

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, December 19th, 2012*. 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 (absent)
Raymond Reber

Also Present

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

*

*

*

ADOPTION OF MEETING MINUTES FOR NOV. 14, 2012

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

Mr. David Douglas stated the minutes are adopted.

*

*

*

ADOPTION OF 2013 MEETING DATES

Mr. David Douglas stated we've been given a draft of proposed meeting dates for **2013**.

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

Mr. David Douglas stated the schedule of meeting dates for 2013 is approved.

Mr. John Klarl stated and it appears for two work sessions we have on Tuesdays.

Mr. David Douglas responded right, there are two work sessions on Tuesdays because, one I believe, is Martin Luther King Day and one is Columbus Day.

*

*

*

ADJOURNED PUBLIC HEARING TO FEB. 20, 2013:

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

Mr. David Douglas stated this has been adjourned to February.

*

*

*

ADJOURNED PUBLIC HEARING TO JAN. 16, 2013:

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

Mr. David Douglas stated that has been adjourned until January.

Mr. John Klarl stated Mr. Wood is going to give you a memo before your January work session.

*

*

*

CLOSED AND RESERVED:

- A. CASE No. 2012-42** **Robert Brumberg and Ellen Gelber** for an Interpretation that the installation of new permanent windows on an existing porch having removable screens and plastic panels is not an expansion of a non-conforming use on property located at **27 Reynolds Lane, Unit 48, Cortlandt Manor, NY.**

Mr. David Douglas stated I believe we got a letter, or an e-mail from them giving – an e-mail to the Board from Mr. Brumberg giving the Board permission to extend the appeals process beyond the **62** day limit so that we'll have additional time to consider their request and that was because our next meeting, after a couple...

Ms. Nancy Vann stated Bob called me and said that you hadn't been able to come to a decision so I thought you might have questions so he asked me to come.

Mr. David Douglas stated we appreciate you coming. Actually the case had been closed. Actually the public hearing has been closed. I'm not trying to cut you off but we don't...

Ms. Nancy Vann stated he wasn't sure what it meant on the agenda so he asked if anybody had any questions if I could come and answer them since they're in the city.

Mr. David Douglas stated no, we didn't actually have any questions. The reason for the adjournment is just usually when we close and reserve a matter we'll usually have a decision either at the next meeting or the meeting thereafter. Under the law, the decision has to be within **62** days but it turns out that the January meeting that I believe is **63** days from November so that's the reason for the extension. We should have a decision in January.

Ms. Nancy Vann stated thank you very much.

Mr. David Douglas stated with this case it will remain closed and reserved and we'll consider it in January.

Mr. John Klarl stated and I'll have a proposed Decision and Order awards review at the January work session.

*

*

*

ADJOURNED PUBLIC HEARINGS:

- A. CASE No. 2012-25** **Mateo and Kim Velardo** for an Area Variance for an accessory structure (above ground pool) in the front yard and an Area Variance for the front yard setback for a proposed deck on property located at **8 Lent Ave., Montrose.**

Mr. Ken Hoch I had a phone conversation with Kim Velardo. She asked if the Board could extend – adjourn this case until April. She had difficulty getting her pool company to drain the pool and move it before the somewhat cold weather came in and that's her request.

Mr. James Seirmarco stated Mr. Chairman I would like to make a comment on that. Not that I don't trust people I just think that it's important that we have some sort of paper trail here and some documentation. If their pool company could write us a letter saying that due to weather conditions or whatever the reasons, we were unable to do this and we will be doing it in April just to make sure that we have some continuity here.

Mr. John Mattis stated I'm a little reluctant to approve that because they've had **3** months now to do that and they haven't. We gave them certainly sufficient time.

Mr. Raymond Reber stated we were gracious enough to let them finish the summer out and then come in the fall so they knew during the summer they should have scheduled an arrangement if

they had to with some pool company or whatever and they had all basically September, October and November so I don't understand the excuse that they couldn't do it in those 3 months. I don't know. I, likewise, have some concern that why now April? They're going to come back in April with another excuse?

Mr. David Douglas stated I share those concerns. I have no problem with them saying they wanted a little additional time but I'm concerned that come April it won't get done and then it'll be another pool season.

Mr. James Seirmarco stated that's the thing, the pool companies are the busiest in May and April, June, getting pools ready. I just think that this is just opening up a...

Mr. John Mattis stated our Decision was – Mr. Klarl could you refresh – was it June or July?

Mr. John Klarl responded we had a July 18th meeting, at the July 18th meeting we said we'd adjourn it to November 14th to remove the pool and be in compliance.

Mr. John Mattis stated we gave them 4 months to remove it and now it's 5 months and now they're requesting 5 more months.

Mr. John Klarl stated you gave them the 7th, 11th, 4 months and then at the November 14th meeting we adjourned it to December, to tonight.

Mr. Raymond Reber stated my recommendation is we deny the application and they be given a notice that they're in violation whatever that requires them in the way of a fine and whatever and maybe they'll wake up and get it done.

Mr. Wai Man Chin stated I agree. I was the one who said that – wait after the summer months then you have plenty of time to take it down, and move it – 4 months is a long time.

Mr. Charles Heady stated it's a long time, right. They should have had it straightened up by now from what Jim said.

Mr. David Douglas stated I guess procedurally we should...

Mr. John Mattis stated we extended a courtesy on this because generally we give 30 to 60 days and we gave them 4 months and they didn't respond last month so now it's 5 months. Enough is enough.

Mr. Raymond Reber stated I would make a motion to deny their request for an extension to April.

Mr. John Klarl stated we can do two things; we can make a motion to close the public hearing and then to...

Mr. Raymond Reber asked we have to close the public hearing to make that decision? Okay.

Mr. David Douglas stated we would close the public hearing and then we would vote...

Mr. John Klarl stated but the public hearing is still open as of tonight.

Mr. David Douglas stated and then after we would vote on – if we're not going to adjourn it we would vote on the Variance.

Mr. Charles Heady stated I make a motion on **case 2012-25** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. Charles Heady stated I make a motion on **case 2012-25** to deny the request they want and sign a violation of their Ordinance that they want to do.

Mr. David Douglas stated so the motion is to deny the Variance.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the Variance is denied.

Mr. John Klarl asked it's **5** nothing?

Mr. David Douglas responded no **6**.

B. CASE No. 2012-30 Marcia Royce for a Special Permit for a Home Occupation on property located at 2223 Maple Ave., Cortlandt Manor.

Mr. David Douglas asked is anybody here on that at the moment? Do we prefer to do executive session now? I think we should because there's people here. We're going to put the Royce off until the end for the moment.

Mr. John Mattis asked is that fair to the people that came out?

Mr. David Douglas responded it's a headcount. I just looked and I think there's more people here for others and I'm not trying to be unfair to you people in the back.

Mr. John Klarl stated maybe Mr. Chairman what you could do...

*

*

*

Mr. David Douglas stated I'm sorry to keep you waiting a little bit longer but I'd like somebody to make a motion for us to go into executive session before we have the public hearing on this. What executive session is that we want to discuss some legal issues with our attorney before we proceed. That's something that we do in private off the record and we'll come back out in a few minutes. Sorry to keep you waiting.

Mr. Wai Man Chin stated I make a motion that we go into executive session.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we're in executive session.

*

*

*

Mr. Wai Man Chin stated I make a motion that we come out of executive session.

Seconded with all in favor saying "aye."

Mr. David Douglas stated we're back out of executive session.

Mr. David Douglas stated we got two letters in the last two days. We got a letter from Frederick Turner, the attorney for Ms. Royce, on December 18th saying: "please be advised that the Key Institute withdraws its application for Code Interpretation" and then continues. So, basically it was a letter withdrawing the application. Then, on December 19th, which is today, today we got another letter from Mr. Turner saying that he was withdrawing his withdrawal and instead is seeking to adjourn this hearing. That's the crux of it. That's where we stand at this point. Before we consider an adjournment I know there are people here that came and if you want to be heard please feel free – it's up to you, you could be heard tonight. If you'd prefer that the applicant be here, because there's nobody here for the applicant, if you'd prefer the applicant be here when you're being heard we can do it next month but please, you came out here and we want to hear what you have to say.

Mr. James Seirmarco stated either way it gets put on the record.

Mr. John Klarl stated if we entertain the adjournment tonight it would be with the directive that they have to appear at the January meeting.

Mr. Joel Benedict stated but the case is not closed and from what I'm understanding here is we don't know if one application's been pulled or all 3 of the applications have been pulled.

Mr. David Douglas responded no, they withdrew it but then they withdrew their withdrawal so it's back on – the entire...

Mr. John Klarl stated within **24** hours we got two letters.

Mr. John Mattis stated it says shown on the agenda.

Mr. David Douglas stated it is the entire application is back on the agenda.

Mr. Joel Benedict stated because the first one he said he withdrew...

Mr. John Klarl stated the application.

Mr. David Douglas stated the whole application.

Mr. Joel Benedict asked the whole, entire application?

Mr. David Douglas responded yes.

Mr. John Klarl responded he said the Interpretation application.

Mr. Joel Benedict stated because that was one of my questions: is this one application or is this three separate applications?

Mr. John Klarl responded the way it was advertised he withdrew the entire application with the first letter then the second letter he asked to adjourn the entire application.

Mr. Raymond Reber stated but it's one application.

Mr. John Klarl stated it hasn't been sliced up.

Mr. Joel Benedict stated because it says that we want an Interpretation pre-existing non-conforming or we want to be deemed...

Mr. John Mattis stated right, if we turned down the first part then he wants to say "or" look at the second part.

Mr. Joel Benedict stated and if that's not or we want a Special Permit.

Mr. John Mattis responded yes.

Mr. John Klarl stated everything as advertised is still before the Board.

Mr. John Mattis stated we've had applications like that that says we would like you to interpret

this and if you don't then we would like to apply for this.

Mr. Joel Benedict stated no, because I was wondering frankly when you guys disappeared, if the whole thing had been withdrawn because I did not see a sign posted on the property tonight.

Mr. John Mattis stated it should be there.

Mr. Joel Benedict stated I know it should be there.

Mr. Wai Man Chin stated on Saturday I asked where the sign was.

Mr. James Seirmarco stated I think Sandy took it.

Mr. John Mattis asked then, Mr. Hoch, could you check with that?

Mr. Ken Hoch responded typically, the sign has to be posted for the first meeting.

Mr. John Mattis asked they can take it down then?

Mr. Ken Hoch responded after the first meeting.

Mr. Joel Benedict asked only the first meeting or is this a new...

Mr. Ken Hoch responded no, this is the same application.

Mr. John Mattis responded this is a continuation of the case that's been going.

Mr. James Seirmarco stated get a new number.

Mr. John Klarl stated it's a certain period of time before the first application.

Mr. Joel Benedict asked would you guys rather me go through my stuff now or...

Mr. John Mattis responded yes, go right ahead.

Mr. David Douglas stated we'd be happy to hear it. We're giving you the option.

Mr. Joel Benedict asked or am I better off doing it where I might be able to get answers from the attorney?

Mr. John Klarl stated you can speak tonight or...

Mr. Joel Benedict continued I do have some questions for the Board.

Mr. John Mattis stated then fine. I'd like to hear them tonight.

Mr. David Douglas stated it's really up to you whatever you prefer. You took the time to come here so we don't want to...

Mr. Joel Benedict stated I'm going to skip through some of the questions I had.

Mr. Raymond Reber asked a question before you continue: you're a neighbor?

Mr. Joel Benedict responded I live around the corner. I am not a direct neighbor however, I feel the implications of this case...

Mr. John Klarl asked what street do you live on?

Mr. Joel Benedict responded I live on Lakeview Avenue West. My feeling is this is a very interesting case and I believe it has implications far beyond just those neighbors that are there because you're dealing with zoning issues, you're dealing with an **R-40** zone, you're dealing with an in-home business, possibly, you're dealing with granting Special Permits and this could happen anywhere in the Town. There's no – who's going to move next door to me and try and do something? I just believe it has further implications than just this local area. I believe also that this case would set a precedent for future-type hearings and that's why I'm concerned. No, it does not directly impact me. I drive on Maple Avenue, yes, it could – the traffic could impact me.

Mr. John Mattis asked have you ever gone by there and seen traffic backed up there?

Mr. Joel Benedict responded I've seen the cones out and the traffic direct – but to be honest with you I don't go that way on Maple Avenue. I come out Furnace Woods Road and I turn left because I'm going to Route 6. I have no reason to go the other way and if I'm going out to 202, I'm going to go down Furnace Dock Road to Croton – so no.

Mr. John Mattis asked but you have seen somebody direct traffic and seen the cones out there?

Mr. Joel Benedict responded I've seen the cones out and I've seen the sign and I've always wondered what's really going on there so no, no direct impact on me per se but there is an indirect impact on me for what could happen in the future and that's my concern.

Mr. Raymond Reber stated it's a valid question which we as a Board deal with all the time because, you're right, we can't look at an individual property and say; well, we don't have to think about what could possibly happen elsewhere because we do. We have to think of the impact on the overall zoning codes and the rest of the communities. Now, there are times when a particular piece of property is so unique that we can give a Variance for whatever they're asking for recognizing that it's not going to come up again elsewhere but you raise a valid point; we must consider the impact of any decision we make in terms of the general zoning code.

Mr. Joel Benedict stated and personally I like this Board because it's more or less black and white...

Mr. John Mattis stated I don't remember what case that you've been here before...

Mr. Joel Benedict stated yes I have.

Mr. John Mattis stated and we're happy that you come out. We like to get different perspectives.

Mr. Joel Benedict stated zoning is pretty much fairly black and white. You know there are some areas that are missing. The first thing that I read through in the code – well, let me go, I've been following on T.V. and through the Internet and the meeting minutes and reading everything like that. Is there still any debate amongst the Board about the D&O from '87 or is that – are you guys leaning more towards one direction or another?

Mr. David Douglas responded I don't think we're going to tell you which way we're leaning or anything like that but there's been...

Mr. Joel Benedict asked but I mean do I need to rehash that?

Mr. David Douglas responded I don't think so. I think we're clear on what that is.

Mr. Joel Benedict stated so I don't need to do that. I notice in the code the definition of a Home Occupation, it's in "Accessory Use: clearly incidental and secondary to the use of the dwelling."

Mr. John Klarl stated the only thing is you're reading from the newer code.

Mr. David Douglas asked have you been talking to Mr. Seirmarco?

Mr. Joel Benedict responded no, I understand this is the newer code but this would pertain to, I guess if they would application for a new Special Permit?

Mr. John Klarl responded right.

Mr. John Mattis responded yes.

Mr. John Klarl stated rule you're operating under came from our '87 Decision and Order and Mr. Hoch put together a fact sheet for us and it said in the **case 161-87** they gave the applicant an Interpretation that "tutorial service for children with learning disabilities conducted within her home was a customary Home Occupation as defined in **section 88-2**" of the old code.

Mr. Joel Benedict stated of the old code, so there may be some issues but if we go to the Special Permit, we're going to go under the new code?

Mr. John Mattis responded that's correct.

Mr. Joel Benedict asked but the Special Permit would waive a lot of those provisions I would imagine but you can set conditions? So, I don't need to go through that. In there it also mentions the percentage of the dwelling that's used for the business versus the residence. Was that in the old code or not? Because, I don't get privy to the old code, I can only look and see what's in the current code. I don't believe you post the older codes on the website?

Mr. John Klarl responded the older code would be found in the Planning Department.

Mr. Joel Benedict asked I'd have to come in and take time out from my job and come all the way up – has that part of the code changed, the **25%**?

Mr. John Klarl responded I'd have to look.

Mr. Joel Benedict stated I guess this also pertains; “making of external structural alterations that are not customary in residential buildings.” Now, altering a garage, that I assume is built-in, to classrooms, is that considered external structural alterations?

Mr. Raymond Reber responded no. It may still require a Building Permit or some code approval but it's not an external structural...

Mr. John Mattis stated I think an example of that would be in the back where it's all gravel now that to me would be an external change.

Mr. Joel Benedict stated this one I would like to see if you could find out for me because I don't see it anywhere in the code; definition of a full time employee, I don't think it's in there.

Mr. David Douglas stated I don't think we have a definition for that off the top of my head.

Mr. Joel Benedict asked would you consider a public school teacher who works maybe **6, 7** hours a day, **190** days a year; would you consider that person a full time?

Mr. Raymond Reber responded we haven't discussed that but I would assume that would go by the state guidelines as for town employee or any public employee in terms of how many hours before...

Mr. Joel Benedict stated but it used to be **40** hours a week and then I think it got reduced to **36** and now everyone's getting laid off...

Mr. Raymond Reber stated I don't know Mr. Hoch maybe can correct me or Mr. Klarl but I think it's somewhere around **20**, usually it's roughly half; if you work more than half the normal hours, then it falls into a not full time category. So, I think it's somewhere: Mr. Klarl is that correct,

somewhere in that range, roughly half the hours?

Mr. John Klarl responded yes.

Mr. Raymond Reber stated so, like with the town it's half of, what is it **37 ½** hours if you work more than that.

Mr. John Klarl stated but there's a definition every school has got definition of what their part time and full time faculty...

Mr. Joel Benedict asked but there's no – we have no definition of what a full time...

Mr. John Klarl responded not on the code but we go to Webster's and we go to references and every school district defines in the district who's full time and who's part time faculty.

Mr. Joel Benedict stated the reason I bring that up is because in the table of permitted uses and it sounds like this Permit was specifically made for this business, "instruction and academic teaching or tutoring of no more than **4** pupils simultaneously" it says it is permitted in an **R-40** zone however, in that same section it says "with more than **2** full time, non-resident employees on site" the table says it's not permitted. Home Occupation, other than those listed above in the same section, it says "yes it's available for a Special Permit." So, I think it's important to determine – it's differentiated here. It says "two full time, non-residential employees" it says "no" it's not permitted but then it says you can get a Special Permit if it's "other" so I think that would be an important factor if we try to get a Special Permit.

Mr. James Seirmarco stated in the past we have used the ownership, the husband and wife and one additional person is typically for Home Occupation, more than that, it's not a Home Occupation anymore.

Mr. Joel Benedict stated no, but my concern would be: why does it say "no, it's not permitted," but then it says you can get a Special Permit but specifically it says "no more than **4** full time no..." so I'm assuming you can't get a Special Permit if it says "no" on the table.

Mr. John Klarl stated look at the column and see if it says "SP."

Mr. Joel Benedict stated it does not, it says "no." It specifically says "more than **2** full time employees: no."

Mr. John Klarl stated essentially, the applicant would be held to what she came in '87 we looked at what she had...

Mr. Joel Benedict stated but if they try to apply for a new Special Permit, if there's more than **2** full time employees according to the current code, what you say the new Special Permit would be under, it says "no." "Deemed to have been granted..." I won't even go into that.

Mr. John Klarl stated Mr. Benedict you've been a veteran of a couple Planning Board and Zoning Board meetings and that section was put when we had ZORP, when ZORP came in '94 and it said for certain uses that needed be a Special Permit use it said if you don't have that Special Permit we're going to deem you have that Special Permit now that ZORP started.

Mr. Joel Benedict stated I'm not going to address that issue.

Mr. John Klarl stated that's what that section dealt with. Uses that had to have Special Permit uses were deemed to have been granted the Special Permit and started at that point. We didn't want **100** people to come in and make Special Permit applications, we just deemed to have been granted a Special Permit.

Mr. Joel Benedict stated deemed that it's been granted provided it hasn't expanded beyond what its originally used – that's the crux of the case.

Mr. John Mattis stated your point is well taken.

Mr. John Klarl stated that was the background on that section.

Mr. Joel Benedict stated so, again, if we go for a new Special Permit, we start from scratch, correct?

Mr. James Seirmarco responded yes.

Mr. Joel Benedict stated at this time I'm not going to get into the general conditions and standards for a Special Permit, I'll save that for another day. That's about all I have to say right now.

Mr. Wai Man Chin stated thank you for your comments.

Mr. David Douglas stated thank you.

Mr. Joel Benedict stated I do like the fact that I can look up online and get these things. Unfortunately, I can't get the older codes and I do appreciate your input, everything like that. Thank you.

Mr. David Douglas stated thank you.

Mr. Michael Hussey stated I'd like to get two things on record. I live at 24 Galloway Lane. I'm a direct neighbor of Marcia Royce. I got a copy of a survey that was done in **2003** when I moved in and I also have this aerial view of, I guess it's the tax line for the Town of Cortlandt, it shows the – I don't see it up there. What I'm concerned about is the property line between Marcia and myself – and it clearly shows that the driveway that she put in after – her original survey doesn't

show a driveway coming across my property, sometime over the years when she was turning her house into a school, she decided she needed a parking lot in the back so she made a parking lot and then she knew, I guess she knew she needed a different entrance because I think the other way there wasn't enough room on the other side of her house. She decided to put a driveway in without asking anybody or anything, she just needed it so she just put it in. These two pictures show it very clearly and I would just like to have it on record and whatever way you guys rule on this whole thing, at the end, I'd still like my property back.

Mr. John Klarl asked do you think that one or two driveways traverse your property?

Mr. Michael Hussey responded just one. The original one is on the other side of the house.

Mr. Wai Man Chin asked the one with the gravel? The driveway with the gravel is the one that goes on your property.

Mr. Michael Hussey responded yes sir. And it shows very clearly on both of these. You don't have that?

Mr. Raymond Reber responded yes, it's on this one here, on your survey it shows up.

Mr. Michael Hussey asked this one is a different picture -- you want to look at this?

Mr. David Douglas responded no, we have it.

Mr. Charles Heady asked have you had your land surveyed by your property there to make sure that you can show her where your property is? Have you ever thought of that?

Mr. Michael Hussey responded right here.

Mr. John Klarl asked what's the date of the survey you're showing there?

Mr. Michael Hussey responded it's August 28th, 2003. I moved in in September.

Mr. John Klarl asked and who's the survey by?

Mr. Michael Hussey responded it's called Hanock and Plan Surveyors?

Mr. John Klarl asked Katonah?

Mr. Michael Hussey responded Pound Ridge. You want the address?

Mr. John Klarl responded no.

Mr. Michael Hussey asked you want a copy of this?

Mr. Wai Man Chin responded I think we have it.

Mr. John Klarl asked have you brought this to her attention?

Mr. Michael Hussey responded well, Saturday, when you guys were over at my house I was talking to, I think Mr. Reber, and she told me I was on her property. I was standing on my lawn so it's pretty hard to get things going there.

Mr. John Klarl stated I didn't know if there were any letters that had been exchanged by professionals.

Mr. Michael Hussey stated no, I figured a licensed land surveyor was good enough.

Mr. John Klarl stated that's a professional.

Mr. Michael Hussey stated yes, but I have no letter. I never asked for a letter specifically saying that it goes across...

Mr. John Klarl stated I don't know if you've ever brought this to her attention by letter.

Mr. Michael Hussey responded no. We have discussed it in the past but there's no way of proving that.

Mr. Charles Heady stated what I was saying about the survey, if you had stakes in there, because she kept saying it's not over as far as you're saying. You understand what I mean. She's making a dispute that you're wrong, when I was talking to her.

Mr. Michael Hussey stated I understand that, but the stakes – that had nothing to do with the survey. That was just outlining on her little area there. Those are way on her property.

Mr. James Seirmarco stated she said the stakes were for snow removal.

Mr. Michael Hussey responded yes, that had nothing to do with the survey.

Mr. Raymond Reber stated when we consider a Home Occupation one of the criteria is that it's not supposed to impact on the community, it's supposed to be innocuous, something that exists but you basically don't notice it. Now, as a neighbor, do you have any specific comments to make in terms of what you think in terms of whether this goes beyond what you consider...

Mr. Michael Hussey responded I think I've said quite a bit in the last 6 months but most people their backyard, they'll have lawn or garden or shrubs or trees, she's got a parking lot. She's got a driveway that goes across my property. She's got people driving over my lawn. I've said all this. She's got people driving over my lawn, walking on my lawn. She's got people directing

traffic. I don't know. I don't know what else I need to say.

Mr. James Seirmarco stated that covers it.

Mr. Michael Hussey stated this gentleman here's said that he's seen – you said you saw the cones and stuff right? I mean, I don't know. I guess that's it then.

Mr. James Seirmarco stated and we're pretty much aware of all the things that you've stated and thank you for your input.

Mr. Michael Hussey stated have a good holiday.

Mr. David Douglas stated nobody wants to be heard who's here tonight, should we consider the adjournment that the applicant has sent...

Mr. John Klarl stated understand with a directive that the applicant must appear at the January meeting?

Mr. David Douglas responded right, so the idea would be to have the case adjourned for one month – one month and only one month and the applicant – and Mr. Hoch will send a letter to the applicant informing her that, or her attorney of that and also that he must appear next month.

Mr. Michael Hussey asked I do have one more question; is the property issue something that's going to be different than this Occupation issue?

Mr. James Seirmarco responded that's between you and her.

Mr. David Douglas asked you mean for her going onto your property?

Mr. Michael Hussey responded yes, her driveway...

Mr. David Douglas stated ultimately that's an issue between you and her. That's not something the Town can get directly involved in, that's between you and her.

Mr. Michael Hussey asked if I just want to drive across another neighbor's yard every time I go to my house I can do it and if you don't say anything it's not a problem?

Mr. David Douglas responded it's not that you can do it's just that if they don't want you to do it they don't come to the Town and the Town can't stop them but that person could go to court.

Mr. John Klarl stated it's a private property issue between you and the neighbor and generally you can contact attorneys and write letters. If the letters don't work out, there's lawsuits.

Mr. Michael Hussey stated okay.

Mr. Joel Benedict stated one question; if the applicant does not show up, what happens?

Mr. David Douglas responded it depends, we'll have to make some sort of determination.

Mr. John Klarl responded it depends what the reason is for. If someone has a death in the family or...

Mr. Joel Benedict stated that's fair.

Mr. David Douglas stated so Mr. Hoch, you'll inform the applicant it's adjourned for one month and one month only, the applicant is to be here at the January meeting. Are there any other conditions you wanted to add? So we need to vote on that, just because I said it doesn't make it right.

Mr. John Mattis stated I'll make that motion.

Seconded with all in favor saying "aye."

Mr. John Mattis asked that included the adjournment, the motion?

Mr. David Douglas responded that included the adjournment, the one month only adjournment and the direction that they must be here.

C. CASE No. 2012-36 Brian & Stacey Retallick for an Area Variance to allow storage of a travel trailer in the side yard on property located at **130 Highland Dr., Cortlandt Manor.**

Mr. Brian Retallick stated my wife refuses to come up because she doesn't want to be on camera so she's going to remain seated. In October, we submitted an application for a Variance for seasonal Variance to park a **20-foot** trailer next to our home and some documentation was submitted for your review. The survey – do you have that? Is there any questions?

Mr. Charles Heady stated where you want to put that trailer it's an easement too for the water main, am I right?

Mr. Brian Retallick responded that is correct.

Mr. Charles Heady stated I feel very strange about it and I'll explain to you why. Where the easement's there, okay maybe they never use it for years and years but all of a sudden, sometimes they want to get through to repair something, they want to bring some material in and your trailer's there and it may be an emergency and they can't get through there. So, I really don't think that it would be possible to, in my opinion, it's one opinion, we could grant you that

easement that you want. That's the way I feel about it.

Mr. Brian Retallick responded the trailer is mobile. It is on wheels and it is a standard 2 and 7/8 ball jack which I've talked to a number of folks about that. Typically that's the one that's installed on the back of trucks so it is a mobile unit.

Mr. Raymond Reber stated the problem is that, in general, for easements, even though it's a rare occurrence, the concern is if we make an exception to the idea of having any kind of obstruction on an easement, like I said, in the very unusual situation where you and your family go on a vacation and it's left behind sitting there and it just happens that there's a water main break or a problem, how do we move it? We don't have the keys. We can't move it. So, now life gets complicated. So, as a general practice anything that can be restrictive on an easement is not allowed. There are, for example, you do have some shrubbery. The agreement there was, we can just rip that out you know the utility people can come in, just rip that out and that's understood, that happens. Moving that vehicle is another issue and also it's a liability. In that sense we generally would not approve any kind of obstruction on an easement.

Mr. Brian Retallick stated and my attorney is willing to draft something to release you of any liability of the trailer.

Mr. Raymond Reber stated but still, it's a complication that the public workers shouldn't have to deal with – and the issue is that if you're granted that and then somebody else comes along and they want something else and the argument is well it can be removed or maybe, maybe not, it just slows down the process and when people are trying – and if you've ever seen a water main break, it can get pretty scary. I've seen water main breaks where they just blow out and they start digging craters. Now, the concern with your property is that severe drop off in the back and if that main along there blows out and it blows to the back side – it could be an ungodly mess and so every minute is critical to get in there and to be able to deal with it. As I said, as a policy would not approve any kind of obstruction on an easement.

Mr. Brian Retallick stated the challenge Mr. Reber that I have is I was not aware of this previously. This isn't stated in any documentation anywhere and now I have a trailer and I have nowhere to park it.

Mr. Raymond Reber stated usually easements, there is a statement that says that the utility has the right to cross the easement at any time. That's usually standard wording.

Mr. Brian Retallick stated there's clearly documentation in there that discusses the access issues of an easement and removal of anything in the way essentially so that is covered, that's clear, but it's not clear – right now there's a driveway on the easement directly on the easement, not over the property and we'd be parking the trailer in line with the driveway. So, the Zoning Board should have never approved the driveway on an easement if you're not supposed to park cars.

Mr. Raymond Reber stated there's a difference – unfortunately there is not a restriction on

having the driveway, that's a little different – there's so much that we can address as a Zoning Board and we can't. The other thing too with zoning Decisions for Variances: is there an alternative? The question is there's got to be some other place – that's the only place in the world where this thing can be parked. If you go to the far end of your property to the other side, putting it on that end of the property – I realize you don't want to put it on your septic field which I know is over on that side – but again, go down to the far end and rearrange the terrain down there – I know it's a drop off a little but it takes a little bit of work and you can slide it in there.

Mr. Brian Retallick stated it's a lot of work, frankly and it would rip out the underside of the trailer because it is on a decline, plus there's nowhere to back it in or pull out. It's not set up to drive. You seem predisposed so I understand.

Mr. Raymond Reber stated I think it could be worked out and yes it would take some work, some money to readjust that part of the yard but again, the cost of making such a correction...

Mr. Brian Retallick asked Mr. Reber, you've seen the property?

Mr. Raymond Reber responded yes. I'm familiar with it.

Mr. Brian Retallick stated so you could direct me to where you think it should be parked.

Mr. Raymond Reber responded far end. Down past – on the very far end, gets it away from your septic field.

Mr. Brian Retallick stated that would be on our property.

Mr. Raymond Reber stated I believe it would, yes.

Mr. Brian Retallick asked and it would be behind the house?

Mr. Raymond Reber responded no. I would be willing to grant a Variance and park it to the side on that side because it's not bothering the easement. It's not encroaching on a neighbor. There's plenty of space down there before the next house. It wouldn't be bothering anybody. It's just a matter that, yes, you have to do some work in the yard to get it so you can back it in there or pull it in, however you want to store it in there.

Mr. Brian Retallick stated it's just not practical – I would have to go onto the property across the street from Radzivila Road because you need a wide entry to get a **25-foot** trailer and a truck to either back it in or pull it in and then to get out of there, you have to drive over the top of the property which is over the septic field. It's just not set up for that and it's on a decline as you apparently have seen, it's on a pretty steep of a decline. It's just not made for parking trailers.

Mr. Raymond Reber stated there's also the possibility you can do things to get across part of the

septic system too. Again, you've got to be careful on how you do it but if you wanted to angle it coming in from the other side – it's not up to me to solve the problem other than to say you've got other property and hopefully you can work it out and to again, it's not something we're mandated to say "ok, you've got to have it right to park a trailer." Because, it's not a right that any citizen has per say on their property. Unfortunately, you may be in a situation where it's difficult to find an acceptable place to park such a trailer.

Mr. John Mattis stated I'd like to read from a letter from the Montrose Improvement District, a paragraph that I think gives us some significant direction, it says: "the policy of the Montrose Improvement District as established by the commissioners is that NO significant object should ever be placed on any of its water main easements. Workers need immediate access to MID mains in the event of a break to minimize the damage such a break could cause with water pressure well over 100 pounds per square inch."

Mr. Brian Retallick stated that's a memorandum that Greg wrote on October – that wasn't pre-published.

Mr. John Mattis stated this is from a fellow named Matthew Geho.

Mr. Brian Retallick stated so this was published afterwards in response to this request.

Mr. Raymond Reber stated it was in response to a question from this Board.

Mr. Brian Retallick stated John, just to bring you up to speed on what occurred, Pat Murphy who is an acting supervisor on the Board came out to our property, gave us approval to park the trailer – he saw the trailer. He saw where we were parking it and then we got an e-mail from Pat several weeks later which said there was a change of heart about that.

Mr. John Mattis stated that's all internal to the MID and we just – we go by the document that we have.

Mr. Brian Retallick stated but that letter is in response to a battle issue so you understand the genesis of that letter, it wasn't pre-published. I didn't get it previously and say – Brian you need to consider where to park your trailer – if you're going to buy this house you need to consider where you're going to park your trailer.

Mr. Raymond Reber stated this letter was in response to this Board asking for – what's the policy?

Mr. Brian Retallick stated I beg for one more moment. John, if you look at the letter, it's in reference to a policy, an MID policy, there's nothing in the policy that states anything about...

Mr. John Mattis stated that's why they have the commissioners and they have these people. It's their feeling that it shouldn't be there and I concur with that but I have additional reasons that I'll

tell you. I think it's too close to the property line, that house next to it is fairly close. It's not like you're parking it farther, you're parking a 25-foot trailer. I know somebody that lives in the Town of Cortlandt that has a trailer and right now, they're paying rent to somebody else to put the trailer where they can put it in the backyard. They can't put it – they don't want to come for a Variance for their side yard because they know that that's the code and they didn't know that at the time they got the trailer but they got stuck with it and so they're paying to have it – I think that this is an eyesore to the community to have it parked close to that property line and I go back to the Montrose Improvement District, I'm going to rely on their recommendation.

Mr. Brian Retallick stated I understand. The residents are the ones speaking, the area residents and they don't have a problem with it. I just want to be clear with that.

Mr. John Mattis asked how many times are they reluctant to come out?

Mr. Brian Retallick responded then why send them letters then. If you're going to send them letters, you're asking for their opinion.

Mr. John Mattis stated people are afraid to stand up to their neighbors many times. I've been on this Board 19 years, I've had people call me that are afraid to come to a meeting.

Mr. David Douglas stated what Mr. Mattis is getting at is that when neighbors come and they say "I don't have a problem" that has some weight but it doesn't have that much because we all know about how difficult it is for a neighbor to complain about something that one of their people next to them wants to do.

Mr. Brian Retallick asked so you're saying you're the judge and jury instead of the neighbors.

Mr. John Mattis stated that's what our purpose is. It's not a popularity contest with neighbors, that's why they have a Zoning Board of Appeals, it was a popularity contest we just go have the people go vote on it.

Mr. Brian Retallick stated I'm just getting clarity.

Mr. Raymond Reber stated the reason for notifying the public is to make sure that we didn't overlook something. It gives the neighbors a chance to come forward and say "look, you may not be aware of..." and that's the purpose, not because they vote yes or no, because like you say we can't trust their opinion, but it's to get input.

Mr. Brian Retallick stated but I think you're asking for their opinion, in genuine honesty, you're asking for their opinion, you want them to come forward...

Mr. David Douglas stated I also want to point on the record here, we don't have all the neighbors submitting letters saying "yes we think we want this."

Mr. Brian Retallick asked would that help in this case?

Mr. David Douglas responded I don't think it would but I'm just pointing out that...

Mr. Raymond Reber stated and we're also aware...

Mr. Brian Retallick stated it's a moot point.

Mr. Raymond Reber stated we're aware also of the fact that Mr. Murphy had talked to you and he had said it was okay.

Mr. Brian Retallick stated and they're ganging up on me now.

Mr. Raymond Reber stated but we followed up to get clarification and what he said his position was; "it's not going to harm the main."

Mr. Brian Retallick asked who's he?

Mr. Raymond Reber responded Murphy, Pat.

Mr. Brian Retallick asked Pat Murphy, your acting supervisor.

Mr. Raymond Reber stated because he had said to you "it's no problem."

Mr. Brian Retallick stated he gave permission, that's correct.

Mr. Raymond Reber stated and we checked with him and he said "yes, I was thinking in terms of damage to the main," and he's right, you're not going to damage the main, that's not the issue.

Mr. Brian Retallick stated you're not parked on the pipe, you're off...

Mr. Raymond Reber stated structurally you're not going to damage the main.

Mr. Brian Retallick continued you're within **6** feet of the pipe so you're not over it.

Mr. Raymond Reber stated and the pipe there is quite a ways down there, it's not close, so he was right when he said "no, he's not going to cause any damage to the main" and the commissioners agreed, that's not the issue. There is not going to be any damage to the main if you park there. The issue is as we discussed; if there's a problem with the main we don't want any obstructions that we have to deal with to go after fixing it.

Mr. Brian Retallick stated I understand your opinion. It's a common challenge that you have anywhere with vehicles being parked on top or near a water main breaks. I was really just asking for permission for a seasonal Variance for a **6** month Variance during the season to park the

trailer temporarily because I really don't have another place to put it.

Mr. John Mattis stated when I went out the trailer wasn't there. You obviously had another place to put it at that time.

Mr. Brian Retallick stated a seasonal place which is **110** miles away, that's correct. It's in Orange County.

Mr. John Mattis stated well, the person I know found something in the Town of Cortlandt.

Mr. Brian Retallick stated well, John, there's exceptions. Hopefully I'll get as lucky.

Mr. John Mattis stated I hope so.

Mr. Brian Retallick stated I hope so too.

Mr. Charles Heady stated another thing we'd be concerned too is; your neighbor next door, they're in favor, it doesn't bother them whatsoever, but the way houses change over – if you get another neighbor in there, a new neighbor coming in and they're going to start complaining probably. They may not like the situation. There's nothing you can do.

Mr. Brian Retallick stated that's the case in every situation. You always have people come and go and they can come in and voice their opinion.

Mr. Charles Heady stated right, they have different opinions.

Mr. Wai Man Chin stated I'd like to say that quite a few years ago, somebody on East Mount Airy – actually, West Mount Airy Road wanted a trailer on the side yard and we denied it only because it's not allowed. And there were plenty of people complained about him parking the trailer there so he had to move it and he moved it and he found a place to park it. It's just not allowed on a side yard. Mr. Reber's saying that he would have no problem if you parked it all the way on the other side or somewhere over that way. I wouldn't mind agreeing with him on that but this is too close to the houses right there even though no neighbor's complaining right now but on the last one on West Mount Airy, everybody under the sun complained even though they were very good friends, they still complained.

Mr. Brian Retallick stated every case is situational.

Mr. Wai Man Chin stated it's just not allowed.

Mr. Brian Retallick stated I understand your position. You guys are making that pretty clear.

Mr. Wai Man Chin stated and that's it.

Mr. Raymond Reber stated actually there's no neighbor really that's affected by this.

Mr. Brian Retallick stated I'm going away with my tail between my legs.

Mr. Wai Man Chin stated like I said, if you parked on the other side, I might consider that because it's away from anything over there.

Mr. Raymond Reber stated as things stand now, there's not a neighbor affected because the house adjacent is vacant, there's no house directly across the street and the house as you come up the street is quite a distance down and wouldn't even know that the trailer was there.

Mr. Brian Retallick stated there's two houses involved, there's my house and then there's a vacant house next door.

Mr. David Douglas stated to me, the Montrose Improvement District which has a large stake in this has made it very clear that they don't think it's appropriate and I personally see no reason then why we should overrule their view on this because it seems like it's a reasonable thing, it makes perfect sense and I don't see why you should get a Variance in light of that.

Mr. Brian Retallick stated the only reason why I had the courage to come and ask for one, in light of that, is that this occurs all the time, there's vehicles parked over the top of water mains all the time, whether it's New York City, whether it's here in Montrose, everywhere. You can't avoid it, the pipes are everywhere and when you have land you have a limited amount of property that you're paying taxes on and you look for that piece of property that's most leveled to park your trailer. I understand your position but I'm a little overruled here and outnumbered but I'm just stating my position.

Mr. James Seirmarco asked have you looked at alternative sites within the Town?

Mr. Brian Retallick responded within the Town? No, I have not.

Mr. James Seirmarco stated because I know there's some.

Mr. Brian Retallick stated okay, if you want to furnish one or more of those I'd be grateful.

Mr. James Seirmarco stated I don't know what the name of it is but right off Welcher Avenue and Route 9.

Mr. Brian Retallick asked what type of place is it?

Mr. James Seirmarco responded it's a storage place and they store boats, cars...

Mr. John Klarl asked off Wood Street?

Mr. James Seirmarco responded it's off of Wood Street, correct.

Mr. John Klarl stated you see it from Route 9.

Mr. James Seirmarco stated they have indoor and outdoor storage.

Mr. Brian Retallick stated I'm going to investigate that. Obviously it's not what we had in mind when we bought the property but that's how it goes.

Mr. Charles Heady asked you think you might want to adjourn this until next month? If you change your mind and make a place to put the trailer on the other side of the house. You want to think it over?

Mr. Brian Retallick asked so the procedure would be to, you're saying to investigate an alternative space on the property and then to re-apply?

Mr. David Douglas responded you wouldn't re-apply. There's three ways we could go: either we vote on this and I think you know what will happen if we vote on it. You can withdraw it. you have that right to withdraw it, or what Mr. Heady is suggesting is if you want to adjourn it it'll give you another month to consider whether there's another alternative on your property that you want to bring up to us and let us know before the next meeting.

Mr. John Klarl stated on or off your property.

Mr. David Douglas stated right, and you can let us know and then you don't have to re-apply. It's adjourned, it's open and then if you have – if you come up with another alternative that requires a Variance then it'll be – we'll consider it next month.

Mr. Charles Heady stated just think it over.

Mr. David Douglas stated it just gives you a chance to think.

Mr. Brian Retallick stated that makes sense.

Mr. David Douglas stated there's no downside and if you decide that there is no other alternative if you could just notify Mr. Hoch before the meeting that you don't want to go forward with it and save you from coming here.

Mr. Brian Retallick stated I would like to do that if that's possible. Thanks Mr. Heady for the recommendation. We'll adjourn it until next month.

Mr. Charles Heady stated I make a motion on **case 2012-36** to adjourn it until January.

Mr. David Douglas stated before he adjourns it I heard a little voice over there, is there anybody

else who wants to be heard first?

Ms. Debra Santucci asked are you closing the public hearing or not?

Mr. David Douglas responded no.

Mr. John Klarl asked is your name Debra Santucci?

Ms. Debra Santucci responded yes. I'm the owner of the property next door.

Mr. Charles Heady stated I make a motion on **2012-36** to adjourn.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-36** is adjourned until January.

Mr. John Klarl stated just to let you know that will be January 16th.

D. CASE No. 2012-44 Signs Ink on behalf of 97 Locust Ave. LLC for an Area Variance for the total allowed business signage on property located at **97 Locust Ave., Cortlandt Manor, NY.**

Mr. David Douglas stated we got a letter from the person representing Signs Ink saying that they're withdrawing this application. **Case #2012-44** has been withdrawn.

*

*

*

NEW PUBLIC HEARINGS:

A. CASE No. 2012-47 Rengasamy Kasinathan for an Interpretation that paving an existing gravel driveway and parking area for a pre-existing, non-conforming convenience store is not an expansion of a non-conforming use on property located at **2117 Maple Ave., Cortlandt Manor.**

Mr. David Douglas stated if you could tell us what it is you're seeking.

Mr. Rengasamy Kasinathan stated thank you very much for inviting us to – we just bought this property a month ago and I got about **70 to 80** people sign here that they don't want to come to that place because of the parking lot. Joey's here, he's one of the tenants and he couldn't even get into his car without going through the puddles. We wanted to improve, in terms of paving it so people can come safely. We have lots of ideas to do good business and improve in terms of getting community people. Every day I drive by – it's an eyesore. I live in the community for

the past **15** years. My children went to Cortlandt school and we really wanted to do the right in terms of safety and security.

Mr. John Klarl asked what's your business name?

Mr. Rengasamy Kasinathan responded 2117 Maple Avenue Deli, LLC.

Mr. Charles Heady stated we didn't make a site – I just stopped there by mistake more or less and as far as I can say we have no problem with you doing the blacktop like you want to do. It would make it much better like you say for the gravel – people walking and safety, people walking on the driveway itself. I think it would be a very nice improvement there...

Mr. John Klarl stated Charlie the question is an Interpretation whether the paving of the existing gravel driveway and parking area for a pre-existing non-conforming store is non-expansion of the non-conforming use. It's an Interpretation you feel it's not an expansion.

Mr. Charles Heady responded yes, I feel it's a non-expansion.

Mr. Wai Man Chin stated I agree. When we parked there on Saturday at a site visit nearby, we stopped there for coffee there was puddles of water and so forth. It would be nice to walk out of your car to a dry little area.

Mr. James Seirmarco stated I agree. I was there Saturday also.

Mr. John Mattis stated I agree.

Mr. David Douglas stated I think we all agree and to my mind the key thing is the safety issue because with a non-conforming use, we're not supposed to permit any improvements and expansions to it so the issue, I believe, is whether or not you are expanding the driveway and improving it rather than repairing it and in my mind it falls into the repair side of the line but for safety and that's where I come out on it.

Mr. Wai Man Chin stated I agree.

Mr. Raymond Reber stated I would have only one caveat in terms of approving this; when you pave an area that's pervious is you can affect drainage so I would just recommend a conditional approval if we approve it, conditional on the engineering department approving the paving and making sure there's no drainage issue.

Mr. John Klarl stated you need to get a driveway Permit and any DOTS directives.

Mr. Raymond Reber stated so to make sure that we don't have a drainage problem.

Mr. John Klarl stated they have to seek, right Mr. Hoch, they have to seek the driveway Permit?

Mr. Ken Hoch responded yes, they have to obtain a driveway Permit.

Mr. John Klarl stated DOTS obviously will look at it in its totality.

Mr. Rengasamy Kasinathan stated we can do that. We'll do that. Whatever it takes we'll do it.

Mr. Wai Man Chin stated that means before you actually pave, you have to get a Permit and everything else.

Ms. stated the plant closed 3 days ago so we have to wait until spring.

Mr. John Klarl stated it usually closes by Thanksgiving.

Ms. stated they told me the 16th was the last day.

Mr. Wai Man Chin stated that's because we had a warm winter.

Mr. John Klarl asked when do they open up? Did they tell you March or something?

Ms. responded yes, March.

Mr. Wai Man Chin stated yes, somewhere around there, depending on the weather.

Ms. stated we can fill it, we can put some more item-4 on it and fill the holes, do whatever we can until the spring.

Mr. Wai Man Chin stated that's fine.

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

Mr. John Mattis asked don't we generally close and reserve on a Decision and Order or Interpretation so that we can write it up properly?

Mr. David Douglas responded yes.

Mr. John Mattis stated it won't affect the outcome it'll just that we'll vote on it next month.

Mr. Wai Man Chin stated so we'll close and reserve and then vote on it next month but you're not going to be doing anything right now anyway.

Ms. responded no, just filling in a couple...

Mr. John Mattis stated and that gives our attorney time to write it up properly.

Mr. Charles Heady asked does anybody else want to speak on this case? I make a motion on **case 2012-47** to close the public hearing and reserve Decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed, I guess Charlie, you combined it into one, so the public hearing is closed and it's closed and reserved.

Ms. stated thank you.

Mr. John Klarl stated we'll have a Decision in January.

B. CASE No. 2012-48 Earthcon Equipment and Realty Inc., Kevin Fraioli, President for an Interpretation that a proposed garden center is a retail use permitted in the HC zoning district and not a landscape contractor, which is not permitted use in the HC zone on property located at **2279 Crompond Rd., Cortlandt Manor.**

Mr. Dan Ciarcia stated from Ciarcia Engineering joined this evening by Ken Fraioli who's president of Earthcon Equipment and Realty, the owner of the subject parcel. This parcel had previously been approved by the Planning Board Site Plan Approval for the purpose of storage of vehicles. That tenant is no longer interested in the property so Mr. Fraioli is proposing to bring his own enterprise to the property which is a garden center. We proposed that to the Planning Department and they advised us that they felt there was some ambiguity in terms of whether this was a permitted use in the HC zone, hence our appearance before you this evening. We believe that this would be covered under the SIC code **52** which is in your zoning code for the HC zone. These retail uses are categorized by the SIC codes so we looked at that and the garden center does come under the SIC code of one of the sub-categories of SIC code **52** and we believe that this use is permitted in that zone but we're here this evening to get clarification from this Board.

Mr. John Klarl asked so you're calling your use a garden center?

Mr. Dan Ciarcia responded yes.

Mr. Wai Man Chin stated Monday night we spoke, actually with you and Board members spoke with each other, I believe myself that this is not a landscape contractor what you're proposing. You're really proposing a garden center for retail, for sale, for two landscapers to the public and so forth and so on. I really don't find a problem with interpreting that this is a garden center in this area for the HC zone.

Mr. Raymond Reber stated I generally agree with Mr. Chin even though at first I wasn't sure it seemed; is this truly a garden center type of retail operation but as you had presented Monday, it

is in our code. It's listed with lumber and you use the example of a lumber yard. One question I have is if it's truly retail for customers; if I go to a lumber yard, I can buy a 2' x 4' or a piece of plywood. I can put it on the roof of my car, tie it down and go home. If you're truly retail will you have the ability – I mean, if I came there and I wanted a bag of top soil or mulch, which is what you would normally get at a garden center if you wanted to as a true individual resident...

Mr. Dan Ciarcia responded absolutely.

Mr. Raymond Reber continued how would that happen in your operation?

Mr. Dan Ciarcia responded some people do have pickup trucks so they could be loaded with a loader.

Mr. Raymond Reber stated in other words, what you're saying is it's bulk buying.

Mr. Dan Ciarcia stated I mean, I've gone to garden centers with garbage cans in the back of my minivan and put a couple of shovels because it's much cheaper buying it like that than buying it by the bag.

Mr. Raymond Reber stated I'm just bringing up a question if somebody asks "well, is it truly retail?" In other words, if one of our residents sees you tonight and sees you open up and says "good, I'm going to come by." What you're saying is if he has a bucket or a can you'll accommodate them.

Mr. Dan Ciarcia responded I'm not going to deny anybody. There's also other things...

Mr. Raymond Reber stated the problem is if we approve this as a retail and then people come by and you say "no, if you don't have a truck we can't deal with you." Then it's a little – what you're saying is no, one way you'll accommodate people somehow.

Mr. Dan Ciarcia stated yes, as I was sort of explaining I think it's much like the lumber yard in that the lumber yard you really – and I don't know anybody that wants to try or even the lumber yard gets wholesale and retail customers, you really can't tell, especially if you're delivering. Are you delivering to a wholesale client who buys in bulk or just somebody who decided to do a patio in their backyard and it's a one shot deal. But, the operation is essentially the same.

Mr. Raymond Reber stated I've had cases where I've had to do major construction and I've had a truckload delivered to my house. There's other times when I've gone there in my car and picked up miscellaneous items. It all depends on the situation, but that's a true, full retail, wholesale operation. I'm just making sure that you will set up a shop that is truly retail. Retail means you have to be able to sell to people that come in and want something other than a truckload.

Mr. James Seirmarco stated I have no problem with this.

Mr. John Mattis stated I concur.

Mr. David Douglas stated I think what we're going to do the same procedurally we'll do the same thing we did with the last one. We'll close and reserve and we'll have a formal Decision next month but you know what the Decision's going to be.

Mr. Dan Ciarcia stated thank you very much.

Mr. Wai Man Chin stated I make a motion on **case 2012-48** to close the public hearing and reserve Decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the **case #2012-48** is closed and reserved. Thank you very much.

*

*

*

ADJOURNMENT

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated meeting is adjourned.

*

*

*

**NEXT MEETING DATE:
WEDNESDAY JANUARY 16, 2013**