

TOWN OF CORTLANDT
PLANNING AND ZONING BOARDS

ZONING BOARD MEETING

Town Hall
1 Heady Street
Cortlandt Manor, New York 10567
January 20, 2022
7:00 p.m. - 7:20 p.m.

January 20, 2022

MEMBERS PRESENT:

Wai Man Chin

Chris Beloff

Adrian C. Hunte

Benito Martinez

Thomas Walsh

Chris Kehoe, Deputy Director, Planning

Michael Cunningham, Deputy Attorney

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2 (The board meeting commenced at 7:00 p.m.)

3 MR. WAI MAN CHIN: Okay, here we go,
4 good evening. Welcome to the Zoning Board of
5 Appeals meeting for January of 2022. The first
6 thing we're going to do is rise and pledge to our
7 flag.

8 MULTIPLE: I pledge allegiance to the
9 flag of the United States of America and to the
10 republic for which it stands, one nation under
11 God indivisible with liberty and justice for all.

12 MR. CHIN: Can we have a roll call?

13 MR. CHRIS KEHOE: Mr. Martinez.

14 MR. BENITO MARTINEZ: Here.

15 MR. KEHOE: Mr. Beloff?

16 MR. CHRIS BELOFF: Here.

17 MR. KEHOE: Mr. Chin?

18 MR. CHIN: Here.

19 MR. KEHOE: Ms. Hunte?

20 MS. ADRIAN C. HUNTE: Here.

21 MR. KEHOE: Mr. Walsh?

22 MR. THOMAS WALSH: Here.

23 MR. KEHOE: Mr. Douglas and Mr. Franco
24 noted as absent.

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2 MR. CHIN: Do I have a motion for
3 adopting the minutes of the meeting for December
4 of 2021?

5 MS. HUNTE: So moved.

6 MR. WALSH: Seconded.

7 MR. CHIN: So moved.

8 MR. WALSH: Second.

9 MR. CHIN: All in favor?

10 MULTIPLE: Aye.

11 MR. CHIN: Okay. We're going to also
12 adopt the revised 2022 meeting schedule that we
13 got recently. Do I hear a motion on that?

14 MS. HUNTE: So moved.

15 MR. MARTINEZ: So moved.

16 MR. CHIN: Second?

17 MR. MARTINEZ: Second.

18 MR. CHIN: All in favor?

19 MR. KEHOE: Just, just on the question,
20 just for the record, the next meeting will still
21 be a --

22 MR. CHIN: Two, two day meeting.

23 MR. KEHOE: I can't remember. I think
24 it's a Monday/Thursday or Tuesday/Thursday, but

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2 the after the February meeting, all of your
3 meetings will be together, work session first,
4 regular meeting immediately following most of the
5 time, on the fourth Mondays of the month.

6 MR. CHIN: Right. Except for, I think,
7 uh --

8 MR. KEHOE: There's a couple exceptions
9 in there.

10 MR. CHIN: Yeah, which is May, September
11 and October will be on a Tuesday.

12 MR. KEHOE: Yeah.

13 MR. CHIN: Do I have a second?

14 MS. HUNTE: Second. And our February
15 meeting is February 17th, and the work session is
16 the 14th.

17 MR. KEHOE: Right.

18 MR. CHIN: Right. That's still the same.
19 Second?

20 MS. HUNTE: Second.

21 MR. BELOFF: Second.

22 MR. CHIN: All in favor?

23 MULTIPLE: Aye.

24 MR. CHIN: Okay. Next is new public

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2 hearing, case number 2021-1, application for a
3 building permit service for the property of
4 Judith Johnson at 12 Colabaugh Pond Road.

5 MS. NORA HILDINGER: Do I need to leave
6 my mask on?

7 MR. CHIN: No, you can take it off.

8 MS. HILDINGER: Or can I speak without
9 it?

10 MR. CHIN: Yeah, yeah.

11 MS. HILDINGER: Okay.

12 MR. CHIN: You're good. State your name
13 and your purpose.

14 MS. HILDINGER: My name is Nora
15 Hildinger. I'm here for 12 Colabaugh Pond Road,
16 for a front yard, accessory structure in a front
17 yard. Good evening, everybody, vice-chairman and
18 Happy New Year. So let me describe the shed. The
19 accessory structure is 20 feet by 11 feet, as
20 shown on the architect's plans and it is listed
21 as shed one. There's also a second shed on there,
22 but there's no discrepancy with that. It doesn't
23 need a building permit, but the shed that we're
24 speaking about is shed one. It's 20 feet by 11

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2 feet, the elevation is ten feet. It's sided in
3 texture 111 and the shed matches the, the outside
4 of the house, the, the cedar of the house and,
5 and the accessory structure are the same, so
6 that, that describes the structure.

7 So now, I'm going to go through some of
8 the points, the factors. The first factor I'm
9 going to discuss whether an undesirable change
10 will be produced in the character of the
11 neighborhood or a detriment to nearby properties.
12 There will be no undesirable change to the
13 neighborhood. The accessory structure has been
14 there since 1987. And it has, to this point, not
15 produced any adverse effects or changes in the
16 neighborhood in the last 35 years. The shed is
17 attractive and it fits with the house, and the
18 shed is not visible from the road. So, there is a
19 six foot fence with a -- the fence meets zoning
20 and you cannot see the shed from any angles on
21 the road. So that's point one, there's going to
22 be no change to the neighborhood with this
23 accessory structure.

24 The second factor I'm going to talk

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2 about is whether the benefit sought by the
3 application can be achieved by some other method,
4 feasible for the applicant to pursue other than a
5 variance. No. The shed, the accessory structure,
6 is placed in the most logical area. If you're
7 facing the house, the shed, accessory structure,
8 is on the left-hand side. On the right side, of
9 the house, where it looks like there's more
10 opening is where the sanitary system is, so
11 that's not a feasible location for the accessory
12 structure. Once again, facing the house, on the
13 left, looking on the left side of the home, where
14 the accessory structure is located, directly
15 behind the accessory structure is a four-foot
16 wall. And behind the stone wall is an embankment.
17 These physical characteristics have always
18 existed on the property. And just as a little
19 aside, the stone wall dates back to the
20 construction of the dam, and on top of the
21 embankment is an old foundation from an inn that
22 served the dam builders at the turn of the 19th
23 Century. So it's been like that for a really long
24 time. Because of the stone wall and the

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2 embankment, the shed has been pushed slightly
3 forward to accommodate these physical conditions
4 and characteristics and it cannot be pushed back.
5 So there is no other way, besides a variance to,
6 to have the accessory structure there.

7 The third factor I'm going to discuss
8 is, is the variance substantial. The accessory
9 structure projects seven feet in front of the
10 home. At the time of -- and I think the big point
11 I'm going to bring this up here. The big point is
12 that at the time of construction, the location of
13 the accessory structure would have been
14 permitted. So, is the variance substantial? Once
15 again, it's seven feet in front of the home, so I
16 don't think, I don't believe it's substantial.

17 Anyway, so, and the fourth factor I'm
18 going to discuss is if the variance is
19 authorized, it will not alter the essential
20 character of the neighborhood, or the district in
21 which the property is located, or impair
22 appropriate use or development of adjacent
23 property, nor be detrimental to the public
24 welfare. The accessory structure has been there

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2 for 35 years, it hasn't altered the neighborhood,
3 it hasn't affected any of the adjacent
4 properties, so I don't think that it will in any
5 way change the essential character of the
6 neighborhood and as I've mentioned in my first
7 factor, it fits with the whole property. And
8 also, if, if the variance wasn't granted, it
9 won't, it will not -- that the accessory
10 structure is there is not creating any adverse
11 effect on the neighborhood, but the structure
12 can't be pushed back and to do anything else
13 would be a financial hardship to the owner. So, I
14 think that covers the fourth factor that it
15 doesn't alter the neighborhood.

16 And the fifth thing I want to talk about
17 is whether the alleged difficult was self
18 created. And it was not because the need for a
19 var- the need for the variance, the shed was
20 placed first, as I discussed in factor two in the
21 most logical place. It can't be on the other
22 side, it looks good where it is, it can't be
23 pushed back because of the wall. So the accessory
24 structure is in its most logical place. It looks

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2 good, but most importantly, at the time the shed,
3 accessory structure, was constructed, it was
4 prior to ZORP 1992, and prior to 1992, and this
5 shed was there in 1987, the, the location of the
6 accessory structure would have been permitted.
7 And I think that's a really important point,
8 that, that when the structure was put there, it
9 was allowed there.

10 So with that, I conclude and I thank you
11 for listening and I thank you for your time.

12 MR. CHIN: Mr. Beloff, that's your case.

13 MR. BELOFF: Yeah, how you doing?

14 MR. CHIN: Would you like some remarks?

15 MR. BELOFF: I actually took the time to
16 drive out and, and I agree with a lot of, of the
17 points that you've made. The last point that you
18 made, and it's my understanding, prior to ZORP
19 1992, I mean that, that would be the case, it's
20 my understanding that if a building permit was
21 taken at that time.

22 MS. HILDINGER: Correct

23 MR. BELOFF: So if we had a building
24 permit and prior to 1992, 1987, we wouldn't even

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2 be here.

3 MS. HILDINGER: Correct.

4 MR. BELOFF: Okay.

5 MS. HILDINGER: Correct. Yes.

6 MR. BELOFF: So, with that, I mean I'll
7 go through the, the factors here as, as I see
8 them from driving by. I agree with you with the,
9 the first, an undesirable change will reduce the
10 character of the neighborhood, it is behind the
11 fence, you can barely see the top of the roof,
12 and, uh, and I actually drove from, from the side
13 of 129 all the way through Colabaugh to the other
14 side. And I found many houses actually, along the
15 ride, that had sheds in the front of the
16 property. And if any of the other members want to
17 take a look at them, I have them here.

18 Number two factor here, whether the
19 benefits sought by the applicant can be achieved
20 by some other method feasible to the occupant,
21 uh, and for the area variance, I agree also,
22 looking at the layout of the, the area here, I
23 don't think you had any other choice for the
24 location.

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2 Number three, whether requested variance
3 is substantial, I don't think so. Number four,
4 the proposed variance will have an adverse effect
5 or impact on the environment and neighborhood,
6 like I said, looking at number one, driving
7 through the neighborhood, the whole, there's
8 sheds throughout. Many property owners have
9 sheds, just like yours, in the front yard.

10 And was it self-created, obviously it
11 was back in 1987 whether or not, you didn't know
12 if you needed a permit or if we had a permit,
13 like I said, we wouldn't even be here, so. I
14 don't know, does any other members have something
15 before --

16 MS. HUNTE: Yes. Similar to Mr. Beloff,
17 I do want to know when did you actually own the
18 property? Was that shed there when you purchased
19 the property or no?

20 MS. HILDINGER: The owner purchased the
21 land and actually constructed the home and the
22 home has a, it was, the construction was finished
23 in 1987, or '86 and the shed was constructed
24 within a year of when the house CO was, was

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2 given. And the owner, Judith Johnson, who's here,
3 still owns the property today.

4 MS. HUNTE: So in that sense, it would
5 be self-created. It's not as though you purchased
6 the property with the shed already on it, but in
7 terms of the five factors, I don't see any
8 undesirable change. We do have some question
9 concerning the ZORP or whether Mr. Rogers was
10 able to confirm that.

11 MR. MICHAEL CUNNINGHAM: So, I, I can
12 answer that question. So as far as whether or not
13 this would have been allowed prior to ZORP, we
14 couldn't confirm that today and I think as
15 everyone here knows, one fact is not necessarily
16 dispositive. So, even though we can't -- even
17 though I think the board is leaning towards this
18 is self-created, that doesn't mean that the
19 variance could not be granted.

20 MR. KEHOE: We checked with Martin
21 Rogers, and I know that you've spoken and John
22 has spoken. I think his point was he didn't do
23 independent research on his own to prove whether
24 that was true. I know that's your representation.

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2 His position was he didn't want to say one way or
3 the other. He wanted to leave it up to the board,
4 look at that as all of the factors together.

5 MS. HUNTE: Understood. Self-created is
6 not necessarily in and of itself a reason, a
7 constituting reason for denial. So, I understand.

8 MR. CHIN: Well, I'd like to say, I'd
9 like to say one thing, I mean yes. Prior to the
10 1992 ZORP, okay, the house was built -- I mean
11 the shed was built in 1987, approximately the
12 time that when the house was built.

13 MS. HILDINGER: Yes.

14 MR. CHIN: Okay. Because they got a
15 permit for the house, but never got a permit for
16 the shed, okay, it has to go by what ZORP is in
17 1992, not prior to that, okay. But otherwise,
18 based on all the other factors, I really don't
19 have a problem with what you have there now. I
20 drive around it, I live right around the corner
21 from there.

22 MS. HILDINER: Okay.

23 MR. CHIN: So, I, you know, I see it all
24 the time and I, as soon as you come around

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2 Colabaugh Pond, around the curve right there,
3 it's right there in front of you, and you call,
4 you can't see it at all, barely, you know, you
5 have to really stretch your neck to get a view of
6 it. So again, I have no problem with it. Again,
7 it was self created, only because he didn't get a
8 permit for the shed at the same time you got the
9 permit for the house.

10 MS. HILDINGER: Right.

11 MR. CHIN: And that's the problem. You
12 know, and so we have to go by the newest law of
13 1992. Okay. So, and in either case, I still would
14 not have a problem granting a variance.

15 MS. HILDINGER: Okay.

16 MR. WALSH: My, my comments on this is
17 we kind of dealt with almost the same thing last
18 month with an existing shed that was on a side
19 yard.

20 MR. KEHOE: Mendelson, I think.

21 MR. WALSH: Yeah, off of, off of 202,
22 where we did grant the variance to keep the
23 existing shed. I'm following kind of along the
24 same lines with that, where this is, this is an

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2 existing shed, you know, semantics is, our
3 comment sheet in the application is calling it a
4 12 x 15 shed, but your plans are calling it a 20
5 x 10 shed, so just as you're writing up the DNO,
6 I want to make sure we're listing the correct
7 shed.

8 MS. HILDINGER: Yeah. It's, what's on
9 the plans is correct.

10 MR. WALSH: Okay. Just to make sure that
11 it's written.

12 MS. HILDINGER: Yeah.

13 MR. WALSH: I would be, you know, I have
14 no issues as it is, but I would also like it
15 written, I'd be more comfortable as this is the,
16 this is the shed that we're approving, no other
17 future sheds can be built there.

18 MR. KEHOE: Okay.

19 MR. WALSH: Kind of like we have done in
20 the past, where is this thing is knocked down by
21 a tree, or something drives through it that it
22 cannot be replaced.

23 MR. KEHOE: Right. So I want to confirm
24 with the attorney, right, that what I've done in

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2 other DNOs is this can stay, but if it gets
3 destroyed or something like that, it can't be
4 rebuilt.

5 MR. WALSH: That's perfectly acceptable.

6 MR. KEHOE: It's acceptable to us.

7 MS. HILDINGER: Yes, that would be
8 acceptable, yes.

9 MR. CUNNINGHAM: As legally permissible.

10 MR. KEHOE: Okay.

11 MS. HILDINGER: Yes.

12 MR. WALSH: And then also, just I had a
13 question with the propane tank, is that
14 [unintelligible] [00:15:48] on that?

15 MR. KEHOE: I also had conversations
16 with Martin Rogers about that.

17 MS. HILDINGER: Right.

18 MR. KEHOE: And I think that's a similar
19 circumstance, although that one he seemed to
20 believe was okay.

21 MS. HILDINGER: That the propane tank --
22 the house is heated by the propane tanks and has
23 always been heated by the propane tanks, the
24 house itself has a CO, so the propane tanks at

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2 the time, were always there, that's always where
3 they were located. And I believe we determined it
4 was covered under that, the house CO.

5 MR. KEHOE: And that's -- that's a
6 better way of explaining what Martin Rogers told
7 me as well.

8 MR. WALSH: And it [unintelligible]
9 [00:16:25] by the fence. I'm just, I'm just
10 bringing it up as I'm seeing it as
11 [unintelligible] [00:16:28].

12 MS. HILDINGER: I can explain something
13 better than Martin?

14 MR. WALSH: I have no other, no other
15 comments.

16 MR. MARTINEZ: And basically, what the
17 questions that Tom had for you was the same one
18 that I had and you basically answered it, so I
19 don't have any problem with that.

20 MS. HILDINGER: Okay. Thank you.

21 MR. CHIN: Anybody in the audience would
22 like to speak on this? Mr. Beloff.

23 MR. BELOFF: Alright. I'd like to make a
24 move to close public hearing.

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2 MS. HUNTE: So moved.

3 MR. CHIN: Second?

4 MR. WALSH: Second.

5 MR. CHIN: All in favor?

6 MULTIPLE: Aye.

7 MR. BELOFF: Alright. I'd like to say a
8 motion to approve the variance for case number
9 2022-1 for 12 Colabaugh Pond Road, for an area
10 variance to permit an existing shed to remain in
11 the front yard setback.

12 MR. CHIN: Second?

13 MS. HUNTE: So moved.

14 MR. CHIN: All in favor?

15 MULTIPLE: Aye.

16 MR. KEHOE: And, and just for the
17 record, it's a SECR Type II action, which doesn't
18 require any other compliance.

19 MR. CHIN: Does it say that?

20 MS. HUNTE: Yes.

21 MR. KEHOE: So as Nora and John are well
22 aware, in the next couple of days we'll draft up
23 a decision and order and we'll get it out to you
24 all. And then you get that, I send a copy to

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Martin as well, and then you can continue on with whatever you're doing with Martin.

MS. HILDINGER: Great. Thank you for your time.

MR. CHIN: Good night. Okay. An order, anybody have a motion to adjourn the meeting to February?

MS. HUNTE: Motion to adjourn.

MR. BELOFF: Second.

MR. CHIN: All in favor?

MULTIPLE: Aye.

MR. CHIN: Okay.

(The public board meeting concluded at 7:20 p.m.)

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of the board meeting of the Town of Cortlandt on January 20, 2022 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Claudia Marques

Date: February 4, 2022

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