

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, October 17th, 2012*. 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:

Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman
Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

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ADOPTION OF MEETING MINUTES FOR SEPT. 19, 2012

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

Mr. David Douglas stated the minutes for September are adopted.

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ADJOURNED PUBLIC HEARINGS TO NOV., 2012:

- A. CASE No. 18-09** **Post Road Holding Corp.** for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**

Mr. David Douglas stated that's adjourned at the request of the applicant.

- B. CASE No. 2012-25** **Mateo and Kim Velardo** for an Area Variance for an accessory structure (above ground pool) in the front yard and an Area Variance for the front yard setback for a proposed deck on property located at **8 Lent Ave., Montrose.**

Mr. David Douglas stated also adjourned at the request of the applicant.

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CLOSED AND RESERVED:

- A. CASE No. 2012-20** **Department of Technical Services, Code Enforcement**
for an Interpretation of how an animal rescue shelter, whether for profit or not-for-profit,
is classified under the Town Zoning Ordinance.

Mr. Ken Hoch stated yes, Mr. Chairman I had hoped to withdraw this tonight but the particular facility that triggered this is not yet closed so I just would like to adjourn it until next month, to November.

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

Mr. David Douglas stated **case 2012-20** is adjourned until November.

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ADJOURNED PUBLIC HEARINGS:

- A. CASE No. 2012-28** **Department of Technical Services, Code Enforcement**
for an Interpretation of whether the pre-existing, non-conforming use of a building or
land is reduced by a portion of the building or land being unoccupied for more than a
year.

Mr. David Douglas stated we recently got a memorandum submitted by a resident, Christopher Post, which we now have in the file, which we will consider – does anyone want to be heard on this? Did we want to close and reserve this one or do we want to adjourn?

Mr. John Mattis responded I'd rather keep it open because we just got this the other night and didn't have a chance to discuss it.

Mr. John Klarl asked so we'll adjourn it then?

Mr. Wai Man Chin responded yes.

Ms. Adrian Hunte stated I'll make a motion on Zoning Board of Appeals **case #2012-28** that we adjourn the matter to the November 2012 meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-28** is adjourned until November.

B. CASE No. 2012-30 Marcia Royce for a Special Permit for a Home Occupation on property located at 2223 Maple Ave., Cortlandt Manor.

Mr. Keith Potenski stated I'm an attorney with the law firm of Turner and Turner appearing tonight on behalf of the applicant Marcia Royce and the Key Institute for Learning Strategies. Ms. Royce is here tonight with me as well. Mr. Turner should be joining us shortly. Before he does I'd like to just quickly brief the Board on where we stand procedurally. I know the Board is already familiar with the application so I won't go into too much detail and then, of course, if the Board has any questions we'd be happy to address them. As the Board is aware the Key Institute for Learning Strategies has been operating in a private residence on Maple Avenue for the better part of nearly **30** years. The Key Institute consists of **5** classrooms that are in what was a remodeled garage. The site is uniquely setup for this use due to its location on a through street, Maple Avenue and the crescent driveway off of Maple Avenue.

Mr. Frederick Turner stated law firm of Turner and Turner for the applicant Key Institute for Learning Strategies. We appear here tonight in response to a letter from the Code Enforcement officer Ken Hoch dated April 20th saying there was a complaint. Key Institute did not wait for a ticket or other enforcement initiative. Mrs. Royce was told that there was a complaint and she made an application to you to voluntarily come here and clear that up. Key Institute specializes in helping children with learning disabilities and I know you're aware of that and I know that there are letters in the file attesting to the work of Key Institute over the years and I'm sure there are supporters here this evening for Key Institute who may speak briefly and I'll limit their comments because I know you've heard them before. The Key Institute offers numerous scholarships to families that can't afford its services. In some, Key Institute provides an important service to the local public and the private schools do not provide as evidence by the many letters of support by the parents and teachers attached to the submittal given to you previously as exhibit '**F**'. We've submitted a memorandum of law in support of this application, an affidavit by Mrs. Royce attesting to the history of the Key Institute together with extensive documentation in support of our position that the Key Institute operates as a prior legal non-conforming use. I know as members of the Zoning Board that you're well familiar with that term 'prior legal non-conforming use' and that designation is rooted in its history, and its history should define the analysis of this case, an analysis of the complaint. Key Institute is a legal non-conforming use by virtue of a **1987** Decision by this Board that found it to be a bona fide home occupation under the **1984** then existing Zoning Code. Key Institute was established at its present location; 223 Maple Avenue in **1984**. These dates are important for the analysis of course of what is constitutes a prior legal non-conforming use. Later in the summer of **1987**, Key Institute applied to this Board for an interpretation that tutoring was a permitted bona fide home occupation. In a Decision dated November 25th, **1987** this Board agreed and concurred and issued a Decision that Key Institute was a home occupation under the then prevailing Code. At the time, the Key Institute was recognized as a bona fide Home Occupation, this Board, the Town was aware that the Key Institute served **13** students. That documentation was provided to you in your memorandum as exhibit '**D**'. There's a submittal. There's a date stamped in "acknowledged and received by the Town that the Key Institute was serving **13** students.

Mr. John Klarl stated in **1987**.

Mr. Frederick Turner stated behind that in exhibit 'D' to the Royce affidavit – behind that is a class list from **1989** showing the Key Institute served **26** students at a single time during the summer of **1992**. These dates are important because they all precede the change in use as a table of permitted uses that allegedly Key Institute is in violation of currently. Now my associate Keith Potenski will discuss the current enrollment and the current numbers and the current scheduling and I know from our work session, Mr. Matthews that that is an important issue and it's a legitimate issue and we want to go through it. But, these historic numbers document its Key Institute's status as a prior legal non-conforming use.

Mr. David Douglas asked can I ask you a question?

Mr. Frederick Turner responded yes.

Mr. David Douglas asked regarding the **13** students, is there any indication as to whether all **13** were being taught at the same time or how many were in the same location in any one given time?

Mr. Frederick Turner responded not in that documentation, no. There was certainly more than one on the premises. The **1987** Decision did not specify a cap either.

Mr. David Douglas asked am I right that in the minutes of the **1987** – the hearing in **1987** there was talk about there being **2** to **3** students at any given time?

Mr. Frederick Turner responded that's a very interesting point. I want to discuss that. I looked at that today and I went over that language with Mrs. Royce because it is somewhat confusing. That language can be easily – we're referring to the minutes of **1987** right?

Mr. David Douglas responded yes.

Mr. Frederick Turner responded and that is on page **45**, it's not a stenographic transcript. Someone's taking minutes here and it says: "it is my understanding after visiting her place that it is limited to **2** to **3** students who get individualized attention." That's on page **45**, page **46** in the third paragraph clarifies that when "Mrs. Royce advised that she takes them either one at a time or two at a time." I wish it was a stenographic transcript because there would be no ambiguity but what she's doing there is pulling them out of larger classes for individualized instruction.

Mr. Raymond Reber stated that's an interesting interpretation but I doubt very much that anybody would interpret that statement that way and also the fact that the letter that dates back to **1987** – in my operation I have approximately **2.7** children, on an average – you're really stretching it when you're trying to tell us somehow there's more than that there and she just pulls those out to specialize with them and I also, as our Chairman had asked, you gave the Town a list of **13** students, logic is all **13** don't all show up at once. I have a daughter that does tutoring.

She doesn't tutor all her kids all at the same time. They come different times, different days, what have you so to just make the assumption that well we're supposed to know that they all came at once and when she says she has **2** or **3** students that she's taking and extracting them, that's a stretch and one that I'd have a tough time accepting.

Mr. David Douglas stated in addition, I also think that in addition to being a stretch that would be utterly inconsistent with what Mr. Hirsh said on the previous page of the minutes when he says it was limited to **2** to **3** students per evening. He didn't say that they were pulled out of any class.

Mr. Frederick Turner responded okay. This is our interpretation of the minutes on page **46** and it is, I think admittedly, ambiguous but there is no ambiguity...

Mr. David Douglas stated no, actually I don't think it is ambiguous. I understand your saying is ambiguous but I personally don't think it's ambiguous.

Mr. Frederick Turner stated there's no ambiguity about the **1992**...

Mr. John Mattis stated I'd like to read the sentence before that if I may: Mr. Centrillo asked how many pupils she has in the course of a day. She advised she takes them either one at a time or two at a time. There's no ambiguity there. How many does she have in the course of a day? One at a time or two at a time. She doesn't say I have a big class and I take a couple out of it. Nowhere is that ever stated.

Mr. Frederick Turner responded can I respond? There are teachers present and she personally takes one or two...

Mr. John Mattis stated at that time there was nobody except she and her husband and that's in the testimony also. They were the only two. That's in the minutes and it's in the letter that she wrote.

Mr. Frederick Turner responded we'll address that and I want to say that there is no ambiguity about the **1992** summer class list. That is clearly **26** students were taught.

Mr. John Mattis asked was that presented to the Town or is that something she kept internally?

Mr. Frederick Turner responded I believe this was an internal record.

Mr. John Mattis stated right, so the Town had no record of it so how do they know how many she had? She's allowed so many, if she has more and keeps her own records, the Town doesn't know that unless they go out there and check.

Mr. Frederick Turner asked how many was she allowed?

Mr. John Mattis responded that's what we're trying to determine but it's pretty clear from the testimony that it's certainly not the number that you're trying to tell us that it is.

Mr. David Douglas stated in **1987**, if I'm reading this correctly, what was approved in the Decision and Order of the Zoning Board of **1987** was approval as a Home Occupation of the tutorial service that she was conducting at that time. It says "the tutorial service for children with learning disabilities conducted by the petitioner within their home is a Home Occupation." That's in the Decision and Order so the tutorial service that she appears to have been conducting at that time had **2** to **3** students at the time.

Mr. Frederick Turner asked are you reading from the **1987** Decision?

Mr. David Douglas responded I'm actually looking at the minutes but I believe the actual D&O has the exact same language in it.

Mr. Frederick Turner stated the Decision doesn't have a number in it.

Mr. David Douglas stated no, that's not what I said. I didn't say it had a number in it. What it says is "the Zoning Board finds that the tutorial service for children with learning disabilities is conducted by the petitioner is a Home Occupation." And, the tutorial service was conducted by the petitioner at that time was, according to the records and according to what was represented by her to the Board at that point, was **2** to **3** people. So, that's what was approved and in **1992**, **1993** she may have had **25** students, she may have had **500** students. She may have had a **1,000** students but that doesn't mean that the Town approved it or the Town knew about it.

Mr. Frederick Turner responded well the Town certainly knew that there were at least **13** students there.

Mr. Raymond Reber stated registered.

Mr. David Douglas stated **13** registered students.

Mr. Raymond Reber stated not there at one time, never indicated there at one time, just that she had on contract or however you want to call it, **13** students.

Mr. John Mattis stated I'd like to put something in perspective here since you were not her attorney at the only other meeting that she had, we're not trying to say that she's not doing something good. What she provides in a service for those students, everybody on this Board thinks is wonderful but that's not the issue. We are here strictly to look at the Code; is she adhering to the Code or is she not adhering to the Code? Some people out there think that we're just -- have it against what she doing. We don't have against what she's doing at all. We think that that tutoring service is wonderful and I know some children that went through there, most of the people on the Board do and she provides a very good and valuable service. The question is; is she in conformance with the Code, what was she given at that time and what is she doing now?

Mr. Frederick Turner responded is she in conformance with Code? The Code protects legal non-conforming uses and your attorney will tell you that an intensification or enlargement of a non-conforming use does not destroy its status. There's good case law on that. We've provided the case law in the memorandum, and I can quote from it right now...

Mr. James Seirmarco stated we're not trying to destroy the status. The status is it's a pre-existing non-conforming use. The issue at heart here is; how many students, and whether, as the Chairman said, whether **500** students is a legal use. We're not saying that the use is illegal but the performance of that particular activity – you'll agree that there is a number that exceeds the practical use of a Home Occupation. You'll agree to that. It can't **500**, it can't be **1,000**. There is a number and that's what we're trying to determine now, the number and we're going back through the records at that particular time from documentation that you submitted, that your client submitted to try and determine the number that D&O reflects. We're not trying to say it's a non-conforming use.

Mr. Frederick Turner responded it was granted and we all agree, and this is very important to take our time to go through this very carefully, it's a woman's livelihood and I appreciate you're getting into the nitty gritty of this thing. The Court of the Second Department which is the Appellate Court that has jurisdiction for this area has ruled on exactly your issue of when the status of a non-conforming use is destroyed – a prior non-conforming use no longer becomes a prior non-conforming use...

Mr. David Douglas stated wait, wait, hold on a second. What's in front of us now is whether the current level of activity is a pre-existing non-conforming use. That's the issue. It's not whether what was approved in **1987** is a pre-existing non-conforming use or what was existing before **1987**, or what was existing before **1993**.

Mr. Frederick Turner stated this addresses that point too. Is the current level of operation a legal non-conforming use? This case from the Second Department will address that as well. Let me read a brief quote...

Mr. Raymond Reber stated I have a problem, first of all, you say non-conforming legal or illegal. What's non-conforming? The Code, even back in '87, home occupations were acceptable if approved so where's the non-conforming? A non-conforming is when you don't stick within the boundaries that were established for a conforming use. Home Occupation is conforming so don't get your terminologies mixed up here. We're trying to decide; was it a conforming with what is acceptable or is it non-conforming with what's acceptable? Go ahead and explain why this impacts on what we're trying to do.

Ms. Adrian Hunte stated Mr. Turner, you also made reference to, citing the Clark's Town VMRO Pump and Tank in case Second Department **2006** that the number since **1993** has not increased materially, however, you say that that's not considered a per se impermissible expansion of a non-conforming use. There's a difference between per se impermissible as in

malum per se and malum prohibitum meaning that the malum per se is illegal but the 'not per se impermissible' is more like malum prohibitum and leaves room for discretion and that discretion perhaps lying with the Town in terms of what number would be considered beyond what would be for the customary home use occupation.

Mr. Frederick Turner asked what criteria would the Town use to make that determination? Are there traffic accidents? Are there kids running in the street? Are there disruption? Is it a community nuisance? Is it a noise noxious use that demands police intervention? Is it a troublesome use that must be stopped? You need to have some criteria?

Mr. David Douglas asked what criteria do you suggest?

Mr. Frederick Turner responded I go by the Second Department. I stick with what the Second Department says.

Mr. David Douglas asked what case is that? Can you give the site?

Mr. Frederick Turner responded it's Incorporated Village of Laurel Hollow. It's **669** New York, sup-second **222**.

Mr. David Douglas asked is that in your memo?

Mr. Frederick Turner responded it is not.

Ms. Adrian Hunte stated did you say sup-second?

Mr. Frederick Turner stated an impermissible extension or enlargement of a non-conforming use "must be a change in volume or intensity which results in a variation or alteration of the specific type of use," that's what the Court says. It must alter the underlying nature of the use. The use is still tutoring disabled students and it has maintained that.

Mr. James Seirmarco stated I think there's got to be something here in common sense. The applicant comes and says this is what I want to do as a Home Occupation. If you grant that, there's some specific stipulations of the number of people there, an implicit, and all the documentation is a particular number. We haven't agreed upon what your interpretation is and our interpretation is but there is a specific number. I don't think that that law that you just read to us means that it's carte blanche no matter how many students you have there it never would negate the non-conforming use. I don't think that's the legislative intent of that law. I'm just having common sense. I'm not a lawyer but common sense says there must be a number where you go over the top.

Mr. Raymond Reber stated there is a change. You're saying "as long as it doesn't change then they can expand." So, if you make **5** widgets and you make **10** and it doesn't change anything that's acceptable.

Mr. Frederick Turner repeated as long as the character of the home...

Mr. Raymond Reber stated I will challenge that. The reason I will challenge that again, I will go back to the minutes on that page **46** where the statement was made by Mrs. Royce “advised she either takes them one at a time or two.” The whole gist of what the Board was presented in **'87** was very personalized tutoring. When you have **20** kids in the building, even if you've got **5** teachers, that's not personalized, that's group teaching. So, the character does change if you go from what the Board thought they approved in **'87** which was individualized tutoring to group class tutoring. That's a change of character of what was going on there so that would say we still have a right to question it.

Mr. Frederick Turner responded just on that point and I want my associate to talk about it. If we want to talk about the numbers and how the school functions because that's important, that's a legitimate concern.

Mr. Raymond Reber stated you brought it up.

Mr. Frederick Turner stated we'll talk about whatever you want but it's not classes of **20**. It's instruction of **5** students at a time.

Mr. Raymond Reber stated that's no individual. Five is not individual.

Mr. Frederick Turner stated **5** is certainly tutoring.

Mr. David Douglas asked are there only **5** students there at the Key Institute at any one time?

Mr. Frederick Turner responded the schedule fluctuates dramatically depending who – we have morning classes of pre-k or evening classes or SAT. Keith has mastered the schedule and will tell you exactly what that is. We want you to know what that is because it's worked for **26** years, but to your point, you can't make up a number. There's got to be a reason for it.

Mr. David Douglas asked what number do you think?

Mr. Frederick Turner responded well, we touched on that last night...

Mr. David Douglas stated it's not a negotiation, I'm asking you now. You're saying that it doesn't change the character and I think you said no matter what the number is but I don't know whether you really – I don't think you mean that no matter how many more students there are it wouldn't change the character, no matter the limit. I was going to make sense of what do you think would be the appropriate number that would keep it within that same character?

Mr. Frederick Turner responded it depends. It depends on the time of day, the age of the students involved and the instruction what exactly is being taught, how many teachers were coming in to teach those students.

Mr. David Douglas asked how many teachers are there now at any one time? And, I'll tell you why I'm asking, it's not a trick question, one of the other things that was mentioned in the minutes of the prior Decision, it says "the instruction is conducted mainly by Mrs. Royce, but she has one assistant from time to time." There may now be a change as the number of teachers there so that's the reason for my question.

Mr. Frederick Turner responded prior to the change in the law though, there were **4**. She had teachers helping her prior to the current schedule of uses which limits the number of...

Mr. David Douglas asked in **1987** she had **4**? In the minutes it says that she had one assistant from time to time.

Mr. Frederick Turner asked were there **4** teachers there before **1993**?

Mrs. Marcia Royce responded absolutely.

Mr. Frederick Turner responded leave it at that.

Mr. David Douglas stated so, what Mrs. Royce statement to the Board in **1987** was incorrect that she has one assistant from time to time?

Mr. Frederick Turner responded it could have been correct at that time but it did expand, it did grow because there was a need for these services and that growth occurred before you're changing the law.

Mr. David Douglas asked do you have the document about how many teachers there were in **1993**? Because you pointed to how many students there were?

Mr. Frederick Turner stated if we're going to get into numbers I want Keith to do that because he's spent a lot of time on that point but we did touch on numbers a little bit at the work session and that was really something that took me by surprise. I thought amortizing and it comes as a surprise because we had never considered such a thing. We think we have a very strong case as a non-conforming use or a grandfathered use.

Mr. John Mattis stated you didn't answer one question, Mr. Douglas asked you the maximum number of teachers and you said prior to **1993** it was **4**, what is it now? That's what he was asking for.

Mr. Frederick Turner responded same. It's the same.

Mr. John Mattis asked so never more than **4**?

Mr. Frederick Turner responded correct. And, verify that with Keith. He's studied...

Mr. John Mattis stated I accept that.

Mr. Frederick Turner stated I don't want you to...

Mr. John Mattis stated you mentioned prior to '93, you didn't mention what it was currently. Thank you.

Mr. Frederick Turner stated we opened a dialogue just a little bit on Monday night about amortizing...

Mr. Raymond Reber stated I think that's premature...

Mr. John Klarl stated I just threw that as an idea.

Mr. Frederick Turner stated it's an idea – it comes as a big surprise to us. We never considered it. We think we have a strong case as a grandfathered use but if that's something that the Board would entertain I would like to take it up...

Ms. Adrian Hunte stated Mr. Turner, may I direct your attention to your exhibit 'D' "student lists." The first page is October 16th, **1987** received by the Town of Cortlandt and I assume those are the **13** original students?

Mr. Frederick Turner responded yes, that's right.

Ms. Adrian Hunte asked and they're taking math and language, math and reading but we're saying they may not have necessarily been taking the classes at the same time during the week? They were?

Mrs. Marcia Royce stated our program is called the Total Learning Plan and the Total Learning Plan which is a registered trademark in Washington D.C., there are **4** classes: there is a teacher in each class, a New York State Certified, Licensed teacher. The children rotate every **45** minutes. That is taking place right now on Saturdays. In the summer time we've added, and I talked about this the last time I was here, that we added art because the unfortunate thing is, there are children who can't read, children who can't do math and somehow how are you going to build that confidence? You build that confidence through the art and it goes out into the other subjects.

Ms. Adrian Hunte stated we're not disputing your program but my question was this **1987** list, lists **13** students in **1987**, and my question was; of these **13** students taking math and language or math and reading, did you have more than one math class a day?

Mrs. Marcia Royce responded they're taking math and reading and they were group lessons. Mrs. Mary Hill taught the reading and I taught the math. There were **2** teachers in '87, myself, Mary and my husband.

Ms. Adrian Hunte asked so there were **13** at one time?

Mr. Raymond Reber stated again, going back to that same document, the October 16th, **1987** document that was sent to the Town, the last line on that page says "without the supplemental assistance from this service and a one-on-one type of assistance these children may be handicapped for life." Again, the inference made here on this document just like in the minutes and in your memo, gives the indication to the Board at that time that this was one-on-one tutoring not group tutoring. It states it right on this document delivered in '87.

Mr. Frederick Turner stated it's an inference. It's only an inference and I don't think that that is...

Mr. Raymond Reber stated but it keeps repeating itself and there's nothing, nothing said in the minutes, nothing documented at any place that counters that inference so to us it consistently gives the impression that the Board sitting at that time was under the impression that this was basically one-on-one maybe two, but not three, four or five. Everything that's stated, everything that's recorded in this case, that was the basis on which the Board was approving the program.

Ms. Adrian Hunte asked may I move on to the next one, the second page after that fourth revised list, **6-26-89** through **6-30-90** "critical thinking skills, group **1 – 8:30**, group **3 – 8:30**." Is one **8:30 a.m.** and one **8:30 p.m.** or are they both **8:30 a.m.**?

Mrs. Marcia Royce responded they're all a.m.

Ms. Adrian Hunte stated so you have **15** students at **8:30 a.m.**

Mrs. Marcia Royce stated they all were **8:30**, this is not really printed correctly. They all begin at **8:30** – oh, I'm sorry, this is the critical thinking skills. That's correct.

Ms. Adrian Hunte stated but there were **15** students in **1989**, in June for **4** or **5** days, I guess that was week in the summer schedule.

Mrs. Marcia Royce responded it was a one-week program.

Ms. Adrian Hunte stated so there were **15** students, were they one-on-one at **8:30** or was that a group setting?

Mrs. Marcia Royce responded no, it was a group of this amount of children per group. It was critical thinking which was an introduction to the summer. We no longer have the critical thinking. It starts right away with the math, writing...

Ms. Adrian Hunte stated their initials in the middle column between the group **1 – 8:30** and group **3** and grade **MR** would you know what that stands for?

Mrs. Marcia Royce responded what happened was that there were two subjects in critical reading: one was a language and one was math.

Ms. Adrian Hunte asked who's initials, do you know who's initials those are? **MR**?

Mrs. Marcia Royce responded that's me, Marcia Royce.

Ms. Adrian Hunte asked did you teach both those classes or one class?

Mrs. Marcia Royce responded yes, I taught the verbal part and my math teacher taught the math critical thinking skills. After an hour, the children changed places. He had the math first, I took the math, my verbal went to the math teacher. Then, they left in two hours. That's **10:30** there, a new group of children came in. The other children left. The ones at the top left in two hours, well a few minutes before **10:30** so there wouldn't be any problem with changing students and classes.

Mr. Frederick Turner stated I want Keith to talk about the scheduling because I know that is a concern of the Board.

Mr. John Mattis asked before we do that I have a question: did you have a comprehensive curriculum of the different classes back then?

Mrs. Marcia Royce responded the curriculum is guided by where the children are. We give an introductory test, an informal assessment and we go by that informal assessment within the group of **4** or **5** children each child can be doing an exactly different thing. We are meeting the needs of each child.

Mr. John Mattis asked but I'm saying, and you told us they go through the whole schedule of the **4** or **5**. Did they do that back then in **1987** also?

Mrs. Marcia Royce responded yes, they did it with two subjects. They did it with reading and math.

Mr. John Mattis asked so would you consider that a comprehensive curriculum?

Mrs. Marcia Royce responded I'm meeting the needs of the children, whether it's comprehensive or not is not the issue. Are we meeting the children's needs so they can surge ahead and be able to read and do math?

Mr. John Mattis stated I'm just trying to get consistency with the minutes we have and the letter that we have and it says, again, "In my operation I have approximately **2.7** children on an average. I do not have any regularly comprehensive curriculum of study." So, I'm trying to determine whether there was or not, just as the testimony in the minutes and in the letter say only you and your husband and several minutes ago you said "you and your husband and an assistant." So, everything you're telling us is inconsistent with this so I'm very confused because I like to go on documents that have been submitted as part of a testimony and part of a Decision and everything you're telling us seems to contradict that.

Mrs. Marcia Royce responded okay, this is a tutoring situation. There is not a curriculum except New York State guidelines and that is what we go by. We go by New York State guidelines. I have hundreds of books. I have so many materials it is incredible, to meet the student's needs, that's what it's about.

Mr. John Mattis asked what's the limit to the number of students in a class?

Mrs. Marcia Royce responded **5**.

Mr. John Mattis stated well, September **2012** ad, in the PennySaver "each class is limited to **7** students." Another inconsistency.

Mrs. Marcia Royce responded but that's for SATs. Sir, that's the SATs.

Mr. John Mattis stated I said class, I didn't say which – I meant any class, what's the maximum number and you said **5**.

Mr. Frederick Turner stated this is tricky stuff.

Mr. John Mattis stated it is tricky because we're hearing different things than what we see.

Mr. Frederic Turner responded but there's a rational and honest explanation for that and I'll ask Keith to take that over.

Mr. Keith Potenski stated yes, I know that a lot of numbers have been thrown around here tonight so hopefully I can shed a little bit of light on the number of students that are currently present at the Key Institute and I'll talk a little bit about, first, scheduling wise what happens over the course of a year so we'll start big picture and then we could narrow it down to what the individual classes look like. Over the course of a **12**-month year, the Key Institute is only in session during **11** months. So, there's an entire month between mid-August and mid-September when there are absolutely no students present there. So, it's important for the Board to understand that.

Ms. Adrian Hunte asked Mr. Potenski, would you refer to back in **'87** and also now; in **'87** what number of hours would you say were devoted to the program and days of the week and now in

2012, what number of hours are devoted to the program or programs and number of days of the week?

Mr. Keith Potenski responded I can try and shed some light on **1987** but of course that was a long time ago and as you know, I was not the attorney for the Key Institute at that time and we're just going based on the documentation that was submitted to the Board so I can do my best to try and talk about what was then but I think it might be helpful for the Board to get a sense for what's really happening at the site today and then...

Ms. Adrian Hunte stated I'd like to know, do we have any information about the date? It is important because going back to the D&O (Decision and Order) back in **1987** it talks about that the home defined in section **88-2** of the Town of Cortlandt Zoning Code, the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. If we were having classes one or two days a week and two hours a day or whatever that's one thing. That's why I'd like to know whether we had **7** days a week back then and **8** hours a day and what we have now.

Mr. Keith Potenski responded the short answer to your question, and again, we're just going based on the documentation that we have because that was over **25** years ago is that when the Key Institute was initially designed, it was designed with **5** classrooms and each classroom was designed to have up to **5** children for the grade school Montessori certified program and the idea was the students rotate from classroom to classroom so that they would...

Mr. John Mattis stated I have a problem with that because we see no documentation that was presented to the Board when they made their Decision that said nothing more than average **2.7** kids, **2** to **3** kids, Mrs. Royce and her husband. That's all we see and we consistently see that and you're telling us that's what it was but this Board was totally misled, if that's what she had, **5** rooms, it was totally incidental and I just don't understand – I'd like to see some documentation other than the total number of students to me is **13** but that could be **3/2**, **3/2**, **3/2** or whatever adds to **13**. I think the understanding was that there was never more than **3**, and it was only she and her husband.

Mr. Keith Potenski responded again, I can't speak as to what the Board's understanding was in **1987** but I can say that we did submit a copy of the floor plan which has not changed since **1987**. The floor plan has not changed and the floor plan at that time included **5** classroom and in **1987**, I'm told, at least two of those classrooms were in use and the Board has a copy of a class list of **14** students from **1987**.

Mr. David Douglas asked but in **1987** there were two classrooms in use? Is that what you're saying?

Mrs. Marcia Royce responded there were two: reading and math.

Mr. David Douglas stated so there were two classrooms in use which would be consistent with Mrs. Royce teaching a student in one room and her husband in another room.

Mrs. Marcia Royce responded sir, my husband took my place when I was not available, when I may have taken a student out to work with him but essentially it was one classroom for reading and one classroom for math. Then, I may have taken a student out or one or two students and worked with them on a one-to-one basis but there was a group...

Mr. David Douglas asked when you took one of those students out in **1987** who was teaching in the other two classrooms?

Mrs. Marcia Royce responded my husband was in one and the reading teacher, named Mary Hill, was in the other one.

Mr. David Douglas asked was there also an assistant of some sort?

Mrs. Marcia Royce responded no.

Mr. David Douglas stated if it said in the minutes in **1987** that you had an assistant that wouldn't be correct.

Mrs. Marcia Royce stated evidently it isn't correct because there weren't any assistance in **1987**. Subsequent to that there may have been one – it's over **25** years ago. I don't remember if there was an assistant in **'87** or **'88**.

Mr. David Douglas stated if you don't remember you can say you don't remember.

Mrs. Marcia Royce responded but I'm trying to remember and in trying to remember I recall – maybe there was one. There's one every summer or two every summer, assistance to assist the teachers.

Mr. John Mattis stated but that's why we're relying on the documentation we have from **1987**.

Mr. Keith Potenski responded sure. I think, as any Home Occupation, it evolves over time and there may have been changes there. what we've submitted to the Board is the class list for **1987** and we've also tried to assist the Board by providing two additional class lists from **1989** and **1992** to show how the system worked. But, I think it's important to go over how the classes are organized and how they're scheduled throughout the year because if you just look at the numbers, I think it's a little bit misleading. In other words, what you're seeing is really – you're focusing on the peak use of the Learning Institute during what's essentially a three-week period over the year. And, the reason why we've done that is because the Code that Mrs. Royce has been alleged to have violated talks about the maximum number of students simultaneously present. That's in the current table of permitted uses. That's why we've done that analysis for the Board but that's not the whole picture, that's only one small piece of the puzzle.

Mr. John Mattis stated but that's what's addressed in the Code is the maximum number. That's the important piece.

Mr. Keith Potenski responded yes, and as far as the pre-existing non-conforming use argument is concerned, I agree with you that's a big part of the analysis but, nevertheless, what we're talking about today is the Key Institute and how it's been operating and comparing that to **1987** and other time periods.

Mr. John Mattis stated okay, let's compare it to **1992** because you gave us a list for **1992**.

Mr. Keith Potenski responded right.

Mr. John Mattis stated it's the summer August 10th to August 28th. There's **1, 2, 3, 4, 5** classes: reading, study skills, math, writing and art. It looks like they don't have more than **6** students, **5, 5**, whatever. Students rotate to each class every **45** minutes, that's from **9:00 a.m.** to **1:00 p.m.** so from **9:00 a.m.** to **1:00 p.m.** they had that maximum number of students in the classrooms rotating.

Mr. Keith Potenski responded correct, and that has not changed. So, that is the grade school Montessori certified program, **5** students per classroom, **5** classrooms. The students rotate through all **5** classrooms for approximately **8:45** in the morning to approximately **12:45** in the afternoon and then they leave and that takes place during **3** weeks out of the year, from the last week in July to the second week in August.

Mr. David Douglas asked so in **1992** they were running a Montessori based curriculum?

Mr. Keith Potenski responded yes.

Mr. John Mattis stated so there were either **26** or **27**, one is crossed out, coming and going at **9:00 a.m.** coming and leaving at **1:00 p.m.**

Mr. Keith Potenski responded that's right and there's a staggered rolling drop-off procedure in the morning, which is strictly enforced and supervised by Mrs. Royce and then a staggered rolling pickup procedure at the end of the day and in over **26** years, thank goodness there hasn't been a single accident or even a near accident. But, again, we are focusing on the busiest **3** weeks over a **12**-month period. There's an entire month where there are no students and there are **9** months during the academic school year where there are **10** students – a maximum of **10** students simultaneously present. I think it's important for the Board to understand that.

Mr. David Douglas asked where's the documentation about that last part, there were no more than **10** students?

Mr. Keith Potenski responded I'm making that information available to the Board right now. Again, the information that's been presented was in reference to the...

Mr. David Douglas stated but we don't have any documentation of that yet.

Mr. Keith Potenski responded and we'd be happy to submit that to the Board if you'd like that.

Mr. David Douglas stated yes, because, with all due respect to your lawyer getting up and saying there were no more than **10** students really doesn't have much weight.

Mr. Keith Potenski responded I should also point out the initial submission to this Board that was made by Mrs. Royce's previous attorney; the first exhibit did include a very detailed schedule.

Mr. David Douglas stated that's what I was asking for.

Mr. Keith Potenski responded I'm sorry, I hadn't remembered that one when you'd first asked the question but if you pull out that schedule that Mr. Menken submitted it does talk about how many students are there during which times of year. The first page of that schedule notes that there are only a maximum of **10** students present simultaneously for that program during the academic school year which is the bulk of the year, and that happens Monday through Thursday. On Fridays there are no students present. On Saturday, which is a larger program, there are **20** students in the morning and only **14** students present in the afternoon and then on Sunday there's a maximum of **14**.

Mr. John Mattis stated well, I'm looking at that schedule. I'm looking at the maximum of **20** pupils in **4** groups of **5**. Saturday's **8:45** to **12:45**, that's **4** months out of the year. It's September, October, March, April only, so there's **4** months and then the **25** pupils in **5** groups of **5** with **5** employees: **8:45** to **12:45** Monday through Friday, that is July and August so **6** of the **12** months you have **20** students or **25** students. Four months you have **20**; two months you have **25**. So, it's not just one or two months out of the year. And, this is the that document you just referred to.

Mr. James Seirmarco stated one technical question. Initially, **25** years ago it was mostly math and math and reading skills. Pardon me. I don't understand what do you mean by one year?

Mrs. Marcia Royce responded the math and reading program was for one year, subsequent to that then we went into the four subject curriculum.

Mr. James Seirmarco asked so are you teaching remedial art?

Mrs. Marcia Royce responded no sir, I explained that but I just want to explain one more thing since you asked the question. We had the graduate students of a college in New Rochelle in '88 and '89, they were four interns who were gaining their Master's degree and I was a site supervisor for the college in New Rochelle in the Graduate school and that went on for two

years; summer of '88 and '89. Concerning the art, I believe I explained what happens. We have a New York State certified art teacher who teaches regular art but children who have learning disabilities they have to have a very strong gift for art. They are able to express themselves through art and what happens is they start feeling very confident and pretty soon they are able to read and pretty soon they're able to do math and the pathway to that is, guess what? Art.

Mr. James Seirmarco stated just asking.

Mrs. Marcia Royce responded okay, I'm telling you.

Mr. James Seirmarco stated all I'm trying to establish is the criteria at the beginning of the school and what it is today and as admirably I'm sure what you said was wonderful.

Mr. John Mattis asked I have another question, a student comes into to you and they take these sequence of courses, typically when somebody comes in for an SAT course that runs, I'll say 6 weeks whatever it runs, and you never see them again, how long do these students – is this a period of years that they come to you or do they generally spend – do they go through that curriculum in one year and they're done? An individual student comes in to you.

Mrs. Marcia Royce responded we don't teach the SATs to one student. It's a group of 7 which you pulled out from the advertisement.

Mr. John Mattis stated I'm actually talking about that comprehensive set of courses that they go through.

Mrs. Marcia Royce stated then that's not 7 in a group, that's 5 in a group.

Mr. John Mattis asked but how does a student...

Mrs. Marcia Royce responded when they come in we informally test them to see what level they're on and then we put them in the appropriate class, grades 1 and 2, 3, 4, 5, 6, 7, 8 that's...

Mr. John Mattis asked will people stay with you for years?

Mrs. Marcia Royce responded yes, some.

Mr. John Mattis asked some do?

Mrs. Marcia Royce responded yes.

Mr. John Mattis asked so it's not like one year and then you're done with the program.

Mrs. Marcia Royce responded oh no, may I explain the situation? I have a mother call me. Her daughter was adopted from India and she was told that this child was un-educable. Her name

was Stephanie. Stephanie came in Kindergarten, first grade all the way through 8th grade. Stephanie has now graduated from undergraduate school and she just got her Master's in Social Work from the University of Buffalo and that child is my God child. What happened is, I was called and asked – they were having a baptism at St. Columbanus, she was 10 years old and had not been baptized and they said – she called me and she said “Mrs. Royce, you’ve done more for me than any other person and I want you to be my Godmother.” That’s a true story.

Mr. David Douglas asked can I ask you a question about the SAT course? You said you give an SAT course. When is the SAT course given?

Mrs. Marcia Royce responded right now the SAT course is in session. It started September 15th. There are three groups: one group has 6 kids, one group has 7 kids, and one group which meets Monday and Tuesday night has 3 kids, not because that was the way that we said you can only come to a 6 or 7 class group. What happens is that the children choose the day they want to come and when that group is filled up...

Mr. David Douglas asked the SAT course you give, those kids have learning disabilities?

Mrs. Marcia Royce responded yes, some of them, absolutely.

Mr. David Douglas stated no, I’m just – are all the kids in the SAT course is it solely for people with disabilities?

Mrs. Marcia Royce responded no.

Mr. David Douglas stated I just wanted to know that. That’s all I needed.

Mrs. Marcia Royce stated I want to add to that, we have had children who have been undiagnosed for learning disabilities and what happens is because my certification is a learning disabilities I am calling the school...

Mr. David Douglas stated Mrs. Royce, my question really isn’t questioning whether you’re successful on what you do. I had a different reason for that...

Ms. Adrian Hunte stated the request according to the Zoning Board of Appeals **case #2012-30** was “an Interpretation that the current level of activity of her home, meaning Mrs. Royce’s home tutoring occupation is a pre-existing non-conforming use based on a **1987** Zoning Board of Appeals’s Decision and Order **#161-87** but if the Interpretation is denied applicant requests a Special Permit for a Home Occupation.” So, we’ve already established Mrs. Royce that you’re doing a fantastic job and I think we’re getting off into other areas and I’d like to come back to this particular original request and where we are and according to this memo it says “the Town Code permits and as of right home occupation for teaching or tutoring of not more than **4** pupils simultaneously with no non-resident employees. Should the Board grant a Special Permit home occupation to allow more than **4** pupils and non-resident staff, the Building Permit could be

subject to conditions required by the Board.” So, can we move on to where we are with that and our discussion of the possible amortization and whether that’s something we can consider and go from there?

Mr. Keith Potenski responded yes, I think that’s an important discussion and in order to have that discussion I think it’s also very important for the Board to also understand just the remaining periods during the year and how many students are present because that’s pertinent to any conditions that the Board might choose should the Board decide that this is not a pre-existing non-conforming use.

Mr. David Douglas asked is the information going to give us in addition to the chart that the prior counsel submitted?

Mr. Keith Potenski responded no, it’s just clarifying...

Mr. David Douglas stated if we’ve got that information -- I just don’t want to be repetitive. If we’ve got that chart, which I think is quite useful but if we have that chart and you’re just repeating it, I think we’ve got it.

Mr. Keith Potenski responded I definitely won’t repeat the information in the chart but I just want to make sure that the Board is aware of the periods during which the Key Institute is closed because I don’t think that was included in the chart and also I want to highlight the fact that the summer session is really the peak time of year when the students are not in public and private school and during the rest of the school the enrollment is very limited, as noted on that chart. Just to clarify Mrs. Royce’s previous comment in answer to the Chairman’s question about whether or not the children attending the SAT class are learning disabled, I think what she didn’t point out was that while they may do more intensive testing for younger children who have not entered the public school system yet and had the benefit of that testing to determine whether or not they’re learning disabled and what their specific needs are, by the time they’ve gotten to the SAT classes, Mrs. Royce may not be doing that testing herself. The students may come to her for that specific reason so when she said that they may not be learning disabled it’s that she’s got a very specific task there and she may not be doing that testing so I just wanted to clarify that for the Board. And, lastly, as far as the number of students enrolled during the course of the year, I just want to point out that the chart that was previously submitted does go through the three summer sessions and as far as the summer sessions are concerned, the maximum number of students currently simultaneously present during summer session **1** which consists of two weeks is **20** students, summer session **2** which consists of three weeks is also **20** students and in summer session **3** which like I said is really the peak time of year is **25** students. I hope that answer’s the Board’s questions.

Mr. Raymond Reber stated I’d like to expand on Ms. Hunte’s statement with respect to just what we’re trying to do here and what you’re proposing or what your argument is. A Decision was made in ’87 to permit Mrs. Royce to perform some sort of a tutoring service at her home. Your argument, I believe what you’re trying to say is: the way she’s conducting business today

basically complies with generally what was approved and therefore it's pre-existing and we should just say "yes it's acceptable." We shouldn't say that she's violating anything and that we should in any way restrict her. I believe that's what you're hoping to convince us of.

Mr. Frederick Turner responded very close. Generally complies, admittedly grew and grew before your change in the law.

Mr. Raymond Reber stated meaning that, therefore it's acceptable.

Mr. Frederick Turner responded yes.

Mr. Raymond Reber stated now, that would hold if in fact there was nothing to indicate that there were some parameters that would agree to that created some limitations and some description of what was to be held and I think that's where we, as a Board, have to make a decision with respect to that issue because as people who have been before our Board before and those who watch it on television know, many a times we have to make decisions that are not necessarily the most logical or the most acceptable but we have to comply with the Code. Our job is to interpret Codes not what we feel should be done or shouldn't be done and I think we state that many times. We think this is a wonderful program. We would love to find a way to say "yes, continue." And, if we could find a way we would do it but if we can't find a way then we have to say so because we can't unilaterally just throw out the rules and say people can come to this Board, get an approval and then go out and do expand, and do what they want and believe that that makes it okay. That's our problem that we're facing.

Mr. Frederick Turner responded okay, well there is a way. There is a way and that is to acknowledge that it grew to its present size and current operating status prior to the adoption of the current table of uses in **1993**. There's an alternative way...

Mr. Raymond Reber stated I'm not so sure that that necessarily is the criteria. If there was a misrepresentation made previously.

Mr. Frederick Turner responded the Town's lack of documentation cannot be held to penalize the Key Institute.

Mr. Raymond Reber stated there is no lack of documentation.

Mr. David Douglas asked what lack of documentation?

Mr. Frederick Turner stated the Decision didn't set a numerical limit.

Mr. David Douglas stated I don't want to go back but the minutes say what the minutes say. The Decision and Order says what the Decision and Order says, you've got the same documentation that we do. I don't want to go back. We started out the whole night talking about that. I don't want to go back to that. You say it's ambiguous, whatever, we've got that.

Mr. Raymond Reber stated I think it's important for the audience to understand what we're wrestling with too. If you go back to the minutes in **1987**, page **43**, the issue back then was as stated in here "Mrs. Royce was cited for operating a private school." That's the whole reason why it came up in '87. People claimed "oh, she's running a school," and the whole point of going before the Zoning Board then was to prove to the Zoning Board that it was not a school. Now, I have a problem when Mrs. Royce says that her summer program is in accordance with the Montessori school program with **4** or **5** classes rotating around. That's describing a school. A lot of what she said here kind of indicates a school but let's go back to '87, that was the case that was brought before the Board in '87, it stated in the minutes and the whole argument by her attorney Mr. Hirsh and Mrs. Royce herself time and time again, paragraph after paragraph and I'm not going to read each one consistently says the same thing: for example top of page **46**, first paragraph bottom of the line by her attorney says after explaining that there's no way this is a school and in fact if it was it would be a violation of the Code back then and it would not be allowed he goes on to say that "because the Institute is so limited in size and scope and its function dictates that it is an individualized tutoring program and not a school." So, paragraph after paragraph the message to the Board was "time out. We are not running a school. We're doing individualized tutoring." That one was approved. Anything beyond that is now changing the scope of what was being done and therefore was never approved. My argument is, if somebody came to me and said "I want to park cars in my yard," and they come in and I ask them "well how many are you going to have?" "Oh, never more than one or two because I'm a hobbyist and tinker with them and everything." That's okay and then **2** years later I turn around and find out he's got **15** cars in the backyard. By your definition that's okay?

Mr. Frederick Turner responded that is the case by the Second Department. That is exactly the case.

Mr. Raymond Reber stated I'm sorry sir, but I don't interpret that case the way you interpret it.

Mr. Frederick Turner stated well, I encourage you to read it and I'm happy to apprise you a copy of it so you can do your own edification.

Mr. Raymond Reber stated that's fine. I'm just telling you my opinion.

Mr. Frederick Turner stated the school remains.

Mr. John Mattis stated that basically says come in and tell him you're going to do – your interpretation of that sir, says, come in and tell us you're going to do it with 'x' number of students, 'x' number of teachers and then just put in however many you want and you're allowed to do that. That's basically what you're telling us to accept.

Mr. Frederick Turner responded as long as the Second Department has said "the character of the use is not altered."

Mr. John Mattis stated the character was individualized two to three student tutoring and all of a sudden it's **5** classrooms of **5** and **6** students. That's a change. That's a major change.

Ms. Adrian Hunte asked is it only the character of the use in terms of the schooling or is it in terms of use of the premises, meaning the physical structure as well because if you've got **25** people in a three-bedroom house, how many bathrooms are there? What is there in terms of Certificate of Occupancy? What is the bearing load on that property?

Mr. Frederick Turner responded the structure has not been altered since **1987**.

Ms. Adrian Hunte stated right, the structure hasn't been altered but you've got **25, 30** people on that premise at one given time and do you have adequate Department of Health – are there Department of Health issues? Do you have adequate restrooms, etc?

Mr. Frederick Turner responded we've never been cited for a violation?

Ms. Adrian Hunte responded that doesn't mean it didn't exist.

Mr. John Mattis stated the Town doesn't go knocking on doors and asking people how they're conducting their business.

Mr. Frederick Turner stated the judicatory board, and we can speculate about violations all day long...

Ms. Adrian Hunte stated well, I'm not going to speculate, I just want – but I'm just asking questions concerning the physical structure. My question was whether the use concerns only the use meaning the schooling portion, the tutoring or does it mean the use in terms of the structure itself and whether it has lost its character as a residential premises and is now being used, basically as a school or something beyond that what those three bedrooms were originally for.

Mr. Frederick Turner stated I'm happy to share the case with you and in all honesty it doesn't say. It doesn't clarify that...

Mr. John Mattis asked are you familiar with Building Code of New York State **2010** section **305-1** Education, Group **E**?

Mr. Frederick Turner responded no, not off the top of my head.

Mr. John Mattis stated it was something that I mentioned at the work session. According to that, the maximum floor area allowance per occupant that students, teachers, everybody, is **20** square feet staff and students. According to the documentation that we got with the dimensions, the total of, and I won't go by the office study room etc, the total allowed in there is only **19** people. When you have **25** students and **5** teachers, you have **30**.

Mr. Frederick Turner asked that's not a violation that's been alleged. That's not why we're here. We're a little bit – we came to you voluntarily for an Interpretation.

Mr. John Mattis stated I understand, but we have to look at everything and we can't approve **30** people in there when we violate the State Code that says you can only have **19**. We can't just throw out a State Code and allow you to have what you want.

Mr. Frederick Turner stated if there's a violation there, we want to know about it so that we can correct it.

Mr. John Mattis responded okay.

Mr. Frederick Turner stated there's an alternative vehicle if you're interested in finding a way to legalize this use or put this issue to rest. There's an alternative Interpretation. There's an alternative vehicle and that is your Town Code **307-83** which says "any use to which a Special Permit is required or for which a Special Permit may be granted as provided which was existing at the time of adoption of this chapter or its predecessor," and I paraphrase and I leave out the parentheticals in between "shall without further action be deemed to have been granted a Special Permit."

Mr. John Mattis stated okay, and we discussed that Monday too but you're leaving out things sir because it says "permitted subject to the securing of a Special Permit." You still have to secure a Special Permit and if you this was approved for **2** to **3** students at a time with **2** teachers I would say maximum is **6** and you have **15, 20, 25** that's an expansion of the use and that's a violation of the Code, therefore, it is not a legal pre-existing because that is a violation and therefore it is not subject to this.

Mr. Frederick Turner stated that Interpretation, I looked at it, and I remember discussing it with you and that's subject to goes back to the previous clause, it's an independent clause; do you remember from your high school English class, "for any use that's designated as requiring a Special Permit." You take these clauses apart, it's a long sentence, it's a run-on sentence with three independent clauses in a row.

Mr. John Mattis stated I took English, in college too.

Mr. David Douglas stated can I ask you a question? Isn't it going to boil down to exactly the same factual issue? Because, it says this covers uses which use was existing at the time of the adoption of this chapter. This is just another hook what's going to depend on the same exact facts...

Mr. John Mattis stated it's a lawful use.

Mr. Frederick Turner stated Mr. Reber has asked if there's any way to...

Mr. David Douglas stated I just want to clarify, so the same exact facts about how it was used before and it had...

Mr. Frederick Turner stated the facts remain the same.

Mr. David Douglas stated and the answer to whether this falls under **307-83** is going to depend on the same exact facts as whether or not it's a pre-existing non-conforming use correct?

Mr. Frederick Turner responded the analysis is similar, yes.

Mr. David Douglas stated no. It's either the same or not. I'm not trying to put you on the spot tonight, you can tell us next month if you think it's any different. To my mind, it's identical but if you think there's a difference, we'll do the analysis under both.

Mr. Frederick Turner stated I'm hesitant to admit at the top of my head.

Mr. David Douglas stated that's fair enough.

Mr. John Klarl stated like I explained at the work session on Monday night is one of the big reasons why this section to the Code is we had problems with Contractor's Yards throughout the Town so when we had these renewals about the Special Permits of Contractor's Yards we said well wherever you are a Contractor's Yard right now and you have to get a Special Permit we're going to deem you to grant the Special Permit you have to come in and apply and that's the essence for that piece of legislation.

Mr. Frederick Turner stated and those contractors I believe that was involved in our discussion about amortizing out the use.

Mr. John Klarl stated I threw out, as you know, one of the tools in a tool case of Zoning and Planning is if a town doesn't like a given use and a given use whether it be a building or whether it be the use itself, one thing we can do to get rid of it is by amortizations and amortizations come with a big examples there are billboards, which have been done in the Town of Cortlandt, been done in the Village of Buchanan. Amortizations have been used for junk car lots and I think the City of Peekskill did that on lower South Street and they give a certain amount of years to kind of get out of town. I threw that out as one of the uses that this person obviously has an on-going use and obviously she would claim to us so I think it's certainly would claim to us that it would be a hardship for her to close down tomorrow so amortization allows you to feather your use to a certain point and then your use ceases to exist. I threw that out as something I'd never discussed with the Board but obviously you picked up on that thought also.

Mr. Frederick Turner responded as a conversation we'd be willing to have it came as a surprise to us. It's something we need to really understand the implications of and really plan and have an earnest discussion about. We propose a third alternative as well and that would be as well the use is entitled to a Special Permit. With all that, and in closing, I appreciate the time. I know

time is precious. I'd say only that the use was grandfathered, was recognized as a legitimate Home Occupation in **1987**, it grew, admittedly after '87 but before your Code was changed, and therefore, it is entitled to...

Mr. John Mattis asked but was that growth legal? Can you get approved for something and just grow it? We've never seen that before.

Mr. Frederick Turner responded yes. Well, your attorney will show you and I will show you the case which say an intensification or enlargement of a non-conforming is permissible.

Mr. David Douglas asked can you tell us the cases now? It'll make my life easier. If they're in your memorandum I don't need them again.

Mr. Frederick Turner responded one's in the memorandum, the other one is the case I gave you **669** New York sup...

Mr. David Douglas asked anything else, just what's in your memo and that?

Mr. Frederick Turner responded those two.

Mr. David Douglas stated okay that's fine.

Mr. Frederick Turner responded with that, I appreciate your consideration to your careful consideration regarding this case which is, of course, a woman's livelihood providing a much needed, vital service to the community and many, many success stories have come out of it.

Mr. John Mattis stated and we totally agree with that.

Mr. Frederick Turner responded I know you do.

Mr. Charles Heady asked I have to ask you one thing Mrs. Royce, in the memorandum you sent to us it's got on here Mrs. Royce was informed that she "did not need additional Certification of Occupancy to renovate and extend the residence." I'd like to know whoever told her that she didn't have to get a Permit to change that garage over to a classroom. Somebody must have told her. That's a statement you made.

Mr. Frederick Turner asked is that in her affidavit?

Mr. Charles Heady responded yes, it's the second page.

Mr. Frederick Turner asked it's page?

Mr. Charles Heady responded **2**. The second page over.

Mr. Frederick Turner asked of the affidavit or the memorandum?

Mr. Charles Heady responded it was the memorandum. I can't believe that anybody in the Code Enforcement would tell her that she could do that without having the Permit...

Mr. John Mattis stated I might be able to shed a little light on that. Back in **1987** the Zoning Board reported to the Planning Department and the Building Department that issued the Permits was a different Department so the Zoning Board – since our Building Department, our Code Enforcement Officer is the one that issues the Building Permits, it's an automatic that he knows that but back then, since they were attached to the Planning Board, they may not have known – they may have assumed that it was done. They never had any direct knowledge whether these Building Permits were applied for or not.

Mr. David Douglas asked you're finished? Does anybody else want to be heard tonight? With the caveat that we don't need to hear what a great program – I know that some of you might want to come up and say what a great program she runs. That's not necessary. We're all convinced. This has been said before that it's a great program.

Mr. Frederick Turner stated let me just add, we've tried to work with this case came to the building, Code Enforcement Officer on a complaint and we reached out to Mr. Hessi, the complaining neighbor and asked to please accommodate his...

Mr. Ken Hoch stated Mr. Turner, let me correct that. No one knows who the complainant is and it wasn't Mr. Hessi.

Mr. Frederick Turner stated we have reached out to all the neighbors on both sides of Mrs. Royce's house and we have a letter of support from the neighbor closest to her. We reached out to the neighbor on the other side and there's no communication there. We hoped there would be to address whatever concerns he may have but we don't know them.

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

Mrs. Robin Alpern stated I live at 228 Union Avenue in Peekskill and my daughter Guenevere has been attending Key Institute for **2** years. I think there were three things that I wanted to say; one is that there's been a lot of talk about how many students are there and from my bringing my daughter there for the last **2** years, as far as I can tell, during the summer camp is the only time that the building is filled. The other Saturdays and Wednesdays there just aren't a lot of kids around. In fact, sometimes I worry how is she going to keep the thing afloat with so few people there? Secondly, it seemed like several people got kind of agitated about that well it has turned from tutoring into school and I have to confess, I don't know how you define the difference but it seemed to me like people were kind of on the spot making it up that well if you have a certain number of kids that's a school and not tutoring. I'm not sure that that's the case. There probably was a third thing but now I forgot it so thank you.

Mr. Michael Hessi stated I wasn't going to say anything but since my name was brought up – I did not bring this complaint. It had nothing to do with me. Let's get that straight. I hope they see me. I hope you hear this. That wasn't me. I didn't bring this complaint. I just want that on the record. Thank you.

Dr. Brenda Ayres stated I spoke a couple of months ago regarding the Key Institute and my experience there and I'd also like to speak to the operation of the facility because that that's been something in question. My older daughter went through and now my younger daughter and hopefully my infant son will be able to go through – dropping her off and picking her up, there's never been more than **10** kids in my experience, on site. To speak to the question about do the children, is there a continuity with the SAT classes and things like that, my **16** year old has been taking preparatory classes since I think **7th** grade, he's now in **11th** grade and continues to doing fabulously because of that. There is – and that is one-on-one tutoring. To speak to the issue of whether there is one-on-one attention with the children, yes there are **10** children, two classes of **5** but I do know and have observed myself that the children are given individual attention so while there are larger groups; **5** kids per group, there are break away times where the kids are given one-on-one attention from the teachers.

Mrs. Laurie Weiss stated my son went through the summer program and we went through the summer program I think in his group there was only **3** students and I know there is the question about the tutoring. I did not put him in the program for the two weeks, actually it was for three weeks, for a school. I put him to get him a little help over the summer for the following school year. Whether it's **3** kids or **5** kids, I can see where it would sound like they were at a school because they rotate but it is individual. It's hard to – it sounds subjective but it seems individual. They do take the time with each child but he had **3**. And, as far as drop off and pickup, there was never more than **2** cars when I was there and I never, for the **5** years that I've lived down and around the corner, I never realized what the Key Institute was. I just saw a little sign that had a rainbow so I never really saw a lot of traffic other – not until I had heard about it and then brought my son there, but she's very strict on drop off and the kids get escorted to the car and picked up at the car, very strict almost too strict. She tells you and reminds you at every drop off and pickup and I think she's doing her best to be respectful to the neighborhood and trying to keep it individualized even though it is in small groups and that's how it felt going through the process. Thank you.

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

Mrs. Grace Angelo stated one of those teachers that you've been debating about. I've known Mrs. Royce for over **20** years now and worked for her in different capacities. While there was a peak enrollment time that unfortunately was long over, so if people are concerned that there are **20** and **30** students leaving this building at one time, that's not happening anymore. The reality of the recession is that class is now very small, especially on the Saturday program. While there are other groups that rotate, often they don't have more than **3** students in a group. I just want to say that that's what's going on in today's world and it's affecting the Key Institute also and in terms of parking and traffic, never has there been ever an issue with that. Mr. and Mrs. Royce

are very concerned about the neighborhood and don't want to irritate any of the neighbors. Thank you.

Mrs. Cathy Newinski stated just lastly, because I know you've been here a long time. I just wanted to reiterate that Marcia really does watch these kids. She has them under strict control. The parents are even nervous when we have to drop off these kids because she's got us so regimented. The kids take breaks. They don't wander. They don't leave her premises. I've had three kids go through her program and I have to say, she does a wonderful job and to think that she might not be here for other kids is really very, it's very unfortunate because I think she brings a lot to the community.

Mr. John Klarl asked what do the kids do on a break?

Mrs. Cathy Newinski responded they stand right outside that door. They don't leave. They stand right there. Marcia has them supervised so those kids do not wander. I have a **24** year old who was like "do you want me to come down and talk? Marcia had us under her thumb." So, you know if you're thinking that these kids are wandering or walking on people's lawns or doing things like that, they're not. She does a wonderful job so I know you've heard that a million times but I just think that you have all these parents here because we don't want to see her out of business. Thank you.

Mitchell stated when I went to the Key Institute and I got dropped off I wasn't allowed to leave the car and go inside unless a grownup would take me inside and when I was supposed to go outside they wouldn't take us outside unless I was with a grownup and unless my car was there. Thank you.

Mr. David Douglas asked anybody else? Somebody want to make a motion?

Mr. Charles Heady responded I make a motion on **case 2012-30** to adjourn it until November.

Seconded, with all in favor saying "aye."

Mr. David Douglas stated **case #2012-30** is adjourned until next month. Thank you. We're going to take a **5** minute break

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NEW PUBLIC HEARING:

- A. CASE No. 2012-36 Brian & Stacey Retallick** for an Area Variance to allow storage of a travel trailer in the side yard on property located at **130 Highland Dr., Cortlandt Manor.**

Mr. David Douglas stated my understanding is that Mr. Hoch we got a notification for them – they want to adjourn this.

Mr. Ken Hoch responded yes.

Mr. David Douglas stated I believe they want to adjourn it to December? We talked about that we would agree to the adjournment on the condition that they not put the trailer back on the easement.

Mr. John Mattis stated I wouldn't want it anywhere on the property in the front yard. Keep it off the property unless it's in the backyard until we determine, until December. It sounds like they're just buying time.

Mr. Ken Hoch stated Mr. Retallick sent me an e-mail stating that the trailer camper was placed off-site in Orange County for winter storage. The plan is to return the trailer in the spring pending Board approval.

Mr. John Mattis stated but we just want to make sure he doesn't bring it back.

Mr. Ken Hoch stated he said he won't bring it back until there's a Resolution here.

Mr. Raymond Reber stated we'll just put it in the record.

Mr. John Mattis stated we'll put it in the record so that it doesn't appear.

Mr. John Klarl stated but the condition is that he not place – if the R.V. came back that he not place the R.V. in the front yard or on the easement.

Mr. David Douglas responded right.

Mr. Raymond Reber stated front or side. I think the Code requires it to be in the back.

Mr. John Mattis stated the Code only allows the backyard.

Mr. Raymond Reber stated he can't violate the Code until we review the case.

Mr. John Klarl stated and then he shouldn't violate the Code either.

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

Mr. David Douglas stated **case #2012-36** is adjourned to December subject to that condition that was just discussed.

B. CASE No. 2012-37 **Lawrence Baskind** for an Area Variance to allow two back-up generator propane tanks in the front yard on property located at **5 Radzivila Rd., Montrose.**

Mr. David Douglas stated my understanding is that's going to be adjourned because he did not do the advertising that's required under our Code. That's going to be adjourned until November.

Ms. Adrian Hunte stated I make a motion to adjourn **case #2012-37** to the November 2012 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-37** is adjourned until November.

C. CASE No. 2012-38 **Kimberly Harcourt** for an Area Variance for Accessory Structures, three sheds and a playset, in the front yard; and an Area Variance for the height of a front yard fence on property located at **29 Susan Lane, Cortlandt Manor.**

Mr. John Klarl stated Mr. Chairman I'm going to recuse myself.

Mr. Gordon Fine stated I'm the attorney for the applicant on this matter. What the applicant is seeking is an Area Variance for several structures; there are two sheds and a playset in what's designated as the front yard. There is also two sheds, a playset and a play house; it's three sheds basically and a playset and a fence that has a maximum height of **6 feet 3 inches** where **6 feet** is permitted also in the front yard. Basically, the base of the application is that the reason it's in the front yard is the location of the property. The property is unique in the sense that it's a dead-end piece of property and the side of the house where these items are borders on that side by Route 9 which then makes it designated as the front yard instead of a side yard. Ordinarily, you would think of it as being in the side yard but because of its location it's designated as the front yard. The property is just under **2 acres**. It's **1.881** acres I believe according to the survey that was submitted. The structures have been there for approximately **11** years. If you look at that time-wise you're not creating any kind of change in character to the neighborhood because it kind of sets the tone of the neighbor having been there for so long. It's also my client's understanding that when these items were first put in, **11** years or so ago, they did comply – or at least the playset complied with the Ordinance at the time, if there was one. It came out of compliance based upon the change in the Code. These items are in that section of the property also, based upon the topography of the property, you have a steep slope wooded area going down to Route 9. You can't put anything over there and that's also still the side yard. What would be the rear yard has ledges and also steep slopes and the other side of the property has lake property on there so you couldn't put the items over there. If you permitted the playset, I'll discuss the playset at this point, excluding the fact that Route 9 is where it is and that's what creates the front yard, if you look at the playset in its location it's sort of juts out beyond the driveway on the side of the house. It is behind the fence so it's not that – you can't really see it from the outside. It's also

not a major piece of playground equipment. It's basically a slide and a swingset, so it's not a very large structure. It would not by allowing it to be placed there, it wouldn't create any kind of all encompassing precedent that you're saying you can now put playsets in the front yard because it is unique to this property. The uniqueness of the property, once again being the topography, the location and the fact that it's a dead-end property would set it aside from possibly many other applications of this nature where someone just wants to put a playset in their front yard. I have a topographical map of the property if the Board is interested in seeing it, otherwise, I'm open to any questions you may have.

Mr. Raymond Reber stated I did visit the property so I am familiar with the layout and the issues here. You also appeared before us during the work session. We discussed the issues to some extent there. I think the general consensus of the Board is that the issue of Route 9 as a true front yard really is not appropriate here. The house is on Susan Lane, it faces Susan Lane, even though it's at the end of the cul-de-sac. Route 9 is a distance away. There's quite a bit of vegetation and what have you. I don't have a problem with basically ignoring that as a true front yard and saying yes this doesn't cause any real complications. Then the question is; all right, let's take a look at the true front yard which is the direction the house is facing towards Susan Lane, and again, the two sheds still I think pretty much comply if you look at the line of the house. They're to the side and into the back of the house so there's not an issue there. The play house, one could argue, maybe but even there I would concede that it's so close to being near the line on the side there. Again, I would not have a problem – anybody that looks at it would not think “oh gee, they're encroaching and they're doing something strange.” The only issue is the playset and you made an interesting statement here because, as you said, the key is; do we set a precedent here that opens it up so that other neighbors and people can say “oh well, we can do what we want with playsets?” And, it's probably true if in fact this playset has been in place as long as you claim that back then it wasn't clearly stated, references weren't made to playsets in terms of what a structure was in the front yard. That came later when the issue did come before the Town and they clarified that and they said “yes, it is a structure and it applies to that just like anything else.” My feeling on this is I would almost agree, or I would agree I think personally to say; leave the playset where it is, it doesn't bother anybody and if it's been there all these years and it's behind the fence the uniqueness here would be it was there prior to the Town making the Decision that it's not. I guess my point here is, if you can prove that, if you can show a bill or purchase or something that shows this playset was purchased prior to **1980** or whatever, or get testimonials from neighbors somehow get some documentation to say “yes, that playset predates the Decision of the Town,” I personally say that's a unique situation. It goes back to pre-existing a Code definition and therefore I would say I would not have a problem with it.

Mr. Gordon Fine stated I don't know if we have any documentary of it. I have Mr. Kaplan here who's one of the property owners who can provide testimonial evidence and perhaps he knows of some kind of documentary evidence that I don't know. So, I would ask that Mr. Kaplan...

Mr. Raymond Reber stated or even neighbor testimonials if they'll come forward and state.

Mr. Gordon Fine stated I think they were some neighbors here. I don't know what they're going

to say but they are here but Mr. Kaplan can speak to what he knows of the length of time it was there.

Mr. Raymond Reber stated while we're at it, the fence issue, our Code says front yards **6** foot fencing, it's a nominal dimension but that's what it says. The fence that was purchased is a **6** foot fence, the problem is the post. The posts extends beyond it and again, personally I don't think – my problem with that is as long as the posts aren't **4** feet long and flags waving on them. He needs just a couple of inches extension which is typical standard posts, again I would have no problem with saying that's, in essence, in compliance with the **6** foot ruling.

Mr. Mike Kaplan stated I reside at **29** Susan Lane, Kim Harcourt is my wife. The place was purchased in late **2001**. I'm sure if we dig up hard enough maybe we can find something. We did speak to Barbara Miller of the Town. We did speak to her and she said there was no regulations as far as playsets. We did speak to the Town at the time there was no on-line with the Town Code so I didn't look at the Town Code but we were in constant contact with Barbara Miller because we were building our house. We did general contract it and we did have a lot of communication with her and we did inquire prior to putting down the playset. It's also cedar. It blends in with the natural surroundings. We didn't go for the carnival orange, red top. We went to a neutral green top to blend in with the environment. There is a tree in front of it to cover up the fence. There really is no other place to put it. We could have put it in the rear yard – we would have preferred to put it in the rear yard. It just really was impossible. There is absolutely no other location to put the swing.

Mr. Raymond Reber stated as I said, if in fact you did put it up at a time when the Town really didn't have an objection then it's kind of hard to say now you have to move it because it hasn't created any problems. I wouldn't have a problem with that. And I think that's the key: do we accept the fact, as you stated, Barbara Miller at the time said "no problem."

Mr. Gordon Fine stated and I would also point out, with all due respect to your position and all, but if you look at the **5** criteria to the area Variance, I think it would be met by that as well.

Mr. Raymond Reber stated yes, except the problem we have is, even though you can say it doesn't affect it, if everybody decided to put swingsets or playsets or whatever in their front yard and people didn't have fencing and all of a sudden you have kids running around the front – that might change the character of the neighborhood. His case maybe doesn't so that's why I said – if I can come up with some distinction that says he's somewhat unique and it's very easy if he predates the ruling.

Mr. Gordon Fine responded sure, but that's why also I said if you look at the uniqueness of the property as opposed to anybody else who might be applying for a front yard for this playset there may be differences.

Mr. John Mattis stated I believe it's only visible from one other house and it's at the end of a cul-de-sac so there's no traffic going through there either.

Mr. Gordon Fine responded correct. You'd have to be pretty much on the property to see it.

Mr. Wai Man Chin stated I'd like to say, based on the topography of the property towards the back right hand side of the house, there's a lot of ledge rock right there and then it drops off substantially back as you're back towards the back of the house, it drops down **20** feet in elevation. Anything back there would be almost impossible to put anything over there. I would not have a problem with that playset where it is, which is basically on the top of the septic fields.

Mr. Gordon Fine stated I have nothing else unless you have any questions. Otherwise I'll yield the floor.

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

Mr. Alan Bivona stated I live next door, **29** Susan Lane, to the property in question and just wanted to bring up a couple of issues; 1) the sheds are new. The play house has been there for quite some time but there are two new sheds that have arrived that's only this past year. One of them is being used full time as a kennel for his dogs which has impacted the neighborhood because he built a fence around the kennel and leaves the dogs in there **24** hours a day, **7** days a week. That creates a problem when the dogs bark incessantly. I've had to call the police many, many times, to ask for the dogs to be quieted down. They go away, they leave the dogs outside and it's not just a shed, it's the home for the dogs now so, that really does impact the neighborhood.

Mr. Raymond Reber stated unfortunately, I don't think we have jurisdiction over that. There's no law that says they're in violation by putting a shed that houses a dog with a fenced area. Obviously he can't have dogs disturbing the neighborhood but I think the issues you're raising are issues for Code Enforcement and they have to address it, it's something that, we as a Zoning Board, don't have jurisdiction over.

Mr. Alan Bivona stated the second issue is the fence, while it's not very much over the legal limit, I would like to know if, as a neighbor, I would like to – he doesn't really upkeep that fence up. It's a white fence. It's never been washed or cleaned in the entire time it's been there and at this point I'm kind of just tired of looking at a fence that's in disrepair and want to put a fence up that blocks my view of his fence so is it then justifiable to put my fence up so it's equal to his fence and if his fence is a little over, my fence is going to be a little over too and that's not going to be an issue.

Mr. Raymond Reber stated I think we stated that the fence itself is not – it complies with the **6** foot. It's a **6** foot fence, it's the posts that extend a few inches that support it. There's nothing illegal about the fence. It's a standard type of white plastic fencing. When I was out there, it wasn't in disrepair, it wasn't broken, it wasn't falling down, it wasn't damaged, it wasn't even dirty so I can't...

Mr. Alan Bivona responded well I brought pictures with me today where there's green slime on the fence.

Mr. Raymond Reber stated but again, there's nothing – it's Code that says – I have a yard where I have a lot of shade and I'll tell you, there's certain parts of my house and parts of my trees and stuff in my yard that are green. It's the North side.

Mr. Alan Bivona stated I don't mean to cut you off but my only question is if I put a fence up that matches it that's exactly the same, Mr. Kaplan has filed many, many complaints against us and I don't want to have to be dragged...

Mr. John Mattis stated this isn't a these and them thing. The issue with the fence is only the **3** inches. We do not have jurisdiction in whether it gets moldy or something. It may or may not be a Code Enforcement issue. I don't know but it is not an issue of this Board. We would grant you relief for the **3** inches for the caps too.

Mr. Alan Bivona responded okay, that's what I wanted to hear.

Mr. Raymond Reber stated you would get the same relief.

Mr. Alan Bivona stated that's exactly what I wanted to hear. Thank you.

Mr. Dave Van Voorhis stated I've run into you once before when we had our problem with our wood pile and I appreciate your service helping me straighten that up. My only contention with this whole thing with the fence, I really don't care, it's been up for **10** years whatever is the fact that they brought in soil, raised it up, now they've created a dam which originally, when they had the Site Plan approved Ed Vergano and I had a discussion that there was not to be any filling of the swell that went under the fence. It was one of the reasons why that fence was raised up higher was water goes under the fence and down his driveway and into the Annsville Creek. Now, that whole area, some places it's up to a foot, it's been filled with gravel and soil and it's created a dam. It's backed up water into our septic field and it's creating a health hazard for us. We think that's very contingent on what you decide on this fence. One of the things that really annoys me is that he does all of this on the weekend. You can't be called. Nobody can be called. He comes in, brings in his dump trucks, dumps everything in the backyard. I have copies of the stop work orders on projects he's had in the wetlands in the backyard. He comes in on the weekend with an excavator, digs it all up, pushes the stuff into the wetlands, cuts down trees. Say something about it, it takes a week to have anything done about it. He's dug, looks like a drain from his septic field into the Annsville Creek across the wetlands. No one says anything about it. It's a Health Department problem. How many of these things do we have to put up with as a neighbor? It's not sour grapes. It's just basically, we appreciate our environment. We'd like it to stay that way. It's getting – it's like Little House on the Prairie over there with all these little sheds all in our view sheds.

Mr. Raymond Reber stated the issues you raise are obviously serious issues. If drainage is

altered and water is re-routed those are serious issues that should be addressed before there's any topographical changes and that's a standard procedure but it's not a Zoning Board issue. That's Code Enforcement in cooperation with the Engineering Department and, even if they do something, I'm just talking generic not just this specific case because there have been other situations in the Town where I know that – okay, somebody does something over the weekend, it's done, the Town goes and checks it out, following that they can ask, they can insist that it be remediated. There's nothing that stops the Town from saying “no, you did something illegal. You filled in the wetlands, or you did whatever.” They can say “no you've got to fix that.” So to say that just because he does it on the weekend and there's no recourse is not true. The issue though is not our issue. The issue is you've got to work with Code Enforcement and they in turn with the Engineering Department to decide; have they done something here that is either drastically changing the drainage and the issues...

Mr. Dave VanVoorhis stated I have requested that the Board comes out and take a look at it because it's obvious. You can see it under the fence.

Mr. Raymond Reber stated but again, unfortunately we can't address that. That's not our...

Mr. Wai Man Chin stated as Mr. Reber has indicated you have to talk to Code Enforcement on things like that.

Mr. Dave VanVoorhis responded I have.

Mr. Wai Man Chin stated we're the Zoning Board. That's not our issue.

Mr. Dave VanVoorhis stated Zoning Board is issuing a Special Permit for these buildings correct?

Mr. Wai Man Chin and Mr. Raymond Reber responded no.

Mr. Raymond Reber stated we're deciding if they need a Variance because of their location and if their location specifically causes a problem, in other words, if they were going to put a building in such a way with a foundation that it stops drainage and routed water back into somebody else's yard then that would affect us. I don't think, in your situation, you can say that the location of the playset or the buildings have done that. I was at the property. I don't think so.

Mr. Dave VanVoorhis responded I don't care about the playset. It's been there for **10** years, fine. I have a problem with him putting a kennel on the edge of a wetlands and then washing the excrements from his dogs into the wetlands.

Mr. Raymond Reber stated but the kennel per se we have no control over it because it doesn't require a Variance. The only things that require a Variance is really, other than the Interpretation of Route 9, is the...

Mr. Dave VanVoorhis responded you allow kennels in a wetland?

Mr. Raymond Reber responded no.

Mr. Dave VanVoorhis stated it's in the wetland. I can show you.

Mr. Raymond Reber stated but that's a Code Enforcement – if they've got things in the wetland, violating wetland requirements, that's a Code Enforcement issue it's not up to us.

Mr. Dave VanVoorhis asked so you're going to grant him a Variance so he can put a kennel in...

Mr. Wai Man Chin responded no. How many dogs are there?

Mr. Dave VanVoorhis responded **3**.

Mr. Wai Man Chin stated **3**. I don't know how many dogs are allowed but again, that's something you have to talk to Code Enforcement. He's allowed **3** according to Code Enforcement right now. Again, this is a not an issue for the Zoning Board. If there's any complaints with his dogs barking or whatever then you have to call either Code Enforcement or the police Department or something like that. We're not giving him a special thing for his dogs, period.

Mr. James Seirmarco stated the location he shows the sheds on the drawings do not show them to be in the wetlands. If you take exceptions to the location of those sheds.

Mr. Dave VanVoorhis responded I do take exception to it. Can I show you what I have?

Mr. James Seirmarco responded sure.

Mr. John Mattis asked is that the topographical map?

Mr. Dave VanVoorhis responded yes. Here is your own stop work order him working in the wetlands.

Mr. Wai Man Chin stated excuse me, let's get back to the issue. That's Code Enforcement's stop work order not Zoning Board's.

Mr. Dave VanVoorhis responded but this is where you put the sheds on this property.

Mr. John Mattis stated we have no jurisdiction over the wetlands, however, what I would do, if we approve this I would make it subject to the Engineering Department and Department of Technical Services – I would make sure they have their approval that it is not in a wetland. That's the best we can do.

Mr. David Douglas stated that's a good idea.

Mr. John Mattis stated and then they would have to come out and take a look at it and that would solve it once and for all. And, if they determine that it is it'll have to be moved.

Mr. David Douglas stated I think Mr. Mattis made a good idea. If we could approve it subject on it not being in the wetlands. Code Enforcement will come out and they'll say it is or it isn't and if it is then it's not approved.

Mr. Dave VanVoorhis responded thank you.

Mr. David Douglas asked is there anything else you wanted to say or you were done?

Mr. Dave VanVoorhis responded no.

Mr. Gordon Fine stated just as a matter of clarification, back on August 2nd there was a site inspection done, I was present. Your Code Enforcement officer was present as was someone from the Highway Department and they reviewed the situation with the fence and the drainage and the additions to the ground, the gravel that's been added was actually added by the Town to correct the drainage issue. So, they're fully aware – your Highway Department's fully aware of any drainage issue. They were the ones working to correct it, not my client. As far as the wetlands are concerned, the Town – the Code Enforcement officer saw the sheds where they are. I don't believe they're in the wetlands or the wetlands buffer but that's obviously subject to review of it.

Mr. David Douglas stated and if not then there's no problem but if they are...

Mr. Mike Kaplan stated this all started because if you recall my neighbor had the firewood...

Mr. David Douglas stated no, the firewood has nothing to do with it.

Mr. stated no, but the Board did grant my neighbor's shed in a wetlands Variance.

Mr. David Douglas stated Mr. Kaplan, I don't want to get in the middle of it. This is between neighbors.

Mr. Mike Kaplan stated my whole property is in a wetlands.

Mr. David Douglas stated okay fine. I don't want to get into the dispute between you and your neighbors. Okay? Mr. Hoch, was there some issue about merger of the lots or has that been resolved.

Mr. Ken Hoch responded I put that in there because according to the tax records, there's still

three separate parcels and the approval was given to that house as one lot and if they're not merged, which they need to be you now have accessory structures on a lot with no main residence on it which can't be because the Permit was issued for the three lots. As a housekeeping issue I just recommend that that in fact the applicant come in, go to the assessor and put these three lots together so they're on one parcel.

Mr. John Mattis asked would we make that subject to that being merged also?

Mr. Ken Hoch response you could.

Mr. Gordon Fine stated I'm not familiar with that section of your Code but is there a merger doctrine in the Code?

Mr. John Mattis responded yes.

Mr. Gordon Fine stated so it would apply anyway.

Mr. John Mattis stated if the properties are adjacent, same owner and they're sub-standard size they automatically merge, but then it should be documented.

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

Mr. Raymond Reber stated I guess the question is we say conditional engineering, just confirming that there isn't a problem as far as location of the sheds. Do we need anything further – does this Board want anything further with respect to the playset or are we willing to accept that that's a unique situation. It is at a cul-de-sac. It really doesn't affected by traffic since there's no traffic going through there and it's been there for a number of years, pre-dating presumably the decision by the Town that playsets do represent structures in the front yard and if that's the case do we close and reserve? Is that the consensus?

Mr. John Mattis responded I think that's a good idea because this is a tricky one.

Mr. David Douglas responded yes, that's a good idea.

Mr. John Mattis stated for the verbiage.

Mr. Raymond Reber stated so I make a recommendation on Zoning Board of Appeals **case #2012-38** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on Zoning Board of Appeals **case #2012-38** for Kimberly Harcourt at

29 Susan Lane asking for Variances to allow accessory structures; essentially **3** sheds and a playset in the front yard as defined primarily by a second front yard being Route 9 except for the case of the playset which is also in the front yard relative to Susan Lane, that the Variance and that there's a **6** foot fence...

Mr. David Douglas stated we close and reserve.

Mr. Raymond Reber stated we're going to close and reserve the Decision on it **on case 2012-38**.

Seconded with all in favor saying "aye."

D. CASE No. 2012-39 Anchor Sign Inc. on behalf of Brown Group Retail, Inc. (dba Famous Footwear) for an Area Variance for a business wall sign on property located at **3163 E. Main St. in the Cortlandt Town Center, Mohegan Lake.**

Ms. Maria stated with Light Bright signs and Anchor is my customer. They couldn't make it tonight from North Carolina. Sometimes they fly out and they do their own meetings but tonight they hired me. Basically, we're asking for a storefront sign that's **2** foot **8** inches high by **28** feet **8 ½** inches long.

Mr. James Seirmarco stated I visited the site and there's an existing sign from the previous business and I think the previous business that was an adequate size sign and I see no reason to make this business with any larger sign.

Ms. Maria stated I don't know what size the previous sign was.

Mr. David Douglas stated I think it's **57.8** square feet.

Mr. John Mattis stated I think what we have to take into consideration in this is if you have a long name you get penalized. Mr. Hoch do you know what the height of the letters was? I believe that was part of the hospital – wasn't that their fitness center.

Mr. Ken Hoch stated I didn't have that file John.

Mr. John Mattis stated but generally we've approved up to **3** feet and this is **2** feet **8** inches. This is in the character of that whole shopping center. The fact that it's such a large Variance it is because it is Famous Footwear. If its name was ABC Shoes, there wouldn't be a problem and we'd probably give her **3** feet and it would come out to a smaller Variance.

Mr. David Douglas stated but if its name were Wellness Center that's basically the same number of letters.

Mr. James Seirmarco stated right, that's exactly – Wellness Center is about the exact same

number of letters.

Ms. Maria asked excuse me?

Mr. James Seirmarco stated the previous occupant of that building was called the Wellness Center so that's the same number of letters as Famous Footwear, roughly.

Mr. John Mattis stated I would argue as I do on every one of these cases that we're not on a street and we're not creating eyesores for people driving up and down the street. This is a shopping center. We know the curb cuts are bad. We know the visibility is bad in there. It has the highest incidence of accidents in the Town and that was documented in a traffic seminar that we had and because of that I don't have a problem making a big sign that you don't have to strain to see and this – the **2 feet 8 inches** is smaller than the adjacent signs, some of them go up to **3 feet** and I think the height is the issue and I don't have a problem with that and I think this is a realistic and a justifiable Variance.

Ms. Maria stated let me just add, the Footwear is much smaller and if you get rid of the negative space, which is above Footwear it's really...

Mr. Wai Man Chin stated we don't do that.

Mr. David Douglas stated we can't do that under our Code.

Ms. Maria stated well, I'm just saying it's really not as large as **76** square feet. It comes out to **57** if I get rid of the negative space.

Mr. John Mattis stated right, and if it was all **2 feet 8 inches** it would look like a bigger sign.

Mr. David Douglas stated I agree with Mr. Seirmarco but I also know it's getting late and I also know what the result of these votes are going to be because we've had this – this is why I said you don't know what you're getting into. We have had this debate for the last **4, 5, 6, 7** years and the vote usually works out the same. Once in a while somebody else joins Mr. Seirmarco and me but not usually so...

Ms. Adrian Hunte asked so are we ready to vote?

Mr. David Douglas stated so I think we're probably ready to vote because Jim and I are probably going to lose. Does anybody want to be heard?

Mr. James Seirmarco stated I move to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Wai Man Chin stated I make a motion on **case 2012-39** to grant an area Variance for the size of Famous Footwear business wall sign from an allowed **39.5** square feet up to **76.56** square feet. this is a type II under SEQRA no further compliance is required.

Seconded.

Mr. David Douglas asked want to poll the Board Mr. Hoch?

Mr. Ken Hoch responded Mr. Reber; aye, Mr. Mattis; yes, Ms. Hunte; grant, Mr. Seirmarco; no, Chairman Douglas; no, Mr. Chin; yes, Mr. Heady; yes. It carries **5/2**.

Mr. David Douglas stated your Variance is granted.

Mr. John Mattis stated one of the things we've required in the last several years, we've approved signs for let's say the size you have and we find out several years later that a bigger sign was put up so before it goes up, when it's on site, we ask that Code Enforcement comes out and confirms the size. We're not saying you're doing anything wrong but we just want to make sure.

Ms. Maria asked where does it need to be measured, on site before it goes up?

Mr. John Mattis responded yes, the day they're doing it somebody can come out and take a tape measure and measure it.

Ms. Maria asked how much notice do you need?

Mr. Ken Hoch responded you call my office. We need a few days to actually issue your Permit and after that we can talk.

Mr. Raymond Reber stated no, she's asking, when they get the sign on site how much advance notice, like the day before...

Ms. Maria asked how many days in advance – do I need to make an appointment a couple of days before...

Mr. Ken Hoch stated a couple of days before you call me we'll make an appointment.

Ms. Maria stated okay.

Mr. John Mattis stated yes, you don't get up in the morning and decide it's going there that day.

Ms. Maria stated we do, definitely at least **2** days ahead. Thank you. Good night.

Mr. John Mattis stated just coordinate it with him.

E. CASE No. 2012-40 John Lentini, architect, on behalf of Emily Wszolek for an Area Variance for the side yard for an existing side covered deck on property located at **24 Hood Place, Cortlandt Manor.**

Mr. John Lentini stated architect representing Emily and Raymond Wszolek. They own a house at **24 Hood Place**. They are trying to sell it. They would've been here tonight but they're out of town. They bought the house with the deck on it and I'm sure we've all heard that before but I have a history here that's very interesting. In October of **1967** a survey was finalized for the house and it shows no deck on the side – it's just a rectangular box, it's part of the plan. This owner actually has the offerings that was put out for these properties and every house was offered a deck on the side of the house either the left or the ride side. They're all raised ranches. It's the Cedar Hill subdivision. It says that it's a raised ranch **23** foot recreation room, garage on a wooded rolling half acre and our house is the flip flop of this. A C.O. was issued in **1968**, March 15th and the C.O.s generally don't list decks, bedrooms or anything but my client had a duplicate C.O. issued in May **1986** which also didn't mention the deck, however, her title company surveyor reading on July of **1986**, July 18th, **1986** compared a survey by Bunny Associates and made the observation that there's indeed a deck on the south side of the house. I would believe them that they bought the house with a deck but **10** years ago they put a roof over it. They put a little metal roof. It was part of a family function and it seems that everybody facing the south over there has some kind of protection. I provide these photos – can I provide them to you for the file? Very interesting.

Mr. John Klarl stated so you're fairly certain they bought it with the deck and then they put the roof on it?

Mr. John Lentini responded yes. You can't see it. I tried my best to get a picture of it and in the front of this is it on the left side of the house.

Ms. Adrian Hunte stated well, Mr. Lentini, I visited the area and I noticed that most of the houses on both sides of the street actually have decks and I guess the concern I have is that the closeness to the property next to – if you're facing the house on the left, there's a driveway. Is that a shared driveway or does that belong to...

Mr. John Lentini responded no, they're right on the person's driveway. Their driveway encroaches on the property on the right which also was a subject of the survey reading. The house – it's very tight, the long sprawling houses.

Ms. Adrian Hunte stated and their bushes that seem to be covering the deck which actually are truly past in.

Mr. John Lentini stated I did a review of all the houses there and ours is about the closest. There may be others I don't know, I don't have surveys for the others but there probably are others that

are sort of close to but I'm only working on this one and ours looked like it might be the closest in the neighborhood.

Ms. Adrian Hunte stated I think we had discussed that possibly subject to some sort of spot survey to make sure that it's not actually...

Mr. John Lentini stated how I performed the survey – I measured **10** feet the deck – from the house to the railing is exactly **10** feet and the side yard setback is **13.33** feet. That's how I came up with **3.3** feet.

Mr. Wai Man Chin stated we figured that.

Mr. John Lentini stated it gets bigger in the back but I used the worst.

Mr. Wai Man Chin stated again, we would like to have a spot survey as a subject...

Mr. John Mattis stated to that closest point. I'd like to add something to the record, one of the things that generally we're concerned with is people take sunrooms, decks, etc and convert them into living area, year-round and in looking at – when you drive by there you don't see it but looking at this one photograph it's very clear that it's just a roof on poles and there's no danger of this being converted at some point into a real room or anything. It's only going to be a deck.

Mr. John Lentini stated I asked him if it made it through October of last year or so – seems like it was a long time ago but the big snow storm we had...

Mr. John Mattis stated it certainly conforms with the character of the neighborhood. It doesn't change it because as you drive up and down that street everyone of them has a deck.

Mr. John Klarl asked are they under contract to sell their house too?

Mr. John Lentini responded I believe so. They have an offer. In fact, I think they were living in Delaware and they left the kids behind. Something I strive to do one day.

Ms. Adrian Hunte stated under our criteria; he has no undesirable change would be produced in the character of the neighborhood and from what we've heard no detriment to nearby properties will be created by granting the Variance. The benefit appear that obviously it's there already so the alternatives, there aren't too many except taking it down. The Variance is – you could say it's substantial because of the closeness, however, in number of feet it's not too great. It will not have an adverse affect or impact on the physical environmental conditions of the neighborhood and we're not sure, in terms of self-created, it appears as though it was there before...

Mr. John Lentini stated only the roof is self-created.

Ms. Adrian Hunte asked is there anyone in the audience who would like to be heard? On case

Zoning Board of Appeals **case 2012-40**, John Lentini, architect on behalf of Emily Wszolek 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 Zoning Board of Appeals **case #2012-40**, John Lentini, architect on behalf of Emily Wszolek for **24 Hood Place, Cortlandt Manor** for an Area Variance for the side yard setback for an existing side covered deck from a required **10** feet down to **3.3** feet side yard setback, I make a motion that we grant the Variance subject to spot survey, it's a SEQRA type II no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. John Lentini stated thank you very much. Have a good evening.

* * *

ADJOURNMENT

Mr. Charles Heady stated I make a motion to adjourn.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we're adjourned.

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**NEXT MEETING DATE:
WEDNESDAY NOVEMBER 14, 2012**