

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on Wednesday, January 18, 2006. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

John Mattis, Chairman presided and other member of the Board were in attendance as follows:

Raymond A. Reber
Richard Becker
David Douglas
James Seirmarco
Charles P. Heady, Jr.

Also Present: John J. Klarl, Deputy Town Attorney
James Flandreau, Code Enforcement

Absent: Wai Man Chin, Vice-Chairman

ADOPTION OF MINUTES: 10/19/05, 11/16/05.

Mr. Heady made a motion to adopt the minutes for 10/05, and 11/05 seconded by Mr. Reber with all voting "aye."

ADJOURNED PUBLIC HEARINGS TO FEBRUARY 15, 2006.

CASE NO. 50-05 CHARLES W. REYNOLDS for a Special Permit for Home Occupation in a principal residence on property located at 26 Teatown Rd., Croton.

ADJOURNED PUBLIC HEARINGS

CASE NO. 48-05 NEW CINGULAR WIRELESS SERVICES INC. for a Special Use Permit for a wireless telecommunications facility on property located at 451 Yorktown Rd., Croton.

Mr. Mattis stated to Mr. Fisher, Esq. Before we begin we received from you last night a document, which we obviously didn't have time to review. So if you can kind of briefly just go over what is in it, and we'd like to review it for next month, and really get into a deep discussion. Similarly, we had a document, which we didn't even get a copy of until tonight from the Homeowner's Group, and if we could ask you to do the same thing. We want to try, and keep this a little bit briefer tonight, because obviously we haven't had a chance to even look at any of these, and then we can have a chance to review it, and go over it in depth for next month.

Mr. Chris Fisher, Esq. appeared before the Board. He stated I represent Cingular. I apologize that we couldn't get that to you sooner. I was waiting on some documents from some of the consultants to try, and get that out, and with the Holiday, obviously I couldn't get it to you in advance for your work session. I did make a submission attempting to address many of the outstanding questions, and some of the new information that was raised at the last Zoning Board of Appeals meeting on this particular project. The cover letter details what is included. One piece of information that was requested was dry data of Cingular's existing network, that is a map behind Tab 1, that demonstrates, and identifies the areas of basically no usable signal, or very weak signal, those are the gray, and reds. If you compare that to the network design requirements, which from an engineering perspective are really the yellows, and greens. There is little, or no yellow, or green on any of that drive data. The yellow, and greens go back to the coverage spots, which are shown on our existing network, and proposed site. That is how that relates. I also submitted, as said in the past, a map behind Tab 2. I tried to color code that to information that has been produced as part of this record as far as alternatives that my client searched before we came in with the application, and then alternatives that we searched throughout the application. Very briefly, the pink areas shown on the map, that is NY City DEP water shed land. The yellow areas are NY State DEC portions that we talked about. The blue area to the south on the map is County Park. The blue area close to the site is actually County Conservation land. The orange area are the four parcels that are zoned commercial in this area of Town, which Cingular had looked at, one of which is obviously the subject of this application. The green area is the site to the south, which is residentially zoned, but a commercial use, and I think the property was here at one of the earlier meetings on that particular location. The red box, which we identified, is not a property that we looked at, but we highlighted it. It looks to be a vacant parcel, it is zoned residential, pretty much to the rear of the property that we're located on. That is actually owned by the Town, and it's zoned residential. I have no reason to believe that this site wouldn't work, it is right next door, it probably would, but we did not talk to the Town Board about that site, and we would not, unless you felt strongly that it would be appropriate for us to do so. My personal feeling is that it's even closer into the residential community than what we're proposing already. The other areas in black are properties that are both zoned residential, and either developed with single family residences, or vacant land, and then the one area that the tax information doesn't have a property owner, but legally it's part of the DOT. It is that area right at the intersection of Rte. 129, and some of the other various roads, and that is in close proximity to the site. I just tried to give you an overview of the properties in the area, and some of the sites we looked at. Behind Tab 3, and I don't have my RF engineer here, or my site plan engineer here. So I couldn't go into great detail here tonight anyway, but behind Tab 3 there is a coverage plot of the site that had been mentioned at the last meeting, that was the Thalle Ind. property, which is zoned residential, about a mile north of the proposal. I can preserve a more technical conversation for next month's meeting, but the analysis showed that that site would leave some coverage gaps on 129, and Mr. Airy Rd. to the south, which is primarily a function of its' location north. It is at a higher elevation, but primarily a function of the distance away from the coverage area that's needed in this particular application. If it's helpful to you on the map, N526 is the location of the proposal that is pending, that's noted as 526C, and the other ones which I left on the map from last month's discussion are A and B,

which are the power lines to the south. That gives you a sense of the area. Behind Tab 4 is Building, and Fire Code information related to the propane storage tanks, and their requirements as related to occupied structures, and the proposed facility. I had received information from our site plan engineers that our proposal would be in compliance with all those regulations. Behind Tab 5 is additional information from the tower manufacturer related to fall zones, and safety of power structures, the ability to design yield points. We gave you as a representative example, a tower, a letter that they had prepared for a proposal in Redding, Connecticut, actually involving a site so that you could see, but it give you an engineering overview of the safety of the structure, and yield points, and Chairman, it does answer your question that you really can't design it at a directional component. In the last section, Tab 6, a copy of the Omnipoint case, which was referenced at the last meeting. Also, a copy of your regulations. I would like to take some time, as I requested in my letter, to give you some of the distinction factually, and otherwise some of our legal analysis. I gave you at least factually, a sense of what is going on in that particular proceeding, a lot of which doesn't come out in the case as written by the Court. You have to in some way have a sense of what's going on in that particular area of White Plains, and Scarsdale for siting purposes. Also, I gave you a revised plan of the lay out of the location of the septic on site, concept plan for additional co-location, and identified basically the uses on the site, and showed you basically, conceptually, where other carriers could located in the future.

Mr. Mattis asked if there were any comments from the Board?

Mr. Seirmarco replied we did request as he had just mentioned. We asked for a sketch of the site locating the septic system, and I guess we did receive that last night. It looked to me that it is a little small for a septic system, but whatever. Anyway, we did receive that. We did receive the sketch of the two cabinets where you could co-locate other carriers. He indicated the buildings, and all that we had asked for. I didn't see a calculation for lot coverage. I guess we could probably do that ourselves to at least a starting a point. Secondly, we did ask for information regarding the propane tank, and I think there is a separate issue there, whether the propane delivery system is approved for that site in general. I think there has to be a site plan approval for that particular system. We did ask you to look into the Thalle property, and we did get the response to that, but we still need to look at the information a bit closer, which we will do. I know that you said that is not a workable spot. That is unfortunate, and I think that I'd like to be sufficiently convinced that that is not a good spot for this. Myself, I need to take more time to look at the things you just to us last night, and I will have more comments next month.

Mr. Mattis asked if there was anyone else who wanted to comment?

Mr. Becker replied I am glad to see that there are people coming out. It is nice to see the community involved. I want to respond, and kind of bring the audience up to date as to where this Board is. At our work session this past Monday, we went over various things, and we are quite far away from approving, or denying this proposal at this point, but as the issues that the public has brought up, I wanted to address at least three of them. First, as a point in clarification, this Board, we are all residents here, and we all take pride in our town, and we would love for

these issues to go away. We all grumble a little bit, when another cell tower comes in. We have tried to place them as best we can in the most innocuous places. Certainly, as we are told to as to try to get them into commercial areas where they will have the least impact in every way. Despite being residents, and despite having an intuitive dislike to cell towers, they are a necessity, and the ability of this Board is limited by the law. What I am referring to specifically is the Telecommunications Act of 1996, which is known as the TelCom Act, which you have heard referred to. It is very specific in certain issues about what we can consider, and what we can't consider. Three of the issues I want to go over. The first is the issue of effects of radiation on the community. As a physician, I'm personally never satisfied that anything is 100 percent safe. I'm never satisfied that there's ever been established a low limit of safety, that a certain number of X-rays is safe, that a certain amount of radiation is safe, and the number of calls that you make from you cell phone is safe, and certainly from electrical towers, and high voltage line, and cell towers I have personal concerns. Despite that, the ordinance in this TelCom Act is very clear, and it is a federal regulation that Zoning Board, and other overseeing bodies cannot consider this. At this point the federal government said that this is not an issue that can be considered, that the radiation effects, and we've all reviewed it, and we've reviewed the NY City Bar Association's physician's take on it, it's just not a topic we can go near. We were presented with a statement by the fire department talking that they did not want this on their own property. I don't blame them. I wouldn't want one on my own property, but that is not relevant, and everything that the quote in that article, there are no scientific studies to guide us, and even if there were, we couldn't consider it. So this Board, I think has heard it, we've thought about it, and we can not take it into consider to guide us with our decision for this tower, and every other tower that comes up after at. The second issues is the visibility, what's the impact. Well we all live in a semi-rural community. We pride ourselves on that status, but the Tel-Com Act is also very clear, that to get it straight that the tower is having a negative impact means basically it has to be obstructing either a national, state, or local landmark, and just because you see it does not give you any right to turn it down. There are guidelines that we can use to mitigate that visibility that where we position on a property, how we asked the Telecommunications Company to set the lot, to landscape that lot, and perhaps suggest alternatives, but we have no say on whether it can be just seen, whether it can be seen in the Summer, or Winter. I think in this particular situation, we all feel that it will be visible, but not tremendously so, and certainly no more than the other sites that we've been asked to approve. The third issue that came out in the public's comments was whether the tower itself is actually necessary, and whether the signal strength in that area is adequate. We have heard our community standing before us, and say that they had perfect reception to make calls throughout at all times of the year without interference, but when every member of this Board went down there, and lost contact as we were driving through various spots. This from an intuitive standpoint, this is going to cost this applicant a significant amount of money, in the millions, to develop this, and face also the wrath of the community, if it is corrected, and the consequences thereof. It is not up to this Board in any way to determine whether there is a need. All that being said, we have issues with this cell tower, and things that we want to address concerning everything from the size of the lot, and I'm still not sold on the idea that an adequate search for other sites has been completed, but I'll reserve to comment on that until I review what was just handed to us the other night. So this Board is not ready to approve this. We still have a lot of work to do, but on those three issues, the visibility, the

radiation effects from the cell tower, and whether there is a need for the cell tower, those are not issues that we really have any say in at this point.

Mr. Seirmarco stated yes, we discussed this last evening at the work session, and we all agreed that we would like to see more information regarding the alternative sites. This is up to the applicant. They will be spending a lot of money to install this tower. I assume that they know what they're doing as far as investigating sites. Again, I am cautious about this property being it is so small. It has multiple uses, and that is why I had asked for last month a detailed sketch of what's on the property. So that we can go back, and calculate lot coverage, and I also asked for information on the set back regarding the propane tank, and we will continue to look at that site in total detail.

Mr. Heady stated I also agree with Jim that they should look at some other sites too around the vicinity. I am very disappointed that they said the Thalle property wouldn't work at all, being that it was so much higher than where they intended to put the tower now. I thought that would work out very good for the community, and for the Board here. I don't know why. I haven't had a chance to read the whole thing.

Mr. Becker stated one of the last questions that we had asked you to look into, when you mentioned that the Emery mine is not an adequate site, because you still have some loss there. Is it possible to construct a main tower on the site with some sort of smaller facility in that area?

Mr. Fisher replied that is certainly a question to ask the RF engineer, and again just to be able to review some factual information. At next months' meeting, I'll be sure to have some of that response back, but I myself as the applicant's representative, have pressed them hard to look elsewhere. If there was a universally, better alternative, believe me, I would press them hard to accept it, model it, make sure that there confident before they out of hand just reject it. I don't want to give you false hope, but I keep pressing them on. Before I say to you, absolutely not. I've got the coverage map, which shows you what coverage does, or doesn't achieve, I'm still pressing them.

Mr. Douglas asked regarding the Thalle site, have you spoken to the owner? This could be a waste of everyone's time, if they have no interest.

Mr. Fisher replied it could be. We did the initial analysis from the RF engineer's perspective, and with the help of a member from the public, who guided us to the site. That was very helpful. Some of the other concerns the client had with the location, which I am not prepared to give you all the information, but the long access road, utility runs, high construction costs, and lots of environmental impact, if you will, tree clearing etc. just to get to the location to build the site. I didn't get past the threshold question with the RF department, and if it was at a point where whether it's compromised, or acceptance, I could move forward with discussion with the property owner, and understand better construction related impacts. That is what I would do.

Mr. Seirmarco stated in relation to technical terms, if the property that we are discussing this

evening is 100 percent perfect, if the Thalle property is 20 percent, I would have no problem with it, but if it's 88 percent as good, or 78 percent, or a high percentage as good, I would certainly, this is speaking for me, would insist that you go to the other property. So that is where I'm coming from. I'd like to have some hard figures here saying that this is the optimum place for your signal. How bad is it at the Thalle property? If it increases your construction costs, well so be it, in my opinion.

Mr. Douglas stated also with the analysis on the Thalle property, did they look at one specific site? That is a large piece of land there.

Mr. Fisher replied they picked with some hand held GPS, they picked some coordinates off of the front. It was part of the site visit to kind of walk out there, and get a sense, and some bearing off of it. I need to get that information from the RF engineers, look if you move it over here, does it change? I need to understand it a little bit more. They only got this last month, ran the plot, and pretty much came back to me, and said, it's rejected, and I said to them well before you tell me it is rejected, let me understand why you are rejecting it.

Mr. Douglas stated I am personally familiar with the property, I can see it from my house. I was just wondering if you moved it over 100 yards this way, or that way.

Mr. Fisher stated I have no way to understand, only by the residents that are here, and your general feelings about the property. Once we have figured it out, I can get the RF to look further into this site, understanding development issues. I don't know that putting a site there is better visually, that it doesn't have greater impact on the community, I don't know that. Just my speculative guess is what we're really talking about is further away from homes, which makes it better. On an environmental analysis, it may not prove out to be better that this proposal that we have in front of us.

Mr. Seirmarco stated again, you put this in your mind, that it may not be good as the model is written, but when the rubber meets the road, you will probably have to go out there, and make some empirical measurements, I would think, and I would like to see those.

Mr. Fisher stated the real difficulty that I can predict on getting a measurement out there would be being able to get access to the site with a crane facility with a test chamber, up in the air 150 feet plus, or minus. We may not be able to get that kind of empirical lay out. There is no physical access currently in the location that we would be trying to build it.

Mr. Douglas stated that is part of why I asked, if you had spoken with the owner, because if the owner is interested, he is going to let you go on.

Mr. Seirmarco stated he is a construction company. So he may be able to help you out.

Mr. Fisher stated I just have to go to Cingular, and take the appropriate steps. If it is close to the coverage at the other site, then they may need to explore it. I got that initial rejection. I looked at the plot. I didn't even further inquire with my client as to how we could deal with it.

Mr. Seirmarco asked would it help if we were to send a letter to Cingular saying that we would really like you to look at this site very seriously, because of A, B, C, and D, because I am sure we could?

Mr. Fisher replied I think you can rely on me to speak with them. Maybe that sounds kind of not right, but I think you can rely on me to get my client to understand that this is something that's real, that the community would like them to look into further, and it's not just a red herring for us to chase, which in other communities it can be. So I understand why you're asking us, and I think you can trust me to go between you, and my client.

Mr. Becker stated that is a big point, because I mentioned all the things that we can't do as a Board, but the one thing that we can do is search for alternative sites. So if we're able to find an alternative site that works adequately, and is more pleasing to the public, so that the acceptance is better, than it is a much more win, win.

Mr. Mattis stated I would like to touch on a point that I believe Mr. Becker brought up, and that is on the Thalle property there are still some dead spots. We recently approved some antennas, a small antenna for Nextel at the Town Center on top of one of the buildings. It's not a cell tower. They needed it basically for coverage for their walkie talkies. I recall, and the Town Board still had jurisdiction over cell towers, where they put antennas in the Croton Colony on a water tower, and I'm wondering, if you could have something small like that to fill in these dead spots, if in fact Thalle property proves out to be what we think it might be, and it's a much better location, and maybe fill in something that isn't very high, isn't very big just to cover those other few spots.

Mr. Fisher stated it's a good point, and hopefully I don't get in trouble with my own client, but let me kind of take you down that path real quick in this particular instance. If Thalle is pretty good, and 140 feet comparable, the coverage is not as good, and there is a compromise on my client's behalf to be made in terms of how that works, and they would say that's their business decision, but they're willing to compromise. If I could do that, yes. What the answer might be is okay, they can just put an antenna somewhere else. If it performed less than anticipated, I would think the answer would be we might have to come back in the future for a little something in this area, we'd probably do that. We would figure that would be a marginal area that is going to be problematic for our customers, and if it's really problematic, we might come back to you for some other infrastructure.

Mr. Mattis stated it sounds much more desirable than what's on the table today. He then asked if there were any other comments from the Board? He stated we received, the Town received it yesterday, we got the copies this evening, we haven't had a chance to look at them, and it's a document from the Mt. Airy Vicinity Neighborhood Association with a cover letter from our Supervisor, who apparently met with several of you yesterday. I would ask, if you could also keep it brief, and kind of go over what's in this, and then by next month we'll have a good review of it, and then we can discuss it in more detail. So can I ask one of the representatives to

come up?

Mr. William Doughty appeared before the board. He stated the Association has asked me to speak on their behalf this evening. Actually, I would like to thank you for the comments that you've just made. I think they are quite pertinent, and we recognize what the Telecommunications Act prohibit it you from considering. We will touch a little bit later on, on some of the things that the Telecommunications Act, 47 USC, does permit you to consider, and to that end I would like to start it up by saying that we intend to be as really brief as possible tonight, in as much as a sequential manner as possible. A few of us have little bits of brand new information, which will think you will find very helpful. It really falls into two categories. In the first half of our presentation, we believe that we can demonstrate more to your satisfaction, exactly how inappropriate the current site is, and again for some brand new reasons, very substantial reasons, but then on the flip side of that, because we have always communicated that we want to be instructive rather than destructive, we have three additional sites, alternative sites to recommend with some data that supports the technical feasibility of those sites. Obviously, however, while this Board has to this point in time, just reviewed three cell tower applications for this Town, this one has obviously developed into something that is a little more complex than some of the others, and to that end, as you now from Ms. Puglisi's letter, we feel very strongly that it would be for the benefit of the Board, as well as the public, to engage in some expert help such as the organization that you had draft the code in the first place some time ago. So at that point, I would like to ask your permission to continue this in a sequential manner with three, or four of our people. We will try to be quick as possible, and the next person, I think who has something to add to that is Ms. Gilson.

Ms. Debra Gilson appeared before the board. She stated I live at 21 Pond Meadow Lane, and I am part of the Mt. Airy/Colabaugh Pond Owner's Association, and I felt that it was important to be here tonight to illustrate a few points, and reiterate the point that we feel very strongly about getting a second opinion, someone to come in, and do this work. As you'll see from what we have to present, we've done a significant amount of research. We don't claim to be experts on this, but some of us has done an extraordinary amount of work on this, but we also requests that the Town goes ahead, and gets an expert to come in, and help with this.

Mr. Klarl asked by an expert, do you mean you want the Town to hire an RF expert?

Ms. Gilson replied that is correct.

Mr. Klarl stated there are various experts, and the Board had taken a look at the December 2005 decision by the US Court of Appeals, Second Circuit in Manhattan, the Omnipoint case. They talk about various experts, and there is RF experts, there is landscape architect experts, there is aesthetic experts, there are visual experts. So the one you're referring to is about the RF frequency?

Ms. Gilson stated that is correct, and in addition to that we feel that the EPA has some input on this, it is in the watershed area. It will be situated right now on what is known as an auto body

shop, which has propane on it. There is run off that comes off of that property into the road. There are many reasons why we need a lot of different experts would have significant input on this site.

Mr. Seirmarco stated you would have to given an example of how that would effect. You say the run off from the site is happening now, are you saying the cell tower at this site would exasturbate that condition?

Ms. Gilson replied I think even in the construction, it would certainly exasterbate that condition.

Mr. Seirmarco stated okay, but with construction there are things to mitigate run off, and that's the Building Department who would handle that.

Mr. Reber stated I find that interesting that you raise that as an issue, and yet the Association seems to be supporting the Thalle property, and raising EPA. If you talking about damage to the area, run off, construction issues, I think it is very clear that construction issues on the Thalle property are going to be much more extensive than what's going to be involved in putting this right in back of that garage. So I have no problem when you folks come to us with these issues, and yet they're not consistent. I mean why do you support them going up on the Thalle mountain, and go in there, and clear up trees, and do all kinds of other work, and now you're concerned about a commercial piece that's right next to the road where there is hardly going to be no impact during construction, there will be minimal impact.

Ms. Gilson stated I think what Bill had said when he came up here is that tonight we're prepared to show three other sites as well.

Mr. Seirmarco stated our attorney asked a viable question, we have no problem hiring a consultant, but what we'd like to do is make an intelligent offer to a consultant say we have a concern about this, that, and the other thing, and so far we do not have that answer.

Ms. Gilson stated well, I'm not the person that's going to be speaking about what we want for that, that would be Jeff Weiss, who would know exactly what we want.

Mr. Mattis stated you mentioned the propane, and one thing we discussed in the work session last night, there is a question of whether or not that was ever on the site plan for that property, and the Town Code, I believe, says it can't be within 500 feet of a residential structure, and we're going to have the Code Enforcement Department look into that. So we want to get a clear understanding that that is something that was put there, and was approved, and that it meets the parameters.

Mr. Seirmarco stated on the other side of the coin, there is no site distance required from the cell tower to the propane tank. So there are two separate issues, should the tank be there without the cell tower? We are investigating that, and there is no requirement from the cell tower to the propane tank.

Ms. Gilson stated well like I said, we certainly appreciate the work that's going into this. We just certainly want to be acknowledged for all our work, and we feel that we're doing a tremendous amount of work to provide various pieces of information.

Mr. Mattis stated and we appreciate that.

Ms. Gilson stated I know that one you mentioned, I think it was Mr. Becker, the three things, the radiation, the visibility, and whether

A gentleman interrupted her. Mr. Mattis asked him to come up to the microphone, and identify himself.

Mr. Art Radak appeared before the Board. He stated I live at 40 Colabaugh Pond Rd. Debbie here, referred to run off on this property. This isn't per say for construction, this is coming from the building itself, from the body shop in the process of prepping his cars, the water is coming out of this building underneath the doors in the winter. In the summertime, he's out in the front, washing his cars, washing whatever.

Mr. Seirmarco stated that is the point I am trying to make, will the construction of the cell tower effect that water flow, or are you talking about the problem as it exists today? If it exists, as it exists today, that is a different issue.

Mr. Radak stated but it is an issue that has to addressed. I am just here clarifying it, because it is a continuing problem. It's going on the road causing ice from the water running down.

Mr. Mattis stated maybe we can help with a remediation of that.

Ms. Gilson stated so I just wanted to say that in reference to the radiation, the visibility, and the necessity of this. I just think that you'll find after the presentation that we're going to make tonight none of those things come up in our concerns. We truly have thought about this from many different aspects, safety, and all the things. Thank you.

Mr. Jeff Weiss appeared before the Board. He stated I live at 103 E. Mt. Airy Rd. Again, I can imagine how you folks must feel to see us coming. At any rate, I'll try to be brief. One of the directions that we're heading in here is we would like the Board to request that Code Enforcement pay a visit to this property, with an eye towards examining the current use to make sure that everything is up to code, because it would seem to me that if it isn't than we're adding variance, or problem to an already existing problem. If need be, I suppose we could lodge formal complaints, if that is what it takes to get Code Enforcement, but we'd rather not.

Mr. Mattis stated they are going to look into the propane for example, but you said you could lodge some formal complaints. Is there any evidence there, we don't know, is there anything that you think is not approved that they're doing there?

Mr. Weiss replied we think that there might be, but again.....

Mr. Mattis stated if you bring it out now, we'll ask Code Enforcement to take a look at it.

Mr. Flandreau stated we will check into anything that you have a concern with.

Mr. Weiss stated okay. Can you, since you're going to be there, can you just look at the entire site in terms of the existing site plans, to see for example if the property is being used as it has permission to used? If there are any structures that don't belong there? That is what we would ask.

Mr. Flandreau replied I will make a full review of the site before I go out there with the approved site plan from the Planning Department, and then go out to the site to make sure everything that is there is supposed to be there.

Mr. Weiss stated thank you very much.

Mr. Reber stated we're very sympathetic to that, and as the Chairman indicated, we would consider those factors as conditions, and we did so with an earlier application that we approved where there were certain issues with the site in terms of some clutter, and some things that we felt inappropriate, not necessary, and we put that in as a condition that the owner of the property had to agree to get that taken care of before the applicant could go, and put the that cell tower up.

It is a reasonable request, and certainly if it is a violation it should be addressed anyway, but even other issues, if they can be clearly delineated, we could take that into consideration, and ask the owner to take care of it.

Mr. Weiss stated I would like to make a side comment, Platinum Auto Body, we do business with Platinum Auto Body. Andy is a nice kid, he's trying to do business, and we understand his motivation. However, we feel that he may have stepped out of being a good neighbor at this point. So that is why we asked that these reviews be done. The Center for Municipal Solution is an organization which the Town has actually used. In fact, this is the organization that assisted the Town in drafting 277. So a quote from a statistic from their website, and I've actually spoke to Mr. Comi. One of the statistics on their website is an indication that in a year in this country, 400 towers have fallen. Now that is not cell phone towers only, and there is no distinction about what kind of towers, and we assume that there are probably hundreds of thousands of towers currently in use of all kinds, but we feel that this kind of information, we fell that those towers especially larger ones all had sign offs from professional engineers at one point or another. You can't put up a 200 foot tower someplace without an engineer designing it, and saying it will stay up, and yet this consultant's website suggests that it's not impossible for them to fall them down, and we feel that this kind of information, and I think there's probably more where that came from speaks to the issue of whether or not fall zones are relevant. In fact, we feel.....

Mr. Reber stated sir, can I cut you off? I mean, you yourself said earlier, you don't what these towers were as they were referenced, and I think it's very unfair. I see too much data on too many different subjects where people throw numbers out. Unless you can come to us, and say this is the history of cell towers. Cell towers are unique structures. To say towers, it could be a water tower, it could be any kind of tower at all, a tower that is a hundred years old, it could be a wooden tower. It could be an old tower that we use for drilling or something, so therefore, please don't try, and prejudice, and create a situation here with some premise that there is a significant potential that these things fall down. When you have the data that you can give us specifics about cell towers, fine, but please don't continue to try, and tell us that we have a tower that is going to fall.

Mr. Weiss stated as a matter of fact, the Town Board wrote the Code requiring fall zones, because the Town Board was recognizing fall zones, not me. The Town Board must have recognized that there might be some potential, even if not significant chances.

Mr. Reber stated there is a designer ability to have these things off in some remote place, it's not going to bother anybody, and it's only logical that they put some recommendations in. I am sure, if we go to the Town Board, and then to the people that consulted them, they don't have any hard evidence. They said, well we'll pick, what is the height, and we'll pick half that, that's a number. To be honest, to say that the Town Board did an extensive study, and.....

Mr. Weiss stated I didn't say that.

Mr. Reber stated but, your inferring that.

Mr. Weiss stated I am only inferring what I said, that they put it in the Code, and they must of had a reason for doing so.

Mr. Seirmarco stated Mr. Weiss if I can summarize your comments. I think you have concern about the fall zone. I think you're right. They put it in the Code to certainly address that concern, to mitigate that concern. I think I speak for everybody on the Board that we are concerned with it also.

Mr. Weiss stated okay, then I'll go on.

Mr. Seirmarco stated and whether it's 400 or 1 that came down, we agree.

Mr. Becker stated the TelCom Act does require the applicant to specify, if that breakpoint would be in half the height of the tower would fall within the property boundaries. So the Town Engineers would certify, and we don't have to be engineers.

Mr. Klarl stated and the Town didn't invent the idea of a break point, collapse zone. Obviously, there have been many ordinances after the Federal Act, and our ordinance models other government decisions.

Mr. Weiss stated okay the point is made, and we'll go on.

Mr. Klarl stated the Board is really interested to know if anyone else has any other specific cell tower data.

Mr. Reber stated also you have to recognize that earlier we asked them to move their location as far as they could so that there would be no residential property within the fall zone. Right now our issues within the commercial zone, there is a question of fall zone, but we had them move it. It is now outside the fall zone of any residential parcel. Is that not correct?

Mr. Weiss replied that is correct. However, it is not outside the fall zone of the Platinum Auto Body where there are employees working.

Mr. Reber stated but the Resolution didn't say it had to be a certain distance from another structure on the property. It's on the property. They can put all kinds of buildings on the property. If they want to sacrifice a garage, I mean it seems kind of dumb, but they can do that.

Mr. Becker asked did you reference that in the communication that we received, your source for that?

Mr. Weiss replied I believe I did, but again the Board is familiar with this organization.

Mr. Mattis stated this is something that we have discussed. In fact, I think you do recall, I asked if there was a way they could add more collapse than just the 50 percent yield point. So you're bringing us an issue that we're very cognizant of, and it something we are definitely going to consider.

Mr. Weiss stated okay. Co-location, the Town Code encourages co-location. I haven't seen the applicant's site plan for co-location.

Mr. Seirmarco stated we just got it last night. It does show that. It shows the cell tower with two electronic cabinets there for co-location.

Mr. Weiss stated okay. I looked at a cell phone tower installation with three co-locaters. The enclosure measured 54' x 54'. This is not this particular, as an example, I don't know if it's representative or not, but there were three cabinets plus insulated structures, that is 2900 square feet. Again, I am sure Mr. Reber is going to say, that's not representative, let's not frighten people, but my point here is, is that unless this site can support the maximum number of co-locations encouraged by our own Code, then that argues against the site in of itself.

Mr. Mattis stated yes, it does, but I think if you're people also argue the fact that there are no drop outs on Verizon. So I would argue that Verizon does not need to co-locate there, and the fact that maybe we could put two rather than three or something in, and of itself does not

disqualify that, but again, that's one of the things that we will look at as part of all the different things that we will look at.

Mr. Weiss stated okay. Now, one of the things, Mr. Becker mentioned is that we cannot discuss the effects of radiation on the general public. We understand that the law prohibits that, or at least sets it aside. I would not, however, that on this particular site that I inspected, or looked at from the outside, there was very clearly a sign that said that any employee entering that site, or working on that site needed to wear a radiation badge, and I would submit that should the Town choose to go ahead and approve this, then the employees of Platinum Auto Body would certainly be for an 8 hour, or 9 hour day in as close proximity as.....

Mr. Mattis stated I think you're out of bounds here, we can't discuss that, and it certainly has not been to my knowledge, anywhere, a regulation, and this is something that work precluded, they say that the radiation level is not something we can consider.

Mr. Seirmarco stated just to answer your question. I think that sign is on the building, and it means that those people who enter the electronic cabinets, not for those people who are around the site.

Mr. Weiss stated well as I'm trying to point out is that the employees of Platinum Auto Body during the entire the work day would be at least as close as that.

Mr. Douglas stated that is a matter for OSHA regulations, not the Zoning Board.

Mr. Weiss stated okay, then I'll ask Bill to come back up at this point.

Mr. Seirmarco stated so just to summarize your comments this evening. So far your concern is the fall zone.

Mr. Weiss stated also in terms of fall zone, we also would consider, and this is mentioned in some of the literature, the possibility of debris, and/or ice fall from the tower, especially if it is wind driven, and the ice falls from 140 feet up could easily reach the retail property next door, or the road. So that is another consideration we have.

Mr. Seirmarco asked wind driven?

Mr. Weiss replied ice fall, right. In other words if ice falls off the tower, and falls straight down that's one thing, but if there is a 10, 15, or 20 mph breeze blowing, then that ice could easily reach the road.

Mr. Reber stated could that be one of the factors that maybe why they define the fall zone as opposed to idea, that this thing is just going to flop over.

Mr. Weiss stated it's possible, I suppose.

Mr. Reber stated I mean we are trying to make sure that other than it falling on the garage. We understand that that garage is vulnerable, but that's up to the owner, not us.

Mr. Weiss stated well if you approve a variance.

Mr. Reber stated there is no variance associated with on the property. That is not the issue. As long as we keep it away from the public roads, keep it away from residences, keep it away from the properties on the side, then it is up to the tenant that if it falls on his garage, we have no control over that, because if he had more property around the garage he could still put it right next to the garage without any variances or any special issues.

Mr. Weiss stated can I ask the Board a question, just for my own edification? It seems to me we're talking about two things that the Board needs to make a decision about. One is that that property can support a tower in terms of what the Code says it can do, and if it can't without any special considerations, then variances have been requested by the applicant. For example, a set back, a side yard set back, or for example the fall zone. If it was a 5 acre site, much of this would be moot. My question is are we really talking about two things? First a decision to grant a Special Use Permit, and second a decision to grant any additional variances that might be required?

Mr. Seirmarco replied yes.

Mr. Weiss stated okay, so we are talking about two issues.

Mr. Mattis stated yes, and one doesn't necessarily mean we would do the other.

Mr. Weiss stated I understand that. So you might approve the tower, if the site was 5 acres, and yet not approve it, because in order to put it here it would require additional exceptions.

Mr. Mattis stated that is correct.

Mr. Weiss stated okay, Bill will come up now.

Mr. Mattis stated I heard the discussion of three new sites, I hope you're going to tell us what you think those sites will be.

Mr. William Doughty appeared before the Board. He stated I certainly will, that is part of my presentation. However, before I get to the good part, I have to cover a bad part, and the bad part is something I heard briefly mentioned before, but I have been in touch over the past several days with the Westchester County Board of Health, and they have communicated with me by telephone, and by fax, and by mail the last piece of which just arrived today. Even though it just arrived today, when I finish with it, I can share copies with you.

Mr. Mattis stated we would like that.

Mr. Doughty stated so let me briefly read this, because it is important, and I would like to read this into the record.

Mr. Mattis asked how long is it?

Mr. Doughty replied this one page. I will read very fast. He read, "Applicable codes prohibit absorption trench systems from being located under driveways, being under areas , or under any other permeable surfaces, and any time that the initial approval of construction shall be so protected as to prevent the removal....."

Mr. Douglas asked Mr. Doughty to slow down.

Mr. Mattis stated sir I am going to make a suggestion, that is a page, you held the page up. There is a lot of stuff on that, and you're reading very fast. Could you just enter it into the record, and we'll look at it. I don't think we'll understand it tonight, and we really won't have time to absorb it.

Mr. Doughty stated with all due respect sir, that is the last piece of technical information, the rest is pretty straight forward.

Mr. Mattis stated okay.

Mr. Douglas stated please slow down.

Mr. Doughty stated okay I will slow down then. The Town of Cortlandt has revised its' numbering plans, so when this property was first permitted for a septic system back in 1953, instead of being the section, block, and lot it is now, it was section 15.17a. At any rate, I have a copy here of the permit issued on September 28, 1953, and at that time the permit was issued to Nelson Construction for a 400 gallon tank, etc.... Now in advanced fax copy of the drawing from the Westchester County Board of Health shows the placement of this system, and I'll share this with you, to be approximately 100 feet north of the structure, the building, and an established pattern on the easterly access of approximately 70 feet. So in observation of the site today, indicates that the entire system is completely covered by blacktop, which traverses a heavily traveled driveway/right of way for adjacent residences, and is quite likely that it has partially been built over during construction of the neighborhood neighboring silo commercial building. Any feasible remediation of this apparent violation would be to re-file with the County Board of Health to relocated the trench field on the only remaining unpaved area, which is lot 5 behind the building. Coincidentally, that is the same area, which Cingular has proposed using for erection of the cell phone tower. This alone should provide the ZBA with more than sufficient grounds under the Federal Communications Act, and under the USC 47332 to properly, in writing, deny Cingular's application for use of this property, the attachments are here. That is all I have to say on that particular issue.

Mr. Mattis stated well I think we have to see certification of that from Department of Health. I understand your point, but we do not make the decision, the Department of Health does.

Mr. Doughty stated the Department of Health today suggested that they would respond, and they would probably request them to do so.

Mr. Mattis stated okay, that is the proper avenue for that. We do not make Department of Health decisions on things like that. It should be referred to them.

Mr. Doughty stated without a doubt, we understand that, but I thought it was fair to the applicant that we mention it tonight.

Mr. Seirmarco stated this is the reason that I asked the applicant to provide the location, and the approximated size of the septic system, and I think you heard my comment this evening that they had provided that, and I thought that what they provided was a little small.

Mr. Doughty stated according to the County Board of Health in Mt. Kisco, this is the only installation, there have been no revisions since 1953. It is a clear violation, and to remediate that really puts a kibosh on the existing land.

Mr. Mattis stated right now that's hearsay until we have documents to prove that.

Mr. Doughty stated that's a very good point, Mr. Chairman.

Mr. Seirmarco asked when you say it's a clear violation, a violation of what?

Mr. Doughty replied the County health codes.

Mr. Mattis asked so the County told you that's a clear violation?

Mr. Doughty replied yes.

Mr. Mattis asked are they doing anything about it?

Mr. Doughty replied they only found out about it during my conversation with them. They will be doing something about it.

Mr. Seirmarco asked what's a violation?

Mr. Doughty replied the violation is a violation of the Westchester County Sanitation Code 873.71.

Mr. Seirmarco stated you're missing my point. If you're saying that covering it with a cell tower would be a violation.

Mr. Doughty stated that is not what we're saying.

Mr. Seirmarco asked so what you're saying is the violation is that they blacktopped over it?

Mr. Mattis stated time out here. I think you made your point. I don't think we're going to get any further with the discussion. It is really a Department of Health issue, and they are apparently going to be looking into this. So we'll expect something from them.

Mr. Reber stated Mr. Seirmarco had brought this subject up, because we did discuss it, and we were concerned, a small parcel like this, you'd have to question the septic system. We understand it. We've asked for information. We're still skeptical, as Mr. Seirmarco said, and you're just raising the point that he probably doesn't have a septic system that's functioning, and probably doesn't even meet the original criteria, when it was installed back in 1953, and we all know that over 50 years, it's hard to keep a system working. So it's a valid question, and we would certainly wait until we got clarification, because we would not want them to come in, and put in a cell tower, and all these structures, and prevent the ability to have a working septic system on that property. We understand that.

Mr. Doughty stated without a doubt, and I appreciate your comments, and this goes to what I said before. We as citizens, are providing input, some of it in developmental stage, which will either help the applicant, or will help the Board to more fully understand the implications.

Mr. Mattis stated Mr. Doughty, you said that several times, and I appreciate that, but I think you're beating a dead horse, because you've brought up the information, it's a Department of Health issue, and we have other applicants here that have waited an hour for three, or four meetings, because you brought up the issues. There is nothing we can do with it. It's a Department of Health issue, so can we move on to the next item? I believe though, Mr. Fisher wanted to make a comment on the septic, we'll allow that right now.

Mr. Fisher stated just quickly. The Department of Health is obviously at the urgency of the neighborhood, looking into some things. They've urged that you look into some Code compliance issues, I'm sure it's not going to be punitive to the property owner. I don't represent the property owner, but if the Department of Health is going to start looking at this septic system, which is no doubt nonconforming to today's standards, the property owner has some legal rights here, and I recognize that I don't represent, and I understand what the objective here is. For my purposes, I represent the cell carrier. I don't think there is an inconsistency with the septic location, and the development of a cell tower. However, if they're going to go down that path, I think they owe it to the property owner to actually tell them what they're doing with the Board of Health versus the Board of Health coming out with some opinion that I'm going to have to help him get a lawyer to disagree with, and say that they have legal nonconforming rights. I'm sure, honestly, if you go, and look at the site plan records in Town, they may not exist, and that as an understanding, I just want to put on the record for the property owners benefit. I don't represent him, but I just want to put it on the record.

Mr. Douglas stated you could tell the property owner.

Mr. Fisher stated I've told the property owner that when we came in on this application that he should clean up his lot, and make sure he's in good standing with the community.

Mr. Mattis stated there is really nothing else we can do tonight on this issue. So I'd like to move on to the next topic.

Mr. Doughty stated I just wanted to point out that if it upsets the ability of the remaining piece of unpaved property to support a cell tower, that may become an issue for you.

Mr. Douglas stated we recognize that. So what are the three other locations?

Mr. Doughty stated we have done a topographical analysis of Cingular's coverage plans, and alternative solutions. This was intended to be given to you not in bits, and pieces, but all at once, but given the time frame here, that is impossible.

Mr. Mattis stated well quite honestly, I'm not happy with either side that we get something Monday night, we're supposed to have it last week to review everything, and you give us something, when we walk in tonight, and now you throwing out all this other stuff. Anytime you submit something, can you please get it at least a week in advance, so they can copy it, because I understand you had problems making copies, and the Town has agreed to make copies. So that we have a proper chance to review it. I don't want to spend a lot of time going circles of stuff that you're throwing out at us that we've never had a chance to review. This is going to go on for several more months. I'd rather you tell us very briefly what it is, what the locations are, let us review that, and then have a detailed discussion next month, because I think we're spending a lot more time than we have to that is nonproductive right now, because you can't just throw things out of the blue at us, and expect us to have a long winded discussion. I am not trying to just cut you off, but I don't think it's fair to us. I don't think it's fair to you. I don't think it's fair to the applicant, and I don't think it's fair to everybody else that's been waiting over an hour now for their cases, when these are all new things.

Mr. Doughty stated well keep in mind, Mr. Chairman, that this is a public hearing, and as a hearing we are speaking to be heard. Now to that end, I will speak to the issue, you can review the attached dated until the cows come home. If you take two, or three months, or two, or three years, it makes no difference to me.

Mr. Mattis stated but it's not productive to try, and discuss it, when we haven't had a chance to look at it, and I think the rest of the Board will agree with me. I believe in free speech. I believe in letting people have their say, but when we start going around in circles about things. I think we are just wasting everyone's time. We let you have a lot of say for a lot of months, and I heard somebody even talk about why are these people dragging it on. I've never said that. I don't care. I let you speak. I have not cut you short, but when I think we're getting off the issue,

or we're not productive, I like to move it along.

Mr. Doughty stated fair enough, in that case, we should thoroughly discuss this subject of alternative sites, and hard challenge to the coverage area, because we believe that we can demonstrate by virtue of the applicant's own maps before, and after the proposed tower coverage. The rather limited additional area, which would be served, and is equally served by the other three locations, which we are prepared to demonstrate. I'll tell you what we'll do, tonight we'll give you these copies, it's better than watching T.V.....

Mr. Mattis stated we take this seriously, and your humor is honestly not very funny. We just want you to tell us what they are.

Mr. Douglas stated we all just want to know what the other locations are so that we can do our job here.

Mr. Doughty stated the other locations are at the top of S. Mt. Airy Rd., when you go to the top of the hill, hang a left, and go down to the village, S. Mt. Airy Rd. You have power towers on both sides of the road, here are the photographs of those towers.

Mr. Mattis asked are these the same ones that Mr. Fisher ruled out before?

Mr. Doughty stated I'm not sure, but I think he was speaking of the ones on the other side of Croton gorge.

Mr. Mattis stated why don't you just enter these into the record, and let us look at them, because we're not prepared to discuss these, but we do appreciate you looking at other sites.

Mr. Doughty stated well we spent a lot of time researching this particular site. One of these towers already has a cell transmitter on top of it.

Mr. Douglas asked you're talking about the Con Ed towers that are on Mt. Airy South, as you go down the hill to the village?

Mr. Doughty replied that's right.

Mr. Douglas asked and the second location is what?

Mr. Doughty replied there are three of these tower spread out over half a mile.

Mr. Douglas asked so the three locations are different spots on these towers?

Mr. Doughty replied exactly, and they are all ranging from 600 feet to almost 700 feet above sea level, and they cover the are topographically very well.

Mr. Douglas asked these are different than what the applicant looked into the last time around?

Mr. Doughty replied I certainly believe so, and if he has looked into it, that simply drives the question of getting another expert to the value of the data.

Mr. Fisher stated I just want to make a comment. We did look at two of the Con Ed towers. I gave you information on that. My simple request would be, if they could take our USGS map, and our applications materials, and pencil in the specific towers they want us to look at, fax it to me so that I can have it, then I can look into it.

Mr. Mattis stated that is a good idea.

Mr. Doughty stated I would be happy to do that. As a matter of fact, we have our own topo maps to do that.

Mr. Seirmarco stated I would prefer just that you fax it to the Town, and the Town will fax it to him. This way we'll have a copy of it, and we'll be on the same page.

Mr. Douglas asked Mr. Doughty do you have anymore points that you want to make?

Mr. Doughty replied at this point no, I would actually at this point like to pass it on to Mr. Jeff Weiss, because he does have something to add.

Mr. Klarl stated so just for the record, the three towers are the three locations that you referred to, the three towers are the three locations?

Mr. Doughty replied that is correct.

Mr. Mattis stated they're all Con Ed towers.

Mr. Doughty stated they're all Con Ed, and apparently there's some facility where they have a very simple procedure for accommodating these carriers. Visually they are innocuous.

Mr. Weiss appeared before the Board. He said good night, and thank you very much. We really do appreciate it, and we appreciate the patience of all the rest of the people in the room, who have their own issues of their own importance, and anything we've missed tonight, we can get to you after.

Mr. Mattis stated and I apologize for our apparent lack of patience, but it's unfair. Our procedure is we get stuff in advance, and we review it. It's been that way for years, it's only fair to you, and it's only fair to us, but to come in with things, one thing after another, after another. We get a document that's about 15 pages long, when we walk in, and we get another document, and we're not prepared to discuss these. If we can get things in advance for our review for the next meeting that would be helpful.

Mr. Weiss stated we will try to do that, and again we thank you for your patience.

Mr. Mattis asked if there was anyone else in the audience who wanted to speak?

Mr. Seirmarco made a motion in Case No. 48-05 to adjourn the case to the February meeting, seconded by Mr. Heady with all voting “aye.”

* * *

CASE NO. 59-05 JOHN CAMP for Area Variances to reconstruct an accessory building on the same footprint that housed an accessory apartment, together with a height variance on property located at 2030 Maple Ave., Cortlandt Manor.

Mr. John Camp, and Ms. Susan Reardon, architect appeared before the Board.

Mr. Becker stated at last month’s meeting, we agreed that we would look into the ordinances that concerned us, and to see if there was some sort of way we help with the site given the fact that the previous structure was completely demolished. So I will turn this over to our attorney.

Mr. Klarl stated yes, we had an initial meeting with you at our November meeting, and the Board found you to be very credible about the facts here, and we saw you once again at the December meeting, and I think you indicated to us that the property was last occupied, the accessory structure, which housed the accessory apartment was last occupied July 2005. I think you indicated that you took it down in the middle of August of 2005, and I think you indicated that you came to DOTS in September thinking about getting a Building Permit being a good citizen, and having good thoughts. The only thing is the thoughts were about the Building Permit, and not for some type of Building Permit to renovate, or Demolition Permit to demolish, and the Board asked me to take a look at the Code provisions here, and we have at least three Code provisions that are relevant to your accessory structure housing the accessory apartment in the R-40 district, and specifically we have Section 307-45 of the Code, and 307-45, sub-division B4 indicates that no Special Permit for an accessory apartment in an accessory building may be issued except in R-80, and R-40 districts except when an accessory building existed prior to April 21, 1979. So it says that you can have an accessory apartment in an accessory building in R-40, or R-80 where the accessory building existed prior to April 1979. So you’re allowed to do that. Then we look at Section 307-79 of our code, and it says that any building in which any nonconforming use is conducted or maintained is hereafter removed, the subsequent location, and use of any building thereon shall be in conformity with the regulations specified by this chapter. The regulations specified by this chapter say you can have an accessory apartment in an accessory building R-40, if it’s before 1979. You don’t have a building that was existing prior to 1979 now. In addition, we have a further Code section, section 307-80, and it says that no existing building devoted to a use not permitted under the regulations specified by this Chapter in the district in which such a building is located shall be reconstructed, or moved unless such use is changed through use permitted under the regulations specified under this chapter for the

district in which such a building is located. Once again, it says you can reconstruct, if you are in compliance with the regulations specified under the chapter for this district. Once again, the district regulations are R-40 allows an accessory apartment in an accessory building, if the accessory building exists prior to April 1979. Once again, you aren't able to avail yourself of that set of circumstances, because the April 1979 building is gone. So, unfortunately in removing the April 1979 building, or a building built prior to that date, you took away your accessory apartment, and accessory structure in the R-40 district. No one here is very happy about that, and you're probably not either. Unfortunately, it says you have to have the accessory apartment in a building that existed prior to April 1979, and that is not your circumstance anymore. Unfortunately, if we turn back the clock, and if you came in first, and said you had some renovation work to do on certain aspects, and you would have worked with Code Enforcement for that renovation. Having totally removed the building that then pushes you into these other sections that say, you must abide by the Code regulations for the district, and those regulations require an accessory structure prior to 1979, and that's not your case.

Mr. Mattis stated now we can handle this in two ways. You can either say you want to withdraw, or we can give you a formal vote. We have to have some kind of conclusion to this.

Mr. Klarl stated in addition, you are not a man without a remedy, because in the R-40 district having a building after 1979, you can do that. You can still apply for an accessory apartment in your principal structure. If you wanted to put an accessory apartment in your principal structure, you could do that. You just can't have an accessory apartment in an accessory structure. So you can still look at putting an accessory apartment in your dwelling.

Mr. Camp stated okay.

Mr. Reber stated you can also check with the Code Enforcement, you are allowed to have accessory structures, storage buildings for lawn mowers, and things like that, so you can construct something along those lines in that same area, may be acceptable. The key is that it is not a habitable structure.

Mr. Camp stated I understand. I made a big mistake. I should have came here first. I guess I am going to withdraw at this time.

* * *

CASE NO. 60-05 STEPHEN S. GERSON & LEA COLEMAN BY ADAM MCCAULEY, CONTRACT VENDEE for Area Variances in the front yard of property known as 11 White Birch Lane and in the front yard of Meadowsweet Road to allow construction of a one family dwelling.

Mr. Adam McCauley, and Ms. Laurie Conklin appeared before the Board.

Mr. McCauley stated I want to thank you for the clarification that you gave us at last month's

meeting, and the recommendations that you gave us to definitely meet more of the set back requirements. We went back to our engineer, and we actually got those drawings done, and thank you for letting us come to the work session, and present that to you with Mr. Zutt, who could not be here today. He had prior arrangements. We did provide layouts to shrink the house to make us have the need for only one set back instead of two. So we created a 50 foot set back on the left side, which is also a front, and the right side we met the set backs. The back is properly met, and we just require a 28 foot variance in the front, and a 22 foot to the stoop.

Mr. Mattis stated right, and that is required, because basically you can't move the house back, and meet the septic requirements.

Mr. Reber stated I was probably the strongest voice in being concerned about the original plan. So I do want to thank you for the letter you sent, and for the alterations that you've made, because it certainly met all the issues that I raised, and I would have no problem with the current proposal that you've made.

Mr. Seirmarco stated I did go out, and visit that lot. It looks like an ideal lot, flat, square, no outcrops of rock, and whatever, but there were some special circumstances with the perk tests requiring the design of the septic system, and it does have two front yards so the applicant has been able to shrink the original plan, and I am happy with what they have done.

Mr. Mattis asked if there was anyone in the audience who wanted to speak?

Mr. Scot Rosenthal appeared before the Board. He stated I live at 18 Shady Brook Lane. I understand this is going to go forward. I am just asking for consideration of the Board to consider a 10 foot buffer on my side due to the circumstances of the construction, the 4 foot of soil, and the possibility of more from the leach fields. If they could put some trees up, and a fence, I would appreciate that.

Mr. Mattis stated this is on the side where they meet the requirements. They don't need a variance there, they meet the requirements.

Mr. Rosenthal stated I understand that, I'm saying that sometimes the Zoning Board mandates a 10 foot buffer. It's been done before.

Mr. Mattis asked as we look at the house from White Birch Lane, you are on the right of them?

Mr. Rosenthal replied right.

Mr. Mattis stated I think what you're requesting, and I don't favor this, and the reason why is we generally do that where we give a variance. If they could move the house back, they wouldn't even be in front of us. That is not an issue, your side. They are within the set backs that they require. There is no variance required.

Mr. Reber stated they are showing on the revised plans, they will be 27 feet away from the property line. So that is well away from the limitations. So there is no basis for us to have a concern.

Mr. Rosenthal stated I was just curious, because it was done with the house on the side, it was smaller, and put closer to the road with a 10 foot buffer.

Mr. Seirmarco stated you are saying a 10 foot buffer, would you be satisfied with some trees there?

Mr. Rosenthal replied yeah, that would be great, that would be just fine.

Mr. Mattis stated well I wouldn't even support that. We generally only give buffers as an accommodation for giving a variance, when the house is closer than what's required. There within the parameters that they need. There is no variance required on that side, so there is no buffer that should be required. If you want trees there, by all means you can plant your own trees. If we were giving them a variance on that side, I certainly would consider that they put bushes or something, but under the circumstances where the requirement for the variance is in the front not the side, I wouldn't support that at all. He then asked if there were any other comments? He asked if there was anyone else in the audience that wanted to speak?

Mr. Seirmarco made a motion in Case No. 60-05 to close the public hearing, seconded by Mr. Douglas with all voting "aye."

Mr. Seirmarco made a motion in Case No. 60-05 to grant the front yard variance on White Birch Lane from 50 feet down to 28 feet, the variance is 22 feet, and front yard variance for open stairs from 44 feet to 21 feet, a variance of 22 feet. This is a Type II Sequa with no further compliance required, seconded by Mr. Reber with all voting "aye."

Mr. Mattis stated I would like to apologize on behalf of the Town for the misunderstanding with the Building Department that brought you here in the first place. I am glad it all worked out. He then stated that if you can wait until after Tuesday of next week to come in for your building permit so that they can process their paperwork with the Town Clerk.

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CASE NO. 62-05 AAK REALTY, LLC BY BRIAN AITHCHESON, AGENT for an Area Variance for a proposed free standing sign and an Interpretation if the sign frame is part of the sign size on property located at 2085 E. Main St., Cortlandt Manor.

Mr. Carl Berg from DCAK architects appeared before the Board. He stated Brian asked me to appear here tonight, because he had a death in his family so I will try to represent him the best I can. I believe we were asked to reduce the sign by 1/3 last meeting, which we did, and if there are any other issues I will be happy to answer them. I brought reports, which I guess you have seen before that show the reduced signage.

Mr. Seirmarco stated the reduced signage is fine. The question that still remains is the width of the structure that holds the sign up. He asked Mr. Flandreau, were you able to contact them today?

Mr. Flandreau replied yes, I gave him a call, and actually got in touch with Brian, and told him about the 12 inches, or so, which we discussed at the work session yesterday.

Mr. Berg stated right, we looked at that in the office a little bit to reduce it down to 12 inches, and the feeling was that it didn't look like a masonry structure anymore even though it had the profile, it didn't have the masking, which was similar to the building, which is what we wanted to achieve with this sign.

Mr. Mattis stated well I don't think that the Board really gave the direction to reduce it by a 1/3. The direction I had was to reduce it considerably more than that, and I pointed to the freestanding Kohl's sign that's in front of their building. I referred to the sign going into the Town Center, and the structure on the side of that. We're not an Architectural Review Board, though we do consider that, and I still that a foot, and a half on each side creates a bulk there that is really unacceptable particularly with the location of it, and how it blocks off the site lines from parking in there, and everything else.

Mr. Klarl stated there were two Board members at the last meeting, it wasn't a vote, but they indicated they would like to see the sign reduced to 2/3's of what was being proposed. So there was mention of it by these two Board members that gave the applicant that direction. So he did take some direction from the last meeting.

Mr. Berg stated the sign is much smaller than it was before. I have drawings showing it at 12 inches, if that is the only condition that the Board will approve it under even though we have talked to the client, we have his approval.

Mr. Mattis asked what is the total square footage of this?

Mr. Berg replied the masonry support is 43.86 square feet, and the signage is 39.7 square feet.

Mr. Mattis stated so it is 39.7 for the sign, but the overall of the entire thing is over twice that, and I think if the Code states what is required, and it says supporting poles, and it doesn't say big structures around it, and the purpose of the Code is to limit the size of the sign. Our attempt is not only to keep the sign in the right size, but not to build a big super structure around it, which runs counter to everything we have out there.

Mr. Seirmarco stated the original was something like almost close to 73 square feet. So if you reduce the structure to the 2/3, it is still in excess of 48 square feet.

Mr. Mattis stated I think we reluctantly discussed last night that if those columns could be

reduced to a foot instead of a foot, 5 inches on each side.

Mr. Berg passed out new sketches to the Board.

Mr. Mattis stated yes, I think this is better. The texture of the architectural design, the color of it still fits in with the building, and I don't think you really lose that much by going 5 inches shorter.

This is pretty much what we're looking for here. It keeps the architectural look, but it takes away a lot of the size of those columns. Are you authorized to act on behalf of the tenant for this, or would you rather adjourn it for next month to get their approval?

Mr. Berg replied well I was told that if we could go ahead, and get it approved at the 12 inches, we should go ahead with it, and we would deal with discussing it with the client later.

Mr. Mattis stated okay, but if we approve that, and they don't like it, they're going to have to apply all over again, or by unanimous decision we can re-open the case.

Mr. Berg stated well we did feel that it loses its' masonry look, masonry has a certain mass to it, and once it get thinner, it starts to become not like the rest of the building. That is why we had it larger.

Mr. Douglas asked do you want to take another month to talk this over with your client? It's up to you, but I know personally what I do in my day job, if I have doubts about what I think my client wants, I would prefer to ask the client.

Mr. Berg stated I mean I was just handed this, this afternoon, so I really I am not sure. I would say if you approve it at the 12 inch, and we'll live with it, because we want to get this sign up.

Mr. Klarl stated sir, the Board is trying to be protective of you, and what they're concerned about is that you are going to agree with something tonight, and one week from tonight we'll get a letter saying the client is very upset, and you didn't have the authority to do that, and the Board might be reluctant to open it back up after they closed on a matter, and given you a decision.

Mr. Berg stated I understand.

Mr. Mattis stated I am very reluctant to vote on this tonight, because I'd want a clear cut approval from them. I don't want to put you in the middle where they're going after you, and writing letters to the Town.

Mr. Berg stated let me ask you this. If the 12 inch is acceptable to the client, is it acceptable to the Board?

Mr. Mattis asked the Board members is anyone opposed to the 12 inch sign?

Mr. Seirmarco replied I'm not opposed to it, I just want to remind everybody that this will be in excess of 65 square feet.

Mr. Mattis stated I understand that, and I don't hear anybody voicing their opposition.

Mr. Berg stated the original sign is already approved by the Architectural Review Board, or something.

Mr. Mattis stated they don't look at size though.

Mr. Berg stated I know. So if 12 inches is acceptable to the client, then it is also acceptable to the Board is that correct?

Mr. Mattis replied I don't hear any opposition, we're not voting, but I think you can see that there won't be a problem.

Mr. Douglas stated I don't have any opposition, but I just want to state that this is substantially larger than generally what we allow, and I generally oppose any increases in signage. Personally, I think the only reason I would go along with this, is that it seems to be somewhat a unique structure with two entrances, and really two buildings. So that is what is swaying me.

Mr. Seirmarco stated I feel the same way as Mr. Douglas, and normally I wouldn't approve a large sign like this, but the uniqueness of the building, it's consistent with the building dimensions so I would not have any problem with it.

Mr. Mattis stated I don't have a concern with it, and I am only speaking for myself. We're not talking about a new structure with new signage, we're talking about an existing structure, and the Mavis sign, and the code has been changed since that.

Mr. Seirmarco stated so that is also part of the uniqueness of this.

Mr. Mattis stated okay.

Mr. Klarl stated okay just for the record, you weren't here previously, but we received a memo dated 11/14/2005 from the Deputy Planning Director indicating that at the November 1st Planning Board meeting, the Planning Board approved the design of the proposed free standing sign for this application, and took no position as to the granting of any variances. So the Planning Board previously approved the design, but didn't take any position on the variances.

Mr. Berg stated okay.

Mr. Mattis asked is there anyone in the audience that would like to speak? He stated I would suggest that we carry this over. I don't want to put you in a position with your client. I don't think one month will make a difference, and I doubt you'll start a sign anyway in the winter.

Mr. Klarl stated it would help the Board by writing a letter indicating that you client has consented to that proposal so that we have it before the next work session.

Mr. Berg asked do you think it would require our presence, or can we just submit something in writing?

Mr. Mattis replied if you submit a letter that says your client is in full agreement with this, reference the drawings, and maybe attach that to the letter. I don't think we would need the presence of anybody here to approve that. Does anyone on the Board have any objection to that?

Mr. Seirmarco replied no, I have no problem with that.

Mr. Seirmarco made a motion in Case No. 62-05 to the February meeting, seconded by Mr. Heady with all voting "aye."

Mr. Becker stated you may want to advise your client that you had a bunch of nods tonight on this plan, but he feels differently, you might want to say that you would have a bunch of negatives, if he was looking for something larger.

Mr. Berg stated right, thank you.

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CASE NO. 65-05 GREG T. BLEAKLEY for a Special Permit for an Accessory Apartment on property located at 4 Crugers Ave., Croton.

Mr. Mattis stated we'll hold that over, and give it a second call later.

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CASE NO. 67-05 MICHAEL JONES-BEY for a proposed two lot sub-division that would require lot width variances for two proposed lots and front yard variance for existing dwelling on proposed lot 1 on property located at 210 Red Mill Rd., Cortlandt Manor.

Mr. Flandreau stated we got a call today from the applicant requesting an adjournment.

Mr. Becker made a motion in Case No. 67-05 to adjourn the case to the February meeting, seconded by Mr. Reber with all voting "aye."

* * *

CASE NO. 69-05 OMNIPOINT COMMUNICATIONS, INC. for a Special Use Permit for a wireless telecommunications facility on property located at 3105 East Main St., Cortlandt

Manor.

Mr. Daniel Braff, Esq. appeared before the Board. He stated I am from the law firm of Snyder & Snyder on behalf of Omnipoint Communication Inc. As you know Omnipoint is requesting a Special Permit for a wireless telecommunications facility at the Cortlandt Town Center. The facility consists of a 140 foot monifold, and three equipment facilities there. It is about 50' x 50', and this leaves room for co-locating carriers. The property is over 500 square feet, and is located in a commercial zone. I can address any question from the Board.

Mr. Mattis stated okay, we're still at the point in this where this goes to Engineering for their review, and we haven't heard anything from them yet. So we really aren't prepared to do too much on this yet, but I will entertain comments from anybody on the Board. Basically tonight is just an oversight, where it will be, what it would be, and we had some questions. Specifically, I had a question, and I mentioned it earlier about Nextel just having some little antennas, could they do something like that? We discussed the difference of that as to why T-Mobile needs a tower.

Mr. Braff replied to cover Rte. 202, and Rte. 6, and with the frequency difference, you need different coverage.

Mr. Mattis stated yes, we had gotten those answers. So we have a very good overview, it's a matter of Engineering doing the review for us, and they come back, and they have their comments, and see if there's any issues that are outstanding, or anything like that.

Mr. Klarl stated just to follow up on the Chairman's comments. I met with Ed Vergano yesterday, he is the Director of the Department of Technical Services. Mr. Vergano said that they are doing the review right now. So we should be receiving it hopefully by the next meeting.

Mr. Mattis stated I would like to know in advance of the next meeting, if we have that review completed or not, because if we don't, I think we would contact you, and adjourn to the next month. There is no sense you coming out here, waiting for the other cases just to find out that we are going to adjourn it. So we'll coordinate with the Code Enforcement office, and the Engineering, and if it's not ready we'll let you know that.

Mr. Klarl stated I would suggest that you give us a call the Friday before the next meeting, and they'll let you know whether you need to appear or not.

Mr. Mattis asked if there were any comments from the Board members? He then asked if there was anyone in the audience who wanted to speak?

Ms. Maggie O'Gorman appeared before the Board. She stated I live at 4 Jerome Drive, Cortlandt Manor. This notice says this is a wireless communications tower facility for property located at 3105 Main St. That is the old State Farm office.

Mr. Mattis stated it is the Town Center, and it's behind where the A&P is.

Ms. O'Gorman stated the address is the same as the old State Farm building.

Mr. Klarl asked right now it is the address of the old State Farm?

Ms. O'Gorman replied yes, that's why I'm here, because I but up against that property. You may have the wrong address then.

Mr. Mattis stated okay, we may have to correct that.

Mr. Braff stated just to clarify that, the site is located right behind the A&P in the Cortlandt Town Center.

Ms. O'Gorman stated okay, so they wrote down the wrong address.

Mr. Mattis stated we'll make sure that is corrected, and we apologize for that.

Ms. O'Gorman stated I was just concerned if this was the property, because as I had said my property butts that property. She then stated I just want to make one more comment. The people from the Mt. Airy area really should go last, because everyone else had to wait for them, and they all just kept repeating themselves.

Mr. Mattis stated we've had some suggestions to do things like that, and I agree with you 100 percent, and I think we're going to talk about a possible resolution that all cell tower applications are at the end. We don't want to discriminate against one, and move that back, and not the others. The cell tower ones generally take five, or six meetings. They're more complicated, they're longer, and as you can see, they start going off track. We try, and put them on track again, and I don't like to cut people short, but when we start talking in circles, and it drags on, and I agree it's not fair to the rest of you people here.

Mr. Mattis asked if there were any other comments?

Mr. Seirmarco made a motion in Case No. 69-05 to adjourn the case to the February meeting, seconded by Mr. Heady with all voting "aye."

NEW PUBLIC HEARINGS

CASE NO. 01-06 DONNA ACOSTA for an Area Variance for side yard set back for a principal structure on property located at 13 Rick Lane, Cortlandt Manor.

Ms. Donna Acosta appeared before the Board. She stated I live at 13 Rick Lane.

Mr. Mattis asked can you explain what you're here for, and what you're looking for?

Ms. Acosta replied yes, I am adding a second floor addition to relocate two bedrooms to the second floor to give us a little more living space on the first floor. We also have an existing one car garage, but we're going to just leave that as basement space, and we're going to add on a two car garage, and what I understood from Mr. Flandreau is that we needed a variance, and that is why I'm here tonight.

Mr. Mattis asked there is also a kitchen addition on top of the garage?

Ms. Acosta replied yes, a kitchen on top of the garage.

Mr. Mattis stated before we begin I have one comment. I went out there, and it was very difficult for me, and I'm speaking for several other Board members, we have a requirement that a sign goes out ten days in advance, and we understand that you just picked up the sign on Monday.

Ms. Acosta stated I was not aware, and I had trouble leaving work in time to pick it up, and I apologized to Mr. Flandreau yesterday, and I am sorry about that.

Mr. Mattis stated okay.

Mr. Becker stated I am glad you brought up that point, because the point of advertising is not only so we can find it, but it gives neighbors enough time to prepare, and come in, if they want to speak for, or against.

Mr. Mattis stated right, and several years ago I was at the Association of Towns in New York City, and found out that communities do this, and recommended to the Towns that they do this for Zoning, and Planning, because the requirement is that the adjacent property owners, and those directly across the street get notice, and I think people who live two doors down have every right also, and with the sign out there, people know, and they get involved, and it gives them the opportunity to know about it, and respond if they want.

Mr. Becker stated the project here has brought up several questions, and a lot of them are centered around the point that we don't have an adequate new floor plan.

Ms. Acosta stated I submitted the floor plan through the architect.

Mr. Mattis stated we did have one, we just had a sketch for everybody, but only one set of floor plans.

Mr. Becker stated okay. I have questions on the addition on the side. That appears to be the area that is going to be your kitchen, and dining room. That is a fairly large space, and actually that is the side where you need the variance.

Ms. Acosta stated I do believe that it is because of the garage that we need the variance. Am I correct, in the side yard?

Mr. Flandreau replied it would be the square footage of the space that is needed for each car in the garage, so you would need that certain size.

Mr. Seirmarco stated let me just summarize it. The structure is 24' 8" x 22' 6", but if you were to take, and remove about 3 feet off the length of the rooms, it would still give you a 19 foot long garage, but it would minimize your required variance, almost eliminate it.

Ms. Acosta stated well the architect did the plans, and I have my son, who's a licensed contractor doing the work. So I'm just here to present this. I don't know how to explain that, or anything. I'm sorry about that.

Mr. Seirmarco stated maybe you would want to have your architect, or your son talk to Jim during the week, but our job is to try, and minimize the variance required, and we look at things like hardship, and other alternatives. Are there different ways to do it, so that it doesn't require as much of a variance or whatever, and the first thing that comes to mind is that just taking a few feet off the 22 foot, 6 inch length brings the corner of that room probably closer to 20 foot side yard, and if you worked it out a little bit you might even not need a variance.

Mr. Reber stated I agree. We wrestle with this quite often in terms of two car garages, and I am sure your architect was wanting to give you a garage with enough space, walking room, and what have you, but certainly we've seen many two car garages that are smaller than this, not only in the length, but if that doesn't get you to where you don't need a variance, 26 is also kind of wide.

Mr. Seirmarco stated well I can understand the 26, because it's consistent with the plan.

Mr. Reber stated so what, they can have the front smaller than this.

Mr. Seirmarco stated I don't think we should design it here.

Mr. Reber stated I am saying what you're saying, which is you can design this without a variance, and still have a two car garage. Instead of making it 26 wide, you can make it 24 wide, and instead of 22.6 long, you make it 20, I am pretty sure you'll not need a variance. A 24 foot wide garage is an acceptable two car garage.

Mr. Seirmarco stated we're saying the same thing, talk to your architect, and tell them that we're trying to minimize, or limit the variance, and probably you'll be able to do that, and still have a sufficient wide room, and a two car garage too. Unless there is a hardship associated with it, you have to have this like it is, and if there is, come back, and tell us.

Ms. Acosta stated okay.

Mr. Mattis stated if you cut a little bit off the width, a little bit off the length, and you require a 4 foot variance. I think take a little bit off each side, and it will come in within the 4 feet, and then you can withdraw the case, and I don't think it creates any real hardship, because that kitchen, and dining room is quite large, but I think that was driven by the garage, and I think if you make the garage smaller, the kitchen will be a little smaller, but it will still certainly be a good size. This is about 550 square feet, which off the line for a garage, and dining room. So I don't think we're creating a hardship by making that smaller.

Ms. Acosta stated okay.

Mr. Becker stated the point of this is that the Zoning requirements that everyone's been leaning towards is that what you're seeking cannot be achieved by some other method, if it can be, then it would prohibit us from granting a variance, and we all think it can be.

Ms. Acosta stated okay. Now if my son has questions, can he come speak to Code Enforcement?

Mr. Flandreau replied yes, definitely.

Ms. Acosta replied okay, that would be great, thank you.

Mr. Mattis stated I think between your son, and the architect, they can probably come up with something, and coordinate that with Code Enforcement, and in all probability you could probably withdraw this case.

Ms. Acosta stated okay, thank you very much.

Mr. Mattis asked if there was anyone in the audience who wanted to speak?

Mr. Becker made a motion in Case No. 01-06 to adjourn the case to the February meeting, seconded by Mr. Reber with all voting "aye."

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CASE NO. 02-06 TEATOWN LAKE RESERVATION INC. for Area Variance as to average width for a proposed subdivision on property located at 143 Teatown Rd., Croton-on-Hudson.

Mr. Norman Scheer, Esq., Fred Coons, and Diane Baron appeared before the Board.

Mr. Scheer stated I represent the applicant, Teatown Lake Reservation, and with me tonight is Fred Coons, the executive director, and Diane Baron, the director of operations. This is an application for a lot width variance in regard to a proposed two lot sub-division. The entire property encompasses about 15 acres. The property is in a R-80 district. It's located on the north side of Teatown Rd. The sub-division, as I said, proposes two lots. The first lot(referring to the

plans), lot 1, and it's presently improved with a single family house. Lot 1 is proposed to have about 97,000 square feet. It has about 300 feet of frontage on Teatown Rd., and the proposal is that, that house will be sold by Teatown, and we'll come back to this lot, because this is the lot that requires a variance. The second lot is the lot to the rear of that, it borders some of Teatown's own property, it comprises about 13 acres, it's indicated on the sub-division plan as a no build lot, and that is the intention for that lot. It may have some nature trails, it may have some plant, and wildlife facility on it, but essentially it will be an open space lot, it may remain exactly as it is.

Mr. Klarl stated and your plan has been discussed with the Planning Board about filing a declaration that would indicate that lot 2 is a no build lot.

Mr. Scheer stated that is correct, and we would accept it as a condition of the variance. Mr. Mattis stated I saw that on the Planning Board meeting. There was discussion of that, and you were in agreement with that.

Mr. Scheer stated yes we are, and if the Planning Board does it, you guys can do it too, as a condition of the variance, if you're so inclined. Lot 1 is the lot that gets us into some difficulty. If you do the calculation, 97000 square feet divided by the depth. This lot is quite a deep lot, it's about 570 feet deep from Teatown Rd. It is true that we could move the line, and if you look at the drawing in front of me, a little to your right there is a purple line, which indicates how far back we would have to go in order to comply with the code. The additional property would be another 1.3 acres. Teatown would like to assure that that 1.2 acres remains as an open space parcel. If we were to comply, and move back to the purple line on the drawing, this lot would become almost 740 feet deep. I might point out to the Board that in your subdivision regulations, the Planning Board is encouraged to try to keep lots in 300 feet in depth. We're already almost twice as much, if you comply, we're going to be almost 2 ½ times as much as that. So we think that when you do the balancing act that the Town law requires that you will see, sure we're looking for a benefit, but the benefit that Teatown is looking for in providing open space is a benefit not only to Teatown, but it's a benefit to everybody in the Town, really anybody in the Town that comes to visit Teatown. Is there any detriment to the health, safety, and welfare?

Mr. Reber replied no, I have a question. The land as the map is lying here, the land adjacent to that long, wiggly property line that causes this aberration, who owns that?

Mr. Scheer replied I believe that is owned by people names Carr, it's a residential lot.

Mr. Reber asked okay, so it's not part of any Teatown property?

Mr. Scheer replied that is correct, but Teatown does adjoin in this area (referring to the drawings.) So we think that when you take a look at the Town law, and you take a look at this proposal we think that we an improvement, so we hope you'll grant it.

Mr. Douglas stated you mentioned the willingness to have the second lot a no build lot. I agree with you that it does have a benefit to the Town, and a lot of that benefit has to do with maintaining the open space. So, personally I would be in favor of making that a condition of any approved variance.

Mr. Scheer stated the Planning Board is going to require that we file a declaration, if they grant a subdivision, and you can protect your own Board by making it a condition of the variance as well.

Mr. Klarl stated once again, we are doing coordinated review of the Boards. I'd rather file the condition on the Planning Board side so that we have one consistent declaration rather than possibly two in existence. We might reference in our ZBA Decision & Order that the Planning Board is going to do that.

Mr. Douglas stated whatever is the best way of achieving the goal is fine with me.

Mr. Mattis stated we mentioned the case just before this, we try to eliminate variances when possible, but I think you've shown us how you can eliminate the variance. However, that takes away land from Teatown, and it really in terms of any property boundaries doesn't accomplish anything in terms of the neighbor next door, or anything like that. So I think there's a reason plus the fact it would go back over 700, and some odd feet rather than the 570 feet.

Mr. Douglas stated also speaking personally I would like to thank Teatown for preserving this open space, and doing its' share to preserve open space in the area, and I hope you will continue to do more.

Mr. Mattis asked if there was anyone in the audience who wanted to speak?

Mr. Douglas made a motion in Case No. 02-06 to close the public hearing, seconded by Mr. Reber with all voting "aye."

Mr. Douglas made a motion in Case No. 02-06 to grant the requested variance for a minimum lot width variance on lot #1 from 200 feet down to 164 feet. This is for a variance of 36 feet. This is a Type II Sequa with no further compliance required.

Mr. Scheer stated there is one issue, the latest drawing indicates that the variance width would be 163 feet, but there is also on the proposed subdivision plan a potential dedication to the Town for a road there, and if the Town were to take that parcel the calculation would sink to about 157 feet. So it's an either/or, I think it is 163 without the taking, and 157, if the Town elects to take it.

Mr. Klarl stated what we have done in the past is we have just addressed the applicant's situation, and if the Town does the taking, we've done a resolution that indicates that you're still conforming.

Mr. Reber seconded the motion in Case No. 02-06.

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CASE NO. 03-06 SUE ANN & RAYMOND T. LEVERICH JR. for an Area Variance as to minimum lot area, minimum lot width, two front yard set backs and a rear yard set back for a proposed lot line change on property located at 2017 Maple Ave., Cortlandt Manor.

CASE NO. 04-06 SUE ANN & RAYMOND T. LEVERICH JR. For an Area Variance as to minimum lot width, side yard for a proposed lot line change on property located at 2019 Maple Ave., Cortlandt Manor.

Mr. and Mrs. Raymond Leverich Jr. appeared before the Board.

Mr. Mattis stated we will hear these two cases concurrently. He asked do you want to explain briefly what you're here for?

Mrs. Sue Leverich stated we own two homes on Maple Ave. One sits in the front of the property, and one sits in the back. The property with the house in the front completely surrounds the house in the back. So what we want to do is we want to subdivide it, so we can sell the house in the front, but still have the property that surrounds our house in the back.

Mr. Mattis stated what you're really doing is, it's a strange layout to the two lots, and even though there's a number of variances required it really rationalizes the two lots, and the two lots will make a lot more sense.

Mr. Seirmarco stated I agree, I visited the property. There are two existing houses, and if you look at the map it does show a kind of unusual lot lay out, and this makes more sense, and I really have no problem with this.

Mr. Mattis asked if there were any more comments from the Board? He then asked if there was anyone in the audience who wanted to speak?

Mr. Seirmarco made a motion in Case No. 03-06, and 04-06 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Seirmarco made a motion in Case No. 03-06, and 04-06 to grant the variance as shown on the attached tax chart shows, and previously mentioned. This is a Type II Sequa with no further compliance required seconded by Mr. Douglas with all voting "aye."

Mr. Klarl stated just for the record we did receive a Planning Board memo from Mr. Verschoor that indicated the Planning Board conditionally approved this application for a subdivision on May 13, 2005 by Planning Board Resolution 21-05, and they also noted this would be subject to

obtaining the applicable Area Variances from the ZBA. So the Planning Board acted on this matter, and we did a coordinating review.

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CASE NO. 05-06 MID VALLEY OIL CORP. for an Area Variance for a proposed freestanding sign on property located at 98 Roa Hook Rd., Cortlandt Manor.

Mr. Joseph Dennis appeared before the Board. He stated I am with Morris Associates, and I'm representing Mid Valley Oil for this sign permit application for an Area Variance for a freestanding sign at the Annsville Mobil Station at Annsville Circle.

Mr. Heady stated I was out there, and saw the sign. You don't have the sign up there right now right?

Mr. Dennis stated there is a sign there currently.

Mr. Heady stated okay just looking at it from the car, it looked like two signs together, one on top of the other.

Mr. Dennis replied yes, there is a larger Mobil sign on top, and there's Dunkin Donuts on the lower portion.

Mr. Heady stated I figured that the sign on top is about 4' x 3', it's about 12 square feet, for that one sign. I am just guessing at it now, approximately from looking at it. The other one looked to be about 3' x 3', it would be 9 feet. So you have a total of 19 square feet combining two signs, and you are asking for 48 square feet, am I right?

Mr. Dennis replied that is correct.

Mr. Heady stated so you want double what the amount is that you're entitled to. We had a case last month, the same situation you've got there now, and we turned that down. I can't see why you can't go back to the drawing board, and pick this sign, and put it into the square feet that you're allowed, which is 24 square feet. In other words it would be approximately 6' x 4'. It came up at the work session, and the ATM, you don't need that on there. You would need the price of the gas more so than anything else there, but you could adjust these in, the Mobil, and the Dunkin Donuts, and have enough room for everything you need there. You still have 24 square feet to work with, it is more than what you have there now. I can understand that you want a bigger sign, but in the Code you're allowed 24, and I don't see why you can't put fit in what you need with that square footage. What do you think?

Mr. Dennis replied well, I think the sign that's up there, I don't have the exact dimensions, but it may be that it's up in the air, and you can't really judge the size of it. This sign is proposed to be on the ground.

Mr. Heady stated well I was just estimating the size. We also talked at the work session about the sign being higher, because anyone traveling there, the trucks are about 12, or 14 feet high, and people aren't going to see the sign. So we thought it might be better to put the sign up about 16 feet roughly.

Mr. Seirmarco stated yes, it's a very, very busy, and critical intersection. There are many accidents. The yield signs are not adhered to, people kind of stop on Rte. 9, and just shoot into the circle.

Mr. Reber stated you're showing at the bottom of this sign on top of a monument structure at an elevation of 4 feet, which puts it below the roof line of just a regular car let alone a truck or anything else, and we're concerned, and we're surprised the Planning Board, or somebody else didn't make an issue out of this. Coming around that circle, and if people are trying to look at your pricing on gasoline, and the next thing you know there will be a collision.

Mr. Seirmarco stated there are collisions there without any extra signs. So we would think that you would want to raise the sign, and come closer to the 24 square feet.

Mr. Mattis stated I think what we're saying is we'd like to see it higher. I went through there rush hour yesterday, and with this in mind, and something that low, if you have an SUV in front of you, you have trucks going through there, you're not going to really see it. I don't think you need it as high as what you have, but you're allowed to go up to 16 feet in the sign ordinance, and to put it up somewhat higher really as a safety issue makes it much more visible so people can see it without really straining to see it, and with respect to the issue of the size, there's a lot of white area above, and below the Mobil, and Dunkin Donuts, I think you could re-work the sign, and be creative, and make it a little smaller so that the variance we grant is less, but you still have what you need there for your advertising purposes.

Mr. Dennis stated as far as I was thinking with the 48 square feet is because we have both the Mobil station, and the Dunkin Donuts, and there is a convenience store there. So we were thinking that it is really multiple tenants using that building.

Mr. Reber stated we had a similar situation elsewhere, having to deal with multiple tenants, and as our Chairman mentioned, if you take the white space, and reduce it above, and below the Mobil, and Dunkin Donuts, everything is still there, it is just not as big. It is not as bulky, and it doesn't need the same variance.

Mr. Mattis stated I think people know what Mobil looks like. They know what Dunkin Donuts looks like, and I don't think we need to make it narrower, but I think if we reduce the height of the sign itself, and maybe, as we said before, raise the sign up, I think that would accomplish what your goals are, and what we're looking to do as a Board to approve this.

Mr. Dennis asked can I just point out that the applicant also has done away with some signage in other areas of the property. I think it was something like 80 square feet as total with the wall signs, and free standing signs. So they were trying to put more emphasis on the free standing sign.

Mr. Mattis stated with the bays, I think there is, I think, 6 gasoline bays there. There is a roof on top of there with the canopy. You don't really see the signs on the building that much anyway, and I think this is important. I don't think the overall size of the lettering, or anything is too big. Because of the type of the location, and the type of traffic that goes through there, I think from a safety standpoint I'm much more agreeable to this size than I would be at many other sites in the Town where the traffic is not such an issue, but I think by cutting out some of that white space, and maybe, as we said as a suggestion, raising it up so that it's visible above the roof lines of the cars, and things, from a safety standpoint, that would accomplish a lot .

Mr. Klarl stated if I recall, Dunkin Donuts was permitted a sign above the electronic doors, and in the window of the doors also, a neon sign.

Mr. Dennis stated yes, that is right.

Mr. Mattis stated if they want to put their signs up to the 80 square feet on that, they are really separate things, they are entitled to that, and that doesn't reflect on what you get here at all.

Mr. Dennis stated okay. I'm sure you're aware the Planning Board reviewed this in December, and they were agreeable to it.

Mr. Mattis stated and we have many reviews by both the Architectural Review Board, and the Planning Board, and they generally don't look at size.

Mr. Klarl stated just for the record, speaking on this issue, we have a memo dated January 17, 2006 from Mr. Verschoor, Deputy Planning Director, and he indicates that at the Planning Board meeting on December 6th, the Planning Board reviewed the new free standing sign at the Annsville Circle Mobil, and the Planning Board approved the architectural design of the sign, and takes no position as to the granting of any variances by this Board. So he does indicated to us the Planning Board approved the architectural designs of the free standing sign.

Mr. Mattis stated and they leave the size, and the height of things pretty much up to this Board.

Mr. Reber stated I would like to raise a question just for clarification to the applicant's benefit. This is 6 feet, the base is 4 feet, so that's 10 feet. So he's got 6 feet, and he could raise, and hopefully he'll reduce the overall 6 foot height of the sign itself to maybe 5 feet, or 4 ½ feet, if he comes back , and he raises the stone monument, and fills that space all in, as opposed to having any open space between the base, and the sign, what's the position of this Board? At first I'd like to see it open, I don't want to see a stone monument.

Mr. Seirmarco stated I do too.

Mr. Mattis stated leave the base the way it is, have the poles come out of it, and just leave open space in between.

Mr. Seirmarco stated a monifold sign is fine too.

Mr. Dennis stated okay.

Mr. Mattis stated I think the design of this is pretty good, it's just a matter of the height of the Mobil, and Dunkin Donuts boxes, and the overall height of the sign, which generally we don't like them that high, but in this case, I think for safety reasons, it's okay.

Mr. Flandreau stated you still have to come in, and pick up your sign to place on the property, no one has come to pick that up as of yet.

Mr. Mattis stated we had mentioned that to the other applicant. It's a requirement, there is a yellow sign that says there is an application before the Zoning Board.

Mr. Dennis stated okay.

Mr. Douglas stated I am not so convinced about the 24 square feet, because I think the same rationale would apply on Rte. 6. I don't think we should grant anything above the 24 square feet.

Mr. Heady stated I don't think so either. That is a good size.

Mr. Mattis asked if there were any other comments from the Board? Is anyone else opposed to the larger sign?

Mr. Dennis asked was the other property on Rte. 6 a gas station also?

Mr. Douglas replied I think that the fact that it is a gas station works against you. It is the only gas station there. I think the people would want to just check out the prices to be honest. That is a business decision. Anybody will know that is a gas station.

Mr. Becker stated I think I'd be somewhere falling in the middle. I think that I would not be opposed to a larger than normally approved sign, but not twice the size allowed. If we were increasing it 25, or 30 percent so that we're granting a smaller variance, I think I would be more confident with that.

Mr. Mattis stated in my own mind, the difference between going down a straight line like Rte. 6, and looking over to see a sign, and merging into a circle like that, I would like to see a bigger sign.

Mr. Reber stated I did a rough calculation cutting down some of the white space, not taking it all out, but it looks like you might be able to reduce the height to about 4 foot 10 inches, and that gets you about 38, or 39 square feet. So that is half the variance.

Mr. Douglas asked why don't you just cut out the food mart, and ATM, and put the prices next to each other, and go down to 24 square feet?

Mr. Heady stated that is how I feel.

Mr. Dennis replied I think they will want something a little larger than 24.

Mr. Douglas stated yes, I know they want that, but I don't see a justification for it. I don't see a need for us to go above what the code sets forth so they can put food mart, and ATM on their sign.

Mr. Mattis stated I think anywhere you look you're going to find that gasoline, diesel prices go below each other, and side by side, I think it will be very confusing.

Mr. Seirmarco stated that was my question. You usually have super, medium, and regular, and diesel, so you're going to have more prices up there too?

Mr. Klarl asked has this been thought out?

Mr. Dennis replied they were okay with having just the two, one for gas, one for diesel, but I guess what I was trying to say, if they didn't use the food mart spot, and ATM, they may want to put the gas prices in there.

Mr. Klarl asked do you want to talk to your client, and get back to us?

Mr. Dennis replied yes, I think that is a good idea.

Mr. Mattis stated I think you can talk to them about the height, the overall size, and specifically what they want on the sign.

Mr. Dennis stated okay.

Mr. Heady stated I think you better talk to them, and see about the 24 square feet you're allowed. It could be 6 feet wide, and 4 feet high, you should be able to fit it pretty well in there.

Mr. Mattis asked Mr. Dennis do you have any further questions, or comments from us?

Mr. Dennis replied I guess the sign is there, so it might be better to try to work up something from what is there as another option.

Mr. Mattis stated I am not sure what you mean.

Mr. Dennis stated the existing sign.

Mr. Seirmarco stated just make sure it's high enough.

Mr. Mattis stated well the existing one is pretty high.

Mr. Dennis stated maybe we should check the dimensions on that, and see what could be done.

Mr. Heady stated that is small, the sign that is there.

Mr. Mattis stated that is a possibility.

Mr. Heady asked you mean to keep the sign that is there already?

Mr. Dennis replied yes.

Mr. Heady stated that is only about 19 square feet roughly, just from looking at it, and you're allowed 24. You could go with a bigger sign than that. That is up to you.

Mr. Dennis asked as far as the sign notifying the public, should I have that out, because I assume this will be on next month?

Mr. Flandreau stated yes, you can send somebody into Code Enforcement to pick that up, it's already set.

Mr. Seirmarco stated the other thing I just want to remind everybody about is that this has to be measured physically by somebody before it goes up.

Mr. Mattis stated yes, we had a problem with somebody that put up a sign that was larger than what was approved. So you notify the Town, when you're ready to put it up, and someone will go out there to do a quick measurement to make sure it is okay.

Mr. Klarl stated also if there is modified sign, you show this also to the Planning Department, because they approved one scheme as an architectural design that worked for them, but if you are going to change the sign, the Planning Board will need to take a look at that also. Assuming that the ZBA will work with you, and give you some direction to modify the sign, I'm sure the Planning Board will approve that.

Mr. Mattis asked if there was anyone in the audience that wanted to speak?

Mr. Heady made a motion in Case No. 05-06 to adjourn the case to the February meeting, seconded by Mr. Seirmarco with all voting "aye."

Mr. Mattis recalled Case No. 65-05. He then stated that there should be a letter written to him by the Code Enforcement Department saying that he did not appear, and if he doesn't notify you for an adjournment, and does not show up next month, then we will deem the case abandoned.

Mr. Heady made a motion in Case No. 65-05 to adjourn the case to the February meeting, seconded by Mr. Reber with all voting "aye."

Mr. Mattis stated I would like to discuss the cell phone applications, and turn this over to Mr. Reber for his further comments on this matter.

Mr. Reber stated in consideration of the impact that having to deal with cell tower applications, and changing this Board's ability to efficiently, and quickly resolve issues for the applicants here before us. In fact, this evening there was a comment made here by one of the visitors that this seemed unfair that these discussions that seemed to consistently run over an hour, or more cause everyone else to wait. I would propose that at all future meetings the agenda place all cell tower applications at the end of the agenda, whether it be their first time before this Board, or whether they're reappearing, or it's an adjourned case, it wouldn't matter. All cell towers should be at the very end of the agenda.

Mr. Klarl asked even the first one where we a brief presentation from the applicant?

Mr. Reber replied I think just to be uniform, because even if it is the first time on, we could get trapped. So I think it should be a uniform rule so we don't show favoritism for one application versus another, all cell towers should be addressed at the end of the meeting.

Mr. Mattis stated I agree, we really don't know in advance, who will be coming in. So I think by putting them all at the end would be more fair. I think it's more fair to the people that come here for other cases.

Mr. Reber stated this way too, if they know they are at the end of the agenda, they don't have to be here when the meeting starts, they can come a half hour later, or an hour later, whatever they think will be the required time.

Mr. Mattis stated I think that is a good idea.

Mr. Heady stated I also think that we should notify the cell tower applicants that are on the agenda now that they are going to be put on the end of the agenda.

Mr. Mattis stated yes, that will be good. He then stated there is no one left in the audience to speak at this point.

Mr. Reber made a formal motion to have all cell tower applications at the end of the Zoning Board agenda, seconded by Mr. Heady with all voting "aye."

The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Christine B. Cothren