

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, February 21, 2007. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

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

Raymond A. Reber
Richard Becker
David Douglas
Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.

Also Present: John J. Klarl, Deputy Town Attorney
James Flandreau, Code Enforcement

Absent: James Seirmarco

ADOPTION OF MINUTES: 12/20/06 & 01/17/07

Mr. Mattis stated the last page of the copy of the minutes for January 2007 did not come out right. So we did not have a chance to thoroughly review them.

Mr. Heady made a motion to adopt the minutes for 12/20/06 seconded by Mr. Chin with all voting "aye."

ADJOURNED PUBLIC HEARINGS

CASE NO. 66-06 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE ENFORCEMENT for an Interpretation if a lot line separates a lot from the Bear Mountain Parkway is a front lot line.

CASE NO. 03-07 ACE SPORT REALTY HOLDING CORP. for an Area Variance, if required per ZBA Case No. 66-06, for front yard for a proposed structure and Area Variance for the required landscape buffer requirement on the property located at 2054 East Main St., Cortlandt Manor.

Mr. Mattis stated we will hear these cases concurrently.

Mr. William Zutt, Esq. appeared before the Board. He stated at the suggestion at the Board at the last meeting, and I won't go into the issues, because you were all present at the last meeting.

It was suggested that an application be made for set back variances with regard to the proposed two buildings on this site plan, rather than pursuing the interpretative issue, which is the subject matter in the first case on the agenda. We have, in fact, submitted an application. It is the second case on your agenda, and we do so reserving our rights with respect to the interpretative issue in the first case. We reaffirm our position regarding the interpretative question. I did want to take care of one housekeeping item. In a staff report prepared by Mr. Flandreau for this meeting, he mentions that the fact that there seems to be some confusion regarding the easterly lot line on this property. It happens that I have been around so long that I was actually involved in the transfer that led to the transfer of that strip for its' former owner, which was Pike Realty Inc. There was a land swap done of that strip, and Pike Realty conveyed to Mr. Hersh's now deceased father, Mr. Hersh in return for lands west of the Hersh side. As a result of that transfer, the construction of Jacob Hill Rd. was facilitated. I have give Mr. Flandreau a copy of the deed to the current owner, which shows a contiguous boundary of Bear Mountain Parkway. My suspicion is that the current tax map still shows that point which shows it as a separate parcel simply because, if I recall the paperwork, the land exchange was done in the form of an agreement, which also involves some common easements, and it is probably in the County Clerk's Office in that fashion rather than in the regular index, and may have not have been picked up for that reason. I am going to try to provide original documentation of that.

Mr. Mattis stated yes that was a question we all had.

Mr. Zutt stated I hope I have answered it, at least partially, and I will get you the remaining paperwork on that.

Mr. Klarl asked so who do you think the record owner is right now?

Mr. Zutt replied Ace Corp. Realty.

Mr. Flandreau stated on the tax map that just came out, the tax assessor showed me that it is a 10 foot slope adjacent easement to Jacobs Hill Condos.

Mr. Mattis asked does that effect the variance required?

Mr. Flandreau replied yes that will effect the variance, because then it will be considered a front yard along the Bear Mountain Parkway, because you have an easement sloping to the side yard.

Mr. Zutt stated what I've done is I actually asked the site plan engineer, Mr. Mastromonaco, to give us some alternative configurations of this site, which would reduce, and/or eliminate the need for the variances with respect to building set back as well as with regard to the landscape buffer. I did provide you all as part of my application with the first site plan submitted, and two alternatives, Alternative A, and Alternative B. You should have all have received those. I took some time today to prepare a little chart, a table which gives the comparative variances required for each of those, if I may just hand it out. He handed out copies to the Board. He stated the site plan currently before the Planning Board, the one that accompanied the initial application for the

first case on the agenda tonight involves the need for a front yard set back along the Bear Mountain Parkway. A set back of 51 feet for the lower building, and 72.5 feet for the upper building. That is the dimensional set back from the property line. We had Mr. Mastromonaco set the actual set back from the Bear Mountain extension ramp, and that scale is 90.2 feet for the lower building, and probably 150 or more feet to the upper building. So that the perceived set back is substantially greater than the actual set back. The principal plan is for a two story building with 24 foot building height, and we're requesting a complete waiver of the 25 foot landscape buffer for two principal reasons. One, you could probably travel most of Rte. 6 and find few, if any landscape buffers. It applies only to a CD zone, which there is a substantial amount of HC zone along Rte. 6. Also, the substantial amount of an existing landscape buffer within the right of way of Bear Mountain Parkway. So our request under the principal plan is for a 24 foot side yard set back variance for the lower building, and 2.5 feet for the upper building. There will be no height variance needed, and a waiver of the landscape buffer along both Bear Mountain Parkway, and Rte. 6. Alternative A, the second sheet. By the way, all three alternative involve the same amount of building square footage, 32,000 square feet. Alternative A is also a two story situation for both buildings. What we've done is to enlarge the upper building, and reduce the size of the lower building, which enabled us to reduce the needed front yard variance for the lower building from 24 feet down to 17.5 feet, and eliminate completely the need for a front yard variance for the upper building. We'd be above 75 feet in that instance. The height would remain the same, and we're able to show an 8 foot landscape buffer under Alternative A. The third alternative, Alternative B, again involves a 31,000 square foot building. However, in this instance we'd be going for a three story structure, which would in fact be code compliant. It would be an 35 foot hike in grade. We would require a 24.5 foot set back variance for the lower building, and no variance for the upper building, and this would allow us to provide a complete 25 foot code compliant landscape buffer as well. Alternative B, probably most code compliant of the three options, but unfortunately a much higher profile situation, because we would have two three story buildings in the context of two lower profile two story buildings. I would say out of the three alternatives, the one that is preferred by this applicant is the first. We don't believe there would be any adverse impact upon the neighbors. I don't believe I have anything else. I would be happy to answer any questions.

Mr. Mattis stated I will turn it over to Mr. Becker, that is his case.

Mr. Becker stated okay, first of all your overall plan, I am happy to see this type of development, because I think it is a good location for commercial real estate. It is along Rte. 6. It is near Jacobs Hill so it will provide retail for seniors without having to travel substantial distance. So I think it is a good idea for this. However, I have some concerns a little bit about the size, and I do think that the buffer is important. I am so concerned personally about the set back requirements, but I believe the buffer is important, because I think that otherwise it is just going to be like two big boxes standing out. Whenever, I look at variances particularly how this is going to appear to the community as you drive by along Rte. 6, or the Bear Mountain Parkway I believe all of our building should be appealing, and not stand out, and I think that once you set the precedence of eliminating buffers you've opened up a Pandora's box, and everyone is going to want to do that. There are alternatives, one which is just to make the site it slightly smaller. I know it may

impact the financial aspect of the plan, but because there is that alternative, I would have trouble voting for eliminating the buffer. Again, the other set back I don't personally have a problem with.

Mr. Mattis asked are there other comments?

Mr. Douglas stated I share Dr. Becker's views on this.

Mr. Mattis asked have you been far enough along in the process with the Planning Board yet? Have they come out in favor of any of these three plans?

Mr. Zutt replied no they haven't, because they have only seen the original plan, and the dimensional issues that we have before your Board are pursuant to the staff memorandum to the Planning Board. Although we have received a positive declaration from the Planning Board requiring preparation of a Draft Environmental Impact Statement, and a SCOPE document is under consideration right now. We are at least several months away from reviewing various alternatives, but because a significant variable in this equation is location, size, and set back of the building. It is important that we get a ruling from your Board in this regard. It also turns out that because of the dimensional variances, they are what you call Type II under Sequa, and therefore, this Board can rule in advance of a Draft Environmental Impact Statement.

Mr. Klarl stated this is in its' initial stages of the Planning Board right now, as Mr. Zutt said, and we have a SCOPE document right now that we are working on. The applicant has requested that certain things be carved out of the SCOPE. I think the applicant is on for a special meeting next Tuesday night at the Planning Board on the SCOPE. So we haven't looked at alternatives yet.

Mr. Mattis stated the reason why I asked that is that I don't know whether it makes sense for us to vote on a variance before any of these other proposals are put before the Planning Board.

Mr. Chin stated I would like to say that I agree with Dr. Becker on the buffer zone, but I might give a variance on the buffer, maybe reducing somewhat, but not a lot. So I think that the plans should actually be shown to the Planning Board, and indicated to us so we can at least see it, and say it is good, or it is not good.

Mr. Mattis stated if we don't vote, and give you a variance on any of these, and just hold this over, how does that effect you in terms of what you're doing in the SCOPE document with the Planning Board?

Mr. Zutt replied I don't think it would have a dramatic effect. Honestly, we will try to settle on a site plan that is likely to be approved. I would be lying if I said we can't move forward without a ruling from your Board. It is not the case, but it would be beneficially helpful to us in that process knowing, generally speaking, what we can expect. One of the reasons I had Ralph prepare these alternatives was that I anticipated that the Board would be resistant to complete elimination of a landscape buffer, and it was for that reason that I had him sketch an alternative that would

provide for a reasonable buffer both along Rte. 6, and along Bear Mountain Parkway, keeping in mind the site has a very substantial amount of buffer along the parkway. For that reason we would hope that you would look favorably on what I would consider a substantial reduction in a landscape. This is a unique site. Also, I would ask you to bear in mind that the interpretative issue in which we still have a position was that the Bear Mountain Parkway is not a front yard at all, and I am not sure what the implications are for the landscape buffer part of it. I think that the Interpretation that we advocate is accepted, that would eliminate all together the need for a landscape buffer along the Bear Mountain Parkway. I think landscape buffers are stipulated to be along the street frontage of a parcel. If the Bear Mountain Parkway isn't street frontage, as we maintain it isn't, then there would be no legal requirement for any buffer at all. So we're trying to meet you half way here.

Mr. Klarl stated since the Planning Board meets two times before the next Zoning Board meeting, we have the Special Meeting next Tuesday, and I think you are on the agenda for early March also, why don't we have a referral by Jim to the Planning Board regarding the alternatives. So then we would have some input without giving up your jurisdiction, and let the Planning Board see the alternatives at least twice before our next Zoning Board meeting.

Mr. Reber stated I would like to add something. I don't think it is unreasonable for the Zoning Board, if it has preferences to kind of voice that, because I think this could be a ping pong ball. We saw this once with an application for a funeral home where it went back and forth, and I don't think that was fair to the applicant. I'm appreciative of the fact that the applicant has prepared alternatives. Thank you for doing that. I generally agree with the opinion of my colleagues, however, in keeping with the idea that we want this site to fit in, to look attractive on that basis, personally I would reject the last alternative, the three story building. I don't think that would look good. It would just stand out too much along there. So I would be opposed to that. I don't see any reason why, personally, why Alternative A where he does provide some buffer, and again I kind of agree that the parkway itself offers a buffer. He gives us an additional 8 feet there. To me that area there, and the nature of the commercial zone, to me that's reasonable, and in residential sections answering your comments about buffers being up front, we often do ask for buffers on side yards particularly if we give a variance. They are usually narrow buffers, usually no more than 5 to 8 feet, some shrubbery or something. The other thing I like about the B alternative from an aesthetic point of view is if you look at the dimensions of the two buildings, and you said you are going to increase the back building, and decrease the front to me that's favorable, because from an architectural point of view, if you look at the two buildings one standing up behind the other, the bigger building should be to the back rather than the bigger building sitting right out in front, and it's not a big change here, it's a slight change, but to me I think it fits into the aesthetics of the hillside, and the other buildings around. So to me it's not the ideal set up, however, their alternative gives them the square footage, and it meets some requirements, and I think it's a reasonable compromise, and to me I think that would fit in. I think if the Planning Board can see fit to work with that, I think I would be perfectly willing to approve the variances that are required, which are less than what was in the original plan. So my feeling is, if we can work with the Planning Board to something similar to that, to me that would be the preferred alternative for everybody.

Mr. Mattis stated I agree, and I do not like the three stories either especially the way it sits up. Alternative A eliminates one variance, and minimizes two others, and I think that is a very good approach. I like Alternative A. Are there any other comments?

Mr. Reber asked should we maybe just send a memo to the Planning Board stating what our preference is, and our comments?

Mr. Mattis replied sure, yes I think Mr. Flandreau could draft a memo to the Planning Board telling them that we look favorable on Alternative A although we're not voting yet.

Mr. Douglas stated I am not sure all of do, because I think I feel more strongly about there being a buffer than some people may on the Board. There is still a 17 foot variance with a buffer on Alternative A, and I am not sure that is really necessary. I am a little uncomfortable with Alternative A for that reason.

Mr. Klarl asked so you would like Alternative A with a more substantial buffer?

Mr. Douglas replied I would look more favorably on Alternative A, if there more of a buffer.

Mr. Mattis stated we can incorporate that into our memo.

Mr. Chin stated I also feel that what they put there as a buffer is really important. Some buffers are all year round, and some are not. So that would make a difference to me. If the Planning Board says this is what kind of shrubs, and they have no problem with that, and if I look at it, and agree, then I have no problem with it.

Mr. Reber stated I think we're all saying the same thing. If we list the things we're looking for, we're saying we really don't want to see, and correct me if I'm wrong. We really don't to see three story buildings. They are going to have to split the space so they can meet the variances. They will have more room in the back, so make the back building a little bit larger, cut down in the front, and it allows you to be more conforming with the shape of the property. It minimizes variances, and I think aesthetically that helps, and we would like a buffer, the more, the better, and I think that is the essence of what we're asking for.

Mr. Mattis stated right, and if we can do less than a 17 foot variance then all the better.

Mr. Zutt stated I just want to say something, and it just dawned on me. There is a regular balancing here in regard to site plans, and we have a parking requirement that we have to comply with as well so we may wind up back to you for a parking variance of some kind. I just mentioned that now so it doesn't come as a shock.

Mr. Becker stated just by way of precedence, this property would require a 25 foot buffer, and I think we're all saying we would reduce that, but we generally don't vote for 50 percent. So I think you should try to aim for a 15 foot buffer, and I don't think you will have a problem.

Mr. Mattis asked are there any other comments? Is there anyone in the audience who wants to speak?

Mr. Jerry Petro appeared before the Board. He stated my wife and I are currently residents at Jacob Hill, and we're here with several of the other owners of the condos up there. We've got a couple of concerns. Primarily, what is going to happen to the traffic pattern when they are knocking down trees, and the construction is going on? It is only a one lane road, and we've seen emergency vehicles going up that place all hours of the day and night. Is it going to hinder our access, and entrance into our main street to get up to the condos. There's something like 60 condos, and there is 6 buildings three stories high, it's going to be horrible as far as the traffic pattern is concerned. Has anybody addressed that?

Mr. Chin replied that is really a Planning Board issue right now.

Mr. Petro stated so we're at the wrong place to talk about it.

Mr. Klarl stated you may get some insight here, and it is a good question, but it is really relevant to the site plan review of the Planning Board.

Mr. Mattis stated we do want to hear your comments even if it may not be the right jurisdiction.

Mr. Flandreau stated also if construction does start, if they get approvals for it, if there are any road blockages you would call the Code Enforcement office, which is my office, and we would send someone out there to get that taken care of.

Mr. Petro asked is the entrance to this building going to be off Jacob Hills Rd.?

Mr. Mattis replied yes.

Mr. Petro asked is it going to be right where the.....

Mr. Reber stated it will be directly opposite to the entrances of the existing plaza.

Mr. Petro asked so it is where the house is right now?

Mr. Mattis replied yes.

Mr. Klarl asked do we have a site plan to show the gentleman?

Mr. Petro asked so none of it is going to be facing Jacobs Hill?

Mr. Mattis replied no.

Mr. Petro asked who is going to occupy those buildings?

Mr. Reber replied that is not our concern.

Mr. Petro asked I mean is it going to be commercial, is it going to stores?

Mr. Becker replied it is retail space.

Mr. Klarl stated it is retail and offices.

Mr. Flandreau showed Mr. Petro a copy of the site plan.

Mr. Mattis asked are there any other comments?

Mr. Becker made a motion in Case No. 66-06, and Case No. 03-07 to adjourn the cases to the March meeting, seconded by Mr. Heady with all voting "aye."

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CASE NO. 04-07 ROBERT MCARTHUR for an Area Variance for an accessory structure on the property located at 31 Wheeler Drive, Cortlandt Manor.

Mr. Philip Hersh, Esq. appeared before the Board. He stated I have been asked to represent Robert McArthur with regard to a request for a 6 inch Area Variance along the subject premises known as 31 Wheeler Drive, Cortlandt Manor, NY. I believe you all have the survey.

Mr. Flandreau stated I just want to make a correction it is .7 feet, it is not 6 inches, it is about 7 ½ ,8 inches.

Mr. Hersh stated okay, I apologize. We have the contractor here tonight. It was just a mistake. It was not a purposeful mistake. We had the footings all set, and it was checked out by the Building Inspector, and okayed. It would be a hardship for us to move it at this time, and we would ask for your consideration for a 8 inch variance.

Mr. Douglas asked the contractor is here?

Mr. Hersh replied yes.

Mr. Douglas asked could he just stand up, and tell us on the record that it was a mistake.

Mr. Mario Caruso appeared before the Board. He stated I live in Queens, NY, and I did the work for my friend Bobby, and JoAnn. The day we started the job I had some plans, and the measurement was what was in the plan, but because I am 37 years in this business in Queens, and Long Island, we usually always have 5 feet. So when the inspector came he said fine, and he

came back to look at the footings, and he said it was fine. If I moved it just a little bit more that way, so I did the job the way I thought was right.

Mr. Reber stated yes, if I understand you correctly you say that Code Enforcement did come out, and inspect the footings when the footings were in, and the foundation before the structure went up?

Mr. Caruso replied yes, yes.

Mr. Reber stated I think in that case the Town probably shared responsibility, and certainly the applicant wasn't intentionally putting the full structure up, and saying oops there it is. So as much as it bothers me that these things happen, and they do happen, I do have one question though only because I need clarification, there is an overhang on this garage, I understand that the overhang does not count toward the set back?

Mr. Flandreau replied no there are exceptions in the Code, and overhangs, ewes, those types of items can project 2 feet, 6 inches into the set back.

Mr. Reber stated okay, because this does have an overhang, but with that information it is not a problem. So I would not have a problem with this as much as I hate to see these mistakes. I think it was an honest error, and the Town had a chance to pick up on it, and they didn't pick up on it either. So I think we should probably give the variance.

Mr. Mattis asked are there any other comments? Is there anyone in the audience who wants to speak?

Mr. Reber made a motion in Case No. 04-07 to close the public hearing seconded by Mr. Becker with all voting "aye."

Mr. Reber made a motion in Case No. 04-07 to grant the side yard variance for an existing garage from the allowed 6 feet down to 5 feet, 3 inches. This is a Type II Sequa with no further compliance required seconded by Mr. Becker with all voting "aye."

Mr. Flandreau stated anyone receiving a variance tonight resulting in a Building Permit, the Decision & Order will be ready on Tuesday.

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CASE NO. 05-07 ROBERT L. CERESA for an Area Variance for an accessory structure on the property located at 2 Croton Lake Rd., Croton-on-Hudson, NY.

Mr. Robert L. Ceresa appeared before the Board. He stated I have been a resident of the Town of Cortlandt for over 30 years. I bought the house in 1977 from Baltic Estates. The original

property of the estate consisted of several acres, and the owner at the time, Jonas Bastys sold off 5 homes in a subdivision of the parcels. The entrance of the existing estate was an eyesore to say the least. The front entrance of the existing estate consisted of the walls that were in place by its' previous owner, and these walls were in place, and I can show you if you go to Exhibit B on the information I gave you. You can look at the survey that was done in 1978 by Mr. Slater, and if you look at the entrance you can see the walls outlined there at the front entrance. These walls, as I said, have been there for 40 years now. The house that we bought, and the property around it was in very sad shape. We bought the house as an "as is" structure. There was a great deal of landscaping that had to be done over the years, and my wife, and I have spent several thousands of dollars, and several hours, days, and years improving the area where we live. In 2005 after doing extensive work on the front entrance, for example we put in a cobblestone entrance there, we took out a lot of overgrown trees, and shrubbery, and quite honestly the gates were in bad shape, but they were the original gates that were there 40 years ago. The walls were the original wall that were there 40 years ago. We decided to fix up the front area, which was very costly, and we decided to build an arch over the existing wall. The arch itself was built, of course, and we built it, and this was our fault, we built it not realizing we needed a Building Permit, because we felt that it was built over an existing structure. It was built on top of the walls, and that's why we didn't apply for a Building Permit, and unbenounced to us, we had to have a Building Permit. So over a period of time in talking to the lawyer, the Town Attorney, Mr. Wood, and so forth not only did we get the original survey, but we got an updated survey, and if you look at that appendix A, you will see we got the survey, and sent a letter to the Town saying that yes, the walls didn't move, they've been there for 40 years, and everything is on my property. In fact, the walls are close to like 45 or 48 feet into my yard. We fixed up the walls, the gates, and built the arch over the walls. We had a gentleman by the name of Gary Yates, if you look at Appendix C, Gary Yates came in, looked at it, inspected it, and certified it according to State certification. As you see, if you look at the measurements of the arch, you can see that the inside dimensions of the arch itself, or the entrance is 20 feet. That's almost twice as wide as most gated areas that you see in Westchester County. The gates can swing both front, and back. They can swing out, and they can swing in. For over 40 years we never had a problem with any emergency vehicle, any fire truck, any major structure, and we've had several major trucks come in through there, because of our renovations that we were doing. We had major trucks bringing top soil, bringing stone, and these are major big commercial trucks, and we never had a problem, never will have a problem. We have plenty of room for any. In fact, last year as you know, the Greene property there was a major fire in the area, and what happened was the fire trucks were all parked in front of my arch, because they had to use the water in my pond. They had problem whatsoever getting the water out of my pond to try to fight the fire on the Greene property. So I take offense when people say that this structure is not either big enough, or high enough to take care of a problem of emergency vehicles of any kind. The structure was built with an interior height of 14 feet high. It is 20 feet wide. A sherman tank can go through there with no problem I assure you. Also, I want to say that Robert Captroll, one of neighbors who lives on 6 Croton Lake Rd., and Joe Stracey, who was kind enough to come with me. He lives at 4 Croton Lake Rd., and unfortunately Robert can't make it, because he is away on business. Also, Damian Ganone at 8 Croton Lake Rd., who had a knee operation, and unfortunately can't make it, but Bob Captroll wanted me to read this letter to you, because he feels very strong about this.

Mr. Mattis asked is that the letter that he sent to the Board?

Mr. Ceresa replied yes, you have it. He goes, and says my name is Bob Captroll, and I live at 6 Croton Lake Rd., Croton-on-Hudson, NY. I moved to Croton in 1999. I really like the neighborhood, and thought everything was beautiful except the entrance to Robert Ceresa's house, and that is the subject of my writing. Mr. Ceresa's read, "Robert's driveway entrance kind of looked the entrance to a junk yard. The brick wall was falling down, and the gates falling off. It just looked kind of pathetic. The years went by, and the walls just kind of seemed to be a lost cause, then one morning, and I can't remember when probably in 2005, or 2006, I saw a bunch of activity in the entrance of Mr. Ceresa's house. There were several workers, and a lot of construction materials stacked up on the ground. Over the next month, and half a transformation occurred. They worked, and they worked, and they worked, and the wall eventually began to come to life. In fact, the once eyesore became quite beautiful. Every day I drove by the it made me smile to see what was happening. Then after several weeks I saw that the work that was beginning, the frame of the arch that blends beautifully with the wall. In fact, it was magnificent, more of a piece of art than an arch. I couldn't believe it. The frame went slow, because there was so much detail, but when it was finally finished and the top of ready to go up over the frame you could see the plan developing. Aesthetically it looked so good, and the colors that were selected made it seem like it was just a natural progression of the surrounding environment. The added bonus for me personally, was that it made what was once a complete eyesore to a structure that pulled up all of our homes, which are nearby. Visitors to our house used to ask me if Mr. Ceresa's house was an abandoned piece of property. Now visitors come, and comment how pretty the arch, and the wall are. Since I live just a little up the road I have no doubt that it even raised the value of my property instead of pulling it down." I am not going to read the whole letter, but I'm going to on to say that he gets upset, because he knows that at some time people had to complain, and he is very upset about this that someone would come, and create a case that he feels is just pure jealousy.

Mr. Klarl stated he seems to get very emotional in his letter.

Mr. Ceresa states yes, he becomes very emotional about this, and he says this with a lot of sincerity. He says, "I am not a psychologist, but the only motive I can think of is just pure jealousy. The art is so beautiful, but it's not on their property." Then he goes on to add to say, "I have actually thanked Mr. Ceresa several times for improving the entrance of his home, and our neighborhood. Believe me I miss looking at those falling down walls. Every time I drive home, and that beautiful wall, and arch is there to greet to me I smile. Mr. Ceresa did us all a favor, and this is how we thank him. I have to say in my humble opinion it looks good, and it's a tremendous asset to our neighborhood." I think that is a very powerful letter, and I hope you take note of it. Also, Joe Stracey, my next door neighbor at 4 Croton Lake Rd. also wrote a letter, and voiced his opinion. I am not going to go through in detail but he says the same thing in that "it's a beautification, and an improvement of their property, and neighborhood." It goes on, and on. On September 23rd we put a little informal opinion to our neighbors, and you can see

the signatures there. I'll give you some of the names, Sandra and Paul Cutro at 2214 Quaker Ridge Rd., who is our next door neighbor to our left signed this, and said it's a beautiful structure, Val Pott at 20 Croton Dam Rd., who is across from me, and said it's a beautiful structure, and enhances the property, Robert Coptroll, of course, the Stracey family of course, the Robinson's on Apple Bee Farm Rd., also, Catherine and Damian Ganone at 8 Croton Lake Rd. also said "this structure is not offensive to me, and they like it." So it goes on and on. A great deal of our neighbors feel that what we did was an enhancement not a detraction, and it beautified the area. I will go on to finish, and say that Thomas Wood the attorney wrote me a letter dated March 3, 2006 stating, and I will hand this out to you if you don't have it, but it says, "In lieu of the new survey, the Town would be willing to accept a letter from a licensed land surveyor, who will indicate that the wall as depicted on the survey of 1978 is still accurate, and still in that location. Based on that letter, we would then be able to allow you to apply for a Building Permit, and to apply to the Zoning Board of Appeals, if necessary for a height variance. I trust this is satisfactory to you, and provided you work with the Code Enforcement, this case is currently adjourned from Justice Court. As I advised you, if you make an application for a Building Permit we can further adjourn it until it is complete." So the lawyer is basically saying that if you adhere to the rules, and so forth we shouldn't have any problems.

Mr. Klarl stated well what he is really saying if your structure is on your property, you can make an application, and that is what you are doing.

Mr. Ceresa stated right, and what I'll do is I will hand this letter up to you so you can have a copy of this for the record. Also, I will give you a letter from the court as well signed by Judge McCarthy. He handed the letters to Mr. Mattis. He then stated also I have photographs that my lawyer wanted me leave.

Mr. Mattis stated okay, we can look at them tonight. Some of us have been out there already, but pictures are always helpful.

Mr. Ceresa stated I have photos, and also I assume that all this information I am providing will be part of the public record.

Mr. Mattis stated yes, it certainly will.

Mr. Ceresa I want to go on, and I know there are people who are apparently opposed to this structure, and I want to mention a couple of names. One is Donna Marter okay, who lives across from me, that is the red house. I don't know if you went to see the actual structure, but that is the red house that's there. The woman is not a full time resident of the house.

Mr. Mattis stated if she is here, she can explain that for herself.

Mr. Ceresa stated okay.

Mr. Mattis stated we don't want to get into personalities okay.

Mr. Ceresa stated okay, well the important thing is that the only person that I think that could complain about this is where the arch is facing her property, and I would say that okay she could have a gripe that is all I am saying. The question is that she is not a full time resident. She comes in once a week, and she has a business. She does psychiatric work, and then she leaves, and she lives somewhere else. So you have all the information. It is all public record. I have one more letter that I sent to the court, and I want to hand it out so that it will be part of the public record also. He handed the letter to the Board.

Mr. Mattis stated so these letters are basically a record of what you have been doing trying to comply. It is the history of building up to you getting here.

Mr. Ceresa replied right. I have one other quick question to ask. I would like to poll the Board, and I know Mr. Flandreau, and I know Mr. Chin went out to see the property. Did Mr. Heady go out to see the property?

Mr. Heady replied no, I didn't.

Mr. Ceresa replied okay, you did not. Did Mr. Klarl go out to see the property?

Mr. Mattis replied he is not a member of the Board, and neither is Mr. Flandreau.

Mr. Ceresa asked Mr. Douglas have you been there?

Mr. Douglas replied I am familiar with the property.

Mr. Ceresa asked have you seen it?

Mr. Douglas replied I am familiar with the property.

Mr. Ceresa asked did you drive by, or did you walk out?

Mr. Douglas asked why are you quizzing me?

Mr. Ceresa replied because I have to ask you these questions. I'm sorry but I just want to know.

Mr. Douglas stated you don't, you don't.

Mr. Ceresa stated well I do. Did you go out, and did walk it?

Mr. Douglas replied I've seen the arch.

Mr. Ceresa asked did you drive by, or did you walk the property?

Mr. Douglas replied I am not under cross examination sir.

Mr. Ceresa stated okay. Mr. Becker did you see the property?

Mr. Becker replied yes, I drove there. I walked it. I have looked at it, and inspected it. I looked at your plans, and the other information submitted.

Mr. Ceresa asked Mr. Reber?

Mr. Reber replied likewise. I was there. I checked the plans. I looked at the structure.

Mr. Ceresa stated okay, thank you. I will leave you with these photographs. Thank you.

Mr. Klarl asked Mr. Ceresa the photographs you just handed in who took them, and when were they taken?

Mr. Ceresa replied I took them today.

Mr. Mattis stated Mr. Chin this is your case.

Mr. Chin stated I was out there about a week or so ago, and I met with Mr. and Mrs. Ceresa, and looked at the arch, and I would say yes it is large. It is pretty big. I personally didn't have a problem with the size of the arch. I have a problem with the color maybe, because it is a very outstanding color. I had indicated that to Mr. Ceresa, but again I am only one vote, and there are six other votes on this Board, and everybody has their own opinion, as I had indicated. Now again, I thought it was large, but it didn't overwhelm me that badly, because being in the field of architecture I thought it was impressive. I really didn't have a problem with it.

Mr. Ceresa stated we have no problem, and in fact I have had conversations with several people, and they mentioned the color, and we would be more than happy to paint it.

Mr. Chin stated okay Mr. Ceresa it is our turn to speak. We have other Board members who may want to make some comments.

Mr. Mattis asked are there any other comments from the Board?

Mr. Becker replied I have some questions for you. I understand you built this on top of the existing wall, but nowhere along the lines of all the planning, and drawings, and architecture did any of your expert consultants, architects, engineers, builders, ever bring up the idea that you needed a Building Permit for this?

Mr. Ceresa replied no.

Mr. Becker stated and none of them ever mentioned to you height variances?

Mr. Ceresa replied unfortunately they did not.

Mr. Becker stated because I can tell you that as long as I have been sitting on this Board, I personally looked at it, and it didn't bother me, and if none of the neighbors complained they probably wouldn't be making a big deal out of it, but as long as I am sitting on this Board I cannot remember ever, once that we granted a height variance. In fact, there are several applicants who came here that completely redesigned garages, and sheds because of height requirements. So that is a big issue, and I am kind of thunderstruck that it took you to be cited in court, and had that type of issue in front of you to even to get here. So every person that builds something in this Town needs a Building Permit. It needs to go through the application process. If you look on the agenda tonight, everyone is coming here for help in designing a project to get some guidance. Many spend months, even years getting through the process. The fact that you show up here with a structure that is already in existence that exceeds the height is a real problem for me.

Mr. Ceresa stated well the reason why we did that was primarily to make sure that emergency vehicles could get through. We wanted to make sure, and I'll say this because I want to stress it, I just want to mention that we had never had a problem with the health, welfare, or safety of the community with the structure that I have.

Mr. Becker stated there is no question that you would need a certain height to allow vehicles through there. The question is that were there alternatives, and those could not be explored now that it is already built, and the other issue is this a self created hardship? It is, because you built it without seeking advice from the Town. So that is another issue, when granting a variance for a structure. Most importantly, I want to hear from the other neighbors. I want to hear what their issues are.

Mr. Mattis asked are there other comments from the Board?

Mr. Heady replied I actually didn't get out there to look, but I've seen your pictures, and read the literature, and it is a pretty big arch in looking at it. It looks almost like you are going into a zoo, and the colors are very bright. The structure is very good, but that's not the point. The point is like you said, you agreed you did it without a Building Permit, and that bothers me more than anything else. It is too high, and from my standing it is a self created hardship. If you'd gone to Code Enforcement they would have explained to you how high you could have gone with it, and you would have been able to prevent this. So I feel that we could, and we should make you take it down. Also, we got some information from Croton Hook and Ladder, and the truck is 12 foot high. Now that truck if he goes through there, he has to be exactly in the center of that arch according to the dimensions on this. If he is off one way on the side of it, he is going to hit. So he would have to be really lined up to get through there.

Mr Ceresa stated well let me say this. We had several trucks go through there that were bigger than 12 feet.

Mr. Heady stated I am talking about emergency trucks.

Mr. Ceresa stated okay, if you look at the arch it is 20 feet wide. The entrance is 20 feet wide, which is a lot wider than probably any of the gated structures that I've seen around. Okay, so it is 14 feet, if the guy goes through there, he has to be a pretty bad driver to knock down a wall. The thing is 20 feet wide.

Mr. Heady stated I understand that, but where it goes in in the center, he can't be on the side of that arch at all, and if you are in a hurry to get to a fire.

Mr. Ceresa stated let me say this, we had fire trucks there last year, and they had no problems.

Mr. Mattis stated you mentioned that, but you said they were parked in front of your place. Did they go through the arch.

Mr. Ceresa stated yes, they had to go through the arch to get the water out.

Mr. Mattis stated okay, I was under the impression that they parked outside of it.

Mr. Ceresa stated well they all parked on my lawn, and everything else, but the fire truck had to go in, and get the water from the pond.

Mr. Reber stated I would like to redirect this discussion. We are the Zoning Board of Appeals, our job is to hold people to the zoning requirements in this town, and give variances only under the need, or special circumstances, and we have criteria that we have to meet, which includes things like it doesn't deteriorate the neighborhood, it is not a self created problem, etc. There is an issue here. This is a structure. This Town, and many other towns in Westchester have been fighting the issue of structures in front lawns of a property. He builds an arch. Somebody could come in, and build an Aztec pyramid in their front lawn, 7 feet tall, a pile of stone, and say that is not a structure, it's a pile of stone. Well there is another town that has gone through this, and their Zoning Board ruled against it. We have an ordinance that says no structures in the front yard unless it is a very unique, special circumstance, and it doesn't interfere with the appearance of the property. People have come to us for sheds if there sheds can't be put in the backyard, and they can put it off to the side, and mask it so it is not really seen, we give variances. We are also told that even if the structure is in the backyard, it can't be higher than 14 feet. Here we have a situation where this thing is 20 feet high, built without a Building Permit, and it is right out in front, right on the road for everybody to see. If we grant this, we're basically saying anybody can build any kind of structure, gizmo, architectural feature, or whatever on their front lawn, and we set a precedent, and say well as long as it is aesthetically pretty. I have no problem with it. I think it's attractive, but you know what, that's not what we rule on. I have had many people that have come to us with garages that aesthetically would look proper if it was designed with a bigger peak, and slope to match the house, and we've rejected it even though we know it looks better, because the Code says no, and we cannot set a precedent. If we approve this, we set an unbelievable precedent, and we're saying you put the wildest structure you want on your front lawn right there on the road for everybody to see, and I don't think this town wants that. That is why the Code is written the way it is. So to me there is no way we can approve this arch. The

wall is fine, take the arch down.

Mr. Ceresa stated first of all it is 19 feet, not 20 feet.

Mr. Reber stated make it 18 feet, make it 16 feet. It is more than 14 feet, and it's a structure. If it was 12 feet, it is still an illegal structure. It's structure in the front yard.

Mr. Ceresa stated it is also 47 feet in from the property line.

Mr. Reber stated it is in your front yard. You've said yourself people see it. You've asked if we've seen it. Everybody sees it. It's a monument to your yard. You can't miss it, when you drive by.

Mr. Mattis stated okay are there any other Board members?

Mr. Douglas stated I just want to point out that under the law there are various factors that we have to consider in order to give you a variance, and I personally don't think that you meet any of the factors. One of the first factors is whether there is an undesirable change in the character of the neighborhood, aesthetics is not an issue for the Board, but I do believe that there is an undesirable change in the look of your entire neighborhood. There is nothing remotely like this structure anywhere in the neighborhood. Could you have achieved what you were trying to do with another alternative? Clearly there are other alternatives. You do not need to build a 19 foot arch to get into the front of your house. Is the variance substantial? The Code requires it not to be higher than 14 feet, and putting aside whether this is a structure in the front yard or not, you've built something that is 19 feet, which is a substantial variance. Will it have an adverse impact on the conditions in the neighborhood? I am concerned about the safety issue. My understanding is that the ladder truck from Croton is 13 feet, 4 inches high. That does not give the driver all that much leeway in getting in there, and if he doesn't go right through the middle he is going to crash right into the arch. The final factor is if it is self created, and I don't think there is any doubt that this was entirely self created. So under the law I don't think that we could possibly grant you the variance you are asking for.

Mr. Mattis stated I would like to take it a step further. The dimensions of this are quite large. If we grant this variance, we set a precedent, we've allowed a 19 foot arch, and then all of a sudden somebody else comes in, next month, or next year, and they want a 19 foot arch, we can't turn them down. They can file an Article 78, and go to State Supreme Court, and they're upheld.

Mr. Ceresa stated there is an arch down the road from me.

Mr. Mattis stated well we're dealing with you. We don't know about that, because it's never come before the Zoning Board. If there is one, and it's more than 14 feet, turn them in, and they'll be here before us.

Mr. Ceresa stated I am not going to turn them in.

Mr. Mattis stated the point is we're here because you have a violation. We're not the police, we don't go look for violations.

Mr. Ceresa stated there are arches all over the place.

Mr. Mattis stated well they're probably all illegal then, but that's not relevant to this. What is relevant is your arch, and the fact that it would allow every other arch in this town, or anybody to put one up, because there's no unique circumstance why you have this, if we could use to differentiate that from anybody else who wants one, other than the fact that you want it. It serves no purpose other than the fact that you want it.

Mr. Ceresa stated well I built it to beautify the area. That is the reason why I did it. I tried to do something that I thought would be a beautiful piece.

Mr. Reber stated we accept that, and we're not arguing that point. I myself said that it has some aesthetic value. The problem is we've been told by the Town, the way the code is written they don't want things in the front yard. They don't want structures of any type. They really don't want it that way. They want the fronts open. There has been arguments about play gyms. There has been arguments about all sorts of things, not specifically arches, structures. This is a structure. This is not a wall. It is not your driveway. It is a structure. I think that sets a precedent that really makes it difficult for us, because somebody else, your neighbor could decide to put something up that is some weird representation of the Eifel Tower, and paint it purple or something, and now what we're going to argue over colors. That is not our jurisdiction. We can't get involved in it aesthetically.

Mr. Ceresa stated there is nothing in the ordinance about arches.

Mr. Mattis stated it is covered under structures, and if it's not a structure, then it's a fence, and if it's a fence you're only allowed 6 feet.

Mr. Ceresa stated well it's not a fence.

Mr. Mattis stated so then it's a structure.

Mr. Flandreau stated I just want to clarify one of the items, and that would be fire apparatus. It was Mohegan Lake that I called, and they're ladder truck was 12 feet high, 8 feet wide, and 20 feet long. The 13' 4" dimension that is on the sheet that I handed out to the Board is the width of the stakes between the arch. So at 12 feet, you would actually have 13' 4" clearance to get through that.

Mr. Mattis stated so that would 12 feet or higher.

Mr. Douglas stated I believe it's the Croton Fire Department.

Mr. Flandreau stated I got in touch with Mohegan Lake.

Mr. Mattis asked is there anyone in the audience that would like to speak? Come up, and give us your name and address, and we'd like to hear your comments.

Ms. Nancy Scheer appeared before the Board. I will be brief, and I promise you I am not motivated by jealousy. I live at 1 Croton Lake Rd. opposite the property in question. Croton Lake Road is a quite, and narrow, wooded country road with 8 homes, and no large artificial structures of any kind. Some time ago when we were away on vacation, we returned home to find a massive, monumental, two story arch literally looming over Croton Lake Rd., and that arch is also set at an angle, which causes even greater visual impact. Before this construction there was a need to repair, and refurbish what was an eyesore. I have people who come to visit my home, and the comments are always similar, "What is that over there? Is that a park? Is that legal?" These are some of the comments that I hear. We just feel the structure is way too excessive, and the colors are too overwhelming for the natural look of the area. It has become a landmark in the area.

Mr. Jim Carse appeared before the Board. He stated I live at 2224 Quaker Ridge Rd. I am Donna Marter's husband. Donna, and her late husband bought the property probably about 40 years ago, between 35, and 40 years ago. The house is pre-revolutionary. It is likely nearly as old as Cortlandt Manor. It is certainly one of the oldest homes in the area now, and it is quite extraordinary inside, and it's history is very rich. It's a fascinating landmark, and it exists in one of the most beautiful areas in Westchester. That whole region is forested with lots of ponds, and brooks and so on. It is really very lovely. The house aesthetically belongs in that settings, and also historically belongs in that kind of setting. Now the arch I would say is extremely well constructed. I watched some of the building when it was going on, and the people who were doing it seemed to know what they doing, and worked hard at it. I also want to say that it is quite amusing, this structure. The problem is it is out of place. It doesn't belong there. It would be perfectly fitting in a mall. It is kind of Taco Bell architecture. Is the issue jealousy? Let me see if I can give you a sense of what it's like to walk out of the front door of our house, and look, in fact you don't look anywhere else, your attention is immediately grabbed by this structure, and all the rest of the natural setting is somehow blanked out by this. The issue for us is strictly aesthetic, but it's a very large aesthetic issue. It is not congruent, and it is not consistent with the area whatsoever. I go by train to Croton from New York, and I'm in the habit of telling the taxi cab driver it used to be the red farm house, and now it's the orange arch. So the issue for us is one of beauty, but it's a large issue. Thank you.

Ms. Carolyn Brody appeared before the Board. She stated I live at 2 Croton Lake Rd. I just want to read letters from two of my neighbors, who were unable to be here tonight. She read, "Dear Board Members, We live at 10 Croton Lake Rd., Croton-on-Hudson, NY. In order to reach our home we must pass Mr. and Mrs. Ceresa's arch as does our guests. Most of them comment such as saying, "What is that thing. It certainly doesn't fit your neighborhood." To us this arch is out of place, and does not fit in with the neighborhood." That is from David and Lisa Hutter. The next letter is from Harvey and Ardith Hutter. She read, "We have lived on Croton

Lake Rd. for over 34 years, and have known the Ceresa family to be nice neighbors. With amazement we have watched the construction of the arch on Croton Lake Rd. We have admired the craftsmanship of the workers until it slowly started to dominate, and overtake the rest of country corner, then came the paint, a two tone peach, and orange pertinent to Arizona, or South America, but unfortunately it was far too much for the neighborhood. We totally respect the rights of our neighbors to do what they like, but this is a little much.”

Mr. Mattis asked what is your address please?

Ms. Brody replied mine is 3 Croton Lake Rd., and I feel the same way.

Mr. Mattis asked is there anyone else that would like to speak?

Mr. Evan Brody appeared before the Board. He stated I live at 3 Croton Lake Rd., and I just want to say that we moved into the neighborhood about 8 years ago, and it took us a long time to find a house that was in a quite, country road, and every day we drive home, we liked the fact that there is just trees, and woods as you go through, and now the orange arch has basically changed the character our neighborhood. It is all you see when you drive to our house. Thank you.

Mr. Mattis asked is there anyone else?

Mr. Norman Scheer. He stated I live at 1 Croton Lake Rd., and I am here tonight not to represent anyone, as I usually do, but I am here representing myself, and my wife, who spoke. First, like my wife, I would like to say that I have never in 38 years of owning a home in Croton opposed any application of anyone, but I feel that this application does require by addressing the Board. You’ve heard the neighbors talk about the oversized arch, the color, and so on, and I feel the same way, but I would like to address some more specific items. First of all, I’d like to submit some colored pictures of the arch. He stated referring to the pictures, this is the arch right on the corner of Croton Lake Rd., and Croton Dam Rd. This is the archer looking at the intersection. The red house here is the Marter house. This is the arch, and if you look way in the back you see the Ceresa house. The Ceresa house is way in the back. The arch is practically in the Marter’s front yard. This is the photograph of what I see, when I come down my driveway. I would like the Board to make these photographs part of the record. As Mr. Ceresa mentioned, there is another arch in the neighborhood, and it’s true there is. It is on Quaker Ridge Rd., and it is part of the Summer’s house, and there is an arch. The arch is part of a structure that includes a gate fence. The Summer’s house was built in 1927. It existed prior to zoning, and is legally nonconforming. I would like you to take a look at these photographs looking from Quaker Ridge Rd., and you will see that this arch can hardly be seen. He handed the pictures to the Board. Of course these are winter time not summer time photographs. Mr. Ceresa has also mentioned that he has a petition submitted to the Board. I’ve seen the petition. There are 14 signatures. I think this Board should know that out of those 14 signatures, 5 are in one family, 5 live on Quaker Ridge Rd., or Apple Bee Farm, and these are people who never, or rarely drive by the arch especially since the dam is closed. The most amusing part is that one of the signatures is a 13

year old girl. A lovely girl. She is a babysitter for the Brody's, but I just thought that you should know. There is one aspect of this application, which I think is fatal. As the Board knows, the Town of Cortlandt has very detailed list of permitted uses, and as the Board knows I'm sure if it's not permitted, it's prohibited, and when it comes to accessory uses. The uses that are permitted as an accessory in the R-80 district are things like playground equipment, private garage, barn, and stables, swimming pools, and so on. What isn't listed on the list is an arch. It's not a permitted use. If it's not permitted, it's prohibited. There are some other problems with the application. As Mr. Douglas mentioned, the variance is substantial, 14 feet, 19 feet, 36 percent. That is a 36 percent variance. If we say arches are not permitted, and we say that it is a fence, well 6 feet to 19 feet, it would be over 300 percent. So no matter how you look at this, it is a substantial variance. As far as the height of the fire trucks, I spoke with Bill Glad. Bill Glad was the Croton District Fire Chief from 2004 to 2006. He told me that Croton's new fire truck is 12 feet, 6 inches high. As the Board noted particularly Mr. Heady, maybe and you can't tell from the drawings, because there had been no architect's drawings submitted, when we photographed, but they might make it through with the ladder truck, if they went directly dead center, maybe, but if there was anything blocking it on one side, or the other, the ladder truck isn't going to get through there. So given all these facts, we really hope that this application is denied, and that the arch will be taken down. Thank you.

Mr. Mattis asked is there anyone else that would like to speak?

Mr. Joe Stracey appeared before the Board. He stated I live at 4 Croton Lake Rd., which is right next door to Mr. Ceresa. I think the biggest mistake that Mr. Ceresa made was not to get a permit. As far as colors, and what have you it seems to me that some neighbors want to dictate the way you live, and this is not the American way, I'm sorry. I've lived outside of this country where too many people didn't have a chance to express themselves, and do their own thing. So all of sudden we have a group of individuals, who take it upon themselves without consulting the whole neighborhood....

Mr. Mattis asked can you speak to the issue of the variance, please? We don't want to get into personalities. We have to people who are for this, and against this. The issue is that it is 19 feet high. The issue is not whether people like it, or not. We are the ones who will be making the decision.

Mr. Stracey stated I think you have already made a decision as to how this is going to go, but it seems to me most unfortunate that this situation has been blown up to the point that it has been blown up. I understand the violation, but there could be a remedy to the violation without forcing this individual to knock down the structure, and incur some substantial financial losses.

Mr. Mattis stated let me address that point. The remedy would be to approve this, or to deny it. If we deny it, he takes it down. One of the things that we're charged with is, is it a self created hardship? It became self created when he took on the expense to build it without a Building Permit. Whether he did that with knowledge, or by mistake is irrelevant, and if we allowed people who said oh, I did this, I made a mistake, and it's going to cost me money to take it down

we'd have chaos in this Town, and everything would be going up all over. That's why they have that as one of the criteria.

Mr. Stracey stated this neighborhood tends to lack a humanity factor. We tend to be at each other's throat. The only people that seem to get along in that neighborhood is the dogs. It is most unfortunate, and this to me is an act that is very unneighborly, and creates a lot of dissension, which we're going to live with in the years to come. It is most unfortunate, okay, Mr. Ceresa made a mistake. He should have gotten a permit. I fully understand that, but again, for all the reasons that he gave, and it is a sad commentary about what is happening, and I'm really, really sorry to see this kind of friction in the relationship of the neighbors.

Mr. Mattis stated well you're obviously in favor us granting the variance then, and some of the neighbors are not, but that's the American way. We're listening to both sides. We're not condemning anybody, and we're not judging him.

Mr. Stracey stated all I see here is a few people without consulting the neighborhood as a whole, who have taken it upon themselves to make decision, and trying to force people to do something that they don't agree.

Mr. Mattis stated we are listening to both sides, and we will make the decision. They're not making the decision.

Mr. Stracey stated well I hope you make the right decision, and a fair decision.

Mr. Becker stated sir, I just want to respond to what you said, you raised a good issue. I think you appreciate America, and what it has to offer, and I think we all do too. This is however, a country of law, and just to follow up on that everyone has the right to build a home, and to live in this community, if they can afford to, and to build a structure that they like as long as it's done within the law such as obtaining Building Permits, and also certain restrictions. You can't build to a property line. You can't build too excessive of a height. You can't build too close to a road. You have to build it safely. There are structural, engineering, and lots of rules you must apply including not to interfere with other people's rights, which is just as important as that of the applicant is the rights of the neighbors to live in a community that their proud of, and what they put all of their time, and effort, and money into. So here there are several issues. One, is that there was no permit, and we try to help people out, because we as a Board all live in this Town, and we like to help our neighbors, but there is also more than just a lack of the right paperwork. There is a violation of a law, and that is something that the people who formerly wrote the code, and our code by the way is not unique to the Town of Cortlandt, it's unique to the entire State of New York. It is applicable to the State of New York. There are certain height requirements, and set backs, and this is excessive by those rules, and you must have a compelling reason. People come here because in a sense this is an appellate court to appeal to allow us to give them a little latitude, but unfortunately we have to meet certain criteria as Mr. Douglas, and others referred to including alternatives, again is it self created, and in all these cases it fails that test. I think that there are things that can be built there that are architecturally beautiful. I think there are things

that can be placed there that will enhance the community. I think there are things that can be built there that will have the support of the community.

Mr. Stracey stated whatever you do you need the consensus from the neighbors, is that what it is?

Mr. Becker replied no as long as it is compliant with the code, and it doesn't require a variance, then you don't even come here.

Mr. Stracey stated my wife got a call from a Mrs. Zelman, who happens to be a very prominent, local artist. She thought that this was residence, and she called Carol, my wife to compliment her on that structure. So my wife immediately mentioned to her that this was not our home, it was our neighbor's home.

Mr. Becker stated again, liking something, and not liking something is a matter of aesthetics.

Mr. Stracey stated what you've got here is a group of people who decide that they don't like it so therefore,.....

Mr. Becker stated what I am trying to say is that this Board is not going to decide on the basis of aesthetics that is not part of the code. We'll decide on the dimensional issues, and other legal issues that apply to the case that I think we have all addressed, and spoken to.

Mr. Douglas stated this decision is not going to be based on whether we personally like it, or don't like it. Some of us may like it, and some of us may not, but that's not a factor in our decision.

Mr. Stracey stated well thank you very much.

Mr. Mattis asked is there anyone else who would like to speak?

Mr. Consier appeared before the Board. He stated I live at 519 Yorktown Rd. I'm not here for this particular case. I've never seen this arch, and I know some of the building codes, and I agree with the Board that you have to have a permit to put anything together in the Town of Cortlandt so by putting up a structure, and trying to get the Board to rubber stamp an item in place is wrong, and I've seen this happen more than once. I agree with the Board, and you can't allow that to happen, but I've never seen that arch.

Mr. Mattis asked is there anyone else?

Mr. Ceresa stated as you know we put this thing up to have some aesthetic beauty. I had a meeting with Mr. and Mrs. Scheer, who spoke here tonight. They came over to my house, and we talked about this, and they said at the time that if we painted it a different color it would be acceptable, and we told them we would be more than happy to paint it any color they would like,

and they left kind of like saying that would work for us. Now I am shocked that they come up here, and give us all these different things. Now these people don't live across me from per say, you have to drive down the road to see these people. The only people that really live across from me is Donna Marter.

Mr. Mattis stated these people do pass by there.

Mr. Ceresa stated let me tell you a lot of people drive by, and a lot of people compliment on the aesthetic beauty, and you saw several names on those papers that liked what they saw. I'd like to say again, Donna Marter's property is across from me. They don't live there anymore. It is a business. I rest my case. Thank you.

Mr. Mattis stated she may move in there tomorrow, or sell it, and somebody else could be there tomorrow. So that's really not relevant. What is relevant is the height, not the aesthetics. It is the massiveness of it, and the height. Mr. Scheer did you want to say something else?

Mr. Scheer replied yes. I just what to explain to the Board what my wife, and I had said to the Ceresa's. What we said was we'd think about it, and as I thought about it I realized that we might agree on the color, but I don't think the Town wants to get involved in forcing a change of color, and that's why we didn't get back to the Ceresa's, and I would point out that they didn't get back to us either to discuss whether painting the arch would be acceptable, and we thought about it, and we decided it would not be acceptable.

Mr. Mattis stated can I ask you a question? You're a lawyer, and you were the former chairman of the Planning Board in Croton, were you aware that this was being built without a permit, was that ever part of the discussion?

Mr. Scheer replied as it was going up I had no idea what it was going to be when it started, and then we went vacationing in the Adironecks, and when we came back, and it was done, and at that point I did inquire as to whether a permit was obtained, but it was done, but it wasn't painted at that point though.

Mr. Mattis asked are there any other comments from the Board?

Mr. Reber stated I have a problem, and I think this case is improperly set up, because I think there are two violations. There is a height violation, but I want to get back to the point that it is a structure, and there is a violation of putting a structure in the front yard. If you look at our code it says, "A structure a combination of materials to form a construction to use occupancy, or ornamentation, whether installed on, above, or below the surface of land, or water including, but not limited to the following a building, a bin, a bridge, a deck, a fence, a framework, a platform, a pier, a reviewing stand, a shed, a shelter, a sign above and below the ground pool, a tank, a tent, a tennis court, a tower, a wall, a wharf." In other words, that is a structure, and our code specifically says that no structure should be placed in front of the primary residence. It is just not allowed. So by definition this is a structure, it is front of the house, it is in the front yard

right off the road. It is an illegal structure. It's not a wall. The wall itself is legal, but not the structure. As somebody said before, a wall, and fences are limited to 6 feet in the front yard so anything over 6 feet is a violation. It is a structure, it is illegal, and therefore it has to come down.

Mr. Mattis asked are there any other comments?

Mr. Chin stated I would like to say to Mr. Ceresa if he would want us to adjourn this case, or would he like to have us vote?

Mr. Ceresa stated I don't know what that entails.

Mr. Chin stated well you can adjourn, and think about what you want to do with this arch.

Mr. Ceresa stated well I have no option. It either comes down, or I appeal it.

Mr. Chin stated again, I had no problem with it.

Mr. Chin made a motion to close the public hearing in Case No. 05-07 seconded by Mr. Douglas with all voting "aye."

Mr. Chin made a motion in CaseNo. 05-07 to grant the variance for the height of the accessory structure arch from 14 feet to 19 feet, and an Area Variance to allow an accessory structure in the front yard of the property. This is a Type II Sequa with no further compliance required, seconded by Mr. Douglas. The Board was polled as follows:

Raymond A. Reber	No
Richard Becker	No
David Douglas	No
John Mattis	No
Wai Man Chin	Yes
Charles P. Heady, Jr.	No.

The motion was denied 5-1.

Mr. Ceresa stated I will be appealing this.

Mr. Mattis stated that is your right.

Mr. Klarl stated just to make it clear. There was a motion made by Mr. Chin to grant the variance, and it wasn't granted. So there should be another motion to deny the request.

Mr. Douglas made a motion in Case No. 05-07 to deny the request for the Area Variance seconded by Mr. Reber . The Board was polled as follows:

Raymond A. Reber		Yes
Richard Becker		Yes
David Douglas		Yes
John Mattis		Yes
Wai Man Chin	No	
Charles P. Heady, Jr.		Yes.

The motion was carried 5-1 vote.

* * *

CASE NO. 06-07 PATRICK & HILDA SCELZA Interpretation on the merger of two parcels or Area Variance to subdivide the two parcels on the property located at 2010 Crompond Rd., Cortlandt Manor.

Mr. William Zutt, Esq. appeared before the Board. He stated I am here representing Mr. and Mrs. Scelza on this application. I hope you all had a chance to look at the application summary. I pretty much laid out the reason for the application. In brief, Mr. and Mrs. Scelza acquired these lots one of which fronts on Crompond Rd., and the other on Taylor Avenue. They share a common 50 foot boundary. It is really an L shaped configuration. For convenience sake, and to have an easier time with the taxes, at some in time Mr. Scelza asked the assessor, as I understand it to make one tax lot. I haven't seen it in writing, but I did hear something to that effect. So he took the two parcels, and made one tax lot out of it. He's as a point now where he would like to build on the parcel, but cannot do say, because he has been told that the two lots have merged. Citing two sections of your ordinance dealing with the topic of merger, one is a definition section, and speaks to the grand fathering of nonconforming lots except when they are contiguous to one another. In my reading of the first of those two sections I think that the code doesn't have a copy of the provision to carry out the definition. I could find nothing in the narrow portion of the Zoning Code that said what the consequence is, or what it really means, or in what context it is employed. Oddly enough, if it had the effect of merging into one single lot a series of lots that had been lawfully subdivided into compliant lots. So it's a very odd section, and I don't know if this has ever been applied as written. The second potentially relevant section of the code is a section that deals with existing nonconforming lots, and that section requires in substance that where there are adjacent nonconforming parcels in the same ownership that they are deemed to be merged, and form a single parcel. However, that occurs only when the merger will result in a lot who's width is code compliant, but merger is not required where the required lot width isn't met. So we have that situation here essentially. We have an L shaped configuration of two filed map lots, and their merger will not in any way reduce the width of either of them. So I don't believe that as the code is written that merger has occurred to it. To the extent, if you should find otherwise I would ask that you consider granting dimensional variances to allow a re-subdivision of these two lots. I believe Mr. Flandreau has given you a fact sheet, which gives you the breakdown in terms of what's required, what's divided, and the dimensional variances that would be needed to facilitate the subdivision. As I said the zoning is

R-10, which requires 10,000 square feet parcel areas, 75 foot width. If the parcels are redivided along the common boundary the parcel on the Crompond Rd. side, which is lot 25, and we have roughly 7500 square feet, and a 50 foot width, and the currently vacant parcel, which is somewhat overgrown, weeded, and somewhat unkempt is just about 6200 square feet also with a lot width of 50 feet. So we'd be requesting dimensional variances as set forth in Mr. Flandreau's memo, and also my application summary. I twice viewed the area, and the immediate surrounding properties appear to be nonconforming. In fact on the corner parcel there is a deli, and it looks to be almost completely developed, the parcel itself. So we believe that the granting of these variances would not be out of character, or have a negative environmental impact. We ask that you consider this application.

Mr. Douglas stated I want to make sure I understand this. If the lots were not merged, do you need a variance?

Mr. Zutt replied no. I am sorry I didn't make that clear. The lot that fronts on Crompond Rd. already has an existing structure on it, and if that line is recreated we would not be creating any nonconformity there, and the plot plan for the currently vacant lot shows a house that would need front, rear, and side yard set backs.

Mr. Douglas stated so if we hold that it's lot merged that would be as far as this Board goes, and if it is merged then you will need the variance. Would you need to go before the Planning Board then from here?

Mr. Zutt replied if you declare that it has not merged, then we would not have to go to the Planning Board.

Mr. Douglas stated it seems that it is a strictly legal issue as far as the merger, and I would personally suggest that we keep it open, and discuss this at our next Work Session.

Mr. Zutt stated I am really glad you mentioned that, because I took the time to do a bit a legal research. I have a few cases dealing with this odd lot configuration situation, and in each of them the court basically said there shouldn't be a merger here, because it basically makes no sense.

Mr. Mattis stated I want to read into the record a letter from Ellen Doherty from 5 Taylor Avenue. He read, "I am writing you because I am unable to attend tonight's meeting. Thank you for the opportunity to let you know my thoughts. I live at 5 Taylor Ave., and share a property line with the land in question. Facing the property from Taylor Ave. my house is the white one on the left. I object to any variance, or interpretation that allows construction of a building, or dwelling on the site. As I am sure you have seen, the lot is narrow, and shallow. Any building on the site would have to be close to my property line necessarily interfering with our privacy, and use of our property. The lot would also be quite a bit smaller than other parcels on the road. Had this property been zoned for building when I purchased by home in the Fall of November 2003, I would accept the inevitable, but it wasn't. I checked before I purchased my

home. I believe building on this small parcel will adversely effect my family's ability to enjoy our property as well the value of my home, and land. I implore you to deny any requests that allows construction on this land." So that is in the record, but as Mr. Douglas mentioned it is really an interpretative issue of the law.

Mr. Zutt stated I also want to point out that the side yard set back in an R-10 is I believe 10 feet, and our plot plan shows 11 feet so we meet the required set back.

Mr. Mattis asked are there any other Board members who want to comment? Is there anyone in the audience who would like to speak?

Mr. Pat Thompson appeared before the Board. He stated for my lifetime I have resided at 8 Taylor Avenue directly across from the vacant lot in question. I am just questioning the lot size. I am not aware of any site plan in question, but the lot that faces Taylor Ave. is 50 feet wide, and how far back does that go?

Mr. Flandreau replied 147 feet.

Mr. Thompson stated it is somewhat of a narrow lot, but from what you are saying that is within the side yard set back, it's within code to fit a single family home in that lot? So the question for the Board is whether or not this is a legal merger of the two lots to begin with?

Mr. Mattis replied right.

Mr. Thompson asked so if it wasn't then?

Mr. Mattis replied then they can go ahead and build, however, if they don't meet those set backs, they would have to come back to us for a variance, but we don't know that at this point. They may be able to meet them.

Mr. Reber stated they're showing on the plot plan that they can meet the set backs by placing the house that would be 20 feet wide, but 53 feet deep. So contrary to the normal where a house fits in the width here they would turn it so they could squeeze it into the narrow lot, and have the set backs that are required.

Mr. Thompson stated okay. I just wasn't quite sure how that would fit.

Mr. Mattis stated sure that was a good question. Thank you. Is there anyone else who wants to speak?

Mr. Scelza stated when I purchased that home the separate lot already came with a separate deed, and I was told by the bank that it was a buildable lot. What happened was, which was stupidity on my end, is that I work down county, and I work the midnight shifts, and picking up the kids during the day, and I was afraid I would forget to pay the taxes, which was only \$100. So I went

to the assessor, or some office, and I asked them if I could incorporate my taxes into my mortgage, and she said yes. So the next thing I know I don't have a lot. She never told me by doing that I would lose my lot, and I have been paying for sewer, and water on my lot for the last 12 years. That is how this whole problem started. So I spoke with Mr. Zutt, and he told me I would have to go to the Zoning Board. So that is how I got here. Thank you.

Mr. Mattis asked are there any other comments?

Mr. Douglas made a motion in Case No. 06-07 to adjourn the case to the March meeting seconded by Mr. Chin with all voting "aye."

* * *

CASE 07-07 RENIE BROOKS for an Area Variance for a rear open deck and stairway on the property located at 3 Aberdeen Rd., Cortlandt Manor.

Ms. Renie Brooks appeared before the Board. She stated I am here because I'm asking for an Area Variance for a rear open deck, and stairway off my new addition to my kitchen. I don't have a lot of backyard so it's close to the line.

Mr. Heady stated I went out there and saw the property, and spoke to Mrs. Brooks the other day. Did you get those letters from the neighbors we talked about?

Ms. Brooks replied yes, and I have signatures. She handed the letters to the Board. She stated I'm sorry I only have only copy. Those are from the neighbor across the street, next door to the left, and to the right, and the neighbor on Oregon Rd., which is in the back of the house.

Mr. Mattis stated that is the one directly behind you, correct?

Ms. Brooks replied right.

Mr. Mattis stated that is an important one.

Mr. Heady stated when I was talking to them out there, they wanted to bring the stairs to the back of the house, and I suggested they push it to the side. It would make it more convenient, and they'd have less of a variance that they would need. They thought that would be a good idea. So I don't know how the rest of the Board feels, but I have no problem with it if they move the stairs to the side.

Mr. Mattis stated so we can eliminate the variance for the stairs then?

Mr. Heady replied yes.

Mr. Chin stated then the deck would be coming out no further than the house. So I would have

no problem with that either.

Mr. Mattis stated my concern with this case was you closed in the kitchen, and even though you're close to the house behind you, it was closing in. It was open before. So that actually was a plus because when you sat out there, because you're quite close to that, and my concern with this deck was the same thing. It would be the noise, and that's even closer to that house, but since they don't object to that I think that was the real concern that I had.

Ms. Brooks stated none of the neighbors had a problem with it.

Mr. Mattis stated right, and the deck is not coming any closer than the kitchen already is. Are there any other comments from the Board? Is there anyone in the audience who wants to speak?

Mr. Heady made a motion in Case No. 07-07 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Heady made a motion in Case No. 07-07 to grant the rear yard variance for a proposed square open deck from 14 feet down to 10 feet, 10 inches. This is a Type II Sequa with no further compliance required seconded by Mr. Chin who added I would like to not that there is no variance needed for the stairs, and the stairs will be going to toward the back in line with the property line instead of as per the original drawing, all voting "aye."

Mr. Flandreau stated the Decision & Order will be ready on Tuesday.

* * *

CASE NO. 08-07 RICHARD WARE for an Area Variance for a front covered porch and front stairway on the property located at 62 Stuart Rd., Cortlandt Manor.

Mr. Richard Ware appeared before the Board. He stated I am here to apply for a front yard set back for a covered porch. I am allowed 30 feet, and I am asking for 25.61 feet, and also a front yard set back for proposed front yard stairs I am allowed 24 feet, and I would like to get 18.79 feet. I would just like to say that I live in a very nice neighborhood, and I enjoy living there. I have lived there for about 9 years. I enjoy my neighbor, and I enjoy the neighborhood, and I feel it is time for me to improve my house. I think it will add to the beauty of the neighborhood rather than take away. I live in a strange curvature of the neighborhood. It is different than most areas.

Mr. Mattis stated this is Mr. Seirmarco's case, and he is not here tonight. He had indicated to me that he no objection to this, but I'll refer to other Board members for comments, or questions.

Mr. Reber stated as the applicant indicates, it is a little odd where he is located on the bend of the road. It seems as though it will not change the character of the neighborhood. It does not create any visual misalignment even though it does project out more to the neighboring homes. I think in this case granting this variance does not adversely effect the neighborhood. It does not

represent a major addition that would create a problem. It is a minimum size porch entranceway, and on that basis, I think this is a reasonable request.

Mr. Douglas stated the existence of those factors is what makes this different from other applications that we have denied.

Mr. Mattis stated I was also out there, and looked at this, and you are on a curve. The property to the left has large trees where they're not even going to be able to see it, and because of the curvature the property on the right probably won't see it, or could barely see it, because it is around a curve, and across from you is woods. So the impact on the neighborhood is virtually zero. It does come out just a little bit more than the other ones, but that visually you really can't tell. So there is no real impact on the neighborhood at all. So I am in favor of this. Are there any other comments? Is there anyone in the audience who would like to speak?

Mr. Reber made a motion in Case No. 08-07 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Reber made a motion in Case No. 08-07 to grant the Area Variance for a front yard set back for a proposed covered front porch from the required 30 feet down to 25.61 feet, and a front stairway from the required 24 feet down to 18.71 feet. This is a Type II Sequa with no further compliance required seconded by Mr. Chin with all voting "aye."

* * *

CASE NO. 09-07 ROSENTHAL JCC for an Interpretation if the proposed improvements constitute an expansion of a nonconforming use or a Use Variance to allow the expansion of a nonconforming use on the property located at 500 Yorktown Rd., Croton-on-Hudson, NY.

Mr. John Kirkpatrick, Esq. appeared before the Board. He stated I am attorney in White Plains. I am here tonight representing Rosenthal JCC. I have here with me is John Iannacito, the architect who has designed the improvements to the camp. Also, in the audience is Eliot Alonowitz, the executive director of Rosenthal JCC, and Tom Maziglia, who is the inside supervisor of the camp. The camp as you recall is a summer camp located on Rte. 129. I would like to ask John Iannacito to give us a quick run through as to what is on the camp now, and what's being proposed.

Mr. John Iannacito appeared before the Board. He stated I am an architect from Scarsdale, NY. I am the architect for Rosenthal JCC. I will start with the existing conditions on the site. The existing camp has two entrances off of Rte. 129. Referring to his drawing he stated the main entrance is here, and a secondary entrance here for deliveries, and emergency access. The site consists of a pond, which is located right here, two in ground pools, and a number of randomly placed buildings. The main building is this one here, which serves as the administration for the camp offices, and the infirmary. This building here is an unoccupied residence. This is the nature shed, caretaker's residence, dance hall. These four buildings around the dance hall are

used for changing rooms, and lockers. This building back here is used for gymnastics. This one here is the arts and crafts building, and the seven buildings at the rear of the property are unoccupied, and are not being used.

Mr. Klarl asked do they have the ability to be used, or there is a stipulation agreement signed that they can't be used?

Mr. Iannacito replied I think there is a stipulation that they can't use them, but I am not quite sure about that. On our proposed site improvements. We're proposing to add a stockade like fence here at the main entrance of the camp, which may, or may not have a sign. We haven't gotten to that point yet. We're also looking to relocate the nature shed, which exists in the middle of this existing play area. That existing shed does not have a foundation. It simply sits on concrete blocks, and we plan to relocate here in the same way just placing it on concrete blocks. We're proposing to add a wood platform to the arts and crafts building. The existing arts and crafts building is essentially a wood deck with a roof, and we're proposing to add this platform between the two existing wings of the arts and crafts building. This platform will sit directly on the ground. It will require a foundation, and it will not have a roof. Then at the rear of the property we're proposing several outdoor activities including a sports court, athletic field, an area for archery, and an area for an adventure course, which is almost like an obstacle course. The athletic field will require the removal of one of those unused, unoccupied structures, and also the relocation of several pieces of playground equipment, which we are hoping to relocate in this area. The camp is looking to improve their site not in order to increase their operation. They're really looking to do these improvements in order to keep pace with all the other competitors in the area, and within the county. They need to do these improvements in order to keep pace with them, and to ensure the future of the camp.

Mr. Kirkpatrick stated as you probably know the status of this camp was the subject of some complicated litigation not too many years ago. The camp was originally established at this site in 1929. Nevertheless, at some point the camp began to receive a series of Special Permits for its' operation, culminating the last one, which was issued in 1994. However, when the camp began to use the upper field this led to objections from the neighbors, and had led to the litigation, which was mentioned. The result of all that is finally a decision by the Appellate Division affirming that the lower court had ruled that the camp is lawful as a nonconforming use which pre-dated the 1951 code. It was the first one that had made it noncompliant. Now it's an unusual situation because the camp had received Special Permits, and now has been found to pre-date zoning, and not need any permit, but nevertheless the result really of all of this is that the camp as it existed in the time of that 1994 was considered to be that which is approved as a nonconforming use. In fact, it was agreed in a later appearance before the Planning Board that the camp would continue to comply with all of the requirements such as a cap on the number of campers, the camp staff, and the like. So that piece is of the camp today. As John Iannacito went through what we are looking to do here is to make some minor improvements. However, we showed these to the Building Inspector, and he has ruled that a couple of these things would be permitted essentially where we are moving existing facilities to another place on the property, but where it is something new like the platform, or deck that fills in one of the buildings, or the

new play fields that those would be considered expansions of a nonconforming use. Well that essentially means that we have to come before your Board, and seek first an Interpretation as to whether you agree that these changes constitute an expansion of a nonconforming use, and if you do then alternatively our request is that you grant an Area Variance to allow them. Our argument follows a long line of court decisions, and I will tell you honestly that in the area of what constitutes an expansion of a nonconforming use we could spend a great deal of time looking at court decisions, and they are all over the map depending on exactly what the use is. Whether adding three gas pumps to a filling station that already has two is an expansion or not, that is just another popular case that went to the courts, and it's gone both ways over the years. My argument, however, is that what we are doing is making improvements within the area of the existing camp. It's within the spacial limits at the time was established, or became nonconforming. They're minor repairs, they're changes, they're alterations. They did not substantially change the nature of the use that we have here. That should not be considered an expansion. However, if your Board believes that they should be so considered, we are asking you the alternative to grant an Area Variance. I note on your agenda that it is listed as a Use Variance. Since the use is not changing, I cannot understand why it would be considered to be a Use Variance. It is still the same thing. Nevertheless, let me go through quickly the standards that we would need to meet for your Board to grant Area Variances for this. The first one is undesirable change in the neighborhood. We're continuing to operate the camp on the same schedule, the same program, the same number of campers, and staff, the same area of the property, and the same summer only time period.

Mr. Mattis stated excuse me, if we interpret that this is an expansion the code does not allow us to give an Area Variance. We cannot give Area Variances for nonconforming uses.

Mr. Kirkpatrick stated then let me say that I would disagree, and simply say I understand your regulations, but I believe that you would be in violation of the code, but I understand what you're saying. Should I mention the rest of the status for the Area Variances, or should I leave it at that?

Mr. Klarl stated you obviously read the agenda tonight, and see the way the application is advertised so we can start off on clean slate, tell us the application that you meant to make, because maybe it was misinterpreted in the agenda.

Mr. Kirkpatrick stated we simply asked for a variance.

Mr. Klarl stated you see it says right now for the Interpretation, if the proposed improvements constitute an expansion of a nonconforming use, or Area Variance.

Mr. Douglas stated I am confused. Why would it be an Area Variance rather than a Use Variance?

Mr. Kirkpatrick replied a Use Variance, and an Area Variance as defined in the State Law is essentially as follows: A Use Variance constitutes something that is a change in the use of the

property. It goes from single family to multi family, it goes from commercial to industrial. An Area Variance is basically a nonparticular use, a non use variance. Our use is not changing. As we're saying here this is exactly the same camp. It's a summer only camp, same number of kids, same staff, same program, same everything. What we are simply trying to do is to keep up with the times by providing slightly different facilities for the same kids, same staff.

Mr. Douglas stated I am sympathetic to the needs of the camp, and obviously it needs to upgrade, or compete, or whatever the right word is, but my understanding, and my experience from being on the Board is that we've been very strict with respect to nonconforming uses, and it's difficult for me to see how what's being composed here is not an expansion of that nonconforming use. You'd be building new ball fields. You're building a new basketball court. You're building a new archery area. You're building a new obstacle course, building new platforms. Those aren't just repairs that we've allowed before. If somebody has a deck that is rotting, and they want to fix it up that okay, but once you start making new things, and building new areas, that seems to me to go beyond what this Board has allowed to be a nonconforming use.

Mr. Kirkpatrick stated I understand what you're saying, and I understand your concern about the precedent of the situation. The camp is an unusual use, and that's the first thing I would like to point out. What we're proposing to do is within the confines of what's there now. We're not looking to expand beyond what's already there. We're trying to move things around within. We're not proposing to go up to the top of the property, which the neighbors are very upset about. That's staying as is. What we trying to do is simply modernize within the essential area of the existing camp.

Mr. Douglas stated I am not sure if that conceptually that's different than the other nonconforming uses that we have ruled for expansion. If you have a house, and it's nonconforming, and they want to build new windows, and stay within the same spacial footprint, they are not expanding the house so to speak. It is the same thing here, you're not expanding out further toward the property lines, but you're adding new structures, and that seems to be an expansion.

Mr. Klarl stated Mr. Kirkpatrick has been a veteran to this Board, and he knows this Board has been tough looking at expansion of nonconforming uses, and that this Board has allowed when you have a two family house in a one family zone to add an open wood deck. We've allowed a little overhang to cover the elements getting into the house, but beyond that the Board has been pretty tough about the expansion of nonconforming use, and you've seen it in other contexts where we've had illegal properties in the Town, and the Board has not allowed the digging out of a basement to create a larger space. So I am sure Mr. Kirkpatrick is aware that we have a whole history of the toughness on the expansion of a nonconforming use, and I am sure that he realizes that is background of which he makes his application.

Mr. Kirkpatrick stated yes, and let me go a little further, if I can, you may tell me that there are cases that I'm not aware of, but what I am aware of is year round uses that have been looking to

make some changes that you would consider an expansion. This is a use of this property that is only active one out of the four seasons of the year. This is not any of the many alternative uses that you could consider of this property. This is not a subdivision of homes. This could be noisy, but that would also be a financial detriment to the Town. Single family houses don't pay as much taxes as a big house. It's not a church or a temple, which could operate year round, and if it were a busy one it could be operating any day of the week. This is a very light use. I understand that the concept in your Zoning code, and your Board is it has been declared to be a nonconforming use, but it is an unusual one at that, which makes it unique. This is a very light use of this property.

Mr. Douglas stated whether or not I or members of the personally feel that this is a better use than other uses prospectively might be, I think our hands are tied. It is a nonconforming, and yes the concept is that it will eventually die out, and maybe in the case of the camp it will die out, because of camp modernizing to compete with the other camps. That may be unfortunate from certain perspectives, but from the Zoning Board perspective I don't know, and I am not speaking for anybody else, personally I think the camp is a pretty good use, but my hands are tied, and I don't see how I can interpret this other than to say it's an expansion.

Mr. Kirkpatrick stated leaving all the arguments about whether it's a nice use or not, and I understand how you say your hands are tied. I have to still come back to that this is an usual use. In this particular circumstance, you could make that leap without it setting a precedent for the others in town.

Mr. Chin stated actually I saw the item that you had indicated. I believe maybe it is not an expansion. I would like to think about this. I agree with what you said on certain parts. I may disagree with you on other parts. I want to weigh the indifferences myself right now, and I think I need another month to think about this. I am jockeying with it right now at the moment, but that is how I feel right now. I can at least give you my decision about it by next month. I don't know how the rest of the Board feels.

Mr. Reber stated I concur, because I also agree that this is so unique, and the arguments of expansion of use. I mean it's true when something is nonconforming, and you say it doesn't fit the character of the neighborhood, and we don't want to encourage it to be more nonconforming, but by the same token we don't want to put a severe hardship especially on the residents. For instance, if the code says you have to have a sprinkler system, and is adding the sprinkler system an expansion of the nonconforming use, I would say no. We would let them stay up to code, and do whatever was appropriate. So I think here this does require some serious thinking in terms of what really is an expansive use, and where we're going with it. It does have a long history, it's obvious from the file.

Mr. Chin stated it wasn't that long ago that small airplanes used to land behind that property.

Mr. Kirkpatrick asked so I guess then you will leave the hearing open so we can have a chance to bring in any additional information?

Mr. Mattis replied yes. He asked you don't intend to bring back the air strip do you?

Mr. Kirkpatrick replied there's a street there now. Hopefully, no one will land a plane on it. Mr. Mattis asked is there anyone in the audience that would like to speak?

Mr. Conciere appeared before the Board. He stated I live right across the street from what was Rainbow Camp that is now Camp Discovery. My understanding is that it is still a non-profit organization?

Mr. Mattis replied I don't know. I don't know that it is relevant, but maybe they can answer that question.

Mr. Kirkpatrick stated Rosenthal JCC is a non-profit organization.

Mr. Conciere asked so those kids don't have to pay to go to that camp?

Mr. Kirkpatrick replied yes they have to pay.

Mr. Klarl stated sir, for example like a hospital. The hospital is a not for profit organization, but they do charge.

Mr. Conciere stated I have been there for about 25 years across the street from that camp. I've seen it go through different phases. They completely renovated the main house with siding, roofing, windows, and cleaning out the shrubs. I had worked there one season, and if it was up to me I would take a bulldozer to those buildings. If it wasn't for the Board of Health naming it for a non profit organization, they probably would have closed that camp a long time ago. I am not against children having a place to go or having a place for fun, but when they tried to make it almost a 12 month operation a few years ago, if it wasn't for the New York City water department shutting that down, because it would have drained the wells, put an excessive amount of sewer water in the place, and they would of had to bring in water to service the people they wanted there, but they were looking for a 24/7, 12 month a year operation. Then the problem started with that upper field where they tried to make a little league going out into the airport acres area, which was not legal. Like I say, when they start talking about renovation, or a little repair, they always try to push to get it larger. Now I don't know if they're going to have the continued same amount of children, or if they have to increase the amount of children to offset the costs of what it costs to run that place. So as a non profit, you still have to make a profit in order to keep going. Now I don't what their intentions are 5 years, or 10 years down the road, or how many more children they'd have to bring in there to make it work, and then they're talking about expansion in there, and it would go back to the same problem.

Mr. Mattis stated our understanding is that the court decision limited the number of children they can have.

Mr. Conciere stated yes, right now, but any business that doesn't expand 7 percent a year will be bankrupt in 5 years, and I can't expect them to do that. I don't think they have to put up an extra million dollars a year to help house all these children for the 8 or 10 weeks a year that they bring them it. Thank you.

Mr. Mattis asked is there anyone else?

Ms. Linda Hill appeared before the Board. She stated I live at the property in the back of airport acres where the fields are that we shut down, and got them back on their proper layout. I know at that time we were all invited, the neighbors were invited to come to the property to take a look at the buildings. The buildings are pretty run down. They did in fact put a few decks on the buildings at that time just to make it a little safer for the children. It seems to me that just looking at the plan it doesn't look like a very substantial expansion, but when I get a letter in the mail that says that they are applying for it, the panic attacks start. We've been there since 1986, I built the house on the property, and they were talking about if the camp goes away you might get some taxes into Cortlandt. It can't hurt the tax base. This is a non profit, they do not pay taxes on their 19 acres of pristine water shed property. They have been very different neighbors to the neighborhood. If they just want to add a few decks, and what not to make it safer for the children that is fine. I bet if 6 of us went over, and pushed over the building that they are going to level to make the playing field, I am sure it could be done. I don't have any objection, but I also have a very wary eye.

Mr. Klarl asked Mrs. Hill do you think understand each, and every change that they are proposing here?

Mrs. Hill replied I do, John. I think that it does seem to be that they are trying to straighten the place out a bit.

Mr. Klarl asked do you want to see a schedule from them?

Mrs. Hill replied I did see it today, thank you. I just think they are just trying to spiff it up. I have been listening here tonight. It will be you decision, and I don't envy your decision at all.

Mr. Mattis asked is there anyone else that would like to speak?

Mr. Douglas made a motion in Case No. 09-07 to adjourn the case to the March meeting, seconded by Mr. Chin with all voting "aye."

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CASE NO. 48-05 CINGULAR WIRELESS SERVICES, INC. For a Special Use Permit for a wireless telecommunications facility on property located at 451 Yorktown Rd., Croton, NY.

Mr. Mattis stated we have a letter on this case asking for an adjournment to the June meeting.

Mr. Heady made a motion in Case No. 48-05 to adjourn the case to the June meeting seconded by Mr. Chin with all voting “aye.”

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Mr. Zutt approached the Board. He stated I spoke to Mr. Hoch today. I sent a letter to the Board regarding the Rinaldi case. I spoke to Mr. Hoch, and he told me he would speak to Mr. Flandreau, and maybe we could have it added on tonight so we could talk about the site plan regarding the buildings. It is not a formal application, you have already decided the case. We are just having a problem carrying out one of the conditions in your resolution.

Mr. Mattis stated we were not actually going to discuss this until we had a little more indication from the Planning Board.

Mr. Klarl asked did you want to add it to the next agenda to modify the decision?

Mr. Zutt replied maybe what I need to do is to get the information before you so you understand the real extent of our problem, and I don't know that the Planning Board can solve it for us.

Mr. Mattis stated okay. You can formally ask us to reopen, or to modify the case.

Mr. Zutt stated which ever one works best.

Mr. Douglas stated procedurally it would be better if we reopen the case.

Mr. Zutt stated I understand. In order for us to appear before your Board at all I need to do one of two things. I need to intervene your support for the amendment to reopen, and modify the D&O, or file a brand new application, and start over again, and I'm hoping that I'll be able to persuade you that the amendment is the way to go. The Decision & Order that you rendered had a requirement in it that all the activities had to indoors, and so Mr. Cronin modified the originally submitted site plan, and it is before you as the first sheet labeled current proposal. The building is larger than the one that was originally contemplated, it has space for all of his equipment inside as well as material storage are inside. The building height was redesigned so he would actually be able to off load his dump truck within the building. So that all the activities could occur inside the building. Our problem is this, we have a tag along trailer, which is hauled by a dump truck, which has ramps that come out the back. So in order to load it with the trailer we need approximately 130 linear feet, and it's just not feasible to build a building that large for that limited purpose, and that is our problem. If you look at the second sheet, we're showing you a building of that dimension, and arguably the building could be built, but it would result in a required reconfiguration or our septic system, a relocation of the driveway, and would actually require us to move all the equipment in and out of two doors. So if we needed to get something in the back of the shop we'd have to haul all of the equipment out, and it would be like one of those parking lots in New York City where they line all the cars up, and you have the one in the back, and it's not really a practical solution. The last sheet I think is the one that's most supportive, hopefully, of our request. I asked Mr. Cronin's office to prepare a profile of the view

shed, or the site line from the neighbor's property, Ms. Buchanan, their property, as you know, is above this site. The proposed building is shown to you adequately on this plan, and the plan shows that the building as proposed here would completely eliminate any view shed into the property where loading, and unloading of the trailer would occur. The actual site line would carry across Rte. 129 to a point in the woods on the other side. So if you were to grant our request, the outdoor loading, and unloading of the equipment wouldn't even be visible from their property. So that is our request.

Mr. Mattis stated it would also be at the opposite side.

Mr. Zutt stated yes, it would be absolutely on the opposite side of the building, and out of view.

Mr. Chin asked that trailer, Mr. Zutt is basically for the paving correct?

Mr. Zutt replied well I think Lou hauls all of his equipment on that, other than dump trucks he's got a couple of rollers, a paving machine, and excavator, and one other piece, probably a backhoe. So that all has to be hauled by trailer, and he actually went out, and measured the length of each of these items, and when combined with the ramp that you need to use to get the equipment on, and off the trailer, you would need 130 linear feet.

Mr. Mattis stated that would also bring that building much closer to the road.

Mr. Zutt stated much closer to the road it would require a complete reconfiguration of the septic system, because you can't drive over the septic system with heavy equipment, and as I said we would have to move in and out of that building constantly, because it would be stacked the long way instead of the short way as is contemplated under the first drawing. So that is our request.

Mr. Becker asked can you clarify, if we went along with your current proposal, what would be done outside the building?

Mr. Zutt replied the only activity which your Board would then allow, if you approve this, would be loading, and unloading of the trailer, simply putting equipment on, and off the trailer. Right now we have material storage, as you can see from this drawing, and all the equipment stored.

Mr. Becker asked the trailer is for the vehicle?

Mr. Zutt replied the trailer is for the roller, the paving machine, the backhoe, everything that has to be transported to the work site.

Mr. Becker stated what I am getting at is that there will be no rocks, stone, gravel, or anything like that being loaded, or unloaded outside.

Mr. Zutt stated Dr. Becker, if you look at the first drawing in the upper left corner of the building, we have material storage provided for within the building.

Mr. Becker stated okay. The reason I'm asking is that when we drafted the original D&O it was in response to a lot of comments about noise. So understanding the line of site information, I am also concerned about noise. I just want to get on the record that there will be moving of materials that you will just be unloading the truck with equipment only.

Mr. Zutt stated right. The materials will be brought to the site back into the building, and off loaded inside the building.

Mr. Reber stated I looked at our minutes from the last meeting, when I summarized what I thought we were trying to accomplish, and if I just re-read this. I think it clarifies it. We never said you can't move vehicles around the property.

Mr. Klarl stated but we did want the loading of the rocks into the trucks to occur inside.

Mr. Reber stated yes, yes. What I said here was, "So what we've done by putting these restrictions on is to try, and bring this Special Trade as the SIC compliance in terms of its' true operation to sort of resemble what the base examples were in the type of business they were doing, which means you have trucks that park in a building, you load them in the building, you leave the site, and then return to the site. You don't disturb the neighbors, and I think this was the key to the intent of these restrictions." I think it still meets that based on what they're intending to do. It really doesn't make any more noise than the truck itself starting up, and driving off to the site.

Mr. Zutt stated we took the restrictions very seriously, as you can see, and that is why we are here. So that is our request. We would appreciate your entertaining it, and modifying the D&O. I'd like to be able to avoid coming back with a brand new application, if possible.

Mr. Mattis stated okay, you can make the request next month that we reopen the case, and modify this.

Mr. Zutt stated great, thank you very much. Should I do it by letter?

Mr. Mattis replied send in the letter, and officially request it.

Mr. Klarl stated the key thing is that you ask to modify the D&O, and then we can make it the same Case number, and notify the neighbors so they have an opportunity to be heard about the modifications that are proposed. So the request will be to have the case reopened, and modified.

Mr. Mattis stated we have to unanimously approve that otherwise they have to reapply.

Mr. Zutt stated thank you, and we'll see you next month.

Mr. Heady made a motion to adjourn the meeting, seconded by Mr. Douglas with all voting

“aye.”

The meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Christine B. Cothren