

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, August 17<sup>th</sup>, 2016*. 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 JULY 20, 2016**

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

Mr. David Douglas stated the July minutes are adopted.

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Mr. David Douglas stated before we start, a special request for people. This meeting is transcribed and also recorded and put on the internet so if everybody could please just speak into the microphone and speak one person at a time. The person who transcribes it has specifically requested that I remind people of that so she can do her job. Okay, thanks.

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**ADJOURNED PUBLIC HEARINGS:**

- A. **CASE NO. 2016-10**                      **New York SMSA Limited Partnership /d/b/a Verizon Wireless** for a Special Permit to install a wireless telecommunication facility on property located at **1065 Quaker Bridge**

**Rd. East, Croton-on-Hudson, NY.**

Mr. Ed Teyber stated good evening, honorable Chairman, members of the board. My name is Ed Teyber. I'm here tonight from the law firm of Snyder & Snyder in support of New York SMSA Limited partnership d/b/a Verizon Wireless' Special Use Permit to locate a public utility wireless telecommunication facility at 1065 Quaker Bridge Road. In response to comments from the June meeting and the town engineer, Verizon Wireless has revised the proposed tower to not be designed as a tree and has supplied some additional materials, including a supplemental RF maps, tree location study and an appraiser's report. We just received the memo signed by a Frank Franco. As an initial matter, we disagree with the allegations therein, kindly note that the memo states the wrong legal standard for a Special Use Permit, in site's authority not controlling in this jurisdiction. However, we would respectfully request the opportunity to respond in writing and comprehensively, address each of the points raised therein. In connection therewith, we would like to submit a visual analysis for the proposal and I would welcome at this time any areas of concern or in the coming week, any areas of concern to the members of this board from which photos to base analysis on can be based. I have Robert Burns of APT Engineering with me here tonight who can speak to any questions regarding the site plan if there's any questions regarding the revised site plan that was recently submitted. It seems that there are no questions so I would just respect to request that the matter be adjourned until your September 21<sup>st</sup> meeting so that the emergency services can submit any comments they may have about the grading of the access and we may respond to the Franco affidavit as I stated previously.

Mr. David Douglas stated let me just note for the record that we got a memo indicating that Engineering has reviewed the responses and had several follow-up questions. That's what you were referring to?

Mr. Ed Teyber responded correct.

Mr. David Douglas stated okay, that's a memo from today. We got a copy of a memorandum in opposition from Frank and Heidi Franco. We saw that for the first time when we walked in tonight so we will review that as well. And then, we got a series of exhibits. Ken, what are these again?

Mr. Ken Hoch responded they were submitted by – with the memorandum. They're exhibits with the memorandum.

Mr. David Douglas stated so those exhibit to the memo. Is anybody want to be heard from the public on this?

Mr. Andrew Campanelli stated good evening Mr. Chairman, members of the board. My name is Andrew J. Cmapanelli. I'm an attorney. I represent Frank and Heidi Franco. My law firm is Campanelli Associates P.C. 1757 Merrick Avenue, suite 204, Merrick, N.Y. I handle zoning matter --cell tower applications, not only across the state of New York but nationwide. I was prepared to address the application of Verizon this evening and the defects and the reasons why

it should be denied by this board but I will leave it to the board's discretion. I'm prepared to discuss it now but if you're going to adjourn it I can discuss it when you adjourn it. I was surprised they had not submitted a visual impact analysis. I don't suspect the one they submit will ultimately be valid but I'd like an opportunity to review it and address it but as long as I'm here I'd be happy to speak, at least somewhat, about the nature of the application, why not only does it fail to comply with your code but it is the antithesis of the goals which your code was enacted to protect against. So, should I proceed? Should I hold all comments until next time?

Mr. David Douglas responded it's really up to you, whichever you'd prefer. We are going to adjourn it so it'll be adjourned to next month but in all fairness to anybody from the public who came out tonight...

Mr. Andrew Campanelli stated it took me two hours to get here. It's okay.

Mr. David Douglas stated so it's really up to you, whichever you prefer; either now or next month.

Mr. Andrew Campanelli stated well I wouldn't mind addressing, at least in part, this evening. I think it's important because you've heard from one side and I've looked at hundreds and hundreds of these applications and this really is an application which is unsuitable for passage. It clearly doesn't – it doesn't comply with your code and it represents the typical type of tower that should be denied. I'd like to start with just some of the basics if I may. As you know, this is an application for a Special Permit and the Town of Cortlandt zoning code has provisions that are intended, that were enacted to protect property owners against adverse impacts of cell towers. This particular application involves, basically, 149 foot tower which is essentially a 15 story tower in a location where a tower of this type is completely inappropriate. For starters, it doesn't meet your setback requirements. Again, having done this so many times -- there's so many problems with this application it's hard to know where to begin but I'll start with the setbacks. If you look at your code you have setback requirements. In this district, the minimum setback requirements are 30 feet or half the height of the tower or under 307-46 the full height of the tower. In this specific application they play what I call "the postage stamp game." Cell towers have problems. There are three major problems associated with cell towers: one is structural failure. You don't have to be a genius, you can go on YouTube and do a search for "cell tower burns to the ground" and you can watch these things collapsing. Flanges fail, guy wires fail, base plates fail. Once a month one of these things collapses. Other than that you have ice fall. You have 150 foot tower. Nobody really thinks about this but if you have a piece of ice at the top of that tower and it starts to melt, when it comes down by the time it reaches the ground it's doing a 150 miles/hour. It will kill anybody under that. Then you have debris fall. Once a month somebody goes up on the towers, they maintain them, they drop things, things fall off. There's all kinds of problems. Smart jurisdictions, such as Cortlandt, to protect against these types of dangers have enacted setback requirements and the setback requirements typically require a minimum setback equal to at least the height of the tower and it's the same from New York to California, to Virginia and I know because I've been everywhere. Your setback requirements require a tower to have a setback equal to the height of the tower. Well, you're

talking about 149 foot tower. Theoretically, if this tower lays over, which they often do, it's going to cover at least 149 feet. The problem is, the lot they want to put it on is a postage stamp. They're only leasing 60 feet by 60 feet. It's physically impossible for that tower to fall within the area that they've leased so they play the postage stamp game and this is what it is. What is the lot? I submit to you...

Mr. Raymond Reber stated excuse me sir, a question. As far as I know, that can be easily fixed because they leased 60 and if we have to ask them to lease 140 for the tower, my understanding of the property, and I've seen the property, they have plenty of room. There's nothing around it. As far as neighbors, the property line is 437 feet away so it's not going to impact on neighbors in any way. The only impact would be on the property owner and I don't think the property owner has anything within 140 feet so we can correct that. That's no big deal. We just go back to Verizon and say it's a technicality, "lease 140" or they can decide to put a breakpoint like we do with most of our towers which requires the 70. I think originally that's what happened. They thought they were going to need 120, they did the breakpoint 50, lease 60. So we go back, we'll tell them "here, put a breakpoint and go to 70 or go to 140." Either way, I don't think it's a problem for them and it certainly isn't a problem for neighbors who are more than 437 feet away. So please move to your next point.

Mr. Andrew Campanelli responded I respectfully submit on that point, they can't exclude anyone from outside of that fenced-in compound. That means...

Mr. Raymond Reber stated I hear you and I agree. We've got to make an adjustments but it's not a big deal.

Mr. Andrew Campanelli stated it would have to be at least 300 feet, minimum for the fenced-in compound because that's the only way to exclude people from the danger area.

Mr. Raymond Reber stated understood. I agree with you.

Mr. Andrew Campanelli stated separate apart from that, they have not established a need for this tower. Again, I've done hundreds of these. This application is not about providing personal wireless services I assure you. This application is about money. That's the only thing this tower's about and I'll tell you why. They talk about a significant gap in coverage and here's why: if this application does not conform with your code, they want to hold the Telecommunications Act of 1996 over your head and here's the critical it says: the Telecommunications Act says; listen, even if an application doesn't comply with your code, you must grant the application. If denying the application would be tantamount to prohibiting the provision of wireless services and for them to prove that that would be the case they have to prove two things: they have to prove, first, that they suffer from a significant gap in wireless services. It's a very important legal term. And second, they have to prove that even if there's a gap that the proposed installation is the least intrusive means of remedying that gap. Now, in cases where they have an actual gap it is extremely easy to prove. In cases where they don't give you the proof, the reason is, there is no gap. For example, the most common way of proving a

gap is one of two things: they do a drive test and signal testing. It doesn't take a genius to figure out if you can make or receive or send a phone call. If they want to prove they have a significant gap in service they do a drive test. They take a phone. They attach it to a dashboard and they drive through the area and they test the signal strength. They didn't do it here. The reason is; you have sufficient signal strength. There is no gap. The other way they can do it, it's very easy. Verizon, as you might not be surprised has a computer system and what they can do is they can print out a log of dropped calls. There is no log of dropped calls here because there are no dropped calls here. There are reports from their RF Engineer doesn't mention a signal strength test and it doesn't say anything about one dropped calls because there are none. This has nothing to do with a gap in service. This has to do with being the first on the block to put a tower here, to lease it to their competitors, each of whom will pay them \$2,500 a month. So, if you put four competitors on here, Verizon makes \$10,000 a month profit just by having this tower. That's what this application is about and putting this tower here would be a monstrosity. You're talking about putting a tower, and I agree with you, the lot is 49 acres, 49 acres, why then does Verizon want to put it 800 feet from my client's front door? I'll tell you why, because that's the cheapest place to put it. They can put these towers away from everybody's homes...

Mr. John Mattis stated the highest point.

Mr. Andrew Campanelli stated well, it's also the cheapest place to put it. They can put these towers away from everybody's homes but they don't and it's not because they're spiteful, it's because it costs more money. If you put it out in the woods they have to clear the way, they have to make a gravel access road, they have to run power and often polls so they want to put it...

Mr. John Mattis stated that is in a wooded area. They have a big flat plane but it goes down. That's the highest point and it's a wooded area. I don't believe you've seen the property.

Mr. Andrew Campanelli stated I have seen it on...

Mr. John Mattis stated but you haven't walked the property.

Mr. Andrew Campanelli stated I haven't walked the property. I have not.

Mr. John Mattis stated I have. It's in the middle of the woods.

Mr. Andrew Campanelli stated well 800 feet from my client's front door however and what that means is every time my clients want to entertain their family on their back deck, have relatives over, they're going to have a 15 story structure looming over them, 15 stories. This is not a 90 foot tower or 100 foot tower. That's big. If somebody else in this town wanted to put a 15 story structure in their backyard you'd look at them like they had three heads which is what you should be doing for this application quite frankly. Now, letters have been submitted detailing the adverse esthetic impact that this will inflict upon these neighbors and I submit to you that these letters must be considered as valid evidence. Federal courts have ruled exactly that.

Mr. David Douglas stated just you can rest assure we consider everything that's submitted to us.

Mr. Charles Heady asked can I ask you something? Have you tried any other locations besides that location to put that tower up?

Mr. Andrew Campanelli responded I think that the most appropriate location for this structure would actually be the Croton Dam. It's a half mile away. It's more than suitable.

Mr. Charles Heady asked have you tried other places, about three places? According to the Federal government, you're supposed to try three places and take the one that'll work, right? You're controlled by the federal government. We can't stop you from putting that up because they're controlling it.

Mr. Andrew Campanelli stated the gentleman I believe is asking about the constraints of the Telecommunications Act of 1996 and I'm thrilled he asked that question because that's my home turf. I'm admitted into federal courts across the entire United States and I know the TCA. All too often, I hear – I can't tell you how many times I've been somewhere and heard some representative from Verizon or Sprint or some tower applicant basically threatening the board they're going to sue them if -- "you have to give us this. We're going to sue you." First of all, any threat of suit in federal court is as hollow as they come and here's why: if you ever actually somehow managed to violate the Telecommunications Act and if Verizon sued you in federal court, the only thing they'd win is a permit. They don't get attorney's fees. They don't get damages. They get the right to build the tower. That's it. That's your exposure. Nobody gets sued and these suits are summary proceedings. They file a complaint in the federal court. The judge reviews the record and makes a decision. Either, you fail to comply with the Act, you didn't issue a separate written decision or the written decision wasn't based upon evidence of the record, that's it, but if you lose, you don't lose any money.

Mr. John Mattis stated I'd like to respond to that. They have not said anything about a lawsuit. We've had no threats. We've had threats before and believe me, from my standpoint and I can speak for everybody on this board, nobody that threatens us intimidates us. Don't even imply that. We will not be intimidated. We do what's right.

Mr. Andrew Campanelli stated my understanding is there was a mention of the [Shaw] Clock and the gentleman asked me about what you're required to do. You have full authority to apply your code and the only constraint that really applies here is if they can prove to you and, by the way, this is critical because...

Mr. David Douglas asked can I ask you a question before – are you suggesting they put a cell tower on top of the Croton Dam?

Mr. Andrew Campanelli responded I'm suggesting that location would be suitable for a tower.

Mr. David Douglas asked is that what you're saying, the alternative should be that there should

be a...

Mr. Andrew Campanelli responded I'm not saying directly on the tower, on the dam.

Mr. David Douglas stated so in terms of effect on the community and the sight lines, the esthetic of it, are you proposing and saying that that's a better place to put a 15 story cell tower on top of the Croton Dam? Have you been to the Croton Dam?

Mr. Andrew Campanelli responded that's not what I'm proposing. The first position I have is that this tower is not necessary but second, even if a tower is necessary it's not my burden and it's not your burden, it's their burden to prove that this is the least intrusive means of remedying whatever gap they claim to possess which I haven't seen yet. Now, in some circumstances it's not one tower. There are situations where instead of them building a 50-foot tower, you'll build two 90 foot towers that nobody can see. There's nothing wrong with that, it just costs more money to them but that's not the standard.

Mr. David Douglas asked I'm not saying it's your burden to do this but do you have an alternative you propose?

Mr. Andrew Campanelli responded if you'd like, next month when we come back...

Mr. David Douglas stated it's not if I'd like, it's do you have one and it's up to you? Again, it's not your burden to do this but I'm just asking you.

Mr. Andrew Campanelli responded I will look around. I will look at other sites. I can come up with other potential alternatives. There's no reason you have to have a tower this massive if there is a gap. The problem that I have...

Mr. David Douglas stated wait, wait, stop. So, is it the location or is it the size?

Mr. Andrew Campanelli responded for starters it's the need. You have to identify significant...

Mr. David Douglas stated no because you had said you don't need a tower this massive so I'm just trying to understand.

Mr. Andrew Campanelli stated for starters, the way it generally works is, when there is a legitimate gap in service, the provider comes in with evidence and says: look, here's Smith Street from 4<sup>th</sup> Avenue to 8<sup>th</sup> Avenue, Smith Street has no wireless service. If you say that to me I can say "ah ha, I can help you. I will show you a location where you can build a tower that will fill that gap. The problem with you asking me where the tower should go is there is no gap.

Mr. David Douglas stated they assume there's no gaps in town for Verizon service?

Mr. Andrew Campanelli responded I have reviewed everything submitted to the board at least up

until today. I don't know what they submitted now but I can tell you from what I've seen, I do not see evidence of a significant gap in service. Please understand, significant gap doesn't mean complete coverage. If you go through town and there's some dropped calls you may have a gap, maybe, that's not a significant gap. There's a big difference. There's a huge difference and improved service. Improved service, if they want to do it to improve service, that's not a significant gap but if someone can show me a significant gap in town, I will find locations for alternative tower. Verizon's own website...

Mr. David Douglas stated it might be, again it's not your burden to do anything, but if you wish you might want to investigate what the coverage situation is within the Town of Cortlandt and the villages in it in terms of cell phone service because there's a good number of places in town where there are significant problems with coverage because of the topography.

Mr. Andrew Campanelli stated well it's ironic because, as I do in every case, the first thing I do is I go down and I get the entire file and that's what I got here. I got everything they submitted to you, to try to ascertain – look, part of my job is if I'm telling you this is not a good spot for a tower, you're right, I should be able to say “you know what? The problem exists. I understand it and you can remedy it this way.” I'm perfectly reasonable. I'm never against the installation of cell towers. What I oppose is the irresponsible placement of cell towers.

Mr. David Douglas stated that's why I asked you about alternatives.

Mr. Andrew Campanelli stated of course, and the other thing I do is I go on Verizon's website and I look it up and I type in the address and I look for gaps and Verizon's own website, they have published to the world indicates there are no significant gaps in this area. That's what they're claiming to the world so that's Verizon.

Mr. David Douglas stated well I'm sure they'll respond to that.

Mr. Andrew Campanelli stated I'm sure they will and they're going to tell you “oh that's just for marketing purposes.” So you're lying to the world for marketing purposes?

Mr. David Douglas stated I'm not accusing anybody of lying.

Mr. Andrew Campanelli stated I understand.

Mr. David Douglas stated take my word for it, there are significant – I'm not using this as a technical term [inaudible] but in a lay sense, there are significant gaps of Verizon service in this community.

Mr. Andrew Campanelli stated well I do appreciate that response because that affords me an opportunity to look into that issue and be prepared to address it but I have looked into this site to a certain extent. You've got a unique site especially with regard to water. There's no fire hydrant there. There is probably one of the most unique arrangements for fire extinguishing

situations that I've seen. Apparently, the way that the fire department is prepared to address fires at the Danish home is, they have a portable tank and they take water from the lake and they run a hose and they can just barely reach the home. That is absolutely an inappropriate and insufficient method of protection if a tower was to be built here. One of the dangers of cell towers that people don't recognize is fire. At least once a month in the United States, one of these things goes up in flames and I ask any of you who can get to YouTube. Go onto YouTube, please, do a search for 'cell tower burns to the ground' and watch them. Wellingsley Massachusetts had the most famous one, right on a main road.

Mr. David Douglas stated we're going to look at what's in the record in front of us. We're not going to go on YouTube.

Ms. Adrian Hunte asked Mr. Campanelli, you mentioned the significant gaps. Have the courts construed significant gaps and if so, how have the courts construed significant gaps?

Mr. Andrew Campanelli responded that is an excellent question. I'm going to give the answer in one second because the courts have defined it and made it very clear, at least in the second circuit which is where we are. I beg your indulgence for one minute because I dropped my papers.

Ms. Adrian Hunte stated also while you're checking, you mentioned that you've handled these cases across the country so if you could please share with us your success rate in terms of alternative remedies or the remedies.

Mr. Andrew Campanelli stated I will tell you that when my firm is retained, and I'm nobody special. I'm not a genius. There was a time when I represented companies putting these towers up. I don't do that anymore for reasons I'm not going to get into. I make less money now opposing these towers but when I am retained by someone to oppose a tower, number one I don't take every case but when I do take a case I typically prevail in stopping the tower and getting the application denied roughly 75% of the time because typically, the objections I raise are completely valid and yes I'm admitted to federal courts throughout the entire United States. I've been retained by the city of Calabasas to help them improve their code. I've reviewed and assisted municipalities in making their codes better for years. I was asked to speak before the New York State Conference of Mayors to assist towns...

Mr. David Douglas stated we don't need a C.V.

Mr. Andrew Campanelli stated I'm sorry.

Mr. David Douglas stated we don't need a C.V.

Mr. Andrew Campanelli stated sorry. Okay, you've asked for a definition of gap: the best definition of gap I can give you is from the federal court in Eastern District of New York and it says: the federal judge has ruled: "a coverage gaping exists when a remote user of personal

wireless services is unable to either connect with the land based national telephone network or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage gap exists customers cannot receive and send signals and when customers pass through a gap their calls are disconnected.” Consistent with that standard, when Verizon or any carrier has a real gap these calls get dropped and so as evidence to a board, what they will do is they will provide you with a drop calls list. It’s a few keystrokes on their computer.

Mr. David Douglas asked do you have a case site for that?

Mr. Andrew Campanelli responded it is Omnipoint Holdings. Oh wait, I’m going to give you two. I’m sorry. No, the first one is, ironically, New York SMA Limited Partnership versus Town of Oysterbay Zoning Board of Appeals. A second very important case...

Mr. David Douglas stated site – I may be betraying what I do during the day.

Mr. Andrew Campanelli 2010 West Law 3937277. The most important case for what you do...

Ms. Adrian Hunte stated I said is that a lower court case or is it an appellate division?

Mr. David Douglas stated he said the Eastern District.

Ms. Adrian Hunte stated Eastern District but it’s still...

Mr. David Douglas asked what’s the second one?

Mr. Andrew Campanelli responded the second one is Omnipoint Holdings 2008 U.S. District Court, Lexus 111741. That is the second circuit court of appeals 1999 and it talks about when a gap is significant and the court says: “in the second circuit” which is where we are “a coverage gap or a need for a post site is found to be substantial by the courts where, inter alia, the coverage needed by a carrier is not limited to a small number of houses in a rural area or merely the interior of a building in a sparsely populated area.” That’s Nextel Partners v. the Town of Amherst 251F, second 11 82<sup>nd</sup>. “Where the holes of coverage are very limited in number of size, the lack of coverage likely will be diminimus.” That’s what the courts ruled. Did that answer your question?

Ms. Adrian Hunte responded somewhat, thank you.

Mr. Andrew Campanelli stated thank you. There are several issues addressed in the memorandum which has been presented to you. It talks about adverse esthetic impacts. There are letters from licensed real estate professionals. I ask you to review the Omnipoint case because the Omnipoint says this specific type of evidence not only should but must be considered by a board. You have licensed real estate professionals telling you if this tower goes up it’s going to reduce the property value of the property closest. That is their principal asset of my clients. This, not only will unnecessarily inflict upon them a dramatic adverse esthetic

impact, which, under Telecommunications Act of 1996 in of itself is a proper legal ground upon to deny the application...

Ms. Adrian Hunte asked Mr. Campanelli I'm sorry, you mentioned that the value of the property would decrease significantly. Do you have appraisals that show that? Where we have information from Verizon that property values in the area tend to increase with cell towers.

Mr. Andrew Campanelli responded well typically, when a carrier submits letters from appraisers often what we find is those letters come from appraisers reviewing a different area. I haven't seen theirs. I'd like to see them because I'm willing to bet they're not from Cortlandt. That being said, we have provided letters from two licensed real estate professionals who are not really familiar with the real estate market but they're familiar with this specific real estate market and the federal court in the second circuit has ruled that evidence of this type from licensed real estate brokers is just as weighty and just as meritorious as that from an appraisers. You don't have to be an appraisers to give a professional opinion. It doesn't carry any less weight from a broker and two brokers.

Ms. Adrian Hunte stated once again, if you have the site on those cases I'd appreciate it.

Mr. Andrew Campanelli stated that I believe is also the Omnipoint Holding's case and attached as exhibit G and H to the memorandum are letters from two licensed real estate professionals.

Ms. Adrian Hunte stated I did see those, thank you.

Mr. Raymond Reber stated you know it's interesting that you make an issue out of the property values. I live just off of Dutch Street which is right next to the VA Hospital. VA Hospital is listed as one of the sites, they have cell towers that are on top of their structures – I've lived there 52 years. Cell towers have been there since they put up cell towers, 30 years ago, 20 years ago, whenever. Houses buy and sell. Not once has anybody that I know of ever said: "Oh what are those things way over there that I can see?" It's never been an issue so maybe they do devalue a property. I don't know but in my own experience in my neighborhood it's never come up, nobody's even looked at it. If they see a bunch of wires and polls like they do along Albany Post Road, that's disgusting but in my own experience, all the years in my neighborhood, none of my neighbors we've never seen that issue ever raised and those towers have been there since the earliest days of cell towers.

Mr. Andrew Campanelli stated I understand your point Mr. Reber.

Mr. Raymond Reber stated just a point I'm raising. I hear people say – every time we try to do anything in this town: traffic, traffic, oh we're going to have traffic and every time a project is completed the traffic problem seems to disappear. I have to be careful. I can't panic when somebody makes an assumption like that. It may be valid. I'm just saying, to me it's kind of nebulous.

Mr. Andrew Campanelli stated I absolutely respect your point and quite frankly there are many occasions, Mr. Reber, when people call me and ask me to represent them objecting to the esthetic impact that they're going to sustain. In many cases I turn them down because I tell them: it's a 90 foot tower, you're not going to see it from most of your house. That's not the case here. We're talking about a 15 story tower that's going to loom over them every time they sit in their backyard. I respectfully submit that's dramatically different than the hospital scenario. I'm familiar with the hospital scenario. I know they put that there. This is different. Nobody – who's going to buy a house with a 15 story tower looming over their deck? It's 800 feet from their back door.

Mr. Raymond Reber stated I'm an Engineer, okay, so I know numbers. It's 140, 800 feet away. The ratio for the triangulation says the angle that you have to view to see the top of that is somewhere around 8 degrees. That is not looming over. Now, you may see it, I'm not arguing with you but when you say 'looming' this is 800 feet away. [inaudible 28:40] the earth why we don't see the Rocky Mountains. They're a lot more than 800 feet but we don't see them because they're far enough away. The further you get away from something, the less impact a height has. The ratio here is maybe 8 degrees.

Mr. Andrew Campanelli stated it's actually 149 feet.

Mr. Raymond Reber stated 140, 800 feet away, that's about an 8 degree angle of viewing.

Mr. John Mattis stated I've – as you haven't, I've walked that property. The property goes up quite steeply and then it levels off. They're not putting it right where it levels off. They're putting it back further. There's a small house in between and then it's behind that. When you look up at that angle you may only see the top of it and I'm going to suggest something that we've done as a board before. We could put a balloon up there, 150 feet high and you can go down on the road – because I've stopped my car at the road and tried to visualize that and I can't see where very much of it will show at all and you can't guarantee that anybody, at anytime that if you, as much as just see it, that you can't have it. You said that it will have a dramatic adverse impact. I think the word 'dramatic' is very dramatic in this case.

Mr. Andrew Campanelli stated I respect your opinion but I would also submit this...

Mr. John Mattis stated but we can put a balloon up there and see.

Mr. Andrew Campanelli stated balloon tests are very common. The problem with balloon tests of course is, number one, they usually come up for a very short period of time, two; a balloon is not a tower with a 5 foot base. It's a string with a balloon at the top. Think about this for a second...

Mr. John Mattis stated this will not have any ears coming out. This will be a monopole. We've requested that and all the electronics will be inside which will mitigate the problem with the ice too.

Mr. Andrew Campanelli stated I understand. To Mr. Reber, I ask you this, as an Engineer knowing the curvature of the earth and talking about the fact that we're talking about 49 acres, please tell me: do you know of any reason why it can't be located a little further away from their property so they won't see it on that 49 acres?

Mr. Raymond Reber responded I'm also a businessman so I mean I would have to ask them to look at, as Mr. Mattis says, do we really see it? Does it have a visual impact because to just burden and say put another 500 feet in the woods just because we'd like to and double your costs. I'm not about to make people do things unnecessarily so – you raise a valid point. I think what we're saying is we can look at it. If there's an issue here, a visibility problem and if we can have Verizon relocate it on the property to eliminate that, yes, it's a reasonable request and it's something we can sit down and look at the property and discuss it with Verizon. I hear you.

Mr. Andrew Campanelli stated thank you. I think that I would reserve any further comment until I have the opportunity to review the additional submissions which I've just learned of this evening but if anybody has any questions I'd be happy to answer them. If you want me to sit down, I'd be happy to do that too.

Ms. Adrian Hunte stated thank you Mr. Campanelli.

Mr. Andrew Campanelli stated thank you very much.

Mr. David Douglas stated while the next person's approaching, Verizon would be willing to do a balloon test. We can talk about that. You don't have to...

Ms. Karen Wells stated I live at 28 Applebee Farm Road in the Town of Cortlandt. I have to say, one of the things I love about the Town of Cortlandt because you referenced it, we are not a town that scares. We are a town that protects our town, our homes and our people and I do love that about our community. I'm also here to represent a community group called Greater Teatown. This is part of the area where the Danish home is and where the cell tower would go. Couple of things that I'd like to request the board if they're willing to have the applicant do: one, the signage for being in front of this board has come down and even if it's within code for the sign to come down, a number of people have mentioned to me and it's part of our group that they thought that the Danish home had decided not to pursue the cell tower because the signage is no longer there. So, if they could repost that, that would be...

Mr. John Mattis stated the sign that says there's a public hearing?

Ms. Karen Wells responded exactly.

Mr. John Mattis stated Ken, we can have them do that.

Ms. Karen Wells stated if they could do that, that would be wonderful.

Mr. Ken Hoch stated it's not required.

Mr. David Douglas stated it's only required for the first month. We'll ask them if they're willing to but under the town rules it's just the first hearing.

Ms. Karen Wells stated I understand it's not required but it would be nice if they would just so that community members are aware that this is still moving forward. One of the other things I would like to request is that balloon test. When we do the balloon test if we could have some warning when that's going to be happening so – if we could do it on a weekend so that community members can be available. In particular, we do want to see the visual impact on some of the historic sites. Greater Teatown is part of Cortlandt's Master Plan is looking to be recognized for its historically significant area and because part of Greater Teatown has Cortlandt's both state and nationally registered historical sites, the Croton Dam is one of them and we want to see what that visual impact may be. In fact, I was aware that Verizon did a balloon test and took some pictures. I asked to be able to distribute that to the community so people could just see the pictures even and that request was turned down. We would like that opportunity to see it in person.

Mr. David Douglas stated you probably couldn't see him but the Verizon representative was nodding 'yes' about the balloon test behind you as you were walking up. So I think they are willing to do it.

Ms. Karen Wells stated great. The other thing we would like to explore are reasonable options. If I am correct, there is a tower that Verizon can lease space on if they'd feel like they need to increase coverage. I will say, I own a Verizon phone. I don't find the coverage a problem and I do live in the area but in addition, we would like to see their data on the gaps.

Mr. David Douglas asked you said there's a tower – where...

Ms. Karen Wells responded I believe there's a tower – if I have my information correct it is owned by Sprint and it is located...

Mr. Wai Man Chin stated it's actually owned by AT&T.

Mr. John Mattis stated on Route 129.

Mr. David Douglas asked on 129.

Mr. Wai Man Chin stated on Route 129.

Mr. David Douglas stated we had asked them about that specifically at the work session last month and I think they did – at our request, they did a comparison of the coverage under what they've proposed here and the one on 129.

Ms. Karen Wells asked and is that document on your website or do I need to foil it or how can I get a copy of that?

Mr. David Douglas responded I don't know.

Mr. Ken Hoch stated I'd have to look. I don't know if they submitted an actual...

Mr. Raymond Reber stated I think in their one response.

Mr. Ken Hoch stated the one response, okay. I'd have to look.

Mr. David Douglas stated there's a coverage report. I don't know what's on the website and what's in our file.

Ms. Karen Wells stated I'll follow up with the town.

Mr. Wai Man Chin stated the Chairman, myself wish they would cohabit on that tower because we live nearby and we have no service.

Mr. David Douglas stated that's right. That's why they did it.

Mr. Raymond Reber stated August 12<sup>th</sup> response, top of page 2, they address it.

Ms. Karen Wells stated couple of other things that I know have been discussed and I know this board will take this seriously. The fire hazard in the community, as mentioned before, we do not have fire hydrants in extended range within the area. In fact, when we built our house there, the fire inspection included the phrase 'if something starts burning get out because we can't get here in time and the house is going to burn down' but you kind of accept that living there. That's part of the price we pay for living in the woods. Again, I would like to make sure that we explore reasonable options that whether it's the size of the tower, the location of the tower – I'm glad we're going to come back in September because, as I said, a number of the community members seemed to have thought this whole matter was dropped. So I thank you for your time and we'll see you back in September.

Mr. Raymond Reber asked a couple of questions for you: your raising an issue about the impact of a cell tower in the general area of Teatown. I'm familiar and I'm a fan of Teatown. My family is there frequently. We support it wholeheartedly but just to keep things in perspective; is not just north of this location a major high-tension transmission line system that runs right across that area?

Ms. Karen Wells responded absolutely.

Mr. Raymond Reber stated when a person complains about a rotten apple and there is a pile of

rotten manure sitting next to it, it's kind of hard to get concerned but you're point's taken.

Ms. Karen Wells stated one of our concerns in the community of Greater Teatown is right now we're facing a little bit of an onslaught of development proposals not just in the Town of Cortlandt but in the Town of New Castle and in the Town of Ossining. Historically, we've also had proposals to have a pipeline go along that transmission line so it's a concern of, as you said; there is that transmission line and I think sometimes we forget, as a community, just because there is some negative component to that community that it's okay to add more negative components. I'm not saying right now that the cell tower is a negative component. I just want to make sure that the community members that live there have a chance to see this. As a reasonable alternative, I know that cellular providers have put their transponders on the transmission line itself. That may be a more reasonable alternative than building an entirely new tower.

Mr. Raymond Reber stated your points are well taken. I'm not arguing with you. I'm just trying to clarify relativity and as a resident of Cortlandt I sympathize with you. We seem to get hit with everything. It's a favored location...

Ms. Karen Wells stated we have the barge thing now too, so it's never ending but that's why I appreciate your time and again, we'll see you back in September.

Mr. Raymond Reber asked now you say you're at Apple Tree Farms?

Ms. Karen Wells responded Apple Bee Farm Road.

Mr. Raymond Reber asked Apple Bee Farm Road, there is a cell tower on Dickerson Mountain. Is that where – do you know if you'll be picking up from that signal tower?

Ms. Karen Wells responded I know that when I drive through the community – so if I'm coming from my house to downtown Croton, passing the Danish home I have cell coverage the whole way. If I run out of cell coverage actually it is going to the Taconic area where I'm picking up other towers out there.

Mr. Wai Man Chin stated 129.

Ms. Karen Wells stated so quite honestly we'd rather see it on 129.

Mr. Raymond Reber stated we're familiar with the problems along 129 going up – there's a lot of dead spots. I was just curious because, like I said, I know they have a tower on Dickerson Mountain and I think that was supposed to take care of more toward – what's the road that goes out past to the south of Teatown: 134?

Ms. Karen Wells responded Spring Valley and 134.

Mr. Raymond Reber stated yes and I thought that tower was to kind of catch all that out toward

the Taconic...

Ms. Karen Wells stated I'm more on this side of that so...

Mr. Raymond Reber stated I was just curious as to where your signal might be coming from.

Ms. Karen Wells stated well thank you.

Ms. Heidi Franco stated hi there. I'm Heidi Franco, 1059 Quaker Bridge Road. So ladies and gentlemen of the board, thank you for having us tonight. It's my home that will be – I know you don't like the word 'looming' but the cell tower will be near my home. When I look out from my small daughter's bedroom window, that's what I will see every morning and every night when I put her to bed. It's a big burden for us. We saved a lot of money to buy that house in the woods. We bought residential land with the goal to raise our children in the woods. We worked very hard for that land. That's our biggest investment. We looked to raise our children in that kind of area where they could play in the woods. We've enjoyed a good relationship with the Danish home. We were blind sighted by this, absolutely blind sighted. In over seven years of being there and volunteering there, no one ever mentioned this application. We got first notice of it when the sign went up on their front lawn. I would ask the board if anybody on the board has a family member that's at the Danish home or volunteers at the Danish home or has connections with the Danish home?

Mr. John Mattis responded I have a friend that lives there.

Ms. Heidi Franco stated you have an acquaintance that lives there. Okay Mr. Mattis, I would like that to be on the record that you have an acquaintance that lives there. I've seen you there before at functions so I think everybody should be aware of that. I also think people should be aware...

Mr. David Douglas asked do you think that makes Mr. Mattis biased?

Ms. Heidi Frano responded I kind of do. Would you say if you had a good friend that was wanting to do something and that person was on the board...

Mr. David Douglas stated you have your right to your opinions but I'm not...

Ms. Heidi Franco stated it's my opinion and I know the board will consider everything carefully but I wanted to make sure that we all knew.

Mr. John Mattis stated I can say as a board, if anybody thinks there's a conflict of interest they recuse themselves but if we recused ourselves every time we knew anybody that came here, or did business with them, we wouldn't hear many cases. I have no biases towards the Danish home.

Mr. David Douglas stated just so you understand everybody on this board. We all live in the town. If we didn't live in the town we wouldn't be allowed to be on this board so we all know hundreds if not more than that.

Mr. John Mattis stated what's right is right and what's wrong is wrong and it has nothing to do with the Danish home itself.

Ms. Heidi Franco stated you've mentioned that you've hiked the property so you definitely have intimate awareness of it and I do think the board is very fair. I just think it was important for everyone to know that. Thank you for your attention.

Mr. Frank Franco stated I'm Frank Franco and most of what I am going to say is similar to what my wife just said but we have a significant investment in this house and we have a five and a seven year-old and we often go out to our pool area. We are most likely going to see this tower looming over our area and house and it's going to, ultimately, according to the real estate people we contacted and got assessments or evaluations on. It sounds like they're pretty sure that it's going to impact our home value. It's rather upsetting, obviously, for our family that this tower is going to go in. We are the closest people to the tower. This isn't like a townhouse community where the tower goes up and affects a huge density of people around it. As you know, in the Teatown area, our houses are very spread apart and because of that we just happen to be people closest to this tower. I know you guys are listening on this I just hope you consider all the facts obviously and I really hope you guys deny it.

Mr. David Douglas stated you can be assured we are considering all the facts and we consider all the pros and the cons and we try and weigh them and do things within what the law requires and doesn't require. I live in the woods as well. I fully understand. I wouldn't want "my woods" if I don't own them, to be disturbed either. So, I fully understand that.

Mr. Frank Franco stated thank you.

Ms. Arcadia Kocybala Cosavala stated I live 2122 Quaker Ridge Road. I believe on the minutes from the last meeting my address is shown as Quaker Bridge so you might want to change that.

Mr. David Douglas asked you're on Quaker Bridge?

Ms. Arcadia Kocybala Cosavala responded I live on Quaker Ridge.

Mr. David Douglas stated oh on Ridge and it said Bridge.

Ms. Arcadia Kocybala Cosavala stated I'm basically across the street from the proposed tower location. I believe that the board has been provided with the letter from me indicating the fact that I'm not in favor of the proposed location of the cell tower and in the letter I enumerate three of the major areas of concern so I won't be repeating them here to you now, but I did have a couple of questions. Has Verizon actually provided any drawings of what the tower would look

like, what the fenced-in area would look like? Because I don't think the neighbors have been provided with this.

Mr. David Douglas stated we've got the plans.

Mr. Raymond Reber stated we do get those drawings. This is 800 feet into their property. Whatever drawings they provide on what they're putting on the ground, you folks will never see it, not on the ground.

Ms. Arcadia Kocybala Cosavala stated I can see all the buildings from the Danish home from my house in the winter time.

Mr. Raymond Reber stated I mean, fine, if you want to check with Code Enforcement, they do have all the details so you have a right to look at them.

Ms. Arcadia Kocybala Cosavala stated it would seem to me as part of their presentation they should be showing these things to the neighbors you know.

Mr. Raymond Reber stated they are available if you want to see them. Check with Code Enforcement.

Ms. Arcadia Kocybala Cosavala stated the other question I had – I have actually AT&T Wireless service and I never have a problem with coverage.

Mr. Raymond Reber stated but you said AT&T.

Ms. Arcadia Kocybala Cosavala responded yes. The AT&T tower's on 129 – now isn't it possible for Verizon to rent, to lease from the 129 location? Do they really need to put up a 140 foot tower?

Mr. David Douglas responded that's something we've asked them and that we're considering. That's one of the very first questions that we asked them at the initial work session when they came to us about co-locating onto that existing tower on 129.

Ms. Arcadia Kocybala Cosavala stated obviously I think other people have mentioned it too if there's any possibility of really investigating another location for this commercial facility that would not be visible to neighbors since it is such an extensive property of 48 acres I believe.

Mr. Raymond Reber stated question for Mr. Hoch, when we get a document like was submitted August 12<sup>th</sup>, does that document get posted or can it be posted? Is it electronic?

Mr. Ken Hoch responded no, we don't have the ability to post those.

Mr. Raymond Reber asked you don't get an electronic from them?

Mr. Ken Hoch responded no.

Mr. Raymond Reber stated all the questions you're asking about; coverage and how 129, that's all covered in a document that was submitted to Code Enforcement dated August 12<sup>th</sup>. He says they don't give it to us in a form that we can go on line. I don't know whether we can ask for an electronic version...

Mr. Ken Hoch stated I'd have to check with our IT department if we can post things like this.

Mr. Raymond Reber stated if not, at least again, it's available in the office so anyone can go in and take a look at the report.

Ms. Arcadia Kocybala Cosavala stated okay, thank you.

Mr. Wai Man Chin asked anybody else?

Mr. David Douglas asked anybody else? With regard to going back to the balloon test, when do you think Verizon would be able to do that?

Mr. Ed Teyber responded Verizon APT would actually be conducting the balloon test so it's up to their schedule but I think we would be able to do it – usually we schedule a balloon test once a day for the balloon and you can notice it if – or provide people who are interested in knowing the date and we also usually schedule a rain date just because rain and weather tends to impact balloon tests...

Mr. David Douglas stated somebody had said it should be on a weekend. It should be on a weekend.

Mr. Ed Teyber stated that's pretty standard so we could do it on a weekend and have the alternative on the following or two Saturdays following. As I said, initially, if there's any specific locations that this board would like to identify, not right now if you don't have them on hand but in the coming week that would be very welcomed.

Mr. Wai Man Chin stated I think the balloon test should be after the next Zoning Board meeting so we could let everybody know.

Mr. Ed Teyber asked so the next meeting is September 21<sup>st</sup> I believe so you want to do it after that time?

Mr. David Douglas responded yes, the next meeting is September 21<sup>st</sup> – I think that Mr. Chin made a good point. If we could talk so that the public's aware at the next meeting – we're adjourning this anyway so then at the September meeting set a balloon test date and that way it'll be public knowledge.

Mr. Ed Teyber stated absolutely. That's makes a lot of sense.

Mr. Raymond Reber stated we've been through this before with balloons. In one case we had a crane put up...

Mr. Ed Teyber stated the crane is a more expensive...

Mr. Raymond Reber stated we've done both tests. We usually do this on a Saturday. It's convenient for us and for the home owners so that they're not away at work or what have you. I don't know whether we want to see if it's available for Verizon to set it up on the Saturday before we have our next meeting.

Mr. Wai Man Chin stated no, it should be after our next meeting so everybody would – the public would know when it's going to be.

Mr. Raymond Reber stated so you want to wait to the meeting, make the announcement at the meeting. Okay.

Mr. Ed Teyber stated thank you all very much. See you on the 21<sup>st</sup>.

Mr. Wai Man Chin asked anybody else?

Mr. David Douglas stated for any response that you'll be submitting you'll get that to Mr. Hoch by the 12<sup>th</sup> – a week before our work session.

Mr. Ed Teyber stated in the coming weeks you'll have a response.

Mr. David Douglas stated because our next work session is on the 19<sup>th</sup>. You've got to get it to Mr. Hoch a week in advance so you can get it to us so we can look at it because if we just get it for the first time at our work session we're not going to be...

Mr. Wai Man Chin stated I'm going to make a motion on case 2016-10 to adjourn to the September meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated case #2016-10 is adjourned until September.

- B. **CASE NO. 2016-13**            **Christopher Esposito** for an Interpretation that a proposed deck is not an expansion of a non-conforming use, and if approved, an Area Variance for the front yard setback on property located at **236 Kings Ferry Rd., Verplanck, NY.**

Mr. Christopher Esposito stated good evening.

Ms. Adrian Hunte stated good evening.

Mr. David Douglas stated I see you submitted something additional tonight. This is what?

Mr. Ken Hoch responded no, that was from me David.

Mr. David Douglas stated oh that was from you. Never mind.

Mr. Ken Hoch stated but I did – that's the ADA which I emailed to Chris.

Mr. Raymond Reber stated what you're confirming is the 18 inch clearance that Mr. Chin had.

Mr. Wai Man Chin stated basically a 5 foot wide with a 3 foot door...

Mr. Raymond Reber stated is the max that you need in the area where there is a door otherwise it can be reduced to say 4, 4 ½ but if they want to do 5 you're saying okay?

Mr. Wai Man Chin responded usually it's a continuous thing because they have railings along it so it should be a continuous...

Mr. Raymond Reber asked yes, but they – my question is there's three legs to this walkway, only one leg actually has a door approaching it?

Mr. Christopher Esposito responded yes, and it's actually just two legs, the third leg would just be the staircase.

Mr. Raymond Reber stated so the staircase – I mean you don't build 6 foot wide staircases normally. You make it 4 feet per staircase is plenty wide enough. You're not going to have a wheelchair going down a staircase. The other leg that goes out which maybe you would have a wheelchair is what 4 ½ max?

Mr. Wai Man Chin responded that would be fine but right now, the first ramp or that should be the same width as...

Mr. Raymond Reber stated the whole section where the door is, the first – that's 5. When they convert it to the staircase, the staircase becomes 4 and then the third leg that goes out which again is a change in direction and dimension, we make that what: 4 ½, 4?

Mr. Wai Man Chin responded say leave it at 4.

Mr. Raymond Reber stated 4, okay. So if the applicant agrees we do 5 feet for that section where

the door opens and the other two sections: 4 feet?

Mr. Christopher Esposito responded I would request if we could just be consistent about the walkway, if it could maintain the same width the whole way. It's not a very long extension.

Mr. Raymond Reber stated I'll leave it to my colleague if he wants to concede.

Mr. John Mattis stated as we discussed at the work session, the only reason we can grant this because we are not allowed to do any expansions, it's a non-conforming property, is for safety reasons and one of the things we're charged with is to minimize any Variances or anything that we do. So, if we can get by with 4 and 5 where the door opens that's what we have to do. If have to minimize it as much as possible. You can bump that out a little bit, make everything 4 feet and bump that out a little bit where the door is. I understand for esthetics what you want but you're the only ones that are going to see it anyway and we have to minimize what anything that we give and we're only doing this for safety purposes not for really any use except for entrance and egress.

Mr. Christopher Esposito asked okay, so we're agreeing the walkway from the driveway to the stair will be 5 and then from the stair to the yard will be 4?

Mr. Raymond Reber responded yes, and the other part, again, the 5 feet, the only reason why ADA asked for 5 feet is so that someone in a wheelchair can actually pull up next to a door, pull it out, have enough clearance to get it open. Normal ramps, normal walkways for ADA, they're not 5 feet. They can be 4 feet. Wheelchairs and whatever can fit in 4. What we're trying to do is make sure that we're making your house compliant so that if someone does live there that needs ADA issues will be served.

Mr. Christopher Esposito responded okay.

Mr. Wai Man Chin asked anybody in the audience?

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

Mr. James Seirmarco stated as we just discussed the width of the sidewalk will be minimized down from 5 foot to 4 foot just to minimize the impact on the safety issue. Is there anybody else in the audience have comments? I make a motion on case #2016-13 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated so moved.

Mr. James Seirmarco stated I make a motion on case #2016-13 on 236 Kings Ferry Road to an Interpretation that a proposed deck or proposed addition is not an expansion of a non-conforming use and to grant an Area variance for the front yard setback from a required 35 feet down to 5.5

feet. This is a type II SEQRA, no further compliance is required.

Mr. John Mattis asked you put the dimensions in there?

Mr. Ken Hoch stated just so I can clarify, and I'd like to ask the applicant Chris, you have to submit a revised plan to get your Building Permit. I need that same plan to make sure that the dimensions the board's just telling you are what are shown on the plan. It's 5 feet up to the door and 4 feet after the door and I want to be sure I have that plan...

Mr. Raymond Reber stated 4 feet for other sections. Keep the 5 feet for that last section.

Mr. Ken Hoch stated but I need that on a plan so that it's very clear when I write the D&O that this is what we're referring to.

Mr. Christopher Esposito stated right, just to clarify, it's going to be 5 feet to the corner of the house where the staircase starts and then it'll go from 5 feet to 4 feet at the staircase and the walkway to the yard.

Mr. James Seirmarco stated right.

Mr. Raymond Reber stated correct.

Mr. Christopher Esposito stated okay, I'll get that to you as soon as possible Ken.

Mr. Ken Hoch stated okay, thank you.

Mr. David Douglas stated you're done. You can go home now.

Mr. Christopher Esposito stated okay, thank you. Have a good evening.

Mr. Wai Man Chin stated I second that motion.

Mr. David Douglas asked wait, did we vote? You can't go home yet. Hold on, we didn't officially vote. I knew something was missing. You can go home if you want but we didn't vote yet.

Mr. Christopher Esposito stated I was prematurely dismissed.

Mr. David Douglas stated yes, sorry about that.

With all in favor saying "aye."

Mr. David Douglas stated the Interpretation is as stated before. Now you can go home. Sorry about that.

C. **CASE NO. 2016-14**      **Michael Casolaro** Area Variances for the minimum lot size and lot width in the HC zone for a specialty trade contractor on property located at **2006 Albany Post Rd., Croton-on-Hudson, NY.**

Mr. David Douglas asked were you able to reach him? Oh, he is here.

Mr. Thomas Kerrigan stated good evening Chairman, members of the board. My name is Thomas Kerrigan. I work with Site Designs Consultants, the engineers on this project. The property at 2006 Albany Post Road is seeking a lot size and width Variance. It's a specialty trade contract permit. We are going forward with the Planning Board and we are hoping for a Resolution from them at their September 6<sup>th</sup> meeting. We didn't submit anything new since the last Zoning Board meeting and we are seeking a decision on this.

Mr. John Mattis stated we just received something this evening which we hadn't had a chance to review; Area Variance for a side yard setback for a proposed shed. We need drawings to show where that shed's going.

Mr. Thomas Kerrigan stated the shed is on the drawing here. It should have been on the previous one. It's at the rear of the parking area.

Mr. John Mattis stated we do have it? When did we get it?

Mr. Ken Hoch responded it was on the site plan that was part of the original submission. If not, I have it up on the screen John but I do have copies I can get to you.

Mr. John Mattis stated okay, because the last time the representative didn't even know if there was a shed that's why we had never discussed it. I guess we kind of glossed over it.

Mr. Ken Hoch stated there was discussion, as you saw in the minutes from the Planning Board; should there be a shed, should there not be a shed, should there be a bigger shed and this is the end result that the applicant is proposing this 12' x 20' shed.

Mr. David Douglas asked we have to advertise this right?

Mr. Ken Hoch responded yes, I have to advertise this for the next time.

Mr. David Douglas asked so we can't vote on this anyway today?

Mr. Ken Hoch responded no.

Mr. John Mattis asked so this will be 13.7 feet from the property line?

Mr. Ken Hoch responded yes.

Mr. John Mattis stated okay, so this is as amended that we got this evening does show the setback. It's a required 30, you're proposing 13.7 and since it needs to be re-advertised we can't vote on this until September.

Mr. Thomas Kerrigan stated understood.

Mr. John Mattis stated I don't think that the board has any problem with it though.

Mr. David Douglas stated so what we'll do is we'll adjourn it – we will re-advertise it with this new shed Variance and we'll address it in September.

Mr. Thomas Kerrigan responded okay.

Mr. John Mattis stated so it will be a combination of minimum lot size, minimum lot width and the Variance for the side yard setback for the shed.

Mr. John Klarl stated the memo says the Area Variance shall be advertised September 17<sup>th</sup> and our next meeting is September 21.

Mr. David Douglas stated it's just a typo in our fact sheet.

Mr. John Mattis asked is there anyone in the audience that wants to speak? I move that we adjourn case #2016-14 to the September meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we'll see you next month.

Mr. Thomas Kerrigan stated thank you.

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**RE-OPEN CASE NO. 2016-12 TO INCUDE AN INTERPRETATION:**

- A. **CASE NO. 2016-12**      **John Palumbo** for an Interpretation that removal of Bilco doors to a non-habitable basement and construction of a new enclosure for basement access, the enclosure of an existing side covered porch, and construction of a 12' x 11' rear open wood deck are not expansions of a non-conforming use; and if so, an Area Variance for the

front yard setback for the proposed new enclosure for basement access from a required 7.47 feet down to 5.33 on property located at **1090 Oregon Rd., Cortlandt Manor, NY.**

Mr. David Douglas stated this is something we had voted on but we need – well we don't need to, we have to consider re-opening this case to include and Interpretation.

Ms. Adrian Hunte stated good evening.

Mr. John Palumbo stated my name is John Palumbo. I live at Oregon and Beverly, 1090 Oregon Road. About a month ago, my son stood here in my place. While I was on vacation he calls me up that everything went well. We got the approval and I'm jumping for joy but I guess I'm back here tonight because Ken here gave me a buzz here telling me that...

Mr. David Douglas stated I think what Mr. Reber is saying is right, I think what you're saying to me is before he speaks we need to decide whether to re-open it.

Mr. Raymond Reber stated because there's no case if it's not open.

Mr. David Douglas stated procedurally, we need to vote first whether we want to re-open the case and then if we vote to re-open it then we can go ahead. He's right. Does somebody want to make a motion to re-open this? And the vote, just so you know the rules, it has to be unanimous. If it's not unanimous we can't re-open it.

Mr. John Palumbo stated that's fine. I understand.

Ms. Adrian Hunte stated case #2016-12 the applicant John Palumbo for 1090 Oregon Road we need to decide whether we would vote to re-open the case because the Variance may have been issued in error. I make a motion on this case to vote to re-open.

Seconded with all in favor saying "aye."

Mr. David Douglas stated now it's been officially re-opened. Now you're allowed to talk. Sorry about that.

Ms. Adrian Hunte stated so, Mr. Palumbo I guess we'd like to hear what it is that you're doing with the Bilco doors, whether you're planning to just replace them or something more involved.

Mr. John Palumbo stated there's a reason why I would like to do away with the Bilco doors, but you know I've been here before and I received favorable approval from the board before so I make concession at the same time. I can make a concession in here too. I can leave the Bilco doors the way they are. The reason why I would like to remove them is because I have grandkids now. When they come to visit for some reason they love to just run up and down that Bilco door. I replace it twice in the 35 years that I lived there. I lived there 40 years by the way

so September it will be 40 years but roughly 35 years ago I put the addition on that I received the Variance for it and the Bilco doors are to the side and I replaced them twice already because they deteriorate and I had to replace. I don't want to replace them anymore if I can help it. I would like to build another loose structure with a door that I can enter the basement and basically that's what I'd like to do but if there is a problem, if I have to, that'll be fine.

Ms. Adrian Hunte stated one of the issues we have is that this is considered a pre-existing non-conforming use and if you're doing more than just replacing those doors then it creates a problem for us.

Mr. John Palumbo stated if it's a problem I understand.

Mr. Wai Man Chin stated what it is then you have to do some structural work and this and that and then you're adding, you're adding to a non-conforming use and that is not permitted.

Mr. John Palumbo stated those are not our intentions. My wife and I sat down not too long ago and we're trying to make a decision whether or not we want to hang on another for to finish our days here. I heard other people say we love the Town of Cortlandt. We certainly do love the Town of Cortlandt too so one of the things that we would love to have is just the three put together because we would put the deck in between the two small structures and that would just fit fine, esthetically it would look great. That would please us to no end but there's no other reason why I'm interested in putting – I took a picture before I left. I don't know if any of you might be interested, with my I-pad. I could show you what it looks like in my backyard there.

Mr. John Mattis stated let me explain what pre-existing, non-conforming is so the people in the audience know. It means that if the structure was there, whatever was there was there but it does not conform to the zoning today so it's pre-existing, it's non-conforming. It can stay there but you cannot expand on a non-conforming use. The idea is that at some point in time the property changes and the non-conformity goes away or they do something to minimize it but we are not allowed to expand on a non-conforming use. So, this is an Interpretation whether or not what he proposes is an expansion. Now, he wants to remove Bilco doors to a non-habitable basement and construct a new enclosure for a basement access. That is a big change. That is considered an expansion. The enclosure of an existing side covered porch, that's considered an expansion. If it was an open porch and you'd close it in, that's an expansion. The third thing he's proposing is construction of a 12' x 11' rear open wood deck. That is an expansion. He can put tiles or bricks or something and that is not an expansion but once you raise it up and you make it a deck, it is an expansion. We are not allowed and we've interpreted this the same way consistently for many years and we are not allowed to approve something like that.

Mr. John Palumbo asked what can I say after that? Can I go home?

Mr. John Mattis stated many times people come in and it would look a lot better but the code is very specific on that when it's non-conforming. It just says no expansion whatsoever and the idea is hopefully someday it'll either stay the way it is or it'll be minimized and it will come into

conformance. There's not much we can do with this, unless we make an interpretation that runs in the face of every interpretation we've made in the past for many years.

Mr. John Palumbo asked so am I to understand that there's nothing? I'm leaving empty handed tonight?

Mr. John Mattis responded I'm speaking for myself but I think that the board probably concurs with that and you'll find out when we vote or they can just tell you before we vote how we feel.

Mr. John Palumbo stated the porch, at least the porch, that would help us a great deal. Winter time – we're getting up in age. We need to...

Mr. John Mattis stated again, I sympathize with you. We've had cases where I've apologized because what they want to do is very nice, esthetically it helps everything but the code is very clear that if it's an expansion you can't do it. Our hands are tied on this.

Mr. John Palumbo asked not even a standing structure?

Mr. Raymond Reber stated the problem we have is, and we're not saying this is your situation, but there is a progression that occurs. It starts with somebody coming and wanting an open porch or a deck. Okay, no big deal, you grant it. Then they decide they want to put – well it's hot and it's sunny they want to put a roof over it so the next thing you know they put a roof up and columns then they come back a little while later. Well you know in the winter time we'd like to be able to use it. We want to enclose it. Okay, they enclose it and then before we know it a year or two later they put heat in there, they insulate it and guess what? They now have another room in their house in a home that was not supposed to be expanded. That's unfortunate and I'm not saying you're intentions are this. As you say, you just want to enclose it for – but as Mr. Mattis says, by definition you're expanding it. You're improving and expanding it and you're moving forward to make your home better and more attractive and we're not allowed to do that.

Mr. John Palumbo stated see I don't have a little buffer to the entrance and this porch that already has a roof.

Mr. Raymond Reber stated but you self-admitted – you've been there how many years?

Mr. John Palumbo responded 40 years.

Mr. Raymond Reber stated you're still alive and standing so I guess it hasn't caused you any significant harm.

Mr. John Palumbo stated no it hasn't but my wife and I have gotten up in age so we're thinking of ourselves we could at least enclose the two walls we've got to put on the structure. It's got 4 foot closed space then I can do away with the deck and...

Mr. Raymond Reber stated as John said and I agree. It's not that we don't sympathize with you but our code is what it is.

Mr. David Douglas stated we all understand. We all understand why you would want to do that and why that would be beneficial to you it's just that it's a non-conforming use. It's a multi-family property in an area that you're not allowed, you're not allowed to have multi-family residences there. Your property, you can keep it, you can have a multi-family, a two-family because it was there before the zoning changed but the goal is of non-conforming uses that it will shift and it won't be a two-family home anymore, somewhere down the line. That's the idea behind non-conforming uses. You don't want to penalize somebody who's there before but you don't want to encourage it and the idea is eventually everything will switch and it will be conforming to what zoning now requires.

Ms. Adrian Hunte stated and as my colleagues have said in the past, we have to look at this as though you were coming before us today if this were a new property and if it were we would have to deny but we were asked for an Interpretation as to whether what you have with the Bilco doors, removing them, whether that would be considered an expansion. The other items would be an expansion and because of that the Variances that you would request would not be approved or anything but replacing those doors.

Mr. John Palumbo stated I mean, I've been working on this for three years. I realize I don't want to take any more time, you've got more important things to do but I've been working on this project for three years. I even went ahead and put some walls up on the porch thinking that at least that. Like I said, I have no options? I mean, I could do the deck and Bilcos they can stay where they are.

Mr. John Mattis stated that's something we didn't mention. You have started this construction without a Building Permit and that's...

Mr. John Palumbo stated yes, I admit that.

Mr. John Mattis stated that's not allowed.

Mr. John Palumbo stated no choice, no other choice. I have no options.

Mr. Wai Man Chin stated if you had come to the Code Enforcement before you started any of this they would have told you and said no, you've got non-conforming...

Mr. John Palumbo stated I went and that's not going to help but I went through two architects and didn't do anything...

Mr. Wai Man Chin stated the architects should have come into Code Enforcement...

Mr. John Palumbo stated second month didn't do anything and years go by and I finally found the right one I thought. He took some money, a few thousands and he tells me just like...

Mr. Wai Man Chin stated that architect should have went to look at the code first before he actually did anything for you.

Mr. John Palumbo stated I believe that Mr. Hoch suggested -- I know he suggested that we need to go for a Variance. I knew it because there was a Variance approved on the addition years ago so if I'm doing anything up to it I'm sure I'd be going for a Variance.

Mr. Wai Man Chin stated non-conforming properties are -- just a no-no.

Mr. John Palumbo stated no options then.

Mr. John Mattis stated you've had a Variance in the past and you got a Building Permit before you started construction. I'm a little surprised that you went ahead with this without getting a Building Permit.

Mr. John Palumbo stated I haven't Mr. Mattis.

Mr. John Mattis stated but you said you've had a Variance before and you built something there years ago.

Mr. John Palumbo stated no, no, no, the Variance in 1983 when we put this addition in.

Mr. John Mattis stated right and you got a Building Permit before you started the construction of that. You can't start without a Building Permit.

Mr. John Palumbo stated I didn't say that. I didn't start any construction...

Mr. John Mattis asked so are you saying you built that and then came back after the fact? What I'm saying is, when you got your Variance years ago, you got the Variance, then you went in and got the Building Permit and then you built it. So, you knew you needed a Building Permit. This time you just started building without getting a Building Permit. I don't understand that.

Mr. John Palumbo stated explainable. As I said, it's taken me three years and two architects are gone so finally I got the right one...

Mr. John Mattis stated and then you started construction and then somebody reported you and that's why you're in here.

Mr. John Palumbo stated correct but I don't know...

Mr. Raymond Reber stated to clarify just so we understand among ourselves as well as the

audience that's listening. The question of non-conforming: your non-conformance is that you're two-family in a one-family zone. That's the current code. The remediation is, you have an option, if you really want to do all these changes to your property you get rid of the non-conforming then all you have to do is get Variances from us for setbacks which in this case, your situation, I think most of us would agree because they're not more intrusive than what you have and you can get a Building Permit. The problem, you have to get rid of your tenant. You have to revert to the single-family. If you need the tenant, if you need the revenue then you have to accept the fact that our hands are tied and we can't grant you these improvements. That's how simple it is.

Mr. John Palumbo stated I didn't think it was going to be that complicated but that's – what do I know?

Ms. Adrian Hunte asked anyone else have comments? Anyone in the audience wish to be heard? Hearing none, on case #2016-12, John Palumbo initially for an Interpretation – sorry, I make a motion to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Ms. Adrian Hunte stated on case #2016-12 for an Interpretation of removing the Bilco doors to a non-habitable basement and construction of a new enclosure for basement access; enclosure of an existing side covered porch and construction of a 12' x 11' rear open wood deck are a non-expansion of a non-conforming use. I make a motion that we vote that it is – that they are expansions therefore not allowed.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that's our Interpretation.

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### **NEW PUBLIC HEARINGS:**

- A. CASE NO. 2016-15                      Ana Bermeo** for renewal of an Accessory Apartment Special Permit on property located at **817 Terrace Place, Cortlandt Manor, NY.**

Ms. Ana Bermeo stated good evening, my name is Ana Bermeo. I own the property located on 817 Terrace Place, Cortlandt Manor. I purchased the property back in December 28<sup>th</sup>, 2015 and I'm looking to obtain the accessory apartment permit. When I purchased the property – I'm request to be allowed to continue to use the accessory apartment on the property that I purchased

back in 2015.

Mr. David Douglas stated Mr. Mattis this is your case and you need the microphone and I'll put in a special request that next month John gets his own microphone.

Mr. John Mattis stated this apartment has existed while the CO was issued in 1987 so it's existed for quite a while. Except for a permit to repair fire damage and a new boiler there have been no changes to the house. I'm going to ask if there's anybody in the audience who wants to speak but I assume that there's no complaints or anything and there should be no reason why we can't approve this. Now I'm going to ask: is there anybody in the audience who would like to speak? Hearing none, I move that we close the public hearing on case #2016-15.

Seconded with all in favor saying "aye."

Mr. David Douglas stated so moved.

Mr. John Mattis stated I move that we approve the renewal of a Special Permit for an accessory apartment and it's a type II SEQRA, no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Special Permit is granted.

Ms. Ana Bermeo stated thanks so much.

Mr. Wai Man Chin stated you're welcome.

**B. CASE NO. 2016-16 Gary Megennis for an Area Variance for the total square footage of accessory structures to allow for construction of an in-ground swimming pool on property located at 225 Red Mill Rd., Cortlandt Manor, NY.**

Mr. Levesque stated good evening everyone. I'm Kier Levesque. I'm the architect for Mr. Megennis. This is Mr. Megennis.

Mr. Gary Megennis stated hello.

Mr. Levesque stated we have a very large property with a few accessory structures and because we have those existing accessory structures, now we want to put in a swimming pool. We're non-conforming to the accessory coverage which as you know is a percentage of the floor area of the existing house. It happens to be a small house. It's actually smaller than one of the barns that's on the property. So, we're here to get an Area Variance or request an Area Variance for the non-conforming accessory coverage. We'll be adding about 828 square feet for the pool and

40 square feet for the pool equipment.

Mr. Raymond Reber stated this is my case. I had asked for clarification from Code Enforcement because, as you say, the numbers are very large here and the way they were calculated is they were using total floor area for structures that are two stories so I just asked for clarification and I understand that that is the way the formula is done so that's a non issue. On that basis, as you state on your application, this is a large piece of property. Even though the numbers don't comply we have looked to grant Variances in other situations like this on very large parcels, because again, the code is written for what is considered standard lots up to an acre. You've got multiple acres and for a pool like this the feeling is, it's not a problem. It's not going to be obnoxious to neighbors. It's not going to have a significant effect on drainage or the esthetics or the natural nature of the property so my own opinion is I don't think it's a problem and I would be willing to grant the Variance in spite of the fact that the numbers are outrageous in the way that they're calculated. I don't know how the other members want to – if they want to chime in and give their opinion.

Mr. John Mattis stated I agree.

Ms. Adrian Hunte stated I concur.

Mr. James Seirmarco stated I concur.

Mr. David Douglas stated I agree as well. I just want to note for the record since the percentage here is rather large that for the Variance, it's an R40 zone so it's basically a one acre zone and the lot size is over 11 ½ acres. People should not take this as a precedent in general for this sort of Variance just given the nature of this property and its size and the zone.

Mr. Levesque stated in my discussions with the Building Department, the discussion revolved around if we had a bigger house we wouldn't have this problem. No plans to have a bigger house right now.

Mr. Raymond Reber stated one of those unique features when you write code and you try and calculate dimensions.

Mr. John Mattis stated this is one of the unique ones. We've had properties with many acres and old 1800 farm houses that are quite small and they can't even put a garage if that makes any sense so we do take into consideration – and that's what we're here for. Do the neighbors see it? How big is the property? Things of that nature and that's exactly what we're doing tonight.

Mr. David Douglas stated which is a good point. I guess we should note for the record, it's not going to have any impact on any of the neighbors.

Mr. Raymond Reber asked is there anyone in the audience who would like to speak on this case? If not, I would move that we close the public hearing on case #2016-17.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Raymond Reber stated on case #2016-17 for a Variance at 178 Cortlandt Street, 3 Crugers Avenue for – I'm reading the wrong one. Sorry. Correction: for the record we're talking about 2016-16 which is on 225 Red Mill Road in Cortlandt. I move that we close that public hearing.

Seconded.

Mr. David Douglas stated I think we already did.

Mr. Raymond Reber stated I closed the public hearing on a different case.

With all in favor saying "aye."

Mr. David Douglas stated that public hearing is closed.

Mr. Raymond Reber stated now on case #2016-16, 225 Red Mill Road for an Area Variance for the total square footage of accessory structures where 1,436 are allowed, it is proposed at 4,871 square feet for a 239% Variance. As noted: this is a unique case because it is on 11 acres and so therefore propose that that Variance be granted and this is a SEQRA type II, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is granted.

Mr. Levesque stated thank you very much.

Mr. Raymond Reber stated thank you.

Mr. David Douglas stated thank you.

Mr. Wai Man Chin stated thank you.

Mr. David Douglas stated and Ken will get you the paperwork for whatever number days it is.

- C. CASE NO. 2016-17 Edward and Anna Wyganowski, Christina DeLuca, Michelle Ocasio for Area Variances for the size of two lots created by a lot line adjustment on properties located at 178 Cortlandt St. and 3 Crugers Ave., Croton-on-Hudson, NY.**

Mr. David Douglas stated this public hearing is not closed despite Mr. Reber's attempt to do so.

Ms. Adrian Hunte stated good evening.

Ms. Anna Wyganowski stated good evening everybody. My name is Anna Wyganowski. I live at 178 Cortlandt Street. I would like to request that you consider our application for this lot line adjustment. As you can see on the map, what should be our front yard is actually a part of our neighbor's property to the point that a part of our driveway is – this corner of the driveway is actually a part of the neighbor's property. The neighbors support our application. They say they have really no use for this part which is so close to our front window and they even put a fence already on the proposed line so they said no matter how this is going to end up they just have no intention of using this part of the property. It was conditionally approved by the Planning Board already.

Ms. Adrian Hunte stated this is my case. Any comments from the board? Anyone in the audience wants to be heard?

Mr. John Mattis stated this certainly has no impact on the neighborhood. Basically, what you're doing is you're taking a piece of property that is theirs and you're moving the lot line so it becomes yours so the driveway you use is on your property. What it does, it makes one property a little more conforming, one property a little less but it changes no physical characteristics. It has no impact on anything.

Ms. Anna Wyganowski stated that's what we were told, right.

Mr. John Mattis stated except it eliminates any problems in the future if somebody sells and you get neighbors that don't get along and they don't let them use the driveway or something and it's nice, they've already put that fence so it shows that you get along quite well. That's good.

Ms. Adrian Hunte asked anyone in the audience wish to be heard? Hearing none, on case #2016-17, the applicants Edward and Anna Wyganowski and Christina DeLuca and Michelle Ocasio for the property at 178 Cortlandt Street and 3 Crugers Avenue, Croton-on-Hudson, N.Y. for the size of the two lots created by lot line adjustment, I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Ms. Adrian Hunte stated on case #2016-17 for the Area Variances for the size of the two lots created by a lot line adjustment, I make a motion that we approve, grant the Area Variance for the square footage of the DeLuca/Ocasio parcel from an allowed 20,000 square feet down to 10,194 feet and the Wyganowski parcel from an allowed 20,000 square feet down to 7,843 square feet as a result of a lot line adjustment granted by the Planning Board with Resolution

#15-16. This is a SEQRA type II, no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

Ms. Anna Wyganowski stated thank you very much.

Mr. John Klarl stated this application was the condition in the Planning Board Resolution.

Mr. David Douglas stated that condition's met then. It's nice to see neighbors that are actually getting along because more frequently when it comes in front of us it's because they're not.

Ms. Anna Wyganowski stated [inaudible] very nice neighborhood. Thank you very much.

Mr. John Klarl stated thank you.

Mr. Wai Man Chin stated good luck.

**D. CASE NO. 2016-18 Charles McCay for an Area Variance for the rear yard setback for an existing open wood deck on property located at 2 Arthur St., Cortlandt Manor, NY.**

Mr. Charles McCay stated good evening Mr. Chairman, members of the board. My name is Charles McCay, 2 Arthur Street, Cortlandt Manor. I lived there for 37 years. My architect, Mr. Lentini, had a family problem. He can't be here tonight so I'm here myself. When I bought the house in '79 there was a deck on the back and last year I replaced it not realizing I had to get a permit for it. I got a letter from Mr. Hoch and I went to him right away and he told me I needed to put paperwork in and I needed a drawing from an Architect or an Engineer. So, I was recommended to Mr. Lentini. He came to the property, checked it out. He said that that looked good, standard-wise and he made the drawings and we brought them back to Mr. Hoch and at the time I thought all that had to be done was turn them in and have an inspector. I have to pay whatever I have to pay but it turns out I need a Variance. There's a number of issues here. My lot is an R40 which is supposed to be 40,000 feet but my property is only 20,000 feet which makes me have to comply with standards for a larger lot. My lot is also on a corner which I have more Variances, the front yard and the side yard. The thing I'm concerned about, I'm supposed to have 30 feet behind the house but there's only 20 and this was approved in 1974. Where does that leave me?

Mr. Wai Man Chin responded we just got a new fact sheet from Mr. Hoch today.

Mr. John Mattis stated the house is not in question, it's the deck.

Mr. Wai Man Chin stated yes I know.

Mr. James Seirmarco stated it's the deck. You probably saw me...

Mr. Charles McCay stated but the house is supposed to have more than 20 feet behind it right?

Mr. James Seirmarco responded right.

Mr. Charles McCay stated and it doesn't.

Mr. John Mattis stated the issue is you had a deck that was 11' x 7'. It came 7 feet out from the house, now it's 16' x 12'. You came out another 5. That's the issue, going from 7 feet towards the rear of the house to 12 feet.

Mr. Charles McCay stated 7 feet, you can't even get a table and chairs there really though.

Mr. John Mattis asked you bought it in 1979 and you couldn't fit table and chairs there since 1979 and now all of a sudden it's a hardship, but you can't just go build these and make them closer and stuff like that without a Building Permit and without getting a Variance.

Mr. Charles McCay stated I'm here to get the Variance. I made a mistake. I didn't realize it.

Mr. John Mattis stated you've already built this but again, what we have to look at, because people would come in and say: this is a hardship if you tell us to take it down or change it or whatever. We have to look at it as if it was not there and if that was not there I would have given you a deck along the whole back of the house as long as it didn't go out more than 7 feet, but to encroach more into that backyard which is smaller than what you really should have anyway, because you could go to 24 feet. You're existing is 8 feet and you want to go more, I don't see how we can approve that. That's just – you're going out 5 more feet and it's a 16 foot Variance which is 66.7%. That's quite large. Again, we have to look at this as if you did not build it because...

Mr. Charles McCay stated I have a statement from my neighbor who has no problem with it.

Mr. James Seirmarco stated I understand and we'll put it in the record.

Mr. Wai Man Chin asked can I say something quickly? Mr. Hoch gave us a new fact sheet. You read it.

Mr. James Seirmarco responded yes.

Mr. David Douglas asked I'm confused though, how does the new fact thing change...

Mr. Wai Man Chin responded the Planning Board considers South Street to be the front yard of

the proposed house and the required side yard setback would be 20 feet instead of 30 feet is that correct? He's allowed to extend 3 feet into the setback and no closer than 5 feet to the side lot line.

Mr. David Douglas stated he would still need a Variance right?

Mr. Wai Man Chin responded yes, yes I understand that.

Mr. Ken Hoch stated either way he would need a Variance.

Mr. David Douglas stated he would need a Variance either way.

Mr. Wai Man Chin stated either way he needs a Variance but this is a lot less than a Variance. Am I correct?

Mr. Ken Hoch responded do you consider where the deck is to be the rear yard or the side yard?

Mr. Wai Man Chin responded right, that's what I'm...

Mr. John Mattis stated well I think we better adjourn this and take a look at it because we just got this information tonight.

Mr. David Douglas stated that's what I would like because I'd like to think it through.

Mr. Wai Man Chin stated that's why I was reading this and that's what I was kung fu – like I say, we just got it today and I was looking at it and I said; wait a minute, that's a little bit different than what we talked about on Monday.

Mr. David Douglas stated Mr. McCay just to explain to you what happened. We just got some new information about the possibility that a prior Variance was based on – might be based on having Arthur Street being the front yard and we need to think through what impact that would have. Rather than doing it on the fly, we'd prefer to think about it.

Mr. Wai Man Chin stated it may be beneficial to you basically if we think about this right now.

Mr. John Klarl stated and maybe his professional will be available.

Mr. Wai Man Chin stated and maybe Mr. Lentini would be back by then.

Mr. David Douglas stated so what we would like to do is adjourn it to next month.

Mr. Charles McCay stated I just want to tell you, I'm a disabled Vietnam Vet, combat vet. Aging arch, ischemic heart disease. I've had quintuple bypass three years ago. I'm very active in the community and the [inaudible] of VW Yorktown, the [inaudible] of the Disabled

American Veterans, Northern Westchester Putnam and do a lot of charity work in the VA hospitals and I just ask for you for your consideration.

Mr. David Douglas stated we respect all that but what we're going to do is; we're going to look at the facts as the property.

Mr. Wai Man Chin stated like I said, we just got this today before we started and that's why I kind of interrupted a little bit before...

Mr. Charles McCay asked what does that mean? The house should have been facing south...

Mr. David Douglas responded no, no that's what – it changes the numbers and the percentage of the requested Variance and we need to think through whether that helps you or has no impact. We don't know. We just saw this the first time when we walked in tonight.

Mr. John Klarl stated Mr. Lentini will probably want to discuss this with you.

Mr. David Douglas stated if Mr. Lentini is available next month we can have some give-and-take with him about that. It's not harming you in any way. You've got your deck.

Mr. Charles McCay stated I'm hoping I don't have to rip it down.

Mr. David Douglas stated right, but what I'm saying is the one month, pushing it back is not going to harm you in any way.

Mr. Wai Man Chin stated this way it gives us a chance to review this and talk it over.

Mr. James Seirmarco stated I understand your concern. The concern is whether the where the deck is, is the back backyard...

Mr. Charles McCay stated that's the only place I can have it.

Mr. James Seirmarco stated or it's the actual side yard. That your front of your house would be technically on South Hill. If that's the case, it changes the numbers. It doesn't make it...

Mr. Wai Man Chin stated it may help you out.

Mr. James Seirmarco stated it may help you out.

Mr. Charles McCay stated okay, I appreciate that. Thank you for your time.

Mr. James Seirmarco stated not yet. Unfortunately, I have to say that if it's not interpreted that way then it's not going to be permitted so we'll be the bearer of bad news.

Mr. Charles McCay stated well then I have to put it back to 7 feet?

Mr. Wai Man Chin responded if...

Mr. James Seirmarco responded yes, I guess is the...

Mr. Wai Man Chin stated if – so let us think about it.

Mr. Charles McCay stated thank you.

Mr. Raymond Reber stated you brought up the subject of the house itself R40, 20 feet, what have you, that was all clarified in a Decision and Order back in 1972 when it was recognized at that time that the parcel did not conform to the R40 and a Variance was granted that said that becomes legal, that your 20 foot setback, which is more typical of an R10 or what have you is understood and in the nature of the character of that neighborhood. Your house was given permission to be located 20 feet. It's totally legal, totally approved. If you were concerned as to how the house could be there, this document gave approval to that. That's not an issue. All we have to discuss is whether or not you need some kind of Variances for decks.

Mr. Charles McCay stated appreciate whatever you can do.

Mr. James Seirmarco stated on case #2016-18 I make a motion we adjourn this to next week to further – next month...

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's adjourned to the September meeting.

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### **ADJOURNMENT**

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

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**NEXT MEETING DATE:  
WEDNESDAY, SEPT. 21, 2016**