

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 14<sup>th</sup>, 2009*. The meeting was called to order, and began with the Pledge of Allegiance.

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

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

Also Present

James Flandreau, Clerk of the Zoning Board  
John Klarl, Deputy Town attorney

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**CLOSED AND RESERVED DECISIONS ADJOURNED TO JANUARY**

- A. CASE No. 23-07**                      **Congregation Yeshiva Ohr Hameir** for an Interpretation/reversal of Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing, non-conforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion on the property located at **141 Furnace Woods Road, Cortlandt.**
  
- B. CASE No. 51-08**                      **John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**
  
- C. CASE No. 06-09**                      **Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **Case No. 33-08** Decision and Order.
  
- D. 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. John Mattis asked I'll just ask our attorney if there are any updates on any of those?

Mr. John Klarl responded no. They're proceeding at a pace the way we had discussed previously.

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### **PUBLIC HEARINGS ADJOURNED TO JANUARY**

- A. CASE No. 08-09**                      **Jorge B. Hernandez, RA for M & S Iron Works** for an Interpretation if a structural steel & iron erector is a Special Trade Contractor on the property located at **439 Yorktown Road, Croton-on-Hudson.**
  
- B. CASE No. 11-09**                      **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8<sup>th</sup> Street, Verplanck.**
  
- C. CASE No. 30-09**                      **Dominick Santucci** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. John Mattis asked would you like to comment on any of those?

Mr. John Klarl responded I think they have the same status we've describe before.

Mr. John Mattis stated we'll hear those in January.

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### **ADJOURNED PUBLIC HEARINGS**

- A. CASE No. 27-09**                      **Brie Gallagher** for an Interpretation/challenge of Steep Slope Permit No. 20090271 on the property owner by Kyler Cragolin on the property located at **222 Mt. Airy Road West, Croton on Hudson.**

Mr. David Douglas stated we had Mr. Vergano from the Town come to our work session on Monday. I think he indicated that he would not be able to be here today so our plan was that we were going to adjourn this hearing until January.

Mr. John Mattis asked could we have a motion for that? So moved, seconded with all in favor saying "aye." That's adjourned until January.

**B. CASE No. 37-09**                      **Charles and Diana Jones** for an Area Variance from the requirement for the front yard setback for a proposed covered porch and open stair on the property located at **95 Valley View Road, Cortlandt Manor.**

Mr. Kevin Melnar presented himself to the Board and stated I'm here representing Charles and Diana here tonight in their request for a front yard Variance to allow the construction of a front porch on their home at 95 Valley View. We were here at the last meeting. We had some discussion on this and it was asked to be adjourned so that the Board could make additional site visit to have the expanse of the porch marked out on the property which the owner has done and I assume everyone has had the opportunity to see what they wanted to see. I will just briefly go through the points that we discussed last time having to do with the addition not creating an undesirable change in the neighborhood, that the benefit of the front porch cannot be obtained any other way, that the Variance is not substantial, that they're seeking relief from 30 feet to allow 24.3 feet to add this porch on to the front of their house. The porch itself, the deck of the porch I understand would be allowed as of right. It's the roof over the porch which is what kicks in the need for the Variance. I know there was some concern with the idea of setting a precedent for this in the neighborhood and we're simply want to put a roof over the deck which we're allowed to do as of right as I understand it. A number of the homes, as you know, have the porch on it and a number of the neighbors have signed the petition that they are in support of the application and a few of which are here tonight to speak further to that. The granting of the Variance will not have an adverse effect on the neighborhood and the need for the Variance is not entirely self-created. Like I said, there's strong public support for this on this street and the concern last time when we were talking was that precedent that the factor of it. I understand it, and I appreciate that, but we're here on a specific application for the Jones' residence. Any one else who would want to do this would have to come before you if indeed they needed the Variance. Each case should be judged on the merits of the case and it's not an amendment to the Zoning Code saying "well everyone can do this on the block." There's just specific items that are unique to each case that have to be reviewed. I'll just ask for your further consideration and if anyone from the public wants to speak.

Mr. Raymond Reber asked can I ask you a question since you presented it that way. Could you give us some examples of how this is unique compared to the other houses if they did decide they wanted to have the same allowance in the front why this would be granted and the others wouldn't?

Mr. Kevin Melnar responded each case is judged on the merits of the case.

Mr. Raymond Reber asked what's the merits on this case that makes it unique from the other houses?

Mr. Kevin Melnar responded in that several of the homes have the porch already.

Mr. Raymond Reber stated within the setback limits.

Mr. Kevin Melnar continued within setback limits and we're not creating a unique, adverse effect to a neighborhood. The Jones' when they purchased their house at the time that they came into the development didn't have the option to have the porch. They felt very strongly about moving into the community and hence bought the house with the hopes of putting the porch on someday. At the time, they were under the impression they wouldn't have any issue to do it. It was presented as "you can put a porch on, no big deal." It's a surprise.

Mr. Raymond Reber stated very common among real estate people to promise anything when you're trying to buy it.

Mrs. Adrian Hunte asked you mentioned that the Jones' did not have an option. What do you mean by option?

Mr. Kevin Melnar responded they came in after the house was already placed.

Mr. Raymond Reber stated they didn't have to buy that house.

Mr. Kevin Melnar responded true, but that's where we are.

Mr. James Seirmarco stated Mr. Chairman I'd like to hear from the neighbors if possible.

Mr. John Mattis stated why don't we give our comments first. That's how we generally do it.

Mr. James Seirmarco stated this is an unusual case. Typically, in a neighborhood where the houses are different we would probably not entertain this. This is a unique situation to me that all the houses in the neighborhood are relatively designed the same. Seven out of thirteen have a porch. Five out of thirteen have this specific porch that the applicant is requesting. If you come down Oak Street and turn to the right, there are similar houses down there. About 75% of those houses have porches. I think this is what, to me, makes the uniqueness of this application. I don't think that if this was a neighborhood full of different kinds of houses and this was a 30 foot setback I would not be in favor of this. This is a very unique situation to me. We are the Zoning Board of Appeals I know that this is not a permitted thing by right. They're appealing to us for specific reasons and I think I personally favor this particular thing. It's less than 20% Variance invasive of the front yard setback. We have allowed other things in the front yard, generators and whatever. They are not allowed there either and certainly this is where it's unique. We have allowed those things. I personally don't have a problem with this and I would be in favor of this.

Mrs. Adrian Hunte stated I agree with Mr. Seirmarco. I believe that this is a contained cul-de-sac neighborhood with similar homes, similar style, size. They're colonials with basically siding. More than 50% have porches already, albeit perhaps the others have them as of right. I

don't know believe that this would be a detriment to the neighborhood or have any adverse impact on the environment. I think that this is not introducing something that is foreign into the neighborhood. The porches are something common and actually in this area there are many of them, particularly in this subdivision. With that said, I would move to grant the Variance and I don't think it's substantial, it's five feet and I don't think that it's going to impact on the sidewalk that much that it would look out of place with the other houses.

Mr. Wai Man Chin stated I will have to agree with Mr. Seirmarco and Mrs. Hunte on this. From all of the houses that are on that road, the curvature of the road itself in front of the house makes it look a little bit tighter than some of the other houses from an aerial view. I don't think it's a great Variance. I think it would not make a detriment to the neighborhood. I think it will be adding something that everybody else has and it's very similar.

Mr. Raymond Reber stated there is a dissenting vote and it's me. My problem is as follows: of the 13 homes in that neighborhood that we have listed, actually only 5 have porches, 2 others have porticos; in other words a little covering and a porch and a door entrance, that's different than a porch. We do grant those quite frequently so to lump them in as porches so you can say the majority 7 out of 13 are porches is misleading. It's 5 out of 13. Second of all, all but one of those porches are within the setback. The one that's not is actually on the cul-de-sac and it's on the severest part of the curvature and yes that does create a totally different set-up when you do a home. This particular lot is not on a cul-de-sac and the road is straight in front of it. It's a straight line, easy to measure the setback. Second of all, it's my understanding that this home is one of the newest homes on the block. The others were already built. So, the idea that they didn't know they could have gotten a porch when it was being built because they didn't realize others were doing it wasn't true. When they built this house, whoever built it, saw the other houses, saw the porches and for whatever reason decided they weren't going to put a porch on this house when they built it. It is not appropriate for someone to come to us, and we've had it before where they say "well I bought the house thinking I could add a porch because I saw other houses with a porch." We had a case recently didn't have a big garage. The neighbors had garages and they said "we were told we could add a garage." You know you can't just put building structures anywhere you want in the Town. This is self-created. They bought the house the way it is. There is a minimum 30 foot setback in the Town of Cortlandt. That's what was asked for in this neighborhood. To me, once you can see, as I asked you earlier 'what's the uniqueness?' I don't see any uniqueness. If we say to them "forget the 30 foot setback, make it 25," then to me anybody in that neighborhood can come to us and say "we think we'd like a bigger porch," or "we'd like to put a different room on," or "we'd like to do something else." And they would point to this house now and say "well, it's only 25 feet off the road." And, when a certain Board member says we've granted generators. To compare a generator to a porch, to me, is comparing apples to oak trees. The generators that we've granted generally have been for medical reasons because the electrical circuitry is there. They are a little box that sits there. True, it's not granted but to grant that is far less of an intrusion than granting a closed in porch. As far as a deck, you're right, landings and decks to some extent are allowed. Again, we never consider a deck to be anything like a closed in porch. Again, you're comparing things that are not relevant to each other. With all of those considerations to me it would be inappropriate.

It basically violates the concept of preserving the Zoning Codes unless there's a very unique and special situation that would say 'this is the right thing to do and in fact it doesn't harm the neighborhood.' Whether this harms the neighborhood or not it changes the Code requirements. You're basically overwriting the Code for no specific reason other than they'd like a porch. I'm voting against it.

Mr. Charles Heady stated on Valley View Road itself there's 7 people that don't have porches on that road. Then there's 4 people that have porches but when they built the house the Variance was considered and they brought the house back so it didn't need a Variance for those porches. The other 2 it's got an overhang which would probably go over the front door to protect them from the weather. We had another case before similar that people wanted it and we couldn't give it to them and I'm against this Variance that you need.

Mr. David Douglas stated I think that Mr. Reber expressed well what some of the concerns are for those of us that are reluctant to grant this and for me the most powerful reason is the precedential effect if we were to grant it. I don't see this applicant's request as being unique in any way. I think that if we were to grant this then subsequent applicants would come in and basically say "well you gave this to this particular property," and they would have a point. That's what concerns me. I think that we would in fact be changing the Zoning that the Town has set for this community and to me that's the overriding issue here and I would be inclined to vote against it.

Mr. John Mattis stated I think that we're putting the fact that it's a porch over the fact that it's a Variance. In a neighborhood where there's only one Variance and that's on the cul-de-sac and because of the curvature it looks like it's back as far as the other houses. This isn't a headcount where you say this many has porches, this many doesn't have porches. It's a Variance that we're looking at. Whether it's a porch or whatever it is. Mr. Reber said it very well: what is the uniqueness? If there is no uniqueness the neighbor to the right as you face this house would have the identical problem and would come in to us and we would have no recourse but to give it to him because there's no uniqueness other than the fact that they want it. When you look at these things it says there's no other way to accomplish this, well sometimes you can't accomplish things. That's the problem with Zoning. You're not entitled – we've had cases where people want pools, they can't put them because they have rocks, they have different problems. Just because you buy a piece of property – I did notice in being out in that neighborhood and also looking at the overhead here this property and the one next to it, the builder moved those forward because there's very little back yard. What he did was he enabled himself to get a house in there that he could sell. The people bought it. It didn't have a porch and it's a shame that real estate people sell these on things you can do to them because they are not the ones that have to come before the Town Board. Mr. Flandreau can tell you, every day they get people that come in that want to do things and they're surprised that they can't do them. When I got on the Zoning Board I was surprised at the Code and some of the things that people wanted to do and what they couldn't do. It's unfortunate but it's a fact of life and the Code is there to protect everybody, but by granting this Variance with no unique reason, it doesn't matter whether it's really substantial or whatever, this is the first Variance that really encroaches out further and then the next one

would come back as Mr. Reber said, do they want a bigger porch? Do they want an initial porch because they don't have one? There's no unique reason why this is different from any of the others and we would have to grant them all. When we grant them all then we've effectively changed the Code.

Mr. Kevin Melnar responded I understand your point. It's clear but in granting this application in the way that it's granted and being specific in that it's being granted to allow the roof of this porch to be constructed creates a very specific granting.

Mr. John Mattis stated that makes it a porch.

Mr. Kevin Melnar stated I'm just saying the deck and the columns and the railings can be built as of right, the way I understand it. Anyone on that street can go and put a deck on the front of their house that it comes six feet into that setback without having to come here.

Mr. John Mattis stated the Code allows it. You're missing the difference. We're not talking about decks, we're talking about porches and with a roof then it becomes part of the structure, then it's a porch.

Mr. Kevin Melnar stated the concern is that someone would come to you and say "well, they have a porch, why can't I have a room on the front of my house?" We're being here just for essentially a roof.

Mr. David Douglas stated my concern would be that somebody would come in and say "you allowed them to have a porch that encroached into the front yard setback," and we would have to say "yes, we did." Then the next applicant would say "you let them have a porch that encroached in, why can't we?" And, I can't come up with a good answer to that and that's why I would vote 'no' on this.

Mr. Kevin Melnar stated you're also judging the application based on the 'what ifs' of an entire community. You're placing that burden on the Jones'.

Mr. David Douglas responded no I'm looking at this particular property and saying I don't see anything unique about it. If it were unique than I could justify saying "we would allow this Variance because of unique situation, because of x, y and z is unique. I can differentiate this from every other property in the Town." I can't and that's my concern and since I can't then effectively it seems to me that if we were to grant this we would be changing the Zoning in the community because we would be saying "yes you can go in and encroach for a front porch."

Mr. Kevin Melnar stated I don't agree necessarily as seeing it as a change to the Zoning within a community by the granting of a Variance for a particular parcel of land.

Mr. David Douglas stated if you can't distinguish that parcel of land from the others, which I can't, then I think you are effectively changing it.

Mr. John Mattis stated I'm going to open it up to the audience. Is there anyone who would like to speak?

Mr. Joe DeVito presented himself to the Board and stated I live at 109 Valley View Road. I'm one of those smaller houses in the back end of the cul-de-sac. I have known the Jones' for the last 7 years. They are fine people. They take very good care of their property. In my mind, I understand the rules of the Variance and the precedent but I think you also look at quality of life and you look at what they're asking for and it sounds like we're talking about 5 or 6 feet here. If I wanted to do what they were doing there's no way in the world that would happen. I just don't have the space in the front of my house, but to see someone else in my neighborhood improve their house and probably help the value of my house in the long run. I think it's something you should consider.

Mr. Raymond Reber asked you say you've known the Jones' for 7 years. They've been living in this house for 7 years?

Mr. Joe DeVito responded when the whole development went up they came in.

Mr. Raymond Reber asked so they've been suffering for 7 years without a porch?

Mr. John Mattis stated our records show that you're at 37.6 feet from the road. You could put the same type of porch without a Variance. That's what our records show.

Mr. Joe DeVito responded when the Town comes and plows and they have the right to put the snow on my property, half of that pile of snow is within probably 12 feet of my house.

Mr. John Mattis stated maybe there's a mistake on this.

Mr. Joe DeVito responded I think there is.

Mrs. Carla Sims presented herself to the Board and stated I live at 91 Valley View. I'm the house that hangs off the cliff basically. We're the last house built into the subdivision. The houses were all built by the same builder and there is at least one Variance for a house that's less than – in the middle of the circle I know that, that is much closer to the street without a porch. It has no porch and it is right into the street. I see your point of law and that's what this is. This is point of law, but these – we are people. We live in this community, we pay taxes. These people have taken excellent care of their home. Their home is probably one of the best ones sitting on the street. I have known them for 6 or 7 years now. We were the last people to move into the neighborhood. We did not have any choices about that because the house was already built. Both of those houses were already built and yes Dimitri moved the houses in so that he could get those houses on the property. I understand your point but I think you need to look at the people. We sit on their stoop and we have coffee, many, many nights during the summer. Not just me, not just Joe and Diana and Charley but half the neighborhood and we sit on their stoop. We'd



love to sit on their porch instead.

Mr. Raymond Reber stated we're very pleased that we have residents that take good care of their property and that's a compliment to them and a blessing to the Town and the idea of having a porch is nice. My daughter has one on her house. I don't and my neighborhood we sit on the stoop for the same reason. We have a 30 foot setback and that's the way the houses were built. The fact that these people are good people and take good care of their home is not something we can take into account because tomorrow he could have, or she could have their job moved to Pittsburgh and they leave and the next family that moves in are not good people. When we make decisions on Zoning and Variances we have to look at the Code. We have to look at the law and we have to ignore the individuals because those individuals could change tomorrow. That's not a basis on which we can evaluate. I'm very glad that they are good neighbors and that's wonderful but unfortunately that doesn't gain you any points when it comes to how we have to make a decision.

Mr. John Mattis asked anyone else?

Mrs. Diana Jones presented herself to the Board and stated of 95 Valley View. You made the comment that we haven't suffered in the house for 6 years without a porch and you're absolutely right.

Mr. Raymond Reber stated I was just teasing your neighbor.

Mrs. Diana Jones continued you're absolutely right. We have lived there for 6 years without a porch and one of the reasons why it's taken us 6 years to come to this is because I'm a breast cancer survivor so I had other things to deal with before I took the time and the energy to what we thought was rectify or fix what we wanted to fix about the house. No, we have not suffered but I don't feel that this footage – I am not as knowledgeable as you are but I just don't see the detriment. I just don't see all the negatives. I'm very hard pressed to not be greatly disappointed. I don't feel we're asking for anything so out of the norm or so different or unreasonable.

Mr. Raymond Reber stated my best wishes hopefully that you have beaten it and may all be well with you. It's just usually when people come to us and use the real estate people told us, they usually come to us within a year and say "well they told us that."

Mr. Brian Jones stated that's not the case. Nobody told us that we could add a porch at a later date. We didn't think that it would be such a big issue being that there were other porches in the neighborhood. You're concerned about raising a precedent but you've already had this house on the cul-de-sac that's wedged in there, doesn't that already create a precedent?

Mr. Raymond Reber responded it's different because of the curvature of cul-de-sacs and the cut of the curb can have an impact.

Mr. Jones continued I don't know how different it is. We're sort of mixing apples and oranges. We really felt that we were doing something to beautify the house to make it esthetically nice, something that ourselves and our neighbors could enjoy and I have to admit I'm really at a loss. For the sake of a foot or two I just don't get it quite frankly.

Mr. Raymond Reber stated that's your opinion. We've dealt with cul-de-sacs and we make exceptions when the visual integrity is maintained.

Mr. David Douglas stated I'll tell you where I'm coming from I could use your wife's words. What your wife said was "we're not asking for something that's so different." To me that's the sticking point. I agree with her. You're not asking for something that's so different and that's why I personally, I can't speak for anybody else, that's why I can't vote in favor of this because everybody else will come in and say "we're not asking for something that's so different," but the Code has certain criteria and standards and limits and you're asking us to make an exception, that's what a Variance is, it's an exception. I don't see this as something that warrants an exception. That's just me speaking individually.

Mr. Brian Jones stated I understand what you're saying and there's nothing common about common sense but I think the fact that...

Mr. David Douglas stated I don't think that's nonsensical.

Mr. Brian Jones continued I think that it's the fact that several of the other houses have porches I don't think that adds anything detrimental to the neighborhood. I really don't see the negative impact. That's why I'm at a loss.

Mr. David Douglas stated I understand what you're saying but I do have to say that there is a sense to the Code in setting standards and guidelines. I am not saying I would vote to adhere to this just because that's the rule and that's it and I won't bend. That's not what this Board is about. This Board does grant Variances and grants exceptions. I just don't see an exception as being warranted in this situation.

Mr. Brian Jones stated and all I'm saying is if you allow this house to be constructed at the end of the cul-de-sac isn't that a much bigger exception that you've already allowed?

Mr. Raymond Reber responded the difference is a lot of the purpose of some of these Zoning setbacks is visual. When you have a straight street and it's a setback, the idea is to keep all the structures back about the same distance whether it's the porch, the front of the garage, the front of the house, whatever, you want a certain setback. When you get to a cul-de-sac, you're now drawing a circle and what we find quite often is that because of the way you lay out a circle, quite often on the far end of that cul-de-sac where it wedges together the houses get pulled up and the net effect is visually, yes it's a Variance, it's a little closer but you still got the circle. There's a continuity of circle and the perception of the eye and to the neighborhood is you can't tell exactly where that is. Sometimes it's more, sometimes it's less. A lot depends on how the

paving is done on the circle but the visual effect is you've protected that circle. You don't have a house that's jutting out and breaking out the line. This property is on a straight line. What you're saying is you now want to come 5 feet plus the overhang for the roof out farther than the other houses that are within that line and that's usually what we look at. Quite often we'll go to a neighborhood and that's what we'll do. We'll stand down at the end of the street and we'll look down the line and we'll say "okay, that's the line up of the house. Do we want one house that is that much farther closer to the road?" And once we grant it – and this is the concern that Mr. Douglas and I are wrestling with, once we grant it and we say "you can put a structure there with a roof on it and all," then haven't we basically said we've changed the Zoning and anybody can come before us and say "we want to put a structure there and we want to be 25 feet off the road?" I don't see any way that I can deny that. I've basically said the 30 foot setback in the Code is now 25 and we're not allowed to do that. We can't change the Code. We can only grant it when it's unique, special and exceptional and that's what we're wrestling with.

Mr. Brian Jones stated that's where I think we disagree. I don't think that the 30 feet is so hard fast. The purpose of this Board, you're saying that the Code is sacrosanct but isn't it the purpose of the Board to make those decisions?

Mr. James Seirmarco responded yes.

Mr. Brian Jones stated and I'm saying also for the sake of one or two feet that's dramatically negative.

Mr. James Seirmarco stated there are 5 or 6 criteria for an area Variance. Your representative went through them. Sometimes we're fortunate enough to have all of the criteria met and it makes it easy to grant the Variance but sometimes we do grant Variances where the majority of them are met and I think in this case, in my opinion, about 5 or 6 out of 7 have been met. The uniqueness; I look at the uniqueness is the neighborhood has houses with porches. If you have one that doesn't have a porch that's unique, to me, but I'm sure that's not the way other people look at it. To me, it's the norm to have a porch in your neighborhood not, not to have a porch.

Mr. Brian Jones continued I agree. You've expressed it much better than I could.

Mr. James Seirmarco stated that's why I feel – if it was any other neighborhood, and as Mr. Reber said you look down and you want one house sticking out, I would not vote for that. But, in this particular thing, the uniqueness is that most of the houses have porches and you're unique because you don't. That's the way I look at it. Maybe it's convoluted for the lack of a better word, but that's the way I look at it.

Mr. Brian Jones stated I agree, I think you've done a better job at expressing it. I think saying 'sticking out' is a poor choice of words. I don't think that the house with a porch would stick out.

Mr. James Seirmarco stated I don't either.

Mrs. Adrian Hunte stated I will just say that this is – uniqueness is not one of the stated factors that we're looking at. This is something that's been interjected by Board members here. In this neighborhood most of the homes have porches and it's not just this particular development. The one next to it, most of the homes it appears as though most of them have, or a good number of them have porches and yours without one looks different from the others.

Mr. Brian Jones stated that's true. Absolutely.

Mrs. Adrian Hunte continued having a porch would not be an undesirable change in this neighborhood.

Mr. David Douglas stated in terms of the facts it's not accurate that every house in this neighborhood has a porch.

Mrs. Adrian Hunte stated I didn't say every one has one.

Mr. David Douglas stated looking, if I'm counting off this sheet, there are only 7 houses that do not have a porch and some of them that do, it's not a porch it's a portico. Precedential effect is a very important thing to take into consideration.

Mrs. Adrian Hunte stated if the other 5 or 6 that don't have porches decided that they wanted to have porches, yes there would be an issue for us and yes we would have to look at those individually but if each of them then said they would like to have a porch then they would be looking like the rest of the houses in the neighborhood they've got porches.

Mr. John Mattis stated I'd love to say we can give you the porch. I think the house would look better but we are not the Architectural Review Board and the uniqueness is not the fact that you don't have a porch. The uniqueness is we're the Zoning Board. It's a Variance. The uniqueness is the Variance, not the architectural look of the porch and that's the thing that we're wrestling with.

Mr. Brian Jones stated I understand that but like I've said I just think that if we were going to put something up that was detrimental than absolutely you'd be well within your rights and I just don't think we're doing that. I think it's an enhancement to the house, to the community. I think we had 14 neighbors sign the petition the last time we met. In the cul-de-sac there was overwhelming support. These are our peers. These are the people that live there. What else can you say? Thank you.

Mr. James Seirmarco stated Mr. Chairman I'd like to make a motion to close **case number 37-09**, seconded...

Mr. John Mattis stated I think that we should close and reserve on this.

Mr. James Seirmarco responded I don't.

Seconded, with all in favor saying "aye."

Mr. John Mattis stated I'd like to reserve the decision to next month, I'm voting no to close tonight, and then somebody can make a motion to close and reserve.

Mr. James Seirmarco stated I made a motion to close the public hearing. It was seconded. Was it voted on?

Mr. John Klarl responded just to close the public hearing.

Mr. John Mattis asked with all in favor saying "aye."

Mr. David Douglas stated to close the public hearing? I'm in favor.

Mr. John Mattis stated so we're unanimous on that. Now for the vote.

Mr. James Seirmarco stated I make a motion that we approve the Variance on **case number 37-09** as stated reducing the front yard setback for a proposed covered porch as required 30 foot down to 24.3 and the requirement for the front yard setback for the proposed open stair for a required 30 foot down 23.3 on the above referenced property. This is a type II SEQRA no further compliance is required.

Mr. Wai Man Chin stated I'd like to make another motion on that. I'd like to close and reserve on this.

Mr. John Mattis stated we're voting on the question unless he retracts...you've put us in a box. We're voting tonight. We don't have anymore time to think about it so we're voting tonight. I wanted an extra month to think about this but since you closed the public hearing and didn't close and reserve we have to vote on it tonight.

Mr. John Klarl stated all we did was close there's no motion about a reserved status.

Mr. John Mattis stated if he's making a motion to vote and nobody seconds.

Mr. James Seirmarco stated Adrian seconded.

Mr. John Mattis stated Adrian seconded so we have to vote on it. Are we in favor of the Variance? All in favor "aye," opposed "opposed." Can you poll the Board?

Mr. James Flandreau stated Ray Reber; opposed, Adrian Hunte; in favor, David Douglas; opposed, James Seirmarco; in favor, John Mattis; opposed, Wai Man Chin; in favor, Charles Heady; opposed.

Mr. John Mattis stated so that motion is defeated 4 to 3. The Variance is denied.

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## **NEW PUBLIC HEARINGS**

**A. CASE No. 42-09                      Nick Danisher** for an Area Variance from the requirement for the front yard setbacks for a proposed single family dwelling on the property located at **22 Pierce Street, Cortlandt Manor.**

Mr. Tim Cronin stated my office prepared the site plan that the Variance is based on for tonight's meeting. With me tonight is Mr. Nick Danisher. As you can see on the plan the parcel is located at an intersection of two streets: Pierce Street which is marginally developed more as a driveway than a street and Ladd Street which is strictly a right-of-way with no improvements at all on that street. The parcel's located in the R-40 Zoning district which would require normally 40,000 square feet of land, however because this is a pre-existing condition our parcel contains just over 25,000 square feet so we have that handicap but that's not something that's self-imposed it's just a matter of a combination I believe of three lots which were created when the subdivision was originally approved which I think was in the early 19<sup>th</sup> century. The Variance we're seeking tonight is for a front yard Variance with the larger Variance if you will adjacent to Pierce Street and a lesser one to Ladd Street and the main reason for the seeking of that Variance is because in the back of our property would be the western side. There is an existing Town-regulated wetland that we are trying to keep adverse impact on that wetland to a minimum. In having met with the Town's Engineering staff as well as the Town's Building Department and Town's Environmental Consultant, it was thought that in order to try and preserve this wetland that a Variance should be sought and we could actually bring the house out of the wetland and provide a modest buffer between the existing wetland and the proposed improvements. That's the main basis for the reason for the Variance. A report was prepared and submitted a few years ago by Sven Holger who's an environmental consultant who did opine that the wetland is somewhat unique to this area primarily because of the well-drained nature of the soils. However, there's a lot of surface water that seems to find its way to this property with a lot of run-off actually originating on Red Mill Road coming down Pierce Street and then, as you can see, there's an existing culvert across Pierce Street which actually has its termination point right here just east of our property which that surface water I believe is contributing to the wet condition we have on the property. What we're proposing to do is to eliminate some of the drainage problems we have, enhance this wetland so there'll be a positive impact to the environment, and treat some of the storm water which is currently getting no treatment and hope that this Board sees the benefit of possibly granting this Variance.

Mrs. Adrian Hunte asked this property apparently there was a Variance applied for back in 1989 and there was some questions concerning site distance and also exceptions to **280-a** of the State Town Law, can you speak to that?

Mr. Tim Cronin responded I don't remember that but I'm assuming that at that time there may have been an issue with Pierce Street as it comes on to Red Mill Road. That is a very tricky intersection. Since East Hill Road has been developed we're actually proposing our driveway to be an extension off of East Hill Road. As you can see here we'll be constructing a private drive in accordance I believe with **Local Law 5 of 2001** which I believe regulates the construction of private roads and that's what we'll be doing. Our proposed residence will not access primarily onto Red Mill Road. They'll have the option of going out East Hill and that's an option that will also be available for the existing houses on Pierce Street. I would like to think that East Hill Road would become the primary means of ingress and egress to the property.

Mr. David Douglas asked have you gotten or spoken to staff about whether that driveway would be approved under **Local Law 5**?

Mr. Tim Cronin responded I don't know if we've asked that specific question but I believe this plan was based on conversations with Technical staff, DOTS, and the Building Department. We don't have approval for this. What we're hoping is that if we get this Variance we'll proceed with getting approvals from the Town for this road. We did not want to spend the resources pursuing this, pursuing the private drive if we weren't going to get the Variance. Certainly if the Variance is granted the condition can be that we have to be able to extend East Hill Road. That is our intent and that is what we're hopeful that the Town will also agree with.

Mr. James Flandreau stated at the meeting that we had with the applicant it was discussed of the different issues that would need to get approved with. The first and probably the biggest hurdle that they would have to get is the area Variances. So, that's why staff referred them to come to the Zoning Board first to see if they can grant the Variances. If the Variances don't get granted I don't know if they would be able to build in the buffer at that point. That's why they came to you first and haven't submitted a formal application to actually construct the house to us.

Mr. David Douglas stated I'm not sure which is the biggest hurdle because it seems to me that if you look at it the other way and say that the biggest hurdle is to find out whether there would be approval to build into that parcel to begin with. If there's not than what we're doing is totally academic.

Mr. John Mattis stated I agree with that. I'm looking at **case number 27-89** and Mr. Danisher sought relief with respect to **section 280-a** of the New York State Town Law and that had to do with roads. That used to be under our jurisdiction. It's now with Department of Technical Services.

Mr. Tim Cronin stated **Local Law 1** I believe of some years ago.

Mr. John Mattis responded yes. What we used to do is look at it and make sure that the fire trucks could get in there and get out of there and we would get a letter from them. I think we're putting the cart before the horse. If we're going to grant a Variance before we know there's a possibility that that will be approved. I'd like to see something from the Department of Technical Services or a commitment and approval for the road coming in from the other way first.

Mr. Raymond Reber stated I have some other concerns too which again would put the cart maybe in a different orientation to the horse. Is this house being positioned on what falls under the Steep Slopes Ordinance?

Mr. Tim Cronin responded 15%.

Mr. Raymond Reber stated the application says "minimize impact on wetland, steep slopes, and tree removal." That's why I'm questioning, is there a steep slopes issue on this property?

Mr. Tim Cronin responded we would be building on steep slopes but I believe that if we were to go farther back we would also be building on steep slopes and disturbing more steep slopes and in addition also disturbing more of the wetland.

Mr. Raymond Reber stated I understand that. So, now my concern is the thing that will determine, in my mind, why one would grant moving outside of the allowed pocket for construction to be closer to a road or what have you would be one of the criteria that we have "no undesirable impact on the neighborhood." The desirable impact would be: not affecting the wetlands and not causing steep slopes problems. To me, I would have to have a report from DOTS that says a Steep Slopes Permit analysis has been done, they've come back and said yes if this house is positioned here. It does not create any potential problem for the neighborhood. It's not going to disrupt any drainage or water absorption. It's not going to create instability. To me, it's really the other way around. Prove to me on this Board that by allowing you to put this house in an area where it normally isn't that you will not have an adverse affect on the wetlands, on the steep slopes issues and all of the concerns that are built into the Code can be addressed and mitigated properly.

Mr. John Mattis asked the house is 30' x 50', 1,500 square feet. Out of that 1,500 square feet how many of the square feet are within the Variance envelope?

Mr. Tim Cronin responded the only piece that's out is right here.

Mr. John Mattis asked 20%, 10%?

Mr. Tim Cronin responded 10.

Mr. John Mattis asked virtually, you need a Variance for 80% to 90% of the house and we're looking at Pierce Street which is over 50%, it's 51.6 percentage Variance and Ladd Street is



25.6% Variance. So, you're looking for two major Variances. You've got steep slopes problems. You've got wetlands problems. You've got problems with getting approval for the **280-a or Law 5a**. I think we're putting the cart before the horse. I think some of these other issues should be answered before we even proceed.

Mr. Tim Cronin responded for us to obtain approval from the Town's Technical Services and the Building Department for this road here is a pretty significant undertaking. To engineer out this site to satisfy the members that we're not going to have an adverse impact or that we will be minimizing the adverse impact that we otherwise would have, we can certainly do that but – and I recommend that to Mr. Danisher, however it may take us four or five or six months to work this through the Town and if we come back and all of a sudden it's still no good. I know you can't vote on it or it doesn't seem like you're going to vote on it tonight. If we were to come back with a plan that DOTS endorsed would that be a positive influence on your decision?

Mr. John Mattis responded if I don't have anything that tells me about the steep slopes and the wetland's impacts of putting a house there and it's on a steep slope and 10% to 20% of the house is within the setback, the rest of it needs a Variance and you're talking about one Variance over 50% and one over 25%. I don't think it takes a brain surgeon to figure out how I'd vote on that. I couldn't approve something like that. If you want us to vote on it before it goes to the Town, I'd have to vote against it. There's just too many questions. It comes down to the fact that maybe there are some properties because they have so many problems with drainage, with wetlands, with steep slopes, with roads coming in and out that maybe they can't even support a house.

Mr. David Douglas stated I personally feel more comfortable knowing that the Town would allow a house at all before we started voting on a Variance for that hypothetical house. That's why I asked whether you had approval from the Town. The Town may or may not approve that. If they say "no, that's not for safety reasons. We can't allow that." It doesn't seem that we should be deciding whether we should move it forward 5, 10, 20 feet or back 5, 10, or 20 feet when that Town is going to say "no. You can't be there anyway."

Mr. Raymond Reber stated because one of the five criteria is very clear "does it have any adverse affect?" The reason for these Ordinances is because generally if you're fooling around on steep slopes or near the wetlands you will have an adverse affect. So, the very criteria mandates an evaluation.

Mr. John Klarl stated adverse environmental impact.

Mr. Raymond Reber continued it mandates that we have to be convinced that by giving you the Variance that there's no negative impact.

Mr. Tim Cronin stated since the application that's presented tonight does require a Variance, I don't even know if Technical Services would really entertain this. What we can do is actually, as an option, is to bring the house and put it entirely in our building envelope. I agree with Mr.

Reber. You're not supposed to have an adverse impact but any time you build a house you're going to have impacts where we're proposing a house now I believe will have less adverse impacts than where it's allowed by Zoning.

Mr. David Douglas asked why are you saying that Technical Services won't even consider it?

Mr. Tim Cronin responded it doesn't meet Zoning. Do you think they'll look at it? Do you think Art will take a look at this?

Mr. James Flandreau responded I think from the discussion that the Board is having that there would be something that DOTS would start to look at and go through the process. Because of the way we thought that the Board would want to take a look at it first but since the Board has these concerns, to address these concerns and then come back if the house can be placed there than have the Board see if they would grant the Variances.

Mr. Tim Cronin stated and the reason I ask is that more often than not, if I submit a plan that doesn't meet whatever the bulk requirement is, it's come here or revise the plan. I'm sure that DOTS will hear about the discussion at this meeting tonight. They'll be aware of this application.

Mr. Raymond Reber stated normally, you're correct. DOTS doesn't want to spend a lot of tax payer money. Obviously, the applicant shouldn't have to spend a lot of money unnecessarily either but the main concern of DOTS is tax payer's money in reviewing cases that are basically not practical and will never get built that they would waste a lot of time. In most cases we're talking about minor Variances. Somebody says just move the house 5 feet, maybe a 10% or 15% Variance. And, DOTS knows that generally those types of things we would maybe give serious consideration because we could recognize it. It's more of a technicality of the mentions that moving something four or five feet from the greater lot and the environmental issues is not going to be different. But, as our Chairman indicated 85% of this house is going to be outside the allowed limit. This is coming more than 50% closer to the road. These are major alterations to the Code which obviously was written not to stop all development because there's many parts of the land in this Town that were never affected by steep slopes or wetlands but there is a concern. Certain properties are difficult properties to build on. You're not coming here for a minor – if it was the reverse, if you were only asking for 15% of the house to be outside we'd probably give it more consideration, but not when you're asking for 85% of the house to be outside and the Variance to be more than 50% when there are these issues. That's what makes this unique.

Mr. James Seirmarco stated I agree with Mr. Reber but I also think that one of the most important things is the fact that the driveway may not be approvable from a safety standpoint. From a firematic implications might be so great that you'd have to change it.

Mr. John Mattis asked why would it cost so much to determine whether or not you can bring that driveway up? I'm at a loss there.

Mr. Tim Cronin responded to get an opinion from DOTS that yes it can be done is fairly straightforward, I don't think that would be costly at all. However, if DOTS said "well, before I can give you that letter with that opinion I actually need to see a plan that we've looked at and we've reviewed and we've analyzed." That's where you would run into a fair amount of expense.

Mr. John Mattis stated that's going to happen at some point in this process.

Mr. Tim Cronin responded correct but if you're looking for DOTS to say conceptually this is the way to go or I'm sure we can work something out with DOTS I'm sure it wouldn't be too costly, but for us to actually get the engineering plans approved for this driveway that would be pretty significant undertaking.

Mr. John Mattis stated if we were to approve this Variance and you didn't get that approved...

Mr. Tim Cronin continued there's a certain expense to come here tonight.

Mr. John Mattis stated I understand that.

Mr. Tim Cronin continued to put these plans together and that's 'x' amount. To get these plans approved by DOTS may be 20 'x'. Based on conversations we had with staff let's try it this way first. If the Board is so inclined to deny it than we save 20 'x'. If the Board approves it well we've spent 1 'x' but at least now we know when we spend 20 'x' it's engineering and it's improvements.

Mr. Charles Heady stated **case 27-89** in 1989 you came before us and they gave you **280-a** and they denied it. I'm surprised you even started on this lot. There's so many problems with this lot to get a house in there.

Mr. John Klarl stated they denied it Charley, but they also gave them an alternate relief. They said they should go to the Town Board under **Chapter 60-a** of the Town Code. They said "you can't get it this way, but there's another way." I don't know if they ever pursued the Town Board application.

Mr. John Mattis stated the requirement should be that you have to come in off East Hill if we would grant this.

Mr. Tim Cronin responded which is where we're at.

Mrs. Adrian Hunte asked do you know whether there's a fire hydrant close by and whether it would reach back down that driveway?

Mr. Tim Cronin responded what we are proposing is an extension of the Town's existing sanitary sewer and tie that into East Hill and we would also be extending a water main up. I don't know

where the hydrant is. I think there's one down here at the intersection that turn on East Hill but if we extend the water main up there'll be another hydrant here. We will not be expecting to have the fire department to run their hoses from East Hill up to here. There will be a hydrant somewhere in the vicinity of the termination of that water main.

Mr. David Douglas stated I adhere to what I said before. I would personally feel more comfortable and feel more appropriate for us to hold off until we know what DOTS view is on whether you can even come in from that way.

Mr. Tim Cronin proposed how about this, rather than us go through the exercise of getting this actual driveway approved by DOTS which like I said it would be significant if we talk to the Technical Services and see if we can get some type of letter from them where they pretty much are indicating that this is in concept something that they're looking to approve.

Mr. James Seirmarco stated if they give you a list of things that would be required, not necessarily have it on a map. You will need a), b), c), that would certainly be more positive for this Board.

Mr. David Douglas stated whatever way to save you money but also give DOTS the information it needs so we will know whether DOTS says "yes, conceptually this okay if you do x, y, and z." I'm not saying you have to do x, y, and z right now...

Mr. Tim Cronin responded that I think is fine.

Mr. David Douglas stated I don't know what DOTS will require or doesn't require but I personally feel it's more appropriate to find out – they could say to you "there's no way in the universe we would ever approve this" then we're all done. Or, they could say "yes, we will approve this," and then that becomes a non-issue. I think it's better to find out one way or the other.

Mr. Tim Cronin responded I'll speak with DOTS.

Mr. John Mattis stated but you said something before "this will lessen the impact of steep slopes and wetlands intrusion."

Mr. James Seirmarco stated if we move it back he said.

Mr. Tim Cronin responded if we leave it here.

Mr. John Mattis stated that will lessen it but it doesn't eliminate it. So, we've got problems with wetlands, we've got problems with steep slopes, we've got a Variance to the extent that we've never granted before and I can't support anything like that. This would be so unique that to grant a Variance for 90% of the building and Variances over 50%, I just can't support something like

that. I could make it easy because if it comes back this way, if you get the road or not, I'm not going to vote for it. It's just way too much.

Mrs. Adrian Hunte stated I'd like to see what DOTS has to say and also what the hardship is here, what alternatives you've got, it doesn't sound like you've got too many.

Mr. David Douglas stated I don't want to mislead you. I'm not necessarily saying that I would vote in favor of it if you get the DOTS approval.

Mr. Tim Cronin stated we have to rethink what we're doing here.

Mr. David Douglas stated I'm just saying to me that's one pre-requisite and there are other factors as well. I assume that it's part of the DOTS factors will be the safety issue. I assume that's part of what DOTS will say. I just want to put on the record I want to hear that part of DOTS approval if they were to approve it is that you can get fire engines in there. That's key to me.

Mr. Raymond Reber stated and my biggest concern as I said earlier is our Codes, and we have very carefully prepared for the protection of the Town of Cortlandt, these wetlands Ordinances and Steep Slopes Ordinances. I understand that there are some special considerations that these are very generic and quite often they don't have to be adhered to and I'm perfectly willing to accept that but I need the experts. I need the people who are responsible for making sure that those requirements are not abused. It may cost money, I don't know, but in good consciousness I can't just "here's your Variance," and let you go ahead and let you work on this. It's a bind I understand but from my point-of-view as part of our responsibility of protecting the Codes that includes the Wetlands Ordinance and the Steep Slopes Ordinance and being assured that by granting a major Variance we are not creating problems with those because again, we set a precedent then. We're basically saying "why don't you just go anywhere in the Town. Forget about steep slopes and wetlands. You've got a piece of property get a house on it someplace." I don't think that's necessarily always true.

Mr. John Klarl asked do you want to adjourn this so that you can have your discussion with DOTS?

Mr. Tim Cronin responded yes please.

Mr. James Flandreau stated and the Board would be looking for something from DOTS for the driveway, for wetlands and steep slopes and any safety issues. I just want to make sure that we have everything.

Mr. John Mattis stated I think that covers it all.

Mr. John Klarl stated driveways, wetlands, steep slopes and safety.

Mr. John Mattis asked we have people in the audience. Would anyone like to speak?

Mr. Drew Ventrudo presented himself to the Board and stated 55 Trolley Road. I own the property to the west of you. I think he answered all my questions. I never got a chance to meet Mr. Danisher. Thank you for giving him the time and I hope you guys can work it all out.

Mr. John Mattis stated thank you for coming out.

Mr. Dan Sciortino presented himself to the Board and stated 23 Pierce Street. I live directly across from where this proposed builder...I've raised many of the concerns that you guys have actually raised. But, also the road through East Hill is also wetlands. So, he's asking to propose the road through a wetland. There's a lot of issues. I know I just had a garage built and it took me two years to get approval but I'm within the building envelope. I think he was looking for a substantial Variance. It seems excessive. If it was four or five feet, I wouldn't mind but this is a substantial Variance. I know it's 50 feet setback. I'm greater than 50 feet and he's looking to put almost on the road and I have some concerns with that.

Mr. Raymond Reber stated if I look at the plans apparently you go out Pierce Street. Your driveway goes out on Pierce Street.

Mr. Dan Sciortino stated through Pierce Street, correct. I'm the only access through Pierce Street currently. As a matter of fact, I maintain Pierce Street. It's a gravel road. Again, I don't object to build. It would be nice to have a neighbor but not at this extreme case. Thank you.

Mr. John Mattis asked anyone else? Mr. Cronin any final comments?

Mr. Tim Cronin responded as the Board as indicated we'll adjourn this until we get something from DOTS and I don't know if you need to calendar it now for a meeting because it may take us a period of time to get something from DOTS.

Mr. Wai Man Chin stated what we'll do is we'll calendar it for next month and you'll let us know how it proceeds and either we adjourn it...

Mr. John Klarl stated I think he's saying that's pretty close. February I think he's talking about.

Mr. John Mattis stated at least February. Why don't we do February and if you don't have stuff ready in February just let us know. You don't have to show up and you can ask for an adjournment.

Mrs. Adrian Hunte stated on **case number 42-09** Nick Danisher for Variances on 22 Pierce Street I make a motion that we refer this matter to the Department of Technical Services of the Town of Cortlandt to review and discuss driveways, wetlands, steep slopes and safety issues and adjourn it to February 17<sup>th</sup>, 2010 meeting, seconded with all in favor saying "aye."

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## **RECERTIFICATION OF TELECOMMUNICATION SPECIAL USE PERMIT**

**A. CASE No. 40-09**            **TowerCo Assets LLC** for a recertification of an existing Telecommunication Special Use Permit on the property located at **51 Scenic Drive, Croton On Hudson.**

**B. CASE No. 41-09**            **TowerCo Assets LLC** for a recertification of an existing Telecommunication Special Use Permit on the property located at **5742 Albany Post Road, Cortlandt Manor.**

Mr. John Mattis stated I think we can hear on these together we just vote on them separately.

Mr. Wai Man Chin stated Mr. Chairman we have a letter from the Town of Cortlandt from DOTS indicating that "has reviewed the letter submitted by the applicant and this recertification and the applicants have complied with **section 277-18a** of the Town Code on both of these cases."

Mr. John Mattis stated for the record, these are five year re-approvals that come up and they're pretty much perfunctory. It gives us the Town a chance to make sure that for the recertification that everything is complied with. Anyone in the audience?

Mr. David Hockey presented himself to the Board and stated with TowerCo I'm here to answer any questions.

Mr. John Mattis asked any questions?

Mr. Wai Man Chin stated I make a motion on **case number 40-09** and **41-09** to close the public hearing, seconded with all in favor saying "aye." I make a motion on **case 40-09** and **41-09** to recertification of a Special Permit for the wireless telecommunication facilities, seconded with all in favor saying "aye."

Mr. John Mattis stated they are both approved.

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## **ADJOURNMENT**

Mr. John Mattis asked do we have a motion to adjourn? So moved, seconded with all in favor saying "aye."

**NEXT MEETING DATE: January 20, 2010**