

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, May 21, 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 C. 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: 3/19/08

Mr. Heady made a motion to adopt the minutes for 3/19/08 seconded by Mr. Chin with all voting "aye".

CLOSE AND RESERVED DECISIONS

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

Mr. Klarl stated as you know, we closed this some months ago, and we are waiting for the Planning Board to act, and then it will come back to us, if necessary. So we are holding our decision in abeyance.

ADJOURNED PUBLIC HEARINGS

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 Rd. cannot be developed as a retail shopping center is incorrect.

Mr. David Steinmetz, Esq. appeared before the Board. He stated I am from the law firm of Zarin & Steinmetz, representing the applicant. I think I am going to be fairly brief. We presented rather extensively at the last meeting in the form of documents, maps, and a tremendous amount of discussion. We had a rather lengthy legal submission to you last month. At your last meeting you asked for some additional information specifically related to the legislative history of Section 281, and its' original adoption in the 1930's. We did write a letter to your Board dated May 7th with a tremendous amount of additional information. We received a copy of Mr. Wood's memorandum dated May 9th responding to our submission, as well as your Board's inquiry as to whether the Town Attorney intended to add anything to his prior memos. We have reviewed Mr. Wood's memo. We don't think it actually changes anything of any real significance. The only think I found particularly interesting, and helpful was his acknowledgement of the significance of the O'Mara decision, which we explained to you after last month. That decision had come down subsequent to his original July 2007 opinion, and he agrees his of the significance, and the enforceability of a note on an old filed map. Finally, I just want to say for the record that our client was unable to be here this evening. He intended to, however, he did submit a short letter dated today to your Board expressing his apology that he can't be here tonight, and also indicating he is hoping that your Board

will expeditiously resolve this matter in his favor. Other than that, unless your Board has any questions. It's a public hearing. I am hoping your Board will conduct, and close the public hearing, and proceed from there.

Mr. Mattis asked are there any comments from the Board? Is there anyone in the audience who like to speak?

Mr. Jim Farrell appeared before the Board. He stated I live at Hollowbrook Mews. I just have one question about the property that is over there. I've noticed over the past week that it has kind of turned into an informal used car lot. Is that something that the Town approves? I have noticed cars there with for sale signs on for the last week. I don't know if the attorneys here know anything about it or not.

Mr. Flandreau stated I noticed a car when I was coming out of the Work Session on Monday night, but it wasn't there when I came in tonight. I'll keep an eye on it.

Mr. Farrell stated there was another one there prior to that that replaced that one, and there have been a lot of cars that have been parking in there, and looking at the cars, and it's turning it into, like I said, an informal used car lot.

Mr. Flandreau stated we will keep an eye on it, and if there are we will get in touch with the owner of the property that he either has to post something, or block that entrance to the lot.

Mr. Farrell stated thank you.

Mr. Mattis asked are there any other comments?

Ms. Marie Liotta appeared before the Board. She stated there are just two things. The first is that a few meetings ago it was said that if this went to court that the Town would have a hard time. Well in our research, we found 12 cases that went to court, and the Town won 10 of those cases. Secondly, just to keep in mind that this Board, in fact works for the residents, and the citizens of Cortlandt Manor, and not for the big businesses, and the construction people. I thank you in making your decision that you keep that in mind, and to keep the residents in mind, and to keep the sanctity of Cortlandt Manor. Please keep that in mind. Thank you very much.

Mr. Mattis asked is there anyone else? Are there any comments from the Board?

Mr. Reber stated I just want to say that this Board takes very seriously the propagation to preserve the character of Cortlandt, but in that sense we're bound by the law, the Zoning Code, and regulations. Most of the Zoning Code for the Town has been designed specifically for the intent of preserving the character of the Town. I am sure that those of you who have heard other cases regarding variances that our biggest concern when we are asked to give variances is exactly that. This is a little bit different, it's not a variance, it is an Interpretation, and I think it has been well discussed. There has been a lot of information presented, and we will take all of that into consideration, but in the end we have to do what the law dictates we have to do.

Mr. Reber made a motion in Case No. 31-07 to close the public hearing, and Reserve Decision seconded by Mr. Chin with all voting "aye."

Mr. Mattis stated what a Reserve Decision is we have 62 days to make our decision. It will probably be at the next meeting, but it may be the one after that. That gives us time to reflect on it, and to have or attorney draw up the language for it. The public hearing is now closed so there will be no further comment. Thank you.

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CASE NO. 45-07 MARK AND 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. Flandreau stated Mr. Zutt, the attorney for Mr. and Mrs. Hittman was in the office on Tuesday, and said he was going to send us a letter to withdraw this case. I have not received the letter, but he said that the language had been adopted by the Town Board at their last meeting.

Mr. Klarl stated so his intent is to withdraw?

Mr. Flandreau stated I was speaking to him about that, and he didn't send anything to us yet. So I am not sure if he wants to withdraw this month, or wait until next month.

Mr. Mattis stated okay I believe the Town Board passed a resolution to change the zoning at their last meeting. We will get confirmation of that. Can we have a motion to adjourn that case?

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

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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. Klarl stated once again, this is somewhat like the first application. It is a companion application before the Planning Board. It is still proceeding before the Planning Board, and I believe he feels that he has completed his presentation to this Board, and is just waiting for the Planning Board so that we have coordinated review. I thought maybe the applicant would here tonight, but that is the factual situation in this case, and it should be probably resolved by the Planning Board in one, or two months.

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

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

Mr. Flandreau stated Ms. Price came into the office to withdraw her application. She made modifications to the plans that will not require a variance.

Mr. Mattis stated okay so that case is withdrawn.

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CASE NO. 07-08 JOHN AND DEBORAH CRUIKSHANK for an Area variance for a front yard set back for a proposed addition on the property located at 2 Giordano Dr., Cortlandt Manor.

Ms. Deborah Cruikshank appeared before the Board. The last time I was here I submitted a plan for an addition of a garage, and a great room over the garage, and I was asking for a large variance, and the

indication from the Board was that the plans were a little too frivolous, a little too large, and if we could minimize the variance. So I came back asking for a variance of under 10 feet as shown on the new drawings.

Mr. Mattis stated so the dimensions are now 27' 6" x 23'.

Mr. Douglas stated I appreciate the additional work that you've done to try, and reduce the variance. I am still torn about this. It seems to me that this is the sort of property that you would be able to make changes without the need for a variance. It is a nice size lot with a nice size house. There is room to work with, and one of the factors that we're supposed to be looking at is whether or not there is a more reasonable alternative. Can you explain to us why you can't do something here without the need for a variance?

Ms. Cruikshank stated well in the back there is an in ground pool, and the in ground pool is only about 10 feet from the back of the house, and it cannot be moved back because of the leach fields, and the septic system. If we go onto the other side of the house, looking at the front door to the left, there is a huge fern, and I think it would then be an issue for a side yard variance, because our neighbor next door is right there, and I really don't want to come in front of the house. This is really what I consider a side yard. I know it is considered a front yard, because it is on the road. So this is the only way to go on this side. It is already a three house so going up I don't think would be feasible.

Mr. Douglas stated that is the yard that is on Furnace Dock Rd., and as I think we discussed the last time, as you drive through that neighborhood most of the houses truly are set back. You don't really see most of the houses very much, you do see your house, you see it now, and that is perfectly fine. My concern is that by granting a variance you'll see even more of it. I understand why you would want to move in that direction, what I am struggling with is that I'm not sure you need to go that direction to the extent that you need to get a variance.

Mr. Reber stated I would kind of reinforce that. You're still asking for 27 ½ feet, and require the need for a variance, where in another way, if you went 19 ½ feet you wouldn't need any variance. 19 ½ feet is a pretty big garage. It might not be a two car garage, but it's a one car plus a lot of storage, and other things. You also say that you have a pool, but that was your decision, because you came for a variance for the pool itself back in 2001, and you made a decision then that the pool was obviously more important than the garage. Now you come back to us after the pool, and you use that as an excuse as to why you can't have room for a garage now. You can't have it every way, when you bought the house it obviously had certain limitations, and certain zoning. It is not for this Board to just to look the other way, and say well people want pools, they want two car garages, they want this, or that. That changes the intent of the zoning set backs. So we could say to you, look no variance, you have the 19 ½ feet that gives you a nice size room above. It gives you a one car garage. You have been satisfied without one until now, and certainly satisfied you when you decided to put the pool in, and you'll still have plenty of room for storage and other factors. So I also have a very difficult time understanding why we really have to consider a variance.

Ms. Cruikshank stated we need a two garage to store all of our lawn equipment, our snow blowing equipment...

Mr. Reber stated well you put another shed or something up for that, that's allowed.

Ms. Cruikshank stated right, but we do want a place to store two cars. We have two cars that we would like to park in a garage.

Mr. Reber stated well you have a two garage now.

Ms. Cruikshank stated well we use the two car garage now for the two cars, and lawn equipment. We'd like to make a space for the kids.

Mr. Reber stated well put it someplace else on the house. To me, it just seems I understand people's desires, but I don't think it is up to the Town to look the other way so you can just keep expanding in directions that the code does not permit.

Ms. Cruikshank stated okay, I mean I'll accept your decision. It is just that last month you indicated that I was asking for too much of a variance, and that if I came down to under 10 feet from the road, and that is only the corner of it, most of it is only about 4 feet from the set back so that is why I had the plans the revised. If I can't do it, I can't do it. I am willing to live with that decision.

Mr. Reber stated well personally if you had come back with 24 feet, which is usually what we see for a two car garage, and if it is just the corner, then bring it down to less than 5 feet, which is less than a 10 percent variance. I personally would consider that, but you are still asking for 27 feet. I don't know whether you would be happy with the 24 feet.

Ms. Cruikshank stated well we would only be able to fit the cars, and just the way the electrical comes in, and the grading, I don't think it would be possible to do that. You have to actually come out the small section. Do you see the section that comes out with the window? We'd have to come out there because of the grading of the property, and just the way that the architect said that it would need to be. We need that space to come away from the grading, and the retaining wall, and the intake of all the cables and electrical.

Mr. Reber stated well if you are making the garage smaller it makes it protrude less, so I don't understand what the problem is.

Mr. Seirmarco stated I would be willing to approve a 24 foot wide garage.

Mr. Douglas stated I think I could agree to that, 24 feet is often the size of the garage that we would approve.

Mr. Mattis stated I noticed the reference in your letter, and you may have to change the electrical, and cable box, you may have to move that, but a 27' 6" is a very wide two car garage, and especially when you have to ask for a variance. It makes it, in my opinion, something that I can't support, because it is not a normal two car garage. You can make it 24 feet, cut down the variance, and I'd be inclined to approve a slight variance for that as well.

Mr. Chin stated usually a two car garage is about 24' x 24', and I would also agree with that. I mean it is two front yards so it is really considered a side yard to you, but it is still a front yard, and we still have to consider that, 24 feet you can fit two cars into easily.

Mr. Reber stated this is a situation that when that house was built they had two options, one being to put the house the way it is now facing Giordano Drive, and the other is the house facing Furnace Dock Road, and you would have a lot more room to lay it out, but they wanted the Giordano Drive address so that is why there is less to work with now.

Ms. Cruikshank stated lucky me.

Mr. Mattis stated in terms of the storage of the equipment, you can put a storage shed in the back yard.

Ms. Cruikshank stated we can't physically have a garage that is 24 feet wide so if this is the decision, then I will have to live with it.

Mr. Mattis stated I don't understand that at all.

Ms. Cruikshank stated I'd be driving into my retaining wall to get into the garage.

Mr. Reber stated well you can move the retaining wall back can't you?

Ms. Cruikshank stated structurally it would be changing more than a retaining wall.

Mr. Reber stated those things can be done.

Mr. Chin stated I am not understanding your point, but if you'd like to adjourn this, and have your architect come at the next meeting that would be fine.

Ms. Cruikshank stated no, I'm done.

Mr. Seirmarco asked is the retaining wall a rock wall?

Ms. Cruikshank replied it is a rock wall, because of the graded yard, the garage is at ground level, and then the second floor is on a second level so there is a lot of retaining wall structure that apparently can't be moved. The rock wall itself can be moved, but only about 2 feet. You are asking for 3 ½ feet.

Mr. Seirmarco stated if you move the rock wall in front of the porch away from Furnace Dock Rd., then you have your 24 foot wide garage in, and a new rock wall can be put in. I understand these things can exasturbate the cost, or whatever, but that's the way it goes.

Ms. Hunte asked is there a possibility of you narrowing the garage, and having the possibility of having an entrance on both sides?

Ms. Cruikshank stated for the two cars, do you mean from the Furnace Dock side?

Ms. Hunte stated parking one car in front of the other.

Mr. Chin stated it is what they call tandem parking.

Ms. Cruikshank stated although the pool is right there.

Ms. Hunte stated is there any way of bringing the garage further up?

Mr. Mattis stated the retaining wall stops that, so no.

Mr. Klarl asked are you sure you wouldn't like to talk to the architect about these thoughts, and come back next month?

Ms. Cruikshank replied no, no, I'm done.

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

Mr. Douglas asked would you like to take another month to think about this?

Ms. Cruikshank stated no.

Mr. Chin stated you heard what we're saying.

Ms. Cruikshank stated I thought I heard what you said last month. I am just frustrated I guess. I am not frustrated with you. I am just frustrated with the whole situation. So I thought I came back with a

smaller plan, and I put too much money into this already so I think I'm done. That is fine.

Mr. Chin stated you can withdraw it, if you want.

Ms. Cruikshank asked what else is there, a formal vote?

Mr. Mattis stated you can withdraw it, you can ask to adjourn it so you can talk to your architect, or you can ask us for a vote?

Mr. Flandreau stated she also could ask to modify the application now to a 24 foot wide garage, and vote on that, and then she can go back to her architect with what she has, and maybe he could work on something to get that to work.

Ms. Cruikshank asked then if I decide not to do it, then I will have it anyway?

Mr. Flandreau stated if you decide not do it now, and you decide you want to do it 10 years from now, then you still have the variance.

Ms. Cruikshank stated if that is an option, if you can vote on a variance for the 24 foot wide garage, then I would like to do that, as long as I don't have to go through with it, if I decide not to.

Mr. Chin stated no you don't have to do the project, but you would be able to if you wanted to.

Ms. Cruikshank stated okay, that is fine, then I will amend the application of a 24 foot wide garage, and ask the Board to vote.

Mr. Douglas made a motion in Case No. 07-08 to close the public hearing seconded by Mr. Seirmarco with all voting "aye."

Mr. Douglas made a motion in Case No. 07-08 to grant an Area Variance in the front yard from 50 feet down to 45.5 for a proposed addition. This is a Type II Sequa with no further compliance required seconded by Mr. Chin with all voting "aye."

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CASE NO. 09-08 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE ENFORCEMENT for an Interpretation if the screening for a pre-existing contractor's yard was installed as per Zoning board of Appeals Case No. 05-03, and an Interpretation if the property known as 0 Van Cortlandt Place is part of the pre-existing contractor's yard, and an Interpretation if the vehicles on 14 Van Cortlandt Place which have not been moved, can stay as part of the contractor's yard on the property located at 14 Van Cortlandt Place, Cortlandt Manor.

Mr. David Wright, Esq. and Mr. Sheldon Gardner appeared before the Board.

Mr. Mattis stated before we begin I have a question. We had requested a certain amount of information, we didn't get anything for the meeting we had on Monday. Do you have anything for us tonight?

Mr. Wright stated I think I will refer that question to Mr. Gardner. They're asking if you brought any of the documents that I told you they were requesting last month.

Mr. Gardner stated I have none.

Mr. Mattis stated you have none. So there's no proof that this is not a junk yard, but it is a contractor's

yard.

Mr. Gardner stated it is a contractor's yard, as Mrs. Miller had told before.

Mr. Mattis stated things change over the years. A contractor's yard is for equipment to come in and out on a daily basis. We were trying to determine from your records, if you had jobs where you were taking that equipment out, because we have neighbors that tell us that equipment never moves, and our indication from looking at it, is that it never moved. Some of these are unregistered vehicles.

Mr. Gardner stated the one unregistered is being moved except for one, and you're allowed one that I'm not using at the very present.

Mr. Mattis stated okay. What about the one that has a temporary registration?

Mr. Wright stated to Mr. Gardner I think that was the tanker truck.

Mr. Mattis asked what's happening with that?

Mr. Gardner replied the tanker truck?

Mr. Mattis stated yes.

Mr. Gardner stated one has a license onto it, and the other one doesn't.

Mr. Reber stated from what you showed us at the previous meeting, was just a temporary, which doesn't prove to us that it has been in use since the years that it has been stored there.

Mr. Mattis stated we had requested information going back where it would show that it had been registered in the past. We only saw a 30 day temporary registration.

Mr. Wright stated to Mr. Gardner the Board had requested copies of registrations I think going back to 2003. I think there are two trucks in question. One is a tanker truck, and one was old dump truck I think.

Mr. Gardner stated that was moved. That wasn't being used.

Mr. Wright stated also one of the Board members had requested manifests, which I guess are required if you're transporting certain amounts of septic, and other invoices evidencing use of the truck since the contracting business. Those are the documents that I recall.

Mr. Mattis asked and you have none of those documents?

Mr. Gardner replied no.

Mr. Reber stated the issue is that being grandfathered a right allowed in certain zoning such as a contractor's yard stays valid only as long as the business continues. If a year passes, where the business is not happening that right is lost, and that is why we need you to show that you have been actively involved with the equipment on that site as a contractor. If you have been sitting there for years, and you don't have any evidence that you acted as a contractor's business with the equipment there, then the right of holding that as a contractor's yard ceases and desists at that point, and that is why we need that evidence, without that evidence, we basically have to declare that being no longer a valid contractor's yard, and you will have to remove all of that material.

Mr. Wright stated I'm not sure that was the issue that was referred to this Board for Interpretation. I

thought that there were three issues here for Interpretation here. Number one, arising from an ongoing, and current enforcement action, there were the trucks. There was the tanker truck, a dump truck, and what has been described as the rusty bulldozer, and the question that was referred to this Board, three questions.

Number one is are those considered inactive vehicles within the meaning of the code, or do they have to be removed. Number two was whether or not 0 Van Cortlandt Place was part of the pre-existing, nonconforming use, and the Board decided that last time, and said no, it's not, it's residential. The third question was about the screening. I thought those were the three issues, and I got the sense last time the Board was pretty clear about the screening. They interpreted that screening as being inadequate, and the Board clearly decided that 0 Van Cortlandt Place was residential not part of that pre-existing, nonconforming use. I thought the only question tonight was whether those three vehicles, pieces of machinery, or as someone said junk have to moved or not, and refer that back to the Town for enforcement.

Mr. Reber stated yes, but the point is that if in fact that truck had been sitting there, and it hasn't been active that in itself, then declares it is not a contractor's yard.

Mr. Wright stated by definition it is not a contractor's yard. I think that three pieces of machinery that are not being used doesn't mean he is not carrying on a valid business there also.

Mr. Chin stated that is why we asked him for proof of that.

Mr. Mattis stated quite honestly, I am a little insulted that we haven't got anything, and how hard it is to give us old registrations for a vehicle going back several years, when he only has a temporary registration. I think the conclusion is that that was another piece of junk that wasn't registered, and when we have papers that say it hasn't moved in years, and when I look at it, and can virtually see that it hasn't moved in years, then by definition it then becomes not a contractor's yard, and then it's up to Code Enforcement to go back, and enforce that whether they'll take him to court, or what, I don't know. We don't have to make that decision. It's a decision that is made by virtue of the fact that he can't prove that he's doing it.

Mr. Gardner stated some of them were running today, and they were moved in, and out.

Mr. Mattis stated sir, they don't have license plates, they weren't registered. How were they moving in, and out on a daily basis?

Mr. Gardner replied in the yard they were moved.

Mr. Mattis stated that is not a contractor's yard. A contractor's yard is for equipment to be stored overnight to moved out again the next day for a job, and that has not occurred for a number of years.

Mr. Reber stated that is why we were asking for invoices, moving around the yard doesn't mean that it's an active contractor's yard.

Ms. Hunte asked sir, do you have manifests, or did you just not bring them today?

Mr. Gardner I don't have license plates on those vehicles, they're moved on a trailer.

Mr. Wright stated she is asking if you've filed any manifests for transporting sewage, you have to file those with the DEC, I think it is, if you have any of those that you have filed with respect to any of these vehicles, if you just didn't bring them tonight, or if you have them somewhere.

Mr. Gardner stated I have some of them, yes. I have some from Kansas City for the trailer.

Mr. Seirmarco stated I think you are missing the point here, let me see if I can speak up here so you can hear me. We need to justify the fact that you are doing business on a daily basis from that contractor's yard.

We take no exception to the fact that those trucks can move from one side of your property to the other, that's not the issue. The issue is are they making money, and we asked your attorney to provide us with information saying that there is business being done on a routine basis so you can remain as a contractor's

yard, because the trucks can move from one side of the property to the other doesn't justify the continuation of a contractor's yard. So we're trying to help you. So we gave you a list of things you have to provide us with. 1.) A continued registration of the vehicles. 2.) A means of showing us that they are in fact working, and you are earning something as a contractor, just parking them there does not entitle you to a contractor's yard, okay?

Mr. Gardner stated okay, I can bring a whole mess of trucks up there then with registrations.

Mr. Seirmarco stated no, because that is not the point.

Mr. Gardner stated no, I'm not missing the point.

Mr. Mattis stated you have to have records to show that you are doing work, and you said that you don't have any records.

Mr. Gardner stated I have a whole list of registrations right here.

Mr. Seirmarco stated that is only part of it. You need to provide us with some sort of documentation that says you are doing business everyday, business transactions.

Mr. Mattis stated and that they are moving off the property every day, and how were they going out when they didn't have any plates or registration?

Mr. Chin asked do you have other trucks that you use?

Mr. Gardner stated yes. I have a 91 Ford pick up.

Mr. Chin stated that 91 Ford pick up is not going to haul stuff.

Mr. Gardner stated no, I didn't say it would. I have a dump truck, a 9,000 with plates onto it. I have a 93 L9000 with plates onto it. I have a 85 with plates onto it.

Mr. Chin asked where are they stored?

Mr. Gardner stated wherever I'm doing a job.

Mr. Mattis stated with no records, but you're doing a job. I don't even want to get into anymore back and forth. I think it's pretty clear that we asked for documentation. We can't even get documentation on a truck that they say is registered, because it has a 30 day temporary, and obviously there was no registration before that, or it would have been produced. So I don't know how much further we have to go on this. We are just going around in circles now. I think it's very clear to the Board what this property is being used for, and that's a junk yard.

Mr. Gardner stated it's not a junk yard.

Mr. Mattis stated well we have no proof to the contrary, and we asked for it, and we got nothing from you.

Mr. Wright stated once again, I understood what the Board had requested, and I did pass onto my client the very next day after the public hearing a request for the documentation that I described with respect to the vehicles, which is subject to the referral. I did not ask the applicant to provide registrations for the other

vehicles.

Mr. Reber stated that's fine. There's just two things that are before us. One is the contractor's yard has been grandfathered contrary to the zoning right now. Obviously, the Town would like to see that yard

disappear, but it understands, and respects the continuity of business, and the rights of the owner. So all we're asking is that condition, the contractor's yard, will continue as long as what is on that property is actively used in a contracting business. If he's not using that specific equipment, then that equipment should be removed, and if it ends up that there is no equipment, and no documentation to show that he is doing business from that yard with that equipment, then he is not operating a contractor's yard, and if we declare that there's no equipment on that site that can be amicably used in the business, and there is documentation to show that that is supporting his business, then our Interpretation for this last part, which is do the vehicles do have to be removed? The answer would be, if we say yes, and they are removed, then there is nothing there to do business, which means then there is no contractor's yard. That is the whole thing. That is why we asked for documentation to show that he was conducting business with the equipment that is there at the site. If he has to put his equipment elsewhere, that's irrelevant to this. It has to be with that site. He is using that site, and the equipment on that site. A contractor's yard is used to store his equipment in between projects, which is usually within a day, or a couple of days not two years, or six months, and he hasn't given us that. Now if he has it, and he says he can get it to us, then we can give an adjournment, but I am not so sure he has that.

Mr. Wright stated I don't think I understood fully. I did understand that you wanted documentation to show that these three pieces of machinery, whether they were vehicles, machinery, or junk were used in connection with the business. You want to see invoices showing they were used on jobs. I understand now.

Mr. Mattis stated we have nothing whatsoever that we had asked for.

Mr. Wright asked Mr. Gardner do you have any of those documents?

Mr. Gardner replied when I do contracting jobs I don't have each machine listed. I take the job, and do the job.

Mr. Mattis stated we didn't ask for it by machine. We asked for any specifics, when you were doing jobs, and that is required by law, and apparently there are none.

Mr. Seirmarco stated we are trying to be on your side. We are trying to help you.

Mr. Reber stated we've got complaints that the equipment has been sitting there for an extended period of time, and neighbors are annoyed.

Mr. Gardner asked who are these neighbors?

Mr. Reber stated it doesn't matter.

Mr. Gardner stated it does to me.

Mr. Reber stated it matters to us that we looked at the equipment during a site inspection, and it looks as though some of it has not moved, and it hasn't moved in quite awhile. I don't think that bulldozer in the back has moved in years. I think it is questionable whether that can be on the road on a regular basis so it is relevant to us. We are asking you to prove to us that each piece of equipment that you have there in that contractor's yard is actually being used.

Mr. Wright asked Mr. Chairman, may I make a suggestion?

Mr. Mattis stated sure.

Mr. Wright stated the Board made it very clear that the documentation was required. I'll accept the responsibility for misinterpreting it for the three vehicles, and I have given you a month to collect the

documents, and we didn't bring them, but I didn't understand that we were going to the whole gamut of the other two trucks, and what is being used in his business. I mean clearly he has a business that he is operating there, and I would request whatever your decision on the three vehicles, which I thought was, and the only thing I thought was in your jurisdiction tonight, that if you are going to decide on this as Board, that I would request another month to collect documentation to the business there.

Mr. Chin stated I'd like to say something also, Code Enforcement since the last month, knows that those trucks, and vehicles have not even been moved on that yard in the last month.

Mr. Flandreau stated two out of the three vehicles have not moved.

Mr. Gardner stated there is only one truck there.

Mr. Flandreau stated the bulldozer, and the tractor trailer has not been moved. I was out there the prior month, and at the initial application, and they have not moved since.

Mr. Mattis asked the 30 day registration, the temporary registration...

Mr. Reber stated it is a 60 day registration, temporary.

Mr. Mattis asked has anything been done to register that permanently?

Mr. Gardner replied I didn't have a temporary.

Mr. Mattis asked what did you have before that?

Mr. Gardner replied a regular license.

Mr. Mattis asked then how did it become a temporary, if it was a regular?

Mr. Gardner replied it's here in my wallet.

Mr. Mattis stated you have a copy of the registration that was prior to that? If it is a temporary I don't need to see it, we already have a copy of that.

Mr. Reber stated for the 1985 Ford tank it says it was issued March 14, 2008, and it is due to expire June 30, 2008, that's a temporary registration.

Mr. Wright stated that's the one that I had submitted previously.

Mr. Mattis asked does he have anything to show that it was registered prior to that?

Mr. Wright stated I will tell you in a minute. I don't believe so. (Mr. Gardner showed Mr. Wright a registration from his wallet), no that is the same one.

Mr. Reber stated it is a 90 day license, that is temporary in my book.

Mr. Wright stated it is saying it was issued on March 14th.

Mr. Mattis stated I think Mr. Wright made it very clear what we wanted on that, there was no misinterpretation on that was there?

Mr. Wright replied no.

Mr. Chin asked Mr. Wright you are asking for a one month adjournment?

Mr. Wright replied at least as to the vehicles, which I didn't understand were subject to this.

Mr. Douglas asked do need anymore time for the vehicles that were discussed last time?

Mr. Wright replied all I know is I asked that the documents be collected.

Mr. Douglas asked do you want some more time?

Mr. Wright replied yes, I would request on behalf of my client more time.

Mr. Douglas stated I would suggest we give him another month, and if he doesn't have it then we can close it then, and make a decision.

Mr. Mattis asked is there anyone in the audience that would like to speak? Are there any other comments from the Board?

Mr. Flandreau stated I think he should provide the documentation, and invoices for every vehicle, if he uses those, or for any other invoices, if you have other equipment that might be parked on the property at another time. If you are doing a job that is a couple of days, and then the vehicle comes back, it shows that it is still being used as a contractor's yard, but if the vehicle is not on the property at all, then it is not using that contractor's yard status.

Mr. Wright asked all vehicles that are in any way used in connection with the business right?

Mr. Reber stated relative to the property.

Mr. Mattis asked so you are clear on what we're asking for this time?

Mr. Reber stated any equipment that shows up on that property he has to show it is an active use of the business, otherwise it's got to be removed.

Mr. Wright stated and I understand now that when you want invoices for the business you don't want just the invoices that as Mr. Gardner says do not show a particular truck, you want to see that there is a business conducted from that location.

Mr. Reber stated that is correct. He has to somehow tie it all together in a way that we can understand. Like you said he has a septic truck so if he tells us he did a paving job that doesn't explain what the septic truck is there for. So there has to some correlation between the work, and the vehicles, and we need to see the registrations too. Otherwise, those vehicles can be use.

Mr. Seirmarco stated we have requested this of other contractor's, and what they do is bring in the invoice that usually spells out a task, and the date, and you can cross out what the fee was. We are not interested in the fee, we're just interested in the task, and when it was done, possibly some location, it doesn't have to be specific. More importantly is the date, and the task.

Mr. Wright asked just a sampling over a period of say the last several years would that be adequate?

Mr. Mattis stated I would like to see all of them. We had someone bring in a stack this big.

Mr. Reber stated we had other contractor's bring in everything they had.

Mr. Seirmarco stated most importantly over the last two years.

Mr. Mattis stated if it is only a sampling, we don't know that it's a sampling. We don't know that shows he is carrying on business on a daily basis.

Mr. Reber stated you were given this right in 2003, and I think since then we need to see that you've been keeping this business active, because as I said if a year goes by, and you have not used the property as a contractor's yard you lose it. So you have to justify to us that you have been actively utilizing that equipment since 2003, when we granted the Special Permit.

Mr. Wright stated the Board had also asked me to collect copies of complaints against Mr. Gardner relative to the property, and I have filed a Freedom of Information with the DEC to collect hard copies, and I do have those here, there are three. Shall I hand those up now?

Mr. Mattis replied yes, we will put them into the record. Thank you.

Mr. Seirmarco asked is the tractor trailer that is there, it is empty or full?

Mr. Wright stated one of the complaints to the DEC, if I can answer that was in March 2007 a complaint by a neighbor that there was a truck storing septic, and the DEC did actually go out, and verify that none of the trucks had any septic on the property, and there were several other complaints all of which I think you'll find were unfounded. Also, I couldn't get anything in writing for the NYS Department of Environmental Protection, I think he was a captain there, Ronald Gatto, he called my office in March 2008, and he had received a complaint from the neighbor also, and they intended to take no action also. Then there is the Town violations that brought us here. I apologize for not having the documents tonight. You made it clear, and I apologize, but I misunderstood what you were asking for.

Mr. Reber stated I am not certain, but I think the DEP would not take action because I do not think it is in the NYC watershed, so it is out of their jurisdiction.

Mr. Wright stated I didn't ask any questions.

Mr. Flandreau stated actually Mr. Gatto is with the Westchester County Health Department.

Mr. Wright stated oh, I stand corrected.

Mr. Mattis stated at this point we are clear at what we're requesting.

Mr. Wright stated yes.

Mr. Mattis asked are there any other comments?

Mr. Chin stated yes, that should be submitted to us 10 days prior to the June meeting, by June 4th so we can get it at our Work Session.

Mr. Wright asked Mr. Gardner do you have anything to say?

Mr. Gardner stated yes, I would like to know all these neighbors who are complaining.

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Mr. Wright stated to Mr. Gardner well they are saying that is not the issue here. Do you have any questions as to the documentation they are requesting that you collect?

Mr. Gardner stated no.

Mr. Reber made a motion in Case No. 09-08 to adjourn the case to the June meeting to give the applicant

time to provide us with documentation that he has an active contractor's yard that has been active since the Special Permit was issued in 2003, and that any, and all vehicles that he uses to store on that property are part of that active business seconded by Chin with all voting "aye."

* * *

CASE NO. 11-08 THOMAS & STEPHANIE MULROY for an Area Variance for the front and side yard set backs for a proposed addition on the property located at 10 McGregor Lane, Crompond

Mr. Ronald Garcia, architect appeared before the Board. He stated I represent Mr. and Mrs. Mulroy. We were here at the previous meeting with a submission, and basically we are building an addition up to the existing home, and we are requesting a variance for the right front corner of the proposed porch, and the left corner of the proposed garage.

Mr. Mattis stated I think because we didn't have the drawings last month we could not do anything on this case.

Mr. Seirmarco stated we discussed this at the Work Session on Monday there was some confusion as to the off set of the garage, and the second floor. I think that was resolved at the Work Session, and we had no problem with that, and the other corner of the house.

Mr. Mattis asked are there any other comments from the Board?

Mr. Reber stated I just want to thank the applicant for working with us on this, and making the adjustments that we had asked to minimize the variance. I have no problem with it, as the modifications were made since the last meeting.

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

Mr. Seirmarco made a motion in Case No. 11-08 to close the public hearing seconded by Mr. Reber with all voting "aye."

Mr. Seirmarco made a motion in Case No. 11-08 to grant a front yard Area Variance from 50 feet down to 31 feet, and a side yard Area Variance from 23 feet down to 20 feet, as shown on the May 20, 2008 revisions seconded by Mr. Chin with all voting "aye."

NEW PUBLIC HEARINGS

CASE NO. 12-08 PASQUALE CARBONE AND WAYNE SMITH for an Area Variance for the size of lots, an Area Variance for the lot width, and an Area Variance for a side yard set back on the properties located at 150 Highland Ave. and 154 Highland Ave.

Mr. Anthony Carbone and Mr. Wayne Smith appeared before the Board.

Mr. Carbone stated I am here to represent my father tonight. Mr. Smith, and I had a little problem with our

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property line so we are here for a lot line adjustment.

Mr. Mattis asked you purchased the property recently?

Mr. Carbone replied yes.

Mr. Mattis stated what we're doing is taking the property line so that the house is on the correct property.

Mr. Carbone stated yes.

Mr. Mattis asked are there any comments?

Mr. Seirmarco stated this is quite typical in the area that this is in. Many people have their houses, steps, or porches on neighbor's property, or on Town property. It is very common in Verplanck, back in the day where they wrote a sale on a piece of paper, and did not have a proper survey. This is making this less of a nonconformity, and I would recommend that this be done.

Mr. Mattis asked are there any other comments? I think from the size of the lots that basically they require variances so what we are doing is bringing it more into conformity. Is there anyone in the audience that would like to speak?

Mr. Seirmarco made a motion in Case No. 12-08 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Seirmarco made a motion in Case No. 12-08 to grant an Area Variance for the size of lot, and the lot width, and lot line adjustment according to the table attached to the application. This is a Type II Sequa with no further compliance required seconded by Mr. Heady with all voting "aye."

* * *

CASE NO. 13-08 PAUL CILLO for an Area Variance for a front yard set back for a proposed open deck on the property located at 30 Cherry Place, Lake Peekskill.

Mr. Paul Cillo appeared before the Board. He stated I live at 30 Cherry Place in Lake Peekskill.

Ms. Hunte asked can you just give us a brief description of what it is you are trying to do.

Mr. Cillo replied I am just trying to put a front porch in front of my house, because I really don't have a big yard, and I have no where to entertain family, and friends. There is a driveway on the other side so I really can't do anything over there. So we just want to be able to entertain, and if we have children in the future we can have the porch for them.

Ms. Hunte asked why do you need a variance?

Mr. Cillo stated the variance is needed, because there are two sides to the property like two frontages, and one side is 10' 8" away from the road so we need a variance for that part.

Mr. Mattis asked is the purpose for putting that little lag on the side there, because it is off set, up higher for the cars?

Mr. Cillo stated exactly, it is actually 3 or 4 steps to go down, and then like a little driveway.

Mr. Mattis stated otherwise you would have to walk out on the road, and walk around.

Mr. Cillo stated right, we are just going to extend a little part to that area with a couple of stairs to go down.

Mr. Seirmarco asked do you intend to eventually close this in?

Mr. Cillo replied no.

Mr. Douglas stated the house itself is nonconforming.

Mr. Mattis asked are there any other comments? Is there anyone in the audience who would like to speak?

Ms. Hunte made a motion in Case No. 13-08 to close the public hearing seconded by Mr. Douglas with all voting "aye."

Ms. Hunte made a motion in Case No. 13-08 to grant the Area Variance from 30 feet down to 10.8 feet for an open deck on the property. This is a Type II Sequa no further compliance required seconded by Mr. Heady with all voting "aye."

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CASE NO. 14-08 GALO URIBE for an Area Variance for the front yard set back for an existing front porch and the front yard set back for an existing front stairs on the property located at 6 Emerson Place, Montrose.

Mr. Galo Uribe appeared before the Board. He stated we received a letter that I am supposed to fix my garage. So I did fix it, but I did not ask to do it, I just fixed it, myself, my son, and a friend of mine. I did not know I needed to file anything.

Mr. Chin stated I happened to go by, and basically what you're doing is just replacing the porch the way it was in the same configuration so I would not have a problem with it, and based on the site plan it is basically hasn't move anywhere closer to the road that what it was before.

Mr. Mattis stated you didn't even replace the roof there, just the supporting columns.

Mr. Uribe stated right.

Mr. Mattis stated so it is basically just a rebuild, repair to what it was.

Mr. Reber stated I can verify that porch has been there for quite some time. As a child, I walked passed this house on my way to school so I can tell you that in the 1950's it was there.

Mr. Mattis asked when was that?

Mr. Reber stated I think that makes it a prior to zoning situation.

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

Mr. Chin made a motion in Case No. 14-08 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Chin made a motion in Case No.14-08 to grant the Area Variance for the front yard from 35 feet down to 15.8 for an existing porch. This is a Type II Sequa with no further compliance required seconded by Mr.

Heady with all voting "aye."

* * *

CASE NO. 15-08 UMBERTO & CARMELA CEDOLIN for an Area Variance for the front yard set back for an existing dwelling and a rear yard set back for accessory structure (shed) on the property located at 83 Locust Ave., Cortlandt Manor.

Ms. Marisa Moscow and Mr. Peter Cedolin appeared before the Board.

Ms. Moscow stated we are here to represent our parents. They could not be here tonight.

Mr. Klarl asked so the property owners are your parents?

Ms. Moscow replied yes, and we're here to ask for an area variance for a tool shed in the back of their home, which is the way they bought it years ago in 1960. They bought it the way it is, but they're looking to sell their home so they need to get all the necessary paperwork.

Mr. Heady stated I was out there, and I was talking to your mother. I felt sorry, because they don't want to sell the house.

Ms. Moscow stated I know, they've been there for 47 years.

Mr. Heady stated yes, and she said it was there when they bought it, and they bought these problems, they didn't know when they bought the house.

Ms. Moscow stated exactly, there was no paperwork exchanged at that time. They came here from Italy, and they were only here since 1954 so they did not know any rules existed at that time.

Mr. Heady stated it was no fault of hers. They bought that from somebody else. I have no problem with it, and I guess the other Board members feel the same way.

Mr. Mattis asked are there any comments?

Mr. Reber stated normally I would have a problem, but it is only a shed, and it could be moved if it were too close to the property line, however, this shed is 11 feet from the side line, and the back line it is only 4 1/2 versus the required 6 feet so it is not too far off. I am willing to allow it, because if you look at it in relative to the other properties. It backs up into a corner of the lot in back of it, and it's far away from any other structures of anyone else's property. So the 1 1/2 feet really makes no difference. So I am willing to go along with this variance.

Mr. Mattis stated I think even further than that, when the shed was put in there was no 6 foot set back at that time. So it is pretty much grandfathered there. Is there anyone in the audience that would like to speak?

Mr. Heady made a motion in Case No. 15-08 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Heady made a motion in Case No. 15-08 to grant the front yard Area Variance from 40 feet down to 27.5 feet, and a rear yard Area Variance from 6 feet down to 4.4 feet for an accessory structure on the above referenced property. This is a Type II Sequa with no further compliance required seconded by Mr. Chin with all voting "aye."

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CASE NO. 16-08 EDWARD AND SONIA ABOUD for an Area Variance for the side yard set back for a proposed addition on the property at 31 Furnace Brook Dr., Cortlandt Manor.

Mr. and Mrs. Abboud appeared before the Board.

Mr. Abboud stated we are here to ask for a variance to build a three car garage.

Mr. Douglas asked did you say three car garage?

Mr. Abboud replied yes.

Mr. Douglas stated okay, because here it says two car garage. It looks to me like this is a relatively new structure, and you just bought it, and you want to change what you have.

Mr. Abboud stated there is no garage there now.

Mr. Douglas stated right there is no garage. The problem I have with that is that that is sort of the justification a lot of people have, when they purchase property. You have to take the pros with the cons, and I don't know if that makes it different from anybody else who wants to have something that zoning does not allow. It seems like the house is quite a large structure, and what you're proposing will have an impact on your neighbor. Why do you need to build a garage there? Can you build it around the back of the house?

Mr. Abboud replied there is a septic tank on the side and the fields are right there.

Mrs. Abboud stated so the trucks can't go over that.

Mr. Abboud stated to the right of the house there is not enough room to build for the driveway to go around the house, because that is not all our property to the right of the house.

Mr. Chin stated from the corner of your house you have about 23 feet deep.

Mr. Reber stated that is plenty for a driveway.

Mr. Mattis stated in the corner of the house where you want to build out to, it's 23.4 feet on the right side, and on the left side is 23.6 feet, so you have virtually the same.

Mr. Chin stated it is almost the same.

Mr. Seirmarco stated we are required to ask people if there is an alternative that doesn't require a variance, and it appears from the lay out of your property that if you were to build a three car garage on the area behind the house....

Mr. Abboud stated there is no way to build a garage back there.

Mr. Reber stated this house was built in 2000, we have the CO here. It is a large house on a nice size piece of property, and for whatever reason it was built without a garage. You purchased it a year ago as such. We're not obligated to then turn around and allow you to take this house, and put up a garage that totally encroaches on the set backs. You should have thought about that before you bought the house that a garage was critical, and certainly a three car garage I don't ever remember approving that for a variance. As you may have heard we have a hard time granting a variance for a two car garage. Also, what we are trying to

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point out is that if there is any alternative at all, and I don't even know that is a necessity, and personally I don't care if it is, but you've got 23 foot plus clearance on both sides of the house, revise the plan, and put a detached garage if you want to fit the cars. If you don't want it detached, I'm sorry, but there is nothing we can do for you.

Mr. Mattis stated you are also adding a mud room, porch, and storage before the garage even though the garage is angled, which further brings it close to the property line. So it's not just the garage itself, it's the fact that you are building stuff in between the existing house, and the garage.

Mrs. Abboud stated I guess that is pretty much because of the angle we had to plan it that way.

Mr. Mattis stated how wide is this house? You don't have the dimensions here.

Mrs. Abboud stated it is not that wide.

Mr. Mattis stated it is one of the more wider houses on the block here.

Mrs. Abboud stated it is more deep.

Mr. Mattis stated that is why it is angled on the property that way.

Mrs. Abboud stated we didn't know it was going to be such a hard time to build a garage there.

Mr. Seirmarco stated I would go back, and talk to your architect.

Mr. Reber stated if this house was parallel, perpendicular across the yard, your yard is 110 feet wide according to the survey, and the two set backs on each side added together add up to 47 feet. So if you subtract 47 from 110, if that house was across it would be over 60 feet long, and this angled, that is a big house.

Mr. Chin stated since it on an angle from corner to corner it may be about 60 feet wide, but from one side to the other right now from what I see it looks like about 48 feet.

Mr. Reber stated I think it more than that Wai.

Mr. Chin stated I am not talking about the mud room or anything, just from the house itself.

Mr. Reber stated oh, yes, but again, it is somewhat irrelevant.

Mrs. Abboud so can I ask is there any way we can even build a two car garage attached?

Mrs. Seirmarco asked where is your septic system again?

Mrs. Abboud stated if you are facing the house it is on the right hand side in the back.

Mr. Abboud stated when we talked to the architect he said you can't drive over it.

Mr. Reber stated you can't, no you can't.

Mr. Douglas stated you can go in on the left.

Mr. Abboud stated but there is no room.

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Mr. Douglas stated there is 24 feet.

Mr. Seirmarco stated we should not be designing this for you. The bottom line is that you are going to have to explore some alternatives. It really can't be a three car garage, you are going to have to scale that back, and maybe explore around the back of the house. I think there is room.

Mr. Mattis stated it is not just a garage, there is a mud room, there's storage.

Mrs. Abboud stated well don't need to have that.

Mr. Mattis stated the mud room itself comes out 19 feet before we even talk about the garage.

Mr. Douglas stated that is not an issue, because there are other alternatives, and you are right, you don't need a mud room. So you can do this probably without a variance. Also, I don't think the odds of us granting a variance for a three car garage are nill. We are tough enough on a two car garage. So I can't imagine that we would grant a variance for a three car garage.

Mr. Reber stated obviously, when you bought this house you must of assumed that if you really wanted a garage you should have checked with Code Enforcement at that time to find out what the requirements were. I have a real hard time granting a variance for a garage at all, because when you bought this house, and I don't think it's right to come to us after you buy it, and say look I really wanted something totally different, and so we have to have a variance now.

Mr. Flandreau stated should the applicant go back to their architect, and mark out exactly where the septic field is locate that on the plan, and if there is no other option come back for a lesser variance?

Mr. Reber stated for 1 foot maybe.

Mr. Douglas stated right even if the septic is right behind the house, I personally would not be in favor of a variance for a garage this big.

Mr. Chin stated myself I wouldn't mind a two car garage, a smaller mud room maybe. You have stairs going up to an unfurnished area above the garage.

Mr. Mattis stated the garage is only part of the issue, the issue is you wanted to tremendously expand the house.

Mrs. Abboud stated basically we really just want a garage.
Mr. Mattis stated well you have a 19 foot mud room on this plan.

Mrs. Abboud stated that is for storage, because we have an attic, but it is hard to go up those stairs.

Mr. Mattis stated 36 feet by 20 some odd feet for storage, that's pretty generous.

Mr. Chin stated I would not mind a small mud room, but a two car garage would be limit we would even consider. There are options here.

Mr. Reber stated if the take that mud room, and bring it forward, and get it out of the encroachment area, and then take the garage, and cut it down to a two car garage, and bring it forward, they may be able to lay this out to have no variance, or a very minimal variance.

Mr. Flandreau stated that is why I suggested that maybe they should go back to their architect, and try to lay it out differently. They need to show where the septic is, and if the septic is far enough back, they might

have an option there.

Mr. Chin stated nobody is going to give you a variance for a three car garage.

Mr. Abboud stated so we should go back to the architect, and revise the plans for a two car garage.

Mr. Chin stated yes, and try to bring it closer to the set back line.

Mr. Seirmarco stated there is a stream that goes across the property in the back. So it would be a little

unusual for the septic fields to run back there by the stream. I would not be surprised if they were closer than you think.

Mrs. Abboud stated we checked. They are right in the back of the house.

Mr. Mattis stated I think the real issue is the size here. So you need to go back to your architect, and see what you can come up with.

Mr. Douglas asked so based on what you have heard would you like to adjourn this for a month?

Mr. Abboud stated okay.

Mr. Flandreau stated if you architect has any questions, he can contact me at the office, and I can over it with him.

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

Mr. Douglas made a motion in Case No. 16-08 to adjourn the case to the June meeting seconded by Mr. Reber with all voting "aye."

Mr. Mattis stated that meeting will be on June 18th.

* * *

CASE NO. 17-08 DOMINIC & SUSAN PANDOLFINO for an Area Variance for a front yard set back and a side yard proposed accessory structure (generator) on the property located at 59 College Hill Rd., Montrose.

Mr. and Mrs. Pandolfino, and Mr. Dan Pocelli, contractor appeared before the Board.

Mr. Pandolfino stated we have a letter from one of our neighbors. He handed the letter to the Board.

Mr. Mattis stated okay why don't you describe what you are asking for.

Mr. Pandolfino stated we had a generator put on the side of our garage, and some of the houses are behind.

Mr. Seirmarco asked so you are saying this is complete?

Mrs. Pandolfino stated the generator is there, yes.

Mr. Pandolfino stated so the generator is in place, but if you look at the front of the house, the house is sort of cockeyed to the road that is the way they put the house in 1903 with the garage down below it. The garage is actually in front of the house. Therefore, the generator is in the very back of the garage on the opposite side.

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Mr. Mattis stated the house is sort of angled towards the road, which changes the front and back yard. If you draw a line across the front of the house it is right there.

Mr. Heady asked so the generator is already installed?

Mr. Pandolfino stated it is not hooked up yet. We had an electrician working there, and we decided then to put a generator in. So we went for a permit, but it is not hooked up, or running yet. We didn't realize we needed a permit.

Mr. Reber stated I want to ask the contractor, did you place this generator here?

Mr. Pocelli stated yes, we installed it.

Mr. Reber asked can you explain to us the logic why you put it there?

Mr. Pocelli stated it's so you won't see it, you won't hear it. It's the best place to put it. It's out of the way. It fits in with the area. There is a grade on both sides so it will muffle the sound.

Mr. Reber asked where does the power come into the house?

Mr. Pocelli stated there's a pole that run up along the Maynard's property, and along the neighbor's property adjacent to where that generator is. The service is overhead.

Mr. Reber stated so you put it logically in conjunction with the service line. I am somewhat familiar with the property. As he stated, it is in the least annoying location there in my opinion. If in fact, you put it behind the house, you would have two problems. 1.) You'd have to do something about re-routing the line coming in, and 2.) The property in the back is open, and there is a house back there so they would tend to also see, and hear it. So this is probably the best place on the property to put it.

Mr. Pandolfino stated yes, she would probably hear it. So it's in, she won't hear it, it's a lot quieter.

Mr. Reber stated by placing it there the impact is minimal, because it is really only because of the angle of the house, and it just misses by about 2 feet. So I don't have any real problem with it at all.

Mr. Chin stated the house is kind of angled from the front of the road, okay so when we say it's in the front of the house, or the front yard does that mean we have to follow the footprint of the house?

Mr. Mattis stated you do a plane right across the front of the house.

Mr. Chin stated or it could be from the closest corner to the property line. I don't know.

Mr. Reber stated I think the code says that you follow the line of the house.

Mr. Mattis stated yes, it does.

Mr. Reber stated but I think you raised a good point, if you use the closest corner, this is no closer to the road.

Mr. Chin stated exactly, what you are saying right now is that your kind of in a valley between two properties.

A woman from the audience shouted the house is in front of mine.

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Mr. Mattis stated please hold your comments, and you will get your turn to speak.

Mr. Chin stated to me this generator is no closer than the closest part of the house to the road. If you go on an angle, and follow the plane of the house we're going a lot further back in. So I am just bringing up that point.

Mr. Reber stated that is a very good point.

Mr. Seirmarco stated I would like to make a comment. We have venues, and rules to follow here. The Town takes recommendations, and turns them into law. We are bound by the law. There are some

exceptions for accessory structures in front yards. There are telephone poles, and green boxes for the wiring, junction boxes, fire hydrants, and power transformers. Other than that, we have no jurisdiction over those things, but we do have jurisdictions over everything else, and we are bound by the law just like a Building Inspector says you can't put it there, and he is bound by law. We have rules to follow. They would like to have it in their front yard. So they have an appeals process, and that is the Zoning Board of Appeals so we're bound by the law also except in extreme circumstances of hardship, or a reason why it can't be put in the backyard or something. So unless there are extreme circumstances, or a hardship I would not vote for this being in the front yard, because we're bound by the law. It is not a matter of opinion, or nice, or it is going to be quieter there, it's the law.

Mr. Mattis stated we're not here to debate this, but we're the Board of Appeals, and they're appealing for relief, and that's what we're here to do, and we can say because the house is angled, because it's really the farthest point back in the property, because it's below a slope where people won't see it, and won't hear it, that's what we're here to determine. We all have our opinions.

Mr. Reber stated I think that the purpose of the Zoning of Appeals is to recognize the fact that you can't write the law over what is perfectly uniformly satisfying to every situation, and the purpose of the Zoning Board is to look at a situation, and say has the intent of the code been violated, and if not, then we can give a variance recognizing the situation may be better for that piece of property. So I do think we have some flexibility, and I think myself, and some others here have expressed some reasons why we think in essence we are still meeting the intent of the regulations here.

Mr. Mattis stated okay now that we have debated what our purpose is as a Zoning Board, let's get back to the case. I'm going to read into the record two letters that we've received. One is from Mr. William G. Dalton, he is at 72 College Hill Rd. He read, "I am William Dalton, the neighbor across from the Pandolfino residence, and I reside at 72 College Hill Rd. I do not have an issue with granting a variance for a back up generator for two reasons. The first is the Pandolfino house is a great distance from the road, and the generator will not be visible, or detract from the appearance of the neighborhood. The second point is the proposed location of the generator with reference to the road, many of the older homes in the neighborhood are situated to take advantage of terrain, as is the case with the Pandolfino house. It does not face the road. Had this house been situated to face the road plane, which from a passerby perspective, the location of the generator would not be in his front yard. For these reasons I believe granting a variance is well within the spirit of the code." He then stated the next letter is from Larry and Susan DeResh, 17 Kings Lane. They own the property adjacent. He read, "This letter is in reference to Case No. 17-08, and as adjacent property owners to Dominic and Susan Pandolfino we'd like to express our concerns for the application of an Area Variance for a front yard set back, and side yard set back for a proposed accessory structure on the property. Our question are as follows; 1.) Where is the proposed location of the structure to our property, and 2.) What is the size of the structure, 3.) What is generator relevant to? Please take our concerns into consideration. We'd like a response to these questions prior to the ZBA granting the Pandolfino's a permit. We apologize for not being able to attend the Zoning Board of Appeals meeting tonight, but thank you for the opportunity to voice our concerns."

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Mr. Reber stated for the record I would like to make note of the fact that Mr. Dalton is an actual resident living across the road. The DeResh's are property owners of a piece of property that does not have a residence on it, and has been deemed unbuildable for a number of reasons. So it is not an issue of them being affected by this, because they are not residents on this property.

Mr. Mattis asked are there any other comments from the Board? Is there anyone in the audience that would like to speak?

Ms. Sarah Traina appeared before the Board. She stated I live directly behind their house. I know these people very well. They hardly have a backyard....

Mr. Mattis stated stick to the generator please.

Ms. Traina the generator, I don't want to listen to it, if that thing is noisy, and where are they going to put it? They have filled up the backyard so much. Where are they going to put this generator is that going to be up?

Mr. Mattis stated can you please show her on your plans where the generator is.

Ms. Traina asked am I going to have to look at it, or listen to it? Where is it going to be?

Mrs. Pandolfino showed Ms. Traina where the generator was going to be located, and explained to here where it was going to be placed.

Ms. Traina asked is that going to a noise?

Mr. Mattis stated you cannot have a conversation back, and forth, please keep the comments to the Board.

Ms. Traina stated so that is next to the garage where on Walter French's property you sawed down all the trees.....

Mr. Mattis stated okay stop that, you need to keep to your comments to the generator only. They just showed you where it will be located. Are you in favor of that, or do you have a problem with it, and if so why?

Ms. Traina stated if I have to listen to it I am against it.

Mr. Mattis stated well I think they mentioned that it's down in a little gulley where the noise will be muffled.

Ms. Traina asked where is the wood shed that you built?

Mr. Mattis stated please stick to the generator, we're not talking about a wood shed.

Ms. Traina stated yes, but there was a stop work order, and the Town didn't catch onto it....

Mr. Mattis stated talk to Code Enforcement. We're not going to discuss that issue.

Ms. Traina asked am I going to have to listen to it?

Mr. Chin stated excuse me can I say something to you before you say anything else. The generator is an emergency generator so that means it will only be used, when the power is out. It will not be running every day, or even every month for that matter.

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Ms. Traina stated I don't have air conditioning, or computers or anything. I keep my windows open, and use screens all summer. I listen to the birds.

Mr. Mattis stated it is only going on if the power goes out.

Ms. Traina stated okay I understand as long as it won't be something I will hear all the time.

Mr. Mattis stated hopefully the power never goes out.

Ms. Traina stated well it happens a lot there where the old trees tip over, and pull the wires.

Mr. Mattis asked do you have anything else to add about the generator?

Ms. Traina replied no, I don't think so.

Mr. Mattis asked is there anyone else who would like to speak?

Mr. Reber made a motion in Case No. 17-08 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Reber made a motion in Case No. 17-08 to grant an Area Variance for a front yard set back for a proposed accessory structure, a generator, which is not permitted in a front yard set back, and side yard set back for the proposed accessory structure from 6 feet to 3 feet on the above reference property. This is a Type II Sequa with no further compliance required seconded by Mr. Heady. The Board was polled as follows:

Raymond A. Reber	Yes
Adrian C. Hunte	Yes
David Douglas	Yes
James Seirmarco	No
John Mattis	Yes
Wai Man Chin	Yes
Charles P. Heady, Jr.	Yes

The motion was carried with a 6-1 vote.

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GREG CAREY for an Area Variance for a front yard set back and side yard set back on the property located at 14 Short Hill Rd., Croton-on-Hudson.

Mr. Greg Carey and Mr. Michael Picarello, architect appeared before the Board.

Mr. Picarello stated Mr. Carey had an existing stone house, and an existing flat roof, stone garage. What he wants to do with the garage is put a roof on the garage, a pitched roof, and within that roof would be a screened in porch, and a greenhouse, and over the existing one and half story stone house we would put a new second floor, main floor. The existing garage has a flat roof, and it leaks, and it is difficult to park cars in there. The other issue because of the site is parking the car, he needs a place to park the car. The house and garage are nonconforming that is why we're here. I have some photographs here, if you would like to see them of the existing garage.

Mr. Mattis stated I visited the property, but some of the others haven't so you can hand them up to us.

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Thank you.

Mr. Douglas asked he is not proposing to build over the garage, it is an addition to it correct?

Mr. Picarello stated the roof on top of the garage will be a pitched roof, and because it is still part of the house they want to put a screened in porch there. The footprint of the building will not change at all, the garage, or the house will not change.

Mr. Douglas stated I went out to the property and my concern is you are going up. When you drive down the road, the way it is conceived is it is not really visible so my concern is what happens if you build another structure on top of that. All of a sudden you are going to have a protruding structure there right on the corner, and that is my personal concern.

Mr. Picarello stated if you look at the photographs you will see that there will not really be any more site

line that there is now.

Mr. Reber stated I concur with Mr. Douglas. I was also out there, and if you are going to put additional living space plus a roof on top, that is a lot more than what is there. If you were saying to us that you just wanted to put a pitched roof on this structure, I probably wouldn't have a problem with it, but it is very, very close to the property line, very much out front, but because it is on the side of the hill it kind of blends in, and it is not really obtrusive. Anything you put on that you will on the corner of the property, and I would have a problem with it.

Mr. Piccarello stated the way the roof is designed this part of the roof could come off of the existing top part of the existing top point of the deck.

Mr. Reber stated so you plan on a roof structure, and use the dormers to make living space out of it?

Mr. Piccarello stated correct.

Mr. Reber asked so what would be the height of the center of the pitched roof? How far were you planning on going from the concrete floor?

Mr. Piccarello replied it would be 15 feet from the flat portion of that roof.

Mr. Reber stated and that ridge line will run parallel to the ridge line of the house, and is running from the road back?

Mr. Piccarello stated correct. This was taken into consideration when we designed so that we weren't going to put it up any larger than any other structure on the road there. We were trying to keep everything in character to that house, and to the neighborhood.

Mr. Reber stated it does minimize the impact when you slope back all the way from the actual head of the existing garage. This design does minimize the visual impact, and blends it in with the area.

Mr. Chin stated I can see that from the elevations, and I would have to agree with Mr. Reber on that now based on that. It really makes the impact a lot less intrusive.

Mr. Mattis asked are there other comments?

Mr. Seirmarco stated given the elevation on the front and the side, it seems to match quite well with the existing house.

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

Mr. Douglas stated based on what was just pointed out, I would now have to agree.

Mr. Douglas made a motion in Case No. 15-08 to close the public hearing seconded by Mr. Reber with all voting "aye."

Mr. Douglas made a motion in Case No. 15-08 to grant a front yard Area Variance for a proposed addition from the required 50 feet down to 15 feet, and a side yard Area Variance for a proposed screened porch with greenhouse from the required 20 feet down to 8.75 feet. This is a Type II Sequa with no further compliance required seconded by Mr. Reber with all voting "aye."

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CASE NO. 19-08 DENNIS SHERWOOD for an Area Variance for a side yard set back for a

proposed two story addition on the property located at 70 Paulding Lane, Crompond.

Mr. Dennis Sherwood and Mr. Michael Piccarello, architect appeared before the Board.

Mr. Piccarello stated we are looking for a variance for a two bay garage on Paulding Lane. There are several other two bay garages on this street, and because we looked at several locations for this garage, the septic fields are in front of it, and the septic tank, and pump are in the rear behind the house. So this became one of the only locations where you could put a two bay garage.

Mr. Heady stated I spoke to your wife there. The variance that you want is a large variance. We talked at the Work Session, and we thought maybe you could make it a one car garage 12 feet, and go further back, double the cars up in the garage, that is an alternative. We also spoke about the back, but you said the pumps are in the back.

Mr. Piccarello stated yes, they are in the back.

Mr. Heady stated so you couldn't put the garage back there.

Mr. Piccarello stated we also couldn't do a double garage, because the tank is about 10 feet off that corner. We have to stay 10 feet away from the tank.

Mr. Chin stated 20 feet.

Mr. Piccarello stated I think my client was looking to have at least a 16 foot garage door so you could fit two cars in there.

Mr. Heady stated that would still put the variance quite a bit out.

Mr. Mattis stated it is 25 feet now, how much could you bring it down, and still have a 16 foot garage door, and fits two cars?

Mr. Sherwood stated I might be able to bring it down to maybe 22 feet.

Mr. Mattis asked 3 feet? That is still a 10 foot variance, that is still a 50 percent variance, that brings it within 10 feet of the property line. I think what you're going to hear is what you heard us tell somebody else tonight. You just purchased this property several months ago, and now you want a two car garage. I think probably the house is situated too close, and I think it's inappropriate to have a garage even 10 feet away. I think a one car garage with maybe a slight variance, you might be able to fit one without a variance,

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but I cannot support a two car garage with a variance here. There may be other two car garages on that street, but the difference is if you can put a two car garage without a variance that is okay, but you can't.

Mr. Reber stated if this house has been pushed over, which is what I had to do 40 years ago, when I put my house up. I had to put it to one side so that I could add a garage, and it couldn't be a two car, because I wanted to add without getting a variance. As the Chairman said, a one car garage would fit, but this property is not suitable for a two car garage, because of the way the property is laid out.

Mr. Sherwood asked what about if we dropped it down to 20 feet? This is the way the property is designed, and I am trying to raise the driveway with the first level of the house without having a drop off wall. The way that the ground drops off is probably about 20 feet off the house where it drops, and then the slope comes back up going toward the property line.

Mr. Reber stated if you put a two car garage in, and have this driveway coming around, obviously you tend to use the right side so what we're saying is still do the same thing just don't put the left side in.

Mr. Sherwood stated I want to get into the garage straight on, not on the right side.

Mr. Reber stated I understand that, you're going to have to come around to get straight on, so what is the difference?

Mr. Sherwood stated I don't understand.

Mr. Reber stated in other words here is the garage coming out, and you drive straight to the garage, what we're saying is still keep this door just don't build this door. If you're going to be able to get into this garage as a two car garage, you'll be able to get into that garage as a one car garage.

Mr. Sherwood stated that I understand, I am talking about the side of the garage to the right coming closer to the property line, and it drops off there, I would have to build some type of retaining system.

Mr. Reber stated well you would have to do that now too.

Mr. Sherwood stated no I would be able to raise it up to the front there.....

Mr. Reber stated you will have to raise it up.

Mr. Sherwood stated I understand.

Mr. Mattis stated let me read into the record parts of a letter, it is pretty long, but I will read the relevant points here. It is from Laura Lee Sheridan and Naomi Sharrow, who is her daughter. They live in Newport Beach, but they own the adjacent house on the left, which would be effected by this. He read, "The requested 25 foot wide, double garage is wider than necessary since the garage door will be 16 feet wide. I understand maybe something that is reduced. By having an Area Variance for a side yard set back, as Mr. Sherwood proposes, it appears there will be a massive encroachment of the view from my house, and yard towards, and through the property line." We have photo that shows it wide open there. They further proposed that maybe you could put some 12 foot high pine trees for screening, but they understand your request, but they think that it's excessive.

Mr. Sherwood stated that house is actually for sale, and the trees that were taken down on that side were rotted, they were leaning towards my house.

Mr. Mattis stated the point is you are going to have an obstructed view, because of the garage there. That is the purpose of why we're here to see whether variances make sense or not.

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Mr. Sherwood stated I just don't understand, if nobody lives there right now, I don't understand the position of the garage will effect anything.

Mr. Mattis stated there is a house there, it is irrelevant if somebody lives there, or not.

Mr. Reber stated the theory here also is that we are trying to maintain the character of the Town, and take that into consideration. That is a key factor to us, when we grant a variance, and if we gave you a variance to allow you to come within 7 feet of your property line, we are sending a message to everyone on that street that if you want to expand your house within 7 feet of your property you can do it, because there is no unique situation here that should allow you to do it, and the others should. If we did that, the whole character of the neighborhood would change. The reason for the set backs is to prevent that. There is a character of the neighborhood. The character of the neighborhood is that we want open space between houses, and you are asking us to give up more than 50 percent of that buffer, and we are not willing to do that. If it were 2 feet, or something we might consider it, but my feeling is that there is no obligation for us to grant a two car garage, and change the character of the neighborhood.

Mr. Sherwood stated there are others in this neighborhood though.

Mr. Mattis stated I would not support a two car garage. It's inappropriate in that location, and I think we stated all the reasons.

Mr. Sherwood stated but if you look in the neighborhood there are two car garages in about every house there.

Mr. Mattis stated but they didn't require variances, that is the key point. If you could put a two car garage without a variance, you wouldn't be here, but then you wouldn't be encroaching on a neighbor's property.

Mr. Reber stated this house is not that old, had the builder built this house with that in consideration, he could have moved the house over to the right, and you would have had the room. It is not our problem that he didn't plan for that. He decided it wasn't necessary to allow for a two car garage.

Mr. Piccarello asked can we adjourn for tonight, and take some time to look over some other plans?

Mr. Mattis stated yes, and I'll tell you I would not support a two car garage unless you come with a two garage that has a very, very small variance. I think if you came back with a one car garage, and wanted it say 14 feet, I would entertain that. So keep that in mind. I am only speaking for myself. Is there anyone in the audience that would like to speak?

Mr. Heady made a motion in Case No. 19-08 to adjourn the case to the June meeting seconded by Mr. Chin with all voting "aye."

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ADJOURNED PUBLIC HEARINGS FOR TELECOMMUNICATIONS

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. Christopher Fisher, Esq. appeared before the Board. He stated I am with the law firm of Cudey and Fader on behalf of AT&T. I am happy to be back. I missed the last couple, one was for vacation, another for another case, hoping we can get to some conclusion so I don't have to come back. Since the last hearing, my colleague Dan Laub brought me up to speed, and also with me here tonight is Roza Rizvi, he is

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a radio frequency engineer. To try to get everybody back up to speed just as far as the documentation for the site, we took the opportunity to put together a bound set of documents so that you have everything in one place. It is pretty hefty, we've done a lot of work on this project. We also, I guess you had asked about some of the alternative technologies out there such as antenna systems, we gave you a little work from Roza, which explained that particular technology, and how that works, and really why it's not a practical solution for the coverage effected in this particular application. There is also the last plan we had made from 2006, when we then went to the other site. The tower was originally in a different location, and through some of our conversations we moved it closer to adjacent property that is basically a stone yard, it is really not an occupied structure. If I can just take a couple of minutes to refresh your memory on this particular application, we obviously had a need in 2005, when we filed this, still have a need, we have data that demonstrates there is really no coverage out there for AT&T, and I think we had talked about that over the years. We moved that among the different structures, the Con Ed property, another area that the Town had asked us about. We gave you reasons why the Con Ed site was not viable. We also explained, and I had gone through at some length at a prior meeting, all the surrounding properties in this area that we had looked at, houses, and why they we were not feasible. We gave you a map of that. There were a lot of residential properties that we are trying to steer away from. Your code really does recommend the commercial, and this is the one site that would be most viable for this tower. We went

through all of that analysis. We had hoped, and that was two years ago, when the neighborhood had really said was a better option, it is residential, but a very large parcel, and we pursued that with a lot of vigor. I was involved in those discussions with that property owner. I know it came up I guess at the last meeting the status. If I may, we tried a number of different times. We ourselves as a company, we really put this project on budgetary hold for I would say eight or nine months in 2006, and we weren't aggressive in pursuing it, but we fully came back after, and we reproached Thalle properties, and its' principals. Again, we could not cut a deal. So after the last meeting, and I'll put these e-mails in the record for you, but I personally reached out to Mr. Pacciana. I e-mailed him, I said to him look we need a decision from you one way, or another and gave him a "drop dead" date. He engaged us in some dialogue, again. The "drop dead" date went passed. We have some e-mails that I will submit for the record, we just had no confidence at all that that is a viable site. We tried everything we can to say we're at a point where we cannot just keep hoping, and we have to do something. So the only thing I have, and my client has at this point, is really to ask you, the Board, to consider the application I've submitted for the site we originally applied for. Obviously, there is a need in the area. We understand some of the concerns that the neighborhood groups have had, but when you look at the visual studies that were done, this really isn't a significant impact. Yes, it is a 140 facility, we've talked about different aesthetic objectives. We could do a flag pole here. We thought it would look consistent to this commercial area. I went back myself, and looked at the visuals. It is a very discreet area where this structure will be visible, once you get past the seasonal times through the trees, the residents in the area are not going to have straight on view of this. So when we look at the code, and we look at what we've done over the past couple of years, and the effort that we made, we don't believe there is an alternative, and we are left with requesting you to charge our application on the variance and move forward. I can answer any questions you might have, and I really am hoping that we can at least close the public hearing tonight, and possible a decision on that.

Mr. Mattis stated thank you. Mr. Seirmarco this is your case.

Mr. Seirmarco stated I think that this has been reviewed quite nicely, and you have done a lot of work on this. You have certainly met the engineering requirement with the RF engineer, and I would say that you have documented your case for that, and proved that. The alternative sites have been explored, and investigated, but Mt. Airy still gets in the way for some of those sites for realistic signals, because of the topography. They have investigated alternative mechanisms, putting receivers on telephone poles, and this was said not to be a viable alternative, and we are no position to disagree with that. So that is not a practical substitution for the tower. Going to the site itself, we had brought up the fact that it is a business, and has a building on it, it has a septic system on it, it has a propane tank on it, it is meticulous to residential area. We asked the applicant to design a system that would fall within the piece of property, and they've done that. They have located the septic system. Whether they're going to occupy a large portion of that

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piece of property is not for us to decide that is for the property owner to decide. If he can access his trucks, or his property, that is his problem. The only thing that is outstanding to me is service carriers. The Town requires four co-locators, and I don't know whether this is sufficient for that. Your drawing shows three, it doesn't show the fourth. Is that an error here?

Mr. Fisher stated it is really 200 square feet per carrier, which is the standard for every carrier. I am just going to go back to the code, because certainly when we did this we were showing the area for co-location, and I just have to look at the code to see.

Mr. Seirmarco asked Mr. Flandreau is it three or four?

Mr. Flandreau replied I am not really sure, I thought it was four.

Mr. Seirmarco stated and personally my preference would be a flagpole rather than anything with branches, or limbs, or anything else. I think flagpoles have become very dominant. I am still very disappointed in the fact that you were not able to close a deal with the alternative property. So the only outstanding issue here for me right now is the number of co-locators.

Mr. Fisher stated I am trying to find it. I think there is some additional room there to fit four, and if that is a condition of the Board we would certainly revise the plans to show that. I am just trying to find it in the code.

Mr. Reber stated under the definition of co-location it says, "The use of the same tower, or structure to carry two, or more, and provide service on two, or more." So really it seems like you only need a minimum of two.

Mr. Mattis stated so if it's two, or more, three is fine.

Mr. Reber stated unless there is something else in here.

Mr. Chin stated I think there were four on some of the other ones, that already had four.

Mr. Seirmarco stated I think the max is six right?

Mr. Fisher stated yes, I think so. The only issue physically is on the ground, with the pole itself it would be pre-engineered for that, and on the flagpole there will room for at least three.

Mr. Roza Rizvi appeared before the Board. He stated there is usually a maximum of four on the flag pole.

Mr. Flandreau stated that section of the code does say two or more.

Mr. Reber stated it is in the code, Section 277-4, the definition of co-location.

Mr. Chin stated I've seen some cell towers in some of the buildings down in Manhattan up on the roof, and I've seen the equipment for Sprint, or whoever, and I have seen them no bigger than 10'x10' and they have three carriers in there. I'm just saying I've seen that, and I don't know how when you say here it is 200 square foot structure, that is 20'x10'.

Mr. Fisher stated I am going to let Roza address that.

Mr. Rizvi stated right now there are two types of technology, GSM, and UMTS, and one is for data, and is for voice, and they will both be merged at some point, but there is a GSM cabinet, a UMTS cabinet, and a cabinet for E911 so we don't have to put up a cabinet at every two miles, or a mile and half interval. So

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they have a cabinet for each. To answer your question as far as that goes, they are very targeted sites. To think of in Manhattan the coverage can be half a block even, it all depends on what the codes are there.

Mr. Seirmarco asked is there air conditioning in each cabinet.

Mr. Rizvi stated yes, if it is outdoor, there are fans to keep the equipment at a certain temperature so the air needs to be circulating.

Mr. Mattis stated okay, thank you. Are there any other comments? Is there anyone in the audience that would like to speak?

Mr. William Doughty appeared before the Board. He stated well I think Mr. Fisher has done an excellent job in again revisiting the original site. However, I think it's fair to recognize that over the past almost three years, it has been excessive, and most especially in the past 8 or 9 months there have been a number of extensive requests for adjournments over 2 or 3 months at a time presumably to carry on negotiations with the owner of the Thalle property. Now as we have discussed in the previous two meetings of this body, there seems to be, notwithstanding the good intentions of all concerned, a fair evidence of some internal misunderstanding within the applicant's organization as to the residents, or the nature of the

negotiations with the property owner. Now as I said in the past, I am not in a position to speak for them, however, I have been in touch with them, and as I reported at the last meeting....

Mr. Klarl asked is this Mr. Pacciana?

Mr. Doughty stated yes, Mr. Pacciana, Glen Pacciani, and in fact he felt that the discussions that they conducted were less than aggressive, and didn't seem to go very far. However, since Mr. Fisher's associate after the last meeting apparently conveyed that sentiment to Mr. Pacciana. There have been renewed contacts. The unfortunate accident of timing, if you will, is that the parents here, who are the property owners, just happen to be visiting grandchildren out of state, and therefore were not able to meet the applicant's request for, I think as he put it a "drop dead" date, which is ironic in the sense that the "drop dead" date is rather short since this has been going on for almost 2 ½ years. Therefore, I'd like to come back to that point in a moment, but the ongoing accents of registered letters going to the wrong person, being signed by the wrong person, giving the applicant good thoughts to believe that his communications had been received, which in fact they were not received, all contribute to an environment which says that the sense of what I fear cannot is that it's almost a foregone conclusion that alternative sites have all been exhausted, have all been examined, and have all been found to be inadequate, and therefore, there is no alternative left, but to go back to the original site, which has a number of serious public safety concerns. Mr. Seirmarco said a few moments ago had mentioned that there is a septic area, which this Board has many months ago indicated it is not your perview. However, if the septic system needs to be redone, and they take up a large portion of this site, then the applicant will have no room left. So that is really something.....

Mr. Seirmarco stated I don't think what you can consider this, we have to look at what's existing today, and ask the applicant to look and identify where the septic system fields are, he's done that, he has done everything we asked. I don't know whether we can speculate on the future.

Mr. Doughty stated I would agree with that, but on the other hand the applicant has indicated that the Con Ed towers has been examined, and I'm not sure, at least I'm not the Board may be, aware of which particular tower they examined. Our impression, I speak for my community members, was that the towers originally looked at by the applicant were on the other side of the Croton gorge, and I presented to the Board a year ago a profile, which is my area by the way, topographic profiles, to show that the line of site on the towers on the top of S. Mt. Airy Rd. virtually are a direct line of sight to every portion of Rte. 129. Now that goes to the point of expert resources for the Board. At a previous meeting one of your members, and I am not sure which one, indicated that we had not yet come to the point of needing a consultant, when that is appropriate is not for me to know, it is for you to know, and this may one of the reasons to have such

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advice, because it does seem to fly in the face of logic, when one can see that there is in fact that direct line of sight.

Mr. Reber stated I have a question, can you help me out, and explain to me why would the applicant go through all of this trouble to put a tower at this location that they are requesting, if there were a possibility that they could simply add this to an existing tower? Why would he go through all of this trouble?

Mr. Doughty stated well one of the reasons why they would go through all of trouble, as you put it, is to really, not the Con Ed tower, but the concept of the alternative site persay, and the relative short time frame that was given to the owner of the Thalle property in the most recent round of discussions.

Mr. Douglas stated it has been several years that there have been discussions with the Thalle property. Also, I had a chance to look at the e-mails, and they are dated back to April and go to May 19th.

Mr. Doughty asked well from April 26th to now is how long?

Mr. Seirmarco stated it is about 6 weeks.

Mr. Doughty stated 6 weeks, okay thank you, now therefore, let me just make a statement that I think is meaningful in that it would seem to us that in this case that the applicant, and just listen to case law precedent that comes into play. It seems that there is a situation where the applicant cannot find suitable, alternative sites, and that at the same time probable grounds exist on a place not suitable, because of public safety, the Board of Appeals is within rights to deny the application with, or without the advice of confident counsel.

Mr. Seirmarco stated I don't disagree with you, but we just went through, the applicant's attorney went over the requests, a distinctive list of all the requirements, and none of the requirements were safety related. The only one I can think of is the structure was to fall within the boundaries of the property, and they designed that so it does fall within the boundaries of the property. That is the only safety issue that I can think of.

Mr. Doughty stated the safety issues which were outlined at the previous meeting were more than the fall zone. The fall zone includes not nearly the tower itself, but also falling ice over which they have no control, falling ice in the winter time, wind driven, or otherwise.

Mr. Seirmarco stated that is not any different than a tree, it's the same thing.

Mr. Doughty stated well there are no trees that I know of that are 140 feet high. The accumulation of ice on the top of a 140 foot tower is a little different than on a tree.

Mr. Seirmarco stated as indicated this is supposed to be a smooth pole. It is not going to have anything hanging off of it. So the ice that forms on a smooth, cylindrical pole is a heck of lot less, I think, than a tree.

Mr. Doughty stated the next item is that it poses an explosive hazard since the auto body shop stores very volatile chemicals, propane tanks, and oil fuel tanks are there, and pointed out that even though the tower is grounded to anticipate lightning strikes, when that charge is grounded it goes someplace, and therefore it is in the risk of the presence of explosive materials.

Mr. Reber stated many cell towers have a back up generator for power outages, and they use a propane tank to run that generator.

Mr. Doughty stated that doesn't say anything for the other volatile materials stored on this particular site.

Mr. Douglas stated just tell us what the concerns are, we don't need to debate each one.

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Mr. Doughty stated well that is primarily it. First of all, that it's

Mr. Douglas stated don't go back, and repeat.

Mr. Doughty stated well you have the explosive hazard, you have the fall zone, and ice on the tower itself. It is interesting to note that the design of the tower can fall within itself, because....

Mr. Douglas stated so this is the complete list?

Mr. Doughty stated yes, those are the primary safety issues. There were other areas that were discussed last time that are have to do primarily with the fact of the property being congested. If the septic system needs to be replaced, there will be no room left on the site to do so. However, having said all of that there is one thing that I believe we would like to request from the Board. In consideration of the long many, many months of postponements requested by the applicant for a variety of reasons, negotiations, or whatever, on behalf of the people in the neighborhood, we would like the Board to impose, if you will, a two month adjournment so that Mr. Pacciana, or whoever else is involved at that site can make sufficient

contact, and discussions with the applicant.

Mr. Mattis stated excuse me, I am going to interrupt you, but I read the e-mails too, and they gave them the proposal, he says he needs his parent's permission, well if somebody is offering me money, and offering me a "drop dead" date, and I don't get back to them, and they didn't contact them since April. It was a couple of years ago so it wasn't new what they came back with. This could go on forever....

Mr. Reber stated may I interrupt please. A question for Mr. Fisher, Mr. Fisher you were on that site, and did site studies, when did that take place?

Mr. Fisher replied I was there about two years ago, and at the time the landowners were there. In fact, I think George's dad was there.

Mr. Reber stated so two years ago you were on site, and you were on site with the permission of the property owners, they were fully aware of it. So two years ago this all took place, this argument that it has been six weeks is bologna. It has been two years, and the owner has not stepped forward to show a real interest. I don't think it is the obligation of us, or the applicant here to say he has to contact the property owner any further. The property owner has known for over two years that this was an opportunity.

Mr. Douglas stated if the property owner said I need some more time, and contacted us, he has never contacted us.

Mr. Mattis stated or if he had indicated that in one of these e-mails, which was never indicated.

Mr. Doughty stated as a matter of fact that was what I was suggesting that either it be two months, or one month. I would think it would be in your best interest, as well as everyone else's best interest to give him the opportunity to do so.

Mr. Mattis stated these e-mails make it very clear that there was no response. Now if somebody offers me \$2,000 a month, and I don't respond, I'm not interested.

Mr. Doughty asked was there such an offer, or was it just a visit by the engineer's, and the applicant's attorney to the property?

Mr. Mattis stated it is stated right here.

Mr. Seirmarco stated the contracts were sent, and he acknowledges that he had received them.

Mr. Fisher stated can I just make a statement here. I don't know exactly when it was, but when this first came up a couple of years ago we went to the location, and I think his name was George, his dad was there. I gave them a lease, we spent money, our engineering firm was paid. We tried to get an arrangement with them, we kept following up, and following up. We were on a hiatus for about seven or nine months there, and we were not pursuing it aggressively at that time. Before we came back in here, I made sure my client went back to Thalle. They went back, the property owner said no the original lease agreement that you had, we'd like you to move it over here a little bit further, maybe, don't know. This deal has been on the table since that very time with that lease paper, and we've never heard yes, yes we want to do an agreement with you, but we did do a subsequent lease, and we tried there again, came back in here had a conversation four or five months ago, and we have been here the last two months, and I swear to you after coming back from the last meeting when my colleague Mr. Laub was here, I said look we need an answer, and it was at least three, or four weeks before the "drop dead" date, and I told them I needed to know, and I need a signed lease, because I am coming back here for this meeting, and I wanted to know that everything was signed. Maybe he's a nice guy, I don't know, but this thing has gone back, and forth, back and forth, for a very long time.

Mr. Mattis stated maybe no response was the answer.

Mr. Fisher stated maybe it was, but I thought an answer one way, or another would have been appropriate.

Mr. Doughty stated well obviously not being a party to those communications, as I have tried desperately to defend myself, makes a difference. Notwithstanding that, it just seems that in the interest of all concerned after all this time, I think that whether directly from your staff in the office, or through me, whichever you prefer, I think it would be a reasonable request that Mr. Pacciana give you one direct communication.

Mr. Mattis stated we can't contact Mr. Pacciana. It is not our responsibility. I am going to suggest that you read these e-mails, and I think it is perfectly clear, he never responded. If he's not responding to a lease contract, I am not going to pursue it. It is not up to us to do it. He has indicated by that, that he is not interested.

Mr. Chin stated if you knew him so well why didn't you intervene.

Mr. Doughty stated I find myself in an awkward position, because I don't know him that well. I had lunch with him.

Mr. Mattis stated that is really not the issue here. The issue is I am convinced, and I want you to take this copy with you so you can read it, and when you read this, he had every opportunity to come back, and he never did. Now when you have hard numbers on the table, and answers to your questions, and you don't respond by a certain date, and then on May 19th they reached out...

Mr. Doughty asked May 19th of this year?

Mr. Mattis replied yes, this year, that was two days ago. So obviously he knew that the date passed by, and he wasn't interested, he would of said at least that he needed more time, I need something.

Mr. Douglas stated can I ask a procedural question? Can we close the public hearing today, and if the owner of the Thalle property come back in the next 30 days could we re-open it?

Mr. Klarl replied yes by a unanimous vote it could be re-opened.

Mr. Douglas stated that would be my proposal. My proposal would be that we close the public hearing

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today, and Reserve Decision, and if the Thalle property owners come back, and say they are interested, then we will re-open up.

Mr. Seirmarco stated that would have to be in the form of some sort of written documentation for me to change my mind.

Mr. Doughty stated that is about the same as an adjournment so I would agree with that.

Mr. Reber stated by the way the response has to be more than a letter saying I am interested, because to be honest with you I am a very skeptical person, and you and your neighbors might just go to him, and say can you just send a letter, and he could say sure, no skin off my back if he sends a letter saying I am willing to negotiate, and this could go on for another two years in the meantime.

Mr. Douglas stated I am saying only if they come back with an acceptance of the offer from the applicant.

Mr. Mattis stated I think what we'll do is evaluate any response they get from him, and then we can decide if want to re-open or not. If we don't think it's a valid response, then we won't have a unanimous vote to re-open it.

Mr. Doughty stated okay, let me just be specific, two things, specifically what kind of communication are you requesting, and specifically

Mr. Fisher stated whatever the Board may, or may not accept in correspondence is one thing, but I will tell you what my client would accept, the only thing we will accept is what we had asked for, and that is a signed lease.

Mr. Mattis stated and he knows he a “drop dead” date, and if we don’t get a signed lease, an indication that he might be interested is not enough. He could be interested for the next five years so I would like to see a signed lease also, and that shows his interest.

Mr. Doughty stated understood.

Mr. Douglas stated I am going to propose that if there is no signed lease by the time of our next Board meeting, and you have to have a unanimous vote to re-open the case, I personally will not vote to open it up.

Mr. Doughty stated obviously, it’s in the interest of our neighborhood to have that happen since that was our reason to have him look at that site in the first place.

Mr. Mattis stated so I think we’re clear on that.

Mr. Doughty stated we are all clear on that. Now the question that I have still have is specifically under these circumstances to whom should he address the letter.

Mr. Chin stated to Mr. Fisher, he is the one who drew up the lease. We are not looking for a letter.

Mr. Mattis stated we will only accept, at this point, a copy of a signed lease. I assume Mr. Fisher will be bringing a copy of the signed lease, if he gets that.

Mr. Fisher stated obviously I would bring that if the lease is signed by both parties, or even just Mr. Pacciana, and my client has not reviewed yet, or something, I would indicate that.

Mr. Doughty stated okay so that is the most sensible approach I can see at this point in time, fair enough. However, there still remains in the public’s mind that when you close the public hearing, and let’s say we

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are 30 days down the road, and we’re into the June meeting, the other question I have is at that point would the Board feel it appropriate to have all of the technical input evaluated by a third party expert, or.....

Mr. Chin stated no, the public hearing would then be closed. That would be it.

Mr. Doughty stated so you don’t therefore intend to have a professional opinion on this?

Mr. Mattis stated I don’t think there is anything that an engineer couldn’t properly do.

Mr. Doughty stated well you know lawyers are licensed too, and sometimes that doesn’t always to be proven correct.

Mr. Mattis stated we don’t look over the shoulders of everybody that comes in here that is an architect, an engineer, or a lawyer, or whatever.

Mr. Klarl stated as part of the application process, the Department of Technical Services has engineers that will also certify those issues.

Mr. Mattis stated that is our experts.

Mr. Chin stated an engineer is certifying their information. So they are putting their license on the line on anything that they do certify.

Mr. Doughty stated okay, I am not going to beat a dead horse, but there are people who have asked that question, just so you are aware of that. One thing that I had found that was a little disturbing with the site, and that is about the type of tower one would ever choose to recommend here, what has been discussed in a unipole, or manifold. This type of flagpole is basically unacceptable to this neighborhood, because it requires a flag being put on it.....

Mr. Mattis stated we are not going to require a flag.

Mr. Doughty stated there are some down county. I saw one along 287, and we are not in favor of that.

Mr. Mattis stated it will be a flagless flag pole.

Mr. Rizvi stated it is called a stealth pole.

Mr. Mattis stated I think we would prefer that as opposed to one that has all the electronics sprouting of it.

Mr. Douglas stated it will not look the line on Scenic Drive.

Mr. Doughty stated well hopefully the owner of the Thalle property will come forward, and sign the lease so that we will not need to worry about any of this, but that remains to be seen. Thank you for your decision on that, it is the closest thing we can get to an adjournment, and I thank you for that.

Mr. Mattis stated is there anyone else in the audience who would like to speak?

Mr. Seirmarco made a motion in Case No. 48-05 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Seirmarco made a motion in Case No. 48-05 to Reserve Decision, and for the record that for the June 18th meeting in order for us to re-open this case, we would need to see a copy of signed lease seconded by Mr. Heady with all voting "aye."

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

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

Respectfully submitted,

Christine B. Cothren