

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, November 15th, 2017*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

* * *

ADOPTION OF MEETING MINUTES FOR OCTOBER 27, 2017

So moved, seconded with all in favor saying "aye."

Mr. David Douglas stated the October minutes are adopted.

* * *

ADJOURNED PUBLIC HEARINGS:

- A. **CASE NO. 2016-24 Hudson Ridge Wellness Center, Inc. and Hudson Education and Wellness Center** for an Area Variance from the requirement that a hospital in a residential district must have frontage on State Road for this property located at **2016 Quaker Ridge Road, Croton-on-Hudson, NY.**

Mr. David Douglas stated has been adjourned at the request of the applicant until February. So that'll be on in February.

So moved, seconded with all in favor saying "aye."

Mr. David Douglas stated now it's officially adjourned.

B. CASE NO. 2017-22 Ralph Mastromonaco for an Interpretation of Permitted Uses in the M-1 Zone to address the ongoing Construction and Demolition use at Dakota Supply, on property owned by Briga Enterprises, Inc., **2099 Albany Post Rd., Croton-on-Hudson.**

Mr. Ralph Mastromonaco stated good evening Mr. Chairman. I have been here many times before. At the work session the owner of Dakota hired some new attorneys and they presented you with some papers. Rather than me speak at the moment, I would, if you'd like, let the public speak and I would like a chance to respond after that. If Mr. Steinmetz is going to speak, there's a couple of questions that maybe you could ask him. One would be on what basis does he think I don't live at 2083 Albany Post Road? Where does he get his information? Secondly, if you might ask him to explain his reference to the fact that I need to comply with the General Municipal Law section 809. With that, if you let the public speak, I'll come back later.

Mr. David Douglas asked anybody else want to be heard?

Mr. David Steinmetz stated good evening Mr. Chairman, members of the board, David Steinmetz from the law firm of Zarin & Steinmetz representing Jay Bilota and Dakota Supply Corp. With me this evening, Jay Bilota as well as my colleague Ted Tiber. Good to be back before all of you and I will try to be as succinct as possible. I submitted, as I think you all know, our firm was retained about two weeks ago in connection with this matter so unlike Mr. Mastromonaco, I have not been involved in this for an extended period of time. We reviewed the file. We tried to get up to speed as quickly as possible. Mr. Chairman, we did everything possible to avoid requesting an adjournment of the matter this evening. We didn't think that was necessarily appropriate for the applicant or for my client. Quite frankly, when we reviewed the matter we felt that it could be disposed of on a procedural and jurisdictional grounds and that's really why I am here tonight. I'm here to focus on three critical issues and I'm happy to respond to Mr. Mastromonaco's questions as well. First of all, all of you should have the letter that we quickly got out dated November 13th. First and foremost, I think your board can quite easily dismiss the matter this evening for lack of subject matter jurisdiction. As I explained to the board briefly in the work session, and then as I sought to confirm subsequently and did yesterday, I met with both your Town attorney as well as your director of DOTs, Mr. Preziosi, and both confirmed that the administrative official in charge of issuing determinations and orders in the Town of Cortlandt is Martin Rogers. Martin Rogers is in fact your building inspector, he is your Code Enforcement officer. Michael Preziosi is not. New York State Law is quite clear. I think we cited it to you. I know we cited it to you in your letter, 267-a of the New York State Town Law makes it quite clear that absent an interpretation and a ruling from the administrative official responsible for issuing those types of rulings, there is nothing from which to appeal. Your board has appellate jurisdiction only from an instrument or determination issued by Martin Rogers or a referral of some sort from your Planning Board. You have no direct referral of an issue from the Planning Board and when I got involved in this, the first thing that I asked Mr.

Bilota was: can you please provide me with a copy of Martin Rogers's interpretation on this issue? Jay said to me, "David, there is none." I said, "Jay, there has to be if Mr. Mastromonaco filed an appeal or an interpretation and he's got a jurisdiction in front of the Zoning Board there must be something from Martin. I need a Code Enforcement, maybe Ken issued it as the deputy." "No David, all there is, is this letter from Michael Preziosi." So I began writing my letter with my colleague announcing to your board that you don't have jurisdiction and before I signed the letter and I told your board, those who were there Monday night, before I signed the letter I thought, I've been in court enough times, I know the Town well enough and I know the flow chart the Town is a little different than other municipalities, maybe technically Mike Preziosi is in fact the administrative official in charge of issuing orders and determinations. As the Chair indicated to me Monday night at the work session, you have some interesting provisions in your Town Code, they may not have names in them but the Town Code section 149, section 149 tells us that Michael Preziosi is the director of DOTS but Martin Rogers is your building inspector and your administrative official in charge of issuing determinations. I confirmed that with the Town attorney by phone before I signed the letter making this presentation to you on the 13th and then because of our discussion together on Monday evening at the work session, I had the opportunity being in Town Hall yesterday to speak with both Mr. Wood directly in person and this time with Mr. Preziosi and I had both of them tell me, Michael said: "David, I am, you know David I am not the building official. I am not the building inspector and I am not the Code Enforcement officer." So, number one, you have no jurisdiction over this matter because you don't have an instrument referring it to you from the Code Enforcement official and quite frankly Mr. Chairman and members of the board, I would submit to you that when I sat down after Mr. Mastromonaco speaks you are jurisdictionally prohibited from advancing the matter and I would suggest that you entertain a resolution and deny it. Second procedural issue, until I got involved in this matter, I did not know that the Town had been involved in a very similar matter in which Judge Cacace two years ago issued a decision in the matter of Weeks vs. the Zoning Board of Appeals Town of Cortlandt in which, you all know because you were involved, you lived through it, someone, like Mr. Mastromonaco sought to get an interpretation of the non-conforming status of a piece of property in the Town and they had to learn the hard way through litigation that in the Town of Cortlandt you can't just ask for that kind of interpretation. The Zoning Board does not have that jurisdiction in the Town of Cortlandt and as Judge Cacace announced, you can't come before the Zoning Board of Appeals in Cortlandt and ask for an advisory opinion, an off-the-cuff sense of hey, did somebody do something wrong in connection with this. The matter was disposed of and dismissed. Lastly, and the last item allows me to answer Mr. Mastromonaco's first question about how do we determine where he lives? I have no idea where Ralph lives. I hope Ralph is happy and comfortable and thriving and I take him at his word. If he claims he lives now with his son, then he lives now with his son. That is beyond my purview of knowledge factually. I know Ralph used to live in another location and he may well live where he claims he lives. That's irrelevant. For my purposes whether he's the resident – I know officials in the Town have some concern about whether we're talking about Ralph Mastromonaco or Ralph Mastromonaco Jr. with whom he lives and the application as I understand it has been filed by Ralph Mastromonaco PE not Ralph Mastromonaco Jr. It makes no difference to me or my client. From a standing standpoint, New York State Law does not say that Ralph has standing to assert this simply because he lives

nearby nor does the fact that the Town amended its code, as you all know in 2010, to create some thousand foot setback to raise certain inquiry nor does that create automatic standing. The laws in the State of New York, and we cited a number of cases for you, the law in the State of New York makes it quite clear that you have to demonstrate some kind of injury or harm that's different and unique from the public at large. I submit to you, you don't even get to this issue if you can't get through the first and second issue I raised, but let's assume you think you have jurisdiction. Let's assume you want to ignore the Weeks' decision that I believe binds you, there's no standing here because Mr. Mastromonaco has not asserted any harm or injury that's different from the public at large: noise, vibration, concern about the lawfulness of the use. Quite frankly I did read the minutes from 2010 when the law was amended and we didn't discuss this with you in our letter because we just got this information from the Town within the last two days, it's clear to us that Mr. Mastromonaco actually participated in the public hearing before the Planning Board in 2010. He spoke at the public hearing in 2010 as an interested member of the public. He had every right to participate in that process. Everyone had a right to participate in that process but 2010 was seven years after Dakota Supply Corp. received Planning Board approval, Planning Board approval in connection with this operation. I submit to you that we're now 14 years after Dakota Supply Corp. received its Planning Board approval. When I read the submission, and it's unclear originally it was seeking an interpretation then it was denoted as an appeal. I quite frankly don't care what Mr. Mastromonaco wants to package it as, when I read what he has submitted to you it appears that he is trying to convince you, Mr. Preziosi and maybe others that the Planning Board did something wrong 14 years ago. They should have never permitted this operation to exist. This should have never been a lawfully permitted or acknowledged pre-existing use. The statute of limitations to bring that challenge expired about 14 years ago and it cannot be re-litigated now before your Zoning Board. So for those four simple and direct procedural reasons I think your board is well positioned to reject the application and allow the applicant to seek whatever redress he wishes. The last question he asked, and this was a technical point about the disclosures under the New York State General Municipal Law section 809 as to, he indicated, not applicable in his application. I think he submitted additional information indicating why he contends he lives at that address after our original letter. So, we're not here to quarrel with Mr. Mastromonaco, how he filled out the form, or what he's claiming is his connection to the property. I take Ralph at his word on that. So I have no reason to do otherwise. The long and short, and Mr. Chairman, I'm happy to venture into substance if we need to but quite frankly if in fact this board decides it wants to get into the dirt in the details of the 2003 approval, the 2010 amendments...

Mr. David Douglas stated we don't. I know you just got retained, but up to this point we've limited just to the jurisdictional standing issues. We have not discussed the substances.

Mr. David Steinmetz stated if that's the case then I have no need to go any further. I don't want to waste your board's time or energy nor my client's. I think it's clear. This one, at least in my opinion, is an easier one than many others because it shouldn't be here. I think your Town knows it shouldn't be here and from my limited discussions with your professional staff, I don't think any of the professional staff disagrees that this is an improper application and can be disposed of as such. Thank you for your time and your patience. I'm happy to answer any

questions and I'm happy to respond to anything Mr. Mastromonaco raises, Mr. Chairman, that you would like me to respond to. Thank you.

Mr. Ralph Mastromonaco stated there's no questions for Mr. Steinmetz? Mr. Steinmetz raises a lot of enchanting reasons why you should not hear the substantive issues around this case. I requested from Mr. Martin Rogers an interpretation of the M1 Zoning Code. Mr. Preziosi gave me that interpretation. Mr. Preziosi apparently, traditionally, makes those interpretations of zoning. He did it to me, and frankly he did it on a case that Mr. Steinmetz was involved with which was the Hudson Wellness case. Mr. Preziosi opined on August 12th, 2016 that section 307 requires that hospitals are only permitted on a lot in residential zones. Now here he is, Mr. Preziosi making a zoning determination. That determination sent us, and Mr. Steinmetz was behind that case, he was representing the opponents, sent us to you. Mr. Preziosi also gave me an interpretation. Mr. Preziosi, under article 30 in the Town Code is the director of technical services which manages and administrates the Code Enforcement office. Mr. Preziosi was merely standing in the shoes of his direct subordinate Mr. Martin Rogers, when he issued the interpretation that I am appealing. In the year since my first complaint to Mr. Martin Rogers, there have been no zoning violations issued against the Dakota site. The operations continue unabated. This reinforces my contention that the Code Enforcement office is in agreement with Mr. Preziosi. Please note that I believe that appealing to your board is the proper administrative procedure to appeal a decision of the director of technical services as well as the Code Enforcement officer regardless of whether Mr. Preziosi is the Code Enforcement officer or not. He is invested with the authority to render interpretations as can be seen in his actions and in the Hudson Wellness case. I will simply read the rest of this if there's no further comments, questions about what I've just said. I think now at this point I had some thoughts here on why I still live at 2083 Albany Post Road. I think is Mr. Steinmetz has conceded that I live there. He's welcome to come over anytime. As to the issue of the harm, I suffer from the harm of the noise produced by the Dakota site both during the day and in the middle of the night. The cement trucks that rev their engines are audible from my residence. The sound of crushing and hammered concrete slabs is audible from my residence. The large trucks that enter and leave the site and drive past my bedroom any hour of the day or night the owner chooses to operate can wake me from a sound sleep. The constant sound of backup alarms are audible from my residence as is the fear of air pollution from silica dust, which I had presented to you OSHA's rules. I have taken decibel readings the noise at the property line and these always exceed regulations and yet, no violations. Since I do live in close proximity to the Dakota site, I do suffer harm from the events at the site. Of course, separate from the public at large, since I live so close to the plant and the public at large does not. In any event, my standing derives from the fact that I requested an interpretation from the Town staff and I received an interpretation. I am appealing based on state and town law that confers my lawful standing before this board, a concept Mr. Steinmetz confuses with the law's requiring standing for challenges based on the decision of the courts. Interestingly again, Mr. Steinmetz who represents opponents of the Hudson Wellness application that is also before your board, some of whom live as far away as two miles from the Hudson Wellness property. Now, it's unclear to me how he can argue that they suffer harm from a project not built but I, who live 750 feet from the ongoing Dakota site, do not. Mr. Steinmetz brings up the Dakota's contractor's yard often. My research shows that

the Dakota contractor's yard was not legally existing at the time of the addition of rules to the Zoning Code for contractor's yard in 2010. Importantly, the site plan approved by the Planning Board required the owner to obtain all state and county permits which it never obtained by the year of 2010. Accordingly, in 2010 Dakota lacked state SPDES permits, county waste transfer permits, site plan approvals, and special permits. Thus, it never received the benefit of the default special permit for contractor's yards. Even if it had received that benefit...

Mr. David Douglas stated now you're getting into the...

Mr. Ralph Mastromonaco stated I'm only responding to Mr. Steinmetz. I'm happy to forgo it. I'm only responding.

Mr. David Douglas stated keep it to the jurisdictional issue because – the jurisdictional and standing issues are all we're discussing now. I'm just trying to bring it to a close.

Mr. Ralph Mastromonaco stated Mr. Chairman, three minutes more, if you allow me. I'm trying to stay away from the substance, I'm only trying to...

Mr. David Douglas stated go ahead, three minutes, that's fine.

Mr. Ralph Mastromonaco stated okay, thank you. Incredibly Mr. Steinmetz refers to the use of the property in his letter as pre-existing non-conforming. It is well known that in order for all the operations at Dakota to be legally non-conforming the operations must either pre-date the zoning, they do not, or be legal before the zoning was changed. Clearly the only zoning law that changed since 2003 was only a rule in 2010 for contractor's yard and that change did not allow the many uses that have sprung up on the site since 2003. I have complied with the statute of limitation relevant to my application. I am not appealing a decision of the Planning Board from 2003. Mr. Steinmetz references the Augenblick decision which is not relevant here since it referred to another property, an entirely different circumstances. Finally, in his closing written remarks, which he didn't answer today, Mr. Steinmetz bizarrely proposes that my application is somehow subject to the General Municipal Law section 809 when that rule clearly excludes appeals before a Zoning Board. He can explain his reasoning on this fragment to your board. As your board is quasi-judicial you have the power to reserve the decision on standing and move to a discussion of the substance of the appeal should you choose to do so. It appears that to obtain a full hearing, you would need to interview both Mr. Preziosi and Mr. Rogers. And I had mentioned to you at the work session, as in my role as village engineer, I was often called to the Zoning Board by the Chairman to give my thoughts on applications. You don't usually do that, you can do it. Your final decision should address standing as well as my appeal, thereafter any challenges may be made upon a final determination of your board to avoid the situation that Mr. Steinmetz faced in filing challenges to the Hudson Wellness case he recently decided against him. In that case the court went against Mr. Steinmetz for filing a lawsuit before the final decision by your board. So I'm asking your board, if you're going to reject my standing, at least hear the substantive issues then issue your ruling. Thank you.

Mr. David Douglas asked anybody else want to be heard? Mr. Steinmetz?

Mr. Raymond Reber asked nothing from the audience? Anything a board member wants to add? If not, I think between the presentations, which we appreciate tonight for the public record along with all of the proper and extensive correspondence that Mr. Mastromonaco and the defense has presented us, we have plenty of information to make a decision and the way we'll do that is we will not close this meeting. We will just adjourn it but our intent is to have a decision available for the next meeting. With that, I will move for an adjournment.

Mr. Ralph Mastromonaco stated Mr. Chairman before you close the meeting, my remarks, I have copies of those.

Mr. Wai Man Chin stated we're not closing. We're just adjourning.

Mr. David Douglas stated you can just give them to Ken.

Mr. Ralph Mastromonaco stated okay, I'll do that now.

Mr. Raymond Reber stated so on case #2017-22, I move to adjourn to the next meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated next meeting is December 20th. Thank you very much.

- C. **CASE NO. 2017-26** **Steven Auth** for Area Variances for t
minimum landscape coverage and landscape buffer strip, and a side yard
variance on property located at **70 Roa Hook Rd., Cortlandt Manor, NY.**

Mr. Steve Auth stated good evening Mr. Chairman and the board.

Ms. Adrian Hunte stated good evening Mr. Auth. On this case we had adjourned the matter pending resolution from the Planning Board. We understand the Planning Board has in fact resolved to grant with certain conditions, one of which would be that you obtain your proper variances from this board. As we had indicated in our memo to the Planning Board that this board was leaning toward granting all three of your variances, namely for your landscape coverage, landscape strip and the side lot 30 foot. With that said, is there anyone in the audience that wishes to speak? Board? Hearing none, then I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated on this case which is ZBA case #2017-26 the applicant for Steven Auth for Area Variances for minimum landscape coverage, landscape buffer strip and side lot Variance I make a motion that we grant the Variances and of course this would be subject to the approval of the Planning Board conditions that they so mentioned in their resolution. This is a SEQRA type II action, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variances are granted.

Mr. Steve Auth stated thank you very much. Good night.

Mr. David Douglas stated thank you.

*

*

*

NEW PUBLIC HEARINGS:

- A. CASE NO. 2017-30 Nisreen Khoury** for a front yard Area Variance for a front covered entry on property located at **11 White Birch Lane, Cortlandt Manor, NY.**

Mr. Jason Khoury stated good evening.

Ms. Adrian Hunte stated state your name please.

Mr. Jason Khoury stated my name is Jason Khoury, I'm Nisreen Khoury's husband.

Ms. Adrian Hunte stated and this case #2017-30 you are requesting a front yard setback variance for front covered entry. Tell us a little bit about this.

Mr. Jason Khoury stated I ordered a modular and the plans had the front cover on it. So the modular came, it's just the front stoop was already there. It's just a little cover that covers the front entryway of the home.

Ms. Adrian Hunte stated and apparently there was a variance granted a number of years back for the front yard setback for the uncovered stairs on the property. At this point there's no real change in the extension or footprint of the property.

Mr. Jason Khoury responded no, nothing at all.

Ms. Adrian Hunte asked does anyone in the audience wish to speak? Anybody on the board? Hearing none, on case #2017-30 the applicant Nisreen Khoury for the property located at 11

White Birch Lane, Cortlandt Manor, NY for an area variance for the front yard setback for a front covered entry, I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Ms. Adrian Hunte stated and on this case 2017-30 I make a motion that we grant the area variance for the front yard setback from a required 50 feet down to 22.3 feet for a front covered entry. This is a SEQRA type II action, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your variance is granted.

Mr. Jason Khoury stated thank you very much. Have a good night. Thank you.

Mr. David Douglas stated thank you.

B. CASE NO. 2017-31 Frank Ippoliti on behalf of Hudson Point LLC
for an Area Variance for the front yard setback for an entry foyer and
addition on property located at **6 Hollow Brook Place, Cortlandt Manor,**
NY.

Mr. Frank Ippoliti stated good evening. Before I start, have you guys seen pictures? Do you need to see pictures? Pass it along? No? May I start? Good evening, my name is Frank Ippoliti. I am one of the owners of Hudson Point LLC. We are the new owners of 6 Hollow Brook Place. My architect is a member of a Planning Board in his home town. There's a meeting tonight so he could not be here. I'll do my best to answer any questions you guys may have. We're looking to renovate an existing residence and require two variances. One for the front yard setback, second is the basement apartment. The front yard setback's – the house is currently non-conforming to the front yard setbacks. The existing covered front entry is 15 feet from the front property line. We're looking to increase the non-conformity but would like to enclose the existing area under the roof to create a 70 square foot foyer. The foundation does exist. We're requesting a 15 foot variance from the framing to create the foyer. We're also looking to add some curb appeal and a little square footage to the first floor plan with a small 177 square foot addition on the left side of the property. The house is tiny at this point and any additional square feet that we can get into it would be real useful for the house. The house also, we are looking to the addition, so esthetically it matches the other side of the house, so everything is under I guess esthetically correct we could say. The basement of the house is one story with finished walk-out, finished basement. We would like the existing basement to separate from the first floor residence as an accessory apartment. Proposed is 1,167 square feet. I'm sorry 1,167 square feet for the first floor and an additional 723 in the basement for a total of 1,890. Our proposed work

does not increase the scale of the house. The height of the house remains the same. The width of the house remains the same. The depth of the house remains the same. The bedroom count remains the same. We don't believe we're proposing any changes to the property that would negatively affect the neighbors or the neighborhood. I hope you feel the same. I think I should stop here and if you guys have any questions I'd be more than happy to answer them.

Mr. John Mattis stated we have no information about a basement apartment, nothing whatsoever. This is presented to us and advertised as an area variance for the front yard setback for an entry foyer and addition. So, before we even consider that, we need the plans. We need all the scales. We need everything and it has to be re-advertised. We don't have any of this.

Mr. David Douglas stated John, a question, wouldn't the basement apartment now go to Planning Board?

Mr. Ken Hoch responded yes.

Mr. John Mattis stated so we don't have to approve that. So we don't need that.

Mr. Ken Hoch stated he wants to file a special permit for an accessory apartment that would go to the Planning Board. This is just, as he filed his application, an area variance.

Mr. John Mattis stated okay, thank you for correcting that.

Mr. Frank Ippoliti stated sorry, I was.

Mr. John Mattis stated we used to do those. I forgot that we don't do them.

Mr. Frank Ippoliti stated I was reading on line and it said that I needed a special permit from the Zoning Board in order for that. So I do apologize.

Mr. John Mattis stated it probably hasn't been changed yet.

Mr. David Douglas stated they changed the code earlier this year.

Mr. Frank Ippoliti stated okay, perfect.

Mr. John Mattis stated so we're only considering the front yard setback. This doesn't come any closer than what the existing is. It doesn't impact the neighborhood. What you're building on the side doesn't really impact anything. You're not encroaching any further in the front yard. This seems perfectly logical.

Mr. Frank Ippoliti stated if you look at the front entrance where it is, we're just trying to enclose it. We're not trying to increase the size of it and on the side we're just going to be at the same setback that we are before.

Mr. Wai Man Chin stated I can see on the right side where the covered entry is, that's 15 feet from the property line and then the addition that you want to do over on the other side is 22 feet from the property line.

Mr. Frank Ippoliti stated and I believe we need 25.

Mr. Wai Man Chin stated I understand, but it's not any closer than the 15 feet and I don't see a problem with what you're trying to do.

Mr. Raymond Reber stated I have a problem. The entry now is covered and what we've done in the past, particularly when they're encroaching within the front zoning is we've allowed people to put a cover over it to protect from the weather. We don't allow them to enclose it to make a living space so that a couple of years down the road they can take out interior walls and it becomes part of the living space. To me, I'm opposed to allowing it enclosed because we've never done that, that I can recall, particularly when it's asking for a variance. We say, yes you can cover it, protect from the rain, which they have, but the idea of enclosing it makes it, quote, part of the house itself, potential living space and I've got relatives that have done that with stuff. They get the porch enclosed and the next thing you know they take the interior wall down and it's part of the main house. I'm not willing to make a precedent here in agreeing to enclose it. The addition they want on the other side, I agree. It doesn't encroach as close. It's set back a little. It's in line with the house. That I have no problem with.

Mr. John Mattis stated in fact, the case before this was just for an overhang, a roof. It was not being enclosed so I understand it.

Mr. Frank Ippoliti stated so if I may, if you look at the plans, right there currently now is a driveway which was done to the benefit of the previous owner who was in a wheelchair. Esthetically and the only way to really get into the house is if we position the house to the left as an entrance to that foyer, because on the other side is a driveway there used to be a deck and it falls – the steep slope that's there is just too much. So what we're planning on doing is coming in from the left in order to gain entrance to the house.

Mr. Raymond Reber stated when you say coming in from the left, I'm still confused. What does that have to do with the entryway?

Mr. Frank Ippoliti responded if you had to keep the entryway in and that's our main source of entrance, the driveway that's there has to be taken out. So grading that and leveling it down.

Mr. Raymond Reber asked wait, what we're you proposing? You just said you were going to enclose it. You weren't – I understand why by denying the enclosure, all of a sudden we've changed something. I don't quite understand that.

Mr. Wai Man Chin stated I'd like to say something. Right now the plan that we have it says:

existing first floor and existing basement. It's the same floor plan. On the little map over here is indicating what you want to do with the enclosed porch and also the addition on the first floor. But we have actually no plans on how the inside of this space is going to really look like except for what you're saying.

Mr. Frank Ippoliti stated I did submit plans.

Mr. Wai Man Chin asked what plans? Anybody have any plans on the house itself?

Mr. Frank Ippoliti stated I had made seven sets of plans for the board.

Mr. Raymond Reber stated all we have is addition and renovation of the existing residence A1 plan.

Mr. John Mattis stated and it shows what's existing.

Mr. Raymond Reber stated it shows your existing covered entry. It says it's covered and it infers that you come in from the front. Now you're saying there's some change you want to make there but that's not what you asked for. You just said you just wanted to enclose it.

Mr. Wai Man Chin asked and what are you showing right there, may I ask? That's the front page we got. What other pages you have there that we don't have? That's not the renovation.

Mr. Frank Ippoliti stated this is the enclosure and this is the renovations.

Mr. Wai Man Chin stated yeah but we don't have the back plot. Right now all we got is A1. We don't have an A2.

Mr. Frank Ippoliti stated I don't know why you didn't get A2.

Mr. Wai Man Chin asked Ken did we ever get A2?

Mr. Ken Hoch responded no because only A1 was submitted for the variance. A2 is part of the building permit application.

Mr. Wai Man Chin stated yeah but he's explaining he wants to make an entrance now on the left side so now this is totally not exact...

Mr. Frank Ippoliti stated it's the same entrance.

Mr. John Mattis stated what we're saying is, we're talking about the existing covered entry. It's open but covered. We're saying leave it open. It can be covered, we just don't want it enclosed.

Mr. Raymond Reber stated you want to put the stairs on the other side, on the side instead of the

front, you can do that. We're just saying we don't want it enclosed.

Mr. Wai Man Chin asked which is your entrance may I ask? It's going to be a new entrance. Is it on the left side or right side?

Mr. Frank Ippoliti responded it's going to be on the left side. I'm sorry on the right side. I'm sorry, it's the right side.

Mr. John Mattis asked and it won't change the footprint?

Mr. Frank Ippoliti responded it will not change the footprint.

Mr. John Mattis asked so what's the existing covered entry will still be the existing covered entry but you want to enclose it.

Mr. Frank Ippoliti responded yes.

Mr. John Mattis stated okay, and that's what we're discussing, whether or not it should be enclosed. And the case before that was, they applied for a covered entry where their original was for an open one. They did not apply for an enclosed entry and that's our sticking point right now. Any other comments from the board?

Mr. Wai Man Chin stated personally I want to rethink this one over myself because it really got confusing just now. I want to look at it. I'd like to adjourn this case.

Mr. David Douglas stated that's fine.

Mr. John Mattis asked anybody else? Anyone in the audience? On case #2017-31 I move that we adjourn the case to the December 20th meeting.

Seconded with all in favor saying "aye."

Mr. John Mattis stated we don't oppose the dimensions of the variance. What we're considering is whether that should be enclosed or not. I'm assuming that from the other members, but what we're shown we have nothing that said it was going to be enclosed until tonight. All we had was the one set of drawings that said existing covered entry. It didn't say enclosed. That's where we were caught off guard.

Mr. Frank Ippoliti stated on the original application it was for enclosing that existing open porch that you have now.

Mr. John Mattis stated well that isn't how it was presented to us in our worksheet and anything we have nothing that says enclosed.

Mr. Frank Ippoliti stated I wouldn't be asking...

Mr. John Mattis stated that's why we got caught flat-footed tonight because...

Mr. Frank Ippoliti stated but I wouldn't be asking for a variance if I didn't want to enclose it. I could just leave it the way it is because it's pre-existing. That's why I'm here.

Mr. John Mattis stated well we don't know that because we don't have any diagram showing what you're going to have. We only have what's existing. It could have been a little bit wider in which case you'd need a variance.

Mr. Raymond Reber stated and even if it's existing we don't know if it had ever been approved. That happens sometimes too.

Mr. Frank Ippoliti stated I'm sorry.

Mr. Raymond Reber stated even if it existed it doesn't necessarily mean it had been approved. We don't know until we have these discussions to find out exactly what the issues are. It wasn't clear to us, obviously specifically, what the issue was.

Mr. John Mattis stated that will give us some time to think about this.

Mr. Frank Ippoliti stated perfect.

Mr. John Mattis stated I make a motion on that case that we close the public hearing to December. I'm sorry, adjourn.

Seconded with all in favor saying "aye."

Mr. David Douglas stated so it's adjourned to next month and we'll think it through more.

Mr. Frank Ippoliti stated so I don't need to resubmit anything specifically telling you that I'm looking to enclose that piece...

Mr. Ken Hoch stated what you should do Frank is submit nine sets of the architectural plan showing the foyer.

Mr. Frank Ippoliti stated perfect. Thank you.

Mr. David Douglas stated thank you very much.

C. CASE NO. 2017-32 Goran Mornhed for an Area Variance for the side yard setback for an existing deck and garage on property located at **94 Colabaugh Pond Rd, Croton-on-Hudson, NY 10520.**

Mr. Luke Hilpert stated good evening Chairman Douglas, members of the board. Luke Hilpert, the Hilpert law offices on behalf of Goran and Elizabeth Mornhed. This evening we've submitted an application seeking a side yard variance. The total Variance that we're seeking today is 28.61 feet where the side yard requirement is 30 feet. I provided a letter to the board and copies of the plans, the survey and at this point I'd just like to walk the board through what they're seeking to do here. when they purchased the house it had an existing deck on the back. Under the deck there was parking. The deck, there was tarps under the deck. In 2005 they expanded the deck and at that time enclosed the area underneath creating the garage. That space under, the space that is now enclosed under the deck...

Mr. John Mattis asked with or without a building permit?

Mr. Luke Hilpert responded they did that without a building permit.

Mr. John Mattis stated I want that on the record.

Mr. Luke Hilpert stated that space has been enclosed and it does not have any heat...

Mr. John Mattis asked when was that done?

Mr. Luke Hilpert that was done in 2005.

Mr. John Mattis stated so there's two expansions there. Was that all in 2005.

Mr. Luke Hilpert stated that was all done in 2005. It was all part of one project where the deck was expanded further into the side yard setback and the area under the deck was enclosed to create a garage space. They're now seeking a building permit to legalize the enclosed space and in going through that process we found ourselves here seeking a variance for the additional encroachment into the side yard setback. When they purchased the house, when the house was originally constructed there was an encroachment to the side yard setback already so the additional encroachment is only between 8 or 9 feet.

Mr. John Mattis stated but it's also creating garage space and everything. It's not just how far out. There's a big expansion underneath.

Mr. Luke Hilpert stated all of this is in the rear of the property. The expansion underneath is not into a setback. It's all toward the rear of the property. There's sufficient...

Mr. John Mattis asked how did this get to 0.42 feet, less than half a foot when the variance, the last variance that was granted was in 1990 and that didn't bring it within a half a foot?

Mr. Luke Hilpert responded no the last variance brought it within 10 feet of the setback.

Mr. John Mattis stated and they basically cut that 10 feet down to virtually nothing.

Mr. Luke Hilpert responded that's correct.

Mr. John Mattis asked how many garage spaces did they have? How many cars could they fit in there prior to that expansion?

Mr. Luke Hilpert responded prior to the expansion they had – it wasn't a garage space underneath. There was a garage space on the side.

Mr. John Mattis stated that's my point. They built garage space. It wasn't just the deck. They built garage space again without a permit.

Mr. Luke Hilpert stated at this time yes.

Mr. John Mattis asked without a permit?

Mr. Luke Hilpert responded that's correct. All this is done at the rear of the property. It's not visible from the street. It doesn't have any adverse affect, in my opinion, on the neighborhood because it's consistent with other structures. There is a Westchester County land to the right of the property when you're looking at it from the front. That's the setback we're talking about. There is no construction in that area. It does visually, it remains consistent with the rest of the neighborhood.

Mr. John Mattis stated okay I'm trying to get a history on this. In 2005 or prior to 2005, how many cars could they park in the garage?

Mr. Luke Hilpert responded in 2005 they were parking under the deck, no garage.

Mr. John Mattis asked now three, correct? We see three doors there.

Mr. Luke Hilpert responded three yes.

Mr. John Mattis asked and how wide is that garage? It's not shown on any of these. It's a very, very wide garage.

Mr. Luke Hilpert stated it is a very wide garage.

Mr. John Mattis stated I'd like to see the dimension on that. It's not shown. It shows how wide it is but conveniently there's no dimension at anything I looked at. That's important. When you bring it to within half a foot of the property line, that's important to me.

Mr. Luke Hilpert stated understood. I don't believe there is a...

Mr. John Mattis stated there isn't.

Mr. Luke Hilpert stated no there's not a dimension of the garage.

Mr. John Mattis stated we'll just ignore that for the time being.

Mr. Luke Hilpert stated as I said, I believe it is visually it does not have any adverse affect on the neighborhood. It's also consistent environmentally. There are wetlands in the area across and up the hill from them there's the pond, Colabaugh pond there, and it had not created any additional impervious space because the area under that is now enclosed was always a gravel...

Mr. John Mattis stated it may not have an adverse affect on the neighborhood but it has an adverse affect on the zoning because we have to consider this as if it was not there because you mentioned in here the hardship that they take it down. We're not allowed to consider that because everybody in the Town would build stuff and come in and say: "Oh it's a hardship. It's a hardship." It's not necessary to have a three-car garage. It's not necessary to go within a half a foot of the property line without a building permit and then come in. We have to consider this as if it was not there. In no way would I ever vote for that. No way.

Ms. Adrian Hunte asked Mr. Hilpert, could you please speak to the requirement of a state variance as the garage and deck do not comply with the state requirement 302.1 that no combustible wall can be within five feet of a property line?

Mr. Luke Hilpert responded there has not been an application at this time for a state variance. We would need to get through this process I believe in order to get the state variance to the get the building permit.

Mr. John Mattis asked can we hold this off until we see if they give this variance?

Mr. Luke Hilpert responded I believe this would have to be the first step in that process because we would have to get the variance here in order to do the building permit application and then in order to get...

Mr. Charles Heady asked on the fact sheet down here it says the garage and the deck were built without a permit. Did you do that?

Mr. Luke Hilpert responded my clients, they expanded. The deck was there. It existed. It was legally existing non-conforming because it was built prior to zoning and the area under the deck existed but that area was enclosed and the deck was expanded additionally 10 feet into the side yard.

Mr. Charles Heady asked you put the garage on it right?

Mr. Luke Hilpert responded yes sir.

Mr. Charles Heady stated without a permit.

Mr. Luke Hilpert responded yes sir.

Mr. Charles Heady stated technically we can make you take that down because it was before a permit.

Mr. Luke Hilpert stated they do understand that at this point. That is why we're here, to try...

Mr. John Mattis stated I don't understand how somebody built something of that magnitude, gets a builder in and acts like they don't know that they need a permit. That's puzzling to me.

Mr. Luke Hilpert stated when they did the original project they did have an architect, they did have plans and they began the process...

Mr. John Mattis stated and somebody decided not to come into the Town and get them approved.

Mr. Luke Hilpert responded yes.

Mr. John Mattis stated there's many reasons for that and one of them is financial but that's not part of what we rule on.

Mr. Luke Hilpert stated that's correct, that's not. What we're here is trying to legalize this space to do it properly. This was not something they were – nobody called them out on it and told them they had to come in here to do this. This is something that at this point they realize has to be done and it has to be done the right way.

Mr. John Mattis asked and what made the light bulb go on that they saw they had to do this now, after all these years? Twelve years?

Mr. Luke Hilpert responded after 12 years they've realized that if they want to be able to sell their house, if they want to be able to move, if they want to be able to live in the house they have to be able to do that. They realize it was not done properly at that time and it needs to be remedied.

Mr. David Douglas stated we're sort of in a bind. My personal perspective is, I don't have that much of a problem with the application in a sense that I'm familiar with the area. Looking at the five factors we look at, is four of them I don't think are a problem. There's no impact on the environment. There's no impact on the neighborhood, the land. It's very close to the side but that's Westchester County, nobody moves there, nobody can see it. It's completely open for a

substantial amount of space.

Mr. Wai Man Chin stated self-created is the only...

Mr. David Douglas stated the problem is – so three of the factors don't really matter. One is it's clearly self-created and the variance is also substantial. It's about as substantial as you can get. It's right up against the edge. I don't have a problem with the substantial nature of it because it's a prior to zoning situation and that's where the house largely is but we're in a bind here because the problem is, as some of the other members have said, is that somebody built something and had a permit and it may not have ever been approved if they had come and done it the right way and then we're left with a situation where if we say okay then that gives wording for people for breaking the rules by getting the benefit for years, and years, and years. That's the bind we're in.

Mr. Luke Hilpert stated I certainly do understand that. I think Mr. Mattis has pointed out earlier that the fact that it would cost them money to undo this is not a factor that you have to play into your decision here today but I think what is important is that we are looking at a balancing test. So the fact that it was self-created admittedly and even in the letter, admittedly self-created, is not a determinative factor. It's one of the things to consider and it is substantial in looking at it mathematically but for a substantiality we are guided to look at the whole picture. When you want to make sure that something is conforming with zoning it's really to conform with the neighborhood and because of this land on the right side, the Westchester County land, they are in a unique position. Whether they got lucky in that being there or that was the plan, that's really not a question but it is a fact that we must consider in looking at the substantiality of this expansion.

Mr. John Mattis stated what I'm wrestling with, if they come in here with these plans and it was not here, one of the things we have to look at is there a way they can accomplish this in another method with less variance? And I'm sure we could have come up with several of them.

Mr. Raymond Reber stated my concern is, another factor here is, this is just an expansion of a deck that already was a pretty good size. You could have gone with two-car garage. It's almost like it's superfluous, like it's overdone. How important was it to need to go this far with this addition? It's not like you didn't have a bedroom or whatever. To me that's another factor here is that this is almost like -- there's no way we would have considered this if they had come before us and said: oh we want to go to within half a foot of the property line. We'd say: for what? For a deck and for a third car garage? We'd say: absolutely not, that's ridiculous. We wouldn't do it. Yes, this house is closer than the normal setback. We understand that and if they had said maybe five feet. We'd say probably. At least five feet you've got some space to get around it without encroaching on the county property. If the county comes and puts a fence up for some reason some day, what are you going to do? You can't get from front to back, you can't even get around the corner it's so tight. So from my perspective this was a totally unreasonable addition from every aspect of it and it's done without permits and it brings it right to the property line and so to me, my feeling is it should be cut back. Bring it back a little. You don't have to rip out everything but I think coming that close is just absurd for what's built here

in this situation and particularly no permits, nothing was ever addressed. Sorry, that's my opinion.

Mr. Wai Man Chin stated I myself, I haven't visited the site but I would like to visit the site myself to look at this thing. I don't know Jim this is your case but I'd like to look at it because you're saying you're on Colabaugh Pond Road and you're not that far away from the pond or the pond is nearby?

Mr. Luke Hilpert responded it's across the street and up the hill.

Mr. David Douglas stated it's a distance from the pond.

Mr. Wai Man Chin stated they're on the other side of me. I'm on this side of the pond.

Mr. David Douglas stated it's basically across the pond from you but they're on the far side. They're not on the pond side.

Mr. Raymond Reber stated if we take the argument that because it's next to county property it doesn't matter you don't have to have a setback, anybody – there's a lot of county property in our Town. All of a sudden people could be building right up to the property line. To me, we can't just use that as an excuse.

Mr. Wai Man Chin stated personally I would like to look at it myself only because just to see. I can't tell by what's there myself.

Mr. Luke Hilpert stated absolutely.

Mr. Wai Man Chin stated that's the only thing I would like to do myself. I'll even go by myself. It doesn't have to be the whole board.

Mr. Luke Hilpert stated my client certainly invite you...

Mr. David Douglas stated my feeling is if one member wants to do a site visit then we should do a site visit. What we do is we schedule usually for the Saturday before. You know what that date is?

Mr. John Mattis responded the 16th.

Mr. David Douglas stated the 16th. Does that work for your clients?

Ms. Adrian Hunte stated December 16th.

Mr. Luke Hilpert stated that seems to work.

Mr. David Douglas stated what we do is we'd set up that time as a site visit. What time? Wai, what's good for you, 10?

Mr. Wai Man Chin response 10 will be fine, as long as it doesn't snow.

Mr. Luke Hilpert stated that will make it hard to see the lines. May I speak to two issues before...

Mr. David Douglas stated we'll have a site visit at 10 o'clock on December 16th. Whichever members of the board wish to go to the site visit, that's when it'll be.

Mr. Luke Hilpert stated if I could just speak to two quick issues. As to any feasible, and you'll see it when you come to the property, but as to the feasibility the property does slope down significantly in the back and there are at the back of the gravel area, it slopes off significantly and there are retaining walls there that would prevent those garages from being built elsewhere.

Mr. Raymond Reber stated I'm not saying built elsewhere, I'm just saying three-car garage and a massive deck is pretty extensive. It's rare that somebody has to say, "gee, it's an absolute necessity. We have to have the three vehicles for this and that and the other reason and we've got to protect them because they've got to be available even in snow storms so we can get to the hospital." There's no logic for that that I can understand.

Mr. Luke Hilpert stated as to the size of the deck, there is a logic in the sense that if you come out of the kitchen and you're facing the side yard, there's a door that went out onto the deck and it was a narrow walkway. So the logic there...

Mr. John Mattis stated that's a substantial deck. I don't know if we've ever seen one that large.

Mr. Luke Hilpert stated it is a substantial deck. The portion that was expanded was not where they were walking from the kitchen out onto the deck. I'm not saying the deck is not substantial. I'm just saying there was a logic to that reason.

Mr. Raymond Reber stated and that entrance...

Mr. Goran Mornhed stated the house in the back is [inaudible] is added on in a few pieces. The old deck would park two cars under and there is actually from when this house was put together, the third, there's actually an old garage on the side. It was always a driveway in the back so there's nothing new about that. So they would park two cars outside. As you can see on the plan, on the area plan, there is this whole in the back, back since in the third, maybe even before, had a stone walls enclosed. So between the old deck that we parked under and the stone wall/fence was this about 10 feet essentially unusable space for any other purpose because it's 10 feet and it's part of the gravel yard. So when the old deck deteriorated we replaced it and we parked underneath it. It felt natural that we would just like use up that 10 feet too otherwise we couldn't use it for any practical purpose. And if you had a deck out there, well then you know,

we used that to park under that too. That's the reason we ended up that way. Now, I have an old Morgan car and that's the one that's the one that's parked out in that area. So you can't go to the hospital in that unfortunately. But that's just the reason.

Mr. John Mattis asked but the architect and the builder never said you needed any permits or anything?

Mr. Goran Mornhed responded we had an architect to help us put together drawings. I'm an engineer so I know what it is. So we used him to get some stuff done. Obviously I should have gotten a building permit at the time. I looked at it as this is essentially the same as the old one because we did park under the old deck and there was no water runoff and stuff and we essentially just added on these 10 feet in the back.

Mr. John Mattis stated adding the 10 feet is not essentially the same and enclosing.

Mr. Goran Mornhed responded I know and I appreciate that. We could have done it 10 feet shorter.

Mr. Raymond Reber stated understood.

Mr. David Douglas stated so what we'll do, unless you have something to add.

Mr. Luke Hilpert stated no, nothing.

Mr. David Douglas stated what we'll do is we'll adjourn it to next month. We'll have the site visit on the 16th and then we'll continue to discuss it next month.

Mr. Luke Hilpert stated thank you very much.

Mr. David Douglas stated we have to do this officially though. Somebody want to make a motion?

Mr. James Seirmarco stated I'll make a motion on case #2017-32 to have a site inspection on the 16th at 10 a.m. and adjourn.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we'll see you on the 16th. You don't have to be there on the 16th. That's up to you.

D. CASE NO. 2017-33 Quality Signs on behalf of T-Mobile for an Area Variance the size of a business wall sign on property located at Cortlandt Town Center, Cortlandt Manor, NY.

Mr. David Douglas stated I don't see anybody here. What we'll do is what we generally do. Ken if you could send a letter.

Mr. Raymond Reber stated on case 2017-33 application by Quality Signs on behalf of T-Mobile I make a motion that we adjourn to the December meeting and also send a communication to the applicant that he does need to show up at the December meeting or the case will be dropped.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that's adjourned under those conditions and Mr. Hoch is going to send that letter.

*

*

*

ADJOURNMENT

Mr. John Mattis stated I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

*

*

*

**NEXT MEETING DATE:
WEDNESDAY, DEC. 20, 2017**