

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted via Zoom webinar on *Wednesday, September 23rd, 2020*. The meeting was called to order, and began with the Pledge of Allegiance.

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

Wai Man Chin, Vice Chairman (absent)
Adrian C. Hunte
Eileen Henry
Thomas Walsh
Frank Franco
Cristin Jacoby
Chris Beloff, alternate board member

Also Present

Chris Kehoe, Deputy Director for Planning
Joshua Subin, Assistant Town attorney

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Mr. David Douglas stated I'd like to move to have Mr. Beloff join as an alternate just for this month because Mr. Chin is unable to join us again.

Mr. Josh Subin stated it doesn't need a vote. You just nominate him.

Mr. David Douglas stated Chris, your part of the board this month and can interact the same way everybody else can. In case he is actually watching this or hearing a recording, we hope you're feeling better Wai and I understand that you are so we look forward to seeing you next month if you're up to it, and if not, we'll see you the month after that.

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ADOPTION OF MEETING MINUTES FOR AUGUST 19, 2020

Mr. David Douglas stated the first item on the agenda; the adoption of the meeting minutes for August. Do I have a motion?

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

Mr. David Douglas stated the August minutes are adjourned, not adjourned, are adopted. Sorry about that.

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Mr. David Douglas stated whoever has got a name “Lawrence’s phone” if you could mute yourself that would be great.

Ms. Boyle stated I just muted them. I’m going to ask everybody who’s not a board member to please mute either your phones that you’re calling in or if you’re on the Zoom link on the webinar please mute until it’s your turn to talk. Thank you.

Ms. Adrian Hunte asked is Cristin muted?

Mr. David Douglas responded Cristin’s here.

Mr. Chris Kehoe stated you can mute yourself if you want.

Ms. Adrian Hunte stated I see a mute symbol next to Cristin.

Ms. Cristin Jacoby stated I just mute myself when I’m not talking.

Ms. Adrian Hunte stated okay.

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ADJOURNED PUBLIC HEARINGS:

- A. Case No. 2020 – 5 Application of Ed Mauro on behalf of Brad Fredman**
for an area variance for accessory structures, a pool and deck, for property located at 1848 Spring Valley Road.

Ms. Eileen Henry stated we had a site visit. As we talked about at the last meeting, the majority of the board attended. We visited the Sanzary property as well as the Fredman property. I noticed that another neighbor had sent in a letter of support. They’re on 11 Bethea Drive along with the Jacobson’s on 7 Bethea Drive. That’s sort of my update at this point. Mr. Mauro do you have anything new to present to us?

Mr. Ed Mauro responded yes, I issued a revised site plan. I believe it was yesterday morning.

Ms. Eileen Henry asked do you want to tell us about that?

Mr. Ed Mauro responded I [inaudible] or outlined the outlining trees.

Ms. Eileen Henry stated hang on one second.

Ms. Adrian Hunte stated we're getting feedback from somebody.

Mr. David Douglas stated Nadia? Could you please mute yourself?

Ms. Nadia stated I'm sorry.

Mr. David Douglas stated if you could put the mute button – thank you. Go ahead Mr. Mauro.

Mr. Ed Mauro continued I revised the site plan to show the existing vegetation as best I could from Google Earth as well as I included planting of at least three new trees from when we had walked the site on the 30th I believe it was, the 30th there was sort of a line of sight from the neighbor's yard looking towards the pool so I had added some trees to kind of help disguise that. Then I revised the coverage calculations as I noticed that the shed that's on the property is actually under a hundred square feet, because I had been asked if it had a permit or not. It falls under that under a foot that it doesn't need a permit so I had revised the site coverage overall reducing by 158 square feet. That's just because the shed I had was bigger but I also, Martin had told me, our building inspector had told me I could take the mechanical concrete pads off or the air condensing units that were already on site.

Ms. Eileen Henry stated okay. The proposed total square footage then is 1,279 minus...

Mr. Ed Mauro stated I knew you were going to ask that.

Ms. Eileen Henry stated well then if you knew that...

Mr. Ed Mauro stated I know. I shut my other computer off.

Ms. Eileen Henry asked why didn't you do the math?

Mr. Ed Mauro responded no I have it. The subtotal for the existing accessory would then be 6,462, was 6,620.

Ms. Eileen Henry stated and so...

Mr. Ed Mauro stated then the totals would be 11,758 and the proposed would be 13,037. And the reduction goes to removing the equipment pads and the shed actually went down to 98 square feet from the original 116 that I thought it actually was. And then I've added some trees for line of sight from the property line.

Ms. Eileen Henry asked you said you added three trees?

Mr. Ed Mauro responded I added three trees, that's correct.

Ms. Eileen Henry asked are they evergreens or are they deciduous?

Mr. Ed Mauro responded they are conifers, yes, evergreens.

Ms. Eileen Henry stated the sort of issue here is that the tennis court, which was put in several years ago was – never came before the Zoning Board. We don't know why that is. It should have. No one who's involved now was involved then so we don't know why that is. But everything was done by permit. It wasn't – everyone knew what was going on. Once you take the tennis court out of the equation, the square footage falls with under the coded amount allowed for the accessory structure. My thought is that you can't really punish or you can't really deny a request when an applicant followed the procedure the first time and was not aware of what actually – of the square footage that they were – what am I trying to say? Sorry, I know I'm sounding all squirreled up.

Mr. Joshua Subin stated I think it goes to the self-created nature of the problem?

Ms. Eileen Henry responded yes and no. I think, yes that definitely goes to the self-created nature. They didn't know that they literally created this problem, this amount of square footage of the total accessory structures which we sort of have to approve if we want to approve the pool, the pool structure. That's how I'm looking at it. The Sanzaris', I understand their issue. I think, and I hope that they agree, that the homeowner and Mr. Mauro have taken that into consideration and have a plan to add a couple more trees and hopefully that will take care of their concerns. I don't see an undesirable change in any of the properties or in the neighborhood with the addition of this pool. The benefits sought can't be obtained through any other method than what we have now. The requested variance is substantial but we do have precedent for this sort of approval given the circumstances. I don't see that there's an adverse impact on the physical or environmental conditions. And yes, it is self-created and we've already talked about that. Those are my thoughts. I'd like to hear what some of my colleagues have to say. Anyone care to voice an opinion or a thought?

Mr. David Douglas asked any members of the board want to say anything?

Mr. Thomas Walsh stated I concur with Ms. Henry, with our site visit and seeing what the Sanzary's see from their aspect. I think the bigger issue that they've had was tennis court not the actual pool and the deck. We talked about; is it an adverse effect in the neighborhood? I don't think so. Is there substantial – yes, it is substantial. We do have precedent, just from last year we granted variances for tennis courts so I don't have any problems with this proposed pool and the deck.

Mr. David Douglas asked do the Sanzaris want to say anything? Are the Sanzaris on the line or any other neighbors that want to be heard? I guess not.

Mr. Joshua Subin asked did we mute them Rosemary or are they self-muted?

Ms. Eileen Henry asked were the Sanzaris a phone number?

Mr. Thomas Walsh stated I think they had that 610 number.

Mr. Chris Kehoe stated oh, hang on, hang on. Let me see. They may not have gotten the re-invite either. I was doing it fast. Let me double check. I apologize.

Ms. Adrian Hunte stated I concur as well.

Mr. David Douglas stated I just wanted to give an opportunity to anybody else to be heard before we vote.

Ms. Eileen Henry stated absolutely.

Mr. Joshua Subin stated if the neighbors aren't here we should at least go through the rationale one time if they do come in just so that they can understand. It's a public meeting. You expect them to be attending.

Mr. Thomas Walsh stated there is the 609 number that is on mute. I don't know if that was them, because I know they said they were on initially when we came back on the new meeting link.

Mr. Chris Kehoe stated yes, and I did actually send them the link, the first corrected time that we did it.

Mr. Thomas Walsh stated I think they're still on here. They're still muted. Rosemary can you un-mute that 609 number?

Ms. Adrian Hunte responded I'm not even seeing that 609 number.

Mr. Thomas Walsh stated oh maybe they've hung up actually. Now I see it. It's actually not even a microphone. It's a telephone with a line through it. They may have gotten disconnected.

Mr. Chris Kehoe stated she just emailed me and said that they are on the line.

Mr. David Douglas asked can we un-mute them?

Mr. Joshua Subin asked their phone is muted on their handset or Rosemary's got them muted I think right when it's a phone dial? I'm not sure.

Ms. Rosemary stated I don't have them muted. I'm not sure. You see how you can't really un – I don't know. Is it possible for them to come in through a computer? I just don't know what else to do?

Mr. Chris Kehoe stated Rosemary when I hover over that number of something comes up that says "ask to un-mute".

Mr. Rosemary stated do that Chris. I made you host so you could share the screen.

Mr. Chris Kehoe stated I clicked it.

Mr. and Mrs. Sanzari responded can you hear us?

Mr. David Douglas stated here you are.

Ms. Sanzari stated now I'm sorry. There was a lot of this computer or the phone messaging early on.

Ms. Eileen Henry stated no worries.

Ms. Sanzari stated so because of the chatter on the phone we didn't hear the initial comments. I do know you said you added three trees, conifers, and they would be located where?

Ms. Eileen Henry responded Mr. Mauro?

Mr. Ed Mauro responded on the north east corner of the pool property. I guess it would be that north east or actually it would be the south east corner of your property, that upper lawn going towards, I believe it's the shed, that's up towards the main road, Spring Valley Road side. That's the only line of sight from the yard looking towards the pool and deck.

Ms. Sanzari asked so we would be, not...

Mr. Ed Mauro stated do you have, can you see the screen or are you on your phone?

Ms. Sanzari responded no I'm sorry I'm on the phone. I couldn't get into the Zoom.

Mr. Ed Mauro asked do you know where the Fredman's septic tanks are by chance or their mechanical equipment?

Ms. Sanzari responded yes the mechanical equipment yes.

Mr. Ed Mauro stated the trees are basically going right off of that back corner of their house. There used to be a line of sight from your property right – that's where we're planning on planting the trees to block the pool and deck.

Ms. Sanzari stated my husband would like to know how big are the trees at planting?

Mr. Ed Mauro responded they range between three and five feet.

Mr. Sanzari stated no good. I refuse to accept a three-foot tree at this stage of the game. Make a meaningful otherwise forget about it. Do you hear me?

Ms. Sanzari responded we hear you.

Mr. Paul Sanzari stated if I sound angry, I'm very angry.

Ms. Sanzari asked is it possible to provide larger trees?

Mr. Ed Mauro stated I was told that there was none available at this time.

Mr. Paul Sanzari stated [inaudible] come on. You're not dealing with stupid people here. Don't think you're dealing with stupid people. I'm in the business. I know what's going on.

Mr. David Douglas asked Mr. Sanzari, this is David Douglas, can I just make a request that you just take a breath for a minute and try and keep this as civil as we can?

Mr. Paul Sanzari responded sure. I'm willing.

Mr. David Douglas stated just consider you're going to be neighbors with these people.

Mr. Paul Sanzari stated no, we won't be neighbors.

Mr. David Douglas asked either Mr. or Mrs. Sanzari do you have any comments other than your concern about the size of the trees?

Mr. Paul Sanzary responded yes, I'd like you to address the three issues at the close of our letter that we requested you consider; our letter of August 21. We closed the letter with three suggestions. Can you respond to those?

Mr. David Douglas responded generally the way it works is that we tend to ask questions to get information and we don't – it doesn't work the other way around but if you tell us what your specific concerns are we can take them into consideration.

Mr. Paul Sanzari stated I'll tell you what the three questions are. We want the deck and pool moved to the adjacent property in the other direction where there is plenty of room between their house and the adjacent property not that it's only 30 feet away from us. It's a reasonable request. We're not saying do away with it but just move it somewhat. You realize what I'm talking about?

Mr. David Douglas stated we understand what you're requesting is.

Mr. Paul Sanzari stated that's the first one. The second one is we wanted to increase the property along the property line of the pool with landscaping and especially where the children are playing in the backyard which is an illegal play. They cleared away part of the wooded – it's supposed to be kept that way and they cleared it away and they got a direct view into our bedroom, bathroom, and dressing area. That's unfair.

Mr. David Douglas stated that's not where the area – I just want to make sure I understand it correctly. That's a different area from where they're proposing the pool correct?

Mr. Paul Sanzari responded yes it is.

Mr. David Douglas stated when I was there you showed me, you were concerned about the line of sight from your property toward the back of their property but that's not near the pool.

Mr. Joshua Subin stated the one thing I would say is also that the Zoning Board is about the variance and the five factors. Code Enforcement generally does – if there's a complaint is being made you make that complaint to Code Enforcement and then we have people who investigate and make determinations and if they find something, they find something. If they don't, they don't. There are certain things that are within the purview of the ZBA and right now they're dealing with a different area, and a different location. Just procedurally just think about that in a broader context sir.

Mr. David Douglas asked what's the third point?

Mr. Paul Sanzari responded the third point was that we think that the property now has been fully developed with recreation facilities far above the residential neighborhood and we'd like it capped for any future work, any future development and that should be a legal cap that goes along with the deed and goes along the relative with the building department. You know what I'm saying.

Mr. David Douglas stated I would think that if they were to propose any other changes to the property, if they were allowed to do it under the town code, then they would go and get whatever permits they need and if they needed a variance for whatever they might want in the future, they'd have to come before us again.

Mr. Paul Sanzari stated but that's not what we're talking about. I don't trust that. I want a cap on it and that can be done. It's a reasonable request. We have to live here with a recreation facility adjacent to us. Lord knows what they're going to build next.

Mr. David Douglas stated when you talk about recreational facility you're talking about the tennis court?

Mr. Paul Sanzari responded the tennis court, the swimming pool, the deck. What else do they want to build there in the future?

Mr. David Douglas stated let me just note for the record that having a pool and a deck is not unusual for people to have those things in the backyard of their houses.

Mr. Paul Sanzari stated no it's not but when you have a tennis court and you've exceeded the allowable square footage to be used, it is unreasonable. You're not addressing the issue that at their maximum coverage right now.

Mr. David Douglas stated that's actually the only – that's the reason it's in front of us. If the tennis weren't there then they would be able to just build the pool without having to come to us.

Mr. Paul Sanzari stated but the tennis court is there. It is there. It's a fact of life.

Mr. David Douglas stated right, that's what we're considering. That's the only reason it's in front of us.

Mr. Paul Sanzari asked will you consider the area of the tennis court and all the other area as part of the problem? You can't keep all of it and not put a cap on it.

Mr. David Douglas stated I understand what you're saying.

Mr. Paul Sanzari stated I don't think you understand what I'm saying. I live here. I created this place 40 years ago and my wife wants me to shut up. I will not shut up.

Mr. David Douglas stated Mr. Sanzari, I'm not trying to be disrespectful but I do understand what you're saying. I may agree with it. I may not agree with it but I do understand what you're saying and at the risk of speaking for the other members of the board, I suspect that they understand what you're saying also.

Mr. Joshua Subin stated and just to point as the lawyer, the application is going to be dealt with on the five factors as we do with all area variances. As much as these other things are important and the area, the overages of the lot are important, it's when they apply the five factors, not a cap or anything else. It's those five factors that weigh the granting of the variance, not anything else, not any other issues that are outside of that purview. Courts would overrule us if we didn't. We stay within the five factors when dealing with area variances.

Ms. Eileen Henry stated and those five factors are the law through which we have to look at this variance, correct Mr. Subin?

Mr. Joshua Subin responded correct.

Ms. Sanzari stated just for my edification, the five factors briefly, are?

Mr. David Douglas responded whether there's an undesirable change that would be produced in the character of the neighborhood. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than the variance. Whether the requested variance is substantial. Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood. And whether the alleged difficulty was self-created. Just so you know, those five factors, that's from New York State Law that applies.

Ms. Sanzari stated I understand what you're saying. I just didn't know what they were. Thank you.

Mr. David Douglas stated sure.

Ms. Eileen Henry asked are there any other members of the public who wish to speak on this topic?

Mr. Paul Sanzari asked am I allowed to ask the poll, the committee as to how the vote went or will go?

Mr. David Douglas stated we haven't taken a vote. What I propose to do is that we do something that's called closing and reserving in which we would close the public hearing and then under the law we'd have 62 days but we would do everything in our power to have a decision by the next meeting. And then we would vote at that next meeting. That's how I would propose that we do this.

Mr. Paul Sanzari asked will that be Zoomed also and we can listen in on?

Mr. David Douglas responded yes. That will be a regular meeting. There would be a work session. The meeting will be on October 21 and the work session will be on October 19. Then we'll decide at that point. But before we make any such motion, I just want to, speaking for myself, that I agree largely with what Ms. Henry said as to this application. This is somewhat different situation. It's a unique situation because the tennis court was not brought before us and we have to deal with the reality that they got approvals for that tennis court, and but for that tennis court they would have been able to build the pool without coming before us. I was at the site visit and considered the concerns of the neighbors carefully. Speaking personally, I'll think about it before we actually vote but I don't really see why the pool should be denied. I don't think that the pool itself will have an undue impact that would violate those five factors. But, everybody can have their opinion and we'll all vote and decide which way to come out.

Ms. Sanzary stated okay. Paul, anything else?

Mr. Paul Sanzari responded no, I have nothing else to say.

Ms. Sanzary stated thank you.

Ms. Eileen Henry stated you're welcome. Does anyone else have anything they want to say on this? Members of the board? Public? I want to move on case No. 2020-5 that we close and reserve with the hopes of voting on this in the October meeting. Is that too much for the motion or just to close and reserve?

Mr. David Douglas stated I think that's fine. That's a motion with a hope.

Seconded.

Mr. Ed Mauro asked can I ask a question to the board?

Mr. David Douglas responded sure.

Mr. Ed Mauro responded reserve meaning we can't do anything correct?

Mr. David Douglas responded right. You have to wait. We have not approved or disapproved the variance yet.

Mr. Ed Mauro stated okay. Thank you.

With all in favor saying "aye".

Mr. David Douglas stated case No. 2020-05 the public hearing is closed and it's reserved until next month. Thank you very much.

Ms. Eileen Henry stated thank you.

B. Case No. 2020 – 6 Application of Lina Merna for an area variance for two existing sheds located in the front yard for property located at 79 Trolley Road.

Mr. David Douglas stated Mr. Franco stated this is your case.

Mr. Frank Franco stated the Merna's have provided some additional pictures of some areas of their property trying to depict the grade in the backyard. The Merna's claim that it's too steep to put the shed on that area of the property. I'll let them speak a little bit about it. There are some other pictures depicting the grade and showing some of the playground equipment. Before I say any more would the Merna's like to make any comments on those pictures?

Ms. Lina Merna responded absolutely. We just want to go over, as Mr. Subin suggested last time, the five factors. The first, there would be absolutely no undesirable change produced in the

character of the neighborhood or any detriment to any nearby properties. We have shown several examples of houses in our area that have exactly the same situation going on with their shed. In comparison, however, we feel that ours is very different because ours are not visible. We showed you pictures in August of this, not to mention the fact that they are far off of the property line and the street, have never been an issue to any neighboring properties. If they had been, as you all know there was a huge yellow sign in my yard for a month which no one has complained about. That was their opportunity. Nobody's phoned in to complain about them. We've had several conversations with our neighbors. They're fine with it. The first picture here – if you could go back please to that warning sign, I'm not sure of exactly what you call it, but clearly it's a warning sign vivid right outside of my property that there is a stop sign and an intersection coming. That sign, again, is visible and 200 feet away from the intersection, the stop sign and we do not feel that our sheds, that are not visible, would cause any visual problems for anybody driving by: UPS trucks, buses, travelers, truck delivery, oil companies, anything. And we do not think that any undesirable change or detriment does not logically apply in our case. Another factor; these variances that we need, and have been discussing now for two months, are not substantial. We're talking about two 10'x10' sheds here. And again, as already stated during this meeting, any shed that's a hundred square feet does not need a permit. Another factor is whether a variance would have adverse affect or impact on the physical or environmental conditions in the neighborhood or the districts; again, in our case, the answer is absolutely not. Another factor: was the difficulty self-created? Once again, our answer is absolutely not. We put up the sheds in 2006, the other one in 2009. We followed the rules, the regulations. No permit required. We had absolutely, again, no issues with the neighbors or the town for almost 15 years. It was not our fault that a storm hit our area causing a large branch to fall on our property and destroy the shed. We began to rebuild, and as you all already know, I don't have to say it again, we were notified by Mr. Hoch that we were in violation of not one but both. Again, after 15 years, so we were unaware. Now please understand we didn't just plop these sheds down anywhere. There's actual reasons for where we put them. The final factor, is whether the benefit of the application can be achieved by some other way. And again, our answer is going to be no and that's what I'd like to present to you now. So in front of you, you have a copy of our survey. This is a picture, and as you can see, our house is strange and unusual, again due to the fact the front door does not face Trolley Road. We've highlighted the area which we were unaware of that the town considers our backyard and therefore that is where shed building is appropriate. The white part indicates our front yard, again, that's according to the town. We wouldn't consider it our front yard. That's the side of our house facing the street. As you can see, right off the back due to the position of the house, how far back it is from the street that this cuts our options in half of where we can actually put any type of a shed. If somebody were to come to our property; "Wow! You guys have a nice piece of land. It's really big." But what good is it if you can't put anything on half of it? So now, let's focus on the yellow area where, again, according to the town sheds would be permitted. If you see on the bottom left hand corner, that area is a possibility, however, it's really sloped from our neighbor's yard that comes, I would say, I think it's lot 31 and from the other side it's hilled. That's just going to make it difficult, and costly, and timely. Can we show pictures of that Mr. Kehoe, please? Thank you. So the area is sloped and that is the left bottom hand corner that you're looking at there. And then if we go to the next picture, you're going to see this is the other corner of it. We have a play set there that is also, obviously you can't zoom

in there, but again you can see from the picture the two left hand side, whatever you call them, wood, the leg of the swing set. There's a slope. And again, you can't – if you could show the next picture? Again, with the water – again it's sloped and it just makes it difficult and more costly and everything. Is that all of the picture Mr. Kehoe? Oh, here we go. This is the back, back of the home. Again, this would be according to the town. You can see there's a small deck here. One more time Mr. Kehoe, if you don't mind? This is what it looks like standing from my neighbor's property looking towards mine. Obviously, a shed would not be able to be put in that area. So, all the highlighted area basically is just not working. It's just not going to work. If we had to move these sheds, we'd be paying double of what it costs, not to mention the fact that we've stressed what an issue time was with our equipment outside for a while.

Mr. Frank Franco asked any other comments on that? Mrs., the Merna's, that's it?

Mrs. Lina Merna responded that's it. We just feel that our property is unique. I wish it wasn't like this but this is the reality of it.

Mr. Frank Franco stated I guess looking at the five factors, the one – and we didn't do a site visit on this property but based on the pictures, as far as: could it be accomplished by some other means? It definitely looks like, I see a grade in the backyard but some areas look like – I've looked at putting in sheds even in my own backyard and there is a grade and you would have to probably do some railroad ties or whatever to level it out. I get it may not be possibly as flat as where it is now but it doesn't like an insurmountable type hill and I get that it would cost additional money to do that. I get where you're coming from but I don't know if it would be insurmountable in another location.

Mrs. Lina Merna stated I'm sorry. I was under the impression that you guys were visiting as per our last meeting in August. And I was really hoping that so that you could see. In a picture it's one thing. You have to see it. I thought we had an understanding that you were visiting.

Mr. Frank Franco stated we didn't arrange a site visit. I personally drove by the property. I can only...

Mrs. Lina Merna stated you wouldn't see the areas we're talking about by a drive by. You'd have to walk on the property.

Mr. Frank Franco stated at this point I'm going off of what you presented; those pictures. I don't know, if we saw it in person we would have a different opinion. But, based on the pictures and the playground equipment, that was just – the rest of the board may think differently but that was kind of my observation taking a look at the pictures and just going on some of the other factors. As far as the character of the neighborhood, I know you presented some other pictures showing some other sheds on other people's property but I don't think, Chris, Mr. Kehoe, that we looked up all those other properties to see if they do or don't have permits, etcetera. They're there. I don't know if that's a reason that we can base to approve or disapprove what we're looking at here. I'm just looking at the house based on what we're seeing. The one shed is in the front yard.

I don't think it looks horrible. It's a proper nice looking shed but it is right in the front yard. It's not just one shed, there's two and one's clearly more in the front yard I would say than the other one. From a substantial standpoint, yes they're both a hundred square feet but there are two sheds and I grapple with is that substantial? It seems like to me maybe it would be because it's not just one shed, it's two sheds. We're not looking at the square feet of the shed.

Mrs. Lina Merna stated but you have to because it's in the regulations. It's in your handbook, that a hundred square foot shed requires no permit. If I'm correct.

Mr. David Douglas stated Mrs. Merna, that's not really accurate. It doesn't require a permit because of the size, however, the town code prohibits, absolutely prohibits sheds from being in the front yard.

Mrs. Lina Merna stated but just like Mr. Mauro, and this is with all due respect, in your last case mysteriously gets a tennis court with no permit.

Mr. David Douglas stated Mrs. Merna there is a difference between your case and their case. Mrs. Merna, let me finish, please. In their case they got the approvals for the tennis court. Because for some reason, which nobody personally has any knowledge about it, they should have come for a variance but they did not come to the Zoning Board for a variance.

Mr. Joshua Subin stated we were never involved initially when they applied. This is before all of our time here.

Mr. David Douglas stated right.

Mrs. Lina Merna stated I get it Mr. Subin but...

Mr. David Douglas stated you should have – the code is pretty clear about sheds. Also, I'd like to make a small request. We're not your enemies. We're not fighting with you. Don't assume that everybody has the worst out for you. We're listening not in argument.

Mrs. Lina Merna stated I'm just saying, I did hear, and correct me if I'm wrong, Ms. Henry say you can't deny a request from your last case when he wasn't aware. Fifteen years have gone by. If they had told us 15 years ago: "Look you're in violation." Obviously, we would have corrected it then. Nobody has said anything until this year, this year. That's completely insane to me.

Mr. Joshua Subin stated let me just tell you how things – because I see this side a little bit more and so does Chris. Generally, the Code Enforcement division doesn't just drive around town and say: "We're looking for somebody to get. We're looking for somebody to get." They respond to complaints and if somebody sees work being done outside or if it's noticed and there's construction going on, that's when they'll take a look. But it's not something that is just we're driving around looking to violate every single person. It was something that was observed in construction which flagged this whole thing and you have pointed out that there are – and I'm

just dealing with the law, that there are sheds in front yards of properties, single sheds. That goes to the character of the neighborhood and the ZBA will interpret whether they think one shed or two sheds or four sheds or a hundred sheds are appropriate when dealing with the undesirable change in the neighborhood. And whether there's alternatives, substantially, the impact on the environment, and self-created. That's the framework from how we're approaching this. I don't – you understand that correct?

Mrs. Lina Merna responded yes. I'm getting a little bit upset because it's almost as if we're not being taken seriously here. Let me finish please. You promised us that would come to visit, you haven't. Now you're telling me you haven't done the back work on checking those other sheds out. And I was even told...

Mr. Joshua Subin stated to be honest actually, Chris can speak to this more but we did check those out. A lot – some of them are prior to zoning houses.

Mrs. Lina Merna stated we got that.

Mr. Joshua Subin stated and Chris has a little bit more detail but I did ask the Director of Code Enforcement to look at those and he did work it up quickly for us. We absolutely did and Chris do you remember exactly what Martin said about – I think there were three houses that they pointed out? I think two were prior to zoning, right Chris?

Mr. Chris Kehoe stated I think two were prior to zoning and then one would be a similar situation to Lina's in that there's no evidence of permission or prior to zoning about how that shed got there.

Mr. David Douglas stated let me also respond Mrs. Merna to your comment about us not doing what we said we were going to do and not coming to a site visit. We didn't set up the site visit at the last meeting. The way it works is if there was to be a site visit that we would have set something up. Members of the board usually have site visits when we feel that it would be beneficial to us. We had, I'll speak for myself, we had numerous photos that you sent and they answered my questions. The biggest question I had in my mind was whether there were other places on your property that you could put the sheds and what was the nature of the slope that you referred to last time and I could see that quite clearly from the photos. So, I personally didn't feel that I needed to come out in the COVID era to come to have a site visit at your house. But that's only speaking for myself. I think that we take all these cases very seriously.

Mrs. Lina Merna stated I'm not saying you don't.

Mr. Thomas Welsh stated I did do a drive by myself and went up the side road just to kind of see the property, to see what we were dealing with. Even though it wasn't a formal site visit, I did visit the area and checked it out myself. If we wanted to talk about the factors, I look at – we need to look at this as if the sheds were not there. That needs to be pointed out. We need to look

at it that way. Both sheds are not built and I think there are areas on the property that these sheds could be relocated to that would be within – that are not in the front yard.

Mr. Merna stated on a septic system. That makes no sense. You didn't even come here yet. You have no idea.

Mr. David Douglas stated Mr. Merna, we do have an idea.

Mr. Merna stated no you don't. You don't.

Mr. David Douglas stated Mr. Merna, one thing that I think is very important at these meetings, I've been doing this a long time, is that you can be civil to each other and we treat each other courteously. Let's not yell and make accusations. We are trying to do our best and I'm sure you're trying to do your best.

Mr. Merna stated if you were doing your best, you would have gone out here. Three months we've been going through this, three months. You told us to stop building, we stopped building. Three months. Three months. You could have made a trip to the friggin' house. Three months.

Mr. David Douglas stated Mr. Merna, then I'll take you seriously as to what you say. What I then propose is that we adjourn this meeting and that we set up a site visit. We won't make a decision this month and then at the next...

Mr. Merna stated let's drag it out for another two more months.

Ms. Lina Merna stated my only problem with that...

Mr. David Douglas stated let me finish. If you're concern is that we're not doing our job and it's really important...

Mr. Merna stated you haven't been doing your job.

Mr. David Douglas stated let me finish. Let me finish. I'm going to leave it up to you. If you want us to come out to the site then we will, at this meeting right now, we will...

Mr. Merna stated you already made your decision. You're wasting my time.

Mr. David Douglas stated we have not made our decision. Mr. Merna I'm asking you one more time to let me finish. You understand?

Mr. Merna stated I'm not your kid. You're not talking to me like that.

Ms. Lina Merna stated I don't know if it's even worth it at this point. If you're telling me – I don't even know – I've tried planning here the best that I can. I'm not a lawyer. I've tried

presenting this, this is the fourth time we've spoken. There hasn't been much feedback that I've been getting.

Mr. David Douglas stated I'm giving you a choice. Here's a choice, it's up to you. Do you want us to vote on this today or do you want us to schedule a site visit and come out to your property? It's totally your choice.

Mrs. Lina Merna asked can you tell me what is considered a shed?

Mr. David Douglas asked I'm asking you a question? It's your choice. You have to give me an answer and we'll act based on whatever you chose.

Mrs. Lina Merna stated we don't want to wait because another thing is Mr. Hoch who visited our home, he actually said: "You do have an option. You can go and try for a variance, pay the \$200 for the permit", knowing it's going to get rejected. We're frustrated here.

Mr. Chris Kehoe stated what you just referenced there is that you need to apply for a building permit and then be denied to go to the Zoning Board. There's no implication in what Mr. Hoch said that the Zoning Board would deny you. It's a procedural issue that the Code Enforcement office has to deny the building permit but there should be no presumption that the Zoning Board was predisposed to deny the case.

Mrs. Lina Merna stated we don't want to continue with this.

Mr. David Douglas asked you want us to vote tonight?

Mrs. Lina Merna responded yes.

Mr. David Douglas stated okay, that's fine. Then that's what we'll do. Do you or husband have anything else you want to add?

Mrs. Lina Merna responded no.

Mr. David Douglas asked does anybody else in the public want to be heard on this case? Does anybody else in the public who's at this meeting, want to be heard?

Mr. Chris Kehoe responded it doesn't appear so, no.

Mr. David Douglas asked any of the other board members want to have any comments, questions?

Mr. Thomas Walsh stated we've talked about before is that approving one shed versus the both sheds, is that an option for us as we're going through writing up a D&O?

Mr. David Douglas responded if that's the view of the majority of the board then we can do that. We can approve a variance for one but the other. That's an option, yes.

Mr. Frank Franco stated because the one shed that is more adjacent on the driveway I think we were saying that even if we push that back one way or the other it's not going to look much different from the road. I don't know what the rest of the board thinks. If we were going to make an exception, I think that one possibly we – it might be okay letting that one through, but the other one that's directly in the front yard maybe not that one.

Mr. Joshua Subin stated since we're not going for a revised application or anything like that, maybe you could just discuss briefly, David, between the two sheds and locations if they would be amenable to revising the application to reflect something along those lines. We can definitely order it then a variance for one as opposed to another. That's [inaudible]. I'm just saying, but if they're going to go through the five factors, it would be nice if it's on the record. Do you understand what I'm trying to say?

Mr. David Douglas asked are you asking are they willing to agree to have one shed rather than both?

Mr. Joshua Subin responded if we're going to discuss one shed as opposed to both, can we just go through it real quick? Which shed, just the procedure of it, you understand what I'm saying? The undesirability...

Mr. David Douglas asked what do you mean, within the five factors?

Mr. Joshua Subin responded take it through so we have a record.

Mr. David Douglas asked Frank, which shed were you leaning towards saying you would allow and which one you would not?

Mr. Frank Franco responded the shed that is on the side of the house. I guess it's still in the front yard but it's on the side of the house.

Mr. Chris Kehoe asked can you see the screen Frank?

Mr. Frank Franco responded I'm looking at my screen but...

Mr. Thomas Walsh stated maybe underneath that tree that's – not that, but the other...

Mr. Frank Franco stated that's the one I'm saying no.

Mr. Chris Kehoe stated is under construction.

Mr. Frank Franco stated right, and I'm saying no to that one but the one that's like, I think it's just above that bushy tree section maybe a little further to the right.

Mr. Chris Kehoe asked can you see the cursor?

Mr. Frank Franco responded yes.

Mr. Chris Kehoe stated somewhere in there.

Mr. Frank Franco stated right. So that one's more obfuscated.

Mr. Joshua Subin stated it's more in keeping with the other two properties that you're looking at from an aerial view.

Mr. Frank Franco stated exactly, because a lot of the other, or at least some of the other sheds I can't recall them all from memory but they were set back further, unlike the one that's right in the front yard.

Mrs. Lina Merna stated there was one property where it's sitting in their driveway. Talk about an abstraction, or whatever, an obstruction of vision. I don't know what I'm looking at every time I pass by, so our house is not the worst. There's another house that's way worse than that one, but it's fine.

Mr. Frank Franco stated again, that one that you're talking about, I don't know if that was a prior to zoning situation. I know that there was some talk that some of them were and some of them weren't. I don't know the exact situation for that particular one but again, we're talking two sheds, not one. I think that again it speaks to what was that bullet – is it substantial? I think if it was just the one shed and it's right adjacent to the house, I would be okay personally granting a variance. I don't know what the rest of the board thinks about it.

Mr. David Douglas stated let me pick up on what Mr. Franco is proposing and putting it in the context of the five factors. In my view, the issue of whether the requested variance is substantial. To my mind it is substantial. There is an outright prohibition about sheds in the front yard and what the applicant is proposing is to not have one but two sheds in their front yard. As to the factor as to whether it could be achieved by another feasible method. It seems to me quite clearly that it can be – there's a slight slope in the back. There's plenty of space. You can see that structures can go back there. There's a huge swing set back there. There are other structures. I don't see a problem with moving that there. As to whether it's self-created. I don't think that the Merna's were consciously doing anything improper but it was self-created because if they had talked to somebody at the town then they would have realized, or if they had looked at the code they would have realized that it's not allowed. I would be opposed to granting a variance for the two sheds. However, I'm somewhat convinced by what Mr. Franco is proposing that one way of reducing the substantiality of the requested variance is by agreeing to allow that one shed there but not the second one. To my mind, if that was what the view of the majority of the board

wanted, I'd be okay with going along with that because that reduces how substantial it is. That's my view.

Mr. Thomas Walsh stated I'm going to agree with Mr. Douglas and the white shed that's right adjacent to the driveway is not in view. It would not be substantial and then if we could find an alternate location for the second shed within the side yard or rear yard of the property, I would be agreeable to that.

Ms. Cristin Jacob responded I would as well.

Ms. Adrian Hunte stated as would I.

Ms. Eileen Henry stated same here.

Mr. Frank Franco asked anyone else have any comments on the board? Should we make a motion to close the public hearing on this Mr. Douglas?

Mr. David Douglas responded yes, if you want to make that motion. Does anybody want to second it?

Seconded with all in favor saying "aye".

Mr. David Douglas stated public hearing is closed.

Mr. Frank Franco stated I'm going to make a motion to approve the one shed that's adjacent to the house close to the driveway. It's hard to depict unless we have x, y location of that shed but it's the one adjacent to the house further back from the road and is obfuscated by the trees and the surroundings more and more setback. Making a motion to approve that particular shed. This is a SEQRA type II; no further compliance required.

Seconded with all in favor saying "aye".

Mr. David Douglas stated the variance as stated is granted. In the Decision and Order that we'll do, why don't we be more specific about which shed it is just so there's no confusion when somebody looks back on the record. The Merna's do you understand what we've done?

Mrs. Lina Merna responded you're asking us to move the shed that's under construction, correct?

Mr. Frank Franco and Mr. David Douglas responded yes.

Mr. David Douglas stated thank you very much. The paperwork will get filed. Mr. Kehoe should they be speaking with you or should they wait until...

Mr. Chris Kehoe responded what I'll do is I'll work with Josh. In the next couple of days we're finalizing the Decision & Order. We'll get you to sign it and then it'll be mailed to the Merna's but I can keep in touch with Mrs. Merna and get it to her sooner if she needs to see it sooner.

Mr. David Douglas stated thank you very much.

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OLD BUSINESS:

- A. Case No. 2020 – 7 Application of Building Permit Services, on behalf of Larry Caterino** for an area variance to legalize an existing open deck on a 3-family non-conforming dwelling in a 1-family zone pursuant to Sections 307-78 and 307-80 of the Town of Cortlandt Code for property located at 18 Travis Avenue.

Mr. David Douglas stated we've previously closed and reserved this. We've got a draft of a Decision & Order and Mr. Subin, I'm sorry I should have told you in advance. Can we put you on the spot just to summarize or outline what that Decision & Order is?

Mr. Joshua Subin responded sure. I wish I was at my other computer is...

Mr. David Douglas stated I apologize. On my list of things to do things...

Mr. Chris Kehoe stated I can read the important paragraph if you want and then Josh can interpret it for you.

Mr. David Douglas stated okay, that would be great.

Mr. Chris Kehoe stated so it states that under 307-78 and 307-80; "Non-conforming buildings may not be extended and structural alterations to the building may not be made. However, non-conforming uses that in the opinion of the Zoning Board of Appeals by specific finding in a particular case are determined to be of the same or of a more restricted nature and are not substantially more detrimental to the neighborhood than the existing non-conforming use may be permitted and varied. The ZBA reads such a delegation of authority as adding authority to issue a variance in these very limited and fact-specific circumstances. In receiving this delegation, the ZBA is asked to consider without limitation, impacts upon the following: traffic volumes, parking adequacy, traffic congestion, adequacy of municipal water supply, sewer capacity, noise, odor, scale, shading, visual effects, and neighborhood character. Here a no building extension is proposed nor is the building being enlarged or reconstructed, also the aggregate area of the non-conforming portions of the building is not being increased. Pertinently, if this were not a pre-existing non-conforming use of three-family non-conforming dwelling in a one-family zone, the application would be otherwise permitted as-of-right in this zone. Nor have any detriments to the

neighborhood have been noted. Consequently, the ZBA views this application as being of a same or of a more restricted nature than the current use, and furthermore, the ZBA finds that the traffic volumes, parking adequacy, traffic congestion,” those issues that I previously discussed, “will not be impacted by the deck that is subject to this application.” And then there’s the recitation of the five factors.

Mr. Joshua Subin stated if anybody has any questions, feel free. I’ll clarify anything that you want. I’ve got it open now David, but thank you Chris.

Ms. Cristin Jacoby stated I do just want to note too, David, I think you said 18 Travis Avenue but it’s 18 Travis Lane.

Mr. David Douglas stated I was reading from the agenda but I think you’re right.

Mr. Chris Kehoe stated the D&O has it as Avenue.

Mr. David Douglas stated that’s what the agenda has it as. If it’s Lane, I guess we can just correct that.

Ms. Cristin Jacoby stated let’s approve the right deck.

Mr. David Douglas stated that’s right.

Unknown speaker - stated Hi, it’s Travis Avenue, not Lane.

Ms. Cristin Jacoby stated oh.

Unknown speaker - stated there are two Travis’ but we are on Avenue.

Mr. Frank Franco stated I guess the fact sheet’s wrong then.

Mr. Chris Kehoe stated my understanding is the Decision & Order says Travis Avenue and doesn’t the agenda say Travis Avenue?

Mr. David Douglas responded yes.

Mr. Chris Kehoe stated so it’s all Travis Avenue.

Ms. Cristin Jacoby stated the Fact Sheet said Lane.

Mr. David Douglas asked you want to make a motion to adopt the Decision & Order?

Ms. Cristin Jacoby asked yes. There are no more comments? Let’s make a motion to adopt the Decision & Order for case No. 2020-7, 18 Travis Avenue.

Seconded with all in favor saying "aye".

Mr. David Douglas stated the Decision & Order to grant the applicant is granted.

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ADJOURNMENT

Ms. Eileen Henry stated I move we adjourn.

Seconded with all in favor saying "aye".

Mr. David Douglas stated the meeting is adjourned and we'll see everybody again next month.

Mr. Chris Kehoe stated before everybody leaves there is a chance, that we discussed, that I think the town is moving towards in-person meetings. I'll keep you all informed of how that's going to be handled and if there are any options or ways we can finesse that. Good night.

Mr. David Douglas stated thank you Rosemary and Chris for all the tech.

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NEXT REGULAR MEETING WEDNESDAY, OCTOBER 21st, 2020