Klarl stated for the record Mr. Chairman, I have my notes from the Planning Board meeting that was held on April 3<sup>rd</sup> and by motion, not by Resolution, by motion the Planning Board approved the application before them. They noted that the vacuum noise was being reduced for the neighbor, Mr. Rughetti and they said that this approval that they did by motion was subject to three further approvals and that would be DOTS, CAAC (Cortlandt Architectural Advisory Council) and this Board, the Zoning Board of Appeals. Subject to DOTS, CAAC and ZBA.

Mr. Raymond Reber stated the primary reason that this was before us is because you do need two Variances; side rear yard which requires a **30** foot setback. Obviously this doesn't have that. It's only going to have an **8** foot setback but again, I don't think any of us see any problem with that it's location we had indicated that at the previous meeting. I know noise is the issue and certainly to Mr. Rughetti it's the issue – this wall now that they're putting in the back is that a – can you describe what kind of material that's going to be constructed of?

Mr. Joel Greenberg responded it's going to be an aluminum similar to the roof. Also, one of the questions just to get this on the record, that I think Ms. Hunte you brought up was the question

about the way the cars were going to be washed and would that increase the noise. Basically, the car's going to be washed with the hose again so the noise will basically be the same that it is now. It's not going to have any kind of power pressure type of thing coming from the ceiling creating a lot of noise so I did check with Geomat and I think that we've addressed that now.

Ms. Adrian Hunte responded thank you.

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

Mr. James Seirmarco stated I make a motion we close the public hearing on **case #2012-04**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. James Seirmarco stated I make a motion we approve the Variance stated with the side yard from **30** feet down to **8** feet of the **22** foot Variance and a rear yard Variance from **30** feet down to **8** feet. This is a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variances are granted.

Mr. Joel Greenberg responded thank you.

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### **NEW PUBLIC HEARINGS:**

#### **A. CASE No. 2012-11                      Curry Properties** for an Area Variance for a freestanding sign on property located at **3026 East Main St., Cortlandt Manor.**

Mr. David Douglas stated next we're going to do something that we don't normally do. We're going to take something out of order. I understand that Mr. Greenberg has a two places at once problem this evening so our next case is going to be a new public hearing, it's **case #2012-11**, Curry Properties.

Mr. Joel Greenberg stated as Mr. Douglas mentioned, this is a request regarding a sign for the new Subaru/Hyundai building which is under construction, almost completed. I indicated at the work session I'd bring you some renderings. These pictures were just taken today so if you pass by this building, you'll see that it is **98%** complete and should be completed shortly and we're having the grand opening in the beginning of June. It came to the attention of the Building Department that even though we had a Permit for our freestanding sign, apparently, obviously it

got approval from the Architectural Board, the Planning Board and the sign itself, as you can see, the allowance is **24** square feet and this is only **20** square feet. However, the question came up with regard to the support for the sign and I think as we discussed at the work session that I think Mr. Klarl maybe can probably could speak on that issue better than I can as to how we want to approach this.

Mr. John Klarl stated we have to deduce a little bit more of the facts, for example, you were going to indicate to us that the order for the sign didn't take place until the Building Permit was issued.

Mr. Joel Greenberg responded let me expound upon that yes.

Mr. John Klarl stated based upon the issuance of the Building Permit that the sign begin to be manufactured.

Mr. Joel Greenberg responded basically what Mr. Klarl is saying is that the normal procedure is the manufacturer which is Hyundai itself, Hyundai makes the sign, will not make or construct a sign unless a Permit has been issued. A Permit was issued. We sent it to Hyundai. They made the sign. It was discussed at the work session is that this sign cannot be adjusted to have these two little stick type of supports for it and I'd given the Board a quote to make a new sign which was about **\$23,597** to be exact.

Mr. David Douglas stated **\$22,597**, not that that matters.

Mr. Joel Greenberg responded I think the Board members that were present at the meeting felt that because of the situation we went about it totally legal with no signs were made, nothing was done until Permits were issued and the sign was made and the error was discovered when the sign was about to be erected.

Mr. John Klarl stated the Town has indicated that there was an error in the processing of the application and review of what was being manufactured and installed and based upon all those factors and some others this Board was considering closing this application tonight and reserve decision and possibly writing a Decision and Order that distinguishes this application from other applications. What a lot of the applications we've had that have had problems like this we have someone build a sign and says "now I need a Building Permit for a sign that's already been manufactured." This applicant went through the process, got a Building Permit, gave it to the manufacturer and now there's a problem with the sign. We think that there was some reliance on discussions in Town Hall and paper that was issued to the applicant from people in Town Hall and that it's generally what we call an estoppel here where there's been some reliance on the given promise and it's been to the detriment of the person relying on the promise. We want to write a Decision and Order that would show the facts that were involved here and also distinguishes from other people who would like to use this application and this Decision and Order in the future where they're not similarly situated.

Mr. Raymond Reber stated also too, in evaluating the sign, obviously if we felt that the sign was going to create a hazard or some safety issue or was totally out of place we might be forced to do something but I don't think that applies here at all. There's nothing about this sign that would cause any problems at the site. I think as John Klarl indicated that these special considerations put us in a different situation than we normally would have.

Mr. John Klarl stated this is to be distinguished from those other ones.

Ms. Adrian Hunte stated ordinarily where there's a government agency involved there may be an issue with this estoppel where there's an error but usually it's with unauthorized acts and this appears to have been something that was authorized and in that case a stop may apply. So in our quasi judicial role here, rather than going strictly on the language of the statute or the Ordinance which talks about the uprights since you did reasonably rely on the representations of the agent and you did receive the Permit, in this case, that yes, the estoppel grounds would probably be appropriate. And, also that there's no undesirable change in the neighborhood or the character and environmentally there doesn't appear to be any problems and it will not have an adverse affect or impact on the neighborhood although it is substantial it is not self-created because of the issue of the Permits having been issued by the Town.

Mr. Joel Greenberg responded thank you.

Ms. Adrian Hunte asked any other comments from the public.

Mr. Wai Man Chin stated I think we're going to close and reserve on this thing?

Ms. Adrian Hunte stated I make a motion on **case #2012-11** to 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 #2012-11** for Curry Properties 3026 East Main Street, Cortlandt Manor, N.Y., I make a motion that we close and reserve decision on this matter.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the case is closed.

Mr. Joel Greenberg stated thank you very much and if I don't see you before, have a Happy Mother's Day.

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**ADJOURNED PUBLIC HEARINGS CONTINUED...**

**D. CASE No. 2012-05                      Ramroop Bhagwandin** for an Area Variance for side and front yard setbacks for a new addition, a porch and front steps on property located at **14 Richmond Place, Cortlandt Manor.**

Mr. Ramroop Bhagwandin stated good evening everyone. Thank you for the opportunity to redesign our plans. As you recall, the last time we were here, we had an issue where our plans were going to put us too close to the street and so we did a redesign. We removed the porch in the front and hopefully we'll be a lot farther away from the street.

Ms. Adrian Hunte stated I believe that at our work session that the new design appears to be more in compliance and less of an issue in terms of granting a Variance. I don't have a problem with it. Does anybody else have a comment?

Mr. Wai Man Chin stated at the last meeting the floor plan showed a porch on the whole, as you're looking from the front, on the whole right side with a – a whole entire covered porch which I believe the Board did not see that. What you did right now is kind of have a smaller porch, more centered in the building and you protruded out about two feet and that two feet originally with the original porch before was at the corner, was **31.75** feet and the porch came out **4** feet which was substantial. Now, you're going a little further in. Your Variance is going to be not **2** feet but maybe even less than that from what the calculations would say. Is that correct Ken? It may only be a foot or maybe even a little bit less than that from **34.69** on one side to **31** – I would say maybe **16** or **18** inches only. I really don't have a problem. I think the elevation looks a lot cleaner, a lot nicer. I think it does something for the house so I have no problem with it.

Mr. John Klarl asked so you like the front entry proposal?

Mr. Wai Man Chin responded yes.

Mr. Raymond Reber stated I concur. I think it's a nice design. It minimizes the Variances needed.

Mr. John Mattis stated I agree.

Mr. James Seirmarco stated I concur.

Ms. Adrian Hunte asked any other comments from the public? On Zoning Board of Appeals case #**2012-05** for Mr. Ramroop Bhagwandin 14 Richmond Place, Cortlandt Manor, N.Y. for an Area Variance for side and front yard setbacks – I 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 #2012-05** for Ramroop Bhagwandin, address 14 Richmond Place, Cortlandt Manor, N.Y. 10567, an Area Variance for a side and front yard setbacks for an addition and front porch, I make a motion that we grant the Variance based on the revised plans.

Mr. David Douglas asked should we put what the numbers are?

Mr. John Klarl responded we should identify the plan by date and do the numbers yes.

Mr. Wai Man Chin stated the date on the plan is **4-12-12**. Drawings **1, 2, 3** and **4** by architect Luigi Demasi. As for the actual dimensions I don't know how we can determine that. From the front down to **26.94**, but that's for the porch. So, it's **26.94** in the front.

Mr. John Klarl asked so Ken does that go from **30** feet down to **26.94**?

Mr. Ken Hoch responded correct.

Mr. Wai Man Chin stated so it's **30** feet down to **26.94** feet.

Mr. Ken Hoch stated and the side from **10** to **5.69**.

Mr. Wai Man Chin stated and side yard from **10** feet down to **5.69** feet.

Mr. David Douglas stated that hasn't changed.

Ms. Adrian Hunte stated that stays the same.

Mr. Wai Man Chin stated that hasn't changed actually.

Ms. Adrian Hunte stated for the front yard a required **30** feet to proposed **26.94** feet and for the side there is no change from the previous, **10** feet down to **5.69** feet.

Mr. David Douglas stated it's a SEQRA type II.

Ms. Adrian Hunte continued it's a SEQRA type II, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that Variance as read is granted.

Mr. Ramroop Bhagwandin stated thank you very much. I appreciate it.

**E. CASE No. 2012-07**

**Salvatore Fertucci** for an Area Variance for a side yard setback for an addition on property located at **73 Paulding Lane, Crompond.**

Mr. Salvatore Fertucci stated I took into consideration the dimensions that I was asking for, for the previous Variance at **13.11** I think it was. After discussing it with my architect and trying alternative plans to possibly do it in the back of my home, either to the left to the back or to the right of my back, it wouldn't work for two important reasons: 1) is the setback of my septic tank, 2) is that the bedrooms are in a straight line which no matter whether I go out to the left of the back or the right of the back, the bedrooms would no longer have windows which you cannot not have a window in the bedroom. All the bedrooms have existing two windows now. With the windows on the back of the house, if you were to go out the back of the house and add a room, you'd be closing up windows of bedrooms or a window of a bathroom. After discussing with my architect, we are asking for a minimum of **10** feet to the left which is pretty much the smallest sized bedroom I could make and taking into consideration, once again, I have a second child on the way. I only have two bedrooms on one side and my mother moving in, I think it's June 1<sup>st</sup>, I don't have the room that's existing so, once again, I'd appreciate it if you could consider at least asking for – instead of the **70%** that was asking for before, after, again taking into consideration of cutting it back to a minimum of **10** foot. I couldn't fit a bed possibly in a smaller room than **10** feet.

Mr. Charles Heady stated we had talked to you at the last meeting we were here with you and the Variance you wanted over **50** feet Variance and you're still on the **50** feet there now. You went more than what we can really allow. We tried to explain that to you. We thought your architect would figure something else than what you've got here now. You've got a very nice house but when you laid it out when you first started you made it so big you had no room to do what you wanted to do so you should have really figured it out from the beginning. Now, you're coming back to us and want that Variance is pretty hard for us to give you such a big Variance.

Mr. Salvatore Fertucci stated I think, in all due respect, judging the size of my house or judging my house is not fair to me because I do have the legal Permits for everything that I've done. I have all the approvals. I do have neighbors that wrote letters that taking into consideration the way my neighbor's house is designed and the way his house is facing and it doesn't run parallel or side-by-side to my house, I'm entitled to ask for a Variance. I do have a couple of situations and I wasn't asking for a **50%** before, I think it was like **70%**.

Mr. Wai Man Chin stated **68**.

Mr. Salvatore Fertucci stated it's for a bedroom so I can only make the room so small. As we all know, you can't live in a **5** foot bedroom. Standard bed is **6 ½** some odd feet long. That's why we cut it down to the bare bone minimum of **10** feet. I do have a legal two-family. The house does not have big bedrooms in it. It's only two bedrooms on each side. I need the third bedroom for my child and I need another bedroom for my mother. We've tried. I gave the plans to John only recently instead of getting it right back to him the very next day we sat together, me and the architect, and we tried to figure out ways of doing it off the back but that means I lose windows

in a bedroom or I lose windows in a bathroom. In the front of the house is a bathroom but on the back of the house is another bathroom, that bathroom going out the back would be lost, no windows in the bathroom. No windows in either side of the house would have bedroom windows. The one side of the house, we have a walkout foundation, that's major structure rearranging to try to make that work and I would have to lose a bedroom on my side in order to create a hallway to the back of the house. Again, that means the master bedroom has no windows and the bathroom has no windows on either side, if you look at the plans, it's very simple, the bedrooms are in a row. It would be extensive – an expense to try to make it happen any other which way. Again, I have a neighbor that's in compliance. I don't have any complaints of any neighbors. I'm trying to make the bedroom the minimum, minimum size. A **13** foot bedroom would have been nicer than a **10** foot bedroom but that's the smallest I can make it. I'm not here trying to make it as big as I can. I'm trying to make it so it's a bedroom that's livable. That's what it comes down to really. To put a garage underneath the bedroom is a lot cheaper than doing a foundation out the back of the house – rearranging a family room or kitchen. The expenses would be tremendous to go out the back of the house and it doesn't work for bedroom windows. I can't have a bedroom without a window.

Mr. David Douglas asked any other comments?

Mr. James Seirmarco responded unfortunately, the goal of a house, it needs a Variance. Ultimately, the goal would be to bring it into conformance. This doesn't bring it into conformance, it brings it much more out of conformance and what's much more than what we're willing to give. Not every house can have additions on it that conform to standards. I hear what you're saying. Certainly you have a requirement for your mother and your forthcoming child but it's just not going to work.

Mr. Salvatore Fertucci stated it's cost me, without any guidance from the council of what would work or wouldn't work and based on the architect you can't have a bedroom smaller than **10** foot.

Mr. James Seirmarco stated I don't think anybody's disagreeing with that but the issue is where do you put it and how much it increases the non-conformity of the building.

Mr. Raymond Reber stated I just want to clarify something that I heard you say. The existing house, two-family, you have two bedrooms and then the other unit has the two bedrooms.

Mr. Salvatore Fertucci responded it's two bedrooms, legal two bedrooms but the bedroom is an **8** by...

Mr. Raymond Reber stated you designed it or you bought it that way, whatever it's existing, so there's a total of **4** bedrooms. You said you need one more, that's three, you want one for...

Mr. Salvatore Fertucci stated I need one for my side.

Mr. Raymond Reber stated if I look at the plans, it seems to me that if you just move the wall over so that the last bedroom goes now with the kitchen and the middle bedroom goes with you, you accomplish what you want. I could not approve a **10** foot Variance on this situation. I particularly see no urgency when in fact if what you need is a total of **4** bedrooms in two units, you have it existing.

Mr. Salvatore Fertucci responded it doesn't work because if you look at the plans clearly there's a kitchen that runs adjacent to that bedroom so it doesn't work.

Mr. Raymond Reber stated it works right now for whoever's in there, that's a unit, it exists.

Mr. Salvatore Fertucci responded but if you go down to my mother having just the one bedroom.

Mr. Raymond Reber stated I'm sorry, I'm just saying that I would not approve the Variance regardless but in this case I'm confused because it almost seems like you have...

Mr. Salvatore Fertucci responded it doesn't work if you look at the plans because there's a bathroom – yes, it would be nice if I could knock down a wall and take that bedroom but there's a kitchen and a bathroom back-to-back for the plumbing...

Mr. Raymond Reber stated you've got to do a little remodeling. You've got to rearrange and move the door, whatever all I'm trying to say is...

Mr. Salvatore Fertucci stated it's simpler said than done. It doesn't work just remodeling. I've been in the business for **18** years doing renovations...

Mr. John Mattis stated let me put something in perspective. You mentioned earlier that you're entitled to apply for a Variance, that's true but that doesn't mean that you're entitled to a Variance, okay. If we took into consideration everybody that was taking in their mother-in-law or their mother, and as I said last month that's a very noble thing and that's very nice what you're doing and people are having more children and if you can't build out, you can't build out. You have a house that meets the minimum setbacks on each side. It's probably, if not, the largest house in the neighborhood.

Mr. Salvatore Fertucci stated again, you're speculating from day one, again, the speculations with the comments about having the largest house...

Mr. John Mattis stated this isn't speculation. I've been up and down that neighborhood many, many times. Most of them are bungalows that have been expanded somewhat. Your house appears to be, by far, the largest one. It doesn't matter what it looks like but it has the minimum setback on each side. Let's just stop at that if you have a problem with the rest of it. You built a house, I believe you built it, to have a two-family because that's allowed, you maxed it out on both sides and now you're saying you want more, and that would be – we have to look at: does it affect the character of the neighborhood? And, to give you a Variance on that certainly does

affect the character of the neighborhood.

Mr. Salvatore Fertucci responded not everybody is in the same situation I am.

Mr. John Mattis stated I know. Nobody else built all the way on both sides like you did. If we give a small Variance to somebody else, there's still a lot of side yard on one side or the other. But we don't look at the others. We look at each case separately.

Mr. Salvatore Fertucci stated between my house and my neighbor's it's in a – my house faces straight, his house faces this way, again that's the difference between mine and everybody else's in the neighborhood regardless if my house is the biggest or the nicest, or whatever it is in the neighborhood. As time goes on...

Mr. John Mattis stated you've maxed out your width when you built that house and now you want to go further.

Mr. Salvatore Fertucci stated well then at the last meeting...

Mr. John Mattis stated and I think that's inappropriate in that neighborhood. That's what we're here to determine. That's my determination. There are alternatives and we have to look at if there are alternatives...

Mr. Salvatore Fertucci asked what's my alternative?

Mr. John Mattis stated our goal is – the Code does not say “are there alternatives that are cheap? Are there alternatives that are easy to do?” The first thing we look at is: are there alternatives? And, there are.

Mr. Salvatore Fertucci asked what is my alternative?

Mr. John Mattis responded we're not here to give you the alternatives, although, Mr. Reber gave you one, you've talked about some. You don't want to do them because they're expensive but that's not what we're here for. In my opinion, this is a stretch and it's too much.

Mr. Salvatore Fertucci stated your alternative at the last meeting was to come back with a proposed plan because the **13.11** did not work and the Chairman was nice enough to postpone the meeting to now so I came back with a proposed plan of **10** foot based on the minimum size of a comfortable room that I need. The member had made a statement about knocking down a wall. There's a bathroom and a kitchen that affect that lineup. It doesn't line up as nice as it would line up. It won't work like that. I've tried to go out the back on both sides. If you can read the plans you can clearly see that it isn't going to work going out. Forget the expense. Money's not the issue. Look at the plan. Understand that the windows in the bedrooms would get covered up. Going out the back doesn't work. I have a septic to the right. I can't go out the back on the right side off of the master bedroom or the little bedroom. Yes, I do have a two-family. Yes, I

do have **4** bedrooms.

Mr. John Mattis stated but having stated what you stated doesn't entitle you to a side yard Variance. There are times when no Variance is appropriate.

Mr. Raymond Reber stated there are times...

Mr. John Mattis stated this is only my opinion.

Mr. Raymond Reber stated there are times when people outgrow their house for whatever reason that doesn't mean the house can keep ultimately expanding to meet your needs.

Mr. Salvatore Fertucci stated we're not trying to just ultimately just keep expanding. That's not the sole purpose here. Again, the only people that are disagreeing, from what it seems to me – my neighbors aren't disagreeing...

Mr. David Douglas stated there are lots of reasons why neighbors don't disagree, we all know that.

Mr. Salvatore Fertucci responded in regards, I've tried to go out the back, believe me it would make a lot of things easier then I wouldn't be standing here tonight half dead to try to explain to you going out the back does not work. If you look at the plans, you'll see that the back does not work. So, you said to me alternative, other plans. Tell me an alternative. There is no alternative going backwards.

Mr. John Mattis stated that's not what we're here for. We're here to act on that Variance. I indicated last month that I would probably not approve any Variance for the side yard. I wouldn't approve this one.

Mr. Salvatore Fertucci stated I think that's unfair then.

Mr. James Seirmarco stated just to repeat this, the last time you had a **68.8%** Variance. Like I told you last time, we're always willing to listen to a Variance that's **10%, 15%, 20%** or **25%** but when it starts to exceed **40%, 50%, 60%** we never – we just don't do it because that's not the legislative intent of this Board. We just don't do it.

Mr. Salvatore Fertucci responded it seems to me that you're saying one thing and the other Chairman is saying another, that you're saying that you usually take into consideration **25%, 10%** or whatever. The other Chairman sitting here saying that he wouldn't agree on any Variance for my house and using improper statements about the size of my house once again is kind of insulting to me.

Mr. James Seirmarco stated no, he didn't say that. He said he would not entertain a side yard Variance.

Mr. David Douglas stated on this particular application. There are **5** criteria that the law says we have to consider, the first is: would there be an undesirable change in the character of the neighborhood? I think some of the members have expressed a view that it would change the character of the neighborhood and I agree it would change it.

Mr. Salvatore Fertucci stated the whole neighborhood's a character in itself.

Mr. David Douglas stated just let me finish. The second criterion is the benefit that you're seeking: can it be achieved by another method? And, I believe that you do have alternatives. You don't think they're ideal but there are alternatives. The third is: is the requested Variance substantial? It clearly is substantial. We talked about **50%** or so. The fourth is: will it have an adverse affect or impact on the physical environmental conditions? I'm not sure there really are. The fifth one is: is the difficulty self-created? And, it is. It seems to me that weighing those 5 factors, at least **4** of them go the wrong way for you and I don't see that this extremely substantial Variance is warranted.

Mr. Salvatore Fertucci stated what you feel is one thing and what I need is another thing. I have tried to.

Mr. David Douglas stated I'm not saying you have to agree I'm just saying that's my view. Other people have expressed their views.

Mr. Wai Man Chin stated maybe you work out with your architect – maybe for argument sake maybe the garage. Maybe if you took the garage and made that a livable space and put the garage behind the garage and just have the side as a driveway through the garage, I wouldn't have a problem with that.

Mr. Salvatore Fertucci stated I appreciate that. That would be great for me but in the back of my foundation it has a walkout foundation. I have a septic tank that's sits not even like a couple of feet right off the house, right there.

Mr. Wai Man Chin asked what about the left side where the garage is?

Mr. Salvatore Fertucci responded to the left side there's the basement where you walk into the basement and then you have the septic fields that run across so how do I leave any room for expansion?

Mr. David Douglas stated I don't want to get into a design discussion. I don't want us to be designing for you. There's basically two ways you can go with this one: if you want another month to talk it further with your architect and come back to us or the other alternative is we can take a vote. It's up to you whichever you prefer.

Mr. Salvatore Fertucci responded at this point, half the Board is simulating that they're not going

to allow any Variances at all because I've spent thousands of dollars already...

Mr. David Douglas stated those are really the two. I'm not trying to cut you off but really what it boils down to – I am cutting you off. I don't want to be accused of cutting you off. Go ahead, what were you going to say?

Mr. Salvatore Fertucci responded nothing. You were asking me if I wanted to wait another month?

Mr. David Douglas stated no, no I don't want to cut you off say what it is you want. Go ahead.

Mr. Salvatore Fertucci stated we don't have to wait another month.

Mr. Charles Heady asked you want to adjourn or withdraw?

Mr. Salvatore Fertucci responded no because this is only for a Variance. If I had to go backwards or forwards or whatever I wouldn't need the Variance.

Mr. David Douglas stated as long as you're within the setbacks to don't have to come to us at all.

Mr. Salvatore Fertucci stated and based on what I'm hearing is that I'm hearing that there's not going to be any kind of Variance so to spend more money to even try to get a foot...

Mr. David Douglas stated I don't think that we've necessarily said there would, under no circumstances, be any Variance, but based on what you've proposed here I don't think that that would be granted. Again, we can either adjourn it, we could vote or third alternative would be that you withdraw it. It's really up to you.

Mr. John Klarl stated it doesn't hurt for you to adjourn it if you have to talk to your professionals.

Mr. Salvatore Fertucci stated we could just close it.

Mr. David Douglas stated if we close it, it means we will vote on it.

Mr. Salvatore Fertucci stated I understand, correct but...

Mr. Charles Heady asked why don't you just adjourn it or withdraw it?

Mr. John Klarl stated if you're not counting 4 votes in your favor you might want to think about either adjourning it or withdrawing it.

Mr. Salvatore Fertucci stated I appreciate the opportunity to adjourn it, I do. I've been building for 18 years in the County. I know anything less than a 10 foot bedroom doesn't work for a

bedroom.

Mr. John Klarl stated there might be other plans.

Mr. Wai Man Chin stated that's not the point. The point is I don't think anybody here would give you more than maybe **3** or **4** foot tops, Variance and even then that's a lot. You're talking about a **10** foot Variance. If it's **3** or **4** feet you're talking about only from **20** feet, you're talking about maybe **15%** or **20%** but when you go up to **50%** more, we just haven't done that. It sets too much of a precedent and then everybody's going to be asking for the same thing and we can't do that.

Mr. Raymond Reber stated if some change in design said they have to put a stairwell or something on the side of the building that would be your **3** to **4** feet, that's something we might consider but that's the max.

Mr. Wai Man Chin stated that's what I'm saying.

Mr. Raymond Reber stated if you can't do that then there's really no point in dragging this out.

Mr. Salvatore Fertucci stated then I would like to do that because you brought up a valid point with a staircase.

Mr. David Douglas asked I'm sorry you would like to do what?

Mr. Salvatore Fertucci responded I would like it if we could postpone it because you just brought something to my attention that was not brought to my attention before about a staircase. I do have a staircase in the middle...

Mr. David Douglas stated why don't we adjourn it then. You can think about that and any other alternatives you might want to think about.

Mr. John Klarl stated you really should discuss that with a professional.

Mr. Charles Heady stated I make a motion on **case 2012-07** to adjourn it to our May meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case 2012-07** is adjourned to the May meeting. So, talk with your architect and see what you come up with.

Mr. John Klarl stated feel better.

Mr. Charles Heady stated I hope you feel better.

Mr. David Douglas stated take care. May 16<sup>th</sup>. If you have an alternative, you need to get the plans to Ken by what date? Or talk to Ken.

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**CLOSED AND RESERVED:**

- A. CASE No. 15-11**                      **James Meaney (revised)** for an Interpretation as to whether **Local Law 12** of **2010** prevents the Green Materials application to the Planning Board, **PB No. 28-08** filed **8/22/08**, from proceeding; whether **Local Law 12** negates the ZBA Decision and Order in **Case No. 33-08**; and whether the Applicant can obtain a Use Variance from **Local Law 12**.

Mr. David Douglas stated I will turn this over to Mr. Klarl.

Mr. John Klarl stated as a matter of fact, I think you have in front of you a proposed Decision and Order that was considered by the Board at our work session two nights ago. I don't see the applicant or the applicant's attorney or other representatives sitting in the audience so I don't think I want to belabor it or bore people with my reading the entire D&O since we have it in front of us. But, suffice it to say that after a recital of Mr. Hoch's memo to the Planning Board from January 31<sup>st</sup>, 2011 the Decision and Order goes on to call out the three requests made by us and the first request was whether Local Law 12 of 2010 prevents green materials application to the Planning Board from proceeding. The second request was whether Local Law 12 negates the Zoning Board of Appeals's Decision and Order in Zoning Board of Appeals **case 33-08** and the third is whether the applicant can obtain a Use Variance in Local Law 12 of 2010. In looking at each of those issues, the Board found that there's no Use Variance relief contained in Local Law 12 and in addition, or outstanding is that there was no economic proof to this Board to possibly consider a Use Variance. As to whether Local Law 12 negating the Zoning Board of Appeals Decision and Order in our Zoning Board of Appeals **case #33-08**, we recite the first application of Mr. Meaney where he was found to be a Specialty Trade Contractor. We then indicate that we looked at the second case as to what constitutes demolition and distribution of "concrete aggregate" as that term was used, the second Decision and Order in this case, and that we at a Moratorium imposed by the Town Board and so we could not complete our Interpretation then but in looking at that Interpretation that the Moratorium's listed, we found "concrete aggregate" to be recycled concrete and prohibited and we prohibit crushing of virgin rock and virgin rock is crushing larger rocks into smaller pieces. Finally, we looked at Local Law 12 of 2010 as to whether it prevents the green materials application from proceeding and we recite that Local Law 12 of 2010, among other things, amended article **5**, 'table of permitted uses' section **307-14** "to reflect Specialty Trade Contractors to be allowed by Special Permit only" that's the new legislation "in the CCHC" HC zone here "HC-9A, MD and M1 zones, a Special Permit is to be issued by the Planning Board" and we also amended article **11**, section **307-4** 'definitions' to state "Specialty Trade Contractors shall be limited to the following: undertakes activities of the type that are specialized to the building industry and "do not require the processing of raw

materials.” Therefore an applicant in the HC zoning district,” as we have here “cannot apply to the Planning Board for a Special Permit for a Specialty Trade Contractor for the applicant’s activities “require the processing of raw materials” I think the case at bar. We also took a look at the 7 items of relief that we recite in the applicant’s attorney’s letter of February 4<sup>th</sup>. If you recall, at our February 15<sup>th</sup> meeting, we went through each of them and we found them to be disposed of by this Decision and Order or duplicated request that the Chairman was able to elicit from the applicant’s attorney that certain of the 7 items repeated previous items. That’s our Interpretation. Obviously, in our Decision and Order it’s longer than that but the Board has read every word so I’m not going to do so and I also indicate at the end of the proposed Decision and Order that this is a type II application under SEQRA and it consists an Interpretation of an existing Code of Rule and therefore no further compliance is required. I’d ask someone to make a motion to adopt the proposed D&O.

Mr. John Mattis stated this is my case to make a motion but I do have one question. We were working on a draft dated **4-16** and now we have another draft **4-17**, was there any change on that?

Mr. John Klarl responded there was the two spelling changes.

Mr. John Mattis asked so it really didn’t change?

Mr. John Klarl responded no.

Ms. Adrian Hunte stated I thought we were going to set off the quote.

Mr. John Klarl stated what we did, on page **3**, I don’t know if you have the more recent version, we actually delineated it – maybe you don’t have that one.

Ms. Adrian Hunte stated we don’t have it in the front.

Mr. John Mattis stated I make a motion that we approve the draft Decision and Order dated April 17<sup>th</sup> as just summarized by our attorney.

Seconded with all in favor saying "aye."

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

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**NEW PUBLIC HEARINGS:**

**B. CASE No. 2012-09**                      **Gregory Misiti** for an Area Variance for the front yard setback for a one-story addition for a bedroom and bathroom on property located at **17**

**Armstrong St., Cortlandt Manor.**

Mr. Roger Blaho stated the architect.

Mr. David Douglas stated if you could explain to us what you're seeking on behalf of your client.

Mr. Roger Blaho stated the client has about an acre of land and apparently after the house was built, the Planning Board must have set a different zoning and the requirements are for one acre but with a **50** foot front yard setback and his house is considerably less than **50** feet and I wanted to add to it and it seemed reasonable that we should be able to add to the side where he has – I forget how many feet it is, a **150** feet on that side and I wanted essentially extend the house another **20** – I forget the exact number I put down as **26** feet into this **100** foot plus side yard which I thought was a reasonable case to do, to follow the front yard setback would be kind of ridiculous. The back of his house is about **50** feet from the line.

Mr. Raymond Reber stated this is a problem that we see quite often in the Town where some years back the Town decided to, I think the term is up-zone, where a lot of these houses were built generally with a **30** or **35** foot setback and now they've asked for **40**. Again, it's an attempt by the Town to prevent people from building too big a house on a lot. As you stated, what you're proposing is to simply extend the existing house with an addition to the side that would not come any closer to the road. You still have plenty of side yard. You're not approaching any limits there so I see no problem with this. We've granted these in the past and to me this is perfectly acceptable.

Ms. Adrian Hunte stated I agree.

Mr. John Mattis stated I agree.

Mr. Wai Man Chin stated the existing house is actually built prior to zoning of **1951** so I have no problem with this either.

Mr. Charles Heady stated all the houses on that street are different Variances from the front to the road to the front of the house. They don't line up at all so we shouldn't have any problem with it. I have no problem with it.

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

Mr. Raymond Reber stated on **case 2012-09** I move to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on **case 2012-09**, application of Gregory Misiti of 17 Armstrong Street for a front yard Variance, from **50** feet down to **39.1** feet for a **10.9** foot Variance this is a type II SEQRA, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

**C. CASE No. 2012-10 Philip Boyle** for a new Special Permit for an Accessory Apartment on property located at **39 Montrose Station Rd., Cortlandt Manor.**

Mr. Philip Boyle stated I'm here before you tonight with a special application for an application for a Special Permit for an accessory apartment in my basement at my residence.

Mr. James Seirmarco stated Mr. Chairman, this seems to be quite straightforward for an accessory apartment. The comments made by the Builder Inspector's office, there are a few things that are outstanding but they'll be accomplished, I assume, when the accessory apartment is actually built. Their fresh air supply and whatever everything else is in order. It's only **402** square feet. It needs a **400** square foot minimum and it's under the **600** square foot maximum so this looks straightforward. I have no problem with this.

Mr. David Douglas asked anybody else have comments?

Mr. Wai Man Chin responded no.

Mr. John Mattis responded it meets all the criteria.

Mr. John Klarl asked you're Philip Boyle Jr.?

Mr. Philip Boyle responded yes sir.

Mr. John Klarl asked and the equally distinguished Philip Boyle Sr. is in the audience also?

Mr. Philip Boyle responded yes sir.

Mr. John Klarl asked both you and your dad made a recent application before the Planning Board for a subdivision?

Mr. Philip Boyle responded a line lot adjustment.

Mr. John Klarl stated it was lot line but based on the size it really isn't a subdivision but it is a lot line yes. You're up to the point where your dad was playing attorney and title company and trying to get his mylar filed with the County Clerk's office?

Mr. Philip Boyle responded that's correct.

Mr. John Klarl stated and I'm not sure that's achieved yet. I know it was close but has it been achieved yet?

Mr. Philip Boyle Sr. responded it's all been taken care of.

Mr. John Klarl asked it's been filed? They gave you a file...

Mr. Philip Boyle Sr. responded yes, I gave all the maps to Chris, paid the money. The taxes are paid. The mylar was signed by the Board of Health.

Mr. John Klarl stated I know you did a good job but I don't think you have it filed yet.

Mr. Philip Boyle Sr. stated I guess the only thing we're waiting for is the Board's signature.

Mr. John Klarl stated right, but until it occurs the mylar doesn't get filed yet. You're on the verge but Mr. Kehoe takes money on behalf of the Town, he doesn't take it in to file a map. You're close to getting the map filed.

Mr. Philip Boyle Sr. responded it can't get filed until you people sign it.

Mr. John Klarl stated the point is you're close to filing the map. It hasn't occurred yet but that doesn't prevent the processing of this application but I want the Board to understand that there's some new boundary lines established here not that it's going to affect the issues that were just raised. I'm sure within a month's time you'll be filing the mylar on your lot line adjustment.

Mr. Philip Boyle Sr. responded yes, because everything I could possibly do is done.

Mr. John Klarl stated right, but you could make this application without that.

Mr. Philip Boyle Sr. responded oh, I can?

Mr. John Klarl stated you had separate lots before you just adjusted the line.

Mr. Philip Boyle Sr. asked right. Are we talking about filing the map down County?

Mr. John Klarl responded exactly.

Mr. Philip Boyle Sr. responded I was told I can't – they tried that before and all the signatures have to be on the mylar.

Mr. John Klarl stated and your title company called me one late afternoon and they were trying

to file it and there were a couple of deficiencies but that's going to happen soon. But, I just wanted to point out to this Board you have two houses on two separate lots. You just adjusted a lot line recently and that doesn't prohibit the processing of this application but the Board should be aware so in the near future you should have a filed map number.

Mr. Philip Boyle Sr. stated thank you very much.

Mr. Raymond Reber stated I concur with Mr. Seirmarco on this case. I would point out that I would it noted in the Special Permit Approval that it is conditional on meeting all of the requirements under the inspection checklist.

Mr. John Klarl stated we got a couple of cryptic notes from Mr. Kehoe on some application – the County Health has signed the mylar, and he, I assume Mr. Boyle, is coming back for final approval which will be granted in June. It looks like the County Board of Health has signed your mylar and you should be having it filed in short order.

Mr. James Seirmarco asked does anybody in the audience...

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

Mr. James Seirmarco stated I make a motion on **case #2012-10** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. James Seirmarco stated I make a motion to grant the Special Permit for an Accessory Apartment located at 39 Montrose Station Road, this is a type II SEQRA no further compliance is required. In addition to that there was a worksheet provided and I assume that this will all be checked out when the actual accessory apartment is built.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

Mr. Philip Boyle stated thank you very much.

**D. CASE No. 2012-12                      Heide Mason and Susan Costigan** for an Area Variance for the front yard setback and the height of an accessory structure for a proposed new 3 car garage on property located at **597 Croton Ave., Cortlandt Manor.**

Ms. Heide Mason stated Susan Costigan's the person sitting there. This is Lois Wilhamson our architect.

Mr. David Douglas stated I apologize for mispronouncing your name.

Ms. Heide Mason stated we're seeking to build a garage on the property. There is no garage at all. There was apparently one many years ago that I was told by the prior owners, Mr. Ziegler, that it collapsed and that it was then taken down in the '90s. There's no pictures or documentation of that so that's the only information that I have regarding that. We're trying to build a three-car garage. I'm being pointed to a spot on here. The original garage was in the area where the retaining wall is. That retaining wall, my stone mason told me, is a dry set wall. There's no cement in it and it's fill so it's not virgin land. So, what we're seeking to do is put the garage a little bit forward of that which brings it closer to the road. The entrance to the garage will be on the house side, not on the road side so that there won't be cars jimmying or turning into it. I'll ask Lois to explain exactly where she wants to move the cut but it has to do with it being equidistant from the two curbs on the road for visibility purposes. I have to peek myself. So, it brings the garage a little bit closer to the road than is with the setback and also so we're avoiding that area, there's also a bunch of rock outcroppings and there's the septic system beyond those going towards the house. It's basically just a remarkably quirky spot. I took some photos. May I show you?

*Shows photos to the Board.*

Ms. Heide Mason stated you can see that there's the retaining wall then coming back off that between our house and the neighbor, which would be to the rear of the garage is almost sheer set of rock going up. I honestly didn't measure it but it's very high, like **15** feet up and then their garage which does appear, it's the tan building in the photos, is way above where we would like to put our garage. It sits on solid rock that's why theirs is so high. Theirs appears to be two levels. There's a full size door going in – this sort of tin chimney you put on a wood stove, appearing. I don't know what it's attached to, that's just what it looks like. Then we are, in terms of the size of our garage, we're trying to do a three-car garage. That's for the two of us to have two all-wheel drive vehicles and, okay I have a little sports car. The idea is obviously to be able to get the cars out of the weather, if we do get another winter again in this area.

Mr. Wai Man Chin stated that's very likely.

Ms. Heide Mason stated I hope so. I'm a skier and I got cheated this winter. We're also trying to make the garage further back towards the neighbors so it actually is not within the **30** yard minimum, it's **20** and that's simply because what's in front of it has all of the outcrops and we need the proper amount of space to backup into the existing circle and turn and go back out to the road where the cut will be. I'm just counting so that brings us within the distance of the road, a little bit closer to the side. I'm going to let Lois speak because now we're into lingo.

Ms. Lois Wilhamson stated we're also asking for relief for **40** feet for the front yard setback. In order to keep the garage, what happens is that structurally, the sub-straight is such that this is the only place that I can dig and put proper footings to support the structure. We need relief in terms of **40** feet for that. Also, I'm very proud of my clients, the nature of their job is such that they need to get out in a moment's notice. They're always on call and in inclement weather I think,

as well as you do, that this winter we're going to be getting it and they need to get out immediately which means that the Highway Department will not have a chance to plow and they need to get those cars out of there, no snow and get to work. The other thing is we're asking for relief for the height Variance. There was some question as far as the height Ordinance for accessory structures. I had originally thought it to be **14** feet to the mid-point of the gable, which it is in all the neighboring jurisdictions that I'm accustomed to working with and in doing so I had set a **9** foot plate height in order to have the proper height garage door for the type of vehicle and of apparatus that they maintain rather than the standard **8** foot plate height which would only allow me to have a **7** foot high garage door with a **12** inch header. Setting the plate at a **9** foot height and using a **9** on **12** pitch to match the same pitch as the residence – two elevations of the house. My intent was to make the garage look like, architecturally, a structure that was originally built when the house was originally built. That is why I'm using a **9** on **12** pitch. This one here, you can see that's the rear and also this one here. You could see that the residence has quite a steep pitch the way it is. It's my intent to make them match, especially in neighborhoods such as this where you have a lot of the historical type buildings and what have you.

Ms. Lois Wilhamson stated in essence, we're asking for, respectfully, for **3** Variances if you will in order to have this very needed garage. Right now there is a large problem with rodents. I don't know if you've had a problem with this like Pound Ridge and what have you, they have a tendency to nest in the cars when their warm and eat the wires. I believe you've had your car rewired twice now which is why she needs to have the three cars so that when she is called on call immediately, you need to have more than one vehicle. I know, I'm like that to, I have to have two cars so there's always one up and running. Actually, the door also is going to be set in a special type of detail and the raising of the adjacent foundation walls to lessen the likelihood of the rodents penetrating the garage and getting in and eating those wires if you will.

Mr. Wai Man Chin stated they'll still get in.

Mr. David Douglas stated I hate to tell you that you will not get rid of mice anywhere.

Ms. Heide Mason stated no, but if I can reduce it a little bit.

Mr. David Douglas stated you won't be able to. It's impossible.

Mr. Wai Man Chin stated you won't be able to, believe me. They eat through rubber. They come through the garage. They eat through everything. Believe me, they'll get in.

Mr. John Mattis stated you build a pretty compelling case however you're up against the Code where in the front yard you're looking at an **80%** Variance. You're required **50** feet and I think you heard earlier, we rarely give more than **50%** so speaking for myself – and especially since it's close to the road, that's something that I certainly couldn't support.

Ms. Heide Mason stated may I say that the brown garage that's in one of the photos which is directly across the street is two or three feet away from the road and the house that it belongs to

is up around and above.

Mr. David Douglas stated I assume that that's an old garage.

Ms. Heide Mason stated it is but in terms of changing character to the neighborhoods that one's right there and there's no house on that side so it's not...

Mr. John Mattis stated that was prior to zoning and that's allowed to stay. What the intent is, you can't expand those, you can only repair them and hopefully one day they go away but by granting you a Variance that close now you're exacerbating the problem which the Town is trying to get away from. Hopefully one day that one will disappear and then they'll all be set back further. You follow what I'm saying?

Ms. Heide Mason responded I do.

Ms. Lois Wilhamson stated there's only so much that I can slide it backwards and then I'm not going to have virgin land and we also have outcrops so it's going to be touch and go. I might be able to move it maybe another 5 feet and then I'm not on anything structurally sound anymore.

Mr. David Douglas stated in terms of the problem with outcrop, like the rodents, not to compare rocks to rodents but in this region that's what the problem is with this land. You will get outcrops. I don't live all that far from where you are and there's rock everywhere.

Ms. Heide Mason stated that's why we can't move it though not because I don't understand what you're saying.

Mr. Raymond Reber stated there's a couple of issues here, first off with rocks, there was a project that was built by Mr. Santucci, as a matter of fact my daughter bought one of the houses, before he started work there was nothing but piles of rock. We walked over it. We climbed over it. Rock can always be removed and work can be done so that's not an impossibility. But, beyond that my concern is you're talking about virgin land and non-virgin land. That also is not the end of all worlds. You can have soil compacted or have you but you admitted that there was a garage there many years ago and it disappeared so that garage was on some sort of land and virgin land doesn't last forever. I mean sooner or later it becomes stable land. I've taken your sketch here. I've taken what you're proposing and I've rotated it to overlap where the old garage was and – if you take where the old garage was and the retaining wall and you take this and you rotate it around and line it up with the retaining wall and the old garage you can pretty much fit it in here with minimum Variances. You'll give me an argument about the soil is not stable, whatever. Everything can be stabilized sooner or later. I'm saying I can see this garage being rotated, set in here and then you minimize the Variances, you encroach a little bit here, maybe a little bit here which we wouldn't have a problem with a few feet. To argue that it's impossible to put a garage there, I can't accept that. I'm sorry. I'm saying try and stay as close toward the left where the old garage was and minimize the encroachment to the right. Now, you're saying a septic system is the area...

Ms. Lois Wilhamson stated that's our septic system is currently and that's our **100%** expansion area.

Mr. Raymond Reber asked down in this area?

Ms. Lois Wilhamson responded right.

Mr. Raymond Reber asked you have no other place to go in here.

Ms. Lois Wilhamson responded no.

Mr. Raymond Reber stated I'm just trying to help because...

Ms. Heide Mason stated come look at the site. You're welcome to go look at it.

Mr. Raymond Reber stated I'm just having a lot of trouble with the idea that you're going to have a garage **10** feet off the road.

Ms. Heide Mason stated I'm told, again because there's no pictures or anything that I'm aware of, told that the original garage was a single car size. The original house, I'm told, was built as a hunting lodge over **100** years ago. I mean, we have a **10' x 10'** cistern in the basement that just is so whatever garage was there was small and collapsed at some point...so now we're talking about a supported structure and slabs and so on. It's a whole different ballgame on that wall of that area.

Mr. Raymond Reber stated the other option is maybe you can't make it as big as you want.

Mr. Wai Man Chin asked you're saying that the septic field is over past the outcrop? Where you indicate the outcropping over her? Where it says "grassy."

Ms. Lois Wilhamson responded the septic fields are – this whole area is the septic right now currently.

Mr. Wai Man Chin stated that's pretty large for a septic field.

Ms. Lois Wilhamson responded it's linear because if you look at this area beyond here, it is like a **30%** slope downwards. It's a ravine.

Mr. Wai Man Chin stated I understand that.

Ms. Lois Wilhamson stated it's very long and linear they way they had to design that.

Mr. Wai Man Chin stated you've got a flat area down below which is also part of your property.

is that correct? There's no reason why a septic can't go from here down and then down to that flat area. That's not a problem. I'm just saying.

Ms. Heide Mason stated it's **40** feet down.

Mr. Wai Man Chin stated it doesn't matter. You just have one pipe going down and then you have your septic fields down there, as your secondary fields. Your fields probably work right now but your fields could be anywhere in that area from there. What Mr. Reber is saying about moving the garage in that area where he's showing you makes more sense because it lessens the Variance in both directions. Your Variance right now is too great right now, way too great. As far as the height Variance, I mean I don't have a problem myself with the **8** and **10** pitch or whatever or **9, 12** but I'm just saying some members do and we'd like to try to stick with the **14** foot to the top of the thing but sometimes you like to have a little bit steeper slope. I feel it's better for snow coming off of it and so forth and so on.

Mr. David Douglas stated in terms of the height of the garage, I don't recall us granting something over **15** feet. Maybe we granted a little bit over **15** feet, since I've been on the Board.

Mr. Wai Man Chin stated we might have years ago but I don't remember exactly.

Mr. John Klarl stated in extraordinary cases.

Mr. James Seirmarco stated in extraordinary cases, one was already existing and there was one that was one that was **17** feet in the **10** or **15** years I've been here.

Ms. Lois Wilhamson asked is that to the peak?

Mr. Wai Man Chin responded to the peak.

Mr. Raymond Reber stated a number of us don't necessarily agree with those restrictions but unfortunately we're not allowed to give major Variances on these heights so our hands are somewhat tied and we've had the same arguments. We've had some English Tudor houses where they wanted to put a garage in with very steep pitches and we agreed with them that from an esthetic point of view it should be that way but we unfortunately don't have the freedom to grant it.

Mr. David Douglas stated I think you've heard a lot of comments from people. Would it make sense for you to confer among yourselves and think it through and we can pick this up again next month?

Ms. Heide Mason responded unless you want to change your mind. We'll give you that opportunity right now.

Mr. John Mattis stated you are very persuasive but not that persuasive.

Mr. David Douglas stated you did an excellent job and you were very persuasive. One thing that I find myself having to resist and I think to be fair, is that some people are more persuasive than others and it's not fair that we penalize people who are not as articulate. I'm bending over backwards not to be persuade the fact that you spoke so well.

Mr. John Klarl stated and we're open-minded.

Mr. Wai Man Chin stated I haven't seen the site myself but I happen to agree with Mr. Reber about where maybe where that garage should be. Stabilizing soil, that's not a big deal, that's not a big deal.

Mr. Raymond Reber stated as Mr. Wai has indicated...

Mr. Wai Man Chin stated most houses are built on virgin soil. They dig down, that's it, once you're past **4** or **5** feet that soil is very compact, believe me. I've been in your field for a long time and I built a house in Cortlandt and let me tell you, I had to actually jack hammer through ledge rock to put my foundation in. It can be done.

Mr. Raymond Reber stated the Health Department -- they have no problem with you with the auxiliary field in the back of you as long as you define an area and it's perculating and all, the fact that it's a lower elevation is never a problem. That's fine with that and that gives you flexibility.

Mr. Wai Man Chin stated I have a neighbor who has their septic field on a higher elevation and they have to pump it up and that's their secondary field also. Believe me. I've seen that in different areas, that's not a problem also. Again, I think what Mr. Reber is suggesting -- I wouldn't mind going out there and taking a look at it myself but I haven't gone out there myself.

Mr. John Mattis stated part of the legislative intent on that **14** foot height, which as Mr. Reber said, whether we agree with it or not we have to apply it. Part of the legislative intent was that they don't want a full upstairs that you could stand in. They want it small where you can maybe store things and that's all.

Ms. Lois Wilhamson stated and currently we only have less than **6** feet. I appreciate that. What is our latitude with the height?

Mr. David Douglas responded I'm not sure what it is. It's not going to be, I don't think, speak for myself and I think others, it's not going to be anywhere near **20**. I don't know if we can all agree on what the exact number is.

Mr. Raymond Reber stated I think **15** we probably would agree on. Anything beyond **15** is going to be...

Mr. John Mattis stated it might be a unanimous decision at **15** and I think you get drop offs as you go up higher than that.

Ms. Heide Mason stated the observatory is off then?

Mr. John Mattis stated for the time being.

Mr. Raymond Reber stated I don't think any of us want to hear numbers like **17** or **18** or anything like that.

Mr. John Klarl asked it sounds like the applicant and their professional want to talk about this and talk to us next time? The consensus of the Board is you want to discuss it with your client and come back to us next time with some alternate plans that can incorporate the comments that you heard tonight.

Ms. Lois Wilhamson responded yes. That's for a month?

Mr. David Douglas stated that's a month. The next meeting is on May 16<sup>th</sup> and if you do have a revised proposal if you could get it to Mr. Hoch at least a week in advance so that we can look it over and think it through and we have our work sessions on Mondays.

Mr. John Mattis asked anybody in the audience? On **case #2012-12** I move that we adjourn it to the May meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case 2012-12** is adjourned to the next meeting.

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### **ADJOURNMENT**

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

Seconded with all in favor saying "aye."

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**NEXT MEETING DATE:  
WEDNESDAY MAY 16, 2012**