

TOWN OF CORTLANDT
PLANNING AND ZONING BOARDS

ZONING BOARD MEETING

1 Heady Street
Cortlandt Manor, New York 10567

October 19, 2023

7:00 p.m. - 7:35 p.m.

October 19, 2023

MEMBERS PRESENT:

Michael Fleming, Chairman

Wai Man Chin, Vice-Chairman

Chris Beloff, Member

Frank Franco, Member

Michelle Piccolo Hill, Member

Benito Martinez, Member

Tom Walsh, Member

ALSO PRESENT:

Chris Kehoe, AICP, Director of Planning

Michael Cunningham, Deputy Town Attorney

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2 (The board meeting commenced at 7:00 p.m.)

3 MR. MICHAEL FLEMING: All right, I would
4 like to call to order the October 18th, oh sorry,
5 October 19, 2023 meeting of the town of
6 Cortlandt's Zoning Board of Appeals. I'd like to
7 start the meeting by inviting everyone to join me
8 doing the Pledge of Allegiance.

9 MULTIPLE: I pledge allegiance to the
10 flag of the United States of America and to the
11 Republic for which it stands, one nation under
12 God, indivisible, with liberty and justice for
13 all.

14 MR. FLEMING: Can we do a roll call,
15 please?

16 MR. CHRIS KEHOE: Ms. Piccolo Hill?

17 MS. MICHELLE PICCOLO HILL: Here.

18 MR. KEHOE: Mr. Martinez.

19 MR. BENITO MARTINEZ: Here.

20 MR. KEHOE: Mr. Franco?

21 MR. FRANK FRANCO: Here.

22 MR. KEHOE: Mr. Fleming?

23 MR. FLEMING: Here.

24 MR. KEHOE: Mr. Chin?

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2 MR. WAI MAN CHIN: Here.

3 MR. KEHOE: Mr. Walsh?

4 MR. THOMAS: Here.

5 MR. KEHOE: Mr. Beloff?

6 MR. CHRIS BELOFF: Here.

7 MR. FLEMING: All right, before we move
8 to the current matters, before us, I'd like to
9 have a motion to adopt the meeting minutes from
10 the September 28th, 2023 meeting.

11 MR. CHIN: There's only one question,
12 one thing I want to make a correction on it.

13 MR. FLEMING: Okay.

14 MR. CHIN: It was the seconding of the
15 minute of, of the hotel, you asked -- it wasn't
16 you who seconded? It was Mr. Martinez who
17 seconded. You asked for a second, but they wrote
18 out that you seconded also, you know what I mean?

19 MR. FLEMING: I understand.

20 MR. CHIN: So it should be read that it
21 should be read that you asked for a second. Not
22 second.

23 MR. FLEMING: Alright.

24 MR. KEHOE: I'll, I'll find that.

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2 MR. CHIN: Okay.

3 MR. FLEMING: Can we find that and make
4 the correction to the minutes?

5 MR. CHIN: That's the only correction I
6 saw on the whole thing.

7 MR. FLEMING: Where that is it -- will
8 it I, because I did not second that, I called for
9 a second.

10 MR. CHIN: Yes, you called for a second.

11 MR. FLEMING: And Mr. Martinez gave a
12 second.

13 MR. MARTINEZ: That is correct, yes.

14 MR. FLEMING: And then we approved.

15 Thank you for --

16 MR. CHIN: You're welcome.

17 MR. FLEMING: -- for noting that
18 correction.

19 MR. MICHAEL CUNNINGHAM: So you, you can
20 approve them as amended.

21 MR. CHIN: Okay.

22 MR. FLEMING: So with that amendment in
23 mind, can I have a motion to approve the minutes
24 as amended?

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2 MR. FRANCO: So moved.

3 MR. CHIN: Second.

4 MR. FLEMING: All in favor?

5 MULTIPLE: Aye.

6 MR. FLEMING: No opposition, so
7 unanimously approved as amended. All right,
8 today, we have one case on the board and Mr.
9 Walsh is presenting that one. So I will turn this
10 over to Mr. Walsh.

11 MR. WALSH: All right, case number 2023-
12 4 for David Fornelos at 12 Crestview Avenue for a
13 area variance, multiple area variances, maximum
14 dwelling coverage variance. Somebody from the
15 applicant would like to speak?

16 MR. JOSHUA SUBIN: Yes. Thank you, Mr.
17 Walsh, Chairman Fleming, esteemed town attorney,
18 Mr. Cunningham. I overheard what was discussed in
19 the work session. I would like to first apologize
20 for two errors that were in my letter. One
21 regarding the interpolation number, I believe
22 whether it's rounded up or rounded down we, we,
23 we would've liked to have gotten that number
24 correct.

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2 MR. CHIN: One, one thing.

3 MR. WALSH: Introduce yourself.

4 MR. CHIN: Can you introduce yourself?

5 MR. SUBIN: Oh, I'm sorry.

6 MR. CHIN: We know you, but --

7 MR. SUBIN: Too, too familiar. Joshua
8 Subin from McCarthy Fingar representing the
9 applicant.

10 MR. WALSH: Thank You.

11 MR. CHIN: Thank you.

12 MR. SUBIN: So as I was saying, there
13 was the error about interpolation. And there was
14 also the error in regards to the, the lot size,
15 which I had stated that it was 1,184 square feet.
16 It was, it's 1,186.4. So, I apologize for those
17 two errors.

18 Having heard your intention to, I
19 believe vote on all of the variances individually
20 and understanding where you are, I would like to
21 just concentrate on the one that may be having a
22 difficulty before this board, which is in regards
23 to the gazebo and the, the, the accessory
24 coverage.

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2 The argument that I would make, and I
3 would hope you understand, is that we are coming
4 to an accommodation because of the positioning of
5 this house being askew to its lot. It does not
6 accommodate a garage naturally. There's an
7 existing back porch, which is already giving
8 calculation issues to this to this application,
9 which we're not seeking an interpretation and
10 we're not arguing with anything in regards to
11 that, but would mitigate in fact in, in, in favor
12 of leniency here. Given that there is not a, a
13 significant amount of space for the garage and,
14 and with it in terms of Edgewood Road,
15 positioning the shed in the backyard is -- it's
16 taking the space of that area. And if that was a
17 normal attached garage, one, the dwelling
18 coverage calculation would be different, the back
19 porch would be different and he would easily fit
20 this within the, the, the accessory structure
21 coverage.

22 So he's [unintelligible] [00:04:52] in,
23 by coming to the accommodation of not being able
24 to have a garage, he's now losing the ability to

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2 have a gazebo, all of which is really designed to
3 have his high school aged children and his grade
4 school aged children stay in the backyard, have
5 fun with, with their, with the family, and be at
6 home.

7 So if, given the five factors, I would
8 suggest that these are, that you might be able to
9 grant a little bit more substantial variance than
10 you would because the other four, the other four
11 factors would definitely mitigate in favor of
12 this applicant. If you'd like me to go through
13 them, I can, but I did so in my letter, which is
14 already in the record.

15 MR. WALSH: You you're welcome to go
16 through them again if you want. We did all read
17 your letter though, so if you want to stand by
18 it, that's fine. But if you feel the need to
19 address them again, you're welcome to.

20 MR. SUBIN: I trust that this board has
21 read it and carefully considered it. And if we
22 cannot move forward with gazebo, we understand,
23 but we would like the court -- the, the, this,
24 this esteemed body, this honorable zoning board

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2 to just consider that a little bit extra while it
3 votes.

4 MR. FLEMING: Alright, well just I'll
5 say starting off, we did decide just because of
6 the nature of this, we are going, instead of
7 considering the, the application as one request,
8 we are going to consider it as four, one for the
9 side and the front variance, one for the total
10 dwelling and then one for the total area. And,
11 and the, the dwelling coverage and one and two,
12 the side extension and the front extension are
13 kind of integral to each other since the variance
14 is to go a foot over on the side and 2.8 feet in
15 the front are to allow the dwelling itself to be
16 expanded. So they're kind of all tied up into one
17 anyway.

18 But nonetheless, we're going to consider
19 them four different variances as we address them,
20 but I would like to turn it over, you know, Tom
21 definitely is presenting, so he gets to go first
22 if any questions, comments anything you want to
23 say?

24 MR. WALSH: The question I have is the

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2 pool dimension, you know, listed the existing on
3 the existing plan 676 square feet, on proposed
4 plan it's only 402. Can you just give a
5 clarification on what, how you come up with those
6 two different dimensions?

7 MR. SUBIN: I'm gonna confer with Mr.
8 Lentini, but and he will correct me if I'm in
9 wrong on this. But I believe that the original
10 number was a holdover from decking that was
11 unfortunately carried over into this plan. And
12 that decking was never proposed before this
13 board. And so that the current number is the
14 accurate number. Is that correct, John?

15 MR. JOHN LENTINI: Yes, that's correct.

16 MR. WALSH: So the existing is 402 and
17 so on the plan, it's just incorrect, okay, for
18 the existing plan. You know, as I run through the
19 five factors myself and each individual request
20 for relief, you know, the side, the side yard
21 setback, ten feet is required, nine feet
22 proposed. You know, as I stated back in, you
23 know, this first hearing I had, I had no problem
24 with, with granting that. I don't find it

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2 undesirable change. The benefits sought by the
3 applicant could be some other method, I don't
4 think -- I don't have a problem with them putting
5 it on that side of the house. I think we, we've
6 talked about it as a, as a board requiring some
7 sort of screening, whether it's I think a fence,
8 the maximum height permitted fence, two feet from
9 the property line would be one of the
10 requirements that we've discussed that
11 [unintelligible] [00:08:09] question.

12 MR. SUBIN: The applicant would like to
13 request that since there is an existing fence,
14 that the fence stay in line with that current
15 fence, so that footings don't need to be removed
16 and replaced. But he's more than, we are happy
17 with that condition being in the approval. But
18 that is just a request.

19 MR. WALSH: Is the fence on the property
20 line right now or is it set back from the
21 property?

22 MR. SUBIN: It, I think it's a foot off
23 the property line, correct? So it's one foot off
24 the property line as existing. If you require

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2 two, it becomes problematic.

3 MR. WALSH: So, so here's the problem
4 with that and it becomes one of the requirements
5 we're going to condition the approval on that is
6 maintenance of that fence. And I'm not really
7 sure it's physically possible to maintain a fence
8 regardless of what it is, even if you're just
9 power washing it because it's a PVC or other
10 plastic type material, having a foot to work with
11 it becomes difficult.

12 The, the neighbor that you're talking
13 about was one of the most vocal opponents to
14 pretty much all of the applicant's proposals. I
15 understand there's some, you know, grief between
16 these two neighbors. By granting the fence, which
17 is in part to, to help her concerns, alleviate
18 some of her concerns, but putting an obligation
19 to maintain it on the applicant, I'm not sure how
20 we could do that. We certainly can't grant you
21 permission to trespass on her property.

22 MR. SUBIN: That's absolutely true.

23 MR. WALSH: So it becomes somewhat
24 problematic and that's why the two foot number

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2 was raised.

3 MR. SUBIN: How, what if we were to
4 reach out to the neighbor, as you're drafting
5 this, the, the approval and see if they would
6 prefer a seamless fence going down as opposed to
7 a stagger, because I think it would probably be
8 more aesthetically pleasing to the neighbor as
9 well. So if the neighbor agreed to the one foot
10 fence, would that allay some of the concerns of
11 the, of the board?

12 MR. FLEMING: Anybody, anybody have a
13 problem with that?

14 MR. WALSH: I don't have a problem.

15 MR. BELOFF: No, I don't have a problem
16 with that.

17 MR. FLEMING: I, I'd be okay with that,
18 yes.

19 MR. SUBIN: Okay.

20 MR. WALSH: Okay. You know, regarding
21 through the rest of the you know, the five
22 factors for each one of these, the variance you
23 know, it's a 10 percent variance, I don't think
24 it's substantial for the one foot, proposed

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2 variance have an adverse effect. We've hit on
3 that with the neighbor is the adverse effect. Is
4 self-created -- we, that's the factor that's
5 everything is self-created for this.

6 Second request, the 2.8 foot variance
7 for the front yard, going through the same
8 factors I have, you know, it's not an undesirable
9 change in my opinion. The applicant could achieve
10 some other method, I think that where they're
11 proposing it is not -- is fine for me. Request
12 substantial, again, it's only, it's a 10 percent
13 request. So I don't feel it as substantial, and
14 it is self-created.

15 The third request for the accessory
16 structure, they're asking for 700 -- permitted to
17 725 square feet. They're requesting 866, which is
18 a 19 percent request. I do find that, you know,
19 an undesirable change to the neighborhood. It can
20 be achieved -- I guess it cannot be achieved
21 because it's, you're requesting a variance over
22 the allowable. I'm requesting, you know, to
23 remove that gazebo. And if you remove the gazebo
24 from the request, it actually brings it down to

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2 722 square feet, which would be underneath the
3 required allowance and the variance would not be
4 required.

5 The fourth request is the max dwelling
6 coverage. You're looking again for 19 percent
7 request, 1,755 is allowed, 2090 is proposed. My
8 thought is behind, you know, granting variance
9 one and two for the variance for the setback
10 requirements is essentially paving the way for
11 granting this additional square footage for the
12 home. As I go through the five factors in each
13 one of these, I don't believe it is an
14 undesirable change in the neighborhood, because I
15 think what they're building and proposing does
16 look nice for myself. Benefit sought by the
17 applicant can be achieved by another method. I
18 don't believe it's -- I don't believe that is a,
19 you know, a substantial change or effect to the
20 neighborhood. And again, that hits factor three.
21 And I don't feel it's an adverse impact with this
22 request.

23 So variances one, two, and four I am,
24 I'm in favor of. Its variance three that I'll be

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2 on record that I will not be in favor of that.

3 That's, that's my, my comments on this.

4 MR. FLEMING: Chris, either of you guys
5 have any comments?

6 MR. BELOFF: No, I'm good.

7 MR. FLEMING: Wei, do you have anything?

8 MR. CHIN: No, I -- I agree with Tom on
9 that. I think the, the coverage is a little bit
10 large and I, I think you, you, you're covering a
11 lot already. Alright. And either that, you know,
12 you leave the gazebo, then you got to take out
13 the black top in the front, which I don't think
14 he will rather do. He'd rather park his car there
15 because he's eliminating his garage. Is that
16 correct? You know, so --

17 MR. SUBIN: Yes, it's not in the current
18 application.

19 MR. CHIN: I would think that he still
20 wants to blacktop that area. So to me, take out
21 the gazebo would be the best choice.

22 MR. FLEMING: Michelle?

23 MR. FRANCO: Yeah.

24 MR. FLEMING: Oh, sorry Frank, go ahead.

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2 MR. FRANCO: Sorry.

3 MR. FLEMING: No, go.

4 MS. PICCOLO HILL: No, you can go first.

5 MR. FRANCO: Oh, I, I was just going
6 say, I pretty much agree with the comments
7 already made. I'm not going to say them again,
8 but I feel that given the size of the property,
9 that there's just a lot of coverage and I think
10 the gazebo suggestion is a good compromise on
11 that, so.

12 MR. FLEMING: Michelle?

13 MS. PICCOLO HILL: You know, I have no
14 problem with one, two, or four. My concern is --

15 MR. KEHOE: Oh, Michelle, you need to
16 use your microphone.

17 MS. PICCOLO HILL: Oh, sorry, sorry. I -
18 - my concern is the gazebo again. It just, you're
19 covering a lot of different things on your
20 property. So if you were to, and I, you know,
21 this would be totally up to you, if you wanted to
22 shift how you wanted to deal with things. As they
23 were mentioning change the amount of blacktop
24 that you're having, or shift the gazebo, shift

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2 the gravel, in lieu of the gazebo or something of
3 that nature, I'd be more open to it. But right
4 now my concern is that there's just too much
5 coverage. There's too much.

6 MR. SUBIN: Understood. We're, we're --

7 MR. FLEMING: So, well, let, let, let us
8 -- we'll let you speak once we all finish, so.

9 MR. MARTINEZ: Yeah, no, I would just
10 will let, I would just like to hear from, from
11 him if it's anything that he has in mind about it
12 to see whether that he can deal with before we
13 make the decision on that, because we have no
14 problem with any --

15 MR. SUBIN: Mr. Fornelos?

16 MR. MARTINEZ: Yeah.

17 MR. FLEMING: Before you speak though, I
18 just, just to give you my kind of just overall
19 thoughts, and it mirrors somewhat what's been
20 said, but I don't think anyone's actually said
21 that the town passed the, I'm going to call it
22 the total area requirements for a reason. We
23 don't want lots to be essentially completely
24 covered. And when I look at this, I see a lot

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2 which isn't just completely covered, it's
3 completely covered and designed in such a way
4 which the only areas that are not going to be
5 covered are really areas for ingress or egress to
6 the various structures that you're building. And,
7 and that's why the, the request you're making is
8 so large.

9 You, you're covering a significant
10 portion, more so than honestly any, any other lot
11 I've seen in our town will be covered with
12 various structures. Now, I understand the concept
13 of you wanted to build a big garage and that
14 would've changed the factors. But the coverage
15 had nothing whatsoever to do with the fact that
16 that garage was so tall and so big that the board
17 felt it was not something we were ever going to
18 approve. So you had to adjust. And I understand
19 that.

20 I don't think you're going to get an
21 approval on a 19 percent increase in the, in the
22 total coverage. We're certainly willing to listen
23 to you. But it sounds like the board is pretty
24 unanimously on that, on that issue.

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2 You do have options. You know, removing
3 the gazebo or, or changing the size of some of
4 the other structures, so you have options you
5 could work with. But, but the concern is there
6 for a reason. It, it's, it's -- it's not just a,
7 well, I couldn't build a garage, so I had to do
8 this. You didn't have to do this. It's what you
9 want to do.

10 MR. SUBIN: I, I completely understand
11 the board's issues on substantiality in
12 regards to the gazebo. I think there were
13 mitigating factors. I've addressed them. If the
14 gazebos not part of this -- is not going get
15 approved, we're fine with that. We'll make do
16 with what we have to do. It's, it's otherwise
17 compliant without the gazebo. We can lose the
18 gazebo if that's the case.

19 MR. FLEMING: Well, and that's --

20 MR. SUBIN: I've made the case for, I I,
21 I've made the case for --

22 MR. FLEMING: It's up to you though. I
23 mean, the concept is if we deny your request for
24 the third variance, if you were to build a

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2 gazebo, obviously you'd be out of compliance. If
3 you come up with some other way to just get the
4 number under the, the allowed I think you'd be
5 fine. So you have, so I mean the, the concept of
6 the gazebo really was Mr. Walsh saying, hey, this
7 is a good idea, because if you take those 148
8 square feet or whatever it was out, you're under.
9 You don't even need a, you don't even need a
10 variance then. So, but that's where the number
11 came from. It was just purely him saying, this
12 math just happens to work out for you. You don't
13 have to take the gazebo. There are other things
14 you can do.

15 No, I mean, it was identified as such in
16 my letter to, to, to this board because of that
17 very reason. It was identified for the fact that
18 you now have a shed that's occupying a certain
19 amount of space that you -- that required storage
20 is needed because of the flooding issue and the
21 curbing issue that, that adjoins the Crestview
22 block.

23 And so those, those were the factors
24 that were definitely in our favor. And just

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2 making another point, just because I do know some
3 of how this board thinks, and I've consulted with
4 counsels and related issues. When it comes to
5 self-created issues, due diligence is generally
6 what you're looking for. It's not whether you're
7 creating something and that's therefore a
8 problem. It's, has the applicant shown that they
9 did the due diligence when they bought the house,
10 did they do an inspection or are they commercial
11 in nature? Have they then looked at all of the
12 other financing aspects of whatever they were
13 going into? Did they create this problem by
14 getting into the problem?

15 I don't think the applicant here has
16 done that. I think the application -- the
17 applicant here is dealing with replacing sump
18 pumps and having problems with his basement and
19 flooding. And unfortunately, his neighbor has put
20 him in a light where he doesn't feel that he's
21 accurately represented. So he's really trying to
22 mitigate a problem that is structural with his
23 house that he didn't know about. And so I would
24 say that the fifth factor would be in his favor.

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2 That being said, we're not going to hold this up
3 over a gazebo.

4 MR. FLEMING: I'll tell you too, I don't
5 think any member of this board has ever allowed
6 the fifth factor to guide them in denying a
7 request.

8 MS. SUBIN: Got you.

9 MR. FLEMING: I'm of the opinion that
10 just about every fact pattern that's ever been
11 presented to me was self-created. But that's,
12 that's what we're here for. We're, we're here to
13 listen to residents who want to do something more
14 than they're legally allowed to do, so it's
15 always self-created to me, with some minor
16 exceptions. I'm sure you, you and I could come up
17 with ones that wouldn't be hypothetically, but
18 I've never seen one. So, so the fifth factor, you
19 know, although I think we all would agree it is
20 self-created, I also think we would all
21 universally agree that would not be a factor in
22 causing us to deny it. It really is the actual
23 practical implication of --

24 MR. SUBIN: Sure.

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2 MR. FLEMING: -- of such a large amount
3 of, of area coverage.

4 MR. SUBIN: Understood. You're looking
5 at a site plan, you see too much area coverage.
6 You think it's too substantial. That's fine.

7 MR. FLEMING: Yeah. So, alright.

8 MR. WALSH: Anybody else from the public
9 want to --

10 MR. SUBIN: Do you, do you still want to
11 hear from Mr. Fornelos?

12 MR. FLEMING: I'm sorry, I did interrupt
13 you and, and absolutely we did, so please.

14 MR. DAVID FORNELOS: Well, I, this is --

15 MR. CHIN: What was your question,
16 Benito?

17 MR. MARTINEZ: No, no, to see how we
18 feel about what we've --

19 MS. PICCOLO HILL: Shifting the gazebo.

20 MR. MARTINEZ: Yeah.

21 MR. SUBIN: This is the accessory
22 structure, which we could, you could finagle, you
23 could move, eliminate gravel, you could do
24 different things.

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2 MR. FORNELOS: Right.

3 MR. SUBIN: So you, you'll just have to
4 be zoning compliant.

5 MR. FORNELOS: I'm just confused because
6 -- I, I'm a little confused because the gravel
7 pertains to, and pavement pertains to landscape
8 coverage, correct?

9 MR. WALSH: Yeah, not accessory
10 structure.

11 MR. FORNELOS: Right, not accessory
12 structure.

13 MR. WALSH: So it doesn't matter --

14 MR. FORNELOS: So regardless of what I
15 do with a gazebo, where I place it at this point,
16 it's, --

17 MR. WALSH: It's still going to be --

18 MR. FORNELOS: It's irrelevant.

19 MR. WALSH: It's still going be over
20 that [unintelligible] [00:20:44].

21 MR. FORNELOS: So I'm fine with
22 eliminating it altogether to stay in compliance.
23 It's definitely something that, you know, it's
24 for an area to grill.

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2 MR. FLEMING: Okay.

3 MR. FORNELOS: So it'd be nice to be
4 able to go outside and grill with the kids and
5 make our pizzas and stuff like that, but -- even
6 when it rains. I don't want to do that underneath
7 the covered porch area, because it's, I feel it's
8 too close to the house. But you know, the gazebo
9 would be a -- it's a nonflammable metal aluminum
10 structure, that's not -- technically you can, you
11 can move it around. But I have no problems with
12 eliminating it.

13 MR. MARTINEZ: Okay. That was --

14 MR. FORNELOS: [unintelligible]
15 [00:21:24].

16 MR. MARTINEZ: -- that answers the
17 question, yeah.

18 MR. CUNNINGHAM: So to me it seems like
19 just to summarize, it seems like the board's
20 actually ready to vote on the three other
21 variances and I think there's just really one
22 issue that's hanging out there and that's the
23 fence. So for me, at least what I heard it
24 sounded like there are three potential options

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2 with the fence floating out there. One of them is
3 to move the fence, have the whole fence that it,
4 that abuts that neighbor's property be two feet
5 away, be two feet off the property line.

6 MR. KEHOE: And, and it's on the screen
7 now, right.

8 MR. CUNNINGHAM: Right.

9 MR. KEHOE: So that fence exists all
10 along there, but doesn't continue further down
11 where the new addition is proposed, correct?

12 MR. FLEMING: Yes. And it stops at the
13 house line, right.

14 MR. FORNELOS: It's, it's one foot from
15 the property line and just to --

16 MR. FLEMING: No, the, the run.

17 MR. FORNELOS: -- all the way up to
18 where it stops in the front yard.

19 MR. FLEMING: The run, the run starts,
20 the run starts the back corner your property.

21 MR. FORNELOS: It, it stops at the back
22 of the house.

23 MR. KEHOE: Right.

24 MR. FLEMING: Okay.

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2 MR. FORNELOS: And returns to the back
3 of the house.

4 MR. FLEMING: Right.

5 MR. FORNELOS: And I have no problem,
6 like I stated before, when this was brought up,
7 to extend that to the front of the house.

8 MR. FLEMING: To the front of the house,
9 yeah.

10 MR. FORNELOS: Correct.

11 MR. WALSH: Front porch.

12 MR. FLEMING: It'd be where the porch
13 stops.

14 MR. FORNELOS: I have no problem doing
15 that whatsoever.

16 MR. KEHOE: But, but if you, if you're
17 going, if you're going have to extend it,
18 correct.

19 MR. FORNELOS: I'm going to --

20 MR. KEHOE: Could you jog it in a foot,
21 and then extend it?

22 MR. FORNELOS: Currently footings and
23 yeah --

24 MR. SUBIN: That was what, that was the

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2 compromise that I proposed where if we could get
3 the, the neighbor to agree them to the one foot,
4 which would probably be a more aesthetically
5 pleasing.

6 MR. KEHOE: Well, no, I would say if
7 that existing fence now is one foot off the
8 property line --

9 MR. FORNELOS: It is.

10 MR. KEHOE: Then I don't think the board
11 wants that entire fence moved in another foot.
12 They would only want the new addition to be two
13 feet in.

14 MR. WALSH: If, well, I mean if, if the
15 whole thing could easily be moved, I think the
16 board would prefer in fact to have the entire
17 thing moved two feet. But I, but, but listening
18 to the applicant's comments that, you know,
19 moving footings on, I'm just looking there. But
20 this, it's, it's over, it's over a dozen.

21 MR. FRANCO: As of right, I mean --

22 MR. WALSH: Right.

23 MR. FRANCO: It's built as of right.

24 MR. FLEMING: We're not talking about

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2 doing that then. So the question would become,
3 the question will become butting in for the new
4 fence that he'd have to extend for the length of
5 the house, an extra foot in.

6 MR. KEHOE: Right.

7 MR. FLEMING: Or if the neighbor would
8 agree to just have a straight line for the
9 entirety of the fence and that she'd be okay with
10 him upkeeping the fence with only one foot, which
11 would almost by definition require him to
12 occasionally trespass on her property in order to
13 upkeep the, the fence.

14 MR. KEHOE: But I think, alright, I
15 interrupted Mike, because I think what you're
16 getting at is that's going to not allow this to
17 be adopted tonight probably.

18 MR. CUNNINGHAM: Right, right. So then
19 this won't get a vote tonight. If that's what --

20 MR. KEHOE: If, if you need to go back
21 and negotiate --

22 MR. CUNNINGHAM: If you need go back to
23 your neighbor, this is not going get voted on
24 tonight.

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2 MR. SUBIN: Oh, so we, we, we couldn't -
3 - it couldn't be a condition either way? Like it
4 couldn't be phrased conditionally where if, if,
5 if -- because, because this just the site plan
6 wouldn't other, the fence is built as of right.
7 The site plan and what we're talking about is a
8 mitigation measure that's designed to shield the
9 expansion area from, from views. So this is all
10 for that neighbor. So if, if, if the neighbor's
11 okay with one foot, I think it could be written
12 conditionally, whereas if the neighbor's not okay
13 with it, we'll go to two foot, whatever we want.
14 I just think it's more --

15 MR. CUNNINGHAM: So I think there are a
16 lot of variable -- I, I just want to finish I
17 think a few scenarios that I think will maybe
18 help clarify things on a few paths forward, if,
19 if I can, if I may. So I think one potential
20 option then, just based on what I'm hearing is
21 you could also just condition -- you, because
22 we've never had it before where you approve
23 something and then you're waiting for a response
24 from a neighbor. And that's how the building

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2 department's going to enforce this, that it's
3 never, to me --

4 MR. WALSH: And I think, and I think
5 that would be problematic.

6 MR. CHIN: Yeah, we cannot do that.

7 MR. CUNNINGHAM: It, it seems to be a
8 strange --

9 MR. FLEMING: Yeah.

10 MR. CUNNINGHAM: So, yeah, if you'll
11 just let me finish with, with a point. So then if
12 you allowed him just to finish the fence on the
13 current one -- currently one feet off the
14 property line, another potential option is then
15 when the fence does need to be replaced, it has
16 to be moved in two, the whole side would've to
17 move two feet off the property line.

18 MR. FLEMING: Okay.

19 MR. SUBIN: We could do that where if we
20 allow us to build one foot on the property line,
21 but if it needs to be replaced at some point,
22 we'll move it to two.

23 MR. CUNNINGHAM: Then, it'll -- the
24 whole side of that fence will be moved in another

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2 foot.

3 MS. PICCOLO HILL: How do we maintain it
4 now?

5 MR. FORNELOS: So I was going to get to
6 that. I'm currently in the process of maintaining
7 it. My neighbor at 14 Crestview has come to me
8 and asked if she can service her trees from my
9 side of the property. And I more than definitely
10 absolutely allowed her to come onto the property,
11 have her workers do what they have to do. I
12 brought them water, I did whatever I could
13 because she was dealing with an existing issue
14 that she's had for a while that has been causing
15 a lot of debris and issues on my property. So I
16 was more than willing to allow that. I'm
17 currently in the middle of water treating,
18 waterproofing the fence. And she has allowed me
19 to service the fence, like currently this week,
20 that's what I've been doing. He got mad at me.

21 MR. SUBIN: I told him don't do anything
22 on the property while there's anything going on
23 before the ZBA.

24 MS. PICCOLO HILL: And this the same

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2 neighbor --

3 MR. FORNELOS: It's the same neighbor.

4 MS. PICCOLO HILL: It's the same
5 neighbor.

6 MR. FLEMING: So what this does though,
7 so if we approve this with a one foot setback,
8 the problem is it's going to still require, the
9 condition would still be you're required to
10 maintain it. If at some point your relationship
11 with her changes so that you are unable to go on
12 her property to maintain the fence that doesn't
13 remove your obligation to maintain it, it would
14 be significantly more costly for you to have to
15 take the fence down, maintain it, put it back up
16 from your side of the property.

17 MR. FORNELOS: Right.

18 MR. FLEMING: That's what you'd be
19 taking on, this obligation that it it's going to
20 have --

21 MR. FORNELOS: I'm, I'm more than happy
22 to take on the obligation to move the fence if it
23 needs to be replaced at any point 100 percent.

24 MR. FLEMING: Alright, so with that

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2 said, I think what we could do is we could agree
3 to a one foot off the property line conditional
4 approval so that your, your approval for your
5 side variance is conditioned upon you extending
6 the fence and maintaining it for the life of --
7 the lifetime that you own the property. And one
8 foot is okay, but that includes your desire --
9 your, your obligation to legally maintain the
10 fence, so that if you're trespassed off of her
11 property, you still have to maintain the fence.
12 And that if that increases the cost of you to
13 maintain it, if that requires you to literally
14 take sections of the fence down, treat it, and
15 then put it back up, that cost is going be on
16 you.

17 MR. FORNELOS: I never thought about
18 that?

19 MR. FLEMING: What's that?

20 MR. FORNELOS: I never thought about
21 that.

22 MR. SUBIN: He wants to now do that.

23 MR. FORNELOS: I could, I could 100
24 percent do that. That's so easy.

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2 MR. FLEMING: That's your call.

3 MR. SUBIN: Chairman, you are -- just
4 please don't encourage him. [laughter]

5 MR. FLEMING: So anyway, so there, there
6 it goes. I mean, so I'm, I'm -- in light of that,
7 I'm happy to --

8 MR. FORNELOS: I did, I did build the
9 fence as removable panels.

10 MR. FLEMING: It looked like it was.

11 MR. FORNELOS: So that's not an issue
12 whatsoever.

13 MR. FLEMING: If, if, if -- so I think
14 what we'll do then is we will condition the
15 approval on a one foot off the property line
16 fence running from the, the, the allowable start,
17 which is the front of your house once completed.

18 MR. KEHOE: Well that's what I want to
19 double check, right. On the screen, the little
20 x's there show the fence going all the way to
21 where the add- -- where the addition is.

22 MR. FORNELOS: But currently, it stops
23 at the back of the house.

24 MR. KEHOE: Right.

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2 MR. FORNELOS: I added, I had John add
3 those x's to show --

4 MR. KEHOE: Right. So that's, that's
5 good.

6 MR. FORNELOS: Based off of our last --

7 MR. FLEMING: And, and those x's on that
8 slide, that, that reflects what we're talking
9 about?

10 MR. FORNELOS: Correct.

11 MR. FLEMING: Because you're not allowed
12 to have a fence past the front of your house, or
13 you can, but it can only be three feet or
14 something like that.

15 MR. FORNELOS: Three feet, correct.

16 MR. CHIN: Right, right now that fence,
17 that x mark on the top of the screen right there
18 --

19 MR. FORNELOS: Mm-hmm.

20 MR. CHIN: -- is your fence that we just
21 saw on the other --

22 MR. FLEMING: Yeah, but no, it stops
23 right around where it says the number three, I
24 mean ballpark right around there.

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2 MR. FORNELOS: Where it says stair 37
3 square foot, it stops --

4 MR. FLEMING: The fence at.

5 MR. CHIN: Oh, it stops right there?

6 MR. FRANCO: At the back of the house,
7 the existing fence, it stops there. He wants to
8 add.

9 MR. FLEMING: And that's the extension
10 that we're talking about.

11 MR. CHIN: Oh, okay. So now you want, so
12 you want to add that fence to the front of the
13 house or the front of -- before and not all the
14 way to Crestwood?

15 MR. KEHOE: Yeah. I just want to make
16 sure it's not going all the way.

17 MR. FLEMING: You can, you have to stop
18 an eight foot fence at the house -- at the house
19 line. Past that, is it three feet or four feet?
20 There's a height --

21 MR. FORNELOS: Three feet limit.

22 MR. FLEMING: Three Feet?

23 MR. FORNELOS: 36 inches, yeah.

24 MR. FLEMING: There's a height limit and

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2 it's significantly [unintelligible] [00:29:14] --

3 MR. CHIN: Right, right, right. Okay.
4 Okay. So what, what I'm saying is that okay,
5 we're talking about maybe what --

6 MR. FLEMING: It's the length of the
7 house, whatever that --

8 MR. CHIN: Yeah, it's not -- I'm saying
9 I don't know, how many, how many linear feet?
10 That's not --

11 MR. FORNELOS: That's a total linear
12 footage of --

13 MR. SUBIN: Approximately.

14 MR. FLEMING: 48 feet?

15 MR. CHIN: Well --

16 MR. FORNELOS: I want to say 27 foot.

17 MR. FLEMING: 27 foot?

18 MR. CHIN: Yeah, 10, 15, 20 -- 20
19 something feet.

20 MR. FLEMING: Are they, are they eight
21 foot sections?

22 MR. CHIN: A 20-something foot overall
23 20, 26 or seven foot? I'm mean, give or take from
24 where it stops right now --

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2 MR. FORNELOS: Correct.

3 MR. CHIN: -- towards that --

4 MR. FORNELOS: Correct.

5 MR. CHIN: -- that portion right there.

6 So, you know, are you going do the same type of
7 fencing, step it as it goes up the hill or --

8 MR. FORNELOS: Well, ironically there
9 it's much more level. There is a --

10 MR. CHIN: More, much more level, so it
11 will be --

12 MR. FORNELOS: There is a slight pitch -
13 -

14 MR. CHIN: -- just straight across?

15 MR. FORNELOS: -- which does not help me
16 because the water's coming from the street --

17 MR. CHIN: Right.

18 MR. FORNELOS: -- and into my backyard.

19 MR. CHIN: Right.

20 MR. FORNELOS: But, it'll probably take
21 one step up at one point.

22 MR. CHIN: Okay.

23 MR. FORNELOS: Just to follow grade, but
24 I'd prefer to have it completely straight.

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2 MR. CHIN: Straight, yes. No, I agree. I
3 agree with that.

4 MR. FORNELOS: If anything, I might just
5 add a, a few railroad ties to add some fill and
6 just keep it completely straight going across.

7 MR. FLEMING: So I think what we'll do
8 then is we will approve it with a one foot drop
9 off the property line requirement. You're
10 responsible for maintaining it no matter what. If
11 you get permission from your neighbor to go onto
12 her property and maintain it, that's fine. But if
13 you don't, you're still responsible for
14 maintaining it. And that may require you to take
15 down each section by section, maintain the fence,
16 put it back up.

17 MR. FORNELOS: I learned something new
18 today.

19 MR. FLEMING: There you go.

20 MR. FORNELOS: I'm, I'm so thrilled that
21 I didn't think of that.

22 MR. FLEMING: More work to do.

23 MR. FORNELOS: Yeah, thank you. No,
24 that's fine, as long as it gets done right,

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2 that's all I care about.

3 MR. CHIN: So the fence is going to
4 continue on the same line?

5 MR. WALSH: Yes.

6 MR. CHIN: To the front of the --

7 MR. WALSH: Yes.

8 MR. CHIN: -- new addition. That's all.

9 MR. FLEMING: So in light of that, I
10 think what we need is a motion.

11 MR. FRANCO: Well, is there anybody from
12 the public, anybody online?

13 MR. FLEMING: Oh, I'm sorry, yeah.
14 There's -- anybody online as well? Is there
15 anybody online? No, there's nobody online. Okay.
16 So I think what we need is a motion and I'm going
17 ask for a motion. Does anyone disagree with us
18 moving?

19 MR. WALSH: Yeah, I need to make a
20 motion to close the public hearing first.

21 MR. FLEMING: Okay.

22 MR. KEHOE: Absolutely.

23 MR. WALSH: So case number, case number
24 2023-4, I make a motion to close the public

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2 hearing.

3 MR. CHIN: Second.

4 MR. FLEMING: All in favor?

5 MULTIPLE: Aye.

6 MR. FLEMING: There's no opposition. The
7 public hearing is now closed. I think what we
8 would need, would anyone be opposed to breaking
9 this just into two and, and we'll call it this
10 side setback, the front setback and the dwelling.

11 MR. WALSH: Yeah, I can read it that
12 way.

13 MR. FLEMING: You can read it that way?

14 MR. WALSH: Yeah.

15 MR. FLEMING: And then do a separate one
16 for the area. Okay. Alright, go ahead.

17 MR. WALSH: Alright. Case number 2023-4,
18 for 12 Crestview Avenue for -- the applicant is
19 Dave Fornelos, we have three variances to
20 propose. The first one is the side yard setback.
21 Nine or 10 feet required, nine feet proposed for
22 one foot request of variance, a front yard
23 setback, 30 feet required, 27.2, proposed for 2.8
24 foot variance. And then the third request is for

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2 max dwelling coverage is 1,755 square feet
3 required. They're proposing 2,090 square feet for
4 355 square feet requested. This is a SEQR type
5 two, no further compliance required. I make a
6 motion to approve.

7 MR. CHIN: I'm going second on that.

8 Just --

9 MR. WALSH: Well --

10 MR. CHIN: for those three variances
11 only.

12 MR. FLEMING: Adding the -- adding the
13 condition on the fence --

14 MR. WALSH: Adding the condition for the
15 fence, yeah.

16 MR. FLEMING: -- that we had previously
17 discussed. We don't need to repeat it, but we can
18 refer back to the record, with the condition on
19 the fence that we discussed on that motion. Can I
20 have a second on that as amended?

21 MR. CHIN: Second.

22 MR. FLEMING: All in favor?

23 MULTIPLE: Aye.

24 MR. FLEMING: Any opposition? No. Okay.

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2 MR. WALSH: The second part of the case,
3 2023-4, Dave Fornelos, 12 Crestview Avenue
4 requesting a approval of an accessories coverage
5 --

6 MR. SUBIN: Would you prefer that I just
7 withdraw the -- that, that --

8 MR. FLEMING: If you want to you can.

9 MR. CUNNINGHAM: If you just withdraw
10 it, it'll be easier.

11 MR. SUBIN: Yeah, let's, let's -- we
12 withdraw that application.

13 MR. FLEMING: Okay. Okay.

14 MR. SUBIN: On the record.

15 MR. FLEMING: So, so the, the, the area
16 -- oh, sorry, the accessory structure, area of
17 variance has been withdrawn. Okay. Nothing else
18 to do.

19 MR. WALSH: No.

20 MR. CHIN: That's it.

21 MR. FLEMING: Alright. Alright. That's
22 it.

23 MR. WALSH: You will hear from us in the
24 next week.

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2 MR. KEHOE: I'll work on it tomorrow.
3 You probably won't sign it till Monday.

4 MR. FLEMING: I'll sign it Monday.

5 MR. KEHOE: And then it'll be with
6 Martin on Tuesday or Monday.

7 MR. FLEMING: Okay. You'll hear from
8 Martin.

9 MR. SUBIN: Thank you very much.

10 MR. FLEMING: Thank you all.

11 MR. SUBIN: Everyone, have a great day.

12 MR. WALSH: You too.

13 MR. FLEMING: Can I have a motion to
14 adjourn this hearing? Can I have a motion?

15 MR. CHIN: I'll make a motion that we
16 adjourn the hearing --

17 MR. MARTINEZ: Second.

18 MR. CHIN: -- for October?

19 MR. FLEMING: Yeah, until the October --

20 MR. CHIN: Until November.

21 MR. FLEMING: So it's November 19th I
22 think it is?

23 MR. CHIN: Yeah, something like that.

24 MR. BELOFF: Second.

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2 MR. FLEMING: Alright, seconded. All in
3 favor?

4 MULTIPLE: Aye.

5 MR. FLEMING: No opposition, meeting is
6 adjourned.

7 (The public board meeting concluded at 7:35 p.m.)

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of the Zoning Board meeting of the Town of Cortlandt on October 19, 2023 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 2, 2023

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228 Park Ave S - PMB 27669

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