

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, March 19, 2008. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

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

Raymond A. Reber  
Adrian Hunte  
David Douglas  
James Seirmarco  
Wai Man Chin, Vice Chairman  
Charles P. Heady, Jr.

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

**ADOPTION OF MINUTES:** 01/16/08.

Mr. Mattis stated since we had just received these minutes, and did not have time to review them, can someone make a motion to adjourn this.

Mr. Heady made a motion to adjourn the adoption of the January minutes to the April meeting seconded by Mr. Chin with all voting "aye."

\* \* \*

**CLOSE AND RESERVED DECISIONS**

CASE NO. 23-07 CONGREGATION YESHIVA OHR HAMEIR for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its' students is a pre-existing, nonconforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at 141 Furnace Woods Rd., Cortlandt Manor

**ADJOURNED PUBLIC HEARINGS**

CASE NO. 31-07 BEST RENT PROPERTIES, LLC for an Interpretation that the Town Attorney's determination that the property at the southwest corner of Westbrook Drive and Oregon Road cannot be developed as a retail shopping center is incorrect.

Mr. Brad Schwartz, Esq. appeared before the Board. He stated I am from the law firm Zarin & Steinmetz appearing on behalf of the applicant. I am here this evening to give your board and the community an update as to the status of the application, as well as the status of the project. Last Thursday, a representative of Best Rent, counsel, and their architect met with representatives of the Town, the Town Attorney, Mr. Verschoor, and Mr. Vergano to present, and discuss a revised site plan that showed a significantly reduced version of the project. At that meeting it was discussed that the next step for Best Rent would be to conduct an informal hearing, or meeting with members of the community to present that plan, and gain some informal feedback. That meeting has been scheduled for Thursday, April 3<sup>rd</sup> at a restaurant in Town, Piazza Roma in the Cortlandt Town Center. We are sending out by certified mailings, treating it as it were a public hearing notifying members of the community of that meeting. I brought several copies of the flyer with me here tonight that I would be glad to pass out.

Mr. Klarl asked what is the date of that meeting?

Mr. Schwartz replied Thursday, April 3<sup>rd</sup> at 7:00 p.m. at Piazza Roma restaurant in the Cortland Town Center. As I indicated in the letter that we sent to your board, Best Rent at this time, wishes to focus its' efforts on that meeting, and not go through the merits of the application here this evening. An important point that I want to address to your board, as well as to members of the community that are here this evening, Best Rent cannot simply withdraw this application as to preserve its' rights to pursue an appeal in the future, and if it was to simply withdraw it, it would lose the statute of limitations. We did file the application for an interpretation within the appropriate 30 day time period, and the application needs to remain pending in order to preserve that right.

Mr. Reber stated I believe that last point was critical for us, because we certainly do not traditionally allow cases to just sit on our Board for so long, but as the attorney explained they had to make an appeal within 30 days, they did make the appeal, and if they withdraw the appeal they will lose their right to appeal in the future. So it must stay on the agenda until some kind of resolution can be reached. So we are just in neutral right now waiting for something to work with the Town. Apparently they've now made some progress with the town officials, and we are going to continue the public hearing. So at least that is encouraging that there is some progress, and it will give the public a chance to see the idea that is being proposed, and if necessary they can come back to us after that.

Mr. Mattis asked are there any other comments?

Mr. Chin stated I agree with Mr. Reber, what we did say at the last meeting is that unless we hear something positive from the applicant, then we would abandon this, but now we have something positive. They have met with some members of the Town, and now they are going to meet with some members of the community.

Mr. Mattis stated so it seems we are seeing some progress, and moving forward here, and that's a good sign. Is there anyone in the audience who would like to speak?

Mr. Jim Farrell appeared before the Board. He stated correct me if I am wrong, but it seems to me that it was two meetings ago that it was agreed to, and that would have been 60 days that this board was going to request that the next meeting, which would have been last month about having this abandoned. Now I missed last month's meeting....

Mr. Mattis stated this is the second month in a row.

Mr. Farrell stated okay, now the whole issue here is that the Town has ruled that commercial cannot be built, and these people are appealing it. I don't understand why they would be appealing to the residents. We don't make the rules, you guys make the rules. Tonight was the first that we've heard about some kind of meeting that they are going to have to discuss an issue that has already been ruled on by the Town.

Mr. Klarl stated I just want to briefly explain to you what happened. This was a determination made by the Town Attorney by letter, they have to right when there is an administrative determination by the Town that they don't agree with, they can turn to the ZBA, they came to the ZBA. They were here on our agenda from July through January, and we had not seen a representative from Best Rent. So at the January meeting this Board required that someone show up at the February meeting. Mr. Schwartz did show up at the February meeting, and made a presentation, and now he has shown up tonight indicating that they've had some discussions about a possible proposal here, but before they want to go forward with that possible proposal, they want to have a neighborhood meeting, almost like has been done on other projects. It is called a concept committee, the Town has done it in the past with the golf course, the Cortlandt Town Center, and other things. The appeal from the Town Attorney's determination is what is pending before this Board.

Mr. Farrell stated I understand that, and I know that the Board asked for someone from the law firm come here, because these people from Hollowbrook Mews are the ones who asked for that, because it had been going on for how many months, almost a year, where all it was was adjourn, adjourn, adjourn.

Mr. Klarl stated that is why the Board was sensitive to your comments at the January meeting.

Mr. Farrell asked what impact could a meeting by their group possibly have on the residents, who live across the street? It doesn't make any sense to me. I just don't understand it, and if none of us go to that meeting how would the Board look at that?

Mr. Douglas stated speaking for myself, it would not matter either way to me. The issue in front of us is an Interpretation, and that would still be the issue, and I don't think that that legal issue is impacted by if one person meets informally with the applicant, or six hundred do.

Mr. Farrell stated okay, good, that is all I wanted to hear. Thank you.

Mr. Mattis stated we're not sure what their proposing. It may be something that is not subject to this Interpretation.

Mr. Farrell stated if it is commercial, it's commercial.

Mr. Mattis stated well it says retail shopping center, and that is what we are looking at right now.

Mr. Farrell asked doesn't that mean commercial?

Mr. Mattis stated that is only part of commercial, there is other commercial.

Mr. Peter Weinbaum appeared before the Board. He stated I am a resident at Hollowbrook Mews. I have been coming to several of these meetings. I have to say I am really disappointed, I feel we have taken a big step back tonight. While I don't plan to be an expert in the process of the Boards, and the procedures involved, I do understand what is told to me, when I come to these meetings, and it was made very clear, at least in terms of my understanding that what was asked of Best Rent Properties was not to come here tonight, and discuss what progress they've made with the Planning Board, but rather what their intent was in terms of appealing your specific ruling, and I didn't hear anything tonight in terms of their strategy about appealing that particular ruling. We've been coming here frequently, and trying to put some pressure on the Board to force representation, and stop these adjournments. Best Rent Properties sends one paid representative to these meetings, we've got 25, or 30 non paid. I come to these meetings, and I don't see my kids tonight by the time I get home. I am tired of coming to these meetings to be honest, and I don't feel that they've done anything to advance their cause in terms of dealing with this ruling, and I am not really sure what impact we have had on this process. I don't want anybody to buy me pizza. We're here because you made a ruling, and we feel that it should be upheld, and it is just going on and on.

Mr. Mattis asked what would you suggest that we do?

Mr. Weinbaum replied my suggestion would be to force them to abandon this application, or come up with a specific tragedy as to how they propose to deal with your ruling. To me the ruling is clear, 30 of us do not have to come here on a regular basis to listen to the attorney from Best Rent postpone the process, or offer to take us out for dinner. No one here is interested in dinner. We want to put an end to this, or at least find out what they intend to do about it.

Mr. Reber stated a risk you take, and a concern you have to have is a decision in court. Whether we agree

with the Town Attorney or disagree with the Town Attorney, if we disagree with the Town Attorney, and rule in favor of the applicant, and say yes you can develop commercially, okay then, the Town may appeal that to a higher court. If we rule in agreement with the letter, they're going to have to appeal to a higher court. I don't think this would just necessarily end, if we force the issue of the decision, and the thing you don't want to happen is to have the courts say that yes they have a right to develop commercially fully. What they are trying to work out with the Town is the Town is saying look we don't want this property developed to its' full extent, we want to look at other options, something that is less onerous to this area, and community. Our hands are tied under that scenario, for us to force the issue is kind of awkward, and as we stated earlier there is a problem here because of the fact that they had to file this appeal, and in this case it is a legal issue. So I am not so sure that the best answer right now is to force this issue, because if it is decided in favor of the applicant, then that gives them a lot of freedom to build pretty much whatever the zoning under a commercial area will allow. So if there is something that can be worked out to avoid that, I think that is what the Town is trying to solve without having a big court battle, and a lot of lawyer's fees being paid.

Mr. Weinbaum stated we were fighting this issue simultaneously with the Planning Board, and the Zoning Board, and once we understood that the rules mean that it couldn't be commercial we kind of abandoned our fight with the Planning Board. I mean we're certainly opposed to their initial plan, as I am sure you are all familiar with the area, I don't have to describe it. I mean there are two dilapidated buildings there, there is a traffic circle that while well intended is now cracked on all sides, and to establish a third commercial property in that area, actually a fourth, because there is already a line of stores....

Mr. Mattis stated we have to make our decision based on legal reasons not whether the traffic circle is cracked, not whether there are dilapidated buildings near it or not. We have to look particularly at what the legal issue is, and if force them to withdraw the case their statute of limitations would run out, and then they could go back to the court, and the judge would say you didn't give them a chance to have their hearing, you forced them to run out of the statute of limitations, and they'd be right back. So are hands are tied here.

Mr. Weinbaum stated I can understand that, and what your mentioning there is that we are pushing for some kind of ruling, but also we're trying to see if we can get some kind of plan that is more acceptable.

Mr. Reber stated we will only be ruling on the legalities of the issue. It's the Town, the Engineering Department, and other departments, they're discussing with the applicant, we can't. We don't have any control over that. Just like the chairman just said, the fact that there may be dilapidated buildings, or a cracked traffic circle is irrelevant to what the law allows. We have to put blinders on to those. So we're not involved in any of the negotiating or compromising, or discussions, or whatever is going on. We are just sitting here waiting for them to make a decision, force the issue, or come and change the plans so that they don't have to force the issue.

Mr. Weinbaum stated well I don't understand the risk in at least forcing them to come back with exactly how they are planning to appeal this decision. Can we force them to do something?

Mr. Douglas stated I think what the applicant is trying to do is to try, and at least consider the possibility of making some sort of compromise. We can't tell them to that, or not tell them to do it. You can be receptive to it, or not be receptive to it, that's between the community, and the applicant, but I think that is what the applicant is trying to do. They want to sit down, and talk with the community, and you may find that after you speak with them for thirty seconds that it is pointless, or you may find that it is productive. The other thing I just want to explain is that when people think of the Town, they often think the Town is all one body, and we all sit down, and make a decision together, there are different divisions, and boards, and we each have our own authority, and if the Town, and the Engineering Department, and staff sit down with people that's not us. We have nothing to do with that. We're a separate board, and we are just here to rule on the legal issue if , and when it goes forward in front of us. So it's not the Town, and us trying to do something. We're sitting here, and are being asked to interpret a ruling, and if that goes forward we'll proceed with it,

and if it doesn't, we won't.

Mr. Seirmarco stated I just want to add one thing to that. In my experience, if we force the issue, and it goes to the courts usually the only person who wins there is the applicant. The Town usually loses, because they either do one of two things, they prove to the applicant that we have no jurisdiction at all, which is a bad thing, or they send it back to the Town, and say fix this. So probably we are much better off fixing it ahead of time, then having the courts do it, because there is always a risk when it comes to the courts. So rushing this, as you put it, is not a good idea, and we don't want to have to go through the courts, not that we are afraid of that, but I think it's much better if we resolve this within the Town, and the community.

Mr. Weinbaum stated the danger for the residents is that we are obviously hoping this be ruled as purely residential, and really any compromise beyond that is some sort of commercial, and so that is what we are concerned about. The one thing I will say in closing is that the longer this drags out what I expect to happen is that our numbers will increase, and you'll increasing hostility from the community, because it is really becoming frustrating, and I know it has been for you as well. I am sure you don't enjoy sitting through this, but at some point I think it is just going to get increasingly frustrating for the community. Thank you.

Mr. Pedraza appeared before the Board. He stated I live at 10 Priscilla Ct. I have been here for just about every meeting. I missed last meeting. I saw it on Channel 78, and I saw that Mr. Chin mentioned that if the applicant made a proposal that could be a compromise. I don't remember any of that being said. The last time I was here it was about withdrawing the appeal, or the Board going ahead with a decision, that is what I remember being said. Right now I see this accommodation for Best Rent. I don't know what happened between last month, and this month, but it seems like a total turn around.

Mr. Chin stated well I guess you didn't hear what the applicant said about the statute of limitations. Yes, I did say if we don't hear anything, I would like to see it deemed abandoned, but we did hear from them. As a matter of fact, the attorney for the applicant came to Monday's Work Session, and explained a lot of things to us as to how he had a meeting with the Town officials, and that he was setting up a meeting with the community. So this is something that is at least a positive effort of going ahead. So I'm not just saying that, if there was absolutely nothing, then I would say okay let's abandon, but he did give indicate some information to us.

Mr. Pedraza stated all that I see it is as a tactic by Best Rent, and I don't see any benefit except for them to have any kind of meeting with the community. We've already decided what road we're are going to take with this. It was already decided by the Town Attorney that this cannot be developed the way that they want, and I don't know if this Board is afraid to be criticized or what is going on.....

Mr. Mattis stated okay excuse, we rule only on the law, and I resent that comment.

Mr. Chin stated I don't like that comment either. You heard Mr. Douglas say we are trying to get the best thing without going back there later on to some kind of appeal through a court. You are not listening to that. We are trying to get the best thing done without getting appealed by the applicant, or you , or anybody where everybody will be feeling better about this. That is why they are asking to meet with the community, and if you don't want to meet with them, that is fine too. We'll make our decision based on legal matters, and that's it.

Mr. Reber stated I think the thing to remember is it is a legal issue. In normal cases where there are no legal restrictions, we say that's it, you have plenty of time, and you haven't done anything, and we could drop the case, and they can try to appeal it, and the court would rule with us, because they would say look there was nothing here preventing the client from explaining his case. In this situation he has a time constraint, and he is trying to work with other departments in the Town. Now if we try and force it, or if we force him to drop the case, they can appeal to the courts, and the courts will overrule us. So there is no point in doing that.

Now as far as the public hearing that they want to have, if the community is opposed to anything but residential, the best way to make sure that gets heard is you show up at the meeting, and go on record after you hear their case, because what is going to happen if you don't show up, and the ruling goes against you, and they appeal it to the courts, the courts are going to ask if there was a public hearing, and the courts are going to want to know how many people showed up, and if there is nobody, then the court will say then I guess they weren't that concerned about it. They did not show up to see what you were trying to build. So you should protect your interests. You owe it to yourselves to go to the public hearing, listen objectively, and see what they want to do, see the rationality, because if you make an unreasonable demand that makes no sense, and that prevents an owner of a property from using the property, the court will frown upon that. As Mr. Seirmarco said, the courts aren't going to say to people you have a piece of property, and you can't use it. How would you feel, if the Town said that to you? So you have to have logical, rational reasons why they can't do what they want to do. So I would suggest that you go to their hearing, listen to them, discuss it, and if you feel they are being unreasonable, state that, and let it be known.

Mr. Chin stated I would like to say something else also that not everybody has to here. You can write a letter, and that goes on the record also. Some people may have to out one day, something, and then you can write a letter, it will always be there.

Mr. Pedraza stated the reason we come is because we have a strong interest in this.

Mr. Chin stated I understand that.

Mr. Pedraza stated we are not giving up on this. One last thing, for myself, I want to find out for myself if there is any precedent that we have for a case like this, and also find out exactly how the boards in this Town work, because right now I am totally, totally confused as to what the workings of this board and the Planning Board are.

Mr. Klarl stated let me try to explain two things. This application is made by this applicant to propose a commercial building on this property, and they went to the Planning Board, and they had a threshold issue as to whether or not it could be developed in a commercial fashion, or whether it would just be residential. The Town Attorney wrote a letter to the Planning Board indicating that he believed based upon research that lot 40 could only be developed as a single residential lot. They were obviously very unsupportive of that ruling, and their remedy is to come to the Zoning Board of Appeals. So they did, and now the Planning Board is on hold. So this applicant I think would admit that from July of last year to January of this year there was no appearance, it was just adjourned every month. It was their application, not the Town's application, and they just adjourned it. At the January meeting this Board heard very much from the residents, and required that somebody appear on behalf of the applicant in February, they did, and required that someone show up here tonight, and they did. So in terms of fighting, there has just been adjournments by the applicant not the Town. Second, we've had a series, and there is a distinguished gentleman out there in the audience tonight, who has been involved in other applications, of concept committees in this Town, and they have actually worked out for the most part favorable. We had one involving a skating rink a couple of years ago, and the concept committee really worked hard, and I think we had a member of the ZBA involved at the time, and they then decided that they thought the skating rink was something that should be looked at, they went to the board, and the board disagreed. So the concept committees don't outweigh the board, and the board does not outweigh the concept committees, but we have found that over the years, when we had a large project that impacted the neighborhood that concept committees have been a pretty good tool to help out with a result. I understand that at the meeting last week with the applicant and the Town Attorney, someone from Engineering, and someone from the Planning, and they suggested to the applicant that they set up this meeting. So it was not just coming from the applicant. The Town also suggested it thinking maybe it would be a positive thing where the community can have some input. So the idea was to be a positive forum, not necessarily for the applicant, but a positive forum for the neighbors to comment on the project. It was just a suggestion.

Mr. Pedraza stated okay, we will sit down as a group, and decide what we are going to do about attending this meeting. Thank you.

Mr. Mattis asked would anyone else like to speak.

Ms. Marie Liotta appeared before the Board. She stated I live at 48 Augusta Drive. While sitting in this audience, I feel that I am a fairly intelligent person, but I am just totally confused. First of all, we were told numerous times, and I have been at every meeting, and every Planning Board meeting, and we've been told numerous times that it is very important that we do show up in mass. Tonight I got another message that it is not necessary for us to show up. We've appealed to the Planning Board, because we don't want commercial property there. You said write letters, we've written letters. We gave you letters of petition. We went around the neighborhood, that was way back. I don't know how long ago. We have done everything you, and the Planning Board have asked us to do, and it has fallen on deaf ears. That is how we feel tonight. There is a letter somewhere that says this property should not be built commercially. I don't understand what part of that the Planning Board, or you don't understand. It just boggles my mind. Now you are saying to us go negotiate with the lawyers for Best Rent, and see what you can come up with.

Mr. Chin stated no, we didn't say that.

Ms. Liotta stated let me finish. We have never interrupted you, when you had comments. Let me finish. I am not attacking you sir. I am just stating a case. There is no compromise here. The community does not want to compromise. We were given the information that there is a letter out there that said you cannot build on this property. What is the problem, then change you application to residential. We don't have a problem with residential, but no that is not happening. What it is is we need to compromise. Nobody else needs to compromise, the residents need to compromise. I think you're asking a little too much. We have been here to every single meeting, and we have told you no compromise. We don't want to do that. First of all, Best Rent was supposed to get in touch with us as a community, interestingly enough they lost the e-mail address. I rest my case.

Mr. Douglas stated I would like to say something. We're not telling you that you should compromise. We're not telling you that you should not compromise. We're not telling you you should do anything. All I will say for myself is that sometimes meetings with applicants, and communities turn out to be fruitful. Other times it turns out to be an utter waste of time, and I think the message that the community is giving to this applicant is that it will probably be a waste of time, and that may well be, and I am sure Mr. Schwartz will make that message known to his client after tonight's meeting, and then they will decide how they want to proceed, but nobody is telling you what you have to do, or what you should do. All we're saying is that as a board that we need to take certain steps, and there is a certain process, and that the applicant came back to us tonight, and explained why he could not abandon this, because of the statute of limitations, and for that legal reason, he doesn't control it, we don't control it. That is the law in the State of New York, and he is right, and he suggested a meeting with the community, and if that meeting is a waste, then we will come back next month, and we will have a public hearing, and make a ruling.

Mr. Reber stated also I want you to understand that normally we are here to discuss variances, and when we discuss variances we have to take in a number of considerations such as the impact it may have on the community. In those situations, having an audience, having neighbors, and the people here to stress their opinions about that impact is important to us, because it weighs on our decisions. This is not a variance. This is an Interpretation. It doesn't matter whether you are here or not. It doesn't matter what is going on with the property. For an Interpretation, it is strictly a legal item. At some point they have to make a formal presentation, and then we review the record, and based on that we decide yes, or no, and we can't be swayed by these other factors. It is not a factor that we're allowed to use. This is a legal issue. We are just waiting until that has been presented to us. We are not involved in any of these discussions, or anything else that is going on. We feel for you. We understand your frustration. We have a similar frustration, but our role is very limited. It is to sit here, and wait until it is formally presented. We would like to close the

door on it, and we have been told we can't, because we are governed by laws as well.

Ms. Liota stated I don't understand where all this came from with the courts. You said the courts would probably rule against you, and if that's true, well then let me play my lottery, and take the chance.

Mr. Mattis stated no, that's not true.

Mr. Reber stated we merely analyze the record, and make a ruling here, but they haven't presented anything to us yet so we can't make a ruling yet.

Ms. Liota stated well this is what I don't understand, if the lawyer for the Town uncovered this letter, do legal documents have no bearing?

Mr. Mattis stated they have a right to present a case, they haven't done that yet. We can rule against them without hearing them, or we can drop the case. Either way they would go to Appeals Court, and the judge, that is when the judge would turn against us, and say you didn't hear their case, and you dropped it, and they lost their statute of limitations. So we're kind of between a rock, and a hard place. I'm frustrated. I'd like to see this move on.

Ms. Liota stated Mr. Mattis, we are doubly frustrated.

Mr. Mattis stated I don't like to come here every month, and hear there is no progress either. We're here to hear cases, and dispose of them in a timely manner.

Ms. Liota stated I agree, but if they're going to talk to us, then they're not going to argue the fact that the letter says residential. What they're going to talk to us about, I'm assuming, just as you're assuming the courts would work against us, I'm assuming that they want us to negotiate some kind of a kind compromise. So if I were to project that a step further, they cannot fight the residential part of that letter. I'm assuming, it is an assumption on my part, silly me, so they want to appeal to us to compromise some sort of commercial property. I think that is fair for us to assume is it not? So what they're not fighting then is the letter, which says it can only be residential property.

Mr. Klarl they are challenging that right now with this application.

Mr. Mattis stated but they haven't presented their case yet.

Ms. Liota stated they are challenging it okay, they haven't presented their case, but they want us to probably make a compromise.

Mr. Klarl stated since they have not made their case yet, we had a couple of fixed submissions early on, and maybe you should go by the Code Enforcement office, and they can show you some of the submissions that they have sent, and you can take a look at it. So they've given us a written challenge. We haven't had a full verbal challenge, because we've only had someone appear at the February, and now March meeting, but we have a fairly well briefed challenge by the applicant right now. So maybe you would want to take a look at those papers.

Ms. Liota asked do you respond to that challenge?

Mr. Klarl replied no, it gets submitted to the Board, and the Board takes it as part of the public record.

Ms. Liota asked do you answer that is what I am asking?



Mr. Klarl replied the answer is going to be our Decision & Order, our Decision & Order is the final answer.

Ms. Liota stated so you are waiting for our meeting with Best Rent? I must be dense, because I don't comprehend that.

Mr. Chin stated they are saying that they set up a meeting. We really didn't care whether they set up a meeting or not. It is just that they did meet with the other Town officials, staff during a day meeting. So it doesn't matter either way to us. It does not have any bearing on our ruling in this case.

Mr. Klarl stated I think the Board would love to hear from you after that meeting, whether it was good, bad, or whatever.

Ms. Liota stated well I just want to put it on record that those people who are here from the community are 100, 200 percent against anything commercial on that property.

Mr. Douglas stated can I just say something that I would personally find helpful. I think it is important that the community come. This is an Interpretation which is different from a variance, it is a legal matter, but let's assume that this meeting doesn't resolve things, and then next month we are back, and this is back on the agenda. What I think would be helpful to the Board is for the people of the community to come out, and in response to the applicant. The applicant is saying that the Town Attorney's determination is wrong. So it would be extremely helpful to hear why from your point of view why the Town Attorney's determination in your view is correct. So that then we have both sides of arguments as to why you think it's correct, and why the applicant thinks it is not correct. That is the issue before this Board.

Ms. Liota stated sir, I am not a lawyer.

Mr. Douglas stated I know you are not.

Ms. Liota stated your lawyer, the Town lawyer has made a determination through a letter saying that that property could not be developed commercially.

Mr. Douglas stated yes, the Town Attorney has made a determination, under the law the applicant is effected by that determination, and has the right to appeal it. The way to appeal it is to this Board, and the issue before us is it is in front of us for Interpretation as to whether or not the Town Attorney's determination was correct, or was not. They have arguments as to why it isn't for legal reasons, or factual reasons, or whatever they present to us, and we will hear that evidence, and evidence from anybody who opposes it saying this is why we think the Town Attorney's determination was correct, and that is the issue before us.

Ms. Liota stated the only rationale that we have is that the Town Attorney uncovered something, and that we could trust in the Town Attorney to have uncovered that.

Mr. Seirmarco stated that is fine, and there is nothing wrong with that. You don't have to be an attorney to have an opinion, and we will use your opinion, the applicant's opinions, and our own legal opinion, and our own common sense, and try to understand this, and then we will make a determination. So don't feel as though we are not listening to the community. We will listen to everybody. We are required to listen to the community, the applicant, to our attorney for the Zoning Board, the Town Attorney, and anybody else that has a stake in this, and then we will make a decision. So don't think we are minimizing anybody's opinion, because we're not. In parallel to that the applicant is asking the community to speak with them. It has absolutely nothing to do with us. Mr. Reber said it before, and Mr. Douglas said that same thing. The outcome of that, and your opinion is not meaningless to us, but the meeting itself bears no impact to us. I hope I am making myself clear.

Mr. Klarl stated speaking selfishly I think that all Town Attorney opinions should be absolute, and not have

people challenging them, but that is what this Board is for so that people can challenge a ruling.

Ms. Liota stated that is what boggles my mind, as well as the other residents here. It kind of alarms that you can have some kind of a document to the Town, and it's a legal document that somewhere along the line it may be challenged, when a decision is made.

Mr. Douglas stated the Town Attorney rendered an opinion, that's his opinion, a legal opinion. I just want you to understand that that is his legal opinion. Under the law, they have the right to challenge that, and that is what they've done.

Ms. Liota stated okay, this is my last comment. This has been going on for 15 months, if they have a viable argument against what the Town Attorney had uncovered they would have brought it here already, and presented that 15 months ago, 14 months ago, because they could have been building on that property, and getting some revenue from it. Thank you for your time.

Mr. Chin stated I would just like to say something when I said that you don't have to show up for every meeting I meant that if there was something special going on, an anniversary, or a birthday, there is plenty of you that show up, and if you can't show up that day you can always write a letter for that day.

Ms. Liota stated so we walked out of this meeting 6 months ago with most of you, some of the veteran members of this Board. We walked out, and we were told to keep showing up. So tonight the message that we got was if you come, you come.

Mr. Douglas stated it is good, and informative for members of the community to come here. I can guarantee you that every member of the Board is in agreement with that.

Ms. Liota stated I am not so sure that is what I heard tonight.

Mr. Chin stated I was only saying that if you had something important to do, you can always send a letter.

Mr. Mattis stated I think we spoke enough on that. I'd like to say two things. First of all, for the record, the attorney for the Town, Thomas Wood, issued this opinion, not Mr. Klarl, who is the Deputy Town Attorney, and who is representing the Zoning Board here. He is not representing the other interests of the Town. He is representing the Zoning Board. Secondly, if it were in my power, or the Board's power, I would tell Mr. Schwartz you get up here next month, and you be ready to present your oral arguments, but unfortunately we can't do that. If they are stringing us along, legally we have to go along with that, and if we issue a decision one way, or another without listening to those oral arguments, and we turn them down, they're going to appeal, and the Judge will either side in their favor, or it is going to come back to us, and that doesn't do anybody any good. So I am as frustrated as you are. I don't like to come here every month, and hear there is no progress. I don't like that at all. I'd like this to just move on, have them present their oral arguments, let us weigh both sides based on the legal issues, and what they present, and issue a decision, but we can't force them.

Ms. Liota asked if it goes to the courts, does the community have an opportunity to speak?

Mr. Klarl replied what happens is if there is a case brought by the applicant against the Town, you would have to make a motion to intervene. As a matter of fact, this Board has seen Article 78 proceedings where an applicant sued the ZBA, and two neighbors sent in a motion to intervene, the Judge granted it. So you would not be a part of that case, you would have to intervene.

Ms. Liota asked and how do find out about that?

Mr. Klarl stated the first thing is that this Board would issue a Decision & Order, and the applicant would have 30 days from the filing of that Decision & Order in the Town Clerk's Office to bring a challenge to

Supreme Court. In our case it is the Westchester County Supreme Court in White Plains, and if that case were brought we would certainly notify you, and if you wanted to formally submit something to the court you would have to make a motion to intervene, which is generally granted.

Mr. Heady stated I really don't think you would want this to go to court, because it has been strung out so long, it would be another 4 or 5 weeks or more, if it goes to court.

Ms. Liota stated I know, we don't want it to go to court.

Mr. Weinbaum appeared before the Board. He stated I just want to ask a very quick clarification question, because your input may educate us, and help us decide in terms of this public hearing. As I am sure you know, no one in our group has the desire to attend additional meetings, or have dinner with Best Rent Properties, but there was made mention that if in fact this does go to court, that that meeting, and the attendance at that meeting would actually have some bearing on a court's decision, but if that is true our whole community will be there, but we don't want to go, because we don't want to compromise on this.

Mr. Reber stated it could have an impact. If you have the option of going, or not going, it is safer to go particularly if you need to intervene later on.

Mr. Weinbaum stated when they say public forum, there's no Town records, or anyone from the Town there?

Mr. Klarl stated there will only be people there from the applicant. There will be no one else there.

Ms. Michelle Murphy appeared before the Board. She stated I am a homeowner at Hollowbrook Mews. I just have one question. I understand that you are waiting to hear from the applicant on this case. Is there a time frame in which they have to present their case, or as you mentioned earlier, it can just keep being strung along?

Mr. Klarl stated there are no set time limits. If someone makes an application, the Board normally moves the application along, and in this case we didn't see movement from July to January, and now we are seeing people here in February, and March. There is no set number of meetings, but the Board generally moves the cases along. If the Board sees there is no further public comment to be heard, and the applicant is finished, or does not wish to speak. The Board will close the public hearing, and render a decision within 62 days. So if the Board believes all the public comment is played out, all the applicant's presentation is played out, and it's time to close the public hearing, and make a decision.

Mr. Douglas asked may I make a suggestion? Could we direct the applicant to come to next month's meeting prepared to give us a full presentation?

Ms. Murphy stated exactly. I think that would be fair. I think Mr. Schwartz said he did not want to present the case tonight, and that he wanted to wait until this dinner on April 3<sup>rd</sup>, and I think we would all appreciate just coming back here instead of going out to dinner. We just want to hear the case. Let them propose what their proposal is, and then you can make a decision, and we can move forward instead of just repeating, and repeating what has been happening over the past several months.

Mr. Mattis asked Mr. Schwartz do have any comments on that?

Mr. Schwartz replied the reason why this is all part, and parcel is the applicant wouldn't want to go forward, perhaps he wouldn't want to go forward with presenting their case to your Board right now. They just felt the Town and the community would want to discuss this first. However, that is a decision my client

will have to make depending upon the turnout, and depending upon the feedback. I can certainly be here next month, and the neighbors will be here to report back to us as to what happened at that meeting, and I

will fully prepared to present the merits at that time.

Mr. Douglas stated let me just make it clear that when we come back here next month, we are not just going to talk about the meeting, because from my prospective, as I said in the beginning, I don't care about the meeting. What I care about is the merits of the appeal from the Town Attorney's determination. So next month you are going to present your position regarding the appeal. In other words, next month what I would like is that we move forward with the appeal.

Mr. Seirmarco stated that is what I would like to see too.

Mr. Mattis stated and I think you just said, and correct me if I'm wrong, that the applicant wants to gage what the feeling is of the community?

Mr. Schwartz stated that is correct.

Mr. Mattis stated so based on that, if you're all against that unanimously I would suggest that you go out there, and tell him that, and maybe they will withdraw the case. I don't know what they'll do, but they will certainly know how the community feels about it. So it's better for you to go there, and state how you feel, then not to go at all.

Mr. Reber stated this is not the forum to present their plans. We have nothing to do with their plan. So that is inappropriate. They can come here, and spread out drawings, and do what they want, it's irrelevant. That is not for us to look at. I really don't want to spend my time looking at plans. That is the Planning Board's job. I want them to come to us, and present their case as to why they think the Town Attorney's interpretation that he has made is wrong.

Mr. Mattis stated I would like for you to be prepared to do that next month.

Ms. Murphy stated we would also like that as well. We want to know what their appeal is going to be.

Mr. Klarl stated it is like in a court of law where there has to be a motion eliminia about whether or not the case goes forward. This is a threshold issue before there is any kind of viewing of plans.

Mr. Mattis stated I am going to ask our attorney to research something in the next month. If they come back next month, and they're not willing to present that, and they do not go forward to the Planning Board with something that is all residential, then they're wasting our time, and they're stalling, and at that point I would like to see if there is a legal precedent where we can drop this case.

Applause.

Mr. Reber stated in all honesty they have had several months to work out whatever alternatives they want. So it certainly has been enough time.

Ms. Liota stated will all due respect I want to make a comment about the residents showing up at that meeting to express their feelings. We have already done that.

Mr. Mattis stated with all due respect.....are you going to have the owner/applicant at this meeting?

Mr. Schwartz replied the architect will certainly be there. I can't say for certain, but I imagine that a representative from Best Rent will be there.

Ms. Liota stated sir I just want you to be aware that at the Planning Board meetings their architect, and their representatives were there, and when they heard us appeal this, when we presented our petition against this property, so they are well aware of how the community feels. So to try to kind of sway us, we are not

interested.

Mr. Mattis stated well I suggest you have a representative go, and give them a letter signed by the residents.

Ms. Liota stated I think that is an insult to us, honestly.

Mr. John DeBenedictis appeared before the Board. He stated I live on the other side of town at 35 Westminster Drive. The reason I have become friendly with these people is because I have spent a lot of time, my most recent time was the ice skating rink, so you may or may not know, Mr. Klarl certainly knows me from that case. I am concerned because it is a lot like what we went through on our side of town, and I watch all of this. I have lived in the Town for 30 years, and I have been arguing some of these things for years, very quietly in some areas, and some more vocal. It is always the same thing. We are a town of laws, zoning, of codes, and Best Rent comes along, and says I don't like your codes. I don't like your zoning. I don't like your rules, and they proceed to do all kinds of maneuvering, which we have witnessed in the last year, and thanks to you these last few months you actually put some pressure on them. They are finally coming out, and saying okay we're going to show you now some new plans, we're going to show you something. I mean all you have ever asked them for, for almost now I think it is going on 10 months, is to respond to Mr. Wood's interpretation, and what have they done. They stall. They send their attorneys to the meetings, talk about spending millions of dollars for a project, and here the people who are immediately effected, and the whole town is effected, because what occurs on that side of town will eventually work over on my side of town.

Mr. Mattis stated that may not be true, because this is an Interpretation. This is totally different from the project you talked about. This is a strict, legal Interpretation.

Mr. DeBenedictis stated but their mindset is that interpreting the piece of property as residential is wrong, and we just went through this with the split zones, and parcels of land, and you are always getting that. Nobody wants to make it all residential, but they sure want to go, and make it all commercial. Best Rent in its' arrogance, before they even had a permit had a sign as big as that wall.

Mr. Douglas stated I am not sure that is really the issue in front of us.

Mr. Mattis stated no that is not the issue at all.

Mr. Douglas stated sir the issue has to the interpretation of the Town Attorney's decision, which they have a legal right to appeal. What we've done is we now have in place that they will be going forward next month.

Mr. DeBenedictis stated but only now.

Mr. Douglas stated I don't want to hear about what happened in the past. We are moving forward now.

Mr. DeBenedictis stated only now after your good efforts for the last few months in particular have they been willing to come back, and provide something, and now of course they do want to state their case to these people, and dangle whatever they feel is necessary to try, and get that. The fact remains that these residents are the taxpayers in the town. They're the ones who's properties are going to be mostly effected, and yet Best Rent.....

Mr. Douglas stated okay sir, I am usually the one on the Board to not cut off people, but that is not the issue before us, and I think we have it set for next month, and I am not sure that this is advancing things. There are other cases that are waiting to be heard tonight.

Mr. DeBenedictis stated I understand that, but these people have been waiting almost a year.

Mr. Mattis stated but you are not talking about the issue. You are talking about signs they put up, you are talking about the impact on the neighbors. We know all of that. Do you have a comment on the issue of the Interpretation?

Mr. DeBenedictis stated yes, either we are a town of laws internally, or we are not. Our lawyer has said no commercial development. They have taken 10 months to provide you with a reason why that piece of property should be commercial, and they have not done it.

Mr. Mattis stated and if you heard what I said about what we want to do next month.

Mr. DeBenedictis stated yes, after all these months, finally you have forced them into a position where they are finally going to have to answer that question. The question being have they a reasonable argument for that piece of property.

Mr. Mattis stated and that is what we will be hearing next month.

Mr. DeBenedictis stated but it has taken all these months, all of this, and even tonight I wasn't sure at the beginning of the meeting that you were going to push the issue.

Mr. Douglas stated but we did, we did do it. Can we move on now? There are nine other applicants that are waiting their turn to be heard.

Mr. DeBenedictis stated I understand that, but I think these people deserve of hearing this out. They deserve it.

Mr. Mattis stated do you have an opinion on this one way or the other? You talk about them waiting patiently, that is all passed now. We are moving forward. We told you what we are doing. We have 9 more cases, if you can tell us something relevant for the legality of this Interpretation, please do so.

Mr. DeBenedictis stated either we are a town of laws.....

Mr. Mattis stated and we are following the State Law that they have the right to appeal, and we have to wait until they present their case. We are trying to force the issue that they present it next month.

Mr. DeBenedictis stated we always give these developers their way. The citizens don't make it. Thank you.

Mr. Ralph stated I just have a quick question. You said that there was written submission from the applicant, and that is part of the public record. Where can we have access to that?

Mr. Flandreau replied you can come to Code Enforcement between 8:30 a.m. and 4:00 p.m.

Mr. Mattis asked are there any other comments? I think we know where you stand on this, and I think now you know where we stand on this.

Mr. Reber made a motion in Case No. 31-07 to adjourn the case to the April meeting seconded by Mr. Douglas with all voting "aye."

\*

\*

\*

Ms. Evelyn Williams appeared before the Board. She stated I would like to summarize where I am at now, and what has happened since. I bought a house on Trolley Rd. in 1969 with the understanding that it had the proper permits for an accessory apartment in the house. All along we've gone on that assumption until just recently I am planning to sell the house, and we're now trying to make the apartment legal. So with the very able assistance of Mr. Flandreau I proceeded to take the steps needed to comply for the Certificate of Occupancy, and right now I am before you requesting approval of the accessory apartment downstairs.

Mr. Heady stated I was out there last year, when she first started, and she has done a lot of work since then, getting everything together for the CO. We talked about the fire alarm, and she has done everything else, because she got the CO. Also, she has more than enough of the required parking spaces. So she is all set on that. If there any other questions from anyone else, I have no problem because she meets the percentage requirement as long as she eliminates that one office down there. If the applicant closed off the door from the office to the kitchen, then that would bring the numbers down, and she would meet the percentage requirement.

Mr. Mattis stated there is an office there that is part of this, if you could close that off, and make that part of the primary residence, then that brings it down, because you are asking for 36 percent. See the code says you have to have a minimum of 1600 square feet of habitable space, and you have 1902 square feet. It says that the accessory apartment must be within 400 and 600 square feet, and with that office it is 703 square feet, and it says it should be no more than 25 percent, with that office it is 36 percent, and that is more of a variance then we would generally allow. So if you would close off that office so that the accessory apartment does not contain that, it is now 536 square feet habitable space, which means the only issue is that it is 28.2 percent of the total inhabitable space, and the requirement is 25 percent. So that would be a minor variance. So that would be the only thing that we would request in order to grant this. Is that acceptable to you?

Ms. Williams replied I guess it would have to be.

Mr. Mattis stated because the next person that moves in if they don't want it to be an accessory apartment can open that up, and do whatever they want. In fact, they have to come back to us because that approval for the accessory apartment does not stay with the house, it changes with the ownership, and they would have to come back. They may not want that. Somebody may buy it, and not want it. So the point is that if we approve it that way without the office being part of that, and close that off, we can grant you that variance without much of a problem.

Mr. Reber stated the office remains part of your part of the living space, and you can use it, but it cannot be accessible to the accessory apartment.

Ms. Williams stated well I thought the apartment would be a selling point to the house.

Mr. Mattis stated well you still would have the apartment, it would just be a little smaller.

Ms. Williams stated I meant I would not want to not have it there at all, or do away with it.

Mr. Chin stated no, we're not saying that. We are saying to just close the door that goes from the office to the living/kitchen area, and make that a will so that you can't come in from the apartment. It would have to be part of the main house, and that is the only thing we are asking for.

Ms. Williams stated okay, I see. So then I will need somebody to come back around, and see that this was

done.

Mr. Flandreau stated yes, it would be someone from our office.

Mr. Mattis asked is that acceptable to you?

Ms. Williams replied I guess it will have to be, yes.

Mr. Heady asked do you have the place up for sale at this point?

Ms. Williams replied no, not yet. I wanted to get all of this straightened out first.

Mr. Mattis stated so the sooner we can solve this, then the sooner you can get it on the market. Are there any other comments from the Board? Is there anyone in the audience that would like to speak?

Mr. Heady made a motion in Case No. 38-07 to close the public hearing seconded by Mr. Chin with all voting "aye".

Mr. Heady made a motion in Case No. 38-07 to grant a Special Permit for an Accessory Apartment, and an Area Variance from 25 percent to 28.2 percent, and that the applicant close off the door to the office from the living and kitchen area. This is a Type II Sequa with no further compliance required seconded by Mr. Reber with all voting "aye."

\* \* \*

CASE NO. 45-07 MARK & ELIZABETH HITTMAN for an Interpretation that granting a Special Permit for a Medical Office Building does not require abandonment of the residential use in the building on the property located at 1989 Crompond Rd., Cortlandt Manor.

Mr. Mattis stated I will turn that over to our attorney for his comments.

Mr. Klarl stated if you recall we've had this application before us concerning an Interpretation by Mr. and Mrs. Hittman, and what they've chose to do is to pursue a text amendment to our Zoning Ordinance by a Zoning Ordinance amendment. They proceeded by petitioning to the Town Board. The Town Board sent it to the Planning Board. The Planning Board conducted a public hearing, issued recommendations, and then the Town Board was getting ready to adopt that legislation.

Mr. Flandreau stated I spoke to the clerk this week about where we stand with the Town Board. They referred the matter to DOTS, and the Legal Department. I spoke to Ed Vergano, who is the Director of DOTS, and he has no problem with the text amendment. So I think we are now just waiting for legal.

Mr. Chin stated so it has not been enacted yet.

Mr. Flandreau stated no, it has not been enacted yet.

Mr. Chin stated so I think that we are going to have to adjourn this again.

Mr. Klarl stated to a gentleman in the audience. Is that you Dr. Hittman in the audience?

Dr. Hittman replied yes.

Mr. Klarl asked so you haven't had a public hearing yet with the Town Board?

17

Dr. Hittman replied we have not, no.

Mr. Klarl asked so you are awaiting that, and should have it soon?

Dr. Hittman replied I am hoping so, yes.



Mr. Klarl stated so then the Town Board would consider adopting the amendment the Zoning Ordinance at that point, and we can then go forward.

Mr. Mattis stated so based on that we should probably adjourn this for another month. Is there anyone in the audience who would like to speak?

Mr. Douglas made a motion in Case No. 45-07 to adjourn the case to the April meeting seconded by Mr. Chin with all voting "aye."

\* \* \*

CASE NO. 51-07 CORTLANDT RIDGE HOMEOWNERS ASSOC. for an Area Variance for the height of an accessory structure on the property located at 0 Sassinoro/Chuisa/Monto, Cortlandt Manor.

Mr. Flandreau stated I received a letter from the contractor from Toll Brothers asking that this case be withdrawn, and I followed up with John DiBari from the homeowner's association, and he confirmed that.

Mr. Mattis stated okay, so that case is withdrawn.

\* \* \*

CASE NO. 53-07 HILLTOP NURSERIES, LLC for an Area Variance for parking spaces associated with the proposed commercial business in the R-40 portion on the property located at 2028 Albany Post Rd., Croton-on-Hudson.

Mr. Mattis stated I believe that we had finished our business with this case unless there are going to be anymore changes with the Planning Board. So I don't think there is any reason for the applicant to show up here, but because it is a coordinated review we're not going to issue a decision until we hear from the Planning Board.

Mr. Klarl stated at the February meeting we adjourned this to the March meeting with the idea that the applicant said he was going to have his first public hearing with the Planning Board on March 4<sup>th</sup>. So he did appear at that March meeting, and is proceeding before the Planning Board at this point.

Mr. Mattis asked is there anyone in the audience that would like to speak?

Mr. Seirmarco made a motion in Case No. 53-07 to adjourn the case to the April meeting seconded by Mr. Douglas with all voting "aye."

\* \* \*

CASE NO. 02-08 OAKLAND REALTY CORP. for an Area Variance for total signage on the property located at 2094 East Main St., Cortlandt Manor.

Ms. Liz Manning appeared before the Board. She stated I represent Louis Sign Co. At the last ZBA meeting that asked for further clarification of what they wanted. So we measured the existing signs at the Shop Rite store, and I faxed the field notes to Code Enforcement, and earlier today I faxed Mr. Flandreau

some more detailed notes.

Mr. Mattis stated first I noted that on the request that you are asking for a 4.69 feet diameter logo, and you were at 4.8 feet before?

Ms. Manning replied yes. Mr. Flandreau requested that we had to add .2 or .3 to all the measurements. So that brought the total existing up to 142.7 square foot.

Mr. Mattis asked what is the square footage of 4.69?

Mr. Flandreau replied it is 17.30 square feet, and the reason why they did that was because they were under the assumption that the entrance signs are included in the total signage, but the in the sign ordinance it allows for the directional signs under a certain size not to be included in the signage total.

Mr. Mattis stated so actually there is 138.7 currently.

Ms. Manning stated if we are granted the variance, then we would be requesting a 5.2 square foot logo.

Mr. Mattis stated are you are requesting a 4.69 right now?

Ms. Manning replied yes.

Mr. Mattis stated I have a comment on this. I understand that was approved in 1998 that went up to 150 square feet, there was one sign that was not put up, and I understand from Mr. Flandreau that there are some other signs that have been changed.

Mr. Flandreau stated from what the Zoning Board case stated that there was a Fresh Mart sign that is not on the building on now. So this includes the circle sign, the pharmacy within sign, and the sign facing Rte. 6 that says Shop Rite. So that is the existing signage on the building now.

Mr. Mattis asked who measured these signs?

Ms. Manning replied actually the owner of our company. I can show you the field notes.

Mr. Mattis stated we saw those. Did they climb up? Did they put up a ladder, and measure everything?

Ms. Manning replied yes, they did.

Mr. Mattis stated okay. These differ from what we had in our last decision. So things have changed, and nothing was ever approved, and that is why I want to make sure these are the exact things so that if you come back with another change we can reference every sign properly.

Ms. Manning stated yes, and I am really sensitive to that, and I searched our records in our office, and the only thing I can think is we did not put up that script Shop Rite sign on the side, because we do not have a record of it from our office.

Mr. Mattis stated so you certainly did your due diligence in measuring this properly.

Mr. Heady asked are you talking about putting one round sign facing Rte. 6?

Ms. Manning replied no on the other side of the front of the building.

Mr. Flandreau stated the delivery side.

Mr. Heady stated okay, I see.

Mr. Mattis stated it is the west side. It is the functional back, but it is the side, because the building is sideways relative to Rte. 6.

Ms. Manning stated that's right, we feel that traffic approaching from that direction have no indication that there is a supermarket there.

Mr. Klarl stated that is coming from Peekskill to Mohegan.

Ms. Manning stated yes.

Mr. Heady stated okay, but before you put that sign up you have to have Code Enforcement check the dimensions of it. We don't want to have another mistake.

Ms. Manning stated yes, we are well aware of that.

Mr. Douglas stated I just have some comments here. The prior D&O granted a variance from 150 to 155, and what is the total they are seeking now?

Mr. Chin stated 156.8.

Mr. Douglas stated so we granted a variance to 150.25, and what they are seeking now is 156.8. Well personally, I don't feel we should go any higher than what was granted the last time.

Mr. Flandreau stated just for clarification, the 156.8 is with the 4.8 square foot circle sign. That is what brings it to 156 square feet.

Mr. Reber stated with the 156.8 that eliminates the direction sign.

Mr. Mattis stated yes, and that is with 4.8 diameter circular sign.

Mr. Reber stated so the answer is yes to Mr. Douglas' question. They had 150 square feet, and now they are seeking 156.8 square feet.

Mr. Mattis stated right, and so they have less signage on the two faces they had before, but they are putting a sign on the third side. Are there any other comments from the Board?

Mr. Seirmarco stated I agree with Mr. Douglas they had 150 before, and I just think that is sufficient, and I just want to make on other comment. We're not used to getting sketches from the field. It is usually a much better format, and it makes us subject to making mistakes like this. Here there are handwritten notes, and it just leaves us open to make mistakes, because there is no formal documents saying these are the signs, they are located here, this is their square footage, and I just don't feel comfortable with these handwritten notes. I agree with Mr. Douglas they had 150 square feet, and I think that it is sufficient. They should give us exactly what the dimensions of all the signs are typed up in a nice spreadsheet to go in our records so we don't run into this the next time.

Ms. Manning stated okay.

Mr. Reber stated I would like to counter that. First of all, I feel more comfortable now than I normally do, because normally we get some fancy architectural drawing that doesn't label what is actually going to built, and then after we approve it they go out, and have the signs made, and a lot of times they are not made

according to sketches so that doesn't prove anything. At least here they're certifying that these are actual measured dimensions of what actually exists, and we do have a copy here. It is right here Shop Rite letters, with the measurements here. As far as the 156 versus the 150 square feet, I think is totally unreasonable for 6 square feet to tell their client that he's got to go back, and take off other signs that are already on the building for 6 square feet. In fact, if you look at the building, and look at the site adding a round logo that says Shop Rite on the west side doesn't create any detrimental visual effect, or anything but helpful. It is absolutely necessary, no, but if we go through our list of reasons why we don't do things. Is it detrimental to the community? No. Does it have alternatives? Well I don't know how else he can tell people that are coming from the west that this is Shop Rite, don't wait until you pass it, and then step

on the brakes to a screeching halt, because you missed the entrance.

Mr. Douglas stated I think he does have alternatives. I am saying it needs to be no bigger than whatever the 90 some odd percent variance that was granted a few years ago. I don't think that is arbitrary at all.

Mr. Mattis stated in order to that, if they want to put a sign on the west side, they're going to have to take down another sign, and make it smaller.

Mr. Seirmarco stated I have no problem with that, that's fine.

Mr. Douglas stated we do not need bigger, brassier, more glowing signs in this town.

Mr. Seirmarco stated I understand why you would like to put a sign on that side, but you have to take another sign down. Everybody knows from Albany to probably New Jersey the logo for Shop Rite so you don't need to have it all over.

Mr. Chin stated I have to agree with Mr. Reber between 150, and 156 square feet is menial, and I don't see a problem with that. You cannot see what kind of store that is coming from the west from Peekskill, and I've missed it myself a couple of times, and I think it will be a good thing to identify where the store is without stepping on the brakes, and causing accidents. There is only a couple feet under the 100 percent of what is allowed by us, and I have no problem with it.

Mr. Douglas stated 100 percent is what we are legally allowed to grant, what's actually allowed under the code is 80.

Mr. Chin stated we are allowed up to 100 percent.

Mr. Douglas stated we have the power to grant a variance for up to 100 percent, but what is actually allowed is 80 feet.

Mr. Reber stated the code give us that freedom for that logical reason that in certain situations 80 feet might not be reasonable to properly identify the site, and serve the community. So that is why they give us the flexibility, and I am opting to use that flexibility for that purpose.

Mr. Douglas stated I know I am going to lose, and I know what the vote is going to be, but I just want to make my comments on the record.

Mr. Heady stated I agree with Mr. Reber also. You can't see it coming from Peekskill, and you always see people slamming on the brakes to turn into the entrance there.

Mr. Mattis stated I also agree. So is there anyone in the audience that would like to speak?

Mr. Heady made a motion in Case No. 02-08 to close the public hearing seconded by Mr. Chin with all voting "aye."

21

Mr. Heady made a motion in Case No. 02-08 to grant the Area Variance for the total signage to the allowed 80 square feet up 156.8 square feet. This is a Type II Sequa with no further compliance required seconded by Mr. Chin. The Board was polled as follows:

Raymond A. Reber	Yes
Adrian Hunte	Abstained
David Douglas	No
James Seirmarco	No
John Mattis	Yes

Wai Man Chin	Yes
Charles P. Heady, Jr.	Yes

The motion was carried 4-2 vote.

\* \* \*

**NEW PUBLIC HEARINGS**

CASE NO. 05-08 GRACE PRICE for an Area Variance for a front yard set back on the property located at 27 Brandeis Ave., Mohegan Lake.

Ms. Grace Price appeared before the Board. She stated I live at 27 Brandeis Avenue, and I am looking to add square footage to the existing living space. The addition will be adding a living room, and dining room giving more square footage to the living area.

Mr. Heady stated I went out there. There is nobody living there, you just bought the house I guess.

Ms. Price stated no, I've had it for awhile.

Mr. Heady stated but there is nobody living there now is there?

Ms. Price replied just in the summer, spring usually.

Mr. Heady stated I was out there, and the variance you want for the front you have a porch on there, and a concrete patio in the front so you want to go beyond that porch, am I right?

Ms. Price replied yes.

Mr. Heady stated now if you went only 6 feet less you wouldn't need a variance, you would be 30 feet. The only reason I say that is because if you go further the house on your right there you would be beyond that house there, which wouldn't line up at all, which I don't think is right in the neighborhood there.

Ms. Price stated there was no opposition by the board. They came, and inspected the property, and they were all in agreement with it.

Mr. Heady asked what board is that?

Ms. Price replied the board for the colony. They went out there, and they measured it, and the next door neighbor has no opposition, and the house to the right is set back in the corner.

Mr. Mattis asked do you have a letter from the board, or a letter from the neighbors.

Ms. Price stated they said they were probably going to come down, and drop off a letter.

Mr. Flandreau stated there is no letter in the file at this time.

Mr. Mattis asked are any of the neighbors coming out to speak in favor of this?

Ms. Price replied I just met with them on Sunday, and I was with the president of the colony, and we went over my survey, and exactly what I was going to be doing, and there was no opposition to it.

Mr. Mattis stated let me just ask a question here, can you expand to the side instead?

Ms. Price stated there are septic fields over there that is why I am coming forward. I am just asking for 10 feet just to get a little more square footage, which would probably come out to not even 800 square foot with that extra 10 feet.

Mr. Mattis stated well it is actually 12 feet, because we have to count the bay window.

Ms. Price stated it won't be over 10. It is not going to be exactly the 10.

Mr. Mattis stated if this isn't exactly, if this not exactly what you're going to do, then come back with what you're going to do.

Ms. Price stated I am asking for the 10 feet, but you are saying 12 with the bay window.

Mr. Mattis stated what I'm saying is we have to count the bay window, because that extends further so you require a 12 foot variance not a 10, down to 18 feet not 20 from the property line, because the bay window comes out 2 feet.

Ms. Price stated okay, I see.

Mr. Mattis stated so if you're not changing this, it is just that you weren't aware that the bay windows counts as part of that. It is the furthest most living space that comes out.

Ms. Price stated okay, I was not aware of the bay window part. I thought that was included in the 10 feet.

Mr. Reber stated one of the criteria that we have to consider is the benefit sought by the applicant cannot be achieved by some other method. I would have to see a site survey that shows where the septic field is, and the restrictions that you have there. If you don't have enough land area to practically expand within the zoning set backs, what prevents you from going on to a second floor addition here?

Ms. Price stated because I am not expanding the bedrooms. I am living them as is. For medical reasons I need the bedroom on the first floor. The upstairs doesn't do me any good.

Mr. Mattis stated and what you are seeking is to expand the kitchen, and dining room.

Ms. Price stated just the kitchen, and the living area, just moving it forward.

Mr. Mattis stated I'm concerned because you have an area that is coming 15 feet, 6 inches, and it's 20 feet wide, and part of that is a reading area. The reading area to me is a stretch. You could cut this back a little bit, and knock it off the 15.6, and the variance wouldn't be so great, and I'd be inclined to approve it then, but until I see that you can't go sideways, because of the septic. I just think this is excessive. It is a small house with an extremely, extremely large dining room that you want to put off of there.

23

Mr. Chin stated you are asking for a 30 feet down to 20 variance, that is quite a bit, and we usually don't grant that much.

Ms. Price stated for a living, kitchen, and dining area, that is a lot?

Mr. Reber stated we are talking about the variance itself.

Mr. Chin stated we are going by this footage, which is 30 feet down to 20 feet, that is quite a large increase, if it was 20 percent or less, we may not have a problem with it depending on the circumstances.

Ms. Price asked what would I be able to put there, just from the plan, I think it comes out to about 800 square feet.

Mr. Mattis stated the 800 square feet is for what the dining area?

Ms. Price stated no, in total.

Mr. Mattis stated it is over 300 square feet just for the dining room, so that is a large dining room.

Ms. Price stated I am Italian, I have a big family.

Mr. Reber stated I don't know where your septic system is. I assuming your septic system is next to your living room, and then pushing forward.

Ms. Price stated the fields are.

Mr. Reber stated then my question is what is the next to the bedroom? If you put a room on the side of the bedroom, and end up with the dining room in the back, and shorten up the front a little so it doesn't come out so far. There are other options, and we have to see the whole site plan, we have to see the septic fields. We have to know what you have available, and until I can see that, I can't make a decision.

Ms. Price stated but I did not want to go off to the side.

Mr. Reber stated I know you don't, but that is something that we have to consider.

Mr. Mattis stated we have to consider if there are other alternatives to either minimize, or eliminate the variance before we can grant it.

Ms. Price asked is there a minimum that you could grant now?

Mr. Seirmarco stated we really don't like to design for people. Maybe you should sit down with Mr. Flandreau during the week, and maybe rearrange the lay out of things.

Mr. Chin stated you have an architect.

Mr. Flandreau stated you can stop by the office, and I can kind of show you what the Board is talking about.

Mr. Chin stated it is just too much of a variance that you are asking for. Some people ask for only 2, or 3 foot variance.

Ms. Price stated I can shorten that, if I move the bedroom, and bathroom up, then I can make the living room, and dining room smaller, if that would make you happy.

24

Mr. Reber stated you have to first just find out if you need any variance at all, if you don't have alternatives. That is why we need the site plan to show us exactly what else is on the property. Once we that, then you can start talking to us about the possibility of granting a variance. We need to know what your options are.

Mr. Douglas stated we would not be justified in giving you the variance, if you have an alternative here. So that is why we want to explore that further.

Mr. Chin stated we are not saying that you can't expand at all. We can't sit up here, and tell you how to design your house.

Ms. Price stated that is why I did it with an architect.

Mr. Mattis stated I think what we're saying is with the bay window there, you will be 18 feet from the property line, you are required to be 30 feet, and that is a 40 percent variance, and that is a substantial variance.

Ms. Price asked what is the percentage that you grant then?

Mr. Seirmarco stated it depends on your circumstances.

Mr. Chin stated if your septic tank is preventing you from expanding another way, then we can consider a variance. We have no idea where all of that is. We have to have an idea.

Ms. Price asked do you want me to show you on the drawing where the septic is layed out?

Mr. Reber stated not on there. I want to see a site plan, and survey.

Mr. Seirmarco stated you need to go back, and talk with your architect, and tell him that your variance is too large, and we suggested that you rearrange things, and also show the position of the septic system, and I am sure this isn't the first time he's heard this. After you speak to him, you can run the changes by Mr. Flandreau, and come back to us next month.

Ms. Price stated okay, that is fine with me.

Mr. Mattis asked is there anyone in the audience that would like to speak?

Mr. Robert Adams appeared before the Board. He stated I live at 31 Brandeis Ave.

Mr. Mattis asked where is that in respect to this property?

Mr. Adams replied it is right next door.

Mr. Heady asked facing the house is it the house on the left, or the house on the right?

Mr. Adams replied I am the house in the back that I just remodeled. I have been there for 12 years, and I mean I'm sorry to say, but I have to object strongly to what is being proposed. I made a couple of notes here. My house is completed landlocked on a private colony dead end road. The only access that I have is that small 10' x 35' road that comes up to where the black gate is. I tried to buy that road twice from the colony, and I was not successful. Some people in the colony blocked it. Now it is tucked away in the back. It's already difficult for me to be found by delivery trucks. Right now I have a line of sight from my living room, and from my bedroom. Quite often if I am expecting a delivery, I keep my eyes peeled I see them out there, and I go outside to make sure I get to it. What she's proposing is to come out 10 feet in the front, which will completely block my line of sight. I won't be able to see out to the street, and no one from the

street will be able to see into my house. I am glad that she is going to do something, but I have to agree that she has plenty of room on the side. There is a lot room. You don't need a big septic system for a small house like that. I am concerned, none of us are getting any younger. If you checked your records, you would see that I get social security disability, and one of my fears is that there are two basic reasons. One is a 911 issue. If I do have an emergency, and my line of sight is blocked, don't forget this house is not just coming out front wise, it's going up too. You are not even going to be able to see my house. It's hard enough now, and with the increase in the front I'm afraid that if there is some emergency there that I am going to be stuck. She has plenty of room on the side. She can build out on the side, and I mean it is not fair to me that I would have to assume an additional risk. As you said, she is going out 12 feet in the front, and she has room on the side. Normally, I could care less, but if I can't see, and they can't see into me, and because I don't own that road, I have a copy of the survey for my house, and if you look you will



see that I am landlocked, and because I wasn't successful in buying that road. I tried twice, and I was blocked by the president of the colony with all kind of proxies. So I can't even put my street address at the beginning of that 35 foot road. So in order for someone to find me, if she is granted the variance, they pretty much have to drive all the way down to the end of the street. I won't be able to see them, and they won't be able to see me. I just think it's a needless hardship that I would have to endure, when there are other options that can be explored as far as building out on that site. I mean I am sorry to oppose a variance, but I looked at the plan. I have copy of the plan. It looks like a railroad apartment to me. Why not come out a little on the side? I mean I was able to do that with my house.

Mr. Chin stated that is why we are asking if her septic is there, or whatever. She has to show us those plans.

Mr. Adams stated I have no idea where her septic is located.

Mr. Mattis stated that is why we asked her to bring in some plans for the next meeting.

Mr. Adams stated that house has been vacant, no one has lived there in the summer, or anytime for ten years, and I have lived there for twelve years. If the situation, was reversed I would not object to somebody saying what I am saying. I am really tucked in the back, and if she brings that out by 12 feet, my line of sight is shot, and believe me it's difficult for people to find me as it is. God forbid something happens, and I have to call an ambulance, or an emergency vehicle, fire, police. They have a hard enough time finding me now, with going out 12 feet, and I don't mean to repeat myself, but it's an important issue for me. It's going to create a needless hazard. She's got room on the side.

Mr. Chin stated let me ask you a quick question. That is a right of way correct?

Mr. Adams replied yes, that is a colony road.

Mr. Chin stated it is a right of way. Isn't there a way of putting a sign there?

Mr. Reber stated you said you cannot even put an address sign there?

Mr. Adams stated you know I have had a lot of problems since I've lived there, as far as snow removal. I had a lot of problems, as I said, when I first moved there I tried to buy that road twice, and the only reason why I didn't get the road was because the president of the colony, who lives on the other side of Grace Price, blocked with me with proxies from people who didn't even know about it.

Mr. Mattis stated that is not the issue here. The issue is why can't you put a sign out front?

Mr. Adams stated because I don't own that land there.

Mr. Mattis stated so they won't let you put up a sign with an arrow or something?

26

Mr. Adams stated that is only one part of the issue. The most important part of this issue is the line of sight.

Mr. Mattis stated but you can remedy that problem with a sign.

Mr. Reber stated yes, because there are a lot of properties where houses are very deep in the woods, and you don't see them. The only way you see them is there's a sign that says he is located at this address. So I don't understand. You are saying the colony will not allow you to put up a sign.

Mr. Adams stated I never asked them.

Mr. Reber stated well you should.

Mr. Mattis stated well because you never asked for a sign, you expect us not to grant a variance for this. I would suggest that you ask them for a sign.

Mr. Adams stated I understand what you're saying, and that is something that I was going to request anyway, but I think with all due respect, we are getting a little side tracked. The important thing to me is that I maintain a line of sight to the street.

Mr. Reber stated I am not so sure that fits the criteria here.

Mr. Mattis stated if you can't have a sign, that is a consideration. If you can put a sign there where they can see, and it directs them back to you, then you don't need a line of sight.

Mr. Reber stated if the zoning was a little different, she could of expanded, and still block your line of sight, and you can't stop that. It is just coincidental that this is a zoning issue, and like I said there are a lot of properties in this town where the owner does not have a line of sight from his house. So that argument doesn't really make any sense. That argument should be that you should have a right to put a sign up, and let people know that that is your address, and that is not our job.

Mr. Chin stated all we're saying is that if she even came out 6 feet from where she is, she doesn't even need a variance, and that would still block your line of sight.

Mr. Adams stated no, I don't think so. Like I said, I am just finishing up redoing my house. I am going to move back in there very shortly. I had looked at it, and if the 30 foot set back is maintained that would work.

Mr. Reber stated she could plant a row of hedge trees, or something there, which is perfectly legal, you can plant anything in your yard, and it will block your line of sight, and there is nothing stopping here from doing that.

Mr. Adams stated I understand that. I understand that.

Mr. Reber stated so we can't use that argument to defeat her variance request.

Mr. Mattis stated I would suggest that you ask the association if you could put a sign there, and if they don't, I want to see a letter that they denied that okay.

Mr. Adams stated okay, yes.

Mr. Mattis stated Ms. Price maybe you want to pursue that also. So between the two of you, we make sure that it either can be done, or can't be done.

27

Mr. Chin stated you should be able to put a sign there, that is a right of way.

Mr. Adams stated that is something that I will explore.

Mr. Flandreau stated that is actually a law, part of the code of New York State, and every property has to be labeled so you would be able to put a sign out there.

Mr. Adams stated I did ask them to widen that road. That road is absolutely.....

Mr. Mattis stated well that is really not part of this application, or what this Board does.

Mr. Adams stated and they just ignore me.

Mr. Mattis stated the relevance is. Can they find your house, and if NY State Law says you can put a sign on the street, then you can do it, and the colony cannot do anything about it, and that is the alternative that you don't need a line of sight.

Mr. Adams stated alright. I will have to look into that.

Mr. Mattis stated we appreciate your comments. Is there anyone else that would like to speak?

Mr. Heady stated you should talk to the homeowner's association about the numbering of the houses back there. There are all different numbers. It was very hard to find the houses back there.

Mr. Mattis stated well that is something for the future. I don't know how they go about changing that, but that is for another department to take care of. Are there any other comments?

Mr. Heady made a motion in Case No. 05-08 to adjourn the case to the April meeting seconded by Mr. Douglas with all voting "aye."

\* \* \*

#### **ADJOURNED PUBLIC HEARINGS FOR TELECOMMUNICATIONS FACILITY**

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

Mr. Daniel Laub, Esq. appeared before the Board. He stated I am from the law firm of Cudey & Feder of White Plains, New York. I am here on behalf of AT&T formerly known as Cingular Wireless. I am instead of Christopher Fisher, who has previously appeared before you in regard to this matter. I believe that you have in your possession a submission, which we made last week. This is a procedural where we have been trying to pursue an alternate location as described in our submission. Over the past 18 months we've had only minimal interest from the landlord. It was a management issue at one point. We tried two potential sites on the property. One which was actually further back. We still tried to pursue it even though it was a great cost, but once again, the landowner has fallen silent. We have not received anything from him. We did submit a letter to you, which we sent certified, return receipt mail for the record, and we just really haven't had any response, and as of today we still haven't heard anything back from them. So unfortunately I think we have tried to diligently pursue that as far as working with the Board, and upon the suggestions of the concerned residents who have come out. So this alternative does not seem to be viable at this point. There were concerns raised previously by some of the residents and neighbors, we also submitted our Phase II environmental assessment showing there are no contaminants or things on the site related to this. Procedurally we feel that this alternative has not shown any progress. So we are hoping tonight that you will close the public hearing, and render a decision on the original site that we had

28

proposed.

Mr. Seirmarco stated I am sorry I was out last month, but you are proposing now that you close on the Thalle property alternative, and go back to the original site?

Mr. Laub stated exactly. The original site has always been on the table unless we could find an alternative, which we've tried. We had investigated different properties, the DEC property, the Con Ed towers, and the Thalle property. As you know, none of these were able to be used at this point.

Mr. Douglas stated you said that you wanted to close the public hearing on the Rte. 129 property?

Mr. Laub stated correct.

Mr. Douglas stated I would feel very uncomfortable doing that. At this stage this case has been essentially adjourned 6 or 9 months, and there was substantial community interest in this, and I don't think it would be fair at all to the public that out of nowhere we just close this. So I would be very opposed to closing the public hearing, and I think we should continue the public hearing, and give the public a chance to speak further on this. Nothing has happened on this case for nine months, and the other hearings had a room full of people. So I would opposed to closing the public hearing right now.

Mr. Seirmarco stated I agree. I think in all fairness that the majority of people were here, and then became very encouraged by moving the site, and that is why they have not appeared while it was being investigated. I propose that we adjourn this to next month, and at least advertise that this back to the original site, and let the people who were very interested, and then disinterested because there was an alternative site, come back to make their comments.

Mr. Reber stated I concur with that. I think we should at least re-notify the neighbors to let them know that the alternative has not materialized, and we are reverting back to the original site. You have to remember that the whole point of pushing for alternatives is that this is a site that really had some problems that has us all concerned.

Mr. Mattis stated right, and the alternative satisfied the neighbors for the most part.

Mr. Reber stated I think we owe it to them to be able to come back out, and I think the applicant has to again tell us their latest thinking of exactly what they want to do on the site, because I know there were some discussions about positioning certain things on the site, and the design of the collapse of the tower, and other issues. So I think we definitely has some issues to discuss.

Mr. Seirmarco stated we need to see the a simulation, the height of the tower, and some details. There was a tremendous amount of public input, and disdain about the location. So I think we should adjourn this to next month, and readvertise this as the original site so that we give the neighbors a fair warning that we are back to the original proposal.

Mr. Mattis stated I agree with that. The way our agenda to the public is it doesn't say if you are going to be here, or are asking for another adjournment, and we have given adjournment after adjournment, because you had been negotiating with the Thalle property, and that fell through, but the neighbors don't know that. So I think it is only fair to notify them to adjourn this to next month, and give them a chance to come out, because otherwise they would see next month that it is not on the agenda, and they would want to know what happened.

Mr. Laub stated okay, understood then.

Mr. Mattis stated we wouldn't reach a decision tonight, but if we closed the public hearing they would see

29

the public hearing was closed, and they would come out, and want to know what happened.

Mr. Chin stated that was a good try though.

Mr. Mattis stated we also need some more time to review the issues at the original site. There were some outstanding issues on that site.

Mr. Laub stated that was actually my next question. If we are going to adjourn this, I don't know that we were aware of any outstanding issues regarding the proposed site.

Mr. Chin stated oh yes, there was.

Mr. Mattis stated I am now quite sure we covered where the set backs were to be, and where things should be located on the site.

Mr. Klarl stated I think the Board had their mind set on the new site, and we now have to go back and revisit the original site.

Mr. Reber stated actually it would be helpful to us if you would have your applicant provide us with an updated plan as to exactly how they plan to lay out the site, and all of that.

Mr. Mattis stated right, that would put it all back into perspective.

Mr. Seirmarco stated there was also question about the buildings at the base of the tower, and some issue about the protection of those, access to those, and a number of other things were left open there. I cannot remember all of the issues offhand. So we will need until next month to bring ourselves up to date on those issues.

Mr. Mattis stated I think you could probably take the last architect's rendering that showed the location, and everything, and use that as a basis to start with. I don't think we need pictures showing the height or any of those things, just the layout would be fine.

Mr. Reber stated also some insight about confirming where the septic system was, and whether or not anything was going to interfere with that, because again, it was such a tight piece of property there. All of those issues relative to the site itself we just want to revisit.

Mr. Seirmarco stated I think there was also an issue about where the actual property line was in the rear of the property.

Mr. Mattis stated I am sure Mr. Fisher can go through his notes, and he would find all of these issues.

Mr. Laub stated okay. The only other question I have is about the notice. What are the notice requirements for the public hearing for next month?

Mr. Mattis stated well there is no legal requirement, but the problem is they're going to see the same thing that it is an adjourned public hearing, and it's going to be carried forward. It doesn't tell them if you are coming here to speak or anything. So we think it is only fair, because this has been adjourned, adjourned, adjourned, and people haven't come, because there has been no action. We want them to be able to come out, and voice their opinions, and they won't know that unless there is a notice sent out.

Mr. Laub asked to what extent should notice be sent out?

Mr. Flandrau replied it will be sent out as we originally sent it, when it was a new application.

30

Mr. Mattis stated I know it didn't entail a lot of people, 1500 square feet is the guideline.

Mr. Klarl stated the same mailing we did for the original application, we will do again.

Mr. Mattis stated I don't think there is any more than a dozen or so. Is there anyone in the audience that would like to speak?

Mr. Artie Radkin appeared before the Board. He stated I live at 40 Colabaugh Pond Rd. I'd like to convey something to this gentleman here. I think you are a little bit premature in abandoning the alternative site that I suggested, the Thalle property. I have been in touch with Mr. Pacciano, who is one of the principals of Thalle Construction. He has a McCarthy moment going on. He is going through a divorce, and he has not been to attentive to the situation, plus you send your correspondence to Mr.

Pacciano at 40 Colabaugh Pond Rd. He doesn't live there. I have a registered letter that I have in my possession now that I got in touch with Mr. Pacciano about, and I am holding it for him to pick it up. It is from General Dynamics. Are those people affiliated with you?

Mr. Laub stated no.

Mr. Radkin stated back to what I was saying. I think it is a bit premature abandoning what I suggested about this property here. There are a number of people who oppose the Rte. 129/Yorktown Rd. place that you are requesting. As you have seen, there are a number of people now that are for the alternative site. They stated this. I am no saying everybody is, but there are people that would want to stand up along side you, and back you on this cell tower on the alternative site. My opinion is it is a great site, it is out of sight.

Mr. Mattis stated but it was the Fall of 2006. It was a year and a half ago when they first tried to contact them. So Mr. Laub have you had discussions with Thalle?

Mr. Laub stated there were at least two site visits, and there have been some discussions. There was one location, but that had some property management issues. So then there was another location we looked at, but there has never been any "response" as to negotiations, leasing issues, those kind of things.

Mr. Mattis stated so if you're not getting a response from them I don't think we have to go any further with this. If this Mr. Pacciano, if he's interested, let him contact them, because apparently they have been in contact with this company, and they're not interested. I don't think we can penalize the applicant, if they are trying to find an alternate site, and the people with the alternate site aren't interested in negotiating.

Mr. Radkin stated well I am just trying to find the route of least resistance.

Mr. Mattis stated I understand, and quite honestly I wish that they would be able to negotiate something on this site.

Mr. Radkin stated okay, then I'll be in touch with him, and I'll give him this letter, and information.

Mr. Mattis stated he is from the law firm of Cudey & Feder in White Plains. I am sure if they have had discussions with him they know how to contact him.

Mr. Radkin stated as for going back to the Yorktown Road site, my mind hasn't changed, and I know a lot of the neighbors have not either.

Mr. Mattis stated okay, thanks. Is there anyone else who would like to speak?

Mr. Seirmarco made a motion in Case No. 48-05 to adjourn the case and schedule a public hearing for the

31

April meeting seconded by Mr. Chin with all voting "aye."

Mr. Mattis stated also we will notify the neighbors with 1800 feet of the change of circumstances.

\*

\*

\*

## **NEW PUBLIC HEARING FOR RECERTIFICATION FOR TELECOMMUNICATIONS TOWER**

CASE NO. 03-08 NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS for a recertification for a Special Use Permit for a wireless telecommunication facility at the Con Edison Tower located in Verplanck.

Mr. Keith Potenski appeared before the Board. He stated I am an attorney with the law firm of Snyder

& Snyder LLP appearing on behalf of the applicant, NY SMSA Limited Partnership d/b/a Verizon Wireless. Verizon Wireless is proposing to co-locate a wireless telecommunications facility on the existing tree pole located at 51 Scenic Drive. The co-location consists of antennas on the existing pole below the existing antennas as well as equipment there will be a communications compound co-existing. A Special Use Permit is required, and tonight we're here to hold the required public hearing, and request that the Board grant a Special Use Permit.

Mr. Douglas stated we have not received comments yet from DOTS in regard to your application. So what we do is we need to wait to hear from them after they review your application, and they will let you know, or we will let you know. The preliminary first step is for them to review the initial application, and report back to us.

Mr. Potenski asked are there any specific departments that I can follow up with to make sure there isn't anything else that they may need.

Mr. Klarl replied it would be the Director of Technical Services, who is Mr. Vergano, his department does the analysis under the code. So you can give them a call at 734-1060.

Mr. Potenski stated thank you.

Mr. Douglas stated I have one question in the technical area I was reading through here, and I am by no means an engineer. Are you going to need to make changes to the pole in order to have these on there?

Mr. Potenski replied there are some minor changes that need to be made in order to make room for the antennas. Visually there will be no difference.

Mr. Douglas stated that is unfortunate.

Mr. Potenski stated the change will be that the existing branches that are currently in the location of the proposed antennas will be essentially relocated such that they're affixed to the bracket for the antenna as opposed to being affixed to the pole itself. So like I said, visually the branches will look the same. It is just a very minor change. There will be no impact on the structure visually.

Mr. Mattis stated that is very minor.

Mr. Douglas asked is there any way you can prune the branches off the tree?

Mr. Potenski stated as far as I know there will be no pruning.

Ms. Hunte stated there is reference in the packet to a report from the Emerson Network Power, and it does

32

mention installing this 10 foot arm where the branches may not be sustainable at 113 feet. So I guess that is something that the Town Engineer will look into.

Mr. Mattis stated that will be part of what they will look at in the Engineer's Department. Is there anyone in the audience that would like to speak? We should have our comments from the Engineering Department next month, or before next month.

Mr. Potenski stated thank you very much.

Mr. Douglas made a motion in Case No. 06-08 to adjourn the case to the April meeting seconded by Mr. Chin with all voting "aye."

**OTHER NEW BUSINESS**

CASE NO. 04-08 PROPOSED CHANGES TO THE ZONING CODE TABLE OF  
DIMENSIONAL REGULATIONS.

Mr. Mattis stated we had a brief discussion about this on Monday's Work Session. So can we have a motion to receive and file this.

Ms. Hunte made a motion in Case No. 04-08 is received and filed seconded by Mr. Chin with all voting "aye."

Mr. Douglas made a motion to adjourn the meeting seconded by Mr. Chin with all voting "aye."

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Christine B. Cothren