

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 17th, 2013*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

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

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ADOPTION OF MEETING MINUTES FOR FEB. 20, 2013 AND MARCH 20, 2013

Mr. David Douglas asked can I have a motion to adopt those with the correction that Mr. Heady pointed out?

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

Mr. David Douglas stated the meeting minutes for both February and March are adopted.

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ADJOURNED PUBLIC HEARING TO JUNE:

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

Mr. David Douglas stated the case is in front of the Zoning Board as well so we're waiting to coordinate things with the applicant moving forward there.

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ADJOURNED PUBLIC HEARING TO MAY:

- A. CASE No. 2013-07** **Bruce Folgum on behalf of Fulgum's Restaurant and Bar Corp.** for an Area Variance for the front yard setback for a deck and awning on property located at **2151 Albany Post Rd., Montrose.**

Mr. David Douglas stated that's also been adjourned as we're coordinating a review with the Planning Board on that matter.

Mr. John Klarl stated Mr. Chairman, I just have a note on that application – the application of Fulgum – it's before the Planning Board also and the Planning Board did act recently by motion approving going from a patio setting to a deck setting and subject to CAAC approval and this Board's approval. It's going to be back in May with the Planning Board has made a favorable motion on the matter.

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CLOSED AND RESERVED:

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

Mr. David Douglas stated at our work session we discussed adjourning that until May. Do I have a motion to that effect?

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

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

- B. CASE No. 2013-02** **Ed McPartland, dba WackyInflatables Inc.,** for a Special Permit Home Occupation on property located at **17 Wharton Dr., Cortlandt Manor, NY.**

Mr. David Douglas stated I'll turn that over to Mr. Klarl.

Mr. John Klarl stated thank you Mr. Chairman. We have before us tonight a draft Decision and Order in this matter and the draft Decision and Order...

Mr. David Douglas asked do we have rules about cameras by the way? I don't even know.

Mr. John Mattis asked could you identify yourself?

Mr. David Wilson stated I'm from the Journal News.

Mr. David Douglas stated it's fine with me I just didn't know if we had rules.

Mr. John Mattis stated I was just wondering who was taking pictures, that's all.

Mr. David Douglas stated I think it's fine, unless it's affecting Mr. Klarl.

Mr. John Klarl stated this is an application by Mr. McPartland doing business as WackyInflatables for a Special Permit Home Occupation for his property located at 17 Wharton Drive, Cortlandt Manor. The property is located in an **R-10** single-family residential district. The applicant requests a Special Permit for his WackyInflatable business to be conducted as a Home Occupation. This use is not covered by as of right Home Occupation listed in the table of permitted uses and the business consists of the rental of inflatables used at children's parties, fundraisers and other events. Prior to any event, the applicant tests the inflatables by filling it with air from a blower on his property. The applicant has one commercial vehicle, a pickup truck that he parks in the driveway and he's allowed by Code and two pull trailers containing the inflatables. One of the trailers has commercial lettering. The **R-10** zone allows storage of unenclosed trailers in the side and front yards if the applicant removed the lettering from the one trailer, both trailers could be stored on the property. A Special Permit could allow one trailer with lettering, we'll see that later. There's a steeply sloped back yard which cannot be used for storage. The yard parking plank consists the existing driveway and the applicant is the sole employee. The application's submitted photos of this property and client testimonials with his application. Home Occupation is defined in section **307-4** the Town Zoning Board and is as follows: "a) an accessory use clearly incidental and secondary to the use of the dwelling for dwelling purposes which does not change the character of the premises does not occupy more than **25%** of the gross floor area of the dwelling, is carried on by the permanent residents of the dwelling unit and meets the parking requirements of this chapter. Then, we have a section b) of sections **307-4** and it says what Home Occupations does not involve and there's **6** prohibitions which we'll talk about in a little while. Section **307-46** of the Town Zoning Ordinance is entitled 'Special Permit Home Occupation' provides the purpose clause as to why we encourage Home Occupations now, that's section **a)**, section **b)** is the application requirements: there would be a parking plan, a landscape plan, another information to indicate the nature and volume of the pro's Home Occupation is to be submitted with the application for the Special Permit. **C)** Standards and Conditions; **C1)** provides that the applicant should indicate the volume of business conducted by the Home Occupation and it should not be such that the residential character would be altered. The Zoning Board of Appeals shall also consider the number of vehicle trips to the site by passenger commercial vehicles. **C2)** The parking areas shall be screened by fencing and planted materials in manner such that the visual impacts in such areas upon adjacent properties and streets are minimized, and specifically, no parking area shall be less than **10** feet from the adjacent properties. 3) Any accessory structure in which the Home Occupation is conducted shall meet the yard requirements to the principal structure that's for an accessory structure. The applicant testified before us that he owned a pickup truck and two trailers and kept them in his driveway. In addition, he told the Board a couple of things: 1) The business is generally operated on Saturdays and Sundays from April to October each year. 2) The inflatables are

stored in the trailers and inflate in **30 to 90** seconds using a fairly quiet blower. 3) The inflatables are only inflated for **20** minutes on the property and he uses wipes to clean the inflatables as he can't use a hose because that could create a mold condition. 4) The applicant indicated to us that he does not park in the middle of the street, does not block any road signs posted on Wharton Drive. In addition, the applicant does not impede any sight lines for other vehicles travelling Wharton Drive and most importantly, his Home Occupation is not unsightly. The applicant produced a letter in support of the application for the Special Permit from a family living directly across from the applicant's property and driveway stating, the letter said: "I give my **100%** support to Eddy McPartland's request for a Special Permit for WackyInflatables. I live at 16 Wharton Drive, directly in front of Eddy's home, so if anyone would be affected by anything he does on his property would be me and my family. During the few years he has had the business, in no way shape or form has it presented a problem. In fact, if anything, I think it has enhanced the neighborhood. We couldn't ask for a better neighbor than Eddy. He is always there to lend a hand and he keeps his property in pristine condition putting everyone else's to shame. He is a tireless worker who decided to start a side business to make an honest buck and that's all he does. He also donates his floats and services often to schools and charitable events. My driveway is directly across from Eddy's and we've never had an issue being unable to back out or drive in because of vehicles. Wharton Drive is wide enough in front of our homes for two vehicles to pass safely and also anyone that may be walking. To contend otherwise just isn't true." Finally, several other neighbors spoke at the two public hearings also in favor of the applicant's request for Special Permit, then two neighbors: Mr. and Mrs. Gilmore represented by council and through their council indicated they opposed the granting of the Special Permit for a Home Occupation to this applicant for several reasons; among them: 1) the applicant's present use is a commercial operation. 2) The applicant often has inflatables on the lawn and often cleans the inflatables on the lawn. 3) The applicant's use is not a Home Occupation but rather they contended is a use that is not appropriate here. Mr. Gilmore also testified and he echoed his attorney in his opposition to the application stating that "trailers are an eyesore. The trailers were visible from the street." He complained of a business run from a home in a residential neighborhood and he complained of the applicant blocking sight lines on the road Wharton Drive. After considering carefully, weighing about the testimony of the various neighbors of those two public hearings, this Board finds as follows and we had **8** findings: 1) the applicant qualifies for a Special Permit for a Home Occupation as defined by section **307-4** of the Zoning Ordinance. 2) The applicant's accessory use is clearly incidental and secondary to the use of the applicant's dwelling for dwelling purposes. 3) The applicant's accessory use does not change the character of the premises, does not occupy more than **25%** of the gross floor area of the dwelling, is carried on by permanent residents of the dwelling and meets the parking requirements of the Zoning Ordinance. 4) The proposed Home Occupation does not run afoul of the **6** prohibitions recited in **307-4** of the Zoning Ordinance and also meets the application requirements and the standards and conditions except **4th** and **307-46** of the Zoning Ordinance. 5) The applicant does not have customer vehicles coming to and from the applicant's property and thus there is no impact of such vehicle trips on adjacent properties. 6) No parking area will be less than **10** feet from the adjacent properties. 7) A parking plan and information to indicate the nature and volume of the proposed Home Occupation was submitted with the application. 8) Section **307-4b** provides Home Occupations shall not involve "the delivery of goods or products to or from the premises in other than pass your own automobile, mail carrier or packaged delivery service." Here the applicant is not delivering goods and products to and from the

premises. This Board believes the applicant's Home Occupation is in the nature of performing a service off premises. The applicant's Home Occupation does not create and or sale goods or products. Therefore, this Board hereby grants the applicant's application for a Special Permit Home Occupation under section **307-4** and **307-46** of the Town's Zoning Ordinance subject to the following four expressed conditions: 1) The Special Permit shall be valid for two years until April 17th, 2015 at which time the applicant can apply to renew the Special Permit. 2) One trailer with lettering shall be parked in the driveway and not on the street. 3) There shall not be any employees in the applicant's Home Occupation other than the permanent residents of the applicant's dwelling. 4) The applicant can pursue this Home Occupation on his property for one hour on a given day for inflating, deflating, cleaning, etc except when using such inflatables for his personal use and then in that case there's no such time limitation. This is an unlisted action under SEQRA and a negative of declaration is being proposed for this Board.

Mr. James Seirmarco stated after that statement was read it appears that we've done our due diligence on this case and listened to both sides and I make a motion that we grant the Special Permit on **case #2013-02** and this is a type II SEQRA, no further compliance is required.

Mr. David Douglas stated that grant you're proposing gets granted subject to the conditions...

Mr. James Seirmarco stated subject to the conditions that were just read in detail.

Second with all in favor saying "aye."

Mr. David Douglas stated the Special Permit is granted in accordance with the Decision and Order. Thank you very much.

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ADJOURNED PUBLIC HEARING:

**A. CASE No. 2013-09 Tyrone Ijeh on behalf of Edna Ijeh for renewal of an
Accessory Apartment Special Permit on property located at **3 O'Connor Court,
Cortlandt Manor.****

Mr. James Seirmarco stated Mr. Chairman, at the last meeting we discussed this in great detail. We tossed a number of options back and forth and we came to a general consensus of what Mr. Ijeh had to do. He submitted us revised plans for his accessory apartment and I believe they're acceptable to...

Mr. Ken Hoch stated we haven't reviewed the plans for the apartment yet. We're waiting for the Board to grant him a permit. He had submitted plans...

Mr. James Seirmarco stated I don't have a problem with the revised plans.

Mr. Raymond Reber stated likewise, he did what we asked him and it meets the criteria and I

have no problem.

Mr. Wai Man Chin stated I have no problem either.

Ms. Adrian Hunte stated I agree.

Mr. Charles Heady stated he's done everything we asked him to do so I have no problem.

Mr. James Seirmarco stated he did everything that we suggested he do and I don't have a problem so I would make a motion to close the public hearing.

Ms. Adrian Hunte asked anybody in the audience want to speak?

Mr. James Seirmarco stated I make a motion to close the public hearing on **case #2013-09** for a Special Permit for an Accessory Apartment.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. James Seirmarco stated Mr. Chairman, I make a motion on **case #2013-09** located at 3 O'Connor Court in Montrose this is an application for a Special Permit for the Accessory Apartment as revised by Mr. Ijeh. This is a type II SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Special Permit for the Accessory Apartment is granted.

Mr. Tyrone Ijeh stated thank you members.

Mr. David Douglas stated it was a lot easier than the last one wasn't it?

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NEW PUBLIC HEARINGS:

A. CASE No. 2013-10 Marcellino Quispe for an Accessory Apartment Special Permit on property located at **1184 Oregon Road, Cortlandt Manor.**

Mr. Marcellino Quispe stated I'm the owner of the house. I'm asking for Accessory Apartment.

Mr. John Mattis stated your asking for approval for an Accessory Apartment.

Mr. Marcellino Quispe responded correct.

Mr. John Mattis asked how long has that accessory apartment existed?

Mr. Marcellino Quispe responded since I buy it.

Mr. John Mattis asked and how long have you owned it?

Mr. Marcellino Quispe responded **3** years.

Mr. John Mattis asked you know we have certain criteria for an accessory apartment?

Mr. Marcellino Quispe responded yes I know.

Mr. John Mattis stated number one, the house has to be – or the living area, the floor area house to be **1,600** square feet. In calculating this, your calculations show that the first floor is **727** square feet. You don't show the total on the basement other than what we have in our notes here from Code Enforcement which is **600** square feet so that gives you a total of **1,327** square feet. You're required **1,600**. You're about **20%** short of what the Code says, **20%** being a fairly large number. Secondly, it cannot be more than **600** square feet. You're proposing **495** square feet so that makes it under the Code. The third test is it cannot be more than **25%** of the total area and calculating the **495** square feet versus the **1,327** that would be a Variance of **37.3%** and again that's considerably over what the Code allows. This is quite a stretch to approve either of those because both of them are such large Variances and I think that this is a – the intent of the Code, the **1,600** square feet says that they really don't want accessory apartments in small houses because then the primary apartment is so small that it's almost like two accessory apartments in one house and they don't want the size of the accessory structure limiting it to **25%** -- they don't want that to overtake the size of the primary resident and in this case **37.3%** is quite substantial. I couldn't support this Variance. I just think it's the apartment is too large for the size of the house in percentages and the house is too small. Reluctantly, I can't support this.

Mr. Raymond Reber stated the part that concerns me the most is; the way the Code is written it clearly indicates that it expects the primary residence to be at least a thousand square feet and here it's **720** and that's a **28%** Variance so to me that's a real major problem and I would have difficulty with this.

Mr. James Seirmarco stated if you take the size of the house at **1,454** square feet and you say **25%** of that, it's only **365** square feet. That's the maximum square foot that you could have in an accessory apartment so you're way, way past that so you can't have anything, by definition, greater than **363**.

Ms. Adrian Hunte asked can you make it smaller at all to come within the **25%** or the maximum size allowed under the Code?

Mr. Marcellino Quispe responded yes, we can reduce it.

Mr. Wai Man Chin stated I think the major problem is that the house is not big enough, period.

The **1,600** square feet as compared to **1,300** square feet I think is the biggest problem of the whole thing right now as I see.

Ms. Adrian Hunte stated I think there's a problem here with the Code and maybe this is not the appropriate form for it, however, it appears as though is this an arbitrary number; **1,600** square feet, it may be something that needs to be taken up with the Town Board in terms of the Code because I don't see that it says that there has to be **1,600** square feet as the minimum size. It's a number that is chosen for what reasons. If you say it's because there are issues with sanitation, septic, sewer, overcrowding, that's one thing but not seeing that I don't know how they arrived at the number.

Mr. Marcellino Quispe stated I'm requesting this accessory because the house is small. It only has one bedroom and one room I use like office. Sometimes I have visitors or some family why I can't get it, that's why I'm trying to request it. I know it doesn't fit in the rules but there's a problem, it's a small tiny house.

Mr. John Mattis asked what do you mean by use it for some other parts of the family? You mean, they visit or they live there?

Mr. Marcellino Quispe responded temporary visit. My mother-in-law is coming in the summer time and they want to stay in here. They don't want to mix with me and that's why I want this.

Mr. John Mattis stated you're not limited in that. You're limited in the fact that what we're saying is we don't think an accessory apartment is appropriate but that doesn't mean that you can't have living area there. It has to be part of the main floor. It has to be one living area but you can have somebody come and visit you and stay downstairs but you cannot have a kitchen there.

Mr. Marcellino Quispe responded but this is uncomfortable for me to have my mother-in-law that doesn't want to mix with me.

Mr. John Mattis stated I understand that, unfortunately, if we granted the Variance for that reason, I'm sure there's many people in the Town that have the same thing where they have family that stays with them and they'd like that separation and I understand that but then we'd be giving Variances to everybody that doesn't meet even the minimum requirements.

Mr. Raymond Reber stated as I say, you can use it as a one-family. You can use downstairs as you have it. You just can't have two kitchens in the same house. That's the problem.

Mr. Marcellino Quispe stated if that's an issue I would remove the kitchen.

Mr. John Mattis stated even if we allowed – if we said the **1,327** square feet, if we gave that Variance, you're still limited to **25%** and **25%** is only **325** square feet. That's tiny. That's almost **200** square feet less than you want. It's **190** square feet less than you want. That would be tiny.

Ms. Adrian Hunte stated I don't think it's incumbent upon us to decide who thinks something is tiny or large. If there are other issues...

Mr. John Mattis stated the issues are...

Ms. Adrian Hunte stated as I said, if there are issues that pertain to safety and what have you – if Mr. Quispe wants to live in a small apartment that's his prerogative.

Mr. John Mattis stated right, as long as the house is **1,600** square feet.

Mr. James Seirmarco asked where does it say that?

Ms. Adrian Hunte asked where does it say **1,600** square feet.

Mr. John Mattis responded that's the Code. Look up the Code. Whether we agree with the Code or not the Town Board gave us that Code. Minimum **1,600** square feet, that's what we deal with. We don't question their motives. We don't say we don't like it. That's up to them to change it. We have to live with the Code. We're not here to question the Code.

Mr. Wai Man Chin stated from my calculations based on the dimensions over here I came up with **1,450** square feet...

Mr. Raymond Reber stated it's still too little.

Mr. Wai Man Chin stated **725** square feet per floor.

Mr. Raymond Reber stated it doesn't matter. To me, it's still too little.

Mr. Wai Man Chin stated I'm saying it's still under **1,600** square feet. To me, I think that's the biggest problem. Not so much the accessory apartment. I don't think it's that big overall but we're not at the **1,600** square feet that we'd be able to give a Variance on it. That's the problem.

Mr. Raymond Reber stated the Town set the number. If they were within a few feet, square feet, you'd say "okay that's what this Board can look at" but you can't just throw that big a difference and ignore the Code.

Mr. Wai Man Chin stated no, it's over **10%** which is considerable.

Mr. Raymond Reber stated substantial.

Mr. Wai Man Chin stated on the total square footage of the house. Do you understand what I'm saying is that the house right now, from my measurements, is about **1,450** square feet. You need a minimum of **1,600** square feet for an accessory apartment. It's not so much that we would not grant an accessory apartment, but you have to have a minimum of **1,600** square feet and you don't have that right now.

Mr. Marcellino Quispe responded if it's not the **1,600** square feet what's the minimum, another way can do because this is accessory apartment I'm trying to do in the basement floor in the ground floor...

Mr. Wai Man Chin stated I understand that, but the total whole house between upstairs and downstairs right now is only **1,450** square feet. You're short by about **150** square feet which is about a **10' x 15'** room which is pretty big, considering. If the house was bigger by another **150** square feet then we could consider in giving you an accessory apartment but right now, we can't do that...

Mr. Marcellino Quispe stated the problem is if I needed to add some room I could add it horizontally but unfortunately I can't. I have room already in the basement but the trouble, the first floor to the basement my mother-in-law is an older woman...

Mr. Wai Man Chin stated I understand your situation, I know what you're saying, the only thing is – I mean, you have bedrooms downstairs but you just can't have a kitchen. You can't have two kitchens because we cannot grant an accessory apartment unless the whole entire house is **1,600** square feet. That's the biggest problem right now. It's not so much the accessory apartment or even the percentage. It's minor on certain areas but I'm saying, if you had another **150** square feet to the house then I would have no problem of granting a small Variance or doing something downstairs where you could have a kitchen but without the **150** extra square feet, we can't do anything, that's the problem. Unless you want to expand your house and make it bigger, that's up to you but you need a minimum of **1,600** square feet and that's the Zoning Code. We have to go by the Zoning Code on that portion of it. It's not so much the Variance of the apartment or anything else. It's the total square footage of the house.

Mr. Charles Heady stated I think Mr. Mattis mentioned before is you can still have your mother-in-law or father-in-law come, you just can't have a stove or a sink and a kitchen downstairs. They can still come and visit you, there's no problem there you just can't make another apartment down there with a stove or a sink and so forth. You can't make a kitchen down there that's all, because like Wai just said the square footage.

Mr. Wai Man Chin stated there's no way I can explain it any better.

Mr. James Seirmarco asked do you understand why?

Mr. Marcellino Quispe responded I understand you. You follow the rules. That's the law and you have to abide by it.

Mr. Ken Hoch stated I want to clarify something for Mr. Quispe. In **2009** Code Enforcement conducted a prior to zoning inspection of this house and we certified it as two bedrooms with a finished basement. If he wants to add an additional bedroom downstairs, he's going to have to get Health Department approval and a Building Permit.

Mr. Raymond Reber stated which is obviously another issue he...

Mr. John Mattis stated that's not our issue.

Mr. Ken Hoch stated not our issue but I just didn't want him to think he can put another bedroom downstairs.

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

Mr. Raymond Reber stated which these days is not easy to do, usually with the Health Department. They might be a bigger problem than we are.

Mr. Wai Man Chin stated we can either withdraw it or think about it or whatever he wants to do.

Mr. James Seirmarco asked do you want one month to think about it or maybe...

Mr. John Mattis asked what are we thinking about? He can't make **1,600** square feet.

Mr. Wai Man Chin stated he could withdraw or reduce something else.

Ms. Adrian Hunte stated we explained to him that he can withdraw his application if he can find an alternative way to come within the Code or the allowances.

Mr. David Douglas stated what the other members of the Board are saying is at this point you've got a couple of options: you could withdraw your application given I think you see which direction the Board is going or we could go ahead and actually have a vote on it, that's completely up to you.

Mr. John Klarl stated or he could withdraw it.

Mr. David Douglas stated that's right, you could either withdraw the application or we could go ahead and vote.

Mr. Marcellino Quispe stated do I have a chance to do something else?

Mr. David Douglas responded you might be able to consider other options if you withdraw. I'm not sure exactly what the other options – that's what I think Mr. Mattis was getting at, I'm not sure what other options you would have but if you want to withdraw it that's fine.

Mr. Wai Man Chin stated maybe you want to withdraw it and talk to Code Enforcement on something then fine but I think that would be your best option...

Mr. John Klarl stated or adjourn it so you can talk to Code Enforcement...

Mr. David Douglas stated the other option would be to adjourn but quite honestly I'm not – I wouldn't be in favor of adjourning it because I'm not sure what adjourning it would achieve.

Mr. Marcellino Quispe stated I want to take my other options.

Mr. David Douglas asked so you want to withdraw it and consider other options? Okay, that's fine. That's what we will do. So, you'll withdraw your application and then there won't be a formal vote on it.

Mr. Marcellino Quispe stated thank you.

Mr. David Douglas stated **case #2013-10** is therefore going to be withdrawn.

B. CASE No. 2013-11 John Lentini, architect, on behalf of Elease Hunter for an Area Variance for the rear and front yard setbacks on property located at **2 Logwynn Lane, Cortlandt Manor.**

Mr. John Lentini stated good evening Mr. Chairman, members of the Board. I'm representing Elease Hunter through her daughter who has power of attorney. Elease's husband apparently constructed work that I'm requesting a Variance for. I believe he has a compelling hardship in needing a Variance, however, I'm at a disadvantage because the work was done already. It appears that it was done after **1980**. The house was bought in **1972** and hasn't been assessed since **1965**, however, in **1981** a duplicate C.O. was issued and I'm sure the Town would have picked up all this work that was done so sometime after these extensions were put on. One roof of a porch goes the closest to the rear yard within **3.5** feet and then a portion of the living quarters that was put in goes within **4** feet. I have a sketch that I'd like to hand out if I could. It might be better to explain my appeal. The most important thing I wanted to show you of those two pages, the second page shows that the depth of this lot is only **50** feet. The Town of Cortlandt describes a corner lot requirement for front yards that when you have a corner lot you need two front yards. It isn't clear however, other Codes have said that when you have two front yard you only need two side yards but the Code Enforcement after discussing with Mr. Hoch has considered that anything opposite the front of the house is always a rear yard, there's never a waiver from the rear yard. I suspect however that the house originally was granted approval considering two side yards because the original house doesn't comply with a **20** foot setback. I broke it down into percentages and you'll see that the original house has about **26%** of the original house does not meet the **20** foot setback. Then, the **17** to **13** feet would equal **35%** of the house doesn't meet the setback for even **10** feet. In any event, if you look at that second page, all the houses in that whole block have depths of close to **200** feet and we have a depth of **54** feet so that makes it rather unusual. All the blocks from Waterbury Parkway that comes around a corner that isn't **90**, it's less than **90**, which also constrains the lot and if you look at the window I drew from the yards, it would appear that the house maybe should have been built a little to the left – which is a very hard thing to do now but it would have solved everybody's problems. They didn't at least cause that. They bought the house – I'm not completely bad here but... The rooms are one story but they are livable. There is a sewer there so we don't have a bedroom issue. They like watching television. There's a television in every single room of the house and every hallway all built into the wall before flat screens. It was a very entertaining house but right now it's vacant. The family wants to sell it and they recognized that this would be a problem so they're voluntarily coming in with this legalization. There hasn't been ever a violation issue that I'm aware of.

Mr. Charles Heady stated from what I understand is on – they closed in the garage and added a room there right?

Mr. John Lentini responded that's the first thing that was added.

Mr. Charles Heady asked and there's no permit for that?

Mr. John Lentini responded no.

Mr. Charles Heady stated also in the back they made a canopy roof in the back of the deck...

Mr. John Lentini stated it's a patio. It's right on the ground.

Mr. Charles Heady stated and there's no permit for that either.

Mr. John Lentini responded no.

Mr. Charles Heady stated in other words – actually make you take it all down, truthfully we could. I'm not saying we will but it's a possibility. Also, we're considering about the sheds out there, we don't know for sure how close they are to the property line back there. Maybe they have a survey in the back to find out...

Mr. John Lentini stated they're going to come out. I knew it might be an issue. I didn't show them on my survey because the family has agreed to take them down. They're in very bad shape.

Mr. Charles Heady stated that won't be an issue if you take them down then.

Mr. John Lentini responded as a matter of fact, you are generous enough to grant me a Variance you can make that a condition that they come down.

Mr. John Mattis stated I would think that even if we don't grant that – if they're more than a hundred square feet each they do need a Building Permit.

Mr. John Lentini responded one is under a hundred square feet, the other one's a little over.

Mr. Raymond Reber asked Mr. Lentini, as I understand there's no Building Permit or C.O. specific to the conversion of the original garage to living space or that living space that's on the other side of the garage?

Mr. John Lentini responded no there's no permits I could find.

Mr. Raymond Reber stated the question for you and/or Mr. Hoch, on the tax roll, does that show up on the tax rolls? Were the tax rolls ever...

Mr. Ken Hoch responded that I don't know.

Mr. John Lentini responded the assessment card shows the last adjustment was made in **1965**.

Mr. Raymond Reber stated so it doesn't show up anywhere.

Mr. John Mattis asked and you indicated that this was done some time after at least **1980** or '**81**.

Mr. John Lentini responded at least after '**81** I would think, and the family isn't clear. As a matter of fact, the son of who I believe did it might have come tonight but they don't live in the area anymore and they know they didn't get a permit.

Mr. John Mattis asked is this part of an estate that they're selling?

Mr. John Lentini responded the mother's still alive but she's – I'm not sure what her health situation is, I did meet her once but she's been taking care of and...

Mr. James Seirmarco stated the last survey here is from **1972** by Bunny.

Mr. John Lentini responded yes.

Mr. James Seirmarco stated they show just the one-story frame house and a concrete patio.

Mr. Raymond Reber stated it's kind of hard not to know that you need a Building Permit when you put additions on a house, even back then. The problem I have, and we've done this in the past where people have done this and we, as Mr. Heady said, we've said "just tear it down." I think I could look the other way assuming that a Building Permit is applied for and Code Enforcement finds that the conversion of the garage to living space is according to Code, I could probably live with that. I really can't live with the other addition, for two reasons: 1) it was built illegally and second; is it really encroaches on the setbacks. The original house encroached some and I can understand the narrowness. As you say, the yard is an odd shape, you have – and we do, we take that into consideration but this room that was added on to the end of the house here I mean that's just flagrant in terms of building it without a Building Permit and then building it in a zone that it should never have been built so I have a real problem with looking the other way on that room and no taxes paid. I mean that's very convenient to have an addition that you get for free.

Mr. David Douglas asked anybody else have any comments?

Mr. James Seirmarco stated going back in **1972**, this is the way it was without all that stuff. You're right, Ray, the setbacks in the back are **11** feet and you can understand that and I think Mr. Lentini said they had moved that house up a little bit towards the front or the side yard whatever you want to call it, it would certainly minimize that one setback but then all of a sudden you add all those other things – I have a problem with that too.

Mr. Raymond Reber stated and the original design – I mean they may have had to shift the house for septic purposes because now you say the sewers – I don't know if the sewers were there back then...

Mr. John Lentini stated that's probably what it was, was their septic fields.

Mr. Raymond Reber stated so, who knows what their reasoning was so I'm not going to argue over that point as to why they didn't shift the house.

Ms. Adrian Hunte asked the garage space that's in the back that was converted to habitable space, are they trying to sell this with the condition that this would be used as habitable space or can they convert it back to non-habitable?

Mr. John Lentini responded well, yes, it's heated, it's insulated. There are windows. It's used as a family room. I think there's a big television and beyond it, the part that was added is actually, I guess it could be – the picture's not up there...

Mr. James Seirmarco stated that was built approximately when?

Mr. John Lentini responded after '81.

Mr. James Seirmarco stated after '81.

Mr. John Lentini responded yes. There's two family rooms and a bedroom – well, what was added strictly raw added square footage was a **223** square foot family room and a **138** square foot bedroom. Before that the garage – it's very possible the office I'm showing behind the family room might have been added. Perhaps the garage didn't go back that far, except the survey shows that it did. The survey shows that it was always at that **11.28**. It was just those two rooms that were added; the **138** square foot bedroom and the **223** square foot family room.

Mr. John Mattis stated one of the things, the primary things we have to look at: is this self-created? And, it certainly is self-created. It's major in terms of the encroachment under the property line, it's only **3 ½** feet away. We've had cases before where we've had people – we had one on Route 9A where they had some accessory structures that they expanded and we made them take down the extra part. This isn't part of my decision but philosophically, we've had people that – this hasn't been re-assessed since **1965**. They've got a free ride on their taxes and now they want us to approve it so that they could have a more valuable property to sell. That's not part of my decision at all. Standing on its own, if they would come in for a Variance for this, it wouldn't even be much consideration. It's way too much of a Variance and that's how we have to look at it. We have to look at it as if it wasn't there and would we approve it and I don't think that any time in the **20** years I've been on the Board we've given a Variance that would be this substantial to put a house **3 ½** feet away from the property line.

Mr. John Lentini stated perhaps I could get an adjournment and discuss with my client truncating the structure and perhaps we could remove a portion of it but save some part of it. The roof on

the patio was a minor thing to me. It's not in that great a shape anyway and it's not a deck below, it's just a patio so that could easily come down.

Mr. Raymond Reber stated personally, as I said earlier, since the so-called garaged that was converted to office and family was part of the physical structure, the original house, I could see granting that assuming it meets all the Code requirements. It's the bedroom family that was added. That to me...

Mr. John Lentini stated the bedroom particularly because I think the family might be somewhat compliant.

Mr. Raymond Reber stated but still, it was added illegally and even that is maybe one third or at least a quarter of it encroaching. The bedroom obviously is **100%** encroaching on the setback. Those two rooms to me I think are just inappropriate.

Mr. John Lentini stated I would request an adjournment then if I could.

Mr. David Douglas stated I think that's an excellent idea. Why don't you speak with your clients and then we'll approach it relatively fresh next month.

Mr. John Lentini stated I still think I'll need you. I don't think there's anything I could do that would be...

Mr. David Douglas stated I understand that but we can at least get a better sense of what they might be willing to do or authorize you to do and we'll take it from there.

Mr. James Seirmarco stated and reinforce the position that those extra buildings will probably have to be removed also.

Mr. John Lentini stated that I was prepared for. Thank you very much.

Mr. Charles Heady stated I make a motion on **case 2013-11** to adjourn it to May.

Seconded with all in favor saying "aye."

Mr. John Mattis asked was there anybody in the audience that wanted to speak?

Mr. David Douglas stated the case is adjourned until next month. Thank you very much.

C. CASE No. 2013-12 Michael Piccirillo, architect, on behalf of Lordae Realty for 2121 Crompond Road LLC for an Area Variance for the size of business wall signs and an interpretation that the building identification lettering is not a sign to be included in the sign area calculation on property located at **2141 Crompond Road, Cortlandt Manor.**

Mr. Michael Piccirillo stated I have some photographs of the building as it was before we renovated it. I was the architect that was working on the renovation so the client has asked me to represent him for the sign application as well. On the existing building you can see there that they had existing light boxes quite large. I apologize, I don't have the square footage of what was previously on the building but it seems to me in comparison to what is in the Code, it would seem to me the existing – the previous light boxes were oversized for what was allowable per Code. What we had submitted was two things: 1) we're seeking a Variance obviously for the size of the signs. There's three parts to that; one part is that we have an identifier for the building, we're asking it not to be called a sign simply because we'll have the square footage necessary to accommodate all of the ink stores with signs that are with legible from the road. The menu sign, upon submission, we thought was 16 square feet apparently it's not, it's actually **24** square feet. There was a Variance granted for that menu sign, I apologize I don't know the year that was granted but that was granted for a **24** foot menu sign, the last freestanding sign at the road. We've come up with between the submission and now is a revised plan to maintain the **100%** increase above allowable by decreasing the signs on the submission were **1 foot 8** by **9 foot 7** or **16** square feet. The signs that we would like to go with would be 1 foot **5 ¾** by 9 foot **4 ¾** or **14** square feet for a total proposed of **112** square feet which, again, keep our Variance the same. We feel, if you look at the photograph here which is the renovated building with the white part is actually trim that's going to be painted beige to match the building upon which we would apply a carved AZAC sign with a goose neck lining above it. We get rid of light boxes. They look very nice, very classy. It would help the plaza out a lot. We felt that the size of the signs that we're proposing are adequate for the building. Anything smaller, we feel would not be really seen from the road.

Mr. Charles Heady stated I saw yesterday they were putting up the lights, started to put the lights up that you're just talking about.

Mr. David Douglas stated Mr. Chin, this is your case. I'll leave it up to you. You were not at our work session so you're in the dark as to what we talked about. Does somebody else want to take the lead or do you want to go ahead?

Mr. Wai Man Chin responded no, I'll go ahead. What was allowed, first of all, it says **56** square feet for the wall signs and based on the fact sheet over here, the proposed **128** square feet the Variance is **72** square feet, I just don't understand how we got **178%** though.

Mr. Ken Hoch stated he computed the freestanding sign at **16** square feet, but it's not, it's **24** because the Board granted a Variance. That reduced the allowable signage down to **56**. He's looking for a **100%** Variance to bring it up to **112**.

Mr. John Mattis stated that **128** is not an operable number, he just revised because we can't give more than **100%**.

Mr. Michael Piccirillo stated that's why I said we apologize but we discovered after we submitted that we had made a mistake in the math.

Mr. Wai Man Chin stated when I looked at **178%** I thought that was way too extreme. I don't mind **100%** for the sign. From looking at what you're showing me right now up there where you seen it shown on the elevations over there, I think it would look very nice. I think the **100%** is okay with me.

Mr. David Douglas stated I'm confused on the numbers. The **100%** that's excluding the identifying sign?

Mr. Michael Piccirillo responded correct.

Mr. David Douglas stated we would have to decide whether that could be excluded or not.

Mr. Michael Piccirillo responded correct and we looked at it in trying to – the sign simply became so small from the road that we worry that...

Mr. Wai Man Chin stated it's quite a distance from the road, it is.

Mr. Michael Piccirillo responded correct and if you look at the original signs that were on the original building they're actually much larger than what we're proposing.

Mr. David Douglas asked under the Code, what justification would we have for excluding that signage? Is there something we can seize on?

Mr. Michael Piccirillo responded it's not a sign because it doesn't involve a store. If it said – Wal-Mart and then it would define one of the stores – this simply identifies the address or the building itself. It's an architectural identifier so that people know that this is the building that they're seeking. It's not a store. A sign would indicate to me, whether it's a retail store, or some other facility.

Mr. Wai Man Chin stated store underneath.

Mr. Michael Piccirillo responded correct.

Mr. David Douglas stated that's clever but I'm not sure we've ever – that would be contrary to what we've ever done.

Mr. John Mattis stated I have maybe I guess a rhetorical question, if we say that's not a sign then what's to stop any building in the Town, commercial building, to putting a name to that building and making it any size that they want. Now, in terms of signage, we're in the Wild, Wild West and anything goes.

Mr. John Klarl stated as an example John, when you look – remember the totem pole signs we had to do in Cortlandt Town Center, I think we circled both the stores and also the Cortlandt Town Center.

Mr. Raymond Reber stated all those signs at the different locations, you're right, we've always included as part of the signage area whether it's Town Center or we have the same thing in Springvale, they have a label, it's always included. As Mr. Wai said, I have no problem with the **100%** Variance on the other signs because I think you need that as a minimum to be visible. The only way I see getting around the Crompond Plaza as a sign – I think if what was on that wall was the number, the address number; like **2569** and that's it I'd kind of say "okay, that's not a sign. That's just the numbers." Like for emergency identification, an ambulance or something, it's just the numbers on a building. I could kind of look the other way if it was just the numbers but once you get away from that, to me it's a sign.

Mr. Wai Man Chin stated I would have to agree on that also.

Mr. John Mattis stated I understand what you're saying it identifies the building but if I'm going to a store I want to see the store's name. Having 'Crompond Plaza' – and I think it looks very nice by the way, that is kind of superfluous, it's like secondary. The business, if you call them, they don't say "come out to Crompond Plaza." They say "this is the address" and they have a store identifier. The Crompond Plaza is not necessary since there's a store identifier. If you want to substitute that instead of a store sign and fit within **100%**...

Mr. James Seirmarco stated it used to be Toddville Plaza and that was counted as part of the sign.

Mr. John Mattis stated yes.

Ms. Adrian Hunte stated if you were to put **2141** Crompond Road on the building, or even on the freestanding...

Mr. Raymond Reber stated you don't even need to Crompond Road, people should know they're on that road. I had to go to a meeting at one of the other plazas further down on 202, actually in Yorktown and the way I was told to find the place is they told me the number; **3536** Crompond Road, Route 202. They didn't tell me the plaza name. I found it because above the sign was **3536** so I had no trouble finding the place.

Mr. Wai Man Chin stated you can't miss the number.

Ms. Adrian Hunte stated as much as we know Toddville Plaza, I have a feeling if you put in GPS 'Toddville Plaza' for 'points of interest' you wouldn't find, you would need the **2141** address or Route 202.

Mr. Wai Man Chin asked have you had the sign made up yet?

Mr. Michael Piccirillo responded I don't know. I'm just the architect.

Mr. Wai Man Chin stated I hope not.

Mr. David Douglas stated maybe you should call the sign company...

Mr. John Mattis stated I know Sign's Ink.

Mr. Michael Piccirillo responded yes it is.

Mr. David Douglas stated then it's been made up.

Mr. John Mattis asked do you know who's doing the signs?

Mr. James Seirmarco stated Sign's Ink.

Mr. Michael Piccirillo responded Sign's Ink.

Mr. David Douglas stated I'd suggest you call, then tomorrow morning first thing to tell them not to make the sign. We've had experiences with Sign's Ink.

Ms. Adrian Hunte asked is it temp?

Mr. Michael Piccirillo stated that's the existing sign that's there now.

Mr. John Mattis stated that's going out.

Mr. Michael Piccirillo stated it's my assumption, the size will not increase.

Mr. John Mattis stated I would suggest that you call the owner of this and tell him if Sign's Ink hasn't made the signs, don't make them because we've had some experiences where they come in for hardships because the signs are already made and a fellow from Sign's Ink is fully aware of what our Code is but we seem to run into that with him all the time.

Mr. Michael Piccirillo stated I'm the chairman of the ARB in Yorktown so I know.

Mr. John Mattis stated we don't have exclusivity on that?

Mr. Michael Piccirillo stated absolutely not. Could we – is there a way to word it in the Resolution where it could be either the address whether the address is – not just the word, in case he wants to use the numbers or the full address. Would that be okay?

Mr. Raymond Reber responded I'm looking at the number because when you start putting words it starts...

Mr. John Klarl stated we've approved signs with a little bump with a number above it, just the number.

Mr. Raymond Reber stated you can't do too many things with numbers but once you start doing words, the next thing you know the guy wants to put this great big flowery sign with

all kinds of scrolls for the name of the street or something to catch people's eyes, again, how do we control that.

Mr. Wai Man Chin stated after a while we've got to – then we have to include that as part of the sign. From what I see, I think the way you have it right now, I think it looks great but I think, as Mr. Reber says, if you just put down just the number address I think that tells it all. You're going to be on that road. I've seen a lot of buildings all over Westchester where all you see is the number.

Mr. Michael Piccirillo responded okay.

Mr. David Douglas asked do you want to adjourn it so you can speak with your clients?

Mr. Wai Man Chin asked you want adjourn this so you can discuss with the owner or you want to make a decision on this?

Mr. Michael Piccirillo responded let's just do that. I don't see that you guys would bend on it anyways so...

Mr. David Douglas stated I just want to make sure that you're acting within the scope of your authority.

Mr. Michael Piccirillo stated we'll see you tomorrow morning.

Mr. Charles Heady stated don't forget that when you get those signs made, Ken has to check them before they go up.

Mr. Michael Piccirillo responded correct, yes.

Mr. James Seirmarco stated we've found a lot of "oops, it's bigger than we thought."

Mr. Charles Heady stated trying to save you a lot of problems that's all.

Mr. Wai Man Chin asked anybody in the audience? Any comments? I'm going to make a motion on **case 2013-12** to close the public hearing?

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Wai Man Chin stated I make a motion on **case 2013-12** to grant wall signs from **56** feet to **112** square feet **100%** as an area Variance for the size of the business wall signs and interpretation that the building identification numbers is not part of the sign.

Mr. John Mattis asked should we restrict the size of that? I think we have to.

Mr. John Klarl stated the building identification lettering, he says they're naming the plaza but you said numbers aren't part of the...

Mr. John Mattis stated we better restrict the size of that – we don't want numbers that are three times as large as the ones...

Mr. Michael Piccirillo stated excuse me, I'm sorry to interrupt you but the numbers will have to be affixed to that center panel. They can't be any larger than that.

Mr. David Douglas asked what are the dimensions of that panel?

Mr. Raymond Reber stated wait a minute, time out. I don't envision a panel, I just envision on the wall the numbers being mounted. I don't want to see any other decorative or artistic. That panel right now that you have written the plaza on – I don't want to see that panel. I just want to see numbers right on the wall, that's all, just numbers because, again, if we allow the panel then the next guy comes along...

Mr. Wai Man Chin asked is there a panel there now?

Mr. Michael Piccirillo responded it's a white AZAC plaque that all these signs are affixed to – they're all the same. All I'm asking for is put the numbers on that plaque.

Mr. Raymond Reber stated but that's another sign then because somebody else comes along and he wants to put a purple plaque with the numbers on it. How do you – you're regulating a sign again.

Mr. Michael Piccirillo stated it's just numbers though.

Mr. Raymond Reber stated I understand, but now we get into the issue of what color with the background, it's distinctive. We've always included in our measurements – remember the problem we had with Best Buy. They have the big blue panel and we said "is that part of the sign?" The conclusion was yes because it's to catch the eye.

Mr. James Seirmarco stated no it was not.

Mr. Wai Man Chin stated the big blue thing was part of the structure.

Mr. Raymond Reber stated the part was the structure yes, the rest of it we included. To me this is a sign, once he puts that panel in there.

Mr. David Douglas stated maybe instead of voting on this and close, maybe we should adjourn it so we can...

Mr. John Mattis stated because it brings up another question were you going to keep the panel the size that it is...

Mr. Michael Piccirillo responded no, it would have to be adjusted to the size of the numbers, esthetically pleasing, so that's what we're doing. Again, this panel hasn't been made yet. The white trim you see up there is going to be painted beige to match the stucco. This panel will be affixed to it so this would definitely be smaller to accommodate...

Mr. John Mattis stated and those panels are only to be able to put the signs on them.

Mr. Michael Piccirillo stated and again to match so it would blend.

Ms. Adrian Hunte stated I don't have a problem with this.

Mr. Wai Man Chin stated supposedly that panel is only going to be the width of the numbers...

Mr. John Mattis stated I'd like to adjourn because I think we have to discuss some kind of limitation on the size of the letters too of the numbers.

Mr. John Klarl asked so you want to adjourn or you want to close and reserve?

Mr. John Mattis responded we can close and reserve because I think we need a limitation on the size of the numbers.

Mr. David Douglas stated let's close and reserve. We know what the issue is...

Mr. John Mattis stated we know the issue, we're just trying to straighten it out.

Mr. David Douglas stated we're going to decide – we're going to talk among ourselves instead of – we were originally just going to give a vote right now. We're not going to do a vote now.

Mr. John Klarl stated it appears that he's got two issues and one...

Mr. Michael Piccirillo stated is there a way of separating the signs from our architectural identifier?

Mr. David Douglas responded that's what we want to discuss because I don't think we can break it in two because...

Mr. Michael Piccirillo stated just to allow him to start the fabrication that's all.

Mr. David Douglas stated I don't think really we can because we want to think through how we want to treat the numbers.

Mr. Wai Man Chin stated I make a motion to close and reserve decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2013-12**, the matter is closed and reserved which means you'll get a decision probably next month but it has to be within **62** days but it probably will be next month.

Mr. Wai Man Chin stated if you have any – about those numbers or anything, bring it to Ken also.

Mr. John Klarl stated it appears that the Board looks favorably on your one Variance in the number and then they have to work on the interpretation.

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ADJOURNMENT

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is closed.

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**NEXT MEETING DATE:
WEDNESDAY MAY 15, 2013**