

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



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Date: November 2, 2023

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