

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, April 15, 2009**. The meeting was called to order, and began with the Pledge of Allegiance.

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

Charles P. Heady, Jr.
James Seirmarco
David S. Douglas
Adrian C. Hunte
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman
James Flandreau, Clerk of the Zoning Board
John J. Klarl, Deputy Town attorney

ADOPTION OF MEETING MINUTES FOR 3/18/09

Mr. John Mattis motioned for the meeting minutes for March 2009. Seconded with all in favor saying "aye."

CLOSE AND RESERVED DECISIONS ADJOURNED TO MAY

- A. CASE NO. 23-07** **Congregation Yeshiva Ohr Hameir** for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing, non-conforming use that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at **141 Furnace Woods Road, Cortlandt.**

*

*

*

CLOSE AND RESERVED DECISION

- A. CASE NO. 51-08** **John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**

Mr. John Klarl stated we've contacted the Town Clerk's office today and they gave us a certified copy of Local Law no. 1 of 2009 which is entitled "A Local Law Establishing A Moratorium on Certain Uses Under The Zoning Ordinance." That certified Local Law that you have in front of you has a section two entitled "Moratorium" and it says: "no approval shall be granted by the Planning Board, the Zoning Board of Appeals or any building inspectors of the Town, nor shall any applications be made to same with respect to any contractor's yards, specialty contractor's yards, rock crushing, mining, composting, wood chipping, scrap metal processing, and any similar such uses is the intent of this Moratorium that any application for which approval has not been granted or the application has not been completed before the Board by the adoption of the Board's Resolution or Decision and Order prior to April 1, 2009 shall not be allowed to proceed forward and shall await the outcome of this Moratorium." In addition, Mr. Flandreau has handed out to all of us a copy of a letter dated April 15, 2009 today from the New York State Department Estate to our Town Clerk, Jo-Ann Dyckman, and it indicates in the ray of the letter the Town of Cortlandt Local Law no. 1 2009 filed on April 15, 2009. The letter simply says: "Dear sir/madam, the above-referenced material was received and filed by this office as indicated. Additional Local Law filing forms can be obtained from our website." That's from the Principle Clerk of the State Records and Log Bureau. So, Mr. Chairman we're now in receipt of a certified copy of Local Law no. 1. The Moratorium concerning those uses and we are also in receipt of a letter indicating it was filed in Albany today. Based upon this Moratorium document I do not believe that we can entertain the granting or denying of the application and the adoption or Decision and Order that results in same tonight.

Mr. John Mattis stated we did have discussion of this at the work session which was prior to this Local Law being adopted and Mr. Chin this is your case do you have any comments on that?

Mr. Wai Man Chin responded we did have a D&O that was prepared by one of our members and now that we cannot vote on it, I don't know what else we can do but based on the D&O I would have probably given a favorable vote on that, but since we cannot vote on it because we're precluded from voting. I don't know what we do with this case.

Mr. John Mattis stated obviously which is probably the first time this has ever happened with the Moratorium. We're precluded from voting on something like this.

Mr. John Klarl stated the last line of the section two says: "shall not be allowed to proceed forward and shall await the outcome of this Moratorium."

Mr. John Mattis stated so I guess these cases hang in limbo. I'd like to ask if any of the Board members if they have any comments.

Mr. James Seirmarco responded yes Mr. Chairman I believe that this has been before this Board for four months since January, I guess we received it at the end of December.

Mr. John Mattis interrupted actually I believe it started in November but closed in December.

Mr. James Seirmarco stated but closed in December that's correct.

Mr. John Klarl interrupted the first meeting of the Board I have was December 17th.

Mr. James Seirmarco stated well it's been before this Board for a significant amount of time. We did have a public hearing. We had a D&O prepared. It was a positive D&O. I believe that it would have been unanimous that evening and since, subsequently, last meeting we gave our opinions that was unanimous in approving this according to the law as we interpreted it. We did have some residents come before us and said they wanted to be included in the public hearing. I believe that the filing and notice of file was correct. We went out of our way to open the public hearing again the following meeting and listened to comments from the audience, took that under advisement and again, I believe all of us were unanimous in our decision to go forward with this in a positive way. This is very unfortunate and I think that if the Moratorium didn't go in last night, it would have been a positive vote this evening, and I would have voted for it under the Laws that exist today.

Mr. John Mattis asked any other comments?

Mr. David Douglas stated I would like to say something briefly just for those who may not fully understand or maybe watching this on television not having attended these Town Board's work sessions. The Town Board is the legislative authority in this Town, and as that authority they're the ones who are responsible for passing the Town's Zoning Ordinances and what those provide and also as part of that legislative authority it is the right to make changes to the Zoning Ordinances and that is what the Town Board – that's the purpose apparently behind the Town Board's Moratorium. It's an exercise of its legislative power. This Zoning Board is not a legislative Board, we don't have that power and we are bound by the legislative power of the Town Board and we're bound by the Moratorium whether the Moratorium is wise or not-wise, or proper, or improper, that's not in our purview that's for others to look into. But, the Moratorium does stop us from making a decision on this particular matter and some other matters as well, apparently. I don't know that there's anything we can do about it one way or the other. I'm not personally opining on whether I think that the Moratorium's a good thing or a bad thing that's not my role here. I think that our hands are in fact tied by the legislative act of the Town Board.

Mr. James Seirmarco stated Mr. Chairman I would like to make one more comment. I agree with Mr. Douglas's statement. There have been a number of moratoriums, at least three or four in the last seven years, and everyone of those moratoriums always had a provision for an applicant to have an appeal process. This is the first time that a moratorium has been written, that I know of in probably ten years, that there was no appeals for the applicants before this Board. We did interpret some of the moratorium appeals in the past, some we turned down and some we approved for reasons that were obvious at the time. I was very surprised to see this Moratorium did not provide for an appeals position, again, it is not our responsibility to make those decisions but, personally, am surprised at that.

Mr. John Mattis asked any other comments?

Mrs. Adrian Hunte stated yes I would like to say that I concur with my fellow members on the Board and that we were presented with an application for an interpretation. For the new legislation that has been enacted were on the verge of issuing a positive interpretation and that we did not get to issue our final Decision and Order and we just had a draft, so based upon that and the legislation our hands are basically tied as to going forward with this.

Mr. Raymond Reber stated if I could add to that. I certainly concur with my colleagues in terms of the legislative responsibility is being with the Town Board. We are basically a court. We don't make legislation. Our job is to try and make sure that the laws in this case, the Zoning Laws, are applied properly. When we say we're in favor of or approve of a particular situation, it doesn't mean, and I think this is where this confusion with certain residents, it doesn't mean we are approving it per se as something we'd like or that's the way we want it. Many times we make decisions that we personally would not necessarily agree with. That's not our job to make those decisions. We have to just look at the Code and do our best job to interpret the Code as it was written. Obviously, by this Local Law that's just been passed that establishes this Moratorium, the Town Board is questioning whether in fact the Zoning Code is written in a way that they think is appropriate particularly with respect to these activities, and I have no problem with that and, in fact, one of the key cases that apparently precipitated this is for an activity in Montrose in an M-1 Zone. I think that is a proper M-1 Zone area where it is, next to the railroad tracks, but if the Town can come up with a way of improving utilization of that land, I'd be all for it, as a Montrose resident. Would I want to see residential or retailer? Absolutely not, because we have enough of that, but as an M-1 Zone which is basically for manufacturing and businesses if they can do something with the Code that somehow encourages prosperous businesses to come there, to create jobs, and are an addition to the environment, more power to them, and I would certainly be willing to help them. As my colleagues said, we can only interpret what is written in the Code and if that displeases people, that's unfortunate, but we don't have the flexibility to do necessarily what we personally what we would like, and so when we say we're in favor of, all we're saying is we're agreeing that it fits the Code as defined. I suggest possibly to help the Town figure out how properly they should define some of these, it might be useful to at least put in the record the draft D&Os because I think it gives some background as to why certain decisions were made in accordance with the Code and the SIC and what have you, and with that information provided in the record, then the Town can utilize that to say "okay, here's what we have to do to change what we think we would have to change." So, that would be my recommendation to the Board.

Mr. John Mattis asked Mr. Heady would you like to comment? You haven't commented.

Mr. Charles Heady responded I agree with Dave and Ray and also Jim explained it very well I thought.

Mr. John Mattis asked I have one question for our attorney. By law, when we close the public hearing and reserve our decision, we have 62 days to vote. Now we're being precluded, what happens with this case? Is it like as if it's adjourned until either the Moratorium is over or

perhaps the applicant may withdraw it? Are those the only two options at this point?

Mr. John Klarl responded it appears to be. I'm not absolutely certain because we haven't researched the question but I'd be happy to report back to the Board at the next meeting but right now just reading the exact language "shall not proceed forward and shall await the outcome of the moratorium." We'll find out exactly what the Town's position is on that and we'll advise the Board and we'll advise the applicant and the representatives, but there's been no determination exactly how to handle something that's on a given agenda right now.

Mr. David Douglas stated I have a question. I agree with Mr. Reber that it might be useful to have the draft D&O in the record. How do we go about doing that? We have a draft of the D&O written. Do we read it into the record? What can we do?

Mr. John Mattis responded we do it by reference.

Mr. John Klarl responded by reference with the idea that it's not being considered for adoption tonight and not something to vote.

Mr. Raymond Reber stated it's not being voted on.

Mr. John Mattis responded it's not being voted on but by reference we would like it included in the minutes. Is that the way we proceed?

Mr. John Klarl responded we can do that or if you want to send it to them. It sounds like they want to add it to the minutes but not vote on it.

Mr. David Douglas responded well I don't think we can vote on it.

Mr. John Klarl stated I agree we can't but in the alternative it sounds like someone wants it add to the minutes.

Mr. David Douglas added I'd be in favor of adding to the minutes.

Mr. James Seirmarco stated I agree.

Mrs. Adrian Hunte stated what about we read it into this record for those who do not get copies of the minutes.

Mr. David Douglas stated I can do that too.

Mr. John Mattis stated would you like to do that?

Mr. James Flandreau stated the minutes get posted on the website.

Mr. John Mattis stated very rarely though. I look back and don't see them very often.

Mr. James Flandreau responded with the new person whose handling the minutes, we get them electronically so we are able to post them.

Mr. David Douglas stated I think Miss Hunt would prefer it get read into the record. I don't have an objection as long as people don't mind listening to me drone on for two minutes.

Mr. David Douglas stated this is how the draft D&O reads that we would have voted on if we'd been permitted to.

DRAFT D&O
JOHN NOLAN, d/b/a CORTLANDT ORGANICS
ZBA Case No. 51-08

This is an application for an Interpretation that a leaf composting and wood waste processing facility is a permitted use in the M-1 Zoning District. The proposed facility would operate on a 2.2 acre portion of an 11.4 acre parcel located on the south side of Victoria Avenue, east of Albany Post Road (Route 9A).

Section 307-5 of the Town's Zoning Code establishes several different classes of Zoning Districts, including "residential districts", "commercial districts", "industrial districts", "parks, recreation and open space districts", and "aquifer protection districts." Section 307(C) establishes, as one of only two types of industrial zones in the Town, a "Light Industrial (M-1) District." The Code previously also allowed for heavy industrial uses, in an "M-2" Zoning District, but the M-2 industrial zone has since been eliminated in the Town.

The Zoning Code additionally contains a Table of Permitted Uses, which sets forth, for each Zoning District, including M-1, those uses that are permitted by right, not permitted, or require a special permit. Pursuant to § 307-14 of the Code, "only uses listed for each district as being permitted or permitted by special permit shall be permitted. Uses not listed specifically or by reference as being permitted in a district shall be prohibited in a district."

It is against this statutory backdrop that this Board must review the current application. Specifically, do the proposed activities, namely, leaf composting and wood waste processing, i.e.: wood chipping, constitute activities that are permitted under the Table of Permitted Uses insofar as it concerns M-1 districts?

Turning first to the leaf composting element, this Board finds that composting, at least as it is proposed by this Applicant to be undertaken at the property in question, is permitted in the M-1 Zoning District. The activities of the proposed leaf composting facility will consist primarily of simply transporting the materials to the site, treating and storing the composting materials in a specified in a designated area on the site where their use will be largely passive, and then ultimately transporting the composted material off-site. As such, this activity is essentially analogous to a contractor's yard, in which equipment is stored at a site and then moved off-site. The Table of Permitted Uses expressly permits, as of right, "general building and heavy construction contractors, including contractors' yards."

“Specialty trade contractors, including plumbing, heating and air conditioning, electrical, carpentry, sheet metal, etc.” are also permitted in the M-1 Zoning District.

Furthermore, when one looks to the intent of the M-1 Zoning District, an environmentally positive activity such as leaf composting falls squarely into the types of activities for which such a zone is designed. Far more intensive industrial activities are permitted in such a zone, including a myriad of manufacturing uses, including, for instance, the manufacture of food products; apparel; die-cut paper, paperboard, and cardboard and other paper and allied products; leather and leather products; cut stone and stone products; fabricated metal products; boat building and repairing; and miscellaneous manufacturing industries. In fact, other uses in the particular M-1 zone in which the parcel is located include an automobile junkyard, a concrete plant, and an asphalt plant. Perhaps even more tellingly, the Town itself conducted composting activities in the exact same Zoning District for a number of years.

As for the wood waste processing element to the proposed facility, the Board likewise finds that the proposed activity, at least as it is proposed to be undertaken in connection with this application, is permitted in the M-1 Zoning District. The Table of Permitted Uses expressly declares as a permitted use “lumber and wood products (SIC [“Standard Industrial Classification” manual] Sec. 24), except furniture and except logging, sawmills and planing mills.” The proposed wood waste activity is unquestionably an activity involving wood products, and does not constitute logging or a sawmill or planing mill. SIC § 2411 defines logging manufacturers as “Establishments primarily engaged in cutting timber and in producing rough, round, hewn, or riven primary forest or wood raw materials, or producing wood chips in the field.” (emphasis added). Similarly, § 113310 of the North American Industry Classification System (NAICS), which has supplemented the SIC, defines logging manufacturers as “establishments primarily engaged in one of the following: (1) cutting timber; (2) cutting and transporting timber and (3) producing wood chips in the field.” The proposed activity here does not involve the cutting and transporting of timber – which, for instance, the relevant Merriam-Webster’s definition terms as “wood suitable for building or for carpentry” and Dictionary.com similarly defines as “the wood of growing trees suitable for structural uses” – but rather scrap wood (wood waste). Moreover, the wood chips to be produced by this Applicant are to be produced at the facility itself, not in the field where the trees are felled.

Similarly, SIC § 2411 defines sawmills and planing mills as “establishments primarily engaged in sawing rough lumber and timber from logs and bolts. . . . and NAICS § 32113 states that sawmills are “establishments primarily engaged in sawing dimension lumber, boards, beams, timbers, poles, ties, shingles, shakes, siding, and wood chips from logs and bolts.” Again, the proposed wood chip facility here, as described in public hearings by the Applicant, is to use scrap wood, not timber, lumber (“timber sawed or split into planks, boards, etc.”; Dictionary.com) or logs (“a usually large section of a trunk or limb of a fallen or felled tree”; id.), or bolts (“a length of timber to be cut into smaller pieces”; id.).

It is therefore this Board’s INTERPRETATION that a leaf composting and wood waste processing facility, as proposed and described in the public hearings and in documents in the record by the Applicant here, is a permitted use in the M-1 Zoning District. Any such facility on the site, however, is of course subject to such approvals, disapprovals, terms, or conditions that the Planning Board may impose as part of the Applicant’s pending Site Development Plan application. Nothing in this Board’s conclusion should be read as in any way endorsing (or, conversely, in any way criticizing) the specifics of any proposal that this Applicant has or may in the future pursue before the Planning Board with respect to the facility as described in the public hearings and record before this Board.

This is a Type II action under SEQRA consisting of an interpretation of an existing Code or rule.

Mr. Raymond Reber stated I would like to compliment my colleague for the excellent job he did in putting this together.

Mr. David Douglas remarked of my reading ability?

Mr. John Klarl responded on a personal note, I would like to thank Mr. Douglas for all of his help in developing the draft D&O and just for the record, so no one misinterprets it once again, the draft D&O was read tonight by Mr. Douglas but it's not the subject of any vote tonight, it's not being adopted tonight. Just so that there's no misunderstanding.

Mr. John Mattis asked so I would like to ask our attorney; I guess our legal action tonight is to adjourn this closed hearing?

Mr. John Klarl responded you would adjourn and I think what we can do is request a memo from the Town attorney as to the effect of the Moratorium on the applications that are pending before the Zoning Board of Appeals and the Planning Board. For example, this applicant also has a companion application before the Planning Board.

Mr. John Mattis asked any other comments or do we have a motion to adjourn?

Mr. Wai Man Chin stated I have a motion to adjourn **case 51-08**, seconded with all in favor saying "aye."

Mr. John Mattis stated that case is adjourned for a later date.

B. CASE NO. 06-09 **Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **case no. 33-08** Decision and Order.

Mr. John Mattis stated again we have a draft Decision and Order on this and I'll turn this over to our attorney.

Mr. John Klarl stated thank you once again Mr. Chairman. On **case no. 6-09** it's an application by the Department of Technical Services for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as that term was used in the Zoning Board of Appeals **case no. 33-08** Decision and Order. Once again, this concerns an applicant who is a potential tenant at a property next to the Cortlandt Colonial Restaurant where he wants to consider a rock crushing operation and the question for this Board and this Interpretation is whether or not a rock crushing operation be allowed. Once again, we read the Moratorium a few

minutes ago and it does not allow for such an application to proceed and rather has to wait the outcome of the Moratorium so once again we're faced with the same situation we just had in the previous application. There is a draft D&O everyone has and I don't know, Mr. Chairman, if the Board is of the mind to read this into the record as something that would be proposed to be voted upon or rather just want to incorporate it by reference.

Mr. Raymond Reber stated I would again recommend that we read it in and not only for the reason that we have the draft but also it's basically asking for an Interpretation of a previous Interpretation we made which adds extra emphasis on our responsibility to clarify the decisions we've made previously again for the benefit of the Town Board and anyone else who is reviewing these cases, so yes I would recommend it being read.

Mr. John Mattis asked since that's your case would you mind reading it into the record?

Mr. John Klarl asked or would you want me to do since I authored it?

Mr. John Mattis asked or would you rather have the author do it?

Mr. Raymond Reber responded either way, if the author would prefer.

Mr. John Mattis stated we'll defer to the author.

Mr. John Klarl stated once again Mr. Chairman, I'll read this into the record not as something that's being voted on tonight. We have a draft Decision and Order before us by the Department of Technical Services concerning what we call the Meany Property (*see below*):

DRAFT D & O

**DEPARTMENT OF TECHNICAL SERVICES
(MEANY PROPERTY)
ZBA CASE NO. 6-09**

This is an application for an Interpretation as to what constitutes the demolition/distribution of "concrete aggregate" as that term was used in the previous Decision & Order of this Board, adopted on August 20, 2008, in ZBA Case No. 33-08. A copy of that previous Decision & Order is attached.

The prior application (in ZBA Case No. 33-08) was also an Interpretation application, brought by James Meany, a proposed business tenant for property located at 5716 Albany Post Road, a vacant 3.95 acre lot adjoining the Cortlandt Colonial Restaurant. Mr. Meany's application was for an Interpretation as to whether the demolition/distribution of concrete aggregate constitutes a "Special Trade Contractor" under the Town Zoning Ordinance's Table of Permitted Uses.

In our attached Decision & Order, adopted August 20, 2008, this Board concluded as follows on Mr. Meany's Interpretation application:

"The Applicant has proved sufficiently to this Board that under the Town's Table of Permitted Uses ("Special Trade Contractors etc."), and under the Standard Industrial Classification (SIC) Manual, that the Applicant's business of demolition/distribution of concrete aggregate is a specialty trade contractor use."

Now, the present application before this Board (ZBA Case No. 6-09) has been brought by the Department of Technical Services (DOTS) as to what constitutes the demolition/distribution of "concrete aggregate" as that term was used in the attached 2008 Decision & Order. The reason for this subsequent DOTS Interpretation application, is that the prior 2008 Interpretation application was based upon certain statements made by Mr. Meany and his professionals, i.e., that Mr. Meany intends to crush demolished road sections from the nearby massive "Route 9 Project" in Peekskill, being undertaken by New York State, to then be returned to and re-used in that same "Route 9 Project" (See: ZBA Fact Sheet, and ZBA Minutes from August 20, 2008).

However, the Town's Department of Technical Services has since been advised by Mr. Meany and his professionals that the Applicant intends to truck to the site large rocks and boulders and crush them into small stones that could be used as aggregate for concrete. The Department of Technical Services, by this application, is requesting this Board's Interpretation as to whether this type of rock crushing operation comes within the ambit of the Board's 2008 Decision & Order.

This Board has reviewed the August 2008 Interpretation application by Mr. Meany, the minutes of the ZBA Meeting held on August 20, 2008, the SIC sections relied upon and the Board's ultimate Decision & Order, adopted on August 20, 2008. Furthermore, the Board has reviewed the present Interpretation application by the Department of Technical Services and the ZBA Fact Sheet indicating that:

The Applicant (Mr. Meany) filed an application to the Planning Board for a "Special Trade Contractor for a stone crushing masonry material for an aggregate operation". The different language has led to some confusion for this application.

So, the narrow question now presented to this Board is whether this Board's 2008 Decision & Order permitted pure rock or stone to be crushed at this site by Mr. Meany (or, what one Board Member has called "virgin aggregate").

From a review of all the foregoing materials presented to the Board to date, this Board concludes and hereby makes the following Interpretation: The Decision & Order, adopted August 20, 2008 in ZBA Case No. 33-08, does not permit pure rock or stone to be transported to and crushed at this site by the proposed business tenant, Mr. Meany. The 2008 Decision & Order only contemplated the demolition (crushing) and distribution of concrete aggregate by this "Special Trade Contractor" (who was found to be a "Special Trade Contractor" under the Town Zoning Ordinance based upon the Applicant's careful description of its work offered to this Board in connection with the ongoing, nearby "Route 9 Project" in Peekskill, being undertaken by the State of New York).

This is a Type II application under SEQRA as it consists of the interpretation of an existing Code or rule. No further compliance is required.

Mr. John Klarl continued that's the proposed Decision and Order which once again, so no one misinterprets or misunderstands, is being read into the record but not being voted upon.

Mr. Raymond Reber stated and as with the previous case I believe that it is the consensus of the Board that we all agree that this is the appropriate Interpretation.

Mr. John Mattis stated that's correct. Any other comments from the other Board members? Mr. Reber could we have a motion to adjourn that case to a later date?

Mr. Raymond Reber made a motion to adjourn and to further direct it by our counsel, seconded with all in favor saying "aye."

Mr. John Mattis stated so that's adjourned.

*

*

*

NEW PUBLIC HEARINGS

A. CASE No. 07-09 Steve Di Sisto for an Area Variance for an accessory structure (shed) which is not permitted in the front yard on the property located at **11 Ridge Road, Cortlandt Manor.**

Mrs. Adrian Hunte asked Mr. Di Sisto could you describe for us the dimensions of the shed that you're proposing to put on this property?

Mr. Di Sisto responded the shed I'm proposing to put on my property is 10' x 12'.

Mrs. Adrian Hunte asked what about the height?

Mr. Di Sisto responded the height I think I put on the application because I called them. I think it's about 11 feet to the ridge.

Mrs. Adrian Hunte asked is there any other location on the property where you could put the shed?

Mr. Di Sisto responded my property the way it is, my house faces, it's on Ridge of course, but it's perpendicular to the lot, it runs the length of the lot. There's really no other location. I tried to keep it as close to the house and in a location that I think would suit, would sit correctly with the way my house sits and it would face the same direction and with the landscape around it just to make it fit in a little better. It's going to match the house, siding lies and roof shingle lies. I

think I came up with the best location to put it. Anywhere farther would just be sitting in the middle of my property down below.

Mr. Charles Heady asked Mr. Di Sisto you show a drawing of the shed you want to put on there it's just 10' x 12' it's like your front yard, but it's not the front yard because the way your road curves around where you got it in the back of the house because the front of the house is on Ridge Road, but Ridge Road kind of curves around. Actually, you've got no backyard.

Mr. Di Sisto responded there's really no backyard, it's visible no matter which way you go.

Mr. Charles Heady stated we don't generally give you a permit to build in the front yard but under the circumstances the way this is, you have no other choice.

Mr. Di Sisto stated even the other sides, there's 20 feet to the property line, but there's a wall 10 feet from the house so it wouldn't even fit even if I wanted to keep it tucked away someplace.

Mr. John Mattis stated and if you moved it further away from the house you'd be closer to the one neighbor there. You're keeping away from the neighbors.

Mr. Di Sisto stated yes I'm trying to keep it in a location that it doesn't disturb anyone else and it would suit what I need it for.

Mr. John Mattis asked any other comments from the Board members?

Mr. Raymond Reber stated the only comment I would make for the record, just for clarification is, obviously you have a difficult situation since the road wraps around and basically makes your whole yard a front yard. The only stipulation and apparently you're going to comply with it, is that when we grant this variance that it's understood that the shed would always be positioned no further front than the house itself.

Mr. Di Sisto responded definitely.

Mr. Raymond Reber continued I know you're going to comply with that but just for the record so that we clarify that.

Mr. Di Sisto continued yes I'm going to keep it that at 7 feet I showed off the property line from my neighbor there, so it's actually going to be behind my corner now, it's not going to come out any farther.

Mr. Raymond Reber stated I'm just doing that for the record so that people understand we didn't give you a carte blanche to put it any place.

Mr. Di Sisto responded no, I'm going to put it right where I showed on the plan.

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

Mrs. Adrian Hunte stated on **case no. 07-09** I'd like to make motion to close the public hearing, seconded with all in favor saying "aye." On Zoning Board of Appeals **case no. 07-09** for an area variance for an accessory structure shed for the front yard setback which is otherwise not permitted, on 11 Ridge Road in Cortlandt, I move that we grant the variance on the grounds that there's no undesirable change that will be produced in the character of the neighborhood or a detriment to nearby properties. You don't have a reasonable alternative to achieve your goal and this is, although not permitted, it's substantial but otherwise not permitted but you don't have any other alternatives and there'd be no adverse impact on the physical or environmental conditions in the neighborhood and there's no self-created difficulty. With that said, we move to grant the variance to install the accessory structure of the shed in the front yard on the above-referenced property with the condition that it not exceed the height of 14 feet and also this is a SEQRA type II action with no further compliance required.

Mr. Raymond Reber continued and I would also like to add in the restriction that it not be placed any farther front than the house itself is facing.

Mr. John Mattis added seconded with all in favor saying "aye." Your variance is granted.

B. CASE No. 08-09 Jorge B. Hernandez, RA for M & S Iron Works for an Interpretation if a structural steel & iron erector is a Special Trade Contractor on the property located at **439 Yorktown Road, Croton-on-Hudson.**

Mr. John Mattis stated I'll have to turn this over to our attorney based on the Moratorium.

Mr. John Klarl thanked Mr. Chairman. This application by Mr. Hernandez, a registered architect for M&S Iron Works is for an Interpretation for structural steel and iron erector is a Special Trade Contractor on the property located at 439 Yorktown Road in Croton-on-Hudson, and once again this appears that this application falls within the ambit of the Moratorium which we referenced at the outset of this meeting and therefore, the language of the Moratorium is that "it cannot proceed forward, must await the outcome of the Moratorium."

Mr. John Mattis stated unfortunately we can't move forward on this case. The Town passed the Moratorium yesterday. Moratorium precludes any applications that were not completed prior to April 1st.

Mr. Hernandez stated yes, but there's no exceptions or appeals. This is a contract vendee.

Mr. John Klarl stated I think the appeal section I read it I think it goes to the Town Board. Let me read it. Section 5 of the Moratorium, we have a certified copy tonight it says: "the Town Board retains onto itself the right to interpret this Local Law and to make all determinations with

respect to its applicability and interpret and determine the same.” So the appeal section of the Moratorium section 5 talks about referencing any appeal to the Town Board.

Mr. Hernandez stated to the Town Board.

Mr. John Mattis continued so again, as in those other two cases, based on the Moratorium on the Local Law 1 that was passed last night, we have no authority to act on this at this time.

Mr. John Klarl asked are you Mr. Hernandez?

Mr. Hernandez responded yes.

Mr. John Mattis stated I guess we just adjourn this but before we do that I would like to ask if there’s anyone in the audience who wanted to speak on this case?

Mr. Charles Heady asked so he has to wait for a year before he can do anything?

Mr. John Mattis responded up to a year depending on when they lift the Moratorium.

Mr. Wai Man Chin continued or he can go to the Town Board for an appeal.

Mr. John Mattis asked do we have a motion to adjourn this hearing, seconded with all in favor saying “aye.”

C. CASE No. 09-09 Anthony Cesarini, contract vendee, for an Area Variance for the lot width on the property located at 0 Barger Street, Cortlandt Manor.

Mr. Tim Cronin presented himself. My office put together the plan and the site plans for Mr. Cesarini who is standing up here with me. The lot in question is located on the west side of Barger Street, approximately 800 feet south of its intersection with Oregon Road. The lot is 50 feet wide by 150 feet deep and has an area of 75,000 sq ft. It’s located in the R-10 district so it doesn’t meet the current Code, however, it is a lot of record and we did have a meeting with Mr. Flandreau, Code Enforcement Officer/Building Inspector who had indicated that because the lot was a lot of record, I believe since 1984, that the variance that was necessary was a 10 foot variance for lot width and that the area variance was something that was grandfathered in and that’s the reason we’re here tonight is for the 10 foot variance.

Mr. Charles Heady stated it is a very narrow lot from all the rest of the lots alongside of you. The other lots are 121, the other one is 100, and the other one is 79 feet wide. That’s the only lot in that whole development there that’s got a very narrow lot. We would like to work with you but it hasn’t got the variance that you need for the area variance to come up width than what it is. It’s hard for us to determine something like this and try to help the applicant out to be able to get the permit he needs, but our hands are tied in a lot of ways, if there’s any other way it can work, I don’t know. Now I don’t think that the lot facing that lot there to the left is a big lot over there, I

don't suppose he needs to sell you a piece of land there, they'd probably want a lot of money for it to begin with, but that would be some alternative. It could be. I don't know if it could be or not.

Mr. Tim Cronin responded the lot itself is one that goes back, I believe, to a filed map in 1908 and it has been in separate ownership in accordance with the Town Code since the adoption of the merger provisions of the current Codes, the lot width is something that is an existing condition. We've picked the house and Mr. Cesarini has picked a house that is narrow enough so that we don't need any side yard, front yard, or rear yard variances and we do have a septic permit for this lot so aside from the granting of the 10 foot variance, everything else on this lot is something that we've demonstrated works and that it is a buildable lot.

Mr. Charles Heady asked the septic would go in the back, am I right? It would have to go in the back.

Mr. Tim Cronin responded it would have one of the seepage pits, it's a seepage pit system, it would be one pit; there's a primary system and I believe that's in the back, and the front pit would be the expansion pit. We would need to be able to double the size of the septic system.

Mr. John Klarl asked Mr. Cronin your client is a contract vendee?

Mr. Tim Cronin responded yes he is.

Mr. John Klarl continued he's got a signed contract both sides?

Mr. Tim Cronin responded I submitted an application and I believe it's – the contract has been submitted correct and there was something that was also submitted because it was – this is part of an estate so we do have something from the executor allowing us to proceed.

Mr. John Klarl asked but the contract was signed both by seller and potential purchaser? Does the contract have a provision that the closing, the transaction is contingent upon successful application before the Planning Board, the Zoning Board of Appeals, of the Town of Cortlandt?

Mr. Tim Cronin asked is it subject to a building permit?

Mr. Anthony Cesarini is subject to a building permit.

Mr. John Klarl asked but you do have that provision in your contract?

Mr. Tim Cronin responded yes.

Mr. John Klarl continued but there's no reference to application before the Planning Board or Zoning Board of Appeals?

Mr. Tim Cronin responded we figured if we get to that point, we've taken care of all the other issues.

Mr. John Klarl responded you've done excellent lawyering Mr. Cronin.

Mr. Tim Cronin responded I try but sometimes I don't.

Mr. John Mattis asked any comments from the other Board members?

Mr. David Douglas stated my concern is if you look at the neighborhood, what you're proposing seems to me to be totally out of character with any of the other lots. All of the other lots are substantially wider than this is and you're basically proposing to squeeze in a house on a lot that's different and noticeably different and out of character with the neighborhood. I find that troubling.

Mr. Raymond Reber stated this is a situation that we've seen before and it arises because of the referenced subdivision map that was referenced from 1908. Several areas of this Town back in the early part of the century, developers bought large parcels of land and created these maps with these 50 foot-wide lots which maybe back in 1908 was adequate for the little cottages that people lived in those days. Obviously, that's not something that the Town considers appropriate these days and what I find interesting is because of these relatively small lots, it's still only an R-10 zone which is the smallest allowable zone that the Town has and yet this lot doesn't meet all the criteria of the most liberal of the zoning areas in terms of minimization for putting up a house. So, to me "you've got to be kidding, there's no way that the Town really would like to see this." Also, the idea that well we can fit a house on here and we can put septic in, yes, you can do it and, in fact, the only way they're getting approval here is they're proposing a two bedroom house which again in this day and age is rare, but so be it if that's all they want to build that's fine. However, when you look at the neighborhood, you look at the intent of the law, you look at the fact that this is the smallest zoning possible at R-10 and you've got to say "if they can't meet this, no way." But, there's another factor, according to the information provided us it says that the property was divided by a map filed on April 6, 1908, but in 1980 Dorothy Young purchased the lots 14, 15, 16, 44, 45, 46, 47 and then northerly sections of 21 or lots 13 and 48 – 21 feet of those lots. In other words, there was a period before these houses were all built that these lots were purchased. What I've seen happen in this Town before is people do this, they buy up some land, then they break it up, they put up a couple of houses and there's a piece left over, and they consciously do that because they don't need that piece, and they figure it's left over and it's not too developable and why do I want to pay taxes on it so they isolate it off. A lot of times it becomes remnant property and the Town's stuck with it. I don't know what the logic here was of separating this piece out from the adjacent parcels when they were being utilized back in 1980, but to me it's another situation where it could have been avoided back then. They could have realized it doesn't make sense to have a 50 foot lot, particularly next to lots that you're developing which this individual themselves developed which are all basically double and triple lots if you look at the ones that they did develop. So, why would they develop double and triple lots for their own houses that they were developing and then leave this little 50 foot lot to be

built next to the lots they already developed? To me it almost seems like they figured “well it’s just a wasted lot, we’ll just ignore it. It serves no purpose.” Now somebody’s trying to make a few bucks on it by saying “if we can get building permit we can squeeze a little two bedroom cottage in there.” No, it’s not right and it’s not consistent with the neighborhood. I don’t see any reason why we should give the variance.

Mr. Tim Cronin argued this lot was never offered a place in remnant, it always passed in ownership from when it first...

Mr. Raymond Reber interrupted I know that as such it does in many cases that’s what happens to it.

Mr. Tim Cronin responded I would like to point out that it is a three bedroom house, not a two bedroom.

Mr. Raymond Reber stated my information I thought was two.

Mr. Tim Cronin continued if we had an extra 10 or 15 or 20 feet, believe me we would have utilized it, but unfortunately the lot is what’s there today. I don’t know if we have another alternative. The lot lines are not something that we had anything to do with. It’s an existing condition. We’re trying to utilize a buildable piece of property except for the need for a lot with variance every other aspect of this lot is a buildable lot.

Mr. David Douglas responded well that means it’s not a buildable lot.

Mr. Tim Cronin continued except for that aspect. We have a three bedroom septic approved by the County on this lot. You have many lots that are many times bigger than this, two, three or four acre lots where you can only a two bedroom. Now does that make that lot more buildable than this lot?

Mr. John Mattis stated we’re not looking at buildable, we’re looking at the Code and the dimensions of the requirements of the lot.

Mr. Tim Cronin continued and again, this is an existing lot, like I said before, we really can’t adjust the lot dimensions are something that we had nothing to do.

Mr. Raymond Reber stated if you look at the map, if you’re on the front of the lot and you go to the left, the lot widths are 175, 79, 100, and 100. If you go the other direction you’ve got the similar situation, they’re 100, 100 all the way down. If you go to the street that it backs up on, those lots are the same thing; 75 is the absolute minimum, and most of them are a 100 or more. It’s just not consistent with the rest of the neighborhood. It’s a mini-lot, and to squeeze a house in there – okay, septic are underground and whether you can get them in depends on a lot of things with the soil and rock and what have you, but once it’s in nobody knows, it disappears. But, what you put above ground is very visible and it does impact on the neighborhood and

you're going to squeeze a house in here that's going to all of a sudden be compact next to its neighbors certainly on the right as you look at the house. It's a mini-lot and – no. That's why the Code was written the way it was.

Mr. Cesarini stated three years ago I built at, if you know where Casparian Road is by the Golf Course, that lot is 50' x 100', and I built there. This is 50' x 100'.

Mr. John Mattis asked did you come to us for a variance?

Mr. Cesarini responded no.

Mr. John Mattis continued no it did not require a variance.

Mr. Cesarini responded and it was 50' x 100' though, this lot's 50' x 150'.

Mr. Raymond Reber stated it doesn't matter.

Mr. John Mattis responded but it didn't require a variance. That's a world of difference. This requires a variance. I'd like to make some comments. It's certainly, and this aerial view shows it very graphically, that it is narrower than any of the others – I won't go back into the dimensions, Mr. Reber spoke to all of the dimensions of the others. Some of the things we look is this a self-created hardship? Mr. Cesarini it is not your self-created hardship but it was a self-created hardship by the person who created this substandard lot who owned it at the time. So, that's one of the factors we look at. The other factor is, is it out of character in the neighborhood and I think you've heard unanimously that a narrow lot like this where even though the minimum requirement is 60, there is not one up and down the street that is less than 79 or 75, so this is clearly out of character for the neighborhood.

Mr. Raymond Reber continued and we have other neighborhoods in Cortlandt where houses are almost on top of each other, but that's other neighborhoods. Not this neighborhood.

Mr. Tim Cronin stated I'd like to comment. When the lot was created it wasn't a hardship. It was a conforming lot.

Mr. John Mattis stated and things change.

Mr. Tim Cronin continued it was created by the Town passing or changing the zoning. But it wasn't self-created by us. As far as out of character, this is the end of Barger Street.

Mr. Raymond Reber stated I don't know exactly what the requirements were in 1980 but I know that in the 1950's and the 60's there were several developments put in the Town of Cortlandt and their minimum widths when they were laid out was 75 feet. So, I don't know when the Town started saying 50 wasn't acceptable, but I know that in the 50's and 60's they weren't allowing new subdivisions to be any less than 75 feet. So, to say that in 1980 they didn't realize that a 50

foot lot really wasn't very acceptable to me is kind of like having blinders on and saying "we're not paying attention to what's going on in the world." When, in fact, all of the lots that they did create with houses on in this neighborhood were obviously more than 50 feet, so somebody was thinking that 50 was unacceptable or they would have just kept developing 50 foot lots.

Mr. John Mattis asked any other comments?

Mr. Wai Man Chin stated I'm just saying that Dorothy Young subdivided the property in 1980 into three lots, and at that time it was already 60 feet. I think Mrs. Young should have known better.

Mr. James Flandreau added the 60 feet is for a lot of record for that zone. I believe it was 100 feet for any new lot that was created. This was being a lot of record back from 1908 that was re-subdivided so it would have fell under the 60 feet requirement. If it was a new lot being created it would have needed 100 feet if remember correctly with the zone.

Mr. Wai Man Chin stated that's what I'm saying. Since Mrs. Young did this in 1980 it should have been at least 60 feet back then.

Mr. Raymond Reber stated this lot should have stayed with one of the neighboring lots when it was being developed.

Mr. John Mattis added we've seen this in the past where developers have developed a new section and then they have one lot at the end that really doesn't fit and then they come to us and ask for a relief when they've clearly planned it that way and laid it out that way. I'm not saying this is the case but however it occurred, it has occurred, it is only 50 feet. Those are the facts of the case. Compared to all the other properties in that area, whether it be School Street which this backs up into, or Barger Street which it faces, they are all substantially wider lots.

Mr. Charles Heady stated Mr. Cesarini the way the Board is talking now it's pretty hard for them to make a decision for you. I myself would like to see you get the lot but under the circumstances the way that things have been with law, the way things have been changed, it's pretty hard to overrule it. If there is any way that Mr. Cronin could advise you to maybe to either adjourn or withdraw the case. I don't know, you can talk to Mr. Cronin and see what he thinks.

Mr. John Mattis stated I don't understand what adjourning would do, because you're going to come back with a 50 foot lot and we're just prolonging this.

Mr. Tim Cronin stated well it's 5 minutes, 10 minutes, we were try to be quick and succinct. Your position seems like it's pretty clear regarding the 50 feet, so unless we can come up with something that's really earth shattering, or shocking, I don't think...

Mr. John Klarl stated or earth-expanding.

Mr. John Mattis stated you could ask us to adjourn it but I don't know what it would accomplish in this case.

Mr. Tim Cronin stated again, we're contract vendee, if you could adjourn it we would appreciate that.

Mr. Charles Heady stated maybe you could talk to a neighbor next door there and maybe possibly, I don't know if it would pay or not.

Mr. Tim Cronin continued we'll try, but until next meeting and if we work something out by then we'll be back, if not then we may have it withdrawn.

Mr. John Klarl stated the next meeting is May 20th.

Mr. John Mattis asked is there anyone in the audience who would like to speak? Yes sir, could you come up and identify yourself?

Mr. Dennis Holmes presented himself to the Board and stated I own the adjoining lot on Barger Street. 20 Barger Street.

Mr. John Mattis asked now is this to the left or the right of this property?

Mr. Raymond Reber asked the one with the house or the one with the backyard?

Mr. Dennis Holmes responded I'm the one with the house. Existing building.

Mr. John Mattis continued existing building it would be to the right as we look at this.

Mr. David Douglas added if you're standing in the Street...

Mr. Dennis Holmes responded I'm to the North of the house or this plot of land. My only concern really is maintaining a side yard. If they're not building straight out to the edges of the property line and I can reach out and touch them. That's really my biggest concern and that the size of the house if it's ever developed it's just appropriate for the size of the plot of land. Not some sort of McMansion that they're trying to squeeze in.

Mr. John Mattis stated if we grant this variance they can come and as you see, if you look at it, the dotted lines are the envelop that you can put the house without a variance. How many feet is that from the property line in this case?

Mr. Charles Heady responded 7.5.

Mr. John Mattis continued so they can build within 7.5 feet on both sides, which they intend to do.

Mr. Dennis Holmes responded to me that is reasonable, you know they're not trying to go all the way out to the edge.

Mr. Tim Cronin stated the house is only 1,700 sq ft.

Mr. Dennis Holmes stated also appropriate, I think correct that it doesn't fit in with the rest of the street, they're all raised ranches pretty much with 100 foot-wide lots. It's not like they're trying to squeeze a 2,500 sq ft. house on this either. The plan looks somewhat reasonable. That's just my input.

Mr. Wai Man Chin asked so you have no objections?

Mr. Dennis Holmes responded like I said, as long as they maintain a side yard. It's going to be tough to get a driveway in there. They have a plan I guess, because the entire front of the lot doesn't face the street, it faces somebody else's property.

Mr. James Seirmarco asked just for the record, can you point your house out on this area map?

Mr. Dennis Holmes approached the Board and pointed out his house on the map.

Mr. John Mattis asked so we identified where your house is on the aerial map.

Mrs. Adrian Hunte added in addition to the issues with the side properties. What about the property that's in back where this house would be? It appears to be very close to the rear yard of this house.

Mr. John Mattis stated that's a garage.

Mr. Wai Man Chin added that's not a house, that's a garage.

Mr. John Mattis continued that's the garage of the house that fronts on School Street.

Mr. Dennis Holmes added from what I remember I think that house is closer to the rear of the property line than our house is. I just did a site inspection.

Mr. John Mattis asked any other comments? And, you would like an adjournment?

Mr. Charles Heady stated I would like to make a motion on **case 9-09** to adjourn the public hearing until the May meeting, seconded with all in favor saying "aye."

Mr. John Mattis stated so that's Wednesday, May 20th. Now, we have a request from the Department of Technical Services to re-open **case no. 43-08**. Do we have a motion on that? Motioned and seconded with all in favor saying "aye." So, that's unanimous so we can re-open

this case. I'm not sure who this is assigned to. What we're really doing is cleaning up the language on a Decision and Order. Maybe I'll turn it over to our attorney with his comments on this.

Mr. John Klarl stated Mr. Chairman I brought my old file to the meeting tonight and I see that this matter was first on our agenda November '08, then December '08. At the December 17th, '08 meeting we closed the public hearing and directed the preparation of the Decision and Order and I don't have the minutes from that meeting, but I'm looking at my notes and my notes indicated, for example Mr. Chairman, that you summed up that we wanted a Decision and Order that reflected that any time we rebuild a building within a footprint, it should go for a full site plan review. Apparently there was a Decision and Order that was signed and adopted and it didn't track the language as was indicated that night, Mr. Vergano, our Director of DOTS has given this Board a memo dated April 3, 2009 where he suggests some language to replace language in the original Decision and Order and specifically, looking at Mr. Vergano's memo, I see that he says at a minimum the D&O adopted December 2008 should be modified as follows: "the Zoning Board of Appeals interprets that site plan approval will be required from the Planning Board if any portion of an existing commercial building is demolished and/or if any portion of the building is reconstructed within the existing footprint." This is Mr. Vergano's suggested language to replace the previous language in the previous Decision and Order.

Mr. John Mattis asked so the key words there are "any portion?"

Mr. John Klarl responded right. We talked about it at the work session on Monday night and he used the words "all or A" and I think this Board agreed that you'd want to replace the words "all or A" with the word "any."

Mr. John Mattis asked do we have any Board comments on that? Anyone in the audience? Can we have a motion?

Mr. James Seirmarco stated I move that we modify the D&O as stated to any change, and this is a type II SEQRA, seconded with all in favor saying "aye."

Mr. John Mattis asked is there any other business? Do we have motion to adjourn? Seconded with all in favor saying "aye." Meeting is adjourned.